AWARD OF INTEREST ARBITRATOR

In the Matter of Interest Arbitration Between City of Marengo 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-10-227 FMCS No. 11-01290-T

Date of Award: December 30, 2011

APPEARANCES

For the Employer:

Mr. John H. Kelly, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., Attorney
Mr. Joshua Blakemore, Assistant Administrator
Mr. Joseph Hallman, Acting Chief of Police
Mr. George Roach, City Auditor
Mr. Joseph Sheahan, Law Clerk

For the Union:

Mr. Jeffery Burke, Attorney
Mr. Richard Stomper, Field Representative
P.O. Jerzy Rzotkiewicz, Patrol Officer
P.O. Brian Christian, Detective
P.O. Andrew Taylor, Patrol Officer

INTRODUCTION AND BACKGROUND

The City of Marengo, 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 1 ("UX 1")). During their negotiations, which included mediation (UXs 3, 4), the parties reached agreement on many issues

(UX 15) but 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 February 2011 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 modify the arbitration process timelines contained in Section 14, particularly their extension of the time allowed for this Award to be issued (Transcript, page 7 ("Tr. 7"); Joint Exhibit 2 ("JX 2")).

By mutual agreement, the parties held an arbitration hearing on July 7, 2011 in Marengo, IL. This July 7 hearing was stenographically recorded and a transcript was 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 October 3, 2011 the record in this matter was closed.

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

1. Wages (Article XIX)

2. Health Insurance Cost (Section 18.3)
3. K-9 Pay Officer Compensation (Article XIX)
4. Tuition Reimbursement Program (Section 17.2)
5. Corrective Discipline (Section 8.2)

The parties agree that four of these issues – all but the disciplinary process issue in Section 8.2 – are “economic issues” within the meaning of Section 14(g) of the Act, and that the appeal-of-discipline issue in Section 8.2 is not an economic issue with the meaning of the Act. The parties also agree that any economic adjustments provided via this Award will be fully retroactive to the pertinent dates specified in their economic proposals and in this 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 the applicable criteria should be weighed. We will use the applicable criteria to make decisions on the issues presented in this proceeding.

As we will see below, the decision factors that played a prominent role in the resolution of the instant issues include external comparability under Section 14(h)(4), internal comparability under Section 14(h)(4), ability to pay under Section

14(h)(3), and "such other factors . . . normally or traditionally . . . taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining . . . arbitration . . ." under Section 14(h)(8).

At the same time, it is worth noting here that neither party presented evidence to be applied under factors (1), (2), (6), and (7) in Section 14(h). As a result, those four factors will not be considered further.

ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

City. The City of Marengo is a general purpose municipal government that provides, among other services, law enforcement and public safety services via its Police Department. Its 2010 population was 7,648 (UX 5), and it is located in McHenry County a few miles north of Interstate 94 about halfway between Rockford and Chicago.

Union. As of the date of the hearing in this matter, the bargaining unit included ten full-time sworn police officers (UX 11), one of whom is a detective and one of whom serves as a K-9 officer. There are a total of 14 employees in the Police Department (UX 11).

Comparables

The Union selected and used a group of northern Illinois municipalities as its "comparable communities" within the meaning of Section 14(h)(4) of the Act. The Union describes how it

selected these communities, all of which are within 50 percent of Marengo's population, are within 50 percent of Marengo on several municipal organization dimensions, are within 25 miles of Marengo, and have union-represented employees (UXs 5-7; Union Brief, pages 10-12 ("Un.Br. 10-12")). The Union's comparable communities are Fox River Grove, Genoa, Hampshire, Harvard, Island Lake, Johnsburg, Lakemoor, and Roscoe (UX 7).

In Section 14 cases, each party often submits its own group of comparables. In this instance, however, the City elected to not submit a group of comparison communities. Instead, the City has accepted and used the Union's comparison municipalities at many points in its analysis (see Employer Brief). Accordingly, the comparison communities in the record will be used whenever applicable in the analysis that follows.

Issues, Offers, Analysis, and Findings

As will be seen shortly, each party has submitted a three-year package of offers, which means that the successor contract emerging from this proceeding will cover the period May 1, 2010 through April 30, 2013.

1. Wages (Article XIX)

Current. As noted above, unit members currently are being paid their Article XIX wages in effect on April 30, 2010 (UX 1), which amounts range from $46,632 per year ($22.42 hourly) at the bottom (or first) step of the salary scale to $65,413 per year ($31.45 hourly) at the scale's top step (UX 1, pp. 21-22). During

the pendency of the parties' negotiations and subsequent impasse, unit members have not received any general wage increases. Each party has submitted a three-year wage offer that proposes wage rates to take effect on May 1, 2010, May 1, 2011, and May 1, 2012. The parties agree that any 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).

Union Proposal. The Union proposes that (1) effective May 1, 2010, Article XIX wages be increased by 2.0 percent above their current (2009–2010) amount; (2) effective May 1, 2011, contract wages be increased by 2.0 percent above their 2010–2011 amount; and (3) effective May 1, 2012 contract wages be increased by 2.0 percent above their 2011–2012 amount (UX 14). If we set aside the effect of compounding, the Union has proposed a total wage increase of 6.0 percent during the three-year life of the parties' next contract (my calculations indicate that if we include compounding, the Union's final offer calls for a 6.12 percent wage increase over the three years at issue). The top-step hourly wage rates in Article XIX proposed by the Union are $32.08 for 2010–2011, $32.72 for 2011–2012, and $33.37 for 2012–2013.

The Union supports its wage offer with a variety of evidence. Looking first at the *external comparability* evidence, the Union points out that Marengo top step police officer pay ranks fifth among the eight-jurisdiction group composed of seven of the Union's

comparable communities plus Marengo (UX 12; Genoa is excluded from these results because its police contract contains no pay schedule, UX 26B). The Union says that the hourly dollar amounts in UX 12 are subject to change, as they are in the process of being renegotiated in Marengo and in other comparison cities.

Moreover, when these comparison communities recently have adopted wage increases, they have agreed to significantly larger increases than the two percent increases proposed by the Union. For instance, Hampshire officers received a 3.5 percent increase effective May 1, 2010 and another 3.5 percent increase effective May 1, 2011 (UX 26C, p. 33). Similarly, Harvard officers received a 4.0 percent increase effective May 1, 2010 (UX 26D, p. 30). Likewise, Johnsburg officers received a 4.0 percent increase effective May 1, 2010 (UX 26G, p. 56). Officers in Hampshire, Harvard, and Johnsburg already are more highly paid than Marengo officers (UX 12). This means that the adoption of the Union's two percent proposed increase for May 1, 2010 will mean Marengo officers will fall even further behind officers in those three cities, and the adoption of the City's proposed zero offer for the 2010-2011 year will cause an even larger pay gap between Marengo officers and their peers in comparable communities. The Union says these external pay comparisons provide strong support for the Union's wage offer and no support for the City's wage offer.

Looking at the *cost of living* evidence under decision factor 14(h)(5) of the Act, the Union notes that the U.S. Bureau of Labor Statistics' ("BLS") national Consumer Price Index for All Urban Consumers ("CPI-U") shows that the nationwide cost of living

increased by 3.5 percent during the May 2010-May 2011 period (UX 13). Closer to home, the BLS's CPI-U for "Midwest Urban" communities, which includes Marengo and its comparable communities, shows a 3.8 percent increase in the cost of living during that same time period (UX 13). The Union emphasizes that the May 2010 to May 2011 period is the first year of the successor CBA. As a result, even with the adoption of the Union's two percent wage increase for 2010-2011, unit members will experience a loss of purchasing power. If the City's zero offer is adopted for that year, unit members will suffer a substantial loss of purchasing power that will be very difficult to overcome in the years ahead.

The Union vigorously rejects the City's argument that unit member wage increases outpaced inflation during the years encompassed by the prior 2006-2010 CBA (UX 26). The Union notes that the bargains adopted in the prior contract were for the period encompassed by that contract, that both parties entered into that contract with their eyes open and aware of the risks and rewards of that agreement, and that the predecessor contract resulted from arms length negotiations. Accordingly, it is not appropriate for the City to offload some of the wage increases negotiated in the expired contract to the new contract being formed via the instant arbitration.

