ILLINOIS LABOR RELATIONS BOARD
BEFORE
A TRIPARTITE ARBITRATION PANEL
BRIAN REYNOLDS, NEUTRAL CHAIRMAN
JUDGE ROGER HOLMES, CITY DELEGATE
DETECTIVE DON EDWARDS, PBPA DELEGATE

In the matter of an Interest Arbitration between

CITY OF SPRINGFIELD,

Employer

and

POLICE BENEVOLENT AND PROTECTIVE ASSOCIATION, UNIT #5

Union

ILRB Case # S-MA-18-326
Hearing: November 25 and 26, 2019
Briefs: January 22, 2020
Award: February 24, 2020

OPINION AND AWARD

APPEARANCES:

For the Union:
Ronald J. Stone
Attorney at Law
1501 West Fayette Avenue
Springfield, IL 62704

For the Employer:
James K. Zerkle & Nathan Rice
City of Springfield
100 Municipal Building
Springfield, IL 62701-1680

BACKGROUND

This is an interest arbitration under Section 14 of the Illinois Public Relations Act (Act) to resolve a dispute arising over the terms of the collective bargaining agreement (Agreement) between the City of Springfield (Employer or City) and Police Benevolent and Protective Association, Unit #5 (PBPA or Union) for the bargaining unit of the Employer's patrol officers, sergeants, and detectives. (Unit)

The City is the capital of the State of Illinois, the county seat of Sangamon County and is located in central Illinois at the junction of Interstate 55 and Interstate 72. The City employs approximately 1,483 individuals, including 232 Unit members.[1] Of the City's 1,483 employees,

[1] The City owns a public utility and water department, City Water Light & Power (CWLP), which employs over 600 employees. CWLP is funded independently from the City's corporate funds.

approximately 1,000 are in bargaining units covered by one of the City's twenty-three (23) collective bargaining agreements.

The parties have a history of successfully negotiating collective bargaining agreements for the Unit without interest arbitration. Prior to 2017, the only previous interest arbitration took place in 1989. However, the parties were unable to reach agreement in negotiations for the immediately previous collective bargaining agreement, which resulted in the interest arbitration proceeding and decision by a panel led by Arbitrator Marvin Hill, *City of Springfield & PBPA #5, S-MA-16-001* (Hill, 2017). (*Hill Award*) The current panel members for the City and Union also served as panel members for the 2017 proceeding. In that decision, the panel issued a decision on 3 issues, including 2 of the issues here today: Wages and Residency. The results of that decision, along with the previously agreements were incorporated into the current collective bargaining agreement. (Agreement)

The Agreement expired on February 28, 2018. Prior to the expiration, the Union sent a letter to the City requesting negotiations for a successor Agreement on December 24, 2017. On January 12, 2018, the parties agreed to postpone any statutorily required mediation and continue negotiations. A Notice of No Agreement was filed with the Illinois Labor Relations Board. (ILRB)

The parties continued negotiations and reached numerous tentative agreements but could not reach a total agreement due to several issues. The parties agreed to pursue mediation before Mediator Martin Malin on April 26, 2019. The parties reached an impasse and filed a Demand for Compulsory Interest Arbitration with the ILRB. The parties agreed to the selection of the undersigned to serve as the neutral panel chairman for the interest arbitration through the procedures administered by the ILRB.

The parties have chosen to utilize the statutory tripartite panel and stipulated that the proceeding would be governed by the provisions of the Act. The City appointed Judge Roger Holmes and the Union appointed Detective Don Edwards to serve as their delegates to the arbitration panel. (Panel) A hearing was held on November 25 and 26, 2020 at a conference

room in the City's Abraham Lincoln Library, at which time the parties were afforded an opportunity to present testimony, exhibits, and other evidence relevant to the dispute. The parties timely filed briefs on January 22, 2020. The Panel members met in Executive Session on February 20, 2020 at the Springfield offices of Brown, Hay & Stephens LLP.

ISSUES AND FINAL OFFERS

The parties have submitted three issues for this arbitration: Residency, Wages and Sick Day Bonus Usage. The final offers are as follow:

City Final Offer	Union Final Offer
Residency	**Residency**
All new hires would be subject to a 10-year residency requirement to begin on the date of hire. If an individual has extenuating circumstances related to residency, that individual may utilize the procedures set forth in City code to obtain a waiver. Current employees are grandfathered and will not be impacted by the residency proposal. A bonus in the amount of $2,000 for all new hires upon completion of the academy. A 30th year 1% longevity step for all Tier II pension recipients. The Union proposal on new hire vacation proration.	Status Quo – no residency requirement
Wages a. 3/1/2018 – 1.75% b. 3/1/2019 – 1.75% c. 3/1/2020 – 1.75% d. 3/1/2021 – 1.75%	**Wages** a. 3/1/2018 – 2.25% b. 3/1/2019 – 2.25% c. 3/1/2020 – 2.25% d. 3/1/2021 – 1.75%
Sick Bonus Day Usage	**Sick Bonus Day Usage**
Any Officer that has received an annual payment for Sick Sell Back pay pursuant to Section 13.3(b) of the Collective Bargaining Agreement shall not be eligible for sick bonus days during that calendar year	Status Quo

STATUTORY FACTORS

Section 14(h) of the Act sets forth the following factors upon which the Arbitrator is to base his findings, opinions and order:

> Where there is no agreement between the parties, or where there is an agreement, but the parties have begun negotiations or discussions looking for a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the Employer;
>
> (2) Stipulations of the parties;
>
> (3) The interest 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 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, 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 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 private employment.

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

> ...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). The findings, opinions and order as to all other issues shall be based on the applicable factors presented in subsection (h).

In this case, the issues of Wages and Sick Bonus Day Usage[2] are economic and, thus, the Panel is restricted to adopting a final offer from one of the parties. The issue of Residency is non-economic, so the Panel is not so restricted in this issue.

ISSUE #1 - RESIDENCY

BACKGROUND

The City maintained a residency requirement for over 25 years for all of its employees, which included the PBPA officers, to live within the City limits to maintain employment with the City. The residency requirement started in the 1970s.

During this time period, the issue of residency was not a mandatory subject of bargaining for police and fire employees under the Act. However, that changed with the amendment to Section 14(i) of the Act which allowed arbitration decisions to include residency provisions for non-Chicago and Cook County municipalities. This amendment became effective on January of 1998, after which time, police and fire units would be able to bargain over the previously unilaterally impose residency policies. The collective bargaining agreement for the Unit at that time was scheduled to expire on February 28, 2001.

Prior to that expiration date, the City Council passed an ordinance to eliminate the residency requirement for employees effective in December 2000. The City proposed and the City and Union then agreed to include a provision acknowledging that the residency requirement has been abolished as part of the collective bargaining agreement for the term of March 1, 2001 to February 28, 2005. The parties also agreed to include provisions requiring Unit members to reside in the City limits in order to receive take home cars and requiring Unit members to live within Sangamon County to participate in certain specialty units.

This residency policy remained unchanged until 2016. In May of 2015, Mayor Langfelder, was sworn in as Mayor of the City. Mayor Langfelder pursued a residency policy for City employees which he viewed would assist in the stabilization of the City of Springfield. The

[2] The Union presented the issue of Sick Bonus Day Usage as economic while the City presented it as non-economic.

City also conducted an advisory referendum with City residents, resulting in 59% support for a residency requirement for City employees.

On June 21, 2016, the City Council passed an ordinance imposing a residency requirement on City employees. The Ordinance requires any current City employee that resides within the City's corporate boundaries remain within those boundaries. Further, the Ordinance requires any new employee to live within the City's corporate limits. However, the Ordinance grandfathers any current employee who resides outside of the City's corporate boundaries with the mandate that, should the grandfathered employee move within City limits, the residency requirement will apply.

However, the City still had to bargain residency with its 23 collective bargaining units. The City was able to reach agreement with the Unions for 21 of the Units to include a residency provision containing the same residency requirements as set forth in the 2016 Ordinance. That left residency as an issue for the City's two protective services unit, this Unit and the unit of the City's firefighters. (Firefighters Unit)

This Unit did not agree on residency during negotiations for the next agreement, which was for the 3-year term of March 1, 2015 through February 28, 2018. As a result, the issue went to interest arbitration with a panel chaired by Arbitrator Marvin Hill. On October 16, 2017, the panel issued their decision in the *Hill Award* rejecting the City's proposal requiring residency and accepting the Union proposal of the status quo of no residency.

