INTEREST ARBITRATION
BEFORE
DISPUTE RESOLUTION BOARD

IN THE MATTER OF THE INTEREST ARBITRATION	)	
	)	
BETWEEN	)	
	)	
THE CITY OF CHICAGO, ILLINOIS	)	
("Employer")	)	
	)	
AND	)	OPINION AND AWARD
	)	
THE POLICEMEN'S BENEVOLENT & PROTECTIVE	)	
ASSOCIATION OF ILLINOIS,	)	
UNIT 156 - SERGEANTS	)	
("Union")	)	

The hearings in the above matter, upon due notice, were held on October 18 and 19, 2005, at the offices of Franczek Sullivan, P.C., Attorneys at Law, 300 South Wacker Drive, Suite 3400, Chicago, Illinois 60606, before Elliott H. Goldstein, serving as Neutral Chair of the Tripartite Arbitration Panel in the above matter, pursuant to Section 28.3(B) of the parties' current Collective Bargaining Agreement and Chapter 5, Section 315/14(h), (i), (k) and (m) of the Illinois Public Relations Act ("ILPRA" or "the Act"), and in accordance with the parties' pre-hearing Submission Agreement, executed by the parties on September 9, 2005.

I. PRE-HEARING AGREEMENT

This Submission Agreement, entitled Pre-Hearing Stipulation, is as follows:

I. Dispute Resolution Board

Pursuant to Section 28B of the Collective Bargaining Agreement between the City and the Union (hereinafter referred to as "the Contract"), the parties have selected and convened a three-person Dispute Resolution Board (hereinafter referred to as "the Board"). The City's appointee is David Johnson, Esq.; the Union's appointee is Sean Smoot, Esq. The City or Union may substitute appointees prior to the conclusion of the evidentiary hearing. The Neutral Arbitrator is Elliott H. Goldstein, Esq. (hereinafter referred to as "the Arbitrator").

The parties' advocates shall be in attendance at any conference of the Board and shall otherwise be advised of any communi-cations between or among Board members.

The parties stipulate that the procedural prerequisites for convening the Board and the arbitration hearing have been met, and that the Board has jurisdiction and authority to rule on the issues set forth in Section III, below, except as otherwise specifically indicated. The parties waive the time limits as set forth in Article 28 of the Contract. Further, the parties may waive the requirements of Article 28 with respect to their representative's participation on the Board with respect to all preliminary hearings, evidentiary hearings, and oral argument upon the record.

II. Hearing

The hearing in this matter will commence on June 23rd for a pre-hearing conference. The hearing will proceed as follows:

1. On July 5 and July 21, 2005, the parties will convene at 10:00 a.m. at the offices of Franczek Sullivan, P.C., 300 South Wacker Drive, Suite 3400, Chicago, Illinois, for a status conference. During this conference, the parties will stipulate regarding the procedure in this matter. If the parties cannot reach an agreement, then the Arbitrator will enter an order regarding such procedure.

2. On July 29, 2005, the parties will file a submission of the disputed issues with the Arbitrator and serve a copy of this submission on the opposing party. The post-marked date of mailing shall be considered the date of filing and service.

3. On August 12, 2005, the parties shall file offers on the disputed issues with the Arbitrator and serve a copy of them on the opposing party.

4. On August 15, 2005, the parties and the Arbitrator will meet at 10:00 a.m. at the offices of Franczek Sullivan, P.C., 300 South Wacker Drive, Suite 3400, Chicago, Illinois, to mediate the issues in dispute. In the event that the mediation is not complete as of August 15, 2005, the Arbitrator may convene additional mediation sessions on additional dates to be specified.

5. On October 7, 2005, the parties shall file pre-hearing briefs with the Arbitrator that set forth the evidence and arguments in support of their offers. Each party shall also serve a copy of its pre-hearing brief on the opposing party.

6. By October 12, 2005, the Arbitrator will review the parties' submissions, determine whether any additional evidence is required for any issue and notify the parties of his determination. However, either party may request a hearing on the issues of Hazmat, bidding and details, as was advised by the Union in its October 7, 2005 submission to the Arbitrator.

7. If the Arbitrator requires additional evidence for any issue or if either party desires a hearing on the issues of D-2A, Hazmat, and/or bidding and details, a hearing will convene for this limited purpose on October 18, 2005, and continue thereafter on October 19, 2005 and October 20, 2005. At the close of the hearing, the parties shall file final offers on the disputed issues with the Arbitrator and serve a copy of them on the opposing party.

8. Each party shall be free to present its evidence in either the narrative or witness format. Narrative presentations shall be made under oath so as to permit cross-examination by opposing party. The Union shall proceed first with the presentation of its case-in-chief on the issues of D-2A, Hazmat and bidding and details, or any other issue on which the Arbitrator requires additional evidence. The City shall then proceed with its case-in-chief on the same issues. Each party shall have the right to present rebuttal evidence. The order of presentation shall not be determinative as to which party, if any, bears the burden of proof on any impasse issue.

9. After all of the evidence has been submitted, the parties shall agree upon a deadline for filing post-hearing briefs. If the parties are unable to agree upon a deadline, the Arbitrator shall set a date for the submission of post-hearing briefs. Any extension of this deadline must be mutually agreed upon by the parties or granted by the Arbitrator.

10. The parties may modify the above procedure by mutual agreement. Additionally, the Arbitrator may modify this procedure at his discretion. (Post-hearing briefs waived, but submissions presented on the relevance, if any, of the tentative agreement between the Chicago Firefighters Union, Local 2, and the City of Chicago, as well as the introduction of a draft copy of this tentative agreement, as of November 3, 2005.

III. Issues

The parties retain the right to withdraw issues from the proceeding; stipulate that no evidentiary hearing will be necessary for any issue; and modify their offers, provided that any such modification is submitted at or prior to the completion of any evidentiary hearing.

IV. Media and Attendees

No member of the media or public shall be present at any evidentiary hearing in this matter. In addition, no person present at the arbitration proceedings will comment to the media regarding said proceedings. Both parties will secure a written agreement from their representatives that they will maintain the confidentiality of the actual proceedings from the media until a final decision is rendered. The proceedings will not be videotaped.

V. Joint Exhibits

The parties shall submit the following exhibits to the Board by stipulation:

- The Parties' Current Collective Bargaining Agreement (Jt. Ex. 1).
- Uncontested Items. (Jt. Ex. 2).
- This Pre-Hearing Stipulation and Any Other Stipulation (Jt. Ex. 3).

VI. Award

The Board shall base its findings and decision upon the relevant provisions of the parties' Collective Bargaining Agreement and the applicable provisions of the Illinois Public Labor Relations Act ("ILPRA") including Sections 14(h)(i)(k) and (m). The Board shall issue its written opinion and award within sixty (60) calendar days after submission of the post-hearing briefs or at a later date if required by the Arbitrator.

VII. The Record

Any evidentiary hearing will be transcribed by a court reporter, and the parties will order three transcripts of the hearing. The City and the Union will equally share the cost of the court reporter and transcripts. The Arbitrator shall retain the entire record in this matter (including the parties' submissions) until such time as he has been directed in writing by both parties to destroy the record. Any reasonable storage costs incurred by the Arbitrator in fulfillment of this obligation shall be shared equally by the parties.

VIII. Continued Negotiations

No provision herein shall be construed to prevent negotiations and settlement of the terms of the successor agreement at any time, including any negotiations or settlement prior to, during or subsequent to an evidentiary hearing or award of the Arbitrator.

IX. Sequence of Controlling authority

These proceedings shall be governed by the following, in order of priority:

1. This Pre-Hearing Stipulation; then

2. Article 28 of the parties' Collective Bargaining Agreement; then

3. Sections 14(h), (i), (k) and (m) of the Illinois Public Labor Relations Act and the Rules and Regulations of the Labor Board with respect to those sections, including Section 1200.143.

X. Authority of Representatives

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

II. ISSUES IN DISPUTE

On July 29, 2005, the parties submitted a Joint Statement of Disputed Issues to the Board (Jt. Ex. 3). The parties have identified the following issues in dispute:[1]

- (U) Exhaustion of Grievance Procedure (Article 9)
- (U) Selection of Police Board Hearing (Article 9)
- (U) Health Insurance Cap (Article 12)
- (U) Equipment and Hazardous Materials Training (Section 15.5)
- (U) Rank Credit (Section 20.10)
- (U) Details (Section 23.8)
- (J) Wages (Section 26.1)
- (J) Compression (Section 26.1)
- (U) D-2A (Section 26.1A(i))
- (U) Quarterly Differential (Section 26.2)
- (U) Quarterly Differential Pensionability (Section 26.2)
- (U) Payment of Compensatory Time (Section 26.5)
- (U) Baby Furlough Days (Article 29)
- (U) Furlough Days (Section 29A.2)
- (U) Bidding (Article 32)
- (U) Compensatory Time Exchange
- (U) Post-Retirement Health Care Plan (VEBA/VEMA)

- (U) Union Business Leave
- (U) Health Care (Article 12)
- (C) Union Reimbursement

III. AUTHORITY OF THE DISPUTE RESOLUTION BOARD

The parties have stipulated that these proceedings are governed, in sequential order, by: (1) the terms of the parties' September 8, 2005 Pre-Hearing Stipulation; (2) Article 28 of the parties' Collective Bargaining Agreement; and (3) Sections 14(h), (i), (k) and (m) of the IPLRA and the Rules and Regulations of the Illinois State Labor Relations Board with respect to those sections, including Section 1200.143 (Jt. Ex. 3).

Significantly, the parties did not incorporate the "last best offer" provision of the IPLRA into their contractual impasse resolution procedure. See 5 ILCS 315/14(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)"). Thus, the Board is not required to choose between the parties' last offers of settlement for economic issues and, as Arbitrator Briggs observed in interpreting identical language in the 1999-2003 Agreement between the City and the FOP "has the latitude to design its own resolution for each and every issue in dispute." City of Chicago and Fraternal Order of Police, Lodge 7, at 20 (Arb. Briggs, 2002). See also City of Chicago and Fraternal Order of Police, Lodge 7, at 24-25 (Arb. Benn, 2005) (interpreting identical language in FOP Agreement as granting "authority to form the terms of the Agreement using the statutory factors found in Section 14(h) of the IPLRA, but with a result different from the parties' final economic offers.").

