

ILLINOIS LABOR RELATIONS BOARD

In The Matter of Arbitration]	Arbitrator: Stanley Kravit
]	
Between]	ILRB #S-MA-14-284
]	
METROPOLITAN ALLIANCE OF POLICE, NEIU CHAPTER 630]	IMPASSE ARBITRATION
]	
And]	Date of Hearing: October 5, 2015
]	
NORTHEASTERN ILLINOIS UNIVERSITY]	Date of Award: December 26, 2015
]	

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OPINION AND AWARD OF THE ARBITRATOR

A hearing was held in the above matter on October 5, 2015, at Northeastern Illinois University (hereinafter “Employer”) at which time the parties had an opportunity to present witnesses and documents and to cross-examine. All matters agreed upon by the parties to be incorporated into the next contract were confirmed on the record and the remaining issues at impasse were identified as stated herein. A final designation of economic and non-economic items at impasse was reserved for briefs.

Briefs were submitted by December 23, 2015, at which time the record was closed. The Arbitrator hereby makes the following findings of fact and award. Reference to exhibits will be by “UN __,” and “EMP __.” Transcript references will be by “”TR __.”

I. BACKGROUND

The main campus of the University lies in North Chicago, approximately 5 miles from the Loop. It is bound by Peterson, Kedzie, Foster and Pulaski Avenues. In 1966 the Carruthers Center for Inner City Studies (CCICS) was established to serve the African American community, located at 700 East Oakwood, Chicago, approximately 16 miles from the main campus. In 1969 the El Centro campus was established to serve a growing Latino community, and in 2014 a new El Centro location was opened about 3 miles from the main campus.

The University has approximately 10,000 commuter students and expects to open it’s first residence building in the fall of 2016. It has about 3,000 employees. NEIU finds itself in an uncertain financial situation since a substantial portion of its income comes from an appropriation from the State. During FY 2013-14 this appropriation was reduced

by \$349,000. (TR 204-205) Since the State presently has no budget in effect, there has been no appropriation and actual receipt of State funds usually runs several months behind the appropriation. NEIU enrollment is down approximately 4%, and this combination of reduced State funding and enrollment has been in effect during the period the parties have been negotiating a successor to the July 1, 2010 – June 30, 2014 contract.

II. NON-ECONOMIC ISSUES AND POSITIONS OF THE PARTIES

A. Assignment and Transfer of Officers.

- Article II – Management Rights
- Section VI.3 – Transfers

1. Proposals of the parties and background.

This issue involves two provisions of the current contract. Article II contains a lengthy statement of Employer prerogatives that need not be repeated here in its entirety.

The issue revolves around the following:

Section 1 Management Rights:

The Employer retains all traditional rights to manage and direct the affairs of the NEIU Police Department, included, but not limited to, the following: ... *to transfer and reassign employees...* (Emphasis added)

The General Orders created by Management shall not supersede any limitations agreed to in this contract.

Article VI – Seniority, states:

Section 3 Transfers:

The Employer agrees to seek employee volunteers for transfer from one site to another (i.e., Main Campus, Center for Inner City Studies) prior to hiring new employees.

An employee(s) shall not be involuntarily transferred from one site to another.

The Union proposes to eliminate the words “to transfer and reassign employees” from Article II and to retain Article, VI, Section 3.

The Employer proposes to retain the present wording of Article II; to eliminate the present VI. 3 and substitute for it the following:

Section 3 Beat Assignments:

Parties agree that officers will be assigned to beats on a rotation basis, in accordance with available personnel and University operational needs. Beats will be assigned in accordance with NEIUPD Policy 400 1.1 Patrol Function. The patrol function policy will remain in effect for the term of this collective bargaining agreement, unless the University is required to change the policy to remain compliant with federal, state or local law. If the University is required to change the Patrol Function policy, it shall notify the collective bargaining representative and consult with the bargaining unit prior to implementing the change. Assignments will not be made for punitive or disciplinary reasons.

The Patrol Function policy (hereinafter “Policy”) is a General order within the meaning of Article II. It describes in detail the duties of patrol officers and specifies that officers will be assigned by “beats,” or patrol areas. The Main Campus (MC) is divided into four beats. On March 13, 2013, The Police Department (PD) added two new beats to the Policy. (TR 43-44) Beat 5 “Consists of all NEIU property located at the new El Centro location, 3390 N. Avondale Avenue, Chicago.” Beat 6 “Consists of all NEIU property located at the Carruthers’s Center for Inner City Studies...” (CCICS)¹ (UN 9)

¹ See the listing of beats in UN 9 C, attached to the ULP filed on December 15, 2014. (UN 9 A)

The Policy also states at page 4:

1. Minimum Staffing levels will consist of at 3 people.² These staffing levels can include any combination of officers, sergeants, dispatchers and lieutenants (if applicable).
2. Beat assignments will be made by the Watch commander, and will be made in a fundamentally fair, rotational basis that rotate on a daily basis. Beat assignments will be assigned at roll call, and deployed from the main campus, unless operational needs dictate otherwise.

