

In the Matter of the Interest Arbitration)	
)	Marvin Hill
Between)	Arbitrator
)	
Tri-State Professional Firefighters Union, Local 3165 IAFF, Union)	Case No. S-MA-13-299
)	
and)	Hearing Dates: April 17 & 18, 2014
)	February 27, 2014 (pre-trial)
)	
Tri-State Fire Protection District, Employer)	
)	

Appearances

For the Union:	Lisa B. Moss, Esq. CARMELL CHARONE WIDMER MOSS & BARR One East Wacker Drive Suite 3300 Chicago, Illinois 60601 (312) 236-8033
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For the District:	Jennifer A. Dunn, Esq. FRANCZEK RADELET 300 South Wacker Drive Ste 3400 Chicago, Illinois 60606 (312) 986-0300
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INTRODUCTION AND PRELIMINARY STATEMENT

The Tri-State Fire Protection District (“District” or “Employer” or “Administration”) and the Tri-State Professional Firefighters Union, Local 3165 (“Local 3165” or “Union”) are parties to a collective bargaining agreement effective June 1, 2009, with a stated expiration date of May 31, 2012 (“Agreement”)(UX 1, Tab 9). The terms of the Agreement remained in effect while the parties attempted to reach agreement on a successor collective bargaining agreement (“Successor Agreement”)(UX 1, Tab 9, Article XXIV at 45).

On April 3, 2012, the parties commenced negotiations over the terms of the Successor Collective Bargaining Agreement. After negotiations over the Successor Agreement reached impasse, the parties mutually selected the undersigned Arbitrator to serve as interest arbitrator. The parties waived the tripartite arbitration panel provided for in Section 14 of the Illinois Labor Relations Act (“Act”) and agreed that Arbitrator Hill would serve as sole arbitrator. Arbitrator Hill conducted hearing on April 17 and 18, 2014, during which each party was provided a full opportunity to present evidence. A pre-trial was conducted on Thursday, February 27, 2014. Post hearing Briefs were filed on or before July 10, 2014.

I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

This proceeding was long and something contentious, especially involving charges that the Union engaged in bad-faith bargaining.

The District is an intergovernmental agency that serves an area of approximately 21 square miles, covering parts of Darien, Willowbrook, Burr Ridge, unincorporated Clarendon Hills and unincorporated Hinsdale. Recently, the District entered into an intergovernmental agreement to provide fire and emergency medical services (“EMS”) to the town of Willow Springs, which has a population of approximately 5,000 people. The District now serves a population of approximately 42,000 people. The District currently operates out of four (4) fire stations. Equipment currently in use includes one command vehicle used by the Battalion Chiefs; two (2) ALS ambulances; one (1) aerial truck; and two (2) “minis,” which count as fire engines, one of which has water and the other is used for brush fires.

The District is run by three (3) elected trustees, Hamilton Gibbons, Michael Orrico and Jill Strenzel. Hamilton Gibbons serves as the president. When the parties began negotiations, the Fire Chief was Michelle Gibson and the Deputy Chief was Jack Mancione (“Mancione”). Chief Gibson recently retired and Mancione is now the Fire Chief. There is currently no Deputy Chief.

The District’s fiscal year begins June 1 and ends May 31st. The Administration has a budget of approximately \$13.7 million, most of which is derived from property taxes. During its most recent fiscal year, the District budgeted \$6,059,212, or approximately 44%, of its total budget for salaries and benefits for firefighters, EMT personnel and fire prevention salaries. According to its Audited Financial Report, the District’s actual personnel expenses for the fiscal year ending May 31, 2012 were \$4,315,225.

The Parties’ Collective Bargaining History

1. The Bargaining Unit

Local 3165 is the exclusive representative of all full-time, sworn Firefighter/Emergency Medical Technicians, Firefighter/Paramedics, Engineers, Lieutenants, and Battalion Chiefs employed by the District. The Union was certified on May 1, 1992, and a unit clarification

issued April 28, 2005 abolishing the title of Fire Inspector and substituting the title of Battalion Chief for the previous titles of Station Commander and Acting Station Commander. There are currently 43 members in the bargaining unit, consisting of three (3) Battalion Chiefs; thirteen (13) Lieutenants, five (5) of whom are paramedics; twelve (12) Engineers, two (2) of whom are paramedics; three (3) Firefighters and twelve (12) Firefighter/Paramedics. Recently, the District has required that new hires have paramedic licensure.

Bargaining-unit personnel work a typical three (3) shift rotation of 24 hours on duty, followed by 48 hours off duty. The three (3) shifts are designated as red, black and gold.

2. The Parties' Collective Bargaining Agreements

Since certification, the parties have entered into six (6) collective bargaining agreements ("CBAs"). For their fifth collective bargaining agreement, the parties reached agreement prior to the expiration of the fourth agreement and agreed to make the fifth agreement effective prior to the expiration of the fourth collective bargaining agreement.

The parties' first CBA was effective June 1, 1992 through May 31, 1994. The parties' second collective bargaining agreement was effective June 1, 1994 through May 31, 1997. The parties' third collective bargaining agreement was effective June 1, 1997 through May 31, 2001. The parties' fourth collective bargaining agreement was effective June 1, 2001 through May 31, 2005. The parties' fifth collective bargaining agreement was effective November 1, 2004 through May 31, 2009. The parties' sixth collective bargaining agreement is the most recent CBA effective June 1, 2009 through May 31, 2012.

Although this is the first time that the parties have proceeded to a full interest arbitration hearing, they have used the interest arbitration process on three (3) prior occasions.

The first time, Arbitrator Edwin Benn assisted the parties through mediation on the day scheduled for hearing, and the result was the parties' second collective bargaining agreement.

The second time the parties invoked the interest arbitration process, the hearing was scheduled before Arbitrator Robert Perkovich in Case No. S-MA-01-247, but the parties were able to reach agreement on the first day of hearing.

The third time the parties used the interest arbitration process was again before Arbitrator Edwin Benn in Case No. S-MA-12-008. Once again, the parties were able to settle their contract prior to hearing. Consequently, although the parties have used the interest arbitration process in reaching three (3) of their six (6) prior Agreements, this is the first time that they have proceeded to hearing. **This proceeding concerns the terms of the parties' seventh collective bargaining agreement to be effective retroactive to June 1, 2012.**

3. Negotiations Over the Successor Agreement

On April 3, 2012, the parties commenced negotiations over the terms of the Successor Agreement. In total, the parties met for contract negotiations eight (8) times: April 3, 2012, August 13, 2012, September 27, 2012, October 15, 2012, November 2, 2012, January 22, 2013, March 8, 2013 and April 4, 2013. The parties' executed "Ground Rules for Negotiations" at their September 27, 2012 bargaining session.

The Union tendered its first set of proposals to the Employer on June 13, 2012. Three months later, on September 27, 2012, the Employer tendered its first counter-proposals, consisting solely of responses to the non-economic issues identified by the Union, which the District identified as the "Union's Operational Proposals." Later, on October 15, 2012, the Employer tendered its counter-proposals to the Union's economic proposals. The Union tendered its second and third proposals on January 22 and March 8, 2013, respectively. Thereafter, the Employer submitted its first complete set of proposals and counterproposals on April 4, 2013. During negotiations, the parties reached only two tentative agreements.

4. Mediation and Interest Arbitration

On May 6, 2012, prior to the commencement of the District's fiscal year, Local 3165 invoked mediation. After reaching only two (2) tentative agreements, the parties engaged in three (3) mediation sessions with Javier Ramirez, a mediator from the Federal Mediation and Conciliation Service ("FMCS"). Those mediation sessions were held on August 26, 2013, September 7, 2013, and October 7, 2013. The mediation date of October 7, 2013 was erroneously referred to at hearing as having been held on October 10, 2013.

In mediation, with the assistance of FMCS, then Fire Chief Gibson and Union President Don Bulat, on behalf of the parties, with no one else present, reached an additional five tentative agreements, and later, the parties reached one additional tentative agreement. At the conclusion of the third mediation session, the parties declared impasse and, thereafter, the Union invoked interest arbitration.

On March 4, 2014, Marvin Hill was appointed as Interest Arbitrator. The parties met on February 27, 2014, for a pre-hearing session at which they signed the Ground Rules And Pre-Hearing Stipulations ("Ground Rules"), and exchanged lists of issues for hearing and proposed comparables. As agreed in the Ground Rules, the parties exchanged final offers on April 9, 2014. It was further agreed that once exchanged, the final offers could not be altered unless the parties reached agreement on an issue. The interest arbitration hearing was held April 17 and 18, 2014.

At hearing, the Union proceeded on all issues for which it was the moving party, and the District then proceeded on all issues for which it was the moving party. There were two exceptions to this process as explained immediately below.

5. The Petition For Declaratory Ruling

After receiving the District's Final Offer, the Union believed that the District's proposal to amend the probationary period, and to maintain the status quo promotional language contained in Section 5.1 and Article XXIII of the Agreement, respectively constitute permissive subjects of bargaining by requiring the Union to waive certain statutory rights. Accordingly, Union Counsel wrote to Counsel for the District on April 11, 2014 requesting that the District join in its Petition For Declaratory Ruling to resolve the matter, which the District refused to do.

Consequently, on April 15, 2014, the Union filed its own Petition for a Declaratory Ruling, docketed as Case No. S-DR-14-001. Because the Illinois Public Labor Relations Act ("Act") does not authorize interest arbitrators to resolve permissive subjects of bargaining, at hearing, the Union requested, and the Arbitrator agreed, to hold these two (2) issues in abeyance pending the ruling of the Illinois Labor Relations Board's General Counsel.

6. The Parties' Stipulations

The parties entered into the following stipulations:

The tri-partite panel of arbitrators provided for in Section 14 of the Act is waived, vesting the sole decision making authority in Arbitrator Hill.

The Arbitrator shall incorporate in his award the tentative agreements previously reached by the parties.

The lists of issues exchanged by the parties on February 27, 2014 are final and new issues may not be raised by either party in this proceeding.

The offers submitted to the Arbitrator are final and may not be altered in any way, absent agreement of the parties.

The Arbitrator has authority to award wage increases retroactive to June 1, 2012.

The District is not claiming an inability to pay within the meaning of the Act.

7. The Administration's Charge Regarding Bad-Faith Bargaining by the Union

The Administration has taken pains to allege bad-faith bargaining on the part of the Union in negotiating a successor collective bargaining agreement. According to the Administration, well in advance of the contract's expiration, in early 2012, the District reached out to the Union to schedule dates for bargaining. Allegedly, the Union claimed it was not ready to begin negotiations, and that it likely would not be ready until February of that year. (R. 107). The District waited, and continued to

wait, eventually contacting the Union of its own accord to ask about scheduling dates for negotiations. This pattern repeated itself throughout the parties' successor negotiations. (R. 108).

The parties met for their first bargaining session on April 3, 2012. Over the 11 ensuing months, only six bargaining sessions were held, each lasting not much longer than four hours in duration. (R. 109). Management submits that during that same time period, the Union repeatedly ignored the District's efforts to schedule additional dates for bargaining and provided no explanations for its lack of response. (R. 108). The District offered upwards of 56 dates for negotiations, while the Union affirmatively offered zero, never once suggesting a single date for bargaining. (R. 108).

The Employer maintains that in the isolated instances where the Union did, in fact, respond to the District's offer of dates for negotiations, it generally and unilaterally limited its availability to a single date, and did so, again, without any explanation for its limited availability. (R. 108). During that same period, the Union repeatedly canceled bargaining sessions, usually with no explanation and with limited advance notice, counsel argues. (R. 108).

Ultimately, the parties' successor negotiations consisted of six bargaining sessions over an 11-month period for a total of approximately 24 hours in duration. (R. 109). Because most sessions actually lasted less than four hours, this 24-hour estimate is on the high end. During that time period, there were upwards of 25 open issues between the parties, the overwhelming majority of which were raised by the Union. (R. 109).

Amazingly, during that time period, the parties reached a total of two tentative agreements. (R. 15, 109; UX 1, Tab 17). These two tentative agreements addressed the most innocuous of issues: the contractual non-discrimination clause and the movement of a sentence, unchanged, from one provision of the contract to another. The tentative agreements did not represent any significant compromises on behalf of either party and, at bottom, constituted nothing more than mere clean up in the contract. (R. 109). In Management's view, despite the innocuousness of their subject matter, these tentative agreements were the product of much hand-wringing and stalling by the Union. (R. 109-110). Throughout the time period of bargaining, if a tentative agreement appeared even remotely within reach, the District signaled its willingness to execute a "TA" and requested that the Union do the same. (R. 110). Wherever the District saw agreement between its position and the Union's, it requested that the Union execute a TA. (R. 110). The Union, however, balked at entering into any tentative agreement. Counsel argues that at one point, when the District pressed the Union on its ability to TA items at the table, the Union said they would "make this easy" and said they "couldn't TA anything" at the table. (R. 110).

The Employer maintains that the Union's conduct failed to exhibit the hallmarks of good faith collective bargaining. (R. 110; Brief at 7). In counsel's words: "To put it mildly, the Union's conduct frustrated the collective bargaining process and brought negotiations to a standstill. The Union's behavior demonstrated that the Union lacked the sincere desire to reach an agreement, to compromise, and to engage in the give and take that characterizes good faith negotiations. As a result of the Union's bad faith, no substantive good faith negotiations occurred regarding any of the Union-designated issues before the Arbitrator in this proceeding." (R. 111; Brief at 7)

8. The District's Unfair Labor Practice Charge Against The Union

The Administration maintains that the Union's conduct compelled it to file an unfair labor practice charge, as amended ("the Charge"), against the Union with the ILRB. (R. 111; Dist. Exs. 7, 8; *Brief* at 7). In the Charge, and in the subsequently amended charge, the District argued that the Union had engaged in bad faith bargaining during negotiations and violated Section 10(b)(4) of the Act when it failed to meet and bargain at reasonable times and when it failed to designate individuals with the requisite authority to negotiate. The District also alleged that the Union violated Section 10(b)(4) of the Act when it attempted to dictate the composition of the District's bargaining team and when the Union reneged on a valid grievance settlement agreement. The former allegation was dismissed by the ILRB's Executive Director; although the latter allegation was included in the ILRB's Complaint For Hearing against the Union and the parties litigated the matter, it was ultimately dismissed by the administrative law judge, and the District did not file exceptions to the dismissal of that allegation. (R. 111; Dist. Exs. 7, 8; *Brief* at 7). The ILRB issued a Complaint for Hearing and set the matter for hearing before Administrative Law Judge Martin Kehoe ("the ALJ"). (Tr. 111; Dist. Ex. 9). The matter was heard on September 19, 20 and October 1, 2013.

9. Subsequent Negotiations

After the filing of the Charge, the District and the Union met on exactly two more occasions for bargaining: March 8 and April 4, 2013. (R. 111; *Brief* at 7-8). At the March session, the Union tendered a comprehensive set of proposals, many of which were the same proposals that the Union already had submitted and which remained unchanged. (R. 111-112). However, Management points out that the Union also submitted certain entirely new proposals, none of which had ever before been discussed or even referenced during the parties' negotiations up to that point. (R. 112; UX 1, Tab 15; *Brief* at 8). Understandably, the District took this package of proposals under advisement and the parties agreed to meet on April 4. (R. 112). At that session, the District submitted counterproposals to the Union.

Instead, Management asserts, the Union asked for a brief caucus after review of the District's counterproposals. At the conclusion of that caucus, the Union immediately notified the District that it was demanding mediation. (R. 112; UX 1, Tab 18; *Brief* at 8). The District argued that the parties' negotiations were not ripe for mediation and informed the Union that mediation was entirely premature, particularly given the fact that the Union had just submitted new proposals for the first time at the prior session and the parties had not engaged in any serious dialogue over those proposals. The Union refused to participate in any further bargaining that day. (R. 113).

The parties proceeded to mediation on August 27, 2013, with FMCS mediator Javier Ramirez. (R. 16, 113; *Brief* at 8-9). At mediation, the District continued to maintain its position that mediation was entirely premature and inappropriate. (R. 113). At the conclusion of that one and only day of mediation between the parties' negotiating teams, the parties had made no further progress and the Union notified the District that it was proceeding to interest arbitration. (R. 113). The District continued to maintain its position that the Union was putting the cart before the proverbial horse: just as mediation was inappropriate, so too was interest arbitration at that juncture.

10. The ALJ's Decision: The Union Engaged in Bad Faith Bargaining

On May 14, 2014, the ALJ issued a Recommended Decision and Order (“RDO”) finding that the Union failed and refused to bargain in good faith in violation of Section 10(b)(4) of the Act when it failed and refused to meet at reasonable times and places for the purpose of negotiating a successor collective bargaining agreement, and when it failed to appoint representatives with sufficient authority to bargain in good faith. The Employer notes that the ALJ found that, over the course of one year of negotiations, the Union offered few dates for bargaining in contrast to the dozens of potential bargaining dates offered by the District. The ALJ also found that the Union routinely failed to respond to the inquiries of the District’s chief spokesperson, regularly cancelled scheduled bargaining sessions without explanation, and ultimately only agreed to and appeared at just a small handful of sessions. The ALJ concluded that such “negative, uncooperative conduct unreasonably impeded the bargaining process and frustrated negotiations so as to evidence a lack of regard for the bargaining obligation” under the Act.

Management points out that the ALJ also found that the Union failed to designate representatives with the requisite authority to bargain in good faith. This occurred, as the ALJ found, at the outset of negotiations when Lisa B. Moss, the Union’s attorney, notified the District that the Union would not tentatively agree to “any item” until she could review it, and then was not present during the parties’ bargaining sessions, according to the Administration. *See Brief for the District* at 9-10).

On or about June 13, 2014, Counsel for the Union filed *Respondent’s Memorandum in Support of Exceptions to Administrative Law Judge’s Recommended Decision and Order*, which was made available to me via an e-mail from Union Counsel Lisa Moss. In a nutshell, the Union contested the findings of bad-faith bargaining by ALJ Martin Kehoe and offered a meeting-by-meeting account of bargaining. *Id.* In no uncertain terms it asserted that the ALJ erred in making numerous findings of fact that were either erroneous or completely unsupported by the record evidence. *Id.* at 18. According to the Union, there was no uncooperative conduct that impeded the bargaining process and frustrated negotiations. *Id.* at 40.

* * * *

The significance of citing the parties bargaining history is this: In resolving impasse items under the Illinois Statute Interest Arbitrators frequently note that certain issues (insurance contributions, for example) are better left to bargaining. (See, citations *infra* in section dealing with insurance). Arbitrators also point out when parties have not bargained an issue, generally as a rationale for not awarding an item requested by a party. From my perspective this case is *sui generis*, meaning that, as far as I can tell, little bargaining has taken place on some major issues, which is rare in protective services arbitration.¹ Whether the Union is guilty of bad-faith bargaining is beyond my pay grade and, as such, I render no opinion on that issue.

¹ Maybe it is not so rare. Some parties do not like exchanging final offers prior to the hearing because they have not yet engaged in bargaining over these issues (this does not happen under the Iowa statute). It is only at the hearing that a party begins to ascertain the other party’s position. Parties who agree to exchange final offers *before the hearing* (with exceptions) have engaged in bargaining. My take here is that the District and the Firefighters have not engaged in sufficient bargaining over many

II. RELEVANT STATUTORY PROVISIONS

As in all interest arbitration cases involving protective service bargaining units in Illinois, the Arbitrator's findings and decisions must be based upon the requirements set forth in Section 14 of the *Act*, as applicable. See, *Town of Cicero v. Illinois Association of Firefighters Local 717*, 338 Ill. App. 3d 364; 788 N.E.2d 286; 272 Ill. Dec. 982 (1st Dist., 2003) ("*Town of Cicero II*"). The following provisions of Section 14 of the *Act*, 5 ILCS 315/14(g) & (h), are relevant to these proceedings:

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

(h) Where there is no agreement between the parties, . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer;

(2) Stipulations of the parties;

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

In public employment in comparable communities.

In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as cost of living;

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration

of the issues before me and, accordingly, this is why they are at impasse. In my world, when little or no bargaining has not taken place, the moving party has an additional burden to overcome.

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(h)

* * * *

(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 increased 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.

5 ILCS 315/14(h) and (j).

In addition, it is well settled that, where one or the other of the parties seeks to obtain a substantial departure from the parties' *status quo*, an "extra burden" must be met before the Arbitrator resorts to the criteria enumerated in Section 14(h) of the Act.

The oft-cited standards regarding this "extra burden" has been articulated by numerous arbitrators. Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, declared:

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

Will County Board and Sheriff of Will County (Nathan, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at 18-19 (Kohn, 1995).

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

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

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

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

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

Sheriff of Will County at 51-52 (emphasis mine); See, also, *Sheriff of Cook County II*, at 17 n.16, and at 19.

III. SUMMARY: IMPASSE ISSUES BEFORE THE ARBITRATOR

The Union's Issues

ARTICLE V, PROBATION PERIOD/SENIORITY/LAYOFF AND RECALL, Section 5.1 – Probationary Period. (Economic).

ARTICLE VI, GRIEVANCE PROCEDURE, Section 6.1 – Definition of Grievance, Section 6.2 - Procedure. (Non-Economic).

ARTICLE VII, HOURS OF WORK AND OVERTIME, Section 7.1 – Workweek for Shift and Day Personnel. (Economic).

ARTICLE VIII, WAGES, Section 8.1 - Salary Schedule and Appendix B. (Economic).

ARTICLE VIII, WAGES, Section 8.3 - Driver's Stipend. (Non-Economic).

ARTICLE VIII, WAGES, Section 8.8 - Longevity Pay. (Economic).

ARTICLE VIII, WAGES, Section 8.8.1 - Longevity Incentive. (Non-Economic).

ARTICLE IX, SICK LEAVE, Section 9.3 (Resolved via T.A March 6, 2014)(U. Ex. 1, Tab 17, last page).

ARTICLE X, PAID LEAVES – ABSENCES/HOLIDAYS, New Section 10.8 - Emergency Leave. (Economic).

ARTICLE XII, INSURANCE, Section 12.2 - Insurance Upon Retirement. (Non-Economic).

ARTICLE XXIII – PROMOTIONS and Appendix G. (Non-Economic).

ARTICLE XXIV, DURATION OF AGREEMENT. (Economic).

Memorandum of Agreement Retroactivity. (Economic).

(UX 1, Tabs 21, 25).

The District's Issues

ARTICLE VII, Section 7.2 – Overtime. (Economic). The Union asserts that at the hearing the Employer failed to present any evidence to support this proposal. Therefore, the Union deems it withdrawn. (See discussion, *infra*).²

ARTICLE XII, Section 12.1 – Coverage and Cost. (Economic).

ARTICLE XII, Section 12.4 – Cost Containment. (Economic).

Article XII, Section 12.5 – Joint Insurance Committee. (District: Economic; Union: Non-economic).

Article XIII, Section 13.5 – Job Descriptions (withdrawn).

(UX 1, Tabs 22, 26; *Brief for the District* at 10).³

² Significantly, this issue, although identified by the Employer in its *Brief* at 10 as a District issue (Overtime [Section 7.2])(*District Issue*), was not briefed. Still, the issue is not considered withdrawn and will be addressed accordingly in this opinion.

³ The District (*Brief* at 10) lists the issues for resolution as follows:
Grievance Procedure [Section 6.2] (Union Issue)
Workweek for Shift and Day Personnel [Section 7.1] (Union Issue)
Overtime [Section 7.2] (District Issue)

In addition, the parties are at impasse regarding the relevant bench-mark comparables.⁴

IV. THE COMPARABLES

The record indicates that the parties have agreed on most, but not all, of the proposed external comparables which include:

Addison Fire Protection District
Bartlett Fire Protection District
Bloomingdale Fire Protection District
Carol Stream Fire Protection District
Darien-Woodridge Fire Protection District
Lemont Fire Protection District
West Chicago Fire Protection District

The Union proposes Norwood Park Fire Protection District (“Norwood”) as an additional comparable unit. The District proposes two additional comparable units: Frankfort Fire Protection District (“Frankfort”) and Pleasantview Fire Protection District (“Pleasantview”).

