IN THE MATTER OF ARBITRATION	
BETWEEN	**Case S-MA-07-091 (2007)**
TOWN OF NORMAL, IL Employer,	**Hearing Dates: September 25 & October 4, 2007, Normal, IL; Executive Session April 3, 2008.**
and	**Issue: Sick-Leave Buy-Back Provision Retroactivity of MLK Holiday**
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 2442 Union,	**Marvin Hill, Jr. Arbitrator**

APPEARANCES

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The Town of Normal is located in Central Illinois, approximately 125 miles southwest of Chicago and 155 miles northeast of St. Louis, MO. In 2000, the Town had a population of 45,386 residents. It employs more than 348 people, including 67 employees in the fire department. Of the

67 people who work in the fire department, 60 employees are included in the bargaining unit represented by IAFF Local 2442 ("Union"). The only other Town employees that have selected a union are the police officers, represented by the Police Benevolent and Protective Association (PBPA) since 1987.

The parties' first collective bargaining agreement was executed in 1978. Since then, the parties have signed fourteen (14) different bargaining agreements, including re-openers. This is the first time the parties have had to resort to interest arbitration to conclude a successor collective bargaining agreement.

The parties' most recent bargaining agreement expired on March 31, 2007. Negotiations for a successor collective bargaining agreement began in January 2007. The parties reached agreement on all issues except one: the sick-leave buy-back program. This single economic issue was submitted for Section 14 interest arbitration.

On April 12, 2007, the Town Council passed an ordinance that terminated retiree health insurance benefits for all *future hires*. The ordinance did not affect retiree insurance benefits of *current employees* (UX 2). On August 10, 2007, the Union suggested, for the first time, a post-employment health plan, otherwise known as "PEHP," for employees. Under the Union's proposal, this PEHP was to be funded by a good attendance incentive and annual contributions from the employer. The Union also discussed the creation of a new *annual* buy-back program to replace the *career* buy-back program that was already in place.

The Town accepted the general concept of adopting an annual buy-back program in lieu of the existing career buy-back program. In subsequent negotiations, the parties agreed on the framework for a whole new approach to retiree health insurance benefits. To this end, the Town agreed to lock in the retiree health insurance benefits for all current employees with ten or more years of service. In exchange, the parties agreed that employees with fewer than ten years of service would not receive retiree health insurance, but would instead have individual PHEP accounts that could be used to fund their own purchase of health insurance upon retirement.[1]

The parties were not able to reach an agreement on the details of how the PHEP accounts would be funded. When negotiations reached impasse, mediation was requested. During mediation, the parties reached tentative agreements on several critical aspects of the new program, specifically the following:

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[1] As articulated by Jim Baird, counsel for the Town:

> And, by the way, the only ones really affected by any of this are less than ten-year people. For ten years and beyond, the retiree health doesn't change, the annual sick leave buy-back, career buy back, isn't changed. So this is for new hires and existing employees with less than ten years." (R. 109).

The record indicates that 39 bargaining-unit employees will be impacted by the item at issue in this case. The affected employees average $47,950 as their salary before the current increase. (R. 119).

For employees with ten (10) or more years of service on April 1, 2008:

Employees would sign individual agreements with the Town, locking in their retiree health insurance benefits.

The Town would deduct 0.5% of the employee's salary as a contribution to the employee's VEBA Section 501(c)(9) account; and

All accrued comp time over 48 hours as of March 31st each year would be paid into the employee's PEHP account.

For employees with less than 10 years of service on April 1, 2008:

Retiree health insurance would be eliminated;

The Town would create and fund individual PHEP accounts for all employees. Those accounts would be funded in four ways:

1. A salary contribution equal to 0.5% of the employee's salary;

2. Accrued comp time over 48 hours as of March 31 each year would be paid into the PHEP account;

3. The career sick-leave buy-back program would be eliminated in favor of an annual buy-back program. The earnings from the annual buy-back program would be placed into the employee's PHEP account; and

4. The Town would match employee contributions, ranging from $500 per employee to $2,000 per employee, depending on the employee's seniority. The Town match would be paid into an ICMA 457 account.

The parties were able to finalize all but one aspect of this new benefit program. The only unresolved issue involved the details of the contribution from the annual sick-leave buy-back program which could be made as part of the employee's "match" to the PHEP account. When mediation did not result in an agreement, the parties submitted the matter for interest arbitration. A hearing was held in Normal, Illinois on October 8, 2007 at the Normal City Hall, 100 E. Phoenix Avenue, Normal, IL. The hearing was preceded by a mediation session on September 25, 2007. The parties appeared through their representatives and entered testimony and exhibits. Kitty L. Malcom executed a transcript of the proceedings, which was received two weeks after the agreed-upon date. Accordingly, the Employer's post-hearing brief was received on December 7, 2007. The Union received a continuance from the City. Its brief was received on January 22, 2008. The record was closed on that date.

Pursuant to Section 14(f) of the Act, on January 25, 2008, the issue was remanded to the parties for possible resolution by 4:30 p.m., Friday, February 8, 2008. The parties eventually reached a final accord on the merits.

