INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

and

THE CITY OF PERU

ILRB No. S-MA-10-233
S-MA-11-353
Police Officers

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
December 15, 2011

I. Procedural Background:

This matter comes as an interest arbitration between the City of Peru ("the Employer" or "the City") and the Illinois Fraternal Order of Police Labor Council ("the Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The record in this case establishes that the City employs 17 sworn police officers, all of whom are represented by this Union for purposes of collective bargaining.

The Union and the City are party to a fully negotiated Collective Bargaining Agreement in effect for the period of May 1, 2009 through April 30, 2012.[1] That Agreement provided for a general wage increase of 2% (in addition to 1% anniversary and step increases payable under the contract's longevity provisions) effective May 1, 2009. Prior to ratification, the parties further agreed to reopen negotiations concerning the matter of wages to take effect on May 1,

[1] City Exhibit 1.

2010 and May 1, 2011, the two remaining years of the contract respectively. Thus, on January 4, 2010, the Union served Formal Notice of Demand to Bargain pursuant to Article 21, Section 21.3 of the Agreement as to the matter of 2010 wages, and on January 11, 2011, the Union filed similar notice concerning the unresolved matter of 2011 wages. The parties were unable to reach agreement on either outstanding issue, and a Demand for Compulsory Interest Arbitration under the Act was accordingly filed on March 18, 2011.[2]

A hearing before the undersigned on September 1, 2011, the Union was represented by:

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Counsel for the Employer was:

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Post-hearing briefs were filed with the Arbitrator on November 15, 2011. The record was closed on that date.

II. Factual Background

The City of Peru is a home rule community located in LaSalle County, Illinois at the crossroads of Interstates 39 and 80 in the Illinois River Valley. Peru

[2] Union Exhibit 4.

was founded in 1838, and since that time has enjoyed relative prosperity as "hub for river transportation" (Tr. 10). Peru also has a flourishing ice harvesting industry and is now a major industrial, retail, and healthcare center for the region.[3] According to the 2010 U.S. Census Bureau, the population of Peru is 10,295, which represents an increase over the 2000 census by slightly over 11%. The relative age of the City's population is diverse, and the median household income in Peru is approximately $37,060. According to the record before the Arbitrator, Peru's economy is driven by, among other things, production of pre-finished metals and bakery products, and manufacture of fertilizers, steel decks and trusses, chemicals, automobile trim, plastics, corrugated boxes, processed metals and industrial fasteners. The City owns and operates the Illinois Regional Airport (which according to the evidence is self-sustaining and does not represent a significant source of revenue for the City), and also maintains a municipally-owned railway system as well as an electric utility. There are two major hospitals in Peru, and the City boasts the lowest real estate taxes in LaSalle County. Serious crime has declined in Peru by some 30.5% between 2005 and 2010.

III. The Parties' Bargaining History

The Union is the exclusive bargaining representative for all full-time sworn patrol officers. The record establishes that the bargaining unit, which now consists of 17 members, was certified by the Illinois State Labor Relations Board on July

[3] Union brief at page 4.

20, 1990. In June, 1991, the parties finalized a collective bargaining agreement for a term beginning on May 1, 1991 and ending on April 30, 1993. Negotiations for a successor agreement began in January 1993, and on December 9, 1993, the parties reached a tentative agreement, subject to joint ratification, on a two-year contract effective May 1, 1993 through April 30, 1995. However, the parties subsequently reached impasse as to the economic issues of wages, vacation pay, longevity pay and compensatory time, and interest arbitration under the Act was accordingly invoked for the first time in this bargaining relationship.

On March 21, 1995, Arbitrator Herbert Berman issued his final and binding award as to the outstanding impasse issues, and the parties thereafter successfully negotiated every successor contract up to and including the present Collective Bargaining Agreement, which provided for the 2010 and 2011 wage reopeners now at issue.[4] At the commencement of interest arbitration proceedings before this Arbitrator, the parties' final offers were presented and exchanged pursuant to their joint stipulations. The Union and the City subsequently agreed on the record that their identical final offers of a 2% general wage increase to take effect on May 1, 2011 should be adopted, and thus, the sole matter before the Arbitrator now is the issue of 2010 wages.

