

INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

POLICEMEN'S BENEVOLENT & PROTECTIVE ASSOCIATION LABOR COMMITTEE
("Union" or "Bargaining Representative")

AND

CITY OF STERLING
("City" or "Employer")

ILRB Case No. S-MA-13-292
Arbitrator's Case No. 13/063

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:

Timothy D. O'Neil, Foote, Mielke, Chavez & O'Neil, LLC

On Behalf of the Employer:

Jill D. Leka, Clark, Baird, Smith LLP
Roxana M. Crasovan, Clark, Baird, Smith LLP

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the City and the Union pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (the "Act"). The Parties are at an impasse in their negotiations for a successor to the Collective Bargaining Agreement between the City and the Union, which had a stated expiration of April 30, 2013. The Parties each waived the Act's provision for a tripartite arbitration panel and so I am appointed as the sole Arbitrator to decide this matter.

The hearing before the undersigned Arbitrator was held on October 2, 2014, at the City Hall, located in Sterling, Illinois. The Parties were afforded full opportunity to present their cases as to the impasse issues set out herein, which included both testimony and narrative presentation of exhibits. A 209-page stenographic transcript of the hearing was made, and thereafter the Parties were invited to file written briefs as they deemed pertinent to their respective positions. Post-hearing briefs were filed and exchanged on January 29, 2015, and the record was thereafter declared closed.

II. FACTUAL BACKGROUND

The City is an Employer within the meaning of Section 3(o) of the Act. The Union is a labor organization within the meaning of Section 3(i) of the Act. The City is located within Whiteside County and has a population of around 15,000. It employs about 96 employees in all, I am told. Only one other group of its employees is represented for purposes of collective bargaining, that being the City's firefighters, who are represented by IAFF, Local 2301.

The Union is the exclusive bargaining representative within the meaning of Section 3(f) of the Act for all of the City's sworn peace officers below the rank of sergeant. At the time of this hearing, the Unit included 20 employees.

The current wage schedule for these employees, which went into effect on May 1, 2012, is as follows:

| Step | E | F | G | H | I |
|--------|----------|----------|----------|----------|----------|
| Annual | \$37,975 | \$39,533 | \$41,156 | \$42,845 | \$44,604 |

| J | K | L | M | N - Q | R |
|----------|----------|----------|----------|----------|----------|
| \$46,435 | \$48,340 | \$50,324 | \$52,390 | \$54,540 | \$55,655 |

The record reveals that employees progress through the first nine of these steps, Steps E through Step N-Q, annually, subject

to a requirement of satisfactory performance in the preceding year. Advancement to Step R occurs at 20 years of service.

The record further reveals that although the Parties' Agreement, in Article XIII, defines the regular workday as consisting of eight hours, officers assigned to Patrol, 13 of the 20 employees in the Unit, work on a 12-hour shift schedule. The terms of this Patrol Work Schedule are set out in a Memorandum of Understanding ("MOU"), which the City tells me was negotiated in December 2011, and which appears as an appendix to the Parties' expiring labor agreement. The MOU provides for an initial one-year trial period, which the Parties were permitted to then extend another six months. Of further relevance here, the MOU reserves to the Chief of Police the right to modify the schedule at any time based on "an emergency or demonstrated operational need. . ."

The Parties specified in the above-noted MOU that the hourly wage rates for employees on twelve-hour shifts are to be calculated based on a 2,184 hours per year calculation. On the other hand, detectives and certain specialty officers who are assigned to the Department's Detective and Administrative Bureaus continue to work the standard eight-hour shift. Their hourly rates of pay are calculated based on 2,080 hours per year, I note. Also of importance, the Parties included two separate wage schedules in their expiring labor agreement which

set out the differences in hourly rates between the groups based on the yearly hours worked calculation just discussed.

Also relevant to this inquiry, Unit employees enjoy vacation benefits of between 10 days, after one year of service, and 22 days, after 20 years of service - a day per year is added between the completion of the second and eleventh years, and a day is thereafter added upon completion of fifteen years and twenty years, respectively. Unit employees also each receive two Personal Days per year. The City also celebrates ten Holidays per year and in lieu of holiday time off for Unit employees, each employee in the Unit receives an annual lump sum payment equal to 5.5% of his or her annual base pay. Additionally, since 1999, and pursuant to a directive of the Chief of Police, employees assigned as detectives and administrative positions are required to work on only five of the ten recognized holidays.

III. STIPULATIONS OF THE PARTIES

The Parties agreed that the Agreement at issue here should have a three-year term, beginning May 1, 2013, and that the award of wages in this case should be retroactive to that date, per each party's offer. The Parties further stipulated that the issues in dispute are as follows:

Economic Issues:

1. Wages
2. Patrol Bonus
3. Patrol Work Schedule
4. Personal Days
5. Vacation Accrual
6. Compensatory Time (Cash Out)
7. Holiday Compensatory Time
8. Health Insurance

Non-Economic Issues:

1. Grievance Procedure

In addition to the foregoing, the Parties entered into the following pre-hearing stipulations:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The Parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Joint Employers and Union.

2. The Parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The Parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act (the "Act") requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be

secured for the duration of the hearing by agreement of the Parties. Additionally, the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the Parties.

4. The Parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Act.

5. The Parties further stipulated that all tentative agreements reached during negotiations, except those entered into in mediation, are submitted as Joint Exhibit 5 and shall be incorporated by reference into this Award.

6. The Parties stipulated that for purposes of this hearing only the following communities shall be considered as external comparables:

- a. Dixon
- b. East Moline
- c. Kewanee
- d. LaSalle
- e. Ottawa
- f. Peru
- g. Rochelle
- h. Rock Falls

IV. THE PARTIES' FINAL PROPOSALS

A. The Union's Final Proposals

Economic Issue #1 - Wages

Effective May 1, 2013: 2.00%
Effective May 1, 2014: "Step Compression" by shifting pay rates one step to the left and setting

new pay rate at Step R that is 4.00% higher than Step N-O. Schedule as follows:

| | | | | | |
|--------|----------|----------|----------|----------|----------|
| Step | E | F | G | H | I |
| Annual | \$40,324 | \$41,979 | \$43,702 | \$45,496 | \$47,363 |

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| J | K | L | M | N - Q | R |
| \$49,307 | \$51,331 | \$53,438 | \$55,631 | \$56,768 | \$59,039 |

Effective May 1, 2015: 2.00%

Economic Issue #2 - Patrol Bonus

Union's proposal is to add the following Section to Article XI, Wages and Compensation:

Section 11.10 Patrol Bonus

Effect April 30, 2015, and each April 30th thereafter, employees regularly assigned to work a twelve (12) hour schedule shall be paid a bonus of 1.5% of their annual base salary. To be eligible for a Patrol Bonus the employee must have been regularly assigned to work a twelve (12) hour shift for the previous fiscal year of the Employer. Should the employee be reassigned to another position during the previous fiscal year then their Patrol Bonus shall be pro rata based on the number of calendar months they were assigned to work a twelve (12) hour shift.

Economic Issue #3 - Patrol Work Schedule

The Union's proposal is to replace the MOU on Patrol Work Schedule with the following:

Employees assigned to patrol shall regularly work a twelve (12) hour shift. The employees shall be assigned to one of

four patrol work groups which shall work with the following schedule:

That patrol shifts are 7:00 a.m. to 7:00 p.m. and 7:00 p.m. to 7:00 a.m. with the K-9 officer working 5:00 p.m. to 5:00 a.m.

The day Patrol Shift and Night Patrol Shift will be comprised of two work groups which are identified as either A, B, C or D.

The days worked and days off pattern are:

| <u>SUN</u> | <u>MON</u> | <u>TUE</u> | <u>WED</u> | <u>THU</u> | <u>FRI</u> | <u>SAT</u> |
|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| A-WORK B-OFF C-WORK D-OFF | A-OFF B-WORK C-OFF D-WORK | A-OFF B-WORK C-OFF D-WORK | A-WORK B-OFF C-WORK D-OFF | A-WORK B-OFF C-WORK D-OFF | A-OFF B-WORK C-OFF D-WORK | A-OFF B-WORK C-OFF D-WORK |
| A-OFF B-WORK C-OFF D-WORK | A-WORK B-OFF C-WORK D-OFF | A-WORK B-OFF C-WORK D-OFF | A-OFF B-WORK C-OFF D-WORK | A-OFF B-WORK C-OFF D-WORK | A-WORK B-OFF C-WORK D-OFF | A-WORK B-OFF C-WORK D-OFF |

Economic Issue #4 - Personal Days

The Union's proposal is to amend Article XVI, Section 16.2. Personal Days, as follows:

Employees shall receive two (2) personal days per calendar year. **Effective May 1, 2015, employees assigned to work a Patrol Shift, or another position that is regularly scheduled to work a twelve (12) hour shift, shall receive an additional two (2) personal days per calendar year. . . .**¹

Economic Issue #5 - Vacation Accrual

¹ Proposed additions to current text will be shown in bold type and underscoring. Proposed deletions will be shown in bold type and stricken.