II. POSITION OF THE UNION

A. The Union's Final Offer

Under the Union's final offer, the employee's career sick-leave buy-back program also will remain unchanged for all employees hired *before* April 1, 1998. Employees hired *after* April 1, 1998 will be eligible for a new benefit – an annual sick-leave buy-back program designed as one method to contribute to their PHEP accounts:

1. All employees with accrued unused sick leave are eligible for the sick-leave buy-back program. Employees can cash in 45% of their accrued unused sick leave. The money will be deposited into the employee's section 501(c)(9) VEBA account.

2. The remaining 55% of the accrued unused sick leave will be added to the employee's sick leave bank, up to a maximum of 960 hours.

3. Once an employee banks 960 hours of sick leave, employees will only be eligible to bank additional sick leave if they use less than 48 hours of sick leave during the fiscal year. Employees who use less than 48 hours of sick leave may add to their sick leave bank up to a maximum of 1,440 hours.

4. Employees who have 1,200 of accrued, unused sick leave are eligible for sick leave reinstatement.

In addition, employees hired before April 1, 1998 may choose to participate in this program instead of the career buy back program (JX 4A).

B. The Comparables

1. The Union's proposed list of comparable communities is to be preferred because each community shares common socioeconomic, demographic and financial characteristics and are communities located in a large labor market within which the Town competes for Firefighter/Paramedics

The Union initially submits that it has expanded the scope of its initial survey to include municipalities with a population size greater than +50%. (*Brief for the Union* at 8). Communities were compared to Normal across 16 relevant variables. Only those who matched Normal on 10 or more of those variables were included in the relevant bench-marks (Union Exhs. 1, 1A). A municipality's financial resources measured by factors such as EAV, median housing value, state sales tax, per capita revenue and its demographic qualities indicated by factors such as population, per capita income, firefighter per thousand population are routinely considered by arbitrators,

including the undersigned Arbitrator, in determining comparable communities (*Brief* at 9).

According to the Union, the Town's introduction of a +/- 40% criterion at the hearing is a transparent attempt to bias the selection of comparable communities in the direction of smaller communities. (*Brief* at 10).

a. It is appropriate to include larger communities such as Peoria, Decatur, Champaign, Bloomington and Springfield

The Union maintains that excluding larger downstate communities will produce a sample weighted toward much smaller communities relative to Normal. Further, once comparable communities are determined, there is a tendency for this group to become fixed. Normal, says the Union, is a dynamic community with the highest percentage increase after DeKalb among the Union's proposed group. As such, comparables experiencing similar growth should be included (*Brief* at 12). None of the Town's comparables demonstrate the significant growth between 2000 and 2006 that Normal has seen.

b. The Union's 150 mile geographic area encompasses communities with whom the Town is competing to recruit Firefighter/Paramedics

To this end the Union asserts that the Town cannot effectively recruit needed employees within an 80-mile area. Since the Town must now recruit employees who are certified EMT/Ps, or capable of securing such certification, a much wider geographic zone is required to successfully recruit. The plain fact is that the Town has advertised for paramedics within communities well outside of an 80–mile radius (*Brief* at 16).

c. Inclusion of communities outside of an 8–mile radius will help ensure that Normal's Firefighter/Paramedics are offered competitive wages and benefits

In the Union's eyes, there are two compelling arguments for the inclusion of comparables beyond an 80-mile radius. Overlapping labor markets and mobility.

d. An 80-mile cutoff would frustrate the goal of a representative sample

Geographic proximity must bow to the greater objective of obtaining a representative sample that avoids skewing. In the Union's eyes, traditional radius-centered comparability analysis is challenged by the lack of close neighboring communities that can realistically serve as benchmarks

(*Brief* at 20-21). This view is supported by numerous arbitration decisions (*Brief* at 21, citing *City of Belleville & IAFF #53* (2000), *City of Granite City & IAFF #253* (1994), and *City of Rock Island & IAFF #26* (1992)). Operational geographic cutoffs must be subsumed to the operational needs of the Normal Fire Department as currently defined and to the geographic area in which the Town actually advertises and recruits. The Arbitrator would be challenged to compare "like personnel" and "like services" if limited to the Town's comparables. The Union's additional comparables include communities that provide ALS compensation and/or paramedic services: Rock Island, Decatur, Quincy, Springfield and DeKalb (*Brief* at 23). Also important, in the Union's view, is whether a city has a substantial university/college population (*Brief* at 24).

e. The Town's arguments for excluding Bloomington, Belleville, and Rock Island are lacking

Bloomington should be considered as a sister city to Normal (*Brief* at 25-26). Bellivelle is in no way comparable to a collar city like Chicago (*Brief* at 62). The fact that Rock Island receives gaming revenue is no reason to exclude it from consideration as a comparable to Normal (*Brief* at 27).

