In the Matter of the Interest Arbitration between:

The City of Waukegan

And

The Metropolitan Alliance of Police
Waukegan Sergeants Chapter # 285

Before: Richard K. Hanft

Hearing Date: January 18, 2017

Appearances:

For the Alliance

Mr. Joseph R. Mazzone
Chief Counsel
Metropolitan Alliance of Police
3033 West Jefferson St., Ste. 208
Joliet, Illinois 60435

For the City

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FMCS Case # 16-57971-1
INTRODUCTION:

Hearing on this matter was held on January 18, 2017 at the Waukegan City Hall commencing at 10:00 am. This Arbitrator was chosen by mutual consent of the Parties through the auspices of the Federal Mediation and Conciliation Service to hear and decide matters concerning an impasse in the bargaining of a successor collective bargaining agreement covering the period May 1, 2016 through April 30, 2018. The Parties agreed in a pre-hearing teleconference to waive the temporal requirements of the Illinois Labor Relations Act, 5 ILCS 315/14(d) (hereinafter “the Act”) and to allow the Arbitrator to be the sole arbiter of the issues presented pursuant to §§ 14 (b) and (p) of the Act.

One day prior to the scheduled hearing date the City contacted the Arbitrator and expressed the opinion that the Parties were close enough to resolution of outstanding matters that a postponement of the hearing was desirable. The Alliance objected and another teleconference ensued. It was agreed between the Arbitrator and the Parties that the Parties would meet with the Arbitrator as scheduled and that the Arbitrator would attempt to mediate differences between the Parties, with the proviso that the Arbitrator would issue a final, binding decision on issues that the parties could not agree on.

THE ISSUES:

The parties, at the outset of the hearing had ten (10) outstanding issues, seven (7) of which were tentatively agreed to as follows:
SECTION 7.1 – RESIDENCY

There shall be no residency requirements for Waukegan Police Sergeants covered by this Agreement.

SECTION 9.3 – SERGEANT PERSONAL LEAVE DAYS

Each police Sergeant shall be entitled to one personal leave days, which is full shifts regardless of the assignment, annually to be taken with a minimum of forty-eight (48) hours prior notice to his/her supervisor. Personal leave day may not be taken as part of a vacation or holiday break.

Personal leave days will be a full shift regardless of assignment at the time they are used. If a Sergeant elects to save their time, they understand they run the risk of either decreasing or increasing these banks depending on transfer or assignment opportunity.

SECTION 11.3 – TWELVE (12) HOUR SHIFT SCHEDULE

1. Sergeants will receive one 12 hour shift unpaid and off-duty every third pay cycle as a work reduction day.

2. Sergeants will work all 12-hour shifts and during the contract year will receive nine (9) work reduction days “Kelly Days” totaling 108 hours at the start of the fiscal year. Accrue 8.6 days off and will be allowed to complete 4 of a day with comp time, vacation time, or holiday time making a full 9th day. Unused Kelly Days have no cash value, and may not be carried over to the following fiscal year, unless cancelled by the City and no time available to reschedule that individual day prior to the fiscal year ending.
3. Sergeants will be allowed to initially pick 84 hours of vacation or holiday allowing for a full (7) 12 hour shifts to be selected. Sergeants will select all vacation and/or holidays by rank seniority.

4. The scheduling of the work reduction day shall not cause a supervisory hire-back for overtime purposes.

5. The work reduction day will be selected by the Sergeants and begin in the second cycle (to be opposite the Lieutenant) and be repeated every third cycle thereafter. The day must be scheduled prior to the completion of the proceeding cycle.

6. Sergeants will pick their work reduction day in rank seniority inclusive of all the supervisory ranks (Sergeant, Lieutenant) for their shift assignment.

7. Sergeants within patrol will be allowed to “swap shifts” with the understanding that the shift is equal time and within the same pay period, all shift trades must be approved by the Shift Commander or his designee.

8. If the Patrol Division discontinues its use of the 12-hour shift schedule, then the Sergeants serving in the Patrol Division shall adopt the new shift schedule of the Patrol-Officers.

Sergeants in the Patrol Division, working a 12-hour shift, shall receive nine (9) Work Reduction ("Kelly days") totaling 108 hours at the start of the fiscal year. Kelly days are unpaid days off intended to maintain a regular work schedule of 2,080 hours, or 173 1/3 shifts per fiscal year for those Sergeants assigned to a 12-hour shift schedule. Without the Kelly day system. Those Sergeants assigned to a 12-hour shift schedule would work 2,184 hours, or 182 shifts per
fiscal year. Kelly days must be taken in full 12-hour shift increments, and cannot be scheduled in a manner which would cause a hire-back including any conflict with other Patrol supervisors on the same shift who have pre-scheduled vacation, holiday, and/or comp time. Unused Kelly days have no cash value, and may not be carried over to the following fiscal year.