The City proposes a 0% general wage increase for fiscal year 2010 (though 1% anniversary increases and scheduled step increases under Section 13.2

[4] Union Exhibit 7, *Berman*.

longevity provisions remain valid), while the Union proposes a 2% across the board increase in addition to Section 13.2 longevity increases. That sole outstanding issue, then, is now before the Arbitrator, free of procedural defect, for his final and binding determination as to its merit. The parties are in agreement that the impasse issue herein presented under the Act is "economic" in nature, and will thus be decided by the Arbitrator in accordance with the prevailing party's Final Proposal as it is set forth in this record.

IV. Statutory Authority and the Nature of Interest Arbitration

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. In relevant part, they state:

> 5 ILCS 315/14(g)
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> On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute… the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).
>
> 5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]
>
> (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.

Though citing the above statutory foundation and authority for interest arbitrations under the Act is standard in most, if not all, modern awards, the Arbitrator has done so here, as in other cases, for the specific purpose of establishing context for his subsequent findings in this case.

In this arbitration, the parties offer evidence of a long and successful bargaining relationship, and while they were ultimately unsuccessful in reaching accord on the sole outstanding issue of 2010 wages, the record demonstrates a cordial rapport between the City and the Union, and a marked willingness to present courteous and well-defended argument in support of their respective positions before the Arbitrator. Since certification of the Union in 1990, these

parties have gone to interest arbitration only once, and that was more than 15 years ago. Importantly, only one of the issues before Arbitrator Berman surfaced again, and that, predictably, concerns the matter of wages. Every other concern was resolved during negotiations, and that is as it should be.

It is also significant that the matter of 2010 wages was not an "impasse" issue when the present contract was ratified. The parties could easily have held up the entire Collective Bargaining Agreement and gone to interest arbitration over 2010 wages back then. Instead, they wisely and for the mutual good of those they represent, agreed to defer the matter (and also that of 2011 wages, which was mutually settled before the instant arbitration proceedings officially commenced) to a later time because of the economy's relative instability at the time.

Of further note is the fact that the Arbitrator found the two instant offers on the economic issue of 2010 wages to be reasonable in light of the parties' particular priorities, and thus there is no indication in this record that the interest arbitration process under the Act, which was intended to offer relief and not subvert bargaining, has been abused. In other words, the Arbitrator is convinced that this City and this Union, unlike many that have gone before them, have not endeavored to bypass good faith negotiations in hopes that interest arbitration will produce something one or the other could not, or would not, have achieved at the bargaining table. Obviously, without a statutory right to strike, public service employees do need a vehicle by which their concerns may ultimately be resolved

when contract negotiations reach impasse. That is what this and other interest arbitrations are all about. Here, the Arbitrator was pleasantly surprised to find nothing patently outrageous or self-serving in either final proposal as to the sole impasse issue of a 2010 wage increase, though of course one offer must prevail over the other in the end. Such is the fate of any arbitration, and it can be a close call in instances where the parties have independently presented rational and well-presented cases. Both the Union and the City are expressly commended in this forum for having done so.

In sum, the Arbitrator's approach to the issue at impasse in this record will be, as always, in concert with his firm opinion that this process is not, nor will it ever be, a substitute for grievance arbitration or meaningful bilateral collective bargaining. His analysis of the matter at hand will be confined to the substance of the record within the context of all applicable statutory criteria.

V. THE PARTIES' STIPULATIONS

The parties agree the following shall govern their IPLRA Section 14 and Article 29 impasse resolution proceedings:

A. **Arbitrator's Authority:** The parties stipulate the procedural prerequisites for convening the hearing have been met and that Arbitrator John C. Fletcher has jurisdiction and authority to rule on the impasse issue set forth below as authorized by the Illinois Public Labor Relations Act (IPLRA). Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to rule upon the impasse issue set forth below as authorized by the IPLRA.

B. **The Hearing:** The hearing will be convened on September 1, 2011, at 9:30 a.m. in the City Hall, 1901 Fourth Street, Peru, Illinois 61354 and shall

continue, if needed, at such future dates and times as may be agreeable to the parties. Section 14(d) of the IPLRA, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment and Section 14(b) of the IPLRA requiring the appointment of panel delegates have been waived by the parties. Arbitrator Fletcher shall be the sole arbitrator in this matter. The hearing will be transcribed by a reporter which the Employer will secure, and the cost of the reporter's appearance and the Arbitrator's transcript copy shared equally by the parties. Should either desire a copy of the transcript, it shall bear those costs.

