

INTEREST ARBITRATION DECISION

CITY OF KANKAKEE
&
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL
MARCH 24, 2000

In the Matter of:	}	
City of Kankakee	}	By Assignment of the
	}	Illinois State Labor Relations Board
&	}	Case No. S-MA-99-137
Illinois Fraternal Order of Police Labor Council	}	

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HEARING AND BRIEFING DATES, AND HEARING SITE

HEARING: Nov. 9, 1999

BRIEFS: Jan. 24, 2000

AWARD AND DECISION: March 24, 2000

For the Union

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ARBITRATOR

Michael H. LeRoy

I. GROUND RULES AND PRE-HEARING STIPULATIONS OF THE PARTIES

The authorized representatives stipulated the following:

1. The Arbitrator in ISLRB Case No. S-MA-99-137 shall be Michael H. LeRoy. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to award increases in wages and all other forms of compensation retroactive to May 1, 1999. Each party expressly waives and agrees not to assert any defenses, right or claim that the Arbitrator lacks jurisdiction and authority to make such a retroactive effective award; however, the parties do not intend by this Agreement to predetermine whether any award of increased wages or other forms of compensation in fact should be retroactive.

2. The hearing in said case will be convened on November 9, 1999 at 9:30 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the parties. The hearing will be held in the City Council Chambers in the City of Kankakee, Illinois.

3. The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative.

4. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.

5. The parties agree that the following issues remain in dispute and that, with the exception of the issue regarding the scope of the grievance procedure, these issues which are mandatory subjects of bargaining may be submitted for resolution by the Arbitrator. As to the issue regarding the scope of the grievance procedure, the Union does not stipulate that this issue is a mandatory subject of bargaining, but has agreed to submit the same to the Arbitrator for resolution.

Economic Issues in Dispute

The parties agree that the following issues are economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

- (i) What increases in wages will be received by patrol officers:

Effective May 1, 1999

Effective May 1, 2000

Effective May 1, 2001

- (ii) What increases in wages will be received by sergeants:
 - Effective May 1, 1999
 - Effective May 1, 2000
 - Effective May 1, 2001
- (iii) The amount of longevity pay received by bargaining unit members;
- (iv) The language of the agreement governing vacation carryover;
- (v) The language of the agreement governing compensation for temporary upgrade;
- (vi) The language of the agreement concerning the use of sick leave;
- (vii) The language of the agreement regarding the use of personal leave;
- (viii) Compensation for use of gasoline at or below the department's base-line;
- (ix) The language of the agreement concerning insurance;
- (10) The language of the agreement governing uniforms.

Non-Economic Issues in Dispute

The parties agree that the following non-economic issues are also before the Arbitrator for decision and award. As non-economic issues, the parties agree that the Arbitrator may adopt the final offer of either party, or craft an award deemed appropriate by the Arbitrator:

- (i) The language of the agreement concerning residency;
- (ii) The language of the agreement concerning drug testing;
- (iii) The language of the agreement concerning the grievance procedure;
- (iv) The language of the agreement concerning detective vacancies.

6. The parties agree that the following exhibits and information shall be submitted to the Arbitrator at the start of the hearing on November 9, 1999:

- (a) The current Labor Contract between the City of Kankakee and the Illinois Fraternal Order of Police Labor Council (Joint Exhibit 1).

(b) The tentative agreements reached by the parties during negotiations which have been initialed by both parties (Joint Exhibit 2).

(c) These Ground Rules and Pre-Hearing Stipulations of the parties (Joint Exhibit 3).

8.¹ The tentative agreements introduced by the parties as Joint Exhibit 2 shall be incorporated, by reference, into the Arbitrator's Award.

9. Final offers shall be exchanged no later than the start of the arbitration hearing on November 9, 1999. Thereafter, such final offers may not be changed except by mutual agreement of the parties.

10. Each party shall be free to present its evidence in either the narrative or witness format, or a combination thereof. The Labor Council shall proceed first with its case-in-chief. The City shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence.

11. Post-hearing briefs shall be mailed to the Arbitrator, with a copy sent to opposing party's representative by the Arbitrator, no later than forty-five (45) days from receipt of the full transcript of the hearings by the parties, or such further extensions as may be mutually agreed to by the parties. The postmarked date of mailing shall be considered to be the date of submission of a brief.

12. The Arbitrator shall base his findings and decisions upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.

13. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

14. Except as modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois State Labor Relations Board shall govern these arbitration proceedings.

¹ In the original submission of this stipulation, the parties inadvertently skipped number 7 and continued to number 8.

15. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.

For City of Kankakee: Leonard Sacks, November 9, 1999.

For the Illinois F.O.P. Labor Council: Becky S. Dragoo, November 9, 1999.

II. Comparable Jurisdictions

II(A). The City's Comparable Jurisdictions: The City believes that it has no comparable jurisdictions. Instead, it suggests that internal comparisons be made to Kankakee fire fighters and other internal employee groups.

II(B). The Union's Comparable Jurisdictions: The Union offers three alternative sets of comparables: small cities located south of Chicago (Theory 1), approximately thirty miles north of Kankakee; small cities located within 100 miles of Kankakee (Theory 2); and two municipalities adjacent to Kankakee, Bradley and Bourbonnais (Theory 3).

The Union supports Theory 1 by contending that Kankakee is becoming closely integrated into the economic life of the sprawling Chicago metropolitan area. It notes that Kankakee County is now counted as part of the Chicago-area Statistical Metropolitan Area.² It also offers data in support of its view that Kankakee is increasingly becoming a commuting home for residents who work in Chicago or its suburbs. Finally, the Union notes that municipalities such as Evergreen

² Union Exhibit Book 1, U.S. Department of Labor, Bureau of Labor Statistics, *Changes in Area Definitions for Published Metropolitan Areas in the 1998 CPI Revision* (including Kankakee County in newly expanded Chicago SMA).

Park and South Holland are within a 30 percent population range of Kankakee.

Arguing in the alternative, the Union maintains that Kankakee has comparable jurisdictions in size, tax base, housing, and other relevant factors within 100 miles. These towns are also within an acceptable population band.

Table 1: Union's Comparable Municipalities

Theory #1: Chicago Area Cities

City (Population)	EAV/EAV Per Capita	Home Value	Income (Per Capita/Household)
Blue Island (21,203)	\$153,000,059/\$7,216	\$64,300	\$11,845/\$29,234
Chi. Hghts. (33,072)	\$284,612,839/\$8,606	\$62,500	\$11,047/\$27,551
Dolton (23,930)	\$177,382,844/\$7,413	\$65,100	\$14,063/\$36,724
Evergn. Pk. (20,874)	\$255,219,740/\$12,227	\$88,800	\$15,758/\$38,834
Lansing (28,086)	\$313,790,276/\$11,172	\$77,900	\$16,112/\$36,641
Oak Forest (26,203)	\$285,810,553/\$10,908	\$104,300	\$15,745/\$43,387
S. Holland (22,105)	\$290,359,084/\$13,135	\$90,600	\$17,352/\$45,211
<i>Kankakee (27,575)</i>	<i>\$165,344,100/\$5,996</i>	<i>\$40,000</i>	<i>\$10,349/\$20,328</i>

Theory #2: Within 100 Mile Radius

City (Population)	EAV/EAV Per Capita	Home Value	Income (Per Capita/Household)
Danville (33,828)	\$222,063,118/\$6,564	\$38,800	\$12,401/---
East Peoria (21,378)	\$198,236,162/\$9,273	\$48,500	\$13,401/---
Pekin (32,254)	\$213,827,698/\$6,629	\$41,200	\$12,246/---
Zion (19,775)	\$416,595,971/\$21,067	\$68,000	\$11,813/---
<i>Kankakee (27,575)</i>	<i>\$165,344,100/\$5,996</i>	<i>\$40,000</i>	<i>\$10,349/\$20,328</i>

Theory #3: Adjacent Municipalities

City (Population)	Median Home Value Per Capita	Officers Income	Crime Index	
Bourbonnais (13,934)	\$75,000	\$15,124	19	370
Bradley (10,972)	\$47,900	\$11,562	26	912
<i>Kankakee (27,575)</i>	<i>\$40,000</i>	<i>\$410,349</i>	<i>69</i>	<i>2,069</i>

Regardless of the Arbitrator's disposition of Theory 1 or Theory 2, the Union also contends that Kankakee's neighboring jurisdictions, Bradley and Bourbonnais, are comparables. These communities share Kankakee's labor market. In addition, Kankakee, Bradley and Bourbonnais form a unified center for the region's economy.

II(C). Analysis: While every municipality is unique to some degree, many can be reasonably compared to nearby cities of similar size and economic characteristics. However, due to its distinct geography, the City of Kankakee has a more limited range of comparability. To the City's immediate south and beyond, there is farm land. There is low-density population in this direction. On the other hand, the character of the City is very different on its northern and western borders. Its neighboring jurisdictions are rapidly growing communities that are at the outer fringe of the Chicago-area development boom.

There is farm land immediately north of these jurisdictions, thereby creating a buffer between Kankakee, Bradley and Bourbonnais and communities such as Manteno and far-south Chicago suburbs. However, this geographic separation is shrinking almost every day as new housing, commercial and industrial development move inexorably south from Manteno, Peotone and Will County.

One can readily see that Kankakee is approaching a crossroads between a past in which it was a city with a distinct identity set apart from the Chicago-area's economy, and a future in which its existence may be akin to cities such as Elgin, Aurora, and Joliet. While these cities retain their own identity, they are also more integrated into the Chicago-land economy than was the case a generation ago. In a real sense, these cities are also Chicago suburbs. The same cannot be said at this time for Kankakee.

In short, for purposes of this arbitration Kankakee must be evaluated in its present form and not some hypothetical projection about its absorption as a suburban entity. For this reason, the Arbitrator rejects the Union's comparison of Kankakee to all Chicago-area jurisdictions. Granted, towns such as Evergreen Park and South Holland are reasonably close to Kankakee and their populations are within acceptable bounds for comparison. But these "paper comparisons" mask a more obvious reality that is revealed by a drive through any of these communities and a drive through Kankakee. All of the jurisdictions in Theory 1 are in the densely populated suburbs of Chicago. As such, they are much more closely integrated in the Chicago-area economy than is Kankakee.

There is ample evidence of this integration in the statistics offered by the Union. To cite but one example, the median value of housing in Kankakee is \$40,000, compared to values in the comparison group that range from \$62,500 to \$104,300. While housing values are not a litmus test for comparability, they reflect to a considerable degree relevant economic factors such as local wages and tax rates. On this important statistical dimension, Kankakee is clearly set apart from every comparable jurisdiction offered by the Union.

Thus, because of Kankakee's geographic separation from the Chicago metropolitan area, and also because of its much lower median housing values, the Arbitrator rejects Theory 1 as a basis for external comparability.

Putting aside Zion because of its integration in the Chicago-area economy, Theory 2 offers more realistic comparisons. East Peoria, Pekin and Danville have very similar median housing values, gross EAVs, and per capita incomes. This comparison is further strengthened by the fact that they have an industrial base and a traditional downtown district similar to Kankakee. Also,

these small cities are similar insofar as they form a group of communities that comprise a regional economy. For these reasons, the Arbitrator adopts East Peoria, Pekin, and Danville as comparable jurisdictions.

The remaining issue is whether the City's neighboring municipalities, Bradley and Bourbonnais, are comparable jurisdictions. Just as the burden of proof for the Union increases to justify its inclusion of a Chicago suburb, so does the evidentiary standard increase for the City when it asserts that its adjacent jurisdictions are not valid comparables. To be sure, Kankakee is able to point to obvious statistical disparities between itself and its neighbors. The figures in Table 2 (below) summarize the main differences.

