

**BEFORE  
EDWIN H. BENN  
ARBITRATOR**

**In the Matter of the Arbitration**

**between**

**CITY OF MARKHAM**

**and**

**TEAMSTERS LOCAL 700**

**CASE NOS.:**

S-MA-09-270

Arb. Ref. 10.159

(Interest Arbitration)

**OPINION AND AWARD**

**APPEARANCES:**

For the City:

Gregory T. Mitchell, Esq.

For the Union:

Robert E. Bloch, Esq.

Omar Shehabi, Esq.

Date of Award:

April 5, 2011

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## **I. BACKGROUND**

Teamsters Local 700 (“Union”) represents police officers and sergeants employed by the City of Markham (“City”, “Administration” or “Employer”).<sup>1</sup> This case comes before me as an interest arbitration for the formulation of a new three year Agreement for the period May 1, 2009 through April 30, 2012. Employees covered by the Agreement are paid pursuant to a wage schedule providing for four yearly steps for police officers; a base rate for sergeants and then longevity steps for police officers and sergeants. For reasons discussed *infra* at II(C), although this case is presented as an interest arbitration, this is not the typical interest arbitration. There are aspects of this case which present as a grievance arbitration because the parties are still in dispute over the terms of their prior 2005-2009 Agreement — specifically, the wage rates for police officers and sergeants in the last three longevity steps.

## **II. WAGES**

From the hearing held on November 8, 2010, the only issue in dispute between parties concerns wages and, as discussed *infra* at II(C), that dispute is limited to the longevity portion of the wage schedule for the last three longevity steps.<sup>2</sup>

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<sup>1</sup> On January 1, 2010, Local 700 IBT replaced Local 726 IBT as the employees’ bargaining representative. Union Exh. 7 at Tab 7, p. 1, note 1 and Tab 8, p. 1-2. “Patrol” officers and “police” officers are interchangeable descriptions.

<sup>2</sup> The following exchange occurred at the November 8, 2010 hearing :  
ARBITRATOR BENN: ... The parties ... advise me that all other matters have been agreed to with the exception of this wage dispute. ... The only dispute that I have is the dispute over wages. All other matters will be incorporated into the decision in this case. ... Is that a fair statement of what we’ve done so far folks?  
MR. MITCHELL: Yes.  
MR. BLOCH: Yes.

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**A. Police Officers — The Non-Longevity Steps**

At the hearing, the parties agreed to across-the-board base wage rate increases:<sup>3</sup>

Effective Date	Increase
May 1, 2009	2.0%
May 1, 2010	1.9%
May 1, 2011	1.9%

The agreed-upon across the board wage increases establishes the first four non-longevity steps for police officers as follows:

Step	Effective May 1, 2008 (Prior Agreement Rate)	Effective May 1, 2009 (2.0%)	Effective May 1, 2010 (1.9%)	Effective May 1, 2011 (1.9%)
Step 1 (0-1)	41,601.89	42,433.93	43,240.17	44,061.73
Step 2 (1-2)	53,943.76	55,022.64	56,068.07	57,133.36
Step 3 (2-3)	56,786.53	57,922.26	59,022.78	60,144.21
Step 4 (3-4)	59,533.65	60,724.32	61,878.09	63,053.77

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<sup>3</sup> For these non-longevity wage rates, at the hearing and as a point of reference, the parties used Arbitrator Marvin Hill's Agreed Order in *City of Markham and Local 726, IBT*, Case No. S-MA-07-1100 (November 19, 2007) ("*Hill 2007 Agreed Order*") for the periods commencing May 1, 2005, May 1, 2006, May 1, 2007 and May 1, 2008. Union Exh. 7, Tab 5, p. 2 (Article XV Wages). The following exchange then occurred showing agreement with respect to the non-longevity steps:

ARBITRATOR BENN: ... If I'm a starting officer -- as of -- I believe the last rate was May 1, 2008 -- \$41,601.89 --

MR. BLOCH: We would take that scale ...

ARBITRATOR BENN: You would take that and you would add 2%, then 1.9 and then 1.9 and that would be the same for the first four steps ...

\* \* \*

... [I]n terms of what the Union is seeking to do, in terms of those four steps, is the across-the-board wage increases that they've proposed and it's my understanding that there's no objection to that.

MR. MITCHELL: Correct. So what you would have in this contract provision -- in those paragraphs with effective date 2009, you have 2% where you now have 4% [the May 1, 2008 increase] and the like going across.

ARBITRATOR BENN: Correct. Is that how you understand it?

MR. MITCHELL: Yes.

MR. BLOCH: Okay. So that's -- I think that's stipulated then?

MR. MITCHELL: Yes.

**B. Sergeants — Base Rate**

As part of the stipulation for the non-longevity steps, the same across-the-board stipulated wage increase of 2%, 1.9% and 1.9% applied to the base rate for sergeants yields the following:

<b>Effective May 1, 2008 (Prior Agreement Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
64,806.19	66,102.31	67,358.26	68,638.06

**C. Longevity**

Over several contract periods, the parties have provided a longevity schedule for wages for police officers and sergeants for 5-10 years, 10-15 years, 15-20 years and 20+ years of service. The difficulty with this case comes from the computation of wages for covered police officers and sergeants who are in the longevity steps beginning with the 10-15 years step — a dispute which has plagued the parties' relationship for several years now.

**1. What Is The Status Quo?**

Before I can determine the wage provisions for the new Agreement, my first task is to determine what the *status quo* is from the last contract year period — specifically, the wage rates for police officers and sergeants in the longevity steps as of May 1, 2008. Once that is determined, I can then examine the parties' positions concerning longevity to determine the wage rates for employees in those steps for the new Agreement commencing May 1, 2009.

**(a). History Of The Longevity Language**

Aside from this matter, there are four prior arbitration awards between the parties which have addressed the issue of longevity pay. Further, there are

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proceedings in court and before the Illinois State Labor Relations Board (“ISLRB”).

The first grievance arbitration award was decided by Arbitrator Peter Meyers on October 13, 2004 (“*Meyers I*”) and stated the parties’ positions concerning the computation of longevity pay as part of retroactive payments for the parties’ 2001-2005 Agreement:<sup>4</sup>

... The Union points out that the contract provides that longevity increases shall consist of 2% for 5-10 years, 4% from 10-15 years, 6% from 15-20 years, and 8% for 20 and more years. The City questioned whether longevity should be increased only at each incremental step or by the full amount of each step as stated in the Agreement. The Union maintains that the City took inconsistent positions regarding the application of longevity. Miller [a City Attorney] testified that the contract calls for adding an additional 2% on top of an employee’s salary at each longevity step, while Cohn [the City’s Treasurer] and Glover [a payroll clerk] flatly contradicted this approach. Cohn and Glover, who have been responsible for computing longevity for the past eight years, both testified that the percentages have been compounded cumulatively as employees reach each longevity step. ...

\* \* \*

On the issue of longevity pay, the City argues that the Union falsely claims that the City’s past practice supports the Union’s position. The City emphasizes that Payroll Clerk Glover found records reflecting longevity pay of 2% for the 5-10-15 and 20-year levels, for a total of 8%, not the 20% currently sought by the Union. The City asserts that the Union did not contest the City’s past practice.

In *Meyers I*, Arbitrator Meyers rejected the City’s method of calculation of longevity pay and found that longevity pay is to be calculated through “compounding”:<sup>5</sup>

... [T]he Union also has pointed out some confusion among the City’s witnesses regarding whether longevity should be increased only at each incremental step or by compounding the salary rate by the longevity rate at each incremental step. Again, a close reading of the contract language relating to longevity reveals a provision that clearly and unambiguously provides that longevity pay involves a percentage increase each year beginning with the fifth year of employment, with the longevity pay increases compounding the salary rate each year. The contract specifies that longevity pay is a percentage step increase for each year beginning with the fifth year of employment and that is how it must be calculated. ....

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<sup>4</sup> *City of Markham and Teamsters Local 726*, AAA 51 300 01183 03 (Meyers, 2004); Union Exh. 7 at Tab 2, pp. 19, 28.

<sup>5</sup> *Id.* at 34-35.

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The longevity dispute came back to Arbitrator Meyers in another grievance arbitration and was again addressed in a November 1, 2006 Supplemental Award ("*Meyers II*").<sup>6</sup> Arbitrator Meyers again stated the parties' positions:<sup>7</sup>

... The City objected to the Union's approach to longevity pay, which consists of adding longevity pay to an eligible employee's salary during each year of the contract. The City argues that the employees instead are to receive longevity pay only once during each five-year range of the contractual longevity scale. ...

\* \* \*

The Union emphasizes that this Arbitrator expressly found, in the October 2004 Decision and Award [*Meyers I*], that longevity pay was to be added each year to an eligible employee's base salary. ...

