ILLINOIS LABOR RELATIONS BOARD
PETER R. MEYERS, Arbitrator

In the Matter of the Interest Arbitration between: **UNITED STEELWORKERS AND ITS LOCAL 9189, AFL-CIO-CLC**, Union, And **CITY OF WOOD RIVER**, Employer.	Case No. **S-MA-19-227**

DECISION AND AWARD

Appearances on behalf of the Union

Stephen A. Yokich—Attorney
David Dowling—USW International Representative
Josh Timmins—Chairman Committee
Arron Weber—Bargaining Committee
Bobbi Younker—Bargaining Committee

Appearances on behalf of the Employer

John L. Gilbert—Attorney
Tracy Kennett—City Treasurer and Director of Finance
Brad Wells—Police Chief

This matter came to be heard before Arbitrator Peter R. Meyers on the 10th day of January 2020 at the City of Wood River Council Chambers located at 111 North Wood River, Wood River, Illinois. Stephen A. Yokich presented on behalf of the Union and John L. Gilbert presented on behalf of the Employer.

Introduction

The City of Wood River, Illinois (hereinafter "the City"), and the United Steel, Paper and Forestry, Rubber, Manufacturing Energy, Allied Industrial and Service Workers International Union, USW-AFL-CIO-CLC (hereinafter "the Union"), entered into collective bargaining negotiations in an effort to reach a mutual agreement on a successor collective bargaining agreement to replace the parties' contract that was scheduled to expire on April 30, 2019. The parties largely were successful during their negotiations, reaching agreement on the vast majority of their new contract's provisions, but they have been unable to resolve certain of the issues between them.

The parties thereafter agreed to submit this matter to Compulsory Interest Arbitration with the Illinois Labor Relations Board. Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter came to be heard before Neutral Arbitrator Peter R. Meyers on January 10, 2020, in Wood River, Illinois.

Issues in Dispute

The remaining issues in dispute between the parties relate to the following Articles of the parties' collective bargaining agreement:

a. Vacation Buy-Back/Carryover;

b. Treatment of Workers' Compensation Leave for Purposes of Premium Pay;

c. Sick Leave Buy-Back; and

d. Work Schedule.

Relevant Statutory Provisions

ILLINOIS PUBLIC LABOR RELATIONS ACT
5 ILCS 315/1 et seq.

Section 14(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. 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 upon the applicable factors prescribed in subsection (h).

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to 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 interests and welfare of the public and the financial ability of the unit of government to meet those costs.

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

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

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

Fact Summary

The parties to this matter are the City of Wood River, Illinois, and the United Steel, Paper and Forestry, Rubber, Manufacturing Energy, Allied Industrial and Service Workers International Union, USW-AFL-CIO-CLC. The Union represents a bargaining unit comprised of sworn police officers, telecommunicators, and record clerks, all working within the City's Police Department. The instant proceeding is one part of the parties' larger effort to reach agreement on a new collective bargaining agreement to replace the contract between them that expired on April 30, 2019.

The parties achieved a great deal of success during their negotiations over their new contract, reaching satisfactory resolutions of all but four issues between them. The parties, however, have reached an impasse as to each of those four issues, leading to this interest arbitration proceeding. In considering the impasse issues that remain in dispute between the parties, this Arbitrator carefully has considered all of the evidence and

arguments that the parties presented during the hearing in this matter in support of their opposing positions, including the parties' final offers on these remaining issues. The factors set forth in Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h) (hereinafter "the Act") serve as the framework for determining the appropriate resolution of the outstanding issues between the parties.

