

**INTEREST ARBITRATION  
ILLINOIS STATE LABOR RELATIONS BOARD**

**ILLINOIS FRATERNAL ORDER OF POLICE  
LABOR COUNCIL**

**and**

**CITY OF EFFINGHAM**

**ILRB No. S-MA-13-206**

**OPINION AND AWARD  
of  
John C. Fletcher, Arbitrator  
May 2, 2014**

**I. Procedural Background:**

This matter comes as an interest arbitration between the City of Effingham (“the Employer” or “the City”) and Illinois Fraternal Order of Police Labor Council (“the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). A hearing was held before the undersigned, as the sole arbitrator, on January 23, 2014. The Union was represented at the hearing by:

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Counsel for the City was:

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Post-hearing briefs were filed with the Arbitrator on April 7, 2014. The record was closed on that date.

## **II. Factual Background and Bargaining History**

The City is located in south central Illinois and is the seat of Effingham County. The parties each note as a matter of some importance that the City lies at the intersection of U.S. Interstate Highways 57 and 70. Its present population is around 12,500. But, according to the parties, that population doubles to 25,000 each day, which is testament to both its location and its importance as the urban center for the surrounding region. As the Employer puts it, the City is a “location where people come to shop, to play, to work, [and] to worship.” (City Brief, p. 3). The City’s fiscal year runs from each May 1 through the following April 30.

The bargaining unit includes all of the City’s peace officers in the ranks of Patrolman, Corporal and Sergeant. There are currently 22 Unit members. The Union has represented the Unit since March 1987. The parties’ last collective bargaining agreement had an effective term of May 1, 2010 through April 30, 2013. The ending wage scale under the last agreement, which is still in effect, is as follows:

May 1, 2012	Base Pay
Recruit	\$43,171.46
Patrol I	\$48,311.99
Patrol II	\$50,695.04

Patrol III	\$53,280.10
Master Ptl.	\$55,912.78
Corporal	\$58,735.88
Sergeant	\$61,640.05

Over the term of the last agreement the Unit received increases of 0.0% effective May 1, 2010, 1.0% effective May 1, 2011, and 2.0% effective May 1, 2012. As a quid pro quo for accepting the City's wage offer, the City agreed to incorporate 80 hours from each employees annual holiday pay into his or her base pay, which is shown in the above chart.

Also pertinent to the issues presented here, the parties' last agreement provides the following health insurance provision:

Section 22.1 Insurance:

Absent mutual agreement, the Employer agrees to provide health, hospitalization and medical insurance coverage as modified and agreed to for the term of this Agreement. Employees will pay for 20% of the total cost of their applicable insurance or they will pay the applicable monthly amounts set forth below on the dates set forth below whichever is less. The Agreement may be reopened at the request of either party effective May 1, 2011 for the sole purpose of negotiating health insurance issues. It is further agreed that the following caps will remain in effect only up to and including May 1, 2011.

May 1, 2010

Single	\$100
Employee and Child	\$175
Employee and Spouse	\$190
Family	\$230

The parties agree that in the event the Joint Health Insurance Committee recommends changes in the existing health insurance benefit or the employee contribution cap effective May 1, 2010 that are not acceptable to the Union, the Union's rights to bargain as to any changes shall be preserved without prejudice.

It is further agreed that if the City elects to adopt either an HRA or HSA plan during the term of the Agreement, either party can elect to reopen this agreement on the issue of health insurance only by giving the other side notice of their intention to do so.

Current and new employees who have a dependent(s) who qualify for family health insurance coverage and select employee-only coverage, or current and new employees who qualify for single health insurance coverage and decline coverage, shall receive a one thousand (\$1,000) annual payment per full policy year at the beginning of each policy year. This election must be made within 30 days of first employment (or the date the participant becomes eligible for coverage under the Medical Plan, if later) and before January 1 of each year thereafter. Once an election is made, it cannot be changed for the remainder of that calendar year unless the participant has a qualifying change in family status. In such a case of a qualifying change during the calendar year, the City will make a prorated payment for the remainder of the policy year beginning the first of the next month or on the date they qualify for coverage.

The Union stresses that hard caps on employee contributions to premium have been in place in the parties' agreements, albeit with increases negotiated from time to time, since employees began contributing to premium costs, twenty years ago, in 1993.

The City contends that the caps were eliminated from the last agreement, effective May 1, 2011, per the above language, a position which the Union disputes. The City represents that its administration continued the caps in place after May 1, 2011 voluntarily. It points to a letter in the record, dated April 13,

2012, from the City Administrator, Jim Arndt, to all of the City's "Bargaining Unit Leadership," in which Arndt explained that contribution caps on employee contributions to insurance premiums would end on May 1, 2013, whereupon all employees would pay a 20% share of premium. It is suggested in the record, nonetheless, that the premium contributions paid by the employees in this Unit remained at the levels set in the last agreement.

This is just the third interest arbitration between these parties. In fact the last agreement, which provided only 3.0% in total wage increases, was settled at the bargaining table. Both parties stress in this proceeding, on the other hand, that the parties met in just two sessions in before the Union declared impasse. Two more sessions were had in mediation before the Union filed for arbitration on June 14, 2013.

The parties reached agreement on several issues, which are incorporated into this Award. They were unable, however, to reach agreement on the issues submitted herein. The Union invoked interested arbitration on August 7, 2013. Although the parties reached agreement on some issues, they were unable to reach agreement on the issues of Wages and Health Insurance, which are submitted for resolution herein.

#### **IV. Statutory Authority and the Nature of Interest Arbitration**

The relevant statutory provisions governing the issues in this case are found in Section 14 of the Labor Act. In relevant part, they state:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Arbitrator finds that the issues submitted for resolution here are economic in nature and that his job, therefore, is to select that parties' offer on each issue that most nearly "complies" with the above factors. As has been so often explained in the nearly three decades since the Act's adoption, the Act itself provides almost no guidance to the arbitrator in deciding which factors apply in any given circumstance or in giving them an appropriate weight. Arbitrators have over the years established external comparability, how the terms and conditions of employment of these employees stack up against the terms and conditions of employment of employees who perform similar duties in comparable communities, as the single most important factor in choosing between competing proposals on wages and other economic issues. Other important factors include internal comparability, how the terms and conditions of employment of these employees stack up against the terms and conditions of employment of the Employer's other employees, changes in the Consumer Price Index ("CPI") and the employer's ability to pay. The Arbitrator raises these points at this time for the specific purpose of establishing the primary context for his subsequent findings in this case. In addition, this Arbitrator's approach to the issues at impasse in this record, and the application of the statutory criteria will, as always, comport with his firm opinion that this process is not, nor will it ever be, a substitute for meaningful bilateral collective bargaining.

## **V. THE PARTIES' STIPULATIONS**

The pertinent stipulations are as follows:

1. The parties waived the tri-partite panel and agree that Arbitrator Fletcher has sole authority to rule on all issues in this proceeding.
2. All tentative agreements reached between the parties during contract negotiations shall be incorporated into the Arbitrator's Award.
3. The term of this Agreement will be May 1, 2013 through April 30, 2016. All procedural prerequisites for this arbitration and for the issuance of an award of wages and other economic terms retroactive to May 1, 2013, have been met.
4. The issues submitted for resolution, Wages and Health Insurance, are economic issues, and the Arbitrator shall select among the parties' respective offers in accordance with Sections 14(g) and (h) of the Act.
5. The Arbitrator shall issue his Award within 60 days of the date that the briefs are filed, unless extended by agreement of the parties.

## VI. OUTSTANDING ISSUES

1. Article 21 – Wage Rates and Allowances, Section 21.1 – Wages
2. Article 22 – Insurance and Pension, Section 22.1 – Insurance

## VII EXTERNAL COMPARABLES

As mentioned above, external comparability is of primary importance in the analysis of the parties' respective economic proposals. The record shows that in prior interest arbitration proceedings involving this Unit, in City of Effingham and Illinois Fraternal Order of Police Labor Council, S-MA-99-133 (Finkin, 2001), Arbitrator Matthew W. Finkin established the following list of comparable communities:

Centralia

Lincoln  
Marion  
Mt. Vernon  
Olney  
Salem  
Taylorville  
Vandalia

At that time, the City also proposed to include Charleston and Mattoon as comparables. The Union at that time opposed their inclusion as comparables. The Union now seeks to add Charleston and Mattoon as comparables in this proceeding. The Union also seeks to exclude Vandalia, which it agreed to include in 2001. The City seeks to maintain the status quo as to comparables.

The Union accepts the proposition that a historical group of comparables constitute a status quo that ought to be maintained absent a change in circumstances that would warrant disturbing it. See City of Aurora and Association of Police Professionals, S-MA-07-257 (Cox, 2008); City of Harvey and Harvey Firemens' Association, S-MA-06-288 (Perkovich, 2007). The Union accepts that it bears the burden of proof on this issue. It suggests, on the other hand, that any particular set of comparables should not be seen as immutable. It cites various arbitral decisions which, it claims, stand for the proposition that lists of external comparables may need to change as the circumstances underlying their establishment change. Most notably, the Union cites a succession of arbitrators who have so held in proceedings involving the City of Rockford and its firefighters, see City of Rockford and IAFF, Local 413, S-MA-11-039 (Perkovich,

2010), at 3 (“the critical analysis is whether over time the communities. . . have changed so much that their further inclusion among the external communities as historically established is justified”); City of Rockford and IAFF, Local 413, S-MA-12-108 (Goldstein, 2013), at 29-30 (“I do not suggest that a set of comparables, once established by arbitral finding or historical practice, can never be changed. I recognize Arbitrator Berman’s suggestion in the 2008 case that the day for reconfiguring these parties’ comparables may be in the offing.”). In the instant proceedings the Union suggests that the “offing” is now for these parties.

