

**INTEREST ARBITRATION
BEFORE ARBITRATOR THOMAS SONNEBORN**

<i>In the matter of:</i>)	
)	
CITY OF BUSHNELL, ILLINOIS)	
)	
and)	Illinois Labor Relations Board
)	S-MA-13-322
IBEW LOCAL NO. 51,)	
)	
Union.)	

OPINION AND AWARD

A hearing was held in this interest arbitration on January 29, 2014, in Bushnell, Illinois. The City was represented by Bruce Beal of the Beal Law Office, Ltd. of Canton, Illinois and the Union by Patrick Shinnors of Schuchat Book & Werner of St. Louis, Missouri.

At the hearing the parties stipulated this was an initial contract negotiation over the wages, hours, terms and conditions of employment for a newly certified bargaining unit of clerks employed by the City. The parties had been able to reach tentative agreement on all terms of an initial agreement except for three items which remained at issue: wages, hours of work, and subcontracting.

The parties waived tripartite arbitration and the statutory requirement the hearing commence with 15 days. They indicated there were no procedural disputes or issues and stipulated their previously reached tentative agreements were to be incorporated by reference into the arbitrator's award. They further agreed that the wage issue was economic and the two remaining issues – hours of work and subcontracting – were to be considered non-economic for purposes of these proceedings.

Each party presented sworn testimony and evidence in both the witness and narrative formats, reserving closing arguments and the submission of final offers for a post-hearing brief. By agreement, briefs were simultaneously filed electronically on April 4, 2014. The parties stipulated this award was to be issued by June 4, 2014.

I. THE STATUTE

The parties had bargained over the terms of an initial contract for a new unit of employees holding various clerk positions, but had been unsuccessful in reaching an overall agreement. Since there were less than thirty-five employees in the unit, and this was to be the parties' initial agreement, their impasse was referred to interest arbitration pursuant to the provisions of Section 7 of the Illinois Public Labor Relations Act. After outlining a period of initial bargaining and subsequent mediation in the absence of an agreement, Section 7 provides in relevant part:

Notwithstanding any other provision of this Section, whenever collective bargaining is for the purposes of establishing an initial agreement following original certification of units with fewer than 35 employees, with respect to public employees other than peace officers, fire fighters, and security employees, the following shall apply:

* * *

(3) If after the expiration of the 30-day period beginning on the date on which mediation commenced, or such additional period as the parties may agree upon, the mediator is not able to bring the parties to agreement by conciliation, either the exclusive representative of the employees or the employer may request of the other, in writing, arbitration and shall submit a copy of the request to the board. Upon submission of the request for arbitration, the parties shall be required to participate in the impasse arbitration procedures set forth in Section 14 of this Act, except the right to strike shall not be considered waived pursuant to Section 17 of this Act, until the actual convening of the arbitration hearing. 5 ILCS 315/7

The provisions of Section 14 set forth the procedure by which interest arbitrations are to be conducted. Subsection 14(h) outlines the statutory factors upon which arbitrators are to base their "findings, opinions and order when analyzing the issues in an interest arbitration dispute":

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (a) in public employment in comparable communities,
 - (b) in private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
7. Changes in any of the following circumstances during the pendency of the arbitration proceedings.
8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. 5 ICLS 315/14(h)

In drafting Section 14(h), the Legislature did not assign values or indicators of the relative significance to any of the factors, leaving that determination to be made by the arbitrator in each given case. As applicable, each of these factors was carefully considered by this arbitrator in reaching his findings and award in this case.

II. **BACKGROUND**

Bushnell is located in west central Illinois near the City of Macomb. It has a population of 3,200. Unlike most communities in the region, including many of the

comparables advanced by the parties, the City has its own utility distribution system. In addition to the bargaining unit at issue in these proceedings, the City also engages in collective bargaining with one other group of employees, i.e. its police officers and their representative the Illinois FOP Labor Council (“FOP”). That relationship has resulted in a collective bargaining agreement.

There are four positions included in this bargaining unit: Clerk I, Clerk II, Office Manager, and Assistant City Clerk (collectively referred to in this award as “clerks”). The City Clerk is excluded from the bargaining unit. Each of the employees has a considerable number of years of service and seniority. The employees holding these positions have been employed by the City ranging from ten to twenty-one years. The Clerk II position is regarded as the entry level position within the bargaining unit, but there has not been a new hire for at least ten years. Turnover in this bargaining unit, either before or after certification, has not been an issue for the employer in Bushnell.

The clerks’ various job duties were described in testimony as being responsibility for invoices, billing, rechecking meter readings, receipts, payables, balancing accounts, service orders, postings and ledger entries, reporting to the City leadership, and general office duties. While both parties emphasized the significance of the clerks being employed in the City’s operation of its local utility concern, the duties described appeared to be consistent with general clerical duties. That observation does not diminish their importance to the operation of city government, but rather goes to the question of with whom these bargaining unit employees may be compared for purposes of determining “comparability” under Section 14(h)(4) of the Act.

One of the catalysts for the clerks organizing was the City’s decision to revise its health insurance program. The City decided to move to a high deductible plan (i.e. \$10,000) in order to save the City on its premium costs. Not surprisingly, the move was not well received by the clerks who according to the Union felt it put them in “financial jeopardy.”

This view was based not only on the high deductible, but also on the fact that the clerks were thereafter responsible for 100% of the costs of any spousal or dependent coverage.

After the clerks decided to organize and choose a bargaining representative, the City revised its pay plan for all of its remaining non-bargained for employees. The newly revised plan called for pay increases of \$.35 per hour for each of the first five years of service for anyone with less than five years employment with the City, and \$.50 per hour for those with more than five years of service. The new plan did not apply to the clerks in this bargaining unit as they were engaging in collective bargaining with the City.

The City previously had entered into an agreement with the FOP calling for two percent (2%) increases for its police officers. Subsequent to adopting the City-wide non-bargained for pay plan, the City adjusted the police salaries consistent with what it described as a “verbal me-too.”¹ This was done to make certain everyone in the police unit also received a \$.50 per hour increase in the event their respective two percent had resulted in an increase of less than that amount.

