INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

CITY FIRE FIGHTERS LOCAL 413, IAFF, AFL-CIO
("Union" or "Bargaining Representative")

AND

CITY OF ROCKFORD
("City" or "Employer")

ILRB Case No. S-MA-12-108
Arbitrator's Case No. 12/049

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:
Joel A. D'Alba, Asher, Gittler & D'Alba
Margaret Angelucci, Asher, Gittler & D'Alba

On Behalf of the Employer:
R. Theodore Clark, Jr., Clark, Baird, Smith LLP
Benjamin E. Gehrt, Clark, Baird, Smith LLP
Patrick Hayes, Legal Director, City of Rockford, Department of Law

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the City and the Union pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (the "Act"). The Parties are at an impasse in their negotiations for a successor to the Collective Bargaining Agreement between the City and the Union, which was in effect from January 1, 2009 through December 31, 2011. The Parties each waived the Act's provision for a tripartite arbitration panel and so I am appointed as the sole Arbitrator to decide this matter.

The hearing before the undersigned Arbitrator was held over nine days, on December 6-7, 2012, January 14-15, 2013, March 27-28, 2013 and May 14-16, 2013, at the City Hall, located at 425 East State Street, Rockford, Illinois. The Parties were afforded full opportunity to present their cases as to the impasse issues set out herein, which included both testimony and narrative presentation of exhibits. A voluminous stenographic transcript of these hearing days was made, and thereafter the Parties were invited to file written briefs that they deemed pertinent to their respective positions. Post-hearing briefs were exchanged on July 30, 2013. The Union thereafter filed a reply brief, on September 10, and the City filed its own reply brief on September 13, 2013, and the record was thereafter declared closed.

II. FACTUAL BACKGROUND

The City is an Employer within the meaning of Section 3(o) of the Act. The Union is a labor organization within the meaning of Section 3(i) of the Act. The Union is the exclusive and historical bargaining representative, within the meaning of Section 3(f) of the Act, for all sworn fire fighters holding the rank status of Firefighter, Lieutenant and Captain. At the time of the hearing, the Unit included some 248 sworn employees. According to the 2010 census, the City's population is 152,871. The record also reveals that a referendum conducted sometime in the early 1980s denied the City home rule status.

The Rockford Fire Department operates 11 stations. Each station is assigned to a specific "still district," which refers to the area over which the company or companies assigned to the station have primary responsibility. The firefighters work on 24-hour shifts. The expiring labor contract was arrived at through mediation before Arbitrator Robert Perkovich. The contract provided for no wage increases in 2009 and 2010, and for a wage reopener in the final year, effective January 1, 2011. The parties resolved the reopener through interest arbitration, again before Arbitrator Perkovich, who awarded the Union's proposal, which included wage increases of 2.0%,

effective April 1, 2011, 2.0% effective June 1, 2011, and 2.0% effective October 1, 2011. The current top annual base pay[1] for all bargaining unit classifications is as follows:

Firefighter	$67,473
Alarm Operator	$69,397
Fire Equipment Specialist	$71,780
Driver	$71,780
Fire Inspector/Training Officer	$77,873
Lieutenant	$75,704
Captain/Coordinator	$80,374
Additional Assigned	
Paramedic	$ 3,374
ALS Provider	$ 2,362

The existing contract also contains a provision for minimum manning:

> **Section 4.1 - Company Strength**
>
> In accordance with the complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.
>
> The parties mutually agree that this section shall mean that the current level of manpower will be continued, with no fewer than sixty-two (62) personnel, working per shift (A, B, C), who are assigned to a maximum of fifteen (15) companies and five (5) ambulances. Plus two (2) airport personnel, so long as an Intergovernmental Agreement between the Airport Authority and the City of Rockford for fire services at the airport is in effect. The manning

[1] Employees are paid from schedules, with the number of steps varying by class. The parties each analyzed their respective proposals on the basis of the top steps.

> number will be increased by airport personnel pursuant to the provisions below.
>
> The airport manning will be directly related to the index of fire protection required at the airport. An independent company will be implemented at the airport, (Officer, Driver and Firefighter) effective January 1, 2010 or when the fire protection index increases, whichever is sooner.
>
> Effective January 1, 2008 an additional driver engineer per shift will be added to the airport firefighting company.

The record reveals that manning has been a matter of contract between these parties since the parties incorporated Article 4, Section 1 into their 1979 labor contract, which provided:

> In accordance with the total complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of firefighter safety.

The Section continued unchanged until 1988, when the parties entered into what is commonly called the Side-Bar Agreement, which added the following to the above language:

> The parties mutually agree this section shall mean that the current level of manpower, no fewer than fifty-four (54) men working per shift (A, B, C), who are assigned to a maximum of fifteen (15) companies and three (3) ambulances.

In 1992, the minimum manpower level was increased to 57, and sometime thereafter – the record is unclear as to exactly when – the minimum manpower level was increased to its present

62, plus two firefighters assigned to the airport. The number of ambulances was increased to five in the last contract.

During negotiations for the last contract in 2008, in the wake of the Great Recession[2], the City sought unsuccessfully to negotiate a reduction in the Section 4.1 minimum manning requirement to 58. Instead, the parties agreed maintain the status quo, except for the addition of two ambulance companies and to address future manning by the following:

> Effective October 9, 2009 the parties shall convene a joint committee to recommend the establishment of deployment protocols to accommodate up to 2 additional ambulances with the present staffing. The committee has no obligation to reach agreement.

The record reveals that the committee met as scheduled and did not reach agreement on any proposals to accommodate additional ambulances.

Traditionally, the Department has maintained an array of Engines, apparatus with pumping capability; Ladders, apparatus

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[2] I note that there is agreement that the Great Recession of 2007-09 was the worst slump since the Great Depression, and I also find that numerous commentators have noted that the recovery that followed has been very weak. Multiple careful economic studies have shown that the country is still in a time of widespread economic distress, I note. See Paul Krugman, "Free to be Hungry," (The New York Times Op-Ed, Monday, September 23, 2013 at p. A21.) Hence, the continuing debate about how to handle predictions of economic requirements, good or bad, in the course of expiring labor contracts in numerous public sector negotiations, including between this Union and Employer. The contentions about the economic exigencies in the near future may be speculation, but these differing assessments drives the parties' differing positions on the economic issues in this case, even though no direct "plea of poverty" has been made by the City here, I specifically find. Cf. City of Alton and Associated Firefighters of Alton, Local 1255, ISLRB Case No. S-MA-06-006 (Fletcher, 2007) at pp. 8-9.

that carry ladders equipped with a 100-foot aerial ladder[3]; and Quints, apparatus that combine the pumping capabilities of Engines with Ladder capabilities. A "company," as the term is used in Section 4.1, refers to the crew of firefighters assigned to a particular apparatus, I note. Of great significance to the instant matter is that in January 2012, the Department introduced as new equipment two Quick Response Vehicles ("QRV"). A QRV is an SUV, in this current case, two GMC Yukons, equipped primarily for responding to medical and rescue calls.

A QRV does not have any fire suppression capabilities, the record further shows. The two QRVs introduced in January, 2012, were assigned one each to Station 1 ("Rescue 1") and Station 2 ("Rescue 2"). Rescue 2 was assigned a driver, a district chief and a firefighter as a stand-alone crew whose numbers were not counted for purposes of minimum manning. Rescue 1, on the other hand, was manned by members of the company assigned to Ladder 1, a protocol referred to as a "jump company." Fire Chief Derek Bergsten testified that the jump company was used at Station 1 because available living quarters at that station would not accommodate a stand-alone QRV crew. The key point here once again is that the Department made these work assignments under

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[3] Ladders are the trucks that are designed with independent steering in the rear.

the rubric of its management rights, and did not believe Section 4.1 limited how QRV's were counted for its manning obligation.

The Union grieved the implementation of Station 1's jump company as, among other things, a violation of the requirement in Section 4.1 that those firefighters counted toward minimum manning be assigned to companies, or ambulances, which historically referred to fire suppression apparatus, i.e. engines, ladders and quints. The matter was heard in arbitration, concurrently with these proceedings, before Arbitrator Daniel Nielsen, who found that while the Union was correct that the term "companies," as used in Section 4.1, referred to fire suppression companies, or apparatus, the City nevertheless had the right to temporarily assign members of a company to a jump company, at least under circumstances where the assignments would not have an "effect of diluting the minimum manning levels required by Section 4.1. . ." (Joint Ex. 7).

At least in part, the minimum manning issue in this case revolves around the QRV's, the jump company issue, the Nielsen award just noted, and the balance between safety and efficient operational needs set out as necessary elements in the minimum manning provision in Section 4.1 of the parties' predecessor labor contract and also in their respective final offers on Section 4.1 in this case, the record evidence reveals.

III. STIPULATIONS OF THE PARTIES

The Parties agreed that the Labor Contract for the Police Unit should have a three-year term, beginning January 1, 2012, and that the following are the economic issues in dispute:

Economic Issues:

1. Company Strength (minimum manning)
2. Wages
3. Health Insurance
4. Sick Leave Pay Upon Severance

Non-Economic Issues:

None

In addition to the foregoing, the Parties entered into the following pre-hearing stipulations:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The Parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Joint Employers and Union.

2. The Parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The Parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the

arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be secured for the duration of the hearing by agreement of the Parties. Additionally, the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the Parties.

4. The Parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Act.

5. The Parties further stipulated that all tentative agreements reached during negotiations, except those entered into in mediation, are submitted as Joint Exhibit 4 and shall be incorporated by reference into this Award.

IV. THE PARTIES' FINAL PROPOSALS

A. The Union's Final Proposals

<u>Economic Issue #1 – Company Strength</u>

Section 4.1 -Company Strength

In accordance with the complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City win continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.

The parties mutually agree, this section shall mean that the current level of manpower will be continued, with no fewer

than sixty-two (62) personnel, working per shift (A, B, C), who are assigned to a maximum of thirteen (13) fire suppression companies and seven (7) ambulances. Non-fire suppression companies or non-ambulances shall not be staffed by the sixty-two personnel mentioned above. Plus two (2) airport personnel, so long as an Intergovernmental Agreement between the Airport Authority and the City of Rockford for fire services at the airport is in effect. The manning number will be increased by airport personnel pursuant to the provisions below.

The airport manning will be directly related to the index of fire protection required at the airport. An independent company will be implemented at the airport, (Officer, Driver and Firefighter) effective January 1, 2010 or when the fire protection index increases, whichever is sooner.

Effective January 1, 2008 an additional driver engineer per shift will be added to the airport firefighting company.

Economic Issue #2 – Wages

Effective January 1, 2012:	2.75%
Effective January 1, 2013:	2.50%
Effective January 1, 2014:	2.50%

Economic Issue #3 – Health Insurance

Union's Proposal For Health Insurance:

16.1 Paid Premiums of Employees

Effective January 1, 2014, employees who have single coverage shall pay $20.00 per pay period (26 per year) and those with single plus one coverage shall pay $40.00 per pay period (26 per year) and those with family / dependant coverage shall pay $60.00 per pay period (26 per year). The City agrees to pay the remainder of the cost of heal and dental insurance under the City's designated health and dental plan adopted December 29, 2003, by Ordinance 2003-2004 for the employee and covered dependents, except as the City's share of these costs is amended in this agreement.

The City will continue to provide a preferred provider plan for employees. For services rendered by non-preferred providers, the co-payment percentages will be 60 percent City and 40 percent employee, of the first $5,000 following satisfaction of applicable deductibles.

The employee contributions, deductibles and maximum payments are stated in the box below.

PPO Plan	Annual EE Contribution with Discount	Payroll EE Contribution After Discount	Payroll EE Contribution w/o Discount	Annual Deductible	Annual Out-of-Pocket In-network
Single	$520	$20	$33.34	$250	$1,000
Plus One	$1,040	$40	$66.67	$500	$2,000
Family	$1,560	$60	$100.00	$750	$3,000

Deductibles for services rendered shall be a maximum of $250.00 per person per calendar year, a maximum of $500.00 for single +1 or a maximum of $750.00 per family per calendar year.

ALL REMAINING PROVISIONS SET FORTH IN ARTICLE 16.1, AND THE REMAINDER OF ARTICLE 16 SHALL REMAIN STATUS QUO.

Economic Issue #4 – Sick Leave Pay Upon Severance

Section 9.5 - Sick Leave Pay Upon Severance

Upon retirement or honorable termination when the Employee gives at least two (2) weeks advance notice and successfully completes five (5) years of service, the Employee shall be eligible for sick leave pay. The maximum number of sick days, for which compensation may be received shall not exceed fifteen (15) days for an employee with between five (5) and nineteen (19) years of creditable service. For any Employee of the department who retires under honorable conditions with at least

twenty (20) years of creditable service, the maximum number of sick leave days for which compensation may be received shall not exceed 45 days.

In the event of an employee's death, this payment shall go to the employee's estate. Pay shall be computed on the basis of the appropriate number of days multiplied by eight (8) hours at the Employee's "40 hour week" hourly rate."

B. The City's Final Proposals

Economic Issue #1 – Company Strength

Section 4.1 -Company Strength

In accordance with the complement authorized by the City Council, the number of stations to be manned, and the manpower available, the City will continue to distribute men and officers to achieve the highest efficiency of operations and the greatest protection, and in the interest of fire fighter safety.