C. Economic Issue – Good Attendance Incentive

Background. By way of background, the Union submits that, historically, §12.4 provided for a "sick leave incentive" based upon a Firefighter's accumulation of unused sick leave over his career. Accumulations to the level of 1,440 – 2,160 hours received a payout of 40% of the hours accrued. Employees accumulating less than 863 hours were ineligible for any payment. The incentive was reinforced by another provision, §12.5 "Sick Leave Reinstatement." This benefit became available to employees who accumulated unused sick leave accruals to the maximum cap (1,440 – 2,160). This provision is a safety net for employees who have a good attendance and who have the misfortune to incur an extended sickness after accumulating to the cap. Subject to certain conditions (primarily using not more than 5 sick days during the year after returning from extended sick leave), the employee can reinstate his sick leave accumulation to the level of accumulation achieved before the extended illness. These career sick leave incentives were complemented by the existence of a retiree health insurance benefit (JX 1, §8.3(A), ¶4)(*Brief* at 28-29).

The Town's Decision to Terminate Retiree Health Insurance. The historic arrangement was radically disrupted by the Town's decision to terminate the retiree health insurance benefit. The Union asserts that the focus of the parties' negotiations prior to and during the pendency of this interest arbitration has been directed towards dealing with the impact this policy made upon the bargaining unit.

New Terms for a Modified §8.3. In summary, the agreement eliminated the retiree health insurance benefit for employees hired on or after April 1, 1998, a bitter pill to swallow for the younger members of the bargaining unit. To mitigate the impact of this change, the Union and the

Town have agreed in principle to establish an alternative "defined contribution" plan for the historic "defined benefit" plan. The centerpiece for this plan is the establishment of a post retirement health plan (PEHP) for the benefit if less senior and new employees. The Union submits that the schedule for the employer "matching" payments is the *sine qua non* for the new plan (*Brief* at 29-30).

The parties have also agreed to modify the sick leave incentive benefit for employees who will no longer be eligible for the retiree health-insurance benefit (*Brief* at 30). The new agreement must be considered in the context of the overall agreement to establish a defined contribution benefit and, as such, will be recognized as an important complement to it. The Union submits that adoption of the Town's final offer is at odds with the parties' agreement in principle to mitigate the impact of the Town's action to terminate the retiree health-insurance benefit for younger and new employees. Fully understood, the Town's offer, if adopted, will effectively nullify the agreed sick-leave reinstatement benefit for less senior and new Firefighters.

1. The Town's proposal essentially renders the sick-leave reinstatement an illusory benefit

Illustrative of the stringency of the Town's eligibility criteria is the fact that even Firefighters with perfect attendance will not accrue the 1,400 maximum hours until after 14 years (R. 87, 90; UX 9)(*Brief* at 32-33). If only one sick day was used, it would take 16 years to get to the maximum (*Id.*). Anything more than one day, the Town's proposed maximum (1,440) is unattainable (R. 90; UX 9). To base a program on the assumption that a Firefighter will have perfect attendance, or only one sick day average, is extreme. In the Union's words, "only a reasonable attainable carrot serves its purpose as an incentive." (*Brief* at 33). The Town's offer effectively nullifies the sick leave reinstatement benefit for less senior and new employees.

2. The additional costs attributable under the Union's offer are minor when considered against the size of the gain achieved by the Town by the elimination of the retiree health insurance benefit

The liability that the Town is eliminating as a result of the termination of retiree health benefits in current dollars is $4.1 million (*Brief* at 35). Addressing the Town's exhibits dealing with cost considerations, the Union maintains that these exhibits are a form of "single entry bookkeeping," ignoring savings on overtime costs which result from good attendance. The additional costs are also small when measured against the overall savings accruing to the Town as a result of the elimination of the retiree health-insurance benefit.

The Union's offer allows Firefighters to begin funding their PHEP accounts immediately, while the Administration would delay funding for a minimum of five years (with perfect attendance). The Union's offer allows Firefighters to contribute all unused annual sick leave accrual at the agreed 45% rate.

Further, among the comparable communities only Champaign and Springfield do not credit unused and unpaid sick leave accruals towards Firefighters' sick leave bank. Comparable departments have different kinds of incentives and different caps, but once the cap is reached, the incentives of all other departments are paid out at 100% of the value of the incentive (e.g., Bloomington, Belleville and Quincy) or as a premium or bonus with no deduction from accrual toward the bank (DeKalb and Galesburg). Decatur and Moline provide incentives in the form of additional time off. Springfield pays at 100% for incentives provided after employees reach accrual of 90 days (2,160 hours)(UX 3-7)(*Brief* at 37).

3. With retiree health insurance benefits subtracted, adoption of the Town's offer would drop affected employee's sick leave incentive benefit to the bottom of the comparables

The Union submits that the assumption costs underlying the Town's offer is that costs for the conversion from the career incentive to the annual incentive should be roughly the same, However, the existing benefit is below average. Further, the total dollar value of Normal's career benefits rank 12th, more than 41% below the average. Thus, the annual benefit reflecting the same costs will produce a like ranking. But a majority of the comparables (8/14) have both an annual and a career sick-leave insurance benefit. Thus, in the Union's view, adding the value of this benefit would further depress Normal Firefighters (Brief at 38).

D. Conclusion

The comparables offered by the Union are rational, and the variables recognize relevant factors that are needed to account for the novation that the Normal Fire Department is undergoing.