Turning to the City's *ability to pay* under Section 14(h)(3), the Union argues that the evidence about the City's finances shows that the City can afford to fund the Union's final offer. UX 24 shows the City's 2011-2012 budget. The key fund in the City's budget is its General Fund, which is the fund that provides the money to operate the Police Department. In this 2011-2012 budget the City estimates that its General Fund revenues will be $3,884,233, which is an increase over 2010-2011 (UX 24). The Union emphasizes several other items in the 2011-2012 budget:

- The City projects an increase in property tax revenue for 2011-2012;
- The City added $50,000 to its budget to support a full-time Administrator position;
- The Police Department expenditures have been significantly reduced as a result of the transfer of dispatch services to the Village of Lake in the Hills;
- Each year since 2008 the City has increased the levy for the Police Pension Fund by 10 percent. For the 2011-2012 year the City increased that amount [the percentage increase] by 20 percent;
- The City created a new Capital Projects & Equipment Fund during the 2011-2012 year. The City has transferred $119,000 into this new fund from other City funds, and it plans to transfer another $90,000 into this new fund at the end of the fiscal year.

The Union emphasizes that almost all of the above financial steps are voluntary actions by the City. They are not mandated by

law or regulatory requirement. These discretionary actions are steps taken by a City that is very confident of its financial future.

Additional financial information reinforces the conclusion that the City is in good fiscal shape. In the City's *Annual Financial Report* for fiscal 2010, for instance, the City's assets exceeded its liabilities by $7,648,488 at the end of the fiscal year on April 30, 2010, and the City had an unreserved asset balance of $317,826 (UX 25, pp. 2-4).

The Union does not dispute that the economic climate of the past few years may have stressed the City's budget. More important, however, the Union emphasizes that the City's own budget numbers show that the City currently is in strong financial shape, and that it can easily afford to fund the Union's wage offer.

For these reasons, the Union argues that its wage offer should be selected.

City's Proposal. The City proposes (1) that Article XIX wage rates continue unchanged on May 1, 2010; (2) that wage rates increase by 2.0 percent for the 2011-2012 year; and (3) that wage rates increase by 2.0 percent for the 2012-2013 year. Excluding compounding, this represents a four percent wage increase offer during the three years of the instant contract. If compounding is included, the City proposes a total wage increase of 4.04 percent. The top-step hourly wage rates proposed by the City are $31.45 for 2010-2011 (no change from 2009-2010), $32.08 for 2011-2012, and $32.72 for 2012-2013.

The City argues that the *external comparability* evidence indicates that Marengo officers currently rank fifth in the salary standings among the Union's comparison communities, and that regardless of whose wage offer is selected in this proceeding Marengo will continue to rank fifth in the salary standings. Some of the comparison cities (e.g., Harvard, Island Lake) pay significantly more than does Marengo such that Marengo cannot compete with their higher wage rates, and when the wage increase dust settles these two cities will continue to pay significantly more than Marengo (UX 12). At the other end of the pay spectrum, some cities (e.g., Lakemoor, Roscoe) pay significantly less than Marengo, and that conclusion will still apply when this proceeding is concluded (UX 12). In the middle of the pack, Marengo pay already is very close to officer pay in Hampshire and Johnsburg (UX 12). The City says that the selection of its offer will keep Marengo officers in very close pay proximity with Hampshire and Johnsburg officers. In contrast, the City argues that the selection of the Union's offer will result in a pay gain against the market that is not warranted by the City's economic condition.

The City's economic condition is clearly illustrated by the *internal comparability* evidence. In the City's Teamsters-represented bargaining unit of public works employees, those unit members received no wage increase for the 2010-2011 year (City Exhibit G ("CX G")). Similarly, non-represented City employees received no wage increase for the 2010-2011 year, and also for the 2011-2012 year (CX G). More generally, the internal wage increase evidence for the period May 1, 2007 through April 30, 2010 shows

that members of the police bargaining unit received much larger pay raises over this period than any other group of City employees (CX G). This internal comparability evidence provides very strong support for the City's offer.

Another piece of internal pay evidence that supports the City's offer is the fact that the Article XIX police wage scale is composed of nine pay steps (UXs 1, 26). The City says that eight out of ten unit members are still working their way upward through these salary steps, and that each step movement generates an average 4.7 percent increase for the affected officer (City Brief, page 6 ("C.Br. 6")). These step increases put a considerable amount of "new money" into the pockets of the step-eligible unit members, which in turn provides them with strong protection against increases in the cost of living.

On the *cost of living* dimension, the City does not dispute the Union's CPI-U figures for the May 1, 2010 through April 30, 2010 period. However, the City says that it is more important to take a longer view of CPI changes, and specifically to note that during the final three years of the predecessor police contract Marengo officers received wage increases that kept them comfortably ahead of increases in the cost of living (CX G). And as noted above, the heavy majority of unit members also received step increases which, standing alone, increased their pay by significantly more than the CPI increase in any year.

The City says that the core dimension that separates the parties on the wage issue is the City's *ability to pay*. The City points to its FY2011-2012 budget report (CX I), and to the City

Treasurer's Report for June 2011 (CX J) for evidence showing that it is in precarious financial shape. The opening notes in the City's budget report state that "reductions in income tax revenue, utility tax revenue and sales tax is [sic] being projected for FY 11/12" (CX I, p. 2). These forecasted revenue reductions are occurring on top of reductions in these revenues during the three prior years. Further, the overall increase in the 2011-2012 General Fund revenues is primarily due to the transfer of significant Insurance Fund revenue into the General Fund (CX I, p. 2).

City Auditor George Roach testified that the City ended the 2010-2011 fiscal year $43,000 in the red, and the City had $67,000 in cash and no cash reserves (Tr. 89-91). Roach testified that, for any city to be in fair fiscal shape, it should have cash reserves of four to six months of expenses. In Marengo, this amount would be in the $1.2 to $1.8 million dollar range, and the financial evidence indicates the City, with its zero cash reserve status, is on another planet compared to that amount (Tr. 90). The City says this financial evidence strongly indicates that the City is in precarious financial shape and cannot afford the Union's wage offer.

This conclusion is reinforced by the cost-saving steps the City has taken during the past four years. The City notes that it employed 45 full time employees in 2007-2008 (CX H). In 2011-2012, the City employed a total of 28 full-time employees. This is a 38 percent reduction in City employee headcount during this period, and most of it occurred during 2011-2012 (CX H; 41 employees during

2010-2011, 28 employees during 2011-2012). The City says that a staff reduction of this magnitude occurred directly as a result of the City's highly stressed financial condition and the City's concomitant inability to continue to employ the same number of employees as it did three to five years ago.

For these reasons, the City asks that its wage offer be selected.

Analysis. Looking first at the *external comparability* evidence under Section 14(h)(4), this evidence is of limited assistance as submitted into the record, but it is valuable once the necessary corrections have been made. The Employer submitted no external wage data, and instead referred to the external wage information supplied by the Union (UX 12).

The Union submitted one exhibit showing hourly wage rates in seven of the eight comparison communities plus Marengo (UX 12). However, as demonstrated below the hourly wage rates in UX 12 are not directly comparable with one another. For instance, UX 12 lists the top-step hourly rate in Fox River Grove ("FRG") as $27.79. The FRG contract indicates this indeed was the highest pay rate in the FRG unit during the 2007-2008 contract year (May 1 - April 30) (UX 26A, p. 44-45, 67). However, this wage rate is seriously outdated, for FRG unit members received contractual wage increases of 3.5 percent effective May 1, 2008, 3.5 percent effective May 1, 2009, and 3.25 percent effective May 1, 2010 (see UX 26A, pp. 44-45, 67). These subsequent increases produced a top-

step rate of $30.74 effective May 1, 2010 for the FRG officer located at this top-step wage (Mark Slovacek).[1]

Looking next at the wage entry for Hampshire, the Hampshire wage rate of $31.64 is correct – but not for the period beginning April 30, 2012 as indicated in the Hampshire footnote (n. 1) in UX 12. Instead, the Hampshire – Fraternal Order of Police CBA indicates this pay rate took effect on May 1, 2011 for the 2011-2012 year (UX 26B, p. 33).

The other wage rates presented in UX 12 are correctly stated, according to the CBAs from those communities (UX 26). However, the usefulness of these listed wage rates is limited by the fact that they were/are not in effect during the same year, but instead are spread over three different years. The Hampshire wage rate took effect on May 1, 2011; the FRG, Harvard, and Johnsburg wage rates took effect on May 1, 2010; and the Island Lake, Lakemoor, and Roscoe rates took effect on May 1, 2009. As a result, UX 12 does not give us a direct, at-the-same-point-in-time comparison of wages in all of the comparison communities with the wage rate currently being paid in Marengo, which took effect on May 1, 2009.