The Union tells the Arbitrator that the inclusion of Charleston and Mattoon as comparables, back in 2001, was the City’s suggestion. The Union opposed the idea at that time, it now suggests, principally on the ground that the respective populations of the two municipalities were nearly double that of Effingham. On other pertinent criteria, i.e. median home value and EAV; median household income; crime index and department size; total revenues, general fund balances and public safety expenditures, Charleston and Mattoon matched up with Effingham comfortably within a plus/minus range of 50%, both then and now. Indeed, with advancements in the availability of updated census data it has become apparent that Charleston currently matches up with Effingham on 10 of 14 traditional comparability criteria and Mattoon matches up in 8 of those same criteria, putting each within the range of matches established by the majority of the communities in current list. Moreover, Charleston and Mattoon are both fairly

close to Effingham, in terms of travel distance, and much closer than other communities within the current set of comparables.

The Union adds that Vandalia presents a quite different picture. It currently matches up with Effingham in only four of the 14 criteria. Moreover, except as to median home value and median household income, Vandalia is at or very near the bottom among the comparables. Direct comparisons with Effingham show as follows:

<u>Factor</u>	<u>Effingham</u>	<u>Vandalia</u>
Crime Index	517	134
Full Time	22	13
Total Employees	104	40
Total Salaries	\$5.5 million	\$2.2 million
Ending GF Balance	\$4.5 million	\$1.9 million
EAV (tax base)	\$296 million	\$54 million
Per Capita EAV	\$24,040	\$7,764
Sales Tax Revenue	\$8.4 million	\$1.7 million
Public Safety Exp.	\$5.6 million	\$1.3 million
General Fund Revenue	\$9.5 million	\$3.3 million
General Fund Exp.	\$9.9 million	\$2.6 million

The Union stresses that it is not attempting to “cherry pick” comparables. The circumstances that led it to oppose the inclusion of Charleston and Mattoon, and also to agree to the inclusion of Vandalia, in the current list of comparables have changed. Put simply, Charleston and Mattoon currently meet the test for inclusion and Vandalia does not. The Arbitrator should consider each accordingly.

The City notes that the parties have relied on the current set of comparables in every negotiation since “established” by Arbitrator Finkin in 2001. In fact, the same list was considered by Arbitrator Raymond McAlpin in 2009 in City of Effingham and Illinois Fraternal Order of Police Labor Council, S-MA-07-151 (McAlpin, 2009). In that case, the Union raised no issues regarding the existing comparables. Rather, the hearing in this proceeding was the first time in the 13 years since Arbitrator Finkin’s award that the Union has sought to change the comparables. It did not, the City stresses, address the issue at the bargaining table.

The City does not challenge the Union’s data regarding the comparables, but suggests that consideration of comparability criteria alone is not a sufficient reason for disturbing an existing group. The City suggests that an interest in maintaining “consistency and continuity in the collective bargaining process” is threatened by the Union’s efforts here. See SIU and Illinois Fraternal Order of Police Labor Council, FMCS No. 110928-04239 (McAlpin, 2012), at 22. Put simply, the arbitrator should require compelling reason for changing the comparables at this point and should adhere to the status quo.

This Arbitrator finds that the existing list of comparables should be utilized in this case. The Arbitrator finds most compelling the evidence that the list has been in place since 2001, during which time the Union has not challenged it. He agrees with the reasoning of other arbitrators, including those cited by the City in its post-hearing brief, holding that the need for stability in the bargaining process

militates against lightly altering a list of comparables that the parties have relied on in the past. Accordingly, this Arbitrator does not believe it would be appropriate to conduct a de novo review of the respective proposed comparables at this point. Rather, the existing list should be amended only to the extent warranted by a demonstrated change in the circumstances under which that list was assembled. In fact, this Arbitrator notes that both Arbitrators Perkovich and Goldstein reached the same result in their respective decisions involving Rockford, both of which were cited by the Union.

The Arbitrator is also troubled here by the fact that the Union did not propose changing the comparables while the parties were at the bargaining table. The existing set of comparables is the status quo. The parties should be confident that in developing their positions, both at the bargaining table and, if necessary, in arbitration, that they may rely on the comparables as they existed coming into the process. A party wishing to change the comparables ought to be held to a duty to present the change as an initial matter at the bargaining table; to give fair notice to the other side that it intends to change the rules of the game. It seems to this Arbitrator that it is per se prejudicial to the other party for a party to wait until arbitration is initiated to seek to change the comparables.

For all the foregoing reasons, the Arbitrator will consider the following municipalities for purposes of external comparison:

Centralia  
Lincoln

Marion  
Mt. Vernon  
Olney  
Salem  
Taylorville  
Vandalia

## VIII INTERNAL COMPARABLES

The record shows three other bargaining units of City employees. The City's firefighters are represented by IAFF. The City's public works and water department employees are represented by the Teamsters. City telecommunicators are represented by this Union, in a separate bargaining unit. The City tells the Arbitrator that internal comparability, especially as regards the firefighters unit, should be given great weight in the discussion of both issues here due to the presence of a history of pattern bargaining whereby the City's unionized employees have all received identical pay increases, viewed in terms of percentage, at least since 2007, and have enjoyed identical health insurance benefits on identical terms since before then. In fact, for the years covered by this Agreement both the IAFF and the Teamsters already agreed to wage increases that are identical to the City's offer here, and they both agreed to the City's health insurance proposal as well. Negotiations with the telecommunicators unit were not settled at the time of this hearing.

The Union points out that the wage schedule shown in the agreement with the IAFF covering May 1, 2013 through April 30, 2016, did not agree with the

City's contention that the firefighters received the same package of increases that the City proposes here. In fact, the wages shown in the firefighters' 2013-2016 labor agreement indicate that while those in the rank of Firefighter may have received increases of 2.5%, 2.0% and 2.0% over the course of the agreement, those firefighters in the ranks above Firefighter received increases of 4.0% per year. The discrepancy is important as it belies the notion of pattern bargaining.

The Union also points out that although the current agreement between the City and the Teamsters guaranteed wage increases identical to the City's proposal here, it also attached a side letter agreement that promises the employees in that unit the benefit of any higher percentage increases that are negotiated with or granted to any other units of City employees during the term of the Teamsters' agreement.

As a general rule, the Arbitrator agrees with the City that evidence of pattern bargaining is a significant consideration in interest arbitration, at times dispositive. However, the Arbitrator also finds that discussions of the issue in this case, both as to the existence of any patterns and the import, are best done in the context of the particular issues.

## **IX. OTHER STATUTORY CRITERIA**

The City contends that its financial circumstances have been steadily deteriorating in recent years, and it points to dark clouds on the economic horizon. To begin, it has for many years taken advantage of its strategic location at the

“crossroads of opportunity” by basing much of its revenue on sales taxes. It has also taken advantage of Tax Incremental Financing (“TIF”), through which it has received millions of additional sales tax disbursements from the State, \$4.5 million in 2013, for example, specifically for purposes of community improvement projects. Two developments in recent years have undermined its ability to raise revenue. First, in 2009 the truck stops located within the City along I-57 and I-70 switched to bio-diesel fuel, which is not subject to the State sales tax, which contributed greatly to an overall decline in the City’s sales-tax revenue from \$8.7 million in 2009 to \$5.9 million in 2013. Second, the City’s highest revenue producing TIF district, District 1, expired at the end of 2013. In years past, funds from District 1 were routinely used to fund economic development and infrastructure projects in the City’s other TIF districts, none of which compare to District 1 in terms of revenue production. The TIF funds from District 1 will now be divided between various governmental bodies, such as the City, the County and the school district. Although the General Fund will see more money from sales taxes as a result, more funds will be drained from the General Fund to cover the projects that were formerly handled with unshared TIF money.

Additionally, the City points out that its disbursements from the State under the Motor Fuel Tax and Shared Income Tax have been significantly reduced in recent years.

The result of the loss of these revenue sources has been to place greater

burdens on the City's General Fund. In fact, from 2009 to 2013, expenditures from the General Fund have significantly outpaced the rate of inflation, with a net average deficiency of during years 2009 through 2010 over \$1 million per year. In the ensuing period, 2011 and 2012, the City realized a surplus of General Fund revenues to expenditures of \$434,000. But, the City again realized a deficiency of \$421,000 in 2013. Overall, the trend in the General Fund has been negative.

The City stresses that although it has a present ability to pay the cost of the Union's proposals here its focus is on the future, and sustainability. It anticipates continued declines in its receipts from the State and also suggests that it faces the upcoming expirations of its other TIF districts, the next one coming in 2021. With this in mind, the City implemented early retirement incentives in 2010 as part of a plan to reduce staffing and cut services in several City departments - the City notes that it incurred a charge of \$1.8 million in early retirement contributions as a result. It cannot simply continue to cut away at its own structure to survive. If circumstances do not improve, the City is faced with a future where it will not be able to employ vital staff members or adequately provide needed City services. Looking a decade out, the City will be a much different community than it is today.

The City accuses the Union of presenting a distorted picture of the City's financial condition, using irrelevant financial information to that end. While the Union's data would suggest increases in the ending balance of the City's General

Fund since in the years since 2005, the Union virtually ignores the difference between the City's revenues and expenses from 2006 to 2013. In fact, the Union's own exhibits demonstrate that the City's expenditures exceeded revenues in six of the nine years examined. It is true that the City has unreserved cash reserves, as the Union stresses, but it remains that the City's unreserved ending balance in the general Fund has decreased some 18% from 2009 to 2013. Moreover, the Union's arguments do not account for the loss of revenue due to the expiration of the City's highest producing TIF district, District 1, or the stress that the loss of TIF funds will put on the General Fund as it struggles to fill the void. The fact is that the City has the present ability to pay what the Union demands, but it should not be forced to do so, certainly not at the expense of the public welfare.

