BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

CITY OF HIGHLAND PARK

and

TEAMSTERS LOCAL 700

CASE NOS.: Arb. Ref. 11.120
(Interest Arbitration - Sergeants Unit)

OPINION AND AWARD

APPEARANCES**:**

For the City: Robert J. Smith, Esq.
James J. Powers, Esq.

For the Union: Kevin P. Camden, Esq.

Date of Award: February 25, 2013

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I. BACKGROUND

This is an interest arbitration proceeding between the City of Highland Park ("City") and Teamsters Local 700 ("Union") pursuant to Section 14 of the Illinois Public Labor Relations Act ("IPLRA"). The Union is the certified bargaining representative for four Police Sergeants. The official certification of representative issued on March 23, 2009.[1] This dispute is for the parties' first contract.

This is a lengthy opinion due to the inclusion of so many disagreements between the parties. And this proceeding — for four employees — has no doubt been costly to the parties, in both time and money expended to resolve this dispute. However, while the number of employees in this dispute may be small, several of the issues are immensely important not only to the affected employees, but to numerous other employees of the City who no doubt will be looking at or impacted by this proceeding, the unions representing various groups of employees, the City itself as to how it will deliver needed services and, ultimately, the taxpayers.

II. ISSUES IN DISPUTE

The following issues are in dispute:[2]

1. Duration of Agreement;
2. Wages;
3. Step movements;
4. Longevity pay;
5. Definition of seniority;
6. Drug and alcohol testing;
7. Vacation accrual and time granted;
8. Vacation scheduling;
9. Holidays, holiday pay and personal days;

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[1] City Exh. 3.

[2] Joint Exhs 3, 4; Union Brief at 1-11; City Brief at 9-62.

10. Sick leave;
11. Guaranteed hours;
12. Work schedules;
13. Overtime compensation (calculation and assignment);
14. Call back;
15. Compensatory time bank;
16. Ravinia Festival overtime;
17. Extra job selection;
18. Acting Commander pay;
19. Unplanned/planned time off coverage;
20. Tuition reimbursement eligibility and tuition reimbursement;
21. Health insurance (coverage and plan, contributions, cost containment, terms of policy).

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.
>
> (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 conti-

nuity 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. GENERAL COMMENTS

Before getting into the specific issues in dispute, several comments about the interest arbitration process and application of the standards for this case must be made.

1. The Nature Of The Interest Arbitration Process

In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that "good ideas" alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration — where an outsider imposes terms and conditions of employment on the parties — must be the *absolute* last resort. *See* my award in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 7-8:[3]

[3] The *Cook County* award is published at the Illinois State Labor Relations Board's website: www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf

[footnote continued]

> ... [I]nterest arbitration is a *very* conservative process which does not impose terms and conditions on parties which may amount to "good ideas" from a party's (or even an arbitrator's) perspective. For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one. *See* my recent award in *City of Chicago and [Fraternal Order of Police, Lodge No. 7*, (2010)] ... at 6-7 [citation omitted, emphasis in original]:
>
> > ... "The 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.

As required by the IPLRA, for economic items, this is a "baseball" arbitration — *i.e.*, I am constrained by the IPLRA to select one of the parties' offers on each economic issue. Section 14(g) of the IPLRA provides that "... [a]s 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

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[continuation of footnote]
The *City of Chicago* award is published at the Illinois State Labor Relations Board's website: www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Chicago%20&%20FOP%20Lodge%20No.%207%20(2010).pdf

applicable factors prescribed in subsection (h)." I therefore have no ability to compromise economic issues.[4]

2. Changes To The *Status Quo*

As just noted, the interest arbitration process is very conservative and places a heavy burden on a party seeking a change — typically to show that the existing system is "broken" and therefore in need of repair, with "good ideas" not being enough to meet that burden.

With respect to that heavy burden used for changing the *status quo* and the frowning upon breakthroughs, the City seeks to lessen the burden in cases such as this where the contract is an initial contract as opposed to a case where the parties have had previous contracts. According to the City, the burden of proof in an initial contract interest arbitration should only require a "legitimate justification" for adoption of a proposal.[5] As discussed in this Award, application of that standard fits very nicely for changes the City seeks to existing benefits which it views as too costly.

However, the IPLRA makes no distinction for burdens to be applied in interest arbitrations for initial contracts as opposed to successor contracts. Moreover, if a change could be made based upon such a lesser burden as urged by City, then a term or condition which may have existed for decades prior to organization by the employees could be more easily changed by a union in an initial contract interest arbitration and that change would then become the *status quo* for successor contracts. Then, if in a future contract the City sought to make changes to return the term or condition back to what it had

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[4] Therefore, final offer interest arbitration often puts arbitrators in the position of having to select an offer which is the least unreasonable.

[5] City Brief at 8-9.

been for decades, those changes would be subject to the more rigorous standard which frowns upon breakthroughs and changes to the *status quo*. The City's argument for this lesser standard is a classic double-edged sword.[6]

For purposes of changes, the *status quo* must be the *status quo* — whether it exists before of after an initial contract. Again, the broad design for the interest arbitration process is to convince the parties going in that they should only use the process as a last resort and they are better off controlling and determining their own fates. The City's position that a lesser standard should be used for making changes to the *status quo* will only serve to encourage use of the interest arbitration process and not discourage its use.

Further, I am finding that there is a fundamental misunderstanding in the public eye about what arbitrators do. Given the finality attached to arbitrators' decisions, arbitrators have extensive power to decide disputes. However, in the end, that power is really quite limited and must be cautiously exercised — whether it is in a case involving the interpretation of a collective bargaining agreement (a grievance arbitration) or, as here, in a case involving the formulation of the terms of a collective bargaining agreement (an interest arbitration).

Grievance arbitrations involve the interpretation of the parties' negotiated contract language and arbitrators have no authority to add to or ignore the parties' negotiated language. The result in a grievance arbitration is the product of the parties' negotiated contract terms — nothing more. Arbitrators are

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[6] Indeed, as discussed throughout this Award, the rationale that changes to the existing *status quo* for terms and conditions maintained by the City which the Union seeks to change and which may have had a legitimate justification have been rejected by me under the more rigorous standard placing the heavy burden on the Union to demonstrate an existing term or condition is broken and in need of repair. Under the lesser standard urged by the City for changes to the *status quo* for initial contracts, the result may be well have been different.

not judges — they have no equitable powers. Arbitrators simply read contracts and apply their terms.

Interest arbitrators follow statutory factors deemed applicable which are found in Section 14(h) of the IPLRA. Interest arbitrators do not make political decisions concerning the impact of their decisions — that is appropriately left to elected officials and appointed administrators. If application of the statutory factors by an interest arbitrator results in requiring payment of a benefit which proves to be too costly (here, for example, the maintenance of certain benefits), how the City reacts to having to meet its financial obligations for payment of that benefit either in terms of budgeting funds, maintaining staff levels, delivering services, etc., is not for an interest arbitrator to decide. Those kinds of decisions are for the City's elected officials and administrators. Putting it bluntly, if maintenance of a benefit which cannot be changed through the interest arbitration process proves too costly to continue at current levels, then layoffs or leaving positions unfilled which are vacated through attrition — the "virtual" layoff — could result (either in a bargaining unit involved in the interest arbitration or in some other group of employees, represented or unrepresented) or diminished services delivered. Or, revenues may have to be increased, depending upon the importance of the service to be delivered. The dynamics of the tugging of the entitlements of the employees against the reality of what could happen if benefits prove to be too costly but are maintained and factoring in the need for providing services to the public and the costs which the taxpayers must ultimately bear, is the brew that forces realities through the collective bargaining process. Those decisions are simply not for an interest arbitrator to make.

Finally, it is often argued that the interest arbitration process should yield what the parties would have agreed to if left to their traditional economic devices or is the natural extension of the collective bargaining process. In theory, that's fine. But in reality, it does not work that way. The best example is this case. These parties — as professional and sophisticated as they are as negotiators and acting in good faith as they have done — have been negotiating for several years and now come to this point at impasse on some 21 issues. The interest arbitration process is, in reality, simply the end of the road — the brick wall that the negotiating process crashes into when the parties simply cannot overcome their differences. Try as they did, the parties simply have not been able to resolve their differences. Now, that resolution becomes my statutory responsibility.

3. External Comparability

The parties have stipulated "... for the purposes of this hearing only ..." and on a non-precedential basis that 14 communities are comparable to the City.[7] And throughout their presentations and briefs, references to the external comparability factor of the IPLRA (*i.e.*, Section 14(h)(4) ("[c]omparison 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. ...")) are made either looking to the external comparables for support or lack thereof, or asserting that they should not be considered.[8]

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[7] Joint Exh. 1 at 2, par. 7.

[8] *See* Tr. 47, 48-49, 53, 86. *See also*, City Brief at 12-13, 15, 17 at note 7, 26-27, 48, 55, 61-62; Union Brief at 7, 10, 12.

The external comparability factor has been the source of some controversy since the country was hit with the Great Recession in 2008. As the Union 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 reflect the status of the economy, such as the cost-of-living.[9] I do not know

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[9] *See* Union Brief at 7 ("… [A]s the instant arbitrator has clearly written in multiple opinions (citations omitted), in this uncertain economic time, external comparability is not the controlling factor."). The Union is correct.

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 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 dis-

[footnote continued]

how the non-precedential comparable communities chosen by the parties did during the Great Recession. Were some hit harder than others? How did their experiences compare with the City's experience? Were contracts they negotiated with their various labor organizations negotiated on a non-precedential basis and therefore are of questionable reliance? While the factors in Section 14(h) are vague and in many cases not defined (*e.g.*, what *exactly* are "comparable communities" and what *exactly* are "[s]uch 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"?), under Section 14(h) those vague factors are to be chosen for analysis only "... as applicable".

[continuation of footnote]

> tricts 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.
>
> 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").

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.

The external comparability factor under Section 14(h)(4) simply does not help in this case. The contract period involved in this case in great part overlaps the Great Recession and the country's still struggling recovery. Under the circumstances of this case, the external comparability factor is, in my opinion, just not "applicable". The driving factor in this case (as in the others where I have moved away from the former arbitral dependency on external comparables to decide these cases) is the factor that is, for now, more closely geared to the economic conditions — *i.e.*, the cost-of-living. Further, the City's experience can also be measured by looking to *internal* comparables — *i.e.*, contracts for bargaining units negotiated by the City with its other labor organizations, particularly in the protective services.

V. DISCUSSION

1. Duration

The Union proposes a three year agreement for the period January 1, 2010 through December 31, 2012.[10]

The City proposes a four year agreement for the period January 1, 2010 through December 1, 2013, with a reopener for wages and longevity for calendar year 2013.[11]

As the Union notes, since the Union's certification in May 2009, "[t]he parties have been bargaining for nearly three years, including multiple sessions

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[10] Union Final Offer Joint Exh. 3 at 10; Union Brief at 11.

[11] City Final Offer Joint Exh. 4 at 9; City Brief at 23. The City's final offer proposes that "[e]ither party may reopen this agreement for the purpose of negotiating a base wage adjustment and/or over the subject of longevity for the period January 1, 2013 through December 31, 2013 ..." followed by a wage schedule for the period January 1, 2010 through December 31, 2012. Joint Exh. 4 at 9-10. The City restates its reopener proposal as "... the City's proposed wage and longevity reopener in 2013 ...." City Brief at 24.

with FMCS mediators ...."[12] The City agrees that the parties have been through "... 2 1/2 years of bargaining and interest arbitration proceedings ...." This process has played out over an extended period of time.[13]

I have previously recognized a need to give parties a "breather" after difficult and lengthy contract negotiations and therefore have imposed longer contracts.[14] However, I have also recognized that in unstable economic times, shorter contracts or reopeners in the out-years of an agreement are preferable so the parties can adapt to future and unknown ebbs and flows caused by the Great Recession and a struggling and still unknown recovery to more realistically address current existing economic conditions.[15]

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[12] Union Brief at 1.

[13] And regrettably from my standpoint, because of my involvement as the fact-finder in the lengthy and time-consuming Chicago Public Schools - Chicago Teachers Union proceedings this past summer, I became backlogged and was not able to issue this award as timely as I desired, which only further delayed resolution of this dispute.