The Union's proposal is to amend Article XVII, Section 17.1. Vacation Accrual, as follows:

| <u>Continuous Years of Service</u> | <u>Days/Hours Per Year</u> | |
|------------------------------------|----------------------------|---------------|
| Less than 1 | 0/0 | 0/0 |
| One (1) | 10/80 | <u>11/88</u> |
| Two (2) | 11/88 | <u>12/96</u> |
| Three (3) | 12/96 | <u>13/104</u> |
| Four (4) | 13/104 | <u>14/112</u> |
| Five (5) | 14/112 | <u>15/120</u> |
| Six (6) | 15/120 | <u>16/128</u> |
| Seven (7) | 16/128 | <u>17/136</u> |
| Eight (8) | 17/136 | <u>18/144</u> |
| Nine (9) | 18/144 | <u>19/152</u> |
| Ten (10) | 19/152 | <u>20/160</u> |
| Eleven (11) | 20/160 | <u>21/168</u> |
| Fifteen (15) | 21/168 | <u>22/176</u> |
| Twenty (20) | 22/176 | <u>23/184</u> |

Economic Issue #6 - Compensatory Time (Cash Out)

The Union's proposal is to amend Article XIV, Section 14.3. Compensatory Time, as follows:

Employees, at their option, may elect to receive overtime pay or compensatory time for all overtime hours worked, until the employee has accumulated eighty (80) hours or more of compensatory time. If the employee has accumulated eighty (80) hours of compensatory time, the employee shall be eligible for overtime pay in accordance with Section 1. Compensatory time may be taken in one (1) hour increments and only with the approval of the Chief or his designee. **Effective April 30, 2015, and each April 30th thereafter, employees shall be eligible to request payment for accumulated compensatory time up to a maximum of eighty (80) hours annually. The employee must request payment for accumulated compensatory time no later than the pay period prior to the employee's anniversary date.**

Economic Issue #7 - Holiday Compensatory Time

Union's proposal is to add the following Section to Article XIV, Overtime:

Section 14.7 Holiday Compensatory Time

The parties recognize the difficulties imposed upon the community and the Administration of the services rendered by the Police Department by Holidays being taken as time off and paid for. Therefore employees assigned to the Detective and Administration Bureaus will be entitled to forty (40) hours of compensatory time in accordance with the past practice of the Employer. This would include employees that are assigned as detectives, School Resource Officer and the D.A.R.E. officer positions.

Economic Issue #8 - Health Insurance

Union's proposal is to maintain the status quo of all sections of Article XIX, Health, Life and dental Insurance:

Non-Economic Issue #1 - Grievance Procedure

Union's proposal is to amend the various Sections of Article XX, Grievance Procedure that now define and limit the availability of the contractual grievance procedures to individual employees and to allow, for the first time, effective January 1, 2015, the Union to file and process grievances on its own behalf or on behalf of employees.

B. The City's Final Proposals

Economic Issue #1 - Wages

Effective May 1, 2013: 2.00%
Effective May 1, 2014: Eliminate first pay step, increase the differential between Step N-Q and R to 4.00%, and add new Pay Step S that is 4% higher than the Step R.² Schedule as follows:

² The City's written proposal does not address the placement of employees in the newly configured steps. However, in explaining the City's offer (Tr. 113-114), the City's attorney suggested that the effect of the offer would be to give each member of the Unit a 4.00% increase, effective May 1, 2014. I infer from that explanation that the unit employees will be placed in the reconfigured steps so as to retain their relative positions, such that, for

| | | | | | |
|--------|----------|----------|----------|----------|----------|
| Step | F | G | H | I | J |
| Annual | \$40,324 | \$41,979 | \$43,702 | \$45,496 | \$47,363 |

| | | | | | |
|----------|----------|----------|----------|----------|----------|
| K | L | M | N-Q | R | S |
| \$49,307 | \$51,331 | \$53,438 | \$55,631 | \$57,856 | \$59,014 |

Effective May 1, 2015: 0.75%

Economic Issue #2 - Patrol Bonus

City's proposal is to maintain status quo on all Sections of Article XI, Wages and Compensation:

Economic Issue #3 - Patrol Work Schedule

City's proposal is to retain the MOU and to restart the trial period effective May 1, 2014.

Economic Issue #4 - Personal Days

City's proposal is to maintain status quo on Section of Article XVI, Section 16.2 Personal Days.

Economic Issue #5 - Vacation Accrual

City's proposal is to maintain status quo on Article XVII, Section 17.1 Vacation Accrual.

Economic Issue #6 - Compensatory Time (Cash Out)

City's proposal is to maintain status quo on Article XIV, Section 14.3 Compensatory Time.

Economic Issue #7 - Holiday Compensatory Time

example, an employee who was at Step F on April 30, 2014 will be placed at Step G on May 1, 2014.

City's proposal is to maintain status quo on Article XIV, Overtime, including current practices as to holiday benefits and holiday for employees in the Detective and Administrative Bureaus.

Economic Issue #8 - Health Insurance

City's proposal is to amend Article XIX, Health, Life and Dental Insurance to add the following new provision:

Section 19.8. Affordable Care Act (ACA).

Notwithstanding the other provisions of this Agreement, the City reserves the right to make changes in benefits specifically to avoid imposition of any excise tax on the City under the provisions of the ACA. Prior to making any such change, the City shall notify the Union and provide the Union an opportunity to discuss and provide input about any such changes.

Non-Economic Issue #1 - Grievance Procedure

City's proposal is to maintain status quo on all Sections of Article XX, Grievance Procedure.

V. RELEVANT STATUTORY LANGUAGE

Section 14 of the Act provides in relevant part:

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 Joint Employers.
- (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.

5 ILCS 315/14(j) - [Limits on the arbitrators authority to issue retroactive wages.]

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

VI. EXTERNAL AND INTERNAL COMPARABLES

The Parties' pre-hearing stipulation on the composition of the external comparables universe leaves the matter fully settled for purposes of this Award. The communities that I will consider in this matter for purposes of external comparison are the following:

- a. Dixon
- b. East Moline
- c. Kewanee
- d. LaSalle
- e. Ottawa
- f. Peru
- g. Rochelle
- h. Rock Falls

As mentioned previously, the City's firefighters are the only other unionized group among the City's 96 employees, in all. The firefighters are represented by IAFF, Local 2301.

VII. OTHER FINANCIAL CONSIDERATIONS

The City, while conceding that it cannot show an inability to pay relative to any or all of the Union's proposals here, nevertheless argues that its present serious negative fiscal condition and economic prospects for the future should be an important consideration in my deliberations. The gist of its argument is that it has not fully recovered from the effects of the "Great Recession" of 2008 is pointed out by the City and that it is not projected to do so in the foreseeable future. In fact, it most recently, in FY2014, the City actually suffered a decline in Equalized Assessed Valuation ("EAV") of 2.11%. The City adds that it anticipates, based on estimates received from Whiteside County, seeing further decline of 2.18% in FY2015. The City argues that the most significant aspect of the decline in EAV arises from the fact that the majority of the revenues that the City realizes from EAV go to fund the City's contributions to employee pensions, which, in contrast to the EAV declines, rose by 23% in FY2014 alone, the Employer avers.

Although, as the Union has stressed, the City's general revenues were up slightly in FY 2014 over FY 2013, it is at the same time true, urges the City, that its City's general expenditures also rose. In fact, it asserts, the City experienced an overall reduction in its General Fund balance in FY2014, and that the General fund went from a beginning balance of roughly \$5.12 million to an ending balance of roughly \$5.07 million. Moreover, the ending cash balance in the General Fund in FY2014 was only around \$21,000, the City contends. To the City, future trends, moreover, are no promising as indicators of future revenues and expenditures. Specifically, there is an expected softening of the recent increases in sales taxes due to the instability of the economy and expected cuts by the State of Illinois in terms of its budget transfers to municipalities. All these realities suggest that the overall funding deficits will continue and, as a result, although the City's current bond rating is good, these issues suggest a downward push in its bond ratings. As the Union itself notes, "Standard and Poor recognized that the City has low market value per capita, too strong of a reliance on economically sensitive revenues, and high overall debt burden as a percentage of market value." (City Brief, p. 14). That is consistent with the City's arguments that the overall economic situation for this City represents a need for great care in the City's budgeting and spending.

Pension costs to the City continue to rise, the City also points out. From 2001 to 2014, the cost of only the police pension "skyrocketed" from roughly \$191,000 annually to roughly \$628,000. Fire pension costs have risen as much over the period. To offset the burden, the City has been forced to "squeeze" funding from other budget items, pulling ever more money from property taxes, it suggests.

The Union responds by noting first that the City has an A+ bond rating. Moreover, recognizing the City's good financial position, the City gave its non-represented employees a 1.25% bonus in April 2013 because the City had been experiencing budget surpluses, the City Manager conceded in his testimony here. More recently, the City Manager added in his testimony, the City Council approved a transfer of \$2.25 million in surplus from the General Fund to the Capital Improvement Fund despite the fact, which he admitted, that the City had no major capital improvements either in the works or planned through at least April 2016. This is a fact directly contrary to the City's picture of tough times in Sterling, the Union maintains.

In issuing its A+ rating to the City, as of November 2012, the Standard and Poor Service determined that the City's fiscal outlook appeared to be stable, the Union forcefully submits. It notes in its analysis of Sterling's fiscal status that the City enjoys a relatively diverse economy, "adequate income

indicators", and a very strong unassigned balance in its General Fund. The Union cites the following excerpt from Standard and Poor's discussion:

Sterling drew down 3.7 million of its general fund reserves in fiscal 2012 when it transferred 4.3 million to its newly created capital fund after establishing a fund balance policy that called for transferring excess reserves to that fund. With the drawdown, the unassigned general fund balance at the end of fiscal 2012 was 4 million dollars which we still consider a very strong 38% of expenditures. (City Ex. 18).

The City's pension funds are well funded, the Union quickly adds. Again, according to Standard and Poor, as of April 30, 2012, the City's police pension fund was 71% funded, its firefighter pension fund was 75% funded, and the IMRF pension fund, which applies to most of its other employees, was 82% funded. These funding levels are far in excess of the funding levels enjoyed at most public safety pension systems, the Union asserts.

All in all, the Union concludes, the City's finances are in very good shape. With \$2.25 million in its Capital Improvement Fund - with no projects planned - and \$4 million unassigned balance in its General Fund, the City has more than adequate resources to pay the cost of the Union's proposals, the Union believes. Economic woes are not a defense to needed improvements in compensation and benefits for the bargaining Unit officers, the Union concludes.

VIII. DISCUSSION AND FINDINGS

A. Economic Issue #1 - Wages

The Parties' proposals as to the first two years of this Agreement are substantially identical, as the Union tells me. That is, each Party proposes an across-the-board increase of 2.00%, effective May 1, 2013, and a "step compression . . . by deleting the initial first pay step and adding a new pay step that is 4% higher than the last pay step effective May 1, 2014." (Union Brief, p. 5). I find that the only real difference in the Parties' offers comes in the third year, effective May 1, 2015, for which the Union proposes an increase of 2.00% and the City counters with an increase of just 0.75%. There is the gap the Union insists must result in my finding that its wage proposal is more reasonable than Management's here, the Union goes on to argue.