The Union suggests that the sort of "limited ability to pay" argument raised by the City has become something of a cliché in interest arbitrations had since the Great Recession. The Union tells the Arbitrator that this is not the case for departing from the established standards for assessing the issue that have been set out by arbitrators in awards spanning three decades. The Union quotes from Arbitrator Elliott Goldstein's award, in Forest Preserve District of DuPage County and MAP, FMCS No, 091103-0042-A, (Goldstein, 2009), at 48-49:

This Arbitrator is not authorized to interject himself into what is the political question of overall allocation of resources. I cannot order the District to raise taxes, either by concluding that the property tax "has room" to be increased or by indicating that other funding sources are available and might be utilized. That is simply not the function of an interest arbitration panel, as I understand it. Instead,

economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer.

The core idea of the Act is that if probative evidence exists in the framework of the Section 14(h) criteria that require choices that differ from Management's our role is to accept that evidence and choose the Union's final wage offer, no more, no less.

The Union stresses that in assessing the City's arguments here, this Arbitrator should keep in mind that the employees lack the right to strike. The Act, in turn, is designed to provide them with "an equitable effective" alternative for resolving disputes with their employer. (Union Brief, p. 32).

The Union points to the City's own audited financial reports, and the absence therein of any dire warnings about the City's finances. Certainly, applicable accounting standards would dictate that some prominent mention be made in the Management Discussion portion of the City's audit reports of the expiration of the City's TIF District 1 had the event been the "financial awakening" that the City now claims it to be. In fact, all that the City reported in 2013 as to its TIF funds was a positive variance of \$10 million from its budgeted revenues to its actual revenues. Otherwise, management's statements in the City's 2013 audited financial statement were positive, including, for example, statements to the effect that: the City's total assets exceeded its liabilities by nearly \$86.5 million, \$7.6 million of which was available to meet ongoing obligations; the City's combined government fund balances were up \$2.9 million from the previous year; and the City's sales tax revenues had increased. The credibility of

the City's claim of poverty here is indeed open to question.

This is not the first time that the City has claimed poverty, the Union contends. In the proceedings in 2009 before Arbitrator McAlpin, the City suggested dire consequences would befall it from the introduction of bio-diesel fuel and the resulting loss of sales tax revenues. It warned of potential State action to seize City assets to solve budget shortfalls, and a looming need to eliminate City projects and employees. It claimed that the General Fund was in peril. For the most part, what the City projected in 2009 did not come to pass. It will not now.

The Union contends that the City's financial condition is significantly better than the City portrays it to be. To begin, the Union points to historical evidence of the yearly ending balances of the City's General Fund, since 2005, to wit:

<u>Year</u>	<u>Ending Balance</u>
2005	\$3,488,029
2006	\$2,999,177
2007	\$4,210,396
2008	\$4,841,092
2009	\$3,958,415
2010	\$4,933,435
2011	\$5,506,563
2012	\$4,043,789
2013	\$4,505,283

Equally important, the Union suggests, the General Fund balances have been largely unassigned during the period, meaning that money is available for use by the City at its discretion. Since 2009, the unassigned portions of the ending

balances of the General Fund have been as follows:

<u>Year</u>	<u>Ending Balance</u>	<u>Unassigned Portion</u>
2009	\$3,958,415	\$3,757,039
2010	\$4,933,435	\$4,747,341
2011	\$5,056,563	\$4,833,366
2012	\$4,043,789	\$2,703,671
2013	\$4,505,283	\$3,454,073

Finally, the General Fund has maintained a “solid liquidity ratio,” which measures the City’s ability to meet short-term liabilities with cash from the fund. In sum, the City is not only unable to claim a “pure” inability to pay; it is also in no position to claim a limited ability to pay.

## **X. THE ISSUES**

### **Article 21 – Wage Rates and Allowances, Section 21.1 – Wages**

#### The Union’s Final Proposal

The Union proposes general wage increases as follows:

1. Effective May 1, 2013 – 2.5% across the board.
2. Effective May 1, 2014 – 2.5% across the board.
2. Effective May 1, 2015 – 2.5% across the board.

#### The City’s Final Proposal

The City proposes general wage increases as follows:

1. Effective May 1, 2013 – 2.5% across the board.
2. Effective May 1, 2014 – 2.0% across the board.

2. Effective May 1, 2015 – 2.0% across the board.

**Position of the Union:**

The Union is unabashed in boasting that the officers in this unit are at the very top among the comparables and intend to remain there. After all, the Union insists, the City is the “metropolitan core” of the area (Union Brief, p. 41). It sits at the “crossroads of opportunity” and enjoys both the benefits and the burdens of its location at the intersection of two major Interstates. It enjoys a boon economically but, at the same time, presents its police force with a greater workload than might normally be seen in a community of 12,000. On a daily basis, the population doubles, and with that comes increased motor vehicle traffic and crime. In short, the officers earn their high pay and the parties have for decades recognized this as a fact at the bargaining table.

External comparables clearly favor the Union’s proposal. The yearly averages of the increases received by the officers in the Union’s proposed comparables are 2.39% in 2013, 2.48% in 2014 (5 of 9 communities reporting) and 2.42% in 2015 (3 of 9 communities reporting). Moreover, the members of this unit gave ground to the comparables in the last contract. The Union tells the Arbitrator that the City’s plea for internal consistency on wage increases should be rejected in favor of the parties’ history of maintaining the officers in this unit at the highest level among the external comparables.

The Union insists that an award of the City's proposal based on internal comparables would do nothing more than to incentivize the City to line up its other bargaining units in advance of the parties' next negotiations to avoid having to negotiate with the Union for appropriate increases. The Union quotes Arbitrator Howard Eglit, in City of Rock Island and Illinois Fraternal Order of Police Labor Council, S-MA-95-82 (Eglit, 1995), at pp. 12-13:

The arbitrator has some degree of empathy for the City's arguments. But not enough to buy them. He is unwilling, in other words to conclude that because two other bargaining units settled for a 3.5% wage increase for one year, it follows that the bargaining unit in this arbitration had to do so as well. For there could be a variety of legitimate, reasonable reasons why one bargaining unit would find an offer acceptable and another would not. Perhaps, for example, the members of the units that were willing to take the offer felt themselves to be more fairly compensated (and perhaps rightly so) than do the members of the patrol officers' and investigators bargaining unit. Perhaps the bargaining units that accepted 3.5% one year offer were for their own particular reasons especially reluctant to expend union resources. Perhaps the members of the bargaining units that accepted the offers had reason to believe that accommodation would lead to future advantage.

The bottom line is that the rights of the patrol officers and investigators cannot be held hostage to the determinations made by other unions, any more than those unions can be held hostage to the choices of the members of the patrol officers' and investigators' bargaining unit.

This assertion is not meant to wish away, in effect, the fact that the statute directs the arbitrator to look to the matter of internal comparability. But internal comparability is only a factor. True, it cannot be ignored. But it cannot be given controlling force to the exclusion of other considerations. In brief, the patrol officers and investigators cannot be consigned to losing on their own claims even before they have a chance to make their case, just because the other bargaining units made different choices.

Arbitrator Marvin Hill recently rejected an employer's wage proposal that was tied directly to its internal wage settlements, but below the averages of the increases received by the external comparables, characterizing the employer's proposal as an attempt at "negative catch up." City of Belleville and IAFF, Local #53, S-MA-12-306, (Hill, 2013), at p. 21 ("simply because the Union negotiated its contract before the 'Great Recession' of 2008 and avoided a pay freeze was not reason enough 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").

The Union also questions the City's claim that its proposal is entirely consistent with internal comparables. Point of fact, while the firefighters may have received increases of 2.5%, 2% and 2% in their latest contract, the ranks above them received, in the same contract, yearly increases of 4%. The Union characterizes the City's treatment of its firefighter supervisors as "living proof of the 'variables' that exist when parties structure economic resolution at the bargaining table." (Union Brief, p. 43). The devil, according to the Union, is in those details that the City has glossed over in its efforts to sway the Arbitrator over to its claims of internal parity.

The Union reminds the Arbitrator that its concessions to the City's claims of poverty were had in the parties' last agreement, when it agreed to a wage freeze and a 1.0% across-the-board increase, accompanied by increases in the employees'

contribution caps for health insurance, in exchange solely for the right to roll a portion of the employees' existing holiday pay into their base salaries. It is time to add new money to their wages. As a final point, the Union adds that its members have already agreed in this Agreement to steep increases in their health insurance contributions. The Arbitrator should therefore adopt the Union's proposal on wages.

**Position of the City:**

The City starts by reminding the Arbitrator that the Act requires that he "be very sensitive to the costs that would be imposed" on the City by this Award. (City Brief, p. 46)[Quoting, St. Clair County and Illinois Fraternal Order of Police Labor Council, S-MA-99-60 (Finkin, 2000), at p. 8]. Since 2009, bargaining unit wage increases have significantly outpaced the growth in revenues coming into the City's General Fund. Furthermore, increases over that same period in police department expenditures have also far outpaced the rate of inflation. Restating its arguments regarding its fiscal position, the City again points out that the loss of sale tax revenues have taken a toll and will continue to do so. The loss of the City's first TIF district will now add to the City financial woes and will continue to do so for the foreseeable future. The looming expirations of the City's remaining TIF districts will leave the City a different place than it now is.

Add to this the fact that the City's costs in pension contributions for this unit have increased exponentially over the last several years. It is now faced with

unfunded obligations in the police pension alone of \$4.5 million, with an equal level of unfunded obligation hanging over the City at the firefighters' pension plan. The City is already burdened with meeting these obligations with diminishing revenues. Given the state of the national economy, it is highly unlikely that the City's finances will recover anytime soon. The economy itself warrants selection of the City's proposal.