However, the City did reach agreement with the Firefighters Unit on a residency provision similar to the proposal being put forward to the PBPA. The Firefighters' residency provision is as follows:

> Section 12. 6 – Residency - Effective upon ratification, the City of Springfield Residency Ordinance (effective 6/21/2016) shall apply to all firefighters hired after January 1, 2019. However, new hires shall have six (6) months from the completion of their probationary period to establish residency within the City corporate limits. Such residency [requirement] shall cease after fifteen (15) years of employment. Local 37's agreement to residency for new hires is contingent on the continued status quo of Divisions II and III.

Including but not limited to those provisions set forth in Articles XVII, XVIII and Appendix A.3.a, as referenced below.

As of 2019, the City reports that 564 of the City employees lived outside of the City limits, or approximately 40.7% of the City's workforce. At present, approximately 40% of Unit members reside outside of the City limits.

In this arbitration, the Union again proposes the status quo of no residency requirement, while the City proposes an adaptation of the City residency proposal presented and addressed in the previous Hill Award. The City proposal on residency at issue here is:

> All new hires would be subject to a 10-year residency requirement to begin on the date of hire. If an individual has extenuating circumstances related to residency, that individual may utilize the procedures set forth in City code to obtain a waiver.
>
> ii. Current employees are grand-fathered and will not be impacted by the residency proposal.
>
> iii. A bonus in the amount of $2000 for all new hires upon completion of the academy.
>
> iv. A 30th year 1% longevity step for all Tier II officers
>
> v. Union proposal on new hire vacation proration.

CITY POSITION

The City maintains that the internal bargaining history of 22 out of 23 units having a residency requirement supports the City's proposal. Arbitrator Hill in his award failed to even consider this factor in reaching his decision to reject the City's proposal thus ignoring his own citing previous arbitration awards of Arbitrator Elliot Goldstein in *Village of South Holland and PBPA Unit #11*, S-MA-09-238 (Hill 2010) in *City of Danville*, stating:

> There is legitimate and logical concern on the part of the management of the Village that a residency rule should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment for this bargaining unit has been proved, I find... that the Union's attempt to establish such a compelling need for the liberalization of the Village's residency rules because of the unique nature of the terms of work for police officers does not convince him in this case to disregard the internal comparable, which undisputedly shows all of the Village employees worked under the same rules for residency as does this bargaining unit.

City of South Holland and FOP, ISLRB Case No. S-MA-98-120 (1999).

Arbitrator Hill also adopted the position of Arbitrator Gunderman in *Village of Skokie and IAFF local 3033 (1993)* holding:

> Internal comparable are considered for at least two purposes: first, to determine if there is a pattern of settlements between the employer and its bargaining units which may be applicable to the dispute before the arbitrator; and second, to determine if there has been an historical pattern of settlement involving bargaining units.
>
> Generally, where internal comparables are considered for the purpose of determining if there is a pattern of settlements it involves a situation where agreements have been reached between the employer and a number of bargaining units and either the union or employer is attempting to break the settlement pattern.

The City's proposal will not apply to any current employees and a 10-year residency requirement for new hires only. While the City objects to the Union's characterization of City schools as dangerous or inadequate, it designed the 10 year limit to allow Unit members who desire, to move to a community of its choosing after 10 years of aiding the City taxpayers in paying for their own salaries and benefits.

Although the City maintains Arbitrator Hill was mistaken to require a quid pro quo for a residency proposal, along with the limited residency time period, the City proposal contains a number of measures to compensate future officers impacted by mandatory residency: all new hires subject to residency shall receive a signing bonus in the amount of $2000.00, all Tier II pension recipients shall receive a 30 year 1% longevity increase, and accrued vacation time for probationary police officers shall be pro-rated based upon time in service.

The Union objected to the City's proposal since it maintains the bonus payment, longevity increase, and vacation proration provision were not submitted to the Union prior to the terms set forth in the ground rules. The ground rules state:

> 6. The parties agree that by three sessions no new proposals may be submitted by either party except by mutual agreement.
>
> 8. Either party reserves the right to add to, delete from or otherwise amend its existing proposal throughout the course of

> collective bargaining, except as it may relate to any agreement regarding a deadline for the submission of new proposals .

The City clearly proposed the issue of residency as a subject of bargaining prior to the third meeting deadline PBPA President Sergeant Grant Barksdale admits that residency was submitted at the beginning of the collective bargaining process and was a frequent topic of discussion with the City offering multiple options The City's residency proposal contained in its Last Best Final Offer is clearly an amended proposal pursuant to the ground rules.

The City made various proposals on residency to get the Union's agreement. In contrast, the PBPA refused from making a single proposal on the issue and continually just offered the status quo. Continuously saying "*status quo*" for two (2) years in negotiations is not a proposal, repeatedly stating "*status quo*" is a refusal to bargain. In Arbitrator Hill's 2017 decision, Hill stated:

> If residency comes back to the PBPA, it should be through collective bargaining and not arbitral fiat, especially when the City cannot demonstrate any operational advantage to the Department by adopting a two-tier residency provision (at 42).

While the City takes issue with Hill's analysis and decision in regard to residency Regardless, even if Hill is deemed correct, PBPA's refusal to bargain could not have been the outcome he intended. As a result, this panel should award the City's residency compromise.

Public policy also supports the awarding of the City's residency proposal. Experts have found that officers perform better and less apt to use force when they are familiar with the communities they police. If Unit officers live in City neighborhoods, the bond between the officers and those he or she polices will only grow and, in effect, increase police and community relations. Therefore, Hill is clearly mistaken that there is no "operational advantage" to a residency requirement.

The City disagrees with Arbitrator Hill's determination that a *quid pro quo* is required. While the City, in the spirit of compromise, has proposed a number of benefits to compensate yet to be hired officers for residency, the City does not believe that a *quid pro quo* is necessarily required. The language of the current contract plainly states that the previous residency

requirement, which was much more restrictive than the current proposal, was lifted without a bargained for exchange. As Judge Holmes argued in his dissent, Hill "incorrectly ignores the significant and distinguishing fact that the status quo for 25 years was a residency requirement, which was unilaterally lifted by the City with no quid pro quo given by the Union." Holmes added that, "Yet, now the arbitrator improperly asserts that the City must buy back residency to which the union did not bargain for, nor give any clear quid pro quo." Holmes cited the findings of Arbitrator Finkin in his decision in *PBPA Unit #11 v. City of Danville* (S-MA-12-330) (Finkin 2014), where he stated:

> As sensible as the Union's arguments are, the Union does not address the City's main argument, which is to the primacy of achieving a uniform policy for all City employees. Nor does it address the fact that all comparable communities impose some residency requirement. Inasmuch as the policy change is prospective only, inasmuch as no identifiable person is disadvantaged by equality of treatment with pre-2008 hires and all other city employees, the need for a quid pro quo is questionable. Given the validity of equality of treatment as a policy desideratum, the "grandfathering" on incumbent post-2008 hires, and the City's argument to public interest, the undersigned finds the City's position better in keeping with the statutory considerations laid out in [Section] 14(h).

Therefore, the City's position is that in if the panel accepts PBPA's objection to a portion of the City's residency compromise, this panel should still grant the 10-year residency requirement because a *quid pro quo* is not required. The City has met its burden of establishing a pattern of residency with its 22 other collective bargaining agreements. While Mayor Langfelder has made residency a priority, he has also been reasonable and made residency applicable to no current police officer in this bargaining unit, even though Police Lieutenants and Command staff, all other non-union personnel, and all other non-public safety *current* employees living within the City are required to stay within the City limits. The City has been very reasonable and lenient in its bargaining in this unit for residency to apply for new police hires only. The police are attempting to be the sole holdout in the City despite the strong public interest and break the pattern of the internal comparables. Instead, the PBPA wishes to rely

exclusively on external communities whose priorities perhaps have not been focused on residency as the City.

Accordingly, the City's internal comparables that establish a pattern of collectively bargained residency conditions should control. Thus, this Panel should award the City with the residency requirement that would only apply to newly hired police officers for a period of ten (10) years from the date of hire.

