

IN THE MATTER OF INTEREST)	
ARBITRATION)	
)	Marvin Hill
Between)	Arbitrator
)	
CITY OF BELLEVILLE, ILLINOIS)	Hearing Date: July 23, 2013
)	
-- and --)	Case No. S-MA-12-306
)	
INTERNATIONAL ASSOCIATION)	Hearing Location: Belleville, IL
OF FIREFIGHTERS, LOCAL #53)	
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Appearances:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The City of Belleville is located in St. Clair County, Illinois and has a population of approximately 44,515 (CX 14). The City's Fire Department has a budget of approximately \$5.67 million (CX 14). The equalized assessed value of property in Belleville is approximately \$604 million.

The parties have stipulated that the following Illinois communities are external comparables appropriate for comparison: Alton, Carbondale, Collinsville, Danville, East St. Louis, Galesburg, Granite City, Moline, Pekin, Quincy, and Urbana.

Belleville has a mayor and city council form of government with sixteen aldermen in eight wards. There are nine collective bargaining units in the City, including International Association of Fire Fighters, Local 53 (R. 30). The Belleville Fire

Department has four stations, staffed by 64 full-time firefighters including the Fire Chief and three other chief officers (CX 14). Firefighters in Belleville work in four shifts on an atypical schedule of 24 hours on and 72 hours off (hereafter “24/72”) rather than the common 24/48 schedule. Most of the comparable communities operate under a traditional 24/48 schedule. The Department responded to 1,556 emergency calls in 2011 and 1541 emergency calls in 2012, which averages approximately one call per station every 24 hours, a low number in the City’s view. On average, starting firefighters work 2,589 hours per year and a median of 2,667 hours per year (CX 17). In Belleville, a starting firefighter works 2,166 hours annually, which is 423 fewer hours than the average and 501 fewer hours than the median (CX 17). When broken down on a weekly basis, Belleville starting firefighters work 41.61 hours/week. Starting firefighters in comparable communities work an average of 49.80 hours/week, with a median of 51.29 hours/week (CX 17)(see, *Brief for the Employer* at 9-10).

Currently, the bargaining unit has four (4) ranks: (1) battalion chief, (2) captain, (3) engineer and (4) firefighter. The firefighters in Belleville are not required to be EMTs or paramedics. Rather, the Belleville Fire Department utilizes a private ambulance service to respond to emergency medical calls (R. 23). The Belleville rank of captain is a company officer position equivalent to the rank of lieutenant in comparable communities, and the City’s exhibits equate those two ranks for comparison.

The parties agreed to certain ground rules and stipulations -- including the comparable communities cited above (R. 6). To this end the parties reached certain tentative agreements and ask that the Arbitrator, in this award, include those agreements (EX 2; R. 7, 16). They are attached in Appendix “A.”

According to the Union, two (2) economic issues remain for the Arbitrator’s consideration: (1) General Wage Increase for 5/1/12, 5/1/13 and 5/1/14 and (2) Light Duty §12.7 (new). A third economic issue, “§ 7.2 Salary for Non-Residents,” does not constitute a separate item for the Arbitrator’s consideration, as argued by the Union (JX 3 at ¶5; R. 7). One non-economic issue remains for the Arbitrator’s consideration: Residency (JX 3 at ¶6; R. 7). The Employer has tied its residency proposal to its wage offer, in the Union’s view (*Brief for the Union* at 2).

The Employer submitted its final offer (EX 1) at the hearing. The Union reserved its right to provide a final offer upon close of the hearing (R. 8). The Union’s final offer is the same as its “Last Offer” which it presented at the hearing.

The parties currently operate under a collective bargaining agreement for 2008-2012, which expired on April 30, 2012 (CX 29). The Union requested negotiations in January 2012. The parties met several times from April 2012 through April 2013. The parties failed to reach an agreement on the four remaining mandatory subjects of bargaining, and proceeded to interest arbitration. A hearing was held by the undersigned Arbitrator on July 23, 2013 in Belleville, Illinois. The parties appeared through their representatives and entered exhibits and testimony. Post-hearing *Briefs* were filed on

September 27, 2013, and electronically exchanged through the offices of the Arbitrator. The record was closed on that date.

II. POSITION OF THE UNION

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

A. WAGES (ECONOMIC)

Final Offers

The Union's final offer is for a 2.0% increase in the Salary Schedule effective May 1, 2012 for the 2012-13 fiscal year (FY); a 2.0% increase for FY 2013-14; and a 2.0% increase for FY 2014-15. The Union's final offer is less than the going wage increases in the comparable communities, it asserts. The Union designed its final offer to maintain marginally its position in comparison to the comparables.

The City's final offer proposes a zero percent (0%) increase in the Salary Schedule effective May 1, 2012 for the 2012-13 fiscal year; a 2.0% increase for fiscal year 2013-14; and a 2.5% increase for fiscal year 2014-15 (EX 1; R. 13). According to the Union, the City's Final Offer purports to be a *quid pro quo* for a loosening on the parties' residency requirements. The "*quid*," i.e., the loosening on the residency requirements, the Union asserts, is a *quid* that the Union neither asks for nor wants (R. 45, 51).

1. BECAUSE THE UNION'S WAGE OFFER MORE CLOSELY ADHERES TO THE INTERNAL COMPARABLES MOVING FORWARD AND THE GOING WAGE INCREASES IN THE COMPARABLE COMMUNITIES, ITS OFFER SHOULD BE AWARDED

(a) The Police Contract is Distinguishable and Reliance Upon it is Misplaced Because of Differentiating Circumstances, the Parties' Interests, and the Backwards Nature of the Police Agreement

The Union submits that the City hangs its wage proposal on the fact that in its estimation, "it's fair for [the firefighters] to be taking a zero in the first year of this contract . . . each of the [City's] bargaining units, other than the firefighters, between 2009 and 2011, had at least one year in which their contract provided for a zero percent increase." (R. 32).