Although they made considerable progress in negotiating the terms of their initial labor contract, the parties were unable to reach overall agreement. Mediation narrowed the issues to three: wages, subcontracting and hours of work. When the hearing on their impasse began, the City proposed two successive fifty cent an hour increases or 3.71% the first year and 3.58% the second year for a total of 7.42% over the two year agreement. The Union proposed ninety five cents an hour the first year and fifty five cents an hour the second year or 7.05% and 3.81% for a total of 11.13% over the two year agreement. Both parties proposals were effective May 1, 2013, so retroactivity was not an issue. On the two remaining issues, the City claimed the right to subcontract the bargaining unit work and set

¹ The import of that “me-too” will be discussed later.

its hours of work as it chose, while the Union disputed those rights and sought to limit the employer on both.

III. THE FINAL OFFERS

The parties' final offers on the issues in dispute were:

ISSUE	UNION'S FINAL OFFER	CITY'S FINAL OFFER
Wages	<p>1st Year: Effective May 1, 2013: \$.95 per hour increase for all classifications</p> <p>7.05% on average hourly rate</p> <p>Starting pay of \$11.00 per hour for new hires in any of the classifications</p> <p>2nd Year: Effective May 1, 2014: \$.55 per hour increase for all classifications</p> <p>3.81% on average hourly rate</p> <p>Any new employee employed for 6 months shall receive raises on same dates.</p>	<p>1st Year: Effective May 1, 2013: \$.50 per hour add to base pay of each employee</p> <p>3.71% on average hourly rate</p> <p>2nd Year: Effective May 1, 2014: \$.50 per hour added to base pay of each employee</p> <p>3.58% on average hourly rate</p> <p>Starting pay of \$9.50 per hour for new hires in any of the classifications</p>
Subcontracting	<p>Section 1.3 Management Rights:</p> <p>No inclusion of or reference to a right to contract out job duties of bargaining unit.</p> <p>Add to Article 18.1: No employee to be hired to perform or permitted to perform duties normally performed by an employee while any employee is on lay off status</p>	<p>Section 1.3 Management Rights:</p> <p>Include in list of management rights:</p> <p>Employer retains the management right to contract out services of Employer and job duties of bargaining unit.</p>

<p>Hours of Work</p>	<p>5 consecutive eight-hour days to be worked Monday through Friday shall constitute a workweek.</p> <p>The schedule of hours of work for all current employees shall be eight (8) hours between 7:00 a.m. and 4:00 p.m. which shall constitute a workday. The schedule of hours of work for anyone hired after the date of ratification shall be any eight (8) hours between 7:00 a.m. and 5:00 p.m. which shall constitute a workday.</p> <p>Forty (40) hours shall constitute one (1) full week. Lunch periods shall be approved by the Employer and shall remain as consistent as possible.</p>	<p>5 consecutive eight-hour days to be worked Monday through Friday inclusive shall constitute a workweek.</p> <p>The schedule of hours to be any eight (8) hours between 7:00 a.m. and 5:00 p.m. which shall constitute a workday. The work schedule of employees shall be set by the Employer at their discretion.</p> <p>Forty (40) hours shall constitute one (1) full week. Lunch periods shall be approved by the Employer and shall remain as consistent as possible.</p>
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IV. THE PARTIES' POSITIONS

Although each argument advanced by the parties was carefully considered, the following generally summarizes the parties' positions.

A. The Position of the Union

The Union's arguments began with a consideration of comparability. It noted the parties have agreed to eight jurisdictions with which to compare Bushnell, but believed that additional jurisdictions must be considered in the comparable analysis. The agreed eight jurisdictions are Albany, Abingdon, Geneseo, Ladd, Havana, New Boston, Princeton and Rushville. It asserted its method of selection of an additional eight communities is neutral and easily understood, being based upon population, utilities provided, median home average, median household income, per capita income, utility revenue, land area and

distance from Bushnell. The Union stressed the significance of Bushnell's electric, gas and water distribution systems in making comparisons to other communities. Finding insufficient comparables with their own utility distribution systems within a 125 mile range, the Union expanded its radius for finding comparables to 225 miles from Bushnell which resulted in a total of sixteen jurisdictions with which it sought to compare the employer in this case. In addition to the eight which are agreed, the Union believed Oglesby, Marshall, Rock Falls, Riverton, Casey, Carthage, Lewistown and Sullivan should be added to the comparable list.

The Union argued the City's method of selecting comparables is inconsistent and difficult to understand. While the City indicated an electric or gas distribution system was a significant factor in its selections, five of the eight communities it advances do not have such a system. Two jurisdictions which do have utility distribution systems - Carthage and Lewistown - are excluded from the City's pool, yet they are close in population and within the same geographic area as the City's comparables. The Union notes that seven of the eight City comparables – *i.e. the agreed comparables* – have no represented clerical employees.

While external comparability supports the wage increases and language sought by the Union in these proceedings, the Union believed that internal comparables "...are the most compelling reason to award the clerks..." the increases it seeks. The Union noted two main reasons for adopting its final offer on wages: first, the City gave substantial raises to its non-represented employees in 2013, the average increase being \$1.23 an hour – *i.e. the internal comparability* - and second, in its view, the Union's offer was the more reasonable because the City "grossly underpays its employees relative to both represented and unrepresented clerks in comparable communities." The Union pointed to the City employees with less than five years of service who received an increase of \$.35 per hour for each of the first five years of service.

Even if the Union's offer is adopted, it argued the bargaining unit employees will "remain entrenched at the bottom of the comparable rankings." The City's unilaterally granted increases to non-represented employees disproportionately rewards more junior employees and discounted the service of more senior employees. The average per hour increase of \$1.23 is primarily the result of increases given to junior employees.

The Union argued the City is well able to pay the salary increases sought by the Union and failed to advance any inability to pay argument during the proceedings. Rather, the Union noted the City stressed the pass-through consequences or ripple effect of giving these bargaining unit employees a greater increase than received by other City employees. It believed the fact that whatever the clerks receive in excess of what others have been given will be passed on to them by the City is irrelevant to the Union's position. Doing so would be voluntary on the City's part, and not required by law, custom or any award in this case.

The Union pointed to its starting pay proposal and noted that it awards an increase to employees starting during the term of the contract, whereas the City's final offer on starting pay does not provide any raises during the life of the contract. The Union believed its final offer on wages is supported internally and externally and is only a modest step "to bridge the tremendous gap" that exists between Bushnell clerks and their counterparts among the represented and non-represented.