Three of the four issues presented here – vacation buyback/carryover, the treatment of workers' compensation leave for purposes of premium pay, and sick leave buy-back – are economic in nature pursuant to Section 14(g) of the Act, so this Arbitrator is without authority to fashion an award different from the parties' final offers as to the economic issues. Accordingly, this Arbitrator shall select either the Employer's or the Union's final offer on each of these three issues in dispute. The fourth issue, relating to the Union's proposed work schedule memorandum of understanding (MOU) unless the parties agree otherwise, is non-economic in nature. This ordinarily means that the Arbitrator may select either party's final offer as the appropriate resolution or may fashion a resolution different from what either party has proposed. Because of the nature of this non-economic issue, which centers on whether or not to include in the parties' new Agreement the MOU proposed by the Union, it is appropriate to follow the procedure applicable to economic issues by adopting the final proposal that represents the most appropriate resolution of the issue, either for or against the inclusion of the MOU in the parties' new collective bargaining agreement.

Section 14(h) of the Act sets forth eight factors that an arbitrator is to consider in analyzing competing proposals in an interest arbitration. As expressed by the plain

language of Section 14(h), however, not all of the eight listed factors will apply in each case, or with equal weight. It therefore is necessary to determine which of the statutory factors are relevant and applicable to the instant proceeding.

One statutory factor that often plays an important role in interest arbitrations, and certainly does so here, is the comparison of employment data from this bargaining unit to employment data from comparable external communities, as well as a similar internal comparison with other bargaining units of Wood River employees. The selection of appropriate comparable external communities obviously is critical. In this particular case, the parties reached agreement on the following as comparable external communities: Bethalto, Highland, Troy, Columbia, and Waterloo, all located in the State of Illinois. In addition to these agreed external comparables, the City has proposed East Alton, Illinois as an external comparable, while the Union has proposed Glen Carbon, Edwardsville, Alton, and Madison County as comparables. All of the Union's proposed external comparables are municipalities within the State of Illinois, except for Madison County, Illinois, which the Union proposes based on its Sheriff's Department.

The demographic data submitted into the record establishes that the five mutually agreed-upon external comparable communities are, in fact, appropriate comparators to the City. The demographic data in the record includes information on population, median household income, sales tax rates, proximity to the City, and equalized assessed valuation of real property from 2017. In terms of this demographic data and financial information, Wood River falls within the range established and generated by the data collected from the comparable external communities. This Arbitrator therefore agrees with the parties

that the mutually agreed-upon external comparables are appropriate comparators to the City, and they shall be utilized as external comparables in this case under Section 14(h)(4)(A).

As for the proposed additional external comparables, the same demographic data has been submitted into the record on these five communities. Addressing the City's proposal first, East Alton, Illinois, the demographic data shows that East Alton's population is significantly smaller than that of the City and all of the agreed-upon external comparables. East Alton's median household income is slightly higher than that of the City, but lower than all of the agreed-upon comparables. There is no indication that East Alton has a local sales tax, while the City does. While East Alton is located less than two miles from the City, it's 2017 equalized assessed valuation figure is less than half the valuation of the City. The 2017 assessed valuation figures for the agreed-upon external comparables, where that information is available, shows that the valuation figures associated with the agreed-upon comparables all are much closer to the City's valuation than is East Alton's 2017 valuation figure. I find that the inclusion of East Alton among the external comparables would radically alter the demographic range across the external comparables, and this alteration would make the data range less relevant to the City's demographics and the list of comparables less helpful as comparators. This Arbitrator finds that East Alton is not an appropriate addition to the list of external comparables to be utilized in this matter.

Turning to the four communities proposed as additional comparables by the Union – Glen Carbon, Edwardsville, Alton, and Madison County – the demographic data shows

that three of the four have significantly larger populations than does the City, with Madison County having a population more than twenty times that of the City. The fourth of the Union's proposed additions, Glen Carbon, is closest to the City in terms of population, but it still has 2700+ more residents than the City. The median household income data for these four communities reveal a range that extends beyond both the high and low end of the range established by the agreed-upon external comparables. The 2017 equalized assessed valuation figures for these four proposed communities all are well beyond the high end of the range established by the agreed-upon external comparables. These communities have valuation figures that are so far above the highest valuation among the agreed-upon comparables that adding them to the list would skew the data range so far in an upward direction that the list of external communities no longer would serve as useful or reasonable comparators with the City. Based on the data, this Arbitrator finds that, like the community proposed by the City, the four communities proposed by the Union shall not be included as external comparables in this matter. Instead, this Arbitrator shall utilize only the communities agreed-upon between the parties as reasonable and appropriate external comparables.