We get a more accurate picture of external wage comparisons in Table 1 below. Table 1 compares all of the wage rates in the seven

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1. The Fox River Grove – Illinois Council of Police CBA for the period May 1, 2006 through April 30, 2011 does not contain an experience-based step pay schedule of the type found in Article XIX in the instant contract (UX 1). Instead, in the FRG-ICOPS CBA each FRG officer's name is listed in each year's pay exhibit with an hourly pay rate attached to each officer (UX 26A, p. 66-67). The $30.74 wage rate for 2010-2011 I calculated for Officer Slovacek assumes, of course, that he continues to be employed as an FRG police officer.

comparable communities and Marengo for 2009-2010, which is the most recent year in which all eight communities (excluding Genoa) had a contractual top-step rate in effect. Table 1 indicates that during 2009-2010 Marengo ranked third on the police wage index in this grouping (and not fifth, as noted by both the Union and the Employer (Union Brief, page 12 ("Un.Br. 12"); C.Br. 6")). The italicized numbers in Table 1 specify the percent increase of each wage rate in each municipality during the 2009-2010 year and later.

Focusing on the seven comparison communities for which we have wage data, during FY20009-2010 Marengo paid a higher top step rate than five municipalities (FRG, Hampshire, Johnsburg, Lakemoor, and Roscoe) and paid less than two communities (Harvard, Island Lake). The average 2009-2010 top-step wage rate in the seven comparison communities was $30.70, and the Marengo $31.45 rate that year was $.75 per hour above that comparison average. As this indicates, during 2009-2010 Marengo was one of the higher-paying municipalities in this eight-community group.

More specifically, Table 1 shows, as the City notes, that Harvard and Island Lake pay significantly more than Marengo, so it is highly likely that Marengo will continue to trail those two communities regardless of whose wage offer is selected. At the other end of the wage index, it also is likely that Marengo will continue to pay more than Lakemoor and Roscoe regardless of whose wage offer is selected.

The three communities of FRG, Hampshire, and Johnsburg paid 2009-2010 top-step wage rates that were closer to what Marengo paid that year than the rates paid in other communities. In addition,

FRG increased its top-step rate by 3.25 percent for 2010-2011, Hampshire increased its top-step rate for 2010-2011 and 2011-2012 by 3.5 percent in each of those years, and Johnsburg increased its top-step rate by four percent for 2010-2011. As a result, these three communities narrowed their wage gap with Marengo since the 2009-2010 year.

How the top-step wage rates in these three communities and Marengo will compare with each other during the 2012-2013 year depends on the size of the wage increases adopted in all four communities. The Marengo top-step wage rate in 2012-2013 will be either $32.72 or $33.37, depending on whose wage offer is selected. We don't know from the instant record what the top-step rates in FRG, Hampshire, and Johnsburg will be during 2012-2013.

At the same time, we can determine from the information in Table 1 that the City's assertion that the selection of the Union's offer will provide Marengo officers an unwarranted gain in wage rates against the market very likely is not correct (C.Br. 6). In fact, if the Union's wage offer is selected, and wage rates in Johnsburg increase by only two percent in each of the 2011-2012 and 2012-2013 years (a very conservative estimate), the Marengo top-step wage will shrink to only $.60 per hour higher than the Johnsburg top-step wage (down from $1.17 per hour higher during 2009-2010). This hardly qualifies as a "gain against the market."

If the City's wage offer is selected and Johnsburg wages go up by only two percent for each of these two years, then Johnsburg will take over the third place wage ranking and Marengo will slip to fourth place in this comparison group (the Marengo 2012-2013

rate will be $32.72 and the Johnsburg rate will be $32.77). Similarly, the selection of the City's offer ensures that the size of the Marengo wage advantage over FRG and Hampshire that existed during 2009-2010 will shrink significantly by 2012-2013 if wages in FRG and Hampshire increase by only two percent per year during the applicable years.

TABLE 1
TOP STEP HOURLY WAGE RATES
IN UNION COMPARISON COMMUNITIES

Municipality	**FY2008-2009**	**FY2009-2010**	**FY2010-2011**	**FY2011-2012**	**FY2012-2013**
Fox River Grove	$28.76	$29.77 *3.5%*	$30.74* *3.25%*	---	---
Genoa	---	---	---	---	---
Hampshire	28.54	29.53 *3.5%*	30.57 *3.5%*	31.63 *3.5%*	---
Harvard	33.13	34.46 *4.0%*	35.84 *4.0%*	---	---
Island Lake	32.46	33.76 *4.0%*	---	---	---
Johnsburg	29.12	30.28 *4.0%*	31.50 *4.0%*	---	---
Lakemoor	26.61	28.47 *7.0%*	---	---	---
Roscoe**	27.58	28.62 *3.8%*	---	---	---
Average wage w/o Marengo		$30.70			
Marengo	30.24	31.45 *4.0%*	---	---	---
Marengo - City Offer	NA	NA	31.45 *0%*	32.08 *2.0%*	32.72 *2.0%*
Marengo - Union Offer	NA	NA	32.08 *2.0%*	32.72 *2.0%*	33.37 *2.0%*

*Wage rates are taken from the respective CBAs in UXs 1 and 26.

**Roscoe wage rates take effect on January 1 for the calendar year. All other jurisdictions use May 1-April 30 fiscal years for wage rates and wage adjustments.

As a result, regardless of whose wage offer is selected, Marengo will continue to pay more than some communities and less than others when the wage increase dust settles. At the same time,

the selection of the City's wage offer very likely will result in a decline in Marengo's wage ranking in this eight-municipality group, and will definitely result in Marengo losing much of its 2009-2010 wage advantage over wage rates in FRG, Hampshire, and Johnsburg. Accordingly, I find that the external comparability evidence provides more support for the Union's offer than for the City's offer.

Looking at the *internal comparability* evidence under Section 14(h)(4), we see that the City's public works employees represented by the Teamsters received a zero wage increase for the 2010-2011 year (CX G). This zero increase for the public works employees for that year is the same offer the City has proposed for the police unit for 2010-2011. As a result, the internal comparability evidence provides more support for the selection of the City's offer than for the Union's offer.

At the same time, the truly "comparable" wage information comes from police officer wage rates in similar comparison cities in the same part of the state, for it is police officers in these comparable communities who perform jobs that are closely aligned with jobs performed by Marengo officers. In turn, these police-to-police wage comparisons yield more valuable information than comparisons with the wages the City pays other employees performing very different kinds of work. As a result, when we consider all of the evidence under the Section 14(h)(4) factor, the most weight should be given to police officer wages in comparable communities.

Turning to the *cost of living* factor under Section 14(h)(5), the Union's CPI-U evidence indicates that the cost of living

increased by 3.5 percent during the May 2010 – May 2011 period, which is the first year of the successor contract. The Union's proposed two percent increase for that year will not keep pace with inflation, and the City's zero increase offer for that year means that unit members will experience a significant loss of purchasing power during 2010-2011. We don't know, of course, what changes in the CPI will occur in the months and years ahead. Based on the cost of living evidence available to date, this cost of living evidence provides more support for the Union's offer than for the City's offer.

I note that the City is correct that unit members received wage increases during the life of the predecessor contract that handsomely outpaced the rate of inflation (CX G). However, that contract has expired, the bargains it contained are now part of the parties' bargaining history, and therefore there is no persuasive basis for "averaging" the wage and cost of living increases under the 2006-2010 CBA with the wage and cost of living increases under the 2010-2013 CBA.

Moving on to the *ability to pay* factor under Section 14(h)(3), this evidence shows that the City has experienced substantial fiscal distress during the past few years. The City's General Fund has finished in the red during the 2007-2008 through 2010-2011 years and generated a total of more than $600,000 in red ink during those four years (UX 25; CX I). We do not have audited figures for the 2010-2011 year, but City Auditor George Roach testified that the City finished that year (on April 30, 2011) about $43,000 in the red (Tr. 87). Roach testified that the primary reason for the

City's financial plight was the sporadic payments and concomitantly delayed receipt of the City's share of income tax and sales tax revenue from the State of Illinois (Tr. 87-96).

The most visible evidence of the City's financial condition is the fact that the City reduced its employee headcount from 45 full-time employees in 2007-2008 to 28 full-time employees in 2011-2012 (CX H).