UNION POSITION

Pursuant to the ground rules in place between the parties August 18, 2018 was the drop-dead date for the submission of issues. At that time, the City's proposal only proposed the word "residency." There is no reference to any $2000 bonus for new hires; no reference to any 1% 30-year longevity step for Tier II hires; and no reference to any new hire vacation proration. It was only after this drop-dead date that the City proposed the significant additional terms that are in its current proposal. The City injected the new terms into its mediation proposal, and the Union has continuously objected to the inclusion of the new terms. Therefore, these defects invalidate the City's proposal and the Panel should reject the City proposal.

If the Panel still wishes to consider the City proposal on its merits, the Union maintains that the decision of Arbitrator Hill in his 2017 Award was accurate and summarizes the evidence and findings leading to that Award as follows:

1) The present residency provisions in the CBA have been in place since 2000; and
2) To order an Award restricting the present status quo residency provisions, one must conduct a breakthrough analysis, and the City falls woefully short of satisfying that burden (p. 38 of Award);
3) There has never been an assertion by the City that the present residency provisions have presented any adverse operational issues (p. 42 Award);
4) Arbitrators have recognized the safety concerns for officers made to live in the City limits (see FOP/Belleville, S-MA-08-157, Goldstein; Tinley Park/Metro 291 S-NL4-16-133, Malin);
5) No comparable city contract has a residency requirement that mandates officers reside within the city limits;
6) The safety concerns not only extend to the officers, but to their family as well (see testimony from 2017 by Sgt. Davidsmeyer relating to a drug traffic stop wherein one of the occupants volunteered that he knew his son from school;

7) There has always been differing opinions do to whether residency provisions should be made more restrictive, however neither "opinions" nor "good ideas" justify such a change;

8) The current move to restrict residency is a product of the current Mayor's political agenda; and

9) The city is proposing residency for new hires, which results in a 2-Tiered system, something extremely disfavored by arbitrators (p. 35 of Hill Award).

Evidence presented at the current 2019 arbitration further supports the evidence and findings in the 2017 Hill Award.

As to external comparables, there is still no comparable City which restricts residence to its municipal boundaries. Also, a review of interest arbitration awards issued since the Hill Award do not support the City proposal. The *Bolingbrook Fire* and the *Bolingbrook Police* awards expanded the residency boundaries. While the *Morton Police* award also expanded the general residency restrictions, Arbitrator Gibbons did add the city's proposal to require the K-9 officer to live in the City limits, which the current Parties' Agreement already requires. While in his *Oak Lawn Firefighter* Award Arbitrator Malin did impose a 50-mile radius to new hires as well as mandating that the City offer a one-time incentive payment of $6,500 to present employees who move into the City and stay for 3 years, neither side in the Oak Lawn case proposed the status quo, and therefore the Arbitrator did not conduct any breakthrough analysis. Additionally, there were legal issues involving issuing an award allowing out of state residency.

Officer Ryan Leach's testimony portrayed the disrespect and physical altercations occurring while working as a school Resource Officer at City schools. Leach testified that the City high schools were inherently dangerous. Newspaper articles support this assertion. The hearing evidence also showed that there are more calls for police service, and the offenses are more severe at City schools than those at Glenwood, Rochester and Williamsville high schools. Also, although Springfield High School ranks pretty well, Lanphier and Southeast rank in the lower quarter of State high schools.

Arbitrator Hill rejected the City's residency proposal since the City failed to show the requirements needed to adopt a breakthrough proposal, 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 attempts to bargain over the change (i.e., refused a quid pro quo).

The City remains adamant about pursuing the residency issue, with the City delegate filing a written dissent to the Hill Award which, as Arbitrator Hill noted, is a rare event in Illinois interest arbitration awards. The Union asserts the following arguments in response to the expected City arguments.

The fact that other City unions have accepted residency is not evidence that supports a breakthrough proposal. As Hill said in his award:

> 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. (*Hill Award*, at 49-50)

In a prior case, while rejecting the employer request for residency, Hill stated: "Specifically, the City has not demonstrated a proven need for the change, it simply desires to align the police and fire departments" (*Belleville and IAFF Local 53* (Hill 2013).

While the City points that the other 22 units have accepted the City residency proposal, is important to note that 21 of the units are non-public safety and, as the AFSCME negotiator has testified, they have no recourse to arbitration over the issue. While the IAFF did accept the residency restriction, it did so only by tying residency to staffing levels, with the residency provision providing:

> The residency restriction is contingent on the continued status quo of Divisions II and III.

It is clear that the IAFF agreed to the residency restrictions specifically based on the City agreeing to not cutting the 11 position in Divisions II and III. In other words, the City had a hammer over their heads, and the Union did not want to lose those headcounts.

As it has been previously noted, a desire to align fire and police has been held insufficient to impose a term of employment of a union. If the PBPA is forced to accept residency merely because the other non-public safety unions agreed to it, then the PBPA is basically forfeiting it's right to binding interest arbitration.

The City maintains it desires residency so the employees can contribute to the tax base. The economic impact of the 80 officers living outside the City has a negligible effect in a City of 117,000. The City claims to need this revenue to cover pension obligations. It makes this argument while keeping its own property tax rate inordinately low. The evidence shows that if the City had a property tax rate to the average of its comparable, excluding Rockford which has an abnormally high rate, the city would contain over $12 million on an annual basis.

The national trend is clearly to loosen residency requirements. Also, the City's proposal would impose a two-tier residency system which Arbitrator McAlpin has personally seen to cause a problem. Based on this experience, McAlpin rejected such a two-tier system in *City of Centralia and FOP, S-MA-09-076* (McAlpin, 2011) citing the problems when the officers required to utilize the smaller residency area become the majority of a unit.

The City has advanced several proposals which it claims are quid pro quo for the residency requirement. Besides maintaining that these are untimely, the Union states that they are not a quid pro quo because the City is offering something that the Union doesn't need or want, and thus has no value.

The City's time barred additions to its residency proposal are: a $2,000 bonus to new hires, a 1% longevity step at 30 years for new hires, the Union proposal for a vacation proration for new hires which was withdrawn by the Union on June 25. A review of the City's exhibits does not reveal where any of these residency add-ons were costed out in the City hearing exhibit book. The following is the cost based on a review of the pre-arbitration materials:

Vacation Proration - Based on the assumption that there are approximately 10 new hires on annual basis, the entire cost over the course of this 4-year contract is $20,400.

Longevity Raise at 30 Years - Exhibit A shows a cost to the City of a speculative estimation of $2,069 for each 30-year retiree at a 2% longevity raise, not the 1% that the City now proposes. The application that was costed out in negotiations was not confined to new hires. As the proffered 30-year longevity increase would only be effective 30 years after January 1, 2011, when the Tier II modifications went into effect, the offer would only be to new hires 30 years from 2011, which is 2041. This costs the City nothing and provides no value to the Union. Further, at hearing, Barksdale specifically denied that the Union had any interest in the new hire 30-year 1% longevity raise. The new hires already come out of the Academy with a completely full compensatory bank, based upon the abnormal work hours schedule utilized during the training Academy.

$2.000 Bonus for New Hires - The Union never received any cost calculations on this, as it was added much later on in the process. Using the City estimation of 10 new hires per year this equates to $2000 x 10 new hires = 20,000 x 4-year contract $80,000.

Moreover, the City should not be in charge of deciding what is important and valuable to the Union. Thus, the Panel should find that there is no sufficient quid pro quo being offered to the Union to bolster any argument in support of a breakthrough on the residency issue. In any event the City has not satisfied other elements of proof necessary to justify a breakthrough on this topic, as previously noted by the Union.

Since Residency is viewed as a non-economic issue, the Neutral has the ability to craft his own resolution. It would appear that any remedy short of ordering strict City limits would not address any of the City's stated concerns or arguments, and that residency restriction is simply not supported by a look at the police in comparable cities' contracts, any Illinois arbitration award, the National Trend or the equities of the circumstances. The law enforcement positions that require a quick response already have residency restrictions in the Agreement. Therefore, it is urged that the status quo remain.

DISCUSSION AND FINDINGS

Procedural Objection

The initial issue involves the Union's procedural objection to the City's residency proposal. The City timely raised the residency issue in compliance with the parties' ground rules. While the extra provisions that the City believes constitute a quid pro quo were not

raised early on, the ground rules allow the parties to adapt and amend their proposal until the final offers are to be submitted. The additions the City added to their residency proposal serve only to amend an existing proposal and are consistent with the ground rules. Thus, the Panel will consider all the terms of the City's residency proposal.