In *Meyers II*, Arbitrator Meyers rejected the City's "only once" approach to longevity pay and stated that as he previously found in *Meyers I*, "longevity compounds each year":<sup>8</sup>

The parties' argument over the proper handling of longevity pay exemplifies the reasonableness of the Union's approach. The language in Article XV of the contract that addresses the matter of longevity pay leaves no doubt that longevity is to be added to each eligible employee's salary during each year of the contract's duration. Article XV clearly and unambiguously states that the increase associated with each step of the longevity range is "for each of these years," meaning each of the years at each step. If the parties had meant for longevity to be paid during only one year of each five-year step, then the contract would have said so. Instead, the contract conclusively provides that longevity is to be paid each year.

As this Arbitrator expressly found in the October 2004 Decision and Award herein, the clear and unambiguous language of the contract leaves no doubt that longevity pay "is a percentage step increase for each year beginning with the fifth year of employment, and that is how it must be calculated." *Decision and Award at 35* (October 13, 2004). In addition, this Arbitrator found that because longevity pay consists of a percentage increase in salary beginning in the fifth year of an employee's employment, longevity compounds each year. *Id.*

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<sup>6</sup> *City of Markham and Teamsters Local 726*, AAA 51 300 01183 03 - Supplemental (Meyers, 2006); Union Exh. 7 at Tab 3.

<sup>7</sup> *Id.* at 11-12.

<sup>8</sup> *Id.* at 14-15.

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The third arbitration concerning longevity is the *Hill 2007 Agreed Order*, *supra* — an interest arbitration — which specified the longevity provisions of Article XV for the 2005-2009 Agreement:<sup>9</sup>

**ARTICLE XV**

**WAGES**

\* \* \*

LONGEVITY PAY (Applied to top base salary of Patrol Officers and Sergeants)

5-10 years	2% longevity increase for each of these years
10-15 years	4% additional longevity increase for each of these years
15-20 years	6% additional longevity increase for each of these years
20+ years	8% additional longevity increase for each of these years

\* \* \*

The fourth relevant arbitration is another award by Arbitrator Hill (“*Hill 2009 Award*”).<sup>10</sup> In that case, Arbitrator Hill addressed disputes over compensation for employees flowing from the *Hill 2007 Agreed Order* which set the terms of the 2005-2009 Agreement and, with respect to longevity pay, Arbitrator Hill found Arbitrator Meyers’ award in *Meyers II res judicata* with respect to the requirement that “longevity compounds each year”:<sup>11</sup>

... Arbitrator Meyers ruled that longevity compounds each year. His words are instructive:

As this Arbitrator expressly found in the October 2004 Decision and Award herein, the clear and unambiguous language of the contract leaves no doubt that longevity pay “is a percentage step increase for each year beginning with the fifth year of employment, and that is how it must be calculated.” Decision and Award at 35 (October 13, 2004). In addition, this Arbitrator found that because longevity pay consists of a percentage increase in salary beginning in the fifth year of an employee’s employment, longevity compounds each year. *Id.* (*Meyers* at 15) ...

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<sup>9</sup> Union Exh. 7 at Tab 5, p. 2. The *Hill 2007 Agreed Order* provides “[i]t is therefore ordered that my prior award is hereby amended to reflect the revised wage and longevity schedule as attached hereto.” Union Exh. 7 at Tab 5, p. 1.

<sup>10</sup> *Village of Markham and IBT Local No. 726*, AAA 51 390 00521 09; Union Exh. 7 at Tab 6.

<sup>11</sup> *Id.*, quoting *Meyers II* at 35. Union Exh. 7 at Tab 6, pp. 13-14, 23.

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\* \* \*

Significantly, the successor collective bargaining agreement amended the prior language so that there would be no credible issue regarding longevity pay. ...

\* \* \*

Clearly, the insertion of the term “additional longevity” carried over the rationale and ruling by Arbitrator Meyers, specifically: “... beginning in the fifth year of an employee’s employment, longevity compounds each year.”

The parties’ disagreements have moved into forums outside of the arbitration process. There is presently a pending court proceeding. From what has been presented to me, the court proceeding involves a petition by the City seeking to vacate the *2009 Hill Award* and the Union’s counter-petition to confirm that award.<sup>12</sup>

There is also a proceeding before the ISLRB. With respect to the 2005-2009 Agreement, on August 23, 2010 an administrative law judge of the ISLRB issued a Recommended Decision and Order finding that the City violated the Illinois Public Labor Relations Act, 5 ILCS 315 *et seq.* (“IPLRA”) because it “failed and refused to execute the agreement” and further directed the City to “[e]xecute the successor agreement with Teamsters Local 700.”<sup>13</sup> On January 28, 2011, the ISLRB adopted that recommendation.<sup>14</sup>

The point of all of this is that as of May 1, 2008 — the beginning of the last contract year of the 2005-2009 Agreement — there is existing language for longevity for Article XV as ordered in the *Hill 2007 Agreed Order*, *supra* quoted above; Arbitrator Meyers previously found that longevity pay is to be computed by “compounding” (*Meyers I*) and also found that “longevity compounds each

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<sup>12</sup> *City of Markham v. International Brotherhood of Teamsters Local No. 726*, Case No. 10CH11504 (Cir. Ct. Cook County). See Union Exh. 7 at Tab 8.

<sup>13</sup> *Teamsters, Local Union 726 and City of Markham*, Case No. S-CA-09-233. See Union Exh. 7 at Tab 7, pp. 6-7.

<sup>14</sup> Decision and Order of the ISLRB in *Teamsters, Local Union 726 and City of Markham*, Case No. S-CA-09-233 (January 28, 2011).

year” (*Meyers II*); Arbitrator Hill held that Arbitrator Meyers’ compounding requirement was *res judicata* for computing wages under the 2005-2009 Agreement (*Hill 2009 Award*); the ISLRB has ordered the City to sign the 2005-2009 Agreement; and no court has set aside anything related to *Meyers I*, *Meyers II*, *the Hill 2007 Agreed Order*, *Hill 2009 Award* or the ISLRB matter. What this all means is that for my purposes the *status quo* language — *i.e.*, the wage rates upon which the new Agreement are to be built upon by applying the agreed upon across-the-board wage increases of 2%, 1.9% and 1.9% for the contract years beginning May 1, 2009 — is that language ordered by Arbitrator Hill in the *Hill 2007 Agreed Order* and that language is to be interpreted by the holdings by Arbitrators Meyers and Hill that “longevity compounds each year”.

**(b). The Longevity Pay Rates As Of May 1, 2008**

Knowing the *status quo* language and that “longevity compounds each year”, does not, however, resolve the real question that needs to be answered in order for me to perform my function to establish the wage rates for the new Agreement for police officers and sergeants in the longevity steps. In order to move forward into contract years 2009-2010, 2010-2011 and 2011-2012, I need to know *exactly* what the pay rates were for the police officers and sergeants in the disputed longevity steps as of May 1, 2008. I cannot construct a wage grid for the new contract periods unless I have a starting point — which is the period for the 2008-2009 contract year (the last year of the 2005-2009 Agreement). This task becomes complicated because there has never been an *agreed-upon* wage grid for the 2005-2009 Agreement which has been reduced to writing. The parties are still fighting over that through the court and ISLRB proceedings. But notwithstanding those proceedings, I have to set the wage rates for the new Agreement.

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The *Hill 2009 Award* explains why a final agreed-upon wage grid for the 2005-2009 Agreement does not exist. In the *Hill 2009 Award* and as he formulated a backpay remedy flowing from the *Hill 2007 Agreed Order* for the longevity provisions Article XV of the 2005-2009 Agreement, Arbitrator Hill explained how the longevity provisions in the *Hill 2007 Agreed Order* came to be:<sup>15</sup>

As noted by the Union, the IBT did not present figures for other employees, although the data were available.

\* \* \*

... The point here is this: There was never any objection by the attorneys representing the City to what the parties agreed to in negotiations. I simply incorporated the wage language into the collective bargaining agreement as reflecting a stipulated agreement. Longevity was never actually litigated in the 2007 interest arbitration. What went to arbitration was residency and manning. Again, longevity was the parties business, not mine. ...

\* \* \*

A final note is in order. As indicated in the opinion, the matter of wages and longevity was never litigated in the 2007 interest arbitration. Rather, wages and longevity was part of an agreement reached by the attorneys as part of a stipulated award. ... Simply stated, the matter of longevity never came up.

The parties are now in the other forums over disputes flowing from the *Hill 2009 Award* (court) and the signing of the 2005-2009 Agreement (the ISLRB).