These differences notwithstanding, a regional map shows that these municipalities are more alike than not. They share borders, and together they form a regional economy that is mostly set apart from Chicago to the north and the vast swath of farm communities in all other directions. For most occupations, these areas appear to share a common labor market.

Finally, the rationale of the Illinois Public Labor Relations Act's [hereafter, IPLRA] concept of comparability is to make apples-to-apples and oranges-to-oranges comparisons. With this in mind, the Arbitrator closely considered the scale of these governmental units, especially as indicated by the size and distribution of their tax bases. These jurisdictions are more similar than not. Their EAVs range from \$108 million to \$165 million. Also, the revenue sources for all three governmental units are roughly the same, with two-thirds to three-fourths of every tax dollar coming from residential real estate.

Thus, in view of their shared geography and statistical congruence with Kankakee, the Arbitrator also finds that Bradley and Bourbonnais are comparable to Kankakee under the

IPLRA.

In sum, Danville, East Peoria, Pekin, Bradley and Bourbonnais are comparable jurisdictions for purposes of this arbitration. In addition, all other City bargaining units are valid for making comparisons pursuant to the IPLRA.

<u>Table 2</u>					
<u>Kankakee's Comparable Jurisdictions</u>					
<i>Jurisdiction (Pop.)</i>	<i>Distance</i>	<i>Home</i>	<i>EAV</i>	<i>Officers</i>	<i>Crime</i>
		<i>Value</i>		<i>Index</i>	
Kankakee (27,575)	—	\$40,000	\$165,344,100	72	2,276
Danville (33,828)	70 Miles	\$38,800	\$222,063,118	67	3,367
East Peoria (21,378)	97 Miles	\$48,500	\$198,236,162	36	709
Pekin (32,254)	94 Miles	\$41,200	\$213,827,698	49	1,241
Bradley (10,972)	Adjacent	\$47,900	\$108,612,944	26	912
Bourbonnais (13,934)	Adjacent	\$75,000	\$138,349,997	19	370

NON-ECONOMIC ISSUES

III. Final Offers and Ruling on Residency

The City's requirement that all bargaining unit employees reside within its official boundaries is the most important issue in this proceeding. In view of this, the supporting positions of the City and Union are presented in detail.

III(A). The City's Final Offer: The residency issue is highly salient for the City. Like the Union, the City spends much of its brief supporting its proposal on this issue. The City's final offer is preservation of the status quo, that is, residency within the City as a condition of employment. Failure to comply with this requirement would subject an employee to discharge.

Lack of Statutory Basis for the Union's Final Offer: The City contends that the Union misunderstands and mischaracterizes the IPLRA amendment that made residency a mandatory subject of bargaining. The Union conceives this as a unilateral right to determine where employees should reside. Thus, the Union erroneously bases its position on the view that the law allows them the "right to choose" in this matter.³ Not only is this view false, but it overlooks the key fact that police officers knowingly chose to accept this condition of employment.

The Residency Requirement is Consistent with Internal Comparables: Other employment groups are subject to the same residency requirement as police, including fire fighters, waste-water treatment employees, and school district employees. The Union's proposal takes no account of the potential impact on these employment groups, which are also subject to

³ City Brief at 6.

collective bargaining agreements.

The City's Offer Reflects Public Opinion: The residents of Kankakee are the ultimate employers of public employees. In this respect, “the almost unanimous attitude of public officials and private citizens is that they want their police, firefighters and other City employees to be their neighbors and reside in the City.”⁴

The Union's Arguments Are Unsupported: The Union's personal safety argument has two serious flaws. First, there is “no evidence of any threats or risk of harm to any police officer or any member of a police officer's family which has taken place at the officer's residence throughout the history of the City.”⁵ Second, assuming *arguendo* that suspects would threaten Kankakee officers, there is no reason to believe that this threat could be minimized simply by moving outside formal boundaries of the City.

The Union's housing argument has no basis in law or in fact. At the time of the hearing, the City produced a detailed roster of 140 Kankakee homes listed with MLS realtors.⁶ Homes ranged in price from to \$39,000 to \$258,000. These listings were depicted on a large city map that showed homes for sale in every neighborhood. The obvious conclusion is that officers have a

⁴ *Id.* at 7.

⁵ *Id.* at 8.

⁶ City Exhibit 3.

wide array of choice.

The Union’s Proposal Is An Attempt to Camouflage Racial Bias:⁷ The City asserts this as an opinion by noting that the Union’s bargaining team had “no minority, women, or Hispanic members on the Union’s bargaining team.”⁸ This is because the Union’s proposal is a thinly veiled form of white flight.⁹ Thus, the City concludes that, “[a]s a matter of public policy and a matter of adhering to the Statute, the Union ought not to be granted the opportunity to engage in racial discrimination.”¹⁰

The Residency Requirement is Necessary to Effectuate Good Community Policing: Crime prevention depends to a considerable degree on a community-oriented approach to law enforcement. The City’s expert witness, Dr. James Coldren, offered testimony in support of this position. Dr. Coldren testified without rebuttal that police residency can contribute to this

⁷ City Brief at 9.

⁸ *Id.*

⁹ Here, the City asserts that the “only conclusion that can be drawn is that the Union does not want to have its members reside in a racially diverse community but rather in the lily-white suburbs and rural areas surrounding Kankakee.” *Id.*

¹⁰ *Id.*

approach, while non-residency can make the community feel more like an “occupied territory.”¹¹

III(B). The Union’s Final Offer: The Union strongly asserts that the status quo must be changed. Its final offer is that current residency requirement be abolished and replaced with a provision that permits employees to reside within a ten-mile radius of the perimeter of the City. Much of its 161 page brief is devoted to this single issue.

Enforcement: For many years, the City was lax in enforcing its residency requirement for police officers. As a result of years of lax enforcement or no enforcement, some officers moved outside the City limits. Others took a dual residency approach, by owning or renting a residence inside and outside the City limits. At the hearing, there was a vague allusion to one or more employees who use a relative’s address as a residence, while residing outside the City.

During the 1996-1999 CBA, the City changed its view on this matter. Unit employees were told that they would be discharged if they were found to be in violation of this requirement. Just as this issue emerged, the Illinois General Assembly amended the IPLRA to provide that residency is a mandatory subject of bargaining.

As a result, the Local Union demanded to bargain over residency. On November 26, 1997, officers wrote a letter to Mayor Donald Green requesting to bargain residency. The Mayor took this request to the December 15 City Council meeting for its recommendation. Since there was no motion to consider the officers’ letter, the City effectively denied their request.

¹¹ *Id.* at 10.

The Union responded by filing an unfair labor practice charge on February 10, 1998, alleging that the City failed to bargain in good faith. In November, this complaint was settled with the understanding that the City would bargain the issue, and reserve enforcement of its policy pending the outcome of negotiations. According to the Union, the City stated during negotiations that once talks were completed, anyone found to be residing outside City limits would be discharged.

Safety to Officers and Their Families: In the Union’s view, the residency requirement has an intolerable impact on the personal lives of employees and their families. The Union cites numerous examples where an arresting officer or his family were threatened.

In one illustrative case, Officer Gear arrested a gang member late at night on a weapons charge. Officer Gear recalled that the suspect then “described to me, in detail, where I lived, what my wife and daughter looked like, what kind of bicycle my daughter rode, and even what time of day my family took our dog for a walk.”¹² As a consequence, Officer Gear moved his son to Indiana to reside with his grandparents and also relocated his daughter and mother outside City limits. He resides in an apartment in the City to comply with the residency requirement.

The Union posits this argument in terms of the public interest provision of the IPLRA: “Surely the interests and welfare of the public are best served by a . . . psychologically secure police officer– not one who is living in an apartment in town while his wife and daughter live out of town and his son resides with his grandparents in another state. . . .”¹³

Justification for a Breakthrough: The Union readily acknowledges that it seeks a

¹² Union Brief at 115.

¹³ *Id.* at 116.

breakthrough at arbitration, and thereby, is seeking to gain something that it could not achieve at the bargaining table. The Union implicitly agrees that a change in the status quo, if it occurs at all, should be achieved through bargaining and not as a result of an arbitrator's intervention.

This case calls for different treatment, however. The Union states that in negotiations it explored many different ideas on this issue with the City. The Union proposed that the City levy a \$1,500 tax against all nonresident bargaining unit members, but the City rejected this idea.¹⁴ Then, the Union proposed to reimburse the City 3-4 percent of an officer's basepay for the privilege of living outside the City.¹⁵ When the City was unresponsive to these economic offers, the Union proposed a residency requirement based on years of service and a twenty-minute response time. When this was rejected, the Union returned with another offer that was responsive to the City's community policing concern: a contractual requirement that nonresident officers volunteer sixty hours each year to a City-based community service to ensure that officers would not lose touch with the community.¹⁶

This bargaining history is highly relevant in the Union's view because it explored every avenue to reach an agreement on this issue with the City. In each proposal, the Union offered to give something significant in exchange for this breakthrough. These offers were not only rejected, but in the Union's view, were not seriously considered. The Union recounts its bargaining with the City in these terms: "[N]ot only did the City refuse to meaningfully discuss any movement on residency, it came to the table armed with demands for givebacks and concessions on other

¹⁴ *Id.* at 111, n.56.

¹⁵ *Id.*, n.57.

¹⁶ *Id.* at 111-112.

benefits and working conditions.”¹⁷

The Union maintains that its futility at the bargaining table meets the conditions for a breakthrough at arbitration. Citing Arbitrator Harvey Nathan’s decision in *Will County*, the Union observes: ““Were it otherwise, particularly under the IPLRA where strikes by peace officers are prohibited, all of the bargaining power would be with the party who says no.””¹⁸ Having proposed a breakthrough, the Union readily concedes that it bears the burden of proof to justify its position. It contends that it has more than amply met its burden.¹⁹

Arbitral Precedents: The Union also supports its proposal in terms of an emerging trend in the arbitration of residency under the IPLRA. Five arbitration decisions have been rendered since 1998, and in four cases, arbitrators have adopted union proposals to permit employees to reside outside city limits. In the single case won by a city, the employer’s proposal would permit

¹⁷ *Id.* at 110.

¹⁸ *Id.* at 122, citing *Will County Board and Sheriff of Will County and AFSCME, Local Union 2961* (Arb. Nathan, 1988), at p. 53.

¹⁹ *Id.* at 153.

police officers to live outside the jurisdiction, but within a reasonable response zone. The union's final offer was for no residency requirement. The Union sees the adoption of Highland Park's offer as consistent with its final offer in the present matter. Officers should be subject to a reasonable restriction on residency, but not limited to living within a city's corporate limits.

The Evidence: The evidence supports the Union's final offer on residency,²⁰ and is briefly summarized here.

The City offered no evidence at the hearing related to operational concerns if the Union's ten mile radius offer is adopted. The Chief of Police was unavailable to testify at the hearing. The record includes a newspaper article that reports that the Chief purchased a second residence in Springfield, where his wife apparently resides. The Chief's behavior contradicts the City's rationale for imposing a strict residency requirement on its police department.

In addition, comparable jurisdictions do not require residency within city limits. These include Bourbonnais and East Peoria.