First, the police contract (EX 12) upon which the City relies, resulted from an interest arbitration award that took place during the so-called "Great Recession." The different context in which the firefighters' interest arbitration and the police interest arbitration took place undercuts any rationale for imposing a zero percent wage increase

at this point in time (*Brief for the Union* at 8). Significantly, in the police interest arbitration, Arbitrator Elliott Goldstein explicitly recognized the importance of timing when imposing a wage freeze (EX 12 at 45) (“The internal comparables since the Spring of 2008 have included a 2009 wage freeze, uniformly. The internal “comps” where no such freeze was negotiated by the fire and police clerical units were before this ‘great recession . . .’”). This finding comports with the testimony provided by Union President Brent Maine that the firefighters had concluded their prior contract negotiation and reached settlement before the City’s other bargaining units (R. 67-68).

Second, when a party agrees to a zero percent wage increase or an arbitrator imposes such an award, it is typically in the context of a *quid pro quo* or an employer’s dire financial difficulty. The City relies on the fact that firefighters are currently projected to make more than police officers in the future. But that disparity exists only because of Arbitrator Goldstein’s zero award and the police officers’ subsequent choice to trade a relaxed residency requirement for less money. The Union stresses that in contrast, presently, the firefighters are not willing to accept a zero percent increase in their wages for expanded residency rights. And the firefighters do not have the historical monetary leverage the Union asserts, i.e., more money with which to trade than police officers had (*Brief* at 9-10; EX 20).

In this case, the parties’ bargaining history demonstrates the Union’s reluctance to agree to enhanced residency status because it viewed the cost as too high (R. 69-70; UX 3).

The Union argues that because arbitrators routinely refuse to allow parties to revise the product of past negotiations through the use of interest arbitration, this Arbitrator should ignore the City’s plea that it is “fair” to impose a zero percent increase because other City bargaining units took one during the recession. According to the Union, it negotiated its past agreement at a propitious time and there are no current circumstances indicating the City’s dire financial need to impose a harsh bargain on the Union. Indeed, the City has not expressly argued that it is unable to pay the costs of the Union’s proposal.

(b). External Comparables Support the Union’s Wage Offer Which Allows it to Maintain its Status Among its Peers

Presently, the Union acknowledged that it ranks among the highest in terms of hourly compensation relative to the comparable communities (UX 3). The Union has this status only as a function that it works fewer hours than those worked by units in comparable communities (EX 17). Saliiently, in terms of salary compensation, however, the Union is below the average and median of the comparable communities (EX 15). The Union seeks to maintain this status but is cognizant that it does not have as much room to receive percentage increases equivalent to those of the comparables. Thus, the Union structures its wage increase proposal below those of the comparable communities (UX 1).

In the Union's view, the City's proposal, however, would drop the bargaining unit in comparison to the comparable locals. And the City's proposal is more than 2.5% less than the going wage increase rate for the comparable communities (UX 1)(reprinted infra).

Because the Union's wage increase proposal (six percent over three years) more closely matches those of the agreed-upon comparable communities, its offer is more aligned with Section 14's statutory criteria.

B. LIGHT DUTY (ECONOMIC)

Final Offers

The Union proposes that the parties add a provision providing for light duty assignments at the City's sole discretion based upon an employee's request. The Union's Final Offer mimics the City's December 19th proposal.

The City's Final Offer proposes that the parties add a provision providing for light duty assignments at the City's sole discretion and the City can mandate an employee to perform light duty work or if an employee makes such a request (EX 1 at §12.7; R. 13, 38).¹

1. Because the Union's Proposal Mimics That Which the City Had Previously Proposed and Does Not Create a Permanent Obligation on the City's Part to Create Light Duty Assignments Which Do Not Exist, the Union's Offer is More Closely Aligned With the Statutory Criteria

The Union concedes the Department has never had a "light duty" assignment provision. According to the Union, the "well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) is to place the onus on the party seeking the change . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

(1) that the old system or procedure has not worked as anticipated when originally agreed to or

¹ The exact wording of the Administration's proposal (EX 1) is as follows:

Section 12.7. Light Duty

With certification from [an] attending physician stating that an employee otherwise eligible for sick leave or duty-injury leave benefits is capable of performing light duty, the employee may request or be assigned light-duty assignments.

The Employer may require the employee to be examined by a physician of its choosing, at the Employer's expense, to verify that the employee is fit for light duty. Light duty shall not interfere with scheduled medical appointments, therapies, or prescribed physical therapy.

(2) that the existing system or procedure has created operational hardships for the employer (or equitable due process problems for the union) and

(3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.”

(EX 1 at 6; citations omitted).

While both parties are in agreement that a light-duty assignment should be created, the parties are at impasse as to whether the Employer should be able to mandate an employee to take such an assignment. In essence, the City’s proposal, by allowing it to mandate that an employee work light duty, is stripping away an employee’s existing right to use accrued sick leave when unable to perform regular duty, in the Union’s eyes (See, JX 1 at Art. XIV). The City has not fulfilled its obligation to demonstrate the need for a “breakthrough.”

Also, under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12111-12117, an employer such as the City could obligate itself to employ individuals in permanent light duty assignments if it creates such an accommodation. 42 U.S.C. § 12112(b)(5). Common sense dictates that if the City were to employ numerous individuals in a light-duty capacity, the City would have less resources to employ able-bodied individuals to service the City’s fire suppression needs. Thus, the City’s proposal, if adopted, could have the unintended consequence of obligating the City to provide permanent light-duty assignments. Such a result would negatively affect the health and welfare of the City’s residents, which is one of the Arbitrator’s considerations.

In comparable communities, the parties’ collective bargaining agreements specify that any light-duty assignment is not a permanent assignment. Here, no such language exists in the City’s proposal (EX 1). And the Arbitrator is not authorized to modify this language even if it agrees with the City’s position.

Further, light-duty assignments typically consist of fire inspections. However, fire inspections are part of the regular shift assignments that Belleville’s firefighters currently complete. There is not a separate bureau or department that conducts that fire investigations. So an employee on light duty, if inspections were his/her assignment, would be eroding shift work, the Union maintains

In summary, the Union has not avoided negotiating a light-duty assignment. But because the City seeks to radically change the Sick-Leave Benefit, the Union’s incremental approach should be favored.

C. RESIDENCY SALARY PENALTY (ECONOMIC)

Final Offers

The Administration proposes the following final offer language regarding salary for non residents:

Section 7.2 Salary for Non-Residents

Any employee with less than 20 years of service in the Department at the time he or she elects to reside outside the City’s corporate limits, pursuant to Section 24.1 of this Agreement, shall have his or her base salary as set out in Appenix A reduced by 1.5% (EX 1 at 1).