The officers in this Unit are demonstrably in need of a "catch up" in wages, the Union strongly asserts. Testimony in the record reveals that the City has lost seven sworn officers, six patrolmen and a sergeant, since April 2009. Six of these officers left to work at other law enforcement agencies - one went to the Illinois State Police; one to the Secretary of State Police; "a couple went to the sheriff's department;" and, of particular note, one officer left this Department to join the department in Dixon, a closely comparable community that lies

just 14 miles from the City. (Union Brief, p. 5). Finally, the only officer who left the Department during the period, but not for employment with another law enforcement agency, left for a job at Wal-Mart, the Union points out with a hint of indignation.

Dixon is the closest match to this City among the comparables, the Union tells me - the officer who left this Department to work there did so shortly after the City paid for his academy and field training, the Union adds. Indeed, Dixon is the "perfect" comparable to this City in terms of population and EAV, department size and crime rates. On the other hand, at the time that the officer just mentioned left for Dixon, in July 2013, his Step E wage was \$37,975 per year. His rate at the equivalent slot in the Dixon department was \$46,864, according to the applicable schedule, stresses the Union. The record also shows that this gap with Dixon will grow as Dixon officers enjoy across-the-board increases of 3.5%, effective on May 1, 2014 and again May 1, 2015. It is to be noted that these increases will put Dixon's top officer pay at more than \$60,498 per year. Top pay for the officers in Sterling however will remain below \$60,000 per year, regardless of which proposal I may adopt, the Union argues.

Adding to the sense that the officers in this Unit are low paid, in comparison to the external groups, argues the Union, is

the fact that it is clear that even with the 4.00% increases that the officers will receive on May 1, 2014, the pay for the officers in this Unit will remain well behind that paid to officers in most of comparable communities.

For example, urges the Union, at the top of the comparable range, officers in the communities of Ottawa and Rochelle will top out at around \$70,000 come May 1, 2015, the Union stresses. Even in LaSalle, which has a significantly lower EAV and bond rating of BBB, also significantly lower than this City, LaSalle officers will be paid substantially more - \$57,748 base plus 20% longevity - than will the officers in this Unit, at top pay. There is no realistic basis for a finding other than catch up - and significant pay raises - are needed, the Union insists.

Importantly, says the Union, even under the Union's proposed 2.00% increase, effective May 1, 2015, the Sterling officers will lose some of the ground that they made up against the comparables by virtue of the 2014 "catch up," included in both Parties' offers. The City's offer of 0.75% on May 1, 2015, "will plunge the Sterling officers back down the comparable rankings. . ." (Union Brief, p. 7). If the City's proposal is adopted, even officers in Kewaunee, which has an EAV of only \$55 million, will be making more than the officers in this City, at top pay, the Union submits.

As it sees it, the Union has demonstrated that it is not seeking parity with the most comparable community, namely Dixon, all at once. Indeed, the proposed increase of 2.00% in 2015 is slightly below the City's own evidence of consumer price index forecasts for 2015, which suggest a range of consumer price increase of around 2.10% to 2.20% for the year. In any event, neither the comparables nor the economic forecasts support the City's counterproposal of 0.75%. For these reasons the Union's wage proposal should be seen as the more reasonable proposal and should be adopted.

The City responds that the Parties' respective proposals for May 1, 2014 are not in fact the same. The City's proposal maintains the current structure, keeping the gap between the ninth and tenth steps 4.0% and the gap between the 10th and 11th steps at 2.0%. The Union's proposal effectively flips the relationship between these last three steps by establishing an increase at the tenth step of only 2.0% and establishing the new top step at a 4.0% increase over the tenth. The Union has not demonstrated a basis for changing the current wage structure, the City submits.

The City also reminds me that bargaining Unit officers spend 10 years of their careers at the tenth step in the schedule, Step N-Q, under the Union's proposal, or Step R under the City's proposal. The City's proposal for May 1, 2014 results

in a tenth step that is more than \$1,000 higher than the tenth step in the Union's proposal. The gap will remain at nearly \$400 per year, in the City's favor, when the Parties' respective proposals for May 1, 2015 are factored in. The bottom line is that the City's proposal is actually more lucrative for the majority of officers in this Unit than is the Union's, the City strenuously argues.

Citing my award in Forest Preserve District of DuPage County, S-MA-08-290 (Goldstein, 2009), the City contends that I previously acknowledged that in this economic climate "there is no reasonable foundation for awarding a massive increase, unless the need to catch up is proven by strong evidence that all other employees in comparable Units are being paid substantially more." (City Brief, p. 26). The data on comparables in the instant case show that during FY2012, under a wage package negotiated by this Union, the officers in this Unit ranked eighth among the present set of comparables at starting wage and also wages after five years. The pay rank was moved to fifth after nine years and fifth at top salary, too.

These rankings are the product of more than 20 years of negotiations, the City suggests. Far from establishing a need for "catch up," then, the evidence of record in fact establishes that the current ranking of these officers among the comparables is the negotiated status quo, which the Union should not be

allowed to "unwind" through interest arbitration, the City specifically claims. See, City of North Chicago, S-MA-96-62, p. 11 (Perkovich 1997) ("I note that there does not appear in the statutory criteria any provision allowing for wage increases that would allow employees to catch up simply because the parties have chosen to undertake those efforts in the past. Rather, any continuing march toward equality or comparability should be undertaken through bilateral negotiations."); see Village of Orland Park, at p. 10 (Hill, 2013) ("The importance of where the parties placed themselves in past contracts is an important consideration in rendering an award in an interest proceeding."). The City's proposal, overall, serves to maintain the negotiated rankings, the City points out.

Moreover, the City's proposal on wages fares well against the comparables in a percentage-to-percentage comparison, I am told by Management. In simple terms, the City's three-year wage package runs to 6.75%. The average of the increases among the comparables for the same three years is 6.94% - the total of the increases in Union's proposed wage package comes to 8.0%. Overall, the City's proposal ranks fourth among the seven comparable communities that have determined wage increases for all three years, the City emphasizes.

The City acknowledges my stated position that external comparison remains the single most important factor in any

analysis of competing wage proposals in interest arbitration. See, County of Macoupin, S-MA-09-065,066 (Goldstein, 2012). The City also reminds me, on the other hand, of comments by other arbitrators suggesting that in difficult economic times external comparables should be given less weight than is traditionally given them in the arbitrator's deliberations on economic issues, see, City of Rockford, S-MA-09-125 (Yaffee, 2010); Village of Skokie, S-MA-08-139 (Briggs, 2010), and the City reminds me that I too have recognized that "the particular facts must always be reviewed in their appropriate context. That is the critical point here - context is everything, in my opinion." Macoupin County, at 23.

Cost of living is an important part of that context, the City further urges. It "is a measure of inflation (or deflation) and establishes a context for the need to change terms and conditions of employment." City of Belleville, S-MA-08-157 (Goldstein, 2010), at pp. 42-43. CPI-U for the three years of this Agreement runs to a total value of 4.90% - 2013 (1.20%), 2014 (1.80%) and 2015 (1.90%). In Belleville, I found in the context of similar figures that there was no "pressing need for wages to be raised to counteract inflation. . ." the City points out. The 6.75% in increases proposed by the City more than keeps pace with inflation, in any event. The Union's proposal exceeds CPI by more than 3.0%. Of equal importance, a longer-term review

of CPI and the wage data for this Bargaining Unit shows that the wage increases for this Unit will have exceeded inflation for the last six years, regardless of which proposal is selected here. Consequently, the cost of living factor favors Management, the City maintains.

Additionally, the City urges that I should consider that the "real impact" of the City's wage proposal is greater than what is depicted in the flat across-the-board numbers. See City of Highland Park, Arb. Ref. 13,340, p. 20 (Benn, 2014). The "real dollar" increases that these Unit employees will receive, including step movement, is a more telling figure for juxtaposing with CPI, the City particularly suggests. See, City of Highland Park, Arb. Ref. 13,340, pp. 23-24 (Benn, 2014); Village of Arlington Heights, S-MA-88-89 (Briggs, 1991). In fact, all but three of the officers in this Bargaining Unit will be progressing in the steps during the term of this Agreement. Factoring in the step increases that most officers in the Unit will receive, the total increase that most officers will receive over the course of the instant Agreement under the City's proposal will be %18.75%. This is a significant cost for the City, it concludes.

The City also takes issue with the Union's suggestion that the City has had difficulty in either attracting or retaining qualified officers. The record shows that a substantial

percentage of the City's officers have been employed at the Department since the 1990s, the City tells me, and the City was able to increase the number in its police officer rank from 18 to 20 over the last two years. The City also points to its own exhibits showing that only five officers have left this Department since 2009 and, of those five, only one went to work in a comparable community. That officer left to work in Dixon, which is his home town. Of further relevance, the City's most recent eligibility list contains some 28 candidates. The Union has simply failed to show "an immediate need for relief, such as serious inability to attract new personnel or recruits or to maintain the current employment group . . ." Village of Skokie, No. S-MA-89-123 (Goldstein, 1990).

Internal comparability should also be considered here, the City reminds me. Historically, the wage increases negotiated with this Unit have closely tracked the wage increases enjoyed by the City's firefighters, the City asserts. The respective annual wage increases for the two Units were identical from 2002 through 2008. Indeed, an overall comparison of the increases for each Unit, since May 1, 2001, shows a total difference of just 0.25%, in favor of this Unit. This pattern has been by conscious design of the City, the employer says. The limited deviation from the pattern occurred only as a result of "concession bargaining with different employee groups" that resulted from

"extended periods of fiscal uncertainty." (City Brief, p. 36). Moreover, the City's own proposal here exceeds the percentage wage increases that it negotiated with the firefighter Unit, for the same period, by 0.75%. Internal comparability favors Management's wage proposal, the City insists.

