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Illinois Labor  
Relations Board

ILRB  
# 212

IN THE MATTER OF ARBITRATION )

Between )

CITY OF BELLEVILLE, ILLINOIS, )

and )

BELLEVILLE FIREFIGHTERS ASSOCIATION, )  
IAFF LOCAL No. 53. )

Marvin F. Hill, Jr.  
Arbitrator

S-MA-99-193 (2000)

APPEARANCES

*For the Administration:* Karl R. Ottosen, Ottosen Trevarthen Britz & Kelly, Ltd.,  
300 South County Farm Road, Third Floor, Wheaton, IL  
60187.

*For the Firefighters:* Ronald McDonald, Southern District Vice President,  
Associated Firefighters of Illinois, 509 Garesche,  
Collinsville, Illinois, 62234.

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The Belleville Firefighters' bargaining unit currently consists of 52 men. They now work a 42 hour work week average and daily shifts of 10 hours daytime starting at 8:00 a.m., and 14-hour night shifts starting at 6:00 p.m. Firefighters work an average of 2,184 hours per year. They have been on this schedule since the early 1970s, more than 28 years, a consideration the Union asserts is paramount in this dispute.

The Firefighters came from a 40-hour work week and the record is not clear how they arrived to work two more hours per week but it is clear that there are advantages over a traditional rotating

eight-hour shift. The bargaining unit currently enjoys two full weekends off per 28-day cycle: one starting on Thursday at 6:00 p.m. and not having to work again until 6:00 p.m. on the following Monday; the other weekend starting on Friday at 8:00 a.m. and not having to work again until 8:00 a.m. the following Monday.

The City is proposing that the Firefighters work a traditional 24 on / 48 off shift and work 2,555 hours per year. The bargaining unit has rejected the City's offer in favor of the status quo schedule. The issue is now before the undersigned arbitrator for final and binding arbitration.

## **II. ISSUES FOR RESOLUTION**

One issue is before the undersigned Arbitrator for resolution: that of the work week. Numerous other issues, unresolved at this time, are reserved for a second hearing if the parties are unable to reach agreement once the work week issue is resolved.

## **III. POSITION OF THE ADMINISTRATION**

The City submits the following statements of fact and arguments in support of its positions regarding comparable communities and the Firefighters' work schedule.

### **A. Comparable Communities**

Two dissimilar lists of proposed comparable communities are at issue. The Union compared 35 factors to illustrate comparability among the proposed communities. Using +/-50% from Belleville's numbers for the 35 factors yielded the following results:

<u>Union's Comps.</u>	<u>No. Of Matches</u>	<u>City's Comps</u>	<u>No. Of Matches</u>
Alton	26	Urbana	28
Collinsville	26	Quincy	27
Granite City	24	Pekin	27
East St. Louis	20	Rock Island	27
		Galesburg	26
		Alton	26
		Carbondale	24
		Granite City	24
		Moline	20
		East St. Louis	20
		Champaign	15

The Union's list contains Alton, Collinsville, East St. Louis and Granite City. These cities are asserted to be the comparable group predominantly due to their proximity to Belleville using a labor market criterion. The Union maintained these communities are the relevant comparables due to their inclusion in the greater St. Louis metropolitan area from which the labor force can commute to Belleville. According to management, this assertion ignores the fact the City has a long-standing residency requirement for all employees. Thus, a labor market approach by itself is inappropriate.

The City's list of proposed comparables is: Alton, Carbondale, Champaign, Danville, East St. Louis, Galesburg, Granite City, Moline, Normal, Pekin, Quincy and Urbana. The City submits its proposed list of home rule communities south of Interstate 80 with their population, area, EAV, budget and department size is more appropriate with its specific sampling than the limited labor force sampling of the Union's. Indeed, five communities not on the Union's list have equal or more "matches" than the Union's most evenly matched community. The City submits that East. St. Louis with less than a 60% match ratio is not a comparable community. Also, Collinsville as a non-home rule city with 50% of Belleville's population, employees, income tax revenue, total revenue, property tax extension, and housing units is not a comparable community.

Based on the foregoing, the City submits the most appropriate comparable communities are the home rule municipalities with at least 24 matches using the Union's Exhibits' Tabs 21 and 22, plus Danville which was omitted from the Union's Tab 22 data. Based on the City's data on Exhibits Tabs 1-3 and Exhibits A and B attached hereto, Danville is clearly appropriately included in any list of Belleville's comparable municipalities. This yields the following as comparable communities: Alton, Carbondale, Danville, Galesburg, Granite City, Pekin, Quincy and Urbana. While the above are suggested as the most comparable and thus the ones to be used for comparisons on other issues, the City will continue to use the Union's and its own lists as submitted at the hearing for the remainder of this brief.

## **B. The Work Schedule**

The City proposes to consolidate the 52-man bargaining unit's four platoons into three. The main reason for this proposed change is to increase manpower from the current 13 employees per shift to 17. In the City's view the additional personnel greatly enhances firefighter safety, sharply improves the ability to efficiently and effectively respond to and extinguish fires enhancing public safety, and increases overall efficiency of all phases of the department's operations including training, public education and fire prevention. Also, the City asserts it will be in much better position to comply with the Illinois Department of Labor's requirements for interior firefighting commonly referred to as the 2 in -- 2 out rule. Further, property owners in Belleville will benefit by having a lower Insurance Services Office (hereinafter "ISO") rating which results in lower property owner's insurance premiums.

