

WAGES

City's Offer		Union's Demand
5/01/2012	2%	2%
5/01/2013	3%	2%
5/01/2014	2%	2.5%

Health Insurance Cost

The expired collective bargaining agreement required the City to provide one or more plans of group health insurance (including managed care plans) for which the City paid 100% of individual employee coverage and for which the employee would share the cost of dependent coverage in these amounts:

Status Quo

	Employee Share One Dependent	Employee Share Two (+) Dependents
May 1, 2009	\$100/mo.	\$110/mo.
May 1, 2010	\$115/mo.	\$125/mo.
May 1, 2011	\$130/mo.	\$140/mo.

The City's Offer

The City proposes first to maintain the 100% employee coverage for the ensuing two years whilst increasing the employee cost of dependent coverage thusly:

	One Dependent	Two (+) Dependents
2012	\$145/mo.	\$155/mo.
2013	\$160/mo.	\$170/mo.

Second, upon the undersigned's award of its offer, the City would shift to the employees the

obligation to pay 11% of the premium cost of all coverage under City-provided health insurance both for themselves and their dependents.

The Union’s Demand

The Union would retain the status quo May 1, 2011, for two years and increase the cost of dependent coverage only in the third year thusly:

	One Dependent	Two (+) Dependents
2014	\$135/mo.	\$145/mo.

Selection of Health Insurance Carrier

The prior collective agreement made provisions for the City’s “Right to Select Carriers” thusly:

The insurance benefits provided for herein shall be provided under a group insurance policy or policies or through a self-insured or managed-care plan selected by the City, *with no reduction in current coverage*. Except as otherwise provided herein, the City shall notify and consult with the Union before changing insurance carriers, self-insuring, implementing a managed-care plan or changing policies. In connection with such consultation, the City shall provide the Union with a written summary of all proposed changes. Notwithstanding any such changes, the level of benefits as provided for herein *shall remain substantially the same*. [Italics added.]

Both the City’s offer and the Union’s demand eliminate the clause “with no reduction in current coverage”. The critical difference in the City’s proposal is to change the last word where the Union insists on the status quo.

City’s Offer	Union’s Demand
Notwithstanding any such changes, the level of benefits as provided herein shall remain substantially <i>similar</i> . [Italics added.]	Notwithstanding any such changes, the level of benefits as provided herein shall remain substantially <i>the same</i> . [Italics added.]

Residency

The status quo provides that:

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

The Union's demand retains this provision. The City would excise this language and have the provision read,

All bargaining unit members hired: (a) prior to January 1, 2008, and (b) on or after the date of issuance of Interest Arbitrator Matthew Finkin's Award in ILRB Case No. S-MA-12-330, shall be required to reside within a five-mile radius of the corporate boundaries of the City of Danville and within the State of Illinois. Any bargaining unit member who was hired: (a) on or after January 1, 2008, but (b) prior to the date of issuance of Interest Arbitrator Matthew Finkin's Award in ILRB Case No. S-MA-12-330, shall be exempt from City residency requirements.

* * *

Background Facts

A. Economic Situation of the City

The economic situation of the City of Danville has been explored in depth and set out in an interest arbitration decision issued by Arbitrator Marvin Hill in 2010. *City of Danville and Policemen's Benevolent and Protective Ass'n* (S-MA-09-238) (Marvin Hill, Arb. 2010) (hereinafter *Hill Award*). It need not be rehearsed afresh. Suffice it to say, the City is in somewhat better financial condition now than in 2010 when it had an ending balance in the fiscal year of about \$2.6 million. The ending balance for 2011 was slightly over \$4 million; this has increased to \$5.7 million in 2012 and \$6 million in 2013 without, however, adjusting for such increases may be awarded here. However, the City has projected a deficit for the year 2012-

2013, and is experiencing a continuing high rate of unemployment. Nevertheless, the City has not asserted that it is financially unable to meet the Union's demands.

B. External Comparables

The parties are agreed on the following as the historically comparable communities which the law directs the Arbitrator to consider:

- Alton
- Belleville
- East Moline
- Kankakee
- Normal
- Pekin
- Quincy
- Urbana

Basic Facts Relevant to the Issues

A. Wages

1. The Instant Unit and the External Comparables

In order to assess the relevance of the wage increase proposals vis-à-vis the comparable communities it would be useful to see what comparable wages are from a baseline.