The issue of the authority of the PD to transfer officers as anticipated under Subsection 2, above, has a long legal history. It is and has been the Union's position that all members of the bargaining unit (BU) were hired with the understanding that they would be assigned to a particular campus and that Section VI. 3 prevents the PD from doing what Subsection 2, above, permits: assigning an officer away from the beat for which he was hired for all or part of a shift.

Officer Gava testified that, when he was hired in 2005, he did not even know the University had a campus at CCICS. (TR 50) He testified that the background to these events is the long-standing practice of hiring officers to work at specified campuses. (Beg. At TR 38) Union Exhibit 6 contains signed affidavits from eight officers including Gava's stating that they were hired to work at a specific campus; seven for MC and one (Lambert) for CCICS). They maintain that, where CCICS was mentioned, they were told other officers were hired specifically for that campus. (See affidavit of Lambert stating he was hired for CCICS.) Officer Gaza stated that, at one time, five officers and one security guard were assigned to CCICS. I find that these facts are not in dispute and the University's position in this hearing regarding Article II and VI does not depend upon a contrary argument.

² Lt. Moore testified that "minimum staffing levels are to have at least two sworn officers on duty.(TR238)

Union 6-C was introduced to show that in 2005-06 CCICS had four officers and two security guards assigned to CCICVS. Officer Gava testified that for his first five years no officer from MC was required to go to CCICS. (TR 54)

On July 6, 2010, MAP was certified to represent the BU and the first contract between the parties contained Articles II and VI. 3, as stated above. Officer Gava testified that in 2010 the Chief began sending officers from MC to cover shifts at CCICS. A grievance was filed and Gava testified that 15 officers received \$850 each (\$12,750) as a result of not receiving overtime for work at CCICS. (TR 54)

Nevertheless, by a memo dated May 19, 2011, officers were informed that they would be reassigned between the MC and CCICS to cover regular shifts. The Union filed an unfair labor practice charge. The ULP complaint was resolved by a settlement agreement dated February 7, 2012. (UN 8-C) Subsection b. of that Agreement states that the present language of Section VI. 3 would be inserted into the 2010-2014 contract, which expired June 30, 2015.

In September of 2012 the PD resumed the practice of involuntarily assigning officers from MC to cover shifts at CCICS after one of the two Security Guards hired for that campus resigned a week after being hired. The Union grieved and the issue was heard before Arbitrator Clauss whose award is dated April 11, 2014. (UN 8-A)

The Arbitrator rejected the University's argument that officers were only occasionally *detailed* from MC to CCICS as a temporary duty assignment. He held that the issue before him was identical to that resolved in the 2011 ULP settlement in favor of the Union, which placed the language of VI. 3 into the present contract. The issue

was, therefore, *Res judicata*.³ I agree with the Arbitrator, since placing Section VI. 3 in the contract bound the parties to the interpretation expressed in the settlement agreement: when an additional officer is needed at CCICS an officer may not be transferred in lieu of overtime. (TR 84-85; 90) Chief Lyon testified that the PD is acting in accordance with this award. (TR 89-90)

Since June of 2014 negotiations have been underway, leading to my appointment as impasse Arbitrator. In a letter dated September 29, 2014, Union Counsel stated in a letter to Ms. Reardon-Henry that the University was violating the arbitration award. The Union proposes to reinforce the ULP settlement agreement/Clauss award history in its favor once and for all by removing even the now limited management right to transfer and reassign employees from Article II; and to retain Section VI. 3. The Employer seeks to establish not only Beats 5 (El Centro – a satellite campus three miles from MC) and 6 by Policy, but by an unfettered contractual right to assign officers across campuses on a daily basis by a system of rotation.

Chief Lyon testified that the University's proposal is based on current operational requirements;

Over the years the operational needs of the University and the Police Department have changed. And so changing the language of the contract would enable us to be able to address those operational needs as the University Police Department requires. (TR 116)

When pressed to explain what he meant by "operational needs," he first replied that he needed "latitude" to make assignments. He then stated: "The other thing that I would argue is we need a well-rounded work force." TR 120) Within the police officer

³ In law, a thing or matter settled by judgment in an identical matter between the same parties.

classification, "It should be plug and play." (Ibid., 121) The management proposal for beat rotation

would allow those officers to be exposed to different levels of activity, different levels of experience and not to be pigeon-holed, so to speak, into one specific area.

And I think Officer Gava pointed that out during his testimony, that he went down to CCICS and didn't have the training. Well, likewise, the officers at CCICS don't necessarily have the training to do the job that needs to be done here at the main campus of the University, the main rotation.

