BEFORE
EDWIN H. BENN
ARBITRATOR

IN THE MATTER OF THE ARBITRATION
BETWEEN

CITY OF STREATOR

AND

ILLINOIS FOP LABOR COUNCIL

CASE NOS.: S-MA-17-142
Arb. Ref.: 18.112
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the City: Carlos S. Arévalo, Esq.
For the FOP: Gary L. Bailey, Esq.
Sander R. Weiner, Esq.

Date of Award: November 26, 2018
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I. BACKGROUND

This is an interest arbitration proceeding between the City of Streator (“City” or “Streator”) and the Fraternal Order of Police Labor Council (“FOP” or “Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/14 (“IPLRA”), to set the terms of the parties’ collective bargaining agreement (“Agreement”) replacing the parties’ prior 2014-2017 contract. \(^1\) The employees covered by the Agreement work in the classifications of Patrol Officer, Sergeant and Lieutenant. \(^2\) According to the seniority list, there are presently 15 Patrol Officers; six Sergeants; and one Lieutenant covered by the Agreement. \(^3\)

Section 14(h) of the IPLRA provides that an interest arbitrator/arbitration panel “base its findings, opinions and order upon the following factors, as applicable.” \(^4\)

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\(^1\) The parties have waived the requirement for a tri-partite panel found in Section 14 of the IPLRA.

\(^2\) FOP Exhibits at Tabs 3, 5; City Exhibits at Tab 5.

\(^3\) FOP Exhibits at Tab 7.

\(^4\) The relevant portions of Section 14 of the IPLRA provide:

(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 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.

[footnote continued on next page]
There are five issues in dispute:

1. Duration
2. Wages
3. Health insurance (premiums and gap payment)
4. Part-time employees
5. Education stipend

II. THE USE OF EXTERNAL COMPARABLES

To support their respective positions and for comparison purposes, the parties offered evidence and argument on external comparability – i.e., terms and conditions of collective bargaining agreements covering police officers in other comparable communities.

With the preface in Section 14(h) of the IPLRA that “... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable” [emphasis added], Section 14(h)(4)(A) lists a factor for interest arbitrators to consider – “[c]omparison 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 ... [i]n public employment in comparable communities.” By use of the phrase “as applicable”, Section 14(h) does not mandate that external comparability (or any of the listed factors) must be used to decide these cases. Instead, because of

[continuation of footnote]

(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.

City Brief at 2-3; FOP Brief at 11-25.

FOP Exhibits at Tabs 8-12; City Exhibits at Tab 12. See also, FOP Brief at 4-7; City Brief at 9, 12.
that statutory phrase “as applicable” prefacing the listed factors, Section 14(h) merely 
*suggests* what is plainly stated – the factors can (and not must) be used “as applica-
ble.”

I find that external comparability is not an “applicable” factor in this case as 
provided in Section 14(h) and therefore will not use it to decide this dispute.

19-21 and awards cited therein, I discussed my evolution on the analysis of interest 
arbitration disputes through use external comparability [footnotes omitted, emphasis 
in original]:

... [I]n *Cook County Sheriff/County of Cook and AFSCME Council 31*, [L-MA-13-005-008 (2016)] ... at 38-52, I traced my personal 
history of deciding interest arbitrations in this state since my first 
interest award in 1989 – now over 95 awards/orders setting terms 
for contracts as collected at the Illinois State Labor Relations 
Board website. With respect to external comparability, there has 
been an evolution on my part which occurred as a result of hear-
ing and deciding so many of these disputes.

As explained in *Cook County Sheriff, supra* at 38-42, my looking 
at the external comparability factor evolved from an almost blind 
adherence to reliance on external comparability as *the* determin-
ing factor (as did my arbitrator colleagues and the advocates in 
interest arbitrations); to not giving weight to that factor when the 
Great Recession hit in 2008 (because that economic upheaval im-
acted former comparable communities in different fashions); to

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7. See *City of Decatur and International Association of Firefighters, Local 505*, S-MA-86-029 (Eglit, 1986) at 3-4 [footnote omitted] [Please copy and paste URL for any hyperlink that does not work]:

The statute does not require that all factors be addressed, but only those which are “appli-
cable.” Moreover, the statute makes no effort to rank these factors in terms of their sig-
nificance, and so it is for the panel to make the determination as to which factors bear most 
heavily in this particular dispute.


The award referenced in the quote from *Swansea – Cook County Sheriff/County of Cook and AF-
SCME Council 31* (L-MA-13-005-008) (2016) is posted at:

https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf
a general questioning of the wisdom of giving that factor determinative weight as urged by parties in those cases. That general questioning of giving such heavy and often determinative weight to the use of external comparables came from a practical perspective. That was because the result of giving heavy weight to external comparability meant that wage and benefit rates were being set for employees in particular cases before me by other parties in the external comparables pool when the parties in the cases before me were not at the bargaining table when those other parties determined what their wages and benefit levels were going to be. The parties in the cases before me simply had no input into the terms that were being forced upon them flowing from the results of the contracts from the external comparables. The result just wasn’t fair – to either management or labor.

***

The problem then was not the selection of which communities were comparable, but was what to do with the comparables once it was figured out who they were. *Cook County Sheriff, supra* at 41:

The next problem was once the pool of comparables was determined, what were interest arbitrators to do with them – even when the parties agreed upon some or all of the communities to be used as comparables? That statute gave absolutely no guidance. Section 14(h)(4) just says an interest arbitration award should “... base its findings, opinions and order upon ... [c]omparison 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 ... [i]n public employment in comparable communities.” But how is that “[c]omparison” to be made? Again, no specific statutory guidance is given. Were interest arbitrators to use averages, midpoints, or movement in rankings from prior years? Were employees working in a community who were at the bottom of the pool of comparables required to stay at the bottom? Conversely, were employees who were working in a community at the top of the pool of comparables required to stay at the top? Was the target the mid-point of the pool of
comparables (everyone can’t be at the midpoint)? The statute said absolutely nothing about that.

