

ILLINOIS LABOR RELATIONS BOARD
PETER R. MEYERS, Arbitrator and Chairperson

In the Matter of the Interest
Arbitration between:

**INTERNATIONAL
ASSOCIATION OF FIRE
FIGHTERS, LOCAL 429,**

Union,
And

CITY OF DANVILLE, ILLINOIS,

Employer.

FMCS Case No. **14-58001-A**
ILRB Case No. **S-MA-14-338**

DECISION AND AWARD

Appearances on behalf of the Union

Margaret Angelucci—Counsel
Amanda Clark—Counsel
Jerry Sparks—President
Chris Coats—AFFI District Vice President
Todd Spicer—Vice President

David W. Jones—Steward
Christopher McMahon—Steward
Duane Hall—Command Steward
Aaron Marcott—Lieutenant
Tim McFadden—Steward

Appearances on behalf of the Employer

Timothy E. Guare—Labor Counsel
Scott Eisenhauer—Mayor
David Wesner—Corporation Counsel
Larry Thomason—Director, Public Safety

This matter came to be heard before Arbitrator Peter R. Meyers on the 8th day of December 2016 at the offices of the Danville City Hall located at 17 West Main Street, Danville, Illinois. Ms. Margaret Angelucci presented on behalf of the Union, and Mr. Timothy E. Guare presented on behalf of the Employer.

Introduction

In March 2014, the City of Danville, Illinois (hereinafter “the City”), and the International Association of Firefighters, Local #429 (hereinafter “the Union”), entered into negotiations over a successor collective bargaining agreement to the contract scheduled to expire as of April 30, 2014. That contract covered a bargaining unit composed of firefighters and fire command officers holding the ranks of lieutenant, captain, and assistant chief within the City’s Fire Department (hereinafter “the Department”). Although the parties were able to resolve and agree upon many of the provisions that will make up their new collective bargaining agreement, there nevertheless are unresolved issues remaining between them.

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter was submitted for Compulsory Interest Arbitration and eventually came to be heard by Neutral Arbitrator Peter R. Meyers on December 8, 2016, in Danville, Illinois.

At the outset of the hearing, the parties agreed to waive a tri-partite arbitration panel and appointed Arbitrator Peter R. Meyers as Arbitrator and Chairperson to hear and decide the issues presented. The parties stipulated that all procedural prerequisites for covering the arbitration hearing had been met and that Arbitrator Peter R. Meyers has the jurisdiction and the authority to rule on those mandatory subjects of bargaining that are submitted to him as authorized by the Illinois Public Labor Relations Act, including, but not limited to, the authority to issue retroactively effective awards on economic proposals back to May 1, 2014.

Moreover, the parties agreed to waive the requirement as set forth in Section

123.80(a) of the Rules and Regulations of the Illinois Labor Relations Board regarding the commencement of the arbitration hearing within fifteen days following the Chairperson's appointment.

The parties tendered preliminary final offers at the hearing and agreed to tender final offers by December 23, 2016.

The parties further stipulated that the Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Public Labor Relations Act and issue the Award within sixty days after the submission of briefs or any agreed-upon extension approved by the Arbitrator.

The parties submitted written, post-hearing briefs in support of their respective positions on the issues remaining in dispute; the City's post-hearing brief was received on or about January 31, 2017, while the Union's post-hearing brief was received on or about February 1, 2017.

Relevant Statutory Provisions

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

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of

government to meet those costs.

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

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

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

Issues Submitted for Arbitration

The parties initially submitted eight issues that remained in dispute between them to be resolved in this interest arbitration proceeding. Prior to the hearing in this matter, however, the parties resolved three of these issues.

During the hearing, the parties confirmed that the following issues remained in dispute between the parties:

1. Duration of Agreement;
2. General Wage Increases;

3. Rank Differential Adjustment (Asst. Chiefs);
4. Shift Manning (Division 1); and
5. Manning (Division 2).

After the hearing in this matter, the parties reached a Tentative Agreement as to the last of the above-listed issues, Manning (Division 2). All of the Tentative Agreements that the parties have reached shall be incorporated into and become part of the parties' new collective bargaining agreement. The four remaining issues in dispute shall be considered and resolved in this Decision and Award.

Discussion and Decision

Background

The City of Danville, Illinois, is located near Illinois' border with the State of Indiana, about 150 miles south of Chicago and about thirty miles east of Champaign-Urbana, Illinois. Danville is surrounded by rural areas. The City's industrial and commercial sectors have been in decline for some years, and they were further hit during the Great Recession beginning in 2008. The evidentiary record contains data revealing that as of October 2016, the City's unemployment rate stood at 7.3%, indicating that the City's economic and financial condition has not fully recovered from the recession.

There is a long bargaining and contractual history between the parties. The record in this matter includes copies of various collective bargaining agreements between the City and the Union that date back to 2006. The record indicates that there initially were two separate bargaining units within the Department, one of firefighters and the other of command officers holding the ranks of lieutenant, captain, and assistant chief. Each of

these units was governed by its own collective bargaining agreement prior to the implementation of the parties' 2011-2014 contract.

The contract governing the firefighters in 2009-2011 was a two-year agreement, and this contract is notable here because it included what the parties refer to as "patch" language. This patch superseded existing contractual "shift manning language," reduced the shift manning level from thirteen to eleven, provided for call-backs to staff "working fires," required the City to maintain a total fire suppression roster of fifty-one, required the City to maintain four operating fire stations, and was expressly intended to exist only for the two-year term of that contract.

In negotiating their own new contract in 2009, the fire command unit and the City reached a tentative agreement, but this was rejected by the City Council. The matter then went to interest arbitration before Arbitrator Brian Reynolds, and this was the first such proceeding between the City and the fire command unit. Like the 2009-2011 contract covering the City's firefighters, the contract governing fire command positions that resulted from this proceeding also had an effective duration of two years.

When bargaining over what became the parties' 2011-2014 collective bargaining agreement, the parties agreed that the firefighter unit and the fire command unit should be merged into a single unit. By May 2013, more than two years after their previous contract had expired, the parties had been unable to agree on a new agreement, so the matter was submitted to interest arbitration before Arbitrator Steven Briggs. After engaging in eleventh-hour negotiations, the parties ultimately did reach an agreement on a new collective bargaining agreement, thereby avoiding interest arbitration. The new

Agreement was ratified by the Union and accepted by the City Council on October 15, 2013. The deadline for filing a notice of intent to bargain for a successor agreement was set for only a few months later.

In March 2014, the parties began negotiating over the successor agreement to their 2011-2014 contract. That contract expired on April 30, 2014, so the employees have been working without a contract ever since. Although they were able to resolve certain issues, the parties reached an impasse by June 2014 with respect to such issues as manning and wages. On June 11, 2014, the Union filed a Demand for Interest Arbitration.

On July 24, 2014, the City filed a Petition for Declaratory Ruling with the Illinois Labor Relations Board, seeking a determination that certain topics were “permissive” subjects of bargaining, and that the City therefore could refuse to bargain over them and could demand that they be removed from the Agreement. These topics were: (1) the “patch” requirement of a fire-suppression force strength of fifty-one; (2) the contract’s specification of minimum equipment to be deployed; and (3) the “patch” requirement of maintaining four operational fire stations. On September 4, 2014, the ILRB issued a Declaratory Ruling finding that all three of these topics were permissive subjects of bargaining.

After further unsuccessful efforts to resolve their outstanding issues, the parties selected this Arbitrator in September 2014 to conduct an interest arbitration proceeding pursuant to Section 14 of the Illinois Public Relations Act. The parties met with the Arbitrator on December 16, 2014, for a mediation/arbitration session in one more effort

to reach agreements on the remaining issues between the parties. During this session, the City presented three sets of proposal packets that set forth proposed changes to manning and global changes of certain language relating to fire station requirements and minimum equipment deployment contained within the parties' contract. Ultimately, the parties' effort to resolve the remaining issues was not successful.