IV. INTRODUCTION

The case for the City was presented by James Franczek, Esq. of Franczek Sullivan, P.C., outside counsel for the City. The case for the Union was presented by Joel D'Alba, Esq., of Asher Gittler Greenfield & D'Alba, Ltd., outside counsel for the Union. At the hearings the parties were afforded full opportunity to offer evidence and argument, and to examine and cross-examine witnesses who were sworn. Both parties presented their modified offers regarding disputes issues on October 7, 2005, as per the above-quoted Submission Agreement, but on November 4, 2005, the parties agreed to withdraw Issue XVII, "Union Reimbursement," again as permitted by the Submission Agreement.

After the evidentiary hearing, both parties presented voluminous material dealing with the tentative Firefighter-City Labor Contract, cost-of-living and comparability factors, as well as consumer price information. The transcript of the proceedings contains 292 pages.

V. BACKGROUND

The last Agreement between the parties expired on June 30, 2003. The record further discloses that both prior to the expiration date of the predecessor contract and during the course of the over two years since that date, there were numerous negotiating sessions between the parties. The evidence of record also reveals that the City's Sergeants, Lieutenants and Captains are each represented by the Policemen's Benevolent & Protective Association ("PBPA"). Sergeants are designated Unit 156A, while Lieutenants and Captains are designated as Units 156B and 156C, respectively. The Sergeants are currently the only group of represented City employees (and the only sworn employees) who have failed to reach a successor agreement with the City and who have invoked interest arbitration.

It is also evident from the parties' submissions and the evidentiary record that, over the course of more than two years of negotiations since the expiration date of the predecessor Labor Agreement, the Sergeants', Lieutenants' and Captains' Unions negotiated either together or in concert. One extremely important issue for the three PBPA-represented Units, and, apparently the most significant issue to this Sergeant's Union, the party at interest in the current matter, was a demand by each of the three for an additional 3% base wage increase, apart from any current wage offer agreement, which all three PBPA-represented Unions strongly believed was required to restore an historic wage differential between the highest paid sworn officers in the City's FOP-represented bargaining Unit and its Police Sergeants.

To the Union, the total compensation differential has been historically roughly 18%, as a binding agreed wage separation, expressed as 13.2% differential on the salary schedule and 5% in what was known as the "Quarterly Overtime Allowance," now designated as the "Quarterly Differential Allowance." The Union believes that this 18% difference, in “scheduled” salary plus quarterly overtime allowance, between the highest paid sworn officers in the FOP bargaining unit and the Sergeants, with the Sergeants maintaining an 18% higher wage, in total salary compensation, was negotiated in 1982 or 1983 by an agreement between this Union, as well as the representatives of the Lieutenants and Captains Union, the other two PBPA-represented bargaining groups, and this City.

Relying on earlier arbitration decisions by this Neutral and several other Illinois interest arbitrators, the Union emphasizes that a change in this negotiated and historic pay relationship would be a change in the status quo and a breakthrough item, as that term is used under the Illinois Act. However, urges the Union, such a breakthrough or

change in the status quo occurred in 1999, without any negotiations or agreement by this Union, when the City created a D-2A salary rate for 1200 to 1300 detectives, gang crime specialists, and youth investigators represented by the Fraternal Order of Police, Lodge 7.

What the City did, says this Union, by creating a new D-2A salary rate for the FOP-represented Detectives, basically, by virtue of its agreement with Lodge 7 in their 1999 Labor Contract was to add a "special" 3% negotiated wage increase to this group of sworn officers in the FOP-represented bargaining unit. In a subsequent grievance arbitration case, Arbitrator Meyers held this increase was not the result of a reclassification of the Detectives to "D-2A" status.

This pay increase clearly has the effect of making the Detectives the highest paid sworn officers in the FOP-represented group, the Union notes. The aftermath of the placement was to narrow the historic differential between the highest paid sworn officers in the FOP bargaining unit and the Sergeants' wage rate from the promised 13.21% differential to 3% less than that variance. This was so because the Sergeants represented by the Union did not receive a similar "reclassification" for pay increase so as to maintain the promised 13.21% wage relationship was the highest paid FOP-represented sworn officer, this Union argues. Because of that fact, this Union, as well as the Police Lieutenants and Captains Union, pursued grievances over the D-2A pay increase for Detectives, but no similar pay increase for the Sergeants, Lieutenants or Captains so as to maintain the promised pay pattern or relationship ("parity").

This firm belief that the parity concept was tied to the highest paid sworn officers represented by the FOP, namely, the Detectives, caused this Union, as well as the other

two PBPA-represented units, to file a grievance in 2002, claiming that the creation of the D-2A pay grade by the City triggered the "me, too" clauses in each of its PBPA contracts, thus requiring a pay increase of 3% on the salary schedule for the Sergeants, Lieutenants and Captains, I note. See PBPA Unit 156 Chicago Police Sergeants', Lieutenants' and Captains' Associations and City of Chicago, (D-2A grievances) (Arb. Peter Meyers, 2003) (Appendix K in the Appendix of Authorities Cited in City of Chicago's Pre-Hearing Submission). Arbitrator Meyers rejected the three Unions' arguments that the "me, too" provisions in their respective labor contracts required a maintenance of parity and a 3% wage increase identical to the wage boost the reclassified Detectives received when they were moved to D-2A pay status. In so doing, Arbitrator Meyers specifically declared as follows:

> "(1) No wage differential was ever the subject of formal agreement between the parties; (2) no precise formulaic amount of wage differential between the salary grades existed; (3) the amount of inter-grade differentials has varied over time; (4) no evidence of a specific pay differential between sergeants and detectives has ever existed; and (5) any differential that did exist was that between sergeants and police officers generally."

Indeed, Arbitrator Meyers held that "[p]rior to the creation of D-2A, the parties recognized that a pay differential should exist between the Sergeant at D-3 and all of the FOP Lodge No. 7 classifications, including detective, that collectively made up the D-2 pay grade." See Appendix K at pp. 45-46.

This Union, however, insists that Arbitrator Meyers' reasoning and conclusions were completely incorrect in the above-cited arbitration decision. More important, says the PBPA, in this interest arbitration the Tripartite Board is clearly empowered to find that there was an historic pattern between the Detectives (now at pay grade 2-DA) and the Police Sergeants represented by PBPA Unit 156 of 18% and to "put back on track" that precise differential.

The Union further presented evidence of several instances when the historic pattern, the 18% pay differential, had "slipped" (in the form of the quarterly overtime allowance not being increased by the same percentage as general across the board wage increases) but was returned to parity at the next bargaining opportunity by Management and this Union. Since the status quo in fact is this wage parity, and Management destroyed it by the creation of the D-2A pay grade for Detectives as a reclassification in 2002 by the device of the 1999 FOP Lodge 7-City Labor Contract, the Board should, and in fact is required, to restore the status quo by granting this Union's demand that the Sergeants be reclassified to D-3A, with a 3% salary improvement on the written salary scale, the Union urges. It was the failure of Management to give the Sergeants a D-3A rating, and the accompanying 3% pay increase in "pensionable" wages, that was the critical stumbling block in this Union's inability to successfully negotiate a labor agreement with the City, the Union finally argues.

The City disagrees with virtually every one of these propositions, the evidence of record makes clear. For example, reasons the City, the Union's basic argument suggesting that granting its demand that all members of the Sergeants' bargaining unit be reclassified to a D-3A rating, with an accompanying 3% increase in wages on the written salary schedule, wholly apart from any other negotiated increase in compensation, presumes that the Union's claim of a binding historical pay differential between Detectives and Sergeants pegged at 18% is valid and representative of the actual status quo prior to 2002 when Detectives were upgraded to the D-2A wage rate.

Yet, the City submits, precisely that argument was rejected by Arbitrator Meyers in a lengthy arbitration opinion (Appendix K). As already noted, Arbitrator Meyers specifically found that no wage differential was ever the subject of formal agreement between these parties. He also moved that there was no precise formula mandating a wage differential of 18% between D-2 and D-3 on the salary schedule. Meyers stressed

that the amount of inter-grade differentials varied over time, based on the evidence submitted in the 2003 arbitration case decided by him, the City emphasized.

The City further insists that Arbitrator Meyers' conclusion that there was no evidence of a specific pay differential between Sergeants and Detectives which would trigger the "me, too" clause in the PBPA Unit 156 Labor Contract with it contradicts the Union's argument that the "real status quo" in any way involves a perpetual 18% wage differential between the Detectives and Sergeants, as the Union would have it. Thus, the Union's proposal that all Sergeants be reclassified to D-3A status is a demand for a breakthrough "for free." Such a demand has been routinely rejected by the Neutral member of the Panel, as well as by numerous other interest arbitrators applying the Illinois Act, the City strongly asserts.

It is also the City's position that several other critical factors require the rejection of the Union's central demand that all Sergeants be reclassified to D-3A status, it notes. First, it stresses that the Sergeants, along with the Lieutenants and Captains, proffered on April 23, 2003 proposal to modify the parties' "me, too" provisions to specifically include parity with Detectives, rather than with Police officers, as a whole, as the contract provided. According to the City, the Union would hardly have been bargaining for parity between Sergeants and Detectives had such parity ever existed in the first place. As Arbitrator Meyers already concluded, no wage parity has ever existed between Sergeants and Detectives, the City contends. Thus, there is absolutely nothing to "restore" so as to justify the Union's demand for a reclassification of an entire bargaining unit, the City is quick to point out.

It is also the strongly held position that the bargaining history between the City and this Union undercuts the Union's current claim that the status quo as regards an 18% wage differential is as the Union says. Despite the historical prominence of the D-2A issue during the City's 1995 and 1999 negotiations with the FOP, this Panel is told,

the Sergeants, Lieutenants and Captains in those negotiations bargained not for parity with the Detectives, but, as has long been the case, instead bargained for parity with the base increases of Patrol Officers as a whole. Thus, any existing historical parity between Sergeants and Patrol Officers actually had been between the percentage base increases given to both the Sergeants and the entirety of the FOP's Patrol Officer membership, the City further urges.