The Union's final offer hardly frustrates, or even interferes with, the Town's goal of eliminating a large retirement liability. The Town still stands to gain a $4.1 million liability reduction even if the Union's offer is adopted. The Union's language merely assures new and less senior affected employees a reasonable chance of obtaining these benefits during their careers.

The Union's proposals do not come close to recouping the career benefit dollar-for-dollar on behalf of its members. There is no attempt at enrichment here. Rather, the Union seeks only to mitigate a substantial effect for new and less senior employees (*Brief* at 39).

For Firefighters, sick-leave buy-backs offer a win/win means of reinforcing good attendance. In the Union's view, the Town takes a simplistic view of the issue based purely on cost, as if it were a zero sum relationship. Even with the Union's modifications, the sick-leave benefits are an investment in productivity because it reduces absenteeism. It is also a significant inducement for hiring and retention (*Brief* at 39).

III. POSITION OF THE ADMINISTRATION

A. The Employer's Final Offer

Under the Town's final offer, the employees' *career* sick-leave buy-back program will remain unchanged for all employees hired before April 1, 1998. Employees hired *after* April 1, 1998 will be eligible for a new benefit – an *annual* sick-leave buy-back program designed as one method to contribute funding to their PHEP accounts. As outlined in the Administration's post-hearing brief (*Brief* at 4-5), this program has several components:

1. Any employee who accrues 40 days (960 hours) of sick leave will be eligible to cash in 45% of 4 days (96 hours) of sick leave accrued during the year. The money will be paid into the employee's section 501(c)(9) VEBA account.

2. Sick leave accrued above 4 days (96 hours) during the year will be added to the employee's sick-leave bank, up to a maximum of 1,440 hours.

3. If an employee uses less that 24 hours of sick leave during a fiscal year, then 55% of the 96 hours cashed out will be placed in the employee's sick-leave bank and will accrue to the maximum of 1,440 hours. If an employee uses more than 24 hours of sick leave during a fiscal year, the 55% of the 96 hours cashed out will not be applied to the employee's sick-leave bank and will be lost to the employee.

In addition, employees hired before April 1, 1998 may choose to participate in this program instead of the current career buy-back program (JX 4B).

B. Argument on the Merits

1. The Comparables

The parties agree on five (5) comparables: Danville, Galesburg, Moline, Pekin and Urbana (*Brief for the Employer* at 7). In addition to these five communities, the Union proposes nine (9) comparables: Champaign, Peoria, Rock Island, DeKalb, Decatur, Belleville, Bloomington, Quincy and Springfield (UX 1). The Town contends those comparables are inappropriate and, instead, proposes that Kankakee be added to the list of agreed-upon comparables, bringing the number of bench-mark jurisdictions to six (*Brief* at 8).

a. The comparables provided by the Union should be rejected because the Union's methodology is flawed

The Employer asserts that the Union made at least five (5) substantial errors when it picked

its list of comparable communities. First, the Union only considered the 15 largest communities within its hand-picked geographical radius, failing to consider whether the population of those communities was similar to the population of the Town. Second, the Union's use of *per capita* data, combined with failing to select towns of a comparable position, led the Union to include towns whose actual measure of wealth exceeds the wealth of Normal by up to 375%. Third, the Union conscientiously excluded communities from the Chicago metropolitan area from its list of comparable communities, but inexplicably failed to exclude communities from the St. Louis metropolitan area from its list. Fourth, the Union expanded the scope of its search for this interest arbitration to communities within 150 miles of the Town. And Fifth, the Union failed to exclude communities that are not comparable because they receive large amounts of gaming tax revenue that is not available to the Town (Rock Island, for example)(*Brief* at 8).

b. The Town's proposed comparable community, Kankakee, should be adopted

The Employer asserts it has proposed only one bench-mark community, Kankakee, that is not on the list of comparable communities proposed by the Union. (*Brief* at 14). To develop its list of comparable communities, the Employer followed a rational approach: First, it excluded communities that were not within plus or minus 40% of the Town's population; Second, it excluded communities in the Chicago and St. Louis metropolitan areas; Third, it excluded gaming communities from its analysis; Fourth, the Town analyzed several factors typically used by arbitrators to determine whether the communities are truly comparable, including the number of sworn fire personnel, *per capita* income, median home value, median household income, EAV per capita, general fund revenues *per capita*, general fund balance *per capita*, and sales tax *per capita* (*Brief* at 15).

In the Employer's view, Kankakee should be included because it matches the profile of the five communities mutually selected by the parties. According to the Administration, Kankakee falls within the established range of values for the agreed-upon communities in six of the nine factors that were analyzed by both parties and, thus, should be included in the bench-mark communities (*Brief* at 18-19).