We do a lot of training for our department, but training doesn't replace experience.... Our officers need to be out and about. They need to know locations. They need to know folks who are in individual offices. They need to understand our emergency responses at all our locations. And, quite frankly, right now that's not done. (Ibid., at 121-122)

Both El Centro and CCICS are individual buildings. The Chief's concern was not only for the effectiveness of officers transferred to these campuses, but from these to the main campus should that prove necessary. Crime statistics placed in evidence by the Employer indicate that incident levels are low at all campuses. The Chief testified that he was "not aware of any safety concerns" (TR 123-124) The University's proposal arises out of these concerns and the legal history.

Officer Gava testified that, while he believed safety *was* a concern when he was assigned to work alone at CCICS (the security guard having resigned), the Chief had denied a request that two officers be assigned there. In an emergency he would probably call 911! (TR 80-82) However, he testified that "My factor is, I got hired to work here (MC); that's my primary factor." (TR 81)

Union Exhibit 6 shows that, at present, there are 12 officers for all locations, with Lambert regularly assigned to CCICS. There are two security guards contracted for at El

Centro. Officers from MC drive by El Centro and would be sent there is an emergency. (TR 91) The Chief testified that two officer candidates had started training at the Police Academy on the day of the hearing. (TR 238)

Directly contributing to this problem is the fact of the PD's turnover in recent years.⁴ According to Union Exhibit 2, and excluding for the moment the two 2015 hires in training, of 20 officers hired since 2008, eleven have left and one was promoted. This leaves eight officers of whom only four have three or more years experience. Of fourteen hired between 1990 and 2008, only four remain. One was promoted and one retired. This is not the picture of a stable Department. I believe these facts have a direct effect upon every issue involving assignments and the ability to use comp or vacation time.

The University raises the question of whether Assignment and Transfer of officers constitutes a manning issue under Section 14(i) of the Act which prohibits manning from being the subject of an impasse award. It cites a 2014 award by Arbitrator Yaeger, relying on *Village of Oak Lawn v. ILRB, State Panel, and Oak lawn IAFF local 3405*, App. Ct. ILL., 3d Dist., 2011:

And the court stated that because matters involving "manning" are statutorily prohibited from being the subject of an interest arbitration decision necessarily such matters cannot be a mandatory subject of bargaining. *City of Hillsboro and Illinois Fraternal order of Police Labor Council, S-M-12-119*. (Emp. Ex. 15-B, p. 7)

The only exception in Subsection (i) would require a finding that

"manning considerations in a specific assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties.

⁴ This issue is related to the issue of the ability of officers to use accumulated compensatory time. *Infra*, at page 13.

The University denies that any such risk exists on the present record.

2. Opinion of the Arbitrator.

Addressing first the question of whether a “manning” issue within the meaning of Section 14(i) exists, I find that it does not for two reasons. First, the Employer has, as it concedes, negotiated the issue, in part by offering an additional a 2% “incentive” wage increase, in addition to the 2% it offers in any event, for a total of 4% effective July 1, 2014, if I find in favor of substituting its Beat Proposal for the Union’s proposal to eliminate Section II. 1 and retain Section VI. 3.

Thus the Employer has waived any objection that the Union seeks to bargain over a non-mandatory subject.

Second, there is no manning issue as that term is normally understood. The record shows that the Employer has set the manning standards in its Policy 400 1.1 Patrol Function:

1. Minimum staffing levels will consist of at least 3 people. These staffing levels can include any combination of officers, sergeants, dispatchers, and lieutenants (if applicable).⁵

The Union’s proposals (and past grievance and ULP actions) indicate only that it wishes the PD to live up to the standards the PD has set.

Negotiations is the place to propose changes in past practices or to attempt to reverse arbitration awards. There is no reason to impose an exaggerated standard of proof upon a party seeking to change an establish practice or interpretation of a contract. Impasse arbitration is, by definition and intent, an extension of the bargaining process, as well as a statutory substitute for strikes by peace officers. A party seeking change here has the same duty to persuade the Arbitrator as it did to persuade the other party in

⁵ See also the testimony of Lt. Moore at TR 238.

negotiations. There should be no surprises in as much as the parties should have had the opportunity to review and consider each other's positions.

In grievance arbitration it is the duty of the arbitrator to interpret and apply the contract. This *judicial* function is what the parties have bargained for and is performed within the constraints of widely accepted standards; e.g., due process, just cause, rules of interpretation grounded in contract law.

In impasse arbitration the arbitrator performs a *legislative* function grounded in the standards set forth in laws such as Illinois PLRA. This process has been working well for 50 years, in 30+ states, represented by thousands of decisions. We intend for it to continue to work well in Illinois!

Despite many formulations as to "what parties might have agreed to" perhaps the best formulation was provided by Arbitrator Stein in a private sector case just as public sector collective bargaining was coming into its own and legislatures and parties were searching for an acceptable means to avoid strikes.

... our task here is to search for what would be in light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves. (*New York Shipping Assn.*, 36 LA 44, 45 (1960).

The standards set forth in Section 14(h) of the Act create the context in which this inquiry must be conducted and include:

- (3) the interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (8) Such other factors .. 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.