On the subject of subcontracting, both the internal and external comparables provide some guidance. Internally, the Union stressed the protective language it seeks is to be found in the FOP's contract with Bushnell. Externally, Oglesby's contract too has much the same type of protection sought. Some contracts limit subcontracting, others do not. Where the contract is silent on the subject, that silence is not a signal the city's authority is unlimited according to the Union. It believed future arbitrators would limit a city's subcontracting in instances where current employees would be replaced or those on layoff

not recalled. The Union claimed limiting language on subcontracting is commonplace in private and public sector agreements and goes to the essence of the collective bargaining agreement. “Without any such limitation, the City could get rid of the bargaining unit members and subcontract all the bargaining unit work.”

The Union contended that during negotiations the City attorney mentioned subcontracting out emergency calls after work. The Union disagreed the City already has the authority to subcontract, citing various interest awards concerning the absence of a status quo to be overcome in instances of initial bargaining. In the Union’s view, there was no bargained status quo, therefore no extraordinary burden of proof or breakthrough analysis required.

The employees’ hours of work have been in place for a number of years and should not be disturbed according to the Union. The bargaining unit employees have come to rely upon their current hours, and some have part-time secondary employment that would be disrupted by a change in work hours. Noting many of the external comparables have set hours of work, in its post-hearing brief the Union indicated a willingness to entertain adjustment to the current hours based on notice, premium pay for adjusted hours and other variables. It also noted that its final offer permits the hours of future new hires to be adjusted as sought by the City.

B. The City’s Position

The City emphasized the interest arbitration process is very conservative, in its view imposing a significant burden on the party seeking a change to prove the existing system is broken. Stressing that imposed terms and conditions are a last resort in the collective bargaining process, the City contended the status quo must be preserved except when change is absolutely required, regardless whether the status quo was bargained or unilaterally imposed. While recognizing the applicability of each of the Section 14(h) factors,

the City believed the cost of living factor should be viewed as the most important. Coupled with internal comparability, the City believed these two factors should be determinative of the outcome of an interest impasse.

The City contended the eight external comparable jurisdictions to which the parties agreed are sufficient to give the neutral a view of the labor market. The expansion to sixteen comparables sought by the Union was not supported by the demographic factors or the geographic location of most of the extra eight the Union seeks to add. As did the Union, the City found it significant these clerical employees work in the City's utility distribution system. For that reason, the City believed the jurisdictions of Albany, Geneseo, Ladd, New Boston, and Princeton are the ones most closely comparable to Bushnell as they too have utility distribution systems they administer. In its post-hearing brief, the City acknowledged that Lewistown and Carthage "were admittedly close enough in proximity to Bushnell to be considered as part of the Employer group" and that Rushville too is appropriate for comparison. In the City's view, the remaining jurisdictions advanced by the Union were too large, too far from Bushnell or too close to the Chicago metropolitan area to be considered comparable to Bushnell.

While the City did not argue an inability to pay, it did stress that the City's carry-over of revenues only covers two and one-half months of municipal expenses, the second lowest carry-over total among the agreed comparables. It also believed the neutral should consider the ripple effect of granting the Union's final wage offer, as the City will want to pass on to all of its other employees any additional increase this bargaining unit receives in arbitration.

Internal comparisons are supportive of its position, the City's argued, as the only other bargaining unit received the same \$.50 per hour received by other longer serving employees of the City. Those non-represented employees with less than five years did benefit from additional increases based on the new step system the City implemented, but this bargaining unit's employees all have more than five years of service. Even the police

received the same \$.50 per hour increase the City proposes in these proceedings. Their negotiated two percent (2%) increase was adjusted up to the equivalent of \$.50 per hour in those instances where two percent fell short of that mark.

The City noted it has had no difficulties in retaining employees, as each of the unit members has at least ten years of service. Turnover is non-existent, and although there are many jurisdictions in the surrounding area – including the comparables - that pay their clerks more than Bushnell, none of Bushnell's employees have left the City's employ for higher wages in some other city.

The City pointed out that its offer far exceeds the cost of living, as well as most of the awards in Illinois interest arbitrations in 2013 and 2014. The City reminded the neutral the average increase awarded in 2013 interest cases was 2.5% and in 2014 only 2.6%. The City regarded its offer as generous when compared with what others have achieved in interest arbitration.

In the event the neutral believes that external comparability should have a significant role in the outcome on the wage issue, the City noted that it is one of only three of the agreed comparables that has an additional longevity plan. It acknowledged that its pay trails that of the comparables, and stated that is why it is offering 3.75% in the first year and 3.58% in the second year of the agreement. Those increases far exceed the cost of living and constitute a step toward bringing the City's pay in line with the market place. The Union's offer, on the other hand, far exceeds the norm granted in interest arbitration and importantly, "...is not something the parties would have reached an agreement on at the table." The City argued this neutral is charged with issuing an award that parallels what the parties would have agree to in bargaining had an agreement been reached.

The City sees the subcontracting issue as one of management rights, rights it contends it had prior to engaging in bargaining with the union and rights it should retain once an agreement is in place. In the City's opinion, the right to subcontract out the

bargaining unit's work is the status quo, a status quo that should be preserved absent a finding that the system is broken and in need of repair. The comparables are a mixed bag, some allowing subcontracting, others not. At most the City should be required to bargain over the impact of any decision to subcontract out the unit's work.

The hours of work issue is another instance where the City believes the status quo should be retained. Currently the City contends it has the authority to adjust employee hours as it sees fit, and opposes any limitation on that right in the parties' contract. The City's evidence showed citizens were complaining about the office being closed at 4 p.m. and the City should have the unfettered right to adjust office hours to meet the needs of the citizenry.

V. ANALYSIS

A. External Comparables

In interest arbitration the advocates seek to establish a pool of external comparables in the geographic area which are of similar size with similar economies and workforces to the city in question. It is helpful when those jurisdictions have mature collective bargaining relationships with their employees. Unfortunately, jurisdictions meeting those criteria are difficult to find when setting out to compare Bushnell. Both of the parties encountered obstacles in their respective efforts to develop a pool of comparable jurisdictions to be used in the negotiations and this arbitration. While there were numerous jurisdictions in the geographic area of similar size with similar demographic characteristics, few engaged in collective bargaining with their clerks or employees performing similar duties. Even less had their own electric and gas distribution systems. Among those which the parties found useful, many ignored requests for salary and benefit information or if they did comply, provided only cursory data.