And it all really come down to a picture demonstrating how the parties in a particular negotiation or interest arbitration before me were literally being dragged along by the results of negotiations or interest arbitrations involving strangers to that proceeding:

**THE EFFECT OF EXTERNAL COMPARABILITY**

![Diagram showing external comparables](image)

**A. A Hypothetical**

To demonstrate the unfairness – indeed, the arbitrary nature – of heavy reliance upon external comparability to set contract terms based on what strangers to that contract have negotiated or had imposed on them through interest arbitration, consider the following hypothetical:
An impasse in wages has occurred between the hypothetical town of “Bugtussle” and the union representing its police officers requiring interest arbitration to break the impasse. Here are the parties’ wage offers in this hypothetical:

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Bugtussle Offer</th>
<th>Police Union Offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/17</td>
<td>2.25%</td>
<td>2.50%</td>
</tr>
<tr>
<td>1/1/18</td>
<td>2.50%</td>
<td>2.50%</td>
</tr>
<tr>
<td>1/1/19</td>
<td>2.50%</td>
<td>2.50%</td>
</tr>
<tr>
<td>1/1/20</td>
<td>2.50%</td>
<td>2.75%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9.75%</strong></td>
<td><strong>10.25%</strong></td>
</tr>
</tbody>
</table>

These parties’ final offers are very close – 0.5% apart – and one would think that such a difference could easily be resolved. However, in this hypothetical, Bugtussle cannot easily agree to the Police Union’s offer because Bugtussle has “me too” clauses in all of its contracts for other represented employees and has established contracts with those employee groups at the same percentage wage increases it has offered to its police officers – the result being that if Bugtussle agreed to the Police Union’s wage offer, it would have to grant that increase to the other bargaining units in a similar fashion. That could become quite costly to Bugtussle, especially with an increased wage offer early in the contract (as in this hypothetical) with resultant “roll-up” money being added to the pay of all of Bugtussle’s represented employees having “me too” clauses in their contracts.

A review of the past several years of interest arbitration awards using external comparability as a basis for determining the result shows the parties and arbitrators relying upon the “average” of the pool of external comparables to apply the external

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9 The percentage differences in this hypothetical may seem small, but in the years following the Great Recession in 2008, interest arbitrators and the parties have been dealing with small percentage differences in wage offers.
comparability factor (and doing so even though the IPLRA is silent on how to use external comparables).\textsuperscript{10}

Why?

In this hypothetical, there are also six “towns” that are agreed-upon comparables, showing the following percentage wage increases in the contracts covering police officers for four-year periods:

<table>
<thead>
<tr>
<th>Comparable Community</th>
<th>Total Percent Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town “A”</td>
<td>10.00%</td>
</tr>
<tr>
<td>Town “B”</td>
<td>10.00%</td>
</tr>
<tr>
<td>Town “C”</td>
<td>9.00%</td>
</tr>
<tr>
<td>Town “D”</td>
<td>8.75%</td>
</tr>
<tr>
<td>Town “E”</td>
<td>9.75%</td>
</tr>
<tr>
<td>Town “F”</td>
<td>11.50%</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>9.83%</strong></td>
</tr>
</tbody>
</table>

In this hypothetical and comparing the offers to the average of the comparables and further giving the heavy weight that external comparability has been given, a strong argument can be made that Bugtussle’s offer should be selected because it is closer to the average of the comparables:

<table>
<thead>
<tr>
<th>Difference From Average of Comparables</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average of Comparables</td>
</tr>
<tr>
<td>Bugtussle Offer</td>
</tr>
<tr>
<td>Police Union Offer</td>
</tr>
</tbody>
</table>

\textsuperscript{10} https://www2.illinois.gov/ilrb/arbitration/Pages/default.aspx
Now make one very minor change to the wage percentages in the pool of comparables. Instead of Town “D” having an 8.75% wage increase over four years, make that increase 10.00% over four years. That’s an additional 1.25% total increase over four years or 0.31% per year in one of the six comparable communities. That minimal change in the totality of the six comparable communities changes the result in the analysis.

With the change in Town “D” from 8.75% over four years to 10.0% over four years, the tables now look like this:

<table>
<thead>
<tr>
<th>Comparable Community</th>
<th>Total Percent Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town “A”</td>
<td>10.00%</td>
</tr>
<tr>
<td>Town “B”</td>
<td>10.00%</td>
</tr>
<tr>
<td>Town “C”</td>
<td>9.00%</td>
</tr>
<tr>
<td><strong>Town “D”</strong></td>
<td><strong>10.00%</strong></td>
</tr>
<tr>
<td>Town “E”</td>
<td>9.75%</td>
</tr>
<tr>
<td>Town “F”</td>
<td>11.50%</td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>10.04%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Difference From Average of Comparables</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average of Comparables</td>
</tr>
<tr>
<td>Bugtussle Offer</td>
</tr>
<tr>
<td>Police Union Offer</td>
</tr>
</tbody>
</table>

In this hypothetical and with that minor change in one of the six comparable communities, the Police Union’s offer is now closer to the average of the comparables and gets selected.
Therefore, a very minor change (1.25% over four years which is 0.31% per year) in one of the six comparable communities changes the result in a dispute where the parties in that dispute had absolutely no input into the negotiations or interest arbitrations leading to the establishment of those external wage rates which are now being forced upon Bugtussle and its police officers because of the heavy weight given by the parties and interest arbitrators to external comparability. That is no way to set contract terms. Yet, that is precisely what is going on with the parties and interest arbitrators in these cases by their giving blind adherence to setting contract terms based on external comparables.

**B. More Problems**

And there are further problems with using external comparables. Working with them is very difficult. One of the most common problems is that comparable communities often have different contract durations when compared to each other or when compared to the public employer and union involved in the interest arbitration. The dispute before me in this matter demonstrates that problem.

The parties in this case discussed LaSalle, Marseilles, Mendota, Morris, Oglesby, Ottawa, Peru, Pontiac and Princeton as comparable to Streator. The duration of the comparables and the duration offers made in this case (as discussed *infra* at III(A)) show the following:

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11 FOP Brief at 5-6; FOP Exhibits at Tabs 8-12; City Brief at 13; City Exhibits at Tabs 12-16.
12 FOP Exhibits at Tabs 49, 50, 52, 53, 55-59; City Exhibits at Tabs 14-16.
As discussed *infra* at III(A), the parties in this case have agreed to a May 1, 2017 start date for the Agreement. Based on the above, seven of the nine comparables in this case have different start dates than the May 1, 2017 start date agreed to by the parties for this Agreement (LaSalle, Marseilles, Mendota, Morris, Ottawa, Pontiac and Princeton). And those start dates are substantially before that May 1, 2017 commencement date of periods of three years (Princeton); two years (LaSalle, Marseilles, Morris and Pontiac); and one year (Mendota and Ottawa).

