INTEREST ARBITRATION

ILLINOIS STATE LABOR RELATIONS BOARD

WHEATON FIREFIGHTERS UNION
IAFF, LOCAL 3706

and

CITY OF WHEATON

ILRB No. S-MA-12-278

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
February 20, 2014

I. Procedural Background:

This matter comes as an interest arbitration between the City of Wheaton ("the Employer" or "the City") and Wheaton Firefighters Union, IAFF, Local 3706 ("the Union"), conducted pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). A hearing was held before the undersigned, as the sole arbitrator, on October 15, 2013. The Union was represented at the hearing by:

Lisa B. Moss, Esq.
Susan M. Matta
Carmel, Charone, Widmer, Moss & Barr
One East Wacker Drive., Suite 3300
Chicago, Illinois 60601

Counsel for the City was:

David M. Lefkow, Esq.
Lefkow Law, LLC
27 N. Wacker Drive, Suite 424
Chicago, Illinois 60606

Post-hearing briefs were filed with the Arbitrator on December 16, 2013.

Reply briefs were also allowed, which were filed on December 23, 2013.[1] The record was closed on that date.

II. Factual Background

The City is the seat of DuPage County. Its population is listed at 52,894 on the City's FY2012 Annual Financial Report. The City's median home value is $313,000; Equalized Assessed Valuation is $2.04 billion; and overall annual revenues for the City totaled $37.8 million, including $18.1 million in property tax and $10 million in sales tax. The total number of City employees is 382, of which 254 are employed full-time and 128 are employed on a part-time basis.

The record in this case further establishes that the bargaining unit includes some 35 sworn full-time firefighters, 21 in the rank of Firefighter, 11 in the rank of Lieutenant and 3 in the rank of Captain.[2] The City also employs 18 contract paramedics. The City does not employ any sworn personnel in classification equivalent to firefighter/paramedic.

The current pay schedules for the firefighters in this unit, which went into effect on May 1, 2011, provide the following base salaries:

May 1, 2011	Firefighter	Lieutenant	Captain

[1] The City submitted 18 new exhibits along with its initial Brief, which the Union in its Reply Brief moved to strike. The exhibits are themselves merely charts, which purport to summarize evidence that was presented at the hearing. To the extent they contained any evidence not in the record, the Arbitrator believes that the Union was able to and did respond accordingly in its Reply brief. The Union's motion is therefore denied.

[2] The term "firefighter" will be used in this Award as a generic term that includes all ranks. The "firefighters" will be referred to herein according to rank only as needed.

Start	$56,816	* * *	$106,257
Step 1	$62,349	$89,536	* * *
Step 2	$66,087	$90,431	* * *
Step 3	$70,054	$91,768	* * *
Step 4	$74,257	$92,883	* * *
Step 5	$78,713	$96,597	* * *
Step 6	$81,862	* * *	* * *

In addition to base pay, the firefighters in all ranks receive $500 per year as longevity pay after completing nine years of service. Longevity pay increases to $1,500 per year after 19 years. They receive $500 annually in uniform allowance, plus $100 for the purchase of running shoes. Each firefighter is also afforded a $50,000 life insurance benefit.

The firefighters work shifts of 24 hours on duty followed by 48 hours off. Kelly days are scheduled every 14th duty day, bringing the total annual straight-time hours to just over 2,713. There are nine observed holidays, including the following:

New Year's Day
Presidents Day
Friday before Easter
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Friday following Thanksgiving
Christmas Day

Sick leave is accrued at a rate of one day every two months of service and are carried over from year to year in an unlimited bank.

III. The Parties' Bargaining History.

The parties' bargaining relationship dates back to 2000. The instant proceedings will finally resolve the term of the parties' fourth collective bargaining agreement. This is their first interest arbitration.

The parties' last labor agreement had an effective term of May 1, 2007 though April 30, 2012. The Union filed its request for mediation with the Illinois Labor Relations Board on March 22, 2012. The parties thereafter met on several occasions during the remainder of 2012 and into 2013. They met with a mediator in three sessions between January 31, 2013 and April 23, 2013. Tentative agreements were reached on a number of issues, drafts of which were submitted into the record at hearing as Union Exhibit 14 and are incorporated herein. The parties were unable to reach agreement on several issues, which were submitted for resolution here. The Union invoked interested arbitration on June 14, 2013.

IV. Statutory Authority and the Nature of Interest Arbitration

The relevant statutory provisions governing the issues in this case are found in Section 14 of the Labor Act. In relevant part, they state:

> 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 employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
>
> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the 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.

The Arbitrator finds that the issues submitted for resolution here are economic in nature and that his job, therefore, is to select that parties' offer on

each issue that most nearly "complies" with the above factors. As has been so often explained in the nearly two decades since the Act's adoption, the Act itself provides almost no guidance to the arbitrator in deciding which factors apply in any given circumstance or in giving them an appropriate weight. Arbitrators have over the years established external comparability, how the terms and conditions of employment of these employees stack up against the terms and conditions of employment of employees who perform similar duties in comparable communities, as the single most important factor in choosing between competing proposals on wages and other economic issues. Other important factors include changes in the Consumer Price Index ("CPI") and the employer's ability to pay. The Arbitrator raises these points at this time for the specific purpose of establishing the primary context for his subsequent findings in this case. In addition, this Arbitrator's approach to the issues at impasse in this record, and the application of the statutory criteria will, as always, comport with his firm opinion that this process is not, nor will it ever be, a substitute for grievance arbitration or meaningful bilateral collective bargaining.

V. THE PARTIES' STIPULATIONS

The parties stipulated to the following:

1. The parties waived the tri-partite panel and agree that Arbitrator Fletcher has sole authority to render the award in this matter.
2. All tentative agreement reached between the parties during contract negotiations shall be incorporated into this Award.
3. The City's fiscal year runs from May 1st to the following April 30th.

4. The term of this Agreement will be three years, from May 1, 2012 through April 30, 2015.
5. There has never been historical parity between the City's firefighter unit and any other internal units.

VI. OUTSTANDING ISSUES[3]

1. Article 15, Lay-Offs, Section A (Notice)

2. Article 23, Clothing and Personal Equipment, Section E Uniform Allowance

3. Article 24, Wages and Rates of Pay, Section A Annual Salary Schedule, and Appendix A

4. Article 24, Wages and Rates of Pay, Section B, Straight-Time Hourly Rate; Article 26 Hours of Work and Overtime, Section B, Normal Work Day and Work Week; and Section C, FLSA Work Period - (Kelly Days)

5. Article 25, Longevity Pay

6. Article 29, Severance Pay

7. Article 32, Holidays

8. Article 34, Life Insurance

9. Article 41, Sick and Injury Leave Section A, Accrual

VII – UNION'S PRELIMINARY MOTION

The Union moves at the outset for a ruling by the Arbitrator the precludes consideration of any of the City's evidence relating to the Union's proposals on Layoffs, Uniform Allowance, Kelly Days, Longevity Pay, Holidays and Life Insurance. The basis for the motion is an allegation that the City violated the

[3] The parties agreed to hold certain other issues relating to Article 5, Management Rights and Article 33, Hospitalization in abeyance pending resolution of unfair labor practice charges filed by the Union against the City, which are now pending before the Labor Board.

parties' agreed ground rules by failing to timely tender offers on said issues.[4] The Union points out that the ground rules were developed in a telephone conference between the parties' respective counsel and the Arbitrator, the terms of which were confirmed in an exchange of emails. The agreed rules mandated that the parties' would simultaneously exchange Pre-Hearing Final Offers, which in fact occurred at 4:07 p.m., on October 11, 2013. The offers then received from the City, the Union asserts, did not contain any proposals on the issues enumerated above, which the Union, as the moving party on each of them, refers to as Union issues. According to the Union the City amended its Pre-Hearing Final Offers 35 minutes later, at which time it proposed to maintain the status quo on each of these Union issues.

The Union argues that the City clearly violated the rule for the purpose of gaining an advantage for itself, by giving its representatives an opportunity to review the Union's proposals before committing to a position. The Union further bolsters its arguments by alleging that the City committed a number of other violations of the parties' ground rules during negotiations. This latest such violation occurred less than a week before the hearing and thus impacted the Union's ability to prepare. The Union suggests that there must be a consequence, a

[4] The Union's Motion is stylized as a motion to preclude the City from presenting evidence on the issues. The Arbitrator did not preclude the City from proceeding with its evidence at hearing. Given that the procedural posture at this point the Arbitrator has restylized the motion as one to preclude consideration of the City's evidence.