The Union believes that the City’s final offer penalizes employees who are non-residents. Furthermore, the Union objects to this issue as being a separate issue apart from the general wage discussion.

1. Because the Illinois Municipal Code Analogously Does Not Allow the City to Make Residency Requirements More Burdensome During the Period of Service, this Arbitrator Should Not Endorse the Employer’s Proposal Which Penalizes an Employee’s Wages for Non-Residency

The Union contends that under Section 10-2.1-6(b) of the Illinois Municipal Code, 65 ILCS 5/1-1-1 (1961), as amended, “[r]esidency requirements in effect at the time an individual enters the fire or police service of a municipality . . . cannot be made more restrictive for that individual during his period of service for that municipality, or be made a condition of promotion, except for the rank or position of Fire . . . Chief.” In essence, the City does not have the lawful authority to make its residency requirements more burdensome during the term of the contract, the Union asserts. 65 ILCS 5/10-2.6-6(b). The City’s proposal is an effort to circumvent this restriction. The Arbitrator should not reward such subterfuge which would place employees performing the same work at different pay classes thus undermining the cohesiveness of a bargaining unit.

D. RESIDENCY (NON-ECONOMIC)

Final Offers

The Union’s final offer on residency proposes that the parties maintain the *status quo*. The current provision (EX 29 at 25) reads as follows:

Section 24.1 Residency

As a condition of employment, all employees shall be required to reside within the corporate limits of the City of Belleville. All new employees shall have 15 months from their date of hire to comply with the residency restriction. Employees with twenty (20) years or more of service with the City of Belleville Fire Department shall be allowed to reside within St. Clair County. Notwithstanding the forgoing, employees shall not be subject to any residency

restriction which is more restrictive than the restriction in place at the time of their hiring.

The City's final offer proposes to modify the existing language by allowing an employee, after twelve years of employment as a City firefighter, to move out into a radius that is thirteen miles from the fountain on the City square. The City offers this "concession" as a *quid pro quo* for its salary proposal.

1. Because the City Ties its Residency Proposal to its Wage Proposal, and the Union Desires to Maintain the *Status Quo* on Residency, there Effectively is No *Quid Pro Quo* and the Arbitrator Should Award the Union's Proposal

Noting that the City asserts that it desires to "align" its residency requirements between the police officers and its firefighters, the Union contends that the police officers voluntarily agreed, in 2012, to the City's residency proposal for a zero percent wage increase in that year (R. 15). Thus, there existed a *quid pro quo* for residency (R. 15; EX 20). The Firefighters, in contrast, do not value residency as the police officers valued residency.

Because the Union seeks to retain the *status quo*, the City bears the burden that the Arbitrator should depart from it based upon (1) a proven need for the change exists; (2) the proposal to depart from the status quo meets the identified need without imposing an undue hardship on the other party; and (3) there has been a *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision. See, *County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council*, LLRB Case No. L-MA-96-009 (Arb. McAlpin, 1998). All three elements are missing in this matter, the Union argues.

To this end the Union asserts that it withdrew its residency proposal because the cost was too much (R. 70; EX 3). And the City never offered a package deal that equaled the police's residency restriction.

Firefighters are free to negotiate their own contract terms and define their own *quid pro quo* as are the police officers. This Arbitrator has recognized this principle in *City of Decatur, supra*, and he should affirm it here. (See, *City of Mt. Vernon and IAFF Local 738*, FMCS 120516-55676, 27 (Arb. Hill, 2012)(holding that "simply because the police or another city unit agree to a specific provision does not imply that every other unit in a city has to follow suit").

* * * *

Based upon the applicable statutory criteria and evidence in the record as well as theory of interest arbitration, the Union respectfully requests that the Arbitrator grant its proposals as to: Wages, Light Duty, and Residency.

III. POSITION OF THE EMPLOYER

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

In the Employer's view, there are four (4) unresolved bargaining issues: one non-economic and three economic. The parties agree that residency is a non-economic issue. The Arbitrator may award the final offer of the City or the final offer of the International Association of Fire Fighters, Local 53 on residency, or the Arbitrator may supply his own language as an award. The parties also stipulate that the issues of wage increases and light duty are economic issues (JX 1 at 2). The City also presents wage reduction for non-residents as an economic issue. The Union disputes the City's characterization of non-resident wage reduction as a separate and independent issue, and wishes to include this issue under either wage increases or residency. The Arbitrator has the authority to award an economic issue by accepting either the City's proposal or the Union's, management asserts.

A. Residency (Non-Economic)

Management points out that under the 2008 collective bargaining agreement, employees with less than 20 years of service are required to reside within the corporate limits of the City of Belleville, and new employees must reside within the City limits within 15 months of their hiring date (CX 2 at 25). An employee who has served 20 years with the City is permitted to reside anywhere within St. Clair County, Illinois (CX 2 at 25).

In its final offer, the City proposes that an employee who has served Belleville for at least 12 years is permitted to live within a 13 mile radius of the fountain in the City square, so long as the employee remains in St. Clair County (CX 1, Final Offer). Where the radius intersects with another municipality's border, the radius will be extended to include the entire municipality, so long as the additional territory is within 15 miles of the fountain in the square. Employees who reside outside the City limits will not be entitled to discounted city services. Employees with 20 years or more of service will still be entitled to live anywhere within St. Clair County, but under the City's proposal, these employees may be removed from the multi-alarm call-in list. The City's proposal increases residency options for employees, is less restrictive than the Union's proposal, and retains the rights of employees who have served 20 or more years to live anywhere in the county.

According to the Employer, the City's final offer on residency should not be treated as a *quid pro quo* for the City's 2012 wage freeze (*Brief for the Employer* at 5). Management disputes the Union's assertion that Arbitrator Elliott Goldstein, in 2010, adopted a *quid pro quo* analysis which exchanged reductions in the residency

requirements for a zero percentage wage increase. *Id.* “Arbitrator Goldstein did not tie residency to wages because he awarded the City’s final offers on both items. The IFOP sought much higher wage increases and significantly less restrictive residency requirements than were awarded. The City’s offer here is similar to the residency provision awarded by Arbitrator Goldstein for the police officers.” (*Brief* at 6).