2. The Town's proposal is more reasonable than the Union's final offer and, accordingly, should be awarded by the Arbitrator

The Administration points out that the parties have agreed to some key components of the newly-defined contribution retiree health system. Specifically, they have agreed to eliminate the current *career* buy-back system in favor of an *annual* buy-back approach. They have also agreed

that Firefighters should be given an incentive for non-use of sick leave. The parties' positions diverge, however, on the details of how the new buy-back approach will operate:

> Minimum Eligibility Requirement. The Town – consistent with the Union's earlier proposal – submits that employees must accrue 960 hours of sick leave *before* they are eligible for the buy-back program. The Union proposes no minimum eligibility requirement.
>
> Amount that May be Cashed in. The Employer proposes employees can cash in 45% of 4 days of unused sick time *per year*. The Union proposes employees can cash in 45% of all 8 days of unused sick time *per year*.
>
> Automatic Banking. The Town proposes there will be no automatic banking of unused sick-leave hours. The Union proposes that employees can automatically bank the un-cashed balance of sick leave, regardless of whether the employee is entitled to a non-use incentive, up to a maximum accrual of 960 hours.
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> Non-Use Incentive. The Town proposes that once an employee has banked 960 hours of sick leave, the 55% un-cashed portion of accrued leave may be banked (up to a maximum of 1,440 hours) as a non-use incentive if employees use less than 24 hours of sick leave in a year. The Union proposes the same non-use incentive, but would allow employees to use up to 48 hours of sick leave in a year and still qualify for the incentive.
>
> Sick-Leave Reinstatement. The Town would leave Section 12.5 of the collective bargaining agreement unchanged, as originally agreed to by the parties. The Union would modify Section 12.5 of the contract so that employees are eligible for sick-leave reinstatement if they have 1,200 hours of accrued unused sick leave.
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> (See, *Brief for the Employer* at 20-21).

a. Minimum eligibility requirements

The Town's proposal embraces a concept it claims was originally endorsed by the Union – employees should have a safety net of accrued sick time in case employees actually need the time for an unplanned illness, injury or disability. Indeed, the Union's September 24th settlement offer included a 960-hour minimum eligibility requirement – the same minimum level included in the Town's current proposal. Thus, even the Union has recognized the wisdom of the Town's approach, in the Employer's eyes. (*Brief* at 22).

b. Number of days that may be cashed in

Under the Union's proposal, employees would be allowed to cash in all eight (8) days of unused sick time. Under the Town's proposal, employees would be allowed to cash in four (4) days of unused time and bank the remainder of their time. The Town would allow a Firefighter earning the average hourly rate ($18.20) to earn and contribute $786.24 per year towards his or her PEHP account. Over a 25-year career, employees will be able to cash in $19,656 of unused sick time. This new benefit will exceed the value of the previous contract's buy-back program by as much as $6,437 per employee (*Brief* at 22).

Management submits that the Union's proposal is far more costly, where each Firefighter will be able to cash in $1,572.48/year. Over a 25-year career, employees will be able to cash in $39,312 of unused sick leave. According to the Employer, the Union's proposal will exceed the value of the old career buy-back program by $26,093, almost $20,000 per employee more that the cost of the Town's proposal. *Management estimates that over 25 years, the Union's proposal will cost Normal nearly $1.2 million more than the Town's proposal would cost* (*Brief* at 22-23).

To this end, the Administration offers the following summary analysis:

	Former Career Buy-Back Benefit	Town's Proposal	Union's Proposal	Cost Difference (Union - Town)
Annual Cost/ Employee	N/A	$786.24	$1,572.48	$786.24
Cost/Employee with a 25 Year Career	$13,219	$19,656	$39,312	$19,656
Total Cost for 60 employees	$793,140	$1,179,360	$2,358,720	$1,179,360
Change from current benefit		$386,220	$1,565,580	$1,179,360

(*Brief for the Employer* at 23)

In the Employer's view, because the Union's proposal costs more than $1.5 million above and beyond the cost of the current career buy-back program, the Union has essentially asked the Employer for a $1.5 million added benefit, while offering the Town little or nothing in return. Furthermore, this proposed $1.5 million benefit does not include the cost of the Town's 457 match to the employees' PHEP accounts. On this basis alone, asserts the Town, the Union's proposal must be rejected (*Brief* at 23).

c. Automatic banking

Under the Union's proposal, when employees cash in their unused sick leave for 45% of its value, the remaining 55% of the cashed sick day will not be lost, but will automatically be returned to the employee's sick-leave bank until the employee banks 960 hours of unused leave. Under the Town's proposal, the remaining 55% of the cashed-in sick days will not be automatically banked. Instead, employees must earn the right to bank the remaining 55% of their cashed-in sick days by their non-use of such accrued sick days.

According to the Town, the Union's proposal far exceeds the sick-leave benefits offered to the Town's police officers, and the sick-leave benefits offered by the Town itself exceed the benefits in the comparable jurisdictions as no jurisdiction offers automatic banking of the unused portion of of an accrued sick day, even as a non-use incentive. Further, the Union has not offered a *quid pro quo* for the requested benefit (*Brief* at 28).

d. Incentive for non-use of sick leave

While both parties have recognized the importance of rewarding employees who do not use sick leave during the year, under the Town's proposal, after 960 hours have been accrued, employees could bank the 55% of their un-cashed time if they used less than 24 hours of sick leave during the year. In management's view, this approach comes far closer to creating a real incentive for employees who use a minimal amount of sick leave than the Union's proposal, where employees would be allowed to use two of their eight days of sick leave – a full 25% of their sick days – and still receive a non-use incentive. The Union's approach would be more costly to the Town and would not create an adequate incentive to use sick days only when they are truly needed (*Brief* at 29).

