BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration **between** **CITY OF CHICAGO** **and** **TEAMSTERS LOCAL 700**	**CASE NOS.:** L-MA-10-002 Arb. Ref. 10.341 (Interest Arbitration SPCO Unit)

OPINION AND AWARD

APPEARANCES**:**

For the City:	James C. Franczek, Jr., Esq. David A. Johnson, Esq. Stephanie B. Donovan, Esq. Jennifer A. Dunn, Esq.
For the Union:	Kevin P. Camden, Esq.
Dates Briefs Filed:	June 8, 2012 (Union) October 12, 2012 (City)

Date of Award: January 9, 2013

CONTENTS

I. BACKGROUND

This is an interest arbitration proceeding between the City of Chicago ("City") and Teamsters Local 700 ("Union") under the initial contract provisions of Section 7 of the Illinois Public Labor Relations Act ("IPLRA") and that section's incorporation of the provisions of Section 14 of the IPLRA.[1] The Union is the certified bargaining representative of approximately 23 Supervising Police Communications Operators ("SPCOs") at the City's Office of Emergency Management and Communication. The official certification of representative issued on January 8, 2008.[2]

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[1] 5 ILCS 315/7 ("Notwithstanding any other provision of this Section, whenever collective bargaining is for the purpose of establishing an initial agreement following original certification of units with fewer than 35 employees, with respect to public employees other than peace officers, fire fighters, and security employees, the following apply ... (3)... Upon submission of the request for arbitration, the parties shall be required to participate in the impasse arbitration procedures set forth in Section 14 of this Act ....").

[2] This overall dispute has existed for many years.

The City challenged the SPCOs ability to be certified alleging that they were statutory supervisors and the City also contested to the appropriateness of a unit consisting solely of SPCOs. By order dated October 16, 2007, the Illinois Labor Board Local Panel ("Labor Board") disagreed with the City's position and "... order[ed] the Board's Executive Director to certify the International Brotherhood of Teamsters as the exclusive representative ..." of the SPCOs (with one member dissenting). 23 PERI ¶ 172 (2007). The Labor Board found that a determination made by an administrative law judge that the SPCOs were not statutory supervisors was not challenged and the Labor Board specifically rejected the lack of appropriateness of the unit argument made by the City. *Id*. On November 14, 2007, the City filed a petition for review of the Labor Board's order, which was dismissed by the First District Appellate Court for lack of jurisdiction. *City of Chicago v. Illinois Labor Relations Board Local Panel and International Brotherhood of Teamsters*, 392 Ill.App.3d 1080, 913 N.E.2d 12, 332 Ill.Dec. 417 (1st Dist. March 27, 2009); reh. denied (August 17, 2009) as modified (August 21, 2009). According to the First District, the Labor Board's October 16, 2007 order was not an appealable order because "[t]he order directs the executive director to certify SPCOs as an appropriate bargaining unit [and t]he order does not itself certify the Union as the exclusive representative, nor does it contain a finding that a majority of SPCOs 'fairly and freely' chose the Union as their exclusive representative." 392 Ill.App.3d at 1082, 913 N.E.2d at 14, 332 Ill.Dec. at 419. The First District did note that the Labor Board's Executive Director issued a "certification of representative" for the Union on January 8, 2008. 392 Ill.App.3d at 1083-1084, 913 N.E.2d at 15, 332 Ill.Dec. at 420. Thus, the First District did not address the merits of the City's position challenging the Labor Board's determination.

The proceedings before the Labor Board and the First District show that the certification process began on December 1, 2005 when a representation petition was filed. 23 PERI ¶ 172; 392 Ill.App.3d at 108, 913 N.E.2d at 13, 332 Ill.Dec. at 418. According to the Union, prior to Local 700's representation of the employees, "... the unit was assigned to the then existing Local 726, subsequently transferred to Local 727, and finally found a home with Local 700 in

[footnote continued]

II. ISSUES IN DISPUTE

The following issues are in dispute:[3]

1. Wages;

2. Work outside of scheduled workweek (overtime);

3. Acting up;

4. Holiday pay.

III. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

> (h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
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> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and

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[continuation of footnote]
2010", with Local 700 being created after the charters of Local 714 and 726 were revoked with those locals' memberships folded into Local 700. Union Brief at 2.

[3] City Brief at 5-6; City Brief at Tab 4; Union Brief at 3-6; Union Brief Exh C.

pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

IV. DISCUSSION

1. Wages

The City proposes:[4]

- Effective 1st payroll period following ratification; 17 SPCOs earning $6,671/month increased to $7,022/month (same rate as remaining 5 SPCOs).
- Effective 1st payroll period following ratification: 4% for all SPCOs.
- Effective January 1, 2012: 2% for all SPCOs.

The Union proposes:[5]

(a) Effective January 1, 2008, the wages of all employees earning $6,671 per month will be increased to $7,022 per month.

(b) Effective on the following dates, the City will implement the following wage increase for all employees:

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4 City Brief at Tab 4; City Brief at 11-12.