SECTION 11.15 COMPENSATION FOR WORKING HOLIDAYS

Sergeants who are scheduled to work the duty shift starting on Independence Day, Labor Day, Memorial Day, Christmas Day, New Year's Day and/or Thanksgiving Day shall be paid at the rate of one and one half (1½) their regular straight-time rate of pay for all such hours worked. Sergeants who are not scheduled to work but called in to work Christmas Day, New Year's Day and/or Thanksgiving Day shall be paid at the rate of two (2) times their regular straight-time rate of pay for all such hours worked.

SECTION 22.1 UNIFORM ALLOWANCE

Sergeants covered by this Agreement who are required to wear regularly, and maintain continuously, prescribed items of uniform clothing and personal equipment, shall be issued the same as necessary, but shall be required to clean and maintain be required to clean and maintain such items properly. Equipment shall be issued by a reputable clothier to be selected by a committee composed of the Chief of Police and the Purchasing Agent. Such clothier shall be capable of supplying the needs of uniformed personnel on the best and most economical basis. The allowance to be paid to each
Sergeant covered by this Agreement shall be $1,000 \text{ per annum, payable in two (2) equal installments on or before June 20}^{\text{th}} \text{ and December 20}^{\text{th}}. \text{ Such allowance shall be paid, and appropriate taxes withheld, at such times and in such manner separate from the Sergeant's normally scheduled payroll check.}

**SECTION 25.2 LONGEVITY**

When a Sergeant completes twenty fifteen (20 15) years of service (time on Department) they shall receive longevity pay in the amount of $900.00-one (1) percent. Said amount shall be added to the affected Sergeant's base pay at his current step on his/her twentieth-fifteenth year of service and shall be included in any calculation of benefit time such as overtime and holiday pay. This longevity pay is NOT cumulative. This longevity shall be considered for pension purposes, and the 9.91\% pension contribution shall be deducted.

**SECTION 25.5 RETROACTIVITY**

Employees covered by this Agreement, who are still on the active payroll shall at the beginning of the next payroll period immediately following the ratification of this Agreement by both parties, shall receive a retroactive payment, and anyone who has retired during the term of the last past collective bargaining agreement, for all hours worked (all hours worked shall include payouts for sick leave, vacation/holiday buyback, compensatory buyback, overtime pay, and court pay). (Excluding outside security details per MOU Detail Agreement dated 06/29/2015).
UNRESOLVED ISSUES REMAINING:

Three issues remained to be resolved, and after a series of partisan caucuses with the Arbitrator the following issues were successfully resolved and agreed to in writing as follows:

SECTION 9.5 VACATION BUYBACK

Sergeants covered by this Agreement will be allowed to sell back to the Employer up to 80 hours of accrued but unused vacation and/or holiday time per year. Said sellback shall be elected at the end of the fiscal year, with such sold back funds transferred into a Post-Employment Health Plan created by the City after receiving the advice and counsel of the Union. The City of Waukegan and the Waukegan Sergeant's Association shall continue to work to secure a Post-Employment Health Plan that will allow each Sergeant to put up to 80 hours of accrued vacation and/or holidays in such Plan that is acceptable to the Internal Revenue Service. Until such Plan is implemented, any Sergeant that is eligible for Vacation Buyback under Section 9.5 may elect to be paid up to 80 hours of vacation and/or holiday time. Payments shall be made on the same paycheck as payments under Section 18.4 ACCUMULATION: OFFICERS HIRED ON OR BEFORE MARCH 31, 1995 or Section 18.5 ACCUMULATION: OFFICERS HIRED ON OR AFTER APRIL 1, 1995.

SECTION 14.7 LAYOFF AND RECALL

The City, in its discretion, shall determine whether layoffs are necessary and such decision shall not be reversed unless it is clearly established that such a determination is arbitrary and capricious. Although not limited to the following, layoffs shall ordinarily be for lack of work and/or lack of funds. If it determined that layoffs are necessary,
employees covered by this Agreement will be laid off in accordance with their departmental seniority order.

Except in an emergency, no layoff will occur without reasonable notification to the Chapter (not to be less than five (5) Calendar days prior to any layoff) and consultation with the Chapter in good faith, affording the Chapter opportunities to propose alternatives to layoff.

No Patrol Officer shall be promoted to the rank of Sergeant while any Sergeant remains on layoff status. Any Sergeant who shall be laid off under this section shall receive, when recalled, the salary rate that the affected Sergeant would have received had the Sergeant never been laid off.

Employees who are laid off shall be placed on a recall list for a period of two (2) years. If there is a recall, employees who are still on the recall list shall be recalled, in the inverse order of their layoff, provided they are presently qualified to perform the work to which they are recalled. The City shall not hire new employees in bargaining unit positions as long as there are still employees on the recall list, who are presently qualified to perform the work.