But getting back to this matter, after the close of the hearing and on November 22, 2010 (and as permitted at the hearing), the Union submitted a wage grid as part of its proposal to reflect the 2%, 1.9% and 1.9% across-the-board increases along with the longevity schedule the Union contends conforms with the previously decided holdings that “longevity compounds each year”.<sup>16</sup>

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<sup>15</sup> Union Exh. 7 at Tab 6, pp. 10, note 7; 15, note 9, 23, note 14 [emphasis in original].

<sup>16</sup> The Union also made the following request in its November 22, 2010 submission: For purposes of the award, and in view of past disputes over wage scales, the Union requests that the Arbitrator prepare an actual wage chart reflecting the amounts set forth in the award in order that the parties all understand what rates of pay are in effect.

[footnote continued]

Examination of the Union's calculations in that grid shows that the Union computes longevity by taking the year 4 wage rate for police officers and adding 2% to determine the wage rate for years 5-10 (the first longevity step); taking the resulting calculation for the years 5-10 wage rate and adding 4% to determine the years 10-15 wage rate (the second longevity step); taking the resulting calculation for years 10-15 wage rate and adding 6% to determine the years 15-20 wage rate (the third longevity step); and finally taking the resulting calculation for years 15-20 wage rate and adding 8% to determine the years 20+ wage rate (the fourth longevity step). With respect to sergeants, the Union uses the same approach, but starts with the sergeants base rate.<sup>17</sup> From its November 22, 2010 proposal, the Union's final computations for the longevity portion of the wage schedule as of May 1, 2008 are as follows:<sup>18</sup>

... By way of explanation, the alternate proposal is the equivalent to the Union's percentage base wage proposal (2%/1.9%/1.9%) and the compounded step increases (2% - 8%), with the actual rates of pay shown.

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[continuation of footnote]

To hopefully help bring an end to the parties' ongoing disputes over what wage rates arbitrators intend to apply, that is what I have done in this case.

<sup>17</sup> The Union explained its calculation at the hearing as follows [emphasis added]:

MR. BLOCH: ... [The Meyers and Hill] awards interpreting that language make it clear that those increases would be a percentage increase *over and above the previous step*. So at 5 years it's a 2% step increase *over the previous rate*; at 10 years it's a 4% step increase *over the 5 year rate*; at 15 years it's a 6% step *over the 10 year rate*; and so on. They compound. And that's what the history of the awards ... shows you.

<sup>18</sup> According to the Union's calculations, the wage rate effective May 1, 2008 in its alternate proposal is the same as in the calculations presented at the hearing for the contract years under the 2005-2009 Agreement. See Union Exh. 1 for the contract year beginning May 1, 2008.

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<b>Rank/Step</b>	<b>5/1/08</b>
<b>Patrol Officers</b>	
Year 4 (3-4 years)	59,534
Years 5-10 (2% step increase)	60,724
Years 10-15 (4% add'l step increase)	63,153
Years 15-20 (6% add'l step increase)	66,942
Years 20+ (8% add'l step increase)	72,298
<b>Sergeants</b>	
Base	64,806
Years 5-10 (2% step increase)	66,102
Years 10-15 (4% add'l step increase)	68,746
Years 15-20 (6% add'l step increase)	72,871
Years 20+ (8% add'l step increase)	78,701

However, while the Union's approach to determining longevity steps as being an interpretation of Arbitrator Meyers' requirement that "longevity compounds each year" in *Meyers II* is understandable as providing compounding wage rates, the Union's computation of "compounded step increases" does not precisely square with its position as it sought a remedy for backpay for an employee under the 2005-2009 Agreement as litigated in the *Hill 2009 Award*. Specifically, in the *Hill 2009 Award* (which was rendered after Arbitrator Hill issued his *2007 Agreed Order* placing the longevity language of Article XV into the 2005-2009 Agreement and addressed backpay due under the 2005-2009 Agreement), Arbitrator Hill discussed an example used by the Union for the computation of backpay where the Union sought a total of "... \$37,825.09 for the entire period at issue", with the further observation that although there was a dispute over how longevity was to be structured, "[t]he Administration does not challenge these calculations."<sup>19</sup> The Union's position on the specific calculation of backpay for longevity for the employee (Sergeant Alexander) was the following:<sup>20</sup>

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<sup>19</sup> *Hill 2009 Award* at 10; Union Exh. 7 at Tab 6, p. 10.

<sup>20</sup> *Id.*

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To this end, an analysis of Sgt. Alexander's rates of pay clearly prove that the Employer has failed to follow the agreed to pay scale. As a Sgt. with twenty (20) years on the job, his hourly rate of pay on May 10, 2008 (the first pay period following the May 1st contract date) should be \$37.39 (UX4). ...

An "... hourly rate of pay on May 10, 2008 ... [of] \$37.39" for a 20 year sergeant as argued appropriate by the Union for the calculation of backpay in the *Hill 2009 Award* does not match the salary grid submitted by the Union in this matter for the contract year beginning May 1, 2008 and its approach to the compounding calculation of longevity of adding the percentage increase to the wage rate of the next lower step. Under the Union's proposed grid for this matter, a 20 year sergeant on May 10, 2008 earned \$78,701 per year, or \$37.84 per hour — not \$37.39 per hour as used in its example for compounding longevity in the *Hill 2009 Award*.<sup>21</sup>

Again, it is crucial for me to know *precisely* how the longevity pay was to be calculated for the contract year beginning May 1, 2008 rate because, without that information, I cannot construct the wage rates for the years under this Agreement beginning with the contract year commencing May 1, 2009.

However, and returning to the example used by the Union in the *Hill 2009 Award* for Sergeant Alexander, if the following grid for May 1, 2008 is used to compute the longevity pay for sergeants — a grid which is constructed by adding the total increasing longevity percentages to the sergeants base rate rather than adding the percentage increase to the next lower step — then the example of Sergeant Alexander's \$37.39 is explained:

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<sup>21</sup> \$78,701 ÷ 2,080 hours = \$37.84 per hour. See Union Exh. 2 and the Union's November 22, 2010 proposal, both providing for a yearly salary for a 20+ year sergeant for the contract year beginning May 1, 2008 at a rate of \$78,701.

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Step	Effective May 1, 2008 (Prior Agree- ment Rate)
Sergeant's Base [taken from Article XV attached to <i>Hill 2007 Agreed Order</i> ]	64,806.19
Years 5-10 (2% additional step increase)	66,102.31
Years 10-15 (4% additional step increase) [add 6% to sergeant's base]	68,694.56
Years 15-20 (6% additional step increase) [add 12% to sergeant's base]	72,582.93
Years 20+ (8% additional step increase) [add 20% to sergeant's base]	77,767.43

If the computation for longevity added the longevity percentages to the sergeants non-longevity base rate instead of computing the percentages based on the next lower longevity step as found in the Union's proposed grid, a 20 year sergeant would make \$37.39 per hour — which is *precisely* the amount in the example used by the Union in the *Hill 2009 Award*.<sup>22</sup> And, it was the \$37.39 per hour rate which Arbitrator Hill adopted in the *Hill 2009 Award*:<sup>23</sup>

... I hold that the Meyers award [*Meyers II*] effectively sets the stage for this grievance, making the Union's argument regarding longevity more credible than the Administration's position.

With respect the wages for Sergeant Alexander, Arbitrator Hill found in the *Hill 2009 Award*:<sup>24</sup>

... Alexander is awarded \$37,825.09 for the relevant time period.

What this means is that Arbitrator Hill utilized the calculation used by the Union in the *Hill 2009 Award* which, as shown above, is based on a \$37.39 per hour wage rate for 20 year sergeants as of May 1, 2008 yielding a \$77,767.43 salary effective May 1, 2008 and not \$78,701 as now proposed by the Union for that period. Because of the awarding of Sergeant Alexander's backpay under the 2005-2009 Agreement utilizing a \$77,767.43 salary effective

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<sup>22</sup> \$77,767.43 ÷ 2,080 hours = \$37.39 per hour.

<sup>23</sup> Union Exh. 7 at Tab 6, p. 17.

<sup>24</sup> *Id.* at p. 23.

May 1, 2008, Arbitrator Hill appears to have adopted the specific calculation for compounding longevity pay as reflected in the grid I have constructed which adds the total increased longevity percentage to the sergeants base rate rather than the computation now proposed by the Union which adds the increased longevity percentage to the wage rate at the next lower longevity step. In simple terms, it appears that Arbitrator Hill ordered payment to Sergeant Alexander in accord with the grid I constructed for the longevity pay rated effective May 1, 2008 and not according to the grid now proposed by the Union for May 1, 2008. Just as the concept of “longevity compounds each year” from *Meyers II* was *res judicata* for Arbitrator Hill in the *Hill 2009 Award*, when it comes to the precise calculations, Arbitrator Hill’s adoption of a method proposed by the Union for actual computation of the wage rate in the *Hill 2009 Award* is similarly *res judicata* for construction of the wage grid flowing from “longevity compounds each year”.