The Union also disagrees with a number of City justifications for maintaining the status quo. If the residency requirement is relaxed, there will not be a mass exodus of officers. The Union's statewide poll suggests that 5-15 percent of the officers would relocate. The argument that a city employee should also pay city taxes is flawed. In fact, City employees in other occupational groups are not subject to a residency requirement. The argument that officers who

²⁰ *Id.* at 133-145.

live in the city are also more dedicated to the City is simply a fiction. Residency is no guarantee of community spirit, involvement, or interaction. The City's contention that employees knew about the residency requirement when they took their job is beside the point, because it ignores the increasing number of personal threats to which officers have been subjected since they were hired.

Finally, the argument that officers who live in the City will be more sensitive to diversity issues is contradicted by experience in comparable cities. The Union points to letters in the record from police chiefs in other Illinois cities stating that more permissive residency requirements have led to retention of high quality employees and recruitment of better quality candidates.

Employee Turnover: The residency requirement has adversely affected the City by accelerating turnover in the department. Since 1990, 80% of the Department has turned over. The rate among new hires since 1990 is no less startling (39%). Admittedly, not everyone who left did so because of the residency requirement.

The real impact of the residency requirement shows up in the resignation of key Department employees who specifically cited this in their resignation letters. When Officer Ken McCabe resigned to take a job with the County Sheriff, the City lost his experience with juvenile and DARE policing, training in community oriented policing, and leadership in the Problem Oriented Police unit. The City experienced a similar loss when Detective Sergeant Ron Kilman, a thirteen year veteran, quit to take a job in Aurora. He oversaw the City's crime lab and was a court qualified expert in latent prints and marijuana. In the Union's view, the residency requirement has contributed to the Department's image of being a training ground for other agencies.

Housing: The Union bases part of its proposal on the state of the City's housing market.

Citing statistics from the Kankakee County Planning Department, the Union shows that in the past twenty years, only 16 new homes have been built within City limits. In contrast, 1,606 new homes have been built in the remainder of the County. The residency requirement therefore denies almost all access to the new housing market to bargaining unit members.

Crime: The City's crime statistics are high. The homicide rate, 80 per 100,000, is ten times the national average. In this vein, the Kankakee County Violent Crime Task Force issued a report in April 1999. The report concluded with an encouraging assessment that public respect for law enforcement has improved, with positive implications for community oriented policing. According to the Union, nothing in the report mentions the City's residency requirement. The Union concludes that residency may be a political issue, but not a crime prevention tool.

Grandfathering of Current Employees: The Union implores the Arbitrator to resist the temptation of grandfathering current employees under a permissive residency requirement, but requiring newly hired bargaining unit members to reside in the City. This would only create an invidious cleavage within the bargaining unit, and eventually would return the City and the Union to this very issue in future negotiations. The Union also cites a wide-array of research and anecdotal accounts of the harmful effects of two-tier systems on morale and productivity in other collective bargaining settings.

III(C)(1). Residency: The Relevant Factors under Section 14(h) of the IPLRA:

There is much in the record on this issue that is a matter of philosophy or opinion. The Union's philosophy is that residency should be a personal choice, not a condition of employment

dictated by an employer. The City's opinion is that the Union's bargaining position is a veil for race discrimination.

No matter how earnestly each party embraces its view, no award can be based on these considerations. These matters are simply beyond the reach of Section 14(h) of the IPLRA. As the parties know, the IPLRA is the only basis for an interest arbitration award.

Other arguments are also irrelevant as statutory factors:

- both parties' contentions about the state of the housing market for bargaining unit employees;
- the Union's contentions about the second residence of the Chief of Police, and arbitration rulings in noncomparable communities; and
- the City's inference about the demographic composition of the Union's bargaining team.

These matters are best left to the privacy of the bargaining table, where caustic accusations can be freely traded without betraying mutual mistrust to the public.

Putting aside these matters, the Union points to previous interest arbitration decisions in support of its final offer here. These decisions have no persuasive value in this case because they involve non-comparable jurisdictions. They might still be of use if they revealed some reliable method for discerning the General Assembly's intent in enacting Section 14(h)(3). While these early residency decisions run the gamut in their activism²¹ or restraint,²² they do not provide

²¹ In one example, the arbitrator concluded that the "projected or hypothetical needs of Cicero cannot take precedence over the actual here-and-now freedom of the individual firefighters to exercise a basic right enjoyed by most unincarcerated U.S. residents." *Town of Cicero and IAFF Local 717*, S-MA-98-230 (Berman, 1999), cited in Union Brief at 131.

guidance that is pertinent here.

Determination of the residency issue therefore comes down to examining the evidence closely in light of this provision in Section 14(h)(3) of the IPLRA:

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

. . . .

The interests and welfare of the public. . . .

Unfortunately, there is nothing in the text of the law that limits or guides the judgment of the Arbitrator. Nor is there anything in Illinois caselaw that suggests the intent of the Illinois General Assembly in enacting this provision.

²² Arbitrator Finkin took a more modest approach when he recognized: “What distinguishes a valid social ‘need’ from a selfish individual ‘want’ seems to be in the eye of the beholder.” *Village of University Park and IAFF Local 3661*, S-MA-99-1123 (Finkin, 1999) at 19, cited in Union Brief at 127.

One potential hazard in such a vague standard is that it unconstitutionally delegates lawmaking powers to the arbitrator. This matter was considered in a similar public safety arbitration in a different state. The supreme court dismissed this constitutional challenge by concluding that “the arbitration panels before us certainly could not be considered legislative in nature.”²³ This view has also been rejected on the theory that interest arbitration laws “empower arbitrators merely to determine the relevant factual circumstances pertaining to a bargaining impasse and to interpret such facts in accordance with prescribed guidelines. Such enactments do not delegate ‘any power to make the law. The only authority conferred is power to execute the law already determined and circumscribed.’”²⁴

In this vein, two relevant fact patterns pertaining to this bargaining impasse relate to the IPLRA factor of public interest and welfare. One is the concern among employees that the current residency requirement presents an undue safety threat to them and to their families. The other concern is the City’s method of community-oriented law enforcement. The facts in these two areas form the basis of the Arbitrator’s award on residency.

III(C)(2). The Current Residency Requirement Presents a Significant Threat to the Safety of Kankakee Police Officers and Thereby Harms the Public Interest and Welfare

There is a disturbing pattern of criminal victimization and intimidation of Kankakee police officers and their families. Contrary to the City’s absolute and categorical denials,²⁵ these crimes

²³ Harney v. Russo, 255 A.2d 560, 564 (Pa. 1969).

²⁴ Charles Craver, *Public Sector Impasse Resolution Procedures*, 60 CHI.-KENT L. REV. 779, 791 (1984), citing State v. City of Laramie, 437 P.2d 295, 301 (Wyo. Sup. Ct. 1968).

²⁵ The City contends: “There is no evidence of any threats or risk of harm to any police officer or any member of a police officer’s family which has taken place at a police officer’s residence throughout the history of the City.” City Brief at 8.

have occurred at the residences of police officers, and in some cases appear to be retaliation for the officers' performance of their duties. If any part of the voluminous record warrants easing of the residency requirement, this evidence provides such justification.

This evidence is so convincing that it merits reproduction. These materials are divided into two portions. The first part is organized by date and references to an official police complaint number. This detail is important because of the hearsay nature of this documentary evidence. While these written reports by the affected officers were not authenticated, nor subject to cross examination, the case number identification gives these accounts added credibility. The second part of this evidence generally does not report a specific crime, but describes events or circumstances that a reasonable person would conclude are alarming, threatening, or intimidating.

Evidence of Reported Crimes Committed Against Police Officers and Their Families In or Near Their Residence:

- Jan. 11, 1993: My daughter was home for Christmas vacation from SIU. She had packed up her car to leave the next morning when person(s) unknown broke into her vehicle, stealing some Christmas presents. Case 93C0261 (Sgt. James Kadow).
- October 29, 1994: I reported criminal damage to my vehicle that occurred sometime overnight. Persons unknown damaged two of the tires on my personal vehicle while it was parked at the rear of my residence, 645 S. Wall, Kankakee. Case 94C7221 (Officer Jeffery D. Powell).
- May 13, 1996: Officer Willie Corbett advised reporting officers that subjects driving a white Pontiac 6000 put a bottle of carburetor fluid with a

rag inside of it in front of his residence at 356 N. Industrial St. Suspects were later identified and placed under arrest. Case 96C2563 (Officer Willie Corbett).

- June 15, 1996: At approximately 4:50 p.m. Officer Coash witnessed a verbal altercation between a juvenile suspect and his neighbor from across the street at 805 N. 9th. A few moments later, Officer Coash who was off-duty at the time exited his residence and approached the two subjects. Officer Coash stated for the juvenile subjects to leave the area or he was going to call the police. The juvenile became verbally abusive towards Officer Coash at which time Officer Coash identified himself as a police officer. The juvenile subject then continued to be verbally abusive and came to Officer Coash with a brick in his hand. Officer Coash immediately placed the juvenile under arrest and fought with the subject until police arrived. Case 96C3288 (Officer Coash).
- August 24, 1996: A group of juveniles rode up on bicycles and began to harass the children. When my wife asked the bike riding youths to leave, one of the boys became verbally abusive towards my wife, using profanity and then spit on her. Case 96C4800 (Officer Gregory Gear).
- September 3, 1996: Matt [officer's son] was the neighborhood paperboy for the *Kankakee Daily Journal*. . . . He was collecting payment, door to door, when he was robbed at the local gas station. Case 96C5039 (Officer Gregory Gear).

- February 2, 1996: I reported criminal damage to my vehicle that occurred sometime overnight. Persons unknown broke out the rear driver's side window of my personal vehicle while it was parked at the rear of my residence, 645 S. Wall, Kankakee. Case 96C0912 (Officer Powell).
- April 2, 1997: I arrived at home after a family outing to find the front of my house dripping with raw eggs. Case 97C1635 (Officer Gregory Gear).
- June 25, 1997: I returned home after being away for several hours and found that the glass in my front door was broken. Case 97C3266 (Officer Gregory Gear).
- Oct. 14, 1997: I discovered that my garage had been burglarized, and two bicycles had been stolen. Case 97C5754 (Officer Gregory Gear).
- March 19, 1999: At approx. 9:15 a.m., Mrs. Lillie Baptist, Officer Joe Baptist's mother, stated in a report . . . that an unknown subject approached her and stated that he was going to blow up Joe Baptist and his house. The unknown subject stated that he was upset because officer Baptist had arrested the subject's niece on numerous occasions. Case 99C3184 (Officer Joe Baptist).

Evidence of Alarming, Threatening, or Intimidating Occurrences or Events In or Near the Residences of Kankakee Police Officers:

The record also contains evidence of alarming, threatening or intimidating occurrences or events involving bargaining unit employees. The main significance of these events is their connection to the officers' residences. These include:

- One night while working the midnight shift I responded to a call involving an armed gang member. After I confiscated a loaded pistol from this person, and placed him under arrest he described to me, in detail, where I lived, what my wife and daughter look like, and what kind of bicycle my daughter rode, and even what time of day my family took our dog out for a walk (Officer Gregory Gear).
- I was sitting out on my screened porch at about 11:00 p.m. one night when several gunshots were fired right across the street. I saw a robbery victim who had been shot running past my house to escape his attacker. Not long after that incident I was sitting in my front room watching TV. I heard gunshots about four doors to the south of my house. I called in the shots fired report and walked outside. I could clearly see a man on the corner with a gun in his hand. The subject with the gun continued firing into the air. As patrol cars rolled into the area he ran into an apartment complex and disappeared into one of the apartments (Officer Gregory Gear).
- I have lived at 1074 S. 3rd Avenue in Kankakee since November 1985 and am the owner of that property. There is a rental property next door to my residence. About two years ago Sanford J. Richardson . . . moved in to the upstairs apartment next door. Richardson has an extensive criminal record with our police department. Richardson is a known gang member as well as a drug dealer and user. My children were not even allowed to go outside in their own backyard to play because of Richardson and the unsavory

characters that would come to visit and do business with Richardson (Sergeant Gregory B. Foster).