Additionally, the Union's motion also seeks to exclude evidence as to certain aspects of the City's proposals on Hospitalization. The Arbitrator will not address this aspect of the Union's motion as the underlying issue is not before him at this time.

penalty, for the City's violation of the ground rules. The simultaneous exchange requirement was intended to place the parties on "equal footing." (Union Brief, p. 14). The Arbitrator should therefore grant the Motion and adopt the Union's proposals on each of the enumerated Union issues.

The City responded at the hearing, at first by challenging the Union's assertion that it had agreed to the ground rules. The City also asserted that it had at all times proposed status quo in response to each of the issues raised in the Motion. In its Reply Brief, the City also points out that it submitted its initial final offers to the Arbitrator at the beginning of the hearing, as the Arbitrator had directed, and submitted its final offers at the close of the hearing, also as directed by the Arbitrator. There is no dispute that the parties each retained the right to modify its proposals during the course of the hearing. Simply put, the Union cannot show that it has been prejudiced in any respect by the alleged failure of the City to specify its position of maintaining the status quo on the Union issues in the initial exchange on October 11, 2013, a week before the hearing. The Union seeks a windfall that will allow it to prevail on proposals that it cannot support on the merits.

The Arbitrator confirms that the Union's factual assertions relating to the development of the ground rules is essentially correct and the record demonstrates that the City's compliance with those rules was less than perfect. Perhaps then there should be a penalty. However, the Arbitrator does not believe it is properly

within his power to impose what is essentially a default award. The issues submitted here, including those referred to as Union issues, are all economic in nature. Section 14(h) of the Act is quite explicit in directing the Arbitrator as to what he may and must consider in rendering an award as to each such issue. Accordingly, even if the Arbitrator was to grant the Motion and exclude the City's evidence on these issues, it would not follow that the Union's proposals on the issues would be automatically adopted.

Of course, the Act can reasonable be interpreted as granting the Arbitrator the authority to run the proceedings. Indeed, this Arbitrator considers the protection of the hearing process and the enforcement of ground rules and the like so as to avoid undue prejudice to either side as one of his primary obligations. The Arbitrator also agrees with the City that the Union has not shown that it was prejudiced in any substantial way by the City's omissions in its initial Pre-Hearing Offers. The record does not contain any suggestion that the City has ever departed from its position on the Union issues, i.e. to maintain the status quo. As will be discussed further below, as the moving party on the issues in question the Union has at all times had the burden of addressing the status quo, specifically to show that the status quo should be changed. The Arbitrator does not see how, in light of the circumstances, it has been in any substantial way prejudiced by the City's conduct. The Arbitrator suggests that perhaps the Labor Board would provide a more appropriate venue for resolving the Union's claims.

VIII – EXTERNAL COMPARABLES

As mentioned above, external comparability is of primary importance in the analysis of the parties' respective proposals. Indeed, neither party in this case has argued otherwise. The Union proposed the following list of comparable municipalities:

Buffalo Grove
Downers Grove
Elk Grove Village
Elmhurst
Hanover Park
Lombard
Mt. Prospect
Park Ridge
Romeoville
St. Charles
Streamwood
Wheeling

The City's proposed comparables are:

Downers Grove
Elk Grove Village
Elmhurst
Hanover Park
Hoffman Estates
Lombard
Mt. Prospect
Park Ridge
Wheeling

The Union arrived at its list of proposed comparables by considering ten factors, which it asserts are those most commonly considered by interest arbitrators: 1) population; 2) department size; 3) Equalized Assessed Valuation (EAV); 4) sales tax revenues; 5) total revenues; 6); total expenses 7) current fund

balance; 8) per capita income; 9) median household income; and 10) median home value. The Union applied a comparability range of plus/minus 50%, which it characterized to as the range most commonly used range by arbitrators, citing City of Alton and PBPA, Unit 14, S-MA-02-231 (Kossoff, 2003). The Union asserts that all of its proposed comparables match up with this City at between seven and ten of the relevant factors. In fact, each of the four communities that are on the Union's list but are excluded from the City's, i.e. Buffalo Grove, Romeoville, St. Charles and Streamwood, match up with this City on all ten factors.

The Union criticizes the City methodology in arriving at its own list, which it characterized as being designed to cherry pick among potential comparables to select those that best support the City's own proposal. To this end, the City used an overly narrow comparability range of plus/minus 25%. It considered 17 factors, many of which lack relevance, i.e. police and fire expenditures, total numbers of full-time and part-time employees, and crime index, but failed to consider such commonly accepted criteria as the number of department employees, current fund balances and median home value. The result is that four closely comparable communities are excluded from the City's list, while Hoffman Estates, a city with more than double the number of this City's firefighters; total revenues that are 56% higher than this City's; and expenditures that exceed this City's by some 81%, is included. In fact, the only reason for including Hoffman Estates, the Union surmises, is that its "inclusion serves to bring overall salary averages down,

creating a more palatable view of the City's salary proposal." (Union Brief, p. 20).

The City, for its part, takes a relatively open position on the issue of the appropriate external comparables. It notes the differences in the methodologies employed by each party in deriving their respective lists, but suggests no criticism of that employed by the Union. The City merely suggests that of the disputed comparables, in fact, only Streamwood fails to meet the City's minimum of five matches out of its 17 criteria. The City does not, however, specifically demand that the Arbitrator exclude even Streamwood from the list of external comparables. The City's position, rather, stresses that whatever the set of comparables may be, the firefighters at issue here rank highly among them in terms of their wages and benefits.

This Arbitrator recently commented that "comparability begins to lose vigor as the range of acceptable deviation increases." McHenry County and SEIU, Local 73, S-MA-12-001 (Fletcher 2013), at p. 12. Despite this stated reservation, this Arbitrator accepted the union's use of a plus/minus 25% range in that case, reasoning, in part, that utilizing such a broad range found substantial support among arbitrators, see Village of Elmwood Park, S-MA-10-192 (Hill, 2010); City of Peru, S-MA-93-153 (Berman, 1993), and finding further that resort to it seemed necessary in order to garner a list of comparables of sufficient number to allow for a meaningful analysis.

In this case, the Arbitrator finds that the Union's resort to a plus/minus 50%

range for comparison is appropriate. He so finds for several reasons. First and foremost, the City does not seriously object to it. In fact, the parties agree on eight of the proposed comparables despite having arrived at respective groupings using vastly different methodologies. On the other hand, the record shows that the eight agreed comparables do not supply enough data to allow meaningful comparisons, most notably in regards to the second and third years of the proposed Agreement. Those communities that are excluded from the City's list, Buffalo Grove, Romeoville, St. Charles and Streamwood, appear to match up with the City as well or better than many that the City included, at least in those areas that are traditionally seen as most important, i.e. geographic location, department size, revenues and EAV, and expenses. Indeed, the Arbitrator can find no real reason why those four communities should be excluded from a list of comparables that would include Hoffman Estates.

The bottom line is that collective wisdom has yet to produce a truly scientific approach to assembling comparables. Arbitrator Edwin Benn long ago commented that 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." Edwin Benn A Practical Approach to Selecting Comparables Communities in Interest Arbitration Under the Illinois Labor Relations Act, 15, No. 4 Illinois Public Employee Relations Report 1, 2 (Autumn 1998); see also City of Rockford and City Firefighters, Local 413, S-MA-12-108

(Goldstein 2013), at p. 29. Moreover, in a case such as this, where neither the Union raises a claim of need for its members to "catch up" to the comparables nor the City a claim of inability to pay, the need for precise matching up with the comparables is secondary to the need for assembling a pool of sufficient size. Put simply, facts that Hoffman Estates, for example, may have a much larger fire department than this City and pays its firefighters at the low end of the comparables group do not weigh heavily in the analysis of the parties' economic proposals.

For all the foregoing reasons, then, the Arbitrator will consider the following municipalities for purposes of external comparison:

Buffalo Grove
Downers Grove
Elk Grove Village
Elmhurst
Hanover Park
Hoffman Estates
Lombard
Mt. Prospect
Park Ridge
Romeoville
St. Charles
Streamwood
Wheeling

IX – INTERNAL COMPARABLES

The County currently has bargaining relationships with three other unions. They are, excluding the present bargaining unit:

FOP: Full-Time Sworn Peace Officers in the Rank of Patrolman - Current

contract term May 1, 2011-April 30, 2014.