Effective the first 24-hour shift after the issuance of Arbitrator Elliott Goldstein's interest arbitration award, this section shall mean that the current level of manpower will be no fewer than fifty-nine (59) personnel, working per shift (A, B, C), who are assigned to a maximum of fourteen (14) companies and seven (7) ambulances. The City may deploy QRVs as jump companies in accordance with the provisions of Arbitrator Nielsen's arbitration award dated May 13, 2013.

Plus two (2) airport personnel, so long as an Intergovernmental Agreement between the Airport Authority and the City of Rockford for fire services at the airport is in effect. The manning number will be increased by airport personnel pursuant to the provisions below.

The airport manning will be directly related to the index of fire protection required at the airport. An independent company will be implemented at the airport, (Officer, Driver and Firefighter) effective January 1, 2010 or when the fire protection index increases, whichever is sooner.

Effective January 1, 2008 an additional driver engineer per shift will be added to the airport firefighting company.

The Side-Bar Agreement dated October 30, 1998 that was attached to the parties' 2009-2011 collective bargaining

agreement shall be deleted and shall not be attached to the parties' 2012-2014 collective bargaining agreement.

The City will not lay off any Local 413 bargaining unit employees during the term of this 2012-2014 collective bargaining agreement.

As an additional quid pro quo, the City will make a one-time lump sum payment to all members of the bargaining unit who are employed as of the date of Arbitrator Elliott Goldstein's interest arbitration award, said lump sum payment to be computed on the basis of one percent (1%) of their bases salary as of January 1, 2013, which shall be based on whichever final wage offer is awarded by Arbitrator Goldstein.

Economic Issue #2 – Wages

Effective January 1, 2012: 2.00%
Effective January 1, 2013: 2.00%
Effective January 1, 2014: 2.50%

Economic Issue #3 – Health Insurance

Employer's Proposal For Health Insurance:

In order to bring the City's health insurance program for the IAFF bargaining unit into line with all AFSCME bargaining units and the City's non-represented employees, the City's final offer on insurance contains the following elements:

1. Health insurance premiums for PPO coverage:

   - 2012 -- status quo
   - 2013 -- status quo
   - Effective 1/1/2014:

   ➢ Single coverage--$650
   ➢ Single plus one coverage--$1,300
   ➢ Family coverage--$1,950
   ➢ Wellness program non-compliance will result in a 10% surcharge of premium contribution.

2. Deductibles for PPO coverage:

   - 2012 -- status quo
   - 2013 -- status quo
   - Effective January 1, 2014 -- $400/$800/$1,200

3. Out-of-pocket maximum for PPO coverage

- 2012 -- status quo
- 2013 -- status quo
- Effective 1/1/2014, increase to $1,200/$2,400/$3,600

4. Prescription co-pays:

- 2012 -- status quo
- 2013 -- status quo

- Effective 1/1/2014--$15/$30/$50
- Effective 1/1/2014 (mail order)--$30/$60/$100

5. Out of Network provisions:

OUT OF NETWORK

ITEM	CURRENT AND THROUGH	EFF. 1/1/2014
Individual Out of Pocket	$2,000	$2,400
Single Plus One Out of	$4,000	$4,800
Family Out of Pocket	$6,000	$7,200
Individual Deductible	$200	$800
Single Plus One Deductible	$400	$1,600
Family Deductible	$600	$2,400
Co-Insurance after	60%	60%

6. Office Visit Co-Pay

- Effective January 1, 2014, if the City opens a City Health Care Clinic and the employee/dependent does not use the City Health Care Clinic, there shall be a shall be a doctor office visit co-pay of $25. Until the City's opens its City Health Care Clinic there shall be no co-pay for doctor office visits.

Section 16.1 as revised to incorporate these changes is attached as Appendix A and incorporated herein by reference.

Economic Issue #4 – Sick Leave Pay Upon Severance

The City proposes status quo as to Section 9.5.

V. RELEVANT STATUTORY LANGUAGE

Section 14 of the Act provides in relevant part:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

(1) The lawful authority of the Joint Employers.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other

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

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

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

5 ILCS 315/14(j) – [Limits on the arbitrators authority to issue retroactive wages.]

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

VI. EXTERNAL COMPARABLES

The record reveals an historical list of external comparables including the municipalities of Aurora, Bloomington, Champaign, DeKalb, Elgin, Joliet, Peoria and Springfield. See, City of Rockford and City Fire Fighters Local 413, S-MA-97-199 (Briggs 1998). The parties specifically agree on the continued inclusion of Bloomington, Champaign, DeKalb, Peoria and Springfield, the evidence of record reveals. The City however currently challenges the continued inclusion in the list of Aurora, Elgin and Joliet, contending that these communities have morphed into "Chicago-land" communities, i.e., that these three former comparables now have economic resources available to them, including riverboat casino revenues, that are vastly different from those available to the City of Rockford.

To the City, this makes Aurora, Elgin and Joliet at present not in any way "comparable" to Rockford for purposes of Section 14(h)(4) of the Act. In fact, the City points out that Arbitrator Herbert Berman opined in a fairly recent interest arbitration proceeding between these parties, City of Rockford and City Fire Fighters Local 413, S-MA-06-103 (Berman 2010), at p.16, that "the day may come when equity requires the exclusion of the Riverboat Cities," referring to Aurora, Elgin and Joliet. The City also reminds me that in City of Belleville, S-MA-08-157 (Goldstein 2010), I accepted that union's proposed list of

external comparables, over the employer's objection, even though it excluded several communities that had been included in a list of comparables that had been relied on in a previous interest arbitration involving the same parties as in the instant Belleville case. Consequently, where the underlying circumstances are shown to have changed, I have permitted a modification of historical comparables, the City avers.

The City further suggests that in the matter at bar, the dynamics of comparability have changed dramatically since Arbitrator Briggs 1998 Award that set out the external comparability universe for Rockford, based on the changes evidenced in the period between the censuses of 1990 and 2010. I am told that population grew substantially more in the three disputed communities, Aurora, Elgin and Joliet, than it did in Rockford, going from an average of 64% of Rockford's population to 99%; the average median annual household income for the three disputed communities went from being some $5,500 more than for Rockford to more than $21,000 higher; and the growth in Equalized Assessed Valuation averaged nearly $2.3 billion in the disputed communities, while the relevant EAV grew just a little over $700 million in Rockford, reflecting a similar comparison in the growth of medium home values during that time period.

On the other hand, Rockford experienced a growth in the percentage of individuals below the poverty line from 14% in

1990 to 23% in 2010, while the average among the disputed communities went from 9% to just under 12%, the City emphasizes. The poverty levels in the three disputed comparable communities did not balloon to those highs, the City submits.

In 1998, Arbitrator Briggs did consider the fact that among all of the proposed comparables before him then, only Aurora, Elgin, Joliet and Peoria employed paramedics, the City also points out. Today, Bloomington, Champaign, DeKalb and Springfield also employ paramedics in-house, it states. Consequently, the parties in this case no longer have to stretch, on economic and demographic lines, to find communities that provide EMS service to fill out their list of comparables, the City urges. The five communities not in dispute here provide apples-to-apples comparison and an ample pool of data for this Arbitrator's analysis, the City concludes.

I have often cited with approval the contacts-based approach[4] to selecting comparables, the City reminds me. On most economic measures, the three disputed external communities do not now fall within the ranges established by the other five comparable communities, according to the City. In fact, considering the broader measures earlier mentioned, i.e.

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[4] By this, the City means that I look to more than geographic proximity and the likelihood of a common labor market.

population, median household income, EAV, median home value and percentage of individuals below the poverty line, the three disputed communities of Aurora, Elgin and Joliet fall within range of the other comparables only as to poverty, the City avers. On all other measures, Aurora, Elgin and Joliet appear to be much larger and wealthier than any of the other communities in the historical group, the City firmly believes.

I, however, have also considered the labor market approach in determining comparable groups, the City also reminds me, as have many other arbitrators. Considering labor market, arbitrators tend to agree that comparing communities within the Chicago Metropolitan area to those outside the area is not appropriate. For example, Arbitrator Peter Feuille refused to consider any of the disputed communities here as comparable to Peoria, noting among other things that, "It is well known that the general level of wages and the overall level of cost of living are higher in the Chicago area than in the downstate portion of Illinois." City of Peoria, S-MA-92-067 (Feuille, 1992), at p. 22; see also City of Aurora, S-MA-95-44 (Kohn, 1995)(rejecting Rockford as a comparable for the City of Aurora).

The City of Rockford is a separate and distinct labor market from Aurora, Elgin and Joliet, the City strongly asserts. In fact, the Bureau of Labor Statistics ("BLS") has created a

special statistical area for it, Rockford MSA, it notes. Moreover, BLS data shows a large disparity in wages paid in the Rockford MSA, as compared to the statistical area Chicago-Joliet-Naperville, ranging from a difference of 16% for all occupations to a difference of nearly 45% when limited to firefighters, with Rockford MSA being on the low side in each category. On the other hand, the City also notes, the cost-of-living index for Chicago is nearly 17% higher than the national average, while for Rockford the index is more than 8% lower. The same disparity in CPI is not found, the City adds, when comparing Rockford with the downstate communities among the proposed comparables that are accepted by Management as appropriate for use in this case.

Finally, the data shows that residents of Aurora, Elgin and Joliet each enjoy much lower personal tax rates than do the residents of Rockford, this Employer urges. This is due to the fact that each of the disputed communities has available to it revenues generated from non-residents who visit riverboat casinos. Therefore, and considering all of the factors just discussed, Aurora, Elgin and Joliet no longer present as an apples-to-apples comparable to the City of Rockford, the City concludes.

The City’s history of challenging the inclusion of Aurora, Elgin and Joliet among the comparables is clearly a long, but

also an inconsistent one, the Union particularly asserts. The Union stresses that the City first challenged the inclusion of the three disputed communities, Aurora, Elgin and Joliet, during and since the parties first proceeded to interest arbitration in 1998. See City of Rockford and City Fire Fighters Local 413, S-MA-97-199 (Briggs 1998). In that early case, Arbitrator Briggs found that the evidence established a history of using the full list of eight communities, as proposed herein by the Union (and including the disputed communities), dating back to at least the late 1980s. Arbitrator Briggs also took note of the fact that this City had objected to the continued inclusion of the three disputed communities during the negotiation process leading up to the 1998 arbitration, but not before. Arbitrator Briggs found that such belated objection was insufficient to overcome the "long-standing use of the communities in the comparables group."

Two years later, the Union further stresses, the City actually raised no objection to the inclusion of all eight municipalities among the comparables in its interest arbitration with the police officer unit heard by me. See City of Rockford and Policemen's Benevolent and Protective Association, S-MA-99-078 (Goldstein, 2000). In my 2000 police case, those parties in fact stipulated to the same set of comparables that Arbitrator Briggs had used in 1998, the Union points out. All this suggests that the City has accepted Joliet, Elgin and Aurora as proper

comparables, I am told by the Union with great emphasis, I further note.

The Union recognizes that the City however challenged the inclusion of Aurora, Elgin and Joliet in the proceeding before Arbitrator Herbert Berman, cited hereinabove, City of Rockford and City Fire Fighters Local 413, S-MA-06-103, (2010) to no avail. The City then again raised the same challenge before Arbitrator Perkovich, in what became a mediated settlement and a reopener hearing see City of Rockford and City Fire Fighters Local 413, S-MA-11-039 (Perkovich 2011), again without success, the Union maintains. Importantly, in both cases, (Berman and Perkovich), the City presented the same arguments for excluding the three communities at issue here that it presently raises before me, the Union submits. In both cases, too, Arbitrator's Berman and Perkovich each found, albeit for slightly different reasons, that the City had failed to show a sufficient change in the relationship of the disputed communities to this City and/or the other communities in the comparables group to warrant upsetting their historic inclusion in the comparability universe, the Union suggests.

Here, the Union adds, the City has again not shown any significant change in the economic, social and demographic characteristics such as would warrant excluding the three disputed communities from the comparables. The biggest changes

in the traditional measuring sticks for comparability came in the period between 1998, when Arbitrator Briggs first accepted the comparability of the eight designated communities, and 2008, when Arbitrator Berman heard that particular comparability challenge. For example, during the period from 1998 to 2008, the Union further maintains, EAV for Rockford fell from being $320 million above the average of the three disputed communities to $1.2 billion below – it has since increased to just $1.1 billion below, as of the 2010 census, it goes on to argue. Also, the measure of narrowing household income in Rockford fell 11% compared to the average among the disputed communities between 1998 and 2008, and another 6% by 2009. It has since fallen by only 1%, the Union points out. In terms of population, Rockford is in fact closer to the average among the three disputed communities than it has been at any time since the Briggs 1998 award, it adds. Finally, the percentage of persons living in poverty has not changed significantly among any of the four communities since 2011, when Arbitrator Perkovich considered the comparability issue in the course of his arbitrating the 2011 reopener, the Union contends. The fact that these changes were fully considered by Arbitrator Berman should be binding on the current comparability issue, the Union argues.

The Union adds that a review of unemployment rates for the full list of comparables weighs against the City's arguments in

the current case, too. For example, the rates for Aurora, Elgin, Joliet and Rockford are all considerably higher than those of the other communities in the list, it notes. The City does not, however, seek to exclude any of these other communities. Moreover, looking over the year from March, 2012 to March, 2013, Rockford has seen an overall decline in unemployment whereas each of the disputed communities has seen an increase. These facts reinforce the comparability of Aurora, Elgin and Joliet to Rockford, the Union submits.