- Criminal damage to property, no report taken. Spring of 1993. One time two tires were cut on my personal truck while it was parked on my driveway at 520 S. Winfield. 2nd time one tire was cut on my truck again while it was parked at 520 S. Winfield (Sgt. James Kadow).

Personal Safety Threats to Officers and Extraordinary Turnover is a Detriment to Public Interest and Welfare of Kankakee:

The substantial evidence of crimes and personal threats that have victimized Kankakee officers since the early 1990s is clearly connected to voluntary quits from the Department. The Union's evidence consists of a statistical summary showing that 80 percent of the Department has turned over since 1990. The Union readily concedes that some turnover is attributable to causes that are unrelated to the residency requirement, but after accounting for five terminations, three deaths, and eighteen retirements, it asserts that thirty-one voluntary resignations occurred since 1990.

There is no precise way to measure the impact of residency on turnover since resignations are not usually an occasion for such personal disclosures. The Union successfully proved, however, that two key resignations were motivated by this concern. Sergeant Ken McCabe's resignation provides highly probative evidence of the harmful impact of the City's residency requirement. Although he was a distinguished officer who was in line for a promotion, he took a pay cut to join the Kankakee County Sheriff's Department. The clear implication is that he valued some degree of choice of residency over pay and fulfilling job duties. The fact that he remained in

the county implies that he probably could have been retained if the City's residency requirement was changed.

The same is true for veteran Ron Kilman. At the time of his resignation, the thirteen-year employee did not cite better pay or professional opportunities with another agency as his motivation. Instead, he blamed a residency requirement that was holding his family "hostage."²⁶

In sum, there is ample evidence that the residency requirement has exposed bargaining unit employees and their immediate families to crimes and safety threats that directly result from living within City limits. If this exposure had only affected the employees' enjoyment and use of personal time, there would be no basis under Section 14(h)(3) to interfere with the City's residency requirement. However, since the record demonstrates a clear linkage between the residency requirement and personal safety concerns for employees and their families, which in turn has caused the City to lose the services of valuable employees in positions of leadership, the public interest and general welfare of the City is no longer being served by the residency requirement. Accordingly, the Arbitrator rejects the City's final offer of maintaining residency.

III(C)(3). The City's Approach to Community Policing Is Significantly Related to the Interests and Welfare of the Public:

The City offered evidence that its community policing program is necessary for effective crime prevention. The most salient aspect of this evidence related community policing to the

²⁶ Union Brief at 140.

City's residency requirement.

While this evidence is not presented in statistical form, it is nevertheless highly probative. Dr. James R. Coldren Jr., a professor at the University of Illinois-Chicago,²⁷ and director of a community police training institute in Chicago, provided his expert opinion in this matter.²⁸

The following is a summary of this probative evidence:

- “Community policing in my opinion . . . is a philosophy or an approach to public safety, crime prevention, community safety.”²⁹
- “I think the most important one from our perspective in (sic) the notion of shared responsibility. And in the community policing philosophy, the responsibility for public safety, community safety, again crime reduction and prevention rests with the community at large and with community leaders and community stakeholders and it does not rest squarely on the shoulders of the police department. So there is this notion that we're all in this together and we each have to take part in the solution of any problems that come to our attention or anything that we deem is a problem.”³⁰
- “Another key tenet of the philosophy is the neighborhood orientation. Those in the

²⁷ Although the Arbitrator in this matter is also a professor of the University of Illinois, he has never met Dr. Coldren nor heard of his work before. The expert witness and the Arbitrator work on two different campuses 135 miles apart. Dr. Coldren's affiliation with the University of Illinois-Chicago was relevant in the Arbitrator's judgment, but only because of that campus' generally good research reputation, especially in matters pertaining to urban affairs.

²⁸ The City sufficiently established the professional expertise of Dr. Coldren.

²⁹ Tr. 157.

³⁰ Tr. 158.

policing world are familiar with the beat responsibility or a sector responsibility. But there's a notion that an officer or group of officers has a distinct geographic responsibility within which he or she operates to detect, solve, prevent crime, social problems."³¹

³¹ Tr. 158-159.

- “There are a number of things that I can point to specifically that typically change when a community and a police organization adopts the community policing philosophy. The response to calls. Typically you move away from 911 response to emergency call orientation towards again this beat responsibility where officers respond to problems or calls within those geographic areas. Patrol changes. Typically there’s less of an emphasis on an automotive patrol, more foot patrol, more bicycle patrols in some cases.”³²
- [Responding to the question, “Why can’t you do this from . . . like five or ten miles outside the city? Why can’t you be a community policing person if you live outside the city?”] Well, it depends on how much you want to hold yourself to the philosophy and the ideal. You could live outside of a city boundary and still have a neighborhood orientation and beat responsibility or a foot patrol or bike patrol, that is true. My opinion on that matter is that the foundation upon which community policing rests is a network of social relationships, social fabric that is built upon proximity. And so to me it’s not an either/or proposition, but if you want to fully support the notion of community policing, you would have your

³² Tr. 159-160.

officers live in the community that they're responsible for.”³³

³³ Tr. 161-162.

- [Responding to the question, “I’ve heard the term occupation. Have you ever used that term in conjunction with community policing or teaching community policing?”] I’ve heard the term used before. . . . What it refers to . . . is the more you have them living outside the community and coming in to do their enforcement duties, the more the community develops a sense of a military, an occupational force that’s coming in to enforce order and then leaving so—³⁴

This expert testimony is persuasive because it corresponds to intuition and practical experience. There is no suggestion that community policing always works or that city residency is a necessary predicate for crime prevention. This testimony effectively suggests, however, that law enforcement entails more than reacting to crimes and making arrests. Community policing is a proactive mixture of dialogue between officers and citizens; sensitivity about race, gender, ethnicity and domestic relations in a particular community; awareness of crime prevention resources such as schools, churches, community services, and neighborhood and community leaders; and the daily routines of particular neighborhoods.

This testimony is also persuasive insofar as it suggests that good policing is more than showing up for a shift, climbing behind the wheel of a patrol-car, touring the city with the windows closed, ending the shift, and retreating from the jurisdiction.

This testimony has special significance for the Union’s final offer of residency within a ten mile radius of the City. The City is bordered immediately to its northeast, north, and northwest by Bradley and Bourbonnais. To an outsider, the only demarcation between Kankakee and these municipalities is a population sign and different street markings. Otherwise, these three

³⁴ Tr. 165-166.

governmental units form a continuous community for all intents and purposes.

Immediately beyond this population area, there is open farmland dotted by very small, low density subdivisions; and more predominantly, by working farms. At the far reaches of the ten mile radius to the north, the suburban sprawl of Chicago pushes through Manteno. Heading ten miles south of Kankakee, one encounters a much more rural community in Chebanse.

The Union's final offer is premised primarily on response time. While this is often an important consideration, response time is a non-factor in the present arbitration because the welfare and public interest of the City involves much more than off-duty response time to an emergency call. The City's high crime rate and racial diversity all but necessitate that police officers have a close familiarity with their community. The welfare and interest of the City are not served by officers who retreat after their shift to the leisure of country-living.

This does not mean, however, that the City has a rightful claim on an officer's time 24-hours day by turning his or her residence into a neighborhood sub-station. The City's need for community policing does mean, however, that officers who accept employment with the City must also buy into the idea of being part of the community they police.

In the particular case of Kankakee, community may mean the City proper, but it can also mean the geographic unit that is formed by Kankakee, Bradley and Borbounnais. Daily living within that community would appear to accomplish much of what Dr. Coldren testified about concerning "a network of social relationships, [a] social fabric that is built upon proximity."³⁵ It is reasonable to suppose that residents in these communities have a high degree of interaction in this geographic zone that centers around schools, churches and other religious organizations,

shopping, parks, children's activities (e.g., scouting, 4-H, youth groups, park district, sports, music, dance, YMCA, etc.), elder care, banking, entertainment, and so forth.

There is also the subtle but vital influence of living with close-by neighbors. Living in this moderately dense population area not only connects officers to the community's "social fabric," but regularly acculturates them to the irritations and problems that go hand-in-hand with living among neighbors. A variety of interpersonal skills and sensitivities are likely to grow out of this kind of daily interaction. The lifestyle of a hobby farmer, in contrast, may insulate a person from these influences.

III(C)(4). The Final Offers of the City and the Union on Residency Are Rejected. As a Condition of Employment, Bargaining Unit Employees Shall Reside in Kankakee, Bradley, or Bourbonnais.

Section 14(g) requires the Arbitrator to select one of the final offers for an economic impasse issue. The Arbitrator is thereby constrained from fashioning his own award. This limitation does not exist in the law concerning non-economic issues. After carefully considering the voluminous record and briefs, the Arbitrator cannot adopt the final offer of the City or the Union because neither one fully accounts for the interests and welfare of the jurisdiction. Instead, these offers are pure expressions of what the parties want as a matter of self interest. The Arbitrator's Award therefore provides that as a condition of employment, bargaining unit employees shall reside in Kankakee, Bradley, or Bourbonnais, and shall be subject to discipline, up to and including discharge, for failure to comply with this condition.

Since the record disclosed that several employees are not in compliance with the current residency requirement, employees shall be given one year from the effective date of this Award to

³⁵ Tr. 162.

comply with this condition of employment. During this period, the City shall not discipline employees for failure to comply with this provision of the Award.

IV(A). Drug Testing: The City's Final Offer

The City's final offer is to "change Article 13 to provide for random drug testing."³⁶

Although this statement of the offer is not clear on its face, the City equates its drug testing proposal to a policy in a separate CBA that covers lieutenants.³⁷ This is its offer:

All members of [this] contract shall be subject to random drug/alcohol testing. [Bargaining unit employees] shall be assigned a RANDOM number that same day and selection of those to be tested shall be determined by a random drawing conducted by the Police Chief, in the presence of a Union Representative selected by the Union. The Chief will be permitted to have two (2) random drawings per shift per year with a maximum of four (4) persons per drawing that may selected for testing. Numbers shall be drawn in random fashion. For purposes of random drawing, 40 hour shift employees shall be divided between and designated to one

³⁶ City Brief at 1.

³⁷ At hearing, the City's attorney stated: "And then the next exhibit which is on page 13 is the contract we negotiated May 1st, 1996, through April 30th of the year 2000. And you'll see that that provision which is the one that we're proposing be included in the current patrol and sergeants' contract is a drug and alcohol testing provision that among other things is much more specific and provides on page 18 for random testing for drug and alcohol of the lieutenants and hopefully the sergeants and patrol officers."

of the 8½ hour shifts. The pool from which each random drawing will be made shall include all [bargaining unit employees] in the department on the shift (including 40 hour shift employees designated to the shift), but shall exclude employees on injury, illness (occupational) and sick leave, vacation, Comp time, holiday or personal leave. After an employee is selected, testing will conform to the provisions of this Article.³⁸

³⁸ City Exhibit 4, Excerpt from Agreement between the City of Kankakee, Illinois and Police Lieutenants of the Kankakee City Police Department, May 1, 1996-April 30, 2000, Article IX (G).