5 Union Brief Exh. C; Union Brief at 3-5.

Effective	Increase
1/1/08	1.0%
7/1/08	1.0%
1/1/09	1.5%
7/1/09	1.5%
1/1/10	0.0%
7/1/10	0.5%
1/1/11	1.0%
7/1/11	1.0%
1/1/12	2.0%

Wages are obviously an economic issue. Under Section 14(g) of the IPLRA, only one party's offer can be chosen ("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)."). By statute (for economic issues) this is therefore "final offer" interest arbitration. What that means is that given the length of the Agreement and the economic conditions that existed during the term of the Agreement, if an individual year is examined, an offer for that year might favor one party while an offer in another year might favor the other party. However, the IPLRA does not give me that ability to pick and choose different offers in specific years. Unless agreed otherwise (which did not occur here), the parties' wage offers must be considered as package for the entire Agreement as the parties' respective final offers.

The parties' wage offers are structured differently with respect to implementation dates. The City proposes changes in wages "[e]ffective 1st payroll period following ratification ..." with another increase effective January 1,

2012.[6] The Union seeks the first wage change "[e]ffective January 1, 2008" and at six-month intervals through January 1, 2012.[7]

With respect to the beginning date for the wage increases, the City's offer — which is tied in great part to "ratification" — does have a definite percentage increase which takes effect January 1, 2012. However, given that January 1, 2012 has now passed and that any "ratification" has not yet occurred, strictly

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6 City Brief at Tab 4; City Brief at 11-12.

7 Union Brief Exh. C; Union Brief 3-5.

The movement of all SPCOs to the same wage rate (if achieved prior to application of any percentage increases) amounts to a 5.26% wage increase:

$7,022 - $6,671 = $351. $351 / $6,671 = .05261 (5.26%).

With the 5.26% increase for most of the SPCOs, the City views the Union's wage offer as follows, with the conclusion that "[i]t thus provides an overall wage increase totaling 14.76% (for the majority of the SPCOs) ...." (City Brief at 12):

Year	% Increase
2008	7.26%
2009	3.00%
2010	0.50%
2011	2.00%
2012	2.00%
[Total	14.76%]

The problem with that analysis is that the Union's final offer for 2008, 2009, 2010 and 2011 contains increases effective half-way through the year (effective July 1st in each of those years) thereby halving the July 1 percentages in those years. For example, if an employee earns $40,000 per year and is given a wage increase of 1% on January 1 and another 1% increase on July 1, the employee does not receive a 2% wage increase for the year, but receives a 1.5% increase for the year:

	Wage Rate (2%)	Wage Rate (1% - 1/1, 1% -7/1)
Start rate before increase	$40,000	$40,000
Earnings 1/1 - 6/30	$20,400 ($20,000 + 2%)	$20,200 ($20,000 + 1%)
Earnings 7/1 - 12/31	$20,400 ($20,000 + 2%)	$20,402 ($20,200 + 1%)
Annual earnings with increase	$40,800	$40,602
Annual increase due to raise	$800 ($40,800 - $40,000)	$602 ($40,602 - $40,000)
Annual percent increase	2.0% ($800/$40,000)	1.5% ($602/$40,000)

Thus, taking into account the Union's proposed July 1, increases, the above chart summarizing the Union's percentage increase offers should look as follows:

Year	% Increase
2008	6.76%
2009	2.25%
2010	0.25%
2011	1.50%
2012	2.00%
[Total	12.76%]

read, the City's position appears to be that the earliest date for commencement of wage increases is January 1, 2012. Given the Union's January 1, 2008 proposal for a wage increase and the increases which follow every six months thereafter through January 1, 2012 (with the exception of the 0.0% for January 1, 2010), the Union is at a position for a wage increase four years prior to the City's first wage implementation date. Thus, the Union's wage offer is retroactive to January 1, 2008, while the City's wage offer is only retroactive to January 1, 2012. The City's offer is therefore a wage freeze until January 1, 2012. Because the manner in which the wage proposals have been made are incorporated into the parties' final offers on wages, the implementation date of the wage proposals is also an economic issue under Section 14(g) of the IPLRA, which only permits the selection of one party's offer.

Section 14(h) of the IPLRA lists factors for interest arbitrators to consider "as applicable". Therefore, some factors may be more "applicable" than others.

Under Section 14(h)(5) of the IPLRA, one of the factors interest arbitrators can consider is "[t]he average consumer prices for goods and services, commonly known as the cost of living." The Bureau of Labor Statistics ("BLS") defines the Consumer Price Index ("CPI") as "... a measure of the average change in prices over time of goods and services purchased by households."[8]

According to the BLS, since January 1, 2008 up through the present, the changes in the CPI-U — not seasonally adjusted — are as follows (each year comparing January through December with the exception of 2012 which com-

[8] http://www.bls.gov/news.release/archives/cpi_11152012.pdf at p. 5.

pares January through November as a result of presently available data for 2012):[9]