But it is not just the Union’s apparent approach in the *Hill 2009 Award* for Sergeant Alexander which leads me to believe that the appropriate way to calculate the longevity pay is to add the total increased percentages to the police officers or sergeants highest non-longevity base pay instead of adding an increased percentage to the next lower step as the Union now proposes. Not only did the Union appear to take the approach found in the above grid for Sergeant Alexander in the *Hill 2009 Award*, the Union *specifically* took the approach in *Meyers II*.

In *Meyers II*, the Union’s witness who calculated the retroactive pay was “... Winifred Lyday, [who] has extensive education and experience in the area of employee compensation and benefits [and who] ... testified as an expert with

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regard to the raw data from the City's computerized payroll information."<sup>25</sup> According to Arbitrator Meyers in *Meyers II* [emphasis added]:<sup>26</sup>

Lyday added longevity pay, if applicable, *to the base salary figure* in each employee's salary calculation for each year of the contract.

\* \* \*

... The City objected to the Union's approach to longevity pay, which consists of adding longevity pay to an eligible employee's salary during each year of the contract.

\* \* \*

The Union asserts that its own chart clearly and unambiguously tracks *the top base rate negotiated for each year, applies the bargained-for longevity rates for each year of the contract*, and calculates each officer's retroactive pay based on where the officer falls in the steps set forth in the Agreement ....

In *Meyers II*, Arbitrator Meyers adopted the Union's position as expressed through its expert witness Lyday [emphasis added]:<sup>27</sup>

... [I]t is evident that the Union's proposal is based upon a logical and arithmetically precise approach to the question of calculating retroactive pay.

\* \* \*

... With regard to longevity pay, and as previously noted, I find that the Union has correctly added the appropriate percentage increases to each eligible officer's *annual salary* for each year of the contract's term. ...

Thus, not only does the precise calculation for longevity in the *Hill 2009 Award* for Sergeant Alexander follow a method which adds the increasing longevity percentages to the highest non-longevity base pay rather than adding the increased longevity percentage to the next lower step as the Union now proposes, but as shown in *Meyers II*, that was how the Union's expert witness made the calculations in that case. As was the calculation for Sergeant Alexander's wage rate in the *Hill 2009 Award res judicata*, the calculation found appropriate by Arbitrator Meyers in *Meyers II* is also *res judicata*.

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<sup>25</sup> Union Exh. 7 at Tab 3, p. 8.

<sup>26</sup> *Id.* at pp. 8, 11-12.

<sup>27</sup> *Id.* at 14, 16.

The grid I have constructed for the May 1, 2008 longevity wage rate appears more appropriate than the Union's proposed grid for yet another reason. The *Hill 2007 Agreed Order* specified for Article XV Wages that "Longevity Pay (Applied to top base salary of Patrol Officers and Sergeants)".<sup>28</sup> That language — which appears to be clear — yields my grid set forth above for the contract year beginning May 1, 2008 and not the Union's proposed grid for that period.

For a 20+ year sergeant, the difference between the May 1, 2008 wage rate used by the Union before Arbitrator Hill which he used for the *2009 Hill Award* (\$77,767) and the wage rate the Union now states for the *status quo* as of May 1, 2008 (\$78,701) is not minor — a difference of \$934 per year at that level. Again, that difference comes from the manner in which the Union has computed the compounding nature of the longevity steps. For the 20+ year longevity rate for a sergeant, the Union builds that rate by adding the "8% additional step increase" to the 15-20 year longevity rate instead of adding 20% to the sergeant's base salary as it did in the example for Sergeant Alexander used before Arbitrator Hill in the *2009 Hill Award*.

As the increased percentages agreed to by the parties for the across-the-board increases (2%, 1.9% and 1.9%) are applied for the contract years covered by this proceeding, for calculations of longevity, the differences in the Union's computations between the method it apparently used for the *Hill 2009 Award* along with the one it specifically used in *Meyers II* and the method it now proposes are as follows (the differences begin in years 10-15 of the longevity steps):<sup>29</sup>

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<sup>28</sup> Union Exh. 7 at Tab 5, p. 2 [emphasis added].

<sup>29</sup> Differences in numbers from the various proposals are attributable to rounding and truncating. For example, for sergeants, rather than using the specified base in the wage schedule for May 1, 2008 attached to the *Hill 2007 Agreed Order*, \$64,806.19, the Union began its com-  
[footnote continued]

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**SALARY SCHEDULE "A"**

**The Union's Proposal (adding the specified increase longevity percentage to the next lower longevity step)**

**Police Officers**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agreement Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Step 1 (0-1)	41,601.89	42,433.93	43,240.17	44,061.73
Step 2 (1-2)	53,943.76	55,022.64	56,068.07	57,133.36
Step 3 (2-3)	56,786.53	57,922.26	59,022.78	60,144.21
Step 4 (3-4)	59,533.65	60,724.32	61,878.09	63,053.77
Years 5-10 (2% step increase)	60,724.32	61,938.81	63,115.65	64,314.85
Years 10-15 (4% add'l step increase)	63,153.30	64,416.36	65,640.27	66,887.43
Years 15-20 (6% add'l step increase)	66,942.49	68,281.34	69,578.69	70,900.68
Years 20+ (8% add'l step increase)	72,297.89	73,743.85	75,144.98	76,572.74

**Sergeants**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agreement Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Base	64,806.19	66,102.31	67,358.26	68,638.06
Years 5-10 (2% step increase)	66,102.31	67,424.36	68,705.42	70,010.82
Years 10-15 (4% add'l step increase)	68,746.41	70,121.33	71,453.64	72,811.26
Years 15-20 (6% add'l step increase)	72,871.19	74,328.61	75,740.86	77,179.93
Years 20+ (8% add'l step increase)	78,700.88	80,274.90	81,800.12	83,354.32

[continuation of footnote]

putations using \$64,806. The above following tables use the two decimal numbers in the *Hill Agreed Order* and then computes the wage increases to three decimals, rounding and truncating accordingly. The methodologies account for the variances in the computations.

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**SALARY SCHEDULE "B"**

**The Example Used By The Union In The 2009 Hill Award and Meyers II  
(adding the specified total percentage increases to the top non-longevity  
base salary of police officers and sergeants)**

**Police Officers**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agree- ment Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Step 1 (0-1)	41,601.89	42,433.93	43,240.17	44,061.73
Step 2 (1-2)	53,943.76	55,022.64	56,068.07	57,133.36
Step 3 (2-3)	56,786.53	57,922.26	59,022.78	60,144.21
Step 4 (3-4)	59,533.65	60,724.32	61,878.09	63,053.77
Years 5-10 (2% step increase)	60,724.32	61,938.81	63,115.65	64,314.85
Years 10-15 (4% add'l step increase)	63,105.67	64,367.78	65,590.78	66,837.00
Years 15-20 (6% add'l step increase)	66,677.69	68,011.24	69,303.46	70,620.22
Years 20+ (8% add'l step increase)	71,440.38	72,869.18	74,253.71	75,664.52

**Sergeants**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agree- ment Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Sergeants Base	64,806.19	66,102.31	67,358.26	68,638.06
Years 5-10 (2% step increase)	66,102.31	67,424.36	68,705.42	70,010.82
Years 10-15 (4% add'l step increase)	68,694.56	70,068.45	71,399.76	72,756.34
Years 15-20 (6% add'l step increase)	72,582.93	74,034.59	75,441.25	76,874.63
Years 20+ (8% add'l step increase)	77,767.43	79,322.77	80,829.91	82,365.67

But while it appears that the correct way to calculate the longevity increases comes from the method used to construct Salary Schedule "B", there still may be some question about construction of the grid for the wage rate as of May 1, 2008 and following into the years of the Agreement in this dispute. Although finding that "longevity compounds each year", in the *Hill 2009 Award*,

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Arbitrator Hill recognized that when it came to making the precise computations, there still were questions with the language as formulated by Arbitrator Meyers and which Arbitrator Hill placed into the parties' 2005-2009 Agreement with the *2007 Agreed Order*:<sup>30</sup>

Clearly, the insertion of the term "additional longevity" carried over the rationale and ruling by Arbitrator Meyers, specifically: "... beginning in the fifth year of an employee's employment, longevity compounds each year." (Meyers at 15). Arbitrator Meyers did not say that longevity compounds each year *and continues to compound across classifications*, giving a 20-plus police officer 2% + 4% + 6% + 8%, or a 20% longevity bump, *although this is a fair reading of his award*.