In order to accomplish the above, the City proposes to modify the current 10/14 work schedule to a new 24/48 schedule. The 10/14 schedule consists of four platoons, or shifts, working

10 hour day shifts and 14 hour night shifts on a rotational basis. Two shifts rotate between days and nights such that they work Monday and Tuesday on one shift, (day/night) are off Wednesday and Thursday, and then rotate to the other shift (night/day) Friday, Saturday, and Sunday. These two shifts are off the following Monday and Tuesday and then rotate shifts (day/night) working Wednesday and Thursday with Friday, Saturday, and Sunday off. This results in employees working 182-183 shifts per year and averages 42 hours per week.

The proposed 24/48 schedule will consist of three (3) shifts of 17 employees working 24 hours on duty followed by 48 hours off duty. The City proposes to reduce the total number of shifts worked to 106 by assigning every 8th shift off. This results in 5 consecutive days off every 24 calendar days. 106 shifts equates to approximately 2,544 hours, but the employees' scheduled work hours will average about 2,555 per year. The City's proposal also adjusts leave time to reflect the 24 hour shifts.

According to the Administration, the following illustrates the differences in *net* average weekly hours between the two schedules once holidays, personal leave, vacation time and Kelly days are subtracted from the scheduled work hours.

<u>Yr. Of Serv.</u>	<u>10/14 net ave. Wkly hrs.</u>	<u>24/48 net ave. Wkly hrs.</u>	<u>Increase in net Ave. Wkly.hrs.</u>	<u>% Increase in net Ave. Wkly. Hours</u>	<u>% salary increase proposed by City</u>
1	41.54	47.75	6.21	14.9	12
2	39.92	45.45	5.53	13.8	12
3	39.92	45.45	5.53	13.8	12
4	39.92	45.45	5.53	13.8	12
5	39.92	45.45	5.53	13.8	12
6	39.92	44.52	5.53	13.8	12
11	39.12	43.14	5.40	10.3	12
16	38.31	43.14	4.02	12.6	12
21	37.50	42.22	4.72	12.6	12
26	37.50	42.22	4.72	12.6	12

While it is arguably a management right to determine the number of shifts an employer will staff (in the Administration's view), the City has consistently sought to negotiate this matter with the Union. The Union's bargaining team has refused to discuss this issue. In fact, the Union's position has consistently been one of "You won't get this schedule change in arbitration so we aren't going to negotiate." In the City's view the Union has refused to negotiate even the simplest of clean up items such as changing outdated and incorrect statutory citations.

According to the Administration, the parties have a pattern of changing the work schedule. From at least 1939 to 1956 the Firefighters worked 24 hours on and 24 hours off. From 1956 to 1970 or 1971 the shifts were 24/48. For a one year period around 1971 the employees worked rotating 8 hour shifts according to a traditional police department schedule. In 1971 or 1972 the current 10/14 schedule was implemented. Thus, the employees have worked 24 hour shifts over half of the last 60 plus years. To contend that 24 hour shifts are totally out of line and bad for employees and their families as the Union has done is a historically inaccurate exaggeration.

The City recognizes its proposal increases the annual hours of work and has proposed to compensate the employees accordingly. The City accepts that as the party wishing to alter the *status quo* it has the burden of providing a strong reason and a quid pro quo for the change.

Belleville has provided ample and compelling reasons to switch to the three platoon 24/48 schedule. First is firefighter safety. No one can argue that having 13 men on a shift is better than 17. With two (2) employees scheduled off each day, the operational full shift will have 15 employees. Two stations will be staffed with four employees rather than three, and the third station will have between five and seven employees. The City will thus be able to ensure all engines have at least four employees responding to all alarms. The truck company's manning is similarly increased from two to three.

Currently, stations 2 and 3 are usually staffed with only 3 firefighters each. In order to comply with IDOL's 2 in - 2 out rule the department cannot engage in interior firefighting until another fire company arrives from another station. The department's 52-man staffing level is most appropriate for safe, effective and efficient emergency response if, and only if, it is consolidated into three shifts.

Cost considerations. To obtain the same level of safety as the City proposes, an additional 10 firefighters at a cost of at least \$450,000 will have to be hired under the Union's status quo position. With the City's current financial condition, hiring 10 more firefighters is not fiscally possible. Belleville's firefighters work almost the fewest hours of all full-time unionized departments in the State. Yet, they responded to only 1.1 calls per station per day in 1999. Unlike many departments with increasing emergency medical services (EMS) demands, Belleville's firefighters have the benefit of a declining fire call volume, a national trend, without performing EMS functions. The citizens of Belleville will be better served by a more productive, cost efficient and safer department.

Public safety and education considerations. Public safety is another compelling reason for the new schedule. The department can more effectively and efficiently provide services to the residents with two to four additional firefighters on duty at all times. The department is better positioned to provide fire suppression, training, fire prevention and fire investigation functions. Further, it will be able to provide enhanced public education programs. The training program can be greatly improved by reinstating a full time training officer position without adding personnel. There are currently 52 bargaining unit positions with 13 on each platoon. The proposed schedule contemplates 3 shifts of 17 for a total of 51 positions. This allows for reinstating the training officer position which was eliminated three years ago as part of a City-wide reduction of 16 positions. The training officer frees up a captain to perform other tasks, ensures continuity and consistency of training across all shifts and will permit the department to engage in life-training evolutions which require a minimum of six employees. Therefore, the ability to improve the training program and ultimately the City's safety, is another reason supporting the City's proposal.

It is undisputed that the proposed schedule change increased manpower alone, will go a long way towards reducing the City's ISO rating. This schedule was recommended by the ISO evaluator in 1994. The fact that all neighboring fire departments, which are volunteer operated, have the same ISO rating demonstrates that Belleville's current system is not appropriately or adequately servicing the community for the professional standards its workers and paid to perform.