At the same time, the City's 2011-2012 budget report indicates that the City's financial status recently has improved. The City's General Fund received actual revenues of $3,565,452 during FY2010-2011 (CX I). The City estimates that it will receive General Fund revenue of $3,884,233 during FY2011-2012 (CX I). The City correctly notes that some of this increase in the General Fund comes from money transferred there from the Insurance Fund. As a result, we should subtract the $103,232 from the Insurance Fund that was transferred into this General Fund estimate so we can perform an apples-to-apples comparison of the General Fund in both years (CX I, budget p. 1). When we do that, we have a 2011-2012 General Fund that is projected to be $3,781,001. This is an increase of $215,549 over the General Fund's 2010-2011 revenue (again, excluding the money transferred from the Insurance Fund), which is a 6.0 percent revenue increase for the 2011-2012 General Fund.

Looking specifically at the Police Department, the City spent $2,081,431 on the Department during FY2010-2011, and the City forecasts that it will spend $1,858,836 on the Department during FY2011-2012 (CX I, budget p. 5). This $233,000 cost reduction

comes from many sources, but the largest element of this cost savings comes from the City's decision to contract out its dispatching service to the Village of Lake of the Hills. The City spent $246,693 on dispatch services during 2010-2011, and this amount is estimated to shrink to $36,000 during 2011-2012 (CX I, budget p. 5). Even when the City's annual payment of $107,000 to the Village of Lake in the Hills for dispatch services is included as a new cost item, the City's contracting out of its dispatch service will result in a net saving to the Department of more than $100,000 during 2011-2012 (CX I).

The City's 2011-2012 budget report contains other indications of improved City finances. As one example, during FY2011-2012 the City created a new Capital Projects and Improvement Fund, and during this new fund's first year the City's goal is to transfer $90,000 into it from the General Fund. The purpose of this new fund is to help fund projects in the City's Capital Improvement Plan (CX I, p. 4). This new fund is an indication of an improved fiscal situation in the City.

The City emphasizes the results in the City Treasurer's Report for June 2011 (CX J). In particular, the City points to the meager June 1, 2011 City cash balance of $22,852 across the General, Audit, and Insurance Funds (CX J). There is no question that this cash balance, which also was the cash balance for May 31, 2011, is quite thin. However, the cash balances in these funds on June 30, 2011 paint a very different picture. This amount, across these three same funds, totals $524,740 (CX J), and is a result of the substantial influx of property tax revenues the City received

during this month (Tr. 104-105). My point is not that the City's property tax receipts in June 2011 solved the City's financial problems, only that end-of-month cash balances can vary substantially during the City's fiscal year.

The City has said that it cannot afford to fund the Union's wage offer. However, the City made no similar claim about being unable to fund its own wage offer. In effect, then, the City argues that it cannot afford to fund the two percentage point difference between these two wage offers. The City calculates that a two percent wage increase for this unit costs about $13,000 (Tr. 130). This figure will be larger after fringe benefit costs are added. The City says that it included a two percent increase in the City budget for the 2011-2012 year, but that it did not do so for the 2010-2011 year (Tr. 130). The City's response to the Union's proposal of a two percent increase for 2010-2011 is "that retroactive amount of two percent that the FOP is asking for, the City simply doesn't have it" (Tr. 130).

Expressed another way, and using the City's estimate of a $13,000 cost associated with a two percent wage hike for this unit, the City proposes about $26,000 in wage increases during the three-year successor contract and the Union proposes about $39,000 during this period. As noted above, these figures are exclusive of fringes.

The evidence indicates that the City did not budget an increase in police salaries for the 2010-2011 year (CX I; Tr. 130). As a result, there is no question that paying for a non-budgeted police wage increase for that year will be difficult. However, it

does not automatically follow that the City cannot pay for such an increase because "we don't have it." In a City with an approximate $3.8 million General Fund that is projected to receive an increase of more than $200,000 in revenue during 2011-2012 compared with 2010-2011 (CX I), and in a City with a Police Department that is projected to spend about $233,000 less in 2011-2012 than it did during 2010-2011, the City's ability to fund a two percent wage increase for 2010-2011 is higher now than during prior years.

In sum, both parties have presented reasonable final offers on wages, and both parties have presented reasonable evidence in support of their offers. Indeed, there is adequate evidence to justify the selection of either wage offer. However, Section 14(g) mandates that one of these offers be selected. When we combine the external comparability evidence and the cost of living evidence, both of which support the Union's offer, with the ability to pay evidence that supports the City's offer, this combined evidence provides more support for the selection of the Union's offer than for the selection of the City's 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 Union's wage offer says nothing about how the retroactive pay process will be handled (when and how will unit members 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. Health Insurance Cost (Section 18.3)

The other large cost item on the arbitral agenda is the cost of employee health insurance. This Section 18.3 item in the expired contract reads as follows:

"The Employer shall continue to pay 100% of the cost of single coverage under any existing plan.

The employee shall pay 35% of the cost of the difference between insurance program and coverage selected and the cost of single coverage under the same plan.

The Employer shall institute a cafeteria IRS 125 plan that all employees may participate in as of October 1, 2002." (UX 1, p. 21).

As this language indicates, under the expiring contract employees with single coverage paid nothing toward the total premium cost of their insurance, and employees with family coverage paid 35 percent of the premium cost of family coverage.

Union Proposal. The Union proposes to modify the existing Section 18.3 language to read as follows (strike-throughs represent deleted language, underlines represent newly added language):

"The Employer shall ~~continue to~~ pay ~~100%~~ 90% of the cost of single coverage under any existing plan and the Employee shall pay ten percent (10%) of the cost.

~~The Employee shall pay 35 percent of the difference between insurance program and coverage selected and the cost of single coverage under the same plan~~.

For coverage beyond single employee, the City shall pay 70% of the difference between the total premium cost of coverage and the

total premium cost of single coverage under the same plan, plus the Employer's share of the individual coverage under that same plan.

The Employer shall ~~institute~~ continue a cafeteria IRS 125 plan that all employees may participate in. ~~as of October 1, 2002.~~"

The Union notes that its proposal calls for employees with single coverage to begin paying toward the cost of their insurance by paying ten percent of the premium, and the Union notes that the Employer's health insurance offer proposes the same thing.

The Union says that the differences between the two offers emerge in the language specifying how the cost of family coverage will be allocated between the employee and the City. Under the Union's proposal, the new language makes clear that the employee with family coverage will pay 30 percent of the cost difference between family coverage and single coverage, minus the City's share of the cost of single coverage. Expressed another way, the City will pay 70 percent of the cost of the difference between family coverage and single coverage, plus the City's share of the cost of single coverage.

The Union uses the following example to illustrate its proposal. Single coverage costs $500 per month and family coverage costs $1,500 per month. Under the Union proposal, the employee with single coverage will pay $50 per month (ten percent) and the City will pay $450 per month, which total to $500. For family coverage, the City would pay $1,150 per month and the employee would pay $350, which total to $1,500. How is this $1,150 City amount generated? The first $700 of this amount would be generated by the language requiring the City to pay 70 percent of the cost difference between single and family coverage. This cost

difference is $1,000 ($1,500 minus $500), and it is multiplied by 70 percent (0.70), which is $700. However, if the calculation stops there, the employee with family coverage would pay $800 per month, which the Union argues is not either party's intention. However, under the Union's proposal the employee with family coverage is protected from paying $800 per month by the terminology "plus the Employer's share of individual coverage under the same plan." This language requires the City to pay for its $450 cost of single coverage for employees who select family coverage, over and above the 70 percent cost of the difference between single and family coverage (the $700 in this example). When this $450 amount is added to the $700 amount, the City's total payment for family coverage is $1,150 per month.

The Union agrees that the City is already calculating the non-unit employee and City contributions toward single and family coverage in the manner proposed in the Union's offer (UX 27). However, the Union says that the City's contribution practice is not consistent with the existing contract language or with the City's proposed new contract language.

Further, the Union says that its proposal would require its unit members to pay about the same monthly amount for family coverage ($417.22) as paid by other City employees ($436.95) under the Blue Cross/Blue Shield PPO (the City also offers an HMO plan with lower premiums). In contrast, the Union says the City's proposal would require its unit members to pay $476.59 per month for family coverage, which is significantly more than is paid by other City employees for family coverage.

The Union additionally notes that the health insurance premium cost allocation data in UX 12 show that Marengo unit members pay more for family coverage than almost all of the comparison communities. The Union argues that requiring Marengo officers to pay even more for their health insurance is not an equitable resolution.

As a result, the Union asks that its health insurance cost offer be selected.

City Proposal. The City proposes to revise the Section 18.3 language to read as follows (strike-throughs are deletions, underlines are new language):

"The employer shall ~~continue to~~ pay ~~100%~~ ninety percent (90%) of the cost of single coverage under any existing plan and the employee shall pay ten percent (10%) of the cost.