With regard to internal comparables, the evidentiary record contains collective bargaining agreements between the City and other unions representing bargaining units covering uniformed firefighters, certain employees working within the City's Parks and Recreation Department, and employees of the City's Public Services Department. While there are differences in the nature of duties, extent of training, and other factors that affect the relevance, for comparative purposes, of some of these agreements, they

nevertheless provide valuable information regarding the general range of wages, benefits, and working conditions that are earned by employees of the City. This Arbitrator shall utilize that information as appropriate in resolving the impasse issues that remain between the parties here.

As for the other statutory factors set forth in Section 14(h) of the Act, the Employer's lawful authority does not appear to be at issue here, and the parties have not brought forward any stipulations, other than their agreement as to certain external comparables, that will have a meaningful impact upon the resolution of the impasse issues remaining in dispute. The cost of living obviously must be considered here, particularly as to those issues that are economic in nature, and the evidentiary record does contain relevant consumer price index information. Continuity and stability of employment, as well as a consideration of overall compensation and benefits, also contribute to the framework that shall guide this Arbitrator's consideration of the impasse issues in dispute. With respect to the City's ability to pay, it is important to note that the City has not explicitly claimed an inability to pay the cost of the Union's proposals on the remaining economic issues in dispute, although the City has mentioned ability to pay as an important consideration in this matter. The record also demonstrates that the City has agreed to wage increases and an additional paid holiday, among other provisions in the parties' new Agreement that will add to the City's overall personnel costs. The City has, however, presented evidence relating to the fiscal challenges that it has faced in recent years and continues to face now. It is appropriate to consider prevailing revenue and economic conditions in connection with the economic issues in dispute here, even if the

City has not specifically asserted an "inability to pay" under Section 14(h)(3) of the Act. These matters must be considered in connection with the projected impact of the parties' respective final offers on the remaining economic issues, particularly given how dramatically current events are impacting economic conditions generally and revenues at the local, state, and national levels, more specifically.

The statutory factors also include changes in any of the factors listed in Section 14(h) of the Act that occur during the pendency of the arbitration proceedings. The coronavirus pandemic that currently is spreading on a global basis certainly qualifies as a relevant factor under this part of the Act. Local, state, and federal government units throughout this country are dealing with the impact of the business and economic shut-down that this pandemic has caused. As of this writing, it is unclear how long this shutdown will last, what the short- and long-term economic consequences will be, and how local governments like the City will be affected financially and in other ways. While this Arbitrator is mindful of the potential for devastating impacts from this coronavirus pandemic, it appears that the actual costs associated with the economic issues that remain unresolved here do not amount to make-or-break financial obligations no matter which party's final offers are accepted as more appropriate. This Arbitrator also will note that if the economic situation deteriorates too far, the parties always have the option of working together in a cooperative way to make sure that the financial health of the City and of its employees are protected as much as possible. Because of the absolute uncertainty that currently prevails about the ultimate impact of the coronavirus pandemic, this particular factor cannot now be utilized as the basis for determining the proper

resolution of the economic issues that remain in dispute between the parties.

In light of the relevance and importance of the City's financial condition, this Arbitrator also must note that despite the City's assertions that it has had to transfer monies into its General Fund, and that this is a sign of financial challenges, the City's two most recent annual financial statements document that the City's overall financial condition has improved over the past couple of fiscal years to a significant degree. Each of these financial statements show a noteworthy improvement in the City's overall financial position over the previous fiscal year. The City's most recent financial statements must be accepted as presenting an accurate and comprehensive picture of the real state of the City's financial condition, and the data shows that financial condition appears to be stable and favorable.