On the issue of revenues, the Union notes that the City's arguments have changed over the years. In the past, the City has highlighted the availability of gaming revenues for the disputed three communities, which enabled Aurora, Elgin and Joliet to pay their firefighters more than Rockford could afford to do. The Union notes that each of the previous arbitrators, beginning with Arbitrator Briggs, rejected this as a basis for excluding the three disputed communities from the list of comparables.

The Union further notes that Rockford is now in line to receive its own gaming revenues, which perhaps explains the shift in the City's characterization of the disputed communities from "Riverboat Communities," which was used in prior arbitrations, to "Chicago-area cities." The Union also maintains that Rockford has in fact made significant gains in its overall revenues, relative to Aurora, Elgin and Joliet, since 2010. The

universe of all eight external comparables thus is proper, despite the Department's best efforts to claim otherwise, the Union concludes.

Finally, I should not be persuaded by the City's references to the traditional separation of Chicago-area cities from those outside the area for purposes of comparability, the Union insists. This generally applied rule is most applicable where a group of comparables is being established for the first time, the Union suggests. Arbitrators Briggs all the way back to 1998, in fact rejected application of the "Chicagoland" rule because of the parties' already long-standing history, it observes. Moreover, the City's cost-of-living and wage data, which it uses to bolster its arguments on this "lacking of comparability" issue, are misleading because they are not derived from the three communities in dispute but from a much broader Chicago area base. Indeed, the City's use of comparison points are skewed by the data for Chicago proper and Naperville, the Chicago-Naperville area, and on the other side by the considerable number of small communities and non-unionized fire departments in the Rockford MSA, the Union also urges.

My response to these various arguments on comparability is that geography is an important consideration, despite Management's arguments otherwise. The City's proposal to remove Aurora, Elgin and Joliet from consideration as comparables, I

stress, in fact removes three of the four communities closest to Rockford, a point that the Union also raises. Indeed, Management's universe of comparables would result in a list of comparables in which only one community, DeKalb, is located within 130 miles of Rockford, I point out. The Employer's various arguments overlooked that point, I go on to hold.

Furthermore, the Rockford Fire Department is easily the largest and busiest among the comparables, as the Union asserts, I realize. In 2012, the Department responded to 23,183 EMS and fire suppression calls. The average among the comparables for the year was 10,790. Coming in second among the comparables was Joliet, which responded to 16,474 calls. In fact, the three disputed comparables, Aurora, Elgin and Joliet, are easily the closest comparables to Rockford in this important factor, I hold. This is another point in favor of maintaining the historic comparability universe, I rule.

My analysis in the instant case also is grounded on my realization that this case presents facts and circumstances that are not in any way similar to what was before me in City of Belleville, supra. In fact, the only similarity between these two cases is that there, as here, I was asked to depart from a list of comparables that was established by previous arbitrators. In Belleville, that Union sought to eliminate certain comparables from the established list and replace them

with other communities that were located within the St. Louis Metro East area. The Union there specifically contended that an appropriate list of comparables should only include Metro East communities, despite the history of a broader comparability universe. That was a major shift in focus, not a demand for fine tuning the comparability universe, as I see the City's challenge in this case to be.

Importantly, I also noted in Belleville that both proposed lists of comparables in that case were supported on the record as being appropriate for consideration. However, that Employer had put me in a quandary, I also noted, by failing to provide sufficient useful data to allow me to compare the respective economic offers to any external groups. That Union, on the other hand, provided a detailed comparison with external comparables, but only as to those communities that it had proposed. I therefore considered the union's proposed comparables in Belleville because it provided the more useful basis for analysis, in my judgment. I did not find or suggest that in Belleville the Union's proposed comparables was the appropriate set of comparables going forward.

The Belleville case is therefore inapposite to this matter, I hold.

I note once again that the process of compiling a list of external comparables is not a science. The notion that any

proposed comparable, let alone a group of them, will compare closely on all points with the community at issue "tilts more towards hope than reality." City of Belleville, at p. 18 (quoting from A Practical Approach to Selecting Comparables Communities in Interest Arbitration Under the Illinois Labor Relations Act, Edwin Benn (1998)). On the other hand, I once again also note that comparables are "the traditional yardstick for looking at what others [in the relevant marketplace] are getting . . ," which is of crucial significance to assessing the parties' respective final offers. Village of Skokie and Skokie Firefighters Local 3033, IAFF, S-MA-89-123 (Goldstein 1990), at p.35. The fact that the parties themselves have established such a list of comparables and have relied on them over a long period of time as the context for arriving at their own offers is compelling, I hold, as Arbitrators Briggs, Berman and Perkovich also suggested before me, I believe.

I certainly understand that the City has raised some valid points that would suggest that Aurora, Elgin and Joliet should not be included among the comparables for this Employer. However, I also agree with the Union that those arguments would carry more weight if "the die was not already cast," as it is here by the history of the debate over the propriety of their inclusion or exclusion. I do not suggest that a set of comparables, once established, whether by arbitral finding or

historical practice, can never be changed. I recognize Arbitrator Berman's suggestion in the 2008 case that the day for reconfiguring these parties' comparables may be in the offing. I simply do not find that this is the time, especially when Arbitrator Berman already reviewed the largest portion of the changes in comparability factors and still maintained the eight city universe, and I so rule.

As a final point on this issue, having considered the record and the parties' respective proposals on all of the disputed issues, I do not believe that the City is substantially prejudiced in its positions here by my consideration of any of the disputed communities as comparables. The differences among Aurora, Elgin and Joliet compared to Rockford exist, I understand, but the geography, labor market (certainly with Elgin, at least) and the volume of work/level of activity of each of these departments is similar. Further, the history here is quite important, given its length and the number of times these comparable have been put at issue but have been found to be appropriate, in my judgment. I also do not find that any of my analyses in this case have turned in any substantial way solely on the data coming from Aurora, Elgin or Joliet, singly or collectively. They may be "richer communities" than Rockford. However, the Union in this matter is not seeking to catch up with them or match any of their wage increases dollar for

dollar. I also note that the City utilizes the manning data for each of the three communities to its favor on the critical issue in this case regarding Company Strength.

Based on all these conclusions, I find the eight comparables, including Aurora, Elgin and Joliet, to be appropriate comparables and I so rule.

VII. INTERNAL COMPARABLES

The City proposes three internal bargaining units for consideration. First, the City's police officers represented by the Police Protective and Benevolent Association, Unit #6, whom the City characterizes as "highly relevant" to the resolution of the issue of wages. Second and third are two civilian units represented by the American federation of State, County and Municipal Employees, Locals 1058 and 1058-B. Each of these three is covered by a labor agreement covering the years 2012-2014. In each of these labor agreements, the employees have accepted the health insurance plan and cost structure proposed by the City herein, I importantly note.

In a recent settlement, the police unit received across-the-board wage increases of 2.0% for 2012, and again for 2013, and 2.5% for 2014, which is the equivalent of the increases proposed by the City here. The police unit also received a 2.0% equity adjustment, which was to be effective upon the employees'

ratification of the settlement. The City also notes that in the police unit's prior agreement covering 2009-2011, the employees received only 4.0% in wage increases, 2.0% in 2010 and 2.0% in 2011.

The two AFSCME units each received increases in their latest settlements of 2.0% in 2012, and 2.5% in 2012 and again in 2014. The City notes as to these two units each agreed to extensions of their labor agreements in 2010 and 2011, in which they received no general wage increases for either year. The City also notes that the City's offer of the extra .5% increase in 2012 was predicated at least in part on the employees' agreement to substantial increases in employee contributions in health care premiums. The City also concedes that the settlements with AFSCME stipulated that such increases would not go into effect until both the police and fire units agreed to premium contributions at or above those to which AFSCME had agreed.

The Union has not suggested any additional internal comparable groups, nor has it objected to consideration of the three suggested by the City.

VIII. DISCUSSION AND FINDINGS

A. Economic Issue #1 – Company Strength

Loosening the restrictions that Section 4.1, Company Strength, places on the City's right to manage its operations, the City's view, has been a significant focus for the City in bargaining since the onset of the Great Recession. There are three main factors that drive the City's proposal on Company strength. First, calls for medical services have expanded greatly in the years since 2000 to the point that they now make up, based on 2011 data, around 80% of the calls for service received by the Department, the City emphasizes. Fire service calls, on the other hand, make up less than 5% of all calls. Second, due to changes in the Department's standard operating procedures since the present Chief took over in 2008, which call for higher alarm responses for all structural fires, the Department is able to safely and efficiently operate with fewer firefighters per apparatus, allowing the assignment of more three-man companies than have historically been used. Third, the cost of maintaining the present system, in terms of both overtime expense and wear on fire suppression equipment, is becoming too much for the City to continue to bear, it submits.

All Department sworn personnel are certified in Advance Life Support ("ALS"), the City points out. According to protocol, the Department responds to all medical calls with an

apparatus from the Station assigned to the territory and also an ambulance. In order to improve efficiency and reduce costs, the Department introduced QRVs to take the place, as much as possible, of engines, ladders and quints, specifically in responding to medical calls, and also rescue calls. By utilizing QRVs, in place of fire suppression equipment, the Department has been able to improve response times for medical calls. According to studies done by management, it has done so without sacrificing significantly its ability to respond to fire calls. The use of QRVs results in less wear and tear on Rockford's fire suppression equipment, which translates into less down time, Management also urges.

Chief Bergsten further testified at length as to the effect of the City's proposed changes on the Department's ability to respond to fire calls, timely, effectively and safely. He acknowledged that four-man companies are preferable overall to three-man companies and that all things being equal, he would choose to put four firefighters on every engine and ladder, and five on every quint. He also acknowledged that by assigning firefighters to jump companies, the Department effectively took their engine, ladder or quint out of service for the duration of any medical call to which they responded.

However, I point out, Chief Bergsten stressed in his testimony that his own studies have shown that occasions where

medical calls and fire calls overlapped within the same territory are rare. Furthermore, Chief Bergsten testified, protocols give local commanders discretion to send fire suppression companies rather than QRVs to medical calls if circumstances seem to warrant that action.

Moreover, Bergsten testified, the Department's own studies of response times showed that the Department's ability to reach the point of Effective Response Force ("ERF"), i.e., the point at which manpower is sufficient to perform all of the essential functions, within the standards followed by the State, has not been adversely affected by either a three-man company configuration or the use of a jump company. Chief Bergsten attributed that particular result to the Department's policy of sending more equipment to fire calls than it had in the past. There, too, the Chief also testified, the changes proposed by the City to be made in Section 4.1 would not result in the closing of any stations or the taking of any fire suppression equipment out of service. Efficiency would be maximized and firefighter safety still maintained, Chief Bergsten asserted, a goal that is hampered by Section 4.1 under the status quo.

The City further stresses that the impact of the Great Recession on the City's finances has been devastating. In 2008, for example, Rockford experienced a nearly $9 million deficit in its General Fund. In 2009, that deficit fell to a little over $2

million, actually due to reductions in spending, but City revenues for that year also fell by more than $2 million compared to 2008. Small surpluses were realized in 2010 and 2011, the City acknowledges, but only due to further deep cuts in spending, especially for personnel, throughout the City government, it insists. In fact, in four major revenue categories, State Sales Tax, Income Tax, Franchise Fees and Personal Property Tax, revenues in 2012 were still below those of 2007, the City points out. Dark clouds are looming on the horizon, the City also suggests, because a variety of studies suggest that Rockford will likely suffer flat or reduced income from shared revenue sources in the foreseeable future. Indeed, there is pending or threatened legislative action at the State and federal levels that aims at bringing that result about. All these facts require a strong presumption of short-term future economic distress that the City believes require changes in Company strength and manning, as per its last and best offer, the City submits.[5]

In these hard economic times, the City additionally asserts, it has at the same time been faced with growing expenditures in overtime for Department personnel. This

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[5] See City of Carlinville and Policemen's Benevolent Labor Committee, Case No. S-MA-11-308 (Goldstein, 2012) at pp. 41-42.

increase in overtime is attributable principally to the manning requirement of Section 4.1, it believes. Overtime costs grew from $1.2 million to almost $3.1 million, mostly due to "hire-backs." That number grew by nearly $1 million in 2012 from 2011, it also notes. The City has attempted several measures to reduce costs at the Department, including closing stations and laying off firefighters, but to no avail due to the limitations placed on the City by the 62 man shift minimum set out in Section 4.1, the City argues. These plain facts all establish the need to modify Section 4.1, it strenuously contends.

The status quo is proving to be a disservice to the public, the City further concludes. As a specific example, from 2010 to 2012, the City has had to rely on private ambulance services to respond to medical emergencies, where City equipment was unavailable, "1,100 times." The City loses revenue when such utilization of outside contractors occurs, the City notes. More important, the response times for private ambulance services are, statistically speaking, slower than that of the department's own units, by 4 minutes, 10 seconds, the City says. This time can be crucial to the patient, it urges. Additionally, the slower response times result in longer down times for the fire suppression equipment that also respond to those calls, it reasons.

The weight of arbitral precedents, and the Act itself, also favor the City's proposals, the City suggests. The Act in essence presumes that matters of minimum manning are not a mandatory subject of bargaining.[6]In further point of law, many Arbitrators have long thought of minimum manning as implicating a strong managerial prerogative. For example, in Village of Elk Grove Village, S-MA-93-164 (Nathan 1994), Arbitrator Nathan refused to consider a proposal on manning, reasoning that the matter was outside his jurisdiction, See also, City of Canton, S-MA-90-142 (O'Reilly 1991) for another instance where manning was deemed to be an inherent management right.