The City implicitly bases its offer upon Section 14(h)(3) of the IPLRA.³⁹ It also believes that there is a public interest in having police officers set a positive example of being subject to a broader form of drug testing. The City does not believe that bargaining unit employees should be subjected to a sweeping form of drug-testing; instead, it emphasizes that its proposal is a “minor infringement” and this “far exceeds the minor inconvenience that a law abiding officer would have to endure to give random drug samples.”⁴⁰

The City also supports its offer in terms of internal comparables. The lieutenants are subject to the very kind of limited random drug testing that is in this final offer. The City wants patrol officers and sergeants to set the same leadership example as the lieutenants for the community.⁴¹

IV(B). Drug Testing: The Union’s Final Offer

The Union contends that its offer to continue the status quo is sufficient to deter and monitor for violations of drug and alcohol standards. The current arrangement is detailed and

³⁹ City Brief at 10-11, citing state and federal public policies prohibiting and discouraging drug and tobacco use.

⁴⁰ *Id.* at 12.

⁴¹ *Id.*

lengthy. It provides just-cause testing for urine and blood, requires use of a licensed laboratory, and so forth. There is no evidence offered to justify the City's broader drug testing proposal.⁴²

⁴² Union Brief at 96.

The Union relies upon *Illinois Department of Central Management Services and Corrections*. The Illinois State Labor Relations Board upheld the State's unilateral implementation of reasonable suspicion drug testing for prison guards, but strongly cautioned that "Illinois public employers would be ill-advised in relying on our decision in this case as useful or broad authority for the unilateral implementation of drug testing programs for Illinois public employees." ⁴³

The Union also cites several arbitration decisions in support of its status quo offer. In *Bureau County & Illinois Fraternal Order of Police*, Arbitrator Harvey Nathan rejected the employer's drug and alcohol testing offer.⁴⁴ Arbitrator Milton Edelman ruled against an employer offer to substitute random drug testing for a reasonable cause standard.⁴⁵

The Union also notes that none of its eleven proposed comparable jurisdictions allows random drug or alcohol testing of its police officers.⁴⁶

IV(C). Drug Testing: The City's Final Offer is Adopted

The Arbitrator adopts the City's final offer on random drug testing. This ruling is based on specific evidence, and not an abstraction, that is related to the welfare and interest of Kankakee.

The record shows that in the course recently hiring police officers, there has been adverse selection of a number of criminals, including drug users. This evidence comes to light in that part of the Union's presentation that suggests that the residency requirement has filtered out good

⁴³ *Id.* at 97.

⁴⁴ *Id.* at 97-98.

⁴⁵ *Id.* at 98, quoting *Granite City and Granite City Fire Fighters Ass'n, Local 253*, at 23.

⁴⁶ *Id.* at 98.

applicants and left the City with a poor quality applicant pool.

The Union's cause-and-effect explanation is plausible though not proven. Whatever the reason may be, one cannot deny that the City has been unable to use the selection process to weed out all unfit officers.

In this respect, the following evidence specially warrants adoption of the City's limited random drug testing offer:

The City of Kankakee has hired several applicants that have prior arrest records Another result of lower standards is that the City now accepts applicants who have experimented with drugs, including cocaine, heroin, and cannabis. In 1994 a new hire had used cocaine in the past; another admitted to extensive use of marijuana. . . . The City of Kankakee annually spends thousands of dollars on drug prevention programs. How can the City promote its anti-drug program when it hires former drug users to enforce these programs?⁴⁷

In weighing this evidence, the Arbitrator gave strong consideration to the Union's contention that none of the comparable jurisdictions has a random drug testing provision. Ordinarily, this evidence would be convincing, but the City's adverse selection experience is too

⁴⁷ Union Exhibit Book 2, Residency Tab (Residency Requirement Report, "Unqualified Hires: An Expensive Way to Keep Residency Requirement in Place," at 9).

concrete and serious to ignore or minimize.⁴⁸

In considering the Union's comparability argument, the Arbitrator also evaluated the scope of the random testing offer. The very limited nature of this testing program led the Arbitrator to conclude that this offer, while a breakthrough, does not differ dramatically from the day-to-day experience of jurisdictions that have only for-cause testing. In this case, random testing cannot occur daily or even regularly or periodically. Instead, it can only occur twice in a year. This means that on any given day, bargaining unit employees face less than a one percent

⁴⁸ In this vein, the Arbitrator gave weight to evidence of the following terminations: Lance Emola, Richard Peters, Alton Williams, Julie Waters, and Noel Alexander. Union Exhibit Book 2, Residency Tab ("Kankakee City Police Officers Who Have Come and Gone After 1990"). The Arbitrator fully understands that this roster does not state the reason for termination, and he assumes that at least some were terminated for reasons unrelated to drug or alcohol violations. Nevertheless, when considered in tandem with other evidence of drug use or history of drug use among bargaining unit employees, it strengthens the Arbitrator's conclusion that the City is entitled to take stronger measures to counteract its problems with adverse selection.

chance of being randomly tested. Even then, only a fraction of employees can be tested under this policy. In addition, there is a cap of two tests per shift per year. Thus, a large majority of bargaining unit employees will not be subjected to random testing in any given year.

The policy also has a wide range of exclusions which, in pertinent part, cover employees who are injured or ill or are on sick leave. These exclusions have weight because the policy absolutely shields from random testing that segment of the bargaining unit that is most likely to be taking prescription medications. To be sure, some on-duty employees probably take prescription medications, but even for them this random testing policy also provides critical safeguards such as quality-controls and double confirmatory analysis. Finally, the policy is not linked to automatic discharge but is, instead, related to rehabilitation. All these factors convinced the Arbitrator that this policy is narrowly tailored and is rationally related to evidence of a problem that affects the public interest and welfare of the City under Section 14(h)(3) of the IPLRA.

V(A). Grievance Procedure: The City's Final Offer

Although the parties stipulated that they were at impasse on this issue,⁴⁹ the City presented no specific final offer at the hearing. In addition, its brief is silent on this matter.

V(B). Grievance Procedure: The Union's Final Offer

The Union stated in its brief that its understanding is that the City has withdrawn its former position on this matter, which had been that employees would be barred from grieving discipline under the labor agreement. Thus, the Union understands that the status quo remains in effect concerning the grievance procedure.

V(C). Grievance Procedure: The Status Quo Shall be Maintained

Although the parties stipulated at the hearing that they remain at impasse over this issue, the Arbitrator concludes that the City effectively waived its pre-hearing final offer to change the grievance procedure. Accordingly, the Arbitrator rules that the status quo for the grievance procedure shall remain unchanged and carried over into the new CBA.

⁴⁹ See Point (iii) in Stipulation (Part II, above), under the heading of non-economic issues. Also see Tr. 6.

VI(A). Detective Vacancies: The City's Final Offer

The City's final offer is to change the existing method by providing the Chief authority to fill detective vacancies at his sole discretion. The Chief would maintain a roster of interested candidates to fill vacancies for juvenile officer, KAMEG, and the stolen auto task force. He would also have discretion to remove detectives. During the hearing, the City's Attorney stated the "Chief will explain to you why he wants the detective vacancies filled in the fashion that he suggests. . . ." ⁵⁰

VI(B). Detective Vacancies: The Union's Final Offer

The Union's final offer is preservation of the status quo. The current provision was negotiated in 1990. Candidates submit to a written examination and evaluation. Successful candidates are placed on an eligibility list. When a vacancy arises, the City chooses any of the top three candidates from the list.

VI(C). Detective Vacancies: The Union's Offer Is Adopted

The City proposed a major change in the negotiated status quo, and based its case entirely on a presentation by the Chief. At the hearing, however, the Chief was unavailable to testify and the City did not ask for a continuance to allow for his testimony. Since there is no justification provided for the City's final offer to change the status quo, the Union's final offer is adopted.

⁵⁰ City Brief at 147.

ECONOMIC ISSUES

VII(A). Patrol Officer Wages: City's Final Offer

The City's offer is to increase patrol officers' rate of pay by three (3) percent in the first year of the new CBA, four (4) percent in the second year, and three (3) percent in the third year, retroactive to May 1, 1999. In addition, the offer is to guarantee each sergeant \$500 of overtime each year.⁵¹

This offer is based primarily on the condition of the City's finances, and therefore, is within the ambit of the Section 14(h)(3) of the IPLRA. The City cites several budgetary and tax factors in support of its wage offer.

- The City's tax rate has been essentially level since 1987, when this was \$2.839 per \$1,000 in 1987 and \$2.729 per \$1,000 in 1998.⁵²
- Although the tax rate has been constant, tax revenues have increased due to rising EAVs. The most significant aspect of EAVs is its slow rate of growth, according to the City's auditor, Stephen Schmidt. From 1997 to 1998, EAVs grew only

⁵¹ City Brief at 3.

⁵² Tr. 233-234.

2.09%, from \$203,063,460 to 207,304,468.⁵³

⁵³ City Exhibit 6.

- The City also supports its offer in light of its General Fund balances as of April 30. The year-end balance was negative in 1994, 1995, and 1998. Moreover, Schmidt testified that he expects the fund to be in deficit by \$600,000 to \$750,000 this tax year.⁵⁴
- The City has hired more police officers using federal grant money. Grants provide the City a short-term means for hiring without also burdening the Department's budget. Over time, however, the City has been underwriting the cost of this new employment as grants phase out. The relationship between Department expenses and grant funding appears in City Exhibit 14. This shows expenses rising from about \$2.5 million in 1991 to over \$4 million in 1999. Grants have varied in any given year in the \$500,000 to \$1 million range, but clearly leveled off in 1997 and declined since then.

⁵⁴ Tr. 247.

- The City's pension funds for police and fire fighters are seriously underfunded. Using the latest actuarial figures, the police fund had \$10.1 million in assets, against obligations of \$19.7 million, leaving a deficit of \$9.6 million.⁵⁵ The City readily acknowledges that this obligation is due over a 40-year period, and so it has time to narrow the projected shortfall. But the main point of this part of the City's case was summarized by its auditor: "Now, just to make sure you understand what the City has started to do is all of the tax revenue increase that they have been able to generate has been going to fund both the police and the firemen's pension more aggressively. . . . But it is significantly short of where it needs to be."⁵⁶
- The City's operation of a solid waste facility also aggravates its intermediate financial picture. The main point is that renovations to plant are a net cost to the City, and in the projected budget, are responsible for the estimated shortfall of \$600,000 to \$750,000. Eventually, the facility will pay for itself through a user fee, but in the near-term, the City will not be able to recapture this projected deficit spending.⁵⁷

VII(B). Patrol Officer Wages: Union's Final Offer

The Union's final offer is 4 percent in each of the three contract years. Pay for patrol officers trails far behind comparable jurisdictions. Even if the Arbitrator adopts the Union's offer,

⁵⁵ Tr. 267.

⁵⁶ Tr. 267-268.

⁵⁷ Tr. 273-274.

Kankakee will be last or next-to-last in pay among comparable Chicago-area jurisdictions. If the Arbitrator considers only jurisdictions that are outside the Chicago metropolitan area, the result will be essentially the same.

The Union does not base its offer simply on rankings and percentages, although it considers these numerical indicators highly relevant under the IPLRA. The Union links poor pay in Kankakee to “the exodus of trained officers to better paid jurisdictions. . . .”⁵⁸

⁵⁸ Union Brief at 53.