The final statutory factor listed in Section 14(h) of the Act, the public's interest and welfare, obviously cannot be left out of any analysis of the issues to be resolved in this proceeding. It is evident that this factor involves balancing competing concerns and considerations that affect the proper resolution of the issues remaining in dispute between the parties. These competing concerns include the City's need to attract and retain high-quality personnel within its Police Department so that the Department will continue to function at the highest operational levels, the City's need to remain within reasonable and necessary budgetary constraints, the employees' expectation of a competitive compensation and benefit structure, and the employees' need for terms and conditions of employment that reasonably accommodate the concerns and issues in their daily lives. The public, of course, has a very real interest in the Department's being able to maintain

the highest level of quality among its first-responders, while also ensuring that the City makes every tax dollar count.

This Arbitrator now moves on to a focused analysis of each of the remaining impasse issues in dispute, in light of the relevant statutory factors, the evidence in the record, and the parties' arguments in support of their respective final offers on these remaining issues.

1. Vacation Buy-Back/Carryover

The Union's final offer on the impasse issue of vacation buy-back/carryover is to maintain the status quo.

The City's final offer on the impasse issue of vacation buy-back/carryover is to limit such buy-backs/carryovers to forty-two hours.

Among the guiding principles in evaluating a proposed change to existing, established contractual language is that the party proposing a change to the status quo bears the burden of proving that there is a substantial and compelling reason that justifies and supports the proposed change. The party proposing such a change also should support its position with a showing of some exchange in return for the concession that it is seeking. As has been noted in many interest arbitration proceedings, the existing language of a contract was negotiated and agreed-upon at some point by the parties, and that negotiation and agreement presumably involved an exchange in which one party gives up some valuable benefit(s) in order to gain another. In this case, it is reasonable to conclude that the Union gave up something valuable in order to obtain the very generous vacation buy-back/carryover provision that is at issue here. Accordingly, the City bears

the burden of establishing that there is substantial and compelling reason that justifies its proposed change to the Agreement's existing vacation buy-back/carryover provision and that it is offering an appropriate *quid pro quo* for the change.

The City's proposal on the impasse issue of vacation buy-back/carryover would change the existing language appearing in Section 11.11 of the Agreement to reduce the maximum amount of accumulated vacation that an employee may sell back from 124 hours to 42 hours. In support of its proposal on this impasse issue, the City points to general financial considerations relating to the status of its General Fund, its long-term liabilities, its limited ability to raise taxes, and the need to exercise fiscal restraint so as to help fund the wage and other cost increases associated with the parties' new Agreement governing the bargaining unit at issue, as well as the costs associated with new contracts governing the City's other bargaining units.

The City estimates that its proposal to reduce the limit on vacation buyback and carryover to forty-two hours will save it $7,849 per year over the four-year effective term of the parties' new Agreement. While the impact of these estimated savings for the City should not be minimized, it appears that individual bargaining unit members would experience a negative impact that is more significant than the positive impact that these estimated savings would provide the City. Not only would bargaining unit members see the amount of vacation time they could sell back cut by well more than half, but they also would have far less flexibility as they manage their accrued vacation time against heavy work schedules. This loss of flexibility is critical for employees who, as first-responders, must be ready to report for duty on short notice in the event of emergency situations,

even when they may otherwise be scheduled for time off. To the extent that a reduced limit on vacation hours subject to buyback and carryover places employees in a "use it or lose it" situation more frequently than occurs with the current higher maximum number of hours, individual employees potentially may suffer a loss in their overall compensation whenever their accrued and unused vacation hours exceed the lower limit on buyback and carryovers.

The record makes clear that the City has not offered a *quid pro quo* in connection with its proposal to reduce the vacation buyback/carryover limit. While the estimated cost savings associated with this are important to the City, these savings do not constitute a substantial and compelling justification for making a change in long-standing Agreement language. The City has failed to establish that the relevant Section 14(h) factors favor its proposal on this impasse issues. There is no evidence from either the external or internal comparables that supports the change proposed by the City. Given the estimated dollar amounts involved, there is little to no support for the City's position from the other relevant factors in the Act. The City has not shown that there is a substantial and compelling justification for making the change in vacation buyback and carryover that it proposes, it has not shown that it has offered a *quid pro quo* for this proposed change, and it has not shown that the statutory factors support its position on this impasse issue. Moreover, there is no evidence in the record that indicates that there has been any abuse of the Agreement provision as it currently exists that would support the City's proposal to dramatically reduce the maximum limit on accrued vacation hours subject to buyback and/or carryover.