Breakthrough Standard

The next issue to be determined is whether the City's proposal should be evaluated as a breakthrough proposal under the standards established in many arbitrations. Arbitrator Hill found in the 2017 Award that the City's residency proposal constituted a breakthrough. In both this proceeding and the previous one, the City has maintained that its proposal should not be evaluated as a breakthrough. It bases its argument largely on the assertion that the language of the current contract plainly states that the previous residency requirement, which was much more restrictive than the current proposal, was lifted without a bargained for exchange. As expressed in his dissent to the Hill Award, Judge Holmes argued that Hill "incorrectly ignores the significant and distinguishing fact that the status quo for 25 years was a residency requirement, which was unilaterally lifted by the City with no quid pro quo given by the Union." Holmes added that, "Yet, now the arbitrator improperly asserts that the City must buy back residency to which the union did not bargain for, nor give any clear quid pro quo."

The breakthrough standard in interest arbitration is most often derived from Arbitrator Harvey Nathan's reasoning in *Sheriff of Will County and AFSCME Council 31, Local 2961*, Case S-MA-88-9 (Nathan, 1988). stating:

> . . . The well-accepted standard in interest arbitration when 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 is to place the onus on the party seeking the change . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:
>
> (1) that the old system or procedure has not worked as anticipated when originally agreed to or
>
> (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
>
> (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

> Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves. *Sheriff of Will County* at p. 51-52

I have cited both Nathan's decision and that of Arbitrator McAlpin's similar determination when evaluating proposals in several interest arbitrations. Arbitrator McAlpin has expressed this standard in several cases.[3] Under this standard, the party desiring a change to the status quo has the burden to show that:

1) There is a proven need for the change;
2) The proposal meets the identified need without imposing undue hardship on the other party; and
3) There has been a quid pro quo offered to the other party of sufficient value to buy out the change or that comparable groups were able to achieve the provision.

This breakthrough standard has been applied in a long series of interest arbitration decisions. Arbitrators believe its use helps ensure that the parties do not achieve through interest arbitration what they could not achieve at the bargaining table and also that neither party gets something for free or a deal beyond what it could have obtained if it could strike. *City of Rockford,* S-MA-99-078. (Goldstein, 2008)

Arbitrator Ed Benn explained in one of his interest arbitration decisions how the use of the breakthrough standards provides important stability to the parties' expectations. Benn asserted that the parties:

> ... also know that the interest arbitrator (if doing the job correctly by consistently following his or her own prior decisions to provide stability) is not going to award a breakthrough or change the status quo either through establishing a new benefit or reducing an existing one unless there is a showing that the existing system is broken - which is a heavy burden to meet. And that means that through prior awards of the interest arbitrator the arbitrator has effectively drawn a circle - an outer boundary - within which the parties can navigate and negotiate and if there are any major changes outside of that boundary, the parties will have to bargain and trade for those changes because an interest arbitrator is not going to give those changes to them." *Village of Lansing & Illinois Fraternal Order of Police Labor Council*, S-MA-12-214 (Benn, 2014)

[3] *County of Cook and IFOPLC*, L-MA-96-009, (McAlpin, 1998); In *Village of Oak Brook and IFOPLC*, S-MA-09-017 (McAlpin, 2011)

Thus, the breakthrough standard gives an existing procedure deference as an already resolved issue that does not need to be renegotiated unless it has broken. Numerous arbitrators have used the breakthrough standard when evaluating residency proposals.[4]

The City's assertion in this case is that the breakthrough standard should not be used here because the current residency provision was not the result of bargaining but a result of the City's unilateral action. Thus, it argues, the existing provision should not have the protection of a status quo that has been bargained for, nor should a quid pro quo be necessary.

Residency first became an issue that was bargainable and subject to an interest arbitration award in 1998. At that time many jurisdictions had restrictive residency rules including in-city residency requirements. Thus, when Unions requested relaxed residency standards in interest arbitrations, the employers asserted that the existing standards were the status quo and the unions needed to fulfill the breakthrough standards first. However, arbitrators consistently refused to grant these existing standards status quo protections since the unions had not been able to bargain for them. See *Town of Cicero & IAFF*, S-MA-98-230 (Berman, 1999); *City of Lincoln & ILFOP*, S-MA-99-140; *Calumet City &ILFOP*, S-MA-99-120 (Briggs, 2000).

The City appears to be relying on these decisions to assert that the residency proposal here is also not a bargained for provision. However, the limited exception to the breakthrough standard applied by the arbitrators following the change in the law about residency is not a situation similar as to what occurred here. Those Unions did not bargain over the residency status quo because prior to 1998 they were not legally entitled to. Whereas here, the City had the clear ability and right to bargain over residency at all times. The City proposed non-residency in 2000 and, as it favors non-residency, the Union agreed to the City's proposal. Thus, unlike the residency requirement that existed prior to 2000, the current non-residency provision was the result of the voluntary agreement of two parties that both had the legal right

[4] See *City of Alton & IAFF*, S-MA-06-006 (Fletcher, 2007) and *City of Carbondale*, S-MA-04-102 (Briggs, 2006) finding for the City's offer of status quo;

and ability to bargain over it. The fact that the City and not the Union originally proposed the measure does not change the fact that both parties voluntarily agreed to non-residency for many years prior to the City requesting a change. The *Hill Award*, which has the same effect as a collective bargaining agreement, has continued the status quo on non-residency, which has now been in existence for 20 years.[5] Thus, the current non-residency provision is a status quo provision subject to the additional burden of proof imposed by breakthrough standards.

The City's reliance on its prior history of 25 years with a residency requirement before 2000 is misplaced as the Union did not have the legal right to bargain residency during that period. As said before, when the parties agreed to non-residency for the Agreement commencing in 2001, it was the first time the Union was legally able to bargain over residency. Thus the existing 25 year provision requiring residency would not have had status quo protection so the breakthrough analysis would not have been applicable and the Union would not have had to show a quid pro quo for the change if bargaining over the issue had reached impasse and interest arbitration resulted. Thus, the residency clause as exists now is the first residency clause to exist since unions attained the ability to enforce bargaining over the issue.

The City also asserts that since it provided non-residency in 2000 without getting a quid pro quo, it shouldn't be required to provide one now. However, if that argument carries any weight, it is only material to the third prong of the breakthrough standard and not to the first two prongs of the standard. It is not determinative of whether the breakthrough standard should be applied at all. Additionally, as already pointed out, the residency bargaining in 2000 to 2001 would have been bargaining without breakthrough standards, so the Union would not have been required to provide a quid pro quo to obtain non-residency at that time.

Based on the above, I find that the existing non-residency provisions are a bargained-for status quo and the City's proposal to change the residency provision to require City residency must be evaluated under the breakthrough standards prior to evaluating it further.

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[5] *City of Alton & IAFF*, S-MA-06-006 (Fletcher, 2007) See discussion on p. 66 finding that a residency clause resulting from interest arbitration is given "deference equal to that of a negotiated status quo."

Application of the Breakthrough Standard

Under the first two prongs of the standard, the City has the burden, as the party seeking the change to demonstrate that the existing non-residency requirement:

> has not worked as anticipated when originally agreed to or has created operational hardships for the employer (or equitable or due process problems for the union) (Nathan) or, stated another way:
>
> There is a proven need for the change in residency and the proposal meets the identified need without imposing undue hardship on the other party; (McAlpin)

The Section 14(h) factors can be considered is evaluating whether the current residency system is not working or there is a proven need for the change. The City's contention is that the current non-residency is not working as intended and needs to be changed since: 1) every other internal bargaining unit now has a residency requirement; 2) the residency requirement is needed so that employees are contributing to the tax base funding their salaries and benefits. 3) if Unit officers are required to live in City neighborhoods, the bond between the officers and those they police will increase, and it will foster better police and community relations.

In an interest arbitration in Edgar County, this Neutral Chair found that internal consistency can be considered as a factor when determining the need for the change involved in an employer's Offer.[6] However, my determination in Edgar County involved the issue of health insurance for county employees. Arbitrators have consistently held that the need for internal consistency is paramount in administering insurance plans. However, that same need does not exist in residency restrictions.[7] The fact that police are not required to be City residents while other employees are required, does not impose the same operational burdens on the City as administering differing insurance plans do. The differential in residency requirements

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[6] *County of Edgar, Edgar County Sheriff & IFOPLC*, S-MA-18-081 (Reynolds, 2018) citing *Village of Oak Brook and IFOPLC*, S-MA-09-017 (McAlpin, 2011)

[7] *City of Pekin & IFOPLC*, S-MA-03-180 (Yaffe, 2004) where Arbitrator Yaffe stated on a residency issue: "Although internal comparability supports the City's position on this issue, the undersigned does not believe that it merits the same weight given to the same factor in determining the merits of the parties' proposals on health insurance. There, the impact and inter relationship between all City employees and the benefits were indisputable; here, a persuasive case has not been made that the absolute residency prohibitions in Peoria County are related to legitimate operational concerns, and no other compelling argument has been made why the City's historical residency restrictions need to be maintained."

between the units does not cause operational problems. If it causes any problems, they are political or public relations issues that do not constitute a hardship or a proven need.