* * * *

As noted, the statute effectively requires the Arbitrator to consider the criterion of comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work given consideration to factors peculiar to the area and the classifications involved. Significantly,

Driver’s Stipend [Section 8.3] (Union Issue)
Longevity Pay [Section 8.8] (Union Issue)
Longevity Incentive [Section 8.8.1] (Union Issue)
Emergency Leave [New Section] (Union Issue)
Health Insurance Coverage and Cost [Section 12.1] (District Issue)
Insurance Upon Retirement [Section 12.2] (Union Issue)
Health Insurance Cost Containment [Section 12.4] (District Issue)
Health Insurance Joint Committee [Section 12.5] (District Issue)
Duration [Article XXIV] (Joint Issue)
Wages [Appendix B] (Joint Issue)

Unlike the Firefighters, the District did not list retroactivity as an issue for resolution, although it has advanced a position on the matter. Believing that the parties’ final offers are similar, the District has proposed that salary and 7(g) wages be retroactive to June 1, 2012. The issue was not briefed.

⁴ As will be discussed *infra*, while the parties agreed on the selection of seven comparable fire protection districts, the parties dispute whether Norwood Park Fire Protection District (Union suggested comparable), Pleasantview Fire Protection District (District suggested comparable) and Frankfort Fire Protection District (District suggested comparable) should be included among the comparables. See, *Brief for the District* at 10.

the Act does not specify the weight to be given to any specific criterion in any specific dispute.

With exceptions, and as stated by Arbitrator James Scoville, “A general rule in public sector interest arbitration is to use external comparisons for wages and internal comparisons for benefits.” *Central Decatur Schools & Central Decatur Education Ass’n, PERB CEO #127/3* (Scoville, 2004). “This is not invariable, but as Elkouri & Elkouri puts it: ‘Benefits issues, such as health insurance, are often resolved through the use of internal comparables.’” *Scoville* at 4. Particularly relevant in this case, Arbitrator Scoville went on to observe:

Arbitrators are notoriously reluctant to change long-standing provisions of an agreement. Thus, although the parties are encouraged to accept the general validity of the distinctly different uses to which internal and external comparisons are commonly put, this Arbitrator will not use them to destroy a long-prevailing benefit, especially one restored to full coverage through bargaining. (*Scoville* at 5).

In *Macon County Board and AFSCME, Council 31 and Local 612, S-MA-94-70*, Arbitrator Peter Feuille stressed geography and size in selecting comparables. His reasoning is instructive in this case:

I selected 12 comparison counties from the Union’s comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St. Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions. Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. Feuille at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP, S-MA-94-215* (1995), likewise found *geographic proximity* and *local labor markets* as primary considerations in selecting comparables:

The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.

It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That principle has been upheld again and again by interest arbitrators and there is no need to discuss it at length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defined that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as “just too far away to be meaningful for comparison purposes.” Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, “as being outside of the local labor market in which Mt. Vernon competes for police officers.” *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in *City of Springfield & IAFF, Local 37*, S-MA-18 (Berman, 1987), at 26, “[d]etermining comparability is not an exact science.” Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int’l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:

The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

Thus, in selecting a comparability group, the arbitration panel should look to “those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace.” The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources. *Kohn* at 7 (emphasis mine).

Arbitrator Charles Fischbach, in *City of Du Quoin & IL FOP* (2008), S-MA-04-075, observed that “external comparability is a crucial factor in interest arbitration because it often receives the most attention from the parties.” *Fischbach* at 23. I submit that the attention is often disproportional to its importance in selecting final offers.

Especially relevant is the fact that arbitrators give greater weight to internal comparability *vis-à-vis* external comparability when health insurance is at issue. See, e.g., *Elk Grove Village & Metropolitan Alliance of Police (MAP)* (Goldstein, 1996) (concluding: “the factor of internal comparability alone required selection of the Village’s insurance proposal.” Goldstein observes that arbitrators “have uniformly recognized the need for uniformity in administration of health insurance benefits.”); See also, *Loess Hill Area Education Agency No. 13 & Loess Hills AEA No. 13 Education Association, PERB CEO #27/1* (Gallagher, 2008) (“Regarding the Agency’s argument that internal comparables should be more compelling on the insurance issue, this Arbitrator generally agrees.” *Gallagher* at 13. Arbitrator Gallagher further notes: “significant changes in benefits should be bargained for and agreed to in the give-and-take of negotiations.” *Id* at 14); *Winneshiek County & UE Local 869 (Roads Unit)*, PERB CEO #463/2 (Feuille, 2008) (selecting County’s insurance proposal providing no contribution for dependant health insurance, reasoning that internal comparables indicate “the County had not ever contributed toward the cost of dependant insurance for any of its employees.” *Feuille* at 22); *Dubuque Community School District & Dubuque Education Association* (Thompson, 2011) (rejecting employer’s proposal for greater contribution, reasoning: “The Arbitrator is reluctant to change the insurance based upon internal comparability, especially given the fact that other employees receive 75%, not the 71% noted in the Employer’s arbitration position.” *Thompson* at 12); *AFSCME Council 61 & City of Cedar Rapids, IA, PERB CEO #113/2* (T. Gallagher, 2010) (“the use of external comparisons when determining health insurance issues has

diminished relevance because of variations from city to city in health insurance plan benefits and in wages and other forms of direct and indirect compensation.” *Gallagher* at 17); *City of Iowa City, IA & Police Labor Organization of Iowa City, PERB CEO #338* (Jacobs, 2011) (“Finally, as many arbitrators have noted, health insurance is uniquely specific to each public employer. It may not be completely accurate to compare ‘costs’ without comparing the plan themselves along with a variety of other factors in comparing them. *This is why internal consistency is generally the most important factor for such a fringe benefit because of the unique history of each such plan may have and how it may have changed over time with differing concessions, bargaining history and negotiated changes in exchange for other things across jurisdictional lines.*” Jacobs at 10; emphasis mine).

Similar to my holding in *Town of Normal & IAFF 2442* (2007), applying the above principles, and conceding that “this analysis is anything but an exact science,” I find the Union’s comparability analysis with respect to the bench-mark jurisdictions (and numbers) more on point than the Administration’s assertions.

Significantly, there are no historical comparables since the parties have never engaged in interest arbitration to determine a set of comparables. Therefore, the Arbitrator must determine whether any of the remaining three (3) proposed fire protection districts constitute comparable units within the meaning of the Act.

I agree with the Union that the goal in determining comparables is to select similar units within the “local labor market.” *Macoupin County Health Department and AFSCME, Local 3176*, ILRB Case No. S-MA-08-103 at 15 (Hill Arb.) (2008). “The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources.” (Id. at 16-17, quoting *City of Aurora & Aurora Firefighters Union, Local 99*, ILRB Case No. S-MA-95-44 (Kohn Arb.) (1995). Relevant data typically includes:

- population;
- department size;
- total number of employees;
- number of bargaining unit members;
- income levels;
- sales tax revenues;
- EAV (Equal Assessed Valuation);
- general fund revenues; and
- geographic location.

See, Edward Benn, A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act, 15, No. 4 Illinois Public Employee Relations Report 1, 2 (Autumn 1998); *City of Alton and Policemen’s Benevolent and Protective Association, Unit 14*, ILRB Case No. S-MA-02-231 (Kossoff Arb.) (2003); *Village of Oak Brook and Teamsters Local Union No. 714*, ILRB Case No. S-MA-96-242 (Kossoff Arb.) (1998). When selecting the comparable jurisdictions, arbitrators most commonly apply a

comparability range of plus or minus fifty percent ($\pm 50\%$) to the various criteria. City of Alton at 7-8, 16.

Of the three (3) additional units proposed by the parties as comparables, Norwood Park FPD is the only proposed comparable in the same labor market as the District which matched all nine (9) relevant criteria. While the Administration argues otherwise (See, *Brief* at 10-11), I see no basis for excluding Norwood. Significantly, the Union evaluated other fire protection districts under nine (9) traditionally accepted criteria, including, population, number of employees, EAV, property tax revenue, total revenue, total expenses, per capita income, median household income, and median home value. The Union derived the data for evaluation from reliable, independent third party sources. The data for population, EAV, property tax revenue, total revenue and total expenses were obtained from the Illinois State Comptroller's Annual Financial Report. The number of fire department employees was obtained from the Illinois Department of Insurance Pension Division. The per capita income, median household income and median home value were derived from the American Community Survey US Census Bureau 2011 "5 year average". The Union evaluated these criteria for each of the three contested comparable districts to determine the number of matches that fell within the generally accepted comparability range of plus or minus fifty percent ($\pm 50\%$) of the data for the District. The shaded areas in Union Exs. 2A, 2B and 2C represent those communities that fall within $\pm 50\%$ of the District.

Based upon the evidence, it is evident that eight (8) units, including the seven agreed upon fire protection districts and Norwood Park FPD, are comparable to the District. I note that these eight fire protection districts are the only districts within a 20-mile radius that match the District in all nine (9) criteria. All eight (8) fire protection districts proposed by the Union match the District within $\pm 50\%$ of all of the relevant criteria and all are within approximately 20 miles of the District. Bartlett is the farthest comparable included among the Union's proposed comparables at 20.54 miles from the District.

For the above reasons, Norwood Park FPD is the only proposed comparable which matches all nine (9) relevant criteria.

What of the Administration's argument (*Brief* at 10-11) that Frankfort FPD and Pleasantview FPD should be considered as a comparable?

I agree with the Union, that the data demonstrates that the two (2) additional comparables proposed by the Employer are not truly comparable for purposes of interest arbitration. Here, the Employer objects to the inclusion of Norwood Park, even though the data shows it is within $\pm 50\%$ of the District on nine traditionally accepted criteria, yet seeks to include Frankfort FPD and Pleasantview FPD, which match the District on only eight (8) and seven (7) criteria, respectively. Moreover, the Employer advocates for the inclusion of Frankfort FPD, which matches the District in eight (8) traditionally accepted criteria, but inexplicably does not seek to include the other four (4) districts that also match the District in eight (8) of the traditionally accepted criteria, even though three of them (Homer FPD, Plainfield FPD, and Mokena FPD) are closer to the District than Frankfort FPD.

Similarly, the Employer seeks to include Pleasantview FPD, which matches the District in just seven traditionally accepted criteria, but omits the same four (4) districts that match in eight (8) categories, while also excluding four (4) additional fire protection districts (North Palos FPD, Palos FPD, New Lenox FPD and Elburn-Countryside FPD) that also match seven (7) traditionally accepted criteria. The District provides no explanation for its decision to exclude the eight (8) districts that match an equal number or more criteria than the two it selected for inclusion. Furthermore, while the District objects to inclusion of Norwood Park FPD on the grounds that the area served by Norwood Park FPD is smaller than the area served by the District, it simultaneously advocates the inclusion of Frankfort FPD, which serves an area more than double that of the District, and has the highest Median Household Income of all twenty-five (25) fire protection districts analyzed by the Union.

There is no reason to accept the two (2) communities advocated by the District, without also including the eight (8) similarly qualified districts omitted by the District.

All in all, the Union advances the better case on the comparables.

V. FOCUS OF AN INTEREST ARBITRATOR IN RESOLVING DISPUTES

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

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

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

See, City of Galena, IL, Case S-MA-09-164 (Callaway, 2010). See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

Chicago Arbitrator Elliott Goldstein had it right and said it best: “Interest arbitrators are essentially obligated to replicate the results of arm’s-length bargaining between the parties, and to do no more.” *Metropolitan Alliance of Police, Chapter 471, FMCS 091103-0042-A (2009).*⁵

There is no question that arbitrators, operating under the mandates of the Illinois statute, apply the same focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one’s own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.⁶ Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

⁵ See also, City of East St. Louis & East St. Louis Firefighters Local No. 23, S-MA-87-25 (Traynor, 1987), where the Arbitrator, back in 1987, recognized the task of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor’s words:

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

Id. at 11.

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

⁶ In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

VI. RESOLUTION OF ISSUES AND ANALYSIS

UNION ISSUE NO. 1

ARTICLE V, PROBATION PERIOD/SENIORITY/LAYOFF AND RECALL, Section 5.1 – Probationary Period

The Arbitrator retained jurisdiction to hear this issue, if necessary, pending the outcome of the Union's Petition For Declaratory Ruling filed with the General Counsel for the Illinois Labor Relations Board concerning whether the District's proposal constitutes a permissive subject of bargaining over which this arbitrator has no jurisdiction.

UNION ISSUE NO. 2

ARTICLE VI, GRIEVANCE PROCEDURE, Section 6.1 – Definition of Grievance, Section 6.2 – Procedure

Current Contract Language

Section 6.1 - Definition of Grievance. A grievance is a dispute or difference of opinion raised by an employee, group of employees (with respect to a single common issue) covered by this Agreement or the Union involving an alleged violation of an expressed written provision of this Agreement, except that any dispute or difference of opinion concerning a matter or issue which is subject to the jurisdiction of the Board of Fire Commissioners, except as otherwise provided in Article XXI, or concerning the imposition of discipline to a probationary employee shall not be considered a grievance under this Agreement.

Section 6.2 - Procedure. All grievances shall be handled in accordance with the following procedure. Nothing in this section shall prevent the parties from conducting off-the-record discussions regarding a grievance, including settlement, which shall not be raised in any subsequent proceedings.

Step 1. The employee, employees, or Union, as the case may be (hereinafter referred to as "grievant"), must file a written grievance setting forth the name(s) of the aggrieved employee(s) and the nature of the dispute, including the specific provisions of this Agreement which are at issue, with the Deputy Fire Chief within ten (10) calendar days of the occurrence of the event giving rise to the grievance. The Deputy Fire Chief shall submit a written answer to the grievant within ten (10) calendar days of receipt of the grievance.

Step 2. In the event the grievance is not resolved at Step 1, the grievant may file a written appeal with the Fire Chief within ten (10) calendar days of receipt of the Step 1 answer. Within ten (10) calendar days after receipt of the Step 2 appeal, the Fire Chief shall convene a meeting with the

grievant and/or Union representative to hear the grievance. The Fire Chief shall render an answer in writing within ten (10) calendar days of the date of the meeting. The parties agree that written appeal from Step 1 shall set forth the facts, arguments and contract provisions which form the basis of the appeal. Likewise, the answer at Step 2 shall set forth the facts, arguments and contract provisions which form the basis of the District's answer. The meeting at Step 2 shall be a thorough discussion between the parties of the merits of the grievance and appeal. The parties agree that the term "grievant" as used in Steps 2 and 3 shall mean the Union only.

Step 3. In the event the grievance is not resolved at Step 2, the grievant may refer the grievance to binding arbitration, as described below, by delivering a written notice of referral to arbitration to the Chief within twenty (20) calendar days after receipt of the Fire Chief's Step 2 answer.

The remainder of this Article is not affected by the Union's proposal.
(UX 1, Tab 9 at 6-7).

Union's Proposal

Section 6.1 - Definition of Grievance. A grievance is a dispute or difference of opinion raised by an employee, group of employees (with respect to a single common issue) covered by this Agreement or the Union involving an alleged violation of an expressed written provision of this Agreement, except that any dispute or difference of opinion concerning a matter or issue which is subject to the jurisdiction of the Board of Fire Commissioners, except as otherwise provided in Articles XXI and XXIII, or concerning the imposition of discipline to a probationary employee shall not be considered a grievance under this Agreement.

Section 6.2 - Procedure. All grievances shall be handled in accordance with the following procedure. Nothing in this section shall prevent the parties from conducting off-the-record discussions regarding a grievance, including settlement, which shall not be raised in any subsequent proceedings.

Step 1. The employee, employees, or Union, as the case may be (hereinafter referred to as "grievant"), must file a written grievance setting forth the name(s) of the aggrieved employee(s) and the nature of the dispute, including the specific provisions of this Agreement which are at issue, with the ~~Deputy~~ Fire Chief within ten (10) calendar days of the occurrence of the event giving rise to the grievance. The ~~Deputy~~ Fire Chief shall submit a written answer to the grievant within ten (10) calendar days of receipt of the grievance.

Step 2. In the event the grievance is not resolved at Step 1, the grievant may file a written appeal with the ~~Trustees~~ Fire Chief within ten (10) calendar days of receipt of the Step 1 answer. Within ten (10) calendar days after receipt of the Step 2 appeal, the ~~Trustees~~ Fire Chief shall convene a meeting with the grievant and/or Union representative to hear the grievance. The ~~Trustees~~ Fire Chief shall render an answer in writing within ten (10) calendar days of the date of the meeting. The parties agree that the answer at Step 1/written appeal from Step 1 shall set forth the facts, arguments and contract provisions which form the basis of the answer/appeal. Likewise, the answer at Step 2 shall set forth the facts, arguments and contract provisions which

form the basis of the District's answer. The meeting at Step 2 shall be a thorough discussion between the parties of the merits of the grievance and appeal. The parties agree that the term "grievant" as used in Steps 2 and 3 shall mean the Union only.

Step 3. In the event the grievance is not resolved at Step 2, the grievant may refer the grievance to binding arbitration, as described below, by delivering a written notice of referral to arbitration to the Trustees Chief within twenty (20) calendar days after receipt of the Trustees' Fire Chief's Step 2 answer.

The remainder of this Article shall be *status quo* language.
(UX 1 at Tab 25 at 2-3).

District's Proposal

Section 6.1 - Definition of Grievance. A grievance is a dispute or difference of opinion raised by an employee, group of employees (with respect to a single common issue) covered by this Agreement or the Union involving an alleged violation of an expressed written provision of this Agreement, except that any dispute or difference of opinion concerning a matter or issue which is subject to the jurisdiction of the Board of Fire Commissioners, except as otherwise provided in Articles XXI and XXIII, or concerning the imposition of discipline to a probationary employee shall not be considered a grievance under this Agreement.

Section 6.2 - Procedure. The District proposes the Status Quo Contract language for Section 6.2.

Although the Union submitted this issue as a single proposal, the District separated the Union's issue into 2 separate proposals. This is of no consequence here as the parties agree on Section 6.1, and only Section 6.2 remains for resolution.

Position of the Union

There is no dispute that Section 6.1 of the parties' collective bargaining agreement should be amended to include reference to Article XXIII. Therefore, this Union's proposal should be incorporated into the Successor Labor Agreement. The Union contends that the Final Offers submitted by the Union and District propose identical language for Section 6.1 of the Successor Agreement. Accordingly, the Arbitrator should incorporate into the Successor Agreement the proposed language referring to Article XXIII, making explicit the Union's right to grieve issues involving the promotion process.

The Union's proposed Amendment to Section 6.2 should be incorporated into the Successor Collective Bargaining Agreement. The Union argues that it demonstrated at the hearing that the current grievance process is broken, as it no longer operates as the parties intended and set forth in their previous collective bargaining agreements, and has resulted in due process problems for the Union. Additionally, the Union has demonstrated that its proposed

amendment is reasonable and consistent with the practices of comparable fire protection districts. Since the District has resisted the Union's efforts to address this matter at the bargaining table, the Union must be allowed to obtain a remedy in interest arbitration. Its proposal should be adopted.

The Union's proposed amendment to Section 6.2 restores the review procedure that the parties' agreed to and incorporated in their previous collective bargaining agreements.

Amending the language of Section 6.2 of the Agreement, as proposed by the Union, would restore the grievance process to that which was originally envisioned by the parties. Currently, Section 6.2 of the Agreement, which has been substantially the same since the parties' initial CBA, establishes a three step grievance process. In Step 1 of this process, the Union or aggrieved employee is to submit a written grievance to the Deputy Fire Chief setting forth the nature of the dispute. The Deputy Fire Chief is required to respond in writing. If the grievant disagrees with the Deputy Fire Chief's answer, a written appeal may be made to the Fire Chief. This written appeal to the Fire Chief is Step 2 of the process. Step 3 of the process is arbitration. The grievance process is currently dysfunctional, however, because there is no Deputy Chief. As a result, instead of two steps of review prior to arbitration, there is functionally only one step, to the Fire Chief. Instead of review by the Deputy Chief and appeal to a Fire Chief, as the parties intended, the Fire Chief provides both the initial review, as well as the answer on appeal.

This procedure offends notions of due process. In the absence of a Deputy Chief, it is more than likely that the Fire Chief is the only District administrator whose actions will be challenged in the grievance procedure. It seems highly unlikely, says the Union, that the Fire Chief would overturn his own decision; therefore, functionally, there presently is only one level of review, which is self-review. Requiring the Union to appeal decisions to the same source that made the decision for which appeal is sought amounts to a deprivation of due process. To avoid this result and to restore the two step grievance review process originally intended, the Union proposes the simple measure of substituting the Fire Chief for the Deputy Chief at Step 1, and the District's Trustees for the Fire Chief at Step 2. The Union's proposal should be incorporated into the Successor Agreement because it reestablishes the two step review process the parties had historically utilized prior to the absence of a Deputy Fire Chief. It has the added benefit of allowing the Union to present its arguments directly to the Trustees who serve as a true appeal process from the Chief's decisions.

The Union argues that the need for its proposed language is further supported by the fact that, even when the District employed a Deputy Fire Chief, the process did not function as envisioned. At hearing, the Union provided examples of the Deputy Chief's Step 1 grievance responses that were perfunctory denials, lacking any explanation. The parties skipped Step 1 altogether due to the Deputy Chief's absence, and the process was immediately advanced to Step 2. Thus, it is clear that review by the Deputy Chief did not constitute a meaningful component of the grievance procedure.

In summary, the Union's proposal provides the parties with more opportunity to discuss and, hopefully, resolve issues without resorting to the time consuming and expensive arbitration

procedure. By including the District's Trustees in the grievance procedure, and deleting the Deputy Chief, the proposal creates an opportunity for more meaningful discussion at earlier levels in the grievance process, and a greater likelihood that grievances will be resolved by the parties themselves. For all of these reasons and all of the reasons stated above, the Union's proposal to amend Section 6.2 should be incorporated into the parties' Successor Agreement. The Union's proposal is consistent with the grievance processes in the comparable districts. Not surprisingly, the Union's proposal, to include the Trustees in the grievance process, is also supported by comparison with the grievance processes utilized in comparable districts. Four of the Union's eight proposed comparable districts employ a 2-step process culminating with review by the fire protection district's trustees. In fact, the District's own proposed comparable Districts – Frankfort FPD and Pleasantview FPD - include an appeal to the districts' trustees before resorting to arbitration. Thus, including the disputed comparable districts, six of ten comparable districts include an appeal to the districts' trustees before resorting to arbitration. (Id.). On the other hand, none of the proposed ten comparable districts have fewer than two steps in their grievance process, leaving the District as the sole employer that has merely one level of review 3 – to the Fire Chief – before the parties are left with arbitration as the sole means of resolving grievances.

The Union's proposed language for Section 6.2 should be awarded and incorporated into the Successor Agreement. It represents a reasonable means of ensuring meaningful discussion in the parties' grievance process by restoring a functional two-step review process. This sensible solution is the practice in the majority of comparable districts, and should be adopted here to resolve the due process issues resulting from the currently broken grievance procedure.

Position of the District

The Union's final offer regarding the Grievance Procedure Issue is not supported by the evidence record. As such, the Union's proposal to make wholesale changes to the grievance procedure should be rejected. **Management asserts that the parties' contractual grievance procedure has remained unchanged since their initial collective bargaining agreement in 1992. Their bargaining history, as reflected in their six prior contracts, reveals no tendency whatsoever to modify this *status quo*.**

Further, the Union did not offer any evidence that it has sought to negotiate these changes prior to this round of negotiations, and proffered no evidence that it engaged in any substantive negotiations regarding this proposal during these negotiations. The only evidence offered by the Union in support of this proposal was the following: "currently" the Deputy Chief position is vacant, and the Deputy Chief has issued blanket denials of grievances in the past. (R. 27-29).

Management points out that no flimsier evidence could be submitted in support of a final offer seeking to alter the *status quo*. As Chief Mancione testified at hearing, he has every intention of filling the Deputy Chief positions, thus eliminating the Union's first proffered reason for this proposal. (R. 159). Moreover, and contrary to the Union's suggestion, grievances have been resolved at the Deputy Chief's level in the past, and the Deputy Chief has, in fact, issued much more

than blanket denials of grievances, instead providing detailed rationale for the reasons for denying a grievance. (R. 150-155; Dist. Ex. 6).