It also is important to note that interest arbitration is and should remain a conservative process that avoids as much as possible the imposition of an outside party's resolution of disputes over certain impactful and significant subjects of bargaining that should be resolved through negotiated agreements between the parties to a contract. This Arbitrator finds that the details of the Agreement's vacation buyback/carryover provision should be finalized by agreement of the parties themselves. If the City wishes to achieve the change that it has proposed here, then it must bargain with the Union over the issue and convince the Union to agree to change the Agreement through the normal give-and-take of negotiation.

Under the circumstances established by the competent and credible evidence in the record, and in light of the above considerations and the relevant statutory factors, this Arbitrator finds that the Union's proposal on the impasse issue of Vacation Buyback and Carryover is more appropriate. Accordingly, the Union's proposal on this issue shall be adopted, and Section 11.11, the portion of the parties' collective bargaining agreement dealing with Vacation Buyback/Carryover, shall remain unchanged.

2. Treatment of Workers' Compensation Leave for Purposes of Premium Pay

The Union's final offer on the impasse issue of the treatment of workers' compensation leave for purposes of premium pay is to maintain the status quo.

The City's final offer on the impasse issue of the treatment of workers' compensation leave for purposes of premium pay is to not count workers' compensation leave as days worked when determining eligibility for premium/overtime pay.

As with the preceding issue, the City is the party proposing a change to long-standing Agreement language on the impasse issue of the treatment of workers' compensation leave for purposes of premium pay. The current Agreement language long has provided for the inclusion of time spent on workers' compensation leave to be included in the calculation of employees' eligibility for premium overtime pay. The City now proposes to change this provision so that time spent on workers' compensation leave no longer is counted toward eligibility for premium overtime pay.

The same principles that guided the analysis and resolution of the impasse issue of vacation buyback/carryover above apply with equal force here. As the party seeking to change existing Agreement language, the City must establish that there is a substantial and compelling reason for making the proposed change. The City also must show that it has offered a *quid pro quo* to the Union in exchange for the proposed change. The City further bears the burden of showing that the relevant statutory factors supports its proposal on this impasse issue.

The City has asserted that adoption of its proposal here will result in a modest saving for the City, but neither the evidence in the record nor the City's arguments include an estimate of what the total value of that saving might be. Although even a modest saving may be important to the City, the evidence suggests that individual employees stand to experience a significant negative impact in that their overall compensation may be substantially reduced if time spent on workers' compensation leave no longer is counted toward eligibility for premium overtime payments. Overtime often is a key part of a first responder's total compensation, and the City's proposal on this

impasse could make it quite difficult, if not impossible, for an employee who is on worker's compensation for a small part of a pay period to qualify for premium overtime pay, even if that employee works extra hours after returning to active duty.

Such an important negative impact on employee compensation means that the change proposed by the City on this impasse issue really should be implemented only as the result of an agreement between the parties arising from serious bargaining. The City should work to achieve this result through bargaining. Moreover, as typically occurs at the bargaining table, the City may have to offer something valuable to the Union in exchange for securing the Union's agreement to this proposed change.

The City also has failed to show that the relevant statutory factors favor its position here. Although adoption of the City's proposal apparently will yield a modest amount of savings to the City, that modest amount suggests that the statutory factors that focus on economics and finance are not particularly helpful in analyzing the City's proposal. The City has provided little evidence from the external and internal comparables that would support its position here. There also has been no suggestion of any abuse of the Agreement provision as it currently exists that would support the City's current proposal to completely change how time spent on workers' compensation leave is handled for purposes of determining eligibility for premium overtime pay.

Under the circumstances established by the competent and credible evidence in the record, and in light of the above considerations and the relevant statutory factors, this Arbitrator finds that the Union's proposal on the impasse issue of the Treatment of Worker's Compensation for Purposes of Eligibility for Premium Pay is more appropriate.