Starting Patrol (2011)		Maximum Patrol (2011)		
Alton	52,765	Alton	25 yrs.	60,152
Belleville	47,045	Belleville	25 yrs.	64,596
E. Moline	41,801	E. Moline	19/22 yrs.	61,127
Kankakee	45,790	Kankakee	30 yrs.	66,174
Normal	48,170	Normal	20 yrs.	74,108
Pekin	48,236	Pekin	25 yrs.	61,724
Quincy	43,215	Quincy	20 yrs.	60,188
<u>Urbana</u>	<u>53,597</u>	<u>Urbana</u>	30 yrs.	<u>68,496</u>
<i>Average</i>	47,577	<i>Average</i>		64,571
DANVILLE	46,150	DANVILLE	25 yrs.	66,916

There is a minor variation in how the parties have treated the wage increases in the comparable communities. According to the City, which has supplied data for 2012 and 2013, the average increase in each of those years is 2.3%. According to the Union, these are 2.4% in 2012 and 2.5% in 2013, with 2% indicated for 2014, where those data are available.

The City's offer would bring the unit into closer conformity with comparable communities in terms of wages alone. But, as will appear below, this dispute is being driven primarily by health care costs. Total compensation, of wages plus benefits, including the costs to the employees and the employer of those benefits, is what is at stake.

In addition to considering external comparability, the maintenance of wages and benefits that would be competitive in the labor market for police services among comparable employers, the Arbitrator is directed to consider internal comparability, the orbit of comparison within other of the City's employees. The wage increases accorded these groups for the relevant period of time is set out below.

	2012	2013	2014
Fire Fighters	2%	2.5%	--
Fire Command	--	--	--
Laborers (clinical)	3%	3.5%	3.5%
Laborers (Public Works)	0%	1.75%	--
Laborers (Mass Transit)	3%	3%	--
Police Command	2%	2.5%	--
Average:	2.5%	2.65%	--

B. Health Insurance: Employee Cost

The collective agreement obligates the employer to bear the full premium cost of the unit members' individual health insurance and limits the employee's dependent coverage cost to a monthly amount. The City would increase the employee's monthly contribution for dependent coverage for the first two years of the contract term and then shift the unit to an 11% contribution for all coverage, personal and familial. Most, but not quite all of the other of the City's employees have been brought into accord with this policy.

Employee Health Cost Share Danville Employees

	2012	2013	2014
Non-union	11%	11%	11%
Parks PW/Union	10%	11%	11%
Mass Transit Union	10%	10%	10%
Firefighters Union	\$50/150/165	11%	11%
Fire Command	\$50/150/165	11%	11%

The singular exception is the treatment accorded the Police Command officers. Under the terms of a collective bargaining agreement for these officers for the period May 1, 2011 through April 30, 2014, the City continues to bear the full cost of the officers' single coverage and caps the monthly amounts for dependent coverage thusly:

	5/1/2012-4/30/13	5/1/2013	4/30/2014
One dependent	\$115	\$125	--
Two (+) dependents	\$125	\$135	--

The City's costs for the current policy governing the unit employees for the three years in question has been submitted by a carrier:

City Premium Cost

	2012	2013	2014
Employee	\$550	\$663	\$687
Employee + Spouse	\$1,079	\$1,241	\$1,346
Employee + Children	\$1,018	\$1,171	\$1,271
Family	\$1,761	\$2,025	\$2,197

The treatment accorded by comparable communities is set out below.

Employee Health Insurance Costs: Comparables

Alton (CBA 2011-2014)

- | | | |
|------------------------------------|---------|-----------------------|
| 1. Employee non-dependent coverage | \$780 | (\$30 per pay period) |
| 2. Dependant coverage | \$2,340 | (\$90 per pay period) |

Belleville (CBA 2011-2015)

Employer pays \$385/mo., anything in excess shared on 50/50 basis.