It is not surprising that the Union is unwilling to accept the change in language and assignment procedure proposed by the Employer. Making so substantial change in the contract requires a convincing rationale as to the necessity for such change. For an impasse arbitrator to agree that such substantial change is “fair and equitable” there must be a showing of more than inconvenience based on inadequate staffing or the inevitable cost of such understaffing.

In this case the University seeks to overturn the settlement agreement of 2012 and the Clauss award of 2014, based, as the Union’s position here is still based, on the evidence that officers hired up to now have been hired on the basis that they would work at a particular campus. The only evidence offered upon which to overturn precedent here in the interpretation of Sections II. 1 and VI. 3 is the testimony of Chief Lyon that the “need for a well-rounded work force” depends upon the PD having the ability to assign beats at will.

For more than ten years officers were hired for either the MC or CCICS. The record makes this clear and the Union has defended this expectation through Board and arbitration proceedings. The Employer has offered an additional 2% wage increase in the first year of the new contract if the Union would accept its changes in Article VI, to no avail. When the language of the ULP settlement agreement was placed in the contract, the interpretation of both articles was settled and I hold that the training rationale expressed by the Chief in testimony is not sufficient for me to change the present language since VI. 3 modifies II. 1.

Nor is it necessary to change II. 1 in order for the Chief to accomplish the legitimate purpose of insuring that officers are sufficiently familiar with all campuses to

be able to respond effectively when they voluntarily fill shifts or in emergencies. I will therefore add the following third paragraph to VI.3:

Employees may be assigned to a campus other than their regular assignment for one scheduled shift only during each calendar quarter for the purpose of familiarization with other University campuses. Each employee shall be given sufficient notice of such assignments.

I do not mean once per quarter per campus; I mean once each quarter only and the PD may select the campus. This means that in the course of a year each officer may work at another campus a total of four times as a regular (non-overtime) assignment. Also, from the record, I take it to be present practice, not objected to by the Union, that a car from MC may on occasion, when necessary, drive to El Centro, three miles away, as a means of helping to police that campus. (TR 92-95) This is an aspect of assignment to a beat on the MC.

B. Compensatory Time – Section X. 5

1. Proposals of the parties.

The Union casts this issue as economic. The University terms it a non-economic issue. I agree with the University.

This issue, in the context of this impasse, is not economic because it is directed at the administration of comp time rather than at its rate or calculation. Like Vacation Preference (Sec. XI. 3), it is concerned with the ability of officers to take time off that has already been earned and calculated.

Section X. 5 allows an officer to accumulate compensatory time in lieu of immediate cash payment for overtime. It states, in relevant part in the last sentence:

Compensatory time off will be given or granted to the employee by their immediate supervisor and shall be subject to the operational needs of the department and shall not be unreasonably refused.

The Union proposes to add the following language to the Section:

1) Officers shall have the right to use compensatory time, as long as it does not “unduly disrupt” the operations of the employer [sic . a] A request to use accumulated compensatory time must be granted within four (4) hours after the request is made.

2) The term “unduly disrupt” shall not include the posting and offering of overtime for the purpose of substituting the requesting officer.

The Employer denies the need to make any change in the language for several reasons. First, it avers that *Heitmann* is not on point because it deals with the meaning of “unduly disrupt” under FLSA and not with a collective bargaining agreement. Second, the record does not support the need for new language. And, third, the Union has never grieved (or filed a lawsuit contesting) violations of this language. If, as officer Gava testified, that requests for comp time are improperly refused, “the existing grievance and arbitration language” can resolve the issue. (Emp. br. at 27)

2. Opinion of the Arbitrator.

According to the Union, an issue does arise because of the frequent denials of requests for compensatory time, despite the language of the contract and for no reason other than the University’s unwillingness to cover a compensatory time request by overtime to another officer. (TR 233; 236; 242) The Union contends that these denials contravene the opinion of the U. S. 7th Circuit Court of Appeals in *Heitman v. City of Chicago*, 560 F.3d 642 (2009). (For convenience I am using the Union Exhibit.)

The Court was interpreting 29 U.S.C. Sec. 207(o) which authorizes compensatory time in lieu of paid overtime under the Fair Labor Standards Act. The Court held:

(a) Section (o)(5) of the FLSA provides that any employee of a public agency who has accrued compensatory time and requested use of this compensatory time, shall be permitted to use such time off within a reasonable period after making the request, if such use does not unduly disrupt the operations of the agency...

Whether a request has been granted within a “reasonable period” will be determined by considering the customary work practices within the agency based on the facts and circumstances of each case.” The opinion states several criteria for granting a request, including “the availability of qualified substitute staff.” However, cost of replacing the requesting officer is not one of them. In view of the issue, these criteria need not be stated in detail, because the Court also held:

(d) Unduly disrupt. When an employer receives a request for compensatory time off, it shall be honored unless to do so would be “unduly disruptive” to the agency’s operations. Mere inconvenience to the employer is an insufficient basis for denial of a request for compensatory time off...