Against that backdrop, the parties had agreed the following eight jurisdictions were to be used for purposes of external comparability: Albany, Abingdon, Geneseo, Ladd, Havana,

New Boston, Princeton and Rushville. Normally, a pool of that size would be regarded as sufficient to gauge the labor market. However, the list of agreed comparables presented problems for all concerned. First, there was only one jurisdiction among them which had entered into a collective bargaining relationship with its clerks. Second, as noted, the jurisdictions were not particularly forthcoming with information about their employees' salaries and benefits. Third, when they did provide salary and benefit data, it was difficult to determine which positions among the comparables should be compared to which bargaining unit employees in Bushnell. Job titles did not necessarily correlate.

To remedy these problems, the Union sought to add to the mutually agreed list of comparables the following communities: Carthage, Casey, Lewistown, Marshall, Oglesby, Riverton, Rock Falls and Sullivan – because many involved employees of an electric and gas distribution system and some had entered into collective bargaining with their clerks. The City objected.

This dispute is not the classic comparable fight where the parties advance completely different comparables, and the neutral must wade through charts and spreadsheets of demographic and fiscal data to develop a list of jurisdictions appropriate for comparison. In this case, the parties start with an agreed pool of eight and only have a dispute over whether any of the other eight should be added. Both parties sought communities with the same uncommon characteristic as Bushnell – a locally operated utility distribution system. Being uncommon, the characteristic bogged down the effort to find “comparables”, particularly within the local geographic area. To match this criterion, the Union looked to Riverton and Sullivan in central and Casey in eastern Illinois, then south and east of Interstate 57 to Marshall, not far from Terra Haute, Indiana. The Union found Rock Falls which is half way between Rockford and the Quad Cities on Interstate 88 and not far from an agreed comparable, Geneseo, and Oglesby which is located just south of the

LaSalle-Peru area, near another agreed comparable, Princeton. Carthage and Lewistown are located relatively near the Bushnell-Macomb area and near the agreed eight.

As has been noted by many other neutrals, the quest for comparables is less math and science and more art. No two jurisdictions are truly the same, even if they are abutting. The more complicated and computational the claimed method for comparing two jurisdictions, the less likely it seems the results truly will be helpful. What the parties – and the process - require is a snapshot view of the labor market. If possible to find, the parties seek the wages, hours, benefits and conditions of other employees performing similar duties and other employees in general in the labor market where the jurisdiction is located. Section 14(h) directs the parties – and the neutral – to examine the private sector as well as the public, but in most Illinois interest arbitrations the focus is on public sector employees. In this case, there is one jurisdiction that involves a privately owned utility – Havana, which both parties included on their comparable list – although to which the City objected making detailed comparisons because its utility was a privately operated entity.

Geographic proximity is important, and the closer the jurisdictions, the more likely they can be said to be in competition for the services of the employees in question. While there are a few jurisdictions in Illinois for which one must travel great distances to find similar sized cities, the same cannot be said for Bushnell. The parties had no difficulty locating jurisdictions in the immediate geographic area with which to compare Bushnell. However, the difficulty they did have was finding jurisdictions in the area with publicly owned utilities and, more importantly, finding jurisdictions within the area that collectively bargained with their clerks. While the salaries of non-represented employees performing similar duties are helpful, they are not nearly as useful for comparables as those resulting from collective bargaining. The latter provide a neutral a much better insight into the agreement the parties might have reached had bargaining succeeded, much better than salaries which were unilaterally imposed by a public employer.

The agreed pool of eight jurisdictions is larger than the pool of comparables in many negotiations and larger than the pools determined by neutrals in many other impasses. But the absence of bargaining relationships among the agreed pool of comparables limited their usefulness.

As for Carthage and Lewistown, the Union advanced them as comparable and the City acknowledged they fit within the criteria used by the employer in developing its pool of jurisdictions. Both line up well with the factors of inclusion and exclusion considered by both parties in arriving at their comparable lists, and both are geographically close to Bushnell. Adding these two jurisdictions yields ten communities with which to compare Bushnell without the need of venturing too far to north, east, or southeast Illinois.

There are two other jurisdictions advanced by the Union which this neutral believes appropriately belong within the comparable pool, and importantly, which provide insight into the impact of collective bargaining – Oglesby and Rock Falls. Geographically, each is generally located in the northwest quarter of the state. While the addition of Oglesby and Rock Falls were opposed by the City as being too distant from Bushnell, it should be noted that Oglesby is near Princeton – less than 30 miles away - which the City stipulates is comparable and Rock Falls is only 40 some miles from Geneseo which both parties look to for comparison. Importantly, both Oglesby and Rock Falls have entered into collective bargaining relationships with their clerks and afford the parties and the neutral guideposts on the impact of bargaining on wages and conditions of employment for persons performing similar duties to the Bushnell clerks.

The cities of Riverton, Casey, Marshall and Sullivan are located in other parts of the state too far removed from Bushnell and the northwest quarter to be useful as comparables. Their inclusion in the comparable pool is rejected because they are located outside what could be viewed as the Bushnell labor market or any reasonable extension of the same for purposes of comparability.

I find the following jurisdictions to be comparable to Bushnell for purposes of these proceedings: Albany, Havana, Abingdon, Carthage, Geneseo, Ladd, Lewistown, New Boston, Oglesby, Princeton, Rock Falls and Rushville.

B. Wages

Regardless of which jurisdictions are used for purposes of comparability, the wages paid to the Bushnell bargaining unit employees significantly trail the wages paid to their counterparts, both represented and non-represented. Both parties' final offers recognized that "catch up" was needed. The wage issue in this case presents itself as a matter of how much catch up and how fast. In the language of the statute, which party's final offer "...more nearly complies with the applicable factors prescribed in subsection (h)?" (5 ILCS 315/14(g).

