AWARD OF INTEREST ARBITRATOR

In the Matter of Interest Arbitration Between City of Chester and the Illinois Fraternal Order of Police Labor Council	Opinion and Analysis, Findings of Fact, and Award by Arbitrator Peter Feuille in ILRB No. S-MA-10-206

Date of Award: September 28, 2011

APPEARANCES

For the Employer:

Mr. Ivan Schraeder, The Lowenbaum Partnership, LLC, Attorney
Mr. Jeff Kerkhouer, Attorney
Ms. Nancy Eggemeyer, City Clerk

For the Union:

Mr. James Daniels, Attorney
Mr. Bill Mehrtens, Field Representative
Mr. Daniel Walls, Police Representative
Mr. Joe Jany, Police Representative
Mr. Mike Haberberger, Police Representative

INTRODUCTION AND BACKGROUND

The City of Chester, IL ("Employer," "City") and the Illinois Fraternal Order of Police Labor Council ("Union") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2006-2010 CBA that expired on April 30, 2010 (Union Exhibit 2 ("UX 2")). During their negotiations, which included mediation, the parties were not able to reach agreement on all issues. Accordingly, the Union invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor

Relations Act ("Section 14," “Act”). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the sole Arbitrator, and in October 2010 the Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter.

Additionally, the parties waived the Act’s requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator’s appointment, and the parties agreed to waive/extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter. I am most grateful for the parties’ willingness to waive/modify the arbitration process timelines contained in Section 14.

By mutual agreement, prior to the hearing the parties agreed on the three impasse issues (listed below). Also by mutual agreement, the parties held an arbitration hearing on March 3, 2011 in Chester, IL. This March 3 hearing was stenographically recorded and a transcript produced. The parties waived oral closing arguments at the hearing and instead submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs and other post-hearing materials on June 8, 2011 the record in this matter was closed.

The record shows that the parties are at impasse over, and have submitted arbitral proposals on, three issues. They are:

1. General Wage Increase (Appendix A)
2. Longevity Bonus (Appendix C)
3. Choice of Disciplinary Appeal (Article 20)

The parties agree that two of these issues – general wage increase and longevity bonus – are “economic issues” within the meaning of Section 14(g) of the Act, and that the choice-of-disciplinary-appeal issue is not an economic issue with the meaning of the Act. The parties also agree that any wage increases provided via this Award will be fully retroactive to the pertinent dates specified in their wage proposals and in the Award.

STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(g) goes on to say that the “findings, opinions, and order to all other issues [the noneconomic issues] shall be based upon” these same applicable factors.

Section 14(h) of the Act requires that an interest arbitrator base his or her decision upon the following Section 14(h) criteria or "factors," as applicable. These factors, in their entirety, are:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

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

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

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

The Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of these criteria should be weighed. We will use the applicable criteria to make decisions on the issues presented in this proceeding.

ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

City. The City of Chester is a general purpose municipal government that provides, among other services, law enforcement and public safety services via its Police Department. Its 2000 population was 5,185, and it is located on the Mississippi River in southwestern Illinois.

Union. As of the date of the hearing in this matter, the bargaining unit included five full-time sworn police officers and three full-time, non-sworn dispatchers, who are exclusively represented by the Union for collective bargaining.

Selected Arbitral Criteria

Comparability. As noted above, Section 14(h) lists several decision factors or criteria that arbitrators may use when making comparisons of the employment terms of unit members with employment terms of similar employees in comparable communities. As we will see in the analyses that follow, not all of these decision factors will be used to resolve this impasse. Looking at the decision factors that will carry the most weight in this proceeding, one criterion is the Section 14(h)(4) "comparability" factor. Consistent with the majority of Section 14 interest arbitrations in Illinois, the parties have submitted external and internal comparability evidence into the record. As will be seen later in this Award, external comparability evidence was submitted and extensively relied upon in support of the Union's offers on various issues, and particularly in support of its wage offer. As we will see, the parties used comparability evidence in a directly opposing manner on some of the issues in this proceeding.

In particular, on the wage issue the Union submitted a large amount of external comparability evidence, or evidence showing how police officers in similar cities are situated on the three unresolved issues in this case. In particular, the Union's external comparability group includes the following organizations:

City of Benton
City of DuQuoin
City of Sparta
City of Carterville
City of Mascoutah
City of Pinckneyville (Union Exhibit 4 (“UX 4”))

The Union argues that its external comparison group is very reasonable for use in this proceeding, for it is composed of cities that are similar size to Chester and located in the same part of the state as Chester (these other cities are “comparable communities” within the meaning of Section 14). As a result, the Union argues that its group of comparables provides excellent data for use in determining the reasonableness of the final offers of the City and the Union. The Union insists its external comparability information is far superior to the Employer’s approach which eschews using any external comparables in the determination of the unresolved issues. Indeed, the Union argues that external comparables provide excellent evidence about how Chester is economically performing in the recent/current economic environment. The Union points out that the external comparability evidence in its exhibits favor the selection of Union’s final offers and especially its wage offer.

The City has taken a very different approach to the use of comparables. It has used only internal comparisons, or comparisons of the instant bargaining unit with other City bargaining units and other City employees generally. The City argues that its financial condition precludes the use of external comparables as helpful decision factors.

All of the comparability evidence in this proceeding will be appropriately considered in the analyses that follow. I do not

subscribe to the view that the information presented in external comparability comparisons is somehow entitled to be the controlling decision factor, as argued by the Union, when determining an outcome on an impasse item (Union Brief, pages 8–15; ("Un.Br. 8–15")). At the same time, I note that external and internal comparability evidence can be very useful in the decision analyses on the three open issues, but this type of evidence does not automatically deserve to carry the day. Accordingly, each party's comparability evidence will be considered, weighed, and evaluated for its probative value in helping to resolve the unresolved issues.