Turning to expiration dates (*see discussion infra at III(A)*), six of the nine contracts for the comparables expire prior to either the termination date proposed by the City (September 30, 2019) or the FOP (December 31, 2019) (LaSalle, Marseilles, Morris, Ottawa, Pontiac and Princeton). The contracts in the remaining three proposed comparables expire after the termination dates in this case (Mendota, Ogelsby and Peru). And like the commencement dates, those termination dates are significant – ranging up to one and one-half years beyond the earlier expiration date proposed in

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Contract Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>LaSalle</td>
<td>5/1/15 - 4/30/18</td>
</tr>
<tr>
<td>Marseilles</td>
<td>5/1/15 - 4/30/18</td>
</tr>
<tr>
<td>Mendota</td>
<td>5/1/16 - 4/30/20</td>
</tr>
<tr>
<td>Morris</td>
<td>5/1/15 - 4/30/18</td>
</tr>
<tr>
<td>Oglesby</td>
<td>5/1/17 - 4/30/21</td>
</tr>
<tr>
<td>Ottawa</td>
<td>5/1/16 - 4/30/19</td>
</tr>
<tr>
<td>Peru</td>
<td>5/1/17 - 4/30/20</td>
</tr>
<tr>
<td>Pontiac</td>
<td>4/1/15 - 3/31/18</td>
</tr>
<tr>
<td>Princeton</td>
<td>5/1/14 - 4/30/18</td>
</tr>
<tr>
<td>Streator</td>
<td>5/1/17 - 9/30/19</td>
</tr>
<tr>
<td></td>
<td>or 5/1/17 - 12/31/19</td>
</tr>
</tbody>
</table>
Analysis of the contracts from the comparable communities used by the parties in this case shows that not a single comparable matches the duration proposals made by the parties for start and termination dates.

And with those differing contract periods, the obvious different wage and benefit implementation dates follow making rational comparisons difficult, if not impossible.

How can I make rational comparisons for so many contracts that just do not come close to the contract periods involved in this case? The answer is that I can’t.

Further – and just looking at wages – the focus of parties when arguing about comparables is on the percentage increases received by employees in the other comparables. The question from the employees and their employer about comparables inevitably becomes something along the lines of “What percentages did our comparables get and why shouldn’t that apply to us?”

Turning to the comparables identified by the parties in this case and looking just at the top pay of patrol officers in each contract as reported in the exhibits shows the following:
The parties in interest arbitrations argue over *percentage* increases in the comparables. But that really makes no sense. Putting aside the differing expiration dates of the comparables in this case, a single percentage point in the comparables discussed in this case will have differing values in the individual comparables and range from $580.73 (Peru) to $751.83 (Morris) – a difference of $171.10 *per point*. A percentage increase in one community has different actual dollar value in another community. How can use of percentages yielding different actual dollar values to measure comparability really demonstrate comparability? And why should those differing results in real money be forced on the parties in this interest arbitration merely

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Top Pay</th>
<th>1.0% =</th>
</tr>
</thead>
<tbody>
<tr>
<td>LaSalle</td>
<td>$61,883&lt;sup&gt;13&lt;/sup&gt;</td>
<td>$618.83</td>
</tr>
<tr>
<td>Marseilles</td>
<td>$61,662&lt;sup&gt;14&lt;/sup&gt;</td>
<td>$616.62</td>
</tr>
<tr>
<td>Mendota</td>
<td>$61,840&lt;sup&gt;15&lt;/sup&gt;</td>
<td>$618.40</td>
</tr>
<tr>
<td>Morris</td>
<td>$75,183&lt;sup&gt;16&lt;/sup&gt;</td>
<td>$751.83</td>
</tr>
<tr>
<td>Oglesby</td>
<td>$64,448&lt;sup&gt;17&lt;/sup&gt;</td>
<td>$644.48</td>
</tr>
<tr>
<td>Ottawa</td>
<td>$62,219&lt;sup&gt;18&lt;/sup&gt;</td>
<td>$622.19</td>
</tr>
<tr>
<td>Peru</td>
<td>$58,073&lt;sup&gt;19&lt;/sup&gt;</td>
<td>$580.73</td>
</tr>
<tr>
<td>Pontiac</td>
<td>$67,197&lt;sup&gt;20&lt;/sup&gt;</td>
<td>$671.97</td>
</tr>
<tr>
<td>Princeton</td>
<td>$61,693&lt;sup&gt;21&lt;/sup&gt;</td>
<td>$616.93</td>
</tr>
</tbody>
</table>

13 FOP Exhibits at Tab 50 p. 45. *See also*, City Exhibits at Tab 16.
14 FOP Exhibits at Tab 56, p. 36.
15 *Id.* at Tab 53, p. 22.
16 *Id.* at Tab 58, p. 49 (prior to reopener).
17 *Id.* at Tab 54, p. 31.
18 *Id.* at Tab 49, Appendix A. *See also*, City Exhibits at Tab 13.
19 FOP Exhibits at Tab 52, p. 19. *See also*, City Exhibits at Tab 15.
20 FOP Exhibits at Tab 59, p. 61. *See also*, City Exhibits at Tab 14.
21 FOP Exhibits at Tab 57, p. 13 (40-hour week) and p. 42 ($29.66 hourly rate).
because percentages may similar. If comparables are to be rationally used, the focus
has to be on the actual money earned and not just some arbitrary reference to per-
centages. And most important, with those differences, how are equivalencies (or lack
thereof) of percentage increases in other communities in anyway helpful to set wage
rates in Streator when the parties in this case had absolutely no input into the deter-
mination of what those percentages in the comparables would be? They’re not.

Also, looking at the end result of the wage or percentage increase in the com-
parables to force the wage rate in a case like this ignores individual circumstances
which caused the establishment of the wage or percentage increases in the compar-
ables. Were there compromises made on other benefits that caused the parties in the
comparables to adjust wage rates – i.e., the reality that so many wage rates are set-
tled with the exchange across the bargaining table (or in the quiet and often off-the-
record conversation in the hall) that “If you do this, I’ll do that”? That’s not known in
this record. And if that happened, why should those types of compromises individu-
ally structured to a specific community to meet the particular needs of the employer
and the employees in that community be relevant to setting a wage rate in this case?
Again, they’re not.