The City points out that arbitrators have begun taking greater stock of the arguments of governmental employers that their ability to pay, short of an absolute inability pay, must be taken into account. The fact that a public employer may have an ability to pay does not mean that it should be required to do so in the absence of some evidence that the public will benefit from the expenditure, City of Burbank and Illinois Fraternal Order of Police Labor Council, S-MA-97-56 (Goldstein 1998). Of late, arbitrators are recognizing the need for governmental employers to be economically prudent. See, City of Park Ridge and Illinois Fraternal order of Police Labor Council, S-MA-10-232 (Hill, 2011) ("Few, if any, neutrals who conduct interest arbitrations and read the financial pages would rule that a city cannot be cautious in this up and down, roller-coaster economy"). The City adds the following discussion of Arbitrator Dan Nielsen, in City of Collinsville and Illinois Fraternal Order of Police Labor Council, S-MA-12-032 (Nielsen, 2013), at p. 9:

The arbitrator must reject the fallacy that the ability to pay, under the statute, only comes into play when there is actually an inability to

pay. Rather the criterion must be understood to allow an arbitrator to consider the impact of paying the increase. If an employer can pay what is demanded by the Police, but only at the cost of laying off firefighters or clerical employees, the ability to pay criterion should affirmatively favor the offer that avoids those negative effects . . . The Arbitrator must determine how the Union's offer will benefit the public, and how it might harm the public. The need to divert funds from other public purposes is, of course, an example of the harm that can be done by the Union's wage offer.

Factors beyond the City's control have already forced the City to reduce personnel expenses and to put off much needed projects and public improvements. From the City's "financial standpoint," an award of wages to these employees that is greater than that proposed by the City will result in the City diverting money from operations elsewhere, some of which are vital. (City Brief, p. 54). Viewed in this light, the Union's wage proposal is irresponsible.

The officers in this unit "fare extremely well against the historically established comps." (City Brief, p. 54). Their status as the highest paid among the comparables, both as to base pay and overall compensation, was not altered by the lower than average wage package that the officers agreed to in the last agreement. In fact, the City's present offer makes up for that last wage package by granting these officers a higher than average wage increases in the first year of this Agreement.

The City tells the Arbitrator that he should not downplay the significance of the roll-in of 80 hours of holiday pay to the officers' base pay, which was given as a quid pro quo in the last agreement. The trade off was reasonable at the time in light of the lack of financial wherewithal to do more. It nevertheless increased

each officer's base pay by approximately 3.85%. That increase, although not itself new money, will have a compounding effect in the face of future wage increases. It also raised each officer's hourly rate from \$21.23 in 2011 to \$22.23 in 2012. Viewed in terms of comparability, that increase in hourly rate raised the rate of these officers from 4.9% to 9.2% above the average. That differential will again increase in 2013 to 9.3% under the City's proposal. Although the differential decreases slightly in the remaining two years of this Agreement, it will nevertheless end up at over 6.0%, well above where it was in 2011.

The benefit to the public of raising these differentials even further, as the Union proposes, is not apparent on this record. As Arbitrator Nielsen noted in City of Collinsville, S-MA-12-032, at p. 9, "[T]he most commonly cited benefit to the public from higher wages is the ability to retain officers and avoid turnover." The City notes its police force "has a very stable and experienced cadre of officers" (City Brief, p. 59). That will not change under the City's wage proposal. On the other hand, the fiscal burden of paying the officers more than the City proposes lacks justification, especially in light of the recent increases in health insurance and pension costs.

The City again notes the historical pattern of granting its police officers and firefighters, the critical internal comparable, pay increases that are identical in terms of percentage. Indeed, for the past decade all of the City's four bargaining units received identical increases. The City cites several arbitration awards for the

proposition that such pattern bargaining should be given great weight in deciding which offer submitted in arbitration is the more reasonable. See, for example City of Alsip and Illinois Fraternal Order of Police Labor Council, S-MA-93-110 (Fletcher, 1995), at p. 18 (“In evaluating internal consistency, it is more relevant to examine the rates of increase rather than the actual pay rates . . . Internal consistency is satisfied if all groups of employees are progressing at the same rate”); Village of Forest Park and Illinois Fraternal Order of Police Labor Council, S-MA-12-281 at 7 (Perkovich, 2014) (“[S]ince external comparability does not compel the adoption of one final offer over the other, the factors of cost of living and internal comparability do”). In Village of Schaumburg and MAP, S-MA-05-102 (Yaeger, 2007), at pp. 13-14, the Arbitrator commented:

As most arbitrators have concluded, including this one, an employer’s ability to negotiate a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstances surrounding such an agreement(s) that diminishes its persuasive value.

The City suggests that the Union has failed to show any “unusual circumstances” that would justify a departure from the pattern of internal consistency that the parties have established.

The City warns that a departure in this case from pattern bargaining will have a “whipsaw” effect on bargaining with the other units. Each of the other units will be motivated to redress the imbalance created by an award here of increases greater than they received in arms-length bargaining. See Village of Arlington

Heights and IAFF, Local 3105, S-MA-88-89 (Briggs, 1991) (recognizing the destabilizing effect where an employer's represented groups "jockey back and forth to outdo each other at the bargaining table"). Such a ripple effect will no doubt increase the City's costs and force the City to choose between treating employees similarly and eliminating their jobs.

Turning to the cost of living factor, the City suggests that the Arbitrator need not rehash old arguments about which of CPI-U or CPI-W is the more appropriate measure for analysis. The figures under both systems are much lower than either proposal made here. The bottom line for the City is that because its offer allows the bargaining unit employees to keep up with the 2013 consumer price index and does not require the employees to absorb reductions in their real compensation, the City's offer should be selected. City of Elgin and IAFF, Local 439, S-MA-13-010 at 38 (Grenig, 2013).

**Discussion:**

The parties' respective proposals are both reasonable in that they each reflect a sincere effort at settlement and neither is wholly out of line with the evidence in the record. In fact, they are not far apart, as will be addressed again below. The City calculates the total cost difference between the proposals over the term of the Agreement to be \$20,327.75. Therefore, the task of determining which offer is more reasonable in light of the Section 14(h) factors, and should therefore be adopted, is not an easy one. Nevertheless, the Arbitrator is persuaded by the

record as a whole to adopt the Union's wage proposal.

The starting point for the discussion, as this Arbitrator has so often said, is the external comparables, see County of McHenry and SEIU, Local 73, S-MA-12-001 (Fletcher, 2013), at p. 10 (“external comparability is of primary importance in the analysis of the parties’ respective proposals”). “Absent special circumstances, i.e. a proven need for employees to catch up vis-à-vis the comparables or circumstances that will not allow for an apples-to-apples comparison with the external communities, percentage-to-percentage comparisons of the respective proposal with the wage settlements shown among the chosen external communities is the most commonly used approach.” Village of Matteson, S-MA-14-015, at pp. 40-41 (citations omitted). Although the Union wage data is drawn on an inappropriate set of comparables, it is noteworthy that the City’s own wage data, based on the correct set of comparables, yields substantially the same result. In fact, the City’s data is slightly more favorably to the Union, suggesting yearly averages among the external comparables of 2.42% in 2013, 2.48% in 2014 and 2.5% in 2015. In either case, the Union’s proposal is certainly above the averages shown, but by less than .05% per year, which appears to be reasonable in the wake of the austere wage package that was agreed to in the last agreement. The City’s proposal, on the other hand, although somewhat above the average in the first year of the Agreement, 2013, is lower than average in each of the last two years and also in terms of the total of the averages for the three years, albeit by less than

1.0%.

The Arbitrator notes that the pool of available data is not of an ideal size for accurate comparisons. This is particularly true as regards 2015, for which data is limited to just one external comparable. However, the data overall appears to fall in line with data on wage settlements among police units generally in the State, as this Arbitrator has gathered from his own review of published police and fire wage data, which suggests average increases in the area of 2.25% to 2.5%. Certainly, nothing in the comparables data here suggests the likelihood that the final settlements among the external communities will appreciably depart from the recent trend. The Arbitrator is thus persuaded that the external comparables favor the Union's position, not by much but definitely, nonetheless.

The Arbitrator is somewhat troubled by the City's presentation of its claim of internal parity, as to wages. The Arbitrator finds that the support in the record for the City's claim as such is at best equivocal. On the one hand, out of more than two decades of bargaining between these parties, the data presented by the City covers only the period beginning and after 2007. That data thus includes the three-year wage package awarded by Arbitrator McAlpin, in the immediate aftermath of the Great Recession, followed by a three-year "concession" wage package that was agreed to as an effort to address the economic realities arising from the Great Recession.

On the other hand, the City clearly downplayed the fact that it fire

department Captains and Lieutenants received yearly increases of 4.0% in their last agreement, and not the 2.5%, 2.0% and 2.0% that the City claimed were given to all of its other employees, and uniformly accepted by the other unions. The City touched upon it only briefly at the hearing <sup>1</sup> and the City failed to note the discrepancy in any of its demonstrative exhibits, which is in notable contrast to the City's decision to footnote much information in its exhibits that is much less material to this Arbitrator's analysis of the City's claims. The Arbitrator has not taken it upon himself to more fully explore the City's data. In this Arbitrator's view, a pall is cast that suggests the City may have skewed the record.

This Arbitrator also finds little in Arbitrator McAlpin's award to suggest that the City demonstrated in that case that pattern bargaining as to wages was a historic fact. McAlpin certainly indicated that the City argued that it sought uniformity in its bargaining with its various bargaining units, although even as to this it appears that he was referring principally to matters of insurance. However, McAlpin neither expressly found that a pattern of bargaining existed as to wages nor suggested the sort of pattern bargaining analysis that Arbitrator Yeager discussed in Village of Schaumburg and MAP, S-MA-05-102, cited above. Rather, it appears that he based his decision to adopt the City's proposal on findings that the Union's proposal was not supported by the data from the external

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<sup>1</sup> The City's attorney testified that an additional 2% increases was given to the Captain and Lieutenant ranks, which he recalled as affecting two or three employees, because "we couldn't get anyone to apply for the promotion. . . because the wages were so compressed that it really wasn't a promotion. . . ." (Tr. 188).

comparables, and that the internal wage data, i.e. the identical wage increases that the City's other bargaining had agreed to, and also the economic realities of the day, provided decisive support for the City's proposal. Despite the misgivings previously discussed, this Arbitrator accepts that internal comparability favors the City's position. The Arbitrator also finds, however, that the internal support for the City's proposal is not enough to overcome the external support for the Union's proposal.