Ability to pay. It is not surprising that the parties also clash over the Section 14(h)(3) factor, or the City's ability to pay. In a nutshell, the City argues that its budget is highly stressed and it cannot afford to pay for the Union's final offers on the two economic issues on the agenda. Not surprisingly, the Union argues with equal vigor that the City can afford to pay for the Union's final offers. Each party has presented a large volume of ability-to-pay information and argument on the two economic issues.

There are other decision criteria, or factors, in Section 14(h) that the parties have relied upon. We will address them at the appropriate points in the analysis of the three issues below.

1. Wages Issue (Appendix A)

Current. As noted above, unit members currently are being paid their Appendix A wages in effect on April 30, 2010 (UX 2).

During the pendency of the parties' negotiations and subsequent impasse, the unit members have not received any wage increases. As a result, each party has submitted a three-year wage offer that propose wage increases to take effect on May 1, 2010, May 1, 2011, and May 1, 2012. The parties agree that the first two wage increases effective May 1, 2010 and May 1, 2011 will be retroactive to those dates. As with most Illinois municipalities, May 1 is the start of the City's fiscal year, and along with hundreds of Illinois bargaining parties the City and Union decided to have their fiscal year serve as their contract year (May 1–April 30).

In other words, we are nearing the halfway point under the three-year contract term of the next CBA, and also the halfway point of any wage increases this upcoming contract term will provide.

Union's Proposal. The Union proposes that (1) effective May 1, 2010, Appendix A wages be increased by 2.75 percent above their current Appendix A amount; (2) effective May 1, 2011, contract wages be increased by 2.50 percent above their adjusted Appendix A amount ("adjusted" by the May 1, 2010 increase); and (3) effective May 1, 2012 contract wages be increased by 2.25 percent above their adjusted-adjusted Appendix A amount ("adjusted" by the May 1, 2010 and May 1, 2011 increases; UX 10). If we set aside the effect of compounding, the Union has proposed a total wage increase of 7.50 percent during the three-year life of the parties' next contract (my calculations indicate that if we include compounding to calculate the total percentage increase, the Union's final offer

calls for a 7.69 percent wage increase final offer over the three years at issue).

The Union supports its wage offer with a variety of evidence. Looking first at the *external comparability* evidence, the Union points out that Chester shares many similarities with most of its six comparable jurisdictions (Union Exhibits 5-9 ("UXs 5-9," Un.Br. 9-15). The Union says the annual salary comparability evidence provides strong support for the selection of its wage offer and no support for the selection of the City's wage offer. In UX 14, the Union presents evidence that shows that the selection of the Union's wage offer will result in a decline in Chester police officer annual pay standings among its six-city peer group during the life of this next contract. The Union adds that this same body of evidence shows that if the City's wage offer is selected, the pay of Chester officers will plummet when compared to officers in their six-city peer group (UX 14).

The Union says that the dollar and percentage amounts of wage increases during the contract period in the City's peer group provide additional support for this assessment. In the following Table 1, the Union presents the known police officer wage increases scheduled to take effect during the life of this next contract:

TABLE 1

WAGE INCREASES IN UNION COMPARISON CITIES

City	FY2010-2011	FY2011-2012	FY2012-2013
Benton	4.0%	--	--
Carterville	~3.5% *($.65/hr)*	~3.9% *($.75/hr)*	--
DuQuoin	~3% *($.65/hr)*	~3% *($.75/hr)*	*2.8%*
Mascoutah	3%	3%	--
Pinckneyville	2%	--	--
Sparta	--	--	--
Chester-Un. FO	2.75%	2.5%	2.25%
Chester-Er. FO	2%	1.5%	1.0%

Source: Union Brief, pp. 27-28. The dashes in Table 1 mean that wage increases in selected cities for the years in questions have not yet been determined. The wage increases in italics are the actual wage increases adopted each year in each city where such figures appear.

The Union says the combination of the annual salary external comparability evidence plus the dollar amount of known wage increases during the next contract term provide overwhelming support for its final offer of a 2.75 percent wage increase for 2010-2011, a 2.5 percent increase for 2011-2012, and a 2.25 percent increase for 2012-2013. As indicated in Table 1, four of the five comparison cities which have determined wage rates for 2010-2011 have adopted increases of three percent or larger, and the three cities that have determined wage rates for 2011-2012 also have adopted increases of three percent or larger.

The Union acknowledges the truth of the City's argument that no other group of City employees has received a raise since May 2008. However, the Union vigorously objects to using other City employees for comparison purposes. Only one other City employee group is unionized (street and utility employees represented by the Laborers CHECK ON THIS), and that bargaining unit has never negotiated a first contract. None of the other City employees,

unionized or not, perform jobs and/or duties that are remotely similar to the jobs and duties performed by members of the bargaining unit. As a result, the Union strongly objects to the City's use of *internal comparisons* and argues that they should be given no weight.

Turning to the City's *ability to pay,* the Union argues that the evidence about the City's finances show that the City can afford to fund the Union's final offer. UX 18 shows that Chester's beginning general fund balance for the FY2010 was $1,997,269, which was 23 percent higher than this comparable figure was in 2006. Perhaps more important, whatever the dollar amount of Chester's beginning or ending fund balance during an years during the 2006-2010 period, the entire fund balance is unreserved (see UX 20). The Union also notes that the total revenue into the General Fund was $2,624,157 in 2006, and it was $2,612.422 during 2010 (UX 21). This $12,000 decline during this five-year period does not constitute evidence of City financial distress. This conclusion is reinforced by the fact that total City expenditures were $2,463,060 in 2006, and were $2,844,495 during 2010 (UX 22). During this 2006-2010 period the "public safety" expenditures' share of the City's budget actually went down slightly (these public safety expenditures do not include the cost of operating a professional fire department, for the City has a volunteer fire department; UX 22))

In addition to its General Fund, the City has two major proprietary funds that it can and does use to cover spending needs that arise in the tax revenue portion of its funds. For instance,

during 2010, the City had more than $1.6 million in 2010 ending cash and equivalent amounts in its Gas Fund and Water & Sewer Fund (UX 23). When combining the ending fund balances across all of its governmental and proprietary funds, the City's aggregate ending fund balance in 2010 was $4,755,404 (UX 24).