Accordingly, the Union's proposal on this issue shall be adopted, and Section 8.7(c), the portion of the parties' collective bargaining agreement dealing with the inclusion of time spent of workers' compensation leave in the definition of hours actually worked for purposes of determining eligibility for premium overtime payments, shall remain unchanged.

3. Sick Leave Buy-Back

The Union's final offer on the impasse issue of sick leave buy-back is as follows:

a) wage for buy-back based on last bargaining unit wage; and

b) complete six (6) years of service to be eligible for buy-back of sick time.

The City's final offer on the impasse issue of sick leave buy-back is to limit such buy-backs/carryovers to forty-two hours and eliminate the buyback for members hired after April 30, 2019.

With respect to this impasse issue of sick leave buy-back, both parties are suggesting changes to the existing Agreement language that are intended to save money for the City. The City proposes a more dramatic change than does the Union, as its proposal would impose, for the first time, a limit on the amount of sick leave subject to buyback and also would completely eliminate the sick leave buyback for anyone hired after April 30, 2019. The Union's proposal more or less occupies a middle ground between the substantial changes proposed by the City and maintaining the status quo by leaving unchanged the existing language of Section 9.1(m) of the Agreement. The Union's proposal would increase the number of years of service required to qualify for this buyback and would change the amount paid for sick time to the last bargaining unit

wage from the last hourly rate earned by the employee.

Because this is an economic issue, this Arbitrator must choose one of the competing proposals advanced by the parties. Both of the proposals on this impasse issue must be carefully scrutinized, but the City's proposal must be able to withstand more detailed scrutiny because it involves more dramatic and impactful changes than does the Union's proposal. The City therefore continues to bear the burden of proof.

Section 9.1(m) calls for the City to buy back half of the accrued and unused sick leave from employees who separate from the City, so long as their employment is not terminated for cause. Section 9.1(m) specifies that this buyback program is available to all employees who have worked at least four years for the City, and the City shall pay for one half of a separating employee's accrued and unused sick time at the last hourly rate earned by that employee. Under a separate Agreement provision, employees are allowed to accumulate up to 2,080 hours of sick time.

The details of the other economic elements in the parties' new Agreement – including wage increases, the addition of one paid holiday, and changes to the employees' share of health insurance premium payments – demonstrate that the City is not assuming significant added personnel costs in association with the new Agreement. The agreed wage increases over the term of the new Agreement, for example, appear to track the recent changes in the Consumer Price Index, while the other economic provisions do not appear to involve significant cost increases. The evidentiary record therefore does not support any finding that the City's financial position presents a substantial and compelling reason for adopting the City's proposal over the Union's

proposal. The record also shows that the City has not offered any *quid pro quo* that will help to compensate new and recent hires for the permanent loss of sick-leave buyouts that can easily amount to a substantial portion of an employee's final payout upon leaving the City's employ.

The information from the external comparables shows that all of the agreed-upon external comparables have sick-leave buyback provisions within the collective bargaining agreements governing their police employees. While these programs do differ in terms and details, they generally are more generous than what the City proposes here. As for the internal comparisons, it is true that the City's other bargaining units have agreed to terminate the sick-leave buyback program for employees hired after April 30, 2019. The City has pointed to this to support its assertion that adoption of the City's proposal here would lead to beneficial consistency among its employees. The problem with this claim is that this supposed consistency actually is composed of effectively splitting each bargaining unit into two distinct groups: one that continues to have access to the benefit of the sick-leave buyout program, and one that does not have such access. This two-tier approach to benefit management and overall compensation is not beneficial to the City, to its employees, or to their morale. The City's proposal would result in two levels of overall benefits and compensation, one for each group of employees, and this system ultimately would create a first-class group and a second-class group within the bargaining unit. The evidentiary record also does not conclusively establish enough about the details of the City's bargaining with its other units, so there can be no definitive understanding of what, if any, *quid pro quo* might be associated with the other units' decision to agree

to the alteration of the sick-leave buyout program, nor is it possible to determine what factors – including factors that might be unique to those other units – that convinced these other units to accept this proposal from the City.