The proposed schedule and its increased manpower will provide a financial benefit to the community with an ISO rating update. The training and dispatch areas are being addressed, but without the safety and efficiency provided by increased manpower it is unlikely the City will be able to reduce its ISO rating. Hence, economics alone strongly favor revising the department's schedule as proposed. This is the most efficient and cost effective departmental organization available without using part-time or paid-on-call personnel (something which is even more repugnant to the bargaining unit). At the same time, all property owners benefit by a reduction in their property insurance cost.

Based on the above, the current system has inherent operational hardships for the employer which are effectively and most efficiently overcome by implementing the City's scheduling proposal. The City is offering a salary increase of 12% as consideration for the employees' working the additional 10.3% to 14.9% net average weekly hours. The schedule includes significant time off and greater flexibility in scheduling vacation. Employees will be able to schedule single shifts off rather than full weeks. This will enable employees to tie any of their 16 Kelly days with only one vacation day and have 8 consecutive days off. This additional manpower yields a safer environment for the employees and the public they serve.

When compared to the City's comparable communities, the employees maintain their second place ranking in net annual hours. In all but their first year (3<sup>rd</sup> place) the proposed schedule ensures that only East St. Louis' firefighters work fewer hours than Belleville's. At the same time, the City's offer significantly improves the City's ranking among the comparable communities when comparing total compensation packages or salary alone. The following charts reflect the ranking among 13 communities set out in Tabs 56 and 57 for total compensation and salary compared to net annual hours in 1999 versus 2000 when the 24/48 schedule is implemented.

Total Compensation Package Ranking v. Net Hours Rank

Year of Service	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>11</u>	<u>16</u>	<u>21</u>	<u>26</u>
Total Comp. Proposed 99	5	7	9	11	11	10	10	9	7	7
Net Hours 99	2	2	2	2	2	2	2	2	2	2
Total Comp. Proposed 2000	2	2	2	2	2	2	2	1	1	2
Net hours 2000	3	2	2	2	2	2	2	2	2	2

(Source: City Ex. Tab 56)

Salary Rank v. Net Hours Rank

Year of Service	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>11</u>	<u>16</u>	<u>21</u>	<u>26</u>
Proposed 1999 salary	4	4	5	6	8	9	7	7	4	4
Net Hours 1999	2	2	2	2	2	2	2	2	2	2
Proposed 2000 salary	3	3	2	2	2	2	1	1	1	2
Net hours 2000	3	2	2	2	2	2	2	2	2	2

While the Union argues that the City is seeking to reduce the employee's hourly rate, the fact is that the City proposes to maintain the Union's position as one of the highest hourly rates among comparable communities. Further, the City only uses hourly rates for overtime purposes and proposes to pay overtime to all current employee's based on the current denominator of 2184 hours. Finally, the employee's pay increases have surpassed the CPI-U by 165%. Assuming a 2000 CPI-U increase of 3.32% (equal to the largest of the past 6 years) and adding the City's 12% increase will further exaggerate the gap between CPI-U and employee salary increases. This yields a 17.84% CPI-U increase compared to 36% increase in salary over the same 7-year period. When these facts are factored in with the low call volume and the Union's bargaining posture, the reasonableness and adequacy of the City's quid pro quo for its schedule proposal is evident.

**C. Conclusion**

The City submits that the most appropriate comparable communities are: Alton, Carbondale, Danville, Galesburg, Granite City, Pekin, Quincy, and Urbana. In addition, Belleville has demonstrated that the current schedule no longer meets the operational needs of the City due to new safety regulations and ISO requirements impacting upon manpower needs. The present schedule has created operational hardships which are overcome by the implementation of a three platoon system. The proposed schedule enhances firefighter safety, effectiveness and efficiency of departmental emergency response, training, fire prevention and public education. In addition, the City has offered significant consideration in exchange for its schedule proposal through salary, additional time off, and flexibility in scheduling time off. Hence, it is respectfully submitted that the City has met its burden in seeking a change in the employees' work schedule.

**IV. POSITION OF THE BELLEVILLE FIREFIGHTERS**

The position of the Firefighters, as outlined in its post-hearing brief, is summarized as follows:

**A. Background: Bargaining History**

The Union has had a history of negotiations over at least 61 years with the City of Belleville. The Firefighters are covered under the Illinois Public Labor Relations Act and are forbidden to strike, with arbitration as a last resort to resolve conflicts. The bargaining unit points out that it requested to start bargaining for a successor agreement in March of 1999.

In this regard the Union made it's initial request on March 11, 1999, for nine (9) issues to be discussed. On March 19, 1999, the Administration responded with 30 proposed changes and some included up to eight different sections each. In that first proposal the City asked that the Union work every third day with a Kelly day every ninth (9th) shift; the City also proposed to delete the minimum manning clause (Section 3.2 of current contract). The Union responded on April 9, 1999, with counter proposals and to maintain current contract language on hours of work. On April 16th, the City was still asking the Union to work 24- hour shifts and longer hours with a Kelly day every eighth shift, and also the elimination of the minimum manning sentence of Section 3.2

Further meetings were held and the record is unclear, but with two different dates on the City proposal the City switched from asking to delete the 11- man minimum, to proposing that they would maintain 51 authorized positions in the bargaining unit if the 24/48 schedule was agreed upon. The Union made proposals and counters on September 17, 1999. The City then mailed to the Union on January 26, 2000 it's proposals and on February 17, 2000, the parties met and the Union and City exchanged arbitration proposals. On February 19, 2000, the City moved that the hearing be held on only the hours of work issue. The Arbitrator ruled the hearing would be on hours of work only.