East Moline (CBA 2013-2014)

Employees pay 18% of premiums, overall premiums to be established by joint labor-management Health Care Planning Committee

Kankakee (CBA 2012-2014)

Employees pay 20% of all premium cost capped for the term of the agreement at

Single coverage	Family coverage
\$122/mo.	\$388

with a cap on lifetime benefits

Normal (CBA 2012-2014)*

Coverage Level	Premium Rate with Wellness Participation (employee share)	Premium Rate without Wellness Participation (employee share)
Employee Only	\$ 0	\$ 0 Plus \$40.00 per month

Employee and Spouse	\$230.00	\$230.00 Plus \$80 per month
Employee and Child(ren)	\$265.00	\$265.00 Plus \$40 per month
Family	\$495	\$495.00 Plus \$80 per month

*This is the subject to change save that any change must be equally applicable to non-bargaining unit employees.

Pekin (CBA 2009-2014)

- Employee only - \$30/mo.
- Employee/child – \$95
- Employee/spouse - \$95
- Family - \$110

Quincy (CBA 2011-2014)

- Employee – 0 (employer pays full cost)
- Dependents – 50/50 division of premium cost with City reserving power to increase deductibles.

Urbana (CBA 2010 -2013)

- Employee – 0 (City pays full cost) (with possible option for alternative plan for which the employee will pay the difference of the cost for the City’s plan)
- Dependents – employee bears full cost, effective 2012 City pays \$220/mo. for dependent coverage and 50% of any increase over current cost to employee

C. Selection of Carriers

The crux of the dispute is not the power of the City to select a plan, or insurance carrier, but rather whether in doing so what the contractual limit on its discretion will be in terms of the level of benefits. With the exception of the Command Officers none of the City’s collective agreements has a provision dealing with the relationship of the level of benefits to the City’s authority to select a carrier. The Command Officers’ contract, pursuant to an interest arbitration, requires that benefits “shall remain substantially similar.”

The collective agreements placed on the record for Alton and Normal contain no substantive constraint in that regard. Quincy permits change in deductible whilst retaining the same level of benefits. The agreements for Belleville and East Moline also do not make such provision, but they provide for joint committees to review and recommend changes in coverage, the latter committee more authoritative than the former. The agreement for Pekin reserves the City's right to make changes subject to its duty to bargain with the Union about them. The agreement for Kankakee provides that "the City shall provide for equal coverage for the subsequent years of this contract, provided, however, that the City may substitute different carriers, *with substantially the same* coverage as now exists..." Art. 24 (italics added). And the agreement governing Urbana's officers provides:

The City shall notify and consult with the Lodge before renewal or changing insurance carriers or self-insuring. Notwithstanding any such changes, the level of benefits shall remain *substantially the same*.

Art. 7, § 7.1(b) (Italics added).

D. Residence

Residency: Internal Comparables

Firefighters –	Within 5 miles of the city for those hired prior to January 1, 2008; within city limits for those hired thereafter
Fire Command –	Same
Clerical –	5 mile radius for those hired before August 1, 2006; city limits thereafter
Public Works –	5 mile radius for those hired before October 31, 2005; city limits thereafter
Mass transit –	5 miles
Police Command –	5 miles for those hired before January 1, 2008; no limit for those hired thereafter

Residency: External Comparables

Alton –	Non-probationary officers must reside within an area defined by a map appended to the collective agreement. (As Gillespie, Illinois, appears to be included in this zone, the distance to which from Alton is 35.5 miles, that would seem to be the approximate limit of the map's range)
Belleville –	All new employees must reside within the city's limits; all other employees must reside within St. Clair County
East Moline –	Must reside within 19 miles of city hall within 18 months of date of hire
Kankakee –	Officers must reside in Kankakee, Bradley, or Bourbonnais
Normal –	Within the corporate limits of the Town of Normal or the City of Bloomington or within a 20 mile radius of Main Street at College Avenue
Pekin –	Within 20 mile radius of Bradley at 14 th St.
Quincy –	Within Adams County
Urbana –	25 miles from city limits

Statutory Considerations

5 ILCS 315/14 (h) sets out the standards the Arbitrator is to apply to the issues in dispute:

- (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 other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time,

insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Of subsections (1) and (2) there is no dispute about the authority of the employer and the stipulations of the parties has been noted. Of subsection (3), the financial situation of the City has been noted. To sum up on that, the City has endured difficult financial times, its unemployment rate continues to be above the national average. Nevertheless, even as the City's finances are a significant caution against which the arbitral judgment resonates, there is no assertion that the City would be unable to meet the Union's demands.