MAP: Full-Time Sworn Peace Officers in the Ranks of Sergeant and Lieutenant - Current contract term May 1, 2011-April 30, 2014.

IUOE Local 150: Maintenance, Mechanical, Electrical and Custodial Employees in the Department of Public Works – Latest contract term May 1, 2011-April 30, 2016.

Consistent with his long-standing approach to interest arbitration, the Arbitrator does not consider the City's unrepresented employees in the instant analysis. The logic behind this approach has been fully explained in this Arbitrator's prior decisions and need not be revisited here. The Arbitrator also believes that although the City's non-sworn should not be excluded in the comparison, comparisons of the respective duties for the employees at issue here with those of non-sworn officers is markedly different from the comparisons with other sworn personnel.

Additionally, the parties effectively stipulated that no parity relationships exist between the firefighters at issue here and any internally comparable groups. Accordingly, internal comparability carries significantly less weight here than does external comparability.

X. THE ISSUES

Article 15 – Lay-Offs

The Union's Final Proposal

The Union proposes amending Section A as follows:[5]

A. Lay-offs

> In the event it becomes necessary to lay-off, employees shall be laid-off in the inverse order of their seniority. The City shall provide the Union with at least thirty (30) days' written notice of any proposed layoff. The Union shall have the right to meet with the City and provide alternatives to any proposed layoff. No new employee(s) shall be hired, until all employees on lay-off status desiring to return to work have been recalled and hired.

The City proposes to maintain the status quo.

The Position of the Union:

The Union points out that its proposal is intended to do nothing more than give the Union, in advance of any layoff, an opportunity to meet with the City over possible alternatives to layoff. The proposal finds support among nearly half of the Union's external comparables, five of which also call for impact bargaining. Internally, the Union adds, the contract covering the public works employee unit provides for 30-days advance notice to the Local 150 of any layoff and also impact bargaining. The Union's proposal, which does not provide for impact bargaining per se, is fully supported by the comparables..

The Union acknowledges that the record suggests that the department has

[5] Throughout this Award, proposed additions to existing language will be underscored and proposed deletions will be stricken through.

never imposed a layoff. However, the Union suggests that the Arbitrator consider the current economic climate. Layoffs have occurred at other departments and should be seen as a possibility here. Giving the Union a voice will enhance the City's chances of maintaining its current fire suppression capabilities while saving money. In any event, depriving the Union of any opportunity to save jobs for its members works as a substantial hardship on both the Union and its members. On the other hand, asking the City to provide the Union with 30-days notice before a layoff would not burden the City at all.

The Position of the City:

Although the City laid off some workers in other departments in the wake of the Great Recession of 2008-2009, it did not lay off any members of this bargaining unit. It never has. The Union has failed to show any real difficulties with the current language or any compelling reasons for adopting the change that it proposes.

The majority of the external comparables have no specific contract language covering notice of layoffs. Only two have notice requirements 30 days out. Moreover, internally both the MAP and FOP contracts contain no requirement for advance notice of layoff.

Discussion:

The Union seeks a change in the *status quo*, a departure from established contract language. This Arbitrator has consistently followed the rule that the party

seeking such change has the burden of showing that there is a proven need for the change; and, that the proposed change meets the identified need without imposing an undue hardship or burden on the other party. See, Lake County Sheriff, S-MA-11-203, at p. 14. The Union has failed to meet its burden here.

The Union offered no proof of a genuine need for the 30-day notice requirement that the Union seeks. The fact that there have been no layoffs in this unit is more damning to the Union's position than the Union suggests. This Arbitrator has made clear his position on multiple occasion that that the party seeking to depart from the status quo must show more that that change is a "good idea." The moving party must show that the current conditions are "broken" some how. See, Village of Romeoville and MAP, S-MA-10-064 (Fletcher, 2010); Illinois Secretary of State and ILFOPLC, S-MA-12-234 (Fletcher, 2014), at p. 25. This threshold burden is integral to the overall scheme of interest arbitration which is, first of all, to avoid supplanting the traditional collective bargaining process Village of Western Springs and MAP, FMCS Case No. 10-02482-A (Fletcher, 2011) at pp. 10-11 ("[This] Arbitrator has stated on numerous prior occasions, it is worth mentioning that interest arbitration in general is intended to achieve resolution to immediate and *bona fide* impasse, but no to usurp, or be exercised in place of, traditional bargaining. . . [The] function of interest arbitration, as opposed to . . . grievance arbitration, [is] actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of

collective bargaining."). Because the Union failed to show that the current language is "broken," the Arbitrator will not reach the issue of whether, or to what extent, the Union's proposed change to the language would burden the City.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the issue of layoffs. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 15, Section A – Lay-Offs is adopted. It is so ordered.

Article 23 – Clothing and Personal Equipment

The Union's Final Proposal

The Union proposes amending Section E as follows:

Uniform Allowance

1. Effective May 1, 2013, employees shall receive, annually, a uniform allowance of ~~five hundred dollars ($500.00)~~ seven hundred dollars ($700.00) which shall include the cost of running shoes. This shall be credited to each employee May 1 of each year.
2. The uniform allowance shall enable each employee to replace worn, stained, or otherwise unsuitable parts of their uniform.
3. ~~The uniform allowance shall also enable employees to apply one-hundred dollars ($100.00) to the cost of running shoes.~~
4. All unused uniform allowance in an employee's account shall be

> rolled over from year to year so long as the sum total does not exceed two (2) full years.

The City proposes to maintain the status quo.

The Position of the Union:

The Union points out that its proposal is to increase the current total annual uniform allowance from $600 ($500 uniform, plus $100 for running shoes) to $700 (including $250 maximum for running shoes). The Union asserts that the proposal does not constitute a breakthrough, in any sense. In fact, the Union suggests that the parties' historical bargaining patterns support the proposal, as the parties' 2000-2003 labor agreement provided a $450 total yearly benefit, which was increased to the current $600 in the 2003-2007 agreement. No increase was negotiated in the parties 2007-2012 agreement, but paragraph 4 was added to allow for carry over from year to year.

The Union's current proposal is not only in keeping with the historical pace of the benefit increases, it also serves the interests of both parties. Fire suppression is physically taxing work, which requires a high level of physical fitness. Moreover, the City actively encourages the firefighters to keep fit and it is undisputed that many of the firefighters regularly run for that purpose. A key part of the Union's proposal is to give the firefighters more flexibility in shifting the allowance toward the purchase of running shoes. This will facilitate better fitness and, as a result, better firefighters.

Internal comparability favors the Union's position. The FOP unit, for example, receives a yearly allowance of $650, which rises to $800 for investigators, plus $325 for cleaning. Their supervisors, represented by MAP, receive $630 annually, plus $275 for cleaning. The sworn employees in each of these units also enjoy the same rollover rights that the firefighters enjoy. The Union's proposal simply closes an existing gap.

The Union concedes that the current benefit afforded to its members is near the top among the external groups. However, Lombard, Romeoville and Wheeling each run close, receiving annual benefits between $500 and $625, respectively. The Union also points out that firefighters in Des Plaines currently receive a $700 allowance. Also, firefighters in St. Charles, who are on a quartermaster system, nevertheless receive an annual footwear allowance of $175. The Union's proposal is therefore reasonable and should be adopted.

The Position of the City:

The City points out that the Union's proposal would improve the ranking of its members' benefit among the external comparables from its current second place into first place. The City adds that the Union's reference to Des Plaines is not appropriate, as Des Plaines is not proposed as a comparable by either party.

The City also accuses the Union of intentionally distorting the internal comparisons. First, the Union omits reference to the public works employees, who receive only $325 annually for clothing. Second, the Union throws the cleaning

allowance afforded the FOP and MAP police units into the mix, ignoring the fact that the firefighters, unlike the police, "reside" at their fire stations and have access to City laundry facilities, an accommodation that the police units do not enjoy. Cleaning is not an issue, according to the City, and should not be considered. Nevertheless, the City adds that the fire department's budget contains a line item specifically for the dry cleaning of uniforms.