Additionally, the City reminds the Panel that, over the course of more than two years of negotiations, the Sergeants', Lieutenants' and Captains' Unions negotiated either together or in concert in their effort to reach a negotiated settlement in the current contractual dispute. The "D-2A" issue was of primary importance not only to the Sergeants' Union, but also to the Lieutenants' and Captains' Unions, Management notes. Through laborious, lengthy, and good-faith negotiations (rather than through interest arbitration), the Lieutenants and Captains negotiating teams negotiated a fair, balanced and complete contract that was met with overwhelming acceptance by the membership of both these Unions. Indeed, according to the City, the Lieutenants voted 144 to 10 in support of their successor agreement, while the Captains approved their labor agreement by a margin of 70 to 5 -- despite the absence of any “scheduled” salary increase directly related to the D-2A.

The City goes on to suggest that the other two PBPA represented bargaining units negotiated competitive and generous economic increases as part of their deal with the City, as a quid pro quo, not simply for the dropping of the D-2A proposals by the Lieutenants' and Captains' Unions, but for reaching timely agreements that avoided interest arbitration. According to the City, that agreement further permitted the implementation of the City-wide health insurance changes as of January 1, 2006. That fact is of major significance to the City, and, it claims, motivated, at least to some extent, Management's willingness to give the significant economic increases, as well as the

substantial improvements in the non-economic arena which Management believes are reflected by the terms of the Captains' and Lieutenants' Labor Contracts.

PBPA Unit 156, the Sergeants' Unit, proceeded to separate itself from the Lieutenants' and Captains' Unions, and to not agree to drop its pursuit of an additional 3% base wage increase so as to restore what it clearly believes is the "historic, required wage differential between Detectives and D-3 Sergeants." It is on that issue that an impasse in bargaining between these parties has occurred, the City emphatically argues. Since an impasse has been reached, and despite numerous attempts at mediation of all outstanding issues, the parties, under the provisions of Section 28.3(B) of their 1999-2003 Labor Agreement (Jt. Ex. 1) have referred the matter to interest arbitration, the City avers. It is on the 2-A issue that this whole case hinges, the City further stresses.

However, it is also the contention of the City that this Union is attempting to obtain through interest arbitration not only an additional 3% "D-2A" increase not obtained by the Lieutenants and Captains represented by the PBPA in good faith and arm's length negotiations, but also the very generous economic increases represented by the economic package negotiated by the Lieutenants and Captains with this Employer. Indeed, according to Management, this Union has actually continuously demanded the 3% increase represented by its "D-3A" reclassification demand, but also "significant enhancements" in virtually every aspect of the economic package negotiated by the Lieutenants and Captains, as the City sees it.

Specifically, the Union is asking for additional increases in rank credit, quarterly differential, and compensatory time that all far exceed what the Lieutenants and Captains negotiated, the City maintains. It is also the City's position that the Union's non-economic proposals represent a demand for dramatic operational changes, such as a wide expansion in the Sergeants' bidding rights and a concomitant significant constraints on Management's ability to detail Sergeants in the bargaining unit. All of the

Union demands, as specifically set forth above, taken as a package but also if individually assessed, too, constitute a radical departure from the prevailing status quo, the Employer argues, as well as, in many situations, a wholly unwarranted intrusion in to the Police Department's managerial authority. Given the conservative nature of the interest arbitration process, says the City, all of the Union's proposals should be rejected as unwarranted and unreasonable.

Also, extremely significant, from the City's point of view, the Union's economic package should be rejected as unjustified, unwarranted and unsupported because these demands are inconsistent with the negotiated agreements entered into by the Unions representing the 41 other bargaining units which successfully negotiated labor agreements with the City during this current round of negotiations. To Management, the enormity of the impact of the Union's economic offers upon the environment of labor relations within Chicago cannot be overstated.

Specifically, with reference to the Union's D-2A offer, there is no dispute that there has been an historic pay parity between certain corresponding ranks in the Police and Fire Departments, historical pay differentials between ranks in each of these two departments, and also what has been called a "eco-system" of relationships in the salary structure that apply to all the City's unionized employees. Because of the impact of the me-too provisions contained in many of the negotiated agreements between the City and its Union-represented employees, the granting of a 3% wage increase disguised as a "D-3 reclassification" would trigger demand for an additional 3% wage increase throughout the entire "eco-system" of unionized employees, the City submits. Similarly, the other wage demands and economic proposals contained in this Union's package would all be unjustified breakthroughs that would surely disrupt this labor relations "eco-system," I am told.

The City also contends that the most significant fallacy underlying the Union's outlandish proposals is the PBPA's obvious belief that it could have obtained the sort of package reflected in its final offers through arm's length, traditional collective bargaining. Recognizing that the Neutral on this Tripartite Panel has consistently held that "at its core, interest arbitration is a conservative mechanism of dispute resolution," the City maintains that the overall effect of the Union's demands, if somehow granted by this Panel, would be that the mechanism of interest arbitration would have, in this instance, given this Union much more than they ever could have obtained, on their own, at the bargaining table. The Neutral Arbitrator is reminded that interest arbitration exists to resolve "immediate impasse[s]," but cannot "usurp the parties' traditional bargaining relationship." See City of Galesburg and Public Safety Employees' Org., No. S-MA-03-197 at p. 4 (Arb. Goldstein, 2004).

The City once again emphasizes that an interest arbitration cannot be a mechanism by which a party could achieve gains beyond those possible at the bargaining table. According to the Neutral on the Panel, the City submits that:

> "The traditional way of conceptualizing interest arbitration is that parties should not be able to obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise the entire point of the process of collective bargaining would be destroyed and the parties would rely solely on interest arbitration rather than pursue it as a course of last resort."

Galesburg, at 4 (emphasis added). As the Arbitrator observed:

> "If the process [interest arbitration] is to work, it must [not] yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the particular

> circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.
>
> "Under this theory, there should not be any substantial 'breakthroughs' in the interest arbitration process. If the arbitrator awards either party with a wage package which is significantly superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route and this defeats the purpose."

Galesburg, at pp. 4-5 (emphasis original); see also City of Burbank and Illinois FOP Labor Council, No. S-MA-97-56 at p. 11 (Arb. Goldstein, 1998); City of Crest Hill and Metropolitan Alliance of Police, Chapter 15, No. S-MA-97-115 at p. 11-12 (Arb. Goldstein, 1999); Jefferson County and Illinois Fraternal Order of Police, Labor Council, No. S-MA-97-21 at p. 18 (Arb. Goldstein, 1998).

The City understands that this is the first interest arbitration between it and the Sergeants' Union. However, it cites numerous arbitration awards between the City and its other public safety unions for guidance "as to how to navigate the often treacherous terrain created by the complex and tumultuous tangle of relationships that defines labor relations in [this] City."

To Management, the interest arbitrators who have already decided cases involving wage parity in the public safety departments, as well as the impact of the "me, too" provisions in all 42 of the City's Union labor contracts, have consistently affirmed that the internal parity relationships are and must be a controlling factor not only for the economic and health care issues, but for the non-economic contractual provisions, as well. The patterns and comparability within the City of Chicago if properly weighed, require that the negotiated agreements already in place during this current round of negotiations set the parameters for the Panel's decision in this interest arbitration, too, the City strenuously argues.

It is also the City's firm belief that, through laborious, lengthy and good faith negotiations, that the Lieutenants' and Captains' units, also represented by the PBPA, negotiated a fair, balanced, and complete labor contract that was met with overwhelming acceptance by the membership of both Unions. The terms of that contract should set the limits on this current interest arbitration as far as the parameters of the Panel's consideration of each offer, as well as the economic and non-economic packages presented by the Union and the City, are concerned. The City's position on each disputed issue should thus be adopted, it submits.

The City also stresses that its offers reflect the same percentage wage increases as negotiated by the Lieutenants and Captains. The City offers salary compression identical to the Lieutenants' and Captains' agreements. Furthermore, the City has offered to increase quarterly differential by the same amount negotiated by the Lieutenants and Captains, it also avers.

Additionally, the City's economic offer outpaces both inflation and the compensation of Sergeants in the top five United States cities. Its health insurance program proposal is the plan offered city-wide to all employees, and parity for this specific economic benefit has uniformly and consistently been recognized as absolutely essential to maintain the City's labor relations eco-system. Similarly, the non-economic proposals of the City are consistent with the Lieutenants' and Captains' labor contract and reflect what would have been negotiated at arm's length.

In sum, all of the City's proposals should be adopted as the most reasonable and appropriate, the City concludes.

In the course of the two days of hearing, and in their preliminary submissions, both parties presented voluminous material dealing with the D-2A issue which triggered this interest arbitration, as well as other data considered relevant in relation to the

impasse-resolution machinery under the Labor Contract and the above-mentioned statutory factors. Reams of material regarding matters of compensation, the operational issues, comparable data from the private and public sectors, as well as consumer price information were introduced into this record.

Moreover, both parties submitted post-hearing exhibits and position papers regarding several issues, especially the tentative agreement between the City of Chicago and Chicago Firefighters' Union, Local 2, which the Neutral understands was tentatively approved by the Firefighters' Union on Friday, December 9, 2005. It would serve little purpose to recapitulate all this data presented by the parties and, suffice it to say, this Arbitration Panel has taken into consideration all the factors which have been relied upon as applicable to the current areas of dispute. Specifically, with reference to the Firefighter Local 2 Agreement with the City just mentioned, the majority of this Board finds its terms inconsequential to the D-2A-D-3A issue and all the other terms and conditions of employment involved in this interest arbitration, it is to be noted.