The starting point of this inquiry is to determine how Bushnell clerks are paid in relation to their comparable counterparts. Due to the difficulty in lining up job duties with job titles among the clerk type positions in the comparables and the fact that there are four different positions in the bargaining unit, each with its own wage, the parties utilized average hourly rates to make comparisons among Bushnell, the comparables and their final offers. Part of their bargaining included translating the cents per hour increases offered by the City and sought by the Union into a percentage of the average hourly wage among the clerks in 2013. As a result, the City's final offer on wages was considered 3.71% in the first year and 3.58% in the second year. The Union's final wage offer was considered 7.05% in the first year, and 3.81% in the second year. The use of the average hourly rates and the respective percentage increases will continue to be used by this arbitrator in his analysis.

According to the Union Exhibit 11, Bushnell is at the bottom of the range, with only one jurisdiction paying less on average per hour:

CITY	2013 AVERAGE HOURLY CLERK WAGE
Havana	\$21.92
Oglesby	\$20.59
Ladd	\$19.62
Geneseo	\$19.56
Rock Falls	\$19.53
Princeton	\$18.10
Rushville	\$18.08
Carthage	\$16.95
Lewistown	\$16.58
New Boston	\$16.00
Abingdon	\$13.50
Albany	\$ 8.50 ²
Bushnell – Union Offer	\$14.43
Bushnell – City Offer	\$13.98
Bushnell Current Average	\$13.48

That the Union made its case for catch up cannot be denied. But again, the question is whether the catch up it seeks is too much too fast. It is a well-worn phrase, but nevertheless true – interest arbitration is a conservative process. The statutory framework in Section 14 is intended to encourage the parties to bargain - not litigate - to reach their own deal and not merely grab for the brass ring in arbitration.³ Here the Union seeks a 7.05% average increase in the first year of a two year agreement, while the City offers a 3.71% average increase. In the second year the parties offers are within five cents per hour of each other, so the wage issue will turn on an assessment of the parties' first year offers.

² All salaries listed were drawn from Union Exhibit 11, except for Albany's which was not listed on the Union Exhibit 11. The hourly rate shown above for Albany was drawn from City Exhibit 15.

³ This neutral wonders if the Section 7 "one and only one" opportunity to go to interest arbitration in non-safety bargaining units of less than 35 will induce parties to ask for larger salary increases or perhaps, more likely, longer contracts than they otherwise would seek if arbitration was available for impasse resolution in each round of bargaining.

What should the parties have agreed to on wages for the first year? An examination of the non-represented comparables offers little assistance on this question other than to drive home the point that Bushnell is significantly behind. Among the comparable jurisdictions that do bargain with their clerks, the results of their recent bargaining led Oglesby clerks to receive a 2% increase in 2012 and a 3% increase in 2013. The clerks in Geneseo received a 1% increase in 2011 and 2% increases in 2012 and 2013. In Rock Falls, the increases for the payroll clerks/administrative secretaries were 1% in 2011, 1.97% in 2012, 1.99% in 2013, 2.0% in 2014 and 2.02% in 2015. During those same years, the utility collection clerks received increases of 1.96%, 2.05%, 1.95%, 1.97% and 2.05%. In each instance these increases are less than the City of Bushnell's final offer, from as little as .71% to as much as 2.71%. The City of Bushnell is offering significantly more of an increase than any of the three comparables bargained with their respective clerks. The Union's first year offer of 7.05% is significantly higher than any increase that was bargained for clerks among the comparables.

The Union likely would argue the comparables' negotiated increases are close to the cost of living since the clerks in Oglesby, Geneseo and Rock Falls have no ground to catch up, an assertion that may be true given the wages paid among those comparables which engage in collective bargaining with their clerks. However, both parties' final offers in these proceedings exceed what was bargained among the comparables and each involves a step toward "catch up" - again the only issue being how much and how fast that "catch up" will take place.

While none of the comparable jurisdictions proceeded to interest arbitration to resolve their agreements, there were of course many interest arbitrations in Illinois that also provide another guidepost for what should occur in Bushnell. City Exhibit 5 reviewed the

interest arbitration awards issued in Illinois from 2010 to 2014.⁴ The City offered unrefuted evidence to show that of the over one hundred interest arbitration decisions filed at the Illinois Labor Board between 2010 and 2014,⁵ there was not one interest award in Illinois that granted increases more than a five percent increase – and in only three of the one hundred and one reported was the five percent mark reached.

In one of those “five percent” cases, the union received a 0% increase in the first year, a 5% increase in the second year, 3% in the third year and 1.95% in the fourth year. In another of the cases awarding a 5% increase, the award was retroactively effective to 2008, well prior to the fiscal woes experienced by units of local government in Illinois during the recession. The third award in which a five percent was granted only covered a portion of the pay plan. In the remaining 98 arbitrations, the increase awarded was 4% or less.

Of particular interest are the final offers submitted by the parties in those one hundred and one cases. In not one single instance did a union seek an increase of 7% – and in only one instance did a union’s demand reach 6%, that being the unsuccessful bid of the Schaumburg firefighters to secure a 6.08% increase in the second year of a four year offer which the arbitrator declined to adopt. While this neutral did not sift through each written award on file at the Illinois Labor Relations Board to cull the unions’ arguments, it is relatively safe to assume that at least one of the one hundred and one bargaining units that proceeded to interest arbitration regarded itself as woefully underpaid as the Bushnell clerks. However, none came near asking for as much catch up in one year as did the clerks of Bushnell.

⁴ The City asserted this list included all awards issued for the stated time period. Since there was no dispute over that assertion, no effort was made to verify the list was all-inclusive. Regardless, examining the outcome of over one hundred recent interest arbitrations is useful in these proceedings.

⁵ In a 102nd arbitration listed in the exhibit, the case was remanded to the parties for further negotiations without award.

The vast majority of awards tracked closely to the cost of living. In over one-half of those one hundred and one interest arbitration awards – in 59.4% of the cases, the award of wages was for between 2% and 3%. In another 32% of the awards, the wage increase was even less, falling between 0% and 2%. In total, the arbitrators in 92 of the 101 awards granted increases of 3% or less, with over 31% of the time the award being 2% or less.