Discussion:

The Arbitrator again points out that interest arbitration is essentially a conservative process. Where the employees rank in any particular benefit among the comparables, both internal and external, is immaterial as a general rule. Absent a demonstrated need for some degree of "catch up" with the comparables group the Arbitrator's focus should be on ensuring that the employees keep pace with the group. Put another way, the focus is not so much on the current value of the benefits that others in the comparable communities receive as it is on whether that value has changed. The record in this case does not suggest that the uniform allowances received by any of the comparables increased or will increase during the period covered by this Agreement.

The Union's reference to bargaining history is not helpful. The record discloses none of the circumstances surrounding the give and take that led to the parties' earlier agreements and provides no indication that the parties ever agreed on a system or formula for determining future increases. The fact that the parties

negotiated increases in the first three contracts does not alone suggest that the firefighters should receive yet another increase in this next Agreement. The Arbitrator is here constrained by the nature of the proceeding and the requirements placed on his discretion by Section 14(h) of the Act, consideration of which does not support the Union's current demand for an increase.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the issue of Uniform Allowance. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 23, Section E – Uniform Allowance is adopted. It is so ordered.

Article 24, Section A – Wages – Annual Salary Schedule

The Union's Final Proposal

The Union proposes general wage increases as follows:

1. Effective May 1, 2012 – 2.00% across the board.

2. Effective May 1, 2013 – 2.50% across the board.

3. Effective May 1, 2014 – 2.75% across the board.

The City's Final Proposal

The City proposes general wage increases as follows:

1. Effective May 1, 2012 – 1.50% across the board for Firefighters and Captains; 1.75% across the board for Lieutenants.

2. Effective May 1, 2013 – 1.75% across the board.

3. Effective May 1, 2014 – 2.00% across the board.

The Position of the Union:

The Union supports its proposal first and foremost by reference to the external comparables. It asserts that the key here is not the firefighters' ranking among the other units, which the Union concedes will improve under either proposal. Rather, the key is the effect of each proposal on what the Union calls the Difference From Average ("DFA"), which measures the relationship of the wages received by the firefighters to the average among the external comparables. The data shows that in 2011[6], the final year of the expiring contract, DFA for these firefighters across all ranks and steps fell between 4.03% and 4.48%. The Union suggests the 2011 DFA will be maintained if the Union's proposal is adopted. For example, under the Union's proposal, DFA for Firefighters falls from 4.48%, at the top step, in 2011 to 4.21% after the second year of the Agreement, and then rebounds to 4.73% in the third year, albeit as shown by the limited data available for the third year.[7] On the other hand, under the City wage proposal DFA for

[6] References to years in this discussion refer to the year in which wage rates become effective and are not references to fiscal years unless the year is preceded by the letters "FY."

[7] Wage data comparable for the year beginning May 1, 2014, is available for only four of the external comparables.

Firefighters at the top step will fall to 2.84% by the third year of the Agreement.

The DFA for Lieutenants', which was 4.42% in 2011, rises to 4.49% in 2012 under the Union's proposal, and then falls back to 3.01% in 2014. Under the City's proposal the Lieutenants fall to 4.26% above average in 2012, and to 1.33% in 2014. Under the Union's proposal, the Captains' DFA falls from 4.03% in 2011 to 3.20% in 2012, and then rebounds to 4.28% in 2013. Under the City's proposal, the Captains' DFA falls to 2.73% in 2012, and then rebounds to 3.10% in 2013.[8]

Any reference to internal comparables would be misleading, the Union adds. To begin, the City has included its non-union employees in the analysis. It is well settled that non-union employees are not an appropriate group for comparison in these matters, see Village of Lake in the Hills and Metropolitan Alliance of Police, Chapter #90, ILRB Case No. S-MA-09-269 (Nathan, 2010) at 12 (it is settled arbitration law that non-union units cannot be considered unless there are insufficient organized units in an appropriate comparability group).

As to the bargaining units represented by FOP, MAP and IUOE, Local 150, the evidence shows that there is no uniformity in the wage increases that each received in 2012 and 2013, the last two years of available data. In other words, the City has merely shown by its internal data that it does not rely much on internal comparability in determining wages. Indeed, the evidence is undisputed that no

[8] The record contains no 2014 wage data for ranks equivalent to Captain among the external comparables.

parity relationships exist between any of the City's bargaining units. In fact, counsel for the City at one point in the hearing stated that the City has always looked to external comparability in determining matters of pay.

On the issue of inflation, the Union points to CPI-U data for the first year of this Agreement showing an increase in the consumer price index of .95%. That particular index is projected to rise 1.4% in the second year of this Agreement and 2.0% in the third year. Both parties have proposed increases that exceed CPI. The Union therefore concludes that the factor is immaterial to the analysis.

The Union also points to the issue of increases to employee contributions for healthcare, an issue currently held in abeyance and as yet unsettled. The Union points out that whatever the parties eventually settle on, those contributions will increase significantly. When the likely increases in healthcare premium contributions are factored in, the Union's proposed wage increases then exceed CPI-U "only slightly." (Union Brief, p. 39).

On the other hand, the City can clearly afford to pay what the Union is asking here. The evidence convincingly shows that the City is in sound financial health. Indeed, the City offered no suggestion to the contrary. Moreover, the parties' respective proposals are not "far off from one another" (Id). The Union's proposal, simply put, more closely meets the statutory criteria.

The Position of the City:

The City points out as an initial matter that all of its external comparables, save only Elmhurst, and also the Union's comparables, employ firefighter/paramedics, as well as firefighters, while this City employs only firefighters. The average pay differential for firefighter/paramedics over firefighters among the comparables is $4,200 per year. This is an important consideration to keep in mind when looking at the comparability data.

The starting point of the analysis must be the internal comparables. A review of the data dating back to 2006 shows that the firefighters have fared much better than any of the City's other employee "groups," including the FOP, MAP and public works bargaining units, as well as all other non-union rank-in-file employees. To begin, the parties negotiated for a 6.5% wage increase for the firefighters in 2006, which was then intended to catch the firefighter ranks up to the average of the wages paid to their peers in other, unnamed, communities. The following year, the parties negotiated a five-year agreement that included wage increases of 3.75% in each year. The intent in doing so was to maintain the firefighters at a wage level within 0.5% of that average. With the intervention of the Great Recession, however, the effect of the deal was to lift these firefighters to a greater level, vis-à-vis their peers in other communities, than was intended. It also resulted in them receiving much higher increases that did other City employees for the corresponding time period. With this in mind, the City notes

that assuming its wage proposal is adopted the total of the wage increases received by the firefighters over the seven-year period from 2006 through 2013 – the contracts covering other sworn units do not cover 2014 - will exceed that received over the same period by the FOP unit, the next in line, by 4.0%.

The City prefers to take a longer and backward looking view of the wage increases received by the firefighters here as compared to firefighters in the external groups. It looks to the seven year period from 2008, when the Great Recession hit, through 2014. The City notes that the parties' respective offers result in overall averages of the increases received by this bargaining unit over that seven-year period that are only .29% apart. However, the City adds that the Union's offer results in a cumulative average over the eight-year period that is at the top among the comparables, whereas the City's proposal places that average closer to the middle of the pack, although still somewhat above center.

The City again notes that this unit's rise to the top among the comparables was not the result of the parties' design, but rather the result of fortuitous timing. The City suggests that a proper division of the external comparables takes into account the wage premiums that are paid to employees classified as firefighter/paramedic. The differential in pay between a firefighter and a firefighter/paramedic, in those communities that employ both, averages around $4,500 per year. The Union's data on DFA does not account for the fact that the firefighters in this unit do not serve as paramedics. When properly compared to

their firefighter peers, the employees in this unit are at the very top of the class. In fact, the City suggests, the base pay of the firefighters in this unit would fall to the average of the comparables only if they received no increases during the term of this Agreement.

The record reveals a dramatic drop in the percentage wage increases among the comparables in the years immediately following the onset of the recession. Increases thereafter dropped from the pre-recession percentage by as much as two percentage points, except in this City where the firefighter enjoyed the fortune of a long-term labor agreement. More recently, the increases seen among the comparables are "trending slowly upward" (City Brief, p. 28). Nevertheless, the Union's proposal exceeds the averages received even in these more recent times.

There should be no expectation that the firefighters in this bargaining unit will continue to enjoy base salaries near the top among the comparables. The record shows that "the City has established a long term historical practice of maintaining a salary ranking at or just above the average of the external comparable communities" (City Brief, p. 32).