e. Sick-leave reinstatement

The Town's proposal recognizes that Section 12.5 of the collective bargaining agreement was tentatively agreed to by both parties with no change to the current eligibility level for the reinstatement program (1,440)(R. 116). The Union recognizes that this section was tentatively agreed upon, and that the Arbitrator only has authority to modify Section 12.4 of the Agreement, but still asks that the minimum eligibility level be reduced to 1,200 hours. The Administration asserts that the Arbitrator is without authority to award the Union's proposal (*Brief* at 29)

3. The Union's Proposal Must be Rejected Because the Arbitrator Does Not Have Authority to Modify Section 12.5 of the Current Labor Agreement

The Administration maintains that it stipulated that the Arbitrator may only consider one economic issue: Section 12.4 of the parties' current collective bargaining agreement (JX 3). Further, the parties agreed that the tentative agreements reached during bargaining would be incorporated into the Arbitrator's award. Despite these stipulations and agreements that limit the Arbitrator's authority to decide only Section 12.4 of the bargaining agreement, the Union's proposal would require the Arbitrator to modify Section 12.5 of the agreement, a section that deals *not* with the sick-leave incentive program *but with a sick-leave reinstatement program* for long-term employees who use sick leave during a disability (*Brief* at 31).

Management points out that currently, employees who use sick leave for an illness, injury or disability that requires them to miss 10 consecutive days of work are eligible to have their sick leave reinstated to its level before the injury occurred if the employee had accrued 1,392 hours of unused sick leave. In order for the sick-leave bank to be reinstated, the employee cannot use more than five sick days in the year following his disability (JX 1, Sec. 12.5). Under the Union's proposal, employees would be eligible for this benefit once they have 1,200 hours of accrued sick leave – almost 200 hours less than the current contractual requirement (JX 3A, Sec. 12.4(5)(*Brief* at 31). The Union acknowledged that if this proposal is adopted, Section 12.5 of the collective bargaining agreement must be modified. But on September 21, 2007, the parties entered a tentative agreement that Section 12.5 of the bargaining agreement would remained unchanged. Clearly, the Arbitrator may not adopt the Union's proposal because to do so would reverse the parties' tentative agreement and would exceed his authority to consider only Section 12.4 of the agreement. Therefore, the Arbitrator must adopt the Town's sick-leave buy-back proposal (*Brief* at 31).

4. The Union's Offer Would Provide Benefits Far In Excess Of Those Provided In Internal and External Comparable Contracts

The Employer maintains that when internal and external bargaining agreements have adopted sick-leave buy-back programs, the parties rarely allow employees to buy back 100% of the value of their unused sick days. When sick-leave can be brought back for 100% of the value, there is typically a low cap on the number of hours that may be brought back. Sick-leave buy-back hours beyond the cap are entirely lost to the employee. Under the Union's proposal, employees would be allowed to cash in 45% of the value of their sick days and bank the remaining 55% of the days that are cashed in. In the Town's view, this proposal breaks the mold of comparable agreements internally and externally, and should be rejected for that reason alone (*Brief* at 32).

a. Internal comparability supports the Town's offer

Other than the Firefighters, the only Town employees represented by a union are the police officers. The police agreement provides that an officer is entitled to cash in his accumulated sick-leave account at a maximum rate of 40% of up to 960 hours of unused sick leave. The remaining 60% of sick leave is lost (*Brief* at 33). The Union's proposal allows the employee to realize 100%

of the value of the unused sick leave, more than double the amount allowed under the police contract. Because the Union has offered no reason, let alone a compelling reason, why the Firefighters should receive buy-back benefits that greatly exceed those of police officers, the Town's proposal should be adopted.

b. External comparability supports the Town's proposal

(1) The comparables proposed by the Town do not allow Firefighters to buy back 100% of the value of their unused sick leave

As noted, the Town proposed six (6) comparables: Danville, Galesburg, Kankakee, Moline, Pekin and Urbana. The Union agreed with the selection of all these communities besides Kankakee. None of the comparable communities have adopted a sick-leave buy-back program that approaches the scope of the program proposed by the Union (*Brief* at 33-34). External comparability supports the Town's offer because no communities allow employees to retain a balance of their sick leave once it is cashed out. Furthermore, in the few communities that allow employees to buy back sick leave for 100% of its face value, the cap on the number of hours that may be bought back is very low, and employees therefore realize a much smaller value for their unused sick leave. Thus, the external comparables show that the Union's proposal that employees cash in 45% of their sick leave and bank the remaining 55% up to 960 hours is unprecedented (*Brief* at 35). Indeed, even the Town's offer to allow employees to bank the remaining 55% as a non-use incentive is unprecedented. Because the Union has not offered any substantial justification for its version of this unique, costly benefit, its proposal should be rejected in favor of the Town's proposal. (*Brief* at 35).