...The Secretary of Labor has determined that an employer must approve leave “during the time requested” by the employee *unless that “would impose an unreasonable burden on [the employer’s] ability to provide services of acceptable quality and quantity to the public.* (Emphasis added.)

The Court concluded that, when an employee requests a date and time for leave, the only decision for management is whether the request would cause undue disruption in terms of service, “[and] only if the answer is yes, may the employer defer the leave – and then for a ‘reasonable time.’” The answer may only be, Yes, if the standard in the italicized language of the Secretary of labor quoted above is met.

Heitmann recognizes that a collective bargaining agreement may establish the conditions under which an employee may use comp time. The Union obviously believes that the problem may be alleviated by adding the “unduly disrupt” language to X. 5. I

Officer Gava testified that “There is no problem about staffing.” (TR 236) In his view, the sole issue is the unwillingness to pay overtime.

Lt. Moore testified that the Union’s proposal for granting requests within four hours would be difficult “especially if it involves having to find somebody to work in place of that person. They are not always eager to work overtime.” (TR 240)

On rebuttal, Officer Gava denied that officers refuse overtime: “So the issue here is not because its low staff and the other officers are not willing to work. The issue here is because the command staff doesn’t want to pay the overtime.” (TR 242-43)

Current contract language provides that “compensatory time off will be given or granted ... subject to the operational needs of the department and shall not be unreasonably denied.” The Union’s proposal from the language of *Heitman* means that the only basis for denial is that the request is “unduly disruptive” to operations. And “unduly disruptive” has been defined, as expressed in *Heitman*, to mean granting the request would make it impossible for the Employer to provide an “acceptable” level of service to the public.

Attached to Union Ex. 9, Order 400 1.1 – Patrol Function, after outlining the beats, states: “Minimum staffing levels will consist of at least three people. These staffing levels can include any combination of officers, sergeants, dispatchers and lieutenants (if applicable).” The Department has 14 officers and seven supervisors. (TR 230) I accept Lt. Moore’s testimony (TR 238) and interpret it to mean a minimum of two sworn unit officers at each campus.

In summary, the only ground for an otherwise reasonable request is the inability to cover the requesting officer **even** if it means paying overtime to another officer.

“Inconvenience to an employer is an insufficient basis to deny a request.” In order for the PD to meet the standards *it* has set it must hire sufficient personnel or pay the overtime.

As to the second sentence of the Union’ proposed first additional paragraph, I find on the record that four hours will not be sufficient time for the Department to cover the time involved. Common sense would say that the more important the time off the more notice should be given to the Department. I understand officer Gava’s testimony that sometime leave is necessary for unanticipated reasons, but this does not change the test for approval of a comp time request. I therefore order that the present language of Article X be designated Section 5.1. The following subsections shall be added to Article X:

Section 5.2 Officers shall have the right to use compensatory time, as long as it does not unduly disrupt the operations of the employer. The term “unduly disrupt” shall not include the posting and offering of overtime for the purpose of substituting for the requesting officer.

Section 5.3 Requests to use compensatory time shall be made with as much notice as possible, however, requests shall not be denied for any reason other than that such request will unduly disrupt operations. Inconvenience to the Employer shall not be a reason for denial of a request.⁶

C. Vacation Preference – Section XI. 3

1. Positions of the parties.

The Union’s proposal for additional language is in bold:

Seniority shall prevail **in during any and all** vacation requests. ~~As long as such requests are submitted between the first and fifth of no less than the month preceding the month in which in which the vacation is to be taken. Requests shall be approved or disapproved with seven (7) days of submission.~~

5. The parties will have a year and a-half of experience under this successor contract to evaluate their experience in covering comp time and, as *Heitman* clearly anticipates, may negotiate any necessary modifications that experience recommends.

1. Requests equal to or less than five (5) consecutive days shall not be unreasonably denied if submitted seven (7) days prior to the beginning of leave.

2. Requests greater than five (5) consecutive days shall not be unreasonably denied if submitted fourteen (14) days prior to the beginning of leave.

3. Any request for vacation other than above shall be given consideration by the Department head, considering fully the Employee's preference and operational needs of the department. Requests for vacation shall not be unreasonably denied.

In its brief the Union relates these proposals to the need for the application of seniority in approving vacations.

The Employer denies that there is any reason to change current language. I agree.

2. Opinion of the Arbitrator.

This proposal must be denied, first, because there is no evidence of record that would enable me to understand the problem with how vacations are being approved at present. The problem appears to be related to the difficulty of granting comp time requests, and vacation was referred to in that context by Chief Lyon (TR 132) and Officer Gava (TR 247). It is impossible for me to tell whether or not vacation could be more effectively administered if I were to accept the Union's new clauses. The Union's references to comparable vacation provisions in other university contracts serve to emphasize the importance of seniority in granting requests, but seniority is of similar importance in the present contract. I recommend to the parties that they discuss specific vacation problems under Section 8.1- Labor/Management Conferences.