Discussion:

The Arbitrator finds that each party's proposal on wages is reasonable and finds some support among the comparables. The task here is to arrive at a determination of which proposal is more reasonable in light of the Section 14(h) factors. This Arbitrator has consistently said that this task must start with a

discussion of the external comparables, see McHenry County, S-MA-12-001, at p. 10 ("external comparability is of primary importance in the analysis of the parties' respective proposals"). In the typical case, not involving a demonstrated need to catch up to the pack, percentage-to-percentage comparisons of the respective proposal with the wage settlements shown among the external communities is the most commonly used approach. See, County of Cook and Sheriff of Cook County and Teamsters Local Union No. 714, L-MA-95-01 (Goldstein, 1995). Two initial points should be kept in mind. First, notwithstanding the structure of the City's proposal, the parties presented the issue of general wage increases as a single issue. The effect of the increases is of course greatest at the rank of Firefighter, which is where this analysis will be centered. Second, as the Arbitrator suggested earlier in this Award, the current numerical ranking of the firefighters at issue here among the comparables is less important than the question of whether any particular proposal will result in them keeping pace with the comparables on a percentage-to-percentage basis. Accordingly, the Arbitrator will not divide the comparables into firefighter and firefighter/paramedic groups. The evidence does not suggest that doing so would yield a more accurate or helpful picture of the percentage increases that have been or will be received by either group.

All in all, external comparability, as just described, seems to favor the Union's proposal. A review of the wage data for all the comparables yields average increases in each of the years covered by this Agreement, 2012 through

2014, of between 2.0% and 2.5%. Although the available data is somewhat sparse, particularly in the second and third years, the data nevertheless seems to be in line with wage settlement trends among Section 14 units generally in the State, as this Arbitrator has gathered from his own review of published police and fire wage data. In other words, the Arbitrator sees no indication from this record that would suggest that the average of the final settlements among all the external units will be more favorable to the City's position. Equally important, the Arbitrator agrees with the Union's focus on maintaining the current DFA, which the Union's proposal appears to accomplish and the City's proposal does not.

The Arbitrator appreciates the City's contention that its proposal will effectively maintain, even enhance the ranking of these firefighters among the comparables. It also appears that the Union's proposal will push these firefighters ahead of Mount Prospect. However, the impact of the Great Recession, which is still being felt today, has not been even across communities. In any given set of comparables, some communities will be found to be struggling financially more than the others. Wage increases are today not only lower than they were before the crash, see City of Belleville and IFOPLC, S-MA-08-157 (Goldstein, 2010), at p. 41 (commenting that wage increases of 3% to 4% are no longer common), they are also less apt to be uniform across any comparables group. While the average increases now being received in Section 14 units appears to be around 2.5%, it is at the same time not uncommon to see isolated examples of much lower increases,

even wage freezes, being awarded or agreed to from time to time. The record suggests that Mount Prospect may be an example of this. In any event, the increases received by the firefighters in that community, amounting to 3% total for the years 2012 through 2014, appear as an anomaly among the comparables. The fact that this Award may push this City's firefighters ahead of them is not, in this Arbitrator's view, a significant factor. It is certainly not a sufficient basis for awarding these firefighters less that what the rest of the comparables are receiving.

The Arbitrator does not dispute the City's suggestion that this unit has fared well, in fact better than most, in the years beginning and since the onset of the recession. Indeed, they seemed to have benefitted greatly, in relative terms, from the wage increases that were included in their last agreement with the City, which the City characterizes as a long-term agreement fortuitously signed just months before the recession hit. They also benefitted from the 6.15% "equity adjustment" that they received in 2006. However, the evidence does not establish a mutual agreement to what the City terms as its long-term policy of maintaining the wages of these firefighters at the average among some unidentified group of comparables. The facts establish only that these prior wage increases were the product of arms-length negotiations. It would disserve the overall scheme of the Act for the Arbitrator to now effectively hold these negotiated increases against the Union.

Even taking account of the seven-year averages for the comparables

suggested by the City, from 2008 through 2014, the average wage increase for this unit resulting from the Union's proposal is not out of line with the averages received by in the other communities. Moreover, the City concedes that its own proposal will not significantly change the overall seven-year average of the increases for this unit. In any case, the City has not shown any financial hardship that has resulted from the increases that this unit has received since the onset of the recession or that would likely result from an award of the Union's proposal here.

Indeed, the Arbitrator finds that the data on internal comparables, most notably the FOP and MAP units, strongly favors the City's proposal. The Union's suggestion that the data shows only that the increases among the internal groups is not uniform does not address the fact that over the first two years of this Agreement, 2012 and 2013, the increases received by the other units are much more in line with the City's proposal than the Union's proposal. On the other hand, internal parity is not an issue here. Moreover, the record does not disclose the circumstances that led the FOP and MAP units to agree to the increases.[9] For example, the record does not rule out that they were not persuaded to do so by the offer of some significant quid pro quo.

More to the point, this Arbitrator agrees with the apparent view of Arbitrator Elliott Goldstein, as explained in County of Macoupin and PBLC, S-

[9] The Arbitrator found no published arbitration awards for the FOP or MAP units and therefore assumes that their contracts were negotiated in full.

MA-09-065 (Goldstein, 2012), that the real value of internal comparability, at least in terms of the heightened attention that the factor has been given in the years since the recession began, is the extent to which the employer's treatment of its other bargaining units tends to support or undermine any appeals of the employer for austerity. The City is not claiming any economic distress. The settlements that it reached with the FOP and MAP for 2012 and 2013 simply do not support an award of wage increases to this unit that are clearly sub-par vis-à-vis the external bargaining units. The Arbitrator notes further that with the exception of the last two reported years, 2012 and 2013, the FOP and MAP units have received annual increases since the recession hit that are certainly comparable, and in some cases more than, the increases that this unit has received. In these circumstances, the Arbitrator, although duty bound to consider the internal comparables, finds no basis on which to give them substantial weight.

CPI is not a significant factor here. Each party's proposal far exceeds projected and actual CPI. That the City's proposal exceeds CPI by less than does the Union's proposal, is not a matter of great concern to the Arbitrator. It is not sufficient to tilt the tables in the City's favor on this issue.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the City's with respect to the issue of general wage increases. Accordingly, the Union's final offer is

hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 24, Section A – Annual Salary Schedule is adopted. It is so ordered.

Article 24, Section B – Straight-Time Hourly Rate; Article 26, Section B – Normal Work Day and Work Week, Section C – FLSA Work Period

(Kelly Days)

The Union's Final Proposal

The Union proposes equity adjustment increases as follows:

Article 24:

First Paragraph shall provide:

The basic rate of pay shall be computed by dividing the annual salary by 2713.29 hours for twenty-four (24) hour shift employees. Effective January 1, 2014, the basic rate of pay shall be computed by dividing the annual salary by 2697 hours for twenty-four (24) hour shift employees.

B. Straight-Time Hourly Rate

The regular and basic hourly rate of pay shall be determined and computed by dividing the employee's annual salary, and any incentives, by 2713.29. Effective January 1, 2014, the regular and basic hourly rate of pay shall be determined and computed by dividing the employee's annual salary, and any incentives, by 2697.

Article 26:

B. Normal Work Day and Work Week

The normal work day and work week for employees shall be twenty-four (24) hours of work (one shift) followed by forty-eight (48) consecutive hours off (two shifts). ~~Effective Jan 1, 2004 a~~ A Kelly

day (i.e., what would otherwise be a twenty-four (24) hour duty day) shall be scheduled off every ~~fifteenth (15th)~~ fourteenth (14th) duty day, thereby reducing the normal work week to an average of ~~52.27~~ 52.00 hours (the Kelly day shall include twelve (12) hours from each of two (2) consecutive twenty-seven (27) day work cycles as described in Section C of this Article). Shifts shall commence at 0700 and end at 0700 the following day.

Effective January 1, ~~2006~~ 2014, a Kelly day shall be scheduled every ~~fourteenth (14th)~~ thirteenth (13th) duty day ~~with~~, thereby reducing the normal work week to an average of 51.7 hours (the Kelly day shall include twelve (12) hours from each of two (2) consecutive twenty-seven (27) day work cycles as described in Section C of this Article). Shifts shall commence at 0700 and end at 0700 the following day. Appropriate scheduling changes shall be made such that it will not cause the City to incur additional FLSA overtime. ~~Effective January 1, 2006, the employees' straight time hourly rate shall be based on 2713.29 annual hours~~.