The City adds references to a number of awards issued in jurisdictions other than Illinois wherein the arbitrators variously hold that determining manning levels ought to be left to managerial discretion. Most relevant, according to the City, Conciliator Robert G. Stein found that a contractual provision that required at least 19 firefighters to be assigned to "platoon duty at all times" should be eliminated from the

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[6] The City at one point objected to the Union's proposal on this issue on the ground that manning levels were not a mandatory subject of bargaining under Section 7 of the Act. The Labor Board's General Counsel has since ruled otherwise in a declaratory rule proceeding initiated by the City. The City indicated in its Brief (p.64, fn.26) that it was not herein waiving its objection. The Union has responded at length to the City's continued objection. As I understand the Board's rules, specifically Section 1230.90, my jurisdiction to consider the Union's proposal is now settled. I will not address the issue further.

parties' successor agreement, despite the union's willingness to reduce the number to 18, reasoning that the reduction did not go far enough to accommodate the future mission of the department, as articulated by its chief. City of Newark, Ohio and IAFF Local 109, SERB Case #10-MED-08-0987 (Conciliator Robert G. Stein 2011).

The City also submits that I should discount the fact that in the case between these parties in 1998, Arbitrator Briggs favored this Union's proposal to increase the Section 4.1 manning level from 56 to 59, over a proposal by the City to replace shift manning with per company manning minimums. In that case, Briggs' found the City's proposal to be a radical change to Section 4.1 that would have eliminated overall shift minimum manning with specific equipment levels. Arbitrator Briggs found for the Union. However, Briggs in his 1998 decision between these parties also specifically wrote that the City simply had not justified such a "radical step away from the current structure. . ." City of Rockford, S-MA-97-199, at pp. 30-31.

To the City, the adjustments that it now proposes in this current case are relatively modest and are supported by a proven need to give the Chief more flexibility, as explained in Chief Bergsten's extensive testimony, the Department asserts. It thus should be apparent that the facts of this given case disclose a

strong justification for Management's suggested changes in Section 4.1, the City finally observes.

The City also suggests that external comparables fully support its proposal on its changes to Section 4.1. Only one of the comparables, DeKalb, even has any staffing provision in its labor contract with its firefighters. That provision calls for a minimum of 13 firefighters covering three stations, the City stresses. Only one other comparable jurisdiction, Springfield, assigns four firefighters to a rig, it adds. According to Springfield's fire chief, the City in this case avers, the typical staffing per rig in that city is three. All the rest of the external comparables regularly man at three firefighters per rig, the City is quick to point out.

Furthermore, the City contends the two significant quid pro quo components of its final offer that should allay the Union's fears regarding job security and loss of income for bargaining unit members. Layoffs are not permitted in-contract term and the special stipend counteracts any loss of overtime opportunities, it says. There is however a demonstrated need to depart from the current system of Section 4.1 as explained immediately above. There is also clear evidence of the Union's resistance to change at the bargaining table presented by Management here, the City argues.

The applicable arbitral rule is that a party seeking to change the status quo need show either the recalcitrance of the other party or a quid pro quo to meet the other party's need, but not both, says the City. See Cook County Sheriff, L-MA-06-002 (Nathan 2007). Here, the City has done both, it notes. The point is that the Union's arguments relying on possible loss of income or diminished job security must give way to the counter-veiling Management needs to serve and perform its fire suppression and EMS duties, the City argues.

The City also strongly objects to the Union's proposal concerning Section 4.1 as an unwarranted further encroachment on the City's managerial authority to run the Department. First, although the Union would allow the City additional ambulances, it at the same time reduces the available fire suppression companies to 13. The Union proposal on Section 4.1 also would effectively end the use of QRVs by requiring additional personnel to be brought in to man them, the City believes. The Union does nothing to accommodate the City in its efforts to reign in costs while continuing to provide the most effective service possible, the City therefore urges.

On another but similar line of argument, the Union simply cannot show in this case that the deployment of either QRVs or three-man fire suppression companies would create any problems for it as regards members working conditions. QRVs, for example,

have been in use for a year and a half without a single incident where a firefighter's health was put at risk. Indeed, Arbitrator Nielsen rejected the Union's concerns about greater safety issues for firefighters by the utilization of QVRs.

Moreover, the Union produced no actual evidence on this record to rebut the City's clear showing that deploying QRVs and reducing minimum manning to 59 (three-man companies) will not adversely affect the Department's response times or endanger its crews or the public. Instead, the Union has submitted only generalized studies to support its case. That gap in proof is of critical significance in this case, the City therefore concludes.

The Union, for its part, at the outset objects to the City's offer on Section 4.1 on the ground that it contains new components that were not previously submitted to the Union for consideration in the parties' earlier negotiations. To the Union, the City had not previously proposed a one-time bonus or a no layoff guarantee as sweeteners to the staffing and manning changes, it repeats. The Union straightforwardly suggests that arbitrators should not allow new offers to be made for the first time in arbitration. See City of Springfield and IAFF Local 37, S-MA-18 (Berman 1987)(new offer of incentive pay, withdrawn during negotiations, was not truly an impasse issue.) Parties cannot be allowed to avoid bargaining by bringing issues to the

arbitrator at this level in the process in the hopes that she/he will grant what the parties could not have achieved through bargaining, the Union insists.

The Union also suggests that the City's proposal on Section 4.1 is "conditional" and therefore inappropriate, the Union notes. The Union likens the one percent bonus in the City's instant offer on Company strength to an offer made by the employer in Village of Elk Grove Village, S-MA-93-231 (Nathan 1994), which said essentially that if the employer's proposal on Kelly Days was awarded by the arbitrator, then the employer would agree to the union's wage offer. Arbitrator Nathan in that case held that such an offer was inappropriate as an issue for interest arbitration. Here, according to the Union, the City's wage offer of a bonus is conditioned on my award of the City's proposal on Company Strength (Section 4.1). The City is impermissibly bargaining with me and I should not allow it, it urges.

The Union further contends that the City's finances are in fact healthy and stable despite the Employer's argument to the contrary. Revenues to the General Fund rebounded to 2007 levels in 2010, the Union points out, and were even higher in 2011, it avers. Additionally, the City has seen a General Fund surplus every year since 2009, and its General Fund Balance has nearly recovered to pre-recession level, the Union contends. Other

funds have also seen substantial balance and revenue increases of late.

The Motor Fuel Tax Fund, for example, has a current balance of $9.5 million, the Union asserts. Although that fund is restricted and cannot be used to pay the costs of the parties' labor agreement, transfers from that fund to the General Fund could be used to free up other money that can be used for non-restricted purposes, the Union insists. Thus, in large part, the Employer's pleas based on economic exigencies may be characterized as "smoke and mirrors" and not a successful argument about fiscal restraints on this City. To quote from several of my interest awards, "context is everything" and the economic context is much brighter than the City would have it, the Union maintains.

The Union also points out that the City is spending money in large amounts for items other than Employee wages and benefits. It has purchased or leased new vehicles for every City department, not just fire and police, the Union notes. Rockford is also in the process of acquiring new fire equipment, i.e. three new quints at $860,00 apiece; five new engines at an average around $450,000 apiece; nine new ambulances at $167,000 base cost, with additional upgrades between $127,000 to $315,000; four new inspection vehicles at $17,000 apiece; and two new chief's cars at $24,000 apiece. These actions in making

significant capital purchases belie the Employer's claim of economic constraints, the Union therefore argues.

Along those same lines, the Union stresses that the City is hiring additional police and firefighter "bodies" at present. Indeed, the Union points out that the most recent class of new firefighters numbered 20. The hiring of these firefighters is overdue and will undoubtedly reduce the City's overtime expenses in the coming years, the Union reasons. Management thus is shading the truth when it urges that overtime is a critical issue to it now and in the future, says the Union. Sometimes, deciding fact questions in an interest dispute includes the ability to recognize that economic changes are dependent and not independent variables, and overtime and new staff hires are such cases, the Union insists.

The Union adds, its members have already given dearly to maintain the status quo on Section 4.1. These sacrifices include: 1) a wage freeze in 2009; 2) elimination of overtime benefits; 3) reduction in staffing of the inspection bureau; and 4) withdrawal of an unfair labor practice charge that sought reimbursement of insurance deductibles. The cost to the members, and savings to the City, amounted to nearly $3 million, the Union goes on to strenuously argue. The City, moreover, continues to receive the benefit of these significant concessions and the members continue to feel their sting. The

concessions made in the negotiations memorialized in the Perkovich decision were a “tough sell,” the Union tells me. The only reason they passed ratification is that the City had withdrawn its demands to reduce manning. The members valued safety over wage increases then, and still do at present, the Union submits.

Safety is the key issue here, the Union firmly believes. Reducing the number of firefighter’s per shift raises serious concerns about the individual firefighter’s safety, as well as the entire team at the fire ground. The Union references standards established by the National Fire Protection Association (“NFPA”), including an optimal fire and rescue response time of six minutes and suggests that the most recent studies show that the City’s response times already fail to meet these standards. Un-rebutted evidence and reason show that reducing minimum manning will increase the response times. The more staff deployed quickly, the better, the Union points out. OSHA regulations, for example, require two men inside and two men outside as a minimum when responding to a structural fire. This standard cannot be reached with the first responding company under the City’s proposal given the resulting prevalence of three-man companies, the Union declares.

Furthermore, the Union believes that scientific studies do not support the City’s argument that it can fix the problem of

safety risks of under-manning by sending additional equipment. The Union responds that, to the contrary, recent studies by the U.S. Department of Commerce, as to both high rise and residential fires, concluded that adding addition firefighters to each crew could “generally achieve substantial task time decreases.” These same studies also found that sending additional apparatus to the fire was not as beneficial as increasing crew sizes. The study indeed stated that “[l]ow alarm response with a higher crew size tends to be more favorable in critical task timings than the corresponding timings for high alarm response with a crew size of one less firefighter.” (Citing Union Ex. 109, p.16).

By the same token, NFPA standards establish the arrival of 15 firefighters as the point where all critical task can be performed. NFPA studies concluded where there is manning at 15 firefighters, the optimal fire suppression is reached. To argue otherwise, as the City does, indeed to allege that the lower level of manning as a fire suppression strategy is consistent with either safety or efficient operations, is just plain wrong. The Union contends Management’s proposal to reduce manning from 62 to 59 firefighters at mandated strength would, as a practical matter, diminish safety for all firefighters on the fire ground, the Union insists.

"Seconds are critical in responding to a fire," the Union plainly asserts in no uncertain terms. In this case, a number of studies suggest an almost exponential measure of the increase in intensity of a fire as seconds are lost, it argues. The danger of "flashover," an almost instantaneous spread of flames over all exposed surfaces in an area, most frequently occurs between four and ten minutes from ignition, the Union explains.

As a result of those facts, as NFPA clearly concludes, "quick arrival of sufficient numbers of personnel and equipment to attach and extinguish the fire as close to the point of origin as possible. . ." is supremely important. Cutting numbers, whether in fire houses, apparatus or crews would likely yield increases in fire losses, both property and human, the National Institute of Standards and Technology also has found. There thus are certain harmful consequences to Management's reduction in manning proposal. The safety issue takes on a different cast in these circumstances, the Union contends, especially when the need to consider safety is expressly incorporated in the current Section 4.1, in haec verba, it submits.

The overall point, says the Union, is that a great deal of data show that manning at the current negotiated level is necessary and not some sort of makeweight argument to counter the kind of change demanded by this Employer. The facts

underlying this dispute establish the Union's good faith safety concerns, it directly contends.

Indeed, Chief Bergsten has publicly stated on more than one occasion that three-man crews are not safe, the Union submits. Bergsten was quoted in one source, following a fire in which firefighters saved the life of a 63-year old man caught in the fire, that having three-man companies instead of four-man would definitely have slowed the Department's response. In another instance, the Chief characterized the stress on members of a three-man as "getting hammered," suggesting that the Department would rotate its assignments of three-man companies to avoid any single company getting hammered all the time. In fact, Chief Bergsten in the instant proceeding never answered a question put to him regarding whether the Department could safely operate with manning at 59, the Union directly avers.

Reducing manning will frustrate the Department in its ability to train, the Union also notes. The Chief acknowledged in his testimony the paramount importance of regular training, but was unsure of how the City would be able to continue training with manning at 59, except to say that the Department would not drop any company to two firefighters. The Union asserts that with a three firefighter crew as the norm, released time to train would then have to result in other personnel kept on the clock on overtime or callback, which directly contradicts

Management's claim of cost savings. When Management needs to train, logic demands either two firefighter crews or extra personnel, the Union argues.

The "welfare of the public" within the meaning of Section 14(h)(3) of the Act is implicated here, the Union also urges. The City cites that factor as supporting its offer, the Union acknowledges, but the slower response times and increased risks to the public and the firefighters belie the City's position, the Union goes on to submit. The City once before attempted to reduce manning, i.e. in 2010, by a plan to close some fire stations. That plan was met by a very public outcry, the record discloses. The Union points to petitions circulated at the time, and now in this record, that opposed the move that were signed by some 2,300 City residents. Letters and emails from the public opposing the move are also in this record. As with fire station closings, cuts in manning have implications that the public understands. The public clearly opposes such reductions in fire services, the Union believes.

The Union also contends that its own offer, by limiting the City's ability to assign firefighters to non-fire suppression equipment, merely memorializes the parties' historic definition of "companies," which Arbitrator Nielsen recognized as meaning fire suppression companies. See Jt. Ex. 7. I therefore should defer to Arbitrator Nielsen's findings to fully understand his

reasoning, the Union urges. In any case, the evidence in the record in this case establishes without doubt that the parties have at all time since manning was first agreed upon in the late 1970s equated the term “companies” with “fire suppression companies.”