**B. Appropriate Comparables**

The Union's proposed comparables are as follows:

<i>City</i>	<i>Population</i>	<i>Distance</i>
Belleville	44,165	N/A
East St. Louis	40,944	0
Collinsville	22,446	11
Granite City	32,862	17
Alton	32,905	33
<b>Avg</b>	<b>34,644</b>	<b>15 Miles</b>

The Union acknowledged the parties are in agreement on three (3) cities as comparables. The Union has one (1) other city on its list of comparables. The City has eight (8) other cities on its list of comparables. The City disputes Collinsville, which is 11 miles to the north, smaller but still within 50 percent of Belleville's population.

The Union disputes eight (8) of the City's comparables: Carbondale, Quincy, Pekin, Normal, Urbana, Galesburg, Champaign and Moline. It argues that the closest of these eight cities (Carbondale) is 92 miles away-- beyond normal commute limitations-- excluding it from the St. Louis Metro-East metropolitan job market. The average household income for Carbondale is \$11,821 annually, compared to \$26,668 for Belleville, according to the Illinois Department of Revenue. The next closest comparable challenged by the Union (Quincy) is 154 miles and geographically isolated from any other major job market.

According to the Union, previous arbitration cases have established geographic proximity as a predominant factor in establishing comparable bench marks. One only has to look at the closest of the City's comparables to observe that job market has an effect on areas where you work. Carbondale is 92 miles from Belleville. However, Carbondale's household income is a mere 44 percent of Belleville's, as shown by information from the Illinois Department of Revenue. Beyond this one glaring discrepancy, the Union contends the City's proposed comparables are geographically too distant to be reasonably considered. The Union's proposed comparables are all within 33 miles of Belleville's city limits and are universally accepted as included in the St. Louis Metro-East metropolitan area.

The Union cites prior interest arbitrations to defend its position. For example, in *Village of Arlington Heights and Arlington Heights Firefighters Association, Local 3105* (1991), Arbitrator Steven Briggs found that the "geographic proximity is the best description of the relevant labor market." He found the criteria of population, assessed value and/or sales tax less significant because they do not bear upon employment opportunities in the way geographic proximity does. Also in *City of Alton and International Association of Fire Fighters Local 1255* (1996), the advocates agreed to limit comparable cities to those in Madison and St. Clair counties. The arbitrator (Edelman) in that case wrote,

By limiting themselves to Madison and St. Clair counties the parties recognize that labor markets have boundaries. They are areas within which people seek jobs, and employers seek potential employees. One would not normally expect potential fire fighters to seek employment nationwide, or even statewide. Rather, they will seek employment fairly close to their homes, in communities where wages and other benefits are roughly the same (comparable). These benefits, in turn are influenced by population, size of department, revenue sources, and the other criteria used here, including general economic activity. The case-- or difficulty -- with which those seeking employment can travel between employers ---in this case, cities-- in looking for jobs and in reporting for work is an important factor in defining the size of a labor market.

Just as important in determining comparable job market is proximity to St Louis: The City has not entered any evidence that the parties have ever proposed prior to this arbitration the use of comparables outside the St Louis job market. The City disputes Collinsville, but it is interesting that the City does use Collinsville to compare the captains' wages in Belleville to lieutenants' wages in Collinsville

For the above reasons the Union requests that it's list of comparables be accepted as the appropriate bench-marks for analyzing the parties' proposals.

### **C. Hours of Work**

The Union's position is to maintain the *status quo* work schedule of 10/14. While utilized by many departments across the nation, there are difficult challenges to the Firefighters employed under a 24 on-duty / 48 off-duty shift system. Under the *status quo*, Belleville Firefighters have the opportunity on a daily basis to ground their personal lives away from the fire station. Should a problem as this occur for a 24-hour shift employee, the problem may not be able to be addressed until the next day, causing much more hardship. And because all but two (2) Belleville Firefighters specifically have not worked the 24-hour shifts, they were neither hired under this system nor has the Union indicated any interest in going to 24-hour shifts. The drastic change in lifestyle could easily have a negative impact on their personal and family relationships.

Additionally, emotional and physical stresses and danger inherent to a Firefighter's job should be weighed when considering the extension of work hours.

With respect to the City's argument that a change in the work schedule will change the ISO rating for Belleville, the Union notes that the ISO rating does not require that any Firefighters be on duty at a given time. Indeed, the Chief testified that it may only help lower rating and that they had just been rated. According to City's own documents:

Cities are re-graded every 10 to 15 years, based on population. The ISO Inc, public Protection classification process, using the FRS as the grading tool, does not require a city to have specific fire equipment or personnel to respond. Instead, the grading evaluation process gives credit for all elements of the fire protection system that relate to the classification detail established in place when the city is evaluated.

Regarding the Administration's claim that the increase is necessary to comply with Department of Labor Rules, the Union argues that the safety standard is to insure Firefighters do not act on their own and that officers cannot demand that a Firefighter enter a building heavily involved with fire without safety gear, communication and back up. This is not to be construed as all fires, but only fires past the incipient stage or operating in a IDLH and defined as "an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere." The standard has an exclusion if

life is in jeopardy. The standard does not require two fully-suited firefighters outside. If this is the case that there is some sort of requirement for the Belleville Fire Department to have 12 on duty at a time, then all fire departments in the state would have to have a minimum of 12 Firefighters on duty at all times.