In the remaining nine interest arbitrations reported, six of them involved increases of 3% to 4% and in only the three referenced above was something more than 4% awarded. According to the City, its arbitration data demonstrated the average wage award in arbitration was 2.5% in 2013 and 2.6% in 2014. The Union in this case seeks to nearly triple that amount with its final offer of 7.05%

The rate of inflation from May, 2012 to May, 2013 – the period of time inflation would be measured for purposes of bargaining the first year of the agreement in this case – was 1.36%. The Union seeks a seven percent increase, or five times the rate of inflation experienced for the first year of the agreement. Such numbers are rarely if ever attained in interest arbitration. The rate of inflation for the second year, May 2013 through May 2014 tracks what was experienced the year before. From May, 2013 through April, 2014, the cost of living increased by 1.77%.⁶

Of course the Bushnell clerks are far behind their comparables. That cannot be disputed. But there is no evidence in the record to show that state of affairs arose “overnight” or even during the past year or two. As the record is silent on the historical relationship between Bushnell salaries and those of its neighbors, it is safe to assume the disparity has existed for some time. It is very unlikely that all twelve of the comparable jurisdictions, or any significant number of them, granted pay raises of \$5.00 per hour or

⁶ These cost of living figures are based on the CPI-U, U.S. City average, all items.

more or 30% plus during the past year or two. Had they done so, this neutral is confident the Union would have made that fact known in its presentation.

While the City raised viable ability to pay defense,⁷ of particular note in these proceedings is the absence of turn over within the bargaining unit. The least senior employee has at least ten years of service. There was no evidence presented that anyone had ever left the City of Bushnell's employ to seek more lucrative employment elsewhere. While the wages are comparatively deficient, they are not so deficient as to motivate employees to seek other employment within the labor market.

The City's final offer on wages is a step toward catch up. While not as large of a step as the Union or its members want, it does amount to more than twice the rate of inflation in each of both years of the agreement. It also constitutes close to twice the percentage increase that was originally negotiated with the Bushnell police – i.e. 2% vs. 3.71%. Will the City's offer allow the Bushnell clerks to catch up with their comparables? No, but neither would have the Union's offer. However, the City's offer is very likely significantly more than it would have unilaterally implemented had there been no collective bargaining. The City previously had negotiated a 2% increase with its police officers. There is nothing in the record to suggest it would have approached the clerks with a larger increase had they not chose to organize. The eventual restructuring of the non-represented salaries and the proposed 3.71% and 3.58% in these proceedings were likely influenced by the clerk's choice to organize. There is nothing in the record to support the notion to believe the clerks would have received more than the 2% the police negotiated absent their creation of their own bargaining relationship.

It will take time to market adjust the salaries in Bushnell. The parties signed off on a two year term of agreement – May 1, 2013 through April 30, 2015 - before this arbitration

⁷ The City's fretting about having only two and one-half months of carry-over from last year to this fiscal year had little bearing on the outcome either when one considers the difference in the final offers is \$.45 per hour.

occurred. In doing so, they limited themselves to a two year period of time in these proceedings in which to move toward pay equity. They also reached tentative agreement on the issue of health insurance prior to the commencement of this arbitration.

The agreement resulting from this proceeding will have a scheduled expiration date of April 30, 2015. The parties likely will be returning to the bargaining table in the early spring 2015. Once again they will have the opportunity to address the blatant disparities that will remain between Bushnell and its comparables regardless of which offer is adopted. The City may again protest that any increases awarded must be passed on to the remaining city employees. That argument carried no weight with this neutral and should not carry any on the question of what future salary increases are appropriate for this unit. The City contended it had a “verbal me-too” with the police union that it would honor – and in its view did honor when it ratcheted up any police salaries for which the agreed 2% did not equal \$.50 per hour.

According to the City’s witnesses, there is no reference in the police contract to a me-too and no settlement agreement containing such a requirement was introduced. Whether this “verbal me-too” is something more or less than the City’s unilateral commitment to all of its employees to treat them the same is not determinable from the record. Negotiated “me-too” agreements are normally reduced to writing and signed by the parties. Here that was not done.

While the City claim it treated all of its employees the same, the evidence showed otherwise. Non-represented employees with less than five years of service received an annual step increase of \$.35 per hour. Those with more than five years of service received \$.50 per hour. The clerk’s bargaining unit members received longevity pay according to their tentative agreement. I find the City has not established any requirement that it grant the police or any other individual employee or group of employees any salary increases as a result of these proceedings. Doing so is the City’s choice – but by the evidence introduced

in this arbitration, it is not required.⁸ The City's decision to pass through such increases was shown here to be a voluntary act. Whether it makes good "business" sense to do so is beyond the scope of these proceedings. What is relevant to these proceedings is that doing so is neither in keeping with any established pattern of internal parity nor any requirement under the terms of another collective bargaining agreement. I therefore find it carries no sway in this outcome.

In conclusion, I the Union presents a compelling case that its clerks are underpaid and catch up is needed, just not as much or as quickly as the Union seeks. I find the City's final offer on wages is supported by the internal comparables, by the external comparables, by the patterns of contract settlements and dispute resolutions in other jurisdictions, and by the cost of living. Therefore, it more closely matches the factors in Section 14(h) of the Act and is adopted.

C. Subcontracting

The City seeks language securing the right to subcontract out the bargaining unit work. The Union seeks language preventing it from doing so. The City argues the power to do so is a management right and its language is a reflection of the status quo – i.e. since there is no contract at the moment, there is not now a limit on its inherent management rights, including the right to decide to subcontract. The City argues the only limitation on its authority presently would be the obligation to bargain over the impact of any decision it made to subcontract. From the view of the City, it is the Union that seeks to change the status quo and therefore bears the burden of proving why a "breakthrough" should be granted.

⁸ Perhaps other evidence of the existence of a police "me-too" agreement or other required patterns of parity exists in Bushnell. If it does exist, it was not introduced into this record.

The Union argues “...there is no status quo when the parties are faced with bargaining over an issue for the first time” and therefore no breakthrough is being sought. From the Union’s perspective, it need not show the system is broken, the other party recalcitrant or the offer of an appropriate quid pro quo. Rather, the Union believes the issue should be decided based on a preponderance of the evidence in the record. Which party tipped the scales in its favor?