The City places great emphasis on the fact that the State of Illinois still owes the City $180,00 in income tax for 2010 (EX NN). The Union argues that the City appears to be treating this delayed tax payment as a permanent and total loss. However, there is absolutely no evidence in support of treating the State's delayed income tax payment in this manner, and there is plenty of evidence to show that the State is simply late in making these payments and eventually does so (EXs BB, CC).

Looking at the *cost of living* evidence under decision factor 14(h)(5) of the Act, the Union argues that bargaining unit members already have lost about five percent in purchasing power since the date of their last pay increase (UX 26; Un.Br. Addendum 1). If we look only at their loss of purchasing power since the contract's expiration at the end of April 2010 to the present (April 2011), Chester unit members have lost three percent (Un.Br. Add. 1). The Union argues that its proposed increases of 2.75 percent, 2.5 percent, and 2.25 percent will barely enable unit members to keep up with increased cost of living expenses if its final offer is selected, and they will fall behind these increased expenses if the City's offer is selected.

In sum, the Union notes that it is asking for a total wage increase of only 7.5 percent during the three years at issue in

this proceeding. The Union insists that its proposed 7.5 percent increase is reasonable in light of the evidence that strongly supports it, and therefore the Union asks that its wage offer be selected.

City's Proposal. The City proposes that Appendix A wage rates be increased by 2.0 percent on May 1, 2010, by 1.5 percent on May 1, 2011, and by 1.0 percent on May 1, 2012.

The City says that *external comparability* evidence should not be used to assess these two final offers. This wage dispute is a dispute over how much the City of Chester should pay to City of Chester police officers, police sergeants, and dispatchers. This dispute is not about pay rates in other municipalities. However, if external wage comparisons will be used in this proceeding, the City emphasizes that the Union's own external comparability evidence shows that Chester police officers are better paid than most of their peers in comparable communities (UX 14). Only in their earliest years of service do Chester officers trail the average pay paid to their peers, and by the five-year mark Chester officers are several percentage points ahead of their peers and remain ahead through the top pay step (UX 14). As a result, the City argues that the Union's own external comparisons provide much less support for the Union's wage offer than described by the Union.

The City argues that the only comparability evidence that should be used in the analysis of this wage issue is *internal comparables.* The members of this bargaining unit received a general wage increase in May 2009 (UX 2). However, no other City

employee has received a pay raise since May 2008. As a result, the members of this unit already are ahead of all other City employees on any equitable treatment scale, and with the City's 4.5 percent wage increase offer to this unit's members will be even more favorably situated than all other City employees.

The City says that the key driving factor underlying this wage dispute is the City's *inability to pay* the wages sought by the Union. The City emphasizes that its inability to pay can best be seen by examining the significantly declining year-end balance in the City's General Revenue Fund, which is the fund that operates the City's Police Department. In 2001, the General Revenue Fund ("GRF") had a year-end balance of $1,149,501 (CX V). In 2002, the GRF had a year-end balance of $376,948 (CX P). On February 24, 2011, the General Revenue Fund had a balance of $368,507 (CX O). As these figures indicate, the City's revenue has not kept up with its expenditures. And as these figures do not indicate, the additional pension funding costs, which are at a rate of 35.5 percent of salary for sworn officers, that are required by any wage increases ordered in this proceeding are not included here, and that money must be found and spent appropriately (CXs EE, FF).

The only way the City has been able to meet its financial obligations is to occasionally divert revenues from unrestricted funds such as the Utility Tax Fund and the Water & Sewer Fund to cover the General Revenue Fund's shortfalls (CXs X, Y, Z). These diversions of revenues from other funds to the General Revenue Fund constitute a very clear portrait of the City's distressed financial condition.

The City notes that it has proposed to boost the pay of all members of the police bargaining unit by 4.5 percent during the three years this new CBA will be in effect. In light of the City's distressed financial condition, and in light of the fact that the members of this unit are comparatively well paid when measured against their law enforcement peers, the City argues that its wage offer deserves to be selected.

Analysis. Looking first at the *comparability* evidence under Section 14(h)(4), we examine *internal comparisons*. The City is correct that members of this unit have fared better than other City employees. However, to ensure that Chester police officers are equitably paid, we need to compare their pay with the pay received by a group of police officer peers working for comparable employers, not by comparing them with employees who repair the City's streets or work in the City's utilities. The most direct way to do that is to compare the pay of Chester police officers with the pay of police officers employed in similar sized cities in the same part of the state. The Union has provided such a group to be used for external comparisons (UX 4), and the City decided it would not submit such an external comparison group in this proceeding. As a result, we move forward with our external wage comparisons using the cities supplied by the Union for this purpose.

Looking first at annual salaries, the evidence shows the following. First, the City is correct that for most of their careers, Chester police officers are paid above-average salaries compared to officers in this six-city comparison group. This pay

gap in favor of Chester officers is not large – the Union's data indicates that during FY2009 it was about five percent (UX 14). Second, the Union is correct that this Chester pay advantage tends to favor more senior officers, in that first-year Chester officer annual salaries during FY2009 rank Chester officers fifth in the cross-city salary standing, but by their tenth year of experience Chester officers rank second in this same salary ranking (UX 14).