II – ECONOMIC ISSUES AND POSITIONS OF THE PARTIES

A. Wages

1. Requirements of law.

Section 14 of the Act governs impasse arbitration between employers and units of peace officers. Subsection (g) requires that, as to economic issues in dispute, each party shall submit a final offer on each such issue. By agreement of the parties, their final positions have been submitted in their briefs. Subsection (g) provides that:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in Subsection (h).

Under Subsection (h) the critical factors relied upon here in assessing the positions of the parties are:

(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...⁷

Section (h)(8), *supra*, at page 11, regarding factors “normally and traditionally taken into consideration” in negotiations, is relevant here also.⁸

2. Final positions of the parties.

a. The Union

The Union has proposed to amend Sections D. and E. of Appendix A – Wages, as follows:

⁷ For “communities” read “universities.” Neither party has requested comparison to a municipality.

⁸ The COL is approximately less than 1% for the past year and therefore is not a factor in this case.

- July 1, 2015, a three (3.0%) pay increase effective July 1, 2014.
- July 1, 2015, a three (3.0%) pay increase effective July 1, 2016.
- July 1, 2017, a three (3.0%) pay increase effective July 1, 2017.

The parties have agreed upon a three year contract.

b. The Employer

The University has proposed:

- 7/1/14 – A two (2%) percent increase effective July 1, 2014, plus a 2% incentive increase in return for the acceptance of its position under Assignment and Transfer.
- 7/1/15 – A two percent (2%) increase.
- 7/1/16 – A two percent (2%) increase plus 1% added to the base contingent upon the opening of the University Residence Halls in Fall 2016.

The Union has relied, in part, on comparison to other State universities who are members of the State University Civil Service System, or SUCSS, which provides assistance to member universities in various aspects of personnel administration, including wage and salary information. It presented, as part of its Exhibit 7, a chart comparing the wages of police officers at member universities.

The University contends, first, that the only relevant comparables are Chicago State and Governors State Universities; and, that NEIU's wages are comparable thereto. Second, the absence of State funding, including the confusion this has caused thus far and the Governor's announcement that he is seeking a 30% budget cut for all state universities, justify the University's offer. In the last fiscal year of the contract NEIU was required to return \$349,000 to the State. The University has eliminated unfilled

positions and issued 22 layoffs. The willingness of its other unions to accept a series of 2% across the board raises attests to their acceptance of this situation.

In addition, NEIU contends that its wage offer, in its entirety, equals the three year, 9% increase proposed by the Union.

3. Opinion of the Arbitrator.

Comparability has been the central concern of impasse arbitrators for the past fifty years. Its acceptance is enhanced when the parties know that comparative rates are derived from collective bargaining between similar employers and officers who do the same work. When this factor is pleaded it is the *criteria* for comparison that are critical.

I acknowledge that the universities compared by the Union are scattered around the State and the comparability data is far from perfect. All are engaged in the same task of education, and all have similar concerns for the safety of everyone who comes in contact with their campuses – especially in the current malaise in which university officers have to be prepared to meet threats of violence – and in this sense their police forces are comparable. However, the fact that a number of universities are in a Civil Service System is, by itself, not enough.

As collective bargaining progresses, the parties should examine what their relationship (and other impasse awards) suggest are relevant factors, including number of students, faculty and visitors; special events that may require campus police; types of training; location and nature of campuses patrolled; type and frequency of service calls; location characteristics which might bear on officers duties and interaction with local communities; arrests by campus police, as well as budgets, sources of income and other relevant financial data.

The Union appended to its brief wage data from SUCSS and from a Report of the Illinois Auditor General regarding the makeup and expenditures of State Universities.

Although this information is helpful, I will confine my analysis to the criterion which I believe is controlling in this case: the relevant labor market within which comparability should be considered. This criterion falls under Subsection (h)(8). I make this finding because the most significant factor in the record is the inability of the University to staff three locations *as it would wish to do*.

The Union presented a chart at the end of Exhibit 2 to show the retention factors for the PD that are discussed in this opinion. Officer Castro, who testified, clearly believes most officers who leave do so for higher pay. The discussion from TR 165 to 171 indicates that this testimony is hearsay as to possible reasons, but it corroborates the chart. I accept it for that purpose. Just since 2008, 20 officers have been hired; one promoted; eleven have left - the Union believes 8 may have gone to other departments – and eight remain. Unfortunately, neither party conducts exit interviews.⁹

An NEIU officer who has been trained and become experienced, and who wants to improve his economic situation, has wide variety of opportunities in the greater Chicago area. I believe this fact is directly related to the question of comparable universities for purpose of comparing pay offers. I infer that an officer seeking a better-paying university position is less likely to go even as close as Illinois State University at Normal, 133 miles away.¹⁰ He/she is much more likely to remain in the local labor market which I find consists of Chicago State University, 22 miles from NEIU,

8. Given that the parties will be bargaining again in little over a year, nothing prevents either from contacting former officers and asking where they are working and, perhaps, for other relevant information.