The Union also rebuts the City's financial arguments. It is misleading to look only at the increase in EAVs from 1997 to 1998. While this increase was only about 2 percent, in the previous year the EAV jumped from \$191 million to \$203 million. The Union believes that the Arbitrator should take a long view of rising EAVs. This figure has grown steadily from \$113 million in 1989 to \$207 million in 1998— an increase of 82.9%.⁵⁹ In the same period, the ratio of debt to assessed valuations has decreased from 0.245 in 1989 to 0.145 in 1998. In sum, the “decline of both the overall tax rate and the general corporate tax rate coupled with the City's increase in its EAV and decline in debt are also indicative of a jurisdiction in sound financial condition.”⁶⁰ Aside from the budget, Kankakee's economy has strengthened, and its future has more upside potential. The City's Comptroller stated in a forecasting document that Kankakee's proximity to the Chicago metropolitan area will spur additional jobs and growth.⁶¹ Unemployment has fallen from 13.1 percent in 1992 to 8.7 percent in July 1999.⁶²

The Union also calls attention to the fact that the City's 1999 audit contains a line for a 9 percent increase in the budget for Chief and Deputy Chiefs of the Police Department. The Union believes that the City is motivated to do this remain competitive with other jurisdictions. The same consideration should be given to bargaining unit employees.

VII(C). Patrol Officer Wages: The City's Final Offer is Adopted

In adopting the City's final offer for patrol officer wages, the Arbitrator gave controlling

⁵⁹ Union Brief at 39.

⁶⁰ Union Brief at 40.

⁶¹ Union Brief at 42.

⁶² Union Brief at 43.

weight to the City's financial rationale, even though the Union is correct that the Union's offer would still leave wages at or near the bottom of comparable jurisdictions (see Table 3 below).

The Arbitrator found parts of the City's and Union's financial presentations somewhat distorted. The auditor's suggestion that he does not know how the City will even pay for its offer of 3%-4%-3% appears to suggest that the City's bargaining position was not prudent. The Arbitrator is simply unwilling to indulge this possibility. At no point did the City actually make an "inability to pay" argument. Instead, the Arbitrator understood that the City has cash-flow problems that are moderately serious, but not so severe as to warrant a scaling back of City services.

The Arbitrator was also unconvinced by that part of the Union presentation that implied that the City should raise tax rates, if necessary, to make pay for patrol officers more competitive. As a practical matter, it would appear that the City needs a level tax rate to compete for a fresh infusion of new employers and to retain or attract homeowners. The Union is correct in pointing out that EAVs have increased by almost 90 percent in the last decade, but this fact in isolation does not account for serious problems on the expense ledger. These include rehabilitation of the solid waste treatment facility and closing the deficit in pension funds.

The Arbitrator's ultimate conclusion is that the City is warranted in taking a conservative approach to its wage offer for patrol officers. The Arbitrator gave controlling weight to four factors in rendering his judgment under Section 14(h):

1. The City is forecasting a \$700,000 deficit in its budget as a result of upgrading the waste-water plant. The City convinced the Arbitrator that it needs time to steady its finances by bringing this facility on-line and implementing a new user fee to pay for this

operation.

2. The City's decision to give more priority to narrowing its pension deficits than to fund the Union's wage offer appears to be a prudent business decision that is related to the public interest and financial provisions of Section 14(h)(3) of the IPLRA.

3. At the time of the hearing, the City employed 37 First Class Patrol Officers, and 7 Rookie Patrol Officers; but employed only 11 Sergeants. Clearly, much of the payroll for the bargaining unit is concentrated at the patrol officer level. This was a significant consideration in light of the Arbitrator's decision to give controlling weight to the City's financial rationale for its offer.

4. While the City's final offer is behind comparable jurisdictions, the gap is not as great as the Union suggests. Of course, this is because the Arbitrator's finding of comparable jurisdictions differs significantly from those offered by the Union. In this vein, the comparison of the City's offer to Bradley and Bourbonnais is especially important since these municipalities compete directly in the City's relevant labor market. The City did not translate its offer of 3%-4%-3% into a salary schedule, but the differences between this offer and the Union's offer are not great. As Table 3 shows, the Union's final offer was at the low-end of the competitive range of pay. The City's smaller offer results in pay being even less competitive, but the gap does not appear to be so great as to cause widespread employee defection from the Department.

Table 3
City and Union Offers for Patrol Wages and Comparable Jurisdictions (1999 Salaries)

<u>Jurisdiction</u>	<u>Start</u>	<u>1+ Years</u>	<u>5+ Years</u>	<u>10+ Years</u>	<u>15+ Years</u>	<u>20+ Years</u>
Kankakee (Union Offer)	\$29,596	\$33,650	\$38,770	\$39,150	\$39,720	\$40,290
Kankakee (Union Offer w/Adoption of Longevity Offer)	\$29,596	\$33,650	\$38,770	\$39,150	\$39,910	\$40,670
Kankakee (City Offer)	No figures provided [3% in first contract year; 4 percent in second contract year; 3 percent in third contract year]					

Danville	\$32,921	\$38,025	\$38,786	\$39,926	\$41,828	\$42,208
East Peoria	\$26,850	\$32,492	\$49,143	\$51,070	\$52,997	\$52,997
Pekin	\$30,156	\$34,113	\$38,596	\$39,471	\$40,346	\$41,221
Bradley	\$31,325	\$33,592	\$39,333	\$39,811	\$40,040	\$40,394
Bourbonnais	\$28,787	\$34,070	\$40,036	\$41,264	\$42,750	\$43,255

VIII(A). Sergeant's Wages: City's Final Offer

The City proposes to increase wages 3% for the first year of the CBA, 4% for the second year, 3% for the third year, retroactive to May 1, 1999; and in addition, to guarantee each sergeant \$500 of overtime each year.⁶³ The rationale for this offer is virtually identical to the City's offer for patrol officers.

VIII(A). Sergeant's Wages: Union's Final Offer

The Union proposes a \$500 equity adjustment to be added to the Sergeants' base pay effective May 1, 1999, May 1, 2000 and May 1, 2001. Following the equity adjustment each year, the Sergeant's base pay shall be increased as follows: 4% effective May 1, 1999 (retroactive on all hours paid, with officers who have left the City's employ during the period May 1, 1999 to the date such increase becomes effective, receiving a pro rata share of such retroactive pay); 4% effective May 1, 2000; and 4% effective May 1, 2001.⁶⁴

⁶³ City Brief at 3.

⁶⁴ Union Evidence Book 1 (Tab for Final Offers).

While much of the Union's rationale for this offer tracks its reasoning for patrol officers, the Union criticizes certain aspects of the City's offer. It notes that the City's "final offer to give each Sergeant a guaranteed overtime bonus in the amount of \$500 per year is nothing more than a reconstitution of a benefit they are already entitled to under the existing agreement (emphasis in original)."⁶⁵ The Union also points out that its offer of an equity adjustment is not new to the parties: "In the last round of negotiations, the parties agreed to similar equity adjustments to the Sergeants' base salary."⁶⁶ This leads the Union to conclude that the City is departing from established practice of making progress toward paying sergeants a competitive wage.

VIII(C). Sergeant's Wages: The City's Final Offer Is Adopted

For the reasons set forth in VII(C)[Patrol Officers], the Arbitrator adopts the City's final offer. Since the parties broke out offers separately by rank, the Arbitrator was obligated to consider each offer independently. Two facts differentiated pay for sergeants and patrol officers.

First, since sergeants comprise a smaller percentage of bargaining unit employees, the Arbitrator considered the City's financial arguments in light of this small number. If a highly targeted gain could be found for this small group without adding significant expense to the City, the Arbitrator would have been willing to give more weight to the Union's comparability arguments. However, given the Union's combined \$1,500 equity adjustment, and the higher

⁶⁵ City Brief at 49.

⁶⁶ Union Brief at 49.

annual wages of sergeants, the Arbitrator continued to give controlling weight to the City’s financial arguments.

Second, the Arbitrator found merit in the Union’s contention that the public interest was being harmed by the departure of Sergeant Kilman and rising leaders in the bargaining unit such as Officer McCabe. The public interest in retaining the better performers in the bargaining might outweigh the City’s financial argument for this particular final offer. Although the Union repeatedly noted that poor pay was tending to drive officers out of the unit and into the waiting arms of other departments, the Arbitrator saw no specific evidence that poor pay was a motivating factor. To the extent that the record was developed on that point, the Union convinced the Arbitrator that the residency requirement was the main culprit in the departure of Sergeant Kilman.

Table 4
City and Union Offers for Sergeant Pay
and Comparable Jurisdictions (1999 Salaries)

<i>Jurisdiction</i>	<i>Start</i>	<i>1+ Years</i>	<i>5+ Years</i>	<i>10+ Years</i>	<i>15+ Years</i>	<i>20+ Years</i>
Kankakee (Union Offer)	\$42,260	\$42,260	\$42,260	\$43,105	\$44,161	\$44,795
Kankakee (w/Adoption of Proposed Longevity Offer)	\$42,260	\$42,260	\$43,105	\$43,527	\$44,373	\$45,218
Kankakee (City Offer)	No figures provided [3% in first contract year; 4 percent in second contract year; 3 percent in third contract year]					

Danville	\$48,404	\$48,404	\$48,888	\$49,3728	\$49,856	\$49,856
East Peoria	Not Covered by Agreement					
Pekin	-	-	\$41,721	\$42,596	\$43,471	\$44,346
Bradley	\$43,514	\$43,514	\$44,054	\$44,533	\$44,762	\$45,515

IX(A). Longevity Pay: City's Offer

The City phrases its final offer in these terms: “No change in the current contract, except to add a new category for ‘Master Sergeants, Master Patrolmen’, wherein the Master Patrolmen would receive an additional 1% after 15 years and 1% after 20 years.”⁶⁷ The City adds this explanation at the hearing: “Our proposal is that after 15 years both for a patrolman and for a sergeant they get a one percent increase to the existing longevity or an increase in their wage if they complete an evaluation in which their rating is 80 percent or better. And the same thing would be true at . . . 20 years.”⁶⁸

The City does not offer a detailed explanation for its offer, because in its view this proposal is quite similar to the Union’s final offer. Counsel for the City explained: “The longevity pay, we’re not really quarreling too much about bumping up the longevity. Our quarrel is on what it’s based. . . . So all we’re trying to do is maintain that people that work for us aren’t just

⁶⁷ City Brief at 3.

⁶⁸ Tr. 138.

sloughing off and collecting money because they have been here for a long time.”⁶⁹

IX(B). Longevity Pay: Union’s Offer

The Union proposes limited enhancements to the current longevity steps in the parties’ Agreement. It proposes to add an additional one-half percent of longevity pay at the 15 year step, an additional one (1) percent at 20 years of service, and an additional one (1) percent at 25 years.

⁶⁹ *Id.*

As with its other economic offers, the Union justifies this proposal in terms of the poor pay of bargaining unit members relative to officers in comparable jurisdictions. The Union adds support for its offer in two respects. First, it emphasizes that its offer is not a breakthrough. It states it “is only seeking to add to the existing benefit by improving or increasing the longevity plan– not by changing it.”⁷⁰

Second, the Union believes that the City’s offer is a breakthrough and raises a series of knotty issues that will likely cause new kinds of disputes. It notes that the City’s offer has no reference to periodic evaluations, nor a provision for grieving denial of longevity benefits, nor specific performance standards for determining longevity increases. It is, in short, a thinly disguised merit pay system.

IX(C). Longevity Pay: The Union’s Offer is Adopted

The Union is correct in characterizing the magnitude of change from the status quo in its offer and in the City’s offer. Clearly, the Union’s offer is only a small incremental change over the existing longevity plan. In light of comparable salary data in Tables 3 and 4, there is a sound basis in the IPLRA for adopting the Union’s final offer.