The City has painstakingly compiled data on and has accordingly argued to subsection (5), commonly known as the cost of living. It points out that whereas both proposals exceed the established and reasonably anticipated cost of living increases, 2012-2014, the City's offer does more to ensure against the possible erosion of purchasing power taken by the measure of wages alone. Inasmuch as both exceed the historical and reasonably prospected CPI, however, both satisfy subsection (5).

The Economic Items in Dispute

The briefs of the parties make crystal clear that the critical area of dispute is the allocation of medical cost. The City seeks to reduce its exposure for medical benefits. It would shift more of the cost on to these employees, in conformity with its effort, largely successful, to do so with other of its employees by having them bear a percentage of the premium and by securing greater

flexibility over the level of benefits going forward. The City argues that its wage offer, of 0.52% more than the Union's demand when aggregated over the three year period, is an adequate *quid pro quo* for the change. However, as Arbitrator Stanton concluded, in an award between these parties to be discussed below, these items cannot be taken up in isolation from one another.

The Analytical Framework

Both parties devote attention to the gloss of arbitral practice, including awards between these parties, as a key source of guidance. The undersigned does not understand there to be any disagreement between the parties about the content or the utility of resort to these awards. The arbitral stance taken in Arbitrator Stanton's award in *Danville Police Command Officers Ass'n*, No. S-MA-11-336 (Richard Stanton Arb., 2013), captures the analytical framework. The offers should be placed

on a continuum that goes from a very slight modification of the status quo to one that constitutes a very significant change.

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

Id. at 7. Arbitrator Stanton then echoed Arbitrator Stephen Goldberg in setting out the interest arbitration test of what a "reasonable negotiator" would accept: "whether (1) the City has shown a legitimate interest in the change it seeks; (2) the proposed change meets the City's legitimate interest without imposing undue hardship on the Union, and (3) the City has proposed an

adequate quod pro quo for the proposed change.” *Id.*, citing *Bloomington and IAAF Local 49*, S-MA008-242 (Goldberg Arb., 2011) at p. 17 (reference omitted)

Analysis: Health Insurance

1. Premiums

The City’s address to health care cost has been noted above: 10% to 11% of the cost of premiums has been shifted to all other employees save the two units of police. The City’s effort to effect that shift for command officers proved unavailing before Arbitrator Stanton. There, as here, the City proffered a 0.5% increase above the Union’s demand as the *quid pro quo* for effecting both changes that the City also seeks here – assumption of premium cost and relaxation on choice of benefit levels from future carriers. Arbitrator Stanton, applying the “reasonable negotiator” standard, held that the City’s offered increase would allow a relaxation of the constraint on the City’s selection of level of benefit going forward or the shift of premium cost, but not both. He awarded the City’s offer on its power to change the level of benefits, but not the shift in cost. As a result, the police department remains an outlier the City’s effort uniformly to shift a portion of the premium cost to employees, pending the outcome of this dispute.

Consideration of the treatment of this issue by comparable communities provides scant guidance: these policies vary widely, each, no doubt, rooted, as here, in historical developments specific to each. But consideration of internal comparability – consistency – is a weighty factor for reasons explained by Arbitrator Marvin Hill in the immediately preceding interest arbitration between the parties for this unit. *City of Danville and Policemen’s Benevolent and Protective Ass’n, Unit 11*, No. S-MA-9-238 (Marvin Hill Arb., 2010) at 48-50. Nevertheless, he held, “by

the thinnest of margins”, not to award the City’s offer that would “move the unit to the City-wide insurance plan” at the time. *Id.* at 50. The reason was the want of an adequate *quid pro quo*:

The City never offered this Union the 3.5% general wage increases it offered its other bargaining units who agreed to move to the “city-wide plan.” Absent proof of any bona fide *quod pro quo*, which the Union should have agreed to, the City failed to make a case meeting all elements of the three-part test for changing the *status quo*.

Id. at 57.

