

Daniel Nielsen, Arbitrator

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In the Matter of the Arbitration of an Interest Dispute Between

**THE CITY OF MT. VERNON**

and

**THE ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL**

2017 Wages – ILRB Case No. S-MA-16-198

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**Appearances:**

The Illinois Fraternal Order of Police Labor Council, by **James Daniels**, Attorney at Law, 974 Clocktower Drive, Springfield, IL 62704, appearing on behalf of the Union.

Ogletree, Deakins, Nash, Smoak & Stewart, LLP, by **Anthony Byergo**, Attorney at Law, 4520 Main Street, Suite 400, Kansas City, MO 64111, appearing on behalf of the City.

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**ARBITRATION AWARD**

The City of Mt. Vernon (hereinafter referred to as the City or the Employer) and the Illinois Fraternal Order of Police Labor Council (hereinafter referred to as the FOP or the Union), selected the undersigned to serve as the arbitrator of a dispute over the terms of the collective bargaining agreement for the City's Police Officers. A hearing was held on November 29, 2016, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. Post-hearing briefs were submitted, which were exchanged through the undersigned on January 22, 2017. The parties thereafter granted a brief extension of time for the issuance of the Award.

**Statutory Criteria**

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315 provides the specific factors for an arbitrator to use when analyzing the issues in an interest arbitration 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) 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 following 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.

All of the criteria have been considered in arriving at this Award, although given the nature of the dispute, not every criterion is discussed.

### **Issues and Final Offers**

This dispute involves the single issue of wages in the second year of a two year collective bargaining agreement. The City proposes to increase salaries by 1.75% in the first year (May 1, 2016 – April 30, 2017) and 1.75% in the second year (May 1, 2017-April 30, 2018). For its part, the Union seeks 1.75% in the first year, and 3.00% in the second year.

## General Background

The City provides general municipal services to the roughly 15,000 citizens of Mt. Vernon, in south central Illinois. Mary Ellen Bechtel is the City Manager, and Chris Deichman is the Police Chief. The Union is the exclusive bargaining representative for the City's Police Officers, Detectives and Corporals. The City and the Union have been parties to a series of collective bargaining agreements since the Union was certified in 1992.

The parties have gone to interest arbitration twice since the Union was certified. In 1995, Arbitrator Briggs resolved a dispute over a wage reopener, and in 2005, Arbitrator Malin resolved a dispute over wages, health insurance, holidays, and duration.<sup>1</sup> As a result of those two arbitration cases, the parties have an established set of comparable communities that they refer to in bargaining:

Primary Comparables:

Centralia

Herrin

Marion

Secondary Comparables:

Harrisburg

Olney

Murphysboro

Effingham

West Frankfort

The budgeted staffing level for the Police bargaining unit is 43, although at the time of this arbitration hearing, there were only 36 officers, and the City was in the process of hiring four more. In addition to the Police Officers' bargaining unit, the City also has collective bargaining agreements with the IAFF in the Fire Department, the IBEW for semi-skilled and skilled workers in the Utilities, and a joint unit of the Teamsters and the Laborers for non-clerical maintenance, construction and manual laborers throughout the City. Those bargaining units have reached voluntary agreement on two year contracts covering the period from May 1, 2016 through April 30, 2018. In both years, those agreements call for 1.75% across the board wage increases.

As more fully detailed below, the City believes its wage proposal is justified by a series of problems with the City's fiscal condition, including a steady and unexpected decline in shared tax revenues, and an unexpected 42% increase in insurance costs, an increase that the City decided

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<sup>1</sup> *City of Mt. Vernon and FOP*, ILRB No. S-MA-94-215 (Briggs, 8/23/95); *City of Mt. Vernon and FOP*, ILRB No. S-MA-04-123 (Malin, 9/12/05).

to absorb. The City also takes the position that it could not agree to the Union's 3.0% proposal without breaking faith with the other bargaining units, and deviating from a decades long history of wage parity between the various employee groups. For its part, the Union believes that 3.0% in the second year is amply justified by the tremendous workload Mt. Vernon Officers carry, relative to other area departments, many of which pay better than Mt. Vernon despite being much smaller and less urban. It disputes the notion that any true parity exists between Police Officers and other City employees.

### **The Arguments of the FOP**

The Union argues that the dispute here is narrow, but real, and that a 3% wage increase in the second year of the agreement is completely warranted under the statutory criteria. At the outset, the Union acknowledges that the CPI has been low in recent years, and that the increases for FY16 and FY17 will likely fall below either party's offer. This dispute, however, concerns FY18, and there is every reason to believe that the CPI will increase more rapidly in the year to come. The Federal Reserve has increased interest rates, plans further increases, and has adopted a bullish stance on the economy. This has triggered plans for rate increases by major banks. An improving economy will predictably lead to higher rates of inflation. In order to provide actual increases to employees, a wage settlement must exceed the CPI, and there is no guarantee that the City's offer can achieve that goal. While the arbitrator cannot ignore the modest CPI increases in the past two years, he must be alert to the likelihood of rising inflation in FY18.

The City relies on an internal settlement pattern to support its below market wage offer. Certainly the City has three other settlements, and all of them match its 1.75% and 1.75% wage offer to the Union. Unrepresented employees have also received those across the board increases. On its face, that may seem to be compelling evidence, but the facts are more complicated than that. Unrepresented employees do not provide much guidance, since the purpose of interest arbitration is to replicate, as nearly as possible, what a negotiated settlement would look like. By definition, unrepresented employees cannot negotiate. Beyond that, two of the negotiated settlements involve non-protective service bargaining units. Arbitrators, as a general rule, do not attach much weight to non-public safety settlements in police cases, since the duties, training, schedules and working conditions of police officers are so vastly different from those of general employees.