In the interest of providing a speedy resolution of the outstanding issues, the Board of Arbitration will present its opinion primarily as regards the central issue involving D-2A and the proposed D-3A reclassification of this bargaining unit. Since it is the conclusion of the majority of this Board that the Employer is correct, that, essentially, the Agreements negotiated by the PBPA for the units representing Lieutenants and Captains accurately represented what the Sergeants' Union could have negotiated, realistically, at the bargaining table, the other issues, both economic and non-economic, will be set forth only as to the conclusions reached as to each issue. The usual summaries of the positions of the parties on each of the outstanding issues, in detail, will be omitted as not really providing helpful or material information in this specific case, the majority rules.

VI. DISCUSSION AND FINDINGS

The key controversy in this case deals with the Union's proposal to have the entire Sergeants' bargaining unit reclassified to a D-3A classification, so as to obtain a 3% increase in the pensionable wages paid to each Sergeant in this bargaining unit, as per the City's formal salary schedule structure. The parties spent a substantial amount of time in the course of the arbitration hearings and in their pre- and post-hearing submissions in defining their positions and indicating their rationale for those positions on this issue.

Essentially, the dispute comes down to whether this Union is correct in its assumption that the 1999 FOP contract's creation of a D-2A salary rate for a discrete group of 1200 to 1300 Patrol Officers (Detectives, Gang Crimes Specialists, and Youth Investigators) within the entire 11,000-member unit of the Fraternal Order of Police, Lodge 7, broke an historic wage pattern differential between the "highest paid officer in the FOP unit," and the Sergeants in the unit represented by the PBPA. If that change in the wage classification of Detectives in fact destroyed a binding and historic Detective-Sergeant wage differential based on an agreement made between this Union and this Employer in either 1982 or 1983, the "status quo" was unilaterally destroyed by the City and the wage differential could properly be restored without granting the Sergeants' Union a breakthrough.

The proposed reclassification of all Sergeants to a D-3A classification is in the context of the Union's demand that its perception of the status quo as it existed in 1999 and earlier be restored so as to achieve its objective of re-establishing the 18% wage differential, the overwhelming evidence in this record clearly shows.

To the Union, there are also previous instances when this binding and historic pay differential has "gone off track." Corrections to re-institute the differential have

always been made in the next round of bargaining after those improper changes, it strongly argues.

From the Union's point of view, the salary differential between Detectives and Sergeants has been disrupted and there is no justification in this Board's not granting a D-3A reclassification to all the Sergeants in this PBPA-represented unit, with a resultant 3% pensionable pay increase for everyone of them. In addition to the Detective-Sergeant wage relationship argument, the Union contends that the work of the Sergeants is not only more stressful and dangerous, but that there have also been additional duties added to the routine workload of these Sergeants by Management since the predecessor Labor Contract. As a matter of fact, the Union insists that the requirement that Sergeants be the only authorized sworn officers to use TASER guns, as well as newly added responsibilities for HAZMAT, fully justifies a reclassification of the entire bargaining unit group.

The Union believes further that its proposal for a D-3A reclassification for all members of the bargaining unit is not inconsistent with what the City did in moving the Detectives to D-2A on the salary schedule. It also suggests that "reclassification" is proper under the City's personnel code and that the detectives were not reclassified to D-2A, as Arbitrator Meyers determined. The reclassification and D-3A pensionable pay increase would also solve the serious morale problems that the breach in the wage differential agreement between Detectives and Sergeants has obviously caused.

The Union also believes that its proposal for a D-3A reclassification for all Sergeants would not trigger the "me, too" clause in any of the other Union contracts with this City, as Management insists, for the same reason that the D-2A reclassification for Detectives did not trigger the Firefighters' Union, "me, too" clause and, as Arbitrator Meyers found, similarly did not trigger the "me, too" clause for this bargaining unit, too. The Union asserts affirmatively that this Employer should not be allowed to unilaterally

change the wage relationships in its claimed "eco-system" as would be the case if the City is successful in getting this Arbitration Panel to reject the Union's D-2A-D3 proposal.

The Employer argues vigorously that it needs a decision from this panel that the status quo was not changed when it created a D-2A classification for Detectives. In its testimony, the Employer indicated that this the only Union that still maintains the claim that the "D-2A" issue must be resolved, as a matter of equity, by giving a 3% increase in pensionable wages to an entire bargaining unit under the guise of a "reclassification under the personnel code." Specifically, the Employer indicated a lengthy series of reasons, all of which completely contradict the Union's basic posture on the D-2A issue.

A majority of this Board finds that the Union's claim that Management changed the status quo when it gave Detectives a D-2A reclassification has not been proved. First, as Management has successfully emphasized, Arbitrator Meyers already decided this issue in the City's favor, the majority of the Panel stresses. See Arbitrator Meyers' above-cited opinion at Appendix K, the City's Appendix of Authorities. In so doing, Arbitrator Meyers explicitly held that, under Jt. Ex. 1, the 1999-2003 Labor Contract between these parties, the "status quo" was not a precise and formulaic wage differential of 18% between Detectives and Sergeants. While Meyers' award does not preclude the Union's demands in bargaining or in this interest arbitration, his finding that there was no specific and binding, precise wage differential between the Detectives now at D-2A and the Sergeants does rebut the Union's claim that Management changed the status quo in 1999, the majority believes. Therefore, the Union's D-3A demand would and is a demand for a new condition of employment, i.e., a "breakthrough" under the rubric of interest arbitration, the majority holds.

Perhaps more important, as the Neutral Member of this Panel has frequently stressed, there simply should not be substantial "breakthroughs" in the interest arbitration process where the Panel knows the parties themselves would never agree to

such a term or provision. This Panel simply should not award either party a wage package which is significantly superior to anything it would likely have obtained through collective bargaining. The result of such an award would be an invitation for the successful party and/or, in this instance, all the other participants in the labor relations eco-system of the City of Chicago to run to the interest arbitration process rather than to attempt to settle their labor contracts through good faith, across-the-table negotiations. And, what is most clear from the facts of record in this case, is that this Union could not obtain a D-3A reclassification in arm's length bargaining, as the extensive bargaining between the City and the Lieutenants' and Captains' Unions demonstrates, the majority of this Board holds.

The basis for this conclusion is the history of negotiations between the City and the other two bargaining units represented by the PBPA, namely, the Lieutenants' and Captain's Unions. As management has suggested, the "D-2A" issue was of primary importance not only to this Union, but also to the Lieutenants' and Captains' Unions. In order to induce these latter two Unions to take the issue off-the-table, the City offered a very generous economic package to the Captains' and Lieutenants'. The reason is simple. Although there is no binding, precise amount of wage differential between the Detectives and Sergeants, wage parity and internal comparability among the various wage classifications in the Police Department, and between the Police and Fire Departments for that matter, certainly exists and is carefully observed by all the interested parties.

As the evidence suggests, the City's Police and Fire Unions -- all of them -- keep close tabs on each other's progress throughout negotiations. The "me, too" provisions of Jt. Ex. 1, the 1999-2003 Contract between these parties, were found by Arbitrator Meyers not to have been triggered by the "D-2A" reclassification for Detectives. But -- and this is an important but -- both practically and as a matter of morale, the City in its

good faith negotiations with the Lieutenants and Captains was willing to attempt to do "rough justice" as regards maintaining an overall economic differential between Detectives and Sergeants. We conclude that this "rough justice" is all that this Union, too, could realistically obtain at the bargaining table.

It is also important to note that the economic enhancements, as both parties indicated at hearing, negotiated by the City with the Lieutenants' and Captains' Unions resulted in a monetary benefit, overall, actually slightly in excess of what the 3% D-3A reclassification would net the bargaining unit members for at least the term of this contract. It is impossible to tell whether that "rough justice" would last beyond this contract's term, but the parties will once again be able to bargain at that point, we also note. The economic package freely negotiated by the Lieutenants and Captains did not result in an exact equivalency in pensionable wages. It clearly is what the parties would have bargained if the interest arbitration mechanism did not exist for peace officers, the majority rules. Cf., City of Crest Hill and Metropolitan Alliance of Police, Chapter 15, No. S-MA-97-115 at pp. 11-12 (Arb. Goldstein, 1999).

Substantial evidence was presented in the course of this interest arbitration, both during the hearing and in the pre- and post-hearing submissions, dealing with the non-economic package at issue here. The evidence indicated, once again, that what could have been freely negotiated is the terms and conditions represented by the City's contracts with the Lieutenants' and Captains' Unions. The Board has reviewed each non-economic proposal carefully. It is clear that the prudent and reasonable course is to adopt the proposals most fully consistent with those two labor agreements, with a slight modification in the bidding and details proposals. From the Board's point of view, the differences in sheer numbers between the Sergeants and the members of the Lieutenants' and Captains' Unions bargaining units mandate the differences here. More bidding slots have been granted to the Sergeants than either of the Lieutenants and

Captains units, which benefits the PBPA represented Sergeants, we note. A slightly less liberal provision as regards detailing, then, than that given to the Lieutenants and Captains, given the sheer comparative numbers of details and the major change, the "pulling in" of Management's discretion to assign details and the increase in bid, Sergeants' slots, justifies the proposals adopted by this Panel on the detailing and bidding issues, we finally rule.

With these findings in mind, the Award of this Tripartite Panel as to each of the still outstanding issues is as follows.

VII. AWARD

Using the authority vested in the Tripartite Panel by Section 28.3B of the parties' Labor Contract, and, where applicable, the Act's statutory provisions, the following Awards are made by the Majority of this Panel:

I. Exhaustion of Grievance Procedure (Article 9)

- Status Quo - No Contract Change

II. Selection of Police Board Hearing (Article 9)

- No change from Jt. Ex. 1, the 1999-2003 Contract between the parties. The Board finds that this specific proposal by the Union is not ripe for decision, since it was not bargained prior to the institution of the interest arbitration process in July, 2005.

III. Health Insurance Contribution Cap (Article 12)

- The status quo preserving the existing $90,000 cap on health insurance contributions.

IV. Equipment and Hazardous Materials Training (Section 15.5)

- Status Quo - No Contract Change

V. Rank Credit (Section 20.10)

- Effective July 1, 2004, Increase From 30 Minutes per Day to 45 Minutes Per Day

VI. Details (Section 23.8)

- The Board adopts the following language:

Section 23-8 - Details.