The Union's proposal also is not supported by the external comparables. First, all of the external comparable districts recognize a management level below that of Fire Chief as part of an early step for grievance resolution, either explicitly recognizing a subordinate title such as Battalion Chief, Deputy Chief or Shift Commander as the first or second step in the grievance procedure, or implicitly recognizing it by including language providing for the "Fire Chief or his/her designee." Not only does the Union's proposal eliminate the express inclusion of the Deputy Chief at the first step of the grievance procedure, but it also does not recognize the ability of the Fire Chief to designate another rank to hear grievances in his or her stead. Second, of the agreed upon comparables, only three include the Board of Trustees as a step in the grievance process. This is true, no doubt, for exactly the reasons Chief Mancione identified at hearing, which include needless complication of the grievance process, an inability to ensure compliance with response timelines due to the scheduling of Board of Trustees meetings, and a distance of elected officials from the day to day operations of the District as well as collective bargaining matters. (R. 155-156).

The Union's final offer regarding the grievance procedure clearly is an unwarranted breakthrough that seeks to alter dramatically the parties' existing contract language. The interest arbitration process, however, is extremely conservative, and frowns upon breakthroughs: it places a substantial burden on the party seeking the breakthrough to demonstrate that the existing system is broken. See, e.g., City of Highland Park and Teamsters Local 700, Case No. S-MA-09-273, at 14 (Benn, 2013). In the District's view, the Union has failed to satisfy that burden. Accordingly, its final offer on the grievance procedure should be rejected in its entirety.

ANALYSIS AND AWARD

As pointed out by the Employer, currently, the parties' negotiated *status quo* regarding their contractual grievance procedure is set forth in Article VI of the parties' collective bargaining agreement. That provision establishes a three-step grievance procedure consisting of the following: Step 1/Deputy Chief; Step 2/Fire Chief; and Step 3/final and binding arbitration. At the parties' second to last bargaining session, and continuing in its final offer, the Union proposed to eliminate the Deputy Chief's involvement, collapse the District's administrative role in the grievance procedure to one step involving solely the Fire Chief, and include for the first time the District's elected Board of Trustees in the grievance procedure as the final step prior to proceeding to arbitration (*Brief* at 18-19).

Further supporting the Administration's position is this: Not only does the Union's proposal eliminate the express inclusion of the Deputy Chief at the first step of the grievance procedure, but it also does not recognize the ability of the Fire Chief to designate another rank to hear grievances in his or her stead. Also, the Administration has indicated that it is in the process of appointing an individual to the position.

I also find significant that the parties' contractual grievance procedure has remained unchanged since their initial collective bargaining agreement in 1992. In Management's words:

“Their bargaining history, as reflected in their six prior contracts, reveals no tendency whatsoever to modify this *status quo*.” (*Brief for the District* at 19). History favors Management’s case in this instance.

Given the above considerations, the position of the Administration is awarded.

UNION ISSUE NO. 3

ARTICLE VII, HOURS OF WORK AND OVERTIME, Section 7.1 – Workweek for Shift and Day Personnel

Current Contract Language

Section 7.1 - Workweek for Shift and Day Personnel. This Article shall not be construed as an absolute guarantee of a specific number of hours of work per day or per week. The shift schedule for employees assigned to fire suppression duties shall normally consist of working 24 hours followed by 48 consecutive hours off. The 24-hour tour of duty shall begin at 7:00 a.m. (0700 hours) and end the following day at 7:00 a.m. (0700 hours). For shift employees of the Bureau of Fire Suppression and Rescue, the District shall assign one (1) 24-hour shift off for each employee every ninth regularly scheduled work day. For probationary employees, the District may establish a different work period and shift schedule.
(UX 1, Tab 9 at 10).

Union’s Proposal

Section 7.1 - Workweek for Shift and Day Personnel. This Article shall not be construed as an absolute guarantee of a specific number of hours of work per day or per week. The shift schedule for employees assigned to fire suppression duties shall normally consist of working 24 hours followed by 48 consecutive hours off. The 24-hour tour of duty shall begin at 7:00 a.m. (0700 hours) and end the following day at 7:00 a.m. (0700 hours). For shift employees of the Bureau of Fire Suppression and Rescue, the District shall assign one (1) 24-hour shift off for each employee every ninth regularly scheduled work day. The annual hours of work for shift employees shall be 2592. For probationary employees, the District may establish a different work period and shift schedule.
(UX 1, Tab 25 at 4).

District’s Proposal

The District proposes the current contract language (*status quo*).
(UX 1, Tab 26 at 5).

Position of the Union

The Union's proposal to amend Section 7.1 merely seeks to codify the *status quo*. The Union asserts that its proposal seeks to achieve two changes, both of which reflect the *status quo*.

First, as argued by the Firefighters, its proposal seeks to delete, for the sake of clarity, the reference to "Day Personnel" in the title of Section 7.1. **There are no longer any day personnel in the District, so the change to remove these words is merely a housekeeping measure intended to clean up the Agreement and remove inoperative language, the Union asserts.** This proposal should be incorporated into the successor collective bargaining agreement in order to provide clarity and consistency within the document, argue the Firefighters.

Notably, the District agreed during negotiations that the verbiage "and Day" should be deleted as evidenced by its October 15, 2012 and April 4, 2013 proposals in which it also sought deletion of this same language. It is inexplicable why suddenly in interest arbitration, the District no longer finds its own proposal acceptable.

Second, the Union proposes incorporating into the successor collective bargaining agreement an explicit statement reflecting the number of annual hours of work for shift employees. The annual hours are used as a divisor to determine the shift employees' hourly rate of pay, which in turn is used to calculate overtime. The Union contends that this number is 2,592. This number has been used ever since the District began using Kelly days, also referred to as "assigned days off" or "ADO's". Through this proposal, the Union seeks to do nothing more than incorporate into the Successor Agreement the status quo number used for annual hours. Although the District did not agree to the number asserted by the Union, it failed to present any evidence to rebut that the annual hours are 2,592. Indeed, the Administration has confirmed that the District uses 2,592 hours as the divisor for the purpose of calculating the hourly rate for overtime purposes. While counsel for the District represented that the District would present its evidence rebutting the Union's contention during the District's presentation, no such evidence was ever presented as there is none.

Furthermore, all of the comparable districts proposed by the parties have specified the annual hours of work in their respective contracts. Accordingly, the Union's proposal should be incorporated into the Successor Agreement, as it merely codifies the unrebutted *status quo* of the parties and is consistent with the practices of comparable districts.

Position of the District

The Union's final offer on the Workweek for Shift and Day Personnel is not supported by the evidence record. Management first argues that the Union's proposal to add new language to the collective bargaining agreement declaring the bargaining unit's annual hours worked is yet another breakthrough item that should be rejected (*Brief for the District* at 20-21).

Currently, the parties' collective bargaining agreement does not identify the annual hours worked, and the Union has suggested not one reason in support of its proposal to alter this status

quo. Stated simply, the notion that it is a “good idea” to include in the contract the annual hours worked by the bargaining unit work is patently insufficient to satisfy the Union’s heavy burden of demonstrating a need to change the status quo. See *City of Highland Park*, Case No. S-MA-09-273, at 5 (Benn, 2013)(“good ideas alone . . . are not good enough to meet this burden to show that an existing term or condition is broken”).

Further, the notion that this is nothing more than merely “housekeeping” is nothing more than a red herring for changing the status quo without satisfying the Union’s heavy burden: If the matter truly concerned only housekeeping, then it would be addressed during the drafting process, and there would be absolutely no need to submit it to an interest arbitrator. See *Village of Skokie and Skokie Firefighters Local 3033 IAFF*, Case No. 12-250, at 36 (Ed Benn, 2014)(holding same).

Finally, the fact that the Union could provide no evidence whatsoever other than external comparability in support of this final offer demonstrates that, at best, only one of Section 14(h)’s statutory factors may be satisfied in connection with this proposal. That is a patently insufficient basis upon which to base a change to the parties’ negotiated status quo. For all of these reasons, then, the Union’s final offer on the workweek should be rejected (*Brief* at 20-21).

ANALYSIS AND AWARD

I am allowed to take judicial type notice of all things known to all reasonable people. See, Hill & Sinicropi, *Evidence in Arbitration* (BNA Books, 1987)(2d edition)(Discussing judicial-type notice by arbitrators). First, rare is the collective bargaining agreement that does not contain a provision designating the hours by which a firefighter works. The Union is simply proposing incorporating into the Successor Agreement an explicit statement reflecting the number of annual hours of work for shift employees. This number is used as a divisor to determine the shift employees’ hourly rate of pay, which in turn is used to calculate overtime. The Union contends that this number is 2,592, and the Administration has not argued that the number is incorrect (at least in its *Brief*). Second, apparently this number (2,592) has been used ever since the District began using Kelly days, and I see no good reason why it should not be included in the parties’ collective bargaining agreement. Third, and as correctly pointed out by the Union, the relevant bench-mark jurisdictions all include the hours in the collective bargaining agreements.

Add to this analysis the fact that there are no longer any day personnel employed in the district, on all counts the Union advances the better case and, accordingly, its final offer on hours is awarded.

UNION ISSUE NOS. 4 AND 12

In its final offer, the District characterized these issues as “joint issues”. (UX 1, Tab 26 at 17, 19; *Brief for the District* at 10).

**ARTICLE VIII, WAGES, SECTION 8.1 - SALARY SCHEDULE and Appendix B
(Union Issue No. 4)**

AND

**ARTICLE XXIV, DURATION OF AGREEMENT
(Union Issue No. 12)**

Current Contract Language

Article VIII, Wages, Section 8.1, Salary Schedule And Appendix B.

Section 8.1 – Salary Schedule. Employees who are bargaining unit members shall be compensated in accordance with the wage schedule attached hereto and incorporated by reference herein as Appendix B. Each bargaining unit employee shall also receive a one time non-precedential \$2,500 sign on bonus for ratification of this Agreement. (UX 1, Tab 9 at 13).

Union’s Proposal

Section 8.1 – Salary Schedule. Employees who are bargaining-unit members shall be compensated in accordance with the wage schedule attached hereto and incorporated by reference herein as Appendix B. ~~Each bargaining unit employee shall also receive a one time non-precedential \$2,500 sign on bonus for ratification of this Agreement.~~ (UX 1, Tab 25 at 4, 17).

District’s Proposal

Section 8.1 – Salary Schedule. Employees who are bargaining unit members shall be compensated in accordance with the wage schedule attached hereto and incorporated by reference herein as Appendix B. ~~Each bargaining unit employee shall also receive a one time non-precedential \$2,500 sign on bonus for ratification of this Agreement.~~ (UX 1, Tab 26 at 7, 19).

ARTICLE XXIV - DURATION OF AGREEMENT

Current Contract Language

This Agreement shall be effective as of June 1, 2009 and shall remain in full force and effect until May 31, 2012. It is the intention of the parties that this Agreement shall supersede the predecessor Agreement between the parties executed on the 28th day of October, 2004. This Agreement shall be automatically renewed from year to year after May 31, 2012 unless either party shall notify the other in writing at least one hundred and twenty (120) days before the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than sixty (60) days prior to the anniversary date. Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives written notice to the other party of its intent to terminate this Agreement at least ten (10) days before the intended termination date, which shall not be before the anniversary date set forth in the preceding paragraph; provided, however, that such right to terminate shall not be deemed a consent or waiver of any right set forth in Section 14(1) of the Illinois Public Labor Relations Act. Further, in the event that the District successfully passes a tax rate referendum during the term of this Agreement, the District and Union agree to a reopener on Sections 7.2, 8.1, 8.1.1, 8.2.1, 8.8, 10.1 and 12.2 of this Agreement for the fiscal year first beginning after the implementation of the tax rate established by the successful referendum.
(UX 1, Tab 9 at 45-46).

Union's Proposal

This Agreement shall be effective as of June 1, ~~2009-2012~~ and shall remain in full force and effect until May 31, ~~2012~~ 2016. It is the intention of the parties that this Agreement shall supersede the predecessor Agreement between the parties. ~~executed on the 28th day of October, 2004.~~ This Agreement shall be automatically renewed from year to year after May 31, ~~2012~~ 2016 unless either party shall notify the other in writing at least one hundred and twenty (120) days before the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than sixty (60) days prior to the anniversary date. Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives written notice to the other party of its intent to terminate this Agreement at least ten (10) days before the intended termination date, which shall not be before the anniversary date set forth in the preceding paragraph; provided, however, that such right to terminate shall not be deemed a consent or waiver of any right set forth in Section 14(1) of the Illinois Public Labor Relations Act. Further, in the event that the District successfully passes a tax rate referendum during the term of this Agreement, the District and Union agree to a reopener on Sections 8.1, 8.1.1, 8.2, 8.2.1, 8.8, 10.1 and 12.2 of this Agreement for the fiscal year first beginning after the implementation of the tax rate established by the successful referendum.

(UX 1, Tab 25 at 13-14).

District's Proposal

This Agreement shall be effective as of June 1, ~~2009-2012~~ and shall remain in full force and effect until May 31, ~~2012~~ 2018. It is the intention of the parties that this Agreement shall supersede the predecessor Agreement between the parties. ~~executed on the 28th day of October, 2004.~~ This Agreement shall be automatically renewed from year to year after May 31, ~~2012~~ 2018 unless either party shall notify the other in writing at least one hundred and twenty (120) days before the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than sixty (60) days prior to the anniversary date. Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives written notice to the other party of its intent to terminate this Agreement at least ten (10) days before the intended termination date, which shall not be before the anniversary date set forth in the preceding paragraph; provided, however, that such right to terminate shall not be deemed a consent or waiver of any right set forth in Section 14(1) of the Illinois Public Labor Relations Act. Further, in the event that the District successfully passes a tax rate referendum during the term of this Agreement, the District and Union agree to a reopener on Sections 8.1, 8.1.1, 8.2, 8.2.1, 8.8, 10.1 and 12.2 of this Agreement for the fiscal year first beginning after the implementation of the tax rate established by the successful referendum.

(UX 1, Tab 26 at 17).

Position of the Union

The Union proposes that the Successor Agreement run for a term of four (4) years ending May 31, 2016, while the District proposes that it run six (6) years ending on May 31, 2018. With respect to wages, the Union proposes an increase of 2.75% in each year of its proposed four-year term and to maintain the status quo percent differential between the various ranks. The District proposes increases of 1.5% in the first two (2) years of its proposed six-year term, and increases of 2.0% in each of the last four (4) years (See, *Brief for the Union* at 28-45).

The Union's proposal for the contract term is consistent with the parties' past voluntary agreements and the duration of contracts in comparable fire protection districts. Moreover, the Union's proposed contract term is consistent with concerns expressed by arbitrators who have more recently resolved the issue of contract duration in interest arbitration. Finally, the Union's wage offer better comports with the criteria contained in Section 14(h) of the Act. Consequently, the Arbitrator should adopt the Union's proposal on each of these two issues.

Discussing the parties' final offers (again, the Union has proposed a four-year contract term, and wage increases over those four years; the District has proposed a six-year contract

term, and wage increases over those six years), only the Union had the foresight to contain in its offer a proviso addressing the possibility that the Arbitrator might award a duration different from its proposal. Due to the fact that the District, during contract negotiations, had twice proposed that the successor agreement have a three-year term, the Union included in its wage proposal a contingency for the Arbitrator to consider if he concluded that a term shorter than four years was more appropriate. Unfortunately, the Union is not clairvoyant, and did not anticipate that the District would propose, in its final offer, for the first time ever, that the duration of the successor agreement be six years. Due to this divergence in the lengths of their offers, the Arbitrator invited the parties to provide any precedent in which an interest arbitrator addressed the same issue.

In fact, this Arbitrator has previously addressed this same issue in *Village of Skokie and Skokie Firefighters, IAFF 3033*, ILRB Case No. S-MA-07-007 (2007)(Brief at 32-33). In *Village of Skokie*, the union proposed a three-year contract term, with corresponding wage increases over those three years, while the employer proposed a four-year contract term, with corresponding wage increases over those four years. This Arbitrator first analyzed the duration issue and awarded the union's proposal for a three-year term. (Id. at 14-18). However, after analyzing the various criteria, he awarded the employer's final salary offer covering the four-year term. (Id. at 18-29). In order to do so, the Arbitrator determined, on a non-precedential basis, to "lop off" the fourth year of the employer's salary offer. However, this Arbitrator clearly did not agree that this was permissible under the statute and/or the proper result as noted by the following statement:

In the present case, both parties advanced salary proposals and contract term proposals that are "in sync" – "three and three" (Union), and "four and four" (Employer) without ever asserting that the contract term should be decided before submitting final offers. Significant in this case is this: Union counsel did not object to the Employer's argument as to what should happen if a three-year contract term was awarded (Union proposal), and if the Employer's salary offer was selected, which would result in the last year of the Village's offer being dropped, leaving the Administration with a three-year salary offer. Recognizing that some interest arbitrators have acquiesced to a party "lopping off" the last year if a contract term was awarded that was less than the terms of a party's salary offer, I adopt this procedure on a non-precedent basis in this case, although I have serious misgivings whether this is permissible under the statute. Arguably, if deleting the odd year were permissible under the Act (whenever the term is one year less than a salary offer), both parties would always advance salary proposals for the last year, knowing that an arbitrator would just cut the last year if the awarded term was less than the salary offer. The better view, and one consistent with the purpose of the statute, is that the contract term and the salary offer would go "hand in hand" and not be split.

Village of Skokie and Skokie Firefighters, IAFF 3033 at 29-30, fn.8 (as discussed in the Union's Brief at 33).

The Union contends that, as this Arbitrator stated in *Village of Skokie*, the parties' proposals for contract term and wages should not and cannot be split and the Union has

not agreed to any such outcome. As this Arbitrator is well aware, with respect to economic issues, the Arbitrator must adopt the party's final proposal which best complies with the factors identified in Section 14(h) of the Act. 5 ILCS 315/14(g); *City of Highland Park*, ILRB Case No. S-MA-09-273 (Benn Arb.) (2013) at 6-7. He has no leeway to modify a party's economic offer. Accordingly, the Arbitrator must, in this case, determine whether the Union's proposals for contract term and wages, considered together, better comport with Section 14(h) of the Act than the District's proposals for contract term and wages, considered together. Stated another way, if the Arbitrator concludes that the Union's proposal for a four-year contract term is the better proposal, he must award the Union's wage proposal; he may not "lop off" the last two years of the District's proposal and award its wage for the first four years.

This same concept must be applied to the parties' health insurance proposals discussed *infra* this opinion. The District's insurance proposal increases employee contributions to 25% and 50% of the premiums for single and family coverage, respectively, effective June 1, 2016 through May 31, 2017. The Union's proposed contract term ends on May 31, 2016. Therefore, it would be impossible to adopt the Union's wages and duration and the District's insurance proposals. Again, as this Arbitrator has held, such "lopping off" is not permissible under the statute.

The Union and the District have negotiated six (6) collective bargaining agreements since the Union became the certified bargaining representative. Not one of these collective bargaining agreements has covered a six-year term, as the District proposes herein. Instead, they have had durations of 2, 3, 4, 4, 4.5, and 3 years, respectively. The only reason one collective bargaining agreement exceeded four years, the November 1, 2004 to May 31, 2009 agreement was because the parties were able to reach agreement early over the terms of their successor agreement. Thus, as this Arbitrator has previously noted, the parties' bargaining history is a factor supporting the Union's proposal for the shorter 4-year term. *Village of Skokie*, Case No. S-MA- 07-007 (2007) at 16-18.

The Union's proposal is also more consistent with the most recent experience of in the comparable fire protection districts. Of the Union's eight (8) proposed comparable districts, six (6) have recent contracts with only three-year terms; only two (2) (Bloomingdale FPD and West Chicago FPD), have entered contracts that stretch as far as four years. The average duration of contacts for those comparable districts is 3.25 years.

The District's proposed comparable districts produce the same result. Of the District's nine (9) proposed comparable districts, seven (7) have recent contracts with only three-year terms; two (2) districts (Bloomingdale FPD and West Chicago FPD), have entered contracts with four year terms. The average of the District's proposed comparables is 3.22 years. Even the District's disputed proposed comparable districts, Frankfort FPD and Pleasantview FPD, have contracts with only three-year terms.

There is no merit to any contention by the District that a six-year term is necessary to give the parties a respite from bargaining, especially when the District has repeatedly contended

throughout this proceeding that the parties hardly engaged in bargaining. The District cannot have it both ways.

Moreover, adoption of the Union's offer for a contract term expiring May 31, 2016 would provide the parties nearly a two-year respite before commencing negotiations for a new agreement. This precisely comports with their historical practice. For example, the parties signed the Agreement just seven months before it expired; and their initial collective bargaining agreement fifteen months before it expired.

Finally, a shorter four-year contract term may hardly be characterized as a short contract term. For example, the so-called "Cadillac" tax under the Affordable Care Act ("ACA") is scheduled to take effect January, 2018. The effect of the tax is uncertain at best. This is especially so since two elections, one midterm and one general, will occur before its effective date. It is conceivable that the elections will produce changes to the ACA. The Union requests that the Arbitrator take notice that over the past four years, Republicans in the U.S. House of Representatives have voted at least 54 times to rescind, defund, or amend the ACA.

Moreover, arbitrators have recently found shorter contract durations to be preferable so that parties will be better able to adjust to actual economic conditions rather than be locked into fixed costs when the future is uncertain. Village of Gurnee and Gurnee Firefighter Union, IAFF Local #3598, Case No. S-MA-12-185 (Nathan Arb.) (2014) at 12 ("...the shorter Agreement is better in these changing times."); City of Rock Island and Illinois FOP Labor Council, ILRB Case No. S-MA-11-183 (Benn Arb.) (2013); City of Highland Park and Teamsters Local 700, (Benn Arb.) (2013).

For all the above reasons, the Arbitrator should adopt the Union's proposal for a 4-year term. It follows that adoption of the Union's four-year contract term requires that the Arbitrator adopt the Union's corresponding four-year wage offer, since he may not "lop off" the last two years of the District's six year wage proposal. See Village of Skokie, *supra*. However, even if lopping off two years were permissible, the Arbitrator should adopt the Union's wage offer, for it better serves the statutory criteria.

Apart from the duration criterion, there are two components of the parties' wage proposals. One is that both parties propose to amend Section 8.1 to delete the language referring to the one-time \$2,500.00 bonus. The second is the amount of the wage proposals. As previously noted, the Union proposes that wages for employees in the Firefighter rank increase 2.75% each year of its proposed four-year contract. The District, on the other hand, proposes that employees in all ranks receive increases of 1.5% in the first two years of its six-year contract, and 2% increases in each of the last four years.

There is a small difference in the Union's proposal for ranks above those of Firefighter. While the District proposes the same percentage increase for employees in all ranks, the Union recognizes that doing so will ultimately produce wage compression among the various ranks. Accordingly, the Union has proposed in its wage table that, rather than apply a fixed 2.75% increase to those ranks above those of Firefighter, those in the higher ranks receive an increase in

dollars that will preserve the status quo relative wage differentials between the various ranks, i.e., between Firefighter and Engineer (5.3%); Engineer and Lieutenant, Grade 1 (5.10%); Lieutenant, Grade 1 and Lieutenant, Grade 2 (6.04%); Lieutenant, Grade 2 and Battalion Chief Grade 1 (11.66%); and Battalion Chief Grade 1 and Battalion Chief Grade 2 (3.07%). The variance in the amount of increases between the 2.75% increase and the extra dollars required to maintain the rank differential is quite small, ranging from just \$2 to \$10. Accordingly, the Union will refer to its proposal for all ranks as being one for a 2.75% increase.

It is plain that, even setting aside the duration issue, the Union's wage offer better comports with Section 14(h) of the Act. Section 14(h)(4) of the Act requires the Arbitrator, where applicable, to base his findings and opinion upon a "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." These comparisons frequently include comparisons with employees of the employer involved in the arbitration proceeding ("internal comparables") and employees employed by public employers in comparable communities ("external comparables"). Pay comparisons, whether they involve internal or external comparables, to employees performing similar duties are entitled to significantly more weight. *County of Wabash/Wabash County Sheriff and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-09-020 (Feuille Arb.) (2010) at 30. Indeed, "Comparability is one of the most important factors in interest arbitration because it reflects the marketplace." *Bloomington Fire Prot. Dist. No. 1 and Bloomington Professional Firefighters Ass'n*, ISLRB Case No. S-MA-92-231 (Nathan, 1994) at 10. It has been said that external comparable cities are the "predominant criterion" on wage issues. See, e.g., *City of Decatur and Police Benevolent and Protective Association Labor Committee*, ILRB Case No. S-MA-93-212 (Perkovich Arb., 1994) at 18. This concept is particularly relevant here as there are no internal comparables with which to compare wages. Since the District is a fire protection district, there are no other District employees whose terms of employment may be used for the sake of comparison.