Additionally, even when evaluating internal consistency for residency proposals without a status quo situation, the arbitral precedent goes both ways on the issue.[8] The City points to Arbitrator Hill's decision in *City of Danville & PBPA Unit #11*, S-MA-09-238 (Hill 2010) where Hill cited Arbitrator Elliot Goldstein in stating:

> There is a legitimate and logical concern on the part of the management of the Village that a residency rule should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment for this bargaining unit has been proved, I find ... that the Union's attempt to establish such a compelling need for the liberalization of the Village's residency rules because of the unique nature of the terms of work for police officers does not convince him in this case to disregard the internal comparable, which undisputedly shows all of the Village employees worked under the same rules for residency as does this bargaining unit. *Village of South Holland & FOP*, S-MA-98-120, (Goldstein, 1999)

However, in that case Hill was evaluating Section 14 factors in making a determination on residency proposals where there was no status quo requiring breakthrough standards. Hill was utilizing the internal comparables in a situation where he felt the "internals" trumped the "externals" in evaluating residency proposals competing to become a status quo. Neither Hill nor Goldstein were finding that internal comparables can show that a residency system is not working as planned.

Arbitrator Goldstein has also held that "arbitrators have been reluctant to place much weight on internal comparability arguments in residency issues for good reason." *City of Galesburg & PSEO*, S-MA-03-197 (Goldstein, 2005) In that decision, Goldstein cited with approval the words of Arbitrator Briggs in *Calumet City & IFOPLC,* S-MA-99-128 (Briggs, 2000) where, when faced with a non-status quo situation where other units, including firefighters, had accepted the residency restrictions. Briggs stated:

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[8] The City cited the findings of Arbitrator Finkin in his decision in *PBPA Unit #11 v. City of Danville* (S-MA-12-330) (Finkin 2014), where he stated: "sensible as the Union's arguments are, the Union does not address the City's main argument, which is to the primacy of achieving a uniform policy for all City employees." I have reviewed that decision and Finkin did not appear to use the breakthrough standards for a status quo provision. I agree with Arbitrator Hill that Finkin's decision "does not represent the better weight of arbitral authority on the issue of a quid pro quo." *Hill Award*, p.40.

> Ordinarily, the Neutral Chair would be unwilling to break such a pattern in interest arbitration. But this issue is different. The City's clerical employees and members of its Street/Alley & Water Departments do not arrest suspected criminals. They do not testify against such persons on a routine basis, as part of their jobs. And Calumet City firefighters are not required as part of their profession to detain citizens, take them to jail, and contribute to their subsequent imprisonment. Obviously, then, such employees are not concerned about whether the criminal element knows what they do for a living and where they live. At least they are no more concerned about that issue than those of us in other occupational categories. In stark contrast to all other Calumet City employees, its police officers and their families are subject to reprisal at any time from persons who have demonstrated no respect for the law and little regard for human life. The Neutral Chair has concluded that the equity favors them here, and that their individual safety should prevail over the perceived need some citizens have expressed to have cops living in their neighborhoods.

Thus, even when arbitrators are not faced with a status quo breakthrough standard, they don't always consider internal consistency to be a controlling factor. In this case, where there is a status quo, the Neutral Chair finds that the lack of internal consistency in residency requirements does not provide evidence of either a proven need or evidence that the police unit non-residency system is somehow not working as intended.

Similarly, the fact that some Unit members are not contributing to the tax base is not evidence of a proven need or that the system is somehow not working as intended. That situation is a natural consequence of the non-residency provision and has occurred every time any officer moved out of the City within the past 20 years. As to the City having public relations issues with citizens and other employees due to the Unit not having residency requirements, these problems also do not provide evidence of a proven need or that the system is not working as intended or causes an operational hardship. Any problems resulting to the City are perception issues that do not impact actual police operations.[9]

The City's claim that there is a benefit to citizens in having police live in the community they work is an often cited as an advantage to in-city residency when arbitrators are weighing competing residency proposals. However, while that is a factor when weighing competing

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[9] If the City needs to provide a rationale for distinguishing the residency of police from other employees, the sentiments expressed in Arbitrator Briggs' statement in *Calumet City, supra,* is a good source.

proposals, it does not rise to the level of proven need to change the status quo, that the status quo residency system is not working or evidence of operational hardships. The lack of a possible benefit does not equate to a hardship.

Even when weighing the benefits of such a factor versus the benefits of non-residency, the vast majority of interest arbitration decisions have chosen either to have no residency or have residency within a geographic area that includes areas outside the municipality. In every instance, residency boundaries are either expanded or left as is. At best, public employers have managed to retain their existing geographical restrictions. I have found no interest arbitration decisions where a municipality has gone from non-residency to required city residency. Additionally, none of the external comparables have residency restrictions to the municipal boundaries.

As to the third prong of the breakthrough test, the City has proposed some items as a quid pro quo for its residency proposal.[10] The Union portrays the offered quid pro quo as items it does not want. However, I need not determine whether either the existence of the proffered quid pro quo is sufficient reason to satisfy the third prong of the breakthrough standard as the City has not provided sufficient evidence to satisfy the first two prongs of the standard.

Conclusion

The City has not provided the necessary evidence of a proven need to change the residency status quo. or that the existing status quo is not working, or that the status quo causes any operational hardships. As the City has not fulfilled the breakthrough standards, I need not address other arguments raised by the parties.[11]

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[10] The Union's procedural objection to the addition of these items does indicate that the items were not raised early enough to provide for full bargaining on the issue.

[11] In opposing the City's proposed two-tiered system, the Union points to the finding in the *Hill Award* that such two-tiered systems are frowned upon. While I have not relied on that factor in finding for the status quo, I note that other interest arbitration awards cite that the Illinois Municipal Code prohibits restricting existing residency restrictions for incumbent officers. See *City of Danville & DPCOA*, S-MA-11-336 (Stanton, 2013). Neither party has mentioned this provision of the Municipal Code when discussing residency.

Accordingly, the Panel adopts the Union proposal for the status quo on residency.

ISSUE #2 - WAGES

BACKGROUND

The wage proposals of the parties are:

City Offer	Union Offer
3/1/2018 – 1.75%	3/1/2018 – 2.25%
3/1/2019 – 1.75%	3/1/2019 – 2.25%
3/1/2020 – 1.75%	3/1/2020 – 2.25%
3/1/2021 – 1.75%	3/1/2021 – 1.75%

CITY POSITION

The amount of sick leave sellback should be included in analyzing the wage increase. In the *Hill Award*, Arbitrator Hill stated that:

> When the offers are considered side-by-side, *with sick sell back included in the calculation*, the Administration's numbers are validated on an overall comparison basis and, arguably, is consistent with external settlements." *City of Springfield & PBPA 5,* S-MA-16-001 (Hill, 2017) at page 31

Although the Union may point out that officers are not eligible to use the sick sell back until at least 7 years of service, this is no different from longevity steps.

As stated by Arbitrator Benn, external comparables are best left out, and the most important factors are the Consumer Price Index (CPI), internal comparability and overall compensation presently received. Arbitrators recognize that the final offer closest to the cost of living should prevail.

The CPI annual average percent change formula is what should be used to determine CPI. This is the formula contained in the collective bargaining agreement for the City's units.

From 2009 to 2017, the PBPA received wage increases totaling 10.76% more than inflation. In the previous agreement the PBPA received 5% increases while the CPI increased 1.8%, so this Unit received increases totaling 3.2% more than inflation.

The CPI for 2018 and 2019 are known and were 1.4% and 1.6% respectively. The City's proposed 1.75% increases for those years is .5% over the CPI while the Union's 2.25% each year is 1.5% over the CPI. Thus, the Employer's proposal is closer to the CPI for 2018 and

2019. If you include the lucrative sick leave sell back, the wage proposal is 3.33% each year and far over the CPI for each year.