C. **Impasse Issue:** The parties agree there is one economic issue in this case and that issue is:

> What should the wage increases be for the bargaining unit employees effective May 1, 2010, and May 1, 2011?[5]

D. **Final Offers:** Final offers on the impasse issue in dispute shall be exchanged by the parties at the start of the hearing. Once exchanged, final offers may not be changed except by mutual agreement, absent approval by the Arbitrator.

E. **Evidence:** Each party shall be free to present its evidence in narrative and/or through witnesses, with advocates presenting evidence to be sworn on oath and subject to examination. The FOP shall proceed first with its case-in-chief, followed by the Employer. Each party may present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.

F. **Post Hearing Briefs:** Post-hearing briefs, if requested by the Arbitrator, shall be submitted to the Arbitrator within forty-five (45) days of receipt of the transcript of the hearing or such further extensions as may be mutually agreed or granted by the Arbitrator. The post-marked date of mailing shall be considered the date of filing. There shall be no reply briefs.

G. **Decision:** The Arbitrator shall base his decision upon the evidence and argument presented and the applicable factors set forth in Section 14(h) and issue his award within sixty (60) days after submission of briefs or any agreed upon extension requested by the Arbitrator, retaining jurisdiction for purposes of implementing the award.

H. **Continued Bargaining:** Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

I. **Record:** The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

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[5] It is understood by the Arbitrator that the parties' joint stipulations were prepared before they met for the instant interest arbitration proceedings, at the commencement of which they reached agreement as to the issue of 2011 wage increases.

VI. OUTSTANDING ISSUE

Economic Issue #1

Article 13, Section 13.1 (Salary) – Wage Increase effective May 1, 2010

VII – EXTERNAL COMPARABLES

As noted in prior interest arbitrations under the Act, Section 14(h) of the IPLRA establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration. As stated by Arbitrator Benn in City of Chicago and Fraternal Order of Police Chicago Lodge 7 (Benn, 2010), none of the eight factors receives more attention under statutory language than the others. However, before 2009, greater weight was generally afforded the factor of comparability (both internal and external), and indeed many cases were tried and decided on comparability alone. In relevant part, Arbitrator Benn commented as follows:

> "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[6] It is fair to conclude that prior to 2009, few in this area of practice – public administrators, union officials, advocates and neutrals – could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the

[6] Arbitrator Benn quotes a maxim from Henslee v. Union Planters National Bank & Trust Co., 334 U.S. 595, 600 (1949) (Frankfurter dissenting) long held as one of this Arbitrator's most favored citations.

> contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give the same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became "apples to oranges" comparisons…

Thus, as noted by Arbitrator Benn, it was, after 2007-2008, not necessarily reasonable to conclude that contracts negotiated in more favorable economic times were truly comparable in the present statutory sense, because the context of those contracts, i.e. the timing and tenure of them, rendered them intrinsically disparate. Now, nearly 3 years later, many Illinois public service labor agreements have expired and been renegotiated to reflect the relative impact of the 2007-2009 downturn on the State economy in general and on communities in particular, and thus, as a natural consequence, the statutory criterion of comparability is once again viable for purposes of analyzing the proportional "reasonableness" of two economic proposals at interest arbitration.

In this case, happily (albeit unusually), the parties are in agreement as to the list of externally comparable communities for purposes of this arbitration. They are:

> LaSalle – Current police contract term May 1, 2009 - April 30, 2012
>
> Mendota – Current police contract term May 1, 2009 - April 30, 2013
>
> Ottawa – Current police contract term May 1, 2009 – April 30, 2012
>
> Princeton – Prior (and applicable) police contract term May 1, 2008 – April 30, 2011
>
> Streator – Current contract term May 1, 2008 – April 30, 2011

VIII – INTERNAL COMPARABLES

The City of Peru currently has bargaining relationships with five different unions. At present there are as many current collective bargaining agreements in place. They are:

FOP: All Full-time Patrol Officers (Section 13.2 of the current 2009-2011 contract at issue).

IAFF: All Full-time Firefighters – Current contract term April 18, 2010-April 30, 2013.

IUOE Local 150: All persons within defined Operating Engineer classifications – Current contract term May 1, 2010 – April 30, 2013.

IBEW Local 51: All Full-Time employees in Electric Department – Current contract term May 1, 2010 – April 30, 2012.