In the footnote following that passage, Arbitrator Hill states:<sup>31</sup>

An alternate reading of the prior collective bargaining agreement is that, starting in year five, an officer receives 2% of his top base salary "for each of these years." During years 10-15 the officer moves to 4% of the top base "for each of these years" and so on to year 20. In year 20 he goes to 8% of his base "for each of these years" past year 20. He does not receive 2% + 4% + 6% + 6% [sic] + 8%, or 20% once he is a 20-year employee. For a time the parties saw it differently, interpreting Peter Meyers' decision as requiring compounding similar to the present contract. Again, whatever the outcome in the Meyers' award, the "agreed order" mandated "additional longevity," landing the parties in yet another arbitration.

And now this dispute becomes even more muddled. It must be remembered what this proceeding is about. This is *not* a grievance arbitration — this is an *interest* arbitration. In an interest arbitration, I am constrained by the IPLRA to select one of the parties' final offers on each economic issue. Section 14(g) of the IPLRA provides that "... [a]s 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)." I therefore have no ability to set economic terms at something other than one of the specific offers made by a party. Longevity pay is obviously an economic issue. I therefore have to select either the Union's offer as

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<sup>30</sup> Union Exh. 7, at Tab 6, 14 [emphasis in original and supplied].

<sup>31</sup> *Id.* at note 8.

made or the City's offer — I have no authority to formulate something else on this economic issue.<sup>32</sup>

It appears that the Union may be progressing a final offer which uses an incorrect computation to establish the *status quo* — the longevity steps for years 10-15, years 15-20 and years 20+ as those rates are to be computed as of May 1, 2008 and then flowing into the periods for the current Agreement. If the *status quo* is as the Union now proposes, the salary schedule from its offer is Salary Schedule "A", *supra*. If the *status quo* is what the Union's position seems to have been before Arbitrator Hill in the *Hill 2009 Award* and before Arbitrator Meyers in *Meyers II*, then its final offer should properly be Salary Schedule "B", *supra*.

In the *Hill 2009 Award* and while not allowing it to change the result of his decision, Arbitrator Hill describes the cause for what has become a spiraling of the litigation after the *Hill 2007 Agreed Order* — *i.e.*, "a unilateral mistake by the City regarding its reading of the longevity provision."<sup>33</sup> The parties are now sorting out the consequences of their positions in other forums. If the Union has made an erroneous calculation in this matter, it will serve the parties absolutely no good for me to further complicate what is already a mess of litigation with results for a new Agreement flowing from what may be yet another mistake — this time in a calculation made by the Union. I can only choose one of two offers. I have much difficulty making that selection based upon an offer I believe may be incorrectly computed. It is better to cut off the possibility of an error now rather than issuing an award based on a faulty

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<sup>32</sup> The parties are always free to waive that requirement to allow me to set a wage rate different from those proposed by the parties. However, in this case, the parties have not done so.

<sup>33</sup> Union Exh. 7 at Tab 6, p. 21.

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computation, which will inevitably cause further litigation between the parties as they seek to put pen to paper for the terms of this Agreement.

To properly perform my function in this case I need to know — *with certainty* — what the Union’s view of the *status quo* is for longevity payments as of May 1, 2008. Arbitrator Hill awarded Sergeant Alexander backpay in the *Hill 2009 Award* based upon computations of a May 1, 2008 rate which, from my calculations, do not conform with the Union’s present computation for May 1, 2008 which underpins its offer in this case.<sup>34</sup> In *Meyers II*, the Union took the same position for compounding which yielded the result for Sergeant Alexander in the *Hill 2009 Award* — *i.e.*, using the top salary for police officers before longevity and base salary for sergeants and then adding the percentages to those base rates rather than adding the percentages to the next lower rate as the Union now proposes. For reasons discussed *infra* at II(C)(2)(c), I am rejecting the City’s offer in this case. However, without more from the Union explaining its current offer, at this time I will not adopt the Union’s present offer. So that the new Agreement does not spiral off into more litigation over mistaken calculations, I will therefore give the Union seven days from the date of this Award to correct its offer to reflect the wage rates computed in Salary Schedule “B” or to explain why the method of calculation in Salary Schedule “A” (the Union’s present offer) is the correct computation flowing from the *Hill 2009 Award* and the Union’s computations for Sergeant Alexander in that award as well as the position taken by its expert witness in *Meyers II* which Arbitrator Meyers adopted. If the Union agrees that the method of calculation I have used to construct Salary Schedule “B” is the correct method which flows from the *Hill 2007 Agreed*

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<sup>34</sup> I do not have the exhibit which the Union used in the *Hill 2009 Award* to show the calculations it used in that case (“UX 4”). Union Exh. 7 at Tab 6, p. 10.

*Order*, the *Hill 2009 Award* and *Meyers II* and that it desires to correct its offer to reflect that methodology, then for reasons discussed *infra* at II(C)(2)(c), I will select that wage offer. If the Union believes that the correct computation is that reflected in Salary Schedule "A", then this case will require further proceedings for the Union to show why its present offer is not different from the method it used for the computation of Sergeant Alexander's backpay, which was adopted by Arbitrator Hill in the *Hill 2009 Award* and the Union's stated position through its expert witness Lyday in *Meyers II* and adopted by Arbitrator Meyers. The parties have had enough litigation based upon what has been characterized as a "mistake". They do not need more litigation from what might be another "mistake".

## **2. Discussion Of The Parties' Positions**

As discussed *supra* at II(A) and (B), the parties are in agreement for across-the-board wage increases of 2%, 1.9% and 1.9% for contract years commencing May 1, 2009, May 1, 2010 and May 1, 2011, respectively. That agreement takes care of the wage rates for police officers and sergeants in the non-longevity steps. That agreement further sets the rate for the first longevity step (years 5-10) because, under both offers, the 2% longevity step is based upon the next lower non-longevity step (year 4 for police officers and the base rate for sergeants). There is no "compounding" dispute for police officers and sergeants in the first longevity step. The dispute is in the three longevity steps for years 10-15, 15-20 and 20+.

Although the parties addressed the usual arguments made in interest arbitrations discussed *infra* at II(C)(2)(c), the parties' basic positions fall back to the prior arbitration awards of Arbitrators Meyers and Hill and what those awards mean and whether they were correctly issued.

**(a). The Union's Position**

At the hearing, the Union took the position that wage increases should be 2%, 1.9% and 1.9% and that the longevity steps should be calculated by compounding as required by the awards of Arbitrators Meyers and Hill — awards which have resolved the longevity dispute.

**(b). The City's Position**

The City asserts that with respect to longevity, the prior awards are still in dispute; that dispute is pending in court; the retroactive pay calculations in the prior awards started with a dispute for a finite number of officers who were no longer with the City; a subsequent grievance by an individual officer contended that his pay should be recalculated based upon the prior award; another grievance was filed by an officer with the same request for recalculation; another grievance was filed by an officer and the grievance was modified to become a class action, at which point the issue of retroactivity and compounding across-the-board came to a head — again, all of those issues being litigated in court after issuance of the prior awards. The City further contends that even though the word “compounding” was never in the parties’ Agreements, the calculations which followed caused the City to not sign the Agreement.

With respect to contract language concerning wages, the City proposed the following:<sup>35</sup>

**Article XV - Wages**

New Provision - City Proposal: The City of Markham shall establish a “base salary” for all patrol officers and sergeants that will remain in effect throughout the term of the collective bargaining agreement. The “base salary” shall remain unchanged throughout the term of the contract and shall exclude any increase the officer may have received because of: (1) merit pay increase; (2) his step rate; (3) any cost of living increase; (4) any longevity bonus or award and (5) any special pay increase.

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<sup>35</sup> Joint Exh. 2 at p. 3.

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Longevity Pay: Add the words “of the base salary” after each percentage [i]ncrease e.g., 2%, 4%, 6% and 8%.

**(c). Selection Of The Wage Offer**

I reject the City’s offer and its position and, with the caveats discussed on the Union’s offer being corrected or explained if different from Salary Schedule “B”, I adopt the Union’s offer.

First, in great part if not in its entirety, the City’s offer and its position simply seeks to undo the results of *Meyers I*, *Meyers II*, the *Hill 2007 Agreed Order* and the *Hill 2009 Award* with respect to longevity. Those awards ultimately came to the conclusion that “longevity compounds each year”. If those awards were not correctly decided, it is for the courts to sort that out. That question is not for me as the interest arbitrator in this case. No court has set aside those awards and I must therefore assume that the awards are valid.

Second, with respect to the language proposed by the City that “[t]he City of Markham shall establish a ‘base salary’ for all patrol officers and sergeants that will remain in effect throughout the term of the collective bargaining agreement”, I can find no justification to award the City the ability to unilaterally set a base salary. Wage rates are set through the collective bargaining process and, if not agreed to then through the interest arbitration process with final offers chosen through the interest arbitration process. An open-ended unfettered ability to set a base salary is simply not justified.