The Union goes on to assure me that it does not seek to limit the City’s right to add apparatus to its fleet, I note. The Union’s proposal on Company strength is intended only to ensure that the firefighters are not spread too thinly in the City’s rush to man any new apparatus, i.e. QRVs. The Union’s approach is in keeping with the parties’ historic approach to new equipment, according to its analysis. In 2002, for example, the Union points out, the City added a fifth ambulance to the force. At the same time, nine firefighters were also added. This is what the Side-Bar Agreement calls for,[7] the Union stresses. This belies the City’s claim that the Side-Bar Agreement is pointless, the Union reasons. The Side-Bar Agreement clearly acknowledges that the adding of personnel is “the safe way to go” as regards manning, the Union believes.

This Department is far and away the busiest among the comparables, the Union also stresses. The number of incident to

[7] The Union refers to the provision in the Side-Bar Agreement that read, “In the event that another ambulance is placed into service the department will add two additional firefighters/paramedics per shift.”

which it responded in 2012 was nearly 26% higher than it was in 2011. EMS calls have been on the rise, to be sure. However, the data shows that the rate of increase in fire calls since 2008 is even greater. The department needs more firefighters, not fewer, the Union again concludes.

The City's proposal is driven by economics alone, the Union goes on to suggest. On the other hand, the City obviously was suffering the most from the effects of the Great Recession in the time period in 2008 and 2009, but Management in the Perkovich mediation nevertheless agreed to retain the status quo on manning, it stresses. In fact, the Mayor convened a handpicked committee in 2009 to make recommendations for responding to the fiscal crisis. That committee recommended staffing cuts throughout the City. Reducing manning in this Department was not among the committee's recommendations, the Union submits.

Before turning to the merits of the parties' respective offers, I need to address a position taken by the Union in its reply brief, which the City objects to as an attempt by the Union to modify its final offer. Specifically, the Union states in no uncertain terms that its final offer is not intended to preclude the City from manning QRVs by use of jump companies and is instead intended to memorialize Arbitrator Nielsen's findings in toto. Again the Union avers that its final offer on Company

Strength does not limit jump company staffing or work assignments.

On the other hand, the City cites a number of statements from the Union's counsel during the hearing that the City contends contradict the Union's position in reply, including counsel's statement that "while the City can maintain the QRV program, it would just have to be staffed by individuals other than those set forth – other than the 62." (Transcript 5/16/2013, at p. 76). The City argues that the Union obviously got cold feet after realizing that its offer was unreasonable. It is far too late for the Union to amend it, the City goes on to say.

The Union puts me in a somewhat awkward position, I confess. Under appropriate circumstances, I might allow a party to clarify its final offer, provided there was a need for it. The Union's final offer in the instant dispute on Section 4.1, Company Strength, however clearly states in one sentence that "the minimum manning per shift will be 62 personnel, who will be assigned to 13 fire suppression companies and seven ambulances." The offer also provides that, "Non-fire suppression companies or non-ambulances shall not be staffed by the sixty-two personnel mentioned above." I do not find any ambiguity in the provision relating to jump companies that needs clarifying. The Union's final offer as regards Section 4.1 indeed does, by its

unambiguous terms, build a wall between companies and staffing QVRs, in my view.

As noted above, the City argues that I should direct an award in its favor with respect to the issue of Company strength because the Union in its reply brief "clarification to its Section 4.1 offer" in effect violated both the Act and Stipulation No. 4 of the parties, quoted above. Citing numerous authorities, including several decisions by this Neutral, the City claims that amendments to final offers after the record has been closed go against the basic theory of the Act, that is, that the final offer exchange process will only work if the actual offers presented are unequivocal and clear in both their terms and scope.

As I see it, the purpose of this type of final offer exchange process was explained very well by Arbitrator Barbara Doering in County of Lake and Illinois FOP Labor Council, ISLRB Case No. A-MA-02-19 (June 9, 1993) at 3 n.*:

> The essence of a final offer process is that, when "final" offers are made, each side knows each issue will be resolved in accordance with one final offer or the other with no further opportunity for compromise - at least no further opportunity for compromise short of a voluntary agreement to do so. The fact that there will be no later chance to soften a position, nor any opportunity for the arbitrator to opt for middle ground, is supposed to exert great pressure on both sides to put forward their very best offer – including any final compromises they might have been willing to make – in order that their position be deemed the more reasonable of the two in conjunction with statutory criteria. It would defeat the purpose of the

> process to allow later changes to revise offers or re-define issues.

This concept of the final offer process is based not only on the Stipulations of the parties but also on the statute itself, as the Employer specifically argues, I hold. In Village of Westchester and Illinois FOP Labor Council Lodge No. 21, ISLRB Case No. S-MA-90-167 (Supplemental Decision, August 30, 1991), at 12, Arbitrator Steven Briggs said:

> Section 14(o)(2) (of the Act) requires the parties to submit "final" offers of settlement. It does not say "almost final", "nearly final", or "pre-final". The term "final" means just that. FINAL.

By definition, I am convinced, an offer of "clarification" which in effect is akin to legislative history so as to change clear language is not a "final offer" within the meaning of the Act, I hold. This is so because such a "clarification of the actual proposed contract terms," as I view the Union's argument in its reply brief, relieves the offering party of the necessity of making the hard choice as to what its final offer will be by shifting that decision to the arbitrator. In my opinion, though, I am not statutorily empowered to make final offers, my authority is limited to choosing between them, I hold.

The interpretation suggested by the Union in this instance seems implausible, I go on to conclude. The Union seems to suggest by the arguments in its reply brief that the language of

its final offer, which is now at issue, is not only poorly drafted but also that it is nothing more than surplusage. I agree with the City's position that this Union's contention, namely, that it is not seeking to limit the use of jump companies amounts to an actual amendment of its offer. The modification to the Union's final proposal on Section 4.1 comes much too late in the process. I will therefore disallow it and consider the two offers on Section 4.1 by their expressed terms, including the Union's evident intent in its offer to overrule Arbitrator Nielsen's jump company decision. The terms of the Union's Section 4.1 offer must be considered to, as a practical matter, freeze out the use of the 62 firefighters assigned to "companies" from use in the jump companies, I conclude. It is on this basis that the parties' final and best offers on Section 4.1 will be evaluated, I hold.

Turning to the merits, it is well settled that the party seeking to change an existing benefit bears the onus of justifying the change. Arbitrators are reluctant to "markedly change the product of previous negotiation, I note. Will County Board and AFSCME, S-MA-88-09 (Nathan 1988). Common wisdom also holds that the moving party must show a need for the change, that the current system is broken, that its proposed change addresses the problem and that the other party has rejected the

offer of a quid pro quo of equal value. County of Dewitt, S-MA-11-005 (Reynolds 2012).

In what the Union has emphasized over and over, the Union gave considerable concessions to maintain the status quo on Company strength in Arbitrator Perkovich's 2009-10 mediation, sufficiently so that the bargaining unit members "still feel the sting," I know. This Neutral further has carefully evaluated all the arguments made by the Union with respect to the impact of those concessions on the current bargaining, and has considered the various criteria established by the Act as to how to select the final, best and most reasonable offer for disputed issues presented in interest arbitration.

Ultimately, the Union's strongest argument is its claim that one of the most important factors in the case at bar is the history of what went before, i.e., past practice and bargaining history. The history may not mean much if it is predicated upon relationships that antedated the establishing of any bargaining relationship, which is not the case here. That is not to say, however, that past understandings and contracts that existed before the current exchange in bargaining offers cannot be influential and persuasive, as the Union has argued. In that regard, I again note that I believe the prior bargaining history and earlier contracts are indeed important, and the status quo that Management admittedly now seeks to change by its Section

4.1 proposal is one on manning that the Union bargained for and gave up several important items to maintain. The details of just how much the Union gave in concessions is set out above.

Suffice it to say that I completely agree with the Union that the baseline point of analysis must start with a realization concerning how much the Union gave up for maintenance of the prior Company Strength levels in 2009 and 2010, I hold. I must therefore do my best to adhere to the requirement that I not short-circuit the parties' long term bargaining process in my decision in the instant dispute.

Any fair analysis of the Company Strength issue also must begin with the idea that I have been engaged to mimic what the parties would have negotiated in the current bargaining process if negotiations had been successful and a deal struck rather than interest arbitration invoked on this case. That means I must not grant "fresh breakthroughs" that the parties likely never would have negotiated on their own. It also means the City's entire line of argument that operational efficiency and changes in how Department personnel are utilized – fire suppression or Emergency Medical Services genuinely require changes in the Company Strength and manning levels. In a real sense, that is the nub of this case, I find.

On the other hand, the parties both spent a substantial amount of time arguing over whether the "breakthrough, status

quo" rules exemplified by Arbitrator Nathan's Will County decision apply to the proper analysis of the parties' respective offers relating to modification of Section 4.1, I recognize. See Arbitrator Nathan's discussion of the nature of the interest arbitration process in Will County Board and Sheriff of Will County, supra at pp. 51-52 (1988). I have routinely accepted those principles over the years. See my decisions in City of Burbank and Illinois Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Association Unit 54 and City of Elgin, ISLRB Case No. 8-MA-00-102 (2002) at pp. 95-97. What is at issue is balancing prior concessions of the Union and its firefighter safety concerns with the Employer's expressly reserved Management rights to distribute men ad officers in an efficient way. On these points, the parties are put to their proofs.

As also noted above by both these parties, this Arbitrator is not authorized to interject himself into what are political questions of overall allocation of resources, and/or potential supplies of revenue. I cannot order the City to raise taxes, cut purchases of new equipment, or lay off personnel across the City, though in fact there is some evidence that the latter has already "reluctantly" been done in response to budget shortfalls. This is simply not the function of an interest

arbitration panel, as I understand it. Instead, economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer, I emphasize. Thus, while the Union asserts that the City's actions evidence merely a "desire" to allocate funds in a manner more favorable to its particular economic interests here, it is not within my statutory obligation, or jurisdiction for that matter, to direct the City otherwise, I would suggest.

What jumps out to be is that as I see the parties' offers, each of the parties has proposed to change the language of Section 4.1, each pulling in the opposite direction of the other. The City looks to reduce manning requirements; and give Management more discretion in assigning firefighters to three-man companies and non-fire suppression equipment, such as QRVs. The Union has agreed to add two ambulance companies, which it sees as a concession to Management. However, the Union at the same time seeks also to preserve current manning levels, both at the shift and the company level, by proposing to keep the overall shift number at 62 while also reducing the number of companies to 13. The Union's proposal also prohibits Management from assigning firefighters who are counted toward meeting the shift minimum to non-fire suppression equipment, thereby reversing the effects of Arbitrator Nielsen's award.

The parties each accuse the other, at length, of being obstructionist on the issue, I note. They do so, it appears, to persuade me of the necessity of changing the status quo through interest arbitration and thereby meet the third prong of the analysis that I have in the past used in dealing with breakthrough issues. See Village of Matteson and Associated Firefighters of Matteson, Local 3086, IAFF, S-MA-08-007 (Goldstein 2008), at pp. 54-55, where I quoted from Arbitrator Harvey Nathan, Will County Board and Sheriff of Will County, S-MA-88-009 (Nathan 1988), at p.52.

When the requirements set out by Arbitrator Nathan in Will County, supra, are carefully considered, certain interests basic to the structure of Section 14 of the Act become evident. One is that the parties are expected to bargain in good faith before interest arbitration is invoked. Another is proposals for change after a bargaining relationships has been established should be viewed as disfavored, unless the particular items involved in the proposals presented represent circumstances where change is not being requested "merely for change sake."

The record in the instant case reveals that the Company Strength issue is a prototypical impasse issue. There are no bad guys here. There are pivotal points here on which each of these parties holds strong and strictly opposing positions, which I find for each to be honestly and reasonably held. In any case,

preserving the status quo is not a possibility here, I rule, given the last and best offers.

Each party proposes to change Section 4.1, I again emphasize. The City acknowledges this fact, but the Union suggests that its proposal merely memorializes the parties' long-standing practices, except to the extent that it accommodates the City's desire for more ambulances. However, the critical factor, in my opinion, is that the Union's proposal clearly seeks to eliminate the City's option to implement "jump companies" as part of its QRV program, as already referenced in some detail. Arbitrator Nielsen has ruled that the City's implementation of the program is in keeping and consistent with the parties' history and practices, it is part of the status quo in other words. Overall, the Union's offer changes Section 4.1 to further tighten its restriction on the City's managerial discretion and to overrule Arbitrator Nielsen's decision, I find. The Union does not respond to the City's extensive evidence that its demands for change are in reality triggered by real operational needs and the changes in how the Department's services are used.

I agree with the City's suggestion that this is not a typical breakthrough matter. In this case, neither party should bear a clear distinct burden to prove that change is necessary or the status quo is to be maintained. Rather, each party here

shall bear the same burden to show me that its proposal is the more reasonable in the context of Section 14(h) factors, I conclude.