The employee shall pay 35% of the cost of the difference between the family insurance program and coverage selected and the cost of the single coverage under the same plan. The employer shall pay the remaining difference.

The employer shall ~~institute~~ continue a cafeteria IRS 125 plan that all employees may participate in. ~~as of October 1, 2002.~~"

The City proposes that these insurance changes will be effective May 1, 2011.

The City relies heavily on internal comparisons in support of its health insurance proposal. The City points out that, effective May 1, 2010, all City employees other than those in the instant unit began paying a single premium contribution of ten percent. Regarding the employee contribution toward the cost of family coverage, the City emphasizes that this 35 percent contribution level was in place during the two predecessor contracts (UXs 1, 26K), and its presence in the City's offer is simply a continuation

of the long-term status quo. Moreover, the City points out that the Union offered no justification of any kind to support the Union's proposal to decrease the employee contribution toward the cost of family coverage from 35 percent to 30 percent. In fact, the City says that this element of the Union insurance offer was never presented in bargaining between the parties (C.Br. 5).

The City additionally notes that at least four of the Union's eight comparison cities require some amount of premium contribution by employees selecting single coverage, and four communities require some amount of premium contribution by employees selecting family coverage (UX 12).

As a result, the City asks that its insurance offer be selected.

Analysis. Both parties have proposed that employees selecting single coverage will pay ten percent of the premium cost of such coverage, so there is no basis for differentiating between their offers on that dimension. The 2011 single coverage total monthly premium is $609.89, and under both offers the employee will pay 10 percent of that amount, or $60.99 per month, and the City will pay $548.90 per month (UX 28).

The difference between the two insurance offers emerges over how family coverage will be paid for. In spite of the differences in language between the two proposals, and temporarily setting aside the 65 percent vs. 70 percent difference, both proposals call for the same calculation method to be used to calculate employee and City contribution amounts toward the cost of family coverage. The data in UX 28 indicate that this family cost allocation

calculation will be made in the manner set forth by the Union in support of its insurance offer (Un.Br. 14-16).

UX 28 indicates that the City proposes to allocate family premium costs in the instant unit in the manner proposed by the Union, though not at the 70 percent contribution rate for family coverage. The City proposes to continue using the 35 percent employee family contribution rate in the expiring contract, which contribution rate is also in the City-Teamsters expiring contract (UX 26J), with the result being the City pays 65 percent of the cost difference between single and family coverage and the employee pays 35 percent of this difference. For the BC/BS PPO, the 2011 cost of family coverage is $1,797.32 per month, and the cost of single coverage is $609.89 (UX 28). The difference between these two cost figures is $1,187.43, and 65 percent of that difference is $771.83. However, UX 28 indicates that the City will pay much more than $771.83 per month for family coverage under its proposal. The City also will pay for its 90 percent share of the cost of single coverage, which 90 percent share is $548.90 (UX 28). When these the $771.83 and $548.90 amounts are added together, they indicate that the City will pay $1,320.73 per month, and the employee will pay $476.59 per month, for family coverage in the instant unit under the City proposal (UX 28).

The Union calculates that its proposal will require the City to pay $1,380.10 per month, and the employee will pay $417.22 per month, for family coverage (UX 28). The differences in the City and Union monthly family coverage premium contribution amounts emanating from these two proposals are not the result of any

difference in Union and City calculation methods. Instead, it is the straightforward result of the fact that the City proposes to continue to pay 65 percent of the cost difference between single and family coverage, and the Union proposes that the City pay 70 percent of this difference and the employee pay 30 percent.

The Union is correct that unit members who select family coverage will make large premium payments each month for their family coverage. I note, though, that the Union agreed in the two predecessor contracts that unit members would be paying 35 percent of the cost of family coverage (UXs 1, 26K). As a result, unit members have been making large family coverage premium payments for several years. In other words, the parties' bargaining history on the allocation of the cost of paying for family coverage premiums, a relevant factor to consider under Section 14(h)(8), clearly supports the City's offer.

I also note that, under the City proposal, unit members will be paying for health insurance at the same percentage rates as other City employees – 10 percent for single coverage and 35 percent for family coverage – have been paying since May 1, 2010.

The evidence indicates that the City has extended the same health insurance coverages and the same health insurance premiums to all of its employees (UXs 1, 26K, 26L, 27). As this suggests, internal comparability has been a key factor in the City's health insurance arrangement with its employees. In turn, I believe that internal comparability, pursuant to Section 14(h)(4), provides much more support to the City's offer than to the Union's offer.

The Union argues that the wording in the City's insurance proposal does not match the actual calculation method needed to generate the accurate amounts of employee and City contributions toward the cost of family coverage. In contrast, the Union argues that the wording in the Union's insurance proposal explicitly specifies the calculation steps necessary to generate these accurate contributions.

I agree that the wording in the Union's proposal does a better job of precisely specifying how the family contribution amounts are to be calculated. At the same time, the Union admits that "this [the Union's] wording reflects exactly how the City is calculating the contributions right now for its Union employees" (Un.Br. 15). In other words, the evidence clearly indicates that the parties reached a "meeting of the minds" on how to calculate the family coverage contribution amounts for the City and for the employees under the predecessor contract (UX 1) and in their pending insurance final offers.[2] As a result, the differences in the exact

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2. This "meeting of the minds" apparently did not appear in part of UX 28. In this exhibit the Union correctly calculated that, under the City's insurance proposal, the City's monthly contribution for family coverage in the FOP unit will be $1,320.73 and the employee's monthly contribution for family coverage will be $476.59 under the BC/BS PPO plan. However, in the columns headed "City share for non-FOP employee" and "Employee share for non-FOP employee" (toward the left side of the page), the monthly cost amounts presented are $1,360.37 for the Employer and $436.95 for the employee (UX 28). In light of the Employer's insistence that its insurance proposal will extend to the FOP unit the same insurance arrangement that exists with other City employees, this approximate $40 difference in monthly contributions toward family coverage for non-FOP employees and FOP unit members is puzzling. My calculations indicate that the $1,360.37 and $436.95 amounts are the result of incorrectly

wording in the parties' insurance proposals offers no persuasive basis for selecting the Union's offer.

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

3. K-9 Officer Compensation (Article XIX, new Section 19.4)

The City currently has a unit member who serves as a K-9 officer. She is responsible for the care, feeding, and handling of the dog. The Department's K-9 program was established in April 2010 after the predecessor contract was negotiated and adopted, so there is no reference to specialized compensation for the K-9 officer in the expiring contract (UX 1). Both parties propose to fill that gap in this proceeding.

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subtracting 90 percent of the cost of single coverage from the total cost of family coverage ($1,797.32 minus $548.90, which yields $1,248.42). When we take 65 percent of $1,248.42, we get $811.47. When the Employer's 90 share of single coverage ($548.90) is added to $811.47, the result is an incorrect amount of $1,360.37 for the City's contribution.

As noted in the parties' proposals and in the text, under the City's proposal the proper way to calculate the respective contribution costs toward family coverage is to subtract the entire cost of single coverage ($609.89) from the entire cost of family coverage ($1,797.32). Such subtraction yields $1,187.43, and 65 percent of that amount yields $771.83. When we add the Employer's 90 percent share of single coverage ($548.90) to $771.83, the result is $1.320.73 for the Employer's contribution toward family coverage, which amount is correctly shown in the "Employer Proposal for City Share for FOP Employee" in UX 28. The concomitant correct employee monthly contribution amount toward family coverage is $476.59.

Union Proposal. The Union proposes to add the following as a new provision to Article XIX:

"K-9 Officers will receive an additional one (1) hour of compensation at the employee's straight time rate or one hour of paid time off, at the employee's election, for every calendar day in which dog [sic] is put to work.

The Union supports its proposal by emphasizing the large amount of work a K-9 officer must perform caring for the dog, with much of this extra work time occurring during the officer's non-duty hours. The Union says that its one-hour-of-pay proposal likely will not fully compensate the K-9 officer for all the extra work she must perform in this capacity, but at least the Union's offer comes significantly closer to achieving that objective than the City's offer of only one-half hour of time off per work day. Accordingly, the Union's offer should be adopted.

City Proposal. The City proposes to add the following as a new Section 19.4 to Article XIX:

"Officers assigned to K-9 responsibilities shall be compensated for all time necessary for the care and feeding of the K-9 by allowing the officer on-half [sic] (1/2) hour of time off with pay per work day."

The City proposes that this provision will be effective May 1, 2010.