[14] *See* my award in *City of Chicago and FOP Lodge No. 7* (2007 Agreement) (2010) at 23-24 [footnote omitted]:

> Given the complexity of this relationship, if the Agreement expires on June 30, 2011 as the Lodge proposes, the parties will have to soon thereafter return to the bargaining table to begin discussing the many issues between them at a time relatively shortly after the Agreement is passed upon by the City Council. Given the complexity of the parties' relationship and the length of time it takes to negotiate contracts between these parties, I agree with the City that the parties will need some breathing space. A longer contract term as requested by the City should not result in that great a degree of sending the parties into a no-man's land with respect to the uncertain economy (which had been the underlying rationale for my preference for shorter contracts or reopeners in the out years). Even with a five year Agreement as requested by the City, by the time the Agreement passes scrutiny by the City Council and given the July 1, 2007 effective date of the Agreement, 60% of the Agreement will have run its course by the time it is ratified. A five year term as requested by the City is therefore in order.

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

[15] *See* my award in *State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726*, *supra* at 21 [footnote omitted]:

> Perhaps a cautious and practical way to approach negotiations and interest arbitrations in these uncertain and changing times is for parties to negotiate reopeners on economic items or to tie reopeners to triggers in the out years of agreements — *i.e.*, if changes in the cost-of-living or insurance costs occur, the parties have the option to reopen agreed upon provisions mid-term during the period of a contract. With negotiated reopeners, the parties can then assess the situation as the economy

[footnote continued]

The bottom line here is that it is now the end of February 2013 and the parties are well into the period of the reopener sought by the City. The parties have a more realistic sense of where the economy is right now with respect to the City's situation — at least for 2013. Given that the parties are into the re-opener period, there is less of a chance for now making uncertain guesses for 2013. On balance, the parties should be able to realistically negotiate for 2013 and, to more effectively do so, all items rather than just wages and longevity should be available for discussion so that the parties can come to agreement (hopefully sooner than later) and then get the "breather" they may need. If only a reopener on the two items sought by the City is imposed, then the parties will be negotiating this year on those two items only to have to begin negotiating again later this year for a successor Agreement on a much larger range of items. Better to start the process for the successor Agreement now.

I therefore adopt the Union's offer of a three year term for the period January 1, 2010 through December 31, 2012.

2. Wages

The parties' wage proposals are as follows:[16]

[continuation of footnote]

> changes rather than project years out into the future with fixed obligations having no idea what the economic conditions will be. For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers. Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14(g). ...

http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Illinois%20State%20Police%20&%20IBT,%20%20S-MA-08-262.pdf

[16] Union Final Offer Joint Exh. 3 at 10; City Final Offer Joint Exh. 4 at 10; Union Brief at 8; City Brief at 15.

Effective	City	Union
1/1/10	2.5%	2.5%
1/1/11	1.5%	3.0%
1/1/12	2.3%	2.75%
Total	6.3%	8.25%

Looking at the cost of living ("CPI" — Section 14(h)(5)) and comparing the parties' offers to changes in the CPI as reported by the Bureau of Labor Statistics yields the following:[17]

CPI From January 1, 2010 Through December 31, 2012

Year	Begin	End	Yearly Percent Increase	Total Percent Increase
2010	216.687	219.179	1.15%[18]	
2011	220.223	225.672	2.47%[19]	
2012	226.665	229.601	1.29%[20]	5.96%[21]

[17] http://data.bls.gov/cgi-bin/surveymost?cu

By accessing that website for the BLS data bases, the latest CPI comparisons can be made 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.

There are many ways to view CPI changes — *e.g.*, quarter over quarter, calendar year, fiscal year, several years, etc. From my perspective, the most reasonable way to compare CPI changes to wage offers is to overlap changes in the CPI for a designated contract year and duration of the contract — *i.e.*, if employees receive a percentage increase in a contract year which runs from January 1st to December 31st, that same period should be examined for determining CPI changes. Therefore, in this case, because the parties use a January 1 through December 31 contract year, I will be looking at the CPI numbers in the January through December time periods of the Agreement and then look at the CPI changes for the duration of the Agreement. The CPI changes will therefore correspond to the contract years and the total term of the Agreement.

[18] 219.179 - 216.687 = 2.492. 2.492 / 216.687 = .01150 (1.15%).

[19] 225.672 - 220.223 = 5.449. 5.449 / 220.223 = .02474 (2.47%).

[20] 229.601 - 226.665 = 2.936. 2.936 / 226.665 = .01295 (1.29%).

[21] 229.601 - 216.687 = 12.914. 12.914 / 216.687 = .05960 (5.96%).

The differences in the parties' offers compared to the actual increases for the CPI for the years of the Agreement are as follows:

Wage Offers Compared To CPI Increases

Year	CPI Change	City Offer	City Difference	Union Offer	Union Difference
2010	1.15%	2.50%	+1.35%	2.50%	+1.35%
2011	2.47%	1.50%	-0.97%	3.00%	+0.53%
2012	1.29%	2.30%	+1.01%	2.75%	+1.46%
2010-2012	5.96%	6.30%	+0.34%	8.25%	+2.29%

The parties are in agreement for 2010, but both offers nevertheless exceed the CPI increase for that year by 1.35%. Although the City's offer is below the CPI increase for 2011, the City's offer is closer to the CPI increase in 2012 and for the overall term of the Agreement than is the Union's offer. In the end, the City only misses the CPI increase by 0.34% for the entire Agreement — an almost dead-on match, but nevertheless above the CPI changes thus keeping the employees at pace with the CPI changes. The Union's overall wage proposal on the other hand exceeds the total change in the CPI by 2.29%. The City's wage offer therefore more closely tracks the changes in the CPI and therefore more closely complies with this factor.

Given the period covered by the Agreement which so overlapped the Great Recession and for the reasons discussed *supra* at IV, I need go no further. The City's wage offer is adopted.

3. Step Movements

Currently, employees have an eight-step pay plan.[22]

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[22] City Exh. 4 at 2; Joint Exhs. 6, 8 at 22; Tr. 51.

The Union seeks to compress the current step plan from eight steps to three steps.[23]

The City seeks to maintain the existing eight-step plan.[24]

The existing eight-step plan provides that upon promotion to Sergeant, a police officer "... is slotted into the next closest step above what he is currently making."[25] Then, "[e]mployees may advance to the next step six (6) months from the date of appointment ... [and s]ubsequent step increases may occur annually on the date which is six months from the date of appointment (the Payroll Anniversary Date)."[26]

The Union proposes the following three step compression of the existing eight-step plan:[27]

STEP 1	7.3% higher than patrol salary upon officer's promotion	
STEP 2	(6 months after promotion)	5.0% added to base
STEP 3	(1 year after promotion)	4.9% added to base

Once the sergeant is at Step 3, annual increases will be as provided for in the collective bargaining agreement.

The City's offer to maintain *status quo* for the eight-step pay plan must be adopted.

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[23] Union Final Offer Joint Exh. 3 at 10; Union Brief at 9; Union Exh. 6; Tr. 25-26.

[24] City Final Offer Joint Exh. 4 at 7, 10; City Brief at 15; Tr. 51.

[25] Tr. 52.

[26] Employee Handbook (Joint Exh. 8) at 22.

[27] Union Exh. 6.

Under the City's proposal, with the 2.5% wage increase effective January 1, 2010, the City's eight-step plan yields the following wages for the Sergeants for 2010 with corresponding percentage increases between steps:[28]

Step Plan Effective January 1, 2010

Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
67,953	70,332	73,847	77,540	81,417	85,488	89,763	94,251
% Inc.	3.5%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%

Looking at how the eight-step plan operates and assuming for purposes of discussion (and hypothetically) that a promotion occurred in early 2010, in addition to the agreed-upon 2.5% wage increase for 2010 as imposed by this Award, the Union's offer will immediately give the employee another 7.3% wage increase upon promotion, followed six months later by a 5.0% increase — for a total of 14.8% (before compounding). That kind of increase just cannot be supported to change the *status quo*.[29]

Under the City's proposal to maintain the *status quo*, in 2010 alone, the employees will receive an agreed-upon 2.5% wage increase. On top of that, under the existing eight-step plan, the hypothetically promoted employee in this example is then placed at the higher step closest to the employee's salary before promotion — providing a further percentage increase. In 2010, the CPI only increased by 1.15%.[30] The existing eight-step plan yielding a potential real percentage wage increase exceeding 2.5% as a result of a promotion when

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[28] City Exh. 1 at 10. *See also*, City Exh. 7. Percentage increases between steps have been calculated. All four bargaining unit Sergeants are at the top Step 8. City Exh. 7.

[29] As the Union acknowledged with respect to its three-step proposal, "... it's expensive." Tr. 25. I agree.

[30] *See* discussion *supra* at V(2).

the CPI only increased by 1.15% defeats any attempt to compress the step plan as sought by the Union.

Moreover, from an internal comparability standpoint (as opposed to external comparability), the 2008-2010 Patrol Contract has the eight-step plan as does the 2008-2011 Firefighters Contract.[31]

The City's proposal to maintain the eight-step plan is adopted.[32]

4. Longevity Pay

Currently, employees receive longevity pay pursuant to a City policy which has been in effect since May 1, 1995.[33] Longevity payments are calculated based upon a percentage of annual salary.[34]

The Union seeks to maintain the *status quo*.[35]

The City seeks to change the longevity benefit:[36]

> For newly appointed Sergeants, a reduced longevity pay system based on a flat dollar amount; for current Sergeants, annual longevity payments in future years based on the longevity dollar amount they received on 12/1/11, regardless of tenure; plus a market equity adjustment to a Sergeant's base pay in the amount of $2,000.

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[31] Joint Exh. 9 at Sections 15.1 and 15.2; Joint Exh. 10 at Section 19.1 and Appendix D.

[32] The City argues that wages and step increases should be treated together. City Brief at 15, note 6. I have addressed them separately. Because the City has prevailed on both issues, the City's argument for single treatment of the two issues is moot.

[33] City Brief at 9; Joint Exh. 8 at 46.

[34] *See* Union Exh. 7:

LONGEVITY STEP

Upon completion of 10 years	2.5%
Upon completion of 15 years	3.0%
Upon completion of 20 years	4.0%
Upon completion of 25 years	5.0%
Upon completion of 30 years	7.0%
Upon completion of 35 years	9.0%

[35] Union Final Offer Joint Exh. 3 at 10; Union Brief at 9.

[36] City Final Offer Joint Exh. 4 at 7-8; City Brief at 9.

According to the Union, "[t]his issue is the reason the parties could not negotiate a deal."[37] Further, according to the Union, "... [t]he sole driver ... of why we are even here and what caused this unit to seek representation is a proposed change in longevity ... [i]t has been a hot button issue."[38] According to the City, "... the longevity issue ... is front and center in this interest arbitration proceeding.[39]

The City argues that because the longevity payments are a percentage increase tied to wages, "... the City had no control over longevity payments, which were directly related to the amount of an employee's salary."[40] As the City further argues, "[i]n light of the severe economic downturn experienced by the City and other Illinois communities during the last several years, it is certainly understandable why the City has sought to shift its longevity system to a less expensive model where longevity payments have no relation to wage increases."[41]

For the sake of discussion, I find that the City's proposal is a "good idea" — no doubt. As salaries rise, the percentage increases imposed by the longevity system drives those salaries even higher than would a flat dollar amount as proposed by the City.

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[37] Union Brief at 9.

[38] Tr. 6.

[39] Tr. 40. At the hearing, the City gave the history behind the change in the longevity system it seeks. According to the City, in early 2009, the City made its intention known to employees that it was going to change the longevity system to the flat dollar amount which now appears in the Employee Handbook. Tr. 41; Joint Exh. 8 at 46. Then, "[t]he sergeants, as is their legal right, filed a petition to be represented by a union before the City effectuated the change and [it] is only because of that fact that they are currently covered by the old longevity system [and e]veryone else in the City who's not represented by a union has had the longevity system changed for them to exactly what we are proposing in this case." Tr. 41.

[40] City Brief at 9.

[41] *Id*. at 9-10.