Referring to the "interests and welfare of the public," the City also notes that data drawn from a number of sources all show that wage increases for public employees generally have declined dramatically since the onset of the Great Recession in 2008. Indeed, Bureau of National Affairs ("BNA") reports that public employee wage increases over the last two years averaged just 1.40% for 2013 and 1.60% for 2014. The City's proposal, overall, is much richer, the City claims.

Of critical importance to the Employer's theory of the case, Management urges that, in considering the interests and welfare of the public, I should also again consider the fact that the officers in this Unit will, with only a few exceptions, receive annual step increases of 4.00%, in addition to the overall wage increases proposed by the City, which average 2.25% per year. In addition, assuming overtime hours realized by the Unit officers reaches the average of the last six fiscal year's, each officer will enjoy, on average, around \$4,168 in overtime pay on top of his or her annual salary. This is the equivalent of approximately 10% of the average officer salary, the City

avers. Adding still more to the mix, the officers each receive holiday compensation equal to 5.50% of their annual pay. Viewed as a whole, it is clear that the City's wage package is substantially more than it might appear to be at first blush. I should, for these reasons, find that the City's offer is the more reasonable offer and adopt it.

Having reviewed the record, I am not persuaded that there is a compelling need for a catch up in wages here, I initially note. Most of the comparables, including this City, have top annual wage rates within a few thousand dollars of one another, all being in the area of \$55,000 to \$60,000, roughly stated. Three of the communities, namely Ottawa, LaSalle and Peru, each have top annual wage rates that hover around ten-thousand dollars more than the majority of the pack. I do not know the reason for this bump in this grouping, based on the record evidence here. But, in any event, I am not convinced that I should find that the officers in this Bargaining Unit require a catch up in wages based on the wage gap presented by these three outliers, standing above. There are other factors both parties discussed and I just reviewed that do show catch up is necessary, the most important of which is the wage offers of both parties are "rich" in the current context, I hold.

It is clear to me that the Union views Dixon as presenting a particularly close comparable, given that the Union suggested

as much in its brief. Arguing for a catch up in wages based on such a narrow slice of the list of comparables would be a difficult argument to make convincing in any case, I suggest. Moreover, the officers in Dixon and this City will enjoy top wages in 2015 that both hover around \$60,000 per year, regardless of which proposal I adopt here.³ The real difference in wages between the communities, indeed that which the Union itself suggests may have lured the individual officer that left Sterling and went to Dixon as a new hire just a year ago, is that the wage schedule in Dixon has fewer steps than the wage schedule here.

Dixon provides substantially higher wages to officers, compared with the officers in this Unit, in the early years of an officer's career, I find. Neither Party's proposal here really changes the core fact of those early career pay differences that favor Dixon officers, I hold. As a result, the real advantage that Dixon officers have over the officers in this Unit, in terms of wages, is nearly immaterial to the discussion, I would point out. Simply put, catch up in comparisons for those early years of employment between Dixon and Sterling officers is not reflected in the wage proposals of either the Union or the City, I emphasize.

³ The top wage rate for Dixon in FY2015 will be \$60,498, the record reveals.

I am also not persuaded that the Union has made a substantial showing that the City has had difficulties in attracting or retaining officers for its police department. The Union attempted to make its showing that officers are leaving the department at a significant rate by presenting statistics from only the last few years, a very small slice of time, I suggest. On the other hand, I find nothing in the record that suggests a recent change in circumstances, such as a dramatic shift in this Unit's relative ranking in wages or other benefits, which would suggest that the recent departures of officers from this Department are particularly and reasonably indicative of what will be the future trend unless some action to close the gap with the comparables, whether in wages or other benefits, is taken. Indeed, all that this record shows me is that over the last few years, somewhere in the area of a quarter of the Unit employees left the Department. Of those who left, five in total, two retired, three left for employment with non-comparable employers, and only one left to work in a comparable community, which, the City tells me, happened to be that officer's home town. For all these reasons, I find that the evidence does not establish the need for an extraordinary, or "catch up," award of wages for this Unit.

Yet, I once again emphasize that both the Union and Management wage offers on the table in this case represent

significant gains in the bargaining unit police officers' wage structure. Both parties offer a change in the pay grid structure currently in place with the elimination of the current first step. The two proposals each seek to alleviate with both Union and Management apparently perceive to be unacceptable compression of wage rates throughout the pay grid's steps - at least at the early points of a new hire's career. Both offers contain significant percentage increases in wages over the course of the course of the proposal labor agreement at issue currently. By virtue of the wage proposals themselves, then, there is mutual recognition some catch up to the external comparables or at least some significant actual wage increases beyond the current inflation rate are proper and needed, I rule.

I also emphasize that I have long followed a general approach that favors percentage-to-percentage comparisons in assessing wage proposals in interest arbitrations under Section 14 of the Act, particularly with regard to the comparable external groups, whether a great need for a catch up in wages is or is not shown. County of Cook and Teamsters Local Union No. 714, L-MA-95-001 (Goldstein, 1995). From this perspective, the proposals here present a close case. Neither proposal, considering all three years, falls outside the range set by the comparables, I find. Both, in fact, are fairly near the overall average. I nevertheless find that the City's proposal, overall,

is the closer of the two to the average and, for this reason, the external comparables slightly favor the City's proposal.

Much more important to my analysis here, by my calculations, is the fact the incumbent officers in this Unit will fare better in some ways under the City's proposal than they will if I adopt the Union's proposal, as the City specifically points out in its brief. The Union's proposal does in reality effectively change the structure of the pay plan in the second year of the Agreement, reordering the step increases represented in the last two steps from the current 4.0%/2.0% to 2.0%/4.0%. The City's proposal, on the other hand, retains the current structure of the pay plan, and so retains the current 4.0% increase that officers have historically realized in moving to the tenth step. The effect is that for 2014 the annual wage at the tenth step is greater in the City's proposal than it is in the Union's proposal, by nearly \$1,100. The respective proposals provide the same wage rates at all the other steps in the plan, and so the City's proposal in fact results in all officers in the Unit faring at least as well, and in many cases better - there were four officers at the tenth step in 2014 - than they would if I adopted the Union's proposal.

The calculus changes somewhat when the parties' respective 2015 wage proposals are added into the mix. At that point, the wage gap at the tenth step, comparing the two proposals, closes

to just under \$400, still in favor the City's proposal, though, I stress. On the other hand, the Union's proposal provides more money than the City's proposal in 2015 at the first nine steps, ranging from just over \$500 at the first step to just under \$700 at the ninth step, and at the eleventh step. As a result, most of the incumbent officers, but not all, will earn more under the Union's proposal than they will under the City's proposal, during the term of this agreement, I find.⁴ However, taking a longer term view, looking at the first twenty years of a career, all but a few of the incumbent officers, the few being the new hires, will earn more under the City's proposal, at the point they reach their twentieth year, than they will under the Union's proposal, I am convinced. This anomaly is due to the fact that the Union proposes a relative lowering of the pay officers receive at the tenth step, which is where a twenty-year officer has spent half of his career.

Even if I take the short-term view of the proposals, I see that there are four officers, those who will be at the tenth step in 2014 and 2015, who will receive less in terms of their wage increase in the last two years of the Agreement under the

⁴ There are four officers who will be at the tenth step in 2014 and 2015. they will earn less under the Union's proposal than they will under the City's proposal by virtue of the restructuring under the Union's proposal which will result in them receiving only a 2% increase in 2014.

Union's proposal than they will under the City's proposal, and less than their fellow Unit members will receive, in terms of both percentage and real dollars. Although I do not view the effect as disparate treatment, because all officers at the steps below will eventually reach the tenth step, I nevertheless do not ignore that in the short term, which seems to be the Union's focus here, these four officers will alone feel the effects of the Union's proposed restructuring of the wage schedule. The Union has not explained the purpose its proposed change to that structure, or in any way justified giving four officers a wage increase of only 2.0% in 2014, while at the same time giving the rest of the Unit increases of 4.0%.

This aspect of the Union's proposal is not a dispositive factor in my analysis, I frankly note. However, it adds to the sense that I have, from viewing the Union's proposal overall, and also in both its long and short term effects, that the Union's proposal is not, in comparison with the City's proposal, in the best interests of the officers in the Unit or the public at large. Stated simply, the City's overall proposal leaves the officers at least as well off as they would be under the Union's proposal, if not better off, and at a lower short-term cost to the taxpayer. In fact, at this point I see little reason to address the parties' remaining arguments, i.e. regarding internal comparability, cost of living and the interests and

welfare of the public. The best course for me to take in this case is to adopt the City's proposal, leaving the current wage structure intact, and granting officers in the tenth to twentieth years of their service with more actual dollars, even if no further raises are negotiated in the future.

Based on all these considerations, I hold that the City's offer on Wages is more reasonable in light of the statutory criteria, and I so award.

B. Economic Issue #2 - Patrol Bonus

The rationale for the new bonus is quite simple, the Union tells me. Patrol officers working on a 12-hour schedule are regularly scheduled to work a total of 2,184 hours annually. Those officers working the regular eight-hour shift work 2,080 hours annually. The effect is there exists a gap within the Unit in terms of hourly rate, whereby, for example, detectives and specialty assignment officers receiving \$26.76 per hour while patrol officers receive only \$25.48 per hour, at the top step. This gap translates into a patrol officer at the top step earning \$1.92 per hour less, when working overtime, than his counterpart on an eight-hour shift. In other words, the City is reaping an unfair benefit. The Union's proposal is intended to close the discrepancy in pay, I understand.

I am aware also that the Union stresses that I should consider that the Union does not seek to make its proposal fully retroactive, given that it becomes effective only for the year beginning May 1, 2015. Further, the bonus it proposes, a stipend at 1.5% of base pay, is not intended to be pensionable. This minimizes the budgetary impact for the City as the Union argues, I find. On the other hand, to the Union, the City's proposal, which is to maintain the status quo, "unjustly enriches the City and flies in the face of the spirit and the policy of the FLSA." (Union Brief, p. 9). The hourly pay rate differential is patently unfair, the Union reasons.