Here, as demonstrated by the following charts, the Union's wage offer is amply supported by comparison of general wage increases received by comparable fire protection districts. The Union has presented two sets of charts, one for Firefighters, one for Paramedics. They are presented for both the Union's and District's comparable fire protection districts, and with and without Darien Woodridge FPD ("Darien FPD"). It is the Union's position that Darien FPD should be eliminated because it took a 0% increase for the three years covering 2012-14 as a *quid pro quo* for receiving minimum manning language.

UNION COMPARABLE DISTRICTS

General Wage Increases for Firefighters Including Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	1.89%	2.75%	1.5%
2013	2.18%	2.75%	1.5%
2014	2.41%	2.75%	2.0%
2015	2.75%	2.75%	2.0%
4-year Average	2.31%	2.75%	1.75%

(UX 3, Tab 10)

General Wage Increases Firefighters Excluding Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	2.21%	2.75%	1.5%
2013	2.54%	2.75%	1.5%
2014	2.89%	2.75%	2.0%
2015	2.75%	2.75%	2.0%
4-year Average	2.59%	2.75%	1.75%

General Wage Increases for Paramedics Including Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	1.86%	2.64%	1.44%
2013	2.15%	2.64%	1.44%
2014	2.37%	2.65%	1.92%
2015	2.75%	2.65%	1.92%
4-year Average	2.28%	2.65%	1.68%

(UX 3, Tab 19)

General Wage Increases Paramedics Excluding Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	2.17%	2.64%	1.44%
2013	2.51%	2.64%	1.44%
2014	2.85%	2.65%	1.92%
2015	<u>2.75%</u>	<u>2.65%</u>	<u>1.92%</u>
4-year Average	2.57%	2.65%	1.68%

DISTRICT COMPARABLE DISTRICTS

General Wage Increases for Firefighters Including Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	2.09%	2.75%	1.5%
2013	2.34%	2.75%	1.5%
2014	2.32%	2.75%	2.0%
2015	<u>2.63%</u>	<u>2.75%</u>	<u>2.0%</u>
4-year Average	2.35%	2.75%	1.75%

(UX 3, Tab 29)

General Wage Increases Firefighters Excluding Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	2.40%	2.75%	1.5%
2013	2.68%	2.75%	1.5%
2014	2.79%	2.75%	2.0%
2015	<u>2.63%</u>	<u>2.75%</u>	<u>2.0%</u>
4-year Average	2.63%	2.75%	1.75%

General Wage Increases for Paramedics Including Darien FPD:

<u>Average of comparable group</u>		<u>Union Offer</u>	<u>District Offer</u>
2012	2.18%	2.64%	1.44%
2013	2.35%	2.64%	1.44%

2014	2.33%	2.65%	1.92%
2015	<u>2.57%</u>	<u>2.65%</u>	<u>1.92%</u>
4-year Average	2.36%	2.65%	1.68%

(UX 3, Tab 38).

General Wage Increases Paramedics Excluding Darien FPD:

<u>Average of comparable group</u>	<u>Union Offer</u>	<u>District Offer</u>
2012	2.50%	1.44%
2013	2.69%	1.44%
2014	2.80%	1.92%
2015	<u>2.57%</u>	<u>1.92%</u>
4-year Average	2.64%	1.68%

It is readily apparent that, when Darien FPD is omitted from the calculation, using either party's set of comparable communities, the Union's wage offer mirrors almost exactly the four-year average of comparable communities. Using the Union's comparable districts (omitting Darien FPD), the four-year average amongst the comparable communities for Firefighters is 2.59%; the Union proposal is 2.75%, just .16% higher. The District's offer is .84% lower. Analysis of the Paramedic rank under the Union's proposed comparables (omitting Darien FDP) produces a similar result: the four-year average for the comparables is 2.57%; the Union proposal is very close, at 2.65%, and the District offer is almost a full point lower, at 1.68%.

Using the District's proposed comparable communities (less Darien FPD) places the Union's offer in an even better light. In that case, the four-year average of Firefighters in the District's comparable communities is 2.63%; the Union proposal is 2.75%, just .12% higher. The District's offer is .88% lower. The four year average of the Paramedic rank under the District's comparables (omitting Darien FDP) is 2.64%; the Union proposal is nearly identical at 2.65%, and the District offer is again almost a full point lower, at 1.68%.

Even if one were to include Darien FPD in the analysis, the Union proposal better comports with the four-year average of comparable districts. Using the Union comparables for the Firefighter rank, the Union offer (2.75%) is .44% higher than the average (2.31%), and the District's (1.75%) is .56% lower. For the Paramedic rank, the Union offer (2.65%) is .37% higher than the average (2.28%), and the District's (1.68%) is .60% lower.

Once again, the Union asserts, the District's comparables place the Union in an even more favorable position. Using the District's comparables for the Firefighter rank, the Union

offer (2.75%) is .40% higher than the average (2.35%), and the District's (1.75%) is .60% lower. For the Paramedic rank, the Union offer (2.65%) is .29% higher than the average (2.36%), and the District's (1.68%) is .68% lower. Although the differences are not as dramatic as they are when Darien FDP is omitted from the analysis, the comparisons nevertheless strongly favor the Union's offer.

The Union's wage offer is also more acceptable because it better maintains the District's employees' relative standing vis-à-vis employees in comparable districts. For example, one criterion involves analyzing the effect wage proposals have on the wage differentials between the District's employees and employees in comparable districts. Such an analysis is provided below.

Career Wage Analysis for the Rank of Firefighter

2012

<u>Interval</u>	<u>2011</u>	<u>District proposal</u>	<u>Union Proposal</u>
After 5 years	-13.41%	-13.31%	-12.25%
After 10 years	-6.29%	-6.67%	-5.47%
After 15 years	-6.53%	-6.98%	-5.79%
After 20 years	-6.76%	-7.87%	-6.69%
After 25 years	-6.68%	-7.66%	-6.49%
Total Average	-6.84%	-7.30%	-6.12%

(R. 75-78; UX 3, Tab 1 at 1-4; *Brief for the Union* at 43).

2013

<u>Interval</u>	<u>2011</u>	<u>District proposal</u>	<u>Union Proposal</u>
After 5 years	-13.41%	-13.91%	-11.78%
After 10 years	-6.29%	-7.31%	-4.91%
After 15 years	-6.53%	-7.61%	-5.22%
After 20 years	-6.76%	-7.91%	-5.54%
After 25 years	-6.68%	-7.82%	-5.46%
Total Average	-6.84%	-7.75%	-5.40%

(R. 79; UX 3, Tab 1 at 5-6; *Brief* at 43).

2014

<u>Interval</u>	<u>2011</u>	<u>District proposal</u>	<u>Union Proposal</u>
After 5 years	-13.41%	-17.5%	-14.84%
After 10 years	-6.29%	-7.27%	-4.12%
After 15 years	-6.53%	-7.58%	-4.45%

After 20 years	-6.76%	-7.89%	-4.78%
After 25 years	-6.68%	-7.78%	-4.69%
Total Average	-6.84%	-8.74 (-1.9%)	-5.70% (+1.14%)

(R. 80; UX 3, Tab 1 at 7-8; *Brief* at 44).

Thus, as illustrated above (and as discussed *infra*), the Union offer better maintains the District’s employees’ “total average” difference from average, because it raises the difference by 1.14% and the District’s offer lowers it by a greater amount, 1.9%. This is especially true when the bargaining-unit employees here rank very poorly amongst the comparables for wages. In the words of the District’s counsel: “The District admittedly places at the bottom of the ranking among the parties’ agreed upon comparables.” There is no plausible reason to push the bargaining unit employees even lower (*Brief* at 44).

Finally, the record evidence indicates that there is absolutely no information available for wages in comparable communities beyond 2015, with one exception, Pleasantview, and for 2015, there are less than a handful of comparable units that have contracts extending through that year. As such, the Arbitrator is hardly in a position to evaluate the District’s proposal for the outlying years in the absence of evidence demonstrating that the District’s proposal will be in line with reality three and four years from now. Thus, the District’s duration proposal “tips the decision in favor of the Union” as it is impossible to predict future developments and perhaps unpredictable changing conditions. See, *Macoupin County Health Department and AFSCME, Local 3176*, ILRB Case No. S-MA-08-103 at 15 (Hill Arb.)(2008) at 23. In the words of this Arbitrator, adopting the District’s proposal on duration and wages would place all risk on the employees. Given the District’s stipulation that it is not claiming an inability to pay, any contention by the District of financial woes would be unsubstantiated. One only needs to peruse the sampling of newspaper articles questioning the District’s controversial spending (*Brief* at 44-45).

The Consumer Price Index

The Union points out that under the Act, the Arbitrator is obligated to consider “the average consumer prices for goods and services, commonly known as the cost of living.” 5 ILCS 315/14(h)(5). These prices are measured by the United States Bureau of Labor Statistics’ Consumer Price Index (“CPI”). However, as the Arbitrator has noted, changes in the CPI rarely are dispositive in interest arbitration. *County of McLean & McLean County Sheriff and Illinois FOP Labor Council*, Case No. S-MA-13-098 (Hill Arb.)(2013) at 22 (awarding union’s final offer on wages despite fact that administration advanced better argument regarding CPI). It may be the least important statutory criterion. *Village of Schaumburg and Schaumburg Fire Command Assn.*, Case No. S-MA-10-299 (Hill Arb.)(2011) at 30 (“Lastly, to the extent that cost-of-living considerations are relevant in this parity-driven case...”). Indeed, it is not unusual for the Arbitrator to not even mention the CPI when analyzing parties’ wage offers. See, e.g., *City of Belleville and IAFF Local #53*, Case No. S-MA-12-306 (2013); *Byron Fire Protection District and Bryon Professional Firefighters, IAFF Local No. 4755*, Case No. S-MA-12-005 (2012).

This is the typical case where the CPI evidence not only is not dispositive, but has little relevance. At the time of hearing, complete information was unavailable for the CPI for the full term of the Union's proposed four-year contract. Accordingly, the Union supplemented its information with projections based on the First Quarter 2014 Survey of Professional Forecasters.

The Union's information shows that the CPI-U for the Chicago/Gary/Kenosha Region (un-adjusted) for the period June 1, 2012 through May 31, 2016 (the duration proposed by the Union) is, in the aggregate, 6.71%. The Union's total wage proposal over the same period is 11%, while the District's total wage proposal is 7.0%. Consequently, while both parties' proposals exceed the CPI index, the cost of living factor better supports the District's proposal.

Notably, the District's evidence on the CPI is confusing at best as it is based on a calendar year. (D. Exs. 10, 11). The District then attempts to do an apples and oranges comparison by analyzing its fiscal year (June 1 to May 31) wage increases to the calendar year CPI. This analysis must be rejected.

Regardless of which analysis is used, it must be remembered that the District's proposal is for a six-year term, and the Arbitrator may not lop off the last two years of its proposal, in the Union's view. In view of that restriction on the Arbitrator's analysis, the cost of living factor should be accorded even less weight than usual (*Brief* at 46).

Position of the District

The District's Final Offers on Wages, Duration and Health Insurance are well supported under Section 14(h), are eminently reasonable and should be adopted. Addressing the Union's final offer on wages that proposes different percentages for the remaining bargaining unit ranks (in what appears to be an attempt to maintain a differential among the ranks), Management argues that this attempt must be rejected. First, it is not supported by the parties' bargaining history: Since 1992, the parties have negotiated six successive collective bargaining agreements—all outside the interest arbitration sphere—and not once have they negotiated wage increases specific to rank in order to maintain any sort of differential. Second, it is not supported in any respect by the external comparables, none of which have negotiated salary increases in that manner. Third, and most importantly, it is a breakthrough item that the Arbitrator should reject. The Union's proposal is a clear deviation from the status quo in the parties' long established salary structure, and therefore, the Union must not only show a clear justification for its proposal, but also that it was unable, despite repeated attempts, to obtain relief at the bargaining table. See Village of Elk Grove Village, Case No. S-MA-93-231, at 68 (Nathan, 1994). Here, the Union cannot demonstrate that it pursued this dramatic change at the bargaining table where it failed and refused to bargain in good faith in the first instance by not agreeing to meet at reasonable times and places, let alone negotiate over drastic changes to the salary structure. Further, the Union failed to offer any evidence to justify its proposed differentiation and thus its proposal should be rejected.

With respect to economic issues, including wages, an arbitrator's authority is limited to selecting the "last offer which most nearly complies with the applicable factors." County of Vermilion (Sheriff) and Teamsters Local 726, Case No. S-MA-92-212, at 4 (Nathan, 1992). In comparing final offers on wages—especially where a few percentage points separate the parties' positions—arbitrators have considered themselves "obliged to select the most reasonable final offer." See City of Aurora and International Ass'n of Firefighters, Case No. 91-00965 at 19 (Dilts, 1991). The reasonableness of the District's final offer is quite clear and it is well supported by the statutory factors set forth in Section 14(h) of the Act, and accordingly should be adopted.

The bargaining unit has benefited from a generous compensation and benefits package. Pursuant to Section 14(h)(5) and (6) of the Act, the Arbitrator is charged with considering the overall compensation presently received by the employees involved in this dispute as well as the cost of living. See 5 ILCS 315/14(h)(5), (6). A review of these factors reveals that the bargaining unit has enjoyed the benefits of very rewarding labor contracts since the onset of collective bargaining with the District, and during a time of significant fiscal pressures both locally and nationally. Between 2004 and 2011 alone, the bargaining unit enjoyed non-compounded cumulative wage increases of 30%. (Dist. Ex. 10). This amounts to an average annual increase of 3.75%, which greatly exceeded the cost of living during that same time period, which averaged only 2.53%. (Dist. Ex. 10). These exceedingly generous salary increases were coupled with significant enhancements in other economic benefits over the same time period, including paramedic incentive pay, educational reimbursement, holiday pay, uniform allowance, overtime, and health and life insurance. (Dist. Ex. 13). Most notably, this lucrative salary and benefits package is enjoyed by bargaining unit members who work the fewest annual hours of any of the comparables—agreed upon or otherwise. (UX 3, Tab. 15). Thus, the District's employees have worked, and continue to work, the fewest amount of hours, and in exchange, have received, and continue to receive, an enormously handsome compensation and benefits package, in what has been and continues to be a period of economic instability and recession.

The District's wage offer is generous in light of its financial condition and the overall state of the economy. Although the District is not claiming an inability to pay, financial ability is a relative concept and a statutory factor to be considered by the Arbitrator. Simply put, the fact that public management is able to pay a specific wage proposal is not grounds for awarding it. Byron Fire Protection District, Case No. S-MA-012-005, at 43 (Hill, 2012). Here, the value of the District's final offer on wages increases substantially in the context of its increasing financial pressures and the overall state of the economy. It is well established that "the economy literally crashed" in 2008 and that the national, state and local economies have "taken a brutal hit." City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, Arb. Ref. 04-328, at 8-9 (Benn, 2010). In short, the economy entered "the greatest recession experienced by this country since the Great Depression of 1929." Cook County Sheriff/County of Cook and AFSCME Council 31, Arb. Ref. 10-116, at 9 (Benn, 2010).

According to the Employer, the economic downturn is in its sixth year. Despite massive stimulus packages and other efforts by the federal government, the recovery has not seriously transpired, the economy remains uncertain and recovery simply is not yet assured. The national economy expanded only modestly in 2012, and lagging economic growth at the national level continued throughout 2013. The Congressional Budget Office (“the CBO”), while expecting the economy to grow in 2014, simultaneously estimates that the economy will have considerable “slack” for the next few years, with an expected national unemployment rate remaining above 6% until late 2016. Beyond 2017, economic growth is expected to diminish to a pace that is well below the average seen over the past several decades.

This severe economic downturn has reverberated throughout Illinois. At the time of hearing in this matter, the state’s unemployment rate was 8.7%. The local unemployment rate for the Chicagoland area, including all of Cook County and DuPage County, was 8.4%. This downturn likewise has impacted the District’s financial condition. Property tax revenue accounts for 90% of the District’s total income, and by far its largest expenditure is employee salaries and benefits. (Tr. 129, 131-132; see also, District Audit Reports for FY13, FY12, FY11, FY10). The effect of the economy on the reduction of property values and the effect of the property tax cap are negatively affecting revenue. In addition, expenditures have increased both significantly and more rapidly than available revenue. Against this backdrop, the District’s final offer is eminently reasonable, while the Union’s final offer remains out of touch with the economic realities facing the District, the State and the country.

The Cost of Living supports the District’s final offer. The District’s final offer on wages also keeps pace with the cost of living, while the Union’s final offer far exceeds it. The District’s offered percentages of 1.5% for 2012 and 1.5% for 2013 exceed the CPI-U/Chicago for each of those years (1.4% and 1.0%, respectively)(Dist. Ex. 10). Beyond 2013, and at the time of hearing, cost of living projections were modest at best, with the CBO recently predicting that cost of living will remain at or below 2% throughout the next decade. This evidence is compelling support for the District’s final offer, which guarantees 2% wage increases every year for the last four years of this proposed six-year contract.

In contrast, the Union’s final offer pushes the bargaining unit’s wage increases far above the cost of living and unjustifiably so. The Union concedes as much in its own exhibit, which demonstrates that its final offer virtually doubles the cost of living between 2011 and 2018, whereas the District’s offer much more closely approximates what the cost of living will be during that same time period. Thus, the District’s offer is closer to the cost of living while still substantially exceeding it, while the Union’s offer far outpaces the cost of living, providing further justification for adoption of the District’s final offer on wages. See Village of Oak Lawn and Oak Lawn Firefighters Local 3405, IAFF, Case No. S-MA-13-033, at 35 (Benn, 2014)(adopting employer’s final offer that maintained close proximity with cost of living and rejecting union’s offer in excess of cost of living). For all of these reasons, the cost of living compels adoption of the District’s final offer on wages.

The District’s wage offer maintains its ranking among the comparables, to the extent external comparables are relevant. As a threshold matter, during their negotiations, the parties

themselves have at no point made comparisons to external comparables. External comparables have relevance to wages only to the extent that the comparable information was considered by the parties during bargaining. See City of Rockford and City Firefighters Union, Local 413, Case No. S-MA-97-199, at 9 (Briggs, 1998) (holding same). As a general matter, arbitrators are loath to apply external comparable information for the first time at interest arbitration. See City of Elgin and Metropolitan Police Ass'n, Unit 54, Case No. S-MA-94-94, at 6 (Briggs, 1995) (“Adopting a set of new set of comparables now . . . is repugnant to the notion of approximating the outcome of free collective bargaining. It would produce an interest arbitration award based in part on data the parties did not mutually consider at the bargaining table.”). Given that a fundamental purpose of interest arbitration is to approximate what the parties themselves would have agreed to during voluntary negotiations, it is not appropriate to afford the external comparables much weight, let alone a great deal of weight, in this proceeding because doing so would produce an interest arbitration award based in part on data the parties did not mutually consider at the bargaining table.

In any event, the Administration asserts that external comparability is of little consequence in this proceeding. The District’s final offer maintains the District’s ranking among the comparables in terms of salary. Likewise, the Union’s final offer maintains the District’s ranking among the comparables. In essence, the District’s rank among the comparables remains unchanged irrespective of whether the District or the Union’s final offers on wages is selected.

Management points out that at the hearing the Union did not raise the argument that the bargaining unit needs to “catch up” among the comparables in terms of wages. To the extent any such argument is raised in the Union’s brief, it should be rejected. The Arbitrator previously has held that it is not the responsibility of the interest arbitration process to correct previously-negotiated wage inequities, if any; in essence, the parties “have avoided interest arbitration and in the process have placed themselves in the comparative positions they felt equitable and advantageous to their economic interests.” Village of Skokie and Skokie Firefighters, IAFF 3033, Case No. S-MA-07-007, at 22-24 (Hill, 2007). Accordingly, the Arbitrator must examine other factors in order to select between the parties’ final offers. See, e.g., Village of Forest Park and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-12-281, at 5-6 (Perkovich, 2014)(holding same). In light of the foregoing, the remaining factors support adoption of the City’s final offer on wages.

Contract Duration

The District’s proposed duration of six years for this successor contract is eminently reasonable and should be adopted. First, a longer term is consistent with the parties’ historical trend towards agreeing on longer contracts. See UX 1, Tabs 4, 5, 6, 7, 8, 9. Since 1992, the parties have voluntarily negotiated collective bargaining agreements of increasingly longer durations, from a two-year term in the initial contract, to three-year terms for contracts two and three, and four-year terms for contracts four and five. See UX 1, Tabs 4, 5, 6, 7, 8, 9. A proposed duration of six years is logical and consistent with the parties’ history.

Second, the current state of the economy at the national, state and local levels compels a successor contract with a longer duration. A six-year term allows the parties to bargain anew at a time when the breadth and depth of the economic recovery will be more readily apparent. It also provides a sufficient bargaining respite during what has been, and is continuing to be, an economically volatile time period.

Third, at the conclusion of this proceeding, the parties will have been engaged in negotiations for nearly six years by the time the award is presented to the District's Board of Trustees for ratification. The negotiations on this successor contract alone have taken more than two years, and the negotiations leading to the 2009-2012 contract were equally protected where that contract was not executed until October 2011, more than two years into its term. Consequently, the six-year term proposed by the District will result in a much needed bargaining respite of three years. Given the current and forecasted economic conditions, the District certainly merits a three-year period of stability during which the costs arising out of this labor agreement are firmly established. Under the Union's proposal, the parties will hastily return to the bargaining table in less than two years, which is insufficient even under normal conditions. See City of Chicago and Fraternal Order of Police, Lodge No. 7, at 25-26 (Briggs, 2002)(recognizing that ten-month span between award and expiration date was "too soon" for bargaining to begin again); see also, Palos Fire Protection District and Palos Professional Fire Fighters Association, Local 4480, IAFF, Case No. S-MA-011-007, at 13-14 (Feuille, 2011)(finding no "useful purpose served" by adopting shorter proposed duration of two years that would mandate the parties return immediately to the bargaining table).

The evidence regarding this "negotiation fatigue" factor—or truly, given the Union's lack of good faith for so long, the "negotiation failure" factor—further supports the District's final offer on duration. For the above reasons, the Arbitrator should adopt the District's final offer for a six-year term.

ANALYSIS AND AWARD

With respect to the parties' proposals for contract term (duration) and wages, it is clear that the Union advances the better proposal.

As argued by the Union (*Brief* at 37), apart from the duration issue, there are two components relevant to the parties' wage proposals. One is that both parties propose to amend Section 8.1 to delete the language referring to the one-time bonus of \$2,500. The second is the amount of the parties' wage proposals. The Union proposes that wages for employees in the Firefighter rank increase 2.75% each year of its proposed four-year collective bargaining agreement (*Brief* at 37). The Administration proposes that employees in all ranks receive an increase of 1.5% in the first two years of the collective bargaining agreement of a six-year agreement, and two percent in each of the last four years. See, UX 1, Tab 26 at 19.

There is a small difference in the Firefighters' proposal for ranks above that of Firefighter. While the Administration proposes the same percentage increase for employees in all ranks, the Union asserts that this allocation will result in wage compression among the

various ranks. Accordingly, the Union proposes that, rather than apply a fixed 2.75% increase to those ranks above that of Firefighter, those employees in the higher ranks receive an increase in dollars that will preserve the status quo relative wage differential between the ranks, i.e., between Firefighter and Engineer (5.10%); Lieutenant Grade 1 and Lieutenant, Grade 2 (6.04%); Lieutenant, Grade 2 and Battalion Chief Grade 1 (11.66%); and Battalion Chief Grade 1 and Battalion Chief Grade 2 (3.07%)(UX 1, Tab 25 at 17). As noted by the Union, the variance in the amount of increase between the 2.75% increase and the extra dollars required to maintain the rank differential is small, ranging from \$2.00 to \$10.00 (Brief at 37).