This Section applies to sergeants assigned to a unit listed in Article 32 of the Agreement.

A. Sports Events, Parades, Festivals

When the Employer decides to assign a sergeant to a detail outside the area, district, or unit, to a sports event, parade, or festival, the Employer shall select a sergeant(s) for a detail who occupies a management position on the affected watch prior to selecting a sergeant(s) who occupies a bid position on the affected watch for that detail. If and to the extent there are insufficient management sergeants available on the affected watch for the detail, and there are no volunteers for the detail from the affected watch, the Employer shall select the sergeant for the detail from among the bid sergeants on the affected watch on the basis of reverse seniority, provided that there are no management sergeants available.

B. Temporary Manpower Shortage – Short Term Details

When the Employer decides to assign a sergeant to a detail outside the sergeant's unit of assignment to a unit listed in Article 32 of the Agreement to provide relief for a temporary manpower shortage due to furlough, medical, or suspension, the Employer shall select sergeants to work the detail from among management sergeants. If and to the extent that there are insufficient management sergeants available, the Employer shall only select bid sergeants on the basis of reverse seniority from among those qualified bid sergeants, provided that there are no management sergeants available.

C. Temporary Manpower Shortage – Long Term Details

When the Employer decides to assign a sergeant to a detail outside the sergeant's unit of assignment for more than thirty (30) days to a unit listed in Article 32 of the Agreement to provide relief for a temporary manpower shortage due to the actual strength being more than ten (10%) percent below authorized strength, the Employer shall select sergeants to work the detail on the basis of seniority from among management sergeants. If and to the extent that there are insufficient management sergeants available the Employer shall only select bid sergeants on the basis of reverse seniority from among those qualified bid sergeants, provided that there are no management sergeants available. A sergeant will not be detailed to a bid unit for longer than (90) ninety days. A Sergeant who has completed a ninety day detail to a bid unit shall be returned to his/her district and is exempt from the provisions of this paragraph for the next (180) one-hundred-eighty days. However, the detailed Sergeant can, at his/her option, if the detail is to be continued, remain detailed until the detail is concluded or for another ninety (90) days, whichever occurs first.

D. Detail Pay

1. Except for details covered by Section A. (sports events, parades, festivals), a Sergeant assigned to District Law Enforcement that is detailed, pursuant to Sections B or C above, to a District in an Area outside his/her Area of assignment will be compensated at the rate of time and one-half in quarter hour increments for the duration of the

assignment. For the purposes of this Section, Areas of assignment are Areas 1,2,3,4,5, and Central Control Group.

2. Except for details covered by Section A. (sports events, parades, festivals), if the Employer assigns or details a District Bid Sergeant, pursuant to Sections B or C above, to a district other than their district of bid, and which is non-contiguous to the district of bid, the affected Sergeant will be entitled to compensation at the rate of time and one-half in quarter hour increments for the duration of the assignment.

E. .Applicability

The Employer's Tactical Team and Gang Tactical Team Sergeants, Mission Team Sergeants, Community Policing Sergeants and Business Liaison Sergeants units shall not be restricted in any way by this Section (23-8).

In emergency situations, or situations where the Employer reasonably anticipates civil disorder will occur, or does occur, this Section (23-8) shall not apply.

If the Employer assigns a sergeant to a detail in any manner contrary to the provisions of this Agreement, including but not limited to the assignment of a district bid sergeant when a management sergeant is available for detail, the affected sergeant(s) will be entitled to compensation at the rate of time and one-half in quarter hour increments for the duration of the detail.

VII. Wages (Section 26.1)

- Effective July 1, 2003 2.0% increase
- Effective January 1, 2004 2.0% increase
- Effective July 1, 2004 2.0% increase
- Effective January 1, 2005 2.0% increase
- Effective July 1, 2005 2.0% increase
- Effective January 1, 2006 3.5% increase
- Effective January 1, 2007 2.0% increase

VIII. Salary Compression (Section 26.1)

- Effective January 1, 2006, the maximum rate of pay on the salary schedule for Sergeants covered by this Agreement will be available to Sergeants with twenty-five (25) years of service. The salary schedule shall be amended by deleting the thirty (30) years of service pay step (Step 11) and designating the twenty-five (25) year step (Step 10) as the maximum rate of pay on the salary schedule. The salary schedule for Sergeants with more than thirty years of service prior to January 1, 2006 is set forth in an appendix titled "Salary Schedule for Sergeants on Step 11 Prior to January1, 2006."

- Sergeants on Step 11 Prior to January 1, 2006 will remain on "Step 11" until they leave the Department (i.e., retire, quit, die, or are discharged). Sergeants on Step 11 Prior to January 1, 2006 shall receive 3.5% wage increase effective January 1, 2006, an additional 2.0% increase effective January 1, 2007, and any Base Wage Increases which may be subsequently negotiated.

- No additional Sergeants will enter Step 11 after December 31, 2005. Sergeants who are not on Step 11 as of January 1, 2006 will achieve their maximum salary rate at twenty-five (25) years of service – on Step 10.

IX. D-2A (Section 26.A(i))

- Maintain Status Quo - No Contract Change

X. Quarterly Differential (Section 26.2)

- Base Quarterly Differential Increases By Above-listed Annual Percentage Increases Pursuant to Existing Contract Language

- Effective January 1, 2006 Increase Quarterly Differential by $350.00 Per Quarter

XI. Quarterly Differential Pensionability (Section 26.2)

•Maintain Status Quo - No Contract Change

XII. Payment of Compensatory Time (Section 26.5)

•Maintain Status Quo - No Contract Change

XIII. Section 29.1 Baby Furlough Days

- The Board adopts the Union's final offer on Section 29.1 Baby Furlough Days, effective January 1, 2006, which is to increase the number of baby furlough days for Sergeants with less than 5 years of service and Sergeants with less than 15, but more than 10 years of service and further asserts that this increase has already been agreed upon. The adopted proposal is as follows:

Years of Service	Baby Furlough Days
15 or more	6
10, but less than 15	6
5, but less than 10	6

XIV. Section 29A.2 - Furlough Days

- The Board adopts the Union proposal, effective January 1, 2006, to change the number of furlough days by increasing furlough days as follows and further asserts that this increase has already been agreed upon.

Years of Service	Furlough Days
5, but less than 10 years	25 working days
10 years or more	25 working days

XV. Bidding (Article 32)

- The Board adopts the following language:

ARTICLE 32
WATCH/DISTRICT/UNIT SELECTION

A. Watch Selection for District Law Enforcement and other units.

Sergeants assigned to District Law Enforcement and other units as described below shall be eligible to participate in the following process:

1. During the month of October each year, the Employer shall determine and post the number of Sergeant District watch positions to be assigned to each watch.

2. In November of each year, Sergeants may submit to their Commander a watch preference bid, indicating their first and second preferences for watch assignment.

3. The Tactical, Gang Tactical, Neighborhood Relations, Foot and Business Liaison Sergeant positions shall be filled at the Employer's discretion.

4. Eligible Sergeants shall bid based on time in rank for steady watch.

The following position shall be eligible for bidding under this section. –

a. Five (5) Sergeant watch assignments per watch, for each watch, in each District, in District Law Enforcement and ;
b. Two (2) Sergeant unit assignments in Airport Law Enforcement South and;
c. Three (3) Sergeant unit assignments in Airport Law Enforcement North and;
d. Three (3) Sergeant unit assignments in Public Transportation Section and;
e. Three (3) Sergeant unit assignments in Traffic Enforcement Section and;
f. For positions listed in b,c,d, and e above an eligible bidder shall be an officer who is able to perform in the bid position to the satisfaction of the Employer after orientation without further training. The Employer shall select the most senior qualified bidder when the qualifications of the officers involved are equal. In determining qualifications, the Employer shall not be arbitrary or capricious, but shall consider training, education, experience, skills, ability, demeanor, and performance.
g. All other watch assignments shall be filled at the Employer's discretion.

5. Watch and/or unit selections by successful bidders shall not be changed without the consent of the Sergeant, except (a) in the event of an emergency, for the duration of that emergency; (b) for Sergeants identified as Personnel concerns; (c) for Sergeants in limited and

convalescent duty, for the duration of that status; (d) for Sergeants who have been relieved of their police powers; (e) for just cause; or (f) when the Superintendent determines that the officer's continued assignment would interfere with the officer's effectiveness in such assignment.

6. Within ten (10) days of the completion of the annual selection of watch assignments for Sergeants, the Employer shall provide Unit 156 with a list of the Sergeants assigned to each watch and a list of successful bidders by watch.

B. Procedures for Filling Vacant Sergeant District Watch Assignments by Bid

Vacancies occurring after the November selection process shall be filled in accord with the provisions of sub-sections 1 and 2 below by seniority if the previous incumbent held the position by seniority bid.

1. Intra-District Procedures for Filling Vacant Sergeant Watch Assignments by Bid

If and when the Employer decides to fill a recognized watch vacancy, the recognized vacancy shall be posted within the District and remain posted for ninety-six (96) hours. For purposes of this Section, a posting will be considered a notification when posted within the District and on the MLAS website. A copy of such posting shall be given to Unit 156-Sergeants. Recognized watch vacancies will be posted on the second Friday of the 2nd, 6th and 10th police periods. The Employer shall respond to the successful bidder and Unit 156-Sergeants no later than forty-eight (48) hours after the expiration of the ninety-six (96) hour bid time frame. If no Sergeant assigned to the District bids for the vacancy, the Employer may proceed as set forth in sub-paragraph 2 below, "City-Wide Procedures for Filling Vacant Sergeant District Watch Assignments by Bid." During the bidding and selection process, the Employer may temporarily fill the vacant Sergeant watch assignment. If there are two (2) or more declared vacancies on a watch, a bid vacancy will be filled prior to a discretionary vacancy.

A vacancy created as a result of a successful bid may be recognized as a vacancy and, if so, will be bid City-wide.