The City reminds me that the majority of interest arbitrators view with great disfavor any proposals that change the status quo, as established by the parties themselves in bargaining, or result in breakthroughs in terms and conditions of employment. In a recent award, Chicago Transit Authority, Arb. Case No. 13/055 (Goldstein, 2014), I noted that I subscribe to such principle, stating that:

. . . [I]nterest arbitration is essentially a conservative process, which views with some disfavor proposals for breakthroughs in terms and conditions of employment. In particular, I believe that I should not disturb the status quo, as the parties themselves have established it through negotiations and interest arbitration, absent a strong justification for doing so.

I am reminded that I have generally applied a five-part test in assessing proposals like the bonus for patrol at issue now. The five-part test is for the proposing party to establish: 1) a substantial and compelling need for the change; 2) that the status quo has failed to work; 3) that the status quo has caused inequities for the employees, or undue hardship for the employer; 4) that the opposing party has resisted attempts to bargain for change; and 5) that the proposing party has offered a quid pro quo for its proposed change. See, City of Burbank, S-MA-97-56 (Goldstein, 1998).

The Union's proposal is indeed a breakthrough, the City asserts. When the Parties negotiated the MOU concerning twelve hour shifts, which was done at the urging of the Union, the parties specifically agreed that 12-hour shifts would be implemented as a "pilot program" and in a way that would be "cost neutral" to the City. To that end, the parties agreed that the hourly rate for those officers working a twelve-hour shift would be calculated based on 2,184 hours per year. Now, several years later, the Union seeks to change the deal that it urged, and without any real justification for the change, the City submits.

The critical factor regarding the question of the patrol bonus proposal is thus whether the current system is broken, in my opinion. I also am persuaded that this Union offered no

evidence to show that circumstances have changed since the MOU about twelve hour shifts was adopted. Moreover, while the Union seeks to justify its position as a means of establishing equity among the officers, it ignores the fact that its proposal in point of fact will create an inequity within rank in terms of the annual compensation that all the bargaining unit officers will receive. Put simply, the actual pay, with the bonus, will be greater than for detective and specialty positions. This inequity will make it more difficult for the Department to recruit officers for detective and specialty positions, the City argues.

In my opinion, the Union's proposal really does embody a substantial change to the status quo, I find. In City of Carbondale and Illinois Fraternal Order of Police Labor Council, S-MA-04-152 (Briggs, 2005), at pp. 23-24, an opinion that I have before cited, the arbitrator said the following regarding proposals that change the status quo:

The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give and take of free collective bargaining than they are by third party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next

round of contract negotiations. The exception, of course, is when a party shows "compelling need" for change right away.

[Quoted in my discussion in Macoupin County and PBPA, S-MA-09-065 (Goldstein, 2012)].

The City is thus correct when it suggests that I have generally adhered to what is often referred to as the "Will County" analysis first articulated by Arbitrator Harvey Nathan.

The Union has made no real effort to meet its burden of proof on this issue when the five factors just set out are considered, I find. It failed to show, for example, that the City has unreasonably resisted its efforts to negotiate on the issue. It also has offered no quid pro quo to the City in exchange for it giving up the benefit of its MOU bargain and for its absorbing the substantial additional cost of paying the stipend, as I read the evidence on this record. I also understand that the Union also seeks in this proceeding to make the 12-hour shift a permanent schedule, which will permanently add to the City's costs, the facts show. Finally, the Union has not shown that its proposal is supported by any of the external comparables.

The Union seeks not only to add a new benefit for its members assigned to patrol, by way of a sizeable stipend, it also seeks by that new benefit to change an existing pay

relationship to which it previously agreed. That is, I agree with the City that the MOU, as negotiated, clearly and unambiguously establishes a separate, and lower, hourly rate for officers assigned to work twelve-hour shifts. The fact that the Parties themselves established this arrangement as their status quo, going so far as to include separate wage schedules in their last agreement, is highly relevant, as I have previously recognized, see City of Rockford and City Fire Fighters, Local 413, S-MA-12-108 (Goldstein, 2013), at p. 29 ("The fact that the parties themselves have established such a list of comparables and have relied on them over a long period of time as the context for arriving at their own offers is compelling, I hold. . ."). The City was entitled to rely on this arrangement, not only at the time that it agreed to implement the twelve-hour shift schedules, but also when it decided to retain those schedules beyond the initial trial period.

Of great significance, as I see it, is the fact that the City correctly points out that the only apparent basis for the Union's proposal is the hourly wage disparity, to which the Union previously agreed. As a general rule, "parity within rank" is a substantial factor, I concede. However, it is not always a controlling factor. Indeed, it is often the case that employees of the same rank are paid at different rates based on their particular assignments, for example detectives or other

specialty assignments are frequently paid a higher base salary than their fellow officers in patrol, or receive some form of annual stipend. More to the point, where the parties have themselves established a status quo that treats employees differently based on assignment rather than rank, I do not believe it would be appropriate for me to upset that status quo simply because I might feel that it would be a better idea, or a fairer idea, to pay all employees of the same rank at the same hourly rate. The Union has not satisfied the Will County test as to its demanded change from the current MOU, I thus determine.

Based on all these considerations, I hold that the City's offer on Patrol Bonus is most reasonable in light of the statutory criteria, and I so award.

C. Economic Issue #3 - Work Schedule

The Union captions the discussion of its proposal as the "REMOVAL OF THE MOU TRIAL PERIOD." Indeed, the trial period for the twelve-hour shift has now run at least six years, the Union suggests. The Union's own membership showed unanimity in calling for the schedule to be made permanent, the Union then explains.

Clearly, the bargaining unit officers are happy with the twelve-hour shift arrangement, the Union further argues. The Chief of the Department must also be pleased with it, the Union suggests, as evidenced by the fact that he has not exercised his

prerogative to eliminate it as per the terms of the MOU. The trial period should end because six years is long enough for any trial period, the Union urges. Therefore, the practices embodied in, and arising out of the MOU, i.e. the twelve-hour shift, should be incorporated into the Parties' Agreement and made a permanent term and condition of employment.

The parties have a long history of experimentation with a variety of work schedule configurations, the City responds. Most of the dozen or so work schedules implemented over the last twenty years were done so at the behest of the bargaining unit officers, and with their input, the City adds. The present arrangement, which was negotiated by way of the MOU in December, 2011 is no exception to this pattern, the City insists. In fact, the jury is still out on the effectiveness of the schedule and the Chief would like more time to ensure that the twelve-hour shift is a "good fit" for the Department before any decision is made about locking it into a labor agreement, the City also strongly argues.

The City characterizes its own proposal as aimed at maintaining the status quo in this regard. It proposes "that the 12-hour work schedule remain in effect for an **additional** trial period for, at least, an additional contract term." (City Brief, p. 43)(emphasis supplied). This is actually most beneficial to the officers because the Chief's option, should he opt to

discontinue the current twelve-hour schedule, is limited to returning to the mixed eight-hour and twelve-hour schedules that existed immediately before the MOU was adopted, it notes.

The Union's proposal constitutes a breakthrough in several regards, the City further suggests. That is, the Union's proposal "contractualizes" the twelve-hour schedule, and it incorporates into the new contractual provisions specific terms, i.e. a specific shift and day off rotation, that differ from the terms set out in the MOU. The Union supports its proposal only by a prediction that it made during the hearing that officers will leave the Department if the twelve-hour schedule is not made permanent, which the City discounts by reference to the Parties' history of regularly modifying work schedules. Those modifications are usually done at the officers' behest, it also insists. The city goes on to say that the Union has failed to show that the current system under the MOU is broken, i.e. that it has "created operational hardships for the employer (or equitable or due process problems for the union.)" Village of Matteson, S-MA-08-007 at 54-55 (Goldstein, 2008), and it has presented no evidence that it has offered the City a quid pro quo for agreeing to its proposal. See, City of Burbank, S-MA-97-56 (Goldstein, 1998).

Viewed another way, the City asserts, this Union has failed to show that the City no longer desires to work with the

bargaining unit officers to provide a mutually beneficial work schedule. In fact, the details of the work schedule proposed by the Union as regards this current issue, i.e. the shift rotation patterns, have never been discussed at any table by these parties. Such details have certainly never been reduced to writing or incorporated into any of the Parties' labor agreements, the City believes.

The City's major argument against imposing a twelve-hour schedule on a permanent basis is that that change will deprive the City of an opportunity to assess its various effects over time and would also curtail a central Management right to run the Department. In terms of cost effectiveness and its effect on the Department's ability to provide police protection, I am told, scheduling is, in fact, an important managerial function, as I recently recognized, in County of Macoupin (Sheriff), S-MA-09-065, 066 (2012), wherein I rejected a union proposal to restore a work schedule that had been changed four years earlier, stating, at p. 48:

I have previously noted my aversion to granting proposals in interest arbitration that 'trench' too close to matters of important managerial prerogative. I have long recognized that scheduling is an important managerial function even in the private sector. In any event, I do not presume that the Sheriff would have agreed to the Union's proposal under any circumstances and while I sympathize with those employees whose lives were burdened by the change in schedule, which occurred nearly four years ago, I find that an

insufficient basis for imposing the Union's proposal on the Sheriff's office.

I should apply this same reasoning here, the City urges.

Some of the departments among the external comparables have implemented twelve-hour work schedules on a permanent basis, the City concedes. However, not all of them have done so. As important, the vast majority of the external comparables have reserved to their chiefs the discretion to change schedules. Moreover, no other groups in this City have a contractual right to a twelve-hour work schedule.

Both Parties, it appears to me, propose changing the status quo, I initially note. Starting with the Union's proposal, the Parties' expiring labor agreement does not set out a specific work schedule in either Article XIII or the MOU which is appended to it, and I see no evidence in this record to contradict the City's suggestion that the Parties' have never done so. In addition, the way the Union presents its proposal leaves me somewhat confused as to whether or to what extent it would displace the current language of Article XIII - it is not clear, for example, whether the Chief would retain the right to change the schedule as he does under the current Section 13.3 - or whether any of the provisions of the MOU, most notably the provision as to the calculation of hourly rates of pay, would remain in effect.