The idea of respecting the status quo arises from the premise that arbitrators should not disturb the parties’ bargains and past agreements absent a compelling need. The breakthrough analysis routinely applied in interest arbitration when a party is seeking to change the bargained status quo explores whether that need exists. Is the current system broken? Has the moving party’s reasonable proposals been met with a stubborn refusal to entertain any change? Is there an offer of an appropriate quid pro quo? In those circumstances where a breakthrough is deemed warranted, the adage goes that arbitrators are to try to approximate the deal the parties would have made had agreement been reached – a notion which, of course, works better in theory than in practice. Since the parties did not reach an agreement, who knows what deal they really “would have” made had one been reached? The more attainable goal might be to approximate the deal the parties “should have” made.

Through the mid to late 1990’s in a series of residency cases that were arbitrated from one end of the state to the other and carrying through to the cases arising under the Section 7 amendment granting interest arbitration to small non-public safety units such as this one, the position of most neutrals has been there is no “status quo” to be respected or surmounted by the breakthrough analysis where an issue is being bargained for the first time. The reasoning has been there is no bargain of the parties to respect. There is no risk of disrupting the balance of a deal made between the parties, and no need to untangle the chain of consideration flowing to and from each, since there was no deal in the first place.

The state of affairs in such an instance was unilaterally imposed by one party or the other, or simply existed on its own for as long as anyone can recall – but in any event, it was not the result of bargaining.

Some arbitrators recently have suggested the status quo should be respected and protected by the breakthrough analysis regardless of how that status quo came into being – even where it was unilaterally imposed – i.e. that the status quo is the status quo without consideration of its origin. This neutral does not agree. If the status quo is not the result of a bargain between the parties, the arbitrator runs no risk of disturbing the collective bargaining process by making changes to the current state of affairs when supported by a preponderance of the evidence. There is no history of bargaining or trades on the subject to disturb.

In addition to its status quo argument, the City emphasized it had “...made no claim that they are going to embark on contracting out the services of their bargaining unit employees.” It acknowledged its duty to give notice and bargain the impact of any decision to subcontract. It argued the “[u]nion’s fear that the City would engage in contracting out, with no history of ever doing it, is merely speculation on their part, and therefore should be reserved to the impact bargaining process and summarily prohibited...” The Union countered that during the negotiations, the City’s attorney made “troubling representations” about the prospect of contracting out emergency calls after work. It also noted that during the hearing the City indicated it would be willing to accept language that allowed subcontracting only upon a showing that the City’s costs would be less. From the perspective of the Union, such language is worthless as “[k]nowing that the City is saving money will mean little to the clerks if they are unemployed. The Union’s concern is preserving the bargaining unit work.”

The Union pointed to the only other collective bargaining agreement the City itself has entered into – that being the FOP agreement – and noted that it contains similar

subcontracting language sought by the Union in these proceedings. The police contract permits subcontracting, but only after the work first has been offered to bargaining unit members. The language in the FOP agreement also prohibits the City from hiring anyone to perform or permitting anyone to perform an employee's duties while he or she is on layoff status. Thus, internal comparison supports the Union's proposal, although not to the extent of a sweeping prohibition against all subcontracting. The external comparables, on the other hand, are of little help as the majority does not have collective bargaining agreements in place with clerks or persons performing similar duties.

Union Business Agent Karlene Knisley estimated in her testimony that 90% of the contracts she personally administers include language curbing subcontracting. Of the comparables in these proceedings which do have contracts with their clerks, the Oglesby contract permits subcontracting of work not traditionally performed by bargaining unit members, but bans contracting out bargaining unit work unless it has been first offered to unit employees. Geneseo's management rights clause reserves the power to contract out and to determine whether work will be performed by bargaining unit employees or others. The Rock Falls agreement limits contracting out to those situations where doing so does not result in a layoff or "part-timing" of any employee.

The City's proposal authorizes it to wholesale contract out or subcontract the bargaining unit work solely in its discretion, subject only to impact bargaining. Depending on the incarnation of the Union's proposal – submitted or suggested – the Union's offer can be seen as completely closing the door on subcontracting or permitting it subject to limitations. This neutral believes there is a way by which the protections sought by the Union for its bargaining unit members can be achieved without imposing a flat prohibition against any form of subcontracting or contracting out by the City.

The Union's stated goal is to protect its members and their work; however, the City counters as a small town with a small work force, it must have some flexibility to respond to

make sure the needs of the community are met in those instances where the bargaining unit members are unable to meet the demand for services. That being the case, the language of the agreement should preserve the right of the City to contract with others to provide needed services when bargaining unit members are unable or unwilling to do so, so long as such contracting does not result in a layoff.

The parties stipulated the subcontracting issue is non-economic in nature, and therefore this neutral is not bound to adopt either party's final offer. Based on the factors set forth in Section 14(h), I adopt the Union's final offer as modified below. I find the following language most closely matches the Section 14(h) factors and the same shall be included in the parties' collective bargaining agreement in Article 1 and Article 18:

Section 1.3 Management Rights:

(h) The right to contract out and subcontract for good and services, provided that:

(i) prior to contracting out bargaining unit work it will be first offered to bargaining unit members; and

(ii) as a result of the City's exercise of such right, there shall be no layoff of any employee or failure to recall any employee from layoff.

Section 18.1 Layoff: *(Add to balance of tentatively agreed language):*

No employee will be hired to perform or permitted to perform those duties normally performed by an employee while any employee is on lay-off status.

D. Hours of Work

While on the issue of subcontracting, the parties advanced differing views on the significance of the status quo, on the hours of work issue both parties seek to preserve what they view as the status quo. The City contends the existing state of affairs is that it established the current work hours and it has the power to change it as it so chooses. The Union counters that the status quo is that bargaining unit employees have been working an

eight hour day commencing at 7:00 a.m. and ending at 4:00 p.m. for many years and have built their lives around it.

Some bargaining unit employees have taken advantage of the opportunity these starting and ending times have afforded them and secured secondary employment starting at 4:00 or 4:30 p.m. The City now wishes the flexibility to schedule employees for any consecutive eight hour period between 7:00 a.m. and 5:00 p.m., and the Union resists as to current employees. The Union is willing to permit such an adjustment for new hires, but not current members of the bargaining unit.