Third, with respect to the City’s language proposal concerning longevity — *i.e.*, “[a]dd the words ‘of the base salary’ after each percentage [i]ncrease e.g., 2%, 4%, 6% and 8%”, that too is merely an attempt to undo the prior arbitration awards and change the clear holdings of Arbitrators Meyers and Hill that “longevity compounds each year”. That end result of calculations flowing from that language is not a compounding of longevity percentages as found appro-

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priate by Arbitrators Meyers and Hill, but is a simple additional 2% above the base rates for each longevity step. Again, given that the prior issue has been decided by Arbitrators Meyers and Hill, the propriety of that compounding requirement is for the courts to now sort out and not for me.

Fourth, the statutory factors found in Section 14(h) of the IPLRA for interest arbitration proceedings are as follows:

(h) Where there is no agreement between the parties, ... 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) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The most relevant and “applicable” factor here is, in my opinion, 14(h)(2) — “[s]tipulations of the parties”. That is because the parties have *agreed* to the across-the-board increases of 2%, 1.9% and 1.9%. Because of the clear holdings of Arbitrators Meyers and Hill that “longevity compounds each year”, the only question is how to fill out the salary grid when it comes to applying those

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agreed-upon percentages to the longevity steps beyond years 5-10. With the clarification to be made on the Union's offer, that is, for all purposes, what the Union has done in this case. Assuming that the Union clarifies its offer to conform with Salary Schedule "B", the Union's offer must be adopted.

Fifth, the other statutory factors do not, in my opinion, apply in this case to change the result that the Union's offer should be selected. Those factors are not "applicable" as contemplated by Section 14(h) for this particular case to cause me to select the City's offer. This case is really an extension of the parties' ongoing dispute concerning longevity from the prior Agreements. However, when the base rates for police officers and sergeants for the contract year commencing May 1, 2008 are established, the parties' stipulation for 2%, 1.9% and 1.9% across-the-board increases for the years covered by the Agreement formulated in this case commencing May 1, 2009 amounts to merely filling in the salary grid with the calculated amounts.

It may be that the resulting costs to the City are more than it anticipated. But that does not change the result. Arbitrator Hill addressed that issue in the *Hill 2009 Award*:<sup>36</sup>

A fair reading of this evidence record is that the City made a mistake regarding the longevity language. It simply did not comprehend the compounding of longevity ruling by Arbitrator Meyers. Indeed, the record indicates that, at one time, the City properly followed the Meyers' holding. The City now asserts that if the Union's interpretation prevails, longevity will be too expensive for the City to fund. There is no remedy at law for this type of mistake. To the extent that the City finds itself in a financial bind because of Mr. Meyers' award, and the subsequent language adopted [by the attorneys from both sides] ... the remedy is to return to the bargaining table. I have no jurisdiction to redo the parties' language simply because someone in an administrative position finds the negotiated longevity benefit "absurd."

And, it may be that implementation of the compounded longevity wage rates will stress the City's finances and in order for the City to meet its obliga-

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<sup>36</sup> Union Exh. 7 at Tab 6, pp. 21-22:

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tions the City may have to take steps to reduce its higher than anticipated costs. However, that possibility of increased costs also does not change the result. See my award in *Cook County Sheriff and County of Cook and AFSCME Council 31 (2010)* (“*Cook County Sheriff*”) at 32-35 [footnotes and citations omitted].<sup>37</sup>

There may well be layoffs in the coming months and years of the Agreements and selection of the Union’s offer may well increase the number of employees impacted by those layoffs from those projected under the County’s offer. However, the Union was obviously well-aware of that potential going into this proceeding and nevertheless maintained its position on the wage offer. If layoffs occur to the degree stated by the County, it will come as no surprise to the Union. But the short answer to this argument by the County that the potential for layoffs must be taken into account in deciding this case is that the potential for layoffs or increased layoffs is something I certainly do not want to see happen, but the potential for layoffs is not a consideration in setting the wage rate in this interest arbitration.

Budget considerations drive collective bargaining negotiations. However, if negotiations fail to establish economic conditions for a contract and the parties have to resort to interest arbitration to do what they could not, then the result of the interest arbitration imposed by a third party such as myself ultimately drives the budget. If the result were otherwise, there would be no need for interest arbitration or use of the statutory factors under Section 14(h) of the IPLRA to resolve these kinds of disputes because the only question would be whether a public employer’s budget allows for the terms of the requested economic items in dispute. The interest arbitration process would then become a battle of accountants offering theories on whether proposals could be supported by a public employer’s budget. That is not what the interest arbitration process is about. The interest arbitration process sets economic conditions for contracts based on statutory factors and does not look to see how money can be allocated or found in a budget to pay for an offer found appropriate through application of the statutory factors in Section 14(h) of the IPLRA.

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Finding the necessary sources of revenue to limit or prevent layoffs is not for me as an interest arbitrator in this case. If it is to be exercised, that function is properly placed in the hands of elected officials and appointed administrators.  
...

\* \* \*

The potential for layoffs flowing from the selection of the Union’s wage offer is something that will have to play out as the County through its elected officials and administrators determines whether, to what extent and how it will fund increased costs caused by selection of the Union’s wage offer. However, the poten-

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<sup>37</sup> [www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf](http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20&%20AFSCME,%20L-MA-09-003.pdf).

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tial for layoffs does not play a part in the setting of the wage rates in this proceeding. The statutory factors in the IPLRA govern that determination.

Sixth, nor is this an inability to pay case under Section 14(h)(3) of the IPLRA. See *Cook County Sheriff, supra* at 35-37:

... [S]taying with the County's layoff argument, stated simply, the County is really making an inability to pay argument — *i.e.*, that the County cannot pay for the Union's proposed wage increase and, if the Union's wage offer is selected, there will be layoffs in significant numbers. That view of the County's argument is not sufficient to change the result.

And again going to the increased costs caused by the selection of the Union's wage offer, Section 14(h)(3) of the IPLRA provides for consideration of "[t]he interests and welfare of the public and the financial ability of the unit of government to meet those costs" — *i.e.*, the "inability to pay" factor.

But "inability to pay" cannot be equated with "unwillingness to pay. ...

\* \* \*

There is no inability to pay here. There is an unwillingness to pay based on budgetary considerations and decisions reasonably made by the County that from a budget standpoint anything more than 7.0% is not fiscally responsible. I cannot fault or second-guess that decision based on the skillful determinations made by officials such as CFO Williams who are looking out for the fiscal best interests of the County under current budgeting limitations. However, if elected officials and administrators choose not to fund the Agreements by adjusting the budget or finding other sources of revenue, then there may well be layoffs — even substantial ones. As an interest arbitrator, I just cannot prevent that from happening.

According to the affidavit of City Treasurer Karen Cohn filed in the court proceedings:<sup>38</sup>

The City of Markham is not bankrupt and continues to function as a viable municipal government. ... Since the initial August 2006 Arbitration Decision, the City of Markham has continued to employ a fully-staffed police force, fire department and municipal staff. While the current challenging economic conditions facing the City of Markham are similar to those being experienced by governments at every level - district, city, county, state and national, the City of Markham has never failed to pay a judgment for money damages or other debt for lack of available funds or bankruptcy.

Section 14(h)(3) of the IPLRA therefore does not change the result in this case. There is no "inability to pay".

Seventh, I have found the most relevant and applicable factor in this case to be that the parties stipulated to the 2%, 1.9% and 1.9% across-the-board

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<sup>38</sup> Union Exh. 7 at Tab 8, pp. 3-4.

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wage increases. However, even if I looked at the cost-of-living factor in Section 14(h)(5), the result would be the same.

Consumer Price Index (“CPI”) data from the Bureau of Labor Statistics for the time periods since the commencement of the new Agreement (for which data is available) show the following:<sup>39</sup>

**CPI From May 2009 To The Present (Not Seasonally Adjusted)**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009					213.856	215.693	215.351	215.834	215.969	216.177	216.330	215.949
2010	216.687	216.741	217.631	218.009	218.178	217.965	218.011	218.312	218.439	218.711	218.803	219.179
2011	220.223	221.309										

**CPI Month-To-Month Percentage Changes May 2009 To The Present (Not Seasonally Adjusted)**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2009					0.3	0.9	-0.2	0.2	0.1	0.1	0.1	-0.2
2010	0.3	0.0	0.4	0.2	0.1	-0.1	0.0	0.1	0.1	0.1	0.0	0.2
2011	0.5	0.5										

In terms of computation of increases in the cost-of-living for the contract periods involved in this case, the increases are as follows:

Contract Period	CPI Increase
5/1/09 - 4/30/10	1.94% <sup>40</sup>
5/1/10 - 2/28/11	1.44% <sup>41</sup>

Therefore, the 1.94% actual increase in the cost-of-living for the first year of the Agreement is consistent with the 2% increase agreed to by the parties for that year. Further, with 10 months of reported cost-of-living data during the second year of the Agreement showing a 1.44% increase along with the fairly steady upward movement on a month-to-month basis during that period as shown by the above-quoted CPI data showing monthly changes, it is fairly rea-

<sup>39</sup> <http://data.bls.gov/cgi-bin/surveymost?cu>.