CPI From 1/1/08 To The Present

Year	Begin	End	Yearly Percent Increase	Total Percent Increase
2008	211.080	210.228	-0.40%[10]	
2009	211.143	215.949	2.28%[11]	
2010	216.687	219.179	1.15%[12]	
2011	220.223	225.672	2.47%[13]	
2012	226.665	230.221	1.57%[14]	9.07%[15]

How do the parties' wage offers compare to changes in the CPI? This is somewhat complicated because both offers make an adjustment of moving those SPCOs who make $6,671 per month to $7,022 per month.[16] Based on what the SPCOs were earning as of December 31, 2007, that is an increase of 5.26%.[17] However, the discussion goes back to the effective dates of the parties' offers. The Union seeks that 5.26% equalization increase as of January 1, 2008, while the City seeks that increase "[e]ffective on the first day of the first

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9 http://data.bls.gov/cgi-bin/surveymost?cu
By accessing that website for the BLS data bases, the latest CPI comparisons can be accessed through designation of year ranges for U.S. All items, 1982-84=100, retrieving the data and then, if further specificity is desired, by using the link to "more formatting options" and again retrieving the data.

10 210.228 - 211.080 = -0.852. -0.852 / 211.080 = -0.0040 (-0.4%).

11 215.949 - 211.143 = 4.806. 4.806 / 211.143 - .02276 (2.28%).

12 219.179 - 216.687 = 2.492. 2.492 / 216.687 = .01150 (1.15%).

13 225.672 - 220.223 = 5.449. 5.449 / 220.223 = .02474 (2.47%).

14 December 2012 CPI information has not yet been released by the BLS. Using November 2012 data, 230.221 - 226.665 = 3.556. 3.556 / 230.221 = .01568 (1.57%)

15 230.221 - 211.080 = 19.141. 19.141/211.080 = .09068 (9.07%)

16 City Brief at Tab 4; Union Brief Exh. C.

17 $7,022 - $6,671 = $351. $351 / $6,671 = .05261 (5.26%).

full payroll period following the effective date of final ratification of this Agreement ...."[18] And this becomes more complicated because not all employees will get that increase. According to the City, 17 of the 23 SPCOs earn $6,671 per month, which means that six SPCOs will not see the 5.26% increase at anytime under *either* party's offer.[19]

For purposes of analysis, then, the fairest way to look at how the offers compare to changes in the CPI is to divide the employees into two groups — those who will get the increase from $6,671 per month to $7,022 and those who will not receive that kind of adjustment.

With the exception of the last month of 2012, we now have a complete and accurate picture of what the parties have been addressing since January 1, 2008 for wage increases and allows for comparisons of the parties' final wage offers to the CPI for the Agreement.

The Union's offer compares to the CPI as follows:

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[18] City Brief at Tab 4; Union Brief Exh. C.

[19] City Brief at Tab 4, p. 1.

Period	CPI	Union (17)	Union (17) Difference	Union (6)	Union (6) Difference
1/1/08 - 12/31/08	-0.40%	6.76%[20]	7.16%	1.50%[21]	1.90%
1/1/09 - 12/31/09	2.28%	2.25%[22]	-0.03%	2.25%	-0.03%
1/1/10 - 12/31/10	1.15%	0.25%[23]	-0.90%	0.25%	-0.90%
1/1/11 - 12/31/11	2.47%	1.50%[24]	-0.97%	1.50%	-0.97%
1/1/12 - 11/30/12	1.57%	2.00%	0.43%	2.00%	0.43%
Total		12.76%		7.50%	

In simple terms, under the Union's offer, the SPCOs who will get the 5.26% increase will receive an effective 12.76% increase when the CPI for that same period increased by 9.07% — so these employees are significantly ahead of the CPI increase for that period.[25] For those SPCOs who do not get the 5.26% increase, those employees will receive a 7.5% increase when the CPI for that same period increased by 9.07% — so this group is behind the CPI increase for that same period. Breaking down the Union's offer on a year-by-year basis, all employees are ahead of the CPI for 2008; they are behind for 2009,

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[20] The Union seeks 1.0% effective January 1, 2008 and another 1.0% effective July 1, 2008. That is an effective 1.5% for the year. Coupled with the 5.26% increase for the 17 SPCOs earning $6,671 per month raising them to $7,022 per month to be effective January 1, 2008, the Union's offer for 2008 is therefore 6.76% (1.0% + 0.5% + 5.26% = 6.76%).

[21] This is the Union's offer for those employees who would not receive the 5.26% adjustment because they were earning $7,022 per month. The increase for this group of employees is the percentage increase sought by the Union for 2008 — an effective 1.5% (1% as of January 1, 2008 and 1% as of July 1, 2008).

[22] The Union seeks 1.5% effective January 1, 2009 and another 1.5% effective July 1, 2009. That is an effective 2.25% for 2009 (1.5% + .75% = 2.25%).

[23] The Union seeks 0.0% effective January 1, 2010 and .5% effective July 1, 2010. That is an effective 0.25% for 2010 (0% + .25% = 25%).

[24] The Union seeks 1.0% effective January 1, 2011 and another 1.0% effective July 1, 2011. That is an effective 1.5% for 2011 (1.0% + 0.5% = 1.5%).