C. FLSA Work Period

~~Prior to May 1, 2003,~~ The work cycle of each employee for the purpose of the Fair Labor Standards Act (FLSA) will continue to be an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 7:00 p.m. to 7:00 p.m. The amounts set forth on the salary schedule represent a fixed annual amount to be received for straight time pay for ~~2,740~~ 2713.29 hours including regular tours of duty and paid leaves.

Effective January 1, ~~2006~~ 2014, concurrent with the implementation of a regular work schedule providing for a Kelly day every ~~fourteenth (14th)~~ thirteenth (13th) shift, the City may utilize any authorized FLSA work cycle it deems appropriate. This work period shall be established so that the last day of a preceding work period falls on the first twelve (12) hours of the employee's Kelly day (7:00 a.m. to 7:00 p.m.) and the first day of the next work period falls on the last twelve (12) hours of the employee's Kelly day (7:00 p.m. to 7:00 a.m.), there-by ensuring that the maximum regularly scheduled hours worked in the applicable work period is less than the applicable

The City's Final Proposal

The City proposes to maintain the status quo.

Position of the Union:

The Union's proposal really comes down to an increase in the frequency in which Kelly Days are earned. All of the remaining changes in the Union's proposal are the collateral effects of the proposed increase in the frequency of Kelly Days being earned. The Union again cites bargaining history as support for its proposal, as it did with respect to its proposal to raise the uniform allowance. The Union points out that in January 2001, midterm in the parties' first labor agreement, the frequency of Kelly Days increased from every 18th duty day to every 17th duty day. Midterm in the next agreement, effective January 2004, the frequency again increased to every 15th duty day, and again to every 14th duty day the following January. The Union concedes that the Kelly Day rate was unchanged during the term of the agreement now expiring. The Union asserts that the parties have traditionally changed the frequency of Kelly Days in the month of January in order to have the change coincide with vacation selections, which also occur each January. Its proposal is geared, accordingly, to cause the least amount of disruption and ensure a smooth transition. (Union Brief, p. 44).

The Union points out that the average among the external comparables as to annual hours worked was 2,698 in 2011. In fact, the evidence shows that in terms of total hours worked, this unit was 0.57% above the average in 2011 and 2012, and 1.03% above the average in 2013. Although the Union's proposal will reduce

total hours worked to 2,697 in 2014, that total will nevertheless be 1.15% above the average for 2014.

The Union suggests that its members are lagging behind the comparables in terms of actual hourly rate, a measure of career average base salary, plus pay premiums and stipend, and holiday benefits, divided by annual hours worked. By that measure, the firefighters in this unit ranked eighth among the Union's thirteen comparables in 2011, with a DFA of -0.54%. Assuming the Union's proposal is adopted, this unit's ranking will nevertheless move to fifth of eight among the comparables in 2013, with a DFA of -1.79%, but will recover to third of five in 2014, with a DFA of +1.03%. If the status quo is maintained, as the City proposes, these firefighters will move to 6 of eight in 2013, with a DFA of -3.44%, and recover only slightly in 2014 to three of five, with a DFA of -2.98%. The conclusion is that the Union's proposal will effectively maintain the current ranking of these firefighters among the comparables while the City's proposal will result in a significant loss of ground.

Position of the City:

The City contends that the Union's proposal is effectively a raise in the employees' "effective straight time hourly rate – it asserts that this hourly rate would increase from $30.17 to $30.35, but does not specify the salary on which the calculation is based. The City adds that while the change will not impact annual base salary, it will have an impact on overtime pay and so would increase

the annual wages paid to the firefighters. The Union's proposal is not only a move to reduce the firefighters' hours of work, it is also an indirect route to increase their pay.

The City reminds the Arbitrator that all of the previous changes in the frequency of Kelly Days that the Union alludes to in its presentation were negotiated. The City further reminds the Arbitrator of his reasoning, stated in City of Alton and Associates Firefighters of Alton, Local 1255, S-MA-06-006 (Fletcher, 2007), at p.7, where this Arbitrator noted with approval that:

> "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."

Indeed, this Arbitrator and numerous other arbitrators have noted that it is not their duty to award one-sided benefits to either party. In this case, the Union has offered no quid pro quo for increasing the number of Kelly Days that it seeks for its members, for the first time through arbitration.

The number of Kelly Days that the firefighters in this unit currently enjoy is above average, among the comparables. The City suggests that the average among

the Union's comparables is 8.43 days annually, and the median is 7.88 days. The firefighters here, on the other hand, already receive 8.69 Kelly Days per year.

Discussion:

The Arbitrator refers the parties to his discussion above regarding the Union's proposal to increase the Uniform Allowance and the nature of the interest arbitration process. That discussion fairly echoes the discussion set out in City of Alton, cited by the City. The Arbitrator again can find no basis for awarding the Union its proposed increase in benefits. The arguments set out by the Union as to the long-term effects of maintaining the status quo on Kelly Days seem at best to be too clever. The bottom line is that the record does not show that the number of Kelly Days enjoyed by firefighters in the comparable communities have increased in recent years or will increase during the term of this Agreement.

Although the actual costing of the Union's proposal is not set out in the record, the Arbitrator believes that the cost to the City in manpower and overtime would be significant. The Arbitrator also has in mind that the wage increases that the firefighters will receive in this Agreement, under this Award, are significant. Moreover, the Arbitrator agrees with the City's assertion that the Union has not offered any quid pro quo for what is essentially a further enhancement of their pay.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator

finds the City's final proposal to be more reasonable than the Union's with respect to the issue of Kelly Days. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 24, Section B – Straight-Time Hourly Rate; Article 26, Section B – Normal Work Day and Work Week, Section C – FLSA Work Period (Kelly Days) is adopted. It is so ordered.

Article 25 – Longevity Pay

The Union's Final Proposal

The Union proposes the following:

> Employees shall receive additional salary after meeting the following service requirements: After completing nine (9) years: ~~five hundred ($500)~~ one thousand ($1,000) After completing nineteen (19) years ~~one thousand five hundred ($1500)~~ two thousand ($2,000).
>
> ~~Captains/Shift Commanders will be eligible for longevity pay beginning May 1, 2008~~

The City's Final Proposal

The City proposes to maintain the status quo.

Position of the Union:

The Union again suggests that by its proposal, this time for increases in longevity pay, is intended to prevent its members from losing ground to the comparables. As it did with regard to Kelly Days, the Union offers a series of charts showing the ranking of its members and DFA vis-à-vis the comparables, in terms of overall pay including longevity, for each year of the Agreement. It sums the charts up in its Brief, showing that whereas its proposal will slightly improve its members' ranking and DFA during the term of the Agreement, the City's insistence on maintaining the status quo on longevity will reduce DFA from 4.48% at ten years of service in 2011 to 3.06% at ten years of service in 2014, and from 5.03% at 25 years of service in 2011 to 4.04% at 25 years of service in 2014.

The Union raises internal comparability in support of its proposal. The FOP unit, according to the Union, receives $1,000 after completing 14 years of service and $2,000 after completing 19 years of service. The MAP unit fares even better, receiving $1,200 after 14 years of service and $2,200 after 19 years of service.

Position of the City:

The City points out that a third of the Union's external comparables offer no longevity at all. Moreover, in its presentation the Union failed to account for the fact that the external comparables include communities that employ firefighter/paramedic personnel. The data for these comparables show an average pay differential between firefighter and firefighter/paramedic classification of

more that $4,200 per year. Properly factored, the actual ranking of these firefighters in terms of base plus longevity pay is second of thirteen among the Union's comparables.

A more meaningful analysis is one that takes stock of the total longevity paid to a firefighter during his or her career. On that measure, this City's firefighters rank third among the Union's comparables in terms of total payout over a twenty-five year career.

The City points out that the Union's claims that its members will lose ground over the term of the Agreement is supported only by the Union's misleading accounting. The Union does not show that the longevity increases paid in the external communities will go up during the term of the Agreement. Rather, it shrinks the pool side, thus skewing the average. In fact, the Union's proposal amounts to an increase in longevity of 100% at the nine-year mark and 33% at the 19-year mark. This will catapult the Union's members to the top of the comparables.

Internal comparables should be of no help to the Union. There has been no historical parity between the firefighters and police. Moreover, the other internal groups, the public works unit and unrepresented employees, receive no longevity pay.