In my judgment, the City has presented detailed evidence of the changes in operations that require more flexibility for it in work assignments and more staffing for EMS services, as opposed to fire suppression, I note. The detailed evidence as to the actual operational needs for changes in company strength and manning have been set out above, I reiterate. The Employer's obligation to "distribute men and officers to achieve the highest efficiency of operations" is a key element in the current Section 4.1, and in fact the reservation of this Management responsibility goes back to the first version of the Company Strength provision negotiated in 1979. I cannot say that the right to consider operational needs and the obligation to protect the public has been bargained away under Section 4.1, even if there were limitations placed on the Company Strength and manning that would not exist if Section 4.1 did not exist.

Having said all that, I also find reasonable the City's wariness regarding the economic future. Giving the City more discretion in directing the operations of the Department at this point seems likely to be in the better interest and welfare of the public. This is so because, once again, I am convinced that the City has <u>in fact</u> demonstrated that the current system, which

effectively mandates four-man companies, has thwarted reasonable efforts on the City's part to bring its operation costs at the Department under control, and I so rule. With this conclusion in mind, I turn to the next issue, safety concerns under both parties' respective final offers regarding Section 4.1.

Safety is an extremely important concern, I recognize. On this front, I find that the Union has successfully demonstrated that the weight of contemporary thinking among experts in the field is that deploying four-man crews provides a faster, more effective and safer response to structural fires than can be accomplished using three-man crews, even where the agency compensates by responding with additional apparatus. I believe the Chief acknowledged as much when he suggested in his testimony that he would prefer to have four-man crews on every engine.

But the record shows that Chief Bergsten's preference for four firefighter crews had to be balanced against the reality of limited resources. Chief Bergsten also testified at length, and without significant rebuttal, that the Department's own studies had shown that the Department's ability to timely deploy an effective response in structural fires, within the standards set by the State, was not adversely affected by the use of three-man companies, or for that matter the deployment of jump companies.

It is important to also recognize that safety has been made one critical element of the current Section 4.1 by its clear terms. Therefore, there is no possibility that the safety arguments by each party can somehow be avoided by categorizing safety as a non-economic term mixed into an economic issue. If the Union had clearly established three firefighter crews were actually unsafe, as opposed to its proofs that four fighter crews were more effective and safe, the Union offer on this issue would be the more reasonable one, I am persuaded. The safety issue, as well as the economic picture, is part of the context in which I must make my ultimate finding as to which of the parties' proposals on Company Strength is more reasonable, I stress.

All in all, I find that the various studies submitted by the Union on the relationship of safety and three and four firefighter companies does not address actual lack of safety of three firefighter crews, but instead the greater safety and fire protection performance of the four-man crews. The evidence does not suggest, for example, that the studies actually discussed by this Union referenced above have led any regulating agencies, i.e. OSHA or the State, to adopt four-man crews, or companies, as a minimum for any department. In fact, the Union has not explained or rebutted the evidence that all of the external

comparables typically deploy three-man crews on their apparatus. That is of great significance to me, I find.

I do not suggest this external comparison is the reason for awarding the City's proposal, or even the most compelling factor in my analysis. I do give weight to the fact that external comparability favors the City, though. Simply put, I do suggest that the actual evidence on this record tends to rebut the suggestions from the Union that four-man companies are a must for firefighter safety and effective response to a fire. The facts show that safety needs in the context of both parties' offers are satisfied by either parties' final proposal on Section 4.1, I hold.

The historical existence of Section 4.1 does not provide dispositive support for the Union's position, I rule. Neither current Section 4.1, nor the Side-Bar Agreement that gave birth to it, has ever expressly mandated four-man companies, I stress. Nor has safety issues prohibited the City from implementing jump companies, as Arbitrator Nielsen so clearly found, I note. The current Section 4.1 mandates only a minimum number of firefighters per shift, and the number and types of apparatus to which that minimum must be assigned has varied over time. The specifications of the Section, i.e. the minimum manning and the numbers of companies and ambulances, have not been a constant, I reiterate. In fact, it appears that over the years, the changes

made by the parties have tended to favor the Union, but those favorable conditions were purchased by concessions and tradeoffs, I again conclude. What the City now proposes is to move the number back in its direction, specifically to give the City greater flexibility in adapting its operation to meet what appear from the record to be changing conditions, both as to the demands for service and the resources available to meet those demands. That proposal is not inherently unreasonable, I hold.

The Union, for its part, seeks the more radical departure from the status quo, I would suggest. On this point, I defer to Arbitrator Nielsen's findings, as the Union itself requested that I do. The result of the Union's offer would be that the City would be even more restricted than it is today in its ability to deploy QRVs without adding staff or incurring substantial overtime . The sacrifices that its members made to maintain the status quo do not support the Union's attempt to so substantially shorten the leash on management, I hold.

I further note at this point that I have not considered the so-called quid pro quo components of the City's offer. I agree with the Union that the one-time bonus and commitment not to lay off firefighters were more appropriately presented to the Union during bargaining. In any case, though, I do not find that these elements are truly material to the proposals on Section 4.1 so as to constitute forbidden alternative offers. As a whole, the

City's proposal is the more reasonable, I find. The additions of a no layoff guarantee and a 1% bonus are merely an included part, not the "alternative offers" that case law forbids, I hold. See Village of Elk Grove Village and Metropolitan Alliance of Police (MAP), ISLRB No. S-MA-95-11 (1996) at pp. 32-35.

In sum, I find persuasive the City's evidence, and especially Chief Bergsten's testimony set out fully above, concerning the need to staff "to achieve the highest efficiency of operations and the greatest protection" of the public. The Employer has carried its burden to obtain change in these core management responsibilities, even considering the concessions the Union made to protect the status quo in the period 2008-2011, I rule.

Based on all these considerations, I hold that the City's Company Strength offer is most reasonable in light of the statutory criteria, and I so award.

B. Economic Issue #2 – Wages

The City reminds me that it continues to feel the sting of Arbitrator Perkovich's award of three separate 2.0% increases to the firefighters in 2011. In fact, with the increases fully in effect for all of 2012, a firefighter at top pay will receive almost $2,000.00 more in base pay in 2012 that

he or she received in 2011, even before the proposed increases for 2012 are factored in. Longevity pay, which will increase for unit employees as they accumulate years of service, only adds to the cost, the City asks me to also consider.

The PBPA police unit settlement is highly relevant to my analysis, the City further suggests. Arbitrators tend to give substantial weight to internal comparisons between fire and police units, and I should here. See City of Rockford, S-MA-06-103. The wage settlement agreed to by PBPA matches the City's proposal here, at least in terms of the regular annual increases. The 2.0% equity adjustment that was included in the police settlement was intended specifically to address the disparity in increases received by the two units in that last contract term as a result of Arbitrator Perkovich's award of 6.0% to this unit in 2011.

The greater increases agreed to with the two AFSCME units are similarly explainable, the City adds. To begin, the employees in each of those units received no increases in wages in 2010 and 2011. Moreover, the additional .5% increase in 2013 was intended, perhaps mistakenly, to offset the additional premium contributions to which AFSCME agreed, which the City concedes will not be imposed because the City has now agreed to lower premium contributions in its settlement with the police unit and modified its health insurance proposal here to also

reflect the lower contributions. As a result, the circumstances that at one time supported the City's offer of the additional .5% to AFSCME no longer exist.

The City reminds me that its financial health continues to suffer from the Great Recession. Indeed, Arbitrator Byron Yaffe recognized the City's dire financial condition when he awarded the City's wage proposal in arbitration with the police unit for its 2009-2011 labor agreement, City of Rockford and PBPA Unit#6, S-MA-09-125 (Yaffe 2010), at p.8("[T]he record demonstrates that the City has been and continues to confront serious economic and political realities, including high levels of poverty, unemployment, crime and limited revenue raising resources").

The City concedes that its finances have rebounded "somewhat" in the last year or two, but it also points out that number of its General Fund budgeted positions remains more than 60 positions below where it was in 2008; State shared revenue sources are down more than 14% in 2013 (budgeted) from 2007 (actual); budgeted General Fund expenses for all City departments other than police and fire are lower today than they were in 2007; the City's EAV in 2012 was still around $.4 billion less than in 2007; the City's contributions to the Fire Pension will increase by some 13.65% in 2014 as compared to 2013; and the City's ability to raise additional revenues is

limited by the Property Tax Extension Limitation Law, which applies to the City due to its non-home rule status.

In light of the foregoing, external comparables should be given less weight than has historically been the case in interest arbitration under the Act, and more weight should be given to other Section 14(h) factors, the City argues. To the extent I consider external comparables, I should focus my analysis on the non-Chicago area communities, the City again stresses. At top pay, the firefighters in this unit rank second out of six, with only DeKalb firefighters being paid a higher top base pay in 2011. That ranking will not change in 2012 under the City's final offer, I am told. The City also offers a nine-year study of top pay for this unit's firefighters as compared to top pay at the other non-Chicago area comparables, covering 2003-2012. These facts plainly establish that top pay for this unit has ranged between 98% and 104% of the average among the other communities and will be at just under 102% under the City's final offer. The City refers to this as a statistical tie.

The City also notes that when Aurora, Elgin and Joliet are included in the analysis, the City's pay rank moves to fifth out of nine. That ranking will also not change in 2012 under the City's final offer.

The City concedes that on a percentage basis, its offer is at the bottom of the scale among the comparables, considering only the first two years. For example, the average percentage increase received in 2012 by employees in the non-Chicago area comparables was 2.3%. Among the full set of comparables, the percentage was 2.5%. For 2013, wage data is available for only three communities, Aurora, DeKalb and Elgin, which showed firefighters in each receiving a 2.5% increases that year. The City comments that the data for 2012 is also skewed by increases of 4.0% received by Joliet employees and 2.75% received by employees in Springfield, both in contracts that were negotiated "before the true impact of the Great Recession was felt on municipal finances generally."

In any case, the City's offer of 2.0% in 2012 is closer to the average for the year of 2.3% than is the Union's offer of 2.75%. Should I consider the Chicago area communities, I should keep in mind that the average overall of 2.5% is skewed by the increases received in 2012 by Joliet. Taking Joliet out of the mix, the average among the full set of comparable reduces to 2.29%, I am told.

Cost of living should be given extraordinary weight in this "challenging Illinois economic environment," the City further avers. See County of Boone and IFOPLC, S-MA-08-010 (Benn 2009)(wherein Arbitrator Benn found that the extraordinary

circumstances brought on by the Great Recession warranted subordinating external comparability to other Section 14(h) factors, most notably CPI). The City cites Bureau of Labor Statistic reports putting CPI-U for the period January 2012 through June 2013 at 3.02%. The City also cites comments by Federal Reserve Board Chairman Ben Bernancke in July 2013, wherein he suggested that CPI has been running below 2%. The City calculates its own offer to be 6.64%, compounded over the term of the contract.

The City submits that a proper calculation of the Union's offer at 7.95%, when compounded. I am also reminded that the increases affect other costs that, when added to such an increase, will undoubtedly exceed any measure of CPI. See Village of Arlington Heights, S-MA-88-89 (Briggs 1991). I am also reminded of my own comments in City of Belleville, S-MA-08-157, at p.43 ("The CPI favors the Employer's argument that its wage offer is the more reasonable under these specific circumstances, I hold. There is no pressing need for wages to be raised to counteract inflation, in my judgment").

The City cites academic sources for the proposition that vacancy rates in a particular bargaining unit and employee turnover are factors that interest arbitrators consider or should consider in determining the adequacy of a party' wage proposal. I am reminded of my statement in City of Elgin, S-MA-

00-102 (Goldstein 2002), p. 42 ("There is no convincing evidence that the Union's final offers on salaries are critical for this City to remain competitive and maintain its current staffing levels and/or retain its highly qualified police personnel").

Moreover, the un-rebutted testimony of the City's witnesses and its exhibits show that the City has had little difficulty in attracting recruits. On the other side of the equation, turnover at the Department has been very low, the City avers. Voluntary terminations average about one a year. Moreover, of the 15 employees who left the Department in and since 1997, only nine went to work at other fire departments and most of them in other states. The ease with which the City has attracted recruits and retained its incumbent employees should be considered as favoring the City's proposal, it concludes.

Finally, the City cites data from several sources showing that wage increases for state and local government employees, and also federal employees, in 2011 and 2012 have been, on average, well below the City's offer for the same period. In fact, wages for most federal employees, including firefighters, were frozen in 2011 and 2012. Moreover, a resolution overwhelmingly adopted by the Illinois House included the statement that "the state shall appropriate no amount for new wage increases associated with any and all collective bargaining agreements throughout state government for fiscal year 2013."

The Union's response to the City's fiscal arguments are set out above and not repeated in this discussion. The primary points made by the Union on the issue are, first, that the City has not said it is unable to pay for the Union's proposed wages and, second, that the City's cries of poverty are overblown.

The Union stresses external comparability in supporting its own offer. The Union breaks the data on the comparable down to a year-to-year comparison at top pay of this City's firefighters to those among all comparables, beginning in 1990. According to the Union's analysis, this City's firefighters averaged between 95.0% and 97.38% of the average among the comparables each year from 1990 through 2008. In 2009 the City's firefighters' pay dropped in relation to the average among the comparables to 91.64%, and dropped further in 2010 to 90.0%. The City's firefighters' pay rebounded in 2011 to 94.06%, which the Union attributes to Arbitrator Perkovich's award. As an aside, the Union points out that the staggering of the increases in 2011 saved the City about $500,000 that year.

