BEFORE THE INTEREST ARBITRATOR
THOMAS F. GIBBONS

In the Matter of the Interest Arbitration Between VILLAGE OF MORTON, Employer and POLICEMEN'S BENEVOLENT & PROTECTIVE ASSOCIATION LABOR COMMITTEE Union	)	ILLINOIS LABOR RELATIONS BOARD Case No. S-MA-16-197 FMCS Case No. 181012-00360

Hearing Date:	March 7, 2018
Hearing Place:	Village of Morton Police Department 375 W. Birchwood Street Village of Morton, IL
Appearances:	
For the Employer:	Bradford B. Ingram, Esq. Syed E. Ahmad, Esq. Heyl, Royster, Voelker & Allen 300 Hamilton Square Peoria, IL 61601-6199
For the Union:	Shane M. Voyles, Esq. Senior Staff Attorney Policemen's Benevolent & Protective Association Labor Committee 840 South Spring Street Springfield, IL 62704
Interest Arbitrator:	Thomas F. Gibbons, Esq. Northwestern University Wieboldt Hall, Sixth Floor 339 East Chicago Avenue Chicago, IL 60611
Date of Award:	May 29, 2018

JURISDICTION

The hearing in this matter took place on March 7, 2018 at the Village of Morton Police Department before the undersigned Arbitrator who was duly selected by the parties through the appointment process of the Illinois Labor Relations Board. The Union and the Employer agreed at the outset of the interest arbitration hearing that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315/14, (hereinafter referred to as "IPLRA" or "Act"). Tr. 5-6.[1] On or before March 2, 2018, the parties submitted Final Offers to the Arbitrator, and at hearing the parties offered their evidence in narrative fashion, each submitted exhibit notebooks, and filed timely post-hearing briefs on or before April 27, 2018.[2]

STATEMENT OF ISSUES

The parties agreed at hearing that there are two economic issues to be decided: 1. Wages, and 2. Health Insurance Contributions, and three non-economic issues relating to: 1. Compensatory Time, 2. Vacation Time, and 3. Residency. Tr. 6.

THE EXTERNAL COMPARABLES

The parties agreed that the following neighboring communities would serve as the external comparables: East Peoria, Pekin and Washington.

FACTUAL BACKGROUND

The Village of Morton is a suburban community with a population of almost 17,000 located in Central Illinois in Tazewell County. Morton, located approximately halfway between Peoria and Bloomington-Normal, has a total area of 12.9 square miles. The Policemen's Benevolent & Protective Association Labor Committee represents the

[1] References to the hearing transcript are designated as "Tr. __."
[2] The parties at hearing submitted Exhibit Notebooks. For purposes of identification, the notebooks are marked as Union Exhibit 1-19, and Employer Exhibit A-G.

Village's patrol officers and sergeants, whose previous Collective Bargaining Agreement ran from May 1, 2011 through April 30, 2016. Union Ex. 14. There are 22 police officers in the department and 20 of them are members of the bargaining unit. Tr. 61. The parties engaged in extensive negotiations to put into place a successor contract but ultimately reached impasse as to the issues before the Arbitrator, subsequently filing for interest arbitration on the outstanding issues. Additionally, the parties on February 8, 2018 attempted to mediate the issues in dispute but failed to reach an agreement. Subsequently, the parties submitted Final Offers to the Arbitrator. The parties agree that all other tentative agreements between the parties shall be incorporated into the Arbitrator's Award. Pursuant to Section 14 of the IPLRA and Section 1230.80(b)(4) of the Illinois Labor Relations Board's Impasse Resolution Rules, the matter is now properly before the Arbitrator. The parties waived the statutory tripartite panel and agreed to submit their dispute to the Arbitrator for final and binding resolution. Tr. 5-6.

STATUTORY CRITERIA

This proceeding is governed by the provisions of the Illinois Public Labor Relations Act, *supra.* The IPLRA makes a distinction between economic and non-economic issue. The IPLRA states, "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(g)(2006). That same restriction is not placed on the items considered non-economic, which allows the Arbitrator flexibility in shaping a resolution. The applicable statutory factors, per 5 ILCS 315/14 (h), are as follows:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
4. Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and

conditions of employment of other employees performing similar services and with other employees generally:

(A) In the 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 of private employment.