However, Arbitrator Hill added the following rather strong admonition:

For the record: By the thinnest of margins I am awarding the Union’s *status quo* position on health insurance benefits but with this declaration: The Union’s continued insistence on being separate from the rest of the bargaining units at Danville is problematic, at best, for the near future. Gone are the days when employees can isolate themselves from the realities of the economy – an economy that has really tanked, quoting Arbitrator Benn – by insisting on retaining Cadillac-type insurance benefits negotiated in an entirely different economic environment from the present.... There will be a point in time that economic necessity *will* mandate a change from the *status quo*. Danville will not be exempt. My guess: The next round of arbitration will again be the forum for another contest between the parties regarding a plea for uniformity. Given the evidence record before me, however, coupled with my awarding the City’s final offer on wages for three years (1%, 3%, and 3%), I hold only that management has not shown an appropriate justification and *quid pro quo* to move the bargaining unit to a city-wide program *at this time*.

Id. at 52 (italics in original).

The City has made no showing of such an urgent “economic necessity” that would “mandate” so significant a change in the allocation of medical insurance costs. However, it has shown that it certainly has a strong legitimate interest in the change over time. In this, the undersigned concurs in the conclusions drawn by Arbitrators Hill and Stanton. The City has met the first element of the “reasonable negotiator” test it relies on.

The second element, the presence of undue hardship on the employees *vel non*, is complicated by the Union's demands. The Union proposes no movement at all in recognition of the inexorable drive toward higher medical costs save for a de minimis dollar adjustment to employee dependent contributions in 2014. In other words, the Union's position on this issue, taken in isolation, is not reasonable. As a result, the City's offer has to be taken in comparison with the *status quo*.

On this, the matter hinges on the third element: faced with an unreasonable Union position on the medical cost issue, is the total economic package offered by the City a reasonable *quid pro quo* for the changes it seeks? *I.e.* change in both the apportionment of medical cost *and* the acceptable limit on choosing future level of benefit? This, the undersigned notes, is the very same question put before Arbitrator Stanton with respect to the command officers.

Analysis accordingly turns first to the wage component, the positive element in the City's offer, that it argues constitutes the *quid pro quo*. This should be taken up primarily in the context of the treatment accorded to the internal comparables for alignment with those employees is the City's key desideratum, and only secondarily with the external comparables. This comparison is set out below.

Wage Proposals in the Context of
Internal and External Comparisons

	2012	2013	2014
Average Internal Comparisons	2.5%	2.65%	--
Average External comparisons			
City Data	2.3%	2.3%	--
Union Data	2.4%	2.5%	2% (est.)

City Offer	2%	3%	2%
Union Demand	2%	2%	2.5%

After two years, the City's offer – slightly in excess of a cumulative increase of 5% – is slightly below the increase of internal comparables who enjoy a cumulative increase in excess of 5.15%. The Union's demand, cumulatively slightly in excess of 4%, is below that of the internal comparables; that is, the Union has positioned itself to offer modestly lessened wage increases, not only with respect to the City's offer but also with respect to internal comparables, in return for retaining more advantageous treatment on insurance costs. The question turns accordingly to where the parties would leave the members of the bargaining unit when the wage package, the *quid pro quo*, is laid alongside the consequence of the shift on insurance cost.

The difference between the two wage proposals is set out below.

	Union Demand		City Offer		Difference in Total
	2/2/2.5		2%/3%/2%		Dollars with Union
Non-probationary Officer	\$57,686		\$57,686		
	\$58,840	0.02	\$58,584	0.02	--
	\$60,017	0.02	\$60,605	0.03	+\$588
	\$61,517	0.025	\$61,817	0.02	+\$200

	Union Demand		City Offer		Difference in Total
	2/2/2.5		2%/3%/2%		Dollars with Union
Max Patrol Officer (@ 26 yrs.)	\$66,916		\$66,916		

	\$68,254	0.02	\$68,254	0.02	--
	\$69,619	0.02	\$70,708	0.03	+ \$683
	\$71,360	0.025	\$71,708	0.02	+ \$348

The consequential range of medical cost change on the unit members is framed by that affecting an officer insuring only himself or herself and one insuring an entire family.