(2) The Union's proposed comparables support the Town's offer

The Employer submits that the comparables suggested by the Union should be rejected because it adopted a faulty methodology when picking its comparables. Nonetheless, even if some of these comparables are accepted, external comparability still favors the Town's proposal because no bench-mark community allows employees to bank the balance of sick leave after it has been bought back (*Brief* at 35). To this end, only two of the Union's 14 comparable communities allow employees to buy back 100% of their sick leave. The overwhelming majority of comparable communities allow employees to buy back their unused sick leave at a reduced rate, forfeiting the balance of time. The Union's proposal in this case breaks from the mold of the currently-accepted sick-leave buy-back programs, and thus should be rejected by the Arbitrator (*Brief* at 36).

5. Summary

By way of summary, the Town submits that the unique nature of the benefits negotiated

limits the value of a comparability analysis. Still, such an analysis is helpful to the extent it reveals that it is very rare for employees to be allowed to realize 100% of the value of their unused, accrued sick leave. Indeed, caps are almost always placed on the amount of sick leave than can be bought back, or sick leave is bought back at less than 100 cents on the dollar, or some combination of these two factors in place. When sick leave is bought back for less than 100 cents on the dollar, the remaining value of those sick leave days is *always* lost. Indeed, the Union's groundbreaking proposal would single-handedly change the sick-leave benefit from a form of "term" life insurance to a more-expensive "whole life" insurance plan, without any consideration paid for by the Union. This proposal should accordingly be rejected and the Employer's proposal accepted (*Brief* at 37).

IV. DISCUSSION

A. Background – Statutory Criteria

As noted, this dispute involves one economic issue. The parties have stipulated that the Arbitrator is to resolve this dispute based upon the factors of Section 14(h) of the Illinois Public Labor Relations Act, Ill.Rev.Stat, ch. 48. § 614(h). See, *Ground Rules and Stipulations of the Parties*, Town of Normal & IAFF Local 2442, ILRB Case No. S-MA-07-091 (2007), at page 2. (JX 3). The Act restricts the Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child."[2]

The eight factors specified in Section 14(g) of the Act are as follows:

(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:

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[2] *Cf.* 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

(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 costs of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

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

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable."

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue.

B. Comparable Bench-Mark Jurisdictions

As is often the case, the parties are not in agreement regarding the relevant bench-mark comparables. The Employer urges the following six (6) bench-mark jurisdictions as comparables: Danville, Galesburg, Kankakee, Moline, Pekin and Urbana (*Brief* at 33). The Union's original 15 comparables include the following: Pekin, Urbana, Champaign, Peoria, Rock Island, Moline, DeKalb, Decatur, Belleville, Danville, Bloomington, Quincy, Galesburg, Springfield, and Rockford (UX 1A; *Brief* at 2). The City of Rockford was subsequently dropped.

The Administration submits that the Union analyzed whether the communities were within 50% of Normal's base value for every other factor in its analysis, yet it did not analyze whether its comparable communities were within 50% of the Town's population (*Brief* at 9-10). As a result, argues the Employer, the Union has included communities that are significantly larger than Normal

while excluding communities smaller than Normal but which are closer to Normal's actual population. Because the size of a community is a critical factor to consider when selecting comparables, the Union's proposal to include communities vastly larger than the Town of Normal should be rejected (*Brief* at 11). Illustrating the size differential is the following Table:

Community	2000 Population	Percentage Difference from Normal
Rockford*	150,115	231%
Peoria	112,936	149%
Springfield	111,454	145%
Joliet	106,221	134%
Decatur	**81,860**	**80%**
Champaign	**67,518**	**49%**
Bloomington	**64,808**	**43%**
Normal	**45,386**	**0% (base)**
Moline	**43,768**	**-4.0%**
Belleville	41,410	-9%
Quincy	40,366	-11%
Rock Island	39,684	-13%
DeKalb	**39,018**	**-14%**
Urbana	**36,395**	**-20%**
Danville	33,904	-25%
Pekin	33,857	-25%

Source: Table 1, as cited in *Brief for the Employer* at 10.
* In its *Brief*, the Union acknowledged that Rockford was excluded because it ended up with only 9 matches. Each of the other 14 comparables matched on 11 or more variables (*Brief* at 11).

Significantly, Belleville and Quincy are 150 and 130 miles, respectfully, from Normal. Also, Belleville is part of the St. Louis metropolitan area, an additional reason for rejection as a bench mark.[3] I also have trouble with Rock Island since it is a "gaming city" averaging $2.7 million in gambling revenue. Finally, Rockford, Peoria, Springfield and Joliet are suspect because of their large populations relative to Normal. All are suspect as labor markets. The cities that are left from

[3] The Employer advances the argument that the same logic that excludes near-Chicago communities from other comparables does not apply to Belleville (*Brief for the Employer* at 26-27). In its words:

> One only has to cross the river (leaving St. Louis) and drive 20 miles, or 30 minutes, into southern Illinois to be quickly disabused of such reasoning. Instead of arriving at Woodfield Mall in Schaumburg, one would find himself in, well, Belleville. The Friday fish fry in Belleville may be a popular local draw, but the city could never compare to the likes of Arlington Heights, Naperville, et al. *Id.* at 27.