FINAL OFFERS

Village of Morton Final Offer

Economic Issues:

1. Wages

   2.35 percent increase for fiscal year 2016/17, 2017/18, 2018/19 and 2019/20 (4 year contract).

2. Health Insurance

   a. 2016/17 – existing
   Individual - $0
   Employee + child - $75
   Employee + spouse - $100
   Family - $125

b. 2017/18 – fixed contributions as follows:
Individual - $98
Employee + child - $173
Employee + spouse - $195
Family - $263

c. 2018/19 – fixed contributions as follows:
Individual - $130
Employee + child - $230
Employee + spouse - $260
Family - $350

d. 2019/20 – fixed contributions as follows:
Individual - $130
Employee + child - $230
Employee + spouse - $260
Family - $350

e. No coverage for spouse if spouse has the option to have coverage through their own employer or other source for new employees or employees who have a change in marital status as of January 1, 2018.

f. Village will provide two plan options for an employee to choose from: High Deductible Health Plan or a standard PPO Plan.

Non-Economic Issus (Old language is stricken and new proposed language is underlined):

3. 19.8 Compensatory Time
In lieu of receiving payment for overtime worked, as defined in Section 19.3, an Employee shall be entitled to accumulate compensatory time at the rate of one and one half (1 ½) hours for each hour of overtime worked. ~~Said compensatory time may be accumulated up to a maximum of eighty (80) hours. Any said accumulated compensatory time may be used subject to the mutual agreement of the Employee and the Chief of Police, however effectively July 1, 2011 through December 21, 2011, Employees may use no more than eighty (80) hours of compensatory time and effective January 1, 2012 and every year thereafter, Employees may use no more than a total of one hundred twenty (120) hours of compensatory time in a one year period.~~ Any said accumulated compensatory time may be use subject to the mutual agreement of the Employee and the Chief of Police. Employees may use no more than a total of one-hundred twenty (120) hours of compensatory time in a one-year period. It is further understood that an employee may not accumulate more than eighty (80) hours of compensatory time, and after that an Employee shall be paid for any overtime worked.

Employee requests for compensatory time off shall not be unreasonably denied and shall be granted in a like and consistent manner.

4. 21.3 Vacation Scheduling
   B. Vacations must be approved by the Chief of Police. The Chief of Police has final authority on approving all vacations and he has the right to limit the number of personnel on vacation at a given time in order that sufficient personnel are available to operate the department. Under no circumstances shall adequate police service be curtailed for vacation purposes; provided, however, that at least one (1) officer per shift per day shall be permitted to take paid leave. Officers, who submit forty (40) hours or more of consecutive vacation time and have no more than one (1) conflicting day with no more than one (1) other officer who has already been granted approved paid leave for that conflicting day, shall too have that conflicting day approved.

5. 30.5 Residence of Employees
   All non-probationary Employees covered by this Agreement shall reside in or within ~~fifteen (15)~~ twenty (20) miles of the Police Department. With the exceptions of the Department canine officer who must reside in the Village or Township of Morton.

Union Final Offer

1. Wages

Increase all 18.1 steps by 2.25% effective 5/1/16; 2.25% effective 5/1/17: 2.5% effective 5/1/18; 2.5% effective 5/1/19 and another 2.5% for any and all additional years of duration proposed by the employer, fully retroactive to include all those who have retired (but not quit or discharged) during the term of the agreement to be resolved in this matter.

2. Health Insurance

Health Insurance Benefit Levels (Plan)(Art. 25):
Status Quo (current benefit levels as appears on City's handout tendered during negotiations).

Health Insurance Employee Monthly Contributions (Art. 25):

a. Effective May 1, 2018
   Individual - $50
   Employee + child - $100
   Employee + spouse - $125
   Family - $150

b. Effective May 1, 2019
Individual - $75
Employee + child - $125
Employee + spouse - $150
Family - $175

3. Vacation Scheduling (21.3)

Change paragraph "B" as follows:

Vacations must be approved by the Chief of Police. The Chief of Police has final authority on approving all vacations and has the right to limit the number of personnel on vacation at a given time in order that sufficient personnel are available to operate the department. Under no circumstances shall adequate police services be curtailed for vacation purposes; provided, however, ~~except that the Chief shall not deny any vacation request for forty (40) or more consecutive hours of work and~~ that at least one (1) per shift per day shall be permitted to take ~~paid~~ vacation leave. Officers, who submit forty (40) hours or more of consecutive vacation time and have no more than one (1) conflicting day with no more than one (1) other officer who has already been granted approved vacation leave for that conflicting day, shall too have that conflicting day approved.