On the other hand, the City also proposes to change the status quo, it seems to me. As I read the MOU the "trial period" is likely ended. The City thus proposes to change the terms of the MOU in order to revive the trial period and extend it to at least the end of this Labor Agreement. I say this with less than a comfortable degree of certainty because my finding as such is based entirely on my reading of fairly ambiguous language suggesting that the trial period would last at most a year and one-half. The record is otherwise unclear as to the trial period's status, I find. And, further, I was not appointed in this matter specifically to interpret the MOU. However, in order to meaningfully assess the Parties' positions here, both of which embody the argument that the offering Party is seeking to preserve the status quo in some way, I must arrive at an understanding of what the status quo is in fact. I therefore find that the City's proposal to restart the trial period is a change in the status quo based on the foregoing analysis.

I was presented with a similar circumstance in City of Rockford, S-MA-12-108. In that case, I found that each party had proposed what amounted to significant changes to the status quo on the issue of manning. In that case, too, neither party presented or carried its burden of proofs to show the necessity of changing the status quo, which would not be preserved in any case, I ruled. The same ruling will apply here, I reason.

Having so ruled, the depth and breadth of the changes sought by the Union has not escaped my attention, I further note. Whether the "work group" structure and schedule rotations set out in the Union's proposal reflect the current practice is of secondary concern here. The real problem with the Union's proposal is that it departs from bargaining history by introducing specific work groups and schedules into the Parties' contract and thus appears to limit, albeit implicitly, the historic right of the Management to alter schedules as needed. On this point the City is correct in noting my often expressed "aversion to granting proposals in interest arbitration that 'trench' too close to matters of important managerial prerogative," including the matter of scheduling. County of Macoupin (Sheriff), S-MA-09-065, at p.48.

The officers in this Unit have a legitimate interest in gaining some certainty as to their work schedules, I appreciate. Indeed, I also view the City's proposal to extend the trial period with some disfavor, and would prefer to leave the Chief to his prerogatives under Section 13.3, in the event he would seek to change current schedules at this point. However, the Parties stipulated that this is an economic issue. My authority is thereby limited to selecting from among the proposals as they stand.

Based on all these considerations, I hold that the City's offer on Work Schedules is more reasonable in light of the statutory criteria, and I so award.

D. Economic Issue #4 - Personal Days

The Union seeks to increase the personal day benefit for officers working twelve-hour shifts by two days, the equivalent of 24 hours. The affected officers currently enjoy two days of personal leave per year, also the equivalent of 24 hours, I am told. The Union proposes the increase effective May 1, 2015, the last year of this Agreement.

The officers in this Unit are behind the comparables in terms of their benefit time, the Union suggests. The Union lists the personal day benefits for the comparables as follows:

1. East Moline - 64 hours;
2. Dixon - 48 hours;
3. Kewaunee and LaSalle - 40 hours;
4. Ottawa - 24 hours;
5. Peru - 2 days, day for day with officers working on 8, 10 or 12 hour shifts; and
6. Rock Falls - 16 hours

The Union is "not trying to catch up all at once but trying to move closer to the comparables," the Union urges. (Union Brief, p. 10).

Personal day usage remains subject to the approval of the Chief, the Union also points out. The Chief thus retains the authority to deny an officer's request to use a personal day,

based on his assessment of staffing levels and needs. Moreover, it is not retroactive. Overall, the proposal is designed to have only a "small effect" on the City, while bringing the benefits for the officers closer to the middle among the comparables.

The City, for its part, suggests that the Union's proposal is for yet another breakthrough. Once again, the Union has failed to show that circumstances have changed since the Union agreed to the current personal day structure. The current system has not shown to be broken, the City adds. In fact, the officers affected by the Union's proposal, those working twelve-hour shifts, recently gained an increase in their personal day benefit by virtue of a provision in the MOU that promises "day-for-day benefit for personal days." (City Brief, p. 57). In addition, officers on specialty assignment, who also work on twelve-hour shifts, would benefit from the additional personal days despite the fact that they already receive five additional personal days each year as holiday time off.

The Union's perceived need for a catch up in time off is misplaced, the City also urges. The officers' current benefit of two days is already in the middle of the comparables, which includes Rochelle, whose officers do not enjoy any personal days. Moreover, the affected officers already enjoy the most generous personal day benefit of any of the City's employee groups, the City suggests.

I do not view the Union's proposal as a breakthrough, I initially note. The Union does not seek to add a new benefit. It seeks only to enrich an existing one. However, it is a substantial change to the status quo, in my view, as the Union seeks to double the existing benefit, at least for some employees. In Macoupin County, S-MA-09-065, at pp. 36-37, I discussed the employer's proposal to dramatically reduce the cap on the employees' sick leave buy back at separation, which I rejected, and I noted my approval of the following discussion by Arbitrator Steve Briggs, in City of Carbondale and Illinois Fraternal Order of Police Labor Council, S-MA-04-152 (Briggs, 2005):

The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give and take of free collective bargaining than they are by third party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next round of contract negotiations. The exception, of course, is when a party shows "compelling need" for change right away.

I added that, "Whether I view the Joint Employers' proposal as embodying a breakthrough or simply a change in current benefits, it must be justified not simply as one would support a

bargaining proposal at the bargaining table but, more than that, as something that I should impose here." (Id).

I need not cite my previous awards when I say that I view interest arbitration as an essentially conservative process, one that presumptively disfavors proposals that fall outside the parameters of what reasonable parties might agree to under the circumstances presented. I understand the reasoning behind the following discussion by Arbitrator John C. Fletcher, in City of Wheaton and IAFF, Local 3706, S-MA-12-278 (Fletcher, 2014), at p. 23:

The Arbitrator again points out that interest arbitration is essentially a conservative process. Where the employees rank in any particular benefit among the comparables, both internal and external, is immaterial as a general rule. Absent a demonstrated need for some degree of "catch up" with the comparables group the Arbitrator's focus should be on ensuring that the employees keep pace with the group. Put another way, the focus is not so much on the current value of the benefits that others in the comparable communities receive as it is on whether that value has changed. . .

Yet, as the Union correctly points out, the current benefit of personal days enjoyed by the officers in this Unit ranks in the lower end of the external comparables, I emphasize. Moreover, to read the above comments on the nature of interest arbitration as approving only breakthroughs or catch ups as available to an interest arbitrator as part of the process that "stands in lieu of bargaining by the parties themselves." The

Union's proposal on personal days does not fall outside the parameters of what reasonable parties might agree to in face-to-face negotiations, I find. It therefore is not a proposal to be "disfavored" under the rubric of adherence to the conservative nature of the overall process. Instead, in particular, the enrichment of this benefit is an improvement in the ranking order with the comparable communities is more reasonable than the across-the-board maintenance of the status quo outside the wage scale that the Employer offers in this case, I hold.

On this last point, I am not persuaded that the effect of the Union's proposal is minimized by its argument that approving personal time off is at all times subject to the Chief's approval. The Chief's discretion in that regard is not unfettered, I believe. The Chief cannot, for example, refuse to approve any requests for personal days in a blanket manner so as to nullify any new benefit. But the overall needs of the Department are protected by the ability of the Chiefs to deny approval of personal time off in such circumstances as may arise where the ability to satisfy operational needs is impacted, I hold.

Based on all these considerations, I hold that the Union's offer on Personal Days is more reasonable in light of the statutory criteria, and I so award.

E. Economic Issue #5 - Vacation Accrual

The Union proposes to add eight hours of annual vacation at each step in the vacation accrual schedule. It proposes to make the addition effective on May 1, 2015, the last year of the Agreement. It notes the following vacation maximums among the external comparables: Rock Falls - 312 hours; East Moline - 250 hours; Dixon and LaSalle - 240 hours; Rochelle - 216 hours; and, Ottawa and Peru - 200 hours. The officers in this Unit, who enjoy a vacation maximum of 176 hours, rank "dead last" among the comparables, the Union urges. Under the circumstances, I should view its proposal to add just eight hours at each year of service, which will bring the maximum benefit to 188 hours, as modest.

The City responds by incorporating much of the legal arguments stated earlier regarding the appropriateness of changing the status quo through interest arbitration. It characterizes the Union arguments in support of the proposal as "I want what they have," with no real substance behind them. In addition, the City argues that its police officers already enjoy a greater vacation benefit, from 15 years of service on, than any other group of City employees, including the firefighters. As to external comparability, the City counters the Union's argument by pointing out that its officer's rank in the middle

of the pack considering total hours of vacation that an officer will accrue over the span of a 20-year career.

I will not belabor the points that I just made, in discussing the personal days issue, by reapplying them in detail to this issue of vacation benefits. Suffice it to say, I see a substantive difference in the Union's support for this proposal from what I found to be convincing in its support for increasing its members' personal days off. I mean by this, principally, that I find no evidence of any changes in vacation benefits among the comparables and no offer of a quid pro quo hire, either, at bargaining across-the-table prior to interest arbitration.

Based on all these considerations, I hold that the City's offer on Vacation is more reasonable in light of the statutory criteria, and I so award.

F. Economic Issue #6 - Compensatory Time (Cash Out)

Under the current agreement, officers are allowed to accumulate up to 80 hours of compensatory time, after which all time must be paid. Officers are not allowed to exchange compensatory hours for cash at any time, except at the point of separation from the Department. The Union proposes to give each officer, effective April 30, 2015, an option to "cash out" a maximum of 80 hours of compensatory time annually, provided the

officer gives notice of the election prior to his or her anniversary date.

The Union points out that among the external comparables, only LaSalle, which limits compensatory time accrual to 40 hours, has a more restrictive compensatory time provision than the City. Dixon, the City's closest comparable, allows only 60 hours of accumulation, but also allows officers to "replenish" those hours. Among the other comparables, the following caps are imposed on accumulation of compensatory time: Ottawa - 480 hours; Kewanee - 250 hours; Peru - 140 hours, with right to "replenish;" and Rock Falls - 120 hours, also with a right to "replenish." East Moline has no stated cap on compensatory time accrual, which means that its officers have the option to accumulate up to the Fair Labor Standards Act maximum of 480 hours. The Union's proposal is made to bring the rights of the officers in this Unit more in line with the rights enjoyed among the comparables.