Medical Insurance Cost Increase Above 2011:

Single Coverage

	2012	2013	2014
City	\$180 [\$15/mo. x 12]	\$360 [\$30/mo. x 12]	\$906 [11% of \$687 x 12]
Union	No increase	No increase	\$60 [\$5 x 12]

Full Family Coverage

	2012	2013	2014
City	\$180 [\$15/mo. x 12]	\$360 [\$30/mo. x 12]	\$2,900 [11% of \$2,197 x 12]
Union	No increase	No increase	\$60 [\$5 x 12]

From this one can grasp the range of the actual impact of the City's offered wage increase in the context of the proposed medical insurance package, that is, what would be bargained-for in exchange. The parties are agreed to a 2% wage increase in 2012. The key differences takes effect in 2013 and 2014. Set out below are the wage consequences of the City's offer vis-à-vis the Union's demand in conjunction with the cost consequences of its medical insurance proposal.

	2013	2014
City <i>quid pro quo</i> : amount greater than the Union's demand		

Non-probationer	\$588	\$300
Maximum patrol	\$683	\$348

Added cost to employee for insurance		
Single coverage	\$360	\$906
Family coverage	\$360	\$2,280

In sum, the City's offer – of a wage increase larger than the Union's demand as *quid pro quo* for the changes it would make in medical insurance – would make the officers better off economically, by between \$228 and \$323, in 2013. But the critical thrust of the City's proposal is to shift the officers to a percentage of the premium in 2014, with longer-term implications once that reallocation of financial responsibility is established. In 2014, the positive aspect of the *quid pro quo* greater than the Union's more modest wage demand – plus \$300 to \$348 – becomes negative in the range of \$550 to \$600 as a result of the percentage impact of the single coverage shift, and a good deal more by virtue of the impact on family coverage.

Further, as Arbitrator Stanton reasoned the City's *quid pro quo* has to be considered in the context of the other change it is seeking, to loosen the limit on the level of medical benefits it must maintain. The Union argues here that no economic foundation for this change in the *status quo* has been laid; that it creates "undue hardship" by substituting arbitration for a duty to bargain over a change in which the Union would bear the burden of proof; and is unsupported by a *quid pro quo*.

The City argues that the demand meets the City's legitimate need for flexibility by giving but limited scope for change as the level of benefits must be "substantially" the same. *Village of Elk Grove*, [Health Insurance Grievance], (Harvey Nathan Arb., 2001). The City argues that its wage offer is an adequate *quid pro quo*. Turning to the statutory criteria of comparability, it argues that for

no other unit of employees, including the Command Officers, is the City required to maintain the “same” level of benefits; and only two of the external comparables adhere to that standard. Even of that, the City argues, adverting to the weight of arbitral authority, that internal comparability is far more important than external comparability on this issue.

As did Arbitrator Stanton, the undersigned has to weigh the facts bearing on the application of the statutory criteria to both issues, of medical cost and benefit levels vis-à-vis the parties wage positions. The Union offers moderate wage increases vis-à-vis internal and external comparables in order to insist on maintaining the *status quo* regarding medical costs and benefit levels – a position that Arbitrator Hill opined was simply not sustainable in the longer run. As the City argues, given that wages will increase, the Union’s insistence on the *status quo* on medical costs actually results in a lessening of the percentage of the employees’ compensation package going for that benefit; this in an environment of inexorable medical cost increase. The City offers a modestly more generous wage increase as the *quid pro quo* for the changes it seeks, but which is below the average for internal comparables from 2012 to 2014.

The undersigned concludes that Arbitrator Stanton’s reasoning remains persuasive: here, as there, the City’s wage position could sustain one or the other of its demands, on medical cost and benefit level, but not both. As did Arbitrator Stanton, the undersigned is persuaded that the change in benefit level flexibility better comports with the “reasonable negotiator” test. First, it enjoys the clear, indeed uniform weight of internal comparability. Second, the *status quo* draws little support from external comparables. Third, the change it seeks does not give the City a free hand: any change must meet the test of substantial similarity; and due process via arbitration is available as a check on opportunism or overreaching.