All tentative agreements shall be incorporated and all other provisions not tentatively agreed to shall carry forward *Status Quo*.

DISCUSSION

Wages

The Employer and Union wage proposals compare as followed:

	5/1/16	5/1/17	5/1/18	5/1/19
Employer	2.35%	2.35%	2.35%	2.35%
Union	2.25%	2.25%	2.5%	2.5%

The external wage comps show the following:

	5/1/16	5/1/17	5/1/18	5/1/19
East Peoria	2.25%	2.25%	2.25%	No Data
Pekin	2.5%	2.5%	2.5%	No Data
Washington	3.0%	2.5%	2.5%	No Data

There is not a substantial variance between the proposals submitted by the Employer and the Union with the cumulative difference over four years being 0.1%. (Employer 9.4%; Union, 9.5%). Averaging the proposed wage increases, the Union's per year average is 2.375% and the Employer's 2.35%. Both the Union and the Employer agree the proposals are cumulatively very close, with the Employer evenly spreading wage increases over four years and the Union also proposing wage increases over four years with an additional percentage increase in years three and four. The Union at hearing said the "wages are very close." Tr. 7. The Union said: "The net effect of this miniscule percentage difference is about $4,000 over four years." Union Post-Hearing Brief, p. 16. Employer counsel said at hearing, "(I)f you did all the math, the wage proposals for both the Union and the Village are very close, and so – I think (Union) Counsel had mentioned something in the hundreds of dollars of difference. So the wage proposals of both sides are very, very close." Tr. 50.

The Village appears to be in good financial health as the Employer has not raised any economic hardship concerns. Both parties presented Bureau of Labor Statistics data, which does not offer any guidance in light of the closeness of the two proposals. Employer Ex. G, Union Ex. 7. The Union presented Cost of Living data but again it does not offer any insights to guide the Arbitrator to either side's proposed wage increase. The Employer has also presented crime index data showing that the Village has a crime index of 68 (100 is safest), which suggests the Village is a safer community than the comparable communities and their crime index: Washington (61), East Peoria (16) and Pekin (26). It is the Employer's view this lower crime rate is further justification for its lower wage proposal. Tr. 48-49.

It is difficult to compare year-to-year wages between the Employer, the Union and the agreed-upon external comparables. The Employer wage increase is below Pekin and Washington in all three years when data is available but higher than East Peoria. The Union is lower in some years and higher in others with the neighboring communities.

What is more helpful is to compare the annual wage averages of the neighboring communities with the Union and Employer's proposed annual wage averages.

The three-year averages (no date in the fourth year) of each individual external comparable are the following:

East Peoria: 2.25%

Pekin: 2.5%

Washington: 2.666%

_____

Employer Average: 2.35%

Union Average: 2.375%

The combined annual averages of the three comparables are the following:

	5/1/16	5/1/17	5/1/18	5/1/19
Comps:	2.58%	2.42%	2.42%	No Data

In comparing external community individual averages, the Union and Employer's proposals both fall below the average for Washington and Pekin, and above the average for East Peoria. The Union's proposal is 0.025% closer to Pekin and Washington, and the Employer is 0.025% closer to East Peoria. If comparing the average of the comps combined for each year, the Union's proposal is closer to all the comparables by 0.025%. By looking at these comparisons through either of these lenses, the Union's proposal is closer to the majority of external comparable averages.

Thus, the Union's final offer on Wages is adopted.