The Arbitrator is sympathetic to the City's claims that it has seen better times, financially. The data suggests that the lost revenues suffered by the City, which was a significant factor in Arbitrator McAlpin's award, in 2009, have not been fully replaced. It is at the same time true, however, that the City does not appear to be broke. Moreover, its arguments as to the detrimental impact of adding to its police department expenditures are extremely vague, in that they really boil down to little more than bare truisms, i.e. that the more its spends on the operation of its police department the more will be taken away from its ability to meet expenses elsewhere. It has not produced any specific data to suggest that an award of the Union's wage offer over its own, a difference amounting over three years to less than a single year's salary for a single employee, will cause substantial harm to City's operations. Stated simply, the Arbitrator finds no basis for giving the City's ability to pay arguments much weight in the determination of which of the two wage proposals presented here is the more reasonable one.

This Arbitrator consistently holds to the rule that “‘fiscal responsibility’ alone is not a defense for inferior public service wages.” City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-10-233 (Fletcher, 2011), at p. 28. He recently suggested that while he “is aware of his statutory obligation to consider an employer’s ability to pay in these matters he, at the same time, appreciates both the limitations of his authority and the underlying purpose of the Act to provide the employees, who cannot strike, with ‘an alternate, expeditious, equitable and effective procedure for the resolution’ of their disputes with their employer (5 ILCS 315/2)” City of Matteson, S-MA-14-015, at p. 44. The Arbitrator agrees with Arbitrator Goldstein’s view, quoted above, that an arbitrator has no power to affect the spending priorities or its taxing policies of a public employer. He must accept them as they come. Therefore, if this process is to be “equitable and effective” for both parties, the Arbitrator must take care that his decision making is not given over to the City’s managers. In other words, as Arbitrator Goldstein put it, in Forest Preserve District of DuPage County, FMCS No, 091103-0042-A, at p. 49:

The core idea of the Act is that if probative evidence exists in the framework of the Section 14(h) criteria that require choices that differ from Management’s our role is to accept that evidence and choose the Union’s final wage offer, no more, no less.

Accordingly, the Arbitrator again stresses that in this process of interest arbitration comparability, both internal and external, with somewhat greater weight given to the latter, cannot be overlooked merely because the City would prefer to spend its

money elsewhere.

CPI is not a significant factor here. The Arbitrator finds that the projected CPI-U favors the City's position, but also finds that it is not sufficient to tilt the tables in the City's favor on this issue.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the City's with respect to the issue of general wage increases. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

### **Order**

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 21 – Wage Rates and Allowances, Section 21.1 – Wages is adopted. It is so ordered.

### **Article 22 – Insurance and Pension, Section 22.1 – Insurance**

#### The Union's Final Proposal

##### Section 22.1 Insurance:

Absent mutual agreement, the Employer agrees to provide health, hospitalization and medical insurance coverage as modified and agreed to for the term of this Agreement. Employees will pay for 20% of the total cost of their applicable insurance or they will pay the applicable monthly amounts set forth below on the dates set forth

below whichever is less. ~~The Agreement may be reopened at the request of either party effective May 1, 2011 for the sole purpose of negotiating health insurance issues. It is further agreed that the following caps will remain in effect only up to and including May 1, 2011.~~

	<u>May 1, 2010</u>
Single	\$100
Employee and Child	\$175
Employee and Spouse	\$190
Family	\$230

	<u>Effective May 1, 2013</u>	<u>Effective May 1, 2014</u>
Single	\$119.50	\$130.26
Employee and Child	\$209.13	\$227.95
Employee and Spouse	\$227.05	\$247.48
Family	\$275.00	\$300.00

The parties agree that in the event the Joint Health Insurance Committee recommends changes in the existing health insurance benefit or the employee contribution cap effective during the term of this agreement May 1, 2010 that are not acceptable to the Union, the Union's rights to bargain as to any changes shall be preserved without prejudice.

It is further agreed that if the City elects to adopt either an HRA or HSA plan during the term of the Agreement, either party can elect to reopen this agreement on the issue of health insurance only by giving the other side notice of their intention to do so.

Current and new employees who have a dependent(s) who qualify for family health insurance coverage and select employee-only coverage, or current and new employees who qualify for single health insurance coverage and decline coverage, shall receive a one thousand five hundred ~~(\$1,000)~~ (\$1,500) annual payment per full policy year at the beginning of each policy year. This election must be made within 30 days of first employment (or the date the participant becomes eligible for coverage under the Medical Plan, if later) and before January 1 of each year thereafter. Once an election is made, it cannot be changed for the remainder of that calendar year

unless the participant has a qualifying change in family status. In such a case of a qualifying change during the calendar year, the City will make a prorated payment for the remainder of the policy year beginning the first of the next month or on the date they qualify for coverage.

### The City's Final Proposal (See Appendix A)

The City's Final Proposal is set out in full in Appendix A. Summarizing, the Arbitrator suggests that the City proposes to maintain existing benefits, for the time being, but with the hard caps on premium contributions eliminated in favor of a simple percentage-based contribution set at 20%; and to establish a Joint Health Insurance Committee ("Joint Committee"), as set out in the attached Joint Labor/Management Insured Benefit Committee Agreement, which:

- 1) Establishes that the Joint Committee will be composed of two members from each bargaining unit, two members selected by the City Administrator from among the City's rank-in-file non-union employees, the City Administrator, the City Clerk and the Mayor;
- 2) Grants jurisdiction to the Joint Committee to design health insurance programs – which must include a wellness component – which the Joint Committee then recommends to the City Council, and which the City Council may accept or reject;
- 3) Establishes the term of the Joint Committee Agreement at four years, after which any party may give notice to terminate, which then triggers multilateral negotiations over terms for renewal of the Joint Labor/Management Insured Benefit Committee Agreement, including the right of parties to invoke interest arbitration. And further, that the Joint Committee may be terminated at any time by 2/3 vote of the City Council or a majority of the members of the Joint Committee, but only in the event that the Joint Committee fails to reach agreement on a health insurance plan for recommendation to the City Council; and
- 4) Limits the right of the constituent unions to bargain directly with the City over health insurance, during the life of the Joint Committee, to issues of cost relating to their respective members.

### Position of the Union:

The Union reminds the Arbitrator that the parties have been bargaining with one another for the past 27 years. In all of their negotiations, contract to contract, health insurance has been an issue. Hard caps on employees contributions to premium were introduced in 1993 and they have remained a part of the contract ever since. In the last agreement, the employees agreed to an increase in the caps, notably to \$230 per month for family coverage, where they have since remained. The employees also agreed at that time to participate in committee of City employees to assist the City in shopping for renewals. The City, not the Union, ultimately declared that committee to be ineffective.

Interest arbitration is essentially a conservative process, one that eschews easily granting breakthrough proposals or significant changes to the status quo. As a general rule, the party seeking such a change or breakthrough must justify its proposal to do so by showing that the current system is dysfunctional; that the proposed change will set the system right; and that a quid pro quo of substantially equal value was offered for any loss coming from the change, which the other party unreasonably rejected. City of Love Park and Illinois Fraternal Order of Police Labor Council, S-MA-01-160 (Meyers, 2002), at p. 13. Contrary to the City's argument that the hard caps on contributions were eliminated in the last agreement, those caps have in fact remained in place. They are the status quo. The Union is proposing to increase them to levels that are in line with projected costs, and which exceed most of the contribution levels being paid by employees in the

external comparables. The City seeks to eliminate the caps in favor of a straight percentage contribution rate. Moreover, the City now seeks to take health insurance away from the employees as a future bargaining issue and to transfer control over the issue to the Joint Committee, on which it sits, an advisory body that has no real power. Indeed, the Union notes, the Joint Committee is authorized only to make recommendations to the City Council for health benefits and terms, which the City Council is free to accept or reject. The Union retains no right under the City's proposal to bargain over any matters other than contribution rates. The City has not demonstrated a single element of the test for implementing such drastic changes.

The Union contends that there is nothing wrong with the current system – it admits that premiums are indeed going up and also asserts that its members have responded by agreeing to increase their contributions, substantially and at all levels of coverage. The City has not shown through evidence that either eliminating hard caps is in any way necessary, or even beneficial. Rather, the City's arguments really boil down to the fact that the City favors eliminating the caps and subjecting the employees to an open-ended liability for insurance. On the other hand, eliminating the caps will have an immediate and harsh impact on unit employees. At present, employees contribute \$2,760 per year for family coverage. That rate would immediately increase to roughly \$4,495 per year. The City has not offered the employees anything in exchange for eliminating caps and accepting

such a heavy increase in costs or, for that matter, for ceding such important bargaining rights to the City.

The Union derides the City's boast that its new Joint Committee will be successful in reducing costs, and thereby benefit City employees who contribute to premium on a percentage basis. In fact, the Union notes, the City conceded during the hearing that the new Joint Committee was a "revamping of sorts" of the old insurance committee, which the City itself declared ineffective (Union Brief, p. 49)(citing Tr. 153). The bottom line is that the Joint Committee structure envisioned in the City's proposal merely takes what were previously bilateral negotiations and diverts them to a multilateral mess, with all of the various groups having conflicting interests and a desire for control of the process. It is a recipe for disaster. Moreover, if the Joint Committee system does not work, it is truly up to the City alone to dissolve it and return the issue of insurance to the bargaining table. The Union's retain no such unilateral right to do so.

As to internal comparability, the Union suggests that the firefighters were given something of value in exchange for agreeing to the City's Joint Committee proposal. The Union points again to the fact that the Captains and Lieutenants received extraordinary wage increases. Moreover, counsel for the City's was forced to admit during the hearing that the City also agreed to changes in minimum manning that were proposed by IAFF. The Teamsters, on the other hand, had little choice but to accept the Joint Committee. It was either that or

strike. It was more acquiescence than agreement and it should not be held against this Union or its members.