The Union's goal is to return the firefighters' pay to its historic levels vis-à-vis the external groups, the evidence of record shows. The Union stresses that it does not seek to accomplish its goal immediately. Its first year offer will in fact put the firefighters' pay at 94.4% of average. The Union suggests that its offer will restore the historic balance in the

last year of the contract, assuming that those wage increases not yet agreed to among the comparables come in at 2.0% each year. On the other hand, the City's proposal would result in the firefighters'' pay slipping backward to 93.74% in the first year. Under the City's final offer, again assuming the 2.0% increases for the unreported comparables, the firefighters' pay would be restored only to its current relationship to the average only in the third year of the contract.

The City is truly using the employees' sacrifices in 2009 and 2010 against the employees here, the Union complains. The employees pitched in when it was needed, during the recession, it insists. With the economy recovering, the City nevertheless makes an offer that not only drops the relative wages of the firefighter back toward the low that came as the result of the employees' sacrifices, i.e. two successive wage freezes, it does not even match the percentages received by the comparable units, which the Union asserts averaged 2.59% in 2012 alone.

CPI for calendar year 2012 was 2.9%, the Union claims. For June 2012 to June 2013, it was reported to be 1.8%. For the two-year period ending in June 2013, CPI was reported at 4.5%, .5% higher than the City's 2012 and 2013 offers combined.

The parties' offers differ by 1.25%, not accounting for compounding. By the City's reckoning, the difference is actually a little more than 1.3%. Neither of the offers seem particularly

remarkable to me, I note. By that I mean the City does not propose any wage freezes and the Union does not propose any "catch-up" increases, or a return to the pre-recession days where increases of 3.0% to 4.0% were the norm, as I recognized in City of Belleville, S-MA-08-157. Moreover, although the City and the Union argue strenuously over the state of the City's finances, as I previously discussed, the City does not raise a claim that it is unable to afford the increases that the Union proposes.

For the reasons that follow, I am persuaded that the Union's offer is the more reasonable offer considering all relevant Section 14(h) factors. The Union stresses external comparability as support for its final offer, while the City asks me to discount the external comparables on the ground that the data is skewed by increases received by firefighters in Joliet and Springfield under contracts negotiated before the full economic impact of the Great Recession was known.

Alternatively, I should disregard the increases received by the firefighters in those two cities for purposes of my analysis of external comparability. It seems to me that the City is asking that I extend the notion, first adopted by Arbitrator Benn in County of Boone and Illinois FOP Labor Council, Case No. 8-MA-08-025 (Benn, 2009), and followed by a number of arbitrators since then, that in light of the unforeseen

“economic free-fall” of the Great Recession beginning in 2008 external comparability with contracts negotiated before the fall “should not carry much weight.” I suggest that the City’s position extends that notion because it does not appear that the contracts at issue were negotiated pre-2008, but the City nevertheless suggests that the employers in those cases may not have been aware of just how bad the free-fall would be.

I decline the City’s invitation to go beyond the reasoning of Arbitrator Benn and essentially write new law on this issue. As I stated earlier in my discussion here, I continue to adhere to the notion that accurate external comparables are the traditional yardstick by which economic offers, particularly as to wages, are measured. Although I have approved some aspects of Arbitrator Benn’s logic, I never adopted the notion that external comparables should be discounted altogether. See County of Boone and Illinois FOP Labor Council, supra, Case No. S-MA-8-025 (March 23, 2009.)

Indeed, my approach has always been to weigh external comparability in the context of all the evidence and factors presented to me to determine the extent to which the external employee groups provide an “apples to apples” comparison. It is a reasonable rule of thumb to say that contracts negotiated before the recession hit in 2008 provide a less meaningful comparison for present purposes than those negotiated after the

markets went into free-fall. It is a much less certain proposition to begin divining case-by-case whether a particular community took into account in 2009, for example, the “full impact” that the recession would have on its finances. The City’s position, if accepted, would put us on a slippery slope, I would suggest.

This case does not turn on the data from either Joliet or Springfield, or both of them, I also emphasize. My analysis here does not turn on which offer is closer to the average of the comparables. The difference between the offers is not substantial by that measure. Comparing the two offers, the Union’s offer is more clearly designed to maintain the unit’s historical relationship among the comparables, I do suggest. The Union’s offer is somewhat front-end loaded, and exceeds the average increase among the comparables, I also recognize. However, I am persuaded by the data that this “equity adjustment” will not result in this unit leapfrogging any of the comparables and will have only an incremental effect on restoring the unit’s historic wage ratio to the average received by the comparables as a whole.

Moreover, the Union’s offer matches percentage-to-percentage the known wage increases among the comparables in 2013, albeit the number of comparables for this year is few. More to the point, I am convinced that regardless of what the

other firefighters in the external groups receive for both 2013 and 2014, this unit's ranking among them will not change under the Union's offer. That is certainly of significance in my considering overall reasonableness, I find.

Likewise, the City's offer will not result in a change in this unit's ranking in the first year of the contract, I acknowledge. In terms of the historic wage ratio of this unit to the average among the comparables, the City's offer will to a degree, albeit a slight one, reverse the restorative impact of Arbitrator Perkovich's award. Moreover, the City's offer of only 2.0% for the second year puts the unit at significant risk of falling behind Springfield, should Springfield's firefighters fare better by percentage in 2013.[8] In any case, it is a fair assumption to say that the ratio of the unit's wages to the average among the comparables will again suffer in 2013 under the City's offer. While the unit might be expected to recover somewhat with a 2.5% increase in year three, i.e., 2014, I agree with the Union that the unit's relationship to the comparables on wages will slide backward over the entire term of the contract.

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[8] The evidence shows that the Springfield firefighters' pay would pass this unit's wages in 2013 if the Springfield firefighters receive an increase that year of 2.2% or greater.

I appreciate the City's need to reign in costs, I again state. On the other hand, my function is not to ensure the City's fiscal health but is, instead, to "attempt to replicate the results of arm's length bargaining between the parties and to do no more." City of Belleville, S-MA-08-157, p.40 (citing Will County Board, S-MA-88-9, pp. 51-52). My award on the manning issue will, overall, result in substantial savings to the City, I note in considering the City's presentation. Those savings will come in large measure at the expense of the members of this bargaining unit. Some quid pro quo for the firefighters' contributions here to the City's austerity is warranted in order maintain some balance that the parties might have accepted on their own.

I further believe Arbitrator Yaffe had something similar in mind when he refused to award the City's health insurance proposal in its recent interest arbitration with the police, after he awarded the City's wage offer which included a one-year wage freeze. City of Rockford, S-MA-09-125, p.9 ("While the City's desire for a uniform, less costly plan is understandable, it cannot be supported in this award, particularly in view of the fact that at best, unit officers will stay even, with respect to wages, over the term of the agreement").

I also find that the internal comparables support the Union's position here, as I see it. The police unit, which the

City calls highly relevant to my analysis, received increases totaling 8.5% for the three years covered here. The AFSCME units each received 7.0% for the three years, but that is still higher than what the City offers here. I understand the City's arguments that the wage increases received by these other units included equity adjustments, although at this point it appears that the AFCME units received an additional 5.0% in 2013 for agreeing to the same health insurance plan that the City propose in this case. The point, however, is that the other internal "comparable" units received "equity" adjustments at the same time that the City, while claiming a need to cut costs, proposes none here. The sacrifices that this unit has made, here and in the last contract, appear to be just as worthy of a quid pro quo as were the sacrifices made by those other groups, I specifically find.

I also am not persuaded that Consumer Price Index (CPI) appreciably favors either party's offer, I further note. CPI is not a precise measurement of what particular employees are paying to live, but is a gauge of relative changes of an artificial benchmark, I stress. It is a measure of inflation (or deflation). The CPI establishes a context for the need to change terms and conditions of employment, to see how these particular bargaining unit employees will fare over time in terms of their specific buying power. See my discussion in City

of Belleville, supra, at pp. 42-43. Here, I do not believe the "buying power" of the employees at issue will be much enhanced by selection of the Union's offer, or much reduced by my selecting the offer submitted by the City.

Based on all these considerations, I hold that the Union's offer on wages is most reasonable in light of the statutory criteria, and I so award.

C. Economic Issue #3 – Insurance

The City places heavy emphasis on internal comparability on this issue. Arbitrators have over the years recognized "with amazing uniformity" the strong interest that employers have to establish and maintain uniform insurance benefits throughout the workforce. The City in the instant case cites several interest arbitration decisions going back to the early 1990s, including my own, in Village of La Grange Park and Illinois FOP Labor Council, S-MA-08-171 (Goldstein 2009), to support that proposition. In the present arbitration, with the police settlement in hand, the City asserts, now all of the City's employees, both union and non-union, will be on the same PPO health insurance plan as of January 1, 2014, it says. Indeed, this date set out in the City's final and best insurance benefit offer is the same effective date as the City proposes, I am told.

The only difference between the City's offer in the current case and the terms of the settlements with its other union's employees and non-union staff is that the City's present final offer includes a $25 office visit co-pay that will be charged to participants if and when the City opens its own clinic and the participant goes elsewhere thereafter and does not use the clinic. On the issue of office visit co-pays, the police settlement is silent and the two AFSCME agreements provide for the parties to negotiate the issue in the event the City opens such clinic. This difference is minor, the City submits. The great deference to internal comparability for health and welfare programs requires me to accept its last and best offer on Economic Issue Number 3, it goes on to argue.

External comparables also support the City's proposal, at least as to premium costs, it further urges. According to the City's data, annual employee costs for PPO premiums among the external comparables average $3,428 per year. Under the City's proposal, the firefighters here will pay $2,145 annually, unless they qualify for a wellness discount, which will lower their premium share to $1,950. Only Joliet firefighters pay less, at $1,300 annually, the City stresses. The City's firefighters will also pay deductibles, prescription co-pays and out-of-pocket maximums that are within the ranges paid by their counterparts in the external comparables, the City avers. External

comparability thus shows consistency among the eight comparable municipalities sufficient to support the basic final offer, it submits.

The City also points out that the impact of the increased premiums on employees, $260 annually for employee, $520 annually for employee plus one, and $780 annually for family coverage, will be substantially lessened by the availability of the City's Section 125 plan (the "Wellness Plan").

The City suggests that it tried mightily but in vain to negotiate the changes that it presently seeks in interest arbitration. The Union simply never budged from status quo, until its final offers in the current case. Yet the Union presently objects to the City's final offer on insurance benefits on the ground that the out-of-pocket maximum increases in the City's final offer were omitted from prior bargaining proposals and its initial proposal at interest arbitration. This argument is really nit-picky, because the City's first offer was just an unintentional oversight, the City contends. The City explicitly denies that it was engaging in bad faith or regressive bargaining in this instance. It instead stresses that its negotiators made it clear to the Union throughout this entire negotiation process that the City's proposed health insurance plan was the same as that agreed to by AFSCME. The discussions at the table clearly reflect the increase in out-of-

pocket maximum now included in the City's final offer, it also argues.

Balanced against any harm the Union might claim as a result of the increased out-of-pocket maximums in the City's final offer on insurance benefits is again the matter of the cost to the City of maintaining the current program. The City's offer not only shifts some costs to the employees, it is also designed, through deductibles, co-pays, wellness incentives, and the like, to make the plan's participants "better shoppers." The City also cites coming additional costs imposed under the Affordable Care Act ("ACA"), such as a "transitional reinsurance fee" that the City's insurance expert, Ryan Braun, indicated will cost the City $63 annually per participant. That possible extra cost will translate into roughly $198,000 per year to this City, Management points out. In addition, fees and taxes levied under the ACA on material and service providers, i.e. drug companies and medical device makers, are already driving up some prices, the City emphasizes. The added costs of the ACA must be part of the Arbitrator's assessment of the reasonableness of the parties' respective last and best offers regarding health insurance benefits.

The Union makes too much of the fact that the City's health insurance fund has a surplus, the City believes. The evidence actually shows that the surplus is due entirely to a voluntary

action by the City Council some years ago to increase the City's contributions to the fund. The fact of the matter is that while the City's annual contributions to the fund grew from just over $16.4 million in 2010 to $19.0 million in 2012, overall employee contributions for the period actually dropped from just under $1.19 million in 2010 to just over $1.11 million in 2012. The resulting positive balance in the fund is therefore irrelevant.

The City also suggests that it is concerned about the potential that its insurance plans will be hit with the so-called "Cadillac Tax" when it goes into effect in 2018. The tax, according to the City, will be imposed on plans with overall costs that exceed certain statutory thresholds for single and family coverage, both generally and for so-called High Risk Employees. The tax is imposed on employers at 40% of the amount by which the costs of its plan exceed the threshold(s). The City cites testimony from Employer witness Braun to the effect that the City's current health plans will almost certainly be well in excess of the threshold from the Cadillac tax come 2018. There remain only a few plan cycles before then so it is vital that the City begin making plan changes now to lower costs. This is a significant part of the City's motivation in tailoring its last and best final offer on health benefits, it maintains.

As the City anticipated, the Union raises a threshold objection to the City's offer on health insurance benefits, I

note. It claims that the City failed to negotiate over health benefits in good faith prior to this interest arbitration. In fact, the City's proposals prior to arbitration did not include any increase to out-of-pocket maximums, which are presently included in the City's final offer, the Union suggests. Although the City's negotiators made reference to bringing the firefighter health plan "into line" with the plan for the AFSCME units, they never said what "into line" actually meant, namely that the benefit plans for AFSCME and non-Union personnel would become a "me, too" basis in this interest arbitration. The City currently claims the omission of details was an oversight, the Union understands. In fact, though, the City did not rectify the oversight when it learned of it on the third day of hearing in this matter. The Union again cites Arbitrator Berman's award in City of Springfield, S-MA-18, supra, arguing that because the City's final offer contains this "new, non-bargained for component," it is not truly an impasse issue and thus should not be considered.