Health Insurance Contributions

The parties are in agreement that the most significant issue in this interest arbitration is employee health care contribution. Employer counsel described it as the "primary issue." Tr. 46. The Union said "this is a case about health insurance." Tr. 10. "Objectively, the

parties resorted to interest arbitration over a health insurance dispute and not a wage dispute, and the health insurance issue impacts the wage issue." Union Post-Hearing Brief, p. 16. The Employer and Union final positions compare as followed:

	Union	Employer
May 1, 2016	Individual - $0 Employee + child - $75 Employee + spouse - $100 Family - $125	Individual - $0 Employee + child - $75 Employee + spouse - $100 Family - $125
May 1, 2017	Individual - $0 Employee + child - $75 Employee + spouse - $100 Family - $125	Individual - $98 Employee + child - $173 Employee + spouse - $195 Family - $263
May 1, 2018	Individual - $50 Employee + child - $100 Employee + spouse - $125 Family - $150	Individual - $130 Employee + child - $230 Employee + spouse - $260 Family - $350
May 1, 2019	Individual - $75 Employee + child - $125 Employee + spouse - $150 Family - $175	Individual - $130 Employee + child - $230 Employee + spouse - $260 Family - $350

The Employer also proposes the following:

a. No coverage for the spouse if the spouse has coverage through their own employer (applies only to new employees or employees who have a change of marital status as of January 1, 2018); and
b. Village will provide the option of a High Deductible Health Care Plan along with the standard PPO Plan.

In arguing for its health care position, the Employer does not claim that the new insurance contribution scheme is necessary because the village has financial difficulties. Tr. 66. Instead, the Employer states that such benefits should be balanced with the public's interest in preserving public money and interests. The Employer states that it must engage in a "balancing act" between providing the village with an adequate police force and offering its employees with healthcare at costs comparable or below the public

and private sectors. Employer Post-Hearing Brief, p. 7. The Employer seeks to maintain excellent benefit levels but at a fairer cost distribution between the Village and its employees. *Id.*, p. 7-8. The Employer argues the increase in employee health benefit contribution is appropriate as the current rate is far below the national and regional average, as well as the comparable communities selected by the parties. Even with the proposed increase, the Employer states the employee contribution will still remain below the private and public sectors generally, and will be more in line with the comparable communities. The Employer points to U.S. Department of Labor Bureau of Labor Statistics, which provides data showing healthcare contribution percentages of employers and employees. Those statistics show the following contribution share across the U.S. and the Midwest, Employer Ex. G:

	Employer	Employee
Private Sector	67%	33%
Private Sector (Midwest)	69%	31%
States and Local Governments	71%	29%
States and Local Governments (Midwest)	73%	27%
States and Local Governments (Union)	76%	24%

The comparable rates are the following:

East Peoria
Effective 5/1/2017
PPO
Individual - $148.94
Employee + children - $218.92
Employee + spouse - $235.50
Family - $406.62
HDHP (High Deductible Health Plan)

Individual - $118.94
Employee + children - $173.92
Employee + spouse - $185.50
Family - $331.62

Pekin
Effective 10/1/17

Single	$70
Employee + child	$120
Employee + spouse	$170
Family	$195

Washington

Individual	$100
Family	$200

(Washington's premiums can be increased so long as employee share does not increase by more than $100/month from one year to another for an individual and $150/month from one year to another for family).

The Union argues the Employer is trying to achieve in interest arbitration what it cannot obtain at the bargaining table; a cost-shifting proposal that imposes undue hardship on union members. The Union states the Employer offers no *quid-pro-quo* to underwrite the new insurance costs that would fall on the bargaining unit. The comparative labor statistics presented by the Employer is also questionable as it provides no analysis of benefits received. Additionally, the Union states, the Employer has put forward a "breakthrough" proposal seeking to eliminate coverage for spouses and that none of the external comparables deny health insurance coverage to spouses for any reason. The Union also puts forward the following:

- The cost for employee health insurance in Morton is much higher in comparison to the health insurance benefits for officers in the comparable communities, but there is no evidence explaining why health insurance is so much more in Morton.
- The Employer's insurance proposal is inconsistent with the bargaining history between the parties. Under the current system, the cost of employee health insurance increases by $25 per month or less about every two years. Employees

with single coverage do not now and never have paid anything for their health insurance coverage.

- The Union has been willing to cooperate, to some reasonable degree, with the Employer's effort to increase employee insurance contributions. The Union has proposed to change aspects of the current system. The Union has proposed accelerating the incremental increases to the employee share of monthly health insurance premiums. The Union also proposes to require individuals with only single coverage to begin paying for the first time for their health insurance coverage.