However, as explained *supra* at IV(2), in this very conservative process which frowns upon breakthroughs, the legitimacy of a proposal is not the driving consideration and a "good idea" is not sufficient to force a change. Again, if legitimacy of the proposal was the driver for determining these issues, then the other side of coin would be used by the Union to successfully change existing terms and conditions because of the legitimacy of its positions — efforts by the Union which I have rejected throughout this Award. If there is going to be a change on issues like these, it must come through the *bargaining* process and, if not, in a process such as this to be used *only* as a last resort with a very heavy burden placed on the party seeking the change. But to achieve the result the City seeks in this process, it must show that the system is broken.[42]

Turning to internal comparability, the 2008-2010 Patrol Contract in evidence provides for longevity pay at Section 15.3 that "[o]fficers shall be given longevity pay increases consistent with the City Policy effective on May 1, 1995."[43] Similarly, the 2008-2011 Firefighters Contract provides at Section 18.2 for the same longevity system based upon the percentages of salary.[44] The most relevant internal comparables therefore have the same longevity benefit the Union seeks to maintain in this Agreement.[45]

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[42] Just as an example, as the City correctly notes with respect to the Union's efforts to change the existing eight-step plan which I rejected *supra* at V(3), "... the Union is proposing a dramatically different step system than the one that is currently in place." Tr. 51. If the heavy burden used to reject the Union's efforts to change the eight-step plan, that same heavy burden must be applied to the City's efforts to similarly change existing benefits — here, the longevity system.

[43] Joint Exh. 9 at 32.

[44] Joint Exh. 10 at 58.

[45] The employees in Public Works who are represented by IUOE Local 150 do not have that percentage of salary benefit for longevity. Tr. 41-42. However, according to the City, "... the public works employees, who are represented by 150, had their longevity system changed because their petition was filed later than the sergeants' petition." *Id*.

The City does not claim an inability to pay. The City's argument is that maintenance of the longevity benefit in its present form is expensive. I agree — it is expensive. But that is not the determinative factor to compel a change through this very conservative process.

On balance, the Union's proposal to maintain the existing longevity system is adopted.

5. Definition Of Seniority

The Union proposes that seniority be used for bidding for overtime and that shift picks be done by time in grade as a Sergeant, with Sergeants also entering the bargaining unit at the lowest rank in seniority.[46]

The City proposes "[s]tatus quo (do not include such provisions)".[47]

The parties have agreed to a "Definition of Seniority" and various applications for seniority.[48] The Union's proposal seeks to add bidding for overtime, shift picks by time in grade as a Sergeant and utilizing seniority for ranking in grade to the sections already agreed to.

According to the City, the part of the Union's proposal concerning establishing seniority for time in rank as Sergeant "... deviates from the Police Department's practice of calculating seniority based on the overall length of City employment (not 'time in rank')".[49] With respect to shift picks based on seniority, according to the City, that proposal is "... brand new, it's not in the patrol contract ... [t]his is a substantial change ...."[50] The Union agrees with those

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[46] Union Final Offer Joint Exh. 3 at 1; Union Brief at 1-2.

[47] City Final Offer Joint Exh. 4 at 1; City Brief at 29.

[48] Joint Exh. 2 at 9.

[49] City Brief at 32-33.

[50] Tr. 95.

conclusions (the Union's additional seniority proposals "... are new sections ... [t]hey are not included in the patrol contracted and we have deviated here.").[51]

As presented at the hearing, "... sergeants don't pick their shift, they rotate ... [t]his has been noted from one shift to the next every two months ... [t]here are no permanent shifts to bid."[52] Further, the parties have already agreed that Sergeants can exchange shifts (which will have the effect of allowing Sergeants to work some shifts based on their personal needs):[53]

MR. CAMDEN: Shift exchanges is done, correct, counsel?
MR. SMITH: Yes, we TA'd that.

* * *

MR. SMITH: ... Sergeants may exchange shifts. ...

What's broke here? At most, perhaps (and giving the Union the benefit of the doubt), the Union proposes a "good idea".[54] But the Union must do more than propose a "good idea". On that basis, the Union has not met its burden and the City's proposal for "*status quo*" must be adopted.[55]

The City's proposal on seniority is adopted.

6. Drug And Alcohol Testing

The City proposes reasonable individualized suspicion drug and alcohol testing along with random testing.[56] The City also proposes inserting language stating a prohibition against "[u]se, sale, purchase, delivery or possession of il-

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51 Tr. 7.

52 Tr. 94.

53 Tr. 18, 94.

54 The City does not view the Union's proposal as a "good idea". The City sees use of seniority to a shift or overtime opportunity as hampering the City's ability to meet special circumstances which may require the assignment of a particular Sergeant. City Brief at 31.

55 That being the case, the City's arguments concerning whether the Union's proposal includes non-mandatory subjects of bargaining are moot. City Brief at 29-32.

56 City Final Offer Joint Exh. 4 at 1; City Brief at 37.

legal drugs at any time and at any place (on or off the job) while employed by the City, abuse of prescribed drugs, failure to report to the Police Chief any known adverse side effects of medication, or prescription drugs which the employee may be taking, consumption or possession of alcohol while working, or having a detectible level of alcohol while working [which] shall be grounds for immediate termination."[57]

The Union proposes reasonable suspicion drug and alcohol testing, but opposes random drug testing.[58]

The 2008-2010 Patrol Contract is silent on drug testing.[59]

The 2008-2011 Firefighters Contract provides at Article XX for "... reasonable, individualized suspicion of improper drug or alcohol use", but not random testing.[60] The 2008-2011 Firefighters Contract also provides that "[u]se of proscribed drugs at any time while employed by the City, abuse of prescribed drugs, as well as having alcohol or proscribed drugs in the blood while on duty shall be cause for discipline, including termination ...."[61]

As the parties recognize, their real difference is on the issue of random drug testing, with the Union agreeing to reasonable suspicion testing:[62]

> MR. CAMDEN: ... As you will compare the final offers at 8.9, drug and alcohol testing, we are on about three of four ... with what the City proposes. Where we depart radically is we stopped the sentence at reasonable individualized suspicion, the Employer wants completely random ...

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57 *See* City Final Offer Joint Exh. 4 at 1.

58 Union Final Offer Joint Exh. 3 at 1; Union Brief at 2.

59 Joint Exh. 9.

60 Joint Exh. 10 at 67.

61 *Id*.

62 Tr. 7-8; 95.

> … I can tell you the main difference between our two proposals is random versus reasonable suspicion.
>
> * * *
>
> MR. SMITH: … As counsel for the Union noted, the parties have differing proposals on drug testing. I think the principal difference between the parties is on random testing. Other than that, I think they line up pretty closely. …

The Union's brief confirms that difference, with the Union stating "[s]imply put, the union objects to random testing."[63] And the City offers to delay implementation of random testing "… unless and until at least 40 other City employees would also participate."[64]

The City's proposal for random testing must be rejected.

With respect to random testing, there is no evidence that drug or alcohol usage is a problem in this bargaining unit. The Union's statement "… we have never had a drug problem among any of the sergeants" has not been refuted.[65] Moreover, the following exchange occurred at the hearing:[66]

> ARBITRATOR BENN: Any evidence that individuals in the bargaining unit have had issues with drugs or alcohol?
>
> MR. SMITH: No. Happily, no.

From an internal comparability standpoint and looking to the 2008-2010 Patrol and 2008-2011 Firefighters Contracts, while the 2008-2011 Firefighters Contract has reasonable suspicion testing, specific random testing provisions appear in neither the 2008-2010 Patrol or 2008-2011 Firefighters Contracts.[67]

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[63] Union Brief at 2.

[64] City Brief at 37; Tr. 96.

[65] Tr. 8.

[66] Tr. 97.

[67] Joint Exh. 9, 10. According to the City, the Public Works employees are subject to random testing. City Brief at 37; Tr. 96. However, that applies because of a requirement for certain employees to possess commercial drivers licenses (with the regulatory requirements concerning *[footnote continued]*

For purpose of discussion, I can agree with the City that "[a]s supervisors, it is imperative that Sergeants lead by setting a good example for their subordinate employees."[68] However, that argument places the City's position on random testing into the category of a "good idea" and not one of a broken system which needs repair through the conservative interest arbitration process.[69]

As the City argues, drug and alcohol testing is a non-economic provision.[70] As discussed *supra* at IV(1), the IPLRA at Section 14(g) makes economic provisions subject to final offers, with the interest arbitrator only permitted to select one of the final offers made. That is not the case for non-economic provisions. For non-economic provisions, I am not limited to the parties' final offers and I can craft my own provision for a disputed non-economic provision. I will do so in this case, but with restraint to allow the parties in the first instance to draft the language, instead focusing on concepts of what should be included now that random testing will not be imposed by me in this Award.

I agree with the City that there should be a positive prohibition stated in the Agreement against use or possession (and certainly sale) of proscribed drugs and similar prohibitions against alcohol consumption or being under the influence — especially while on duty.[71] Whether those prohibitions should

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[continuation of footnote]
random drug testing). Tr. 96; Employee Handbook (Joint Exh. 8 at 34-35). In any event, the more relevant internal comparable units are Patrol and the Firefighters — who do not have specific random testing language in those Agreements.

[68] City Brief at 37.

[69] It appears that at one time members of the bargaining unit were amenable to a random testing provision, but, according to the Union, "... it was in the context of a larger package." Tr. 8. The City focuses on that prior apparent openness to random testing. City Brief at 38. That one-time openness cannot determine this issue.

[70] City Brief at 37.

[71] City Brief at 38-39.

carry the consequence of immediate termination (as the City seeks in its proposal) or be a cause for discipline up to and including termination (as appears in the 2008-2011 Firefighters Contract); to what extent, if any, employee assistance programs should be woven into the mix; whether there are any acceptable levels of alcohol (*e.g.*, whether there should be a zero tolerance for alcohol); and testing procedures (*e.g.*, specific types of prohibited substances, chain of custody and test confirmation issues), should be first addressed by the parties. Now that random testing is off the table for this contract which was the impediment to the parties coming to terms on drug testing and given how close the parties appear to be in their proposals on reasonable suspicion testing, I am confident they will be able to come to terms on the details of the drug and alcohol testing language. However, if the parties are unable to agree upon the language, I can set the terms under my retained jurisdiction for such disputes as discussed *infra* at V(24). The other alternative is for the parties to agree to move this issue into their upcoming negotiations for a successor Agreement.

7. Vacation Accrual And Time Granted

With respect to vacation accrual and time granted, the parties are in apparent agreement.

According to the City, its offer "[p]arallels patrol officer agreement ...."[72] Further, according to the City, its offer is "... status quo in terms of the accrual benefits."[73]

According to the Union, "[t]he union seeks to maintain the status quo on how much vacation ... [t]he union proposal mirrors the patrol contract."[74]

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[72] City Brief at 39.
[73] Tr. 97.
[74] Union Brief at 3.

The 2008-2010 Patrol Contract at Section 10.1 specifies the continuous service and corresponding vacation credit.[75]

For this issue (vacation accrual and time granted), the 2008-2010 Patrol Contract which specifies the *status quo* shall be continued.

8. Vacation Scheduling

In its Vacation proposal, the Union seeks to insert the following language:[76]

> Vacation picks are selected separately between Patrol & Specialty Supervisor personnel. Patrol Sergeants make selection with Patrol Commanders, based on overall police department seniority to ensure shift coverage.

According to the Union, with respect to this language appearing in Section 10.1 of its final offer:[77]

> MR. CAMDEN: ... 10.1, the last paragraph, is new language. It's codified what we had, memorialized what's there. The rea-

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75 *See* Joint Exh. 9 at 17:

Continuous Service	Vacation Credit
0-104 pay periods (1 through 4 years)	80 hours per year or 3.0770 hours per pay period
105-286 pay periods (5 through 11 years)	120 hours per year or 4.6154 hours per pay period
287-547 pay periods (12 through 20 years)	160 hours per year or 6.1539 hours per pay period
548-572 pay periods (21 years or more)	168 hours per year or 6.4615 hours per pay period
573-597 pay periods (22 years or more)	176 hours per year or 6.7692 hours per pay period
598-624 pay periods (23 years or more)	184 hours per year or 7.0769 hours per pay period
625-650 pay periods (24 years or more)	192 hours per year or 7.3846 hours per pay period
651 or more pay periods (25 years or more)	200 hours per year or 7.6923 hours per pay period

76 Union Final Offer Joint Exh. 3 at 2.

77 Tr. 9.

> son we have added the last sentence in the middle of the page is we think it's in the City's best interest and to make sure that some command staff are worth it, so we want to make sure that when we do shift bids the patrol sergeants, your first line of defense, are in fact included with patrol commanders for purposes of overall department seniority. We believe this to be the status quo. The language is new, you won't find it in patrol ....