The City's effort to use a history of general employee settlements that match the

settlements with the Police is not only not particularly relevant, it is not even proven. The City did not provide source documents – collective bargaining agreements – to track the history of settlements in the City. It merely provided hearsay summaries and an unsworn narrative, claiming that all of the bargaining units historically matched one another on wages. The arbitrator cannot attach any weight to this supposed evidence, as it amounts to nothing more than a series of assertions. Even if the arbitrator chose to believe these assertions, they would prove nothing. It does not matter if there has been a pattern over time, unless it can be shown who set the pattern. If all of the other bargaining units followed the lead of the Police Officers, that pattern says nothing about what should happen in a year where the Officers reach an impasse. The City has the responsibility to prove its case, and its case turns on a history of settlements. No proof has been provided to show how those settlements came about, and whether the Police set the pattern every year, or the Police deferred to a pattern set by others. Without that information, the City's case simply cannot be made.

The City also seeks to use the IAFF settlements to prove its case for internal comparisons. Again, the source documents are missing from this record. Moreover, this attempted comparison must fail because the Police and the Fire are not similarly situated. Specifically, the Firefighters' contract is considerably more lucrative than the Police Officers' contract. Wage rates for Firefighters are roughly 1% above wages for Police Officers, and that disparity widens by another 4% when paramedic pay is added, as it must be since all of the Firefighters are paramedics. By contrast, Master Patrol pay in the Police Department is available to only a third of the officers, is not automatic, and provides a maximum of \$2,000 per year, which is \$569 less than a Firefighter with paramedic certification receives. Moreover, Firefighter have more, and more lucrative, promotional opportunities than Police Officers. A Firefighter may rise to Lieutenant, and then to Captain, without leaving the bargaining unit. A Police Officer might become a Corporal, but the difference in pay is half of what a Firefighter who promotes to Lieutenant would receive. That disparity grows over time as the Fire Lieutenant advances on the pay scale, until after 10 years, the Lieutenant is making \$7460 more than the Corporal.

There are many additional examples of disparities between the benefits available to Firefighters and Police Officers, disparities that seriously undermine any City claim to want parity or fairness. Firefighters and Police Officers both work 12 hours days. Yet, Firefighters accumulate sick leave in 12 hour monthly increments, while Officers accumulate only 8 hours per month. This not only disadvantages Officers who need to use the time, but has a direct monetary

impact, since there is a 50% payout of unused sick leave on retirement. Likewise, Firefighters get 120 hours of vacation per year, while officers get 80, and after 12 years of service, the gap increases to 240 hours versus 160 hours. These are striking differences in important benefits. If the City had a commitment to equity and equality between these two units, as it claims when it discusses wages, these benefit gaps would not be allowed to exist. There is no way to justify them. Firefighters in Mt. Vernon handle on average 22% more calls for service than other area fire departments. Police Officers handle 80% more calls for service than their peers in area police agencies. This workload is reflected in the attrition rate for Police Officers, which is 382% of the average for other departments. The much higher demands placed on Mt. Vernon Police Officers cannot be squared with the much higher compensation levels enjoyed by Mt. Vernon Firefighters. Any appeal by the City to parity is simply talk when viewed in light of these statistics.

The history of these negotiations also undercuts the City's claims of fairness. The City reached an agreement with the IAFF which included a boost in the clothing allowance. Once it had its wage offer in place, it went to the Teamsters and the other units, and obtained identical wage settlements. It then, in essence, presented the Police Officers with a take it or leave it offer, and refused to consider any of the Union's proposals. This conduct, seeking a lowball settlement with one unit and then imposing it on others, creates an unhealthy race to the bottom that should not be rewarded by the arbitrator.

The City will make the claim that its low wage offer was in return for not increasing the cost of insurance for employees. That trade may well have been one the IAFF chose to make, but the Police Officers were never given an opportunity to assess or bargain over it. It was, once again, presented on a take it or leave it basis. The arbitrator cannot allow the City's claim of a binding internal pattern to oust it from its rightful role as the bargaining agent for these Officers. It must have a meaningful opportunity to make its own choices and tradeoffs, and to set its own priorities. For all of these reasons, the arbitrator must reject the argument that the internal pattern of settlements should dictate the result on wages for this bargaining unit.

By far the more reliable measure of what is and is not reasonable is the pattern of settlements between comparable communities and other Police Officers. External comparability has long been understood to be the weightiest factor in determining wages, and it decisively favors the Union's proposal. Settlements among comparable departments averaged 4.36% over the two years of this contract – 2.02% in the first year, and 2.34% in the second year. The City is

offering only 3.50% over the contract term, while the Union seeks 4.75%. Clearly the Union offer is closer to the average, but even that understates the case. The average for the comparables includes an incredibly low 0.50% increase in 2016-2017, and 1.15% in 2017-18 for Herrin police officers. As explained by the Union at hearing, those tiny increases were in return for a huge increase in training pay, tripling the amount that could be earned over the life of the contract, and making it much easier to earn. The negotiators in Herrin noted that an officer taking advantage of the training pay would see an increase in pay of \$3200 over four years, the equivalent of an additional \$0.40 per hour. Thus the Herrin hourly wage increase only appears to be tiny, but since it was expressed in across the board terms, it is included in the comparables data and it artificially depresses the average.