Addressing the City's argument that it will maintain the bargaining unit strength of 51 authorized full time positions, the Union points out that the current contract calls for minimum staffing levels per day to be at least 11. According to the Union, currently the City and public benefit from having at least 22 Firefighters provide coverage over a 24-hour window starting at 8:00 a.m. Half work the first 10 hours, and the other half relieve the first at 6 p.m. The City proposal will at no time guarantee that more than the current levels will be maintained. If the City was serious about staffing, argues the Union, it would be maintaining the 12 or 13 level now and asking for the daily minimum to be increased to 12 or 13 required to be on duty at a time. That is not what the City is proposing. And, in fact, in the first two proposals (dated March 19th and 31st), the City proposed to delete the 11- man minimum in the contract.

The Union points out that to understand the City's proposed change in hours of work, one must understand what a Kelly day is. A Kelly day is simply unpaid time off, just as any other non-scheduled work time. By putting a name to it, the City is trying to claim a benefit that does not exist. The City could just as easily put a name on the two weekends off the Firefighters currently enjoy and claim it as a benefit.

The City has not declared it would be adding Firefighters if they stayed on the current shifts. The City cannot claim savings of \$450,000 dollars on Firefighters that do not exist. The only overtime savings the City could claim is if it returned to or near the current 11-man minimum.

The City claims that its proposal would save \$450,000 over hiring additional men. If the figures supplied by the City are used its proposal would cost the City an average of \$12,000.00 per man for the total compensation between the years 1999 and the total compensation after 5/1/00. This cost is at least \$612,000 per year (51 x 12,000) additional over the 1999 year. And that doesn't count the salary of the 52nd man they would promote out of the bargaining unit. The City will not explain in common sense language how any discussed proposals will either benefit the firefighter or cost the City right at \$12,000 per man. This represents a 25 percent increase in benefits or costs to the City in just one year. The end results are the byproduct of all the City's mistakes and skewing the exhibits.

Under the City's proposal the only given is the Administration will reduce the bargaining unit from 52 to 51 to do the same amount of work. As testified at hearing, the Firefighters currently have two full weekends off per every 28 day cycle (26 per year). Under the City's proposal they will have only eight or nine full weekends off per year, as per city advocate. All wage proposals prior to and including the January 26th proposal were always tied to a new two-tiered wage system. The City is still proposing a two-tiered overtime system at the time of this arbitration. The Union has never shown an interest in beginning a two-tiered pay system.

With respect to the City's claim that the change would not change the rankings in its comparables, the Union points out that in the City proposal, Belleville Firefighters would move from working 3.8 hours per week less than the current average to working 3.2 hours per week more than the current average. Under the City's radical proposal, the average will increase 1.42 hours per week for the whole group. Collinsville firefighters have 12 hours per year personal leave and a maximum of four (4) weeks of vacation (168 hours), compared to Belleville's 24 hours personal leave and up to five (5) weeks of vacation (210 hours). The City's proposal would move Belleville Firefighters from working less hours than Collinsville firefighters, to basically working seven (7) more hours per week and would change the relationship. The Union's proposal will maintain the status quo.

The Union points out that Effingham works 10/14 shifts and 2,184 hours per year, the exact same as Belleville as are another six cities working non 24/48 schedules in the same exhibit. Besides those listed by the City, the Union pointed out that south of Interstate 70 the fire departments working non 24/48 schedules are as follows:

Effingham, 10/14 shifts, and 42 hours per week

East St Louis at 42 hours per week

Collinsville at 42 hours per week

Marion at 42 hours per week

Metropolis at 42 hours per week, but they split their shifts 12 and 12

Anna at 40 hours per week.

East St Louis, Collinsville, and Marion are all on a 24 hours on and 72 hours off schedule.

If the City proposal is adopted there will still be, at most, 51 firefighters instead of the current 52 to protect the citizens, lives and property and to address all the other required work that needs to be done daily. There is no guarantee that the Administration will not go back to the 11-man minimum in the contract. The public is better-served by 22 fresh Firefighters on a given 24-hour day than by 11 or maybe 12 or 13 who may have little energy after fighting a fire at 3 p.m.

#### **D. Conclusion**

In *Fort Atkinson Education Ass'n v. District of Fort Atkinson*, (Decision No. 17103-a Wisconsin Employment Relations Commission, Kerkman, Arb. 1979 [unpublished]) Arbitrator Joe Kerkman set forth a three-fold criteria for change in the status quo, accordingly:

1. A demonstration that the existing language is unworkable or inequitable;
2. An equivalent "buy-out" or quid pro quo;

### 3. A compelling need.

According to the Union: (1) the City has failed to meet any of the above criteria; (2) The City has not made its final offers and reserved the right to change the offers currently in negotiations. In doing so, the City erred by asking to have this issue bifurcated, because it removed from the arbitrator the ability to determine if a *quid pro quo* is maintained; (3) the Union would have no assurance that the manning would be anything but what it is currently; (4) Two nearest cities have the same 42-hour work week as Belleville firefighters currently; (5) The Administration has demonstrated its ability to claim language in contract is unlawful; (6) The arbitrator is without power to decide whether a *quid pro quo* is maintained; (7) Changes such as the City is proposing are best decided at the bargaining table where both parties can judge for themselves what risks are acceptable and what is due compensation for increased work, exposure to danger and change in lifestyles, and (8) An award for the Administration would upset 28 if not 61 years of bargaining to arrive at the current contract (*Brief for the Union* at 24-25).