The City once again characterizes the Union's proposal as one embodying a breakthrough, and a substantial change to the status quo. Referring again to the Will County factors, the City suggests that the Union has failed to show that the present system of compensatory time accrual is broken, or that it has worked a hardship on the officers. Moreover, the Union has again

failed to show that it has offered the City a quid pro quo for the proposed change.

None of the City's other employees are allowed to cash out compensatory time, the City points out. Among the external comparables, at least three other groups do not allow a cash out. Comparability, therefore, does not really favor the Union's proposal, the City argues.

Officers are not compelled to take compensatory time in lieu of pay, the City further notes. The choice of whether to take pay or compensatory time is the employee's in the first instance. The City, allowing them that choice, strongly opposes the notion, embodied in the Union's proposal, of having the City's coffers used as the officers' "piggy bank."

I view the Union's proposal as embodying a substantial change to the current compensatory time protocol. It changes a simple system that allows for a limited accumulation of time off for the officers into a system of investment. Officers would be allowed to accumulate hours at a low rate and exchange those hours for cash as their rates of pay increase. Instead of a one-time payout for the City, at an officer's separation, the City would be faced with large Unit-wide payouts annually, especially in those years where the officers receive substantial pay increases. It is a good idea for the officers, I suggest. But that is all.

I believe that the factors that I discussed in City of Burbank, supra, apply here. I agree with the City, moreover, that the Union has not met its burden to show that any of those factors are present here. Most notably, the current system is not "broken," as far as this record reveals. The fact that other groups may have a different deal is not really an important factor for me. If the Union wants what they have, borrowing the City's language, it will have to bargain for it.

Based on all these considerations, I hold that the City's offer on Compensatory Time (Cash Out) is more reasonable in light of the statutory criteria, and I so award.

G. Economic Issue #7 - Holiday Compensatory Time

The Union proposes to add a provision to the Agreement that would give to officers in the Detective and Administrative Bureaus, namely detectives, and school liaison and D.A.R.E officers, 40 hours of "compensatory time" off annually, to be scheduled with the approval of the officers' respective commanders. In doing so, the Union does not seek a breakthrough, it claims. Rather, it seeks to incorporate into this next Agreement a practice that has existed for approximately 19 years whereby these officers have been allowed time off for five of the ten recognized holidays. The result is something that I

should view as presumptively appropriate and reasonable, the Union suggests.

The City points out that the practice, although it has long been in effect, has not been contained in any of the parties' previous labor agreements. The Union now wishes to "contractualize" a practice relating to holiday pay, but has not shown that the current system is not working. In fact, Union witnesses admitted that the current practices are working well.

The practice of allowing officers who work on eight-hour shifts five days off per year, as holidays, was begun by the Chief in 1999. The Chief recognized at the time that officers in patrol in fact worked, on average, about half of the ten recognized holidays. Accordingly, he determined that detectives too would work on half of the holidays, enjoying time off on the other half. The implementation of holiday time off for the detectives was a gratuity.

To the City, too, the affected officers have been allowed to take the days off, at the discretion of their commanders. The days themselves were never allotted to the officers as compensatory time off. The Union's proposal therefore differs from the current practice. In fact, the Union seeks to change the existing practice without offering the City any quid pro quo for the change.

As a general rule, I believe that proposals which merely incorporate existing practices into the parties' labor agreement should be favored, although I do not mean to suggest that they should be adopted as a matter of course and without a thorough review of the circumstances. In my review of this particular proposal, I am first persuaded that however the practice came about - that is, regardless of whether it was established through give and take negotiations at the parties' bargaining table or as a gratuitous and unilateral gesture of the Chief, as the City suggests - the record suggests that the practice is sufficiently long-standing, clear and mutually accepted as a term and condition of employment that it has become binding. This is not an issue of a free Thanksgiving turkey. In this case, I believe that the Union's proposal to incorporate this particular practice into the Agreement is appropriate.

Of great importance in my analysis on this issue is my finding that the Union is correct in suggesting that a proposal that merely incorporates the status quo into the parties' labor contract is not a breakthrough. It is not necessary, therefore, that such a proposal be supported by evidence that the proposal is necessary to fix some problem with the status quo or that some quid pro quo be offered in exchange for it. It is enough to show that the practice has taken on the aspect of a tacit agreement for its continuation, i.e. that the parties have

established a "meeting of the minds" in that regard. [See my discussion of binding past practices in Archer Daniels Midland, 117 LA 1419, 1423-1424 (Goldstein, 2003)]. At that point, the Act itself requires that the parties reduce their agreement to writing, if requested.

The City's suggestion that the Union's proposal here somehow departs from the existing practice is unpersuasive, I further suggest. First, the Chief's 1999 memo clearly states that the benefit is to apply to officers in the Detective and Administrative Bureaus, and unrebutted testimony from the Union's witness establishes that the three positions currently receiving the benefit are detective, school liaison officer and D.A.R.E. officer. Second, although some ambiguity might arise from the Union's choice of words, i.e. "compensatory time," any confusion in that regard is adequately resolved by the qualifying phrase "in accordance with the past practices of the Employer," which follows it. It seems clear enough to me that the Union's intent here is to merely incorporate those practices into the Agreement, unchanged.

Based on all these considerations, I hold that the Union's offer on Holiday Compensatory Time is more reasonable in light of the statutory criteria, and I so award.

H. Economic Issue #8 - Health Insurance

The City proposes to add language to the health insurance provisions of the Agreement, which would give the City the right, after giving the Union notice and an opportunity for "input," to "make changes in benefits specifically to avoid imposition of any excise tax on the City under the [Affordable Care Act] ACA." The object of the City's proposal is to avoid having to pay the so-called "Cadillac Tax," embodied within the Affordable Care Act, which is an excise tax that will be imposed on employers that maintain health plans with costs that exceed certain statutory thresholds. The tax is currently scheduled to go into effect for plan years beginning in 2018. The cost ceiling currently stated under the ACA is roughly \$27,000 per year for family coverage, roughly \$30,000 for family coverage when covered employees are deemed to be in "high risk" occupations. In 2014, the cost of the City's current plan for family coverage was about \$24,000 annually. Factoring in an average increase in cost of 11% annually over the next couple of years, this City "will be on track to hit the Cadillac Tax," even if it is assumed that police work will be deemed "high risk," the City urges.

The new section proposed by the City is designed to allow the City to take steps to avoid the tax being imposed. The City describes the operation of the provision, as follows:

. . . [I]f it were determined that the City was on track to be affected by the Cadillac Tax, the City would identify what types of benefit changes might be necessary to create a value/savings that would avoid the imposition of the excise tax. However, prior to making any change in benefits, the City would first notify the Union and provide it with an opportunity to discuss and provide input about the changes. (Tr. 122-23). For example, if there existed an option between increasing the deductible, increasing the maximum out-of-pocket, or putting co-pays in place, under the City's proposal the Union could provide input to the City prior to the City making any such changes. (Tr. 123). . . .
(City Brief, p. 73).

The City attempted to address the issue of the Cadillac tax at the bargaining table during negotiations, but its proposals on the issue were met with nothing more than stubborn refusals by Union negotiators to even consider the language, the City adds.

The City cites to a number of interest arbitration awards from various arbitrators, all of whom discussed the importance of maintaining internal uniformity in health insurance among an employer's employee groups. Of particular relevance, the City suggests, is Arbitrator Peter Feuille's reasoning in City of Elmhurst, S-MA-92-111 (Feuille, 1993), at 41:

The record is undisputed that the City has a lengthy history of City-wide insurance benefit uniformity. The City's health insurance offer seeks to restore that uniformity, but the Union's offer seeks to maintain the disparity between this unit and other City employees. As a result, the internal comparability evidence provides very strong support for the City's offer. Further, this internal comparability evidence deserves the most weight among all the available evidence bearing on the resolution of this issue.

The City adds that I too have applied a similar approach when it comes to health insurance matters, reminding me that I once suggested that internal comparability is often not only the most important criterion but, perhaps, the only criterion that is truly relevant. Village of La Grange Park, Case No. S-MA-08-171 (Goldstein, 2009).

All City employees are covered "the same or similar" health plans, the City adds. Clearly, anything changes in benefits that the City may make that are necessary to avoid the Cadillac Tax are not subject to bargaining with unrepresented groups. As regards the firefighters, their contract, although it does not have a specific ACA provision like that proposed here, contains provisions that will allow the City to make the types of changes to benefits that it will need to make in order to avoid the tax. In that regard, arguments by the Union regarding the lack of internal support for this proposal are misleading.

It is also important to note that the City's proposal does not contemplate taking money from the officers. Rather, the City, having projected out the cost of its plans and determined that it will be subject to the tax, is trying to reserve to itself the right to take steps to avoid having to take money, that would otherwise be available to the City for things such as wage increases, and giving it to the federal government. The

proposal, to this extent, is actually beneficial to the officers.

Although the tax does not kick in until 2018, action is needed well in advance of implementation to avoid it, says the City. There are but a few "plan cycles" in the interim and if the parties are mired in negotiations for two years, following the end of this Agreement, it will be too late. Indeed, Arbitrator Peter Meyers recognized the need for prompt attention to the issue in a fairly recent discussion of the issue, in Village of Round Lake Beach and Illinois FOP Labor Council, Case No. S-MA-11-115 (Meyers, 2012), at 21, wherein he stated:

There can be no serious dispute that with the passage of the Affordable Care Act, there will be some changes in the manner in which health coverage is structured and provided for many people. Moreover, employees who continue to provide coverage for their employees, like the Village, will have opportunities to, for example, seek coverage from different sources that may include insurance exchanges. As a responsible employer, the Village has an obligation to prepare for the changes and opportunities that will occur as the Affordable Care Act is implemented.

The changes that are included in the Villages' proposal appear to be a reasonable step toward preparing for the impact of the Affordable Care Act as its implementation continues.