It is not only the rates of increase that do not match up with the comparable communities. The Union argues that pay in general for Mt. Vernon Officers lags behind that of other jurisdictions. Looking at the three primary comparables, The Union points out that Mt. Vernon Officers start at a rate that is 10% below the average starting salary, and remain below average by roughly 5% throughout the remainder of their careers, until they reach top pay after 30 years, when the disparity drops to just under 1% below average. If that comparison is expanded to include secondary comparables, the Mt. Vernon Officers still lag behind the average at most steps, although by a much smaller percentage. However, neither party's final offer will improve these rankings. In fact, both offers slightly decrease the Mt. Vernon Officers' rankings relative to the entire set of comparables. An offer which results in a drop in the rankings, as does the Union's, can hardly be said to be expensive or unreasonable.

The underpayment of Mt. Vernon Officers relative to their peers in comparable communities is indefensible when one considers their vastly different working conditions. Most of the comparables are far smaller communities, with far less crime. Mt. Vernon is 40% more populous than its comparables, it sits at the crossroads of major highways connecting St. Louis and Chicago, and is 245% above the average in the major crime index. The City has one of the highest crime rates in the United States. Indeed, the crime rate per 100,000 people in Mt. Vernon is twice that of the City of Chicago. It has earned the unfortunate distinction of being the only Downstate community with a weekly standing appointment with the State Crime Lab to prepare cases.

One consequence of this workload is that the Mt. Vernon department has an attrition rate

that is 382% above the average, and voluntary resignation rate that it 669% of the average. Forty three officers have left in the past decade, as against an average of nine in the comparables. Twenty four of those departures were voluntary resignations, as compared to an average of three in the comparables. Corporal Ray Gilbert, the secretary of the pension board and a steward for the Union, testified that he personally spoke with all officers at the time of their departures, as part of his duty to explain their available benefits. Corporal Gilbert's uncontroverted testimony was that departing officers commonly cited stress and the huge workload as the reasons for their departures. These departures add to the stress of the remaining officers, as the Department is currently down to 36 officers, 10 below a year ago. Gilbert said that officer routinely skip meal breaks to keep up with calls, and are often forced to respond without backup to dangerous situations.

The Union anticipates that the City will claim financial hardships as the basis for its lowball offer. Certainly, revenues have been lower than anticipated in FY16 and FY17. Just as certainly, the Union has responded to that problem by accepting a two year contract and a 1.75% raise in the first year. The Union initially sought a 4% raise in FY17 and a four year contract, but was sensitive to the City's concerns. That can only go so far, and in any event there is good reason to think that the City has straightened out its finances. The City's Ending Fund Balance is at its historical norm, and 94% of it is not assigned. The Police Department has operated hundreds of thousands of dollars in the black over the past six years, even though its budget is essentially the same now as it was in 2013. All other City departments have also run in the black.

Granting that the City faces a shortfall in Shared Revenues, the Union notes that the City has implemented cost savings measures for both the short and the long term. The City has sold surplus equipment and suspended participation in some joint government projects with the County. It has furloughed employees. However, it has also taken steps that will save money over the long term, including operational adjustments, early retirement incentives and moving retirees to a more economical Medicare plan. These steps generated \$2 million in savings, while the shared revenue shortage was \$1.3 million. The City deserves credit for taking imaginative and decisive steps, but the other side of that coin is that it has ameliorated the shortfall and cannot rely on it to justify its 1.75% wage offer. The City, and the experts it consulted, could not explain why sales and income tax revenues dropped in FY17. The local employment picture is bright, and the major local employer is expanding. The drop in revenues remains a mystery, but the Union points out that there is no good reason to believe this anomaly will be repeated in FY18.

If it did, there are other funds, such as the Motor Fuel Fund and the Utilities funds, that can transfer money to cover salaries if need be. The Union estimates the difference in these offers to be perhaps \$30,000. The City has 100 times that amount in its Ending Fund Balance.

Finally, the Union urges the arbitrator to reject any claim by the City that increases are not due to the Police Officers because it made layoffs in other departments. The Union points out that the operational changes the City made, the change in Medicare plans, and other cost savings steps all had the effect of more than making up the shortfall, before the decision was made to layoff DPW employees for several months. That step saved an additional \$200,000, and it may have been a prudent financial move, but it was not driven by the wages or the wage demands of the Police Officers. The City Council wished to insure that it remained solidly in the black, and it had that right, but this layoff decision has absolutely nothing to do with these negotiations.

The officers in Mt. Vernon are underpaid relative to the market, yet they handle 80% more service calls than other area departments. The Department is unable to compete for officers, and unable to retain them. A modest increase in the second year of the contract will not solve these problems, but at least it will not make things worse. The arbitrator should recognize that the Union's proposal is reasonable, and even modest, given the working conditions of this bargaining unit. Accordingly, he should award the Union's offer.

### **The Arguments of the City**

The City takes the position that its final offer is the more reasonable balance between the legitimate aspirations of the Police Officers and the City's need to keep faith with other bargaining units, and with its taxpayers. There has been an unbroken history of parity between the Police and Fire bargaining units since 1992. In the 1995 interest arbitration, Arbitrator Briggs ruled that a voluntary history of parity should not be broken without compelling evidence of a need to do so. That principle has held true ever since. Here, the Union seeks once again to unilaterally break the parity relationship. All other bargaining units have settled at 1.75% and 1.75%. The arbitrator should not disturb this fundamental pillar of the parties' bargaining relationship.