9. I understand this depends upon where he lives now. Illinois State at Normal pays more than \$9,000 over the NEIU starting rate.

Governors State University, 45 miles from NEIU and Northern Illinois University, 69 miles from NEIU.

Arguably, the University of Illinois in Chicago, only 6 miles away, fits within this labor market, however, its size in terms of enrollment, funding and other economic characteristics raise a question as to whether it should be included. CHART I looks first at this labor market area without UIC.

CHART I – COMPARISON OF COMPARABLE UNIVERSITIES
(Salary data from labor contracts)

<u>Employer</u>	<u>Date</u>	<u>Starting</u>	<u>After 5 years</u>	<u>After 10 years</u>
Northern Illinois*	7-1-11	\$50,877	\$58,157	\$63,657
Chicago State	8-1-15	\$50,107	\$62,235	\$68,890 (8 years)
Governors State	7-1-14	\$43,563	\$52,416	\$58,980
Average:		<u>\$48,182</u>	<u>\$57,603</u>	<u>\$63,843</u>
NEIU	7-1-13	\$43,483	\$51,314	\$57,437 (8 years)
Average minus NEIU equals: (NEIU is behind the average by)		\$ 4,699 - 10.8%	\$ 6,289 -12.3%	\$ 6,406 - 11.2%

Adding the University of Illinois at Chicago to the first three comparables produces the following result:

Univ. Illinois At Chicago	9-1-13	\$56,076	\$77,834	\$84,594 (7 years)
Average including UIC equals		\$50,156	\$62,660	\$69,031
Average minus NEIU equals (NEIU is behind the average by)		\$6,673 -15.2%	\$11,346 -22.1%	\$11,594 -20.2%

* When Northern Illinois begins a new contract the average against NIU will drop further.

It is apparent that, although Governors State may drag the average down, in the first analysis UIC adds too much weight in the other direction. In addition, UIC officers reach maximum in 7 years. Therefore, I find that the comparables are Northern Illinois, Chicago State and Governors State. Based on the comparison above, I would find for the Union's wage increase position even if there were no other factors.

However, another reason why I need not go further with an economic analysis is the fact that the parties are only 1% apart. Taking the NEIU starting salary of \$43,483, three percent = \$1,304; two percent = \$877, a difference of \$438. If 3% is added to the NEIU starting salary, and re-calculated against the three university average, the additional \$1,304 reduces the difference to show NEIU only 7.8% behind.

If we take the current starting base at NEIU of \$43,483 and add 3%, cumulatively, for three years, the figure is \$47,515, or still \$667 below the average. The other universities are not likely to remain static.

The last page of the Union Exhibit 2 shows dates of hire for current Unit members. Two were hired in 2015; three in 2014, one of whom has left already. Six were hired in 2013, of whom four have left. Four were hired in 2012, of whom three remain. Of these 15 hires remain, if the last two qualify.

In summary from the Exhibit, of the 20 hired since 2008, 8 remain. Only the additional five officers comprising the 13 person unit have more than 7 years experience. This information fits within Subsection (8) as a factor "normally taken into account" in collective bargaining or impasse proceedings. I regard this factor as extremely important in this impasse.

It seems a reasonable inference that the interests and welfare of the 10,000 members of the public who are NEIU's students would be well served by the three percent increases proposed and the potential stability these might bring. Thinking back to that portion of this award, *supra*, specifying that the Chief may rotate a limited number of assignments so all officers are familiar with all campuses, it does little good to train and inform officers who are unlikely to remain.

NEIU's need is for stability and retention regarding its younger officers. This factor may have a beneficial impact on its overtime costs as well. It will certainly save the Employer a great deal of money spent on hiring on training – perhaps enough to pay for the increase.

The difference in total cost of wage offers is estimated by the University to be between \$15,000 and \$20,000. (TR 215) I believe it is the University's obvious uncertainty about State financing – how much and when it will arrive – that is at the heart of the impasse over wages. Weighing this uncertainty against the difference in costs between the positions of the parties, given the comparable positions charted above, and the fact that a three percent increase may have more impact upon NEIU's ability to retain its newer officers – especially the four remaining of nine hired since 2013 and the two coming on in 2015, who would have two to five years of experience when this contract next expires, I find for the Union on wages. A three percent increase is ordered for the three fiscal years beginning July 1, 2014, to be paid retroactively.

B. Court Time – Article X, Section 11

1. Positions of the parties.

The contract states as follows:

Employees who are required to appear to sign charges at the State's Attorney's office, attend authorized court sessions, attend an authorized pre-trial conference, or attend a university Judicial hearing outside of their regular scheduled hours shall receive compensation at the over time rate for a minimum of three (3) hours, or the actual hours worked, whichever is greater.