## V. DISCUSSION

### A. Background

As indicated, numerous issues, both economic and non-economic, remain unresolved at the time of the hearing. In a mediation session held on Sunday, February 20, 2000, both parties indicated that if the hours provision was resolved, virtually everything else in the contract would fall into place." The declaration by the parties that one issue appeared to be the decisive issue called for a bifurcated hearing. In any other circumstance a bifurcated hearing would arguably be inappropriate under the final offer provisions of the Act. See, e.g., *City of Metropolis, Illinois v. Metropolis Professional Firefighters Assn Local 3367* (Gruenberg, 1993)(asserting that in accordance with 14(g) of the ISLRA economic issues should be resolved at one hearing). However, when both parties indicate a high probability of settlement once one issue is resolved, and at the same time indicate that little or no bargaining has taken place on a number of unresolved issues, the intent and purpose of the statute, to encourage voluntary settlement, is arguably satisfied by arbitrating *the* determining issue and leaving the remainder of the contract to the parties.<sup>1</sup>

### B. Statutory Criteria

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<sup>1</sup> The same result could arguably be achieved by hearing all the evidence on all remaining issues, issuing an award on hours, and then remand to the parties the unresolved issues. Failing to settle, a subsequent award would then be issued.

The parties agree that the arbitration panel is directed by Section 14 of the IPLRA (5 ILCS 315/14(h)) to decide each of the disputed issues in accordance with the following criteria:

(g) . . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Because Section 14 of the IPLRA provides that the decision be based on the factors only "as applicable," some of the factors enumerated in the statute may not be relevant or controlling. Further, under the IPLRA, other factors not enumerated may be relevant to the disposition of the case. As noted by Arbitrator Milton Edelman in Granite City (discussed *infra*):

These eight factors guide arbitrators for both economic and non-economic issues, but nowhere does the Act tell the parties or the arbitrator which factor is most important and which least important. Nor does the Act give weight to the factors. For each impasse issue the Arbitrator decides which factors are important and how to weigh them. A significant – perhaps the most significant – consideration in deciding an issue is the weight to be given to each of these criteria.

**The arbitrator has considerable leeway in choosing the factors upon which to base an award, picking those deemed controlling which still giving attention to the others. The eighth criterion "other factors," deserves separate mention. It frees the arbitrator from confinement to the other seven, allowing special consideration of a factor that may be important for a particular issue even if the Act does not specifically mention this special factor. (Edelman at 3, emphasis mine).**

### **C. Comparable Bench-Mark Cities**

As noted, the Administration submits that the most appropriate comparable communities are: Alton, Carbondale, Danville, Galesburg, Granite City, Pekin, Quincy, and Urbana. The Union's list contains Alton, Collinsville, East St. Louis and Granite City.

While not dispositive in the issue before me (hours of work), the Employer makes the better case with respect to comparables. Its proposed list of home rule communities south of Interstate 80 with population, area, EAV, budget and department size is more appropriate with its specific sampling than the limited labor market sampling of the Union's. Indeed, as argued by the Administration, five (5) communities not on the Union's list have equal or more "matches" than the Union's most evenly matched community.

The City submits that it is appropriate to review interest arbitration decisions which have included Belleville in the arbitrator's final list of comparable communities. In this regard Arbitrator Milton Edelman in City of Granite City and Granite City Firefighters Association, Local 253, S-MA-93-196 (1994) considered a stipulated list including the following: Alton, Belleville,

Carbondale, Danville, DeKalb, Galesburg, Kankakee, Moline, Normal, Pekin, Quincy, and Urbana. Eleven of these communities are found on the City's comparable community list (excluding DeKalb and Kankakee) while only two of the thirteen are on the Union's list. Similarly, in City of Rock Island and Rock Island Firefighters, Local 26, S-MA-91-64 (1992), Arbitrator Herbert Berman accepted the Employer's list of Alton, *Belleville*, Danville, Galesburg, Granite City, Moline, Normal, Pekin, Quincy, and Urbana, as comparable to Rock Island. Only Carbondale and Champaign from the City's list were omitted in Rock Island, while only Alton and Granite City from the Union's list here were found appropriately included as comparable communities in that case.

All factors considered, I find the Administration's list as more appropriate than the Union's proposed bench-marks.

### **C. Hours of Work**

The current contract language on hours of work is as follows:

#### **ARTICLE V. HOURS OF WORK**

##### **Section 5.1 Platoon Duty Shifts**

The employees of the Fire Department of the City shall work an average total of forty-two (42) hours per week, alternating in four (4) platoons. The work schedule shall be one agreed upon by the City and the UNION, daily work schedules shall be ten (10) hour days and fourteen (14) hour nights.

As noted, the Union's position is to maintain current contract language. The City is proposing to change that language to the following:

Article V - Retitle to "Hours of work and overtime" and amend to provide:

Section 5.1 - Application of Article. This Article is intended only as a basis for calculating hours of work and overtime payments. Nothing in this agreement shall be construed as a guarantee of hours of work per shift, week or work cycle, or any other period.

Section 5.2 - Normal work Day and Work Period.

Employees covered by this Agreement shall be assigned to regular duty shifts. Effective May 1, 2000 (Or as soon as practicable following the effective date of this Agreement if it is executed after May 1, 2000), the normal work day for 24-hour shift personnel will be twenty-four (24) consecutive hours, starting at 8:00 a.m. followed by forty-eight (48) consecutive hours off duty. The City may implement other work schedules for training or

educational purposes or day shifts as it deems appropriate. The work period shall be twenty-four (24) consecutive days. Each employee will be assigned to a work period.

In order to reduce the annual hours worked, 24-hour shift employees shall be provided with every eighth scheduled shift day off as work reduction days without reduction in annual salary. Employees assigned to the same shift may trade work reduction days within the same 24 day cycle provided written requests to trade is given to the Fire Chief at least two days prior to the first affected shift.