On February 4, 2015, the City filed a second Petition for a Declaratory Ruling with the ILRB, seeking a determination as to whether the Union's proposal to maintain *status quo* contract language on Station 3 operation and assistant chiefs in fire suppression were permissive. On February 6, 2015, the Union filed its own Petition for a Declaratory Ruling with the ILRB, seeking a determination that the City's three sets of proposals were permissive, and that their tender on December 16, 2014, acted as a waiver of the City's right to argue whether they were permissive or mandatory.

The ILRB consolidated these two Petitions, and then issued a single ruling on April 10, 2015, finding that the City's three sets of grouped proposals were mandatory subjects of bargaining, that the *status quo* language did not act as a waiver on the issues of the use of Station 3 and assistant chiefs, and that these were mandatory subjects of bargaining. This Arbitrator subsequently directed the parties to bargain over the remaining issues in light of the NLRB's ruling.

On December 8, 2014, the Union filed an unfair labor practice charge before the Illinois Labor Relations Board over the City's refusal to promote a new assistant chief to replace one who had recently retired. In an amended ULP charge filed in January 2015, the Union alleged that on the threshold of interest arbitration, the City had tendered

proposals on matters that had not been discussed during two months of negotiations between the parties. On September 7, 2016, the ILRB issued its final Order, determining that the City had not violated the Act by refusing to appoint a new assistant chief, or by presenting its proposals in December 2014.

The interest arbitration hearing in this matter took place on December 8, 2016, during which the parties submitted their preliminary final offers as to the remaining issues in dispute. As previously noted, the parties subsequently reached a Tentative Agreement as to one of the five issues presented during that interest arbitration hearing, manning of Division 2. The parties submitted their final offers on or about December 23, 2016.

Statutory Requirements

In all interest arbitration cases involving protective service bargaining units in Illinois, the Arbitrator's findings and decision must be based upon the requirements set forth in Section 14 of the Act. The following provisions of Section 14 of the Act, 5 ILCS 315/14(h) are relevant to these proceedings:

(h) Where there is no agreement between the parties . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (4) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other

employees performing similar services and with other employees generally;

(a) In public employment in comparable communities;

(b) In private employment in comparable communities.

- (5) The average consumer prices for goods and services, commonly known as 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; and
- (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.

Of the four remaining impasse issues in dispute, two are economic in nature and two are non-economic. With regard to the economic issues, general wage increase and rank differential/equity adjustment, this Arbitrator must select either the City's final offer or the Union's final offer as the resolution for each of these issues. Under Section 14(g) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(g) (hereinafter "the Act"), this

Arbitrator is without authority to devise a compromise resolution different from the parties' final offers in connection with economic issues. As for the non-economic issue in dispute here, duration of the Agreement and shift manning for Division 1, this Arbitrator may select either of the parties' final offers or may fashion a compromise resolution of his own.

Section 14(h) of the Act, 5 ILCS 315/14(h), sets forth the above statutory factors that serve as the framework for evaluating final proposals in proceedings such as the instant matter. It is well established that not all of the listed statutory factors will apply to an interest arbitration proceeding with equal weight and relevance; one or more of these factors, in fact, may not apply at all. The necessary proper first step in analyzing the impasse issues in dispute, therefore, is to determine which of the statutory factors are relevant and applicable to the instant proceeding and which are not particularly relevant.

Some of the listed statutory factors appear to have little or no applicability to this matter. The lawful authority of the City, for example, does not appear to be at issue, and the evidentiary record herein contains nothing that would suggest that there has been any change in either party's circumstances during the pendency of this matter that would affect the outcome of this proceeding. The parties have entered into a number of stipulations, and these are quite helpful in establishing the procedural steps to be followed in this proceeding.

External Comparables

The parties' stipulations also have a direct impact on one of the most relevant and useful of the listed statutory criteria, comparable communities. The parties have

stipulated that certain external comparable communities should be adopted here, and this stipulation is based upon the list of comparable communities adopted by Arbitrator Reynolds in the interest arbitration involving the City and the unit of fire command officers. These communities include Alton, Belleville, DeKalb, Freeport, Galesburg, Granite City, Kankakee, Pekin, Quincy, and Rock Island, all in Illinois. There is a dispute between the parties as to whether Champaign and Normal, also both located within Illinois, should be included within the list of comparable communities in this matter. Both of these cities were included in the list of external comparables in the proceeding before Arbitrator Reynolds, but the City has objected to their inclusion in the instant proceeding.

This Arbitrator notes that Arbitrator Reynolds, in adopting a list of external comparables that included Champaign and Normal, specifically stated that he reviewed the record before accepting the proposed comparables. This straightforward pronouncement expresses a great deal. Arbitrator Reynolds confirmed that he did not simply accept the list of proposed comparables, but had instead weighed and considered the merits and value of each community as a potential comparator to the City by reviewing and analyzing all of the relevant evidence entered into the record relating to these communities. Based on his review, Arbitrator Reynolds determined that the proposed comparables, including Champaign and Normal, all served as appropriate and valid comparables to the City.

Arbitrator Reynolds' evidence-based conclusion cannot lightly be dismissed. Arbitrator Reynolds' inclusion of Champaign and Normal among the appropriate

comparables is not the only historical support for their inclusion here. The record in this matter establishes that in a 2005 interest arbitration proceeding between the City and a union representing a unit of sworn employees working within the City's police department, Arbitrator George Larney included Normal among the external comparables in that case. Arbitrator Larney decided to reject Champaign as an external comparable, but he did so because he found that the inclusion of Champaign might result in repetitive data because its "sister city," Urbana, also had been approved as an external comparable. It is important to note that Arbitrator Larney did not find that Champaign was an inappropriate comparable based on demographic data and other objective evidence. Another fact that cannot be lightly dismissed is that in four other interest arbitrations between the City and other unions representing different groups of City employees, including one proceeding that took place in 2014, the City stipulated to Normal's inclusion among the external comparables. The competent and credible evidence in this record does not show that there has been any material change in the demographic, financial, and other data for Normal and/or for the City since these other interest awards were issued that would provide a rational basis for excluding Normal here. As for Champaign, the current demographic and financial data in the record here indicates that there now is little actual repetitiveness relative to the data from its sister city of Urbana, which is not necessarily unexpected given the lapse of more than a decade since the data before Arbitrator Larney suggested that repetitiveness might exist to a problematic degree.

The record in this matter also shows that the City itself has used Champaign and

Normal in connection with certain internal studies of the operation of its Fire Department that were conducted about two years ago. The City has not offered any evidence that the demographic, economic, financial, and other data on these two communities and the City itself demonstrates that a material change has occurred that would undermine their comparability. Absent such evidence, if these two communities offered valid comparisons to the City for purposes of the City's own internal studies, it is eminently reasonable to find that Champaign and Normal continue to be valid comparators and properly may be utilized as such in this proceeding. The City has not offered any evidence or argument that would justify excluding Champaign and Normal here after the City's own use of these communities as comparables in its recent studies.

The relative positions of the City, Champaign, and Normal along the range of demographic data established across the other external comparables show that Champaign and Normal each occupy a place that makes it an appropriate comparator in this proceeding. The City has suggested that a strict application of a 50% deviation range with respect to population and other demographic and economic factors should be used to determine whether Champaign and Normal are appropriate comparators here, and this straight statistical approach has been used in a number of interest arbitrations. Although the application of a 50% deviation range is useful in identifying appropriate comparables, using this approach alone may result in a too-narrow focus on certain data factors, which might obscure a fuller understanding of the complex elements that help to reveal the existence or absence of actual comparability. The City clearly did not rely on the 50% deviation range alone when it opted to include Champaign and Normal as comparables in

its internal studies, suggesting that the City itself understands the limitations of this single approach.