Although the City’s financial arguments are persuasive in the context of wage offers, they are mostly moot here. The Union’s offer departs very little from the status quo. By increasing the current longevity pay only for employees with 15 years or more experience, its proposal applies

⁷⁰ Union Brief at 56.

only to eight employees (14% of the bargaining unit). The amount of the pay increase is also negligible: a one-half percentage point increase for employees who have 15-20 years of service. The small incremental increase in the Union's offer at years 20 and 25 will not impact the City for many years— assuming that high seniority employees remain in the Department.

Finally, the Union's offer is not inconsistent with internal comparables. In particular, this plan tracks closely with the longevity steps currently in the Lieutenants' Agreement.

Table 5
Union's Offer for Longevity Pay
Compared to Other Kankakee Bargaining Units

<u>Union</u>	<u>5 Year Step</u>	<u>10 Year Step</u>	<u>15 Year Step</u>	<u>20 Year Step</u>	<u>25 Year Step</u>
Union Offer	2%	3%	5%	7%	8%
City Offer	2%	3%	5.5%*	6.5%*	7%*
		[* Contingent Upon 80% Performance Evaluation]			
Current Longevity Pay	2%	3%	4.5%	6%	7%

	[Internal Comparables]				
IAFF Local 653	2%	3%	5%	7%	8%
Ill. FOP L.C.	1.5%	3%	3.5%	5%	5%
Police Lieutenants	2%	3%	4.5%	6%	7%

X(A). Health Insurance: The City's Final Offer

The City's final offer is to "increase the employee's contribution to insurance costs to 20% beginning the second year of this three year contract, leaving a 15% contribution in the first year with existing caps. . . ." ⁷¹ The City's offer is based on internal comparables. It notes that there has been a gradual integration of all City employees under a common health insurance plan. Most other employee groups now contribute 20% to their monthly insurance plan. The City notes that its auditor testified that a fairly significant increase is expected in the next health insurance contract. Even with this proposal, the City will likely be paying more on health insurance per employee; and it is only fair that employees shoulder part of this burden.

X(B). Health Insurance: The Union's Final Offer

The Union's final offer is preservation of the status quo. Currently, bargaining unit employees contribute 15% of the cost for insurance for single and dependent health insurance. In the case of single coverage, the contribution is capped at \$25 per month. For dependent coverage, the cap is \$80 per month.

⁷¹ City Brief at 4.

In seven of the Union's comparable jurisdictions, employees contribute nothing to the premium for single-coverage insurance. A greater number of jurisdictions have employee contribution toward family or dependent coverage, but in general, the amount is less than 20 percent of the premium and is also capped.⁷² In this light, "Kankakee's current contribution of 15% up to a maximum of \$25 per month is generous given these statistics."⁷³ Focusing on dependent coverage, the Union notes that the City's proposal would result in employees contributing more toward their insurance than nine other comparables. The Union concludes that "the external comparables do not support the City's proposal on health insurance."⁷⁴

There is more to the Union's support for its final offer. First, the amount of premium increases incurred under the current plans (HMO and PPO) were very slight. Thus, there is no justification for redistributing the cost-sharing burden.

Moreover, the City's proposal seeks a substantial breakthrough on two dimensions. First, it raises the employee contribution from 15 percent to 20 percent. More important, it removes the existing cap on the amount that bargaining unit employees must pay on premium increases.

The upshot of this proposal is that it would probably reduce or eliminate the employees' wage increase. The Union supports its argument with a chart that presents hypothetical information. Assuming that the Arbitrator grants the City's wage offer, pay for a patrol officer would increase by \$854 at the entry level, \$1,294 for a first-year officer, and \$1,096 for a second-year officer. If the City's insurance offer is also granted, a first-year officer would contribute

⁷² Union Brief at 63.

⁷³ Union Brief at 64.

⁷⁴ Union Brief at 64.

\$1,248 and a second-year officer would pay \$1,311.⁷⁵

X(C). Health Insurance: The Union's Final Offer Is Adopted

Two aspects of the City's final offer are cogent. First, there is no doubt that health insurance costs for the City and its employees will rise in the near future. In this vein, the Arbitrator credits the testimony of the auditor. Increases in health insurance costs for the City remained capped at five percent per year in the period 1997-1999 as a result of a contract with its insurance carrier. The auditor also stated that costs for the carrier were increasing 12-13% per year, reflecting a trend in the industry. Thus, he expects that once a new contract is entered into with this or another provider, significant increases will be passed on to the City. This alone appears to justify the City's final offer.

⁷⁵ Union Brief at 68.

Second, when the City contends that “[a]ll City employees, save the clerks, with the exception of the Sergeants and Patrolmen, pay 20% of the insurance premium costs [so] [t]here is no reason to exclude the Police from this group,”⁷⁶ it makes a powerful argument under Section 14(h)(4)(a). That is, the City’s final offer should be adopted because of its consistency with its other employment groups. The logic for this is especially persuasive in the case of health insurance, because of its uniform coverage.

⁷⁶ City Brief at 15-16.

There is a serious factual flaw in this part of the City's argument, however. Only two of the City's six other bargaining units currently are subject to the uncapped 20 percent health insurance contribution. Table 6 summarizes the current health insurance contributions made by union-represented employees, and clearly shows that only the Police Lieutenants and Operating Engineers contribute 20% with no caps.⁷⁷ On close inspection, there is considerable variability in employee contribution rates— certainly more than is indicated by the City's contention in its brief that all other units pay 20 percent without a cap. In sum, Table 6 persuasively negates the most convincing aspect of the City's final offer on health insurance.

There still remains the City's assertion that it expects health insurance costs to rise substantially in the near term, and that employees should be expected to bear their share of this increase.

As a philosophical principle, the Arbitrator finds this convincing. However, a careful examination of the record diminishes the force of the City's argument. Its own data on City-wide health insurance costs show that the City paid nearly \$700,000 in 1997, and in 1998 and 1999, these costs fell to about \$650,000 per year (as a function of improved experience ratings). The revealing aspect of the data are costs for 1990-1993. Those outlays ranged annually from \$800,000 to \$850,000.⁷⁸

These comparisons are not alone dispositive, but they put the parties' economic arguments in perspective. Assuming that health insurance costs leap 12 or 13 percent annually, as the auditor

⁷⁷ Union Exhibit 1, (Health Insurance Tab). The Arbitrator examined the relevant CBAs to verify the Union's contribution figures in Table 6.

⁷⁸ City Exhibit 13.

believes will be the case, the City's costs will likely rise from its 1999 outlay of approximately \$650,000 to about \$740,000 - \$750,000— an amount that is still considerably less than it paid nearly ten years ago. When this economic reality is paired with the fact that wages for bargaining unit employees are at the bottom of the range for comparable employee groups, the Arbitrator is unconvinced that the City has carried its burden for changing the status quo. In sum, Section 14(h)(6), allowing the Arbitrator to decide final offers based upon the overall compensation of unit employees provides a basis for adopting the Union's final offer.

<u>Table 6</u>				
<u>Employee Health Insurance Contributions for Organized Employee Groups</u>				
<u>Union</u>	<u>Covered Employees</u>	<u>Current Employee Contribution</u>	<u>Maximum Cap</u>	<u>Term of CBA</u>
OPE Int'l	Clerks, Secretaries,	15%	\$25 Single	5/1/96-
	Custodians		\$67.50 Family	4/30/00
IAFF Local 653	Firefighters	20%	HMO: \$33 Single	5/1/97-
			\$95 Family	4/30/00
Ill. FOP L.C.	Telecommunicators	20%	\$30 Single	5/1/96-
			\$80 Family	4/30/00
Pol. Lieutenants	Police Lieutenants	20%	None	5/1/96-
				4/30/00
Teamsters	Driver & Mechanic Operators	\$132.32/month	\$132.32	5/1/96- 4/30/00
Operating Engineers	Instrument Specialist, Mechanic, Operators	20%	None	5/1/99- 4/30/03

XI(A). Vacation Carryover: The City's Final Offer

The City relies solely on the justification it offered at the hearing in support of its final offer on vacation carryover. That offer is to maintain the status quo (i.e., ten days per year). The City explains its rationale:

The carryover language . . . I haven't seen any justification offered by the Union other than we want it and we haven't got it and so the status quo is 10 days or two weeks. They're proposing 15 days or three weeks to carry forward. Whichever way you flop on that issue isn't going to make or break the City, but if we're going to go by the standards that are required for changing things because we've heard a lot about there is no jurisdiction for the changes we have proposed, then I think the burden is the same for both sides. And other than the fact that we want it and you got it, there is no justification for going from 10 to 15 days.⁷⁹

XI(B). Vacation Carryover: The Union's Final Offer

The Union seeks to increase vacation carryover from two weeks (i.e., ten days) to three weeks (i.e., fifteen days). The Union concedes that there is no basis in comparable jurisdictions for adopting its offer. It contends, nevertheless, that its final offer is reasonable, emphasizing that its offer applies to a limited group of employees (those in the eighth year or greater of service). It also notes that its offer is subject to the operational needs of the Department and the

⁷⁹ Tr. 139.

distribution of vacation periods as determined by seniority bidding.⁸⁰

XI(C). Health Insurance: The City's Final Offer Is Adopted

The City's final offer, preserving the status quo, is adopted. The Union has failed to meet the burden of proof in demonstrating the need or justification for increasing vacation carryover.

Table 7 shows that the Union's offer is incompatible with vacation carryover in comparable jurisdictions. Adoption of the City's final offer therefore conforms to Section 14(h)(4)(a) of the IPLRA.

<u>Table 7</u>	
<u>Vacation Carryover in Comparable Jurisdictions</u>	
Union Offer	15 day carryover from year to year
City Offer	10 day carryover from year to year
Danville	No carryover except for exceptional cases
East Peoria	No carryover
Pekin	No set carryover– unscheduled time may be assigned by city
Bradley	10 day carryover
Bourbonnais	Not Covered by Agreement

⁸⁰ Union Brief at 93.

XII(A). Use of Personal Leave: The City's Final Offer

The City's final offer is to grant employee requests of sick leave at its sole discretion. The City explains its rationale in these terms:

Personal leave is the next issue, we have certain operational needs. The Chief here has requested that we grant those if we don't have a need to have people there, but if we do have a need, we'd like to be able to say no, stay. And that's all it amounts to.⁸¹

XII(B). Use of Personal Leave: The Union's Final Offer

The Union contends that the City's final offer is an unjustified attempt to gain a breakthrough. It explains that personal leave dates to 1988 in the parties' relationship. At that time, a provision was agreed to that permitted employees up to three days per year of personal leave, provided that employees gave 24-hour notice to the Department. At that time, those days were deducted from employee sick leave accounts.

In 1994, the parties modified this agreement to the benefit of employees. The three day limit and 24-hour notice requirements remained in place, but the City agreed no longer to deduct

⁸¹ Tr. 141.

personal leave from sick leave.

The Union explains that during contract negotiations that immediately preceded this arbitration, “no changes were made to the personal leave language.”⁸² The Union notes that the City has made a bare request for a change in the status quo without even attempting to muster a rationale. There is no evidence or claim that employees are abusing leave, or that the City is facing operational problems because of this provision.

Speaking to the rationale of maintaining guaranteed personal leave, provided that adequate notice is given, the Union explains that it is there for a variety of purposes— unexpected events that inevitably arise, parent/teacher conferences, doctor appointments, and so forth.