I hold for the Union with respect to wages and duration, and offer the following in support of this decision:

First, the Union's wage proposal is consistent with the parties' voluntary settlements. As noted by the Union, the parties have negotiated six (6) collective bargaining agreements since the Union became the certified bargaining representative. Not one of these collective bargaining agreements has covered a six-year term, as the District proposes herein. Instead, they have had durations of 2, 3, 4, 4, 4.5, and 3 years, respectively (*Brief for the Union* at 34).

Second, and as shown above (using the Union's exhibits), the Firefighters' wage offer is more acceptable because it better maintains the District's employees' relative standing among the comparables. To this end, the evidence record demonstrates that after three years, the District's wage proposal lowers the Union's "total average" difference from average for the comparable districts by 1.9%. In 2011 the total average difference from average was -6.84%; after three years under the District's proposal it falls further to -8.74%. The Union's final offer raises the District's employees' "total average" difference from average by 1.14%, from -6.84 to -5.70% See, *Brief for the Union* at 43-44.

Further, using the Union's comparable bench-mark jurisdictions the four-year average of comparable communities for Firefighters is 2.59%. Compared to the Union's 2.75% proposal, the Union taps out at .16% higher, which the Administration is .84% lower. See, *Brief for the Union* at 41-21.

Also, there is no information available for comparative purposes beyond 2015, with one exception, Pleasantview, and for 2015 there are just a handful of comparables. As correctly argued by the Union, this makes it difficult to evaluate the Administration's proposal for the outlying years in the absence of evidence demonstrating that the District's proposal will be in line with the bench-mark jurisdictions. This, of course, favors the Union's proposal, both on duration and wages.

Third, and to this end, at the hearing I directed the parties to address the disparity between their final offers on duration and whether the proposals on duration, or the proposals on wages, would dictate the outcome of the other—or vice versa. Management asserts that neither case law nor Section 14 of the Act supports such a proposition. According to the Administration:

Pursuant to Section 14, interest arbitrators, when faced with proposals of different durations, have considered and evaluated those proposals in isolation from the proposals on wages, and neither has dictated the other. For example, in Palos Fire Protection District, Arbitrator Feuille analyzed the parties' proposals of differing durations, ultimately concluding that the union's proposed duration of four years was more reasonable than the two-year duration proposed by the employer. Palos, at 12-14. When he reached the issue of wages, Arbitrator Feuille rejected the "temptation to simply select the Union's final offer on the wage issue because [he] selected the Union's contract duration offer." Palos, at 14. Characterizing this temptation as a "selection-by-default manner," Arbitrator Feuille appropriately recognized that that approach would do the parties, and particularly the Section 14 interest arbitration process, an enormous disservice, and thus he analyzed the parties' final offers in terms of the factors set forth in Section 14. Palos, at 14-15. Similarly, and contrary to the statement made by counsel for the Union at hearing, Arbitrator Benn has not engaged in the "selection-by-default" approach when evaluating proposals of differing durations and wages. At various points, Arbitrator Benn has awarded (1) longer durations in order to give the parties the requisite "breather" after difficult and lengthy contract negotiations, as well as (2) contracts of either (a) shorter durations or (b) with reopeners, in order to address unstable and volatile economic times. See, e.g., City of Chicago and FOP Lodge No. 7, Arb. Ref. No. 09-281, at 23-24 (Benn, 2010); City of Highland Park and Teamsters Local 700, Arb. Ref. 11-120, at 13-15 (Benn, 2013). Further, Arbitrator Benn has done so independent of his analysis of parties' wage offers. Simply put, interest arbitrators under Section 14 of the Act have not allowed either duration or wages to function as the proverbial "tail" wagging the "dog." Further, to do so would not simply "do a disservice" to Section 14's interest arbitration process, but rather, would completely upend that process by requiring the arbitrator to adopt a proposal solely on the basis of his or her decision on another proposal, and not based on a contemplative examination and analysis of Section 14(h)'s factors. Such an approach is not only disfavored but simply not permitted under Section 14's framework.

The Union, in response, submits that since the District's proposal is for a six-year term, the Arbitrator may not lap off the last two years of a proposal (*Brief* at 46). The Firefighters make the better case in this respect.

Once the duration issue is settled, wages and insurance fall into place, or *vice versa*. To this end I agree with the Union that what is before me is a Union proposal for four (4) years, and a corresponding salary and insurance offer for four (4) years, and a Management proposal for six (6) years, and a corresponding proposal for wages and insurance for six (6) years. **Consistent with my decision in *Skokie*, I believe that the better view is that an arbitrator does not have jurisdiction to mix and match.** And I find no legal authority to hold to the contrary.⁷ If the duration issue is resolved at four years, by necessity wages and health insurance will fall into

⁷ I concede that selected arbitrators have done this, myself included (once). However, in many of these cases I suspect that mediation efforts took place and the parties agreed that this could be done. I did it in *Skokie* where the opposing advocate did not voice an objection. This is not such a case. I maintain that it is impermissible under the statute, and this represents the better view.

place. This does not mean that an arbitrator has to start at “duration.” It may very well be the case that wages or insurance will determine the duration issue. In the present case, the Employer’s insurance proposal (the deductibles in later years are a real problem) really determines the outcome of wages and duration, rather than duration determining wages and insurance (more on this later).

The Union’s final offer on duration and wages is awarded.

UNION ISSUE NO. 5

ARTICLE VIII, WAGES, Section 8.3 - Driver’s Stipend

Current Contract Language

Section 8.3 - Driver’s Stipend. The parties agree that the establishment of the position of Engineer will be effective on June 1, 2005, and that each regular driver on each shift (12 positions) as assigned on that date will assume the position of Engineer without requirement for further testing. The parties also agree to establish a list for Engineer on that date which shall consist of those members who have successfully passed the state FAE certification examinations, in seniority order, and that subsequently members may request to be added to the bottom of the eligibility list after having successfully passed those same examinations.

With respect to the Engineer and Relief Engineer positions, out of classification pay will be paid as follows:

(a) If there is a duty trade between an Engineer and a Firefighter, and the duty trade causes a Relief Engineer to act up, the Relief Engineer shall not receive working out of classification pay.

(b) If a duty trade occurs between a Relief Engineer and a Firefighter, the person who performs the duties of Engineer on that day shall receive the working out of classification pay.

(c) On any payback by an Engineer for a Firefighter, the Relief Engineer on the shift scheduled to work shall act in the capacity of an Engineer and shall be paid working out of classification pay.

(UX 1, Tab 9 at 15).

Union’s Proposal

Section 8.3 - Driver’s Stipend. The parties agree that the establishment of the position of Engineer will be effective on June 1, 2005, and that each regular driver on each shift (12 positions) as assigned on that date will assume the position of Engineer without requirement for further testing. The parties also agree to establish a list for Engineer on that date which shall consist of those members who have successfully passed the state FAE certification examinations, in seniority order, and that subsequently members may request to be added to the bottom of the eligibility list after having successfully passed those same examinations.

Effective after the date of Arbitrator Hill's Award, Engineers shall be assigned based on length of time the individual has possessed an FAE Certification. Those individuals who have completed their FAE certification, after their date of hire, will be placed on the Engineer list based on the length of time the individual has held his/her certification from longest to shortest in descending order. Those individuals who obtain their certification prior to employment as a full-time bargaining unit employee at Tri-State Fire Protection District, will be placed on the Engineer list according to date of hire. Those individuals who obtain FAE certification who do not have three (3) years of service as a full-time bargaining unit employee with Tri-State Fire District, and have not completed all of the required drivers training, shall be ineligible to be placed on the Engineer list until all requirements are obtained.

With respect to the Engineer and Relief Engineer positions, out of classification pay will be paid as follows:

(a) If there is a duty trade between an Engineer and a Firefighter, and the duty trade causes a Relief Engineer to act up, the Relief Engineer shall not receive working out of classification pay.

(b) If a duty trade occurs between a Relief Engineer and a Firefighter, the person who performs the duties of Engineer on that day shall receive the working out of classification pay.

(c) On any payback by an Engineer for a Firefighter, the Relief Engineer on the shift scheduled to work shall act in the capacity of an Engineer and shall be paid working out of classification pay.

(UX 1, Tab 25 at 5-6).

District's Proposal

The District proposes the current contract language (*status quo*).

(UX 1, Tab 26, at 8).

Position of the Union

The origin of the current language applicable to the Driver's Stipend issue. The Union points out that the Fire Apparatus Engineer ("FAE") certification is required as a condition to perform the function of Driver, also referred to as Engineer. In addition to state FAE Certification, the District requires additional training, as well as three years of service in order to serve as a Engineer/Driver. Collective bargaining agreements preceding the Agreement contained language pertaining to the Driver's Stipend. Pursuant to that language, Drivers were paid an hourly stipend for driving the fire apparatus.

During negotiations for the 2004 – 2009 collective bargaining agreement, the parties agreed to modify Section 8.3 to eliminate the hourly stipend for employees performing Driver/Engineer work and to include a separate position entitled "Engineers" in the salary schedule. Subsequently, in June, 2005, the Union filed a grievance alleging that the District had

violated certain provisions of the 2004 - 2009 CBA with regard to payment to employees performing driver/engineer work. The parties eventually settled the grievance on May 11, 2006.

Pursuant to the settlement agreement, two lists were created. Exhibit A contained a list of employees in seniority order who had successfully passed the state FAE certification examinations. The parties further agreed that Exhibit A constituted the list for filling vacancies in the Engineer position. Exhibit B to the Driver's Agreement listed employees classified as Engineers and relief Engineers, in seniority order, at each Station and was intended for use in the event that the Department needed to hire back to fill an Engineer position.

The current language contained in Section 8.3 first appeared in the Agreement. The language was added as a result of the parties' 2006 settlement agreement.

Both parties recognize that the system is broken as there is no method for adding individuals to the list of designated Engineers and Relief Engineers (*Brief* at 60-61). Due to the fact that there is no method for adding individuals to the list of designated Engineers and Relief Engineers, both parties recognize that the system is broken. **The 2006 settlement agreement contains no provision for adding additional employees to either list. The Agreement, which reflects the terms of the 2006 settlement agreement, is similarly silent concerning a method for adding additional Engineers to the list.** The Agreement obligated the parties to create a list of Engineers contemporaneously with its execution and refers to seniority for ordering individuals placed on that initial list; however, there is no mechanism for adding drivers to the list thereafter.

The parties acknowledge that an agreed method for adding new Engineer/Drivers to the list is lacking. The District itself acknowledged the need to add individuals to the Driver's list.

Due to the absence of an agreed-upon procedure, the District has, on occasion, informally added employees to the list of relief Engineers. Several of the employees on the "Designated Engineers and Relief Engineers" list ("Drivers List") have left the District, or been promoted to other ranks and are now unavailable to perform the role of Engineer. Gaylon Cates, Todd LeClair, Phillip Huto and Jeffrey Eggert are no longer with the District, and Jeffery Allenspach, Daniel Heisen and Robert Gramlich have been promoted to the rank of Lieutenant. These changes to District personnel left openings in the position of Engineer and a need to add new Engineers to the "Drivers' List", with no method for making the necessary additions. Thus, the status quo contract language, by the District's own admission, is broken and the District has refused to address the issue in negotiations.

The Union's proposal provides a reasonable method for adding new drivers to the list, while addressing the discrepancy between department seniority and certification (*Brief* at 51). The Union's proposal not only addresses the need for a method to add employees to the Driver's List, but also includes a well-thought out methodology that addresses potential problems in creating a method for updating the Driver's List. Specifically, the Union's method addresses the difficulty that arises as a result of discrepancies between Departmental seniority and FAE certification dates. The difficulty lies in the fact that some employees were FAE certified prior

to being hired by the District, while others obtained their certifications after being hired. In fact, some waited quite some time after being hired to obtain their FAE certification. As a result, placing employees on the Driver's List in order of seniority allows a more senior employee to jump over less senior employees who have had their FAE certification for a longer period of time.

To avoid this untenable result, the Union proposes adding employees to the Driver's List according to the later of either their hire date, or the date the employee obtained FAE state certification. Individuals who obtained their FAE certification after being hired by the District would be placed on the list according to their FAE certification date. Employees who held FAE certification prior to being hired by the District would be placed on the Driver's list according to their hire date. The Union's proposed method represents a blended approach that achieves a just and fair result for all bargaining unit employees (*Brief* at 52).

For these reasons, the Union's proposal to amend Section 8.3 of the contract, to include its proposed method for updating the Driver's List, should be adopted and incorporated into the parties' Successor Agreement.

Position of the District

Asserting that the Union's final offer on driver stipend is not supported by the evidence, Management argues that, like the Union's proposals on the grievance procedure and workweek, this proposal is also a breakthrough item that seeks to alter dramatically the parties' negotiated *status quo*. Management points out that, currently, Section 8.3 provides that a list for the position of engineer shall be established "in seniority order" for those who have successfully passed their FAE certification examinations. Section 8.3 further provides that bargaining unit employees *subsequently* may request to be added to the *bottom* of the list *after* having successfully passed those examinations. (emphasis added).

Thus, although the Union claims that there "has been no procedure since [2006] that has been developed by the parties in order to add individuals to the list" (R. 55), Section 8.3 clearly provides precisely that procedure—namely, that employees who subsequently take and pass the FAE certification examinations may request to be added to the "bottom" of the list. Further, Chief Mancione recognized this in the email correspondence that the Union introduced as evidence at hearing, wherein he stated his belief that there is a process set forth in the collective bargaining agreement to make additions to the list. Moreover, the existing list, and the parties' agreement regarding the list, was the result of a grievance settlement agreement that the parties negotiated and agreed to in 2006.

ANALYSIS AND AWARD

Asserting that its position is the more reasonable position under the statutory criteria, Management advances the argument that, in this case, the *status quo* is the product of the parties' voluntary negotiations in collective bargaining and in the context of a longstanding grievance resolution. What the Union is seeking to do is to upend that and bring about significant changes

through interest arbitration, rather than negotiating the changes—or even *attempting* to negotiate the changes—at the bargaining table. At the same time, the Union has not demonstrated that it has offered any *quid pro quo* for this proposal, and has not come forward with any compelling evidence warranting this change. As such, the Union has not satisfied its heavy burden of justifying its change to the *status quo* and its final offer on the driver’s stipend should be rejected (*Brief for the District* at 21-22).

There is face validity to the Administration’s argument regarding the Union’s recalcitrant conduct in failing to bargain in good faith with respect to the successor collective bargaining agreement (if the ALJ’s findings are credited). Aside from this consideration, the Employer makes the better argument regarding this impasse item. I view this issue as similar to insurance, where bargaining is the better course (although it is unlikely that the parties would ever come to an accord on this issue).

For the above reasons, the Administration’s final offer is selected.

UNION ISSUE NO. 6

ARTICLE VIII, WAGES, Section 8.8 - Longevity Pay

Current Contract Language

Section 8.8 - Longevity Pay . The District agrees to the following longevity pay schedule for bargaining-unit employees:

	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
10 years + 1 day to 15 years:	\$500	\$550	\$600
15 years + 1 day to 20 years:	\$800	\$850	\$900
20 years + 1 day to 25 years:	\$1,100	\$1,150	\$1,200
25 years + 1 day and after:	\$1,550	\$1,600	\$1,650

The longevity pay shall be added annually to the employee’s base salary set forth in Appendix B. However, said pay shall not be a cumulative increase to base salary from year-to-year.

Union’s Proposal

Section 8.8 - Longevity Pay . The District agrees to the following longevity pay schedule for bargaining-unit employees:

	2009-10	2010-11	2011-12
10 years + 1 day to 15 years:	\$500	\$550	\$600

15 years + 1 day to 20 years:	\$800	\$850	\$900
20 years + 1 day to 25 years:	\$1,100	\$1,150	\$1,200
25 years + 1 day and after:	\$1,550	\$1,600	\$1,650
	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>
10 years + 1 day to 15 years:	\$650	\$700	\$750
15 years + 1 day to 20 years:	\$950	\$1,000	\$1,050
20 years + 1 day to 25 years:	\$1,250	\$1,300	\$1,350
25 years + 1 day and after:	\$1,700	\$1,750	\$1,800

The longevity pay shall be added annually to the employee's base salary set forth in Appendix B. However, said pay shall not be a cumulative increase to base salary from year-to-year. (UX 1, Tab 25 at 6).

District's Proposal

The District proposes to maintain the *status quo*, or the current contract language. (UX 1, Tab 26 at 9).

Position of the Union

The Union seeks to increase longevity pay by \$50 for each year of the first three (3) years of the successor collective bargaining agreement, for a total increase of \$150. The District opposes the increase, and proposes to retain the *status quo*.

The Union points out that longevity pay first appeared in the 1997-2001 collective bargaining agreement. At that time, longevity pay was \$250/\$500/\$750/\$1,000 allocated to four longevity intervals separated by five-year periods (10, 15, 20, and 25 years). Over the life of the succeeding collective bargaining agreement covering 2001-2005, the parties raised the longevity pay by \$200, \$250, \$300, and \$500 respectively, for employees with 10, 15, 20, and 25 years. The Agreement includes "+1 day" in each of the four intervals. Although longevity pay remained unchanged during the 2004-2009 Agreement, the parties increased it during the Agreement by a total of \$150 per longevity interval, in \$50 increments to \$600, \$900, \$1,200 and \$1,650, respectively.

The Union argues that the Arbitrator should adopt the Union's proposal to increase the longevity pay by \$150 over the term of the successor collective bargaining agreement. In the Union's view, once the parties decided to include longevity pay in their collective bargaining agreement, they have agreed to increase it on a fairly regular basis. Including the collective bargaining agreement in which the parties initially established the benefit (the 1997-2001 CBA), the parties have agreed to increase the benefit in three of their last four labor agreements. Moreover, the Union currently proposes to annually increase the benefit by the same increment –

\$50 – by which the parties increased the benefit during the Agreement. Accordingly, the Union’s proposal is consistent with the parties’ bargaining history.

The Union’s proposal is also supported by the longevity pay received by employees in the comparable districts. This is because the Union proposal improves the District’s relative standing with respect to the “Difference from Total Average,” whereas the District’s proposal deteriorates the District’s relative standing.

At present, the District ranks ninth (9th) among the Union’s nine (9) comparable districts in terms of longevity pay. Its total average of \$583 is 33.09% below the \$871 average of the comparable group (UX 3, Tab 8 at 2; *Brief* at 55). In the Union’s view, the following chart demonstrates how the respective proposals affect the District’s relative standing with respect to Difference from Total Average during the term of the Successor Agreement:

<u>Year</u>	<u>Status Quo</u>	<u>Union offer</u>	<u>District offer</u>
2011	-33.09%	N/A	N/A
2011	-33.09%	-38.69%	-41.77%
2013	-33.09 %	-27.51%	-34.43%
2014	-33.09%	-24.05%	-34.43%

Source: *Brief for the Union* at 55.

According to the Union, these numbers demonstrate that the District’s *status quo* proposal results in the District’s employees falling even further behind their peers in the comparable group (*Brief* at 56).

The Union acknowledges that its proposal improves the Difference from Total Average by an amount (+9.04%) greater than the District’s proposal which worsens it (-1.34%). Adoption of the District’s proposal would allow its standing to fall even lower throughout the term of the Successor Agreement. This is an untenable result, in the Union’s view. The identical analysis utilizing the District’s comparable communities produces a similar result. The status quo is –40.5% Difference from Total Average. (UX 3, Tab 27 at 2). Under the Union’s proposal, the District’s relative standing with respect to Difference from Total Average improves to -32.17%; the District’s worsens to -41.44% (*Brief* at 56).

Counsel for the Union explained that the Union’s willingness to maintain the *status quo* on longevity pay was based upon the District’s willingness to modify the retiree insurance provision. Since the District did not agree to modify the retiree insurance provision, the Union refused to enter a tentative agreement on the issue. The District offered no rebuttal to this detailed representation (*Brief* at 57).

Position of the District

Management asserts that from the receipt of the Union's initial proposals in bargaining through mediation, the Union steadfastly proposed no increase in longevity pay. Indeed, in explaining its proposal at the table, the Union actually stated that it was mere "clean up." (*Brief for the District* at 22-23). Not surprisingly, the District agreed with this proposal, and suggested a tentative agreement on this matter each time it was presented in bargaining. Yet, the Union refused, argues Management, thereby "awkwardly" refusing a tentative agreement on its own proposal. Only with the exchange of final offers in April 2014, two years after the parties met for their first bargaining session and more than a year after the District first proposed a tentative agreement on this matter, the Union proposed \$50 increases at every level for each year of a proposed three-year successor contract.

Simply put, there was never any bargaining over this proposal, and the Union cannot avoid bargaining over a significant economic issue like these increments in longevity payments and expect that the Arbitrator will award it (*Brief* at 23). Interest arbitrators consistently have held that parties cannot avoid bargaining over difficult issues merely by submitting them to interest arbitration. As Arbitrator Nathan recognized, "Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate for themselves. In a manner of speaking, arbitration can never construct a better deal for the parties than they can obtain for themselves." *Will County Board*, at 52 (Nathan, 1988). That is precisely what the Union seeks to do by way of its final offer on longevity pay. It is particularly specious to do so herein, after the District repeatedly offered to "TA" this item as originally proposed in bargaining.

The Union also cannot rely on the parties' bargaining history as evidence to support its final offer. The argument that the parties have in prior contracts negotiated increases in longevity pay is not available to the Union in this matter for the same reason it was not available to the Union in *City of Wheaton and Wheaton Firefighters Union, LAFF, Local 3706*: the Union failed to disclose any of the circumstances surrounding the give-and-take that led to the earlier agreements and the parties' negotiations regarding longevity. *City of Wheaton and Wheaton Firefighters Union, LAFF, Local 3706*, Case No. S-MA-012-278, at 21 (Fletcher, 2013)(rejecting Union's reliance on supposed historical bargaining patterns as support for proposed increase in uniform allowances where record disclosed none of the circumstances surrounding the give and take that led to the earlier agreements).

Moreover, argues the Administration, the Union showed no *quid pro quo* that was offered in bargaining in exchange for this gain on longevity.

Finally, the external comparables do not support the Union's final offer on longevity given that, whether the Union's offer or the District's final offer, which is to maintain the *status quo*, which in turn is exactly what the Union itself proposed for more than two years, is awarded by the Arbitrator, the District maintains its relative position and rank among the comparables.

ANALYSIS AND AWARD

Interest awards are not made in a vacuum. Always relevant is a consideration of what the total package is with respect to other impasse items in the impasse arbitration matrix. Failure to vector in on the total settlement would force a party to load up on items, believing that the analysis would always be independent. It is not. My award on wages and insurance and insurance cost containment measures (in the Union's favor) in on point in this analysis.

While the Union's longevity offer is consistent with the external bench-mark jurisdictions (see table above), I credit the Administration's argument that no *quid pro quo* was apparently offered by the Union for an increase in longevity. I also credit the Employer's argument that the Union, apparently, stood by a *status quo* position right up to arbitration. If so, what accounts for the change?

Accordingly, for the above reasons Management asserts that the Union's final offer on longevity pay should be rejected in favor of maintaining the *status quo*. I am not convinced that there was any serious bargaining over longevity and, as such, I award the Administration's final offer,

For the above reasons the Administration's position is awarded.

UNION ISSUE NO. 7

ARTICLE VIII, WAGES, Section 8.8.1 - Longevity Incentive

Current Contract Language

Section 8.8.1 - Longevity Incentive. The Union and District will explore the mutual feasibility of implementing a "buy-out" program for those eligible to retire. Both parties agree to meet and have determined the mutual feasibility of this program by June 1, 2012. If it is determined that this program is indeed mutually feasible, then the contract shall be re-opened to implement this "buy-out" program.
(UX 1, Tab. 9 at 18).

Union's Proposal

~~Section 8.8.1 - Longevity Incentive. The Union and District will explore the mutual feasibility of implementing a "buy-out" program for those eligible to retire. Both parties agree to meet and have determined the mutual feasibility of this program by June 1, 2012. If it is determined that this program is indeed mutually feasible, then the contract shall be re-opened to implement this "buy-out" program.~~
(UX 1, Tab 25 at 6-7).

District's Proposal

The Employer proposes the *status quo*.

(UX 1, Tab 26 at 10).