The Union goes on to say that this City cannot support its position here by claims of financial crisis. Even at the height of the Great Recession, the City was able to maintain the plan that the firefighters currently enjoy, the Union stresses. To be sure, the Union acknowledges that the City proposed to increase contributions during negotiations in 2008-2009, but it

ultimately withdrew those Employer proposals and agreed to maintain the status quo, the Union points out. The City is currently in a much healthier financial position, the Union adds. Consequently, the record evidence does not justify a radical change in the firefighters' benefits, the Union specifically concludes.

Significantly, the City's insurance fund is in point of fact healthy, the Union further says. The insurance benefit fund in 2011 enjoyed the highest balances it had seen in 23 years, the Union asserts. Revenues to the fund have outpaced expenditures in every year since 2006, it also contends. More important, perhaps, on this issue, the Union argues, the City seems to forget that bargaining unit firefighters began making increased contributions to the fund in 2008.

In any event, the health insurance benefit fund is forecast to continue to rack up surpluses through 2018, without increases in the firefighters' contributions, Union strenuously contends. It also is important to a fair resolution on this issue that the City is seeking to increase employee coverage from $390 annually to $650, an increase of 67%, without any established need to do so, the Union calculates. The City's finances thus do not support this level of increase to these firefighter employees, especially when there is complete lack of evidence concerning how the self-insured health plan costs its services or

calculates allegedly needed employee's contributions for health and welfare for any employee.

The City's claims of increased health care costs are not supported in this record, the Union specifically suggests. The Union repeatedly asked the City to explain its premiums calculations and provide the actuarial data on which they are based, it maintains. The City claimed in its presentation at hearing that the overall cost of coverage was calculated to be $8,424 for single, $16,848 for single plus one, and $25,272 for family coverage. The City could not, however, answer the Union's simplest question of how those costs are determined. This is a self-insured plan, once again, and premium calculations are handled in-house, the Union reminds me. If the City seeks to increase premiums contributions from its employees, it ought to at minimum establish the bases on which it determines premium rates. That is not done here, the Union avers. Since that is true, the City's last offer cannot be deemed to be reasonable, it asserts.

The City's plan is self-serving, at least with regard to prescriptions, the Union goes on to say. The Union contends that under its own flat-rate prescription co-pay proposal, the City would receive rebates of $18 each on name-brand drugs. Under the City's more expensive three-tiered plan, the City's rebates will be $20 each on name-brand drugs. The City's own expert noted

that this rebate structure offers something of a perverse incentive for the City to in fact push brand name drugs, the Union suggests.

Moreover, there is absolutely no data that suggests that the three-tiered prescription system, which had been in place for the AFSCME units for one year at the time of this hearing, has made anyone a “better shopper,” as the City contends that it will. The truth is that the City has no proof that its plan will result in overall saving in health care costs. The City, at best, hopes that this will be the effect, the Union concludes.

The City has enjoyed significant savings under the current plan, the Union goes on the claim. The savings were realized from reduction in vendor bids, aggregation of prescription purchases and a move to the Blue Cross Blue Shield of Illinois provider network, all of which brought significantly better discounted rates than were available through the City’s old network. The wellness program has also led to savings, the Union adds. This Union has already partnered with the City on the wellness program, it submits. Braun, the City’s own expert, stated in his testimony that the wellness program is where the City has the greatest potential for realizing more savings. The Union urges its cooperation is a significant factor in reining in costs, and that fact favors its last and best offer, it declares.

The City's references to the ACA are a red herring, the Union also tells me. The effective dates for many of the fees and taxes that the City cites as evidence of its expected increases in costs are uncertain. Indeed, the law is still being debated in Congress. For example, a bill was recently introduced in the Senate to delay implementation of the employer mandates for two years. Many of the City's assertions, moreover, are grounded on the wrong or incomplete data, the Union contends. In further example, the City's claim that the current plan will subject it to the "Cadillac Tax" is grounded on the premium cost of the current health plan. The "Cadillac Tax" in point of fact is based on plan "value," the Union stresses. The City's own experts admitted the result is a different calculation from "cost," as the City made its calculations. In any event, none of the added costs from the ACA will go into effect during the term of this Agreement, the Union argues.

While the City might claim that non-uniform benefits for all its employees will raise its administrative costs, that claim is not a relevant concern in this case, the Union avers. After all, the City "led the charge" to change the benefits for the AFSCME units, which it now claims that everyone should agree to for the sake of uniformity. If administrative costs increased as a result, that is nevertheless chargeable to the City, not this Union or its members. Moreover, the City-wide system is not

entirely uniform. Employees across the City are subject to different contribution levels, which the City's systems already accommodate. There are different plan types and different coverage levels that are already offered to employees. Employees' contribution rates are affected by such things as wellness discounts, which the City accommodates. The foregoing rebuts the core City claim it needs "uniformity" in plan structure, the Union concludes.

The Union further expressly suggests that the City should be required to offer more in return for the increased cost to the bargaining unit employees of the City's plan. The Union cites a number of arbitration awards, both within and without Illinois, which hold that an employer is required to offer a substantial quid pro quo whenever it seeks a radical change in employees' benefits. Here, the City has essentially offered nothing. Combining the City's wage offer with its insurance offer, the firefighters would receive barely a 1.0% raise each year of the Agreement. The police unit, this Union notes, received a substantially higher wage settlement than is being offered by the City to the firefighters. Even the Union's wage offer in this matter does not match the 8.5% received by the police. Thus, internal comparability cannot be the focal point of the analysis of the reasonableness of the Parties' last and best offers, the Union says.

This is not an easy case, I note. Each party presents a very cogent and reasonable set of arguments for its own position. On balance, I however find that the City's offer is the more reasonable in accordance with the Section 14(h) factors. Before explaining why, I must answer the Union's objection to the City's final offer on health benefit insurance, i.e., that there was no bargaining across the table before the actual interest arbitration hearings on maximums in the instant case.

For much the same reasons as I overruled its objection to the City's offer on manning, I also find that the Union's objection regarding the City's omissions on the out-of-pocket maximums must be overruled. In the overall scheme of things, the omission of the increase in out-of-pocket maximums, whether inadvertent or otherwise, does not appear to have affected the course of pre-arbitration bargaining to any degree, I find. The Union has not told me, for example, that its bargaining positions or strategies would have been different, but for the City's failure to include the increases in out-of-pocket maximums. It is also too small a change for me to call it regressive, I also am persuaded. The parties did bargain in detail over insurance benefits before interest arbitration and one omission does not vitiate that fact, I find.

In matters of health insurance, I also stress, arbitrators have long recognized the importance of internal comparability, I believe. Indeed, I have several times before accepted this arbitral truth, the most recent example being City of Carlinville and PBLC, S-MA-11-307 (Goldstein 2012), p. 43. Although cost is always an important consideration in driving the weight given to internal comparability in benefit issues, I recognize, it is not the only factor, I also believe. Disparity between employees is much harder to justify when talking about health benefits as opposed to other economic issues such as pay.

I have also recognized, as many arbitrators do, that internal uniformity is more important to an employer when it comes to benefits than it is in the matter of what an employee pays for those benefits. Here, both the benefits and contribution levels are at issue, and I cannot divide them up, I hold. And, significantly, as I have done often before, in this setting, I understand the City's interest in uniformity of benefit plans not only as to cost, but also to prevent whipsawing and morale issues among the personnel in this municipality, I hold.

I appreciate the Union's arguments that the City is seeking substantial increases in employee premiums that it has not fully justified on this record. However, it seems to me that awarding the Union's offer here would not only cost the City more in

claims administration and the like, but would create a large gulf of disparity between the firefighters and all of the City's other employee, including the police, in terms of both benefits and employee cost, I point out. While a more precise actuarial showing in support of the premium level may have been preferable, it seems to me that the City has shown as much in that regard as has the Union. Moreover, while the increases in premiums and other costs to the employees appear to be sizeable, the evidence suggests that these employees will not be paying premiums, co-pays or deductibles at levels out of line with their external comparable groups. This is important as another basis for the assessment of the parties' last and best offers in this case, I rule. All in all, I believe that the City's offer is a fair one.

I also appreciate that the firefighters will not be receiving increases that are quite as large, percentage-wise, as the increases receive by the City's police unit. No claim has been made, however, that the two groups have any history of lock-step parity and, in any event, it is clear that the firefighters fared significantly better than did the police in the last contract cycle in terms of their overall compensation. Importantly, the Union's offer on health insurance, would result in the firefighter unit employees being in a substantially better position than the police, not just on health insurance,

but overall. The idea that on critical health insurance benefits, a truly significant disparity in costs and a lack of identity of benefit plans would not have an adverse effect on overall employee relations within the City is not convincing, I frankly conclude. To that extent, the interest and welfare of the public favors the Employer's final offer, I find.

Finally, as was observed by Arbitrator John C. Fletcher, in City of Alton and Associated Firefighters of Alton, Local 1255, ISLRB Case No. S-MA-06-006 (issued December 20, 2007), at p. 7, in discussing the applicability of the important standards in interest arbitrations brought under the Act:

> "A number of well-established principles should (and will) serve as underpinning for this interest arbitration award. First, it is now essentially settled that interest arbitration in general is intended to achieve resolution to an immediate impasse, and not to usurp, or be exercised in place of, traditional bargaining. Some Arbitrators have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through "normal" negotiations. Otherwise, as some have reasoned, the entire collective bargaining process could be undermined to the extent that at the first sign of impasse, parties might immediately resort to interest arbitration."

I completely agree with this baseline precept, and will do my best to adhere to the goal of not short-circuiting the parties' bargaining process in my decision in the instant dispute. Any fair analysis of the insurance issue must begin

with the idea that I have been engaged to try to mimic what the parties would have negotiated had the process in this case worked, and not to grant "free breakthroughs" the parties likely never would have negotiated on their own.

After careful consideration, I find that, unlike what is involved in the first impasse issue, Company Strength (manning), what has been presented by this insurance impasse issue would likely have been resolved by the parties in give-and-take bargaining were this the private sector. Manning is a deal breaker or strike issue to these parties. Health insurance impasses are often settled by negotiating in the context of what the internal comparables show, I stress.

I ultimately find that in the current matter, bargaining between these parties would have likely resulted in the parties' agreement on the "AFSCME Health Plan." I just think the balance of statutory factors indicate that the City's claim of the need to have one insurance plan to face the on-coming changes in costs and mandated coverage supports that conclusion, even without any crystal ball projections, and I so find.

Based on all these considerations, I hold that the City's offer on health insurance is more reasonable in light of the statutory criteria, and I so award.

D. Economic Issue #4 – Sick Leave Pay Upon Severance

The Union seeks a substantial increase in the sick leave payout benefit. The City seeks to preserve the status quo. The record reveals that Arbitrator Briggs rejected a similar proposal from the Union is his 1998 award, as the Union acknowledges. The Union contends that Arbitrator Briggs did so because he found that changing the benefit, which had been in existence at that point for only three years, was just too soon. It has now been 18 years since the benefit was put in place. The sick leave pay upon severance provision has not been changed at all during that time. It is also true that telecommunicators represented by this Union and additionally AFSCME unit employees all enjoy a payout at 75% of accumulated time. Furthermore, external comparables continue to "outpace" the firefighters in this unit, some of whom offer retiree health, the facts of record disclose.

In fact, though, Arbitrator Briggs rejected the Union's proposal in 1998 because he found no "compelling justification" for it, I find. In that regard, nothing has changed since 1998. The City has presented less sufficient evidence to convince me that the sick leave benefits received in the external comparables are the same as or less than what the Union asks for currently, I also note. As for the internal comparables, I find that the richer benefit given to the telecommunicators, a unit

represented by the firefighters Union, supports the Union's last offer as more reasonable.

One more point needs to be made. The Act makes clear that I do not have authority to craft a reasonable sick leave pay upon severance by virtue of the economic nature of this issue. The Union's request for "more" is grounded on the long period of this benefit's lack of change or increase, and the Employer simply urges that the retiree benefits are rich enough. Perhaps so, but I hold that external and especially the internal comparables fall in line with the Union's arguments and proofs in this case. Again, some middle ground on this issue perhaps would need be the most reasonable resolution of Economic Issue No. 4, but "the system" created by the Act forbids me from making that sort of adjustment to these particular last and best offers, I hold. Cf. City of Belleville, supra, at pp. 56-58 and p. 63.

Based on all these considerations, I hold that the Union's offer on sick leave pay upon severance is more reasonable in light of the statutory criteria, and I so award.

IX. AWARD

Using the authority vested in me by Section 14 of the Act:

(1) I select the City's last offer on Economic Issue No. 1 with respect to Section 4.1 "Company Strength" as being, on balance, supported by convincing reasons and also as more

fully complying with all the applicable Section 14 decisional factors.

(2) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 2 with respect to Wages because it is most reasonable under the statutory criteria.

(3) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the City's final offer on Economic Issue No. 3 with respect to Health Insurance because it is most reasonable under the statutory criteria.

(4) I select the Union's final offer on Economic Issue No. 4, Sick Leave Pay Upon Severance, as being the most reasonable in light of the statutory criteria, and I so award.

(5) Additional, as per the parties' stipulation as set forth above at paragraph 5, I incorporate all tentative agreements made by the parties in their pre-arbitration negotiations into this Opinion and Award.

IT IS SO ORDERED.

September 30, 2013 _____

Elliott H. Goldstein
Arbitrator