MAP Chapter 642: Dispatchers and telecommunications employees – Current contract term May 1, 2011 – April 30, 2013.

It is undisputed that all five of the contracts noted above represent fully negotiated collective bargaining agreements. It is further undisputed that the contract herein under consideration was negotiated prior to ratification of the other four. Thus, the Arbitrator logically reasons that for purposes of internal comparison, the more recent contracts between the City and its Firefighters, Operating Engineers, Electricians and Police Dispatchers are legitimately illustrative of the present bargaining environment between this Employer and its unionized employees with specific respect to wage increases in fiscal year 2010.

IX – OTHER STATUTORY CRITERIA

Though discussed in more detail below, the Union argues that the "interests and welfare of the public" merit the proposed 2% across the board wage increase for fiscal year 2010. In particular, the Union submits that, "The interests and

welfare of the public are not well served by trying to get by on the cheap."[7] The City, on the other hand, while stopping short of asserting true "financial inability to pay," argues that the present state of the General Fund from which police wages are drawn is not only in peril, but is being propped up by other City funds from which permanent transfers have been made to cover shortfalls. Certainly, the City argues, short of turning off the lights and locking the doors, every municipality has at least *some* ability to sustain ongoing payroll obligations, and thus it is nearly impossible to demonstrate that the Union's 2010 wage proposal simply cannot be met. However, the City argues, the record contains substantive proof of continuing revenue deficits which impacted the 2010 balance sheet in a particularly negative way. The City acknowledges that the economy in general has, if not improved significantly, then stabilized somewhat. Thus, the City notes, the parties were, in fact, able to agree on 2% general wage increases for subsequent fiscal year 2011.

The Union also asserts that escalations in the general cost of living back its proposed 2010 wage increase. In support, the Union notes that bargaining unit members have not received a wage increase since May 1, 2009, and thus, they have lost ground by about 1.98% to the general cost of living. This, the Union notes, nearly mirrors its final offer in the 2010 wage reopener at issue. If the City's final offer of 0% is accepted, the Union accordingly argues, the bargaining

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[7] Union brief at page 14.

unit will fall even further behind in terms of keeping up with living costs.

As to the statutory factor of "overall compensation presently received by the employees…," the Employer asserts that Peru police officers are comparably situated with respect to other bargaining units in the City, and are favorably situated with respect to police officers in externally comparable communities. In substance, the Union admits, other forms of compensation and benefits received by police officers in competitive markets are, for the most part, similar. At least, the Union acknowledges, they are not dissimilar enough to be considered mentionable. Thus, the parties are in essential agreement that their respective wage proposals may be taken at face value, and thus compared with overall wages and wage increases paid comparably situated police officers during the time period in question.

As to the statutory criterion of "changes in any of the foregoing circumstances during the pendency of the arbitration hearing," neither party promulgates any particular argument that their respective position should be sustained because one or the other proposal now makes more sense in view of "environmental" changes subsequent to the invocation of interest arbitration under the Act. Clearly, the parties reached accord as to the matter of 2011 wages just before the instant proceedings commenced, so to some degree, the Arbitrator is satisfied that the Union recognized the reasonableness of a 2% wage increase as opposed to its original 3% offer even after negotiations were terminated, and

similarly, the Employer grasped the opportunity to settle at least one of the two outstanding wage issues. However, there is no additional evidence in this record that other circumstances have changed to such a degree as to be significant to the Arbitrator's deliberations which follow.

In sum, the Arbitrator finds that the statutory criteria of internal and external comparability, the financial ability (or lack thereof) of the City to pay the Union's proposed wage increase for fiscal year 2010, and the overall compensation presently received by members of this bargaining unit, are the most applicable factors in this case.

X. THE ISSUE

Section 13.1 – Salary

The Union's Final Proposal

The Union proposes a general wage increase of 2% for fiscal year 2010.

The City's Final Proposal

The City proposes to maintain *status quo* with a 0% general wage increase for fiscal year 2010.