Third and more important, the Union is correct that no matter which offer is adopted, senior Chester officers will lose pay standing compared to the average pay earned by their peers during FY2011 (UX 14). The selection of the Union's offer means that ten-year Chester officers, for instance, will drop from second to third in the pay ranking among ten-year officers during FY2011, and the selection of the City's offer means that Chester officers will drop from second to fourth in the pay ranking among ten-year officers during FY2011 (UX 14; Un.Br. 16-18).

This relative pay drop is confirmed by the Union's dollar pay increase data. As shown in Table 1 above, for the 2010 and 2011 fiscal years, when compared to the cities in which police pay increases already have been determined for those two years, the pay increases in most comparison cities are larger than either the Union's proposed increases or the City's proposed increases (UX 14; Un.Br. 27-28).

In other words, the external comparability evidence indicates that Chester police officer pay will erode compared to their nearby peers after this Award is issued. This erosion will be smaller if the Union's offer is selected, and it will be larger if the City's

offer is selected. But regardless of whose offer is selected, the relative ranking of Chester police annual salaries will decline in the comparison group used here. And contrary to the City's argument, this is a fact that is highly relevant to the final offer selection decision on the wage issue.

Accordingly, I find that the comparability evidence provides significantly more support for the selection of the Union's wage offer than for the selection of the City's wage offer.

Turning to the *ability to pay* evidence under Section 14(h)(3), these data show that the City can afford to pay for either offer. The City argues that it cannot afford to pay for the Union's 7.5 total percent increase offer, but the City makes no claim that it cannot afford to pay for its own 4.5 total percent increase offer. As a result, in practical terms the City argues, in effect, that it cannot afford to pay for the three percent difference between the parties' wage offers across the three-year period in question. However, the City did not present in its evidentiary materals a cost difference between the two wage offers, so it is not clear exactly how much of a cost gap exists between these two wage offers.

The Union estimates that this three percent difference in straight wages only amounts to about $15,000 over these three years. Neither party submitted the type and volume of salary cost data for me to do a precise calculation check on the Union's estimate, but I find this estimate to be a reasonable approximation of the wages-only difference in final offer costs. If we add in an estimated amount of $6,000 to cover the pension roll-up cost

generated by the Union's offer, we are talking about a total difference of $21,000 in additional pension costs between these competing wage offers over a three-year period. When we examine the most recent end-of-year size of the General Revenue Fund, and the end-of-year sizes of the two key proprietary funds used to replenish the GRF when necessary (EX J), there is no reasonable basis to support a conclusion that the City has enough money to pay for its own wage offer but not enough money to pay for the Union's wage offer. Instead, the appropriate conclusion from the analysis of the evidence of the City's finances is that the City can afford to fund either wage offer.

Turning to the *cost of living evidence* under Section 14(h)(5), the evidence is mixed. It is not appropriate to conclude, as the Union does, that unit members deserve a larger pay raise because considerable time has elapsed since their last raise in May 2009 (during the period that includes the final year of the 2006-2010 contract). It is more appropriate to determine the amount by which the most widely used cost of living indicator – the U.S. Bureau of Labor Statistics' Consumer Price Index – has increased since this CBA expired in May 2010, for May 2010 is the first date that the Union could reasonably expect that its members would have been able to receive another wage increase. The Union estimates that this cost of living increase amount (since May 2010) is 3.09 percent (Un.Br., Add.1). That 3.09 percent figure was calculated in April 2011, and it would be slightly higher now. The Union's offer calls for a 5.25 percent wage increase during the first two contract

years (FYs 2010 and 2011), while the City's offer calls for a 3.5 percent wage increase during these same two years.

The most significant impact of wage increases on unit member purchasing power will occur during the third year of the contract in 2012-2013. During that year the Union's offer calls for a 2.25 percent increase, and the City's offer provides a one percent increase. Although it is always hazardous to predict increases in the cost of living (as well as in other economic phenomena), the Union's wage offer should enable unit members to protect their wage increases from purchasing power erosion during the three-year life of this forthcoming contract, but it is not clear that the City's more modest wage offer will have this salutary effect. As a result, I find that the cost of living evidence provides somewhat more support for the selection of the Union's offer than it does for the City's wage offer.

Finding. I find, for the reasons explained above, that the Union's wage final offer more nearly complies with the applicable Section 14(h) decision factors than does the City's wage final offer. Accordingly, I select the Union's last offer of settlement to resolve the wage issue.

I note that neither party's wage offer says anything about how the retroactive pay process will be handled (when and how will unit members will be paid their retroactive pay?). As a result of the final offer constraint in Section 14 on this economic issue, I must leave the details of this retroactive payment process in the parties' hands to be worked out and implemented. I am confident that they can agree on a reasonable retroactive payment process.

If there are any problems implementing the retroactive payment process, I am available to assist the parties in resolving any such problems.

2. Longevity Pay Issue (Appendix C)

Current. Appendix C currently is titled "Appendix C Longevity Service Steps," and Appendix C contains language that provides unit members with a pay boost of 20 percent of their base salary during their 20th year of service, and a pay boost of 25 percent of their base salary during their 25th year of service, for a limited period of time during these two years. Specifically, employees in those 20th and 25th years of service shall be paid these pay boosts only for the first week of the first full pay period beginning after January 1st of each of these respective years of service and for the first week of the full pay period beginning after July 1st of each of these respective years of service, as follows:

"In addition to the longevity amounts set forth in Appendix A, employees shall be paid the following longevity pay amounts, which shall be considered part of the base salary attached to their rank for all purposes except payment of sick leave upon separation of service:

Employee in his twentieth (20th) year of service: 20% of base salary
Employee in his twenty-fifth (25th) year of service: 25% of base salary

Eligible employees shall receive such longevity pay amounts only for the first week of the full pay period beginning after January 1st and for the first week of the full pay period beginning after July 1st of each of the respective years of service (20 or 25 years). At the conclusion of those two weeks, an employee's longevity pay shall revert to and be as set forth in Appendix A.