According to Sergeant Steven Mueller, the Union's proposed language "... is exactly status quo and has been ever since I have been on the department for almost 24 years."[78]

The City views the Union's vacation scheduling proposal as one that "... gives Sergeants the contractual right to take vacation leave once scheduled, and combining Patrol Sergeants and Commanders in terms of vacation selection picks."[79] The City proposes language which it views "... clarifies the status quo regarding vacation scheduling and cancellation":[80]

> Section 10.2. Vacation Scheduling. All vacations shall be scheduled in advance, subject to approval by the Chief of Police or his designee. All sergeants shall select available vacation time by seniority during an annual vacation period specified by the City. Thereafter, vacation picks among sergeants will be considered on a first come served basis. Notwithstanding any other provision of this Agreement, it is expressly agreed that the final right to designate, approve and cancel vacation periods and the maximum number of sergeants who may be on vacation at any time is exclusively reserved by the Chief of Police in order to ensure the orderly performance of the services provided by the City.

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78 Tr. 117.

79 City Brief at 39.

80 City Brief at 39; City Final Offer Joint Exh. 4 at 2.

The Union's view of the two proposals is that "[t]he difference may be in the nuances, but the union proposal allows for pre-approval and the employer proposal essentially holds the vacation request hostage."[81]

According to the City:[82]

> MR. SMITH: ... The scheduling issue is consistent with the status quo from the City's vantage point. It is essential that the City have the final right to approve or cancel vacation periods and the maximum number of sergeants who could e off. If the NATO [G]8 summit requires sergeants to be here to work, the City has to retain that right. ....

This is not the cleanest issue to decide. The parties both argue that their proposals amount to a codification of the *status quo*. However, they differ on precisely what the *status quo* is, with the parties in dispute over whether Patrol Sergeants and Commanders can pick together for vacation and the extent to which the City can cancel vacations.

The short answer must therefore be that for purposes of this interest arbitration the vacation scheduling issue shall remain *status quo* — whatever that is. In this case, I have insufficient information to determine what the *status quo* is and so the following comments are in order:

First, part of the Union's concern about vacation scheduling is impacted by implementation of shift bids.[83] However, as discussed *supra* at V(5), the Union's position on shift bidding has not been adopted.

Second, this contract expired on December 31, 2012. Therefore, the parties will soon be in negotiations and will have the opportunity to further flush

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81 Union Brief at 3.

82 Tr. 97-98.

83 Tr. 9.

out what the *status quo* is for this issue and then, whether changes should be made.

Third, with the finding that vacation scheduling is *status quo*, should the parties be unable to resolve the matter in the next round of negotiations (or even in the drafting of language for this Agreement), the real answer is that should a dispute arise where the parties are in disagreement over some aspect of vacation scheduling, the grievance (and if necessary, the arbitration) procedure will have to used to resolve what the *status quo* is.[84] In the end, the parties' differences really amount to a dispute that may have to be resolved through the grievance process.

Fourth, with respect to canceling vacations, the parties agreed upon the provisions of a Management Rights article (Article III).[85] That article states the City's right to "... plan, direct, control and determine ... all the operations ... determine the methods, means, organization and number of personnel by which such operations and services shall be made ... to determine work hours ... [and] to take any and all actions as may be necessary to carry out the mission of the City and the Police Department in the event of civil emergency, rights, civil disorders, tornado conditions, floods, etc."[86] Those are traditional management rights. Thus, given the appropriate circumstances, the City has the right in the exercise of its managerial authority to cancel vacations. But that right is not unfettered and unreviewable. Management rights are reviewed through the grievance and arbitration process under a limited standard where

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[84] The parties have agreed to a grievance and arbitration procedure. *See* Joint Exh. 2 at 6-9 (Article V).

[85] Joint Exh. 2 at 3-4.

[86] *Id*.

the arbitrator does not decide if the City is “correct” in the arbitrator’s view, but under the less rigorous standard of whether the City was “arbitrary” or “capricious”.[87] Thus, if the City finds a managerial need to cancel vacations and does so, the question in the grievance process will be whether the City was arbitrary or capricious in making that decision. In short, in the exercise of its management rights, the City has the “right” to be “wrong” — it just cannot be arbitrary or capricious.

But for this proceeding, on this issue, the only ruling I can make on the record presented is that vacation scheduling will be *status quo*.

9. Holidays, Holiday Pay And Personal Days

The Union proposes the following language for holidays, holiday pay and personal days:[88]

10.3 Holidays

(a) In lieu of being granted time off on the holidays observed by the City, each Sergeant shall be credited with nine (9) eight (8) hour days of each calendar. Sergeants scheduled to work on New Year's Day, Independence Day, Thanksgiving Day and Christmas Day shall receive time and-a-half for all hours worked on such days. All attempts will be made to first schedule Holidays on the actual Holiday, if not possible then on the Thursday nearest said Holiday.

(b) In addition, each employee shall be credited with four (4) personal days (i.e., four (4) eight (8) hour days) off each calendar year. Personal days are scheduled pur-

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[87] *See* Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 660 (“Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the ‘sole judge’ of a matter, management’s action must not be arbitrary, capricious, or taken in bad faith.”). In order to determine whether or not there was arbitrary or capricious action by the Employer, *see South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969) (“In general, ... action is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse.”).

[88] Union Final Offer Joint Exh. 3 at 2.

suant to a request by each individual employee, subject to approval by the Police Chief.

Sergeants called in early or held over immediately preceding or following a scheduled shift on New Year's Day, Independence Day, Thanksgiving Day or Christmas Day shall receive an additional half-time premium for hours worked in excess of eight (8) on such days. This premium shall apply only to hours worked that are contiguous to the scheduled eight (8) hour shift or when assigned to an additional detail and shall be in addition to the holiday pay premium due for such days under subsection (a) under this agreement.

The City proposes the following language for this item:[89]

Section 10.4. Holiday Pay and Personal Days.

(a) In lieu of being granted time off on the holiday observed by the City, each employee shall be credited with nine (9) eight (8) hour days off each calendar year. Sergeants scheduled to work on New Year's Day, Independence Day, Thanksgiving Day and Christmas Day shall receive time and-a-half for all hours worked on such days.

(b) In addition, each employee shall be credited with four (4) personal days (i.e., four (4) eight (8) hour days) off each calendar year, which such days shall be earned pro rata over 26 payroll periods. Said days off without loss of pay under this Section shall be scheduled by the Police Chief. Personal days are scheduled pursuant to a request by each individual employee subject to approval by the Police Chief.

Employees called in early or held over immediately preceding or following a scheduled shift on New Year's Day, Independence Day, Thanksgiving Day or Christmas Day shall receive an additional half-time premium for hours worked in excess of eight (8) on such days. This premium shall apply only to hours worked that are contiguous to the scheduled eight (8) hour shift and shall be in addition to the holiday pay premium due for such days under subsection (a) under this Section.

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[89] City Final Offer Joint Exh. 4 at 2-3.

At the hearing, the Union stated its difference with the City's proposal as follows:[90]

> MR. CAMDEN: ... [T]he main difference in the proposals, the first one is at sub b under 10.3. This is advancing versus earning or accruing. The City wants to change the language from patrol contract to a pro rata earning. We simply want them credited at the beginning of each calendar year, which we believe to be consistent with the status quo.

In its brief, the Union stated the following as the difference:[91]

> The union and employer are in agreement on most of this proposal. What separates the two is the union's proposal that a premium shall also apply to an "additional detail" and shall be in addition to the holiday pay premium. The union's concern here is that if you are assigned work, perhaps two hours after your shift ends on a holiday, and the "contiguous to" language is adhere to, you lose the holiday premium.

At the hearing, the City viewed its proposal as maintaining the *status quo*:[92]

> MR. SMITH: ... Section 10.4 deals with holiday pay and personal days. The City, unlike the Union, is proposing status quo.
>
> ARBITRATOR BENN: What section is that?
>
> MR. SMITH: That is section 10.4 of the City's final offer, holiday pay and personal days, we are at status quo. I believe the Union is asking for an increase in the benefit.

In its brief, the City focuses upon the accrual issue pointing to non-union employees, public works employees and firefighters and lieutenants as accruing rather than being credited personal days.[93]

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[90] Tr. 9-10.

[91] Union Brief at 3.

[92] Tr. 99-100.

[93] City Brief at 43.

Reading the proposed language, the parties' statements at the hearing and arguments in their briefs and putting this all together, there are really two issues on this disputed item — (A) accrual of personal days and (B) assignments to an additional detail and scheduling on the actual holiday. These are separate issues and will be so addressed.

A. Accrual Of Personal Days

With respect to accrual of personal days, the first question is to determine the *status quo*. From the evidence before me, the *status quo* appears to be that Sergeants are credited the personal days at the beginning of the year and do not earn those days on a *pro rata* basis. According to Sergeant Rodney Carbajal:[94]

> Q. ... What's the current practice with respect to how you receive your personal days?
>
> A. We receive all four personal days at the beginning of the year.
>
> Q. Do you earn them on a monthly basis or are they given to you or advance to you on January 1?
>
> A. On January 1.
>
> Q. Is that consistent with the proposal the Union put forth in its final offer?
>
> A. Yes.

In its brief, the City appears to recognize that the *status quo* is not an earning of a *pro rata* benefit for personal days, but that personal days are credited at the beginning of the year. The City refers to the "... absence of any legitimate justification for preserving an outdated practice ...." and ties its arguments to the sick leave issue (discussed *infra* at V(10)) which involves accrual

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[94] Tr. 141.

over the year and not crediting at the beginning of the year.[95] Further, given Sergeant Carbajal's testimony quoted above and the City's referral to internal comparables of non-union employees, public works employees and firefighters and lieutenants — with the 2008-2010 Patrol Contract notably absent — the *status quo* is the crediting of personal days at the beginning of the year and not a *pro-rata* earning of the benefit over the year. Further, the 2008-2010 Patrol Contract simply states at Section 10.3 that "... each employee shall be credited with three (3) personal days ... off each calendar year" — there is no accrual mentioned.[96]

Therefore, the *status quo* on when Sergeants receive personal days is that they are credited at the beginning of the year and are not earned *pro rata* over the year.

And the question becomes is the crediting of personal days at the beginning of the year a system which is broken and which requires a change to *pro rata* earning as sought by the City? Could an employee be credited with the personal days on January 1st of a year and then quit several days later after using those days or being compensated for them? In theory, of course. Has this system been abused by the Sergeants? There is no evidence of that. The *status quo* must therefore be maintained. As proposed by the Union, personal days shall be credited on January 1st of each year and shall not be subject to *pro rata* accrual.

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[95] City Brief at 43.

[96] Joint Exh. 9 at 18.

B. Assignments To An Additional Detail And Scheduling Of The Actual Holiday

With respect to the Union's contentions that there needs to be protection for the "additional detail" and the chance that the "contiguous to" language will deprive Sergeants of the premium and the Thursday scheduling language if the actual holiday cannot be scheduled are not supported by facts showing that such has happened or if this has happened it has been to such a degree that the system in existence for scheduling is broken. There shall be no changes in that regard requiring the insertion of the additional language sought by the Union.

Therefore, on the issues presented on this item: (1) the Union's proposal on personal day accrual is adopted; (2) the City's proposals on the remainder of the language which does not include references to additional details and Thursday scheduling is adopted.

10. Sick Leave

The main focus of the dispute here is on accrual of sick days.

Like the personal day issue discussed *supra* at V(9), the Union proposes to keep the current receipt of 96 hours of sick leave to be credited at the beginning of the calendar year.[97]

The City seeks to have sick leave accrue "... at the rate of 3.7 hours per pay period (based upon a typical year of 26 pay periods)."[98]

On the sick leave issue, the record is clear on what the *status quo* is — *i.e.*, Sergeants are credited with sick leave at the beginning of the year. The

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[97] Union Final Offer Joint Exh. 3 at 3.