<sup>40</sup> 218.009 - 213.856 = 4.153. 4.153 ÷ 213.856 = 1.94%.

<sup>41</sup> 221.309 - 218.178 = 3.131. 3.131 ÷ 218.178 = 1.44%.

sonable to assume that the agreed-upon 1.9% increase in the second year of the Agreement will be consistent with the cost-of-living for the contract period May 1, 2010 - April 30, 2011. And, while certainly not a crystal ball, the economic forecasts into 2012 contemplate cost-of-living increases consistent with (or even exceeding) the 1.9% agreed-upon wage increase for the third year of the Agreement. According to the *Federal Reserve's First Quarter 2011 Survey of Professional Forecasters*, "[m]easured on a fourth-quarter over fourth-quarter basis, headline CPI inflation is expected to average ... 2.0 percent in 2012, slightly higher than the forecast of ... 1.9 percent ... in the last survey."<sup>42</sup>

Under the cost-of-living factor in Section 14(h)(5), the parties' agreement for a 2%, 1.9% and 1.9% across-the-board increase is completely consistent with the actual cost-of-living increases reported for the contract years of the Agreement thus far and is further consistent with the forecasts out to the end of the Agreement.

Eighth, at the hearing the parties addressed comparables under Section 14(h)(4) of the IPLRA. Prior to the economic crash in the fall of 2008, interest arbitrators heavily relied upon comparability to establish wage and benefit levels in public sector collective bargaining agreements.<sup>43</sup> In a series of interest awards that I issued since January 2009 and because of the economic down-

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<sup>42</sup> [www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2011/survq111.cfm](http://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2011/survq111.cfm). Other forecasts are reaching similar conclusions. See <http://web.rollins.edu/~wseyfried/forecast.htm>.

<sup>43</sup> See Benn, "A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act," *Illinois Public Employee Relations Report*, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:  
... The parties in these proceedings often choose to give comparability the most attention. See Peter Feuille, "Compulsory Interest Arbitration Comes to Illinois," *Illinois Public Employee Relations Report*, Spring, 1986 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... [o]f these three, comparability usually is the most important.").

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turn which commenced in the fall of 2008, I have taken the position that use of contracts negotiated before the economic crash in the fall of 2008 to establish wage and benefit levels in contracts for periods after that crash would not be helpful or fair because the comparisons would not be “apples to apples”.<sup>44</sup> Simply stated, those kinds of comparisons would not be an “applicable” factor as required by Section 14(h) of the IPLRA. *See Cook County Sheriff, supra* at 14-16 [footnotes omitted]:

The problem for interest arbitrators struggling to set economic terms and conditions of employment for new contracts remains as it surfaced after the economy crashed in the fall of 2008. The tools typically used by interest arbitrators before the economy crashed are of little help in this environment. *See City of Chicago, supra* at 25-26:

For establishing terms and conditions of collective bargaining agreements, Section 14(h) of the IPLRA lists eight factors for consideration by interest arbitrators. Although there are eight statutory factors with no factors receiving more weight from the language of the statute, prior to 2009, parties in interest arbitrations and interest arbitrators — including the undersigned — typically placed great weight on the comparability factor found in Section 14(h)(4) of the IPLRA. And prior to 2009, that is how the majority of these cases were litigated, with most attention — and sometimes all of the arguments — focused on comparability.

“Wisdom too often never comes, and so one ought not to reject it merely because it comes late.” It is fair to conclude that prior to 2009, few in this area of practice — public administrators, union officials, advocates and neutrals — could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give the

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<sup>44</sup> *See State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-262* (January 27, 2009); *County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-08-010* (March 23, 2009); *North Maine Fire Protection District and North Maine Firefighters Association* (September 8, 2009); *State of Illinois Department of Central Management Services (Department of Revenue Illinois Racing Board) and AFSCME, Arb. No. 5637, 6263-0104-09, (372986)* (September 14, 2009); *County of Rock Island and AFSCME Council 31, S-MA-09-072* (April 7, 2010); *City of Chicago and FOP Lodge No. 7* (April 16, 2010); *Cook County Sheriff, supra*. With the exception of the *Racing Board* decision, these interest awards can all be found at the ISLRB interest arbitration website: [www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm](http://www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm).

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same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became “apples to oranges” comparisons. See *North Maine, supra* at 12-13:

Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for “apples to apples” comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.

Instead of relying upon comparables, in *ISP [Illinois State Police, supra]* and *Boone County*, I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index (“CPI”).

Thus, prior to the economic crisis commencing in the fall of 2008, interest arbitrators placed great weight on the comparability factors found in Section 14(h)(4) of the IPLRA. As the economy crashed, my view became that it was inherently unfair to public sector employers (and the public) for interest arbitrators to use comparability as a driving factor for making these decisions because in an economy where public sector employers have taken such a hard hit, looking at contracts which were negotiated before the economy crashed did not yield “apples to apples” comparisons. Until the economy turns around or until a sufficient baseline of contracts in comparable entities have been voluntarily negotiated (or imposed through the interest arbitration process) after the economy crashed, I have been forced to turn to other factors which previously were not given as much weight as comparables — specifically, looking at the economy and the CPI found in Section 14(h)(5) of the IPLRA.

We are pushing away from the fall of 2008 and contracts are being established sufficient in number so that it may now be that "... a sufficient baseline of contracts in comparable entities have been voluntarily negotiated (or imposed through the interest arbitration process) ..." allowing for "apples to apples" and not "apples to oranges" comparisons with the result that "... comparability will regain its importance ...". However, in this case, even if there are sufficient comparable communities with post-crash contracts in place and even if those contracts favored the City's position — an issue I need not decide — I would not use the comparability factor to change the result in this matter. That is because although this is an interest arbitration, the genesis of the parties' differences on the calculation of longevity flows from the prior grievance arbitration awards of Arbitrators Meyers and Hill concerning the compounding nature of longevity. What the City is really trying to do here through the interest arbitration process is to get me to adopt its view of how longevity should have been established — a view that Arbitrators Meyers and Hill specifically rejected. Again, the compounding nature of longevity has been established by Arbitrators Meyers and Hill and it is now the City's burden to convince the courts that the arbitral determinations of compounding longevity from the prior Agreements should be set aside. From what is before me, that has not happened and the *status quo* for that existing benefit is "longevity compounds each year".

One of the fundamental rules of the interest arbitration process is that "[t]he burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the

party seeking the change to demonstrate that the existing system is broken.”<sup>45</sup> The longevity provisions of the prior Agreements are not “broken” — they are just more costly than the City perhaps anticipated. Given the posture of this dispute, until a forum of competent jurisdiction says otherwise, it is not for me to change the benefit structure established by Arbitrators Meyers and Hill.

Section 14(h) of the IPLRA requires that this process “... base its findings, opinions and order upon the following factors, as applicable” The factors I find “applicable” in this most unusual case are “[s]tipulations of the parties” (14(h)(2)) as the parties’ agreed to across-the-board increases of 2%, 1.9% and 1.9%, which then fills out the salary grid based upon the prior findings of Arbitrators Meyers and Hill that “longevity compounds each year” and “[t]he average consumer prices for goods and services, commonly known as the cost of living” (14(h)(5)), which shows that the parties’ agreed-upon across-the-board increases for the contract periods covered by this Agreement are in line with existing known increases in the cost-of-living and reasonable forecasts for future increases for the contract periods at issue. Assuming the Union corrects its calculations to reflect the method for longevity calculations that it used in *Meyers II and the Hill 2009 Award*, those factors favor the Union’s position in this case.

### **III. CONCLUSION AND AWARD**

In sum, it is therefore found and ordered:

1. The parties have agreed to across-the-board wage increases of 2%, 1.9% and 1.9% for the three contract years involved in this matter commencing May 1, 2009.

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<sup>45</sup> *City of Chicago and FOP, supra* at 6-7.

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2. With respect to longevity, Arbitrator Meyers previously held that “longevity compounds each year” (*Meyers I and II*) and Arbitrator Hill ruled that finding was *res judicata* (*Hill 2009 Award*). Those awards have not been set aside. For purposes of this proceeding, “longevity compounds each year.”