Further, the Union has sought, and agreed to, for a significant period of time previous residency relaxations. Thus, the Union’s assertions that it has no interest in changes to residency are simply untrue. In management’s view, the Union’s *status quo* position on residency is merely a tactical position, as it hopes to bolster its position on wages by feigning disinterest in relaxed residency requirements (*Brief* at 6-7). Indeed, management asserts that the parties’ bargaining history supports the conclusion that it was the Union who first proposed that only those employees who became non-residents would receive reduced pay (*Brief* at 7).

B. Wage Increases (Economic)

The City has submitted a final offer of 0.0% increase for the 2012 Fiscal Year, 2.0% increase for the 2013 Fiscal Year, and 2.5% increase for the 2014 Fiscal Year for all ranks within the bargaining unit (CX 1 at 1). The City’s proposal provides for a 4.5% total increase over the life of the contract. According to the Employer, both internal and external comparable bargaining units support the City’s proposal on wages, and a wage freeze for 2012 in particular. In contrast, the Union proposes a 2.0% increase for 2012, 2013 and 2014, or a 6.0% increase in wages over the contract term (UX 1).

The City’s proposal and the Union’s proposal on wages are quite similar, and are only 1.5% apart. The City’s final offer includes a wage freeze in 2012, which accounts for this difference. While most unions in comparable communities and within the City of Belleville felt the impact of the economic downturn and accepted contracts which included wage freezes, the Union has been sheltered by its contract entered before the recession of 2008. All nine (9) of the City’s other internal bargaining units have accepted a wage freeze for at least one year since 2009 (See, CX 19). Seven of the nine bargaining units accepted a wage freeze in 2009, including the Belleville Police. In fact, five of the bargaining units, including the IFOP, accepted two years of wage freezes from 2009 to 2011. *Id.* The Union escaped negotiating a new collective bargaining agreement during the recession. The proposed 2012 wage freeze brings the Union in line with both internal and external comparable bargaining units, and forces the Union to share in the burden of difficult economic times.

The Employer also points out that from 2007 to 2011, the average wage increase within the City of Belleville was 2.09%. The average wage increase for the police officers was 1.75%. The firefighters received an average yearly increase of 3.45% for the same period, which was nearly double that of the police unit (*Brief* at 8). Indeed, the top-paid police officer in 2008 received \$3,200 more per year than the top-paid firefighter. By 2012, the top-paid police officer lags behind the top-paid firefighter by approximately \$5,200 per year (*Brief* at 8; R. 31-31). In management’s words: “This significant shift in

internal rankings of Belleville's public safety bargaining units demonstrates just how much the 2008 collective bargaining agreement protected the Union from the effects of the recession as compared to their internal peers." (*Brief* at 8).

Further addressing the external criterion, the City asserts that under its final offer for 2012, it will maintain its rank of 4th among comparable jurisdictions in wages, and is 4.28% above the average by the Union's own numbers, despite the wage freeze (UX 3). Accordingly, the Union's refusal to accept a zero percent wage freeze in 2012 cannot be justified by claiming it would lose its place among external comparable communities (*Brief* at 8). In short, management submits that the 2012 wage freeze does not cause the Union to lag behind its peers in any way. In fact, under both proposals Belleville remains a leader among the bench mark jurisdictions in terms of wages (*Brief* at 8-9).

Management also notes that the number of calls, hours worked (a 24/72 shift), and hourly wages support the City's final offer on wages (*Brief* at 9). Specifically, Belleville handled the second fewest number of calls among all 11 comparables. In both 2011 and 2012 only Carbondale had fewer calls (due in part to the fact that Belleville's emergency calls are handled by a private company). Also, in Belleville a starting firefighter works only 2,166 hours annually, which is 423 fewer hours than the average and 501 fewer hours than the median, resulting in a high rate of pay for the unit (*Brief* at 9-10).

The City also maintains that economic factors support its final offer. To this end the Employer points out that this Union, in negotiating a collective bargaining agreement, "missed" the recession, which resulted in wages increases denied to other employees (*Brief* at 10-11). While the economy has continued to recover, Belleville continues to struggle with high unemployment rates (8.1% in May of 2013)(*Brief* at 11). Moreover, the Union's fortuitous timing when it entered into the 2008 collective bargaining agreement effectively sheltered Belleville's firefighters from the recession when changes in the CPI are considered (*Brief* at 11). In the City's view, "economic factors including the unemployment rate, CPI, and the slow economic recovery all support the City's final offer on wages." (*Brief* at 12).

Finally, in support of its wage offer the City asserts that the 2012 wage freeze is unrelated to residency (*Brief* at 12). The City asserts that its offer of a zero increase for 2012 is a realistic response to economic conditions, rather than a *quid pro quo* exchange for reduced residency requirements (*Brief* at 13).

C. Non-Resident Wages (Economic)

The Union argues that this issue should be included as a penalty for non-residency or as a wages sub-issue, and should not stand alone as a separate issue (R. 50). The City's final offer provides that any employee who has served less than 20 years with the Department at the time he or she elects to live outside the corporate limits of Belleville

shall have his or her base salary reduced by 1.5% (CX 1, Final Offer). The Union's offer maintains the *status quo* on all residency provisions, including salary for non-residents.

The City proposes a reduction in salary for non-residents as a concession for its proposed reduced residency restrictions. Other City bargaining units, including the police officers' unit, have accepted wage reductions for less restrictive residency requirements. It was the Union that first proposed its members who elect to reside outside the City should receive less pay. This approach was different than the IFOP's agreement that all bargaining unit members would forego a wage increase in order for its members to have the option to move out of the City.

Management submits that when an employee chooses to live outside the City limits, the City loses revenue and emergency callback times are increased (*Brief* at 14). This proposal recuperates some of the revenue lost when an employee moves outside Belleville. Additionally, under City's final offer, employees who move outside the City limits after 20 years of service will retain their full salary. The City therefore requests the Arbitrator award the City's final offer on reduced wages for non-residents.

D. Light Duty (Economic)

The City's final offer allows the employee to request or the Employer to assign light duty to an employee who is certified for sick leave or duty related injury leave but has been cleared to perform light duty. The employer retains the sole right to approve or disapprove light duty assignments (CX 1 at 7). This arrangement provides more flexibility for employees who are cleared for light duty, reduces overtime costs for the City, and is similar to light duty arrangements of other internal bargaining units including Belleville police officers. In contrast, the Union proposes that an employee may request light duty and the Employer has the discretion as to whether to award it. However, under the Union's proposal, the Employer may not unilaterally assign light duty.