The Position of the Union:

At the outset, the Union argues that a review of the external comparables supports its proposed 2010 wage increase. During the relevant time period, the Union argues, LaSalle police officers received a 3% wage increase, Mendota officers a 2.5% wage increase, Ottawa officers a 3% wage increase, Princeton

officers a 3.5% wage increase and Streator officers a 3.75% wage increase. The Union acknowledges that the wages of Peru police officers exceed those of all externally comparable police officers, but argues that its proposed 2% wage increase would narrow that difference. Obviously, the Union submits, the City's 0% proposal would even further erode that advantage. It is reasonable, the Union insists, for the bargaining unit to seek to maintain its relative rank among external comparables.[8]

Bargaining unit members have not received a wage increase since May 1, 2009, the Union notes, and thus have lost ground to the general cost of living by some 1.98%. That loss, the Union submits, would be diminished, if not entirely eliminated by the cumulative effect of its proposed [retroactive] 2% wage increase for fiscal year 2010. The Union further argues that its offer was carefully constructed to recognize negative changes in City's financial standing due to the economic downturn of 2007-2009 while at the same time trying to restore some "earning power" to the bargaining unit during the relevant time period.

As to the City's general fiscal condition, the Union argues that there is no proof in this record that Peru simply could not meet payroll with the inclusion of its proposed 2% wage increase. No single statutory criterion should be given priority over the others, the Union submits, notwithstanding the focus some arbitrators have given "inability to pay" in recent years. Instead, the Union argues,

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[8] See; Illinois Fraternal Order of Police Labor Council and County of Vermilion and Sheriff of Vermilion County, S-MA-03-087 (Meyers, 2006).

the central question remains the same today as it has been for the last 25 years: Does the Employer have the ability to pay what is determined (in accordance with a compilation of 14(h) factors) to be the appropriate level of compensation and benefits? In other words, the Union argues, neutrals who have devoted so much attention to the general state of the economy have, in effect, disregarded the legislative directive that interest arbitration proceedings are to be focused on this employer, these employees, and this labor market alone.

Here, the Union submits, it is important to remember that the "ability to pay" factor contains two parts. The interests and welfare of the public are to be considered in the balance of abilities, the Union points out. Obviously, the Union reasons, it is in the best interests of the public to retain experienced, well-trained law enforcement officers, and the provision of public safety must be regarded as paramount in priority. In recent cases involving an employer's assertion of the statutory criterion of "inability to pay," the Union notes, arbitrators have held the employer to a very high standard to so prove, and nearly all have failed. In support, the Union cites Forest Preserve District of DuPage County and MAP, FMCS No. 091103-0042-A (Goldstein, 2009), in which the arbitrator ruled in relevant part that:

> This Arbitrator is not authorized to interject himself into what is the political question of overall allocation of resources. I cannot order the District to raise taxes, either by concluding that the property tax "has room" to be increased or by indicating that other funding sources are available and might be utilized. That is simply not the function of an interest arbitration panel, as I understand it. Instead,

> economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer.
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> The core idea of the Act is that if probative evidence exists in the framework of the Section 14(h) criteria that require choices that differ from Management's, our role is to accept that evidence and choose the Union's final wage offer, no more, no less.

The Union argues that a "Chicken Little" reaction to the state of the economy is neither statutorily authorized nor wise. A handful of "well intended but unfortunate awards premised on the 'sky is falling' have led to most police bargaining in Illinois to be centered on risk to the employer," the Union states. Employers, the Union argues, are thus stubbornly holding to wage freeze proposals at interest arbitration as an act of opportunism rather than proving genuine need or inability to pay. Here, the Union argues, analysis of the City's fiscal status demonstrates just that.

General Fund revenues have increased every year since 2005 except for the period between 2009 and 2010, the Union argues. General Fund expenditures have also gone up, the Union notes, and substantially so in 2008 and 2009 when the City undertook a major capital building project. Transfer activity between the General Fund and other fund types has been consistent in every fiscal year examined by the Union, and it is undisputed, the Union argues, that, based on the City's year-to-date information for the 2011 fiscal year, the Employer is on better financial footing now than it was in 2010.

In sum, the Union argues that the City's proposal is not equitable. The City of Peru, the Union insists, does not have an inability to pay – that has been amply

demonstrated in this record by its spending patterns and the choices it has made. The City's "opportunism," the Union argues, cannot be sanctioned in these proceedings. Thus, the Union argues, its wage proposal is more reasonable, and, for all the foregoing reasons, should be adopted.