The City argues that the more modest wage increase it proposes reflects more than just the firmly established pattern of internal settlements. It also reflects the fiscal conditions faced by the City's administrators. Tax revenues have steadily declined over the past four years. Sales tax

revenues are lower in FY16 than they were in FY12, when the last contract was settled. While the City has made Herculean efforts, including keeping operating expenses flat for six years, it still ran a budget deficit of \$500,000 in FY16, and projected a deficit of \$1.3 million for FY17. The increase in the deficit was driven by a 42% increase in health care costs and the need to pay contractually mandated step increases to employees. The City responded by freezing hiring, shifting retiree insurance to cheaper alternatives, selling property, eliminating almost all capital spending, and making operational changes, which should have covered the deficit. Unfortunately, tax revenue continued to inexplicably decline. Whereas modest improvements had been expected, the first quarter saw decreased tax revenues across the board:

Revenue Source	Decrease from FY16	Decrease from Budget
1% Sales Tax	-4.2%	-5.7%
1% Home Rule Sales Tax	-4.5%	-5.8%
State income tax	-9.0%	-13.0%
1% food and beverage	-1.7%	-0.5%
2 cent diesel tax	-11.2%	-3.8%

In response to these declines in revenues, the City laid off seven employees in DPW, laid off all part-time employees in the Parks and DPW, reduced minimum manning in the Fire Department, imposed one day furloughs every two pay periods, furloughed the City Manager for one day in each pay period, suspended its demolition program for condemned properties, and suspended its financial support for local development councils. These measures may allow the City to get through the current fiscal year, but increased costs for pensions, health insurance and wages are likely to create \$1,000,000 deficits in each of the next two years, wiping out the City's fund balance.

With all of that by way of background, the City argues that the statutory criteria uniformly favor its final offer on wages for the second year. Easily the most obvious basis for the City's position is to maintain the unbroken history of parity between the City's bargaining units. It is well-recognized that the party seeking to break such a long standing pattern must prove a compelling need to do so. Breaking parity invites whipsawing and destabilizes bargaining relationships. Here, the Police and Fire units have moved in lockstep on wages for twenty five years. The City's offer extends that history of equal treatment, even though the City's fiscal condition deteriorated after the bargains with the Fire, Teamsters/Laborers and IBEW were reached, and before the final offer was submitted for this arbitration. The City could have made a case for a lower offer, based on those changing conditions, but it respected the historical fact of

strong internal patterns. This arbitrator should not disturb that history.

The City also looks to the CPI for support. Over the past contract, from 2012 through 2016, wages increased an average of 2.4375% per year, while the CPI-W increased on average 0.85% and the CPI-U increased by 1.125% per year. There is no data to suggest that this low inflation pattern will change over the course of this contract. The Union claims that interest rates will increase, and argues that this will mean more inflation, but that is pure speculation and, in any event, the Federal Reserve continues to follow a policy of capping inflation at 2%. The City's offer is more consistent with that target than is the Union's.

The City also sees support for its position in the external comparables. The FOP represents this unit, and every comparable unit. The rank order of these units in salary has been a creation of the FOP's efforts. The City's officers are anywhere from 3<sup>rd</sup> to 7<sup>th</sup> in rank at the various steps of the schedule. They are roughly in the middle, and the City's offer basically leaves them there. Using just the primary comparables established by Arbitrator Malin - Herrin, Centralia and Marion - the City ranks second of four at every step. The unusual two-tiered agreement reached in Herrin insures that Mt. Vernon Officers will rank first among primary comparables going forward. Looking solely at percentage rates of increase, the City's offer is also closer to the settlement pattern of the comparable communities. The two-year increase of 3.5% meets or exceeds the rate of increase for all of the primary comparables and all but two of the secondary comparables.

Considering total compensation also supports the City's position. The City's contract provides for several unique benefits – automatic payout of holidays, easily obtained master patrol status with its attendant stipend, and double time for overtime – which add \$4000 or more to Officers' annual compensation. The Union conceded at hearing that these were benefits that no other officers among the comparables enjoyed.

The City's asserts that its offer is strong on its own merits, but is particularly so when the interest and welfare of the public are considered. Not only does this factor typically support the more modest offer, in this case the City's financial condition makes a compelling case for moderation. The budget problems are an established fact. Police expenditures are an increasing portion of the budget, and personnel expenditures in general have been crowding out other necessary operating and capital investments. Revenues have been flat over time, while personnel

costs have continued to increase, and the City has been forced to cut other departments, including laying off personnel in other bargaining units. Despite all of this, the City has put forth a reasonable wage proposal, one that represents the maximum that can be expected under the current dire fiscal conditions.

It is often argued that the interests of the public are served by higher compensation, because it allows the employer to attract and retain qualified personnel. Contrary to the Union's claims, the City does not have abnormal difficulty attracting and retaining officers. It is not unusual for officers to change jobs, particularly early in their careers. Many of the departures identified by the Union involve retirements, and the fact that an officer is around long enough to retire indicates an ability to retain officers, not a problem. Some of the officers who left have not gone to better paying departments elsewhere – they have gone into entirely different fields. The decision to change professions does not reflect dissatisfaction with a particular department – it reflects dissatisfaction with a career choice. Those who have left for other police agencies have either gone to the Illinois State Police or to entirely different geographical areas. Again, that is not a reflection on the department. It more likely reflects a desire to live in a larger community or a different part of the state. Moreover, there is no evidence that the City has any trouble attracting qualified candidates for its available positions. The City grants that recent turnover has been high, but it argues that this is likely an anomaly, since working conditions and relative pay in the Police Department have not changed over the past decade.