[Assume an employee . . [example provided] . .]

The above Appendix C reference to longevity pay amounts in Appendix A is a reference to the parties' salary schedule in Appendix A and its inclusion of longevity-based pay steps of 0.4% per year (up to a maximum of 25 years). These Appendix A longevity amounts are not included in the instant issue, which is limited to the pay specified in Appendix C, and as a result Appendix A will not be considered further in this section of the Award.

The purpose of this Appendix C language is to provide a significant pay boost to the members' pensionable income after the member becomes pension-eligible, which in turn will result in a significant boost to the member's retirement benefits.

On December 20, 2007, the Illinois Department of Financial and Professional Regulation ("DFPR") sent to the City and the Union a message stating that "Bonus payments cannot be considered salary for pension purposes" (UX 17, p. 2; Tr. 47). DFPR's Division of Insurance also posted online a list of "nonsalary compensation not considered salary for pension contributions and pension calculations" (UX 17, p. 3). This information establishes that it was not until 2007, well after the May 1, 2006 effective date of the then-expiring CBA, that Appendix C's bi-annual bonuses were not to be considered as pensionable income.

Union Proposal. The Union says that this DFPR ruling stripped 99 percent of the benefit-to-the-members from Appendix C, and the Union determined to replace the existing but outmoded Appendix C with new language that would provide members with a roughly comparable benefit. The instant negotiations and Section 14

proceeding is the first opportunity the Union has had to seek new Appendix C language since the DFPR ruling in 2007.

The Union proposes to delete the existing language in Appendix C and replace it with the following new language:

> "During their last twelve (12) months of employment, officers who have served the city at least nineteen years as a police officer shall be paid an additional $300 per month. This sum shall be considered part of their regular, base wages. Should the officer continue employment with the City beyond the twelve-month designated period, he shall receive his base wages without the $300 monthly benefit."

The Union offers its proposal to replace the language in Appendix C that DFPR stripped of its benefit to unit members. That no-longer-acceptable Appendix C provided a benefit to retiring officers that enabled them to receive enhanced pensions compared to what they would receive without the no-longer-acceptable provision. According to the Union's calculations, a 25-year officer retiring under the now-defunct Appendix C would have received a $11,000+ boost in his or her annual pension if the officer timed his retirement to take advantage of the Appendix C benefit (Un.Br. 42). It is this benefit that the Union seeks to replace with its longevity bonus proposal as written above.

The Union emphasizes that three of its comparable cities already have adopted such pension benefit enhancement provisions. In 2008 Benton agreed to a CBA provision similar to Chester's with replacement language that provided that an officer would receive an increase of $300 per month in the officer's final declared year of service (UX 15, p. 5; Tr. 64-66). A similar provision was adopted in Harrisburg (Harrisburg is not one of the Union's comparables, but it has a population of 9,000 and is located 76 miles east of

Chester; Un.Br. 44). The new Harrisburg provision provides a $500 per month increase for retiring officers during their final year of service (Tr. 68). Pinckneyville adopted a provision that provides officers with a one-year retirement incentive of $2,500 (Tr. 69). In other words, the Union says there is considerable comparability evidence in support of its proposal.

In addition, the Union argues that there should be no "status quo" burden on the Union with this issue. In this case, the existing Appendix C provision was stripped of its meaning by the State of Illinois in a completely unforeseen manner. When the fact that the old longevity bonus language in Appendix C was adopted by both parties two negotiations ago is also considered, this bargaining history constitutes clearcut proof that the City had no qualms about agreeing to a retirement incentive that is more lucrative than the Union's instant proposal. Now that the State of Illinois has provided Illinois cities, including Chester, with the windfall benefit of nullifying existing pension enhancement provisions, Chester's posture on this issue is to wash its hands of the matter by offering a "status quo" proposal. The Union insists this is nothing more than the City trying to hang on to its windfall gain handed to the City by the DFPR ruling.

City Proposal. The City's longevity bonus final offer is to renew the existing Appendix C unchanged.

The City says that the Union's pension enhancement proposal (a) creates additional unfunded pension liability and thus is much too costly in light of current City finances, (b) the wording of the Union's proposal is not consistent with the Union's stated

intent for this provision, (c) it applies to only one or two unit members, and (d) it is not comparable to pension enhancement provisions in comparable communities

The City points out that the Union's proposal does not do what the Union says it is designed to do – provide an officer with a $300 per month wage increase during the officer's final twelve months of employment in a manner that will enhance the officer's pension. Instead, the Union's proposal places no requirement on the officer to retire at the end of that 12-month period. The Union's proposal explicitly states that "should the officer continue employment with the City beyond the twelve-month designated period, he shall receive his base wages without the $300 monthly benefit." This language clearly contemplates that an officer may declare for retirement, receive 12 payments each containing an extra $300 per month, and then decide not to retire. The provision says that, under this circumstance, the officer has no obligation to repay the $3,600 "retirement" benefit. The only thing that happens to the officer at the end of the 12-month period is that he or she loses the $300 per month benefit and reverts back to the monthly salary she or he was being paid prior to the $300 monthly bump. The City also indicates that there is no limit in this Union proposal, or elsewhere in the contract, on the number of times an officer can do this.

The City says the actual language in the Union proposal does not provide a benefit that is tied to the actual act of retiring. Instead, it provides unit members with the opportunity to collect multiple $300-per-month pay increases, each allegedly tied to

retirement, until the officer changes his mind and decides to continue working and keep the 12 payments of $300 per month.