Analysis

It is difficult to precisely compare health benefits based solely on comparative contributions since it does not reflect benefit levels or restrictions as to coverage, caregivers and health care facilities. Still, it is clear that the bargaining unit employees' health contribution is substantially lower than the comparable communities. It is also lower than the national and Midwest averages. The Employer seeks to more align its employees' health contribution with its neighboring communities, as well as the national and regional average, by more than doubling their contributions over the life of the contract. This would allow the Village to catch up with other communities. The Employer would also like to accomplish this without offering employees with any so-called *quid-pro-quo* such as additional compensation above-and-beyond annual pay increases to offset the higher out-of-pocket expenses for health insurance contributions.

It is the Employer's view that its insurance proposal is in keeping with the IPLRA statutory criteria, particularly as it relates to the interests and welfare of the public, and comparison of other employees performing similar services in public and private employment in comparable communities. The Employer rejects the Union's claim that there needs to be some kind of *quid pro quo* in exchange for an increase in insurance contributions. The Employer states: "The problem for the Union is they say that's got to be a *quid pro quo*. They keep coming back to that criteria that's not in the Act." Tr. 50.

The Employer believes the Union is "fixed on *quid pro quo* (and) not what the cost of healthcare is…." Tr. 52. The Employer believes its offer is more reasonable because it brings insurance contributions in line gradually over the term of the contract and not all at once. *Id.* The spousal carve out, the Employer adds, is "not so unusual in the marketplace" and that it is only being introduced where there is a change in marital status or an officer is a new employee, effective January 2018. Tr. 53.

Interest arbitration by its very nature is a conservative enterprise. Arbitrator Nathan has described it as "essentially a conservative process," *County of Will and Sheriff of Will County and AFSCME, Local 2961,* S-MA-88-009 (Nathan, 1988), while Arbitrator Benn states that interest arbitration is "a *very* conservative process." *City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7* (Benn, 2010). Interest arbitration is designed to assist public sector negotiations, to help parties reach an agreement they themselves should have reached but somehow fell short at the bargaining table. *County of Will* (Nathan, 1988), *supra*. It is a process to complement not subjugate or usurp the collective bargaining process. Arbitrator Goldstein summed it up well: "Interest arbitrators are essentially obligated to replicate the results of arm's-length bargaining between the parties, and to do no more." *Metropolitan Alliance of Police,* Chapter 471, FMCS 091103-0042-A 92009).

The IPLRA sets forth the criteria for consideration in interest arbitration, though there is no guidance as to which factor or factors are to be given the most consideration although this Arbitrator is in the camp that the criteria should be applied equally to economic and non-economic issues. There is also no requirement that all factors must be met. Interest arbitrators are thus given a great deal of leeway to weigh each factor and apply some or all to the facts of the case. Furthermore, "It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party's status quo, an 'extra burden' must be met before the arbitrator resorts to the criteria enumerated in Section 14(h)." *Village of Maryville and Illinois Fraternal Order of Police,* S-MA-228 (Hill, 2011).

And "where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, the onus is on the party seeking the change." *Id.* See also *County of Will,* (Nathan, 1988), *supra*, which set out a three-part test for the showing needed to support a major alteration of the *status quo*. Under this test, which has been recognized by many arbitrators over the years, the proponent of the change must prove that:

1. The old system or procedure has not worked as anticipated when originally agreed to;
2. The existing system, or procedure, has created operational hardships for the employer or equitable or due process problems for the union; and
3. The party seeking to maintain the status quo has resisted attempted to bargain over the change.

Arbitrator Goldstein summarized this test perhaps even more succinctly when saying, "conventional wisdom on the subject of departing from *status quo* in interest arbitration instructs that an interest arbitrator may depart from it when; 1) there is a proven need for the change; 2) the proposal (to depart from *status quo*) meets the identified need without imposing an undue hardship on the other party; and 3) there has been a *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision." *Illinois FOP Labor Council and City of Belleville* (2010).