**Position of the City:**

The City points to the language of Section 22.1 in the last agreement and suggests that the parties clearly negotiated for the complete elimination of the hard caps on premium contributions, effective May 1, 2011. The City Administrator advised the leadership of each representative union, more than a year in advance of the present negotiation cycle, that the City would no longer honor any hard caps, beginning May 1, 2013. It has since voluntarily honored the caps, but only “to ensure the City had sufficient time to negotiate, what were expected to be significant changes in the Plan, with all of its constituent unions.” (City Brief, p. 24)(citing Tr., 151). The City suggests that its hand is now forced, principally by the advent of the Affordable Care Act (“ACA”), “to develop new strategies for negotiating health benefits, with the goal of minimizing exposure to ACA penalties, satisfying the ACA’s coverage and benefit requirements, and preserving flexibility to make changes to comply with the ACA’s complex and evolving requirements.” (Id).

The City concedes that it seeks a breakthrough here, but adds that the Union does so as well by seeking to reinstate the hard caps. Both the City’s and the Union’s proposals constitute breakthrough issues. On the City’s side, it has

shown that the current insurance plan and procedures for changing it have not worked. The hard caps on premium are incompatible with the ACA's focus on patient-driven care and accountability. It provides the employees with the wrong economic incentive when it comes to health care utilization and thereby drives up costs. As a practical matter, moreover, the convergence of the processes of health insurance renewal and collective bargaining leave the City with little time to negotiate with insurance carriers. The fact that the City's plan is self-insured complicates matters in that it presents challenges to the City in trying to extend existing benefits while it reviews the various proposals that it receives from outside brokers. Current contract language adds to the problem by inhibiting the City's ability to make substantive changes in its plan midterm. As a result, the City has not been able to make the changes it needs to in order control costs and comply with the ACA.

The City suggests that as things stand its insurance plan will be considered a Cadillac Plan under the ACA, meaning that the value of its benefits exceed a certain threshold set in accordance with ACA guidelines. If the City does not address the richness of its plan now, to anticipate the overall costs of its benefits before the 2018 deadline set in the ACA, then it will face a further, nondeductible, expense in the form of a 40% excise tax on the value of the benefits in excess of the threshold. The City points out as a matter of importance that the ACA does not exempt collectively bargained plans from the tax.

Indeed, the City's current plan is in financial distress. The City's costs for health insurance and administration have nearly doubled in the years since 2009. During the term of the last agreement alone aggregate premium increased by 27.92%, with the City's premium increasing by 17.65%. Monthly fixed costs also increased by 16.71%. Costs are expected to rise another 7% in 2014. The City needs flexibility to become more consumer driven, "incentiviz[ing] employees to be pro-active in their own healthy lifestyle." (City Brief, p. 28). On this point, the City adds, its health insurance proposal includes mandates for the Joint Committee to develop programs for wellness, smoking cessation and fitness-based healthy lifestyles.

The City reminds the Arbitrator that escalating health care costs are a national problem. It reminds this Arbitrator of his comments, in County of Cook and Illinois Fraternal Order of Police Labor Council, L-MA-05-007 (Fletcher, 2007), at p. 73, to wit:

Certainly, the Arbitrator recognizes that no employee in any industry, wants to pay more for health care, never mind for coverage identical to that which he or she has previously enjoyed for a lesser amount. However, as noted, the cost for that same level of care has risen substantively in recent years, and it is simply indefensible for modern-day employees to expect their employers to foot the entire bill for those increases. Indeed, this would put an undue hardship on any employer.

The Union was made fully aware that the City would pursue alternatives to the current health insurance programs well in advance of the present negotiations. It would not be "unreasonable for the Arbitrator to conclude that the Union is not

dismayed by the idea of health insurance reform or surprised by the timing of it.”  
County of Cook, L-MA-05-007, at p. 72.

The Union has nevertheless consistently resisted the City’s efforts to address the substantial changes in health insurance that must be made. Its only reason for doing so is its desire to maintain control over the process, to avoid other unions having a say in the negotiation of the benefits for this Union’s members. On the other hand, the Union’s current proposal is mere “window dressing” that does not address any of the detrimental problems inherent in the current program, i.e. the costs from overutilization of benefits that comes from the current system of premium caps. The City quotes from Arbitrator Marvin Hill’s decision in City of Danville and PBPA, Unit #11, S-MA-09-238 (Hill, 2010), at p. 53:

Gone are the days when employees can isolate themselves from the realities of the economy . . . by insisting on retaining Cadillac-type insurance benefits negotiated in an entirely different economic environment from the present. Skyrocketing health-care costs will eventually mandate moving everyone from 90-10 to 80-20 co-payments. . . . There will be a point in time that economic necessity *will* mandate a change from the *status quo*.

The Union effectively ignores the economic realities of health care and the continuously rising costs of providing it. The Union’s proposal should therefore be rejected.

The City’s proposal will not unduly burden the employees, the City adds. The Joint Committee is a collaborative body, not one dominated by any single body or constituency. All employees, both union and non-union, are given input. It

provides for an even divide of any savings realized in future plans between the City and the employees. Those savings will come primarily from the elimination of the “economic disincentives” to responsible employee managed care contained in the current benefits, i.e. the hard caps on premium contributions for employees, implementation of wellness programs and the creation of health savings accounts. Put simply, the “City’s health insurance proposal attempts to tackle the trend of skyrocketing health insurance costs ‘without making any dramatic changes to, or reductions in, the quality of coverage provided to the members of the bargaining unit.’ Greene County and Illinois Fraternal Order of Police Labor Council, S-MA-033 at 11-12 (Meyers, 2008)” (City Brief, p. 32).

The City stresses internal comparability, arguing that it is generally seen by arbitrators as the most critical factor when it comes to matters of insurance. The City quotes from a recent opinion by Arbitrator Hill, Village of Lansing and IBT, Local 700, S-MA-11-197 (Hill, 2013), at pp. 18-19 (emphasis supplied by City), to wit:

Especially relevant in this dispute is the fact that arbitrators give greater weight to internal comparability vis-à-vis external comparability when health insurance is at issue . . . Regarding the Agency’s argument that internal comparables should be more compelling on the insurance issue, this Arbitrator generally agrees . . . [S]ignificant changes in benefits should be bargained for and agreed to in the give-and-take of negotiations . . . the use of external comparisons when determining health insurance issues has diminished relevance because of variations from city to city in health insurance plan benefits and in wages and other forms of direct and indirect compensation . . . Finally, as many arbitrators have noted, **health insurance is uniquely specific to each public employer.** It

may not be completely accurate to compare 'costs' without comparing the plan themselves along with a variety of other factors in comparing them. **This is why internal consistency is generally the most important factor for such a fringe benefit because of the unique history of each such plan may have and how it may have changed over time with differing concessions, bargaining history and negotiated changes in exchange for other things across jurisdictional lines.**

Employees in the City's four bargaining units, as well as the City's non-union employees, have "always" enjoyed the same health insurance benefits on the same terms, the City contends. The City's proposal here maintains that parity by putting this Union and its members on the same footing as all other City employees, all of whom have already agreed to the terms proposed for this unit, including the Joint Labor / Management Insured Benefit Committee Agreement.

The Union proposes only to exacerbate the City's health insurance problems by leaving the City with no options other than to either maintain two separate plans, one for police and one for everyone else, or effectively eliminate the Joint Committee – it would be useless if its deliberations were held hostage to this unit's bargaining rights - and simply continue with the current arrangement. If the City opts for the former, operating costs alone will eat up any cost savings realized by the Joint Committee's work. If the City opts for the latter, the problems of skyrocketing costs will simply continue and the financial headaches waiting under the ACA will simply come to pass.

Finally, the City reminds the Arbitrator that in the current round of bargaining the Union declared impasse after just the second session. It did not

engage in any meaningful bargaining over the insurance issue. Bargaining did take place, and the parties reached agreement on Union proposals that benefitted its members, for example giving them educational incentives and an additional personal day based on attendance. Despite the City's willingness to add such new benefits, the Union would not even consider the City's health insurance proposals. Rather, the Union took the position from the outset of bargaining that it would block any meaningful insurance reform. The City submits that its proposal should be seen as the one that more adequately replicates that to which the parties would have themselves agreed had good faith bargaining taken place.

**Discussion:**

Putting aside all the other arguments that the parties made on this issue, most notably internal comparability and the high cost of the current insurance plan, the Arbitrator is persuaded to decide the issue in the Union's favor, simply on the narrow ground of the waiver embodied in the City's proposal of the Union to demand bargaining directly with the City, and behalf of its members alone, over a very important term and condition of employment. This Arbitrator believes that Arbitrator Herbert Berman summoned the matter up well when he stated, in City of Rockford and IAFF, Local 413, S-MA-06-103 (Berman, 2008), at p. 55, that, "I do not suggest that the Union could not have waived its right to negotiate, in whole or in part, on health care or that the Union could not have simply accepted the City's open-ended proposals. But an arbitrator should not make that decision."