I therefore choose not to follow the external comparability method of analysis.
While external comparability may perhaps be useful in non-final offer interest arbi-
trations because it allows the arbitrator to find one or two most comparable commu-
nities and to set a wage rate or condition consistent with those communities, external

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22 The fact that the FOP as an entity was party to a number of the contracts in the comparable
communities misses the point. The FOP represented different groups of police officers under those
contracts – the employees of the various municipalities. The focus here is on Streator and the FOP –
these parties in this case – jointly attempting to determine the wage and benefit rates for Streator’s
employees for this contract. The parties jointly had no input into the terms of the contracts in the
comparable communities.
comparability in final offer interest arbitration is just not an “applicable” factor under Section 14(h) of the IPLRA.²³

When put to the real test of close scrutiny, external comparability should not receive the heavy weight that it has been given – much less any weight. It has taken me decades of deciding these cases to really come to the hard conclusion that the parties and arbitrators in these cases should not be relying so heavily on a factor over which they have absolutely no control and, in the end, is a factor that does not allow for relevant comparisons. See discussion quoted in Swansea, supra. My colleagues and the parties in these cases may differ with that conclusion and I truly respect that. For reasons discussed – and solely on a professional basis – I am of the opinion that they are wrong. With respect to continued reliance upon external comparability in these cases, the world is not flat. See Cook County Sheriff, supra at 52, note 68:²⁴

“Wisdom too often never comes, and so one ought not to reject it merely because it comes late.” Henslee v. Union Planters National Bank & Trust Co., 335 U.S. 595, 600 (1949) (Frankfurter, dissenting). See also, Commonwealth of Massachusetts, et al. v. United States, 333 U.S. 611, 639-640 (1948) (Jackson, dissenting) (“I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.”); Justin Driver, Judicial Inconsistency as Virtue: The Case of Justice Stevens, 99 Georgetown Law Journal 1263, 1272-1273 (2011) quoting Richard S. Arnold, Mr. Justice Brennan – An Appreciation, 26 Harv. C.R.-

²³ While Section 14(g) of the IPLRA provides that economic issues are to be decided on a final offer basis (“[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)”), there are contracts where the parties waive that requirement. See e.g., City of Chicago and FOP Chicago Lodge No. 7, L-MA-03-005, Arb. Ref. 04.328 (2005) at 25, note 47. https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-03-005.pdf

Additionally, parties in interest arbitrations have also specifically waived the final offer requirement and allowed the arbitrator to set the wage rate. See e.g., County of Rock Island and AFSCME, S-MA-09-072 (2010) at 4. https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-072.pdf

²⁴ https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf
III. RESOLUTION OF THE DISPUTED ISSUES

A. Duration

The City proposes that the term of the Agreement should be from May 1, 2017 through September 30, 2019 with the FOP agreeing to the May 1, 2017 commencement date, but seeking a termination date of December 31, 2019.25

The parties have had five prior contracts – all for periods commencing on May 1 and terminating April 30 which coincided with the City’s fiscal year.26

25 City Brief at 6; FOP Brief at 24. The parties thus both seek multi-year agreements.

In recent years, the ability of public employers to enter into multi-year collective bargaining agreements has been the subject of litigation and much discussion. The Illinois Supreme Court’s decision in State of Illinois v. American Federation of State, County & Municipal Employees, Council 31, 51 N.E.3d 738, 401 Ill.Dec. 907 (2016) found that an arbitration award issued by me enforcing plain contract language requiring the State to pay a negotiated wage increase in a multi-year collective bargaining agreement between the State and AFSCME – which was a concession reduced percentage agreed to after the then-existing contract was negotiated to meet the revenue difficulties impacting the State due to the Great Recession – was correct under the contract but nevertheless violated public policy. The Supreme Court made the finding of a public policy violation due to the lack of an appropriation (relying, in part, upon the Appropriations Clause of the Illinois Constitution – “[t]he General Assembly by law shall make appropriations for all expenditures of public funds by the State”, Ill. Const. 1970, art. VIII, § 2(b) [emphasis added]) and Section 21 of the IPLRA (“[s]ubject to the appropriation power of the employer, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this Act”).

State v. AFSCME does not apply to bar this multi-year agreement. The City is governed by the Municipal Code which specifically allows municipalities (as opposed to the State of Illinois) to enter into enforceable multi-year collective bargaining agreements. See 65 ILCS 5/8-1-7(d) (carving out an exception to the statutory requirement of the need for prior appropriations for municipal contracts so that multi-year collective bargaining agreements are valid and not “null and void”). The Appropriations Clause of the Illinois Constitution applies to “the State” and not to the City. Because of the carve-out under the Municipal Code for multi-year collective bargaining agreements, Section 21 of the IPLRA’s “[s]ubject to the appropriate power of the employer” further permits multi-year collective bargaining agreements. Under the Section 14(h)(1) factor of the IPLRA governing interest arbitrations, (“[t]he lawful authority of the employer”), the City therefore has the lawful authority to enter into multi-year agreements. See Swansea, supra at 4-7 and Village of Richton Park and Illinois FOP Labor Council, S-MA-16-012 (2018) at 1-5.

https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-213ArbAward.pdf
https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-012ArbAward.pdf

26 FOP Exhibits at Tab 4.
The City’s fiscal year has now changed from May 1 through April 30 to January 1 through December 31. Consistent with prior contracts terminating on April 30 at the end of the City’s fiscal year, the FOP’s offer to terminate this Agreement on December 31, 2019 is based on the City’s switch to calendar year for its fiscal year. Although it is now on a calendar year for its fiscal year, the City seeks to terminate this Agreement effective September 30, 2019 – three months prior to the end of its fiscal year rather than the corresponding end of the fiscal year as it had in the past (now December 31st) because:

As City Manager [Scot] Wrighton explained at the hearing, the proposal duration relates to the City’s budget process. While the fiscal year is now based on a calendar year, the City engages in developing its budget and tax levy ordinance in the months of September, October and November of each year. This allows the City the time to prepare for the fiscal year which starts on January 1st. By having the contract end on September 30th, the City is in a better position and has a “firmer knowledge” of upcoming costs in terms of wages and benefits if the parties complete negotiations by October 1st. ... It should be noted that the City’s settled collective bargaining agreements with AFSCME for its public works employees and with the Laborers International Union for its clerical employees end on September 30th. ....

From the City’s perspective, the City’s proposal is perhaps a “good idea.” However, in the conservative interest arbitration process, a “good idea” is not enough to change a status quo. In this conservative interest arbitration process, in order to change a status quo condition, there must be a showing by the party seeking the change that the existing status quo is broken. See Village of Barrington and Illinois

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27 Tr. 57; City Brief at 20.
28 FOP Brief at 25.
29 City Brief at 20.
In simple terms, the interest arbitration process is very conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that “good ideas” alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration – where an outsider imposes terms and conditions of employment on the parties – must be the absolute last resort. ...