The City points out that the K-9 program began in April 2010. Since then the K-9 officer has been provided a squad car that she is allowed to take home, and the City covers all of the costs associated with the maintenance of the dog, including food, kenneling, and veterinary costs. In addition, the K-9 officer has been allowed one-half hour off on each work day to allow for the care of the dog (Tr. 113-117). This compensation arrangement,

which was testified to by Interim Chief Joseph Hallman, is exactly what the City proposes as its final offer on the K-9 compensation issue.

Analysis. The Union proposes that the K-9 officer will receive one hour of straight time pay, or one hour of paid time off, at the officer's choice, "for every calendar day in which the dog is put to work." The Union did not specifically define the "every calendar day the dog is put to work" requirement. However, Chief Hallman testified that Officer Sonya Bass is the K-9 officer, the dog is her partner, and she brings the dog to work with her five days per week for each regular tour of duty (Tr. 113-115). As a result, the most reasonable definition of the Union's "every day the dog is put to work" part of its proposal is every day that Officer Bass brings the dog with her to work, which is every day that Officer Bass reports for work.

It is not clear from the record how many different calendar days each year Officer Bass brings the dog to work, as presumably she does not do so during vacations, holidays, personal days, sick days, and other regular work days in which she is unable to work. There are 260 possible work days in a 52-week year, before we subtract days for the reasons just listed. According to Section 7.1, unit members work 10 days out of each 15-day period (five days on followed by two days off, then five days on followed by three days off). There are 24.3 15-day segments in a 365-day year. If Bass worked each of her 10 scheduled work days in each 15-day work cycle, she would work 243 days per year. However, according to Article XIII, Bass is in the seniority category of officers that

provides her with 15 vacation days each year (UX 1, p. 16). In addition, each unit member is allowed up to 12 sick leave days per year. When we subtract 15 vacation days from Bass's annual workdays, and when we allow for several other days each year that she may be absent, for the purpose of this analysis we may reasonably conclude that she reports to work 220 days each year. We also may conclude, relying on Chief Hallman's testimony, that Officer Bass brings the dog to work on each of these estimated 220 calendar days per year. Accordingly, the Union's proposal calls for her to be paid an additional 220 hours of pay or time off for performing her K-9 duties.

The seniority schedule indicates Officer Bass was hired on March 22, 2004 (UX 11). Article XIX indicates that unit members shall be placed on the pay scale according to their years of service. I calculate that, with her years of service, Officer Bass currently is on Step 8 of the Article XIX pay scale. That means she currently is being paid $30.34 per hour, which wage amount will increase as a result of the wage offer adopted above. For this analysis, though, we will use the $30.34 hourly rate. When we multiply the estimated 220 days that Officer Bass brings the dog to work by $30.34 per hour, the resulting figure is $6,674.80 per year that the Union's proposal requires that she be paid as additional K-9 compensation. If she brings the dog to work on fewer than 220 days per year, this amount will be smaller. However, I note that even if she brings the dog to work on only 100 days per year (about two days per week), she will be paid a bit more than three thousand dollars per year for her K-9 work.

What do comparable communities pay their K-9 officers for performing these specialized duties? Genoa is the only community in the Union's comparability group that pays officers additional compensation for performing K-9 duties, at least according to the language in the police CBAs in these comparison communities (UX 26). The Genoa police CBA specifies that K-9 officers receive an annual stipend of $500 for performing K-9 duties, which amounts to an additional hourly stipend of $0.24 (UX 26B, p. 14).

Looking internally at a specialty pay example, Article XIX specifies that a unit member who works as a detective shall receive an annual stipend of $1,200 (UX 1, p. 22). The selection of the Union's K-9 proposal would require paying Officer Bass five times more than the Department's detective is paid for performing his/her specialized duties. When we consider the $500 annual amount that Genoa pays for its K-9 officer, and the $1,200 annual amount that Marengo pays for its detective, the Union's K-9 specialized pay proposal is clearly excessive and simply cannot be persuasively justified.

In addition, according to Section 7.1, the unit members' normal workday is 8.5 hours (UX 1, p. 8). In effect, then, the Union is proposing that Officer Bass should receive an approximate 11.8 percent annual increase in pay for performing K-9 duties (one additional hour of pay per day divided by the regular 8.5 hour workday). When we consider that both parties' wage proposals are limited to two percent increases per year, a proposal for an officer to receive an 11.8 percent pay increase for the performance of her regular K-9 duties is exceptionally difficult to justify.

In contrast, the City proposes that Officer Bass continue to receive the compensation she is presently receiving, which is one-half hour of paid time off per day so she can use that time to attend to the dog's needs. This amounts to $15.17 per day at her current rate of $30.34 per hour, and if she is paid this K-9 stipend for 220 days per year the City's proposal "pays" her $3,337 per year. This amount does not come in the form of additional cash on top of her existing annual salary, but it nevertheless constitutes an additional payment of paid time off that is not received by other officers.

As this analysis indicates, the City's K-9 offer is much more reasonable than the Union's K-9 offer.

Finding. I find, for the reasons explained above, that the City's K-9 compensation final offer more nearly complies with the applicable Section 14(h) decision factors than does the Union's final offer. Accordingly, I select the City's last offer of settlement to resolve the K-9 officer compensation issue. As the City has proposed, this new Section 19.4 will take effect on May 1, 2010. In addition, I recommend that the City correct the typo in its final offer ("on-half (1/2) hour" to "one-half (1/2) hour") before this language is included in the successor contract.

4. Tuition Reimbursement Program

In Section 17.2 the City provides unit members with a tuition reimbursement program. Section 17.2 reads as follows:

"Employees shall be reimbursed for fifty percent (50%) of tuition costs after the employee receives a passing grade. The classes shall be prior approved by the City and be from an accredited school. Classes shall be college-accredited classes

toward a degree, or relate to their current assignment for the City. The reimbursement should cover tuition costs, books and related fees."

City Proposal. The City proposes that Section 17.2 be revised to read as follows:

"Employees shall be reimbursed for fifty percent (50%) of tuition costs after the employee receives ~~a passing~~ grade of "C" or above. The classes shall be prior approved by the City and be from an accredited school. Classes shall be college-accredited classes toward a degree, or relate their current assignment for the City. The reimbursement should cover tuition costs, books and related fees. Each employee shall be limited to reimbursement for no more than two (2) classes per academic period.

Chief Hallman testified that this City proposal is based on the Department's limited funds available for training. Funds to reimburse officers for taking degree program courses come from the Department's training budget, which is the same source of funds used to send officers to nondegree training courses to meet Department needs. As a result, money spent on tuition reimbursement limits the funds available for the Department to send officers for nondegree training courses. Specifically, the Department's training budget has been cut by 40 percent in recent years. This proposal is designed to balance the available funds between officers pursuing degree programs and the other (nondegree) types of training available to police officers. The Chief also testified that the City proposes that officers must obtain a minimum grade of "C" to provide an incentive to officers seeking reimbursement to perform in an acceptable manner (Tr. 111-112).

Union Proposal. The Union proposes that Section 17.2 continue unchanged into the next contract. The Union argues that the City bears the burden of proof to show that the current tuition

reimbursement program is broken and needs to be changed. The Union says the City has not met this burden.

The Union points out that there is no evidence that any unit member has used the tuition reimbursement program during the past several years. The Union notes that it asked the City for payment records under the tuition reimbursement program for the past five years, and the Union said the City's response to this information request was there were no payment records because no one had used the tuition program (Tr. 136-137). The Union acknowledges Chief Hallman's testimony that three officers have sought tuition reimbursement during the past five years, and that at least one officer was reimbursed (Tr. 112-113). The Union emphasizes that it is not impugning the Chief's credibility by presenting its report that no unit member had used the program for the past five years, for that report is based directly on information the Union was given by the City.

The Union emphasizes that the City presented absolutely no evidence of unit member tuition reimbursement expenses borne by the City for any period of time. As a result, the City's claim that the tuition reimbursement program, in its current form, has generated unduly burdensome expenses has not been met. As a result, the City has presented no evidence supporting the need for the changes it seeks in the tuition program.

Analysis. I understand the difficulty faced by the Department in paying for the training and education of unit members with a training budget that has been trimmed by forty percent. I also

find that the particulars in the City's proposal to revise Section 17.2 are reasonable.

More important, however, the City has not presented any documented evidence that during the past year, the past three years, the past five years, or during any other period of time, it has spent a single dollar on tuition reimbursement expenses for unit members pursuant to Section 17.2. I have no reason to doubt Mr. Burke's testimony that the City informed the Union, prior to the instant hearing, that the City had not paid any tuition expenses for unit members during the preceding five years (Tr. 136-137). I also have no reason to doubt Chief Hallman's testimony that, during the past five years, three officers sought tuition reimbursement and one actually was reimbursed (Tr. 112-113).