The basic rationale for identifying and utilizing external comparables supports the inclusion of Champaign and Normal here. A list of external comparables is intended to establish a range of demographic data, economic conditions, and contractual approaches and terms, with the community involved in the interest arbitration falling within that established range. External comparables are identified and utilized for purposes of, obviously, comparison, but that does not mean that these comparables have to be identical to the community in question. In an interest arbitration proceeding, a list of external comparables that allows for some range of differences creates a basis for an analysis of the subject community in terms of where that community is, where it has been, and where it is likely to go during the effective term of a new contract. With this in mind, the inclusion of Champaign and Normal must be deemed appropriate in this particular matter.

The demographic data and other evidence in the record about Champaign and Normal establish that although these two communities are not virtual twins of the City, they nevertheless fall within a range that offers a meaningful basis of comparison for purposes of this interest arbitration proceeding. The City has emphasized, for example, that Champaign does have a larger population than does the City, but this factor alone does not disqualify Champaign as a comparator. The City also is correct in noting other differences between Champaign and Normal, on the one hand, and the City, on the other hand. Champaign's fire department is larger than the City's own, but this size difference

corresponds to the associated differences in the costs of running these respective departments, as well as the sizes of the geographic areas and populations served by these departments. Although Champaign and Normal have larger populations than does the City, their populations and the sizes of their fire departments compare proportionally to the City's population and the size of its own Department. This proportionality indicates that Champaign and Normal represent appropriate and useful comparators in this proceeding, despite differences in EAV and other economic figures. The income and unemployment figures in the record also show that while the City may be recovering more slowly from the 2008 economic downturn, the overall economic picture is beginning to improve for the City's residents and for the City itself when compared to Champaign, Normal, and the other external comparables.

In light of all of these considerations and based upon the relevant evidence in the record, this Arbitrator finds that Champaign, Illinois, and Normal, Illinois, are appropriate comparators to the City, and these two communities therefore shall be included among the list of communities identified and utilized as external comparables in this interest arbitration proceeding.

Internal Comparables and Other Statutory Factors

As important as these external comparables are, internal comparisons with other City employee groups also can be quite helpful in resolving economic and non-economic issues alike. The City currently is a party to several collective bargaining agreements, with other bargaining units composed of clerical employees, police patrol officers, police command officers, transit workers, employees in Public Works, and mechanics working

in the Police Department. The terms and conditions set forth in these various contracts usefully can be considered in the analysis of the parties' competing proposals on the impasse issues to be resolved here. Particularly with regard to the economic issues, the statutory factors involving consumer price data and evidence relating to overall compensation also will be of great use in analyzing the parties' competing proposals.

The remaining factors expressly mentioned in Section 14(h) of the Act are the interests and welfare of the public and the financial ability of the City to meet the costs of the proposals in question. The interests and welfare of the public, the first part of Section 14(h)(3) of the Act, must be an important consideration in an interest arbitration proceeding, especially with regard to a bargaining unit comprised of first responders. As this Arbitrator has noted in other interest arbitration proceedings, however, this particular factor can cut both ways on economic issues. The public has an obvious interest in keeping the cost of its government in check through operational and administrative efficiency, which would include keeping a tight rein on operational, administrative, and personnel costs. The public has an equally vital interest, however, in attracting and retaining high-quality, experienced, and capable employees, particularly front-line safety employees, and this generally requires the outlay of competitive, even attractive, salary and benefit packages.

One other statutory factor must be considered in this matter, the City's financial ability to pay the costs associated especially with the economic issues that remain in dispute. It is necessary to emphasize that the City has not argued that it is unable to pay the costs of any or all of the proposals in question, but it has pointed to the severe

financial challenges associated with its continuing recovery from the recession that began in 2008, as well as to the question of whether its wage structure has served the purpose of attracting and retaining qualified personnel for the Department. This Arbitrator notes that although the City has not asserted an inability to pay, the fact is that the lingering economic difficulties that still face many public employers are among the factors that “normally and traditionally” should be taken into account when considering wages, hours, and conditions of employment, pursuant to Section 14(h)(8) of the Act.

This Arbitrator now moves on to a focused analysis of each of the remaining issues in dispute, in light of the relevant statutory factors, the evidence in the record, and the parties’ arguments in support of their competing proposals.

Issues to be Resolved by the Arbitrator

A. Non-Economic Impasse Issues

1. Duration of Agreement

The Union’s final offer on the impasse issue of the duration of the Agreement is as follows:

May 1, 2014 – April 30, 2018

The City’s final offer on the impasse issue of the duration of the Agreement is as follows:

1. The City proposes a three (3) year Agreement, from May 1, 2014 through April 30, 2017.
2. The City is willing to agree to a Union proposal for a four (4) year term of Agreement, from May 1, 2014 through April 30, 2018, provided the Union agrees to the following:

A. Amendments to Section 7.1, "Manning Requirements:"

...

- (h) In order to avoid undue recalls, effective on the date of execution of this Agreement, the parties agree that no more than three (3) employees from the bargaining unit may be off for reasons of vacation, personal leave, Kelly Day or compensatory time off at any one time on any shift.

Notwithstanding the foregoing, sick leave, bereavement leave, paid Union leave and emergency leave shall not affect the ability of three (3) employees from the bargaining unit to be off on any shift for the reasons set forth here.

- (i) In consideration of the reductions in Shift Manning minimums set forth in par. (a) above, until April 30, 2018, the City agrees that no member of the bargaining unit as of the effective date of this Agreement shall lose their employment due to a reduction in force in the Fire Department.

In most interest arbitration Decisions and Awards, this Arbitrator begins with economic impasse issues because the appropriate resolution of economic issues tends to serve as a guideline for the resolution of non-economic impasse issues. In this particular case, however, the non-economic impasse issue centered upon the duration of the parties' new Agreement will have an impact upon how the other unresolved issues should be addressed. This impact exists due to the effect of the Agreement's duration itself and due to the fact that the City has offered a *quid pro quo* package touching on other contractual issues as part of its response to the Union's proposed four-year contractual term.

Accordingly, the impasse issue of the new Agreement's duration must be dealt with first.

At first glance, the difference between the Union's proposed four-year contractual term and the City's proposed three-year term appears relatively minor. In the context of

the parties' long and somewhat contentious bargaining history, the length of the effective term of the parties' new Agreement bears great significance. Moreover, the City has suggested changes to other parts of the parties' new Agreement, including possible resolutions to other impasse issues in dispute here such as wages and manning requirements for the Department's Division 1, essentially as part of a *quid pro quo* package for its acceptance of the Union's proposal of a four-year contractual term. The contractual language on the Division 1 manning issue included in the City's suggested package in the event of a four-year Agreement term is substantively different from its final offer on the manning issue in the event of a three-year contractual term.

The City's offer of a *quid pro quo* package in exchange for its acceptance of the Union's suggested four-year contractual term essentially is a continuation of the exchange of bargaining positions and proposals. The record indicates that the City's suggested change to Section 7.1(h) of the contractual manning provision was presented for the first time in connection with the hearing before this Arbitrator, when the parties exchanged their final offers on the impasse issues remaining in dispute. This late offer, of course, was in response to the Union's late proposal of a four-year term for the new Agreement, which, in turn, was advanced because of the lengthy bargaining and ILRB proceedings that delayed the finalization of the parties' new Agreement. Despite these circumstances, the parties' final offers here should not have tended to continue negotiations, but instead should have established the parties' final bargaining positions so that a proper analysis may be conducted and a resolution reached as to all outstanding issues. By offering a *quid pro quo* package to the Union for the first time in exchange for

the City's acceptance of the Union's proposed four-year contract term, the City basically presents only a moving target as the Union and this Arbitrator attempt to evaluate the relative merits of the positions taken by both sides.