3. In *Meyers II* and the *Hill 2009 Award*, the specific calculation for “longevity compounds each year” utilized by the Union and adopted by Arbitrators Meyers and Hill was a method whereby the Union added the increasing longevity percentages to the highest non-longevity base rate for police officers and sergeants. That method yields the following wage grid for the contract periods covered in this case (Salary Schedule “B”):

**Police Officers**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agree- ment Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Step 1 (0-1)	41,601.89	42,433.93	43,240.17	44,061.73
Step 2 (1-2)	53,943.76	55,022.64	56,068.07	57,133.36
Step 3 (2-3)	56,786.53	57,922.26	59,022.78	60,144.21
Step 4 (3-4)	59,533.65	60,724.32	61,878.09	63,053.77
Years 5-10 (2% step increase)	60,724.32	61,938.81	63,115.65	64,314.85
Years 10-15 (4% add'l step increase)	63,105.67	64,367.78	65,590.78	66,837.00
Years 15-20 (6% add'l step increase)	66,677.69	68,011.24	69,303.46	70,620.22
Years 20+ (8% add'l step increase)	71,440.38	72,869.18	74,253.71	75,664.52

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**Sergeants**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agree- ment Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Sergeants Base	64,806.19	66,102.31	67,358.26	68,638.06
Years 5-10 (2% step increase)	66,102.31	67,424.36	68,705.42	70,010.82
Years 10-15 (4% add'l step increase)	68,694.56	70,068.45	71,399.76	72,756.34
Years 15-20 (6% add'l step increase)	72,582.93	74,034.59	75,441.25	76,874.63
Years 20+ (8% add'l step increase)	77,767.43	79,322.77	80,829.91	82,365.67

4. In its proposed wage grid in this matter submitted after the close of the hearing, the Union apparently uses a calculation which does not add the increasing longevity percentages to the highest non-longevity base rate for police officers and sergeants as it did in *Meyers II and the Hill 2009 Award*, but instead uses a calculation which adds the increased longevity percentage to the next lower step.

5. Because I can only choose one of two specific offers on wages and because it appears that the Union's present wage offer is not consistent with the positions it took in the prior proceedings, if the Union agrees that the proper calculation of longevity is the one it apparently used in *Meyers II* and the *Hill 2009 Award* as set forth in paragraph 3, then the Union's wage offer is adopted and Salary Schedule "B" shall be the wage grid from the 2009-2012 Agreement as set forth in paragraph 3. If the Union does not agree that Salary Schedule "B" is the appropriate wage grid, then further argument will be necessary in this matter. The Union shall notify the undersigned and the City in writing (or by email) by close of business April 12, 2011 of its position. Upon notification from the Union of its position, a supplemental award will issue ei-

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ther specifically adopting Salary Schedule "B" (if the Union is in agreement with the calculations in that schedule) or directing further proceedings (if the Union does not agree with the calculations).<sup>46</sup>

6. All other matters agreed upon by the parties in their negotiations shall be incorporated into this award. Upon issuance of the supplemental award called for in paragraph 5 (or any other further award by me finalizing this dispute), the matter shall be remanded to the parties for the drafting of language consistent with their negotiations and this proceeding. With consent of the parties, I will retain jurisdiction to resolve disputes concerning language.

7. The wage provisions discussed in this award are retroactive to May 1, 2009 on all hours paid. The bargaining unit employees entitled to retroactive pay under this award shall receive those payments within 30 days of issuance of the supplemental award finally resolving the wage grid to be used for the 2009-2012 Agreement. Failure by the City to make those payments within the 30 day period shall permit the Union to return to the undersigned for further relief.



Edwin H. Benn  
Arbitrator

Dated: April 5, 2011

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<sup>46</sup> Given the rounding and truncating used in establishing wage grids, the parties are free to make agreed-upon adjustments to the specific calculations set forth in Salary Schedule "B".

**BEFORE  
EDWIN H. BENN  
ARBITRATOR**

**In the Matter of the Arbitration**

**between**

**CITY OF MARKHAM**

**and**

**TEAMSTERS LOCAL 700**

**CASE NOS.:**

S-MA-09-270

Arb. Ref. 10.159

(Interest Arbitration)

**SUPPLEMENTAL OPINION AND AWARD**

By Opinion and Award dated April 5, 2011 (“Award”), I held, in pertinent part:<sup>1</sup>

1. The parties have agreed to across-the-board wage increases of 2%, 1.9% and 1.9% for the three contract years involved in this matter commencing May 1, 2009.
2. With respect to longevity, Arbitrator Meyers previously held that “longevity compounds each year” (*Meyers I and II*) and Arbitrator Hill ruled that finding was *res judicata* (*Hill 2009 Award*). Those awards have not been set aside. For purposes of this proceeding, “longevity compounds each year.”
3. In *Meyers II* and the *Hill 2009 Award*, the specific calculation for “longevity compounds each year” utilized by the Union and adopted by Arbitrators Meyers and Hill was a method whereby the Union added the increasing longevity percentages to the highest non-longevity base rate for police officers and sergeants. That method yields the following wage grid for the contract periods covered in this case (Salary Schedule “B”):

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<sup>1</sup> *Award* at 36-39.

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**Police Officers**

<b>Step</b>	<b>Effective May 1, 2008 (Prior Agree- ment Rate)</b>	<b>Effective May 1, 2009 (2.0%)</b>	<b>Effective May 1, 2010 (1.9%)</b>	<b>Effective May 1, 2011 (1.9%)</b>
Step 1 (0-1)	41,601.89	42,433.93	43,240.17	44,061.73
Step 2 (1-2)	53,943.76	55,022.64	56,068.07	57,133.36
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Years 5-10 (2% step increase)	60,724.32	61,938.81	63,115.65	64,314.85
Years 10-15 (4% add'l step increase)	63,105.67	64,367.78	65,590.78	66,837.00
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Years 20+ (8% add'l step increase)	71,440.38	72,869.18	74,253.71	75,664.52

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Sergeants Base	64,806.19	66,102.31	67,358.26	68,638.06
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Years 20+ (8% add'l step increase)	77,767.43	79,322.77	80,829.91	82,365.67

4. In its proposed wage grid in this matter submitted after the close of the hearing, the Union apparently uses a calculation which does not add the increasing longevity percentages to the highest non-longevity base rate for police officers and sergeants as it did in *Meyers II and the Hill 2009 Award*, but instead uses a calculation which adds the increased longevity percentage to the next lower step.

5. Because I can only choose one of two specific offers on wages and because it appears that the Union's present wage offer is not consistent with the positions it took in the prior proceedings, if the Union agrees that the proper calculation of longevity is the one it apparently used in *Meyers II and the Hill 2009 Award* as set forth in paragraph 3, then the Union's wage offer is adopted and Salary Schedule "B" shall be the wage grid from the 2009-2012 Agreement as set forth in paragraph 3. If the Union does not agree that Salary Schedule "B" is the appropriate wage grid, then further argument will be necessary in this matter. The Union shall notify the undersigned and the City in writing (or by email) by close of business April 12, 2011 of its position. Upon notification from the Union of its position, a supplemental award will issue either specifically adopting Salary Schedule "B" (if the Union is in agreement with the calculations in that schedule) or directing further proceedings (if the Union does not agree with the calculations).

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6. All other matters agreed upon by the parties in their negotiations shall be incorporated into this award. Upon issuance of the supplemental award called for in paragraph 5 (or any other further award by me finalizing this dispute), the matter shall be remanded to the parties for the drafting of language consistent with their negotiations and this proceeding. With consent of the parties, I will retain jurisdiction to resolve disputes concerning language.

7. The wage provisions discussed in this award are retroactive to May 1, 2009 on all hours paid. The bargaining unit employees entitled to retroactive pay under this award shall receive those payments within 30 days of issuance of the supplemental award finally resolving the wage grid to be used for the 2009-2012 Agreement. Failure by the City to make those payments within the 30 day period shall permit the Union to return to the undersigned for further relief.

By email this date, the Union advised the undersigned and the City that "... to your April 5, 2010 award, for the purpose of finalizing the award and without waiving its rights to raise other relevant facts or arguments in any future proceeding, the Union accepts the Salary Schedule B wage schedules set forth in paragraph 3 of the award."

Therefore, the wage rates for the 2009-2012 Agreement shall be those in Salary Schedule "B" set forth above; all other matters agreed upon by the parties in their negotiations shall be incorporated into this award and supplemental award; this matter is now remanded to the parties for the drafting of language consistent with their negotiations and this proceeding; with consent of the parties, I will retain jurisdiction to resolve disputes concerning language; the wage provisions called for in Salary Schedule "B" are retroactive to May 1, 2009 on all hours paid; the bargaining unit employees entitled to retroactive pay under this award shall receive those payments within 30 days of this date; and failure by the City to make those payments within the 30 day period shall permit the Union to return to the undersigned for further relief.



Edwin H. Benn  
Arbitrator

Dated: April 7, 2011