It is the Union's position that the Employer's health care contribution proposal is a "breakthrough" proposal. Tr. 24. I will not go that far in my analysis but it is clear the Employer in this matter is proposing a significant change from the *status quo*. The Employer's proposal, more than doubling health care costs for bargaining unit members over the term of the contract, deviates from the historic practice between the parties of small incremental increases to employee's health contribution. The Employer seeks to align employees' health care contributions with neighboring comparables in a single contractual cycle. Additionally, the Employer's proposed carve-out of health benefits for

spouses is a “breakthrough” proposal, one that would add an entirely new term to the parties’ Collective Bargaining Agreement.

The Employer argues that the substantial increase in health care benefit contributions is justified based solely on the agreed-upon comparables of the neighboring communities, as well as national and Midwest averages. The Employer believes there is also no necessity to offer a *quid pro quo* as that is not a criteria set out by the ILRA. I believe the Employer is wrong in its reasoning. Certainly, the comparables are relevant as a criteria as set forth in the Act, but it is not the only criteria. The Employer is proposing a substantial departure from the party’s *status quo* as to employee contributions to health care. This places an extra burden on the Employer, which I do not believe the Village has met. The Employer does not suggest that the Village is facing any kind of financial difficulties or there is a need for savings from increased health care contributions to forestall some coming economic hardship. The Employer has not established an emergent need to double health care contributions so rapidly but only seeks the change, in its own words, to be good stewards of public tax dollars and to be comparable to neighboring communities, and closer to the national and regional averages. However, these increases would certainly impose a hardship on employees especially when the Employer does not offer any kind of *quid pro quo* to offset the cost of the higher contributions. The Employer also does not offer anything for the spousal carve out, which is a *bona fide* “breakthrough” proposal. The Employer does not offer a justification for the change other than to say, it is “not so unusual in the marketplace.” Tr. 53. The Employer argues that the proposal is reasonable because it is only being introduced where there is a change in marital status or an officer is a new employee, effective January 2018.

It is well established that interest arbitrators can consider, as stated in the Act, “(s)uch other factors, not confined to the foregoing, which are normally or traditionally taken into consideration….” In meeting its burden, it is a long accepted practice in interest

arbitration for a party to put forward a *quid pro quo* to offset a substantial departure from the party's *status quo*. This is a concrete way, although certainly not the only way, a party meets its extra burden for such a contractual change. The Employer does not attempt to do that and mistakenly believes it is not a factor since it is not specifically articulated in the Act. The Employer is also offering nothing to the Union in return for the breakthrough marital carve out proposal. The Employer proposes a significantly increase to employee health contributions in a relatively short period of time, as the increase is substantial beginning the second year of the contract. The Employer is seeking to catch up in a short period of time with neighboring communities whose employees are paying a substantially higher insurance contribution. The Employer could not achieve such a significant change at the bargaining table and seeks to catch up with its neighbors through interest arbitration. It is not, however, the function of interest arbitration to allow an Employer or Union to avoid negotiations and take their chances with an arbitrator in the hope that the neutral might ignore the give and take of previous negotiations, to ignore the scope and past pace of employee health contributions, and instead focus narrowly on comparative analysis only. This is not to suggest that comparative data from comparable communities is not persuasive and a recognized statutory criteria. It is only one criteria, however, and does not take into account past negotiated agreements and the give and take that occurs at the bargaining table. As stated by Arbitrator Goldstein, it is "not the responsibility of the arbitration panel to correct previously-negotiated wage inequities, if any….This is because the parties themselves had control over the salaries and benefits previously negotiated." City of DeKalb, S-MA-87-76 (Goldstein, 1988).

Furthermore, the Union has not been completely resistant to change. The Union's proposal shows a willingness to move away from the *status quo* and begin moving employees' health care contributions more in the direction of market norms. The Union's health care proposal goes beyond the past practice of just small incremental increases. It proposes accelerating the incremental increases to the employee share, and

to require individuals with only single coverage to begin paying for the first time for their health insurance coverage.

Thus, the Union's final offer on Healthcare Contributions is adopted.