Because the City waited until the hearing in this matter to present for the first time its *quid pro quo* package offer tying the issue of Division 1 manning to the issue of contract duration, the Union has not had an opportunity to review and respond to this proposal. Under the circumstances, and in light of the very lengthy bargaining process in which the parties engaged and which brought them to this proceeding, it is not appropriate for this Arbitrator to consider this late offer as part of the analysis of the parties' final offers on the impasse issue of contract duration. Bargaining is to be conducted between the parties, not through or with a neutral interest arbitrator. For these reasons, this Arbitrator will not consider the City's proposed changes to Section 7.1(h) of the Agreement in connection with the impasse issue of the new Agreement's duration.

In light of this finding, the parties' competing proposals on the duration of their new Agreement must stand or fall based upon the merits associated specifically with the length of contract being proposed by each party. The City's proposal of a three-year duration means that the parties' new Agreement would expire on May 1, 2017, less than two months from now. This proposed three-year term would require the parties to immediately jump back into bargaining over their next contract, and they would have to do so without any knowledge or understanding of how the terms of the Agreement at issue here actually work, how they affect the bargaining unit, and how they affect the operations, expenses, and efficiency of the Department.

The parties need to see how the contractual provisions that have been newly included, newly excluded, and/or newly modified affects how their new collective bargaining agreement actually work before they can begin any meaningful bargaining over their next contract. The only way to accomplish this is to give the parties some time, some breathing room, before they have to undertake their next round of collective bargaining. The City's proposed three-year contract term, with its looming May 1, 2017, expiration, simply does not allow the Agreement to operate long enough for the parties to be able to see how its provisions actually work and affect all concerned. The extra year included in the Union's proposal on this issue of contract duration has the advantage of giving the parties the chance, albeit still relatively limited, to test, observe, and analyze the impact of the additions to, deletions from, and modifications of their new Agreement.

This Arbitrator also must emphasize that the parties have been engaged in an almost continuous cycle of negotiations, ILRB proceedings, and interest arbitrations that goes back at least as far the 2006-2009 contract between the City and the former firefighters' unit, before the merger of the firefighter and fire command bargaining units. Even more difficult for all concerned is the fact that, as of this writing, the City and its firefighters now have been without a contract since April 30, 2014, nearly three years ago, and this is not the first lengthy time period during which the parties have had to proceed without a contract being in place. The parties similarly did not have a contract for about two and one-half years after the April 30, 2011, expiration of their two-year agreement, until the ratification and adoption of the successor to that two-year agreement in October 2013. Of course, only four months after that, the parties were back at the

bargaining table, negotiating over their next agreement.

This near-constant bargaining effort does little to help the parties establish an efficient, cooperative, productive relationship. Before the parties have any idea about how their current contract fulfills their respective needs, the City and the Union must go back to sitting across from each other, trying to decide what provisions should be included in their next agreement. Against this factual backdrop, there should be little wonder that the parties have not often been able to reach a mutual agreement on a new contract before their old contract expires, and without resort to the ILRB and/or interest arbitration.

In establishing the appropriate basis for analyzing and resolving the issue of the duration of the parties' new Agreement, it must be noted that the factors set forth in Section 14(h) of the Act do not offer much assistance. What matters most here is the parties' unique bargaining history over the years and the distinct reality of their current situation. The City has suggested that at least two years of delay in the finalization of the parties' new Agreement is attributable to the Union alone, pointing to the Union's initiation of proceedings before the ILRB. In making this argument, the City appears to be suggesting that the Union's actions occurred in a vacuum and were not, in any way, affected by the City's own actions, inactions, positions, and approach to the parties' protracted negotiations. Although the Union's claims before the ILRB were not sustained, the fact is that blame cannot be assigned only to one side or the other when parties are unable to finalize a collective bargaining agreement without assistance from outside, be it the ILRB or an interest arbitrator. In fact, blame typically cannot be

assigned at all where, as here, parties negotiate in good faith but simply cannot find common ground on certain issues.

The City also asserts that the Union did not propose a four-year term for the new Agreement until December 2016, late in the parties' overall negotiating process, and that this late proposal prevented the City from considering and discussing the issue and would saddle the City with an additional year of contractual limitations that could not be addressed until after the proposed four-year term expires in April 2018. Contrary to the City's argument, I find that a four-year term for the new Agreement would not amount to "handcuffing the City." Instead, as previously noted, a fourth year would allow both sides to see how the new Agreement's provisions actually work before they engage in negotiations over their next contract. There is no evidence in the record that supports any claim that the City's interests somehow would be prejudiced or harmed in any way by an effective term of four years for the new Agreement.

I find that the Union's proposed four-year term for the new Agreement must be deemed more reasonable than the City's proposed three-year term because the Union's proposal gives the parties a real break from the pressures of the bargaining table, along with a meaningful opportunity to discover the actual workings of their new Agreement.

In light of the relevant evidence in the record, and the considerations discussed herein, this Arbitrator finds that the Union's proposal on the impasse issue of contract duration is more reasonable. Accordingly, the Union's proposal on this issue shall be adopted and included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

2. Shift Manning (Division 1)

The Union's final offer on the impasse issue of shift manning (Division 1) is as follows:

7.1(a) Except as otherwise provided herein, the City agrees that no fewer than thirteen (13) members of the bargaining unit shall function in a fire suppression capacity at all times during the term of this Agreement including:

- One (1) Assistant Chief
- One (1) Captain
- Three (3) Lieutenants
- Eight (8) Firefighters

There shall be two (2) Division 1 command (Assistant Chief and Captain) positions per shift, at least one of which shall be a commissioned command officer. Any vacancy created by the use of a Kelly Day shall not result in a recall.

However, if the Assistant Chief is assigned to Division 2 – Administration, the City agrees that no fewer than thirteen (13) members of the bargaining unit shall function in a fire suppression capacity at all times during the term of this Agreement including:

- One (1) Captain
- Three (3) Lieutenants
- Nine (9) Firefighters

There shall be one (1) Division 1 command (Captain) positions per shift, which shall be a commissioned command officer. Any vacancy created by the use of a Kelly Day shall not result in a recall.

The City's final offer on the impasse issue of shift manning (Division 1) is as follows:

Section 7.1 Manning Requirements

(a) Manning

Except as otherwise provided herein, the City agrees that, if there are four (4) fire stations in full-time fire suppression operation, no fewer than thirteen (13) members of the bargaining unit shall function in a fire suppression capacity at all

times during the term of this Agreement including:

One (1) Assistant Chief
One (1) Captain
Three (3) Lieutenants
Eight (8) Firefighters

As long as there are four (4) fire stations in full-time fire suppression operation, there shall be two (2) Division 1 command (Assistant Chief and Captain) positions per shift, at least one of which shall be a commissioned command officer. Any vacancy created by the use of a Kelly Day shall not result in a recall.

If there are three (3) fire stations in full-time fire suppression operation, no fewer than ten (10) members of the bargaining unit shall function in a fire suppression capacity at all times during the term of this Agreement, including:

One (1) Captain
Three (3) Lieutenants
Six (6) Firefighters

(b) Equipment Manning

All engine companies shall be manned with not less than three (3) personnel, and all truck companies shall be manned with not less than two (2) personnel.

. . . [The City proposes no changes to Subparagraph 7(c)].

(d) Manning Recall Rules

Notwithstanding the provisions of this Section to the contrary, in the event that manning on a shift shall fall below the levels specified in Section 7.1(a) above for a period of time during that shift, recalls for manning will be made only under the following rules:

[The City proposes no changes to the remainder of Sub-Paragraph 7(d).]

[The City proposes to eliminate the existing language of Sub-Paragraph 7(e), entitled "Limitation of Availability of Certain Leave," and to replace it as follows.]

(e) Additional Companies

If the City places any additional units in service, it agrees to man the new unit with

one (1) Lieutenant and two (2) firefighters and increase manning under 7.1(a) accordingly.