[98] City Final Offer Joint Exh. 4 at 3.

City acknowledges that the "... City's final offer on sick leave accrual does incorporate a change and that is the sergeants would accrue sick leave at the rate of 3.7 hours per pay period based upon a typical year of 26 pays."[99] Underscoring its position, the City argues that "... [w]e think it's inappropriate to give that benefit before it's actually accrued."[100] And in its brief, the City asserts that Sergeants "... have managed to maintain a non-accrual sick leave system ...."[101]

The City's argument for a change is best summed up by its position that sick leave utilization has gone down per pay period for other employee groups not on an accrual system (non-police and fire employees) from 0.021 in 2008 to less than 0.019 in 2010 and 2011 "... when the sick time was earned on a per pay period basis as opposed to being dumped in at the beginning of the year".[102] According to the City, with respect to the change to the accrual system it seeks "[w]e think it makes good sense."[103]

I agree with the City's conclusion that its proposal makes "good sense". Common sense dictates that employees are less likely to miss work utilizing sick leave if they do not have that leave in their sick leave banks (taking off without a sufficient bank accumulation would be on an uncompensated basis) and earning sick leave per pay period lessens the chance that an employee will

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99 Tr. 98.

100 *Id*.

101 City Brief at 42. The 2008-2010 Patrol Contract does not have a sick leave provision. Tr. 10. However, the current system of crediting that leave at the beginning of the year appears to be followed for that unit. City Brief at 42 (not mentioning the Patrol unit as following the accrual system the City seeks). *See also*, *id.* at note 19 ("The City obviously will be attempting through negotiations with ICOPS to bring the patrol officer bargaining unit under the same sick leave accrual system.").

102 City Brief at 41-42; Tr. 99; City Exh. 9.

103 Tr. 99.

simply take off because sick leave is not available in a substantial amount due to a crediting of the year's leave entitlement at the beginning of the year. The City's offer makes further "good sense" because, as the City argued at the hearing, Sergeants could burn sick time given at the beginning of the year and "... they could otherwise leave the City's employ and the City in effect would be left holding the bag."[104]

But again, a proposal that makes "good sense" is not enough to require a change of a system through interest arbitration. "Good ideas" are not enough. Have there been sufficient instances where Sergeants over-utilized and abused sick leave earned at the beginning of the year? The record does not show that has happened. Have Sergeants burned sick time given at the beginning of the year and then left the City's employ effectively leaving the City "... holding the bag"? The record also does not show that has happened.

The change in accrual method for sick leave is therefore not warranted — the current system is not broken. The Union's proposal to keep the *status quo* on this issue is therefore adopted.[105]

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[104] *Id*.

[105] At the hearing, the Union briefly discussed how the Family Medical Leave Act ("FMLA") would be incorporated into the sick leave provisions. Tr. 10. And the parties' final offers include references to FMLA issues. Union Final Offer Joint Exh. 3 at 3; City Final Offer Joint Exh. 4 at 58. However, the City did not fully and directly address any FMLA issues at the hearing or in its brief, but instead concentrated on the accrual issue. *See* City Brief at 41-43. It is not clear where, or even if, there is a dispute here. The parties will have to address FMLA-type issues concerning sick leave either in their final drafting of the language for the Agreement, through the grievance and arbitration process (should an issue arise) or, because the contract has expired, in the next round of contract negotiations.

11. Guaranteed Hours

In their listing of tentative agreements, the parties agreed to have an article addressing "Hours of Work and Overtime".[106] The City seeks to have a section included in that article that provides:[107]

> **Section 13.1. Application of Article**. This Article is intended only as a basis for calculating overtime payments, and nothing in this Article or Agreement shall be construed as a guarantee of a minimum number of hours of work per day, per week, or per work cycle.

In its brief the Union states its opposition to inclusion of such language.[108]

The City points out that similar language is found in Section 13.1 of the 2008-2010 Patrol Contract and Section 12.1 of the 2008-2011 Firefighters Contract.[109]

The Union has not shown the need for the existence of a guarantee for hours of work and it does not appear that any such guarantees exist. This type of clause as proposed by the City are quite common and are also found in the 2008-2010 Patrol and 2008-2011 Firefighters Contracts.

The City's position that such language should be included in the Agreement is adopted.

12. Work Schedules

The Union proposes the following language for work schedules:[110]

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[106] Joint Exh. 2 at 22.

[107] City Final Offer Joint Exh. 4 at 4.

[108] Union Brief at 4 ("[t]he Employer seeks a limitation on whether hours of work are guaranteed and the union objects to the inclusion of such language.").

[109] City Brief at 44; Joint Exhs. 9, 10.

[110] Union Final Offer Joint Exh. 3 at 4.

> **13.2 Work Schedule**
>
> The City shall continue to post the work schedules showing shifts, workdays and work hours to which the bargaining unit members are assigned. The current work schedule is based on a five (5) days on duty and two (2) days off duty. Sergeants currently rotate between days, afternoons, and midnights every two (2) months and the first month of every year they reverse the rotation.
>
> Sergeants assigned to the midnights shift may elect to utilize a 10-hour shift schedule. The 10-hour schedule may return to the 8-hour schedule currently in use when operational necessities or personnel issues arise.

The City proposes the following language for work schedules:[111]

> **Section 13.2. Work Schedules.** The City shall continue to post the work schedules showing the shifts, workdays and work hours to which bargaining unit members are normally assigned. The normal work cycle for purposes of Section 7K of the federal Fair Labor Standards Act is seven (7) days.

There are two separate issues concerning work schedules: (A) reference to Section 7(k) of the Fair Labor Standards Act ("FLSA") and (B) the ability of Sergeants working on midnights to choose to work eight or ten hour shifts. Those issues are distinct and must be treated separately.

A. References To Section 7(k) Of The FLSA

The parties are in agreement with respect to the concept expressed in the first sentence of this provision that the City shall continue to post work schedules showing shifts, workdays and work hours of the shifts to which bargaining unit members are assigned.

Nor does there appear to be a general disagreement with respect to the work cycle or period. The Union seeks language providing that "[t]he current work schedule is based on a five (5) days on duty and two (2) days off duty" and

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[111] City Final Offer Joint Exh. 4 at 4.

the City seeks language providing that "[t]he normal work cycle ... is seven (7) days."[112] So it appears, in concept, that the parties agree that the normal work schedule, period, or cycle is seven days.

The difference in the first paragraph of the parties' proposals is the specific reference to Section 7(k) of the FLSA sought by the City, which does not appear in the Union's proposal.

The City's desire for the specific reference to Section 7(k) of the FLSA is understandable because Section 7(k) offers a limited exemption to public employers of law enforcement personnel or firefighters from the overtime limit in the FLSA. The City's desire for a specific reference to Section 7(k) is sought to prevent "... exposing the City to overtime liability in the form of either lawsuits or grievances."[113] And, as pointed out in the City's brief, where a collective bargaining agreement specifically references Section 7(k), that reference supports the establishment of a work period to allow a public employer to successfully claim the Section 7(k) exemption.[114] *See e.g., Adair v. City of Kirkland*, 185 F.3d 1055, 1061 (9th Cir. 1999) [cited by the City], where the collective bargaining agreement specifically provided that "'[f]or purposes of complying with the Fair Labor Standards Act, the Patrol Division work period shall be eight days and the Detective Division seven days.'"

I can only establish terms and conditions of contracts based upon the statutory factors in Section 14(h) of the IPLRA. Obviously, protecting the City from potential litigation is a very sound negotiating strategy. However, protec-

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[112] The City reiterated that position at the hearing that "... the status quo in that sergeants are on a seven day work cycle ...." Tr. 100.

[113] City Brief at 44-45.

[114] *Id*.

tion against potential FLSA litigation is not one of the statutory factors under the IPLRA.

If I look at the internal comparables, the evidence reveals that the 2008-2010 Patrol Contract provides for work cycles and periods in Article XIII without specific reference to Section 7(k) and the same lack of specific reference is apparent in Article XII of the 2008-2011 Firefighters Contract (although Section 12.9 of the 2008-2011 Firefighters Contract references "FLSA Overtime").[115] Therefore, a specific reference to "Section 7(k)" is not something that I can require.

However, the parties appear to be on the same page with respect to the work period or cycle being seven days. Hopefully, when the parties put the language of this Agreement together, this specific potential legal issue will fall by the wayside either through agreed upon contract language or a side letter sufficiently manifesting the parties' understanding about the work cycle and periods for Sergeants for FLSA purposes. But from an interest arbitration standpoint, I do not have a basis to require inclusion of the specific reference to Section 7(k) of the FLSA in the Agreement. Nor do I have the authority to pass upon the implications of whether or not such language appears in the Agreement.

B. The Ability Of Sergeants Working On Midnights To Choose To Work Eight Or Ten Hour Shifts

The main difference in the parties' positions is with respect to the Union's seeking language which provides that "Sergeants assigned to the midnights shift may elect to utilize a 10-hour shift schedule [and t]he 10-hour schedule may return to the 8-hour schedule currently in use when operational

[115] Joint Exhs. 9 at 23 and 10 at 26, 29.

necessities or personnel issues arise." According to the Union, and based upon its view of the testimony of Deputy Chief David Schwarz, "... Sergeants assigned to midnights may choose a 10-hour shift, which is what the union's proposal sets forth."[116]

The City disagrees, asserting that Sergeants on midnights cannot and do not have the ability to, in essence, unilaterally change their own work schedules. The City correctly points out that Deputy Chief Schwarz testified that the ability of Sergeants on midnights to work eight or ten hour shifts is not completely in the Sergeants' discretion but they "... are allowed to choose between an eight and a ten hour shift with the exclusion of when a commander is on vacation, then they have to work that eight hour shift, which would be a five day week."[117] And, most importantly, as testified by Deputy Chief Schwarz, the ability of the Sergeants on midnights to work varying hours was a trial program implemented during the term of the parties' negotiations and was made subject to the City's approval.[118]

Therefore, the ability of the Sergeants working on midnights to effectively be able to unilaterally determine whether to work eight or ten hour shifts is not the *status quo*. And, as further pointed out by the City, the Union's position is contrary to the previously agreed upon language in Section 13.3 that "[t]he normal workday shall consist of eight (8) hours of regular duty."[119]

Based on the above, the Union's proposed language concerning the Sergeants on midnights must be rejected.

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[116] Union Brief at 4 [citing Tr. 106-107].
[117] Tr. 106-107.
[118] Tr. 107.
[119] *See* City Brief at 45, citing the tentative agreement for Section 13.3 (Joint Exh. 2 at 22).

13. Overtime Compensation

There are two issues regarding overtime compensation which will have to be separately addressed: (A) calculation and (B) assignment of overtime.

A. Calculation Of Overtime

With respect to the calculation of overtime, the Union proposes:[120]

> **13.4 Overtime Compensation**
>
> Overtime that has been duly authorized or approved shall be compensated as follows:
>
> All hours in excess of the normal workday shall be compensated at the rate of one and one-half (1 1/2) times the regular hourly rate (hourly rate determined by dividing the annual salary by 2080).

The Union points to the 2008-2010 Patrol Contract (at Section 13.4) which provides "[a]ll hours in excess of the normal workday shall be compensated at the rate of one and one-half (1 1/2) times the regular hourly rate (hourly rate determined by dividing the annual salary by 2080" — which is the same language the Union seeks for calculation.[121] Examination of the 2008-2010 Patrol Contract at Section 13.3 shows a definition of the "Normal Workday" as "[t]he normal workday shall consist of eight (8) hours of regular duty."[122] According to the Union, "the union's proposal at least as to when 1 1/2 for overtime starts is identical to the language in the patrol agreement."[123]

With respect to the calculation of overtime, the City proposes:[124]

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[120] Union Final Offer Joint Exh. 3 at 5.

[121] Joint Exh. 9 at 23-24.

[122] Union Brief at 4; Joint Exh. 9 at 23-24.

[123] Union Brief at 4.

[124] City Final Offer Joint Exh. 4 at 4.