Compensatory Time,

The Employer has proposed changes to the language of the Compensatory Time clause for purposes of removing inapplicable and outdated verbiage. The Union wishes to maintain the *status quo*. The Employer states that the current provisions includes dates and language that is outdated and confusing. The Union said it appears "the Employer just wants to clean up some (language)." Tr. 10. The Union also observed, "The other issues (in the interest arbitration) are not terribly complex, and the parties may have been motivated to reach agreement if health insurance wasn't blocking a deal." Tr. 9. However, the Union argues an attempt to cleanup contract language is not appropriate for interest arbitration and thus seeks no change to the Compensatory Time language. Employer proposal:

> 19.8 Compensatory Time
>
> In lieu of receiving payment for overtime worked, as defined in Section 19.3, an Employee shall be entitled to accumulate compensatory time at the rate of one and one half (1 ½) hours for each hour of overtime worked. ~~Said compensatory time may be accumulated up to a maximum of eighty (80) hours. Any said accumulated compensatory time may be used subject to the mutual agreement of the Employee and the Chief of Police, however effectively July 1, 2011 through December 21, 2011, Employees may use no more than eighty (80) hours of compensatory time and effective January 1, 2012 and every year thereafter, Employees may use no more than a total of one hundred twenty (120) hours of compensatory time in a one year period.~~ Any said accumulated compensatory time may be used subject to the mutual agreement of the Employee and the Chief of Police. Employees may use no more than a total of one-hundred twenty (120) hours of compensatory time in a one-year period. It is further understood that an employee may not accumulate more than eighty (80) hours of compensatory time, and after that an Employee shall be paid for any overtime worked. Employee requests for compensatory time off shall not be unreasonably denied and shall be granted in a like and consistent manner.

There does not appear to be any genuine disagreement that the Employer's proposal is designed to clean-up the Compensatory Time provision and that it does not make any substantive changes to the section. It appears very likely the Union would have agreed to this change if negotiations had not stalled over the insurance contribution issue. These changes are appropriate per "such other factors" of Section 14(h).

Thus, the Employer's final offer on Compensatory Time is adopted.

Vacation Time

The parties are in agreement as to the final proposed sentence in the section. The Employer, however, objects to the Union's proposed changes to the language in the second to last sentence of the quoted language. Swapping the word "paid" with "vacation," as the Union proposes, is objectionable to the Employer as that would impact manning levels. The arbitrator, under statute, has no authority to decide manning levels. The Union's proposal would limit management's ability to prohibit or restrict the granting of vacation which would necessarily infringe on the Employer's ability to properly man the police staff.

Employer proposal:

> 21.3 Vacation Scheduling
>
> B. Vacations must be approved by the Chief of Police. The Chief of Police has final authority on approving all vacations and he has the right to limit the number of personnel on vacation at a given time in order that sufficient personnel are available to operate the department. Under no circumstances shall adequate police service be curtailed for vacation purposes; provided, however, that at least one (1) officer per shift per day shall be permitted to take paid leave. Officers, who submit forty (40) hours or more of consecutive vacation time and have no more than one (1) conflicting day with no more than one (1) other officer who has already been granted approved paid leave for that conflicting day, shall too have that conflicting day approved.

Union proposal:

> 21.3 Vacation Scheduling
> Change paragraph "B" as follows:

> Vacations must be approved by the Chief of Police. The Chief of Police has final authority on approving all vacations and has the right to limit the number of personnel on vacation at a given time in order that sufficient personnel are available to operate the department. Under no circumstances shall adequate police services be curtailed for vacation purposes; provided, however, ~~except that the Chief shall not deny any vacation request for forty (40) or more consecutive hours of work and~~ that at least one (1) per shift per day shall be permitted to take ~~paid~~ vacation leave. Officers, who submit forty (40) hours or more of consecutive vacation time and have no more than one (1) conflicting day with no more than one (1) other officer who has already been granted approved vacation leave for that conflicting day, shall too have that conflicting day approved.

At hearing, the parties put forward their respective arguments as to the Arbitrator's authority to consider this matter, specifically the Union's second to last sentence in its proposal. The Arbitrator ruled the Union's proposed language, specifically the Union's proposed change to the second to last sentence, was essentially a manning issue that falls outside the jurisdiction of an interest arbitrator. Tr. 44. The Arbitrator did not rule as to the proposed change to the last sentence.

Thus, the final proposed sentenced that is accepted by each side is adopted. The Union's final sentence is adopted as there is a one word difference between the Union and Employer's two sentences. The Employer sentence states "approved paid leave" and the Union's sentence states "approved vacation leave." This is likely to be a difference of semantics but the Union's wording is adopted since this section relates to Vacation Scheduling. The remaining portion of the Union's proposal is denied as falling outside the jurisdiction of the Arbitrator.