The City also notes that the Union's proposed Chester language is not at all similar to the language in the comparable cities the Union used on this issue. In Benton, the relevant contract language provides that an officer "during their last 12 months of employment [who have been Benton police officers for at least 19 years] shall be promoted to the rank of Master Police Officer" (UX 17). During this 12-month period the City will pay the Master Police Officer an additional $300 per month (UX 17). The CBA specifies the additional duties the Master Police Officer will perform. The officer's term in this higher rank may be extended beyond one year, but only at the City's discretion (UX 17).

In Harrisburg, a city that is not even included in the Union's group of comparable communities, the CBA provides, in a section titled "Final Longevity Step," that "during their last 12 months of employment," sergeants and patrol officers who have at least 20 years of service with the City shall be promoted to the rank of "Training Officer" (UX 17). These Training Officers shall assist in training less senior officers, and for this work they shall be paid $500 per month (UX 17). For these reasons, the City says that its longevity proposal should be adopted.

Analysis. These other longevity pay provisions in selected Union comparable cities read as follows:

DuQuoin:

Section 3 Length of Service Bonus

The Employer agrees to increase the wage rate of any employee covered under this Agreement, who participates in the DuQuoin Police Pension Fund, and who has over 20 years and less than 25

years of service by 20% for one pay period only each year. The Employer agrees to increase by 25% the the wage rate of any employee covered under this agreement, who participates in the Du Quoin Police Pension Fund, and who has over 25 years of service for one pay period each year. That pay period shall be the first pay period of May or November, at the discretion of the officer. Such increases shall not constitute a contract re-opener.

Should the Employer contractually extend a similar length of service bonus to any other collective bargaining unit, the Employer agrees to extend that same bonus program to all Employees covered by this Agreement (UX 17).

Benton

Section 14.9 Master Police Officer Pay

During their last 12 months of employment, officers who have served the City at least 19 years as a police officer shall be promoted to the rank of Master Police Officer. This promotion is intended to afford the City and the Department the opportunity to utilize the experience, training and expertise of these senior officers to the benefit of less senior officers and the Department's overall mission.

During the period of an employee's service in the rank of Master Police Officer, he or she shall assist the Department in the mentoring and training [of] less senior officers at the direction of the Chief of Police during their regular hours of work, in addition to their regular police duties. Master Police Officers shall be paid $300 per month while serving in the rank. Such sum shall not be included when calculating severance pay, but shall be considered as salary attached to the rank of Master Police Officer for all purposes other than overtime, vacation, sick leave, etc. The City may extend the term of the Master Police Officer beyond one year, but such assignment extension shall be at the discretion of the City (UX 17)

Harrisburg

Section 12.1a Final Lonevity Step

Longevity Pay: During their last 12 months of employment, sergeants and patrol officers who have served the City at least 29 years as a police officer shall be promoted to the rank of Training Officer. This promotion is intended to afford the City and the Department the opportunity to utilize the experience, training and expertise of these senior officers to the benefit of less senior officers and the Department's overall mission.

During the period of an employee's service in the rank of Training Officer, he or she shall assist the Department in training less senior officers at the direction of the Chief of Police during their regular hours of work, in addition to the regular police duties. Training officers [sic] shall be paid $500 per month while

serving in the rank. Such sum shall not be included when calculating severance pay, but shall be considered as salary attached to the rank of Training Officer for all purposes other than overtime, holiday, vacation, sick leave. Etc. (UX 17).

When we compare the Union's longevity proposal with the longevity provisions in the three cities shown above, we see that the Union's proposal falls short of what the parties operating under these other CBAs are trying to do. In the Harrisburg, Benton, and DuQuoin CBAs these three longevity provisions are designed to promote senior police officers to a higher rank for a fixed period of 12 months, give them additional duties to train and assist less senior officers, and limit their time in this higher rank to 12 months. Benton allows its Master Police Officers to serve beyond the 12-month period, but strictly at the City's discretion.

When measured against these comparison standards, the Union's offer contains the following undesirable features. First, the actual wording of the Union's proposed Appendix C contains no requirement that an officer receiving this benefit must actually retire at the end of the 12-month $300-per-month benefit period, nor is there any requirement that the officer who continues to work after the expiration of the 12-month period must pay back the $3,600 he received in what was earlier characterized as "his last 12 months of employment." In other words, the wording of the Union's proposal clearly contemplates an intent to allow officers to collect this $3,600 additional pay and then continue to work rather than retire.

Second, there is no requirement in the Union's proposed Appendix C language that an officer who receives this benefit can only receive it once, which conveys an intent that the same officer can receive it multiple times.

Instead, the Union's proposal in Chester apparently is designed to provide a provision that enables senior officers to make multiple dips into the extra pay pool, and this proposal's only connection with enhanced retirement benefits would occur if an officer decides to retire during one of the periods when the Chester officer is receiving the extra $300 per month. As this description implies, the Union's proposal is an even less desirable proposal than the City's proposal (discussed below). In short, making a final offer selection choice between these two longevity offers means making a decision about which final offer is less unreasonable.

Neither party's final offer on this issue is desirable. As a result, my first choice is to throw them both in the trash and start over. However, I do not have that discretion, so I must choose which one is more reasonable than the other (actually, less unreasonable than the other. I find that the City's proposal is more desirable than the Union's proposal. The City's proposal reflects the parties' mutual intent about how they would address this topic in a jointly agreeable manner two negotiations ago, and as a result the City's proposal is at least partly consistent with the *bargaining history* on this topic pursuant to Section 14(h)(8).