The status quo for these parties is to have their contracts terminate at the end of the fiscal year of the last year of the contract. That is how they have terminated their last five contracts. From the City’s perspective, it may be a good idea to move up the termination date to a date prior to the end of the fiscal year as the City seeks – and for the reasons the City advances. But that is not a showing that the status quo for terminating contracts at the end of the fiscal year is a broken condition. The FOP’s offer seeks to keep the status quo – the only change being that it has moved the termination date to correspond to the new fiscal year followed by the City. That being the case and because the City has not shown how keeping the termination date at the end of the City’s fiscal year is broken, the FOP’s duration offer is adopted.

The fact that two other unions having contracts with the City have agreed to September 30th termination dates is not enough to change the result. The City has to show that the existing condition is broken. The City has not met that burden. The


The City recognizes that “... interest arbitration is essentially a conservative process.” City Brief at 17.

\[31\] City Brief at 20; City Exhibits 18, 19.
end of the City’s chosen fiscal year in the last year of the contract shall continue to match the termination of the Agreement as the status quo.

The Agreement shall therefore commence May 1, 2017 (as agreed by the parties) and terminate December 31, 2019 (as proposed by the FOP).

B. Wages

1. The Parties’ Offers

The parties’ wage proposals are as follows:  

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>City</th>
<th>FOP</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/1/17</td>
<td>1.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>10/1/17</td>
<td>2.00%</td>
<td></td>
</tr>
<tr>
<td>1/1/18</td>
<td></td>
<td>2.25%</td>
</tr>
<tr>
<td>10/1/18</td>
<td>2.00%</td>
<td></td>
</tr>
<tr>
<td>1/1/19</td>
<td></td>
<td>2.50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>5.00%</strong></td>
<td><strong>6.75%</strong></td>
</tr>
</tbody>
</table>

2. Analysis

Since the commencement of the Great Recession in 2008 and my movement away from use of external comparables (see Swansea quoted supra and discussion at II), I have found for Section 14(h) purposes that “applicable” factors used to determine wage increases “… are [1] the cost of living as measured by the Consumer Price Index (“CPI”), [2] internal comparability and [3] overall compensation presently received.”  

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32 FOP Brief at 11; City Brief at 7-8; Tr. 96-100; City Final Offer at 1.
Specifically, to evaluate wage offers, the analysis I have been following in other cases has looked at the simple percentage increases; the compounded percentage increases; the actual cost of living for periods that have passed and for which data exist as reflected by the CPI from the Bureau of Labor Statistics (“BLS”); projected cost of living increases from economic forecasters; the effect of step movements; and internal comparables. 34

That analysis cannot be completely followed in this case. That is because the parties have chosen different contract durations for their offers along with mostly different effective dates for implementation of the wage offers and have argued their positions based upon those proposed contract duration periods. 35 To perform the analysis correctly, I need to make “apples to apples” comparisons. However, with different durations and wage implementation dates as proposed and argued by the parties, it is difficult to make rational comparisons and conclusions. 36

And this decision becomes all the more difficult because in the event that a party’s duration offer is not chosen, the parties have not given alternate wage proposals to fit the other party’s duration offer. Specifically, with the FOP’s May 1, 2017 - December 31, 2019 duration offer accepted as a continuation of the status quo (see discussion supra at III(A)) as opposed to the City’s proposal to terminate the Agreement three months earlier on September 30, 2019, there is no proposal from the City to alternatively add a proposed wage increase to take into account the additional

34 Id.
35 See discussion supra at III(A) and the table above showing the implementation dates of the wage offers.
36 In and of itself, the fact that the parties’ offers are mostly for different implementation dates is not insurmountable in analyzing wage offers. See e.g., Cook County Sheriff, supra at 12 where the parties had different implementation dates. However, the difference between that case and this matter is that the parties proposed the same duration and the same total percentage increases. Id. That is not the case here as duration and implementation dates differ as do the total wage offers.

https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf
three months caused by adoption of the FOP's duration proposal or to alter the timing of its proposed wage increases to fit the duration period proposed by the FOP. That being the case, it must be assumed that the City intended that even with the FOP's duration offer accepted, there would be no additional wage increase offer from the City after October 1, 2018 through the expiration of the Agreement on December 31, 2019.

As earlier discussed, because Section 14(g) of the IPLRA specifies that economic offers (such as wages) is final offer, the last offer of settlement I have from the City on wages is the offer based on its seeking a contract from May 1, 2017 through September 30, 2019 – a duration offer which was not selected. Relevant to this part of the discussion is the fact that while the FOP has made a wage offer totaling 6.75%, the City’s wage offer during the duration of the Agreement totals 5.00%. That 5.00% is the final wage offer made by the City – indeed, it is the only wage offer made by the City in this proceeding. Because I have no authority to deviate from economic offers made by the parties (Section 14(g)), I therefore must use that 5.00% wage offer from the City for further analysis.

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37 See discussion supra at III(A).
38 See discussion supra at III(B)(1).
a. Cost Of Living

The duration of the Agreement has been resolved – commencing May 1, 2017 and expiring December 31, 2019. The task now is to analyze the cost of living and the offered wage increases during that specific period.

As of this writing, there is actual CPI data from the BLS for the period May 1, 2017 through October 31, 2018 (issued November 14, 2018).

Because the Agreement will run through December 31, 2019 and because the year 2018 is not yet completed, there are obviously no actual CPI data for the future.

39 See discussion supra at III(A).

40 The FOP points out that “[t]he use of CPI as an accurate and reliable measurement for determining the cost of living has received both academic criticism and support.” FOP Brief at 11, citing Greenless and McClelland, “Addressing Misconceptions about the Consumer Price Index”, Monthly Labor Review, August 2008, which is posted at https://www.bls.gov/opub/mlr/2008/08/art1full.pdf

41 The FOP further notes that “no other formula has received as much acclaim and acceptance as the CPI.” FOP Brief at 11.