Addressing the Union's argument that if the Employer has the ability to assign light duty, an employee who needs accommodations and who does not receive light duty could potentially bring a claim under the Americans with Disabilities Act (ADA), management responds that under the Union's own proposal, the Employer retains the right to deny light duty to an employee who requests such an assignment. If an employee requested light duty, and was denied, that employee could also bring a claim under the ADA. While the Union accuses the Employer's proposal of creating potential litigation under the ADA, the Union's proposal does not eliminate these same potential ADA claims. The City's proposal allows flexibility, which is beneficial for both the Employer and the employee, saves tax dollars, and puts injured employees back to work.

Further supporting its final offer, the City asserts that its offer on light duty is nearly identical to the language in the current agreement for the Belleville Police (*Brief* at 16). However, and unlike the light duty provision for the Police unit, the City's final offer provides that light duty assignments shall not interfere with medical appointments.

This, the City asserts, provides flexibility for employees who are in need of medical consultation or treatment. In the Employer's eyes, "when an employee is not fit for full duty due to illness overtime injury, but is cleared to perform the less physically demanding tasks associated with the position, there is no legitimate reason as to why that employee should not be required to do so." (*Brief* at 16).

Finally, management asserts that its final offer on light duty has support in the external comparables. Also, this issue is not a "breakthrough" item, according to the Employer (*Brief* at 17-18). Because the Union is not attempting to maintain the status quo, but has in fact proposed changes to create a strictly voluntarily light duty designation, it has lost its ability to claim the City's proposal is a breakthrough, in management's view (*Brief* at 17). Even if the City's proposal was to be considered a breakthrough, the current contract language does not reflect the Employer's ability to create light duty to put firefighters back to work, an arrangement which has functioned for the Belleville Police Department and complies with federal and state disability laws (*Brief* at 17).

* * * *

For the above reasons, and finding there are four items for resolution, the City requests that the Arbitrator adopt the City's final offer on residency, wages, reduced wages for non-residents, and light duty (*Brief* at 18).

IV. DISCUSSION

It was stipulated that the undersigned Arbitrator was to base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Labor Relations Act which, in relevant part reads as follows:

- A. 5 ILCS 315/14(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall . . . 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.

- B. 5 ILCS 315/14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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 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 to her benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
- (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 private employment.

A listing of the eight separate factors does not necessarily mean that all eight factors are relevant or controlling. Section 14 merely requires that an Arbitrator's decision be based on the eight factors "as applicable." 5 ILCS 315/14(g), (h). The Act only requires that the factors be considered and applied within the context of the parties' collective bargaining relationship. The Act's general charge to an Arbitrator is that the Section 14 impasse procedure should ". . . afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as police or firefighters. 5 ILCS 315/2. Enumeration of the "other factors" in the last criterion of Section 14(h) reinforces the Arbitrator's discretion to bring to bear his accumulated experience as well as other factors traditionally applied by arbitrators in resolving disputed items. As stated by one Arbitrator:

These eight factors guide arbitrators for both economic and non-economic issues, but nowhere does the Act tell the parties or the arbitrator which factor is most important and which least important. Nor does the Act give weight to the factors. For each impasse issue the Arbitrator decides which factors are important and how to weigh them. A significant – perhaps the most significant – consideration in deciding an issue is the weight to be given to each of these criteria.

The arbitrator has considerably leeway in choosing the factors upon which to base an award, picking those deemed controlling while still giving attention to the others. The eighth criterion "other factors" deserves separate mention. It frees the arbitrator from confinement to the other seven, allowing special consideration of a factor that may be important for a particular issue even if the Act does not specifically mention this special factor.

City of Granite City & Granite City Firefighters Assn, Local 253, S-MA-93-196 (Edelman, 1994) at 3, as cited in *City of Belleville & Belleville Firefighters Assn, IAFF Local No. 53* (Hill, 2000) at 15.

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

* * * *

As noted, this dispute involves one non-*economic* issue (residency) and three economic issues (wages; light duty; and wage reduction for non-residents, adopting the

Employer's four-item classification, disputed by the Union). As noted, the Act restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. Thus, under the statute there is no Solomon-like "splitting of the child."²

Although the City of Belleville has not entered an inability-to-pay defense, there is no serious argument that ability-to-pay considerations in the public sector simply amount to governmental priorities. Is the Employer funding a new roof in the park pavilion or putting another half percent on the police or firefighters' base? To this end Arbitrator Peter Myers, in a 2010 case, reflected on the weight that should be given to the current financial difficulties in the economy as follows:

The economic situation that now faces all employers, public and private, is one factor that "normally or traditionally" should be taken into account when considering wages, hours and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and considered here. *Village of Western Springs and Metropolitan Alliance of Police, Western Springs Police Chapter #456*, S-MA-09-019 (Myers, 7/30/2010).

Arbitrator Ed Benn devoted most of his opinion in *State of Illinois and International Brotherhood of Teamsters, Local 726*, S-MA-08-262 (1/27/2009, Benn) to an analysis of the "economic free-fall" which occurred in 2007, mentioning, in part, the sharp drop in the stock market, the freezing of credit markets and the worst unemployment rates in Illinois since June, 1993. Furthermore, as of this writing at least five arbitrators have awarded a zero percent wage increase in the context of a multi-year award. See, *City of Bellville and Illinois FOP Labor Council*, Case S-MA-08-157 (Goldstein, 2010); *City of Rockford and Police Benevolent Labor Committee* (Yaffe, 2910); *City of Evanston & IBT Local 700*, Case S-MA-09-086 (Goldberg, 2010); *Wabash County/Wabask County Sheriff & IL FOP Labor Council*, Case No. S-MA-09-020 (Feuille, 2010); *City of Highland Park & IAFF Local 822*, Case No. S-MA-10-282 (Benn, 2010)(stipulated award); *Board of Trustees of Univ of Illinois at Urbana-Champaign & FOP Labor Council*, Case No. S-MA-10-075 (Perkovich, 2010).

Overall, the Employer's financial picture is arguably sound. It is simply not a major factor in this dispute. In the Employer's words: "While economic conditions are showing slight improvement, and the City does not argue an inability to pay, just because an employer can pay an increase does not mean that it ought to." (*Brief for the Employer* at 13).