[25] *See* the table "CPI From 1/1/08 To The Present", *supra* showing a 9.07% increase in the CPI since January 1, 2008.

2010 and 2011; and (barring any drastic changes when the December 2012 numbers issue from the BLS), they will be ahead for 2012.

Again, the City's offer, in large part, is keyed to "ratification", thereby having no retroactive effect prior the definite 2% increase effective January 1, 2012. According to the City, "[t]he City has structured its wage offer to provide a substantial initial increase of 5.26% for 75% of SPCOs, to bring them up to the same rate as the remaining ... SPCOs ... [and t]hereafter, effective the first payroll period following ratification, the City has proposed an across the board increase of 4% for all SPCOs, and effective January 1, 2012, it has proposed an additional 2% for all SPCOs."[26] That means that the SPCOs who will get the 5.26% adjustment will receive a total 11.26% increase — which is above to the 9.07% actual increase in the CPI since January 1, 2008. However, the SPCOs who do not get the 5.26% increase will receive 6.0% — which is significantly below the 9.07% CPI increase.

In terms of the CPI, what tips this is that the City's offer is tied to "ratification" — *i.e.*, "[e]ffective 1st payroll period following ratification; 17 SPCOs earning $6,671/month increased to $7,022/month (same rate as remaining 5 SPCOs) ... [e]ffective 1st payroll period following ratification: 4% for all SPCOs ... [e]ffective January 1, 2012: 2% for all SPCOs."[27]

Given that it is now 2013, the City's offer of the 5.26% increase for the lower-paid SPCOs and the additional 4% upon "ratification" occur *after* the January 1, 2012, 2% increase is implemented. As earlier noted, under the City's offer, for the period 2008-2011 the City is therefore effectively proposing

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[26] City Brief at 11.

[27] City Brief at Tab 4; City Brief at 11-12.

a wage freeze. However, during that period — January 1, 2008 through December 31, 2011 — the CPI increased 6.91%.[28] And, there were yearly increases in the CPI in 2009 (2.28%), 2010 (1.15%) and 2011 (2.47%). In terms of the CPI factor, there is no justification for freezes in those three years — but that is what the City's offer does.

I find that the cost-of-living factor favors the Union's offer. Overall, the Union's offer better keeps pace with the cost-of-living as it unfolded during the period beginning 2008 than does the City's offer. In very simple terms, for the SPCOs receiving the 5.26% adjustment, the Union's total wage offer is 12.76% and for those not receiving that adjustment, the Union's total wage offer is 7.5%. From January 1, 2008 to the present, the cost-of-living has increased 9.07%. While the City's total wage offer for the vast majority of the bargaining unit is 11.26%, because the wage offer is keyed to "ratification" and does not implement an increase until January 1, 2012, that wage offer contains an effective four-year freeze for 2008, 2009, 2010 and 2011 even though the cost-of-living went up in 2009, 2010 and 2011.

The external comparability factor under Section 14(h)(4) does not help. This factor is not emphasized by the parties and, in any event, the period involved in this case overlaps the Great Recession. As the City points out, I have previously found that the impact of the Great Recession has caused external comparability to take a back seat to factors more geared to the economy, such as the cost-of-living.[29]

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[28] 225.672 - 211.080 = 14.592. 14.592 / 211.080 = .06913 (6.91%).

[29] City Brief at 11-13. Prior to the Great Recession in 2008, external comparability was the driving factor under the IPLRA for setting contract terms for those classifications of public employees with interest arbitration rights and I was a big proponent for the use of external comparables to resolve interest arbitration disputes under the IPLRA *See* Benn, "A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public

[footnote continued]

[continuation of footnote]
Labor Relations Act," Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

> ... The parties in these proceedings often choose to give comparability the most attention. *See* Peter Feuille, "Compulsory Interest Arbitration Comes to Illinois," Illinois Public Employee Relations Report, Spring, 1986 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... *[o]f these three, comparability usually is the most important*.").

See also, my awards in *Village of Streamwood and Laborers International Union of North America*, S-MA-89-89 (1989); *City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5*, S-MA-89-74 (1990); *City of Countryside and Illinois Fraternal Order of Police Labor Council*, S-MA-92-155 (1994); *City of Naperville and Illinois Fraternal Order of Police Labor Council*, S-MA-92-98 (1994); *Village of Libertyville and Illinois Fraternal Order of Police Labor Council*, S-MA-93-148 (1995); *Village of Algonquin and Metropolitan Alliance of Police*, S-MA-95-85 (1996); *County of Will/Will County Sheriff and MAP Chapter #123, S-MA-00-123* (2002) and *County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council*, S-MA-00-285 (2002), where issues were decided by my placing heavy emphasis on comparable communities. However, with the shock to the economy inflicted by the Great Recession, after 2008 that approach had to change because it was no longer appropriate to compare public employers with contracts negotiated prior to the crash with those being settled after the crash. Nor did it make sense to make comparisons amongst public employers whose experiences in the Great Recession may have been completely different — some doing far worse than others. Until the economy recovered, external comparability, in my mind, no longer yielded "apples to apples" comparisons as it did before the crash and the focus for resolving these kinds of disputes turned more towards the state of the economy as better reflected by the cost-of-living. *See* my award in *North Maine Fire Protection District and North Maine Firefighters Association* (September 8, 2009) at 12-13:

> Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for "apples to apples" comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.
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> Instead of relying upon comparables, in *ISP [State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726*, S-MA-08-262 (2009)] and *Boone County [County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council*, S-MA-08-010 [025] (2009)], I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index ("CPI").