2. City-Wide Procedures for Filling Vacant Sergeant District Watch Assignments by Bid

The Employer shall post a list of Sergeant District watch vacancies, if any, on the second Friday of the 3rd, 7th and 11th police periods. For purposes of this Section, a posting will be considered a notification when posted within the District and on the MLAS website. A copy of such posting shall be given to Unit 156-Sergeants. For seventy-two (72) hours from the time the list is posted, Sergeants may bid on a vacancy, in writing, on a form to be supplied by the Employer. One copy of the bid shall be presented to the Employer, one copy shall be forwarded to Unit 156-Sergeants, and one copy shall be retained by the Sergeant. The Employer shall respond to the successful bidder and Unit 156 no later than three (3) days prior to the change day for the new 28-day period. A successful bidder may not bid for another City-wide vacancy for one year.

Watch and/or unit selections by successful bidders shall not be changed without the consent of the Sergeant, except (a) in the event of an emergency, for the duration of that emergency; (b) for Sergeants identified as Personnel concerns; (c) for Sergeants in limited and convalescent duty, for the duration of that status; (d) for Sergeants who have been relieved of their police powers; (e) for just cause; or (f) when the Superintendent determines that the officer's continued assignment would interfere with the officer's effectiveness in such assignment.

3. When there are not qualified bidders and the Employer elects to fill the vacancy, the Employer may either promote, provided an eligibility list exists, or fill the vacancy at its discretion, provided that such discretion shall not be exercised for punitive reasons.

4. Temporary vacancies for purposes of relief (e.g., vacation, medical, suspension, detail) shall be no longer than the duration of the temporary vacancies. Temporary vacancies and

details will not be used to circumvent a vacancy that is required to be filled by seniority bid in accord with this Article.

5. The annual furlough selection shall be in accordance with Article 23.2.

C. Dispute Resolution

In the event the parties are unable to resolve disputes regarding the terms of Section A of this Article, then either party may invoke expedited arbitration in accordance with the following procedure, and the arbitration hearing shall commence within thirty (30) days of the demand for expedited arbitration unless the parties otherwise agree.

1. The parties shall mutually select an Arbitrator from among three (3) arbitrators whose names shall be agreed upon by representatives of the PBPA and the Department. If the parties cannot mutually agree, the Arbitrator selected shall be the one who will provide the parties with the earliest available hearing date for an expedited arbitration hearing;

2. Recognizing that the parties have agreed to the steady watch and bid concept and the selection process therefore, the jurisdiction of the Arbitrator is for the purpose of addressing problems that may arise which unreasonably interfere with the effective performance of the Department's mission;

3. The Arbitrator shall render a decision within seventy-two (72) hours of the close of the hearing, or such other time upon which the parties mutually agree.

D. Sergeant's Unit Selection

1. Annually, between November 01 and November 30, a Sergeant may submit a PAR form stating up to two (2) preferences for a unit assignment for the following year. The Sergeant may attach a one-page resume to the PAR form.

2. The Unit Commander will consider a Sergeant's declared preference for a unit when a vacancy is declared in such unit except for those vacancies filled according to Article 32 B., 2. The Unit Commander is under no obligation to select the Sergeant. The PBPA-Sergeants 156 will be advised of the Sergeants who have been selected to fill unit vacancies.

XVI. Side Letter - Compensatory Time Exchange (March 15, 1999)

- Maintain Status Quo - No Contract Change

XVII. Post-Retirement Health Care Plan (VEBA/VEMA)

- The Board adopts the Union proposal to add to the Collective Bargaining Agreement a commitment in the form of a side letter for the City and the Union to form a committee to discuss and implement the City's proposal to establish a post-retirement credit account plan (commonly referred to as VEBA or VEMA) for the members of Unit 156-Sergeants.

  The record shows that the Lieutenants and Captains units have agreed with the Employer on a process for further discussion of this issue. This agreement is reflected in a Letter of Understanding with each unit. The Board directs that the provisions of the Letter of Understanding be extended to include the Sergeants unit. In view of the fact that a working committee, composed of representatives of the Employer, and the Lieutenants and Captains units, is already established and working on

this effort, the Sergeants shall nominate representatives and participate in the work of the committee, provided that their participation shall not have the effect of delaying the process or the work of the committee.

the Board further adopts the Union proposal that, should the City not permit the Unit 156-Sergeants bargaining unit members to participate in a VEBA/VEMA plan under the same terms and conditions as those implemented for the Lieutenants and Captains, the matter can be presented to the interest arbitrator, who will reserve jurisdiction for that purpose.

XVIII. Proposal Withdrawn By City

XIX. Union Business Leave

- The panel adopts the following language:

17.2 Unit 156 Representatives

For purposes of the administration and operation of Unit 156-Sergeants, and for the purpose of conducting union business for Unit 156-Sergeants, the Employer shall grant three (3) officers designated by the President of Unit 156-Sergeants paid time off to be used in the manner determined by the Unit 156-Sergeants. During such paid time off, the Employer shall continue to pay said Sergeants all salary and maintain all benefits, including pension contributions and seniority accruals, as if the Sergeants were on-duty with the Employer; provided that the Union reimburses the city an amount equal to the paid time off for said salary and benefits.

17.3 Attendance at Unit 156 Meetings

Subject to emergencies and the need for orderly scheduling, the Employer agrees that elected officials and members of the Board of Directors of Unit 156-Sergeants shall be permitted reasonable time off equal to a tour of duty, without loss of pay, to attend each general, board, or special meeting of Unit 156-Sergeants, provided that at least forty-eight (48) hours notice of such meetings shall be given, in writing, to the Employer, and provided further that the names of all such officials and officers shall be certified, in writing, to the Employer.

17.5 Attendance at State and National Conferences

A. Subject to staffing needs, a maximum of five (5) appointed or elected delegates will be permitted to attend state and national conferences of the PB&PA and NAPO. Such conference time shall be equal to the duration of the conference, plus reasonable travel time to and from such conference.

B. A maximum of five (5) appointed or elected delegates of Unit 156-Sergeants will be permitted to attend state and national conventions of the PB&PA and NAPO with pay. Such convention time shall be equal to the duration of the convention, plus reasonable travel time to and from such convention, up to a maximum of seven (7) days every two (2) years.

XX. HEALTH CARE

- The Union has proposed two additional modifications to the Health Insurance changes negotiated with the Lieutenants and Captains units, regarding

City funding for health fairs and making non-formulary drugs available through mail order. The Board rejects these additional modifications and awards that the same Health Insurance changes agreed to by the Lieutenants and Captains units shall be applicable to this bargaining unit.

_____
Elliott H. Goldstein, Chair

Arbitration Panel:

_____
David Johnson
City Member Arbitration Panel

_____
Sean M. Smoot
Union Member Arbitration Panel

***Concurring in part and Dissenting in part

December 22, 2005

***Union Arbitration Panel member Smoot for his part dissenting is granted leave of the panel to file a dissenting opinion if he so desires not later than February 1, 2006. By unanimous agreement the filing of such an opinion shall not delay the implementation of the terms of this award.

INTEREST ARBITRATION
BEFORE
DISPUTE RESOLUTION BOARD

The City of Chicago, Illinois,	)	
	)	
Employer,	)	
	)	Elliott Goldstein (Neutral Chair)
and	)	David A. Johnson (City Appointee)
	)	Sean M. Smoot (Unit 156 - Appointee)
The Policemen's Benevolent and Protective Association of Illinois Unit 156 – Sergeants,	)	
	)	
Union.	)	

DISSENTING OPINION OF PANEL MEMBER SEAN M. SMOOT

Initially, it is important in my view to review not only the record, the briefs and the arbitration award written by the majority but also the final offers of the parties as they entered the arbitration hearing process. The Union in good faith informed the employer at the outset of the bargaining process that it would do everything possible to secure and maintain its view of the historical pay differential between Detectives and Sergeants. This was a differential that was negotiated and unilaterally allowed it to be reduced.

An objective examination of the bargaining history, between this bargaining unit and the employer, demonstrates that the employer made an obvious attempt to encourage the panel to punish the bargaining unit for utilizing the arbitration procedure. In other words, the employer's final offers were not nearly as generous or equitable as its representatives have since characterized them to be. To the extent the majority refused to take the bait, and punish the Union, is commendable and not at all unexpected.

It is often said that interest arbitration should be a conservative process. However, the conservative nature of the process does not absolve it of the expectation of a fair hearing and a just result. Regrettably, the rationale, reasoning and process of

analysis included in the majority portion of this particular award, tempers the value of the interest arbitration process overall and has potentially dangerous ramifications for the future of collective bargaining within the City of Chicago.

Most first year law students learn the legal advocacy maxim – If you have the facts, pound the facts. If you have the law, pound the law. If you don't have either the facts or the law, pound the table. Arbitration decisions, like other forms of dispute resolution in civilized society, must be based on facts in evidence not mere argument which is unsupported by, or contrary to, the evidence of record. Here the majority appears to have been hypnotized by the rhythm of the Employer's table pounding. In defending its conclusion with regard to the D2A-D3 wage differential issue, the majority contradicts itself and makes several conclusions which, upon a thorough review of the facts in evidence, are wholly unfounded. Consequently, the majority has damaged the pay parity relationships in the police department and with the fire department.

A central dispute between this panel member and the majority arises from the general theme of the majority's opinion which begs the question – Where do public safety employees, who do not have legal access to traditional economic armaments, go for redress of bargaining disputes? The answer posited by this panel is clearly - not Interest Arbitration. Aside from the fact that this overly conservative view of interest arbitration flies in the face of a very intricately balanced statutory scheme, its adoption is directly contrary to the spirit of Illinois' labor law.

Accordingly, one of the unintended consequences of the majority's reasoning, sub judice, is the clear message which all unions that deal with the City of Chicago will understand: If one bargaining unit desires to press an issue of great significance to its members through impasse procedures, that union must convince others to "hold out," stall, or otherwise impede their negotiations with the employer. This invitation to delay bargaining, where one union might be encouraged to propound marginal proposals or

only participate in surface bargaining in support of another union, is in my view most offensive to the Act. Such tactics are certainly not in the interest of employees whose contracts will be delayed because of issues in which they have no interest. Nor is this in the interest of the public for reasons too voluminous to state here.