Finding. I find, for the reasons explained above, that the City's longevity pay final offer more nearly complies with the

applicable Section 14(h) decision factors than does the Union's longevity pay final offer. Accordingly, I select the City's last offer of settlement to resolve the longevity pay issue.

3. Choice of Disciplinary Appeal Issue (Article 20, paragraph b)

Current. Article 20, paragraph b, currently reads as follows:

> "b. Patrolmen shall have the right to have their discipline cases reviewed by the City of Chester Police and Fire Commission. Dispatchers through the grievance procedure. Probationary employees have no appeal rights of disciplinary proceedings" (UX 2).

This quoted language appeared in the parties' first two CBAs. As it indicates, patrol officers can grieve any disciplinary actions against them only by appealing to the Police and Fire Commission. However, during the pendency of the expiring contract (UX 2), the state legislature amended Section 5/10-2.1-17 of the Illinois Municipal Code so that discipline matters were no longer within the exclusive domain of police and fire commissions in non-home rule cities such as Chester.

Union Proposal. The Union proposes that Section 20.b be modified to read as follows:

> "(b) Patrolmen shall have the right to have their discipline cases reviewed by the City of Chester Police and Fire Commission, or through the grievance procedure of this Agreement. Dispatchers shall have the right to have their discipline cases reviewed through the grievance procedure. Probationary employees shall have no appeal rights of disciplinary proceedings."

The Union supports its proposal with several arguments. First, the Union notes that the instant round of bargaining is the first time the Union has been able to negotiate with the City over this issue as a mandatory subject of bargaining. The Union sought, without success, to negotiate for similar language when this issue

was a permissive subject of bargaining, and each time the City refused to negotiate over this topic (Tr. 97). However, during this contract round the City must negotiate over this issue on its merits.

Second, the Union argues it should not be required to carry any "breakthrough" burden on this issue in light of the fact that the City was not obligated to negotiate over this issue in previous bargaining rounds. The Union cites rulings by other Illinois arbitrators to this effect when they were faced with deciding this same issue (e.g., *Village of Shorewood and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-07-199, Arb. Aaron Wolff, 2008; Un.Br. 33-38).

Third, the Union says there are many procedural shortcomings with disciplinary cases handled by the Chester Police and Fire Commission ("Commission"). For instance, any appeals of discipline by officers to the Commission are handled in public because Commission meetings are subject to the Illinois Open Meetings Act. The Commission also has the right to not only uphold discipline administered by the Chief of Police, but to increase the discipline. Commission members are politically appointed by the mayor and subject to approval by the city council. None of them are required to have any sort of law enforcement or labor relations background.

Fourth, the Union emphasizes that arbitral precedent on this issue is lopsided in the Union's favor, which is not surprising in light of the wording in Section 8 of the Illinois Public Labor Relations Act requiring that all public sector CBAs must contain a

grievance procedure culminating in final and binding arbitration unless mutually agreed otherwise (5 ILCS 315/8). As the Union points out in its brief, several interest arbitrators in cities around the state, when faced with this issue, have ruled that bargaining unit members should have the right to have their discipline reviewed through the CBA's grievance procedure (Un.Br. 33-38). The Union asks that this strongly established arbitral precedent continue to be followed in the ruling on the instant matter.

Fifth, the Union notes that it could have proposed language that mandated that all disciplinary matters be appealed only through the contractual grievance procedure and the Police and Fire Commission be moved out of the disciplinary appeal picture. However, the Union emphasizes that its proposal does not call for this. Instead, the Union's proposal gives employees the choice of appealing their discipline either through the Commission or through the contractual grievance procedure.

Sixth, the Union points to the six comparable cities it has selected for use in this proceeding. The Union points out that Benton, Carterville, DuQuoin, Mascoutah, and Sparta – five of the six comparables – give officers the choice to grieve and appeal discipline up to and including discharge (UX 12).

For these reasons, the Union argues that its final offer on this issue is superior. Its offer provides unit members with the opportunity to have employee discipline reviewed by someone who is not appointed solely by the Employer, and who has training in labor and employment matters. The Union's proposal should be adopted.

City Proposal. The City proposes that the status quo on this issue continue unchanged (CX G).

The City supports its proposal by emphasizing that the Union has not presented a single scrap of evidence to show that there is anything wrong with the current Article 20 arrangement that provides for Commission review of discipline cases. The Police Department has imposed no disciplinary actions that would have triggered any sort of grievance review. As a result, no unit members have advanced any disciplinary cases to the Commission. The City argues that this evidence indicates that there is absolutely nothing wrong with the current system of Commission review of discipline cases that needs to be fixed.

On the Union's comparability dimension, the City points out that the Union agreed on cross-examination that all except one of the communities it cited as having such a contractual provision voluntarily agreed to make the change at issue here (Tr. 93-94).

Analysis. There are several prominent facts that emerge from the body of evidence on this choice-of-procedures issue. First, Section 8 of the Act unequivocally indicates that it is the clear public policy of the State of Illinois that public sector employees and employers working under CBAs negotiated with the labor organizations representing these public employers shall be covered by a contractual grievance procedure that culminates in grievance arbitration (5 ILCS 315/8). This public policy was strengthened by the legislature's 2007 decision to eliminate the exclusive authority over disciplinary matters exercised by police and fire commissions in non-home rule cities.

Second, a review of employee discipline conducted via the contractual grievance procedure, especially review conducted at the terminal step of arbitration, has an appearance of fairness that is difficult for any police and fire commission to meet. As noted above, these commissions are typically appointed by the municipality's chief executive officer, confirmed by the municipality's elective legislative body, and operate under rules that the commission adopts (CX OO). In contrast, an arbitrator is selected by both parties, and operates under jointly specified rules that were jointly negotiated in the CBA. The parties will note that I am not talking about commissions actually behaving in an unfair manner toward disciplined police officers whose cases appear before these commissions. As noted above, there is not a molecule of evidence in the instant record of such behavior occurring in Chester. Instead, I am talking about something equally important – the appearance of fairness. On that dimension, providing sworn officers with access to a jointly negotiated contractual grievance procedure provides the appearance of fair review of employee discipline to a much greater extent than does review by a managerially-appointed police and fire commission.