Position of the Union

The Union's proposal should be adopted because the deleted language is obsolete. The Union's proposal to delete the language of Section 8.8.1 is merely a "housekeeping" matter intended to remove inoperative language from the Agreement. Section 8.8.1 of the Labor Agreement calls for the parties to meet and discuss the feasibility of implementing a "buy-out" program for those eligible to retire by June 1, 2012. That date has long passed and neither party is seeking to extend that date or continue discussions over the feasibility of implementing a "buy-out" program for those eligible to retire. Accordingly, the language of Section 8.8.1 no longer has a purpose and should be removed from the Agreement for the sake of clarity.

This issue underscores yet another example of the District's regressive bargaining in interest arbitration. On April 4, 2013, the District proposed to delete the very same language the Union seeks to delete in interest arbitration. (UX 1, Tab 16 at 11). Again, there is no rational reason for the District's retracting its prior offer to delete the obsolete contract language and refusal to accept the Union's proposal in interest arbitration.

Position of the District

The Administration asserts that the Union's proposal on longevity incentive also should be rejected. According to the Union at hearing, this matter also is nothing more than "housekeeping" and "clean up." Again, as with the Union's proposal on the workweek and inclusion of annual hours worked, if this matter were truly nothing more than "housekeeping," there would be no need to submit it for decision to an interest arbitrator, and instead, it would be addressed during the drafting process. See Village of Skokie, Case No. 12-250, at 36 (Benn, 2014)(holding same). Moreover, during bargaining, the District agreed with the Union's proposal to delete this provision from the parties' contract, and upon doing so, the Union immediately balked, claimed that its proposal to delete the longevity incentive committee was tied to other items, and refused to enter into a tentative agreement on this matter. The Union hinted at this connection once again during the interest arbitration hearing, noting during narrative testimony that its proposal to delete the committee addressing a longevity incentive was tied to its proposal on retiree health insurance. Given the Union's conduct during bargaining and the ALJ's finding regarding that specific conduct, the Union's claims about its longevity incentive proposal are unclear and not credible, and at best, its proposal appears to be nothing more than a "good idea," which is patently insufficient to warrant any change in a negotiated *status quo*. Accordingly, the Union's final offer on longevity incentive should be rejected.

ANALYSIS AND AWARD

This is a win-win item for either side. I see no utility in retaining the language. The Union's final offer is awarded.

UNION ISSUE NO. 8

**ARTICLE IX, SICK LEAVE
Section 9.3 – Abuse of Sick Leave**

This issue was T.A.'d on March 6, 2014 and is no longer an issue in interest Arbitration. (UX 1, Tab 17, Tab 25 at 7).

UNION ISSUE NO. 9

**ARTICLE X, PAID LEAVES – ABSENCES/HOLIDAYS
Section 10.8 - Emergency Leave (new)**

Current Contract Language

There is no current contract language.
(R. 62; UX 1, Tab 9).

Union's Proposal

Add New Section 10.8 – Emergency Leave.

Employees shall be entitled to 24 hours of emergency leave each calendar year for the purpose of attending to personal emergencies which cannot be handled during non-working hours where the employee has sufficient accrued sick time to cover the emergency leave. The emergency leave will be deducted from the employee's sick time. Emergency leave will be used in no less than 4 hour increments and up to 24 hours at a time. Unused emergency leave is non-compensable and does not accrue from year to year. Emergency leave shall be granted by the Officer in Charge of the shift provided the nature of the situation constitutes a true emergency. Such emergency leaves shall not be unreasonably denied.

(UX 1, Tab 25 at 7-8).

Employer's Proposal

The Employer proposes the *status quo* be retained.
(UX 1, Tab 26 at 11).

Position of the Union

There is a demonstrated need for Emergency Leave, yet the Contract currently has no mechanism addressing how employee emergencies should be handled. The Union's proposal seeks to add a new Section 10.8 to the Agreement to remedy the District's refusal to allow employees the opportunity to use paid leave in emergency situations. Presently, the Union points

out there is nothing in the Agreement which allows an employee to request paid leave to attend to personal emergencies. The Union proposal is not far-reaching. It does not seek additional paid time off. It merely seeks that employees be able to request, and obtain, up to twenty-four (24) hours of paid leave in a calendar year to attend to personal emergencies. The paid leave would be drawn from the employee's accrued sick leave. The leave must be used in increments of at least four (4) hours, and approval may not be unreasonably denied.

There is a demonstrated need for a provision governing how and when an employee may be allowed paid leave to attend to a personal emergency. The consequence of not having a mechanism to address emergency leave has been confusion, a lack of uniform responses, and, ultimately, denials of requests for time off in truly outrageous emergency situations. For example, in 2011, Firefighter Matthew Parris was told that he would have to reimburse the District for time he took to assist his mother while her house was on fire. In another example, in 2009, Firefighter Mayotte was eventually allowed to use sick time on a non-precedential basis when his home flooded, but only after his Battalion Chief initially informed him that he would have to obtain a duty trade or reimburse the District for any time off. Finally, Union President Bulat was denied paid leave in 2009 to attend to flooding in his basement on the grounds that his emergency did not qualify as sick leave. These situations presented bona fide emergencies, during the term of the Agreement, that were clearly beyond the employees' control. Employees should not be confronted with a loss of pay in order to deal with such emergencies.

The Union's proposal has the additional benefit of providing clarity and uniformity, while at the same time not increasing employees' paid time off or unnecessarily infringing upon the District's rights. As seen above, Firefighter Mayotte was initially denied paid leave in order to deal with his flooded house. Eventually, the District allowed him to use paid sick leave. However, when Union President Bulat similarly requested paid sick leave to attend to his flooded house, the District denied his request. Such inconsistent treatment would be less likely if the Union's proposal were granted.

The Union's proposal is consistent with similar provisions found in the Collective Bargaining Agreements of comparable departments. According to the Union, the Union's proposal not only meets a demonstrated need within this District, its proposed method for addressing this need is consistent with many of the proposed comparable units. As the table below demonstrates, among the ten (10) proposed comparables, eight (8) have contracts with explicit emergency leave provisions, leaving only Addison, Norwood Park and this District without relevant language.

EMERGENCY LEAVE

Comparable Dept.	Emergency Leave Provision
Addison FPD	No
Bartlett FPD	24 hours/year of sick leave can be used in 4 hour increments (Section 15.4 at 40)

Bloomingtondale FPD	Granted upon request and approval and charged against sick day accrual (Section 10.7 at 50)
Carol Stream FPD	Granted at discretion of Battalion Chiefs (Section 12.5 at 21)
Darien-Woodridge FPD	24 hours/year of sick leave can be used in 4 hour increments (Section 19.7 at 58)
Lemont FPD	24 hours/year of personal time to be used only for emergencies (Art. X, Section 1 at 26)
West Chicago FPD	Up to 3 hours granted at the discretion of the Shift Commander for family emergencies. Additional time may be granted by the Chief. (Section 17.13 at 40).
Norwood Park FPD	No
Frankfort FPD	24 hours/ year (Section 16.10 at 37)
Pleasantview FPD (FF)	16 hours taken in 4 hour increments, deducted from sick leave (D. Ex. 15, Pleasantview Section 12.11 at 14)
Pleasantview FPD (Captains)	16 hours taken in 4 hour increments, deducted from sick leave (D. Ex. 15, Pleasantview Section 12.11 at 12)

(UX 4, Tab 8; UX 2; DX 15).

In summary, the Union points out that eight (8) of the ten (10) comparable districts (including the disputed comparables and treating the two Pleasantview units as one) have contracts that contain emergency leave provisions. Six (6) of the ten (10) comparable units proposed by both parties provide the opportunity to take emergency leave of twenty-four (24) hours or more, which is equal to or greater than that proposed by the Union . Another (the two Pleasantview units) provides the opportunity for emergency leave of sixteen (16) hours. Two (Darien-Woodridge and Pleasantview) contain language virtually identical to the Union’s proposal.

Position of the District

Addressing the Union’s final offer regarding emergency leave, Management asserts that this is yet another breakthrough item that should be rejected by the Arbitrator. By way of this

final offer, the Union proposes to create a new benefit (and a new provision in the collective bargaining agreement) known as “emergency leave,” and provide bargaining-unit members with the ability to use up to 24 hours of sick time to cover an undefined “emergency.”

This, says the Administration, is a radical departure from current contract language and the parties’ negotiated status quo, under which bargaining-unit employees have the fewest scheduled annual work hours (2,592) and the fewest annual hours actually worked (2,398). Further, under the status quo, firefighters currently enjoy an abundance of time off, including vacation leave, personal leave, bereavement leave and sick leave, and moreover, they have the ability to engage in up to 60 duty trades during the course of the year. There is thus no question that the current system is not broken and that this status quo provides ample flexibility and opportunity to address a firefighter’s occasional need for time off under emergency circumstances. Indeed, the Union failed to offer any compelling evidence to the contrary: although stating at hearing that there are “numerous examples” of firefighters who were not permitted to leave in what the Union’s counsel deemed “emergency situations,” the Union was only able to muster three examples of such alleged denials. Despite the Union’s claim that “this has been going on for some time,” two of the three cited examples occurred during the life of the most recent contract.

In Management’s view, the Union has failed to offer any compelling evidence in support of its final offer creating this new benefit, other than noting that the majority of the external comparables offer emergency leave to their employees. Put simply, and standing alone, external comparability does not justify the creation of a new benefit, particularly in the complete absence of any bargaining and *quid pro quos* in exchange for that benefit. The Union’s final offer amounts to nothing more than its suggested “good idea,” and good ideas are not a sufficient basis upon which to change the *status quo*.

ANALYSIS AND AWARD

As astutely argued by the District, the parties’ collective bargaining relationship dates to 1992. The three (3) examples of claimed denials of time off for “emergencies” over a 22-year period not only fails to demonstrate that the current system is broken, but serves as compelling evidence that securing time off for emergencies is not problematic or unworkable for this bargaining unit in any respect (See, Brief for the Employer at 22-23). In no uncertain terms, the Union’s sample is too small to make a statistical inference. While the Union had comparability on its side, I see no demonstrated need for an additional leave provision. At this juncture, the parties are advised to explore the Union’s demand in future bargaining sessions.

Management advances the better case on the Union’s offer for an emergency leave provision and, accordingly, the status quo is awarded.

UNION ISSUE NO. 10

**ARTICLE XII, INSURANCE,
Section 12.2 - Insurance Upon Retirement**

Current Contract Language

Section 12.2 – Insurance Upon Retirement. The District shall, to the extent required by law, make available to retired employees who are not covered by insurance through another employer, the ability to participate in its group insurance program for single and family coverage, with the premiums to be paid by the retired employee.

(UX 1, Tab 9 at 27).

Union's Proposal

Section 12.2 - Insurance Upon Retirement. The District shall, to the extent required by law, make available to retired employees who are not covered by insurance through another employer, the ability to participate in its group insurance program for single and family coverage, with the premiums to be paid by the retired employee.

The Union and District shall meet to explore the mutual feasibility of implementing an insurance upon retirement program. Both parties agree to meet within two months of the issuance of Arbitrator Hill's Award to discuss an insurance upon retirement program and within one year from the execution of this Agreement, determine whether such a program is mutually feasible. If it is determined that this program is mutually feasible, then the contract shall be re-opened to implement the insurance upon retirement program.

(UX 1, Tab 25 at 8).

District's Proposal

The Employer proposes the status quo contract language.
(R. 67; UX 1, Tab 26 at 13).

Position of the Union

The Union's proposal should be granted because it furthers the goal of achieving arms-length negotiations and is consistent with the parties' prior agreements. The Union maintains that its proposal should be awarded because it fosters collective bargaining, is consistent with the parties' past practice, and imposes no significant burden on the District. The current contract language is merely a restatement of the District's legal obligation to allow its retirees to participate in its group health insurance program. The Union's proposal adds to that language a

means to engage in meaningful discussion of the feasibility of an insurance upon retirement program. The proposal is ideologically consistent with the goal of collective bargaining, by providing a means for the parties to continue negotiations concerning the mutual feasibility of an insurance upon retirement program, rather than prematurely submit the issue to an arbitrator. See, *City of Park Ridge* (Hill Arb.) (2011) at 25 (discussing contract terms and benefits of contract re-openers), citing, *State of Illinois, Department of Central Management Services (Illinois State Police) and IBT Local 726*, S-MA-08-262 (Benn Arb.) (2009) and *Metropolitan Alliance of Police, Chapter 471*, FMCS Case 091103-0042-A (Goldstein Arb.) (2009).

Not only is the proposal ideologically consistent with the ultimate goal of negotiations, but the provision is consistent with the parties' own past practices. There is nothing in the Union's proposal that commits the parties to reach agreement. Rather, the sole commitment is to meet and discuss this issue. Only if the parties reach an agreement would they be required to implement any change. In this respect, the Union's proposal to amend Section 12.2 is essentially the same as the expired language contained in Section 8.8.1, which the Employer seeks to maintain in the contract. Thus, Section 8.8.1 of the Agreement demonstrates that the parties have engaged in a practice of discussing topics beyond settlement of a contract.

Finally, the Union's proposal imposes no significant burden on the District. The proposal, if granted, merely requires the District to meet and discuss the feasibility of establishing an insurance upon retirement program. Neither party is obligated to reach agreement. There is no rational basis for the District's objection to the granting of the Union's proposal which should be incorporated into the Successor Agreement.

Position of the District

Management submits that like all of the Union's foregoing proposals, its final offer on retiree health insurance likewise is a breakthrough item that should be rejected. The Union proposes to add new language to the contract that obligates the parties to meet to explore the mutual feasibility of implementing retiree health insurance, and if so, to reopen the contract to implement it. The proposal is preposterous on its face and represents yet another drastic change to the *status quo* that is simply not justified.

The record clearly demonstrates that committee structures, and the attendant obligations to meet and to negotiate in good faith, are commitments that this Union simply cannot satisfy. The record establishes that, although the Union had negotiated language obligating the parties to form a committee to explore the feasibility of a buyout program, the committee never once met. The record establishes that, although the Union negotiated language establishing a health insurance committee, that committee devolved into a dysfunctional vehicle that has accomplished none of its original objectives. The record establishes that the Union did not, over the course of a year of bargaining, ever offer one date on which it was available for negotiations on its successor contract—let alone engage in substantive discussions over mandatory subjects of bargaining. The record establishes that, over the course of that year of bargaining, the Union never designated anyone with any requisite authority to negotiate or enter into tentative agreements.

Now, in the context of this final offer on retiree health insurance, the Union requests that the Arbitrator *impose* upon the parties yet another committee-like structure regarding an issue that, as the Arbitrator cogently recognized, few public employers offer to even maintain, let alone establish for the first time, in today's political and economic climate. *See Byron Fire Protection District and Byron Professional Firefighters LAFF Local No. 4755*, Case No. S-MA-12-005, at 41 (Hill, 2012) (“[f]ew public employers in the State of Illinois are maintaining retiree health insurance benefits.”). The proposal is, in a word, outlandish for this Union to make. Moreover, the Union's statement that its proposal “simply ask[s]” that the parties agree to meet and discuss retiree health insurance demonstrates that the Union's proposal is nothing more than its suggested “good idea,” which again is patently inadequate to justify a change to the *status quo*. Given the parties' bargaining history and the Union's demonstrated inability to bargain in good faith, and for all of the foregoing reasons, this proposal should be rejected in favor of maintaining the *status quo*.

ANALYSIS AND AWARD

While I do not agree with the Administration's argument that “the proposal is preposterous on its face and represents yet another drastic change to the *status quo* that is simply not justified” (*Brief* at 24), still Management makes the better case regarding ordering the parties to commence negotiations for *retiree* health insurance. These parties have enough on their plate already without having an arbitrator order additional bargaining regarding individuals who are no longer employees.

Management advances the better case and, accordingly, the status quo is awarded.

UNION ISSUE NO. 11

ARTICLE XXIII – PROMOTIONS and Appendix G

The Union points out that the undersigned Arbitrator retained jurisdiction to hear this issue, if necessary, pending the outcome of the Union's Petition For Declaratory Ruling filed with the General Counsel for the Illinois Labor Relations Board as to whether the District's proposal constitutes a permissive subject of bargaining over which this arbitrator has no jurisdiction. (*See*, R. 229-30). It was agreed that the parties would not brief this issue at this time.

UNION ISSUE NO. 13

MEMORANDUM OF AGREEMENT

RETROACTIVITY

Current Contract Language

MEMORANDUM OF AGREEMENT

Retroactivity – The salary scheduled attached to the Agreement as Appendix B, the stipends provided for in Section 8.2 (Paramedic Incentive), Section 8.3 (Driver’s Stipend), Section 8.5 (Working out of Classification), and Section 8.8 (Longevity Pay), shall be retroactive to June 1, 2009. The District shall, within forty-five (45) days of the effective date of the Agreement (i.e., within forty-five (45) days of the date on which the Agreement is executed), pay to each employee employed on the effective date of this Agreement (the date on which the Agreement is executed) a single payment in a separate payroll check for additional wages due each employee under this Agreement; provided that the retroactive payment of wages hereunder shall be computed only for all straight time and overtime hours worked and hours paid for vacation and holidays (excluding hours paid for sick) at the appropriate hourly rate of pay for such employee using Appendix B retroactive to June 1, 2009.
(UX 1, Tab 9 at 79).

Union’s Proposal

Retroactivity – The salary scheduled attached to the Agreement as Appendix B, the stipends provided for in Section 8.2 (Paramedic Incentive), Section 8.3 (Driver’s Stipend), Section 8.5 (Working out of Classification), and Section 8.8 (Longevity Pay), and the 7(g) wages provided for in Section 8.10 shall be retroactive to June 1, 2012. 2009. The District shall, within forty-five (45) days of the effective date of the Agreement (i.e., within forty-five (45) days of the date on which the Agreement is executed), pay to each employee employed on the effective date of this Agreement (the date on which the Agreement is executed) a single payment in a separate payroll check for additional wages due each employee under this Agreement; provided that the retroactive payment of wages hereunder shall be computed only for all straight time and overtime hours worked and hours paid for vacation and holidays (excluding hours paid for sick) at the appropriate hourly rate of pay for such employee using Appendix B retroactive to June 1, 2012. ~~2009~~.
(UX 1, Tab 25 at 19).

District’s Proposal

Retroactivity – The salary scheduled attached to the Agreement as Appendix B, the stipends provided for in Section 8.2 (Paramedic Incentive), Section 8.3 (Driver’s Stipend), Section 8.5 (Working out of Classification), ~~and~~ Section 8.8 (Longevity Pay), and the 7(g) wages provided for in Section 8.10 shall be retroactive to June 1, 2012. 2009. The District shall, within forty-five (45) days, plus five (5) business days per month from June 01, 2012 to the date of execution of the Agreement of the effective date of the Agreement (i.e., within forty-five (45) days ~~of the date on which the Agreement is executed~~ plus five (5) business days per month, added to the forty-five (45) days per month until this agreement is executed by the parties), pay to each employee employed on the effective date of this Agreement (the date on which the Agreement is executed) a single payment in a separate payroll check for additional wages due each employee under this

Agreement; provided that the retroactive payment of wages hereunder shall be computed only for all straight time and overtime hours worked and hours paid for vacation and holidays (excluding hours paid for sick) at the appropriate hourly rate of pay for such employee using Appendix B retroactive to June 1, ~~2012~~, ~~2009~~. (UX 1, Tab 26 at 18).

Position of the Union

The Union submits that at first blush, there appears to be little difference between the parties' proposals. The parties agree that the Arbitrator is authorized to award wages retroactive to June 1, 2012, and they have each submitted wage proposals retroactive to June 1, 2012. In addition, the parties agree to add the clause "and the 7(g) wages provided for in Section 8.10" to the list of wages which will be paid retroactively. Beyond these similarities, the District proposes nearly incomprehensible new language to extend the date by which it must pay the wages retroactive to June 1, 2012.

Assuming the Union has correctly deciphered the District's proposal, the Union's proposal should be awarded for two reasons. One is that its proposal is consistent with the parties' bargaining history. Four of the past five collective bargaining agreements have contained retroactivity provisions. The 2004-09 collective bargaining agreement was executed before its effective date and did not include a retroactivity provision.

The first of those, the 1994-97 collective bargaining agreement, provided that retroactivity checks shall be paid "within thirty days of the date on which the Agreement is executed." The three subsequent agreements have each provided that retroactivity checks shall be paid "within forty-five days of the date on which the Agreement is executed" – the same language the Union seeks to maintain here.

The second factor supporting adoption of the Union's final offer is that the District's proposal to extend the deadline for payments appears to be extraordinarily unreasonable. The Union states "appears to be" because it is difficult to fully comprehend what the District is proposing. Although it is the District's burden to justify its proposal, the District made no effort at hearing to explain why it is seeking to change the status quo, thereby leaving it up to the Union and the Arbitrator to figure out. It is not the Union's and Arbitrator's burden to do so. The District proposes that the timing of the payments be governed by the following: The District shall, within forty-five (45) days, plus five (5) business days per month from June 01, 2012 to the date of execution of the Agreement (i.e., within forty-five (45) days-plus five (5) business days per month, added to the forty-five (45) days per month until this agreement is executed by the parties), pay to each employee...

According to the Union, it appears from the foregoing that the District wishes to extend the payment deadline by five (5) business days for each month from June, 2012 until the date the Successor Agreement is executed. For the sake of discussion, the Union will assume that the parties will be able to execute the Successor Agreement on or about September 1, 2014. The period June 1, 2012 through August 31, 2014 covers a span of 27 months. Rounding off "five

business days” to one calendar week means that twenty-seven (27) weeks (one week for each of 27 months) would be added to the payment deadline of 45 days. Adding 27 weeks to 45 days could result in retroactivity checks not being paid for over thirty-three (33) weeks - until on or about the beginning of May, 2015. This is patently unreasonable. It is all the more so in the absence of any attempt by the District to explain its proposal. The District offered no evidence or rationale to support its extraordinary request. If the Arbitrator does not deem the proposal abandoned, it should be rejected. In either event, the Arbitrator should adopt the Union’s proposal.

ANALYSIS AND AWARD

The Union’s final offer on retroactivity is awarded.

EMPLOYER ISSUES

EMPLOYER ISSUE NO. 1

ARTICLE VII – HOURS OF WORK AND OVERTIME

Section 7.2 - Overtime.

Current Contract Language

Section 7.2 – Overtime. For purposes of payment of overtime under the Fair Labor Standards Act, the normal work period for shift employees of the Bureau of Fire Suppression and Rescue shall consist of fifteen (15) days. Pursuant to the FLSA, employees having a 15-day work period shall receive overtime pay at time and one-half their regular rate of pay for each hour worked in excess of 114 hours. For the purpose of this Article, only actual hours worked will be construed in calculating overtime pay due. Periods of time which are compensated but not worked shall not be considered in calculating overtime pay due. The District agrees that employees who are called back or hired back pursuant to Sections 7.4 or 7.5, or Section 8.7.3.1, respectively, shall be paid at the overtime rate of time and one half their regular rate of pay for each hour actually worked.

(UX 1, Tab 9 at 10).

The Employer’s Proposal:

Section 7.2 – Overtime. For purposes of payment of overtime under the Fair Labor Standards Act, the normal work period for shift employees of the Bureau of Fire Suppression and Rescue shall consist of fifteen (15) days. Pursuant to the FLSA, employees having a 15-day work period shall receive overtime pay at time and one-half their regular rate of pay for each hour worked in excess of 114 hours. For the purpose of this Article, only actual hours worked will be construed in calculating overtime pay due. Periods of time which are compensated but not worked shall not be considered in calculating overtime pay due. ~~The District agrees that~~

~~employees who are called back or hired back pursuant to Section 7.4 or 7.5, or Section 8.7.3.1, respectively, shall be paid at the overtime rate of time and one half their regular rate of pay for each hour actually worked.~~
(UX 1, Tab 26 at 6).

Union Proposal:

Section 7.2 – Overtime. Status Quo (current contract language).
(UX 1, Tab 25 at 15).

Position of the Union

The Employer's failure to provide any evidence to support its proposal at the arbitration hearing should be viewed as withdrawal of this issue. The Union maintains that the evidence record indicates the Employer failed to address this proposal at hearing. Absent an explanation of the proposal, coupled with the District's complete failure to submit evidence in support thereof, can lead to only one conclusion – that the Employer intended to withdraw this matter from further consideration. Accordingly, this proposal should not be incorporated into the Successor Agreement.