Discussion:

The Arbitrator finds no reason to discuss this issue at length. For purposes of convenience, the Arbitrator simply refers to the discussions herein on the issues of Uniform Allowance and Kelly Days. The Arbitrator notes his agreement with the City's point that the Union's arguments suggesting that these employees will lose ground under the status quo are misleading. Again, the bottom line is that the Union has not shown that the longevity pay for the comparables, either internal or external, has changed in recent years or will change during the term of this Agreement.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the issue of Longevity Pay. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 25 – Longevity Pay is adopted. It is so ordered.

Article 29 – Severance Pay

The City's Final Proposal

The City proposes the following:

TIER 1: Members of the bargaining unit who have 15 years plus one (1) day of service shall upon termination by resignation, retirement, or departure due to award of a disability pension be entitled to a one (1) time severance payment equal to two (2) months pay. Such severance pay shall be based upon the average monthly salary earned during the current fiscal year. Payment shall be made in one lump sum not more than forty-five (45) days after separation.

TIER 2: Members of the bargaining unit, hired after 3/1/2014, who have 15 years plus one (1) day of service, shall upon termination by resignation, retirement, or departure due to award of a disability pension be entitled to a one (1) time severance payment equal to one (1) month pay. Such severance pay shall be based upon the average monthly salary earned during the current fiscal year. Payment shall be made in one lump sum not more than forty-five (45) days after separation

The Union's Final Proposal

The Union proposes to maintain the status quo.

Position of the City:

The City points out that Lombard is the only community among all the comparables that currently pays severance to its firefighters, which benefit – four to nine weeks of pay - is roughly equivalent to the two months of pay received by the firefighters in this unit. External comparability is therefore of little value in the analysis, except to the extent that it shows that the City "stands out as generous." (City Brief, p. 8).

The City tells the Arbitrator that the current cost of severance to the City is $9,469 for a firefighter at the top step. It suggests that this is not an insignificant sum for the City to pay to departing employees. It is also a benefit that is shared by all of the City's employees, both union and non-union. The City asserts that since the onset of the Great Recession it has been looking for ways to reduce unfunded liabilities, which includes severance. In their last negotiations with the City, both FOP and MAP agreed to the establish a second tier benefit that pays severance equal to one month of pay to employees hired after January 1, 2013. IUOE Local 150 agreed to the elimination of the benefit altogether for public works employees hired after January 1, 2012, and the City eliminated the benefit for all new hires in non-union positions.

The City asserts essentially two rationales for proposing to reduce the benefit for new hires in this unit. First, allowing new hires in this unit alone to continue to receive the full two-month benefit will create "major inequalities among the new employees." (City Brief, p. 10). Second, the City asserts that it did not survive the Great Recession unscathed. Between January 2009 and January 2010, it eliminated 13% of its workforce, laying off both union and non-union employees. The City also notes that the employees in this unit were untouched by the layoffs. It now seeks to balance its need to "adjust its financial circumstances for the future" against the expectations of current employees that they will receive the benefit once they are eligible, i.e. after 15 years of service. (City Brief, p. 11).

The City is demonstrating a commitment both to its current employees and its citizen taxpayers.

Position of the Union:

Not surprisingly, the Union opposes the creation of a two-tiered system. It tells the Arbitrator that the creation of two-tiered benefit systems should be left to the parties in arms-length bargaining. Such systems should not be imposed through interest arbitration. The Union directs this Arbitrator to the findings of Arbitrator Raymond McAlpin, who ruled against a proposed two-tiered residency requirement in City of Centralia and IFOPLC, S-MA-09-076 (McAlpin, 2010). Arbitrator McAlpin in that case reasoned that the proposed system was not only a major change to the status quo, it would also likely lead to future divisions within the bargaining unit. He observed that "collective bargaining in the public sector is difficult enough without adding this emotional item to the mix." City of Centralia, S-MA-09-076 at 13-14.

As both parties have noted where convenient, the Union on this issue again points out that the City has conceded the absence of any internal parity. It asserts that the City cannot on this issue base its position on internal comparability when it has discounted the factor as to other issues raised by the Union. The City "simply cannot have it both ways." (Union Brief, p. 57).

In any event, the fact that comparability factors may support the City's position is immaterial. The City is seeking to change the status quo. It has the

burden of proving a need for the change and that a quid pro quo is offered in exchange for the change. Here, the City has not even raised any arguments that address these burdens.

Discussion:

The Arbitrator suggests that the City's arguments on this issue contain the only real attempt by the City to raise its financial condition as a significant point for consideration. The Arbitrator does not discount the argument despite the fact that the City did not place in the record any hard data to support its claimed need to reduce future liabilities. After all, if any single lesson is to be learned from the financial collapse in 2008 and the shaky recovery thus far seen it is the prudence of planning for future financial difficulties. On the other hand, the Arbitrator does not believe that the City is entitled to an award of its proposal to create a new severance system simply because doing so would be prudent. The Union is correct in its assertion that the City bears the burden to prove that the change is necessary. The lack of any hard financial data precludes a finding that a reduction in the City's future liabilities as to this unit under this Agreement is in fact necessary. In the face of this absence of proof, comparability factors really do not come into play.

The fact that the City's other unionized employees agreed to the changes that the City proposes here is not enough to tilt the balance in the City's favor. Those employees and their unions were free to do so, as this Union is. This

Arbitrator can only assume that in doing so, the other unions took stock of the risks that Arbitrator McAlpin rightly pointed out. The key fact is that the other unions agreed to the change in severance and the creation of two-tiered systems in arms-length negotiations. The record does not disclose what considerations were given for their agreement, what quid pro quo offers may have been made, if any. This Arbitrator will leave the issue for future negotiations. He will not impose a reduction in the benefit or a two-tiered benefit system here.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the City's with respect to the issue of Severance Pay. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 29 – Severance Pay is adopted. It is so ordered.

Article 32 – Holidays

The Union's Final Proposal

The Union proposes the following:

The following holidays are those which shall be recognized and observed:

New Year's Day
Presidents Day

Friday before Easter
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Friday following Thanksgiving
Christmas Day

In addition to the foregoing holidays, each employee shall receive one (1) personal day to be used in a minimum of twelve (12) hour increments.

The City's Final Proposal

The City proposes to maintain the status quo.

Position of the Union:

The Union points out that the firefighters in this unit lag behind the average among the external comparables in terms of the number of observed holidays by some 2.19%. The Union's proposal serves to close the gap a bit, but without changing the unit's ranking among their peers. The City's proposal, on the other hand, will cause the unit to lose ground to the average of the comparables, with the DFA growing to "a staggering" 19.68% in 2014.

The Union adds that in terms of total time off, i.e. vacations, plus personal and holiday time, the members of this unit are significantly their peers in the comparable communities, particularly in the early years of employment, 34.03% after three years to give one example. Overall, the members of this unit rank tenth among the Union's 13 comparables, with a DFA of -5.5% after twenty years of service. Taking into account the Union's proposals on holidays and Kelly Days,

the overall DFA will improve to -0.55% after the proposed changes take effect in January 2014. In terms of total annual hours worked, the Union's proposals will put these firefighters above the average in 2014, but only by 0.95%. The City's proposals, on the other hand, will increase the differential to average, as of January 2014, to -2.56%.

The Union also analyzed the total compensation of its members compared to that of the firefighters in the comparable communities, taking into account average career salary, the value of holiday benefits and any premiums received by the firefighters, such as an educational stipend. Accordingly, the firefighters in this unit ranked eighth among the Union's 13 comparables in 2011, with a DFA of -0.54%. The Union's proposal will maintain that ranking, with the ranking moving to seven of 13 in 2012, with a DFA of -0.17%; and three of five in 2014, with a DFA of 1.03%. The result of the City's proposal will be that the firefighters ranking will fall to ninth in 2012, with a DFA of -1.07%; and to three of five in 2014, but with a DFA of -2.98%.

Position of the City:

The City suggests that the majority of the external units, seven out of its nine proposed comparables, or 78%, offer no personal days to their firefighters. That majority shrinks to 66% among the Union's comparables.

The City complains that the Union's analysis neglects the issue of costs. The City asserts that it will incur additional costs under the Union's proposal in

hiring back firefighters, across all ranks, to replace firefighters as they use the new time off. Using what it calls a composite average overtime rate of $52.67 per hour, the City calculates the current annual cost to the City of the new personal day at $44,242.