> **Section 13.4. Overtime Compensation.** Overtime which has been duly authorized or approved shall be compensated as follows:
>
> > All hours worked in excess of 43 hours per seven day work cycle shall be compensated at the rate of one and one-half (1 1/2) times the regular hourly rate (hourly rate determined by dividing the annual salary by 2080).
> >
> > For purposes of determining overtime eligibility, approved paid time off in the form of vacation, personal leave, wellness leave, incentive days and holidays shall be counted as hours worked.

According to the City, "[t]he City is proposing that overtime be paid for hours worked in excess of 43 in a seven day cycle ... [and t]hat is consistent with the federal standard under the FLSA ...."[125] Further, according to the City, given the inclusion of paid time off for overtime eligibility in its proposal, "... in the vast majority of instances, extra hours worked by a sergeant during the seven day work cycle will result in overtime pay."[126] However, the City notes that "[o]ccasions naturally may arise when a Sergeant works beyond his or her regular shift, but does not exceed the overtime threshold that is consistent with the applicable 7(k) work period ... [and a]s a result, the Union's ... final offer has the potential to dramatically inflate the City's overtime costs.[127] The City also points to the Employee Handbook which provides that "'Police Sergeant' ... [which is one of the classifications of employees that] the City has determined at its own discretion to pay overtime ... shall be compensated for hours worked in excess of their normal workweek ...."[128]

According to the Union, the above-quoted language concerning the calculation of overtime "[a]ll hours in excess of the normal workday ..." is "status quo

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[125] Tr. 104

[126] Tr. 102.

[127] City Brief at 46.

[128] City Brief at 46; Joint Exh. 8 at 23-24.

under our proposal."[129] According to the City, the Union's proposal "... deviates from the Departmental *status quo* ... [by] proposing that Sergeants get paid at an overtime rate for *any* hours worked in excess of a normal work day."[130]

Stripped to its essence, the Union seeks overtime after eight hours in a work day while the City seeks overtime after 43 hours in a seven day counting period, with *both* parties claiming their position is the *status quo*.

The answer to whether the *status quo* should be changed is that there is no reason supported in this record to change the existing *status quo*. If the Sergeants are seeking to change the *status quo*, the Sergeants cannot do so because the Sergeants are well-compensated and have achieved wage increases keeping pace with the cost-of-living and have further maintained their longevity pay.[131] If the City is seeking to change the *status quo*, there is no evidence that the change it seeks is anything other than a "good idea", which is not enough.

So what is the *status quo* with respect to when overtime is paid? Is it after eight hours as the Union asserts or after 43 hours as the City asserts? From this record, I cannot tell. However, the City's records can answer that question. Because I see no justification to change the existing *status quo*, the answer to this issue is that overtime shall be paid in accord with the *status quo* as reflected by the City's records. If the Sergeants have received overtime after eight hours as the Union maintains, they shall continue to be paid overtime on that basis. But if the Sergeants have received overtime after 43 hours as the

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[129] Tr. 12.

[130] City Brief at 46 [emphasis in original].

[131] *See* discussion *supra* at V(2) and (4). *See also*, Joint Exh. 7 showing that as of January 4, 2012, (without the wage increases from this Award) the four Sergeants had annual salaries of $91,952.15. Further, *see* City Exh. 2 at 6 showing that total pay for 2011 for the four Sergeants (including regular, miscellaneous, Ravinia hours, overtime, longevity and acting Commander) ranged from $116,461.96 to $160,169.79. These are very well-paid employees.

City maintains, that shall be the basis for the computation. If there continues to be a dispute on this calculation, I will have to resolve that difference under my retained jurisdiction as discussed *infra* at V(24), or the parties can resort to the grievance and arbitration process.

B. Assignment Of Overtime

The Union proposes the following for the assignment of overtime:[132]

> Overtime/Compensation Time distribution and selection shall be done separately between Patrol and Specialty Divisions (Traffic and Investigations) and with the following provisions:
>
> (a) Absenteeism, Overtime/Compensation Time caused by absenteeism will default first to the sergeant working contiguous to the shift. If the sergeant does not desire this assignment it will default to the supervisor working contiguous to the shift with the lowest rank.
>
> (b) Call-in, Overtime/Compensation Time caused by call-in will default first to the sergeant scheduled for the oncoming shift. If the sergeant does not desire this assignment it will default to the oncoming supervisor with the lowest rank.
>
> (c) Fill-ins, Overtime/Compensation time caused by fill-ins (vacation, extended sick time, planned days off, and training) will be made available by dividing the shift in one half and default first to the sergeant working contiguous to the off-going and the oncoming shift. However, a sergeant assigned a fill-in may elect to place the assignment as a "Free Pick". "Free Picks" are made available in the following order; first to sergeants within their respective divisions utilizing seniority by grade, second to sergeants within Specialty Divisions utilizing seniority by grade, and third to supervisors other then Sergeants. If a "Free Pick" is not voluntarily filled , the fill in assignment will default to the supervisor working contiguous to the shift with the least overall seniority. Changes to the fill-in sheet cannot be done within 72 hours of the assignment unless mutually agreed upon by the default and requesting sergeant.

[132] Union Final Offer Joint Exh. 3 at 5.

(d) Special Events (Taste of Highland Park, Art Festival), Overtime/Compensation Time caused by special events will be made available first to sergeants. Seniority by grade will be utilized for the selection amongst sergeants.

The City opposes this language.[133]

The Union acknowledged at the hearing that its proposal in this regard "... is certainly not the status quo ...."[134] There is no evidence in this record to show that the existing system for assigning overtime is broken and in need of repair. The Union's proposal is therefore rejected and the *status quo* is maintained.

14. Call Back

The Union proposes the following language:[135]

13.5 Call Back

A call-back is defined as an official assignment of work that does not continuously precede or follow a sergeant's regularly scheduled working hours. A minimum of two (2) hour's pay at time and one-half will be guaranteed for all call-backs.

The City proposes the following language:[136]

13.5. Call Back. A call-back is defined as an official assignment of work which does not continuously precede or follow a sergeant's regularly scheduled working hours. A minimum of two (2) hours pay at the applicable rate will be guaranteed for all call-backs.

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133 City Brief at 46.

134 Tr. 13.

135 Union Final Offer Joint Exh. 3 at 6.

136 City Final Offer Joint Exh. 4 at 4.

The difference is the rate of pay for call-backs — with the Union proposing time and one-half for all call backs and the City proposing payment at "the applicable rate" (which might not be tine and one-half).[137]

The *status quo* is the Union's position that call-backs are paid at the overtime rate:[138]

> ARBITRATOR BENN: How is it paid now?
> MR. SMITH: ... Today it's paid at overtime, the two hours.
>
> * * *
>
> Today a two hour call back is in fact paid at tine and a half?
> [DEPUTY CHIEF] SCHWARZ: Yes.

The City sees the current call-back compensation at the overtime rate as "unfair", particularly if a Sergeant would not otherwise be entitled to overtime or if the call-back occurs in a week where the Sergeant has not worked or has been on unpaid leave.[139]

For the internal comparable, Section 13.5 of the 2008-2010 Patrol Contract pays call-backs at time and one-half.[140]

The City seeks to change the *status quo*, but there is no demonstration that the existing system is broken. The Union's proposal is therefore adopted.

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137 Union Brief at 4; City Brief at 47.
138 Tr. 103.
139 Tr. 102; City Brief at 47.
140 Joint Exh. 9 at 24.

15. Compensatory Time Bank

The Union proposes to add the following language:[141]

Compensatory Time Bank

Employees may place overtime hours into the compensatory time bank within the limits stated below in lieu of pay for such hours. For each hour of overtime an employee may place one and one and one-half (1 1/2%) or two (2) hours of time into the Reclaim Time Bank depending on whether the overtime as earned at the rate of time and one-half or double time. When the manpower needs of the police department are met, such earned overtime (which may be accumulated to a total of fifty-six (56) hours) may be taken as compensatory time off, subject to approval by the Chief of Police or Division Commander. Requests shall be granted in order of their submission. In case two (2) or more requests are submitted on the same date for the same reclaim time off, overall seniority shall prevail. Under no circumstances shall overtime hours paid for in accordance with the Fair Labor Standards Act also be taken as compensatory time off.

The City opposes addition of this language and seeks to maintain the *status quo* which does not provide for such a bank.[142]

There is a compensatory bank in Section 13.8 of the 2008-2010 Patrol Contract.[143] However, the Union concedes that addition of language providing for a compensatory time bank is a breakthrough for the Sergeants.[144]

This process frowns upon breakthroughs. No sufficient reason exists in this record for the establishment of a compensatory time bank as sought by the Union so as to change the *status quo*.

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[141] Union Final Offer Joint Exh. 3 at 6.

[142] Tr. 103; City Brief at 47.

[143] Joint Exh. 9 at 24.

[144] Tr. 16.

The City's offer to maintain the *status quo* without a compensatory time bank is therefore adopted.[145]

16. Ravinia Festival Overtime

The City provides police services to the Ravinia Festival and, as a result, members of the Police Department are offered overtime opportunities.

The City proposes the following language for the offering of those work opportunities:[146]

Ravinia Festival Overtime

a) At least two weeks prior to the opening of the Ravinia season each year, the Department will distribute and receive written confirmation from sworn personnel below the rank of Deputy Chief requesting they choose one of the following options:

1. Work every available festival job that does not conflict with their regularly scheduled work hours, including on their scheduled days off, vacation time, etc.
2. Work only those festival jobs that occur on days they are scheduled for duty but that do not conflict with their regularly scheduled work hours.
3. Work festival jobs only on a volunteer basis through sign-up for specific days.

b) Festival Job Assignments

1. Festival sign-up sheets will be posted no later than 10 days prior to the scheduled date of the event. The sign-up sheet shall indicate the personnel assigned to the event and the number of personnel needed to fill vacant positions (after all patrol officer volunteers have been assigned).
2. The two supervisory positions (Posts 1 & 2) will be filled on a rotational basis from those supervisors choosing to work every available concert, beginning with the supervisor having the most overall seniority.

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[145] The City's other arguments, including that the topic is not a mandatory subject of bargaining are therefore moot. City Brief at 50.

[146] City Final Offer Joint Exh. 4 at 4-5.

3. If additional non-supervisory posts remain available after patrolmen have been assigned, these posts shall be made available to supervisors by level of commitment, then overall seniority with the City.

4. Once all posts have been filled with available Highland Park personnel, supervisory posts 1 and 2 will be assigned by rank, then overall seniority with the City.

c) The Department shall make every effort to utilize Department personnel for Ravinia Festival jobs, however, if positions remain unfilled seven days prior to the date of the event, the Department will seek to fill those positions with personnel from other police departments. Should either of the two supervisory posts remain vacant, the Department may assign a supervisor to fill that post. The Chief of Police retains the managerial right to assign a particular rank of supervisor to any particular event at his discretion.

d) Personnel assigned to work a scheduled Ravinia Festival job will be responsible for locating a replacement in the event they do not desire to work the assignment. If the position is a supervisory position, the replacement must be of comparable or higher rank. If the sergeant is unable for any reason to locate a suitable replacement, he or she will be responsible to work the job.

The Union proposes the following language for Ravinia overtime:[147]

Ravinia Festival Overtime

(a) **Department Polling for Festival Jobs**. At least two (2) weeks prior to the opening of the Ravinia season each year, the Department will distribute and retrieve a written statement from each Sergeant which request that one (1) of the following options be chosen:

1) the Sergeant wishes to work every available Festival Job including days off, or

2) the Sergeant wishes to work Festival Jobs on duty days, or

3) Sergeants may work Festival Jobs on a volunteer basis through sign-ups for specific days, including vacation days.

[147] Union Final Offer Joint Exh. 3 at 6-7.

Sergeants will first be installed into the supervisory positions then the nonsupervisory positions upon completion of the police officers "free pick" selection time. The rational[e] is patrol officers' first, Sergeants second, Commanders third and other assigned personnel fourth.

(b) Festival Job Assignment and Sign-Up. Festival overtime shall be assigned in the following steps:

1) Sergeants requesting to work every available Festival Job

2) Sergeants requesting to work Festival Jobs on duty days

3) Sergeants will be given a five (5) day "Free Pick" selection period based on seniority in grade, a Sergeant with more seniority in grade may bump a "Free Pick" selection from another Sergeant with less seniority in grade.