² Cf. 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

A. Focus of an Arbitrator in an Interest Dispute

As I have pointed out in numerous interest decisions, arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, “what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result.” See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion*, in *Arbitration – 1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators* (B.D. Dennis & G.C. Somers, eds) 159, 186 (BNA Books, 1976).

A review of case law and the relevant literature indicates that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator/Mediator traced the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated the principle this way:

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

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

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

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

collective bargaining.” *Will County Board and Sheriff of Will County v. AFSCME Council 31, Local 2961* (Nathan, Chair, 1988), quoting *Arizona Public Service*, 63 LA (BNA) 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to or
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II*, at 17 n.16, and at 19. See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

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

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

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

Id. at 11.

There is no question that arbitrators, operating under the mandates of the Illinois statute (mandating final offer arbitrator by impasse item), apply the same focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one's own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.⁴ Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

B. Wages (Economic)

A side-by-side comparison of the parties' offers is as follows:

<u>Union</u>	<u>Employer</u>
<u>2.0%</u> effective May 1, 2012 for 2012-13 fiscal year;	<u>Zero</u> (0.0%) increase for 2012-13 fiscal year
<u>2.0%</u> for fiscal year 2013-14;	<u>2.0%</u> for fiscal year 2013-14;
<u>2.0%</u> for fiscal year 2014-15.	<u>2.5%</u> for fiscal year 2014-15
6.0% over 3-year contract term	4.5% over 3-year contract term

As noted, the Union asserts that the Administration's final offer purports to be a *quid pro quo* for a loosening on the parties' residency requirements. The "*quid*," i.e., the loosening on the residency requirements, is a *quid* that the Union neither asks for nor wants. The Administration responds that this is not the case, that what is at issue is this: "it's fair for [the unit] to be taking a zero in the first year of the contract [since] each of the city's bargaining units, other than the firefighters, between 2009 and 2011, had at least one year in which their contract provided for a zero percent increase." (R. 32).

Management advocate and author R. Theodore Clark has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. R. Theodore Clark, Jr., Interest Arbitration: Can The Public Sector Afford It? Developing Limitations on the Process II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.D. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike." *Id.* Accord: *Des Moines Transit Co. v. Amalgamated Ass'n of Am. Div.*, 441, 38 LA (BNA) 666 (1962)(Flagler, Arb.)("It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table." *Id.* at 671.

⁴ In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

1. External & Internal Analysis

An analysis of General Wage Increases from the 2011 “Top Base” to the 2014 “Top Base” for Firefighters (UX 3) indicates the following:

Comparable Department	2011 Top Base	2012 Top Base	\$\$\$ Increase	% Increase	2013 Top Base	\$\$\$ Increase	% Increase	2014 Top Base	\$\$\$ Increase	% Increase
Alton	48,856	48,856	484	1.00%	49,100	244	0.50%			
Carbondale	46,230	47,260	1,031	2.23%	48,454	1,194	2.53%	49,784	1,329	2.74%
Danville 2010	54,688									
Galesburg	49,831	51,082	1,251	2.51%	52,103	1,022	2.00%	53,146	1,042	2.0%
Granite City	57,522	58,960	1,438	2.50%						
Pekin	56,367	58,058	1,691	3.0%	59,799	1,741	3.0%			
Quincy	52,403	53,713	1,310	2.50%	55,324	1,611	3.0%			
Urbana	56,241	57,928	1,687	3.0%						
Average	52,707	53,694	1,270	2.39%	52,956	1,162	2.2%	54,841	1,388	2.58%
Belleville	56,097	57,219	1,122	2.0%	58,363	1,144	2.0%	59,531	1,168	2.0%
Difference	6.04%	6.16%	-13.21%	-19.57%	9.26%	-1.60%	-10.28%	7.88%	-18.88%	2.0%
Comparable Rank	4/9	4/8	6/8	7/8	2/6	4/6	5/6	2/4	3/4	3/4
<u>ER Proposal</u>	56,097	56,097	0	0	57,219	1,122	2.0%	58,655	1,436	2.51%
Difference	6.04%	4.28%			7.45%	-3.60%	-10.23%	6.50%	3.31%	-2.85%
Rank	4/9	4/8	8/8	8/8	2/6	4/6	4/6	2/4	2/4	3/4

While the relative standing among the comparables stays (in most cases) the same (i.e., the Union is not losing ground to the relevant bench mark jurisdictions),⁵ the Union’s wage offer of 2.0% (2012), 2.0% (2013) and 2.0% (2014) compares favorably to the bench-mark-jurisdiction average of 2.4% (2012), 2.2% (2013), and 2.58% (2014). By way of summary is the following table:

⁵ To this management’s argument is well taken:

Under the City’s final offer for 2012, the City maintains its rank of 4th among comparable communities in wages, and is 4.28% above the average by the Union’s own numbers, despite the wage freeze (UX 3). The Union’s refusal to accept a 0.0% wage increase in 2012 cannot be justified by claiming it would lose its place among external communities.

Belleville improves its rank in 2013 and 2014 under the City’s proposal, and its projected rank for 2013 and 2014 is the same under both proposals. In 2013, firefighters would rank second among their peers and would be 7.45% above the average in terms of wages. Under the Union’s proposal for 2013, Belleville remains in the second position, but is 9.26% above the average in terms of salary (UX 3). Belleville remains in second place among comparable communities and is 6.5% above the average of their peers (UX 3)(*Brief for the Employer* at 8-9).