- (f) In those instances when manning on a shift falls below 15 and a “working fire” is in progress, the City will automatically recall to duty not less than one (1) Command Officer, two (2) Lieutenants and four (4) Firefighters. In those instances when manning on a shift falls below 11 and a “working fire” is in progress, the City will automatically recall to duty not less than one (1) Command Officer, three (3) Lieutenants and six (6) Firefighters. A “working fire” shall be designated by the first arriving officer and shall apply to all structure fires where a supply line is laid.
- (g) The City agrees that when vacancies exist in fire suppression force positions which continue to [be] funded and authorized by the City Council, the City will draft a letter to the Board of Fire and Police Commissioners notifying them of such vacancy. Such letter shall be provided to the Board prior to their next available meeting, with a copy to the Union.
- (h) In order to avoid undue recalls, the parties agree that no more than three (3) employees from the rank of Firefighter or Lieutenant and one (1) from Command may be off for reasons of vacation, personal leave, Kelly Day or compensatory time off at any one time on any shift.

Notwithstanding the foregoing, sick leave, bereavement leave, paid Union leave and emergency leave shall not affect the ability of three (3) employees from Firefighter or Lieutenant and one (1) from Command to be off on any shift for the reasons set forth herein.

(Note: the foregoing is based on an award of a three-year term of Agreement. If a four-year term is offered by the Union, the City will accept a four-year term of agreement as part of a quid pro quo package set forth in the City's Interest Arbitration Proposal re: Issue #1, "Duration."

Although the impasse issue of shift manning in the Department's Division 1 (fire suppression) is categorized here as a non-economic issue, this Arbitrator is keenly aware of the significant impact that its resolution shall have upon the City's finances.

Moreover, because of the intricacies and details included in each party's final offer on this issue and because of how these competing final offers will affect the language that

ultimately will be included as Section 7.1 of the parties' new Agreement, it is appropriate for this Arbitrator to address the parties' final offers in the same way that final offers on economic issues are handled. In short, this Arbitrator will select one or the other of the final offers here as the more reasonable resolution to the parties' dispute on this issue and will not attempt to draft his own contractual language or meld the two final offers.

It also is necessary to address the question of whether either or both of the final offers here constitutes a "breakthrough," with each side arguing that the other's proposal is a breakthrough that would require the application of a higher burden of proof in order to prevail. The record in this matter shows that the issue of minimum shift manning hardly is a new one for these parties in that they have been negotiating on this issue over the course of several collective bargaining agreements, as evidenced by the "patch language" appearing in the 2009-2011 contract. Moreover, both parties are seeking material changes in minimum staffing that will kick in if and when the City proceeds with its plan to close one of its current four fire houses and to move assistant chiefs from Division 1 (fire suppression) to Division 2 (administration). Because the closure of a fire house and the transfer of the assistant chiefs apparently are coming although they have not yet occurred, both sides have offered staffing solutions in response to the changes associated with these moves that significantly depart from the current minimum staffing requirements. In such a situation, I find that neither side should be required to meet the extra burden of proof generally required to support a breakthrough proposal.

Of all the issues submitted for resolution in this proceeding, this shift manning issue is the most complex. The parties' dispute on this issue originates with the City's

plan to close one of the four fire houses that the Department has maintained and operated. The City's right to make that change on its own has been essentially approved in a ruling from the ILRB general counsel, and the Union subsequently agreed to the closure of one firehouse just prior to the hearing in this matter.

While operating four fire houses, the parties settled on so-called "patch" language in their 2009-2011 contract that provided for a minimum of thirteen-person shifts within Division 1. The record indicates that at one time, the contractual minimum staffing level for the Department was fifteen fire suppression personnel per shift. As the City has asserted, the "patch" language was intended to be temporary, rather than a permanent contractual fixture, in that the City has continued to seek changes in staffing levels as part of its on-going efforts to control costs in the face of difficult economic conditions.

In the wake of the ILRB ruling that the City was entitled to make a unilateral decision to close one of its four fire stations, the City has pushed for a reduction in the minimum shift manning numbers to correspond with the reduction in operating fire houses. Under the current thirteen-person shift minimum, the City stationed one fire engine at each of the Department's four fire houses, and each engine was manned by three firefighters holding different ranks per shift. This accounted for twelve of the minimum thirteen fire suppression personnel on duty each shift, and the thirteenth was one shift commander, an assistant chief, being on duty each shift and operating out of Fire Station 3. As part of its plan to close Fire Station 3, the City seeks the adoption here of its proposed language that will alter the minimum manning language of Section 7.1 of the Agreement so as to reduce the thirteen-person minimum to ten.

The City's proposed minimum staffing reduction clearly anticipates that the City plans to have three, instead of four, fire engines in operation during each shift, with the staffing of each engine remaining at three firefighters per shift. More specifically, this staffing reduction would be accomplished by removing assistant chiefs altogether from Division 1, as contemplated in connection with the impasse issue of rank differential for assistant chiefs associated with their planned move to Division 2 (administration), and by further reducing the minimum staffing on each shift by two firefighters. Under the City's proposal on this impasse issue, the typical minimum staffing per shift would be one captain, three lieutenants, and six firefighters when/if the number of firehouses is reduced from four to three, while the typical minimum shift staffing level would remain at one assistant chief, one captain, three lieutenants, and eight firefighters under both parties' proposals while four fire houses remain operational. The Union's proposal calls for keeping the total minimum staffing number at thirteen after the number of fire houses drops from four to three, with that staffing made up of a captain, three lieutenants, and nine firefighters.

A critical part of this issue is the level of response that the Department must be ready to provide at all times. Like all fire departments, the City's Department must be prepared to instantly respond to all manner of safety-related, even life-and-death, emergency situations. Although fire suppression probably accounts for the majority of work that the Department's fire suppression personnel actually perform, the fact is that fire suppression personnel often have to respond to an amazing range of situations that do not involve actual fires. Moreover, although the Department's emergency-response

responsibilities center on the geographic area within the limits of the City, the Department realistically must be ready to respond to situations in surrounding unincorporated areas and in nearby municipalities if extra help is needed in those locations. Even more, the Department has to be able to simultaneously respond to multiple emergencies because such situations do not always come up one at a time and on a predictable schedule.

The ability to respond to emergency situations quickly, ideally in only a few short minutes, also is an essential element of the Department's responsibilities. Response time can mean the difference between preservation and devastation, between survival and death. This Arbitrator notes that the parties' Agreement requires "calling back" off-duty firefighters in the event a "working fire" is in progress and less than fifteen firefighters are on duty. Such call-backs may ultimately allow the Department to adequately respond to a working fire and/or other emergency situations, but the availability of this step almost certainly will not help the Department in reducing response times and keeping response times at an appropriately short duration. Calling back off-duty personnel takes time, and this extra response time could make all the difference when minutes, and even seconds, count.

Response time, the ability to simultaneously respond to multiple emergency situations, the ability to cover an expansive geographic area, and the ability to meet the needs of a diverse population facing a variety of problems and even crises – all of these factors and more must be considered when analyzing the issue of minimum shift staffing of fire suppression personnel.

In another part of the spectrum of concerns that relate to this minimum staffing issue are the associated financial realities and other statutory factors. As one example, the City currently faces large pension funding liabilities among the many financial challenges in its way. While it has not expressly alleged an “inability to pay” under Section 14(h)(3) of the Act, the City has suggested that it cannot afford to continue funding thirteen-person minimums for each shift without making cuts elsewhere, such as in existing compensation or in other public services, that would result in a variety of dangers and/or problems. Emphasizing the public’s interest, the City also objects to any suggestion that it should tax its residents “to the max.”

There can be little serious question that the planned closure of one of the City’s four fire houses will negatively impact response times on calls to certain parts of the geographic area that the Department protects. The City has acknowledged that one area of the City will experience longer response times upon the closure of one fire house, although the City has alleged that it has addressed this issue by planning the construction of a paved road to serve that area. It must be noted, however, that there is no evidence as to whether or when this planned road actually will be constructed. Even if such a road is constructed, it nevertheless will be true that with one fire house out of the equation, certain locations will be farther from an operational fire house after this closure than they are now. If the closure of one fire house is accompanied by the virtual moth-balling of one of the Department’s four engines, as the City appears to contemplate as part of its proposal to reduce minimum shift staffing levels, then this also will obviously have a negative impact upon response times and upon the Department’s ability to quickly

respond with sufficient personnel numbers to emergency situations, especially when more than one such situation occurs at a time.