The fact that the IAFF and the Teamsters agreed to the Joint Committee, and perhaps had a hand in designing it, is really of no weight in the analysis.<sup>2</sup>

Moreover, the City's does not propose to try the Joint Committee on some short-term basis, leaving the parties a way to return to the bargaining table if they find it disadvantageous. Instead, the Arbitrator sees that the enabling document sets an initial four-year term for the Joint Committee, which is at least a year past the expiration of this Agreement, and calls for negotiations from there for renewal. Indeed, the enabling document provides for interest arbitration of any impasse in those negotiations, which means that this Union might again be compelled to cede its bargaining rights for a second Joint Committee term. Notably, the City reserved to itself a right to unilaterally dissolve the Joint Committee midterm, and thus return the issue of health insurance to bilateral negotiations. Under the proposed enabling document, the Union has no such right. It is thus apparent that once the Joint Committee arrangement was put in place, this Union might be deprived of the right to demand bilateral negotiations for a very long time. Put simply, the Arbitrator does not believe he has a legitimate authority to wrest from the Union

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<sup>2</sup> The Arbitrator will accept, for purposes of this discussion only, the City's position that the hard caps on premium contribution were eliminated in the last agreement, and that the Union's proposal therefore embodies a change in the status quo. Moreover, the Arbitrator recalls Arbitrator Goldstein's recent ruling in City of Rockford, S-MA-12-108, at pp. 61-62, where he held that because both parties had to some extent proposed a breakthrough, in that case on issues of manning, neither party would bear a distinct burden of proof on the issue. This Arbitrator finds Arbitrator Goldstein's reasoning as such to be persuasive. However, this Arbitrator at the same time believes that the arguments that address the reasonableness of parties' respective positions are effectively immaterial. The City has not demonstrated that its needs with respect to addressing costs, or the regulatory requirements of the ACA, are so compelling and immediate that an award of its proposal to remove the issue from future negotiations might be justified.<sup>2</sup> To the extent that the Union's proposal departs from the status quo, that departure pales in comparison to that proposed by the City.

its right to demand direct negotiation with the City over such an important issue.<sup>3</sup> He hastens to add that if it were determined that he had such authority, he is in any case convinced that its exercise here would be irresponsible.

This Arbitrator is not insensitive to the City's arguments regarding its need to begin addressing health insurance costs, and also for the union to recognize that need. The City's arguments for eliminating the hard premium caps, or not reinstating them as the case may be, and also for changing its insurance program in other regards to meet costs, which seem to be ever-rising faster than inflation, are not unpersuasive. To a lesser extent, the City's claims regarding its need to address regulatory issues under the ACA, which seem on this record to be somewhat generalized and anticipatory, are also noteworthy. However, the problem for the City arises from the simple fact that it does not propose a new insurance plan - indeed, the City's proposal keeps the current insurance plan in place, at least for the time being - but instead asks the Arbitrator to declare that the collective bargaining process is broken and to remove the issue of insurance from that process, in order to allow the City to more effectively deal with its insurance problems in the future. This Arbitrator does not normally respond to complaints regarding the structure of the Act or the hardships that the process of collective bargaining brings to employers in their efforts to respond to the demands of their employees. This Arbitrator views his statutorily enabled role in

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<sup>3</sup> In this Arbitrator's experience, health insurance is perhaps the second most common among the issues that wind up in interest arbitration. He believes that this is testament to the importance of the issue to both labor and management.

this process as limited to applying the Act, or really the very narrow portion contained in Section 14, as is, and not as extending to taking actions to fix it.

The Arbitrator is entirely unmoved by the City's suggestion that the Union's resistance to the Joint Committee structure is self-serving. The Arbitrator sees nothing inappropriate in a union's desire to zealously guard its ability to carry out its statutory function to represent the employees who selected it to bargain directly with their employer over their terms and conditions of employment, exclusively. On the other hand, the Arbitrator does not view the Joint Committee as holding forth such promise of future benefit to the employees that the Union's resistance to joining it might be seen as somehow a breach of the Union's obligations to those employees. Indeed, the Arbitrator shares the concern of the Union that the Joint Committee might become something of a Tower of Babel.

More to the point, the City clearly built into the structure of the Joint Committee certain mechanisms that give it significant control over the process. For example, the City controls five of the 13 delegates to the Joint Committee, three of whom are City officials and two others whom the City selects from among its non-union employees, and who thus serve at its pleasure. The City also retains an absolute veto over the Joint Committee's work product and an exclusive right to disband the Joint Committee if it deems that the Joint Committee has failed to reach agreement on a recommendation that the City deems acceptable. In this Arbitrator's view, the City retains enormous power over the Joint Committee.

Viewed in this light, the Union's resistance to the proposal seems to be rational.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the City's with respect to the issue of health insurance. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

### **Order**

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 22 – Insurance and Pension, Section 22.1 – Insurance is adopted. It is so ordered.

### **XI. CONCLUSION AND AWARD**

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

*/s/ John C. Fletcher*

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**John C. Fletcher, Arbitrator**

Poplar Grove, Illinois, May 2, 2014

## Appendix A

City Final Offer:

### Section 22.1 Insurance:

Absent mutual agreement, the Employer agrees to provide health, hospitalization and medical insurance coverage as modified and agreed to for the term of this Agreement. Employees will pay for 20% of the total cost of their applicable insurance. ~~or they will pay the applicable monthly amounts set forth below on the dates set forth below whichever is less. The Agreement may be reopened at the request of either party effective May 1, 2011 for the sole purpose of negotiating health insurance issues. It is further agreed that the following caps will remain in effect only up to and including May 1, 2011.~~

#### Effective May 1, 2010

Single	\$100.00
Employee and Child	\$175.00
Employee and Spouse	\$190.00
Family	\$230.00

The parties agree that in the event the Joint Health Insurance Committee recommends changes in the existing health insurance benefit ~~or the employee contribution cap effective May 1, 2010~~ that are not acceptable to the Union, the Union's rights to bargain as to the amount of employee contributions to the cost of health insurance premiums ~~any such changes~~ shall be preserved without prejudice.

~~It is further agreed that if the City elects to adopt either an HRA or HAS plan during the term of the Agreement, either party can elect to reopen this agreement on the issue of health insurance only by giving the other side notice of their intention to do so.~~

Current and new employees who have a dependent(s) who qualify for family health insurance coverage and select employee-only coverage, or current and new employees who qualify for single health insurance coverage and decline coverage, shall receive a one thousand five hundred ~~(\$1,000)~~ (\$1,500) annual payment per full policy year at the beginning of each policy year. This election must be made within 30 days of first employment (or the date the participant becomes eligible for coverage under the Medical Plan, if later) and before January 1 of each year thereafter. Once an election is made, it cannot be changed for the remainder of that calendar year unless the participant has a qualifying change in family status. In such a case of a qualifying change during the calendar year, the

City will make a prorated payment for the remainder of the policy year beginning the first of the next month or on the date they qualify for coverage.

The Employer also proposes as part of its Final Offer that the Union enter into the terms of a new “Joint Labor / Management Insured Benefit Committee Agreement” as follows:<sup>4</sup>

Joint Labor / Management Insured Benefit Committee Agreement

*By and Among*

Illinois FOP Labor Council, Lodge 209

*And*

The City of Effingham, Illinois.

I. Introduction

The parties to this Agreement have agreed to participate in negotiations as members of the Joint/Labor Management Insurance Committee (the “Committee”) for the purpose of negotiating the plan provisions and funding of the City’s medical, dental, and vision plans (“insured benefits”). The parties understand and agree that Committee participation represents the most effective means to develop and implement cost containment approaches for the management of the City’s insured benefits, while providing quality benefits available to employees and their covered dependents.

The City and each signatory Union agree to the format for funding and negotiating plan provisions to meet the budgetary constraints imposed by anticipated costs associated with providing insurance benefits to both represented and unrepresented, benefits-eligible City employees. The Committee, comprised of the City’s employees represented by an exclusive representative, the City’s unrepresented employees, the City’s administrative staff agree to develop, maintain, and make periodic changes to the City’s insured benefit plan(s) in a collaborative fashion as outlined under this Agreement.

Having bargained in good faith, the signatory parties agree as follows:

II. General Terms

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<sup>4</sup> The entire Agreement is new, but not underscored to permit ease of reading.

A. *Scope of Agreement.* This Agreement shall apply to all unrepresented City employees and all employees whose exclusive bargaining representative is a signatory to this Agreement.

B. *Insurance Benefits Upon Adoption of Agreement:*

1. Each of the Parties agrees to the terms and conditions of the insured benefits outlined in Exhibit 1, attached hereto. Exhibit 1 reflects all current insured benefits. This Agreement supersedes any conflicting provision of any collective bargaining agreement between any signatory Union and the City.
2. The insured benefits set forth in Exhibit 1 will continue unless and until the Committee modifies the insured benefit plan(s) under the procedures in this Agreement. Notwithstanding the terms of this Agreement, any provision of any insured benefit plan that is prohibited, subject to mandatory modification, or otherwise subject to revision as a matter of law, all necessary revisions to the insured benefit plans shall be made as required by applicable law.
3. The provisions of the insured benefits described in Exhibit 1 may be modified upon a two thirds (2/3) vote of the total number of members of the Committee and approved, if necessary (i.e. budget and/or contract approval), by the City Council. Each party shall the right to discuss all proposed changes with its respective constituent members and seek their input prior to any final vote.

C. *Scope of Each Signatory Party's Authority.* Each party has the full authority of its governing board, membership, local union, international union, and or whatever group or subgroup within its structure that would have the ultimate authority to enter into this Agreement. Each of the signatory parties represents and warrants to each other as an inducement to enter into this Agreement that it has such authority and that it intends to and does bind itself and each of its members to the terms of the Agreement.

1. For the term of this Agreement, this Committee shall be the exclusive forum for dealing with non-work related health care issues arising under or relating to the insured benefit plans including, but not limited to:
  - i. Health plan design and benefit levels;
  - ii. Deductibles;

- iii. Co-pays and out-of-pocket costs;
  - iv. Premium levels;
  - v. Participant eligibility and general coverage;
  - vi. Claim levels;
  - vii. Appeals.
2. During the term of this Agreement, the parties clearly and unmistakably waive their respective rights to bargain as applicable over the aspects of the insured benefits described in C.1, above. The processes set forth in this Agreement shall be the exclusive process by which the terms of the health insurance plan shall be formed and no party shall seek to impose other or modified terms by means of a strike or interest arbitration as applicable.