Analysis of City's Final Proposal and Union's Final Proposal in Relation to Comparable Rate

	2012	2013	2014	Total
Average of Comparables	2.39%	2.20%	2.58%	7.17%
City's Final Offer	0%	2.0%	2.5%	4.5%
Difference from the Average-Comps	-2.39%	-.20%	-.08%	-2.67%
Union's Last Offer At Arbitration	2.0%	2.0%	2.0%	6.0%
Difference from the Average-Comps	-.19%	-.20%	-.58%	-.97%

As noted, the Union's offer is 1.0% less than the average for the comparables over the three-year period. Is there a rational reason to award the Administration's final offer of 4.5% for three years which is almost 3.0% below the average for the comparables? Management's rationale – that all nine of the City's other internal bargaining units have accepted a wage freeze for at least one year since 2009, and that management's proposal "brings the Union in line with both internal and external comparable bargaining units – is understandable, given what happen to the other units. For the Administration not to seek a similar zero somewhere "in the line" would be politically untenable. However, simply because the Union negotiated its contract before the "Great Recession" of 2008, thus avoiding a "stagnated" or zero wage increase, is not, *ceteris paribus*, a good reason to downgrade the Union in a future contract. There are simply too many unknown variables in the wage/bargaining equation to travel down such a path.⁶ If, in fact, the Union was the recipient of a "windfall" by avoiding givebacks (generally sought after 2008 by employers, not just in Illinois but nationally), it will be reflected in a skewed salary schedule. In the instant case there is only 1.5% separating the parties over three years, a *de minimis* sum to be sure. Absent authority to the contrary, the fact that a Union escaped the effects of the recession is not a valid reason to play negative catch up.

Further, an analysis of interest arbitration awards in 2012 and 2013 supports the Union's position that since the economy has been recovering from the recession arbitrators are no longer inclined to impose wage freezes or zero percent wages increases (*Brief* at 9; UX 4, 5).⁷

⁶ The assumption, of course, is that the Union "lucked out" in avoiding wage give backs in the form of "zeros," which are still being demanded in bargaining (but less so than in the 90's). An alternative thesis is that some unions assumed a risk avoidance posture, and took less in wages for the security of a longer-term deal. Other trade-offs may have been involved, such as insurance contributions. Such is the essence of bargaining.

⁷ Union Exhibit 6 (Analysis of Interest Arbitration Awards in 2012 & 2013) indicates that in 2012 and 2013, zeros were proposed by an employer 14 times. Only twice (*Village of Morton Grove v. IAFF (Briggs)*, *Village of Hoffman Estates & IAFF (Stallworth)*), did an arbitrator award a zero, while another (*County of Kane & Sheriff v. PBLC (Claus)*), with a stipend (UX 6 at 2).

Finally, and focusing on internal settlements, as reported by management the average 2012-2014 wage increase at Belleville for all units (including non-union) is 2.38% (EX 19):

	Average 2007-2011	2012	2013	2014	Average 2012-2014	Average 2007-2014
Building Service Employees	1.66%	1.50%	2.0%	2.5%	2.00%	1.79%
Clerical	2.04%	4.04%	3.55%	3.74%	3.89%	2.73%
Belleville FOP	1.75%	1.5%	2.00%	2.00%	1.83%	1.78%
Laborers	1.66%	2.25%	2.20%	2.16%	2.20%	1.86%
Library	3.10%	3.53%	3.40%	3.29%	3.41%	3.21%
Operating Engineers	2.00%	2.00%	2.50%	2.50%	2.33%	2.13%
Parks & Recreation	1.66%	2.25%	2.20%	2.16%	2.20%	1.86%
Telecom	2.85%	2.22%	2.00%	2.00%	2.07%	2.56%
Non-Union	2.05%	1.50%			1.50%	1.96%
Average	2.09%				2.38%	2.23%
Belleville Firefighters	3.45%				1.50% *	2.72%

* Average with Employer's offer of 0, 2.0% % 2.5%

Source: Employer Ex. 19

Over the three-year contract period, the unit will receive an average yearly increase of 2.0% (2.0%, 2.0% & 2.0%, or 6% over three years), which is less than the averages outlined in the above Employer's Exhibit.

2. The City's wage offer and the Union's argument that it is a *quid pro quo* for a relaxed residency requirement, a "quid" it does not desire

The Union submits that it is not willing to accept a zero percent wage increase for expanded residency rights. In the Union's words: "Because the City's "quid" is not something which the Union desires, there is in fact no value to the Union if the Arbitrator were to award a zero percent increase for one year of the contract and "enhanced" residency rights for the firefighters." (*Brief for the Union* at 10).

The City, of course, takes the contrary approach, asserting that its offer is not a *quid pro quo* exchange of residency reductions for a zero percentage wage increase (*Brief for the Employer* at 5-6). Citing Elliott Goldstein's award in 2010 for the police unit (CX 12), the Administration argues that Mr. Goldstein did not tie residency to wages because he awarded the City's final offers on both issues (*Brief* at 5-6). Thus, the City's offer in this case is similar to the residency provision awarded by Mr. Goldstein for the police officers.

It is undisputed that during the 2011-12 police negotiations, the FOP offered to have all members' wages be frozen for a second year in three years in exchange for further loosening of the residency restrictions. Here, the City points out that other collective bargaining units within the city negotiated various agreements in 2011-2012.

Unions that maintained the status quo on city residency requirements obtained higher wage increases while those that bargained for concessions on residency received lower wage increases (*Brief for the Employer* at 6). The FOP accepted two years with wage freezes to obtain further loosening of the longstanding city residency requirement. *Id.* In the City's words: "Arbitrator Goldstein clearly stated that the first wage freeze was required because of the Great recession, and was irrelevant to the issue of residency." (Brief at 6; CX 12 at 42-44).

From an outsider's view (mine), it is puzzling why the City would propose a reduced residency provision if not tied to some *quid pro quo*. Is this an attempt at internal uniformity? Still, I adopt the Employer's argument that "wages and residency are two separate issues" which is a matter that, at one time, was of interest to the Union (*Brief* at 7). Which brings the analysis to residency (non-economic) and residency penalty (economic)

C. Residency Penalty (Economic) & Residency (Non-Economic)

1. **Residency Penalty.** As outlined above, the Union objects to the City's residency penalty provision (economic) asserting that the Illinois Municipal Code does not allow the City to make residency requirements more burdensome during the period of service. As such, the Arbitrator should not endorse the employer's proposal which penalizes an employee's wages for non-residency and, accordingly, the status quo should be awarded (*Brief* at 17).