1. **Introduction.** I am on record as pointing out that there are times that interest arbitrators will not award an item even though the party requesting it has demonstrated that comparability or other criteria favors its position. In education, for example, a party may request that an arbitrator adopt a "strict" salary-index schedule where all steps are based on a constant percentage of the base salary. Alternatively, a party may request that a neutral move a school district "off the index" that, for years, governed the salary relationships between lanes and columns. In each case it is possible that the requesting party could cite favorable comparative data in support of its request, yet not have its position awarded. More is at work here than mere comparability or need.

While there is no *per se* burden of proof on either party in an interest arbitration, if one party is making an unusual demand *or one that substantially alters past practice*, it is not uncommon for the interest neutral to place the burden of persuasion upon the proponent of such a proposal. For example, the Chairperson of the Arbitration Board in *Twin City Rapid Transit Co. v. Amalgamated Ass'n of Street Employers, Division 1005*,<sup>2</sup> stated:

We believe that an unusual demand, that is, one that has not found substantial acceptance in other properties, casts upon the [the party proposing the demand] the burden of showing that, because of its minor character or its inherent reasonableness, the negotiators should, as reasonable men, have voluntarily agreed to it. We would not deny such a demand merely because it has not found substantial acceptance, but it would take clear evidence to persuade us that the negotiators were unreasonable in rejecting it.<sup>3</sup>

Similarly, in the often-quoted decision, *Tampa Transit Lines Inc. v. Amalgamated Ass'n of Street Employees, Division 1344*,<sup>4</sup> the Chairperson of the Arbitration Panel stated that: "An

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<sup>2</sup> 7 LA 845 (McCoy, 1947).

<sup>3</sup> *Id.* at 848.

<sup>4</sup> 3 LA 194 (Hepburn, 1946).

arbitrator cannot often justify an award involving the imposition of entirely novel relationships or responsibilities. These must come as a result of collective bargaining or through legislation."<sup>5</sup>

Arbitrator Tom Gilroy, in *Bettendorf Community School District v. Bettendorf Education Ass'n*,<sup>6</sup> ruled that the party seeking changes in a past practice or a tentative agreement has to carry the burden of proof.

A third party neutral should not take lightly that which presumably competent representatives of the Union membership and the employer judged to be a fair settlement, honestly arrived at through the give and take of the negotiation process. While the right of subsequent rejection by elected officials or Union membership may be inherent in the negotiation process, a good faith agreement arrived at by negotiators, albeit tentative in this case, must be given strong consideration. To do less invites irreparable damage to the negotiation process and undermines the legitimate expectation of *both parties* that a concession made in good faith at the bargaining table will not be used later as a starting base point before a third party neutral for either party to gain additional contract concessions. That posture can be a two-edged sword that, if endorsed and perpetuated by the neutral, can be used by either party to negate good faith negotiations.<sup>7</sup>

Earlier in his decision Arbitrator Gilroy declared:

The Union has the considerable burden of demonstrating a compelling reason for this arbitrator to deviate from the tentative agreement reached by the negotiating teams representing both parties. Were the situation reversed, the arbitrator would apply the same burden to the employer.<sup>8</sup>

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<sup>5</sup> *Id.* at 196.

<sup>6</sup> Iowa Public Employment Relations Board (Gilroy, Arb., Feb. 24, 1976) (unpublished).

<sup>7</sup> *Bettendorf Community Sch. Dist. v. Bettendorf Educ. Ass'n*, Iowa Public Employment Relations Board (Gilroy, Arb., Feb. 24, 1976) (unpublished)).

<sup>8</sup> *Id.* See also, *City of Blaine v. Minnesota Teamsters Union, Local 320*, 90 LA 549, 552 (1988) (Perretti, Arb.) ("unless the contract language is causing severe hardships or grievous harm to either party, I am most reluctant to change the construction of the contract without substantive evidence of a need for a change."); *Williamson Cent. Sch. Dist. v. Williamson Faculty Ass'n*, 63 LA 1087, 1090-91 (1974) (Coutnick, Arb.). ("No evidence has been presented to the Fact-Finder to demonstrate a specific need for the relief sought. Nothing in the record suggests that the Board has not exercised its power in a judicious and responsible manner. In the absence of clear evidence of improper conduct, I am unwilling to recommend that the Board adopt the Association's proposal at this time."); *Adams County Highway Dep't v. Adams County Highway Employees Union, Local 323*, 91 LA 1340, 1342 (1988) (Reynolds, Arb.) (designating

Arbitrator Sharon Imes, in *School District of Wausau v. Wausau Education Ass'n*,<sup>9</sup> expressed this principle as follows:

It is not uncommon for arbitrators to require a "compelling need" be shown and/or that a quid pro quo exists in order to justify the removal of benefits secured by a party through negotiations . . . .

. . . .

Absent a showing of need for change or a showing of financial difficulties if the status quo were to be maintained, the undersigned finds no reason why she should implement a change in the working conditions which is more appropriately accomplished voluntarily by the parties.<sup>10</sup>

And, Arbitrator Joe Kerkman, in *Fort Atkinson Education Ass'n v. District of Fort Atkinson*,<sup>11</sup> set forth a three-fold criteria for change in the status quo, accordingly:

- 1) a demonstration that the existing language is unworkable or inequitable;
- 2) an equivalent "buy-out" or *quid pro quo*;
- 3) a compelling need.<sup>12</sup>

*Status quo* arguments are especially prevalent in disputes about higher insurance deductibles, co-insurance, and premium sharing. They also emerge in firefighter cases where a party is seeking a change for a long-standing practice or benefit, such as the work week.