Employees who are eligible for recall shall be given fourteen (14) calendar days notice of recall and notice of recall shall be sent to the employee by certified or registered mail with a copy to the Chapter, provided that the employee must notify the Police Chief or
his designee of his intention to return within three (3) calendar days after receiving notice of recall. The City shall be deemed to have fulfilled its obligations by mailing the recall notice by registered mail, return receipt requested, to the mailing address provided by the employee, it being the obligation and responsibility of the employee to provide the police Chief or his designee with his latest mailing address.

If the City, after meeting and conferring with the Union, determines a layoff/reduction in force are necessary within the bargaining unit members shall be laid off in reverse seniority within the rank and shall be allowed to bump down one rank to avoid layoff/reduction in force.

Any bargaining unit member who elects to bump down shall have his seniority continue to accrue at the rank of Sergeant from such time as the bargaining unit member bumps down. Any bargaining unit member who is laid off shall have his/her seniority frozen until the bargaining unit member is recalled.

Any member who is laid off/bumped into the rank of Patrol Officer shall be subject to recall to the rank of Sergeant by seniority. So long as any bargaining unit member (or former bargaining unit member) is laid off/ reduced in force or bumped into the rank of Patrol Officer, the City will not make any promotions to the rank of Sergeant.

**FINAL ISSUE IN DISPUTE:**

With the above-listed issues modified and agreed upon as shown, the final issue in dispute was wages (that included a "me-too" sub-issue). The Parties agreed, and the Arbitrator finds, that the remaining issue submitted for resolution is economic in nature
and thus, the Arbitrator must choose between the Parties' "Final Offers" with no discretion for modification by the Arbitrator.

Moreover, Section 14 (h) of the Act requires that an interest arbitrator/panel "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 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 determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration or otherwise between the parties, in the public service or in private employment."

The City's final offer with regard to wages for the period May 1, 2016 through April 30, 2018 was to amend Article XXV, Section 25.1 - Wage Scale as follows:
Article XXV

WAGES AND BENEFITS

SECTION 25.1 WAGE SCALE: A newly promoted Sergeant shall be paid at the beginning rate (Step 1) of the Sergeant's salary range. He/She will be eligible to advance to step two of the Sergeant's salary range after 12 months of continuous and satisfactory employment as a Sergeant and will be eligible to advance to further steps in said salary range on such anniversary date in accordance with the step plan.

The following wage increases will be effective on the listed dates:

- 2% - 5/1/2016
- 2% - 5/1/2017

The Alliance's final offer with regard to wages and length of Agreement was to amend Article XXV, Section 25.1 - Wage Scale to the following:

Article XXV

WAGES AND BENEFITS

SECTION 25.1 WAGE SCALE: A newly promoted Sergeant shall be paid at the beginning rate (Step 1) of the Sergeant's salary range. He/She will be eligible to advance to step two of the Sergeant's salary range after 12 months of continuous and satisfactory employment as a Sergeant and will be eligible to advance to further steps in said salary range on such anniversary date in accordance with the step plan.

The following wage increases will be effective on the listed dates:

- 2% - 5/1/2016 with a 1.5% makeup increase.
- 2% - 5/1/2017
For the duration of this Agreement, in the event that the PBLC and/or Teamsters Unions get greater raise or added equity adjustment, MAP employees will get the equivalent of the higher of the 2 unions, effective the same date as the respective union with the highest raise or equity adjustment.

**DISCUSSION:**

On full consideration of all of the statutory criteria, the arguments made and the record as a whole, the successor collective bargaining agreement shall incorporate all of the provisions of the predecessor agreement as modified above and further this Arbitrator finds the Alliance's final offer most nearly complies with the Section 14(h) factors and is herewith awarded.

When the Arbitrator compares the total compensation: wages, hours and conditions of Sergeants employed by the City with other employees (PBLC), I find that there is and has been a disparity since 2013. To remedy this disparity, I find that the Union's demand for a one-time 1.5% wage increase is deserved.

The Arbitrator's rationale for deciding that the 1.5% "catch-up" bargained for by the Alliance is appropriate is rooted in the fact that for the fiscal year ending April 30, 2013, the alliance took a 0% wage increase in reliance on the City's representation that all City Unions were receiving no wage increases for that year. However, the Union that represents police officers below the rank of sergeant (PBLC) received a 1.5% wage increase. This created a disparity in pay for responsibility. According to the Alliance, the City promised to make things right in the future. I credit the Alliance's evidence on this issue and the future is here.
Thus, the one-time 1.5% component of the increase for the period May 1, 2016 through April 30, 2017 is compensation for the disparity created by the increase that the PBLC received and enjoyed for a full year that the Alliance did not receive in reliance of the City's representation that no unit would receive raises.

Moreover, the Parties expressed mutual concern over what effect the 1.5% "catch-up" might have on any so called :"me-too" clauses, including the clause in the current PBLC Agreement. Here, I find that because the 1.5% catch-up is compensation for a promise made, but not kept, it is not amenable to triggering any me-too clause relating to any other City employees.

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

Signed this 24th day of March, 2017.

Richard K. Hanft, Arbitrator