Looking ahead, the City assumed a CPI increase of 1.75% for 2020 and 2021. The PBPA asserts that the Federal Reserve Bank of Philadelphia (Bank) forecasts should be used for 2020 and 2021. However, the current forecasts are for the national average, which is normally higher that the Midwest region average traditionally used for the City employees. Also, the Philadelphia forecasts are normally too optimistic and prone to be revised, such as already reducing the 2020 forecast from 2.1% to 2.0%. Thus, the City believes it more reasonable to rely on a projected CPI of 1.75% for 2020 and 2021.

Using this figure, the City's proposal is in-line with the CPI and 1.58% higher when sick leave sell back is included. The Union proposal is .5% higher than the CPI each year and a 3.66% increase when sick leave sell back is added in. Even using the Bank's projections, both proposals would be over the CPI, with the City's proposal closer to the CPI.

The internal comparables support the City's wage proposals and is the factor, as Arbitrator Daniel Nielsen has stated, that best satisfies the statutory aim of duplicating as near as possible what voluntary settlement would have attained. The City has 23 units and its nearest comparable in number of units is Bloomington with 11 units.

The City and its other protected service unit, the Firefighters Unit, had a protracted negotiation that led to a 2019 agreement. The parties reached agreement on increases of:

2016 – 2% bonus that does not increase base
2017 – 1.5%
2018 – 1.25%
2019 – 1.5%
2020 - 1.75% with a me-too clause to Police Unit

From 2015 to 2017, the police received increases totaling 5% which was 2% greater than the Firefighters during that period. For 2018 through 2020, the Firefighters agreed to wage increases that total .75% less than what the City is offering the Police Unit. In 2021, both parties are offering 1.75% and the Firefighters contract would have expired. However, if the panel accepts the City's proposal, the Police Unit will receive 2.75% more than the Firefighters Unit

during the period of 2015 to 2020, not even considering sick leave sell back. In 2018 and 2019, the City non-public safety employees receive increases averaging 1.74% and 1.76% respectively. Thus, the City offer to the Police Unit almost mirrors those increases. The City proposal is more reasonable especially when you add in the 1.58% average sick leave sell back. Thus, the internal comparables strongly favor awarding the City's package.

The external comparables should be given little or no weight. Nonetheless, from 2008 to 2017, the PBPA received 6.24% more in total wage increases than the average of comparables. When including sick sell back, the City proposed wage increases would exceed its closest comparable by .48% in 2018 and .48% in 2019.

The City's wage package would also still rank it first among the comparables in total compensation. The Unit employees achieve this while ranking 7th out of 8 of the comparables in total hours worked.

Therefore, based on the rationale above, the Panel should accept the City wage proposal.

UNION POSITION

The Panel should pay more attention to comparables in other public safety units rather than settlements in non-public safety units. Due to the type of work, it is most appropriate to compare this unit to other police units. Although there was a tendency to pay less attention to such external comparables during the Great Recession as Arbitrator Martin Malin observed, "As the economy and employer tax revenues have rebounded, the probative value of external comparability has also rebounded....." *Skokie and Skokie Firefighters Local 3033*, S-MA-16-150 (Malin, 2017). This arbitrator has observed the usefulness of using external comparables in determining wage rates. *County of Madison and PBLC,* (Reynolds, 2013). While the City discounts the use of external comparables for this wage issue, it chooses to use them when it suits their argument.

The City first integrated sick leave sell back into its total raise compensation figures in 2017. The increase of sell back hours from 48 to 80 hours occurred in 2015. Arbitrator Hill

confirmed that the Union had just bought and paid for this increase in the previous contract when he awarded the status quo pf 80 hours in the *Hill Award*. The Union submits that the Panel should not factor in the sick leave sell back percentage into an annual pay raise increase. Not all Unit members receive the benefit and some form of the benefit has existed since 1997. The number of officers using the benefit varies from 64 to 90 officers per year; the average is that 38% of the Unit uses the benefit. Arbitrator Hill mistakenly assumed a majority of the Unit received the benefit. Also, other comparables have some form of buy back or a sick bonus or some other benefit that this Unit does not have.

While the City doesn't claim an inability to pay defense, it does point to financial woes. Yet financially, the City is doing fine and is in a better position than in the 2017 arbitration. This is shown by many of the comments made by Mayor Langfelder and Budget Director Bill McCarty. McCarty recognized that sales tax revenue may increase because of a new law geared toward on-line tax collection compliance as well as income from cannabis sales tax.

The City also continues to point to unfunded Police pension liability as a financial concern. Yet, the City caused some of that by projecting an inflated rate of return and failing to make up contributions when the realized rate of return was lower. Also, the City continues to maintain an overly low property tax rate. The City's own documents show that between 9 and 17 million dollars is lost yearly by failing to have a realistic property tax rate. Also, the new pension funding consolidation law should assist by cutting administrative costs and increasing investment returns.

Sergeant Grant Barksdale testified to the differences between police officer duties and the duties of non-public safety employees. These unique duties result in difficulty recruiting and keeping police officers. For these reasons, the most important factor in evaluating wage increases is the wage increases received by fellow police officers in the external comparable cities, which have been the same since 1989.

The evidence shows that from 2014 to 2017 the Unit fell way behind the other comparable cities, ranking last of the 8 comparables in total wage increases for that period. The results are that for the following years, Springfield police unit:

2014	Received a 2.25% raise when the average was 2.41%
2015	Received a 1.50% raise when the average was 2.55%
2016	Received a 1.75% raise when the average was 2.66%
2017	Received a 1.75% raise when the average was 2.37%

The Union's proposed wage increases are totally in line with the raises reached in the comparable cities. Subsequent to the hearing in this case, Champaign police received 2.50% increases for 2018, 2019 and 2020. Thus, the proposed wage increases are still lower than the average of what has been given in the comparables. The City proposal is obviously much lower than what was given in the comparables. It is submitted that the Union wage proposal is not really a "catch up" as the arbitrator has seen in other cases, but more of a "not get further behind" proposal.

The comparables face the same financial issues faced by Springfield yet manage to grant increases averaging more than what the Union is proposing here. This comparison shows apples to apples while the City's comparables mixes in sick bonus, sick cell back and an incomplete total compensation that doesn't include all perks present in the comparables.

The City stats include a sick sell back averaging $1,346. Yet not even a majority of officers receive this benefit. The City stats don't show a monetary value for sick sell back in any comparable, yet Champaign, Urbana and Peoria have some form of that. The $1,428 for take home cars is also a benefit not provided all employees. The Union has no idea how the City calculated holiday pay.

The City's evidence of CPI is inaccurate as presented, The City incorrectly used the CPI for 2017 as the CPI for 2018, which should be 1.6% instead of 1.4%. The City also estimated 1.75% for 2020 and 2021 without showing how it came up with the numbers and without any forecasting service. Using the Philadelphia Forecast for the fourth Quarter of 2019, it shows the annual average forecasts for Headline CPI to be 2019 – 1.8%. 2020 – 2.1% and 2021 -2.2%.

Thus, under the Union's CPI submissions, the CPI for the four contract years would be 7.7% and not the 6.5% presented by the City, The City proposed wage increase of 7% is .7% below the CPI and the Union's is .8% over the CPI, a negligible difference that only slightly favors the City.

Though the City uses internal comparables, the varying job duties make such comparisons useless. The police do not have the right to strike so have the right to interest arbitration. If the City is allowed to reduce police salaries by reducing the wage increases of other employees, then the police unit's right to binding arbitration will be diminished to nothing.

In summary, the Union's wage proposal should be adopted because:

1. The external comparables show an overwhelming pattern of raises in excess of 2%;
2. The majority of interest arbitration awards show an overwhelming majority of the wage awards are at or above 2%;
3. On a national basis, wage increases are almost all in excess of 2%;
4. The City finances are in the best shape they have been in years;
5. The Unit wages have fallen behind the comparables;
6. The public interest and welfare is promoted by retention of qualified peace officers; and
7. The City's overall compensation data is totally deficient and should be ignored; and
8. The City's costing out data is deficient as it improperly includes longevity raise calculations.

DISCUSSION AND FINDINGS

Adding Sick Leave Sell Back to Percentage Increase

In describing the wage offers, the City presents charts that add the 1.58% of additional wages that the average Unit member receives in sick sell back to the 1.75% increase in wages to present an offered wage increase of 3.33% in each of the four contract years.