The City's proposal on its Insurance Plan and the ACA's potential impact is not truly a breakthrough, the City contends. Existing contract provisions already give the City the right to make changes to benefits. In fact, current language perhaps

gives the City sufficient flexibility to do what is needed. However, the risks are too high for the City to "take a wait and see approach" to the issue. Moreover, there is a quid pro quo inherent in the City's position as it is designed to save the City money for its own uses, as opposed to those of the federal government. The Union has simply been blind to this fact and recalcitrant in its approach to this very real problem. Therefore, even if I view the proposal as a breakthrough I should nevertheless see that the City has proven the need for it, the City believes.

The Union notes, first of all, that the officers in this Unit pay 20% of premium cost for health coverage, which is at the very high end of the comparables. The only change that the City proposes to the plan, both here and at the bargaining table, is to give itself the right to unilaterally change the benefits the officers pay so highly for, solely to avoid having to pay a tax that may hit, if at all, in 2018. This is indeed a breakthrough, the Union urges.

The City's position assumes a fact that is very much in doubt, which is that the ACA will still be in effect in 2018, the Union goes on to say. I definitely should consider the recent changes in the political winds in Washington, the Union tells me. Republicans who are bent on the repeal of "Obama Care" are now in charge of both house of Congress. Moreover, there is

a presidential election in 2016, which may shift the winds even more in the direction of repeal. I should not assume, as the City does, that this issue will even be relevant in 2018. In any event, this Agreement will expire on April 30, 2016. Assuming that the ACA is still in effect at that time, with the Cadillac tax still in place, the parties will have more than enough time to address the issue in bargaining. There is no need to take from the officers their right to bargain. The evidence simply does not support the City's claimed need for urgency.

There is no evidence to suggest that the status quo as to insurance is broken, the Union adds. In fact, the City recently settled its contract with the firefighters without any changes to the health insurance provisions. Those provisions, as they now stand, are identical to the provisions on health insurance that are contained in the existing police contract. Notably, the firefighters' new contract contains no "meet and confer" language similar to what the City now proposes. Moreover, there is no evidence in the record that suggests the City even tried to get such a provision put into the firefighters' contract.

The existing health insurance language allows the City to make changes to existing plans, such as to self insure, change carriers, or adopt a PPO or HMO, provided the resulting benefits are similar to what they were before the change, I note. The provision put forth by the City here goes much farther in

allowing the City to make changes to insurance, as it contains no requirement that benefits be preserved, as I see it. Indeed, that is the point. The City believes that before 2018, it may need to reduce benefits, or increase deductibles or co-pays, in order to avoid the tax. The reasonableness of the City's proposal is predicated on its need for an ability to protect and advance its own interest in accordance and the retention of local monies for its needs.

The City's proposal clearly contemplates that the City will not have to bargain with the Union over any changes it makes to avoid the tax. The proposal contemplates instead that, "Prior to making any such change, the City shall notify the Union and provide the Union an opportunity to discuss and provide input about any such changes." This language represents a fairly typical "meet and confer" requirement, I find. I have little doubt that any arbitrator, board or court that might be asked to interpret it down the road would find that the language served to waive the Union's right to demand bargaining over the issue. Indeed, the City does not hide that it seeks the Union's waiver of bargaining over the issue, I stress.

Although the City's proposal represents a substantial change to the status quo, a breakthrough in a very real sense, I see no need to engage a detailed breakthrough analysis. By incorporating what is clearly "meet and confer" language in its

proposal, the City intends by its proposal to remove the issue of changes to health insurance, at least as the City may deem them necessary to avoid the Cadillac Tax, from the collective bargaining process. Arbitrator John C. Fletcher recently a comparable proposal, in City of Effingham and Fraternal Order of Police Labor Council, S-MA-13-206 (Fletcher, 2014), which he rejected, principally because he believed that any proposal that waived a party's right to demand bargaining over terms and conditions of employment was not reasonable in the context of interest arbitration.

In City of Effingham, the employer proposed creating a city-wide insurance committee, composed of representatives from all employee groups, represented and unrepresented alike, as well as management, which would be charged with the task of coming up with a plan to change the employer's health insurance plans in a way that would avoid the Cadillac Tax. The employer, but not the unions, retained the right to reject any proposals from the committee. The unions retained the right to bargain only regarding the effects of any changes on their respective members. Arbitrator Fletcher reasoned, at p. 48:

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."

I agree with Arbitrator Fletcher's reasoning, as well as that of Arbitrator Herbert Berman.⁵

Clearly, the City contemplates that significant changes in benefits may be needed. It really needs, at some point, to propose those changes to the Union, giving it a say in how, and whether, any changes will be carried out. This may prove inconvenient, as the City suggests. Time may be running short. Negotiations may not yield results and the parties may again find themselves in interest arbitration. But that is the process established by law. A fundamental purpose that I serve here is to further and defend the bargaining process to the extent of ensuring that its function is not usurped by the process of interest arbitration or demands for meet and confer to be

⁵ I agree with suggestion of Arbitrators Fletcher and Berman that other considerations, such as internal comparability, are not really material in the face of the waiver issue. Nevertheless, I also note my agreement with the Union that the provisions in the firefighters' contract giving the City limited flexibility to change benefits, which are also contained in this Agreement, serve to undercut the logic of the City's position.

imposed through interest arbitration, I rule. For this reason, the City's proposal cuts against the statutory grain, I find.

Based on all these considerations, I hold that the Union's offer on Health Insurance is more reasonable in light of the statutory criteria, and I so award.

I. Non-Economic Issue - Grievance Procedure

The Union proposes to change the language of the various provisions of the contractual grievance procedure, altering what presently allows only individual employees to file a grievance to allow for grievances to be filed directly by the Union. The Union's proposal is designed to allow the Union to initiate grievances at Step 3. Explaining its rationale for the proposal, the Union points to testimony from its field representative, Doug Block, who related that his own experiences had shown him that individual employees are often reluctant to file grievances on their own behalf. Under the current structure of this grievance procedure, City actions that broadly affect Unit employees may go unchallenged.

The Union reminds me that the collective bargaining agreement is not an agreement between the City and its individual officers. Rather, the parties to the agreement are the City and the Union. The provisions of that agreement govern the terms and conditions of employment for all Unit employees.

Recognizing this, the Generals Assembly included language in Section 8 of the Labor Act, which "provides for the filing of grievances whenever any alleged violation of the contract has occurred." (Union Brief, p. 15). The Union's proposal merely serves the purposes of that Section.

The City responds that the grievance procedure is working, just as it is. Union witness Block, in fact, conceded that grievances have been filed and resolved through the procedure and he was aware of no claims made by officers of retaliation for utilizing the procedure. Indeed, there is no evidence that any officers have ever felt intimidated when utilizing it. The Union has not met its burden to show the need for the change it now seeks and, moreover, it has not offered the City anything in exchange for it.

The firefighters' contract contains the same limitation on grievance filing that the Union seeks to change here, the City points out. A review of the grievance procedures among the external comparables presents more of a "mixed bag," the City also suggests. Given the lack of clear support among the comparables and the stark absence of any justification for the change, I should find that the Union's proposal is unreasonable.

A substantial number of arbitrators in this state have noted the clear preference for arbitration that is embodied in the Act, especially Section 8. See, for example, City of Rock

Island and Fraternal Order of Police Labor Council, S-MA-11-183
(Benn, 2013). However, I am not persuaded that the current grievance procedure in runs in any way counter to that preference. It might be a good idea that the Union be allowed to initiate grievances on behalf of employees, but that is not universally the case in labor contracts, including, as the City points out, the relevant external comparables.

I add at this point that the lack of any apparent access to the grievance procedure for what I call "class grievances," in other words those grievances that involve employer actions that have broad impact on the Unit, for example implementing new work rules or changing benefits, is troubling. I also note that the City has indicated that it is open to the idea of including some provision in the grievance procedure to accommodate such class grievances. (City Brief, p. 72, fn. 40). Because the parties stipulated that the issue is non-economic in nature, they have effectively given me an authority to fashion an award as I see fit. Accordingly, and for the reasons stated, I will modify Article XX, Section 20.1, to read as follows:

Section 20.1. Definition. It is mutually desirable and hereby agreed that all grievances shall be handled in accordance with the following steps: For purposes of this Agreement, a grievance is any dispute or difference of opinion raised by an employee against the Employer involving the meaning, interpretation or application of the express provisions of this Agreement, or any dispute or difference of opinion raised by the Union, acting on behalf of itself or any

group of employees, involving actions of the Employer, or the interpretation or application of the Agreement, directly affecting more than one employee or the Union itself ("Class Grievances"). Class Grievances shall be initiated at Step 3.

I so award.

IX. AWARD

Using the authority vested in me by Section 14 of the Act:

(1) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's last offer on Economic Issue No. 1 with respect to Wages because it is most reasonable under the statutory criteria.

(2) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 2 with respect to Patrol Bonus because it is most reasonable under the statutory criteria.

(3) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 3 with respect to Patrol Work Schedule because it is most reasonable under the statutory criteria.

(4) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 4 with respect to Personal Days because it is most reasonable under the statutory criteria.

(5) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 5 with respect to Vacation Accrual because it is most reasonable under the statutory criteria.

(6) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 6 with respect to Compensatory Time (Cash Out) because it is most reasonable under the statutory criteria.

(7) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 7 with respect to Holiday Compensatory Time because it is most reasonable under the statutory criteria.

(8) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 8 with

respect to Health Insurance because it is most reasonable under the statutory criteria.

(9) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, on Non-Economic Issue No. 1 with respect to Grievance Procedure, I award the following modification to Article XX, Section 20.1:

Section 20.1. Definition. It is mutually desirable and hereby agreed that all grievances shall be handled in accordance with the following steps: For purposes of this Agreement, a grievance is any dispute or difference of opinion raised by an employee against the Employer involving the meaning, interpretation or application of the express provisions of this Agreement, or any dispute or difference of opinion raised by the Union, acting on behalf of itself or any group of employees, involving actions of the Employer, or the interpretation or application of the Agreement, directly affecting more than one employee or the Union itself ("Class Grievances"). Class Grievances shall be initiated at Step 3.

IT IS SO ORDERED.

May 28, 2015

Elliott H. Goldstein
Arbitrator