The Position of the City:

At the outset, the City relies on the statutory criterion of external comparability in support of its wage proposal for fiscal year 2010. In particular, the City states, without rebuttal from the Union, police wages in Peru are substantially higher than those paid police officers in all other comparable communities. Even with the Employer's proposed 0% general wage increase for 2010, the City argues, Peru officers will continue to be compensated over 5% more than similarly situated officers in comparable communities at the start, and over 11% more at the top step in the scheduled pay scale.

The City also stresses that in proposing a 0% general wage increase, Peru police officers will still receive a 1% longevity increase on the anniversary date of their hiring pursuant to Article 13.2 of the Collective Bargaining Agreement. Thus, the Employer points out, the City's offer of a 0% base income increase will still result in an overall 1% wage increase for fiscal year 2010, and the City's [accepted] offer of a 2% increase for fiscal year 2011 will actually result in an overall wage increase of 3%. This is an important point when examining Peru officers' relative position as compared with similarly situated police officers in the

comparable communities, the City argues.

As to the impact of the recent economic downturn on the City of Peru's financial standing, the Employer argues that, no question, the City's General Fund from which police officer wages are drawn declined substantially in fiscal years 2009 and 2010 at the same time expenditures were on the rise. The City acknowledges the Union's argument that the condition of the General Fund is somewhat "discretionary," as Peru is a home rule community and administrators could thus unilaterally implement tax increases to cover losses, decide not to execute road repairs, opt not to fix sewers or water mains, and not to have a sufficient reserve for the operation of the electric power plant. However, the City argues, certainly none of those choices would be in "the interests and welfare of the public."

There was extensive testimony at the hearing with regard to the structure and condition of the General Fund, the City notes. Unchallenged statements by City Treasurer Gary Hylla indicated that in order to pay normal bills out of the General Fund, permanent cash transfers from the proprietary Electric Fund into the General Fund were required in both 2010 and 2011. In order to supplement the Electric Fund, Hylla testified, the City also had to assess a franchise fee which was ultimately paid by customers in the form of an additional tax.

The City has also taken steps to prop up the General Fund, the Employer argues. To control costs, the City argues, it has reduced the number of full-time

employees from 82 to 71 and the number of part-time employees from 19 to 13. Furthermore, the City stresses, the City's general wage increase for all of its employees was 0% for fiscal year 2010. Police officers, the City submits, should not be exempt and treated more favorably than other City workers especially when the external comparables show that they are already compensated substantially more than their counterparts in surrounding communities.

The City further argues that the present state of the Police Pension Fund should not be ignored. The Police Pension Fund is primarily comprised of annual contributions from police officers (9.91% of their salary) and all monies derived from taxes levied by the municipality for that purpose, the City states. The Pension Fund is currently only about 46% funded, the City further explains according to Hylla's unchallenged testimony. Under law, the Employer argues, the City now has an obligation to increase contributions to minimum levels by the year 2016. Thus, the Employer argues, the City has no small amount of catching up to do in this area.

As to the matter of internal comparability, the City states that at present, there are five collective bargaining agreements in place with its unionized employees. All four bargaining units other than the FOP (IAFF, Operating Engineers Local 150, IBEW Local 51 and MAP Chapter 642) negotiated contracts which included a 0% general wage increase for fiscal year 2010. Thus, the Employer argues, the factor of internal comparability strongly supports the City's

final offer. All represented and non-represented employees in the City received a 0% general base wage increase for May 1, 2010, and all received a general base wage increase of 2% for May 1, 2011.[9] There is no justification, the City submits, for patrol officers to receive more in terms of a wage increase than all other City employees, and the Union presented no facts establishing that they should.

In sum, the City asserts that applicable statutory criteria support its final offer, and thus the City urges the Arbitrator to adopt its proposed 0% general wage increase effective May 1, 2010.

Discussion:

Upon the whole of this record, the Arbitrator is persuaded that, of the two legitimate final proposals before him concerning the issue of a 2010 general wage increase, the City's proffer has more support from statutory criteria under the Act than the Union's. That is not to say that the Union's offer was patently unreasonable; it was not. It certainly can be said that the economy, if not in total recovery, has at least stabilized to some degree, and arbitrators charged under the Act to ascertain what negotiations may or may not have produced are now recognizing the significant burden on municipalities to substantiate "inability to pay" arguments stemming from the impact of the recent downturn. In so stating, however, the Arbitrator hastens to add that complete disregard of that negative impact, for we have all felt it to some extent, would be irresponsible. In other

[9] The Arbitrator duly notes that this Union also agreed to the City's proposed general wage increase of 2% effective May 1, 2011.

words, this Arbitrator does not believe that well-intentioned and cogent analysis of this conundrum with specific respect to impasse issues of wages and benefits in interest arbitration is representative of a "Chicken Little" reaction at all. In the end, and the Arbitrator is certain that most if not all of his esteemed colleagues would agree, it all comes down to proof, and here, the City's evidence is simply stronger according to applicable criteria than the Union's.