It bases this calculation on the statement in the *Hill Award* that: ""the Union has advanced its case when external data is examined *with respect to wages only.* When the offers are considered side-by-side, *with sick sellback included in the calculation* (awarded to the Union) the Administration numbers are validated on an overall compensation basis."

I accept that Hill intended the sick leave sell back average as something to be added to the overall compensation calculation for comparison purposes, However, I reject the practice of

adding the two percentages together to reflect the percentage wage increase proposals for each of the contract years as the percentages provide different measurements,

The proposed 1.75% increase is the increase in the wage rate to be given each year. The 1.58% figure is the average percentage of wages in sick sell back benefit received by Unit members in a certain year. That figure results in an amount of sick sellback received. It is not a measure of an increase in wages or sick sell back received each year.

When the two percentages are added together, it indicates that under the City proposal a Unit member would receive 3.33% increase in salary and sellback in each year or over 13% increase over the four years. Yet Unit members will not be getting a 3.33% annual salary and sellback increase from the amount of salary and sellback received in the previous year for each contract year. Instead, a Unit member who receives the same amount of days of sick leave sellback each year will receive a 1.75% increase in wages and sellback each year under the City proposal. Adding the two unrelated percentages together inflates the increase in wages and sellback a Unit member will receive each year and over the contract term.

Therefore, all calculations involving comparisons of the wage offers used in this decision will not add in the average percentage sick sell buy back received to the wage increase percentage proposals.

External Comparables

In the previous Agreement, the Unit's wage increases for 2014 through 2017 were the lowest of the comparables, and the only one averaging less than 2% annually. For this contract term, the Union's proposed wage increases are in line with the raises reached in the comparable cities. For 2018 and 2019, all other comparable units received at least 2% annual increases, with Peoria's 1% for 2018 the only outlier. The only settlement in the comparables for 2020 is the Champaign police unit, which received 2.50% increases for 2018, 2019 and 2020. The Union's proposed wage increases are still lower than the average of what has been given in the comparables. In contrast, the City proposal is much lower than what was given in the

comparables. However, the City's proposal still would keep the City 's position at or near the top end of the comparables in total compensation.

The external comparable evidence clearly favors the Union's wage proposal.

Cost of Living

The parties offered differing calculations of the actual and projected CPI. The Union used the Philadelphia Federal Reserve Bank's (Bank) projections for 2020 and 2021, while the City used 1.75%. The Union summarized these calculations as follows:

Year	Union CPI	City CPI	City Modified
2018	1.6%	1.4%	1.6%
2019	1.8%	1.6%	1.75%
2020	2.1%	1.75%	1.75%
2021	2.2%	1.75%	1.75%
	7.7%	6.5%	6.85%

Year	Union Proposal	City Proposal
2018	2.25	1.75
2019	2.25	1.75
2020	2.25	1.75
2021	1.75	1.75
	8.5	7

I find that the Bank's projection is a more accurate projection than the 1.75% presented by the City, which has no basis other than an assumption. The City points out that the Bank projection is toward the nation as whole rather than the CPIU Midwest average normally used by the parties. I agree that the Bank's projection may possibly be inaccurate, but it is the best projection currently available. The City asserts that the Bank's projection for 2020 has been reduced from 2.1% to 2.0%. Accepting the City's assertion, the Union's CPI figure would total 7.6%. That is the calculation I think best to use. The City's proposal of 7% for all four years is closer to the 7.6% CPI than the Union's 8.5% increase, and closer to the CPI under any of the other offered calculations.

For 2018 and 2019, where the CPI is known, the City proposal is closer to the CPI than the Union's proposal and is still greater than the CPI for those years combined. For the two

projected years of 2020 and 2021, the Union's proposal totaling 4% is closer to the projected CPI of 4.2% than the City's proposed 3.5% increase.

Evaluating each year separately, the City's proposed 1.75% increase is closer than the Union's 2.25% increase to the 1.6% and 1.8% CPI for 2018 and 2019. In 2020, using the 2% projected CPI, both proposals are .25% different than the CPI. In 2021, both proposals are equally below the projections. The City's proposal is closer to the CPI in the two years with reported CPI and the two proposals are equally distant from the projected CPI in each of the last two contract years, though the Union's is closer to the CPI in 2020 if the 2.1% projection is utilized and when 2020 and 2021 are combined.

Overall, the CPI evidence favors the City's wage proposal of 1.75% annually.

Internal Comparables

The non-public safety units have received wage increases averaging 1.75% for the first two contract years, 2018 and 2019. Normally, arbitrators give more weight to the other public safety units when making internal comparisons. The other public safety unit, the Firefighters Unit, has agreed to raises totaling .75% less than the City offered the Police Unit for 2018, 2019 and 2020. The internal comparables clearly favor the City's proposal.

Financial Limits/Ability to Pay

While the City does not claim an inability to pay, it presented testimony and arguments on its restricted financial situation as a factor under Section 14h of the IPLRA provision that an arbitrator consider "the interest and welfare of the public and the financial ability of the unit of government to meet those costs." However, while pension costs are a thorn in the side of most Illinois public bodies, I am not convinced that either of the wage proposals would have a drastic impact on the Employer's financial condition. I find that the City's financial ability is not a determining factor in distinguishing and evaluating the two wage proposals.

Public Interest and Welfare

The Union asserts that the ability of the City to attract and keep quality officers is essential to the interest and welfare of the public. Arbitrators also cite the public interest in the

City having contented public workers as support for an adequate wage increase for the Unit. There is no evidence that the City's proposed wage increase is so insufficient as to affect retention, recruitment or staff morale, especially when the overall compensation of Unit members is considered. On the other hand, the City can assert a public interest in not having the Police Unit singled out for both residency policies and wage increases at a level not obtained by other City employees. Balancing these elements, I find that the public interest and welfare is not a determinative factor in evaluating the two wage proposals.

Conclusion

The parties differ greatly on the weight given each of the statutory factors. The City claims that the current trend is to value internal over external comparables while the Union asserts the reverse is the better policy and the one used by most arbitrators.

Prior to what interest arbitration awards called the Great Recession, arbitrators looked primarily toward the external comparable evidence in evaluating wage proposals. Often arbitrators found the cost-of-living evidence insignificant and would cite only that both offers were over the CPI without giving much weight to which one was closer. Arbitrator Benn described other arbitrators' approach as "their heavy lock-step reliance upon external comparability- whatever that really is - to decide these cases."[12]

When Arbitrator Benn started emphasizing the cost-of-living factors during the Great Recession I believe he brought a needed focus to a factor that had long been subservient to external comparables. Lately, Arbitrator Benn has been further emphasizing the role of internal over external comparables. I am not quite in lockstep with Benn on this yet. I agree that internal comparables should carry more weight than the factor was given prior to the Great Recession. However, while I don't believe external comparables should have the primacy arbitrators long gave it, neither do I believe it should be totally ignored. External comparables are still the best measure of the market value given to police services and is especially important in both measuring that value and in ensuring hiring and retention stability. It still has

[12]*Village of Lansing & Illinois Fraternal Order of Police Labor Council*, S-MA-12-214 (Benn, 2014)

an essential role in evaluating wage offers. Therefore, the cost of living, internal and external comparables should all be prominently considered in evaluating wage offers.

In evaluating the external comparables, cost of living and internal comparables evidence presented here, I find that the external comparable evidence supports the Union's proposal while the internal comparables and cost of living evidence support the City's proposal. Based on that, I find that the Section 14(h) factors as a whole support awarding the City's offer. This is primarily due to the City offer being slightly closer to the CPI.

Due to the narrowness of this advantage though, the Neutral Chair has concerns that the City proposal will result in the Unit falling behind the CPI in the forecasted 2020 and 2021 years. This is not a problem in the measurable 2018 and 2019 years. Another concern is that the Unit will fall too far behind the increases received in the external comparables, affecting recruitment. However, the extent that this is a problem can be reexamined during negotiations for the next Agreement when the actual CPI for 2020 and 2021 will have been determined and more comparables will have reached agreement for those years.

In light of the above, the Panel awards the City proposal on Wages.

ISSUE #3 – SICK BONUS DAY USAGE

BACKGROUND

Under Section 13.3 of the Agreement: any officer who does not have more than one (1) sick leave occurrence during the calendar year is eligible to receive a bonus of:

> one (1) sick leave bonus day for the first year,
> two (2) sick leave bonus days for the second consecutive year, and
> three (3) sick leave bonus days for the third and subsequent consecutive years."