On the other hand, the shift to an 11% contribution, though in keeping with the City's ultimate goal of uniformity, is a far more drastic change in the *status quo*. It leaves the potential of a more significant reduction in the total level of compensation. Further, sustaining the Union's position renders the *status quo* on that issue in effect for only one year as the parties gear up for the next negotiation. The shift from a schedule of fixed payments to one of a percentage contribution is best dealt with by the parties directly, not by an arbitrator. In the negotiation for the future treatment of medical cost the Union should be cognizant of Arbitrator Hill's admonition, quoted earlier, and the undersigned's concurrence in it. It should be obvious that the Union's position is sustained here "by the thinnest of margins" only because a stronger claim was made for the City's position on coverage levels in the face of a wage offer that would be inadequate as a *quid pro quo* for both.

Residence

The current provision provides that should the City change residency requirements "applicable to all persons employed by the City", that change will apply to all officers covered by the Agreement save that the new policy may not be more restrictive than the one it supplants. The Union would continue this provision. The City would have the Agreement provide a requirement that the officer reside within a 5-mile radius of the City's corporate boundary for all bargaining unit members hired prior to 8 January 2008 or from the date of the instant award. Those unit members hired in between these dates are to be exempt from any residency requirement.

This dispute has a complicated history involving three City Ordinances, the claim of ministerial error in the text of one, two interest arbitrations (one involving an agreed award), and a grievance arbitration. *City of Danville and Policemen's Benevolent Protective Association,*

Unit 11, FMCS No. 110712-56808-A (James Cox Arb., 2012) (clarified by the Arbitrator by letter of April 10, 2012).

It should be noted that the current provision refers to extant policy and then governs the scope of allowable change. It does not recite what extant policy, which it incorporates, is. Arbitrator Cox provided a definitive reading of that provision. The undersigned finds Arbitrator Cox's reading, responsive to much that the parties reiterate in the instant proceeding, to be compelling. Consequently, there is no need to rehearse all that has gone before. In response to the parties dispute over what the current residency rule means Arbitrator Cox awarded the following:

Officers hired on or before January 1, 2008 must reside within 5 miles of the corporate limits of the City. Officers hired after January 8, 2008, do not have any residency requirement.

Thus the instant dispute boils down to this: whether the City may require a 5-mile residence restriction for those hired on or after the date of the instant award.

The City argues to internal comparability, to its desire to have a uniform policy for new hires. It points to arbitral authority confirming the weight of that statutory consideration. The City also argues that no external comparables has given free rein to police residence. It points out that as the rule would affect only those hired after the date of this award no identifiable person will be disadvantaged. And it argues that, in contrast to other awards it recites, there is no evidence of an untoward effect worked by a residence requirement, *e.g.* subjecting resident officers to harassment; nor is there evidence that the requirement will diminish the supply of qualified applicants. The City does acknowledge a "liberty interest" on the part of those seeking employment as officers with the City, but notes that that consideration is equally applicable to

others of its employees for whom residency requirement controls and which arbitrators have sustained. On the statutory consideration of public interest and welfare, the City asserts the well-recognized value to the community of having its officers in close proximity to the public they serve.

The Union argues that the City has shown no reason to change the *status quo* in the sense that the current non-limit has been shown to have had any negative effects. Neither, the Union points out, has any *quid pro quo* been offered for the change. Finally, it points out that as this is a non-economic matter, the Arbitrator may devise a policy proposed by neither party.

As sensible as the Union's arguments are, the Union does not address the City's main argument, which is to the primacy of achieving a uniform policy for all City employees. Nor does it address the fact that all comparable communities impose some residency requirement. Inasmuch as the policy change is prospective only, inasmuch as no identifiable person is disadvantaged by equality of treatment with pre-2008 hires and all other City employees, the need for a *quid pro quo* is questionable. Given the validity of equality of treatment as a policy desideratum, the "grandfathering" of incumbent post-2008 hires, and the City's argument to public interest, the undersigned finds the City's position better in keeping with the statutory considerations laid out in § 14(h).

After examining the facts laid on the record and the arguments of the parties including an extensive exploration of arbitral authority in light of the specific statutory requirements the arbitrator is directed to apply, the undersigned's award in this matter is set out immediately below.

AWARD

1. The City's offer on wages is awarded.
2. The Union's offer on employee medical cost contribution is awarded.
3. The City's offer on the maintenance of the medical benefit level is awarded.
4. The City's offer on residency is awarded.



Matthew W. Finkin
Arbitrator

14 May 2014

Date