There is nothing in the record that suggests the existence of a substantial and compelling reason to embrace a proposed change to the Agreement that would create a two-tiered benefit system. The relevant statutory factors also do not support the City's proposal.

The Union's proposal accomplishes the goal of reducing some of the City's personnel costs, albeit not to the extent of what might be saved under the City's proposal, but the Union's proposal also does not carry with it the negative impacts that would flow from the City's two-tiered approach to the sick-leave buyout program.

Under the circumstances established by the competent and credible evidence in the record, and in light of the above considerations and the relevant statutory factors, this Arbitrator finds that the Union's proposal on the impasse issue of the Sick-Leave Buyout Program is more appropriate. Accordingly, the Union's proposal on this issue shall be adopted, and Section 9.1(m) of the Agreement shall be appear in the parties' new collective bargaining agreement as set forth in the Appendix attached hereto.

4. Work Schedule

The Union's final offer on the impasse issue of the work schedule is to adopt the following memorandum and include it as addendum to the parties' collective bargaining agreement:

Memorandum of Understanding Regarding Scheduling

The parties agree to implement the following schedule for the 2019-2023 contract for patrol, unless mutually agreed otherwise under the terms of the contract.

A-Shift	B-Shift
6am-6pm	6pm-6am
Sergeant-Supervisor	Sergeant Supervisor
Patrolman-East District	Patrolman-East District
Patrolman-West District	Patrolman-West District

Afternoon Patrolman 12pm-12am: Generally assigned as Safe Housing Officer

C-Shift	D-Shift
6am-6pm	6pm-6am
Sergeant-Supervisor	Sergeant Supervisor
Patrolman-East District	Patrolman-East District
Patrolman-West District	Patrolman-West District

Afternoon Patrolman 12pm-12am: Generally assigned as Safe Housing Officer

The City's final offer on the impasse issue of the work schedule is to maintain the status quo.

This final impasse issue differs from the others in that it is non-economic in nature and the Union is the party that bears the burden of proof on its proposal to change the existing terms of the Agreement relating to work schedules.

The evidence establishes that work schedules within the City's Police Department historically have been based on two twelve-hour shifts each day, extending from 6 a.m. to 6 p.m. and from 6 p.m. to 6 a.m. One sergeant supervisor and two patrol officers have been assigned to these twelve-hour shifts. Article VIII of the Agreement contains

provisions that govern filling vacancies when unscheduled leave causes the number of sworn officers to drop below three on the twelve-hour night shift. The minimum number of sworn officers on the twelve-hour day shift is two.

Prior to early 2019, the work schedule also included an officer assigned to work a shift extending from 3 p.m. to 3 a.m. every day. This additional shift assignment allowed for an extra officer to be on duty during what often is the Department's busiest time. The evidence shows that in December 2018, the Department Chief announced changes to the work schedule. One officer was removed from each of the 6-to-6 shifts and a new daily shift extending from noon to midnight was added to the schedule. The 3-to-3 shift remained the same. Upon the implementation of this new shift schedule, the number of sworn officers on duty during the hours from 3 a.m. to noon was reduced to the Department minimum of two.

The Union's proposal would return the staffing levels of the 6-to-6 shifts to what they were before the new schedule was implemented, but it would change the 3-to-3 shift to a noon-to-midnight shift. The City has asserted that this particular impasse issue should not be resolved in this interest arbitration because this scheduling issue is currently the subject of a regular contract grievance that is proceeding to arbitration through the contractual grievance procedure. While a grievance arbitration is an appropriate means of resolving many aspects of the parties' dispute over the details of the new work schedule, the regular grievance arbitration procedure cannot be used to resolve any new terms to be included in the parties' new collective bargaining agreement. Work schedules are an appropriate subject for negotiation and collective bargaining. This has

only recently become a disputed issue between the parties in their negotiations over their new Agreement, the parties have reached an impasse on the issue, and whether the Union's proposed Memorandum of Understanding on the subject of work schedules shall be included in that Agreement now must be settled only through this interest arbitration process.