D. *Scope of Committee's Authority.* The Committee, at least forty-five (45) days in advance of the annual insured benefits enrollment deadline, shall:

1. Investigate, analyze, develop, and thereafter, make a formal recommendation to the City Council regarding the procurement and administration of fiscally responsible insured benefit plan(s);
2. Facilitate the development of educational programs and participant communication regarding the City's insured benefit plans and any changes applied upon annual renewal; and
3. Investigate, analyze, develop, and thereafter, make a formal recommendation to the City Council regarding other initiatives intended to incentivize insured benefit plans to live healthier lifestyles and to choose healthcare options that are more effective and produce better results (e.g. wellness programs/initiatives, process changes, plan design changes, cost sharing changes, etc.). The parties agree that a strong program to promote wellness of insured benefit plan participants is important to both improve quality of life for plan participants and control the cost of providing insured benefits regarding competitive bidding procedure, stimulating consumer awareness of priced differences between needed services and products, stimulating employees to shop for the lower priced products and services of equivalent quality.

The parties also recognize the increasing premium costs are driven by higher health claim costs and that these costs are pushed up by

price increases charged by providers of health care services and producers of health products and drugs.

The Committee agrees any recommendation will include (1) a proactive wellness program and (2) new purchasing procedures to promote price competition for health services and products.

E. *Compliance with State, Federal and Local Law.* It is agreed and understood that the City, being a unit of local government, that this Agreement and all actions, procedures, and processes under this Agreement are subject to all of the statutes and ordinances governing the conduct of units of local government including, but not limited to, requirements for bidding and contracting for the provision of goods and the rendition of services, compliance with equal employment opportunity and affirmative action requirements applicable to the City or any other party, and the Illinois Freedom of Information (FOIA), unless a valid exception to FOIA applies.

F. *Medical Savings:* Consistent with the purpose of the Joint Committee to implement steps that will achieve a reduction in medical claims costs, the parties agree that any savings generated in such costs that are less than the base line (including the medical inflation cost increase) shall be shared between the City and members of the Committee on a ratio of 50% for the City and 50% distributed pro rata to each of the signatory employee groups of the Committee.

G. *Committee Composition:* The Committee shall be composed of thirteen (13) regular and five (5) alternate members appointed by the parties as follows:

1. Each signatory Union shall select two (2) regular Committee members and one (1) alternate as representatives of each Union;
2. The City Administrator and Insurance and Safety Coordinator shall constitute the two (2) regular members of the Committee and the City Clerk shall serve as the one (1) alternate representative of the City's administration; and
3. The City Administrator shall select two (2) non-union employees to serve as members of the Committee and one (1) alternate as representatives of the City's non-union employees.

Additionally, the Mayor shall participate in Committee proceedings as a voting member. While the Mayor may participate in the Committee's discussions, his/her presence shall not count toward determining a meeting quorum.

H. *Term of Appointment:* Committee members and alternates shall serve for a four (4) year term, unless replaced at the discretion of the appointing party. Recognizing the need for stability, each of the parties and participating groups agree, to the extent practicable, to maintain the same representatives and alternates for the term of this Agreement.

1. Recognizing the importance of the Committee's business, meeting attendance is mandatory. Committee members shall not be absent from more than two (2) scheduled meetings per calendar year, excluding emergencies.
2. If it becomes necessary to permanently replace a designated representative, the affected party will notify the Committee's co-chairs in writing as soon as practicable and not less than five (5) days prior to any regular Committee meeting.

I. *Internal Governance:* The Committee shall determine its own internal structure, including arrangements for subcommittees and chairpersonship of the Committee and any designated subcommittees. Both labor and management shall be represented by co-chairs and within the membership of all subcommittees. The City Administrator shall serve as a co-chair representing Management. The Labor co-chair shall be elected by a majority vote of Committee members who represent the bargaining units.

J. *Meetings:* The Committee shall meet on a monthly basis or more frequently as needs require. A special meeting of the Committee shall be called upon the demand of any three (3) of the regular members submitted in writing to the Committee's co-chairs.

1. Meetings shall be called with a minimum of ten (10) working days written notice to the members.
2. A quorum for any meeting shall exist when at least nine (9) regular members of the Committee are present, and of those nine (9) there is at least one (1) member from each union-represented bargaining unit and the City's administrative staff in attendance.
3. Regular meetings will be open to all signatories to this Agreement.
4. A designated committee member or the designated alternate (if attending due to the absence of a designated committee member) to the Committee who are employees and who are on duty or scheduled to work during the time of any Scheduled Committee meeting shall be granted time off with pay to attend Committee and subcommittee

meetings, but shall provide his/her immediate supervisor with notice of his/her need to be absent from work at least forty-eight (48) hours in advance of each meeting.

K. *Reports of Committee Business.* The Committee's co-chairs shall report the activities of the Committee to the City Council on a bi-monthly basis in either closed or open session, depending on the nature of the report. The Committee shall circulate the minutes of all Committee and subcommittee meetings among Committee members and shall post such minutes in a prominent location designated by the City for review by City employees within ten (10) days of each such meeting.

L. *Recommendation to the City Council.* No later than the first Tuesday of April of each year, the Committee's co-chairs shall present the Committee's recommendation to the City Council regarding the insured benefit plan or plans for adoption with respect to the ensuing insured benefit plan year.

1. If the City Council declines to adopt the Committee's recommendation, it shall provide the Committee with a specific list of reasons why the plan or plans recommended by the Committee were not acceptable. Thereafter, the Committee shall meet to address the issues underlying the City Council's decision to decline to adopt the Committee's recommendation.
2. In the event that, after reasonable effort, the Committee is unable to reach agreement on recommended insured benefit plan(s), the Committee may be dissolved either by a 2/3 majority vote of the City Council or upon a majority of regular voting Committee members providing written notice of intent to withdraw from participation to the Committee's co-chairs. If a less than a majority of Committee members seek to dissolve the Committee, the Committee shall continue to function in accordance with this Agreement. In the event the Committee is dissolved, any party to this Agreement may demand to bargain over the issue of health insurance. Until the outcome of such negotiations is determined the insured benefit plans in place at the time of the dissolution shall remain unchanged.

M. *Resolution of Disputes Arising under the Agreement:* The parties agree that should any dispute concerning the interpretation or application of this Agreement arise between any two or more of them that cannot be resolved after good faith conciliation efforts, it shall be submitted to binding arbitration under the Illinois Uniform Arbitration Act. This dispute resolution procedure shall not be applicable to disputes arising from the City Council's legislative decisions

regarding the Committee's recommendation(s) or disputes relating to the operation of any insured benefit plan, any individual claims under an insured benefit plan, or any other disputes arising under any insured benefit plan.

1. To select an arbitrator, the parties to the dispute shall jointly request a statewide panel list of seven (7) arbitrators from the Federal Mediation and Conciliation Service. In addition, each party shall receive the right to strike one entire list. Within thirty (30) days of receiving the panel list, the parties to the dispute shall use an alternating strike process until only one arbitrator's name remains. A coin toss shall be used to determine which party shall strike from the list first. The parties will then jointly notify the arbitrator regarding his or her selection. A hearing will be scheduled for a date, time, and location mutually agreeable to the parties.
2. The parties agree to attempt to arrive at a joint stipulation of facts and issues submitted to the arbitrator. The parties have the right to request that the arbitrator require the presence of witnesses and the production of reasonable and necessary documents under subpoena. City employees called to testify at the arbitration shall be released from work without loss of pay or benefits. All arbitration hearings shall be recorded by a stenographer and a copy of the stenographic transcript shall be provided to the parties and the arbitrator as soon as possible after the hearing.
3. The arbitrator shall have no authority to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement.
4. The arbitrator's award shall be reduced to writing and circulated to the parties within thirty (30) days of the close of the hearing or the submission of post-hearing briefs, whichever is later.
5. Fees and expenses of the arbitrator and the stenographer shall be shared equally by the parties. Each party shall be responsible for the cost of purchasing its own copy of the transcript, but shall share the cost of providing a copy of the transcript to the arbitrator.

N. *Precedence of Agreement:* Consistent with the purpose of this Agreement of developing and implementing a cost effective health plan while maintaining the quality of benefits available to covered employees, it is the intent of the parties to exercise all authority available to them under the laws of Illinois to achieve these objectives. Accordingly, the signatory Union parties and the City agree that the ratification of the terms of this Agreement constitutes an exercise of

the parties' authority granted to them under the IPLRA, 5 ILCS 315/15(a) and it is their intent that:

In case of any conflict between the provisions of this Act and any other law (other than Section 5 of the State Employees Group Insurance Act of 1971 and other than the changes made to the Illinois Pension code by this amendatory act of the 96<sup>th</sup> General Assembly), executive order or administration regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control.

O. *Termination and Renewal:* This Agreement shall remain in full force and effect for a period of four (4) years of the date of execution. This Agreement shall remain in full force and effect from year to year after the expiration date unless one or more of the parties serves written notice of their wish to modify or terminate this Agreement on each other party not more than sixty (60) but not less than thirty (30) days prior to the expiration date.

1. In the event such notice is served, all parties to this Agreement agree to meet within sixty (60) days to being good faith negotiations for a successor agreement. If not agreement can be reached within one hundred and twenty (120) days after the parties begin good faith negotiations, the parties agree to request the services of a mediator through the Federal Mediation and Conciliation Service (FMCS) in an attempt to reach resolution of the dispute. If the parties fail to negotiate a successor to this Agreement with the assistance of a FMCS mediator, the parties may then pursue interest arbitration to resolve any matters upon which genuine impasses has been reached. Until such resolution procedure is complete and final, this Agreement shall remain in full force and effect, and the Committee shall continue with the full participation from all parties.
2. If the Committee is ever dissolved, any party to this Agreement may demand to bargain over the issue of insured benefits. Until the outcome of such negotiations is determined and until any applicable impasse resolution procedure is complete, the insured benefits shall remain unchanged as of the date of the Committee's dissolution.