First, with respect to the criteria of external and internal comparability, which some arbitrators would at least privately acknowledge are crucially important bellwethers if not preeminent factors under the statute, the City has demonstrated to the satisfaction of this Arbitrator that the proposed 0% wage increase for fiscal year 2010 alone has significant support. The Arbitrator stresses the stand-alone nature of the proposed 2010 wage freeze first, because this record clearly indicates that the City has no intention of maintaining 2010 wage levels indefinitely. In point of fact, the parties agreed at the commencement of this instant proceeding to implement a general 2% wage increase for fiscal year 2011 in express recognition of a hint of economic recovery in the City, and the Arbitrator assumes, without knowing for certain, that fulfillment of that bargain is already in the works.

It is further noted, even before comparing the relative standing of Peru police officers with similarly situated law enforcement bargaining units in externally comparable communities, that members of this particular bargaining

unit with 20 years of service or less still received a 1% wage increase in fiscal year 2010 pursuant to longevity provisions set forth in Section 13.2 of the Collective Bargaining Agreement which states, "The City will continue in effect its longevity pay system whereby employees receive one percent (1%) additional compensation for each year of service, to a maximum of 20 years (a maximum of 20% longevity pay)." Additionally, longevity step increases were also maintained in the present contract, so to say that members of this bargaining unit have not received an increase in pay since May 1, 2009 and have thus lost substantial ground to the general cost of living, as argued by the Union, is not entirely true. The Arbitrator specifically notes the "across the board" anniversary longevity increases at this juncture for a reason. As set forth in the collective bargaining agreements of all externally comparable police bargaining units, the evidence demonstrates that Peru officers are the only group to receive anniversary increases in addition to traditional longevity step raises.

It is also a matter of record that Peru police officers are already paid more in terms of general wages than members of any other police bargaining unit in the comparable communities. Furthermore, the City's proposal would not cause Peru officers to drop lower in terms of relative ranking among comparable bargaining units. Even with a 0% wage general increase for fiscal year 2010, Peru police officers will still hold the top spot in the standings, albeit by a slightly lesser margin. Thus, according to the evidence before him with respect to external

comparability, which will be considered in concert with other proofs, the Arbitrator is persuaded that the statutory criterion of external comparability favors the City's position.

The factor of internal comparability also very strongly supports the City in this matter. The record establishes that the City has bargaining relationships with a total of 5 unions, one of which is the FOP. The other four, the IAFF, the Operating Engineers, the IBEW and MAP, all negotiated contracts after the one at issue in this interest arbitration providing for wage reopeners for 2010 and 2011. Again, the Arbitrator commends the parties for implementing reopeners as opposed to holding up the entire Collective Bargaining Agreement due to impasse on the issue of wages. Reopeners have been suggested by interest arbitrators in recent years as a means of achieving timely contracts while at the same time demonstrating a mutual recognition of the economy's present unpredictable state.

Generally speaking, it is natural in this country to assume that things get better over time, and as a rule that has proven to be the case. Certainly, that is the hope of any union agreeing to wage reopeners in later stages of a multi-year contract. Certainly it is in the best interests of citizens and administrators alike to attract and maintain quality police forces, and fair wages and benefits certainly have preeminent purpose to that end. However, there is nothing "Chicken Little" about what has occurred as a result of recent hardships in the national economy, and municipalities, just like families, have been adversely impacted. The parties'

agreement to reopen wage negotiations for fiscal years 2010 and 2011 obviously recognized that fact.

With respect to internal comparability, then, all four of the City's other bargaining units expressly acknowledged, by agreement, that fiscal year 2010 needed to be a "recovery" year, because general wage increases were negated in that year alone. In the case of Peru firefighters, which this Union recognizes is perhaps the most internally comparable given its similar status under the Act, the IAFF agreed to a 0% general wage increase effective May 1, 2010, and a 2% general wage increase in each subsequent year of the contract, 2011 and 2012. Firefighters in Peru also receive 1% anniversary longevity increases as to Peru police officers.