The City also notes that the addition of the personal day would create an internal inequality vis-à-vis the other City units. The City points out that a single personal day for a firefighter is the equivalent of three days for any of the City's other employees. Currently, employees in the FOP and MAP units enjoy only one personal day per year; public works employees and non-represented employees enjoy two personal days per year. The City adds that the firefighters already enjoy greater vacation benefits than do its other employees, comparing 300 hours annually for a firefighter with 20 years of service to just 200 hours for all other City employees with similar length of service. In fact, the City further adds, new hires under a two-tiered system applicable to public works and non-represented employees will reduce that annual vacation benefit to 160 hours.

The City argues that the Union's proposal constitutes a breakthrough. There is no current personal day benefit. Moreover, the Union seeks to justify the new benefit by reference to other benefits that the Union does not address in its proposal, i.e. holidays and vacations, and also Kelly Days, which the Union seeks to increase it these proceedings. The comparisons are misleading because the Union fails to account for variables such as carry over and cash out equivalents.

Put simply, the Union's analysis fails to provide a meaningful assessment of the comparables that supports its proposal.

Discussion:

The Arbitrator is compelled to once again note the lack of evidence supporting the Union's proposal. The City's arguments on this issue are well taken. The Arbitrator once again notes that the Union's arguments suggesting that these employees will lose ground under the status quo are entirely the product of an accounting sleight of hand that rests upon a shrinking of the pool of comparables without any showing that the benefits afforded among the comparables, either internal or external, have changed in recent years or will change during the term of this Agreement.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the issue of Holiday. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 32 – Holidays is adopted. It is so ordered.

Article 34 – Life Insurance

The Union's Final Proposal

The Union proposes the following:

Employees shall be afforded fifty-thousand ($50,000) dollar life insurance plan. Effective May 1, 2014, employees shall be afforded a seventy-five thousand dollar ($75,000) life insurance plan.

The City's Final Proposal

The City proposes to maintain the status quo.

Position of the Union:

The Union submits that the $50,000 life insurance benefit currently afforded its members ranks seventh of ten among the external comparables. The DFA for the benefit is -46.3%. An increase to $75,000, as the Union proposes, will lift the benefit for these firefighters to sixth of ten among the comparables, with a DFA of 2.5%. Even under the City's analysis, which is based on comparables cherry picked to put the City in the best light, the median benefit currently afforded the firefighters in the City's comparable communities us $81,472.

The Union objects to what it perceives as the City's attempt to oppose the Union's proposal based on internal comparisons. The Union does not suggest that other City employees currently enjoy a greater life insurance benefit that the $50,000 benefit afforded the Union's members. However, it notes, the City's insistence on other issues that there is no internal parity cannot be overlooked.

Position of the City:

The City points out that the Union's proposal amounts to a 50% increase in the life insurance benefit. The current benefit is equal to or greater than the benefit afforded any of the City's other units. On this issue, the City adds, there is a history of parity among the three units of the City's sworn employees.

The City concedes that the current benefit is less that the average among the external comparables. However, the City quotes from Arbitrator Benn's opinion in City of Highland Park and Teamsters Local 700, S-MA-09-273 (Benn, 2013), at p. 5:

> "In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that "good ideas" alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration – where an outsider imposes terms and conditions of employment on the parties – must be the *absolute* last resort."

Accordingly, the City asks that the Arbitrator award the City's proposal to maintain the status quo.

Discussion:

The Arbitrator finds that as was the case in reference to the Union's proposals to increase benefits for its members with respect to Uniform Allowance, Longevity Pay, Kelly Days and Holidays, the Union has offered no evidence that

the benefits have changed among the comparables. The Arbitrator believes that no purpose would be served by repeating the points he made in his discussions on those issues. Nevertheless, the Arbitrator as a final coda adds that there is nothing inherently wrong with the Union's desire to raise the benefits afforded its members to a level equal to, or even greater than, the benefits afforded comparable employees in other communities. The Arbitrator also believes, however, that the overall scheme of Section 14 of the Act favors reserving such increases for arms-length bargaining. It is not the responsibility of the Arbitrator to change the status quo in terms of ranking or differentials among the comparables in the absence of a proven need.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the issue of Life Insurance. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 34 – Life Insurance is adopted. It is so ordered.

Article 41 – Sick and Injury Leave, Section A - Accrual

The City's Final Proposal

The City proposes the following:

A. Accrual

Sick leave shall be credited to all probationary and regular full-time sworn employees of the fire department at the rate of one (1) work day for each two full months of service and shall be accumulated to a maximum of sixty (60) working days for each employee. After the accumulation of sixty (60) days, sick leave shall be credited at the rate of one-half (.5) day for each two full months of service up to a maximum amount of eighty (80) days. If an employee has greater than eighty (80) days accrued as of 1/1/2014, the amount accrued on 1/1/2014 will be established as their maximum allowed balance.

Sick days earned above the eighty (80) day cap, or above the maximum allowed for grandfathered employees, will be credited at one-half (1/2) day every two (2) months in each employee's special bank. Accumulated sick leave days in the special bank shall be utilized prior to other accumulated sick leave days. Sick leave days shall be credited annually as follows:

- The 12 month accrual period will run from November 1 through October 31.
- Sick leave "bought back" through the City's Sick Leave Buy Back Program will be subtracted from the 12 month accrual total prior to payout.

For the remaining sick leave days accrued during the 12 month period:

- One-half (1/2) days per accrued sick day over that employee's specific accrual maximum will be paid into a 457 deferred compensation plan; and
- One-half (1/2) days will accrue in a special bank for sick leave use purposes only (from eight (80) days (or grandfathered maximum allowed) to a possible on hundred (100) day maximum).

The Union's Final Proposal

The Union proposes to maintain the status quo.

Position of the City:

The City suggests that its proposal is in line with the sick leave benefits currently afforded all other City employees. Sick leave accrual for all other City units is capped at 800 hours, or 100 shifts. The other sworn units agreed to the caps in their last negotiations. The public works unit also agreed to create a second tier for new hires under which the accrual maximum is capped at 600 hours, or 75 shifts. The firefighters are now the only group that enjoys an unlimited accrual of sick leave.

The City contends that the external comparables also support its proposal. Sick leave accrual for six of the City's nine comparables, nine of the Union's 12 comparables and six of the eight common comparables is capped, most at level below that proposed by the City here. The average capping among the City and the common comparables is 68 shifts. The average among the Union's comparables is 82 shifts. The City's proposal caps sick leave accrual at 80 shifts, which is reasonable.

The City notes that it does not seek to reduce current sick leave banks for the firefighters. Rather, it seeks merely to apply the caps going forward. The purpose of doing so is to prevent internal inequities that would result from the

status quo and to control future costs "that will impact new hires more than a decade from now." (City Brief, p. 15).

Position of the Union:

The Union again objects to the City's reference to internal comparables as support for its proposal. The Union observes in its Reply Brief that the record contains no evidence to suggest a pattern of standardization of benefits among the various units. Internal comparability is effectively irrelevant.

External comparables show a significant number of communities with no cap on sick leave accrual. Others among the comparables have sick leave caps that are significantly higher than that proposed by the City here. External comparability really supports maintaining the status quo.

The Union argues that the City has not met its burden to show a basis for altering the status quo. The City made no argument and offered no evidence that demonstrates a need to change the status quo, the Union adds. The City, for example, offered no evidence to show that the current benefits are not used by the firefighters or that the cost of maintaining the status quo on accrual would be prohibitive. Equally important, the City offered no evidence of a quid pro quo for the change.

Discussion:

The Arbitrator agrees with the points raised by the Union, in their entirety. The City has shown no need to change the status quo by imposing a cap on sick leave accrual. It merely alludes to a desire to control future costs without presenting any evidence to suggest that the costs of maintaining the status quo are currently a substantial drag on City finances or are projected to be so in the future. It has also failed to show any quid pro quo for the change. Accordingly, the Arbitrator refers the parties back to the above quote of Arbitrator Benn, for City of Highland Park, S-MA-09-273, with an added suggestion that the parties address their many "good ideas" at the bargaining table.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the City's with respect to the issue of Sick and Injury Leave Accrual. Accordingly, the Union's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article 41 – Sick and Injury Leave, Section A - Accrual is adopted. It is so ordered.

XI. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

/s/ John C. Fletcher
John C. Fletcher, Arbitrator

Poplar Grove, Illinois, February 20, 2014