The combined testimony of Burke and Hallman support the following conclusions. First, different members of the City have different beliefs about the actual tuition reimbursement expenses generated by unit members during the past five years. Second, the tuition reimbursement evidence indicates, at most, that the City has reimbursed one officer for tuition expenses during the past five years (Tr.112-113). Third, the City has presented no evidence to demonstrate that the Department has been unable to send any officer to a necessary or desirable training course that is not connected to a degree program during the past five years. In other words, the City has not met its burden of showing that Section 17.2 needs to be changed in the manner proposed by the City.

It is certainly possible that Chief Hallman is convinced that he is not able to send Marengo officers for appropriate training

because of his shrunken training budget. However, there is not a molecule of evidence in the record to show that any limitations on training have been caused by a high level of tuition reimbursement expenses.

Because the City failed to demonstrate any need to change the Section 17.2 language, there is no persuasive reason to adopt the City's final offer on this issue.

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

5. Corrective Discipline (Section 8.2)

Section 8.2, in pertinent part, currently reads as follows:

"Disciplinary action may be imposed upon an employee only for just cause. Any appeal of an oral reprimand, or written reprimand, or a suspension of five days or less imposed upon an employee may be processed as a grievance through the grievance procedure provided for in this Agreement. Aside from an oral reprimand, or written reprimand, or a suspension of five days or less any appeal of other disciplinary action or measure imposed upon an employee may be processed through the Rules and Regulations of the Board of Fire and Police Commissioners."

In effect, this Section 8.2 language gives unit members the right to grieve and (with the Union's consent) arbitrate through the Article IX grievance procedure what we will call less serious discipline (reprimands and suspensions of five days or less). At the same time, this Section 8.2 language requires that any unit

member appeal of what we will call more serious discipline (suspensions exceeding five days, and terminations) must be processed through the Marengo Board of Fire and Police Commissioners.

Position of the Union. The Union proposes to revise the above Section 8.2 paragraph so that it reads as follows (strike-throughs are deletions, underlines are additions):

"Disciplinary action may be imposed upon an employee only for just cause. The Chief of Police shall have the exclusive authority to impose discipline on bargaining unit members. The City of Marengo Board of Fire and Police Commissioners is hereby divested of jurisdiction to hold hearings over disciplinary charges and appeals of disciplinary actions involving bargaining unit employees, and divested of jurisdiction to order discipline of bargaining unit members. All discipline imposed on bargaining unit members may be grieved and arbitrated under Article IX of this Agreement. Any appeal of an oral reprimand or written reprimand ~~or a suspension of five days or less imposed upon an employee~~ may be processed as a grievance through the grievance procedure provided for in this Agreement. ~~Aside from an oral reprimand, or written reprimand, or a suspension of five days or less any appeal of other disciplinary action or measure imposed upon an employee may be processed through the Rules and Regulations of the Board of Fire and Police Commissioners.~~"

The Union presents a lengthy and complex argument supporting its proposal to have the Marengo Board of Fire and Police Commissioners no longer be involved in the police officer disciplinary process, and instead have all unit member discipline be subject to appeal through the Article IX grievance and arbitration procedure (Un.Br. 17-32).

A summary of the Union's rationale for this proposal is as follows. The Union begins by noting that Section 8 of the Illinois Public Labor Relations Act requires that all CBAs negotiated pursuant to the Labor Act contain a grievance resolution procedure that covers all bargaining unit members and culminates in

final and binding arbitration of all contract interpretation disputes. The Labor Act was made applicable to police officers in 1986. Long before that date, however, the State had in place the Board of Fire and Police Commission Act, and municipalities had in place Boards of Fire and Police Commissions to review officer discipline pursuant to this Act.

In the years after 1986 there was litigation over the role of these Commissions and the role of grievance procedures in the discipline processes for police officers and firefighters. In 1998, the Illinois First District Appellate Court ruled that non-home rule jurisdictions could not bargain away the review of discipline by Boards of Fire and Police Commissions because these jurisdictions did not have the authority to deviate from the statutory scheme (*Markham v. State and Municipal Teamsters, Chauffeurs and Helpers Local 726*, Ill. App. 3d 615, 701 N.E.2d 153 (1st Dist. 1998)). In a different ruling issued that same year, the First District Appellate Court ruled that home-rule municipalities had the authority to deviate from the Boards of Fire and Police Commissions statutes and could agree to have officer discipline reviewed through the contractual grievance procedure (*Illinois Fraternal Order of Police Labor Council v. Town of Cicero*, 301 Ill. App. 3d 323, 703 N.E.2d 559 (1st Dist. 1998)). These two decisions put police officers in home rule and non-home rule jurisdictions on very different footing regarding having their appeals of discipline processed through contractual grievance procedures, to the clear disadvantage of officers employed in non-home rule municipalities. Marengo is a non-home rule city.

However, in August 2007 the legislature amended the Board of Fire and Police Commission Act (the "BFPCA"), and these amendments overruled *Markham* and established that police officer discipline could be reviewed through the grievance procedures negotiated in the parties' CBAs, which negotiations were now a mandatory subject of bargaining (UX 20).

By the time the legislature made this statutory change in 2007, the parties had negotiated their 2006-2010 CBA (UX 1), so the Union had no opportunity at that time to bargain for its preferred disciplinary appeal process to be included in the predecessor contract (UX 1). As a result, this arbitration proceeding and the negotiations that preceded it is the Union's first opportunity to negotiate over the inclusion of mandatory-subject-of-bargaining language that requires that appeals of all police officer discipline be processed through the grievance and arbitration procedures in the parties' CBA.

The Union emphasizes that, because this is the first time the parties have addressed this issue as a mandatory subject of bargaining, there is no "status quo," and hence the Union does not carry any burden to show that the existing language regarding disciplinary appeals is sufficiently burdensome and/or unworkable that it needs to be changed.

The Union notes that the opening sentence of the applicable paragraph in Section 8.2 requires that discipline must be for just cause. The Union presents an extended argument why it believes that Boards of Fire and Police Commission review of appeals of police officer discipline is not consistent with the contractual

just cause mandate. Such Boards are appointed by the municipalities' chief executive and approved by the municipalities' legislative body. As such, Boards do not come close to serving as neutral deciders of such disciplinary appeals. The Commissioners on these Boards are not required to be trained in labor relations matters. These Boards have the authority to sustain the appealed discipline, overturn it, or increase it.

In grievance arbitration involving discipline grievances, the burden of proof is on the employer to prove it had just cause to discipline the employee. In contrast, the rules of the Marengo Board of Fire and Police Commission require that a disciplined employee appealing to the Board carries the burden of proof (UX 19, p. 13). For these and many other reasons, the Union argues that Boards of Fire and Police Commissions are not constituted, and do not operate, in a manner consistent with the just cause requirement. As a result, the Union strongly prefers to have all police officer discipline be appealable via the contractual grievance and arbitration procedure.

The Union emphasizes that Section 8 of the Labor Act mandates that a CBA negotiated between a covered employer and labor organization "shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration and interpretation of the agreement unless mutually agreed otherwise." The Union points out that many arbitrators have held that this Section 8 requirement means that

unions do not need to offer tangible proof of the need for such a provision.

For instance, Arbitrator Edwin Benn found that Section 8 of the Labor Act required the submission of discipline to the grievance arbitration procedure, and that the union carried no specific proof responsibility as the proposing party because the Labor Act required the issue to be submitted as was done by the union (*City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5*, ILRB No. S-MA-89-74 (Benn, 1990)). Arbitrator Benn reached the same conclusion in *City of Highland Park and Teamsters Local Union No. 714*, ILRB No. S-MA-98-219 (Benn, 1999). In this award, Benn stated that Section 8 required CBAs to contain grievance arbitration procedures, and the union was not required to produce evidence of disciplinary actions, or of external or internal comparables. In *Village of Lansing and Fraternal Order of Police Lodge 218*, ILRB No. S-MA-04-250, Benn found that grievance arbitration was required by Section 8 of the Labor Act. Benn also found that this Section 8 requirement meant that the Union's discipline proposal was not a "breakthrough" proposal as the Village argued.