The City points to the general proposition that arbitration should not result in increases, decreases, or changes that would not normally be expected from voluntary collective bargaining, and in particular should avoid dramatic changes, or breakthroughs. Here, the Union seeks a breakthrough, by asking for a wage increase well in excess of those agreed to in voluntary collective bargaining with other units in the City. Arbitration is a conservative process, and should not hold out the prospect of gains for either side that could not have been achieved at the table. It should also respect the outcomes of past bargains, and not allow parties to revisit those settlements. The City's offer, in every respect, tracks these principles, while the Union's abandons them. The Union seeks to overturn past bargains which established its ranking among the comparables, and to overturn the mutually accepted history of parity between City units. Accepting the Union's offer would destabilize bargaining in the City. For all of the foregoing reasons, the City's offer should be preferred.

## Discussion

The sole dispute in this case is wages in the second year of the contract, from May 1, 2017 through April 30, 2018. Both parties agree that the first year of the contract will feature a 1.75% increase. The City proposes another 1.75% increase in the second year, while the Union seeks 3%. The difference between the offers at each step of the wage schedule ranges from \$530 per year at the Start rate to \$791 per year at the Top rate:

### Wage Proposals - May 1, 2017 through April 30, 2018

<u>Step</u>	<u>FOP (3.00%)</u>	<u>City (1.75%)</u>	<u>Difference</u>
Start	\$43,676	\$43,146	\$530
After 1 Year	\$50,775	\$50,159	\$616
After 5 Years	\$52,293	\$51,659	\$634
After 10 Years	\$55,455	\$54,782	\$673
After 15 Years	\$56,914	\$56,223	\$691
After 20 Years	\$59,662	\$58,938	\$724
Top pay (30 Years)	\$65,187	\$64,396	\$791

### **THE CONSUMER PRICE INDEX**

The Union concedes that the increases in the CPI over the past several years are below either offer, but cautions that increasing interest rates and an improving economy may result in higher inflation rates to come in the second year of the contract. There is some indication that inflation rates are increasing, as December, January and February have shown greater volatility in prices than any time in recent years. The seasonally adjusted CPI-U increased by 0.3% from November to December, 0.6% from December to January, and 0.1% from January to February. The Philadelphia Federal Reserve's survey of professional forecasters for the first quarter of 2017 predicts a strengthening economy and jobs picture, and along with that, higher inflation rates.<sup>2</sup> The consensus is that headline rates of inflation will increase by 2.4% in 2017. That places the projected rate for the second year of the contract midway between the two final offers, while the rate of inflation over the entire contract term will more closely resemble the City's offer. Consideration of the cost of living slightly favors the City's position, but does not offer decisive support for either offer.

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<sup>2</sup> <https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2017/survq117>

## **THE INTERESTS AND WELFARE OF THE PUBLIC**

The City has presented compelling evidence of a challenging fiscal environment. In the face of unexpected declines in revenues, declining population, and unexpected costs, the City has faced down a \$700,000 deficit and a \$1,300,000 projected deficit, through severe cost cutting measures, including the elimination of part-time jobs, laying off seven full-time employees, furloughing all non-represented employees one day each pay period, eliminating minimum manning in the Fire Department, selling surplus property, incentivizing early retirements, not filling vacancies, moving retirees to a less expensive insurance plan, and cutting back services and programs. As of the hearing, shared revenues continued to decline, although there was no clear explanation for why they were declining.

The Union correctly points out that the City's cost cutting measures have kept it in the black, and that it has sufficient reserve funds to deal with a continued shortfall in revenues, should that trend maintain itself. However, the City is not arguing that it cannot pay for the cost of the Union offer. It is making the more common argument that its fiscal condition counsels prudence, and an effort to reach an agreement on the lowest reasonable terms possible. It has proved that argument. This is not a generalized appeal for keeping wage costs down. The evidence of impending financial distress is only speculative to the extent that the drop in tax revenues is inexplicable, given that employment levels and business activity do not appear to be down. The most recent data, however, indicates that the shortfall in revenues continues unabated. Moreover, the steps the City has taken to avoid a deficit have been fairly extreme, and have touched every department. When a municipality has furloughed its City Manager for one day in each pay period, it is a reasonably good indicator that it is not simply crying wolf. I find that the interests and welfare of the public favor selection of the City's final offer.<sup>3</sup>

## **EXTERNAL COMPARABILITY**

The Union argues that the rate of increase, and more importantly the actual pay levels, received by officers in other comparable departments generally support its position. In fact, a comparison of rates of increase yields results more mixed than that:

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<sup>3</sup> The interests and welfare of the public are also served by a stable and professional workforce. Because of how the Union's arguments were structured, the Union's arguments concerning turnover are discussed below in the section addressing external comparables.