The Union proposes to add the following sentence:

This shall be upheld even in situations when court time and regularly scheduled court time overlap.

The Employer contends that the net effect of this provision would be to establish "pyramiding" of overtime, in that *any* use of time for court that occurred outside of the regular shift would be grounds for 3 hours of overtime.

2. Opinion of the Arbitrator.

Under the present language, the first question is whether any of the court time required has taken place within the officer's regular shift. If all such time is contained within the shift there is no issue and no overtime. (TR 264) The second question is whether the court time took place *entirely* outside of the regular shift. If so, the officer receives a minimum of three hours overtime. The purpose of such provisions has always been to compensate the officer for giving up personal time even if the actual time is less than three hours.

The issue arises when court time overlaps with part of the regular shift. If, e.g., a shift ends at 3:00 PM and the officer is tied up in court from 2:00 PM to 4:00 PM (including travel), should he receive one hour of overtime (exceeding his shift) or three hours of overtime? I read the present language as authorizing the three hour minimum only when the court time falls entirely outside of a regular shift. The five examples the Union provided of similar provisions in other contracts appear to read the same way,

however, there is insufficient evidence of record to show the effect of current practice on the officers. This would be more persuasive than comparables.

In view of these conclusions, I will not change the Court time provision.

C. Emergency Closing – Article X, Section 14.

1. Positions of the parties.

The Union proposes the following changes in the Section , in bold:

On days, **including weekends**, designated by the University as ~~Emergency Closure Days~~, **closure days** (e.g., snow, flood, explosion, etc.,) the following conditions will apply:

A. Employees who are scheduled to work and work **shall be compensated for all hours worked at the appropriate rate of pay of two (2x) times his regular rate of pay.** ~~will be paid overtime rates; ...~~

Overtime worked on an Emergency Closure Day will be paid at the applicable overtime rate and no additional release time will be earned.

The Union proposal relies on similar language which appears in the NEIU Operating Engineers contract and apparently in police contracts of several other universities. The University contends that there is no evidence in support of this change.

2. Opinion of the Arbitrator.

First, I note the present subsection A. *and* the Union’s proposed change in A. for double-time-and-a-half refer to employees who are scheduled to work and work. The ‘comparable’ Operating Engineers contract language referred to in the Union brief at page 15, line 4, refers to employees who are not scheduled to work, but are required to work on overtime and therefore get 2.5x their regular rate.

At present, officers who work on “Emergency Closure Days (e.g., snow, flood, explosion, etc.) receive time and one-half for hours worked. The Union stated it would rely on the information provided, however, this seems to be that the Operating Engineers

receive double time-and-a-half under certain conditions. I note that there are two subsections of X.14 under which (B.) officers scheduled to work and excused are paid straight time; and (C.) officers scheduled to work, but who request to be excused receive straight time, but in this instance, the eight hours pay is charged to “appropriate absence accrual.”

I reject this Union proposal because of (1) inadequate justification; (2) these emergencies would seem to be times when officers are most needed; and (3) given that I have accepted the Union’s wage offer, I do not believe it is appropriate to add any further cost under this contract absent compelling circumstances.

D. Personal Days – Section XI. 7

1. Positions of the Parties.

This Section presently provides;

Employees shall be allowed two (2) personal days to be taken during the calendar year. Personal days shall be charged against accumulated annual leave.

The Union proposes to establish a separate personal day account by adding the language in bold:

Employees shall be allowed two (2) personal days to be taken during the calendar year. ~~Personal days shall be charged against accumulated annual leave.~~ **Personal days shall be accrued from its own separate account that is replenished at the beginning of every calendar year.**

NEIU avers that there is no support in the record for more expensive time off.

2. Opinion of the Arbitrator.

In view of my conclusion on wages, *supra*, I decline to impose any additional costs on the Employer and, at the risk of being redundant, I also do not believe imposing

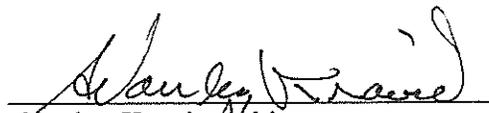
additional time off that would have to be covered by overtime is appropriate to present staffing.

IV. SUMMARY OF AWARD

My award is summarized as follows:

1. Assignment & Transfer; Sections II.1 and VI. 3. Contract language to remain the same with the addition of a new Section VI. 3.
2. Compensatory Time; Section X. 5. I adopt the Union's proposal, in part, as indicated by the addition of Subsections 5.2 and 5.3.
3. Vacation Preference; Section XI. 3. I adopt the position of the Employer.
4. Wages and Appendix A; I adopt the final position of the Union.
5. Court Time; Section X. 11. I adopt the final position of the Employer.
6. Emergency Closing; Section X. 7. I adopt the final position of the Employer.
7. Personal Days; Section XI. 7. I adopt the final position of the Employer.

The foregoing Opinion and Award was mailed to the parties on December 26, 2015.


Stanley Kravit, Arbitrator