Assuming *arguendo* the Arbitrator considers this to be a valid proposal, it should not be awarded as the Employer did not meet the considerable burden necessary to alter the status quo contract language through interest arbitration. The District not only neglected to address this issue,⁸ but the record evidence is insufficient to demonstrate any need to dramatically alter the *status quo* as the Employer proposed in its Final Offer.

Here, the Employer has failed to justify such a dramatic change to the status quo contract language, or even made a threshold case that the payment of overtime has created unbearable operational hardships. See, *City of Park Ridge*, (Hill, 2011) at 28, quoting, *Sherriff of Will County and AFSCME Council 31, Local 2961, Case No. S-MA-88-9* (Nathan, 1988). It is not the Union's role in interest arbitration to guess at what the District is attempting to argue, especially in the face of a record devoid of any evidence. **Moreover, as demonstrated in the chart below, based on a review of the proposed comparable contracts, each and every one of those employers pays their firefighters at the overtime rate for any work performed outside their regular duty shifts.**

⁸ The issue was not addressed in the Employer's *Brief* although the Administration listed this as an impasse item (*Brief* at 10).

OVERTIME FOR WORK PERFORMED
OUTSIDE REGULAR DUTY SHIFT

Comparable Department	Agreement Contains OT Pay For Work Outside Regular Duty Shift	Contract Provision
Addison FPD	Yes	Sec. 16.4.2 at 25. Sec. 16.4.4 at 25
Bartlett FPD	Yes	Sec. 10.4 at 19 Sec. 10.9 at 23 Sec. 10.10 at 23
Bloomingtondale FPD	Yes	Sec. 3.4 at 3 Sec. 5.4 at 5
Carol Stream FPD	Yes	Sec. 4.4 at 6
Darien-Woodridge FPD	Yes	Sec. 7.5 at 18 Sec. 7.9 at 22
Lemont FPD	Yes	Article VIII, Section 4 at 16
West Chicago FPD	Yes	Sec. 4.6 at 8-9.
Norwood Park FPD	Yes	Sec. 9.04 at 9 Sec. 9.06 at 9
Frankfort FPD	Yes	Sec. 12.3 at 25 Sec. 12.8 at 26 Sec. 12.9 at 26 Sec. 12.10 at 26
Pleasantview FPD (FF)	Yes	Sec. 6.4 at 5
Pleasantview FPD (Captains)	No, "overtime rate" applies to hours over 204/27 day work cycle	Sec. 6.4 at 5

At best, any argument about the rising costs of overtime amounts to merely another statement from this Employer that it does not wish to pay these employees comparable rates. For this reason alone, the proposal should be rejected.

The Employer's proposal, if granted, would result in internal inconsistencies within the Agreement. The Employer's proposal is not only unsupported by the record evidence, but it is inconsistent with the remaining overtime provisions in the Agreement. The Employer proposes deleting reference to Sections 7.4, 7.5 and 8.7.3.1 from Section 7.2, in the apparent belief that this would eliminate its obligation to pay overtime wages pursuant to these other sections of the Agreement. However, the Employer's proposal does not eliminate the corresponding language in Sections 7.4, 7.5 and 8.7.3.1, which would result in, either no change to the application of overtime rates in this Department, or confusion and contradiction within the language of the Agreement leading to uncertainty in the application of overtime rates, and, most

likely, additional grievance arbitration over the issue. Specifically, Section 7.4, which remains intact under the Employer's proposal, explicitly states that: "An employee shall receive a minimum of one hour of time guaranteed at the overtime rate of time and a half his regular rate of pay for each call back incident or request to which he/she responds." Similarly, Section 7.5 states that: "Hire back and overtime assignments shall be in accordance with Appendix A attached hereto and incorporated herein."

Clearly, the Employer's proposal is untenable, not only because the Employer has failed to meet the considerable burden necessary to radically alter the status quo language but because, as written, the Employer's proposal would result in internal inconsistencies within the Successor Agreement.

ANALYSIS AND AWARD

As articulated by the Union, the Employer seeks to eliminate overtime payments in cases where employees are called back to work, or held over past the normal conclusion of their shift, but the employee has not yet physically worked 114 hours during that particular pay period. Under the parties' status quo contract language, non-worked benefit time, such as sick time, vacation, furlough, or other such time off, does not count towards calculation of the 114 hours. The effect would be to drastically reduce the amount of overtime compensation provided to bargaining unit employees.

I hold that Management has failed to meet its burden to change the existing collective bargaining agreement. I also credit the Union's argument that internal inconsistencies would result in granting the Administration's proposal. The Union also has comparability on its side.

The Union advances the better case and, accordingly, its final offer is awarded.

EMPLOYER ISSUE NO. 2

ARTICLE XII – INSURANCE, Section 12.1 – Coverage and Cost.

Current Contract Language

Section 12.1 – Coverage and Cost. Except as noted below for the period June 1, 2010 through June 30, 2012, the District agrees to provide comprehensive group hospitalization, major medical and dental insurance coverage and benefits for bargaining unit employees in substantially the same manner and level as provided on the effective date of the 2004-2009 Agreement. From June 1, 2010 through June 30, 2012, the District shall provide health coverage through United Health Care, including the PPO and HSA Plans, with coverage and benefits as they existed effective June 1, 2010. Effective July 1, 2012, and continuing through June 30, 2013, the District shall cease providing health coverage through United Health Care and shall

return to the Tri-State Fire Protection District partially-self-funded Employee Benefit Plan as it existed in the Plan Document revised February 1, 2000, unless the parties mutually agree otherwise.

The employee shall pay \$45.00 per month for premium costs for single coverage and \$90.00 per month for premium costs for family coverage. Beginning the first pay period immediately following the execution of the 2009-2012 Agreement by the Parties, employee contributions for single coverage and family coverage shall cease and employees shall not be required to make any contribution for single and family coverage until July 1, 2012 when the District returns to the Tri-State Fire Protection District partially-self-funded Employee Benefit Plans at which time employee contributions for single coverage shall be \$80.00 per month and \$125.00 for family coverage. The District agrees to continue a Section 125 flexible benefit plan. The District will pay the cost of one eye examination every year on behalf of the employee and his dependents and 50% of the cost of one set of prescription eyewear (i.e., glasses or contact lenses) on behalf of the employee and his dependents. The District agrees to maintain coverage for family planning and infertility as exists under UHC Plan through June 30, 2012 and effective July 1, 2012, as exists under the partially-self-funded Employee Benefit Plan. (UX 1, Tab 9 at 26-27).

District's Proposal:

Section 12.1 – Coverage and Cost. ~~Except as noted below for the period June 1, 2010 through June 30, 2012, the~~ The District agrees to provide comprehensive group hospitalization, major medical and dental insurance coverage and benefits for bargaining unit employees in substantially the same manner and level as provided on the effective date of the 2004-2009 Agreement. ~~From June 1, 2010 through June 30, 2012, the District shall provide health coverage through United Health Care, including the PPO and HSA Plans, with coverage and benefits as they existed effective June 1, 2010. Effective July 1, 2012, and continuing through June 30, 2013, the District shall cease providing health coverage through United Health Care and shall return to the Tri-State Fire Protection District partially-self-funded Employee Benefit Plan as it existed in the Plan Document revised February 1, 2000, unless the parties mutually agree otherwise.~~

~~—The employee shall pay \$45.00 per month for premium costs for single coverage and \$90.00 per month for premium costs for family coverage. Beginning the first pay period immediately following the execution of the 2009-2012 Agreement by the Parties, employee contributions for single coverage and family coverage shall cease and employees shall not be required to make any contribution for single and family coverage until July 1, 2012 when the District returns to the Tri-State Fire Protection District partially-self-funded Employee Benefit Plans at which time e~~Employee contributions for single coverage shall be ~~\$80.00~~ 15% per month of the premiums for single coverage and \$125.00 30% per month of the premiums for family coverage effective at the time of ratification of this Agreement through May 31, 2015. Employee contributions shall be 20% per month of the premiums for single coverage and 40% of the premiums for family coverage effective June 1, 2015 through May 31, 2016. Employee contributions shall be 25% of the premiums for single coverage and 50% of the premiums for family coverage effective June 1, 2016 through May 31, 2017. The District retains the right to

select a different insurance carrier and/or to provide voluntary coverage through an HMO system(s). If the District intends to select a different insurance carrier and/or to provide voluntary coverage through an HMO system(s), the District agrees to discuss the matter with the Union in a Labor-Management Committee meeting. The District agrees to continue a Section 125 flexible benefit plan.

The District will pay the cost of one eye examination every year on behalf of the employee and his dependents and 50% of the cost of one set of prescription eyewear (i.e., glasses or contact lenses) on behalf of the employee and his dependents. The District agrees to maintain coverage for family planning and infertility as exists under UHC Plan through June 30, 2012 and effective July 1, 2012, as exists under the partially-self-funded Employee Benefit Plan. (UX 1, Tab 26 at 12).

Union Proposal:

The Union proposes status quo (current contract language).
(UX 1, Tab 25 at 15).

Position of the Union

Historically, the bargaining-unit employees have been covered by the District's self-insured plan. The status quo contract language came about as a result of a settlement agreement between the parties after several days of hearing before the Illinois Labor Relations Board based on a Complaint For Hearing issued against the District due to the District's unilateral changes in insurance. As a result of the settlement, the current contract language was incorporated into the Agreement allowing the District to maintain its unilaterally imposed health insurance through June 30, 2012. Therefore, prior to July 1, 2012, all District employees were covered by the United Healthcare Plan ("United Plan"). Effective July 1, 2012, the parties agreed to return to the District's self-insured plan. Pursuant to this same settlement agreement, the parties agreed to the establishment of the Joint Insurance Committee. Pursuant to this insurance committee, the parties explored other insurance options including once again returning to United Health Care. However, employees were dissatisfied with the coverage provided under the United Plan, and during a meeting of the Joint Insurance Committee established by the parties, the Committee, including then Deputy Chief Mancione, voted to continue with the Tri-State FPD self-funded PPO Plan (PPO Plan).

Although the District contends that its costs under the self-insured PPO plan have increased significantly, it has consistently failed to supply relevant cost information to the Union.

According to the Union, despite the fact that the District seeks to dramatically raise employees' insurance costs, it has yet again failed to present any evidence in this arbitration proceeding concerning the costs of present and/or future family and single premiums. The District's failure is all the more striking since at hearing it questioned the rates the Union contended the District had provided in mediation, and even requested that the Arbitrator leave open the record so that it could investigate the Union's contention. Not surprisingly, since the

hearing, almost two and a half months have passed and nothing further has been said about the Union's numbers supplied by the former Chief. The absurdity of the District's request to allow it to confirm the numbers it supplied in the first place is underscored by District Exhibit 13 wherein the District costs out insurance allegedly based on COBRA rates. If the District cannot disclose its insurance costs to the Union, and contends at hearing that it cannot confirm the costs former Chief Gibson supplied during mediation, then how could District Exhibit 13 possibly contain accurate information? As a result, the Arbitrator must rely on the premium rates the District submitted during mediation.

Using these mediation figures, costs for single coverage rises from \$80 per month to \$162 per month, which is 15% of the \$1,060 per month cost for single employee coverage. Costs for family coverage would rise from \$125 per month to \$843.90 per month, which is 30% of the \$2,813 cost for family coverage.

The unreasonableness of the District's proposal is demonstrated by a comparison with costs paid by other districts. Comparison with the Union's proposed comparable districts demonstrates that no other comparable district pays as much as the Union's members would pay under the District's proposal. In dollar terms, not a single district pays as much at present as the \$80 per month the Union's members pay for single coverage. The most any other district pays for single coverage is \$66.07 (Bloomingtondale FPD); the average monthly cost of all comparable districts for single coverage is only \$24.11. (R. 201; UX 3, Tab 44). District employees already pay an amount (\$80) far in excess of the average. The District's proposal seeks to increase that disparity, by proposing that employees pay \$162 per month, more than double the \$80 District employees currently pay, and nearly \$100 more than the amount Bloomingtondale employees pay.

The District's proposal for family coverage produces a similarly untenable result. The average cost paid by employees of the Union's comparable districts for family coverage is \$139.01; the most any employees pay is \$339.02 per month (Bloomingtondale). The Union ranks fifth of nine in cost for family coverage. Under the District's proposal, its employees' costs for family coverage would rise nearly 700% to \$843.90 per month, six times the \$139.01 average of all comparable districts, and more than double what employees in any other comparable districts pay. The Union's rank for family coverage would fall from fifth of nine to dead last, 9 of 9.

The District's proposal fares just as poorly in percentage terms. The District's employees currently pay 7.55% of the total cost for single coverage, and rank 5th of nine comparable districts; the average of comparable union districts for single coverage is 5.83%, close to 2% less. The most any employees in a comparable district pay is 11.63% (Norwood Park FPD). . Under the District's proposal for 2013, its employees' share of costs for single coverage would rise to 15%. This exceeds all other districts, and would cause the Union's rank to fall to last, nine of nine. Similarly, the District's proposal for family coverage causes a precipitous drop in the Union's relative standing among comparable districts in terms of percentage contribution. The average percentage paid by employees among comparable districts for family coverage is 9.74%; the highest percentage paid by employees in any district is 20% (Id.). The District's proposal calls for District employees to pay 30% of the insurance premiums in 2013. This is

about three times the comparable districts' average, and causes the Union's relative rank to fall to ninth among the nine districts.

Finally, the District's proposal fares poorly in terms of annual costs paid by District employees. Currently, District employees pay \$960 per year for single coverage. The average annual amount paid by employees in the comparable districts is \$289.32, and the highest is \$792.84 (Bloomingtondale FPD). The Union proposal of \$960 per year exceeds all comparable districts. Under the District's proposal, its employees would pay \$1,944 per year. This is more than twice the Union status quo proposal, and more than twice the highest amount paid by Bloomingtondale's employees.

Analysis of annual costs of family coverage is similar. Currently, District employees pay \$1,500 per year for family coverage. (UX 3, Tab 44 at 2). The average annual amount paid by employees in the comparable districts is \$1,668.15, and the highest is \$4,068.24 (Bloomingtondale FPD). The Union proposal of \$1,500 per year ranks 5th among the nine comparable districts. Under the District's proposal, its employees would pay a staggering \$10,126.80 per year. This is more than six times the Union status quo proposal, more than six times the average of the comparable districts, and more than twice the highest amount paid by Bloomingtondale's employees. It also causes the Union's relative rank to fall from 5 to 9 among the nine districts.

Although the Union has furnished similar data based on the District's proposed comparable districts, it is unnecessary to conduct the same analysis as just presented for the Union's proposed comparable districts. (UX 3, Tab 45). This is because employees of Frankfort FPD and Pleasantview FPD, the District's two disputed comparable districts, pay insurance costs even lower than Norwood Park FPD, the Union's disputed comparable district. Accordingly, the averages for the District's proposed comparable districts are even lower than the Union's, and the analysis is even more supportive of the Union's proposal. For example, the average contribution paid by the District's proposed comparable districts in 2013 for single coverage is \$19.08, lower than the \$24.11 average paid by the Union's proposed comparable districts. The average contribution paid by the District's proposed comparable districts in 2013 for family coverage is \$133.09, lower than the \$139.01 average paid by the Union's proposed comparable districts. Accordingly, even utilizing the District's proposed comparable districts, the Union's status quo offer is by far the more reasonable one.

The District's proposal also must be rejected because of its draconian impact on the parties' wage proposals. The Union has already demonstrated that its status quo insurance proposal is better supported by comparison with comparable districts. However, that comparison is based only on the year 2013. **The District's proposal increases, in each succeeding year, the percentage to be paid by its employees toward health insurance. Thus, the employee percentage for single coverage rises from 15% to 20% in 2015, and to 25% in 2016. The employee percentage for family coverage rises from 30% to 40% in 2015, and to 50% in 2016. Due to these increasing percentages, over the four year term proposed by the Union, District employees' net wages will fall \$6,834.40, or 9.92%.** This is because over the three years when the District insurance proposal takes hold, an employee would pay \$4752 more for single insurance coverage, and \$36,007.20 more for family insurance coverage.

As if the foregoing were not devastating enough, the impact is actually much greater than the above analysis indicates. This is because the District also proposes to delete the contractual language which allows employees to participate in a Section 125 flexible benefit plan. Again, the record is devoid of any explanation or evidence to support the deletion of this language which has been included in the parties' CBAs since 1994. Therefore, the pre-tax dollars with which the employees currently pay for their health care contributions will no longer be available should the Arbitrator adopt the District's proposal.

In summary, the Union asserts that based on all the foregoing, it is evident the District's insurance proposal, if adopted, would have an overall devastating impact on bargaining unit employees. The Arbitrator should reject the District's insurance proposal, and award the Union's proposal to retain the status quo together with the Union's wage and duration proposals.

Position of the District

Citing alarming increases in health insurance for this bargaining unit that regularly exceed 100% on a monthly basis in comparison to what the bargaining unit's health insurance benefits cost the District when it was subject to the same health insurance plan as the District's non-union employees, the Administration asserts that its final offer is more reasonable than the Union's (*Brief for the District* at 39).

The Employer specifically cites extraordinary increases that it says justifies adoption of the District's final offer on cost, coverage and cost containment. The Administration's proposal represents a reasonable and more equitable sharing of that burden. In this specific case the Administration must increase employee contributions for health insurance. The Union's insistence on the status quo, and its failure to bargain about health insurance during successor negotiations, reflects a myopic, narrow stance that ignores the economic realities of health insurance costs. Its position should be rejected. To combat the staggering increases the District is facing, the District has proposed a reasonable structure of employees paying a percentage of the cost of the premiums, with it phased in over the life of the agreement. Similarly, the District has proposed a three-tiered prescription card to replace the outdated language in the contract, which refers to a flat dollar amount prescription card that plainly does not exist in the marketplace and, put simply, cannot be offered by the District. Taken together, and based on the foregoing evidence, the District's health insurance proposals are necessary and well supported by the evidence.

Accordingly, the District's health insurance proposals should be adopted.

ANALYSIS AND AWARD

Everything the Administration asserts regarding costs and health insurance is spot on correct.

To this end, Minnesota Arbitrator Christine D. Ver Ploeg, in *Burlington IA Municipal Waterworks & IBT Local 238*, PERB CEO #99/Sector 3 (2003), refused to order a change in the *status quo* health insurance language (where employees paid nothing for single and family insurance), and reasoned that this is an issue traditionally left to bargaining by the parties. In so holding, she concluded as follows:

I have reviewed the Employer's proposed change and find that it may well represent a better plan for many employees than they are currently provided. Nevertheless, the issue of medical coverage is such overriding concern to most employees – and it certainly is to these employees – that many arbitrators (including myself) entertain a strong presumption that parties should be left to negotiate for themselves significant changes to an existing package. Although that presumption can be overcome with compelling evidence of financial exigency and strong comparability data, the evidence presented at the hearing that supports unilaterally imposing this change upon these employees does not rise to that level. It may be possible that given time and other employees' experience with the new plan, these employees will themselves prefer to come within its provisions. However, now is not the time to force them to do so. (*Ver Ploeg* at 7-8)

Significantly, Arbitrator Ver Ploeg was writing in 2003, long before the “great recession” and an explosion in health care costs.⁹

Likewise, Arbitrator Kim Hoogeveen, in *Cedar Rapids Professional Firefighters, Local 11 & City of Cedar Rapids, IA* (2005), acting as a fact finder, stressed the partnership angle with respect to health insurance and the obligation of employees to eventually assume some of the costs:

With respect to health insurance, a partnership between the Union and the City should exist, as each has an interest in securing the greatest possible bang for every dollar expended. Yet to state the obvious, it is the employees, and not the City, who benefit from health insurance, and as such employees must be prepared to assume a portion of the risk and to share in at least a fraction of the increased cost. As health insurance costs continue to rise, employees have no reason to expect that their partner will bear 100% of cost increases while they retain all the benefits. The collective bargaining agreement should not be used to shield employees from an obligation to fund an equitable portion

⁹ See, e.g., Michael Lewis, *The Big Short* (2011), dealing with the impending financial crisis of 2008 and who knew before the financial crisis that a silent crash in the bond market and the real estate derivatives market was about to implode, resulting in a world-wide economic “crash.” Lewis discusses what led up to the darkest days of the crisis, helping the average, non-financial expert to see how the great financial storm developed. The so-called “great recession” had a profound effect of local and state governments, who by law are required to balance their budgets, unlike the federal government, who continues to accumulate record deficits and can simply print money to operate. The fallout from 2008 and the imploding derivative markets, resulting in numerous bank failures starting in 2009, is still being felt by governments, not just in the states, but world wide.

My point is this: Although many states and local governments have recovered from the 2008 “recession hole” it is not at all clear to me that governmental employers are out of line in urging caution with respect to expected health care costs, and its goal of making employees participate *via* making greater percentage contributions toward premiums. Simply because the District is now healthy does not mean it cannot deal with the subject of health care. Consistent with the above-cited arbitrators (Graham, Ver Ploeg, Dorby, and Perry), my view is the day is just around the corner when the District will achieve greater sharing of premiums.

of the benefits they enjoy. (*Hoogeveen* at 13).

There is no question the day is near when these employees will contribute a greater percentage of premiums or costs toward their health insurance. Add to this any possible mandates looming that have been brought about by the Affordable Health Care Act, pressure for increased premium sharing and overall total reduction will continue. Indeed, plan re-design and plan reductions may be viable options. A wellness program may be just around the corner (for all of us!). See, e.g., *Guthrie County, IA & IBT Local 238, PERB 936/1* (Nathan, 2006)(concluding: “Employee contributions are here to stay. The cost of insurance must be borne by both sides if there is to be a prudent utilization of resources. Employees must have a stake in the risks because the Employer can no more control utilization than can individual employees vis-à-vis the group as a whole.” *Nathan* at 10); *City of Independence, IA & IBT Local 238, PERB Case CEO #860, Sector 2* (Graham, 2004)(“Only a person with their head in the sand could be oblivious to the very different situation caused by the substantial increase in health insurance premiums. The problem being confronted by employers and employees, public and private sector alike, has proved intractable and not susceptible of resolution.” *Graham* at 6.). One Arbitrator (from Warren, Michigan) described the health insurance system in the United States as “broken.” See, *City of Davenport, IA & Union of Professional Police, PERB Case CEO 196/3* (Dorby, 2000)(“For those of you who have not yet figured out that the health care system is broken, here is a wake up call. The problem here is that health care costs are out of control.” *Dorby* at 9). Accord: *City of Davenport, IA & Association of Professional Firefighters, IAFF Local 17, PERB 190/3* (Dworkin, 2003)(“Next to wages, this [health insurance] is a most fundamental and diverse issue. There are no pretty solutions.” *Dworkin* at 11, quoting Arbitrator Dorby in a 2001 fact finding). Mr. Dorby may not be wrong (as Congress has yet to realize with respect to Medicare and Medicaid).

Adopting the *dicta* offered by Arbitrator Perry in *City of Cherokee, IA, supra*, during the next round of negotiations, if the District advances a reasonable proposal, perhaps with less of a jump than is now on the table for the years at issue, to require these employees to bear an increased part of the cost of this important but increasingly costly benefit, with some reasonable *quid pro quo*, and the Union stonewalls such, it would appear to so at its own peril. See, *Perry* at 5. “However, for the contract under consideration the insurance provision should not change.” *Id.*

The importance of where the parties placed themselves in past contracts is an important consideration in rendering an award in an interest proceeding. See, e.g., *Johnson County Sheriff's Office & PPME Local 2003, PERB Case 1083/2* (Graham, 2011)(“Important in this situation is the history of negotiations and intra-employer comparisons.” *Graham* at 4). Research of arbitral case law indicates that the presumption is to leave any non *de minimis* changes in long-time benefits, especially insurance, to the parties themselves.

To this end, Arbitrator Paul Lansing (an Illinois resident acting as an Iowa fact finder), in *City of Mason City, IA & AFSCME Local 1367* (2003), considered changing the parties' health insurance benefit. The City proposed changing the *status quo* to an employee contribution of \$25.00/month toward family coverage. Concluding that the employer “has not demonstrated

why the historic contract relationship between the parties should be changed at this time,” (*Lansing* at 10, emphasis in original), the Arbitrator had this to say on the importance of the parties coming up with their own solution to rising insurance costs:

While I think both parties recognize the necessity of formulating a new method of dealing with the rapidly increasing costs of health insurance, the better solution would be for the parties to negotiate the issue themselves rather than an outside neutral suggest or impose a solution upon them. For example, one objection of the Union was that a contribution to health insurance would effectively mean a reduction in the wage increase. Perhaps, the City would consider a one-time increase in wages above the comparables in exchange for the Union’s acceptance of a required contribution to their own health insurance coverage.