	<b>RATES OF INCREASE</b>		
	<u>2016-17</u>	<u>2017-18</u>	<u>Total</u>
<i>Primary</i>			
Centralia	2.00%	2.00%	4.00%
Herrin <sup>4</sup>	0.575%	1.15%	1.73%
<u>Marion</u>	<u>2.30%</u>	<u>2.40%</u>	<u>4.70%</u>
<u>Average - Primary</u>	<u>1.625%</u>	<u>1.85%</u>	<u>3.48%</u>
CITY FINAL	1.75%	1.75%	3.50%
<u>UNION FINAL</u>	<u>1.75%</u>	<u>3.00%</u>	<u>4.75%</u>
<i>Secondary</i>			
<i>Effingham</i>	3.00%	3.00%	6.00%
<i>Harrisburg</i>	1.80%	2.00%	3.80%
<i>Murphysboro</i>	n/a	n/a	
<i>Olney</i>	3.25%	3.50%	3.75%
<u><i>West Frankfort</i></u>	<u>1.20%</u>	<u>n/a</u>	
<u>Average - All</u>	<u>2.02%</u>	<u>2.34%</u>	<u>3.99%</u>
CITY FINAL	1.75%	1.75%	3.50%
UNION FINAL	1.75%	3.00%	4.75%

Viewed strictly in terms of the rate of increase over the term of the contract, the City's offer almost exactly matches the average increase for the primary comparables, and is closer to the average for the entire comparables set than the Union's final offer. However, these averages are somewhat distorted by the unusual settlement in Herrin, where small across the board wages increases, greatly improved education incentives, and a two-tiered wage schedule all combined for a settlement that is difficult to assess. Ignoring Herrin would leave the two-year average of primary comparables at 4.35%, which is still below the Union's offer by 0.40%, but exceeds the City's offer by 0.85%. Without Herrin, the two-year average for all comparables is 4.45%, 0.3% below the Union offer, and 0.95% above the City's. The Herrin settlement cannot be completely ignored. It exists, but it exists in a specific context which puts it in an outlier status. The more realistic view of the prevailing settlement rates discounts the Herrin figures, and leads to the conclusion that rates of increase are probably closer to the Union's final offer than to the City's.

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<sup>4</sup> The across the board percentage in the Herrin settlement does not reflect two wage related elements. The officers received a valuable education incentive, but they also agreed to a two-tiered wage schedule.

Absolute levels of compensation also provide some support for the Union's position. The ranking of the Mt. Vernon Officers at each step is, by and large, maintained under both offers. As the following set of charts illustrate, their ranking at the 5<sup>th</sup> year is marginally improved. However, their standing relative to the average salary at every benchmark declines slightly from where they were in 2015-16:

<u>Comparable</u>	<b>RANKING – HIRING STEP<sup>5</sup></b>	
	<b>2015-2016</b>	<b>2017-18</b>
<i>Primary</i>		
Centralia	44,594 (6)[3] <sup>6</sup>	46,396 (6)[3]
Herrin	48,766 (1)[1]	49,608 (2)[1]
Marion	44,834 (5)[2]	46,519 (5)[2]
<i>Secondary</i>		
<i>Effingham</i>	46,491 (3)	49,322 (3)
<i>Harrisburg</i>	45,698 (4)	47,466 (4)
<i>Murphysboro</i>	26,925 (9)	27,739 (9)
<i>Olney</i>	46,966 (2)	50,190 (1)
<i>West Frankfort</i>	29,973 (8)	
<u>Average – All</u>	<u>41,781</u>	<u>45,320</u>
CITY FINAL	41,675 (7)[4] [99.7% of average]	43,146 (7)[4] [95.2% of average]
UNION FINAL	41,675 (7)[4] [99.7% of average]	43,676 (7)[4] [96.4% of average]

	<b>RANKING – 1 Year</b>	
	<b>2015-2016</b>	<b>2017-18</b>
<u>Average – All</u>	<u>46,637</u>	<u>50,051</u>
CITY FINAL	48,448 (5)[4] [103.9% of average]	50,159 (5)[3] [100.2% of average]
UNION FINAL	48,448 (5)[4] [103.9% of average]	50,775 (5)[3] [101.4% of average]

<sup>5</sup> The ranking charts are drawn from the Union's exhibit, and use a \$0.45 per hour increase for Marion, which was not settled at the time of the hearing. The settlement reached in Marion actually called for \$0.55 per hour, but this does not materially affect the rankings.

<sup>6</sup> The bracketed figure shows rank within the primary comparables.

**RANKING – 5 Year**

	2015-2016	2017-18
<u>Average – All</u>	51,001	54,046
CITY FINAL	49,897 (7)[2] [97.8% of average]	51,659 (6)[4] [95.6% of average]
UNION FINAL	49,897 (7)[2] [97.8% of average]	52,293 (6)[3] [96.8% of average]

**RANKING – 10 Year**

Comparable	2015-2016	2017-18
<u>Average – All</u>	53,098	56,175
CITY FINAL	52,914 (4)[2] [99.7% of average]	54,782 (4)[2] [97.5% of average]
UNION FINAL	52,914 (4)[2] [99.7% of average]	55,455 (4)[2] [98.7% of average]

**RANKING – 15 Year**

	2015-2016	2017-18
<u>Average – All</u>	55,084	58,160
CITY FINAL	54,308 (4)[2] [98.6% of average]	56,223 (4)[2] [96.7% of average]
UNION FINAL	54,308 (4)[2] [98.6% of average]	56,914 (4)[2] [97.9% of average]

**RANKING – 20 Year**

Comparable	2015-2016	2017-18
<u>Average – All</u>	57,319	60,566
CITY FINAL	56,928 (5)[3] [99.3% of average]	58,938 (5)[3] [97.3% of average]
UNION FINAL	56,928 (5)[3] [99.3% of average]	59,662 (5)[3] [98.5% of average]