(c) Posting of Festival Jobs, Festival Assignments and Sign-Up Sheets. The Festival assigned and sign-up jobs will normally be posted as far in advance as is possible, but no less than ten (10) days before the event. Festival assigned and sign-up jobs will be posted in an area accessible to all sergeants. The assigned and sign-up sheets will indicate the number of individuals needed. Although available Festival sign-up jobs will remain posted until the date of the event, the Department may fill jobs as it deems necessary within seven (7) calendar days of the event.

(d) Sergeants' Responsibility for Festival Sign-Up Jobs. A sergeant who signs up for a Festival Job will be responsible for finding any necessary replacement. If no replacement is found, the sergeant must work the job.

The Union argues that "[o]ur concern is simply equity in making sure that after patrol takes their picks, the sergeants get to jump and take their picks and then any of the exempts after that ... '[t]he rationale is patrol officers first, Sergeants second, Commanders third and other assigned personnel fourth'".[148]

[148] Tr. 16-17; Union Brief at 5 [citing the testimony of Sergeant Mueller, Tr. 109-119 and the language of the Union's proposal].

The City asserts that its Ravinia proposal is the *status quo*.[149] Deputy Chief Schwarz testified that the procedure followed in the City's offer asserted by the City to be the *status quo* has been in place "[s]ince the Ravinia season in 2009."[150] I note that the first performance at Ravinia in 2009 was on June 5, 2009.[151] That date is important because the City's procedure by its terms is implemented "[a]t least two weeks prior to the opening of the Ravinia season each year", which would place the City's current practice as beginning sometime at the latest in May 2009.[152] However, the Union was certified on March 23, 2009 — which is before the required period for the implementation of the current procedure used for Ravinia assignments.[153] Thus, without more of a showing that the current system was put into place before the Union's certification, based on what is before me, the City's current version of Ravinia scheduling cannot be found to be the *status quo* existing prior to the Union's certification and therefore it cannot be given the weight a *status quo* would ordinarily receive.

This scheduling issue is clearly an economic provision and I must select one of the parties' offers. The City's offer shall be selected.

First, the City produced comparative data going back to 2007. Just looking at the three year period 2009-2011 (since the Union has been certified and

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[149] Tr. 61, 77; City Brief at 51.

[150] Tr. 155.

[151] I can take notice that June 5, 2009 was opening night for the Ravinia Festival. The Ravinia Festival Orchestra performed "Camelot" that night:

http://www.ravinia.org/ViewDate.aspx?show=11

To verify that June 5, 2009 was opening night, go to Ravinia's calendar website and follow the calendar back to 2009:

http://www.ravinia.org/Calendar.aspx

[152] City Final Offer Joint Exh. 4 at 5.

[153] City Exh. 3.

since the City's present scheduling system has been in effect) yields the following:[154]

2009
54 Concerts

Sgt. Mueller	43
Cmdr. Tellone	42
Sgt. O'Neill	41
Cmdr. Cameron	29
Sgt. Carbajal	13
Sgt. Weaver	13

2010
51 Concerts

Sgt. Mueller	44
Cmdr. Cameron	42
Cmdr. Tellone	41
Sgt. O'Neill	25
Sgt. Carbajal	23
Sgt. Weaver	17

2011
53 Concerts

Cmdr. Cameron	51
Sgt. Mueller	44
Cmdr. Tellone	43
Sgt. O'Neill	34
Cmdr. Pfutzenrender	27

The conclusion of Deputy Chief Schwarz that "I would say that neither rank at this point has an unfair advantage or an advantage over the other" is supported by the data produced by the City.[155]

Second, this issue has to do with the assigning of Sergeants — command staff — to work at Ravinia. In their tentative agreements, the parties agreed in Section 3.1 of the Management Rights provision that the City has the right to "... manage and direct its employees ... direct the work force ... [and] determine

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[154] City Exh. 5.
[155] Tr. 66

work hours ...”[156] The issue here is really over traditional management rights, which, subject to arbitral review under an “arbitrary or capricious” standard of review (*see* discussion *supra* at V(8)) means a significant degree of deference must be given to how the City believes assignments should be made.

And third, the City does not dispute that if a Sergeant believes that he is being unfairly treated or there has been an inequitable distribution of Ravinia overtime opportunities, that dispute can be taken through the grievance and arbitration procedure.[157] With that protection, if a Sergeant believes that there has been unfair or arbitrary treatment and if that is demonstrated, relief exists through the grievance procedure.

Based on the above, the Union’s proposed language which gives preference for Ravinia scheduling to Sergeants over the method proposed by the City is not supported.

The City’s proposal is adopted.

17. Extra Job Selection

The Union proposes the following language:[158]

> **Extra Job Selection.**
>
> Extra jobs shall be available to sergeants before Commanders. A separate list of jobs that require supervisory personal shall be maintained. Any extra job that requires the presence of three or more patrolman shall have a sergeant assigned to supervise the work.
>
> (a) All department personnel below the rank of Sergeant are subject to extra job assignments. In an effort to identify volunteers for these assignments, a “VOLUNTEER” pool and a “NON-VOLUNTEER” pool will be established. Sergeants may request to

[156] Joint Exh. 2 at 4-5.

[157] Tr. 77.

[158] Union Final Offer Joint Exh. 3 at 8.

be placed in or removed from the VOLUNTEER pool during the months of January, May, and September.

(b) All extra job assignments will be assigned on a rotating basis from the "VOLUNTEER" pool.

(c) Sergeants not wanting to work the assigned extra job may be excused provided the assigned sergeant locates a substitute for the job from the "VOLUNTEER" list. The only time a "NON-VOLUNTEER" sergeant may substitute for any sergeant is if all means have been exhausted to get a "VOLUNTEER" substitute, and the Police Chief or the Deputy Chief has approved such substitution. All substitutions must be made in writing on the forms provided. The forms must provide all information pertaining to the job, and must be signed by both the originally assigned sergeant and the substituting sergeant.

(d) Extra Job Assignments missed while on vacation , holidays, sick or injury leave will not be made up in any way and the sergeant's name will be skipped as though the assignment was completed. This will also apply when sergeants have obtained a substitute, but will not apply to those doing the substituting .

(e) Sergeants working Extra Job Assignments will be paid in accordance with the individual sergeant's overtime scale as established by the City Council. The hours worked will be forwarded to the Finance Department and will become a regular part of each check. Sergeants may not accept tips or gratuities.

(f) In the event an Extra Job Assignment is received on short notice -- less than seventy-two (72) hours -- and a sergeant is not assigned, it will be placed on the board and marked "FREE PICK." The sergeant wishing to work the assignment will sign his name on the card, and the assignment will be handled as if he were originally assigned to the job. Again, only those on the "VOLUNTEER" list may take "FREE PICK" jobs unless all other means have been exhausted. A "NON VOLUNTEER" Sergeant may accept such job with the approval of the Police Chief or the Deputy Police Chief.

The City proposes the following language:[159]

Extra Job Selection. This Section only applies to extra jobs requested by outside third parties that the Department elects to post.

(a) Any supervisor can volunteer for a non-supervisory extra-job assignment that has been posted as a "free pick." Up until

[159] City Final Offer Joint Exh. 4 at 5-6.

72 hours prior to the start of the extra job, a patrolman may take the "free-pick" regardless if an officer of higher rank has signed up for that assignment (unless the post is supervisory in nature). Should no patrolman take the "free pick" assignment, it will be awarded to the supervisor with the highest overall seniority, regardless of rank, who has signed up to take the assignment.

(b) Any supervisor taking a "free pick" assignment will be responsible for finding a suitable replacement should he or she subsequently wish to decline the job. If no replacement is found, the employee assigned will be expected to work the assignment.

(c) Sworn supervisory personnel below the rank of Deputy Chief may volunteer to take an extra-job post assignment that has been designated as supervisory. These posts will be awarded on a rotational basis. If no supervisor volunteers for a supervisory extra-job position, the Department may assign a supervisor to fill that post.

(d) All substitution requests must be submitted in writing on a form provided by the Department and signed by the original sergeant and the substitute. If the post is a designated supervisor position, the substitute must be the rank of Sergeant or Commander. An extra duty assignment of six or more officers will normally include one supervisor.

The problem with the Union's proposal is in the opening sentence of the first paragraph.

First, the Union's proposal provides in the opening paragraph that "[e]xtra jobs shall be available to sergeants before Commanders." What if Commanders performed those particular jobs in the past and Sergeants did not? Why should the Sergeants take over those duties, which would be for all purposes an expansion of the scope of the Sergeants' bargaining unit work?

Second, the testimony at the hearing from Sergeant Rodney Carbajal demonstrated that the Union's proposal in this regard is not the *status quo*:[160]

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[160] Tr. 146.

Q. There really is no status quo as I understand your testimony?

A. That's correct.

* * *

Q. The first sentence of the Union's proposal, "extra jobs shall be available to sergeants before commanders,' that certainly has not been the status quo during your tenure as a sergeant, is that true?

A. That's correct.

The City's proposal provides for a rotating system and does not limit the City's ability to make assignments for extra jobs to officers and command staff which may require special skills. The opening sentence of the Union's proposal which gives the Sergeants preferential treatment for *all* of these assignments really undermines its position so much that it forces selection of the City's offer.

This is an economic provision. I therefore can only pick one of the two presented offers. Because of the preferential treatment sought by the Union for Sergeants in the first sentence of the Union's offer for *all* assignments (whether requested by outside parties or not), the Union's offer essentially disqualifies itself from consideration.[161]

The City's proposal is adopted.

[161] I recognize as pointed out by the Union that the Union's proposal tracks language in Section 13.11 the 2008-2010 Patrol Contract. Union Brief at 6; Joint Exh. 9 at 27. However, the preferential assignment language found in the Union's proposal does not appear in the 2008-2010 Patrol Contract.

18. Acting Commander Pay

The Union proposes the following language:[162]

Acting Commander Pay

Acting Commander Pay will be paid, during any hours, when a Sergeant is acting in the capacities of a Commander and/or the sole Supervisor, and Acting Commander Overtime will be paid as earned.

Acting Commander rate ("act") is the Sergeant's regular hourly pay rate multiplied by 1.06.

Acting Commander overtime rate (act") is the Sergeant's regular hourly pay rate multiplied by 1.59.

The City proposes the following language.[163]

Acting Commander Pay: If the Deputy Chief or his designee assigns a sergeant to serve as acting commander for an entire shift, and/or as a fill-in supervisor for a supervisory shift vacancy, in the absence of a higher ranking command officer, then such sergeant shall receive an additional 6% over his regular base pay for the period of such acting assignment.

The difference between the parties' positions on this issue is that the Union seeks Acting Commander pay for any hours worked by a Sergeant as an Acting Commander and the City seeks to limit payments only for situations when a Sergeant works a full shift as an Acting Commander.

There is some history behind this difference. On January 8, 2003, the City Manager issued a memo to the Chief of Police concerning "Acting Supervisory Compensation" which provided that a "[m]inimum period of time to qualify would be a full tour of duty and not less than 8 hours."[164] The memo specifi-

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[162] Union Final Offer Joint Exh. 4 at 9.

[163] City Final Offer Joint Exh. 3 at 8.

[164] City Exh. 6.

cally referred to Sergeants, noting that "[t]his practice is projected to predominantly involve a Patrol Division Sergeant serving the role of Platoon Commander in their absence."[165] However, the intent of that memo to only pay this benefit for full shifts worked did not turn into an iron-clad practice. There is no dispute that after the memo issued in 2003 requiring full shifts to be worked before the payment for Acting Commander was given, some Sergeants were paid Acting Commander pay for less than full shifts worked.[166] When negotiations began between the parties in 2009, the City informed the Union that Sergeants were receiving the payments contrary to the 2003 memo; the City wanted to pay the Sergeants consistent with the original intent of the 2003 memo (only for full shifts worked); the Union agreed, without prejudice to the Union's ability to propose something different on the issue; and the City agreed to that procedure.[167] Thereafter, Acting Commander pay was only given after Sergeants worked for full eight hour shifts.[168]

The question, again, is what is the *status quo*? The evidence sufficiently shows that the *status quo* is found in the 2003 memo which provides that the Acting Commander benefit is paid only after a full shift is worked. What happened after 2003 was that payments on an hour-for-hour basis were made in error.[169] Aside from the erroneous payments, there is nothing to show that the original intent of the 2003 memo was officially changed.