The Arbitrator cautioned that the day will come when the Union will have to start contributing to family insurance:

[T]he Union should recognize that the present contract relationship regarding health insurance coverage cannot last much longer and it may be in their best interest to negotiate the matter with the Employer in exchange for another benefit they desire. To do otherwise might be short sighted by the Union. (*Lansing* at 10).

That same Arbitrator, in *City of Cedar Falls, IA & Firefighters Local 1366* (2002), again faced the issue of imposing a change to the *status quo* in health insurance. In rejecting the City’s argument for a straight subsidy to the unit (who, in turn, would purchase their own insurance), Arbitrator Lansing reasoned that since it was the employer who requested the change, the burden would lie with him to demonstrate the need for a change. Favoring the Union’s final offer was the complete absence of comparables that presently had a system in place which was similar to management’s final offer. Arbitrator Lansing also commented on the principle applied by labor arbitrators when one side is asking for a change in an existing collective bargaining agreement:

Beyond the comparability matter, both parties know that neutrals are reluctant to make major changes to the present contract. **Neutrals do not know the full bargaining history of the parties, what sacrifices were made to maintain which rights under the contract in past years.** Major structural changes to a contract are better made by the parties and not the neutral. Without evidence beyond the rising costs of medical insurance, I do not think the Employer has carried the burden in this matter. (*Lansing* at 11; emphasis in bold mine).

Accord: *City of Dubuque, IA & Firefighters Local 353* (Thompson, 2006)(*status quo* maintained where Arbitrator finds that nothing has changed since last contract when prior arbitrator mandated a 90-10 split); *Woodward Granger Community Schools & Woodward Granger Education Association*, Iowa PERB Case CEO #665, Sector 1 (Jacobs, 2010)(“The past history of bargaining showed that this provision was quite recently negotiated into the parties’ agreement. To change it now would be, as Arbitrator Johnson noted, quite determined to the notion of good faith bargaining, especially in a situation where there was no compelling evidence to support a radical change in the language.”); *Iowa City Community School District & Iowa*

City Education Association, PERB Case #334/2 (Johnson, 2010) (“It has also been stated that neutrals should be reluctant to effectuate changes in contract language which has been voluntarily accepted by both sides in the absence of evidence showing unique circumstances or a compelling need for the requested change); *Keokuk County and PPME Local 2003, IUPAT* (Loeschen, 2004) (Put another way, ‘what was gained at bargaining should not be lost the following year by arbitral fiat. Nothing can be more detrimental to good faith negotiations.’” *Johnson* at 9-10, quoting *Bettendorf Education Association* (Hill, 1991)); *City of Clinton, IA & Clinton, Iowa Police Bargaining Unit Association*, PERB Case #162/Sector 2 (Schiavoni, 2007) (entering fact finding recommendation that *status quo* be respected, reasoning that because the benefit at issue is significant and the proposed modifications are substantial “take aways,” “it is not recommended that the City be granted its proposed language through the fact-finding/interest arbitration process without showing evidence that it has provided a quid pro quo for the modifications, citing the undersigned Arbitrator, “a neutral should keep in mind that, at one time a party may have paid dearly for a particular item and, this should proceed with caution before drafting an award that would upset the ‘quid pro quo.’” *Schiavoni* at 14, citing *City of Clinton, IA & Clinton Police Department* (Hill, 2006)); *Le Mars CSD & Le Mars Education Association, PERB CEO #368/1* (Gallagher, 2009) (awarding the employer’s insurance proposal, reasoning that the union’s proposal does not retain the *status quo* “and is therefore contrary to the parties’ collective bargaining agreement history and past contracts.” *Gallagher* at 17).

Consistent with the above arbitral authority, the Union’s position on insurance is awarded.

EMPLOYER ISSUE NO. 3

ARTICLE XII – INSURANCE, Section 12.4 – Cost Containment

Current Contract Language:

The District retains the right to institute cost containment measures relative to insurance coverage so long as the basic coverage level of insurance benefits remains substantially the same. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, prohibition on weekend admissions except in emergency situations, and mandatory outpatient elective surgery for certain designated surgical procedures. The District may implement a \$3/\$10/\$25 prescription card. (UX 1, Tab 9 at 27).

District’s Proposal:

Section 12.4 – Cost Containment. The District retains the right to institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially the same. Such changes may include, but are not limited to, non-network coinsurance, mandatory second opinions for elective surgery, pre-admission and continuing admission review, prohibition on weekend admissions except in emergency situations, and

mandatory outpatient elective surgery for certain designated surgical procedures. The District may implement a ~~\$3/\$10/\$25 prescription card. \$10/\$20/\$40 Three-Tier prescription card (Tier 1 – General Rx co-pay, Tier 2 – Formulary Rx co-pay, Tier 3 – Non-Formulary Rx co-pay)~~ and the mandatory use of mail order drugs for maintenance drugs. Lack of use of mail order drugs for maintenance drugs will result in a penalty set by the prescription drug provider. (UX 1, Tab 26 at 14).

Union's Proposal:

Section 12.4 – Cost Containment. The District retains the right to institute cost containment measures relative to insurance coverage so long as the basic coverage level of insurance benefits remains substantially the same. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, prohibition on weekend admissions except in emergency situations, and mandatory outpatient elective surgery for certain designated surgical procedures. The District may implement a ~~\$3/\$10/\$25~~ \$10/\$20/\$30 prescription card. (UX 1, Tab 25 at 15).

Position of the Union

The Union first asserts that currently the parties' collective bargaining agreement provides for a prescription card with a three-tiered co-payment for generic, formulary, and non-formulary prescription drugs of \$3/\$10/\$25, respectively. The Union proposes to modestly offset increased drug costs by raising the co-payments to \$10/\$20/\$30, respectively. The District, on the other hand, has proposed a three-tier co-payment without any dollar value attached. It also seeks to require, under the threat of some unknown penalty, use of mail order drugs for maintenance drugs.

The District's proposal is preposterous. The Union notes that the District first submitted this proposal in its final offer prior to interest arbitration. Previously, on October 25, 2012 and April 4, 2013, the District had proposed three-tier co-payments of \$10/\$20/\$40. The District struck this proposal in its final offer again in indicative of its regressive bargaining in interest arbitration. The District's proposal is preposterous because it has attached no dollar values to its three-tier proposal. Instead, it proposes that it unilaterally set the costs for the three tiers. As a result, no one, probably including the District, knows how much employees might be required to pay under the District's proposal; it could be \$100/\$200/\$300, or \$1,000/\$2,000/\$3,000. Clearly, such a proposal does not warrant serious consideration.

On top of the District's failure to tender a serious offer, the Union's proposal reasonably comports with the average co-payments made by employees in both the Union's and District's comparable districts

The average co-payments for the three-tier system for the Union's comparable districts are \$9.71/\$24/\$31.14. At hearing, Union counsel noted that the column "Brand Name" should be amended to reflect "Non-formulary".

The average co-payments for the three-tier system for the District's comparable districts are \$8.83/\$23/\$28. Thus, the Union proposal fares even more favorably with the District's comparable districts for the generic and non-formulary drugs. Accordingly, the Union proposal is the more reasonable one, and should be adopted.

Position of the District

Compelling evidence supports the Administration's final offer on Health Insurance Coverage and Cost, including Cost Containment. Management asserts that interest arbitrators repeatedly and long have recognized that health insurance costs skyrocketed in the last decade and continue to do so. See City of DeKalb and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-10-366, at 22 (Meyers, 2012) ("Because of the increasing costs of medical care and other expenses, health insurance premiums also have been increasing at a significant rate for several years, and those dramatic increases likely will continue for years to come."); See also, Metropolitan Alliance of Police, Steger Police Chapter #117 and Village of Steger, Case No. S-MA-02-132, at 18 (Meyers, 2003); City of Countryside and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-03-201, at 12 (Benn, 2003); Village of Deerfield and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-02-155, at 10 (Cox, 2003). Here, there is no question that the District has experienced alarming increases in health insurance for this bargaining unit. (Dist. Ex. 4). These increases regularly exceed 100% on a monthly basis in comparison to what the bargaining unit's health insurance benefits cost the District when it was subject to the same health insurance plan as the District's non-union employees. (Dist. Ex. 4). Indeed, since the bargaining unit reverted to the self-funded PPO plan, the District's costs have increased upwards of 400%.

These extraordinary increases alone justify adoption of the District's final offer on cost, coverage and cost containment. Interest arbitrators regularly have adopted employer's health insurance proposals that change employee contributions from a flat-dollar amount to a percentage of premium, in recognition of the significant increase in health insurance costs. See Village of Steger, Case No. S-MA-02-132 at 18; Village of Deerfield, Case No. S-MA-02-155 at 11. In adopting the employer's health insurance proposal basing employee contributions on a percentage of premium in Steger, Arbitrator Meyers recognized the following:

"[The Union's] proposal quite simply does not go far enough, especially in light of skyrocketing premiums...the Employer's proposal more realistically and reasonably addresses the economic pressure associated with the rising cost of health insurance coverage. The Employer's proposal represents a reasonable and more equitable sharing of that burden." Steger, at 18.

Likewise, in this case, the District must increase employee contributions for health insurance, counsel argues. The Union's insistence on the status quo, and its failure to bargain

about health insurance during successor negotiations, reflects a myopic, narrow stance that ignores the economic realities of health insurance costs. Its position should be rejected. See City of Rockford and City Fire Fighters Local 413, IAFF, AFL-CIO, Case No. S-MA-12-108 (Goldstein, 2013)(rejecting union’s offer because it would not only cost the employer more in claims administration but also create a large gulf of disparity between the bargaining unit and the remainder of the employer’s workforce, in terms of both benefits and employee costs). To combat the staggering increases the District is facing, the District has proposed a reasonable structure of employees paying a percentage of the cost of the premiums, with it phased in over the life of the agreement. Similarly, the District has proposed a three-tiered prescription card to replace the outdated language in the contract, which refers to a flat dollar amount prescription card that plainly does not exist in the marketplace and, put simply, cannot be offered by the District. Taken together, and based on the foregoing evidence, the District’s health insurance proposals are necessary and well supported by the evidence.

As the undersigned Arbitrator has recognized in numerous cases, health insurance is “uniquely specific” to each public employer, and the use of external comparables simply has diminished, if any, relevance because of the variations among units of local government in health insurance plan benefits, wages and other forms of direct and indirect compensation. See Village of Lansing and Teamsters Local 700, Records Clerks Union, Case No. S-MA-11-197, at 18-19 (Hill, 2013)(citations omitted). Here, external comparability is particularly inapt, given that, among the agreed-upon comparables, the cost of health insurance premiums varies widely. Accordingly, the District’s health insurance proposals should be adopted.

ANALYSIS AND AWARD

For the reasons articulated above (See discussion *supra* 72-76), the Union’s position (significantly tracking the *status quo* by allowing a \$10/\$20/\$30 prescription card) is awarded. I find that the Administration’s proposal significantly different from the *status quo* to be imposed by an outside neutral, at least at this time.

EMPLOYER ISSUE NO. 4

ARTICLE XII - INSURANCE, Section 12.5 Joint Insurance Committee

Current Contract Language:

Section 12.5 – Joint Insurance Committee. An Insurance Committee shall be formed consisting of six (6) members. Three (3) members shall be appointed by the District and three (3) members shall be appointed by the Union. The Insurance Committee shall meet at least monthly, during the first week of the month, unless it is agreed by a majority of the Committee members to cancel the monthly meeting.

A quorum for Insurance Committee meetings shall consist of four (4) Committee members. Any motion shall require the affirmative vote of four (4) Committee members, in order to be adopted.

A Committee member may provide his/her vote by proxy to another Insurance Committee member. If either the District or Union representative(s) fails to vote in favor of a motion, resulting in a deadlock (tie) vote, the party rejecting the motion shall provide in writing to the other Committee members the reason(s) for rejecting the motion, within 48 hours of the vote.

The Insurance Committee shall investigate, explore and discuss alternative arrangements for hospital, medical, dental, and vision plans. The District shall endeavor to make all relevant information available and this Committee will be empowered to research available insurance plans, comparing their costs and benefits, and invite representatives of insurance plans to the Committee meetings for the purpose of providing information, presenting new plans and options and answering questions. Committee recommendations shall be made to the District and to the principal officer of the Union. If the Committee recommendations are not accepted by the parties, any unresolved issues shall be subject to the impasse procedures provided for pursuant to Section 14 of the Illinois Public Labor Relations Act. Notwithstanding the above, nothing herein shall preclude the District or the Union from making any proposals regarding health insurance to become effective after June 30, 2013 during the bargaining process for any successor agreement. (UX 1, Tab 9 at 27-28).

District's Proposal:

~~Section 12.5—Joint Insurance Committee. An Insurance Committee shall be formed consisting of six (6) members. Three (3) members shall be appointed by the District and three (3) members shall be appointed by the Union. The Insurance Committee shall meet at least monthly, during the first week of the month, unless it is agreed by a majority of the Committee members to cancel the monthly meeting.~~

~~———A quorum for Insurance Committee meetings shall consist of four (4) Committee members. Any motion shall require the affirmative vote of four (4) Committee members, in order to be adopted. A Committee member may provide his/her vote by proxy to another Insurance Committee member. If either the District or Union representative(s) fails to vote in favor of a motion, resulting in a deadlock (tie) vote, the party rejecting the motion shall provide in writing to the other Committee members the reason(s) for rejecting the motion, within 48 hours of the vote.~~

~~———The Insurance Committee shall investigate, explore and discuss alternative arrangements for hospital, medical, dental, and vision plans. The District shall endeavor to make all relevant information available and this Committee will be empowered to research available insurance plans, comparing their costs and benefits, and invite representatives of insurance plans to the Committee meetings for the purpose of providing information, presenting new plans and options and answering questions. Committee recommendations shall be made to the District and to the principal officer of the Union. If the Committee recommendations are not accepted by the parties, any unresolved issues shall be subject to the impasse procedures provided for pursuant to Section 14 of the Illinois Public Labor Relations Act. Notwithstanding the above, nothing herein shall preclude the District or the Union from making any proposals regarding health insurance to become effective after June 30, 2013 during the bargaining process for any successor agreement.~~

(UX 1, Tab 26 at 15).

Union's Proposal:

The Union proposes status quo (current contract language).
(UX 1, Tab 25 at 15).

Position of the Union

The issue presented here is a simple one: whether to eliminate the Agreement's provision for the Joint Insurance Committee ("Committee"). The District contends it is broken and proposes that it be stricken from the Agreement. The Union contends that it has worked well and proposes to retain it.

Contrary to the District's contention, the Committee is not broken. The Committee was formed in late 2011 pursuant to a settlement agreement executed by the parties on October 17, 2011 in an unfair labor practice proceeding. The Union had alleged in that proceeding that the District had unilaterally modified the health insurance carrier (to United Healthcare) and provided employees with substandard insurance. In exchange for the District's agreement to form a Committee, the Union agreed that employees would pay more for health insurance.

Under Section 12.5 of the Agreement, the Committee is charged with investigating, exploring, and discussing alternative arrangements for hospital, medical, dental, and vision plans. Once supplied with relevant information from the District, the Committee is empowered to research available insurance plans, compare their costs and benefits, and invite representatives of insurance plans to the Committee meetings for the purpose of providing information, presenting new plans and options and answering questions. The Committee may make appropriate recommendations to the District and to the principal officer of the Union. The Committee has six members. Three members represent the Union and three represent the District.

The Committee first met in November 16, 2011, shortly after the parties agreed to its creation. Long time District insurance broker Brian Rafferty and the Committee members explored the purpose of the Committee and how it would work.

The Committee met again February 12, 2012. At that time, the Committee discussed the need to survey employees concerning their preference for health insurance coverage. (Id.). During their discussions, the Committee members decided to survey employees concerning their prescription needs, doctors and hospitals. A survey was subsequently conducted. Later, on May 29, 2012, Rafferty, the District's Insurance broker presented the Committee with various insurance plans for their consideration.

Here the Union asserts that perhaps the Committee's most significant accomplishment occurred at the Committee's June 6, 2012 meeting. At that meeting, the Committee unanimously voted to revert to the Tri-State FPD Self-Inured Plan (also known as "PBA" plan). The vote was

5-0 in favor, and included then Deputy Chief Mancione. This certainly demonstrates that the Committee functioned as envisioned under the Agreement.

According to the Union, there is still further evidence of the Committee's successful function. On December 19, 2012, the Committee met, and the Union's designated representatives asked for the opportunity to have Gallagher Bassett, an insurance broker that worked extensively with public sector plans, give a presentation on the type of plans it could offer. The Committee agreed, and on January 21, 2013, Gallagher Bassett made a presentation to Committee, and discussed options including an insurance co-operative, insurance cost-outs and analyses.

In summary, it is plain that the Committee has functioned perfectly well. It met on numerous occasions between January, 2012 and May, 2013. It surveyed employees' concerning their insurance needs. The Union brought to the Committee's attention alternative insurance proposals. In addition to Gallagher Bassett, the Committee identified another potential insurance broker, Dean Cass Financial Services. And, of course, it was responsible for the District reverting to the Tri-State FPD PPO Plan in 2012. All this activity is consistent with the Committee's charge contained in the Agreement.

In summary, the Union submits that the District has failed to submit any convincing evidence demonstrating that the committee has been "dysfunctional and unproductive" and marked by personality conflicts. No evidence was identified at hearing to support its claim of personality conflicts. Moreover, the one example cited by the District to support its claim of dysfunction does not appear to fall within the Committee's mandate. Instead, it appears to involve an emergency need to extend, or amend, insurance coverage as a result of one individual's sizeable claim. This does not appear to fit squarely within the Committee's mandate to investigate, explore, and discuss alternative arrangements for hospital, medical, dental, and vision plans. Since the District has failed to prove the Committee is broken, its proposal to terminate it should be rejected.

As if the foregoing were insufficient to outright reject the District's proposal, the potential impact of the Affordable Care Act is a further basis to continue the status quo Committee. As more and more parties are forced to address the impact going forward of the Affordable Care Act, the parties already have an established mechanism to explore issues that may arise over the next few years. It is absurd to do away with a proven mechanism that has already established a way to explore and resolve health care issues.

Position of the District

Compelling evidence supports the District's final offer on the Health Insurance Joint Committee. *See, Brief for the District* at 36-10 (and case references and citations). The District has proposed to eliminate the health insurance joint committee altogether. The joint committee, says Management, composed of equal numbers of District and Union representatives, was established under the parties' current collective bargaining agreement, as part of a settlement agreement resolving the parties' competing unfair labor practice charges. Pursuant to the

contractual language, the joint committee is charged with the responsibility to investigate, explore and discuss alternate arrangements for hospital, medical, dental and vision plans, but it has woefully failed to live up to that responsibility.

In its brief existence since ratification of the contract, the committee has proven unworkable, “dysfunctional” and “unproductive.” Indeed, the committee has proven so useless, it has not met for close to two years. The committee was unable to handle the simple, straightforward distribution of universal health insurance application forms in 2012, which was one of its first duties in carrying out its contractual responsibility. The District recognized then that there was rampant miscommunication about this matter, that it was “putting a halt to the process,” and that it was “not an appropriate way to handle issues” that affected both parties.

In addition, as with successor contract negotiations, the Union members of the joint insurance committee made it virtually impossible to schedule committee meetings. Even the preparation of minutes of joint insurance committee meetings was contentious, with Union President Bulat objecting to statements contained in the minutes themselves. The Administration asserts that the record is replete with evidence of the joint insurance committee’s substantial shortcomings and essential paralysis in its day to day functions. It absolutely has not effectively investigated, explored or even discussed health insurance benefits in any coherent, intelligent manner.

The District’s final offer proposing the abolition of this committee is amply justified and should be adopted. The District’s final offer should be adopted for one additional reason. While the District has proposed to eliminate the dysfunctional joint insurance committee, it recognizes the value of discussing these health insurance related matters with the Union. Thus, it has proposed, as part of its final offer on health insurance coverage and cost, to agree to discuss the selection of different insurance carriers with the Union in the context of a labor/management committee meeting. When coupled with this aspect of its proposal on coverage and cost, the District’s final offer to eliminate the joint insurance committee is clearly reasonable and should be adopted.

ANALYSIS AND AWARD

The Administration advances the better case on the utility of continuing the joint committee. The Employer’s final offer is awarded.

* * * *

For the above reasons, the following awards are entered:

VII. AWARD

UNION ISSUE NO. 1

**ARTICLE V. PROBATION/SENIORITY/LAYOFF AND RECALL
SECTION 5.1 PROBATIONARY PERIOD
(DEFERRED)**

UNION ISSUE NO. 2

**ARTICLE VI, GRIEVANCE PROCEDURE, SECTION 6.1
DEFINITION OF GRIEVANCE, SECTION 6.2 – PROCEDURE
DISTRICT'S FINAL OFFER AWARDED**

UNION ISSUE NO. 3

**ARTICLE VII, HOURS OF WORK AND OVERTIME
SECTION 7.1 – WORKWEEK FOR SHIFT AND DAY PERSONNEL
UNION'S FINAL OFFER AWARDED**

UNION ISSUE NOS. 4 AND 12

**ARTICLE VII, WAGES, SECTION 8.1 – SALARY SCHEDULE AND APPENDIX B
UNION ISSUE NO. 4
UNION'S FINAL OFFER AWARDED**

AND

ARTICLE XXIV, DURATION OF AGREEMENT

UNION ISSUE NO. 12

UNION'S FINAL OFFER AWARDED (4 YEAR CONTRACT)

UNION ISSUE NO. 5

**ARTICLE VII, WAGES, SECTION 8.3 – DRIVER'S STIPEND
DISTRICT'S FINAL OFFER AWARDED**

UNION ISSUE NO. 6

**ARTICLE VII, WAGES, SECTION 8.8 – LONGEVITY PAY
DISTRICT'S FINAL OFFER AWARDED**

UNION ISSUE NO. 7

**ARTICLE VII, WAGES – LONGEVITY INCENTIVE
DISTRICT'S FINAL OFFER AWARDED**

UNION ISSUE NO. 9

**ARTICLE X, PAID LEAVES – ABSENCES/HOLIDAYS
SECTION 10.8 – EMERGENCY LEAVE (NEW)**

DISTRICT'S FINAL OFFER AWARDED

**UNION ISSUE NO. 10
ARTICLE XII, INSURANCE
SECTION 12.2 – INSURANCE UPON RETIREMENT
DISTRICT'S FINAL OFFER AWARDED**

**UNION ISSUE NO. 11
ARTICLE XXIII – PROMOTIONS AND APPENDIX G
(DEFERRED)**

**UNION ISSUE NO. 13
MEMORANDUM OF AGREEMENT
RETROACTIVITY
UNION'S FINAL OFFER AWARDED**

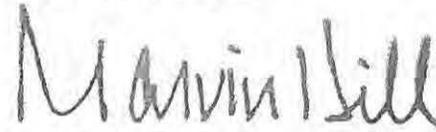
**EMPLOYER ISSUE NO. 1
ARTICLE VII – HOURS OF WORK AND OVERTIME
SECTION 7.2 OVERTIME
UNION'S FINAL OFFER AWARDED**

**EMPLOYER ISSUE NO. 2
ARTICLE XII – INSURANCE
SECTION 12.1 COVERAGE AND COST
UNION'S FINAL OFFER AWARDED**

**EMPLOYER ISSUE NO. 3
ARTICLE XII – INSURANCE, SECTION 12.4 – COST CONTAINMENT
UNION'S FINAL OFFER AWARDED**

**EMPLOYER ISSUE NO. 4
ARTICLE XII – INSURANCE, SECTION 12.5 JOINT INSURANCE COMMITTEE
DISTRICT'S FINAL OFFER AWARDED**

**Dated this 26th day of July, 2014
At DeKalb, Illinois 60115**



**Marvin Hill
Arbitrator**