The Union points to the cases mentioned above as well as several other awards it cited to support its argument that whenever interest arbitrators have been faced with the issue of disciplinary appeals they have almost always ruled in favor of the labor organization's proposal requiring that an officer may elect to appeal any level of discipline through the grievance procedure all the way to arbitration. The Union also points out that these same

arbitrators have repeatedly ruled that a union is not required to support its disciplinary appeal proposal with evidence that the existing Board of Fire and Police Commission system is broken and in need of repair.

The Union says the just cause requirement has been in this unit's predecessor contracts since at least 2004 (UXs 1, 26K, p. 14), but officers have not been able to appeal serious discipline through the contractual grievance procedure. The Union says it is now time to rectify this deficiency by adopting the Union's disciplinary final offer.

Position of the City. The City proposes the status quo on this issue – that the existing disciplinary appeal language be carried forward unchanged into the successor contract.

The City supports its proposal with a variety of evidence and arguments. The City points out that Section 8.2 currently provides that an officer who has been reprimanded or suspended for five or fewer days may appeal such discipline through the contractual grievance procedure to an arbitrator. Only the more serious discipline cases (longer suspensions and termination) are referred to the Marengo Board of Fire and Police Commission ("MBFPC"). Chief Hallman testified that he has worked in the Marengo Police Department for 22 years, and during that entire period only four discipline cases were referred to the Commission. He also testified that of these four cases, only one case actually was heard by the Commission (Tr. 110-111). The City notes that the Union had no criticisms of the manner in which any of these prior MBFPC cases were actually handled.

Despite this, the City points out that the Union levied a trainload of criticisms toward Boards of Fire and Police Commissions generally (Tr. 53-62). However, the Union did not connect any of these alleged shortcomings to the Marengo BFPC. In short, the Union's allegations of bias and prejudice that the Union claims are inherent in the BFPC system have not been shown in any way to exist in the Marengo Commission. In other words, the Union has totally failed to demonstrate that there is anything wrong with the Marengo BFPC that needs to be fixed via its proposal.

Turning to the Union's comparable communities, the City points out that one community (Roscoe) provides for the use of grievance arbitration for disciplinary appeals, one community (Genoa) provides for grievance arbitration for appeals of termination, one community (Hampshire) contains no specific language on this topic, another community (Lakemoor) does not have a Fire and Police Commission, and four communities (Fox River Grove, Harvard, Island Lake, and Johnsburg) refer all disciplinary appeals to the Boards of Fire and Police Commissions (UX 26). As these external comparables indicate, the BFPC system is alive and well in the Union's comparable communities, and only one of these communities has contract language that is equivalent to the Union's proposal.

It is well settled in Section 14 interest arbitration that arbitrators require that the party advocating the proposed change in the CBA carries the burden of demonstrating that the change is needed because the status quo has not worked. As noted above, the Union has not come anywhere close to meeting that burden in this proceeding. As a result, the City's proposal should be awarded.

Analysis. There are three prominent elements that emerge from the body of evidence and argument on this choice-of-appeal-procedures issue. These three elements are discussed and applied pursuant to the Section 14(h)(8) factor – "such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through . . . arbitration . . ."

First, Section 8 of the Labor Act unequivocally indicates that it is the 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):

> "The collective bargaining agreement negotiated between the employer and exclusive representative *shall* contain a grievance resolution procedure which *shall* apply to all employees in the bargaining unit and *shall* provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. . . ." (UX 20A, emphasis added).

The applicability of Section 8 to CBAs covering police officers and firefighters in non-home rule jurisdictions, such as Marengo, was delayed for many years by the Illinois appellate courts, as noted by the Union (Un.Br. 18-19). However, this non-home rule exception to Section 8 was removed by the State of Illinois when it amended the Board of Fire and Police Commissioners Act in August 2007 to specifically allow for the negotiation and adoption of a "form of due process based upon impartial arbitration as a term of a collective bargaining agreement" (UX 20C).

As noted, Section 8 of the Labor Act is a statutory provision that mandates the adoption of a grievance procedure culminating in arbitration for the resolution of disputes concerning the application or interpretation of the agreement. The only exception to its grievance/arbitration procedure mandate is if the parties mutually agree otherwise (5 ILCS 315/8). The instant record is crystal clear that the Union does not agree to continue the arrangement in the expiring contract whereby appeals of serious discipline are prohibited from being processed through the contractual grievance procedure and instead must be heard and decided by the Marengo BFPC. In this circumstance, Section 8 of the Labor Act requires that the Union's proposal, or its functional equivalent, be adopted.

Second, a review of employee discipline conducted via the contractual grievance procedure, especially a 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 unilaterally adopts (UX 19). In contrast, a contractual grievance is processed, and frequently resolved, by the parties on a mutual agreement basis. If the grievance cannot be resolved by mutual agreement and arbitration is necessary, an arbitrator is selected by both parties, and operates under jointly

specified rules that were jointly negotiated in the CBA. As this description indicates, the grievance and arbitration processes are highly consistent with the due process concept of just cause.

The parties will note that I am not talking about commissions actually behaving in an unfair or inappropriate manner toward disciplined police officers whose cases appear before these commissions. As the City correctly emphasizes, there is not a molecule of evidence in the instant record of such behavior occurring in Marengo. I also note that the Union presented absolutely no specific evidence of any biased or prejudicial treatment by any specific commission toward any police officer appealing his or her discipline anywhere in Illinois. 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 fire and police commission.

Third, this issue has been presented to Section 14 interest arbitrators numerous times since police officers were first covered by the Labor Act in 1986, and arbitral precedent on this matter is overwhelmingly lopsided – arbitrators have almost always ruled in favor of adopting proposals that require discipline to be subject to appeal through the contractual grievance procedure (see

Un.Br. 25-30). Specifically, I call the parties' attention to the articulate analysis of this issue presented by Arbitrator Aaron S. Wolff in *Village of Shorewood and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-07-199 (Wolff, 2008). In his award, Arbitrator Wolff concluded that (1) this issue was not a *status quo* issue in light of the fact that the issue had been a non-mandatory subject of bargaining until 2007; so the then-current negotiations and arbitration in Shorewood were the first time the employer was required to bargain over the issue; and (2) Section 8 of the Labor Act requires that disciplinary issues be included in a grievance/arbitration provision in the collective bargaining agreement as an alternative to proceeding before a board of fire and police commissioners, unless the parties have mutually agreed otherwise, and in *Shorewood* the parties did not mutually agree otherwise. Wolff cited a plethora of other Section 14 awards that reached the same Section 8 conclusion in other jurisdictions where this same issue was taken to arbitration. He additionally noted that, of all of the prior Section 14 arbitration cases cited to him on this issue, he found only two cases where the arbitrators rejected the union proposal, and they did so when they deemed this issue to be a *status quo* issue and they found that the union did not carry its burden of proving the need for a change (*Shorewood*, pp. 13-22).

Finally, the City cited external comparability evidence pursuant to Section 14(h)(4) in support of its status quo proposal on this issue. Specifically, the City pointed out that the communities of FRG, Harvard, Island Lake, and Johnsburg use the Commission arrangement to handle disciplinary appeals (C.Br. 3). The City is correct. It should be noted, though, that a highly likely explanation for this fact is that the police CBAs in these four comparison communities were negotiated prior to the August 2007 amendment to the BFPCA that made grievance and arbitration procedures for disciplinary appeals a mandatory subject of bargaining: the FRG CBA was in effect May 2006 – April 2011; the Harvard CBA was in effect May 2006 – April 2011; the Island Lake CBA was in effect May 2006 – April 2010; and the Johnsburg CBA was in effect May 2007 – April 2011 (UX 26). As a result, it is hardly surprising that these four CBAs contain references to BFPCs handling officer disciplinary matters (or in Johnsburg, the Police Commission).

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

Status Quo and Other Provisions

As noted above, the parties resolved several issues during their negotiations and during the instant arbitration proceeding (UX 15). 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 (UX 15), 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 on the agenda in this arbitration proceeding will carry forward unchanged into the successor CBA as "status quo" items. Accordingly, I hereby incorporate into this Award all of these other resolved issues and status quo provisions by reference. It is so ordered.

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 (Article XIX)

   The Union's offer is selected.

2. Health Insurance Cost (Section 18.3)

   The City's offer is selected.

3. K-9 Officer Compensation (Article XIX, new Section 19.4)

   The City's offer is selected.

4. Tuition Reimbursement Program (Section 17.2)

   The Union's offer is selected.

5. Corrective Discipline (Section 8.2)

   The Union's offer is selected.

In addition, all of the parties' resolved issues and status quo provisions are incorporated by reference into this Award.

It is so ordered.

Respectfully submitted,

Champaign, IL
December 30, 2011

Peter Feuille
Arbitrator