[footnote continued]

While external comparability is, in my opinion, not a determining factor in this case, *internal* comparability can be looked at.

The Union points to the Supervising Fire Communications Operator ("SFCO") position under the City's 2007-2017 Agreement with IBEW Local 9.[30] According to the Union:[31]

> On an internal comparability basis, the union's offer is much more reasonable as the SFCO wage increases, based upon prevailing wage, put the SFCO at: $8,047.87 on January 1, 2010 and $8,120.67 on July 1, 2011. .... [T]here is a substantial wage gap internally that must be narrowed.

The City counters that argument as follows:[32]

> The suggestion that parity should be maintained between the SPCOs and the SFCOs is simply not on the table in support of the Union's offer, and must be rejected in any event. Unlike the SPCOs who had never been represented in any bargaining unit prior to 2005, the SFCOs have always been represented by IBEW Local 9 as part of a much larger trades unit consisting primarily of electrical linemen. Further, the current IBEW Local 9 contract was negotiated under much different circumstances. The negotiations over that contract concluded in 2007, well before the onset of the economic crash that is now in its sustained fourth year. That contract also was negotiated as part of coalition negotiations with all of the City's trades unions, which resulted in historic 10-year collective bargaining agreements and the creation of the Labor Management Cooperation Committee on health care. Moreover, while SFCOs' salaries are tied to the prevailing

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[continuation of footnote]

Of late and until the economy sufficiently turns around so that interest arbitrators and the parties can again make "apples to apples" comparisons for comparability purposes, my focus has been on the best indicator of how the economy is doing — *i.e.*, the cost-of-living factor. That focus de-emphasizing reliance upon external comparability is particularly appropriate where, as here, the periods involved overlap the Great Recession.

[30] Union Brief at 2-3, 5; City Brief at Tab 3. *See also*, Union Brief Exh. D (showing 2010/2011 prevailing wages and listing the SFCOs at $8,047.87 effective July 1, 2010 and $8,120.67 effective July 1, 2011).

[31] Union Brief at 5.

[32] City Brief at 15, footnote 5 [emphasis in original].

> rate under that contract, that was the culmination of years of negotiations between the parties, where IBEW Local 9 time and again advanced unsuccessfully a bargaining agenda that sought to tie the salaries of the SFCOs *as well as the FCOs* to the prevailing rate rather than the percentage increases negotiated for non-prevailing rate titles. IBEW Local 9 achieved prevailing rate *only* for the SFCOs as part of the historic 2007 contract, and in exchange, the City received significant concessions in other areas, including break-in rates for other job titles represented by Local 9 and scheduling concessions. The economic climate under which the parties negotiated that contract and the significant concessions wrought to achieve that agreement distinguish the SFCOs markedly from the SPCOs—for whom the Union has *not* suggested the prevailing rate, in any event—thus making parity between the two groups inapposite.

The City's points are well-taken. As a general proposition, employees should not realistically expect that in one fell swoop through an initial contract that they should be able to gain the same achievements that other groups have received through many multiple contracts and years of negotiations.[33] Further, as the City points out, even for internal comparability, such comparisons would not be appropriate when the wage rates for the other internal group of employees were established prior to the Great Recession.

However, even if the Union's internal comparability argument could be negated for the reasons stated by the City, as discussed *supra,* the City's problem returns to the strength of the cost-of-living factor favoring the Union's position and the effective wage freeze for 2008, 2009, 2010 and 2011 sought by the

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[33] Examination of the effect of the Union's wage offer for SPCOs shows that the Union is not attempting to gain wage parity with the SCFOs. As shown by the table *infra* at IV(4), with the Union's wage offer, as of July 2011, SPCOs will receive $7,566 per month. As of July 2011, SFCOs received $8,120.67 per month as a prevailing rate. *See* Union Brief at 5 and Union Brief Exh. D (last page).

City. In my opinion, those factors favoring the Union's proposal outweigh any internal comparability arguments made to support the City's offer.[34]

As earlier discussed, Section 14(g) of the IPLRA only allows me to select one party's offer — even if parts of the offer are not as reasonable as others. Under the circumstances, on balance, the cost-of-living factor drives the wage issue. The bottom line here is that the Union's wage offer is more in line with the cost-of-living since January 1, 2008 and there is simply no justification for a lengthy freeze imposed by the City's wage offer for 2008, 2009, 2010 and 2011.

The Union's wage offer is therefore selected. Wages are retroactive to January 1, 2008.