Even the BLS notes that the CPI may not be a true measure of the cost of living. See BLS Frequently Asked Questions regarding the CPI: https://www.bls.gov/cpi/questions-and-answers.htm - Question_9

9. Is the CPI a cost-of-living index?

The CPI frequently is called a cost-of-living index, but it differs in important ways from a complete cost-of-living measure. We use a cost-of-living framework in making practical decisions about questions that arise in constructing the CPI. A cost-of-living index is a conceptual measurement goal, however, and not a straightforward alternative to the CPI. A cost-of-living index would measure changes over time in the amount that consumers need to spend to reach a certain utility level or standard of living. Both the CPI and a cost-of-living index would reflect changes in the prices of goods and services, such as food and clothing that are directly purchased in the marketplace; but a complete cost-of-living index would go beyond this role to also take into account changes in other governmental or environmental factors that affect consumers' well-being. It is very difficult to determine the proper treatment of public goods, such as safety and education, and other broad concerns, such as health, water quality, and crime, that would constitute a complete cost-of-living framework. Since the CPI does not attempt to quantify all the factors that affect the cost-of-living, it is sometimes termed a conditional cost-of-living index.

The problem is that the IPLRA directly equates the CPI with the cost of living. See Section 14(h)(5) “[t]he average consumer prices for goods and services, commonly known as the cost of living.”

The IPLRA’s direct tie of the CPI to the cost of living therefore answers the question of whether the CPI is a cost of living. As far as the IPLRA is concerned, it is.
months of the Agreement beyond October 2018 and the year 2018 is not yet fully completed. It is therefore necessary to turn to the economic forecasters for the out years of the Agreement.

For determining CPI data for future periods, I have used the Federal Reserve Bank of Philadelphia’s Survey of Professional Forecasters as it “... is the oldest quarterly survey of macroeconomic forecasts in the United States.” While certainly not 100% accurate as no one has a crystal ball for predicting inflation, the Survey of Professional Forecasters is a useful tool for forecasting the impact of future inflation on wage rates.

According to the most recent November 13, 2018 Survey of Professional Forecasters, the forecasts for the complete years of 2018 and 2019 are as follows:

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42 According to the Federal Reserve Bank of Philadelphia:

The Survey of Professional Forecasters is the oldest quarterly survey of macroeconomic forecasts in the United States. The survey began in 1968 and was conducted by the American Statistical Association and the National Bureau of Economic Research. The Federal Reserve Bank of Philadelphia took over the survey in 1990.

The Survey of Professional Forecasters’ web page offers the actual releases, documentation, mean and median forecasts of all the respondents as well as the individual responses from each economist. The individual responses are kept confidential by using identification numbers.


The Survey distinguishes between “Headline CPI” and “Core CPI” – the difference being that “Headline CPI” includes forecasts concerning prices in more volatile areas such as energy and food, while “Core CPI” does not. See Monetary Trends (September 2007), “Measure for Measure: Headline Versus Core Inflation” (“... the ‘core’ measure – which excludes food and energy prices ... [while] the corresponding headline measure, which does not.”).


Because employees have to pay for energy and food, Headline CPI is more relevant for this discussion.

44 Fourth Quarter Survey, supra.
FORECASTS

<table>
<thead>
<tr>
<th>Year</th>
<th>Forecasted CPI Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>2.40%</td>
</tr>
<tr>
<td>2019</td>
<td>2.30%</td>
</tr>
</tbody>
</table>

Thus, to compare the wage offers, I have to use a combination of actual and forecasted CPI increases. Because the Agreement will run for a portion of 2017 (May through December) and because actual data exist for that period, I can use the CPI actual data for May 1, 2017 through December 31, 2017. To make matters more complicated, while the FOP relies upon CPI data for All Urban Consumers U.S. City Average, the City relies upon CPI data for All Urban Consumers Midwest. 45

The CPI increases for the May 1, 2017 through December 31, 2019 Agreement look like this:

45 FOP Exhibits at Tab 17; City Exhibits at Tab 10.
# CPI INCREASES

<table>
<thead>
<tr>
<th>Period</th>
<th>Increase (U.S. City 2017 Actual and 2018-19 Projected)</th>
<th>Increase (Midwest 2017 Actual and 2018-19 Projected)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/1/17 - 12/31/17</td>
<td>0.73%&lt;sup&gt;46&lt;/sup&gt;</td>
<td>0.37%&lt;sup&gt;47&lt;/sup&gt;</td>
</tr>
<tr>
<td>2018&lt;sup&gt;48&lt;/sup&gt;</td>
<td>2.40%</td>
<td>2.40%</td>
</tr>
<tr>
<td>2019&lt;sup&gt;49&lt;/sup&gt;</td>
<td>2.30%</td>
<td>2.30%</td>
</tr>
<tr>
<td>Total</td>
<td>5.43%</td>
<td>5.07%</td>
</tr>
</tbody>
</table>

To make the relevant “apples to apples” comparisons, because the 2017 portion of the Agreement is for eight months (May 1, 2017 through December 31, 2017 inclusive – there are eight full months during that period) and because I have computed the increase in the CPI for the period May 1, 2017 through December 31, 2017 for which there are actual data, it is necessary to prorate the parties’ wage offers covering that same portion of 2017. Therefore, with respect to the FOP’s wage offer, because the Agreement begins May 1, 2017, the prorated percentage increase for 2017 under the FOP’s wage offer is 8/12ths of the FOP’s May 1 through December 31, 2017, 2.00% offer (again, there are eight full months during the period May through December,

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<sup>46</sup> According to the BLS and utilizing the CPI-All Urban Consumers U.S. City Average, May 2017 reported at 244.733 and December 2017 reported at 246.524. Therefore, the CPI increased during that period using the following:

\[246.524 - 244.733 = 1.791\]

\[0.0073181 (0.73%)\]

[https://data.bls.gov/cgi-bin/surveymost?cu](https://data.bls.gov/cgi-bin/surveymost?cu)

Select “U.S. All Items, 1982-84 = 100” and then “Retrieve data”.

<sup>47</sup> According to the BLS and utilizing the Midwest Region, May 2017 reported at 229.705 and December 2017 reported at 230.548. Therefore, the CPI increased during that period using the following:

\[230.548 - 229.705 = 0.843\]

\[0.0036699 (0.37%)\]

[https://data.bls.gov/cgi-bin/surveymost?cu](https://data.bls.gov/cgi-bin/surveymost?cu)

Select “Midwest Region All Items, 1982-84 = 100” and then “Retrieve data”.

<sup>48</sup> Forecasted per November 13, 2018 Federal Reserve Bank of Philadelphia’s Survey of Professional Forecasters, *supra*.