**2. Conclusion.** Management has advanced numerous arguments in support of a move from the current 10/14 work schedule to a traditional 24/48 schedule, a schedule adopted by most firefighters and cities throughout Illinois. Indeed, the record indicates that of the 150 departments responding to the Illinois Professional Firefighters Association's 1999 Wages and Working Conditions Survey, 144 worked 24 hour shifts, 6 did not (City Ex. Tab 1, Section D, and Tab 2, page 4). I agree with the Administration that with over 99% of the reporting departments working 24 hour shifts it cannot seriously be said that the Firefighters throughout the State are

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three-part test in evaluating whether party desiring to alter contract language has met burden).

<sup>9</sup> Decision No. 18189-A, Wisconsin Employment Relations Commission (Imes, Arb. 1982) (unpublished).

<sup>10</sup> *Id.*

<sup>11</sup> Decision No. 17103-A, Wisconsin Employment Relations Commission (Kerkman, Arb. 1979) (unpublished).

<sup>12</sup> *Id.*

opposed to this schedule as detrimental to themselves and their families. The Union's assertion regarding the current 10/14 schedule and divorce rates (R. 72) is nothing more than interesting lawyering. There is simply no evidence in this record that police and fire have higher divorce rates than other sectors of the population, and if they do, that the divorce rate is somehow connected to the work schedule. The fact that an individual is away for 24 hours at a time may have the opposite effect. That is, more marriages are saved because people get their "space" and time to themselves.

There may also be something to the Administration's assertion that the Union has taken a recalcitrant position regarding bargaining an issue of great concern to management. (R. 31-32). At the same time the Union responds that the City would not agree to many of the Union's proposals unless the Union would agree to a 24/48 schedule. (See, *Brief for the Union* at 20). To this extent I agree with the Administration's assertion that "a party should not be rewarded by absolutely refusing to negotiate and then argue that a proposed change should not be awarded because the parties would not have come to that same position through negotiations." (*Brief for the Employer* at 5). An interest arbitration may indeed be one case where the common law "clean hands doctrine" is applicable. A party that declares words to the effect "You're not going to get it in arbitration, thus we are not going to talk about it," arguably disqualifies itself from relying on the traditional rule (Kerkman's three-part test) cited above. Hard evidence that this in fact took place would favor the Administration's position.<sup>13</sup>

Where does this leave the parties?

What is clear from the record is that the City's proposal will require the bargaining unit to work an extra 365 hours per year. As noted by the Union, under the City's proposal the Firefighters will have worked the current total 2,184 hours by November 3rd of each year. The rest of the hours (in a sense) will "go to the Employer." (*Brief for the Union* at 12). As consideration for the increase, the City is offering a 12 percent wage increase. (While the increase itself is not before me, contrary to the Union's position it is appropriate to consider it within the offered context, that of a quid pro quo). The hours, however, are increased an additional 10.3% to 14.9% (net average weekly hours). (City Ex. Tabs 55, 56 and 57). The Union argues the increase is 17 percent. (R. 73). A 12 percent raise, while not unreasonable, appears insufficient for the net increase in hours proposed by the Administration.

What of the safety and ISO arguments advanced by the Administration? I am not convinced that the new safety regulations and ISO requirements favor the City's proposal over the Union's *status quo* position. As noted by the Union, adding one or two Firefighters may help the ISO rating, but there is no assurance that it will even make much of a difference toward reaching the 70 percent rating. (See, *Brief for the Union* at 13; R. 39). As for safety considerations, there is no evidence that

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<sup>13</sup> When the issue (i.e., that the Union refused to negotiate because an arbitrator would not change the current schedule) was raised at the hearing by Mr. Ottosen (R. 31), Mr. McDonald denied that words to this effect were ever said (R. 32).

the City is not currently in compliance with all the mandates of the 2-in, 2-out rule, the rule requiring that firefighters must operate in two-person teams when making an interior attack (*Id.* at 15-16; R. 42). The Union's concern regarding the 11-person minimum manning is also of note. (*Id.* at 22-24; "The City is not giving any assurance that because of sick or injury time off that the firefighters will have any more than the current 11 men on duty."). Why has the City proposed in prior bargaining sessions that the 11-man minimum be eliminated instead of increased?

More telling is the Employer's financial arguments. I credit management's argument that a significant resource allocation is required to increase firefighter coverage, perhaps as much as \$450,000 for an additional ten firefighters. I agree with the City that hiring ten more Firefighters is not fiscally probable, at least without a major shift in priorities.

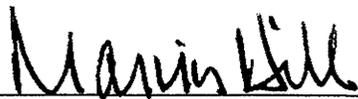
Finally, and what tips the scales in the Union's favor, the record indicates that this is apparently the first year in many that the Administration has proposed a change in hours from the long-standing, status quo 10-14 workday. The bargaining unit has been working this schedule for over 25 years. The Union points out that only two employees have worked an alternate schedule (R. 73). All but two know no other schedule. (*Id.*). The past practice favors the Union's position.

For the above reasons, I am siding with the Union. This award should not be interpreted as a signal to the Firefighters that because an Arbitrator is unlikely to change an existing practice the unit can afford to refrain from good faith bargaining on the issue. Similar claims by the Administration in the future (specifically, that the Union has not engaged in serious bargaining on an issue important to the Administration), backed up with hard evidence of a mind set by the Union of "you're not going to get it, thus we're not going to talk about it," will carry serious weight should the parties again end up in interest arbitration.

## VI. AWARD

The final offer of the Union (current language) is awarded with respect to hours (Article V).

Dated this 19th day of March, 2000,  
DeKalb, Illinois.

  
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Marvin Hill, Jr.,  
Arbitrator