Residency

The Employer proposes to expand from 15 miles to 20 miles the distance non-probationary police officers can reside from the Village. Additionally, the Employer proposes a carve-out exception for the department's canine officer who must reside in the Village under the new terms. The Employer seeks the change in the residency requirement for the canine officer to better ensure compliance with a U.S. Supreme

Court ruling that limits the time for a police stop.[3] Allowing the canine officer to reside outside the Village increases the time, when the officer is off-duty, to arrive with the canine at the scene of a police stop and possibly jeopardize the legality of the search for the undue delay. The canine assignment is a voluntary duty and no officer is required to accept the job and the residency requirement. Tr. 66. The canine officer is compensated an additional seven hours per month for the detail. Tr. 63. The current canine officer resides in the Village. Tr. 64. The Union proposes the *status quo* but believes that a residency requirement of 20 miles for all officers, but for the K-9 officer who would be required to comply with the current 15-miles requirement, would be an appropriate resolution. The Union concedes the Village has a "legitimate interest in making sure the K-9 officer can respond quickly enough to avoid denying apprehended suspects their constitutional rights and due process of law." Union Post-Hearing Brief, p. 36. However, the Union argues the Employer has not put forward any evidence that there has been a problem with the current 15-mile requirement and sees no reason to make a change.

Employer proposal:

Section 30.5 Residence of Employees
All non-probationary Employees covered by this Agreement shall reside in or within ~~fifteen (15)~~ twenty (20) miles of the Police Department. With the exceptions of the Department canine officer who must reside in the Village or Township of Morton.

The Union recognizes that the Village has a "legitimate interest" in ensuring that the canine officer arrives at a police stop in a timely manner as to not jeopardize the constitutional rights of a suspect. It is not persuasive that there is no need to make a change because there has not been a problem to date. That may be the case because the current canine officer lives in the Village. The Employer should not be penalized for trying to be proactive when its police leadership can identify a potential enforcement

[3] *Rodriquez v. United States*, 135 S.Ct. 1609 (2015) ("We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield again unreasonable seizures. A seizure justified only be a police-observed traffic violation, therefore, 'become(s) unlawful if it is prolonged beyond the time reasonably required to complete th(e) mission' of issuing a ticket for the violation. *Id.*, at 407. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision."), at 1612.

problem. The interest and welfare of the public is served, per the statutory criteria, by such judgment. Police Chief Craig Hillidard said it was "important" for the canine officer to live in town "so that the canine officer can make it to a traffic stop as soon as possible." Tr. 59. He explained that the time necessary to get to the scene, as a rule of thumb, is essentially the time it takes to write a ticket. If it takes longer it could be construed as an unlawful seizure, he said. Tr. 58-59. It should also be pointed out that the Employer in its proposal is offering a *quid pro quo*, namely extending the residency limit from 15 to 20 miles for all officers while requiring the canine officer to reside in the Village. Furthermore, the canine officer assignment is a voluntary duty and if an officer wishes to live outside the Village, he/she is free to decline the role and the extra wages that comes with it. Finally, the current canine officer resides in the Village and so it will not pose a hardship as long as that officer wishes to reside in the Village.

Thus, the Employer's final offer on Residency is adopted.

AWARD

After studying the record in its entirety, including all of the evidence and argument presented by both parties, the following is held:

1) Wages: Union's Final Offer is adopted.
2) Health Insurance Contributions: Union's Final Offer is adopted.
3) Compensation Time: Employer's Final Offer Adopted.
4) Vacation Scheduling: The Union's second sentence is adopted. The Union's last proposed sentence is denied as falling outside the jurisdiction of the Arbitrator.
5) Residency: the Employer's final offer is adopted.
6) All other tentative agreements between the parties shall be incorporated into the Arbitrator's Award, per the parties pre-hearing stipulations.
7) The Arbitrator shall retain jurisdiction over this matter for sixty (60) days from the date of the Award.

It is so ordered this day, May 29, 2018.

Thomas F. Gibbons

Thomas F. Gibbons, Esq., NAA
Interest Arbitrator