<sup>49</sup> *Id.*
inclusive). Similarly, because the City has offered two wage increases during the period May 1 through December 31, 2017 (1.00% on May 1, 2017 and 2.00% on October 1, 2017), the relevant portion of the City’s wage offer must also be prorated.

Making those proration computations on the parties’ wage offers more accurately reflects the following wage offers:

**ACTUAL ANNUAL WAGE OFFERS**  
*(Prorated for 2017 Wage Increases)*

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>City</th>
<th>FOP</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/1/17</td>
<td>0.42%</td>
<td>1.33%</td>
</tr>
<tr>
<td>10/1/17</td>
<td>2.00%</td>
<td></td>
</tr>
<tr>
<td>1/1/18</td>
<td></td>
<td>2.25%</td>
</tr>
<tr>
<td>10/1/18</td>
<td>2.00%</td>
<td></td>
</tr>
<tr>
<td>1/1/19</td>
<td></td>
<td>2.50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4.42%</strong></td>
<td><strong>6.08%</strong></td>
</tr>
</tbody>
</table>

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50 There are five full months in 2017 for which the City’s May 1, 2017 through September 2017, 1.0% wage increase will be in effect. 5/12ths of 1.0% = 0.42%.

51 There are eight full months in 2017 for which the FOP’s May 1, 2017, 2.0% wage increase will be in effect. 8/12ths of 2.0% = 1.33%.

52 Prorating the City’s 2.0% wage offer for the period October 1, 2017 to December 31, 2017 and then January 1, 2018 through September 30, 2018 does not change the analysis of the City’s wage proposal and is not necessary.

For the period October 1, 2017 through December 31, 2017, the City’s 2.0% wage offer prorates to 0.5% (three of twelve months). For the period January 1, 2018 through September 30, 2018, that nine full months of a 2.0% annual wage proposal is 1.5%. The City’s annual proposed wage increase for the relevant period is therefore still 2.0%. The point is that the City’s 2.0% wage offer made for the overlapping period in the last three months of 2017 and the first nine months of 2018 will be in effect for a full year of the Agreement. That is not the case for the wage offers that started in May 2017 as those proposals will only be in effect for a portion of 2017, therefore requiring a proration.
Using both the CPI data for All Urban Consumers U.S. Cities (as relied upon by the FOP) and All Urban Consumers Midwest (as relied upon by the City), the comparisons are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Actual Total Wage Offer (Prorated for 2017)</th>
<th>Total CPI Increase All Cities (Actual and Forecasted)</th>
<th>Wage - CPI Difference</th>
<th>Total CPI Increase Midwest (Actual and Forecasted)</th>
<th>Wage - CPI Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOP</td>
<td>6.08%</td>
<td>5.43%</td>
<td>0.65%(^{53})</td>
<td>5.07%</td>
<td>1.01%(^{54})</td>
</tr>
<tr>
<td>City</td>
<td>4.42%</td>
<td>5.43%</td>
<td>-1.01%(^{55})</td>
<td>5.07%</td>
<td>-0.65%(^{56})</td>
</tr>
</tbody>
</table>

In this unusual case due to the differing durations and wage implementation dates offered by the parties, the typical analysis used by me in these cases will not completely work. However, after the duration of the Agreement has been set (May 1, 2017 through December 31, 2019) and 2017 is prorated for wage offers and both CPI indexes offered by the parties are considered (All Cities and Midwest) the following is evident:

First, under either CPI index, the City’s wage offer is below the cost of living increases (by -1.01% All Cites and -0.65% Midwest). The effect of adopting the City’s wage offer would keep these employees below actual and projected inflation rates keyed to the CPI.

Second, under either CPI index, the FOP’s offer – although above the CPI (by 0.65% All Cites and 1.01% Midwest) – is not unreasonably above those numbers.

\(^{53}\) FOP actual wage increase (6.08%) - CPI (All Cities) (5.43%) = 0.65%.

\(^{54}\) FOP actual wage increase (6.08%) - CPI (Midwest) (5.07%) = 1.01%.

\(^{55}\) City actual wage increase (4.42%) - CPI (All Cities) (5.43%) = -1.01%.

\(^{56}\) City actual wage increase (4.42%) - CPI (Midwest) (5.07%) = -0.65%.
Third, as I have pointed out before, simple wage percentage proposals do not tell the entire story. That is because when determining what “real money” comes from wage offers, simple wage percentage offers compound and employee movements due to step increases (or longevity payments tied to years of service) also form a basis for examining the “real money” each employee actually receives during the term of a contract and take into account the overall compensation factor listed in Section 14(h)(6) of the IPLRA.\textsuperscript{57} However, in this case, because the wage proposals are not large, considering the compounding effect does not change the result because not only will the wage offers be compounded, but the CPI increases should also be compounded, the result being that nothing really changes.\textsuperscript{58} Moreover, due to the differing durations and wage implementation dates offered by the parties, “apples to apples” comparisons of how longevity affects the wage offers cannot be made because

\textsuperscript{57} Swansea, supra at 8-10; Cook County Sheriff, supra at 7-19, 24-34.

\textsuperscript{58} The City’s actual prorated wage proposal (4.42%) compounds to 4.48%. That computation is made by simply adding the percentage increases to a starting base wage number. For example, if an employee begins the Agreement with a $50,000 annual salary, applying the City’s prorated wage increases over the life of the Agreement shows the following:

\begin{align*}
$50,000 + 0.42\% &= \$50,210. \\
$50,210 + 2\% &= \$51,214.20. \\
51,214.20 + 2\% &= \$52,238.48.
\end{align*}

Using the same approach, the FOP’s actual prorated wage proposal (6.08%) compounds to 6.20%:

\begin{align*}
$50,000 + 1.33\% &= \$50,665. \\
50,665 + 2.25\% &= \$51,804.96. \\
51,804.96 + 2.5\% &= \$53,100.09.
\end{align*}

If the CPI numbers (actual and forecasted) are similarly compounded, the result would be 5.52% (All Cities) and 5.14% (Midwest) – which are computed in the same fashion as the compounded wage increases. The compounded comparisons would then look like this:

<table>
<thead>
<tr>
<th></th>
<th>Compounded Actual Total Wage Offer (Prorated for 2017)</th>
<th>Compounded Total CPI Increase All Cities (Actual and Forecasted)</th>
<th>Compounded Wage - CPI Difference</th>
<th>Compounded Total CPI Increase Midwest (Actual and Forecasted)</th>
<th>Compounded Wage - CPI Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOP</td>
<td>6.20%</td>
<td>5.52%</td>
<td>0.68%</td>
<td>5.14%</td>
<td>1.06%</td>
</tr>
<tr>
<td>City</td>
<td>4.48%</td>
<td>5.52%</td>
<td>-1.04%</td>
<td>5.14%</td>
<td>-0.66%</td>
</tr>
</tbody>
</table>

For the same reasons discussed supra for the non-compounded offers, when the wage offers are compounded and then bumped up against the compounded CPI numbers, the cost of living factor still favors the FOP’s offer because, when compounded, the City’s offer is below the compounded CPI and is not justified while the FOP’s offer, while above the CPI, is reasonably within range of the CPI numbers.
the parties’ differing dates will not allow for comparisons of overlapping contract periods.