**RANKING – Top Pay**

Comparable	2015-2016	2017-18	Yrs. To Top
<i>Primary</i>			
Centralia	57,629 (7)[4]	60,956 (5)[3]	20
Herrin	71,448 (1)[1]	72,384 (1)[1]	30
Marion	58,816 (5)[3]	60,688 (6)[4]	30
<i>Secondary</i>			
Effingham	63,825 (2)	67,712 (2)	25

<i>Harrisburg</i>	58,053 (6)	60,029 (7)	30
<i>Murphysboro</i>	51,186 (9)	52,733 (9)	30
<i>Olney</i>	63,232 (3)	67,558 (3)	25
<i>West Frankfort</i>	52,250 (8)		20
<u>Average – All</u>	<u>59,555</u>	<u>63,151</u>	<u>26</u>
CITY FINAL	62,200 (4)[2] [104.4% of average]	64,396 (4)[2] [102.0% of average]	30
UNION FINAL	62,200 (4)[2] [104.4% of average]	65,187 (4)[2] [103.2% of average]	30

Each benchmark erodes slightly under either offer, indicating that the external comparables are, as a group, outpacing the City.

The Union also argues that the external comparables are not truly comparable, because of the extreme working conditions for Mt. Vernon officers relative to other departments. In the Union’s view, these are exceptionally demanding jobs, and the Mt. Vernon Officers should as a consequence be paid more than their comparable grouping, particularly the smaller more rural communities among the secondary comparables. While crimes statistics broadly support the Union’s claim that these officers handle more serious crimes than many of their counterparts, the general statistics the Union relies on for its claim of a higher workload do not necessarily bear that out:

#### **Workload and Turnover**

<u>Municipality</u>	<u>Officers in Barg. Unit</u>	<u>Calls for Service 2016</u>	<u>Calls per Officer</u>	<u>Attrition and Rate</u>	<u>Voluntary Resignation</u>
Centralia	23	16394	713	11 – 4.8%	7
Herrin	17	9161	539	5 – 2.9%	3
Marion	32	22618	707	15 – 4.7%	3
<i>Effingham</i>	21	13182	628	13 – 6.2%	2
<i>Harrisburg</i>	14	9575	684	4 – 2.9%	0
<i>Murphysboro</i>	14	9281	663	15- 10.7%	7
<i>Olney</i>	12	6109	509	7 – 5.8%	3
<i>West Frankfort</i>	12	12040	1003	3 – 2.5%	1
<u>Average</u>	<u>18</u>	<u>12295</u>	<u>683</u>	<u>9 – 5.0%</u>	<u>3 – 1.7%</u>
Mt. Vernon	36 <sup>7</sup>	22157	615	43 – 11.9%	27 – 7.5% <sup>8</sup>

<sup>7</sup> The turnover rate is overstated, since it appears that the current level of 36 officers is historically low.

<sup>8</sup> The Union’s list of voluntary resignations includes one in which the resignation was tendered while disciplinary charges were pending. I have not classified that as a voluntary resignation, because it does not

The Union's comparison of Mt. Vernon to the average is somewhat incomplete and thus somewhat misleading. It is true that the Mt. Vernon Department handles 80% more calls than average, but they do so with 100% more officers than average. Looking at calls per officer, it would appear that Mt. Vernon officers handle a below average number of calls, while by that measure West Frankfort is the most taxing workplace. That seems unlikely. The raw number of service calls, of course, says nothing about the nature of the calls. Nor does it say anything about the various departments' policies on what is and is not recorded in the statistics, and how it is recorded. I have no reason to doubt the testimony of Corporal Gilbert to the effect that this is a very busy department, with a heavy workload of serious crimes, but the Union's statistical analysis overstates it. In addition, Corporal Gilbert himself concedes that the workload over the past several years is not particularly different from what it has been for the sixteen years he has been a Mt. Vernon Officer.

In that same vein, Mt. Vernon experiences far more officers leaving than the average, but it is from a higher base. Still, the turnover rate for the Mt. Vernon Department is considerably higher than any of the other area departments. Some of that (23%) is from retirements and, as the City observes, the fact that officers stay on the job long enough to retire speaks well of the Department as a place to work. It indicates that it is not simply a stepping stone for officers. Three departures were from terminations, one was a resignation in the face of discipline and two were caused by disability (14%). Thus 37% of the turnover cannot be attributed to any dissatisfaction with pay or workloads. Corporal Gilbert and Chief Deichman both identified the Illinois State Police as the destination for some of the Mt. Vernon Officers who left (14%). Chief Deichman said the ISP liked to recruit from Mt. Vernon, because the officers had greater breadth of training and experience than other municipalities would offer. That cuts both ways, since it underscores the Union's point that the types of calls they handle are more challenging, while at the same time offering an explanation besides onerous workloads and low pay for an officer's decision to leave – ISP Trooper positions are desirable jobs. Notably only one of the employees that Corporal Gilbert interviewed over the past ten years left for one of the comparables, and only three went to other municipal police departments in southern Illinois.<sup>9</sup> Nine left law enforcement

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appear to be truly volitional.

<sup>9</sup> Chief Deichman recalled two officers who left for the Charleston, Illinois police department. He explained that they were both from Charleston, and wanted to return to their home town. After the hearing, an officer resigned to take a job with Effingham PD. He is the only officer in the ten year period to leave for a comparable.

entirely. The remainder went to geographically distant agencies – Nashville, suburban Chicago, and the like.