2. Work Outside Of Scheduled Workweek (Overtime)

The City proposes:[35]

- Work outside scheduled work week: compensatory time at one and one-half times the regular rate of pay for SPCOs.
- Cash out all unused compensatory time by October 16 each year.

With respect to specific language, the City proposes:[36]

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[34] The City's chart of wage settlements in other City bargaining units (represented employees) makes the point (City Brief at 14):

Year	Police/Fire	Unit II	Local 743
2008	3%	--	0%
2009	2%	6.25%	0%
2010	1%	3.00%	0%
2011	2%	0%	5%/0%
2012	1%	0%	1%/0%

No bargaining unit cited in the City's chart took a four consecutive year wage freeze.

[35] City Brief at Tab 4; City Brief at 5, footnote 1.

[36] *Id*.

Section 4.6 — Work Outside of Scheduled Workweek

Where an employee worked his or her full scheduled workweek, and was required to work additional hours (a) before the employee's scheduled start time, or after the employee's scheduled quitting time, on any work day during that workweek; or (b) on the employee's scheduled day(s) off at the end of that workweek; the employee shall be compensated for such additional hours worked in the form of compensatory time at one and one-half (1.5) times the employee's regular rate of pay, computed on the basis of completed fifteen (15) minute segments. Solely for the purpose of determining whether the employee worked his or her full scheduled workweek within the meaning of this section, hours "worked" shall be deemed to include all hours actually worked, as well as the following types of absences, but only where such absence was excused by the Employer: paid holidays and personal days; unpaid holidays pursuant to the terms of the "Holidays" side letter appended to this Agreement; scheduled vacation days; scheduled compensatory time; paid sick leave; and paid time off under Sections 17.6, 17.7 and 17.8 of this Agreement. No other absence from work shall be considered hours "worked" for purposes of application of this section. No time compensated under the terms of Section 4.5 of this Agreement shall be considered for any purpose under this section.

Section 4.7 — Use of Compensatory Time

Use of compensatory time shall be subject to the operational and scheduling needs of the Employer. All accumulated compensatory time which has not been used or scheduled by October 16 in any calendar year will be paid to employees in the form of cash.

The Union proposes the same basic language for Section 4.6. The language in Section 4.6 is therefore adopted.[37]

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[37] Union Brief Exh. C; Union Brief at 5.

There appears to be one difference in the parties' proposed language. The parties proposed language differs in the following respect for item (b) in the language for Section 4.6 [difference underscored]: "... (b) on the employee's scheduled day(s) off at the end of that workweek; the employee shall be compensated for such additional hours worked in the form of compensatory time at one and one-half (1.5) times the employee's regular rate of pay on an hourly basis, computed on the basis of completed fifteen (15) minute segments." The phrase "on an hourly basis" appears in the Union's proposed language but not in the City's. *Compare* Union Brief *[footnote continued]*

The dispute — if there is one — appears to be in Section 4.7's provisions for use of compensatory time.

The Union sees the City's proposal for Section 4.7 as "… a significant limitation upon the use of Compensatory Time …."[38] According to the Union "… because this is the initial contract, the parties should bargain the limits on compensatory time use in the successor agreement."[39] According to the City, "[t]he parties' final offers on holiday pay and work outside of scheduled work-week do not appear to be in dispute: both the City and the Union's final offers propose that employees be compensated for additional hours worked in the form of compensatory time at one and one-half times (1.5) the employee's regular rate of pay, computed on the basis of completed fifteen (15) minute segments, and both final offers propose that employees who are required to work a regular tour of duty on an established holiday shall receive compensatory time at one and one-half (1.5) times their regular straight time rate of pay for each hour worked on said holiday."[40]

Quite frankly, I really can't tell if there is a substantial dispute over the use of compensatory time. The Union says there is, but the City does not appear to be of the same opinion.

If there is a dispute, the answer to this particular dispute comes from the nature of the interest arbitration process and the burdens to be met. S*ee* my

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[continuation of footnote]
Exh. C with City Brief at Tab 4. From what is before me, the difference appears to be a typographical one with no impact. If there is a substantive difference caused by the phrase "on an hourly basis", the parties are free to bring that difference back to me for resolution.

[38] Union Brief at 5.

[39] *Id*.

[40] City Brief at 5, footnote 1.

award in *City of Chicago and FOP Lodge No. 7* (2010) at 6-7 [citation omitted, emphasis in original]:[41]

> "… [T]he burden for changing an existing benefit rests with the party seeking the change … [and] … in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken."
>
> As shown by the burdens placed on the parties to obtain changes to existing collective bargaining agreements, interest arbitration is a *very* conservative process. It would be presumptuous of me to believe that I could come up with a resolution satisfactory to the parties on these issues when the parties with their sophisticated negotiators could not do so, particularly after years of bargaining. For these issues, at best, the parties' proposed changes were good ideas from their perspectives. However, it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change. …

It has not been shown by the Union that the existing process for use of compensatory time is broken and in need of repair. Further, given the lack of a fully developed record on this issue, the extent of the changes sought — if there are any — is not really clear. Therefore, there shall be no changes. Use of compensatory time shall continue as before — *i.e.,* the *status quo* shall be maintained.