The City offered testimony regarding difficulties its citizens had encountered trying to deal with billing and service issues after 4:00 p.m. In the view of the City, an additional hour of work each day would allow it to "...stay open longer for those who are getting off work late in the afternoon and wish to talk to City employees about problems..." The Union counters that the offices now are open early in the morning to handle problems before others might normally go to work and there is a drop box for bill payment after hours at the end of the work day.

Among the external comparables, most provide no help as the hours are unilaterally set by the employer. Those which do have contracts with their clerks provide an indication of what the parties could have agreed to had agreement been reached. In Oglesby, the shift schedules are tied to current practice. While that practice is not specified, the hours of work article spells out an eight hour day and ties those hours to current practice absent an emergency. So whatever the hours of work are, they will remain consistent with the current practice, absent an emergency. The Geneseo agreement sets forth three shifts with established starting and ending times. Rock Falls' contract lists set work hours for each specific position covered by the agreement. Internally, the City's contract with the FOP is silent on which hours officers will work, but rather sets out the types of shifts (i.e. eight or ten hour days) and calls for shift rotation (days to nights to days, etc.).

Both parties' arguments on this issue have merit. The City has a business to run and if it believes the doors should be open from 7:00 a.m. to 5:00 p.m., then so be it. However, the employees have a legitimate concern as well. What hours is each employee going to work? Who has to work which hours? How is that decision made? Are there any special skills or qualifications required to work the later shift? Will there be any incentive paid to the employee or employees who are required or who volunteer to stay later? What if more than one employee volunteers? Who gets the assignment? Will there be shift bidding? By seniority? What if no one volunteers? Will involuntary assignments be made in inverse order of seniority? If an employee is involuntarily placed on the later shift, how long does that assignment last? Will the shift run from 8:00 a.m. to 5:00 p.m.? Does the City plan any other shift hours? 7:30 a.m. to 4:30 p.m.? What if an employee has secondary employment that will be lost if she is required to stay late at the City? Will there be any "hardship" exceptions? Will the assignment rotate?

This list of questions can and will be as long as the interests of the parties dictate, and the answers should not be determined in arbitration – at least not unless and until the parties have thoroughly bargained the issue and exhausted their own efforts at arriving at answers that meet their respective needs – which it is clear they have not done on this issue. This neutral is reluctant to "fill in the blanks" and write a comprehensive hours of work and shift article for the parties' contract. That task is best left to the parties in negotiations.

By the provisions of the parties' tentative agreements, the term of their collective bargaining agreement will have a scheduled expiration date of April 30, 2015. Their bargaining for a successor agreement is likely to commence after the beginning of next year, roughly eight or nine months from now. The current work schedule has been in place for eight years, and has been within the total control of the City for the entirety of those eight years up to the point the employees organized and selected a representative.

There was no testimony or evidence that the citizens' problems in communicating with the City were of recent vintage or the result of some current event. Rather they were described generally as being those problems encountered by those citizens that got off work at 4:00 p.m. and found the City's offices closed when they approached the drive through window or tried to come into the office to ask a question. No evidence was offered as to how many citizens with problems to address got off work at 4:00 p.m. versus 5:00 p.m. when no one would be on duty even under the City's proposal. While the City argues this is an important element of their ability to deliver service, there was no evidence presented that at some time in the past the City adjusted work hours to keep their offices open later than the current practice. It had the power. If the extra hour was that important, why not extend the work day before now?

One has to think that if these problems the citizenry encountered had been of such a magnitude that a change was required, surely the City would have made the change sometime during those eight years. For that reason and because the details of the work schedule should be fully bargained, final resolution of the myriad of questions associated with the City's desire to keep its offices open later will have to wait until to next round of bargaining scheduled for 2015. Of course, that round of bargaining does not have to wait until 2015. The parties are free to negotiate any time they mutually agree.

I find the following language most closely matches the factors of Section 14(h) and the same shall govern hours of work for the unit employees. The Union conceded language which permits the City to adjust the hours of new hires, and that ability to adjust will be incorporated into the new agreement. As to current employees, the current work schedule shall continue in place absent mutual agreement otherwise.

The parties' agreement shall contain the following language in the Hours of Work article:

Five (5) consecutive eight (8) hour days to be worked from Monday through Friday, inclusive, shall constitute a workweek. Unless the parties agree otherwise, the schedule of hours of work for all current employees shall be eight (8) hours between 7:00 a.m. and 4:00 p.m. which shall constitute a work day. As for employees hired after the execution date of this 2013-2014 agreement, the schedule of hours of work shall be eight (8) consecutive hours between 7:00 a.m. and 5:00 p.m. as established by the City which shall constitute a work day.

VI. AWARD

I find the following final offers more nearly comply with the statutory factors set forth in Section 14(h) and therefore the same are adopted as the award in this matter:

1. **Wages**: The City's final offer is adopted.
2. **Subcontracting**: The Union's final offer as modified is adopted and the

following shall be added to Section 1.3 and Section 18.1 of the parties' agreement:

Section 1.3 Management Rights:

(h) The right to contract out and subcontract for good and services, provided that:

(i) Prior to contracting out bargaining unit work it will be first offered to bargaining unit members; and

(ii) As a result of the City's exercise of such right, there shall be no layoff of any employee or failure to recall any employee from layoff.

Section 18.1 Layoff: (Add to balance of tentatively agreed language):

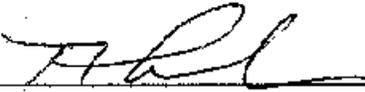
No employee will be hired to perform or permitted to perform those duties normally performed by an employee while any employee is on lay-off status.

3. **Hours of Work**: The Union's final offer is adopted and the following shall be included in Section 7.1 of the parties' agreement:

Section 7.1 Five (5) consecutive eight (8) hour days to be worked from Monday through Friday, inclusive, shall constitute a workweek. The schedule of hours of work for all current employees shall be eight (8) hours between 7:00 a.m. and 4:00 p.m. which shall constitute a work day. As for employees hired after the execution date of this 2013-2014 agreement, the schedule of hours of work shall be eight (8) consecutive hours between 7:00 a.m. and 5:00 p.m. as established by the City which shall constitute a work day.

4. **Prior Tentative Agreements:** Consistent with the parties' stipulation, their previously reached tentative agreements introduced into the record as City Exhibit 2 are incorporated into this Award.

Issued: June 3, 2014



Thomas Sonneborn, Arbitrator