Asserting that other units, including the police officers have accepted wage reductions for employees who live outside of the district for less restrictive residency requirements, the Administration points out that it was the Union who first proposed its members who elect to reside outside the city should receive less pay (*Brief for the Employer* at 3). This approach, says management, is different than the FOP's agreement that all bargaining unit members would forgo a wage increase in order for its members to have the option to move out of the City. *Id.*

I credit the Administration's premise that when an employee lives out of the City limits, it loses revenue and emergency callback times are presumptively increased. Thus, the Administration's proposal recuperates some of the revenue lost when an employee moves outside Belleville. *Id.* Notwithstanding the validity of management's position, what is absent here is any evidence that (1) there exists a proven need for a change, (2) its proposal to depart from the status quo meets an identified need without imposing an undue burden or hardship on the other party, and (3) there has been some *quid pro quo* to the other party of sufficient value to "pay for" the proposed exchange. See, *Brief for the Union* at 20, citing *County of Cook/Sheriff of Cook County & IFOP*, ILRB Case L-MA-96-009 (McAlpin, 1998). The Union's final offer is awarded. Specifically, the City has not demonstrated a proven need for the change; it simply desires to align the police and fire Departments. Similarly, there is no *quid pro quo* because the Union, apparently, does not desire a relaxed residency requirement. Here, the Union believes that the

Administration's residence offer is an artifice designed to induce the Arbitrator to impose upon the firefighters the zero percent increase to which the police officers had voluntarily agreed. *Id.*

While there is something to be said for uniformity in terms and conditions of employment (especially insurance), I credit the Union's argument that this provision is arguably one that makes an employee's residency requirement more burdensome (costly) and, accordingly, runs afoul of both the Code and the parties' past practice as outlined in the expired collective bargaining agreement.

For the above reason, the final offer of the Union (*status quo*) is awarded.

2. Residency (Non-Economic).

Similar to residency penalty (economic), the Union's position on residency (non economic) is *status quo*. The Union maintains that the Administration's proposal is in effect a *quid pro quo* for a zero percent salary increase for the 2012-2013 fiscal year. Asserting that it does not value residence like the FOP (who voluntarily agreed, in 2012, to the City's residency proposal for a zero percent wage increase in that year), the Union argues that it is the Arbitrator's obligation "to award the parties what they would have agreed to at arms-length negotiations." (*Brief for the Union* at 19).

Given my award on wages, and the Union's desire not to accept a relaxed residency requirement, I award the Union's final offer on residency (non economic).

D. Light Duty (Economic)

The parties' final offers vary only with respect to the issue whether the Administration can mandate that a firefighter work a light-duty assignment. Both agree that a light-duty assignment should be created. Significantly, Belleville has never had a light-duty assignment provision. Both parties' offers provide for the addition of a light-duty assignment *at the City's sole discretion*. Thus, under the City's final offer, once an employee has been cleared for light duty pursuant to a medical exam, the Administration retains the discretion to award or refuse a light-duty assignment. By contrast, the Union's proposal on light duty does not allow the Employer to assign light duty without the employee first requesting it (*Brief for the Employer* at 15). To this end the City's final offer contains a provision providing that on apparatus manning, employees on light-duty assignments will not count for minimum manning requirements (*Brief* at 16).

Management counters by asserting that its offer has both internal (Belleville Police)⁸ and external comparability (with four departments proving for light-duty

⁸ The light duty provision contained in the FOP Police Agreement (EX 31 at 19) reads as follows:

Section 12.03 – Light Duty

assignments)(*Brief* at 16-17). According to the Administration: “The Employer’s ability to assign light duty to an employee who has been cleared to perform such duties is not unusual, and is in fact standard practice in comparable communities.” (*Brief* at 16).

Is the light duty issue a “breakthrough”?

Management correctly points out that since *both* parties propose a new provision (thus moving off the *status quo*), “breakthrough analysis” should not be applied (*Brief* at 17). I credit management’s argument that where both parties elect to move from the *status quo* and create a new provision, breakthrough analysis is misapplied, except perhaps where one party is proposing a new provision with a harsh or non-sensical rider attached.

Where does this leave the parties?

A light-duty assignment provision, where the employee has total control whether to accept it (a strictly voluntary program), is really illusory from management’s standpoint. In short, the Union’s proposed contract language does not sufficiently enhance the Administration’s ability to effectively get employees, otherwise medically cleared for light duty, back to work by granting a veto to the affected employee. I credit management’s argument that “where an employee is not fit for full duty due to illness or injury, but is cleared to perform the less physically demanding tasks associated with the position, there is no legitimate reason as to why that employee should not be required to do so.” (*Brief for the Employer* at 16).

As I read the final offers the City’s proposal merely permits the Administration to assign light duty to an individual (1) who is medically cleared for light duty, and (2) such light duty will only consist of tasks the employee is fit to perform. Further, (3) no employee will be forced to perform light-duty tasks that risk injury. Moreover, (4) an employee on light duty will not be counted toward minimum manning requirements.⁹

What of the Union’s argument that selecting the Administration’s plan will necessarily result in denying a firefighter the right to use accrued sick leave when unable to perform regular duty (*Brief* at 15)? This is an interesting argument and the resolution of the Union’s premise will eventually (my guess) be resolved by an arbitrator when a

With certification from attending physician stating that an officer otherwise eligible for sick-leave or duty-injury benefits is capable of performing light duty, the officer may request or be assigned light duty assignments. The Employer retains the sole right to approve or disapprove such request.

The Employer may require the officer to be examined by a physician of its choosing, at the Employer’s expense, to verify that the officer is fit for light duty.

⁹ I am assuming that a light-duty assignment (undefined by the Administration’s language) will be sufficiently related to the job description that is applicable to a Belleville firefighter. As such, any light-duty position created by the Administration would not consist of pulling weeds on the premises, or mowing the lawn, or painting the fire station, or other blue- or white-collar work *unrelated* to the duties of a firefighter.

grievance is filed by a firefighter who is denied the right to use accrued sick leave. It is not all clear to me that management's final offer language *in all cases* precludes an employee from using accrued sick leave when needed, although I concede that the words "otherwise eligible for sick leave or duty-injury leave benefits is capable of performing light duty, the employee may request or be assigned light duty assignments" may otherwise trump the right to use accrued sick leave. I offer no opinion on the issue other than the matter is ripe for a grievance arbitration.

Overall, the Administration advances the better case on light duty assignments. Its final offer is awarded.

V. AWARD

A. Wages – Union's Final Offer (6.0% over three years)

B. Residency (Economic; Salary Penalty) – Union's Final Offer (*status quo*)

C. Residency (Non-Economic) – Union's Final Offer (*status quo*)

D. Light Duty – Employer's Final Offer

**Dated this 21st day of October, 2013,
at DeKalb, Illinois 60115.**



**Marvin Hill
Arbitrator**