I am allowed to take judicial notices of all things known to reasonable people. An interesting and maybe true argument by the union (regarding Belleville), but still lacking in substantive validity when the evidence record is examined.

the Union's comparables are outlined in bold.

Supporting the selected comparables is a 1994 decision by Arbitrator Peter Feuille. In *Macon County Board and AFSCME, Council 31 and Local 612*, S-MA-94-70, Arbitrator Feuille stressed geography and size in selecting comparables. His reasoning is instructive:

> I selected 12 comparison counties from the Union's comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St, Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). **It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions.** Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. *Feuille* at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995), likewise found geographic proximity and local labor markets as primary considerations in selecting comparables:

> The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.
>
> **It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists.** That principle has been upheld again and again by interest arbitrators and there is no need to discuss it al length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defines that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as "just too far away to be meaningful for comparison purposes." Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, "as being outside of the local labor market in which Mt. Vernon competes for police officers." *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided

an analysis of selecting comparables and declared:

> **Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor.** An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in City of Springfield & IAFF, Local 37, S-MA-18 (Berman, 1987), at 26, "[d]etermining comparability is not an exact science." Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:
>
> > The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.
>
> **In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes.** *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

> **Thus, in selecting a comparability group, the arbitration panel should look to "those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace." The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources.** *Kohn* at 7.

* * *

Applying the above principles, and conceding that this analysis is anything but an exact science, I find six (6) criteria noteworthy in selecting comparables: travel distance, population, number of sworn personnel, *per capita* income, general fund revenue/*capita*, and sales tax/*capita*. Excluded, of course, are those communities distant from Normal (Rockford, for example), bench-marks close to major metropolitan areas (Chicago & St. Louis), and those communities with gaming revenue (Rock Island). Rockford (population, 150,115), Springfield (111,454), and Peoria (118,135) are rejected as cities with populations too large relative to Normal. As such, I find the following is a representative measure of the marketplace relative to Normal:

Comparable Bench-Mark Communities

Community/ (Distance from Normal)	Population	No. Sworn Personnel	Per Capita Income Capita	2006 General Fund Revenue/	2006 Sales Tax/ Capita
Danville* (95 miles)	33,904	59	16,476	668	339
Galesburg* (85 miles)	33,706	50	17,214	613	152
Moline* (130 miles)	43,768	71	21,557	811	379
Pekin* (42 miles)	33,857	52	19,616	600	260
Urbana* (62 miles)	33,395	58	15,969	563	200
Kankakee (86 miles)	27,491	54	15,479	715	236

I also find the following as appropriate bench-mark jurisdictions relative to the Town of Normal:

Champaign (60 miles)	67,518	95	18,664	942**	205
DeKalb (116 miles)	44,226	55	16,261	629**	86
Decatur[4] (55 miles)	81,860	113	16,261	623**	242
Bloomington[5]	68,507	98	24,751	1,049**	210

[4] Decatur is "on the fringe" and does not compare well when sworn personnel is considered. Still, it is close to Normal (55 miles, mostly 4 lane, separates Normal from Decatur) and is "in the comparability park" when sales tax revenue is analyzed next to the comparables the parties agree are bench marks (Danville, Moline and Pekin).

[5] Although listed at 42.8% of Normal's population (EX B), Bloomington is especially relevant and a logical bench-mark jurisdiction. An exchange between Mr. Baird and Mrs. Pam Reece, Chief Negotiator for the Town, makes the point:

> Q. [By Mr. Baird]: Did you ever attend a meeting with the Union where you agreed that the City of Bloomington would be a comparable community to Normal?
>
> A. [By Mrs. Reese]: Not directly, although I indicated that the City of Bloomington as a sister city to Normal is sometimes difficult to keep out as a comparable. (R. 144).

(adjacent city)

* Agreed comparable
** *Per capita* revenue (form UX 1A)

C. The Merits

Pursuant to a 14-day remand by the undersigned Arbitrator, the parties concluded an accord on the sick-leave buy-back program (reflected in Appendix A, the successor collective bargaining agreement). As such, no purpose would be served by addressing this issue in a formal decision. However, the parties have requested a decision regarding comparables and, accordingly, the following award is reflective of the evidence record.

V. AWARD

The following jurisdictions are the comparables for the Town of Normal:

Danville
Galesburg
Moline
Pekin
Urbana
Kankakee
Champaign
DeKalb
Decatur
Bloomington

Dated this 4th day of April, 2008
at DeKalb, IL 60115

Marvin Hill, Jr.
Neutral Arbitrator

On all accounts, it is.

ADDENDUM

On April 3, 2008, the parties' legal representatives, Jim Baird and J. Dale Berry, met in executive session at a neutral site in Chicago, IL., regarding the resolution of a dispute involving the retroactivity of Dr. Martin Luther King, Jr. holiday, a holiday added to the successor collective bargaining agreement (Appendix A). The Administration's position was the holiday was not retroactive, while the Firefighters' position was the MLK holiday was retroactive. With assistance from the undersigned Arbitrator, the matter was resolved by the parties' representatives without the necessity of a decision by the Arbitrator. Jurisdiction is retained in the event there is a dispute regarding the parties' resolution.