The City has pointed to the IAFF's 2014 GIS Report that indicates that the Department had to implement an "auto recall" for additional manpower between twenty-four and thirty-six times a year from 2011 to 2014, all while operating four fire houses and meeting shift staffing minimums of thirteen fire suppression personnel. The strong likelihood is that if minimum staffing levels are reduced as the City proposes when it closes one of its four fire houses, the number of "auto recall" situations will increase, with a corresponding increase in overtime costs that will cut into whatever cost savings the City expects to reap from closing a fire station and reducing minimum staffing levels.

Another factor here is that if the City does remove one of its engines from active service when it closes one of its fire houses, the City's own proposal to reduce overall shift staffing essentially would maintain the current three-person staffing per engine, while the Union's proposal to maintain the same shift staffing would result in an increase to four-person staffing of each of the three remaining operational engines. Because it is not absolutely certain that the City will remove one engine from service, it is possible that the Union's proposal on minimum staffing will maintain the three-person crew on each of the four engines engine, while the City's proposal will reduce at least some of the four engine crews to two firefighters.

The evidence in the record shows that although four-person engine crews may offer safety and other advantages, three-firefighter engine crews appear to have allowed the City's firefighters to safely respond to emergencies, including entering fire scenes

when rescues are necessary. If any of the engine crews fall to two firefighters, there could be serious safety implications for both fire crews and the public. This part of the larger issue of minimum staffing suggests that the parties may need to continue their negotiations over exactly how the planned closure of one of the Department's four fire houses should be implemented, even after the resolution of this impasse issue of minimum shift staffing in Division 1.

Apart from the above discussions addressing the City's financial challenges, the safety and interests of the public, and the Department's ability to operate safely while sufficiently responding to emergencies and protecting the public, the other statutory factors are not particularly relevant or helpful in resolving this dispute. Even comparisons to staffing levels among the external comparables is not very helpful because of the size differences (both in terms of population and geographic area) among the external comparables, and because of a lack of specificity in the collective bargaining agreements from these other communities with respect to such matters as identifying whether staffing levels do or do not include EMTs and other personnel not strictly classified as fire suppression personnel.

What the numbers from the external communities do show is that the Department was near the top in terms of total fire runs in 2015, as well as in total fire runs per bargaining unit member. The Department therefore is relatively busy compared to its external comparators, which calls into serious question whether it can continue to perform its responsibilities if its minimum staffing levels are reduced as dramatically as the City seeks.

Based on all of these concerns, the record of evidence available at this point does not show that reducing the minimum Division 1 shift staffing levels is more reasonable than maintaining the current shift minimum staffing even after one of the Department's four fire houses is closed and the assistant chiefs are moved from Division 1 to Division 2. The Union's proposal to maintain the shift minimum at thirteen remains the more reasonable approach for now and at least until there is hard evidence of the impact of the closure of one fire house on response times, safety of operations, safety of the public, ability to timely respond to multiple emergencies, and other elements of the Department's operations. The closure of a fire house will have a broad impact on all of these matters, and that impact must be known and understood before the parties can be expected to reasonably understand whether a reduction in minimum staffing makes sense.

I find that for the duration of the parties' new Agreement, the Union's proposal to maintain the minimum Division 1 shift staffing at thirteen is more reasonable. For the year plus that remains in the new Agreement's effective term after the issuance of this Decision and Award, the City will have the opportunity to implement its plans to close one fire house and to move the assistant chiefs from Division 1 to Division 2. Only after these steps have been taken will the parties be able to embark upon the shared task of evaluating whether it makes sense to maintain or reduce the current manning minimums. The parties need time to observe and understand the impact of the fire station closure and the command reorganization upon the Department's functioning before being able to decide and come to an agreement about whether additional changes should be made with respect to shift minimums.

In finding that the Union's final offer on the impasse issue of minimum Division 1 shift manning is more reasonable, this Arbitrator is not making any judgment as to whether the City should continue with four engines in operation from the three remaining fire houses, or whether the per-engine staffing should be changed in any way. These questions go beyond the issue that the parties have submitted for resolution here. This part of the Decision and Award is limited only to the minimum level of Division 1 staffing per shift, which I find shall remain at thirteen in accordance with the Union's final offer.

In light of the relevant statutory factors, the competent and credible evidence in the record, and the considerations discussed herein, this Arbitrator finds that the Union's proposal on the impasse issue of Division 1 shift manning is more reasonable, it shall be adopted as part of the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

B. Economic Impasse Issues

1. General Wage Increase

The Union's final offer on the impasse issue of a general wage increase is as follows:

Effective May 1, 2014	2.00%
Effective May 1, 2015	3.00%
Effective May 1, 2016	2.00%
Effective May 1, 2017	2.00%

The City's final offer on the impasse issue of a general wage increase is as follows:

Effective May 1, 2014	2.00%
Effective May 1, 2015	2.00%
Effective May 1, 2016	2.00%
(and if a fourth year is added to the contractual term)	
Effective May 1, 2017	2.25%

Because of the previously discussed dispute over the duration of the parties' new Agreement, the City apparently thought it necessary to essentially split its final offer on the impasse issue of wages into two pieces – one that would apply in the case of a three-year contract, and the other that would apply in the case of a four-year contract.

Interestingly, the City offers a larger annual increase for the fourth year than it has for any of the first three years at issue. This fact demonstrates that the City's wage offer must be considered as part of the *quid pro quo* proposal that it presented in connection with the parties' dispute over the new Agreement's duration. By dangling a higher wage increase for the possible fourth year of the new Agreement, the City appears to be offering an extra incentive for agreeing to its *quid pro quo* relating to Division 1 manning that it attached to its final offer on the issue of Agreement duration.

Although there are practical reasons for the City to have broken out its wage proposal so as to respond to both possible effective terms for the new Agreement, the overall structure of the City's wage proposal, and particularly the fact that the largest proposed annual wage increase is targeted for the possible fourth year, does suggest that the City's wage proposal is improper in that it is part of a *quid pro quo* package relating to other issues that are non-economic in nature. While a party's attempt to bolster its position on non-economic issues by leveraging the impact of its wage offer through careful structuring of that offer may appear to be smart bargaining and would be entirely

appropriate at the bargaining table, such a course of action during interest arbitration undercuts the established principles of interest arbitration, which establish a system that allows a neutral fact-finder to analyze competing proposals on the basis of concrete data and real-world comparisons. Among other things, these principles separate economic and non-economic issues, requiring a different treatment of competing proposals in each of these two categories. Moreover, as previously discussed, any *quid pro quo* arrangement should be developed, agreed upon, and implemented by the parties through their negotiations, not imposed from the outside by a third party.

The improper nature of the City's final proposal on the impasse issue of wages may be enough, by itself, to tip the balance in favor of the Union's proposal. This issue is too important, however, to be determined by one consideration alone. Instead, it is necessary to carefully evaluate the parties' competing final offers on wages based upon all of the relevant statutory factors and the evidence in the record.

Because of the extreme length of the bargaining, ILRB, and interest arbitration processes that have brought the parties to this point, nearly three of the four years of the new Agreement's duration have expired. This means that nearly three of the new Agreement's four years' worth of wage increases at issue are going to be awarded on a retroactive basis. This has a critical impact upon the application of the relevant statutory factors. There is absolute certainty about the pay scales that applied to the external comparables and to the internal comparables during the first three years of the new Agreement's effective period, just as there is absolute certainty about what happened to the rate of inflation during most of that same time period. In addition, the record contains

concrete evidence of the City's tax and other receipts during the early years of the new Agreement's effective term, as well as the City's financial assets, actual expenditures, and overall financial health. For the first almost three years of the new Agreement's term, there is certainty about most of the numbers because we are looking back instead of forward.