It is fair to say that the Mt. Vernon jobs appear to be more difficult than those in other area departments. The officers are busy, and there is more serious crime. It also appears, from Corporal Gilbert's testimony, that workload contributes to the amount of turnover in the department, which is higher than in area departments. Yet it is not at all clear what that should lead to, and how it should be valued. The Union suggests it should lead to a jump in the salary rankings, but this is not a new condition. Corporal Gilbert said that workload conditions were basically the same as they had been for at least 16 years. That covers at least four negotiations, including one interest arbitration. The parties have priced in the difference in working conditions in their base wage settlements over that time. To suggest at this point that the rankings the parties have created over time should be put aside because of a condition that existed when those rankings came into being is to suggest that the result in arbitration should be different than the result in bargaining has always been. That is directly contrary to the basic notion that arbitration is a conservative process, and should not lead to gains or losses that would not have been expected in voluntary negotiations.

Consideration of external comparables indicates that neither offer is unreasonable, but that the Union's final offer should be preferred.

### **INTERNAL COMPARABILITY**

The City has reached settlements with the IAFF in the Fire Department, the IBEW in the Utilities, and the Teamsters/Laborers unit, all at 1.75% atb for both years of the contract. This continues a decades long pattern of uniformity in the wage settlements across all City bargaining units. The Union argues that there is no proof of any parity relationship, only hearsay by the City Manager and the City's labor counsel in their narratives at the hearing. This argument is ingenious, but it ignores the fact that the rules of evidence are not strictly applicable in interest arbitration proceedings, and hearsay is routinely admitted. More importantly, it also ignores the Briggs and Malin Awards. Arbitrator Briggs found a 25-year history of absolute parity in wage increases between the City's bargaining units. Ten years later, Arbitrator Malin found a 35-year history of absolute parity in wage increases between the City's bargaining units. His Award in favor of the City relied heavily on internal comparisons, and extended the record of parity to 37 years, through April 30, 2007. These Awards provide very strong support for the narrative of the

City's labor counsel,<sup>10</sup> and the testimony of City Manager Bechtel. Further I would note the "dog that didn't bark" element to the Union's challenge to the claim of consistent wage parity. Given the centrality of it to the City's case, and the representations made by counsel and Bechtel, it would be exceedingly odd that none of the Union negotiating team or their spokesperson said anything at the hearing to contradict these claims if parity had in fact been broken sometime between 2007 and this contract term.

I find that the weight of the record evidence, and the logical inferences to be drawn from that evidence, establishes wage parity between the City's employee groups has been maintained since 1970, and that the parity for the Police unit has been the result of voluntary collective bargaining and two interest arbitrations since 1992.

The Union, however, argues that parity between the Police and Fire is illusory, because the Firefighters have various benefits that are not available to Police Officers, and superior earning capacity over their careers because of the wage structure and the promotional opportunities in the Fire Department. That case, if proved, may be the basis for proposing to add a benefit, or adjust the structure of the wage schedule, or any number of other specific changes, but it does not go to whether a given percentage across the board is a reasonable rate of increase for both Firefighters and Police Officers. As with the argument over workloads relative to other departments, these are conditions that have existed over time, and yet over that time, the Police and Fire, as well as the other units, have negotiated exactly the same percentage increases.

As all other employee groups have settled for the 1.75% offered by the City for the 2017-2018 fiscal year, I conclude that consideration of internal comparables overwhelmingly supports the City's final offer. I also find that the wage settlements with other bargaining units have historically been the determining factor in negotiations, and are by far the most reliable predictor of what the outcome would have been had collective bargaining been successful.

## **CONCLUSION**

A review of the statutory factors show that considerations of external comparables provides support for the Union's offer, although it would not rule out the City's position. The cost

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<sup>10</sup> I note that the City's outside labor counsel also entered appearances in the 1995 and 2005 interest arbitrations, strongly suggesting that his representations about the history of settlements is based on more than just hearsay.

of living, the interests and welfare of the public, and the internal comparables all support the City's final offer to varying degrees. Of these factors, the unbroken pattern of identical settlements across all employee groups for so long as this bargaining unit has been certified, and for years before that, would be the predominant factor in determining that the City's final offer should be selected.

### **AWARD**

On consideration of all of the statutory criteria, and the record as a whole, the 2016-2018 collective bargaining agreement shall incorporate the provisions of the predecessor agreement, as modified by the tentative agreements reached prior to arbitration, and the Final Offer of the City.

The Arbitrator will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 12<sup>th</sup> day of April, 2017.

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Daniel Nielsen, Arbitrator

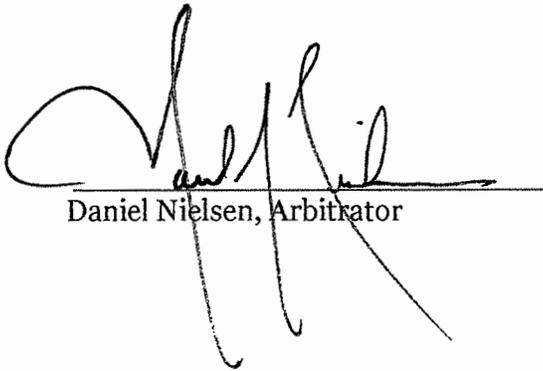
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