The City's agreement with Operating Engineers Local 150 is also a three-year contract providing for a 0% general wage increase in 2010 and 2% general wage increases in each subsequent year of the contract, 2011 and 2012. Operating Engineers in Peru also receive 1% anniversary longevity increases as do Peru police officers.

The City's contract with IBEW Local 51 is a two-year contract providing for a 0% wage increase in 2010, and a 2% general wage increase in 2011. Electricians in Peru also receive 1% anniversary longevity increases as do Peru police officers. Finally, the City and MAP Chapter 642 negotiated a two year agreement implementing 2% general wage increases in contract years 2011 and

2012. Dispatchers were not represented in fiscal year 2010, and they, like all other non-represented City employees, received no general wage increase in that year.

Thus, the evidence demonstrates that no employee of the City, represented or not, received a general wage increase in fiscal year 2010. This is particularly significant, because all of the City's other bargaining units negotiated contracts after the instant FOP Collective Bargaining Agreement was implemented. That fact is important for a couple of reasons. First, and perhaps most obviously, there was an express recognition on the part of other bargaining units that the City's position with respect to its general financial condition was persuasive of a need to maintain *status quo* for one year with respect to employee wages. Secondly, the Arbitrator cannot be accused of "shying away" from an internal departure for fear of "me-too" repercussions in other bargaining units. In each and every case, 2011 wage increases are already set at 2%, and that is exactly what FOP ultimately agreed to in this case. Furthermore, wage increases for fiscal year 2012 are set in stone for firefighters, operating engineers, and dispatchers. Thus, while the Arbitrator has not, in the past, been bound to lockstep internal parity, there is much sense in it here. The Union has presented no compelling reason to depart from internal parity for purposes of "catching up" to other bargaining units in the City, or for maintaining relative ranking among similarly situated police units in comparable communities. Peru police officers are already at the top there, and will retain that position even with the City's final offer in this case.

The City has also offered persuasive proof of a general decline in financial stability in recent years. What keeps this argument on track with respect to a 0% wage proposal for 2010 is the fact that the City has not proposed to freeze general wages for any longer than one year. In other words, the Arbitrator is fully convinced that the City advances general hardship in defense of its final offer in good faith. Certainly, the City's other bargaining units saw merit in the City's position, as evidenced by negotiated general wage freezes for fiscal year 2010 after the FOP contract was implemented. Furthermore, the City and the Union reached accord at the commencement of the hearing in this case to implement 2% general wage increases in fiscal year 2011. Thus, the City's arguments with respect to "borrowing from Peter to pay Paul" are accepted as valid, and the Arbitrator appreciates why the City did not see fit to continue on that path indefinitely. Again, the Arbitrator stresses the temporary nature of the City's proposed one-year wage freeze here, because he will not (and has not) departed from his prior determination that "fiscal responsibility" alone is not a defense for inferior public service wages. It must also be remembered that Peru police officers still received scheduled 1% anniversary and step longevity increases in 2010, so it cannot be said that this arbitration would result in a true "wage freeze" for that year anyway.

As to other statutory criteria, such as cost of living and "overall compensation" disparity, the Arbitrator finds that there is simply not enough

compelling evidence to override more significant proofs with respect to internal and external comparability and the general state of the City's finances for proposing this temporary break from general wage increases. Certainly, we all recognize that it simply costs more to buy groceries and gasoline than it used to. However, as evidenced in this record, Peru police officers already earn more than their counterparts in comparable communities, and still received 1% anniversary increases and step increases in fiscal year 2010 as scheduled. Thus, while that 1% may not have entirely kept pace with rising costs for goods and services in the area, the Arbitrator finds that the Union failed to mount an adequate statutory basis for higher wage increases than those received by any other City employee (represented and non-represented), or for even higher overall earnings than any similarly situated police bargaining unit in externally comparable communities.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the City's final proposal to be more reasonable than the Union's with respect to the single impasse issue of 2010 wage increases. Accordingly, the City's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the City's proposal with respect to Article 13 wages for fiscal year 2010 should be adopted. It is so ordered.

XI. CONCLUSION AND AWARD

The foregoing Order represents the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

/s/ John C. Fletcher
John C. Fletcher, Arbitrator

Poplar Grove, Illinois, December 15, 2011