All of this being noted, the fact is that the parties' competing wage proposals are not extraordinarily far apart. Each proposal suggests an annual wage increase of 2.00 percent for three out of the four years of the new Agreement's duration, although not for the same three years. The Union argues for a 3.00 percent increase during the second year of the new Agreement's term, while the City argues for a 2.25 percent increase during the fourth and final year of that term.

Looking first to compensation data from the external comparables, the parties have utilized slightly different approaches in comparing their competing wage offers with compensation offered by the external comparables. The City has pointed to the starting and maximum wage rates offered by the City in comparison with starting and maximum wage rates among the external comparables, while the Union has emphasized the annual percentage increases in each party's offer compared with the annual percentage increases in the external comparables.

A review of both of these approaches reveal that the Union's final offer on the impasse issue of wages is more reasonable in light of the wage provisions in the external comparables. The City's analysis demonstrates that under either proposal in question, the starting and maximum wages available to the City's firefighters and fire command

personnel will continue to fall in the bottom half of the range established across the comparable communities, about where these wages stood as of the expiration of the parties' former Agreement. The slightly higher total wage increase proposed by the Union, over the entire four-year term of the new Agreement, certainly does not push the wages available to the bargaining unit much higher when compared to the wages paid to fire personnel by the external comparables, however, the Union's proposal does help the City's fire personnel to better maintain their place within the range established by the external comparables. The slightly smaller wage increase over the entire four-year term of the Agreement that the City has proposed does not offer much, if any, advantage to its fire personnel compared to their colleagues in the external comparables, with the starting and maximum wages paid to the City's fire personnel during the term of the parties' new Agreement continuing to languish in the bottom half, at least, of the range established by the external comparables.

In short, the external comparables do not suggest that either party's wage offer is substantially better than the other's offer, but I find that this comparison does indicate that the Union's proposal is more reasonable than the proposal offered by the City because the Union's proposal brings the wages paid to the City's fire personnel slightly closer to the middle of the range established by the external comparables.

A look at the wage data on the internal comparables, other bargaining units of employees working for the City, also supports the finding that the Union's wage proposal is more reasonable than the City's wage proposal. One important piece of evidence is that the current contract covering a bargaining unit composed of City clerical employees

provides for annual wage increases of three percent. Even more important, the current three-year contracts covering the City's police patrol officers and police command personnel both provide for two percent annual increases in years one and three of each contract's effective term and a three percent annual increase in year two of each contract's effective term. Obviously, this closely tracks the Union's wage proposal here, while the wage increases in the contract governing clerical workers are significantly more generous than what the Union seeks here.

The City has argued that the parallels between the Union's wage proposal and the wage increases incorporated into the police contracts and the higher percentage increases provided in the contract governing its clerical employees do not support the Union's proposal. The City asserts that different *quid pro quo* deals explain these other wage increases, and the absence of any similar *quid pro quo* arrangement in connection with the Union's wage proposal here would open the City to an inappropriate "whipsaw" approach in future negotiations involving its different bargaining units. This argument is not particularly convincing. Although there is no specific *quid pro quo* associated with the Union's wage proposal, it must be noted that the Union has not prevailed on every issue during the parties' negotiations preceding and during this interest arbitration, and the Union has not prevailed on every issue being resolved in this proceeding. As is the case in virtually every instance of collective bargaining, the parties have engaged in mutual give and take throughout their long negotiations, with both sides making concessions in order to reach agreement on the many issues covered by their Agreement. Moreover, not every wage increase must be "paid for" by one or more concessions

elsewhere, as the City seems to suggest in making this argument. In addition, the relatively minor difference between the competing wage proposals here hardly would support any argument from other unions that the City should grant excessively large wage increases to different units in future contracts.

Instead, viewed in their entirety, the contracts governing other bargaining units of City employees demonstrate that the Union's wage proposal is more in line with the reasonable, even incremental, increases found in those other contracts. The balance achieved in these other contracts between wage increases for the employees and other provisions that worked more in the City's favor is mirrored in the parties' new Agreement here, with some provisions working more in the City's favor, while other provisions may favor the members of the bargaining unit. In addition, the wage increases incorporated into the two contracts governing police units are particularly relevant as comparators here in that these two police units also are composed of public-safety employees who serve as first responders. The fact that the Union's wage proposal here is quite similar to the wage provisions in the two police contracts represents significant support for a finding that the Union's proposal is more reasonable than the City's wage proposal.

Turning to data on changes to the CPI-U, which is the particular consumer price index data most relevant to this proceeding, the City has argued that the fact that both wage proposals exceed the total CPI-U increase during the first years of the new Agreement, which already have elapsed, offers support for the City's slightly lower wage proposal. This argument might be more persuasive if there were a larger gap between the

parties' competing wage proposals, with the Union arguing for a significantly larger increase than the City, but that is not the case here. Instead, the CPI-U data does not particularly suggest that either of the wage proposals here is more reasonable than the other, but instead indicates that both proposals offer wage increases that will more or less help employees maintain their buying power through the effective term of the parties' new Agreement.

With respect to the other relevant statutory factors, there is no question that the City has not asserted that it is unable to pay for either of the wage proposals in question here. In fact, the relatively minor difference between the two wage proposals means that both parties recognize and are attempting to accommodate the City as it continues to face the economic and financial difficulties that currently confront most units of government. Similarly, both wage proposals here also appear to recognize the desirability of and attempt to foster the City's efforts to retain its highly skilled, experienced, and valuable employees. The Union's wage proposal does not ask for the moon, and the City's wage proposal does not harm the employees' ability to maintain their own and their families' financial viability.

In light of these considerations, many of the statutory factors that often do highlight the differences in the reasonableness of competing wage proposals are essentially a wash here. Such factors as the consumer price index, the interests of the public, and the City's finances do not illustrate any meaningful distinction between the parties' opposing final offers on the impasse issue of wages. Instead, comparisons of these wage proposals with both external and internal comparables demonstrate that the

Union's final offer on the impasse issue of wages is more reasonable and should be adopted here.

Based on all of these considerations, as well as the competent and credible evidence in the record, this Arbitrator finds that the Union's proposal on the impasse issue of wages is more reasonable. Accordingly, the Union's proposal on this issue shall be adopted and included within the parties' new collective bargaining agreement, and it is set forth in the Appendix attached hereto.

2. Rank Differential/Equity Adjustment (Assistant Chiefs)

The Union's final offer on the impasse issue of the rank differential/equity adjustment for assistant chiefs is as follows:

Upon movement of Assistant Chief to an administrative position, increase the rank differential between Captain and Assistant Chief from seven and one-half percent (7.50%) to eighteen and one-half percent (18.5%).

The City's final offer on the impasse issue of the rank differential/equity adjustment for assistant chiefs is to maintain the *status quo*.

This impasse issue has arisen in connection with the planned move of the Department's assistant chiefs, the highest rank within the bargaining unit, from Division 1 (Fire Suppression) to Division 2 (Administration) as part of a reorganization of the Department's command structure. The Union is seeking a change to the rank differential paid to assistant chiefs based upon its assertion that this planned reorganization will result in the assistant chiefs' losing thousands of dollars per year in overtime pay that they typically earn working within Division 1.

There is no question that when the assistant chiefs move from Division 1 to

Division 2, their work hours will change, with most working straight nine-to-five shifts. The total number of straight-time hours regularly scheduled for the assistant chiefs once they are working within Division 2 will decrease from an average of 2,756 hours per year, based on a typical schedule of fifty-three work hours per week, to 2,080 hours per year, based on a typical schedule of forty hours per week. There also is no dispute that while working in Division 1, assistant chiefs typically worked a significant number of overtime hours, with overtime pay sometimes accounting for as much as a quarter, or even more, of their annual earnings. The record also shows, however, that assistant chiefs still will be working some overtime hours after they move to Division 2 and they will have to be on call as well.