The Union has made a number of arguments in favor of its position on this impasse issue that focus on the difficulties that the new schedule can and sometimes does create for officers who necessarily must fulfill both personal and professional responsibilities. It is clear that the need to fill vacancies caused by unscheduled time off, such as sick leave, emergency vacation, or bereavement leave, can create problems for the officers who must step into such vacancies with little advance notice. The fact that the new schedule has staffing at the Department minimum for a significant portion of each twenty-four-hour day suggests that there may be frequent need for "special adjustments" to the work schedule to cover such unscheduled absences.

While these problems and the disruptions they certainly cause are real, I find that they do not amount to a substantial and compelling reason to alter the status quo on work schedules. Under the management rights clause appearing in Article IV of the Agreement, the City Manager, and/or his designee, retains the exclusive right to establish and change work schedules. The new work schedule that was implemented in early 2019 does not appear to violate any of the terms of the collective bargaining agreement that relate to minimum staffing, work hours, hours of rest, or other contractual provisions that address various aspects of scheduling. The current work schedule may not be perfect, but

it was established and implemented in accordance with the City's explicit managerial authority, and it does not appear to violate any portion of the parties' Agreement.

The statutory factors generally do not have much impact on the proper analysis and resolution of this impasse issue. The various financial and economic factors do not come into play in connection with this non-economic issue. The legal authority of the City clearly includes the managerial authority to establish and change work schedules. Neither external nor internal comparisons are determinative here because scheduling of patrol officers should be based upon the unique needs of the City, its Police Department, its police officers, and its citizens. The undeniable fact that the current schedule does create some scheduling problems for officers does not justify a change to the Agreement imposed by an outside party that would undercut the City's managerial authority to establish and change work schedules. If there is truly a problem here, it must be the subject of further discussions between the Chief and the Union. At the hearing, the Chief seemed as if he was willing to continue to look at the Union's concerns with respect to the schedule. Hence, I find that interest arbitration, being the conservative process as discussed above, is not the place to require the change to the scheduling being sought by the Union.

Under the circumstances established by the competent and the credible evidence in the record, and in light of the above considerations and the relevant statutory factors, this Arbitrator finds that the City's proposal on the impasse issue of Work Schedule is more appropriate. Accordingly, the City's proposal on this issue shall be adopted, and the Memorandum of Understanding proposed by the Union shall not be added to the parties'

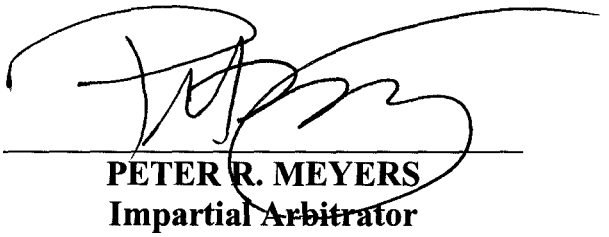
collective bargaining agreement.

Award

This Arbitrator finds in favor of the Union on the issues of vacation buyback/carryover, treatment of workers' compensation leave for purposes of premium pay, and sick leave buy-back.

This Arbitrator finds in favor of the City on the issue of work schedule.

The new language to be added to Section 9.1 is set forth in the Appendix attached hereto.



PETER R. MEYERS
Impartial Arbitrator

Dated this 16th day of April
2020 at Chicago, Illinois.

APPENDIX

ARTICLE IX – LEAVES

Section 9.1 Sick Leave

. . .

(m) Upon separation from the City for all reasons other than termination for cause, the City agrees to buy back half an employee's sick time not used, and pay this amount to the employee at time of separation. All employees will qualify for this benefit, provided they have at least six (6) years of service at the time of separation. This sick time buyback would be calculated by multiplying the total sick hours not used by 50% (0.50), then multiplying by the last bargaining unit wage earned by the employee prior to separation.