3. Acting Up

The City proposes:[42]

- Two hours of compensatory time for every shift on which SPCOs act up, with no right of refusal.

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[41] http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Chicago%20&%20FOP%20Lodge%20No.%207%20(2010).pdf

[42] City Brief at Tab 4; City Brief at 12, footnote 2.

- City to rotate assignments in accordance with established protocols.

With respect to specific language, the City proposes:[43]

> **Section 4.8 — Acting Up**
>
> The Employer may assign employees to perform, and be held accountable for, substantially all of the duties and responsibilities of a higher rated job classification not covered by this Agreement. Such assignments will be equitably rotated among eligible employees assigned to the affected shift, in accordance with the Employer's protocols for such assignments. Employees shall have no right to refuse to accept such assignments. For each such assignment that continues through an entire shift, the employee will be credited with two (2) hours of compensatory time.

The Union proposes:[44]

> **Section 4.8 Acting Up**
>
> The Employer shall seek volunteers to perform, and be held accountable for, substantially all of the duties and responsibilities of a higher rated job classification. If no volunteers come forward, the Employer may assign employees to perform such duties and responsibilities of a higher rated job classification based upon inverse seniority in the bargaining unit. Employees who act up shall receive two (2) hours of compensatory time for every shift on which the employee acts up.

From a reading of the proposed language, the parties are in agreement on the pay aspect of the issue — two hours of compensatory time for each shift worked.[45] The difference is in the method for making these assignments.

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[43] *Id*.

[44] Union Brief Exh. C; Union Brief at 5-6.

[45] *See also,* City Brief at 5 at footnote 1 and 11-12, ("… [T]he parties' final offers agree that employes shall be credited with two (2) hours of compensatory time for each acting up assignment … [t]he City also has proposed additional compensatory time … in the context of its offers on … acting up ….); Union Brief at 5-6 ("Both parties are agreed that the appropriate pay for such acting up is two hours of compensatory time for each shift worked.").

According to the Union:[46]

> The union proposes a voluntary system for acting in a higher job classification, while the Employer wishes to force people into taking on this additional responsibility. The union does not oppose the Employer having the right to order people to act-up, the union seeks to first, do it by volunteer, and then by reverse-seniority, such that the least senior bargaining unit member is forced to take the additional responsibility. ... The Employer retains the right to staff under the union proposal, the difference is which specific SPCO will be forced to work as the acting supervisor if there are no volunteers. Prudence would indicate that in an initial contract, the less draconian alternative be used before we proceed to forcing bargaining members to work in elevated supervisory capacities against their will.

According to the City:[47]

> The only dispute remaining is the method by which acting up assignments shall be made. The Union has proposed that acting up assignments shall be made on a volunteer basis and then by inverse seniority if no volunteers are available. This offer should be rejected in favor of the City's position. The City has proposed to continue the existing practice, which is to rotate such assignments in accordance with the protocols approved by the Hiring Monitor. The Union, as the moving party with respect to this issue, has failed to bring forth any evidence that the current system is unworkable, and thus the status quo should be maintained and the City's offer adopted.

Thus, the City seeks to maintain the *status quo* while the Union seeks a change by going to a system of volunteers and then rotation on the basis of inverse seniority.

The burden is on the Union to show that the existing system is broken and in need of change. The Union may have a good idea, but that is not enough to meet its burden. As the City argues, the Union's burden has not

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[46] Union Brief at 5-6.

[47] City Brief at 12, footnote 2.

been met. The City's proposal to maintain the *status quo* on this issue is therefore adopted.

4. Holiday Pay

There is no dispute over holiday observance.[48] The Union sees a dispute over holiday pay.

The Union proposes to add the following language:[49]

> **Section 6.5 Holiday Compensation**
>
> Employees who work on the holidays, as defined in this agreement, shall receive 1.5 hours of compensatory time for every hour worked, along with the employee's hourly wage set forth in this agreement.

According to the Union "[t]he union's proposal is to accrue a 1 1/2 hour of compensatory time, plus the hour's pay, for each hour worked on the holiday.[50]

While the Union sees a dispute on this issue, with the filing of its submissions, the City apparently does not see a disputed issue. According to the City's proposal for Section 6.2 [emphasis added]:[51]

> **Section 6.2 — Holiday Observance**
>
> * * *
>
> Employees who are required to work a regular tour of duty on an established holiday *shall receive compensatory time at one and one-half (1.5) times their regular straight time rate of pay* for each hour worked on each such holiday. ...

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48 Union Brief at 6 ("The parties agreed on the Employer's proposal of June 10, 2010 as reiterated in the Employer's final offer and this language should be adopted into the collective bargaining agreement."). *See also*, City Brief at Tab 4.