For the majority to aver that the Union's proposal should be rejected because it is the same thing the Union could not or would not have obtained at arms length is simply outrageous. If the Union could have obtained restoration of the pay differential at the bargaining table they would have had no need of this or any other impasse procedure. Where the employer insists to impasse it is the objective (comparable) factors that should guide the panel's decision not a subjective conclusion as to what could or could not be achieved at the bargaining table.

While interest arbitration is a substitute, however artificial it may be, for more severe economic weapons, by law the resolution ought be based on statutory factors not a subjective idea of how a party might fare in a strike. Whether, for instance, the union would be able to launch a successful strike against the city is not one of those factors. Obviously, if this were to become the accepted standard only the most powerful and largest bargaining units would be able to assert contract gains on the theory that if they struck they would cause severe damage. Take, for example, a hypothetical situation where a small unit is only offered a 2% wage increase when all of the internal and external comparables support 4%. Under the majority's reasoning in this case, the smaller unit would only be awarded the smaller 2% pay increase. That result defies the statute's required comparability analysis. This should never be the standard in any public safety interest arbitration case. To the contrary a number of smaller bargaining units have achieved significant gains through interest arbitration based on an analysis of the statutory factors, especially the factor analyzing internal and external comparability – which universally is cited as the most important factor.

Equally bizarre is the majority's statement, "The economic package freely negotiated by the Lieutenants and Captains did not result in an exact equivalency in pensionable wages. It clearly is what the parties would have bargained if the interest arbitration mechanism did not exist for peace officers, the majority rules." (Majority Op. Page 32) The record is completely devoid of any evidence in support of such an assertion. In fact, this member is quite convinced that both the Lieutenant and Captain bargaining units had other priorities of more import to their respective memberships. It was the resolution of those issues, which were not applicable to the Sergeants unit, which made a negotiated agreement possible for those units.

Further, the majority contradicts itself by measuring the award for this bargaining unit against the packages negotiated by the Lieutenant and Captain units. This statement is supported by the fact that the majority failed to award commensurate benefits in this case to those received by the other supervisor units. For example, in the City of Chicago employee medical insurance premium contributions are based on a percentage of employee salaries. The majority awarded this unit a medical premium salary cap of $90,000 per year. This amount was not adjusted proportionally down from the $90,000 cap negotiated by the Lieutenants and Captains units whose members will earn salaries in excess of $90,000. In other words, those (Lieutenant and Captain) employees will enjoy lower health insurance premiums as a percentage of pay than the employees affected by this award who will not earn more than $90,000. In another glaring example, the majority did not award comparable detail language, for this unit, to that which was negotiated by the Lieutenants unit. A close review of the other supervisor contracts and this award reveals additional contradictory discrepancies.

The majority in this case also gave an inappropriate amount of weight to the employer's proffered "disruptive wage ecosystem" argument. The majority discounts summarily the fact that the historical wage relationship between detectives and

Sergeants in the police department was disrupted, without this Union's participation, by the City's agreement to change the pay grade for Chicago police detectives from D-2 to D-2A. See Union Exhibit 5(b), City of Chicago Final Offer; Union Exhibit 5(b)(1), City of Chicago's Post-Hearing Brief and Final Offer, pp. 9-10, 12 n.14, 15-18. Although the agreement was initially rejected by a majority of the FOP bargaining unit members, it became the basis for an interest arbitrator's award on the issue of wages. On February 5, 2002, Steven Briggs, the interest arbitrator appointed by the City and Lodge 7 FOP, who has long been a proponent of the maintenance of pay parity, issued an award ordering the creation of the D-2A pay grade for detectives, investigators, and gang crime specialists. In the interest arbitration proceeding, the City expressed its willingness to implement the tentative agreement concerning the D-2A pay grade as part of an overall package involving other economic and non-economic issues. FOP asserted that the tentative agreement on D-2A should be awarded in its entirety. Recognizing this agreement between the parties on the question of wages, the arbitrator noted:

> The new D-2A pay level for detectives, investigations and gang crime specialists will provide those so assigned with a three percent pay boost, bringing them to parity with the fire Department's engineers (F-3 pay level). The Board is convinced from the record that special skills, greater visibility and/or higher performance expectations associated to varying degrees with police speciality assignments justifies the salary increases contained in the parties' Tentative Agreement. City of Chicago and FOP Chicago Lodge No. 7, Opinion and Award, (February 5, 2002), Union Exhibit 5(c) p. 37.

The arbitrator agreed with the tentative agreement and the Union's desire to restore parity between Detectives and the salary paid to fire Engineers. City of Chicago's Post-Hearing Brief and Final Offer, Interest Arbitration, pp. 4-6, Union Exhibit 5(b)(1). But in doing so, the police department's internal pay parity system was disrupted. The pay schedule wage differential was compressed between Detectives and Sergeants.

It is against this backdrop that the majority herein contradicts itself, as well as, all factual public safety or uniformed service wage history. Here, the majority states:

> [W]age parity and internal comparability among the various wage classifications in the Police Department, and between the Police and Fire Departments for that matter, certainly exists and is carefully observed by all the interested parties. (Majority OP. Page 31)

But at page 24, regarding the new contract between the City and its Firefighters Union, the same majority announces:

> Specifically, with reference to the Firefighter Local 2 Agreement with the City just mentioned, the majority of this Board finds its terms inconsequential to the D-2A-D-3A issue and all the other terms and conditions of employment involved in this interest arbitration, it is to be noted. (Majority Op. at 24)

This statement reverses a heretofore controlling principle in interest arbitration proceedings involving the City of Chicago and its uniformed services unions. The concept of police-fire pay parity and historical differentials within the police department have long been argued by the City and articulated by various interest arbitrators. For instance, a marathon interest arbitration proceeding between the City and Local 2, Chicago Fire Fighters Union ("hereinafter Local 2 ") commenced on April 25, 1984 and was decided on March 13, 1986 by I. M. Lieberman. Among the issues that occupied numerous days of hearings were wage demands submitted by each party. The arbitrator noted, quite specifically, the long history of pay parity in wages and certain other benefits between firefighters and police. Indeed, he stated:

> Historically, the Fire Department wages have been on a direct parity basis with the Police Department wages and it is not the intent of this Arbitrator to distort that relationship. City of Chicago and Chicago Fire Fighters Union Local No. 2, AFL-CIO, AAA Case No. 51 39 0058 84 R, p. 13, (Arb. Lieberman), City Exhibit G, Appendix of Authorities.

In addition to upholding the pay parity concept between police and fire department employees, the arbitrator also modified the annual salary schedule clause, Section 5.1, by adding a "me too" clause to protect the interests of fire department employees should

police personnel receive a percentage salary or wage increase in excess of that granted to fire department employees. Id., p. 14

This concept of pay parity as articulated by Arbitrator Lieberman was also followed in a police interest arbitration proceeding (FOP and City of Chicago) by the same arbitrator, in which he noted the City's extensive parity argument and summarized it as:

> The City insists that parity is the significant and determinative factor with respect to this entire dispute. The City notes that parity has existed with respect to the firefighters and the police for at least 25 years. There has been no difference whatsoever in the wages of police and firefighters during that time. Maintenance of that parity position is vital with respect to labor relations stability, as the City views it. City of Chicago and Fraternal Order of Police Chicago Lodge No. 7, AAA Case No. 51 390 0165 88 E, p. 13 (Arb. Lieberman), City Exhibit I, Appendix of Authorities.

In his review of the arguments and facts submitted in the FOP interest arbitration case, the arbitrator noted that the police and fire wage schedules "have been identical for some 25 years...." Id., p. 21. In assessing the importance of the principle of parity, the arbitrator rejected the FOP claim for wage increases in excess of those granted to fire personnel.

> The wage schedules of the uniformed employees of the city of Chicago have been identical for some 25 years. The Chairman of this Board has long been an advocate of the continuation of that parity. Furthermore, the parties themselves have acknowledged the validity of parity as a general principle with respect to the City of Chicago and the uniformed employees. Thus, the conclusion as to where the parties might have been had the collective bargaining process been successful must be tempered with the concept of parity. Id., p. 22.

As the Union proved at hearing, parity between the City's two major uniformed service organizations is not limited to the lowest ranks but in fact cover the following pay relationships between ranks: firefighter-police officer, detective–fire engineer, police sergeant–fire lieutenant, police lieutenant–fire captain and police captain–fire battalion chief. These pay relationships recognize the similarity in job functions at each of the

various ranks. Police sergeants and fire lieutenants have the first level supervisory responsibilities for their respective departments and in recognition of that similarity, the parties and the arbitrator have acknowledged the pay parity relationship over a long period of time, but the impact of the majority's opinion will jeopardize a continuation of these fixed arrangements

Most significant on the impact of parity is the recent determination by the City and Local 2 to grant significant pay increases to fire lieutenants who are also EMT-B's. These employees for a period of time prior to the 1999 Fire Department collective bargaining agreement were paid on the same pay level as police sergeants. Pay Grade D-3 is equal to Pay Grade F-4. Police sergeants were paid on Pay Grade D-3, and Fire Department lieutenants were paid on pay grade F-4. Union Exhibit 2(c). This chart shows the wage history from 1970 to 1981, p. 1; 1982 to 1990, p. 2; 1991 to 1998, p.3; and 1999 to 2003, p. 4. The salary levels at D-3 and F-4 are identical with the exception of those years in which Local 2 was engaged in collective bargaining negotiations with the City.

The City's Classification Pay Plan Salary Resolutions–Schedule A, Union Exhibit 2(b), for the period 1970 through 2000 indicate that fire lieutenants and police sergeants were paid at the same annual salaries. The classifications and pay plans further identify the job titles for each of the budgeted positions in the Fire Department. Prior to 1999, fire lieutenants were identified as salary grade 8735, and no separate job title existed for fire lieutenants who were also trained to perform emergency medical service work.