In the alternative, the officer may receive compensation in the amount of $270 for the second consecutive year of one sick leave occurrence or less, and $405 for the third and subsequent consecutive years of one sick leave occurrence or less. The collective bargaining agreement defines a sick leave occurrence as sick leave totaling three consecutive days or less.

The City proposal is to amend the current Sick Bonus Day procedure to provide that:

> Any Officer that has received an annual payment for Sick Sell Back pay pursuant to Section 13.3(b) of the Collective Bargaining Agreement shall not be eligible for sick bonus days during that calendar year.

Thus, the City is proposing to make Unit members choose to either accrue a sick bonus day or cash in the Sick Leave Sell Back in a given year.

The Union proposes to keep the status quo which does not limit a Unit member's ability to utilize both Sick Leave Sell Back and still receive a Sick Bonus Day.

CITY POSITION

The Panel should accept the City proposal because, since officers already receive compensation for not using sick time in the form of sick leave sell back, they are already receiving a sick time benefit. In 2018, 146 of the 233 Unit members were rewarded a total of 379 sick bonus days, at a cost to taxpayers of approximately $116,000 for that year. This does not include overtime and other costs caused by sick bonus days.

The Agreement has a Sick Leave Sell Back provision allowing eligible officers to sell back up to 80 hours of sick leave on a yearly basis. The cost of the sick leave sell back program to taxpayers in 2018 amounted to $297,020 or $3,352 per each of the 233 budgeted members of the bargaining unit, or 1.59% of the $18,721,260 in base wages. The sick leave sell back provision contained in Section 13.3(b) of the Agreement operates independently of the sick bonus day provision contained in Section 13.3(c). As a result, an officer can be rewarded twice for refraining from using sick time and showing up to work.

In 2018, 74 of the 146 recipients of sick bonus days, or 50.68% of the receiving members and approximately 31% of the PBPA membership. also received some form of sick leave sell back. None of the City's external comparables have sick leave sell back or bonus day programs remotely as lucrative as those afforded to the PBPA, let alone the eligibility to participate in both. Further, the double compensation of sick leave sell back and sick bonus days defies logic, and does a disservice to the taxpayer, that an employee should be compensated twice for performing the same action in refraining from the use of sick time.

The City's proposal offers a compromise to recognize appropriate sick time usage while preventing double compensation for refraining from sick time usage. The City recognizes that officers early in their careers are ineligible to receive sick leave sell back compensation. As a result, the language allows young officers ineligible for sick leave sell back wages to be rewarded with sick bonus days. However, those officers who received extra sick leave sell back compensation should not receive sick bonus days.

Although PBPA President Barksdale appeared to object to the City's Offer regarding sick bonus days as something not raised in negotiations, he subsequently agreed with the City's attorney that the issue of sick bonus days "was from the very get-go one of the issues the City brought up about doing away with..." The ground rules clearly state:

> 8. Either party reserves the right to add to, delete from or otherwise amend its existing proposal throughout the course of collective bargaining, except as it may relate to any agreement regarding a deadline for the submission of new proposals .

The City's Offer regarding the elimination of sick bonus days was an amended proposal by the City. The City's proposed language prohibiting an officer from participating in both sick leave sell back and receiving sick bonus days is an attempted compromise to avoid unfairly withholding sick bonus days from the officer that is not eligible for sick leave sell back.

Accordingly, this panel should award the City's proposal regarding sick bonus days because an Officer should not be separately rewarded twice for what is essentially the same action, refraining from the use of sick days.

UNION POSITION

All the sick leave incentives were agreed to by the parties with the shared goal of reducing the number of officers calling in sick. This reduces the administrative headache and additional overtime costs that result in trying to fill the position. Some form of the Sick Bonus provision has been in the Agreement since 1994 and there has never been a discussion of the provision not having the desired effect until the present negotiations.

The City's proposal seeks to disqualify an officer from receipt of the sick bonus benefit, in any calendar year where the officer opts to use the sick sell back benefit. The City is requesting a major change in the procedure so, in evaluating the City's proposal, the arbitrator must conduct a breakthrough analysis. As this arbitrator found in *County of Edgar*, under this standard, the party desiring a change to the status quo has the burden to show that:

1) There is a proven need for the change;
2) The proposal meets the identified need without imposing undue hardship on the other part, and
3) There has been a quid pro quo offered to the other party of sufficient value to buy out the change or that comparable groups were able to achieve the provision.

With respect to the first prong, the City has not shown there was a proven need for the change. There has been no discussion of this proposal, as confirmed by email, so it cannot be concluded that the system is broken or that "there is a proven need for the change". The sick sell back benefit has been in the contract since 1997 and the sick bonus language has been in the contract since at least 1994, so the two provisions have co-existed for over 20 years.

As to the second prong, it is difficult to perceive a need that the City proposal addresses since it has been in the contract for years and the City never saw fit to even discuss it contract negotiations. With respect to the third prong the City has offered up no quid pro quo to exchange for this benefit.

In conclusion the City has failed to establish its case. The proposal is only a monetary take-away proposal, at a time when the City finances are in better shape than in the past. As the Last Best Offer shows, the City gave an ultimatum to the Union that if we don't accept the Residency and Wage proposals, the City will attack the Sick Bonus benefit. The City did not even provide any description of their proposal at that point. In any event the City has not satisfied the earlier stated requirements for a breakthrough proposal.

If the Panel feels the breakthrough analysis has been met, the Union asserts that the 14(h) factors support the status quo procedure. The public interest in not affected; the City's financial ability is healthy; and the comparables evidence has limited value as the various

police contracts have various and differing benefits so that those who don't have sick bonus have other benefits not available here.

DISCUSSION AND FINDINGS

In his *Village of Lansing* decision cited earlier, Benn stated how the breakthrough standard brings important stability to the parties' expectations. This desire for stability is why the breakthrough standard is applicable to the last issue, the City's proposal to restrict a Unit member from taking both sick leave bonus and sick leave sellback in the same year.

The City's proposal is a change in the status quo that must meet the breakthrough standards for the panel to consider its merits. The City must show the following requirements needed to adopt a breakthrough proposal, 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 attempts to bargain over the change (i.e., refused a quid pro quo).

The Chair agrees with the Union that there is no evidence that the Sick Bonus provision is not working or created an operational hardship. From the statistics, it is clear that Unit members' use of sick time is low. The City maintains that with the status quo an Officer would be rewarded twice for what is essentially the same action, refraining from the use of sick days.

While both Sick Bonus and Sick Sellback are benefits that encourage officers to not use sick time, the two provisions provide different benefits. The Sick Bonus Day rewards actual extra time to employees who don't call in sick often in a given year. Sick Sellback does not award any time but instead provides a procedure for members to turn their unused sick time, which is accumulated over a period of at least 7+ years, into cash. The City benefits by not having to incur the administrative headache and overtime costs when an officer calls in sick. The existing procedure has likely decreased rather than created operational hardships.

Under the City proposal, a Unit member who has not used any sick time but chooses to use Sick Sell Back will not receive any bonus days while other members not using sick time will

receive bonus days. This may reduce the incentive of a Unit member to not call in sick during a year he plans to use Sick Sell Back, resulting in more sick leave usage. The City proposal is not a solution to any operational problem. If anything, the City's proposal might cause "equitable or due process problems" not present in the status quo.

Thus, the City has failed to show that its proposal would meet any of the prongs of the breakthrough standards. The City has also failed to convince the Chair that, even if it had met the breakthrough standards, that its proposal should be adopted.

Therefore, the Panel adopts the Union proposal to retain the status quo on Sick Bonus Day Usage.

AWARD

We hereby find the following on the issues in this matter:

Residency:	***The Union's final offer is adopted***
Wages:	***The City's final offer is adopted***
Sick Bonus Day Usage:	***The Union's final offer is adopted***

We order that the parties include these offers, along with their tentative agreements, into the successor Agreement.

Issued: February 24, 2020 at Springfield, Illinois

Brian E. Reynolds
Panel Chair

Judge Roger Holmes
City Delegate

Residency: Dissent
Wages: Concur
Sick Bonus Day Usage: Agreed

#382

Don Edwards
Union Delegate

Residency: Concur
Wages: dissent
Sick Bonus Day Usage: Concur