49 Union Brief Exh. C.

50 Union Brief at 6.

51 City Brief at Tab 4.

Further, according to the City [emphasis added]:[52]

> *The parties' final offers on holiday pay* and work outside of scheduled workweek *do not appear to be in dispute*: both the City and the Union's final offers propose that employees be compensated for additional hours worked in the form of compensatory time at one and one-half times (1.5) the employee's regular rate of pay, computed on the basis of completed fifteen (15) minute segments, and *both final offers propose that employees who are required to work a regular tour of duty on an established holiday shall receive compensatory time at one and one-half (1.5) times their regular straight time rate of pay for each hour worked on said holiday*.

If there really is a dispute here with the Union seeking additional compensation for working on holidays over and above what the employees presently receive or that which has been agreed to by the City, that requested increase must be rejected.

Section 14(h)(6) looks to "[t]he overall compensation presently received by the employees, including direct wage compensation ...." Returning to the wage increases obtained by the employees and as discussed *supra* at IV(1), the SPCOs who will get the 5.26% increase (*i.e.,* 17 employees constituting the vast majority of the bargaining unit) will receive an effective 12.76% increase as a result of this award when the CPI for that same period increased by 9.07%. For those SPCOs who do not get the 5.26% increase, those employees will get a 7.5% increase when the CPI for that same period increase by 9.07%.

However, those simple percentage increases are misleading. Wage increases granted by collective bargaining agreements are not simple interest increases. Yearly percentage increases have a compounding effect. *See* my

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[52] City Brief at 5, footnote 1.

award in *Cook County Sheriff/County of Cook and AFSCME Council 31* (2010) at 51-52:[53]

> … [A]n employee covered by the Agreements receiving an 8.5% wage increase over the life of the Agreement, actually receives a higher wage increase because wage increases have a compounding effect yielding a higher percentage — the periodic increases are applied on top of previously granted increases.

In terms of the wage increases granted as a result of my adoption of the Union's wage offer and based upon the 17 SPCOs earning $6,671/month and the six SPCOs earning $7,022/month as of December 31, 2007, the *real* monetary increases achieved by the employees as a result of the adjustments and compounding effect of the wage increases look as follows:

Effective Date And Increase	17 Adjusted	17 Actual Percentage Increase	6 Not Adjusted	6 Actual Percentage Increase
12/31/07	6,671		7,022	
1/1/08	7,022		7,022	
1/1/08 (1.0%)	7,092		7,092	
7/1/08 (1.0%)	7,163		7,163	
1/1/09 (1.5%)	7,271		7,271	
7/1/09 (1.5%)	7,380		7,380	
1/1/10 (0.0%)	7,380		7,380	
7/1/10 (0.5%)	7,416		7,416	
1/1/11 (1.0%)	7,491		7,491	
7/1/11 (1.0%)	7,566		7,566	
1/1/12 (2.0%)	7,717		7,717	
Actual % increase from 12/31/07		15.68%[54]		9.90%[55]

[53] http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf

[54] $7,717 - $6,671 = $1,046. $1,046 / $6,671 = .1568 (15.68%).

[55] $7,717 - $7,022 = $695. $695 / $7,022 = .0989 (9.90%).

Therefore, *in terms of real money* resulting from the compounding nature of the wage increases, the 17 SPCOs receiving the adjustment actually received a 15.68% increase from January 1, 2008 through January 1, 2012 when the CPI for that same period increase by 9.07%. For the six SPCOs who did not receive the adjustment, they actually received a 9.90% increase when the CPI for that same period increase by 9.07%.[56] Simply put, when the economy was in the midst of the Great Recession as it was during much of the period covered by this Agreement, *in terms of real money*, the employees did well compared to the cost-of-living. The 17 SPCOs receiving the adjustment were well ahead of the CPI and those who did not receive the adjustment were still ahead of the CPI. In terms of Section 14(h)(6) which looks to "[t]he overall compensation presently received by the employees, including direct wage compensation …", any additional compensation sought by the Union on behalf of the employees through this offer concerning holiday pay cannot be imposed.

The City's offer is therefore adopted.

V. AWARD

1. Wages:

The Union's wage offer is adopted, retroactive to January 1, 2008.

2. Work Outisde Of Scheduled Workweek (Overtime):

The parties are in agreement for the Section 4.6 langauge. The *status quo* is maintained for Section 4.7's provisions for use of compensatory time.

3. Acting Up:

The parties are in agreement on the pay aspect for acting up. The City's proposal for assignment of employees to act up is adopted.

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[56] *See* the table "CPI From 1/1/08 To The Present", *supra* showing a 9.07% increase in the CPI since January 1, 2008.

4. Holiday Pay:

The parties are in agreement over holiday observance. Changes, if any, sought by the Union to holiday pay are rejected and the City's offer is adopted.

5. Prior Tentative Agreements:

All prior tentative agreements are incorporated into this award.

6. Retained Jurisdiction

The matter is now remanded to the parties for the drafting of language consistent with the provisions of this award. With the consent of the parties, I will retain jurisdiction to resolve any disputes which may arise concerning the drafting of that language.

Edwin H. Benn
Arbitrator

Dated: January 9, 2013