XII(C). Use of Personal Leave: The Union’s Final Offer Is Adopted

The Union’s final offer, preserving the status quo, is adopted. Neither party justifies its final offer in terms of Section 14(h) factors prescribed by the IPLRA. By default, therefore, there is an implicit presumption under the Illinois statute that the offer preserving the status quo should be maintained. Arbitrator Harvey Nathan stated this principle in these terms:

In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

1. That the old system or procedure has not worked as anticipated when originally agreed to, or
2. That the existing system or procedure has created operational hardships

⁸² Union Brief at 85.

for the employer (or equitable due process problems for the union), and

3. That the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.⁸³

By this standard, the moving party— here, the City— fails to meet the burden of proof in demonstrating the need or justification for altering the status quo. Accordingly, the Union’s final offer maintaining the status quo is adopted.

XIII(A). Use of Sick Leave: The City’s Final Offer

The City’s final offer is to amend the CBA to require that employees document an illness with a physician’s note when an employee is out of work immediately before or immediately after a vacation or holiday. The City explains its rationale in these terms:

The language of the agreement concerning the use of sick leave which is what we proposed is . . . very common actually in private industry if you take a day off after a holiday or before a holiday or in conjunction with a vacation day, why can’t you-- and you claim to be sick to extend your vacation and we don’t believe you, bring us a doctor’s slip. We will tell you if we want it. It’s not a big deal one way or the other, but in private industry, it’s a pretty common thing. And so all

⁸³ *Will County Board and Sheriff of Will County and AFSCME, Local 2961 (S-MA-88-9)(Arb. Harvey Nathan, 1989), at 52-53.*

we're asking is the same type of privilege.⁸⁴

XIII(B). Use of Sick Leave: The Union's Final Offer

The Union contends that the City's final offer is unjustified because no proof was offered to show that employees abuse the current policy. Since this policy has served the parties well since 1988, there is no need to change it.

XIII(C). Use of Sick Leave: The Union's Final Offer Is Adopted

The Union's final offer, preserving the status quo, is adopted. The City has failed to present relevant statutory evidence to justify adoption of its offer. Its comparison to private industry is appropriate for purposes of the IPLRA, but more is needed than a vague assertion of prevailing employment practices.

XIV(A). Acting-Up Pay (Sergeant to Lieutenant): The City's Final Offer

⁸⁴ Tr. 141.

The City offers to change the acting-up pay provision, so that upgraded pay occurs after an employee works 45 days continuously as a shift commander.⁸⁵ The City believes this offer is reasonable and equitable.

There is also significant fault with the Union's final offer. First, there is an equity issue. If a sergeant is to be paid hour-for-hour for acting up, why not pay him or her hour-for-hour at the lower rate of Patrol Officer when those duties are being performed?

Second, there is a "serious and obvious difficulty with the Union's proposal [in] keeping track of the [pay] claims."⁸⁶ In effect, the Union's offer would create a continuous variable pay plan, and also would be ripe for generating a large volume of grievances over allegations of small miscalculations.

In sum, the Union's final offer is neither practical nor is it necessary.

XIV(B). Acting-Up Pay (Sergeant to Lieutenant): The Union's Final Offer

The Union premises its final offer on the asserted fact that patrol officers and sergeants are occasionally required to "act up" or step up to a senior position as operational needs dictate.

"Kankakee is no exception, as the Employer routinely utilizes its sergeants to fill the shoes of a

⁸⁵ City Brief at 4.

⁸⁶ City Brief at 17.

lieutenant.”⁸⁷ The Union’s final offer is to pay the officers for any time they work in the higher grade.

⁸⁷ Union Brief at 91.

The Union's primary justification is that the current provision results in "abuse" to its sergeants.⁸⁸ Since they rarely if ever work in the lieutenant classification for six consecutive months, the current provision is an illusory benefit.

XIV(C). Acting-Up Pay (Sergeant to Lieutenant): The City's Final Offer Is Adopted

The City's final offer, preserving the status quo, is adopted. The Union's candor is to be credited when it states that "its proposal tilts far in the opposite direction from the existing language."⁸⁹ The data on practices in comparable jurisdictions are summarized in Table 8, and clearly show that the Union is correct in critically assessing its own final offer.

The Union is nevertheless serious about its offer, and indeed, its argument that the current language is nothing more than an illusory benefit appears to be true. Danville, by comparison, seems to have a practice that, on the one hand, shields the employer from the administrative burden of constantly calculating pay at two different rates while giving employees their due for taking on more responsibility. Even if the Union's offer here matched the Danville practice, correspondence to one comparable jurisdiction would not provide sufficient basis to grant its offer.

In short, like several other final offers submitted by the parties, the Union's final offer is a breakthrough and lacks any statutory justification for its adoption. Since there is no evidence to

⁸⁸ Union Brief at 92.

⁸⁹ Union Brief at 92.

support its final offer for acting-up pay, the City's final offer is adopted.

Table 8
Union and City Offers for Acting-Up Pay (Sergeant to Lieutenant)
and Comparable Jurisdictions

Union Offer	Pay at higher rate when assigned on an hour-to-hour basis
City Offer	Pay at higher rate when assigned for more than 45 days
Danville	Pay at higher rate when assigned for at least three days, with limitations
East Peoria	Not Covered by Agreement
Pekin	Not Covered by Agreement
Bradley	Not Covered by Agreement
Bourbonnais	Pay at higher rate of pay for six accumulated months in one year period

XV(A). Pay-Out Rate of Accrued Leave: The City's Final Offer

The City's final offer is to pay accrued leave at the rate it was earned, as distinguished from the rate it is worth at the time of separation. The City's justification is this:

And the reason is because we are underfunded on our long-term liabilities. . . . The auditor is going to tell you not only is the pension a problem but this type of thing of comp time, unused vacation time, unused sick time because it can go for 20 years and escalate at 3 or 4 or 5 percent, whatever the increases are, can become a rather significant feature.⁹⁰

The City offered no additional justification in its brief.

XV(B). Pay-Out Rate of Accrued Leave: The Union's Final Offer

The Union's final offer is preservation of the status quo. It premises this offer on the legal argument that neither the City nor the Arbitrator have authority to discount the rate of pay of accrued benefits such as sick leave. It cites the Illinois Wage Payment and Collection Act, which states in pertinent part:

Unless otherwise provided in a collective bargaining agreement, whenever a contract of employment or employment policy provides for paid vacations, and an employee resigns or is terminated without having taken all vacation time earned in accordance with such contract of employment or equivalent policy, the monetary equivalent shall be paid to him or her as part of his or her final compensation at his or her final rate of pay and no employment contract or employment policy shall provide for forfeiture of earned vacation time upon separation.⁹¹

⁹⁰ Tr. 146.

The Union also contends that the City's offer violates the Fair Labor Standards Act.

⁹¹ 820 ILCS 115/5, quoted in Union Brief at 94.

In the event that the Arbitrator decides this issue on the merits (that is, without regard to the state or federal wage and benefit laws), the Union contends that the City's offer is a breakthrough. In this case, "there was not one shred of evidence presented by the Employer at the hearing to warrant such a significant reduction in these benefits."⁹²

XV(C). Pay-Out Rate of Accrued Leave: The Union's Final Offer Is Adopted

The Union's final offer, preserving the status quo, is adopted. This offer is adopted notwithstanding the Arbitrator's finding that the Union's threshold argument lacks merit. Since the Union cites no specific provision in the FLSA to support its position, the Arbitrator's ruling is limited only to the state wage law argument made by the Union. In so many words, the Union's position is that payouts of accrued benefits at a discounted rate is an unlawful subject of bargaining.

The Union's legal argument falls short, however, in two respects. The provision of the Illinois Wage Payment and Collection Act cited by the Union expressly covers only vacation time. On its face, it does not pertain to other forms of accrued benefits that have monetary value, such as sick leave.

Second, the Union emphasizes the phrasing at the end of the section that states that "the monetary equivalent shall be paid to him or her as part of his or her final compensation at his or her final rate of pay." However, the Union's interpretation ignores the predicate condition stated in the law: "Unless otherwise provided in a collective bargaining agreement. . . ." Clearly, the

⁹² Union Brief at 15.

Illinois General Assembly did not intend to prohibit unions and employers from negotiating this subject.

On the merits, however, the City's final offer is rejected and the Union's final offer to preserve the status quo is adopted. The Union is correct when it argues that the City offers no evidence to support its bargaining position. The City demonstrated that its pension plans are significantly underfunded, but this conclusion is based on the plans' projected obligations over the next forty years. Evidence adduced at the hearing shows that efforts must be undertaken now to close this funding shortfall, and the Arbitrator gave weight to this factor in rejecting certain economic offers by the Union, even though those offers were well supported by reference to comparable jurisdictions. The City did not show, however, that it is unable to meet its short- or intermediate-term pension obligations. In fact, the high concentration of low-seniority officers in the bargaining unit led the Arbitrator to conclude that pension claims arising from this bargaining unit will be fairly modest in the foreseeable future.

XVI(A). Gasoline Incentive Pay: The City's Final Offer

The City offers to establish a new article in the CBA “wherein patrolmen would share in any savings in gasoline expense from the baseline established by the City, based on the preceding year’s actual cost.”⁹³

The City justified its offer in these terms:

Compensation for the use of gasoline at or below the Department’s baseline was an idea the Chief had suggested during the negotiations. I can’t imagine why they would want to turn it down or not want it. . . . But all we’re doing is saying to them, look, if the budget says you got X dollars in gasoline, learn to turn off the car possibly or do whatever else you can do to save the gas costs and we will give it to you. We’re only talking about giving it to the patrolmen. We don’t want to share it 50-50. We don’t want it 80-20. We’ll give it all to the patrolmen.⁹⁴

XVI(B). Gasoline Incentive Pay: The Union’s Final Offer

The Union rejects the City’s final offer. The Union notes that in the City’s 1998-1999 budget, the Department was allotted \$65,000 for fuel, and spent only \$53,077. This would have produced a bonus of \$270 for all patrol officers.

Nevertheless, the Union rejects this cost-saving concept. It notes that the officers are “to

⁹³ City Brief at 5.

⁹⁴ Tr. 141-142.

protect the citizens of Kankakee. That protection does not involve reducing the amount they patrol in the hopes of obtaining a \$200 bonus if they save on gas used in the patrol cars.”⁹⁵

XVI(C). Gasoline Incentive Pay: The Status Quo Is Maintained

⁹⁵ Union Brief at 90.

The City effectively withdrew its offer in its Brief when it stated: “As to the gas expense saving distribution, if the Union doesn’t want to join in saving with the City and reap the benefits of it, we certainly do not want to shove it down their throats and concede, therefore, that there be no change contained on that particular issue.”⁹⁶ The Arbitrator finds that the parties are no longer at impasse on the gas savings issue. Accordingly, the status quo on this issue is to be maintained.

⁹⁶ City Brief at 18.

XVII. Interest Arbitration Award

1. The Award incorporates the Arbitrator's adoption of all final offers discussed herein.
2. The Award specifically incorporates the tentative agreements entered into by the parties at the hearing concerning field training pay for officers, funeral expenses, and clothing allowance.⁹⁷
3. Any arrearage in the clothing allowance shall be computed to have only prospective effect.⁹⁸
4. Due the number and complexity of issues, jurisdiction is retained as needed for an additional sixty days. Such jurisdiction shall not be exercised, however, to relitigate any of the foregoing issues.

Michael H. LeRoy
Arbitrator by Appointment of the Illinois State Labor Relations Board

This Award Entered Into
this **24th Day of March, 2000**,
in Champaign, Illinois.

⁹⁷ Tr. 11-14.

⁹⁸ This issue was reserved for the Arbitrator at Tr. 14.