The City has asserted that the Union's final offer on this impasse issue amounts to a "breakthrough," but the circumstances giving rise to this final offer demonstrates that it cannot properly be viewed as a breakthrough. The Union's final offer relates only to the amount of the rank differential between captains and assistant chiefs, which already exists. The Union is not attempting to establish any sort of new benefit or to address a subject that has not already been included in the parties' historic collective bargaining agreements. Instead, the Union's final offer on this impasse issue proposes a change in an existing contractual provision in response to the very real changes looming in connection with the City's decision to reorganize the Department's command structure. The higher burden associated with a breakthrough proposal cannot properly be applied to the Union's final offer here, but I find that this proposal nevertheless fails because it cannot be deemed more reasonable, under the circumstances that actually exist at present,

than the City's proposal to maintain the status quo for now.

Because the assistant chiefs have not yet actually moved to Division 2, there is no evidence in the record establishing whether and how much overtime they will be working after this change is implemented. It cannot reasonably be expected that assistant chiefs no longer will work any overtime at all after they move to Division 2, and there is no basis for a full understanding now of how this proposed change truly will impact their overtime work hours and their total compensation.

The Union's proposal to increase the rank differential between captains and assistant chiefs from 7.50% to 18.50% is an attempt to protect the assistant chiefs from the worst possible scenario – that the move of the assistant chiefs to Division 2 will result in the loss of most or all of the overtime pay that has constituted a significant part of the assistant chiefs' annual earnings. With the proposed reorganization contemplating that the assistant chiefs will be on call and will work overtime, it is not likely that the assistant chiefs will suffer the loss of all of the overtime pay that they previously have received.

The record in this matter indicates that although the assistant chiefs likely will work less overtime after they move to Division 2, it is impossible to predict, at this point, what the real impact on their overtime earnings will be. There is no reasonable basis, then, to accept the Union's final offer on the impasse issue of the rank differential for assistant chiefs. The Union's proposal would so greatly increase this equity adjustment for assistant chiefs that it almost certainly would no longer realistically reflect any changes in the overall compensation that might result from their move to Division 2. Because it is not even certain yet how many assistant chiefs will be part of the

Department's new command structure once its reorganization is implemented, it is too early to determine how their pay really will be impacted by their move to Division 2 and how any change in rank differential might reasonably be used to respond to any loss in overtime compensation.

The Union's proposed change simply is too great to be granted at this early point, before any move to Division 2 has been accomplished, and this proposal cannot be deemed reasonable under the circumstances at present and in light of the evidence in the record. The Union's proposal might fare better in future, once there is some actual evidence showing how the assistant chiefs' move to Division 2 has impacted their overtime earnings. But, more importantly, once the changes in the administrative structure are put into place and some track record is created with respect to the overtime hours of the assistant chiefs, the parties will be in a much better position to negotiate a change prior to any future interest arbitration, and hopefully will reach some agreement on this issue after studying the data that will have been developed after the change.

The Union also has suggested that its proposed increase in rank differential for the assistant chiefs also is supported by the fact that a change to a standard nine-to-five schedule may result in other challenges for the assistant chiefs, ranging from increased child care needs and costs to decreased opportunities for secondary employment. These possible ill effects are, like the potential loss of overtime income, still only possibilities that cannot readily be quantified based on the evidence that is available now. Moreover, the move to a regular forty-hour weekly work schedule also may bring some advantages to the assistant chiefs that could counter-balance the ill effects anticipated by the Union.

The impact upon the assistant chiefs, financial and otherwise, of their proposed move to Division 2 is something that should be, as stated above, discussed and bargained between the parties as the City works on developing, finalizing, and ultimately implementing its reorganization plan. It is not reasonable for a remedy to this potential impact to be imposed from the outside, before the reorganization plan has been finalized, and before any change has occurred in the assistant chiefs' position.

A review of the statutory factors demonstrates that they offer no significant support for the Union's attempt to insulate the assistant chiefs from the effects of a change that has not yet occurred. Until the City's reorganization plan is fully developed, there is no realistic basis from which to analyze what are only potential outcomes.

In light of the relevant statutory factors, the competent and credible evidence in the record, and the considerations discussed herein, this Arbitrator finds that the City's proposal on the impasse issue of rank differential/equity adjustment for assistant chiefs is more reasonable. Accordingly, the City's proposal on this issue shall be adopted and the status quo shall be maintained in the parties' new collective bargaining agreement.

Award

1. This Arbitrator finds that Champaign, Illinois, and Normal, Illinois, are appropriate comparators to the City of Danville and these two communities shall be included among the list of other communities identified and agreed to by the parties as external comparables in this interest arbitration proceeding.

2. This Arbitrator finds that the Union's proposal on the issue of contract duration is more reasonable and it shall be adopted. The new agreement shall extend

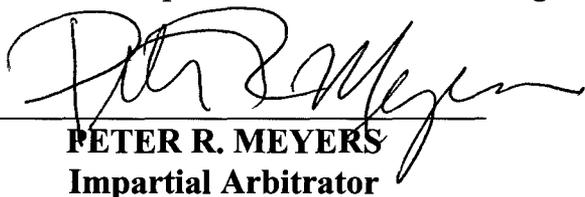
from May 1, 2014, until April 30, 2018.

3. This Arbitrator finds that the Union's proposal on the impasse issue of Division 1 shift manning is more reasonable and it shall be adopted and it is set forth in the Appendix attached hereto.

4. This Arbitrator finds that the Union's proposal on the impasse issue of wages is more reasonable. The Union's proposal on this issue shall be adopted and included within the parties' new collective bargaining agreement and it is set forth in the Appendix attached hereto.

5. This Arbitrator finds that the City's proposal on the impasse issue of rank differential/equity adjustment for assistant chiefs is more reasonable. The City's proposal on this issue shall be adopted and the status quo on this issue shall be maintained in the parties' new collective bargaining agreement.

6. This Arbitrator finds that the language set forth in the attached Appendix shall be adopted and incorporated in the parties' new collective bargaining agreement.


PETER R. MEYERS
Impartial Arbitrator

**Dated this 6th day of March
2017 at Chicago, Illinois.**

APPENDIX

I. DURATION OF AGREEMENT

The Agreement shall be effective from May 1, 2014, and shall remain in effect until April 30, 2018.

II. SHIFT MANNING (DIVISION 1)

7.1(a) Except as otherwise provided herein, the City agrees that no fewer than thirteen (13) members of the bargaining unit shall function in a fire suppression capacity at all times during the term of this Agreement including:

- One (1) Assistant Chief
- One (1) Captain
- Three (3) Lieutenants
- Eight (8) Firefighters

There shall be two (2) Division 1 command (Assistant Chief and Captain) positions per shift, at least one of which shall be a commissioned command officer. Any vacancy created by the use of a Kelly Day shall not result in a recall.

However, if the Assistant Chief is assigned to Division 2 – Administration, the City agrees that no fewer than thirteen (13) members of the bargaining unit shall function in a fire suppression capacity at all times during the term of this Agreement including:

- One (1) Captain
- Three (3) Lieutenants
- Nine (9) Firefighters

There shall be one (1) Division 1 command (Captain) positions per shift, which shall be a commissioned command officer. Any vacancy created by the use of a Kelly Day shall not result in a recall.

III. GENERAL WAGE INCREASES – APPENDIX B

Effective May 1, 2014, through and including April 30, 2015	2.00%
Effective May 1, 2015, through and including April 30, 2016	3.00%
Effective May 1, 2016, through and including April 30, 2017	2.00%
Effective May 1, 2017, through and including April 30, 2018	2.00%

IV. RANK DIFFERENTIAL/EQUITY ADJUSTMENT (ASSISTANT CHIEFS)

Status quo maintained.

V. TENTATIVE AGREEMENTS

All tentative agreements that the parties have reached during the course of their negotiations and throughout the instant proceeding shall be incorporated into and become part of the parties' new collective bargaining agreement.