Any fire lieutenant who had EMT training was paid at Pay Grade F-4. The budgets for 1997, 1998 and 1999 show that fire lieutenants who were assigned as EMT's received only Pay Grade F-4 salaries. The Classification and Pay Plan Salary Resolution 1999–Schedule A, for the first time identified job title 8811 as lieutenant (assigned as LT/EMT). Union Exhibit 2(h), p. 56. Although the job title 8811 pay level

assigned on page 56 was F-4B, the salary schedule, Schedule F, for January 1, 1999, shows the step 1 pay at level 4 was $47,190. A review of the 1999 budget recommendations for the fire department demonstrates no appropriation for job title 8811 was requested in the Mayor's recommendations for that year. Therefore, prior to 1999 the lieutenant–EMTs were paid at the same level as lieutenants, who were paid at the same level as police sergeants. Union Exhibit 2(i).

Although the Local 2 collective bargaining agreement expired on June 30, 1999, and the parties were in contract negotiations until approximately 2003 (contract signed on July 9, 2003), the Classification and Pay Plan Salary Resolution 2000–Schedule A, shows job title 8811 to be paid at level 4B and the salary schedule, Schedule F, shows an annual salary for job title 8811, F-4B as $48,372, which is 2.5 percent above the amount appropriated at F-4. Because the parties were in negotiations, the F-4 pay level for 2000 was the same as it was in 1999 and remained at that level until 2004. Union Exhibit 2(c). Effective June 30, 2003, based upon the 2003 agreement, lieutenants with EMT-B status were paid 3 percent higher than lieutenants without EMT-B status. Based on the October, 2005, tentative agreement, employees with EMT-B status are to receive an additional 1 percent effective January 1, 2006, so that they will be paid at a salary level 4 percent higher than non-dual status employees. In addition, employees with EMT-B status received a one time payment of $750 effective January 1, 2006.

Therefore, fire lieutenants (EMT-B) as of January 1, 2006, received salaries 4 percent higher than sergeants and will have received a one time payment of $600 effective June 30, 2003, or $750 effective January 1, 2006. These are the same employees who were first identified in the1999 Salary Classification and Pay Plan Salary Resolutions–Schedule A but who were previously paid at salary level F-4, the same amount as police sergeants. Since January 1, 2000, lieutenants assigned as EMT have

been paid 2.5 percent above police sergeants and effective January 1, 2006, that number will increase to 4 percent.

It should be noted that the Union advocated that similar increases were justified for the Sergeants in this case based on the expansion of their duties regarding the handling of hazardous materials and Taser (stun gun) certification. The majority however, found these expanded duties and the wage increases obtained by Local 2 to be inconsequential. This finding demonstrates yet another bewildering conclusion drawn by the majority.

Contrary to the majority's quoted self-opposing opinion, these wage developments have a significant impact on pay parity because the established history has been to maintain similar pay levels for Police Department employees in their corresponding positions and ranks. The fault in the majority's judgment on this matter is further confirmed by what the panel recognized and then imposed on this bargaining unit:

> [B]oth practically and as a matter of morale, the City in its good faith negotiations with the Lieutenants and Captains was willing to attempt to do "rough justice" as regards maintaining an overall economic differential between Detectives and Sergeants. . . . It is also important to note that the economic enhancements, as both parties indicated at hearing, negotiated by the City with the Lieutenants' and Captains' Unions resulted in a monetary benefit, overall, actually slightly in excess of what the 3% D-3A reclassification would net the bargaining unit members for at least the term of this contract. (Majority Op. Page 31)

And then in what can only be described as the height of duplicity, the majority recognizes the future impact of its decision to ignore historical parity, in favor of a band-aid solution to the wage differential issue, laying the groundwork for further dispute:

> It is impossible to tell whether that "rough justice" would last beyond this contract's term, but the parties will once again be able to bargain at that point, we also note. (Id. at 31-32)

The Union was not seeking a wage increase in the ordinary sense of the word in this case because its proposal was for a remedial or equitable restoration of something that had been unfairly and unilaterally taken from the bargaining unit. No invocation of the "me too" clause occurred when the police detective–fire engineer differential was restored in 2000.

Once the detectives were moved to D-2A, their salaries remained even with those of the fire engineers, designated as pay grade F-3A in the 1999-2007 Fire Department's collective bargaining agreement. Union Exhibit 24, pp. 82-89. For the years 2000, 2001, 2002 and 2003, the salaries were even. In 1998, the engineer's salary was $61,435 and the detective's salary was $60,846. With the change to D-2A in 1999, the detectives' salaries moved to $67,932 and were equal with those of the engineers by 2000. There were no other changes to the Fire Department's salaries pursuant to the "me too" clause of the fire contract known as Section 5.1(c)-Wage and Insurance Protection, which is invoked by wage increases for those in the Police Department's bargaining units, except for reclassifications. When the detectives moved to D-2A, it did not correspond to any change in the fire engineers' salaries by the same amount. In other words, the fire engineers did not receive an additional three percent increase equal to the one that the detectives received in January 1999.

There was, however, a claim by police supervisor bargaining units for a "me too" increase based upon the creation of D2-A. That claim was submitted in the form of a grievance decided by Arbitrator Peter R. Meyers, who held that the "me too" clauses of the sergeants', lieutenants', and captains' collective bargaining agreements were not broad enough to include the D-2A change, and therefore those clauses were not triggered for the purpose of invoking comparable wage increases for sergeants, lieutenants and captains. In his award Arbitrator Meyers clearly overstepped his bounds by making factual findings related to issues not before him. A portion of these findings

were erroneously relied upon by the majority in holding that the precise differential proposed by the Union did not exist.

What the majority fails to note is that the grievance case, unlike the present case before this tribunal, was limited in scope to whether the "me-too" clauses contained in the contracts were invoked by the agreed amendment of Lodge 7's pay schedule to add the D2A steps. That is all. Simply put, it was a different case, with different evidence, subject to a wholly different analysis. A proper analysis of the facts here, in interest arbitration, would not be constrained as in the grievance case to the four corners of the contract. Quite the contrary. Here the analysis, if one had been undertaken, would have included much, much, more.

As the Union argued in its Pre-Hearing Brief:

> Contrary to the record presented before the Illinois Local Labor Relations Board and the record presented before the interest arbitrator, herein, Arbitrator Meyers held there was no evidence that the differential between sergeants and lieutenants had ever been the subject by a formal agreement between the parties and that there had been no strict inherence to a wage differential formula for sergeants, lieutenants and captains. That reading of the record is incorrect and does not account for the detailed evidence given by John J. Thulis, the prior president of the Sergeants' Association, and the detailed records and agreements entered into evidence before the Labor Board and subsequently before Arbitrator Meyers. Union Exhibits 3(a) through 4 provide clear and convincing evidence of such a differential having been negotiated and maintained by the parties and decisions of the Labor Board and its Administrative Law Judge, Union Exhibits 5 and 5(a), support this statement.
>
> In addition to concluding that the sergeants,' lieutenants' and captains' contracts did not contain "me too" clauses that covered the creation of the new D-2A wage level for detectives, the arbitrator noted the overall compensation system in both the Police and Fire Departments relies upon pay parity and differentials and that any application of "me too" language to wages must be precisely balanced. The instant case does not involve an interpretation of the "me too" language and provides an opportunity for the arbitrator to restore pay differentials that were part of the historic pay parity relationships.
>
> A key way to do this is to follow the argument raised by the employer before Arbitrator Meyers. The employer claimed the D-2A pay grade was created as a restoration of a pre-existing relationship between detective and fire engineer pay grades and fits squarely within the

> accepted purpose of a re-classification of pay grades. . . Such a reclassification would be a way to avoid the "me too" problems and overcome the argument that the City did not successfully urge before Arbitrator Meyers, when it asserted that D-2A had been the result of a reclassification. (Pre-Hearing Brief of Union Pages 32-36)

A carefully structured reclassification, as proposed by the Union, would have been the most appropriate way to restore the traditional wage differential without implementing or invoking the "me too" provisions. That in my view is exactly what a majority of this arbitration panel should have awarded. Instead the parties are left with a differential that, certainly by the next round of negotiations, will once again cry out to be restored, or the union will be in a position to present and argue wage increases outside and beyond the parity arrangement.

Contrary to the majority's opinion the Union's D-3 "reclassification" result should have been obtainable at the bargaining table. As discussed above, this was restoration of a "me too" historical pattern pre-dating the time when the parties had a written contract. Arbitrators including the neutral have been careful to preserve and restore these long standing, historical patterns.

For instance, in Teamsters Local Union No. 714 and County of Cook, LLRB Case No. L-MA-95-001 (Arb. Goldstein) (1995), the neutral held that an 8 percent across-the-board pay increase was preferable to the employer's proposal for a wage re-opener due to the union's demonstrated and proven need for a "catch up." This sizeable increase was granted for the second year of a three year contract, even though it broke with historically created patterns of wage re-openers in prior labor agreements. There was, in that case, a compelling reason to grant the union's request based upon the clear and demonstrated need for a catch-up. The arbitrator further noted that interest arbitrator awards should not create unrest ". . .in what prior to their issuance was a stable, well established 'comparison' relationship." Id. p. 43.

The Union's proposal here, was, in light of the facts and established bargaining history, most reasonable within the applicable statutory factors. Further, it was certainly reasonable for both parties to believe that the pattern of differential restoration would have been invoked given the way the City has bargained with Police (and Fire) Department employee unions in the past. This belief was affirmed by the Union's pursuit of the D2A grievance ultimately decided by Arbitrator Meyers. For whatever reason, the majority either ignored or severely discounted the actual bargaining history.

As stated early in this dissent, the rationale, reasoning and process of analysis included in the majority portion of this award, has potentially dangerous ramifications for the future of collective bargaining within the City of Chicago. In addition to providing an open invitation to aggressively delay or otherwise hamper bargaining, this award, specifically the majority's analysis, so severally distorts the previously established internal pay relationships that future negotiators for the City will be hard pressed to maintain pay parity in future bargaining.

For the forgoing reasons, I respectfully dissent regarding those portions of the majority award relating to the D2A wage differential issue.

Respectfully Submitted,

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Sean M. Smoot, Unit 156 – Appointee

March 17, 2006

[1] Issues submitted by the City are designated "C"; issues submitted by the Union are designated "U"; and Joint issues are indicated by "J".