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165 *Id*.
166 Tr. 117-123, 157; Union Exh. 8.
167 Tr. 157-158.
168 Tr. 123.
169 The City is not seeking to recoup those payments. City Brief at 62.

There is no evidence that the City has abused a requirement that a full shift must be worked by a Sergeant in an acting capacity before payment is made (*e.g.*, where, in order to avoid having to pay the benefit, a Sergeant is assigned for 7.5 hours in an Acting Commander capacity and then assigned back as a Sergeant for the remainder of a shift). The Union's position requires that I find that the *status quo* was, in reality, an error. There is no reason to do so.

I again also turn to the fact that these Sergeants are very well compensated; received raises keeping pace with the cost-of-living; and maintained their longevity payments. No reason for additional compensation of this sort has been shown.

The City's proposal is adopted.

19. Unplanned/Planned Time Off Coverage

The Union proposes the following language:[170]

> **Unplanned/Planned Time Off Coverage**
>
> First right of refusal is afforded to the off going and on-coming Patrol Sergeants, then Patrol Commanders. If both Supervisors (Commander and Sergeant) do not desire the off-going or on-coming assignment it will revert to the lower ranking Supervisor.

The City objects to the inclusion of such language and seeks to keep the *status quo*.[171]

According to the Union, "[r]ather than simply mandating or ordering or releasing your supervisor to work a shift, we want to give the opportunity to the patrol sergeant that would be coming on to work a shift if it was shortened,

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[170] Union Final Offer Joint Exh. 3 at 11.

[171] City Final Offer Joint Exh. 4 at 6; Tr. 104-105; City Brief at 33.

then give the opportunity to the commanders."[172] Further, according to the Union:[173]

> The Union wants to provide for extended supervisory coverage between shifts by its proposal. The employer offers no alternative and contends this is objectionable as a breakthrough item. Once again, the employer does not look at the rational basis for the proposal: it provides for continuity of supervisory coverage when there is not a supervisor working the next (on-coming) shift.

For the sake of discussion (and putting aside the City's position that the Union's proposal is an infringement on the City's discretion to consider skills, abilities and training), at best, the Union proposes a "good idea". However, as explained throughout this Award, a "good idea" is not enough to change a *status quo*. There is no evidence that the City's method of operation is a problem much less than one that is broken. Here the *status quo* is to not have such a provision. The *status quo* shall be continued.

The City's offer to maintain the *status quo* is adopted.[174]

20. Tuition Reimbursement Eligibility and Tuition Reimbursement

While the language proposals are lengthy, the dispute is really over the amount of reimbursement for Masters' degree programs.[175]

As framed by the City, the Union is seeking reimbursement for Masters' degree programs, with *status quo* on the amount of reimbursement, while the City is agreeing to reimbursement for Masters' degree programs, conditioned on

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172 Tr. 21-22.

173 Union Brief at 7.

174 In light of the result, the City's argument that the issue is a permissive subject of bargaining is moot. City Brief at 33.

175 City Final Offer Joint Exh. 4 at 6-7; City Brief at 62-63; Union Final Offer Joint Exh. 3 at 9-10; Union Brief at 7-8.

reimbursing employees 75% of tuition (and not 100%) if employees receive a "B" grade.

The *status quo* as identified by the parties (including 100% reimbursement for "A" and "B" grades in Masters' programs) shall be maintained. The City's stated reason for reducing the reimbursement amount to 75% for "B" grades is that "... [t]he City believes this is a reasonable change, and makes practical sense if the intent of a tuition reimbursement program is to encourage employees to excel at their studies."[176] I agree with the City to the extent that its proposal is a "good idea" as a motivator for employees to excel — the better the grade, the more they get paid. However, there does not appear to be a disagreement on what the *status quo* is and no evidence has been offered that the current method used for tuition reimbursement is broken. Moreover, internally, the Section 14.5 of the 2008-2010 Patrol Contract provides for 100% reimbursement for "A" and "B" grades.[177]

The City's position that reimbursement for Masters' degree programs was erroneously given to Sergeants contrary to the provisions of the Employee Handbook does not change the result.[178] According to the City, "[t]he City's intent for the sergeants, as is evidenced by the employee manual ... was that tuition reimbursement would only be made available for baccalaureate work"... but the City learned during negotiations for this Agreement "... that the benefit was being more broadly administered for the sergeants such that they were being allowed tuition reimbursement for postgraduate work, including master's

[176] City Brief at 63.
[177] Joint Exh. 9 at 30.
[178] *Id*. at 62-63.

time."[179] The version of the Employee Handbook before me (an April 2004 edition) does provide that "Graduate level course reimbursement is available only to Senior Executive Management and Executive Management personnel."[180] But by reimbursing Sergeants for graduate level work, the City — by practice — included the Sergeants into the population of personnel eligible for reimbursement for graduate level work. This is quite different from the Acting Commander pay issue discussed *supra* at V(18) where there was a specific prohibition against payment of that benefit unless *a Sergeant* worked a full shift and payments made contrary to that exclusion were found by me to be in error as the City argued. Here, there was no such specific exclusion for Sergeants, but a practice developed whereby, over time, Sergeants were folded into the tuition reimbursement benefit for graduate work. Sergeants were not specifically excluded from the tuition reimbursement benefit to the extent that payment for Acting Commander pay was prohibited unless Sergeants worked a full eight hour shift in the Acting Commander position. On this issue, the *status quo* includes payment of Sergeants for graduate work. There shall be no change to that part of the *status quo* as well.

The Union's offer is therefore adopted.

21. Health Insurance (Coverage And Plan, Contributions, Cost Containment, Terms Of Policy)

The City proposes the *status quo*.[181]

The Union proposes modifications, but recognizes that on coverage "[b]oth parties language is similar"; seeks a cap on costs for the remainder of

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[179] Tr. 105.
[180] Joint Exh. 8 at 50.
[181] City Final Offer Joint Exh. 3 at 8-9; Tr. 86-87; City Brief at 26.

2012 at the rate in effect; objects to cost containment language of the City; but agrees that with respect to the terms of policy language "[i]t appears the final proposals are identical".[182]

According to the City:[183]

> MR. SMITH: ... the City's proposal ... is completely consistent with the status quo. This is what the sergeants have been paying, it is the same as the police officers pay in terms of the plan and the cost allocation. It is the same as the public works employees represented by Local 150 have in terms of the plan and the premium allocation. It's the same as the non-represented city workforce.

Given the posture of this case — with a contract that expired on December 31, 2012 — and given that the City has, for all purposes, maintained the *status quo*, from a practical standpoint, it makes no sense for me to consider changes when the parties will have the opportunity to address health insurance as they move into negotiations for the next Agreement. Given the unknowns swirling around the current state of health care, the parties should have the opportunity across the bargaining table to address any changes to the *status quo*. No reasons have been presented to change the *status quo*. Therefore, the City's offer to maintain the *status quo* is adopted.

22. Prior Tentative Agreements

As provided in the negotiated ground rules for this proceeding, "[a]ll tentatively agreed upon articles, sections or subsections of the proposed labor contract, ... shall be incorporated into the Award".[184] Tentative agreements were

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[182] Union Brief at 10-11; Union Final Offer Joint Exh. 3 at 10-11.

[183] Tr. 86-87.

[184] Joint Exh. 1 at 2, par. 5(b).

reached by the parties prior to the hearing and were provided as an exhibit.[185] Further, at the hearing, the parties reached agreements on other issues.[186] All tentative agreements are therefore incorporated into this Award.

A dispute arose at the commencement of the hearing concerning language for the "Normal Workday".[187] The parties agreed on the first sentence that "[t]he normal workday shall consist of eight (8) hours of regular duty", but a dispute arose concerning the second sentence.[188] Specifically, the second sentence addresses a 15-minute paid in-service training period, with the City arguing that the language agreed to by the parties was that "[e]ach workday may be preceded by a fifteen (15) minute paid in-service training duty." The Union argues for language that reads "... shall be preceded ..." and not "... may be preceded ...."[189]

The evidence shows that on May 28, 2010, the Union and the City signed off on a tentative agreement consistent with the position of the City that the language for paid in-service training would read "[e]ach workday *may* be preceded by a fifteen (15) minute paid in-service training duty" [emphasis added] and thereafter the on various dates, the City provided the Union with updated summaries of the tentative agreements which included the word "may" and not "shall".[190] I find that the parties agreed to the word "may" and not "shall".

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[185] Joint Exh. 2.

[186] The parties agreed to physical fitness (Tr. 11); changes in work schedules (Tr. 14); and shift exchanges (Tr. 18). *See also*, City Exh. 1; Tr. 34.

[187] Tr. 3; Joint Exh. 2 at 22 (Section 13.3).

[188] Tr. 3.

[189] *Id*.

[190] Tr. 92-93.

That being the case, the ground rules require that the tentative agreement with the word "may" on this issue be incorporated into the Agreement.

23. Retroactivity

Wages and benefits imposed by this Award are retroactive to the commencement of the Agreement and the employees shall be paid accordingly.

24. 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.

VI. CONCLUSION

The disputed issues are resolved as follows:

1. Duration of Agreement:

Union proposal — three years (January 1, 2010 through December 31, 2012).

2. Wages:

City proposal:

Effective	Increase
1/1/10	2.5%
1/1/11	1.5%
1/1/12	2.3%

3. Step movements:

City proposal — *status quo* (eight-step plan).

4. Longevity pay:

Union proposal — *status quo*.

5. Definition of seniority:

City proposal — *status quo* (no bidding for overtime and shift picks by time in grade as a Sergeant and no requirement for

entering into the bargaining unit with the lowest rank in seniority).

6. Drug and alcohol testing:

Random Testing:

Union proposal — no random testing.

Reasonable Suspicion Testing:

Include (agreed, but language to be negotiated with retained jurisdiction for disputes, if any).

Prohibitions against use, possession or sale:

City proposal — include prohibitions, but language to be negotiated with retained jurisdiction for disputes, if any).

7. Vacation accrual and time granted:

Agreed (as per Section 10.1 of the 2008-2010 Patrol Contract).

8. Vacation scheduling:

Status quo.

9. Holidays, holiday pay and personal days:

Accrual of personal days:

Union proposal — *status quo* (credit at beginning of year and not earned *pro rata*).

Assignments to additional details and scheduling of holidays:

City proposal — *status quo* (no requirement for additional language).

10. Sick leave:

Union proposal — *status quo* (credit at beginning of year and not earned *pro rata*).

11. Guaranteed hours:

City proposal — “no guarantee” of hours language included.

12. Work schedules:

Inclusion of Section 7(k) of FLSA language:

Union proposal — do not include.

Ability of Sergeants working on midnights to choose to work eight or ten hour shifts:

City proposal — no language allowing such option.

13. Overtime compensation (calculation and assignment):

Calculation:

status quo (to be determined by examination of City's records).

Assignment of overtime:

City proposal — *status quo*.

14. Call back:

Union proposal — *status quo* (all call backs paid at time and one-half).

15. Compensatory time bank:

City proposal — *status quo* (no compensatory time bank)

16. Ravinia Festival overtime:

City proposal for assignments.

17. Extra job selection:

City proposal.

18. Acting Commander pay:

City proposal — compensation paid only after working full shifts.

19. Unplanned/planned time off coverage:

City proposal — *status quo* (no additional language for right of first refusal for off-going and on-coming Sergeants).

20. Tuition reimbursement eligibility and tuition reimbursement:

Union proposal — *status quo* (for "A" and "B" grades, no requirement for "A" grades for full reimbursement with graduate level courses included).

21. Health insurance (coverage and plan, contributions, cost containment, terms of policy):

City proposal — *status quo*.

22. In-service training duty:

City position incorporated per ground rules as a prior tentative agreement ("[e]ach workday *may* be preceded by a fifteen (15) minute paid in-service training duty") [emphasis added].

23. Retroactivity:

To commencement of Agreement.

24. Retained jurisdiction:

With consent of parties for disputes over drafting of language to implement terms of the Award.

Edwin H. Benn
Arbitrator

Dated: February 25, 2013