Third, the disciplinary appeal language in the police CBAs in nearby communities presented in the Union's brief shows that five of the six comparable communities contain the same type of choice-of procedures language the Union seeks here (UX 12, Un.Br. 40).

Fourth, earlier in this proceeding the Union emphasized the importance of external comparisons in making decisions in this proceeding, particularly on the wage issue. The Union's evidence

indicates that the heavy majority of comparable communities in southwestern Illinois have contract language similar to what the Union proposes here (UX 12). The Union's comparability evidence also indicates that interest arbitrators, when called upon to make the kind of choice at issue here, have overwhelmingly selected proposals that give officers access to grievance procedures and arbitration (Un.Br. 33-38).

Fifth, earlier in this proceeding the City emphasized the importance of internal comparisons in making decisions in this proceeding, particularly on the wage issue. Even modest scrutiny of Section 20.b indicates that the dispatcher members of the bargaining unit have access to the grievance procedure and to grievance arbitration for review of any discipline that they appeal (UX 2). It is not at all clear why the City believes it is appropriate to allow dispatchers access to grievance arbitration while simultaneously prohibiting sworn officers from obtaining similar access.

Sixth, the Union's proposal does not seek to prevent the Commission from participating in the review of a unit member's discipline. Instead, it provides that disciplined sworn members of the unit will have to make a choice between having their discipline reviewed by the Commission or through the contractual grievance procedure in Article 7. As a result, any sworn unit member who prefers the Commission appeal avenue may continue to use it.

Sixth, the City emphasizes that the Union presented no evidence of any problems experienced by sworn unit members because they could not have their discipline reviewed by grievance

arbitrators. I agree that the Union did not do this. But I do not find that this constitutes a shortcoming in the Union's case. Just as it is neither necessary nor desirable to refuse to provide health insurance coverage to unit members until they are sick or injured, so is it neither necessary nor desirable to wait until a series of acrimonious disciplinary episodes has occurred before sworn unit members are given a choice of mutually negotiated disciplinary appeal procedures to use when circumstances require.

Finding. I find, for the reasons explained above, that the Union's choice-of-disciplinary-procedures proposal more nearly complies with the applicable Section 14(h) decision factors than does the City's choice-of-procedures proposal. Accordingly, with the modifications noted below, I select the Union's last offer of settlement to resolve the wage issue. The parties will note that, because this is not an economic issue, the final offer requirement does not apply, and the interest arbitrator may make suitable modifications to the proposal that is adopted.

There is a significant process shortcoming in the Union's proposal, in that nowhere does it specify how or when a disciplined officer who wants to appeal his/her discipline must choose between having his/her discipline reviewed by the Commission or via the contractual grievance procedure. As a result, I find that the following language needs to be inserted into two places, as follows (new language is in *italics*).

1. Insert as the newly modified first sentence in paragraph b in Article 20:
"*b. Sworn unit members shall have the right to have their discipline cases reviewed by the City of Chester Police and Fire Commission, or reviewed through the grievance procedure specified in Article 7 of this*

> *Agreement, with this choice-of-appeal-procedure decision to be made as specified in Section 2 of Article 7.*" Dispatchers may have their discipline reviewed through the grievance procedure specified in Article 7 of this Agreement. Probationary employees have no appeal rights of disciplinary proceedings.

Insert as the new third paragraph in Section 2 of Article 7:

> "*Within ten (10) calendar days of the date of the chief's response in the immediately preceding paragraph, the disciplined employee and the employee's Union shall inform the chief, in writing, of their decision (a) to appeal the employee's discipline to the City of Chester Fire and Police Commission, or (b) to appeal the employee's discipline through the contractual grievance procedure specified below in this Article. This choice-of-disciplinary appeal procedure, once submitted in writing to the chief, is irrevocable and cannot be changed.*"

The parties will note that this new italicized language I have added does not create any substantive rights for anybody. Instead, I have included this new language for the straightforward reason of preventing arguments between the parties about which appeal procedure will be used, how much time the employee/Union have to make a choice, who made the appeal procedure decision, when was the decision made, etc. I invite the parties to add to or modify this process language to fit their particular circumstances.

Status Quo and Other Provisions

As noted above, the parties resolved several issues during their negotiations and during the instant arbitration proceeding. Consistent with widespread terminology, they referred to these items as tentatively agreed (or "TA'd") issues. The parties provided me with a copy of their TA'd issues (JX 1), and it is incorporated by reference in this Award. In addition, the parties agreed that all the provisions in the expiring CBA that were not

changed at the negotiating table and are not encompassed in this arbitration will carry forward unchanged into the successor CBA as “status quo” items. I hereby incorporate into this Award all of these other resolved issues and status quo provisions by reference.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the following outcomes more nearly comply with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award these outcomes on the issues on the arbitral agenda:

1. Wages (Appendix A)

   The Union's offer is selected.

2. Longevity Pay (Appendix C)

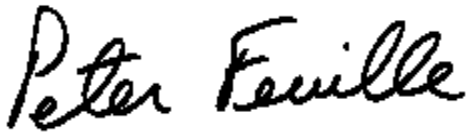
   The City's offer is selected.

3. Disciplinary Appeal/Review (Article 20, Section b)

   The Union's offer, as modified by the Arbitrator, is selected.

It is so ordered.

Respectfully submitted,



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Peter Feuille
Arbitrator

Champaign, IL
September 28, 2011