Fourth, as discussed infra at III(C), the wage increases received by the employees under the FOP’s offer will be reduced by increased insurance costs for percentage of premium to be paid by the employees. Because of those increased insurance amounts, the City’s wage offer will have the effect of driving the employees further below the anticipated inflation than the City’s offer has already placed them.

Based on the above, the cost-of-living factor favors the FOP’s wage offer.

b. Internal Comparability

The City points to two other bargaining units under contract with the City and argues that the percentage wage rates for those units favor its position. That argument does not support adoption of the City’s wage offer in this case.

First, existing employees in the Public Works Department under the City’s contract with AFSCME and other clerical employees under the City’s contract with the Laborers 59 are not similar to the police officers under this Agreement so as to cause the City’s offer to be chosen. The similar group of employees to police officers would appear to be firefighters – and there is no current contract for that group for comparison purposes. 60 Further, there is no demonstration of an existing requirement of parity percentage increases amongst all of the City’s represented employees.

Second, even if I considered those other internal contracts relied upon by the City, they do not support the City’s internal comparability argument.

The AFSCME and Laborers contracts are for longer duration (May 1, 2017 through September 30, 2020) than what the City proposed for this Agreement (May

59 City Exhibits 18, 19.
60 Tr. 21-22.
1, 2017 through September 30, 2019) and provide for 6.0% wage increases where here, the City offered 5.0%. Even if I could consider these contracts, I do not find them to be comparable.

c. The City’s Other Arguments

The City’s other arguments in support of its wage offer are not persuasive in this case.

The City argues:

The City submits that these wage increases, while modest, reflect the City’s fiscal reality as an employer. This reality takes into account the interests and welfare of the public and the City’s financial ability to meet costs associated with providing all services, which clearly are not limited to the Police Department. As the City has demonstrated, its financial look is, to put it mildly, less than stellar. The City’s General Fund revenue streams are lagging. Specifically, for fiscal year 2018, the estimated real estate tax revenues of $1,962,226 show a larger than 20% decline since the 2013/2014 fiscal year ... This relates, in significant part, to the diversion of such funds going toward addressing the City’s skyrocketing pension obligations. Further, and as it relates to real estate taxes, the equalized assessed value shows a slow, but steady drop. ... Sales taxes, while up slightly, have failed to keep pace with the CPI or less than 2%. State income tax revenues show growth of less than 2% and are at the mercy of the State cuts to balance State budget shortfalls. ... Ultimately, when assessing the general funds in light of reduced revenue sources and increasing costs, the City is at a general fund deficit of nearly a quarter of a million dollars. These revenues will be further diminished as a result of the anticipated drop in population. ... Bottom line, more of the same will result in additional and increased deficit spending in the next few years. Such an outlook does not favor significant increases in the wages.

* * *

---

61 City Exhibit 18 at Article 38 and Appendix D7; City Exhibit 19 at Article XXIII, Section 5 and Appendix A.
62 City Brief at 8, 10 [citations omitted].
Ultimately, the City’s proposal serves as a step to attain reasonable wage growth for the Police Department employees while simultaneously limiting the adverse impacts of the City’s unsustainable personnel and pension related costs. Most importantly, the City’s proposal aims to avoid the fate of municipalities like the City of Harvey, where unmet pension costs have not only crippled the City’s existing financial condition, but its ability to even rebound from such a state of affairs. Accordingly, the City submits that its proposal is the most reasonable approach in light of the statutory criteria.

The City does not claim an inability to pay the FOP’s wage offer should it be imposed, but underscores economic difficulties the City contends it faces balancing the need to provide services to the public against revenues it has available as well as the fact that decisions that need to be made are in many ways political and managerial decisions for elected officials and City administrators and are not decisions that are to be made by interest arbitrators. The following exchange occurred at the hearing:

ARBITRATOR BENN: ... I take it the City’s not saying that it has an inability to pay; what it’s saying is it’s really hard to pay, it’s a difficulty in paying; is that fair?

CITY MANAGER WRIGHTON: We have been able to pay so far. That’s a matter of record, in fact, but, Mr. Arbitrator, we don’t want to get to the point where we’re like Harvey, having to lay off half the police and fire departments. If we don’t take corrective action now, we will be there.

* * *

... As the city manager, it’s my responsibility to make recommendations to the City Council about how they can avoid the fiscal cliff before they get to the edge of the cliff, and that’s why we’ve been more modest in our responses.
MR. AREVALO: And it’s really the underlying basis of why we’re here, because of those issues, because the management is looking at that as a very critical question.

ARBITRATOR BENN: Do these then become -- and this is what I always struggle with. Do these issues then become -- morph into the political arena as to what level of services that you are able to provide the citizens which will have a snowball effect on so many things, because that -- that really -- it’s difficult because I don’t make political decisions. I’m not an elected official. I’m just some guy who has got a law degree who is asked to settle the case. It’s what I do. But aren’t we also talking about political issues? You know, it’s what -- okay, the City Council is faced with these kinds of difficulties. Like you say, the legislature has not responded; they haven’t responded to anybody. Then you have to make some hard choices politically, what’s our level of service whether it’s police, fire or public works or whatever.

CITY MANAGER WRIGHTON: And the elected officials as the political leaders of the community will have to make those decisions.

ARBITRATOR BENN: Right.

CITY MANAGER WRIGHTON: And you are, in my opinion, correct to realize that there is a bleed-over into those political decisions because the City will have to take all matters into consideration, both how it structures its pay in benefits, but also what sorts of service levels we can provide.

The City Council of course wants to provide the best services that it can for the dollars it has, but as the pinch gets worse and worse, then more Draconian measures have to be considered.

For purposes of discussion, I accept the premise of the City’s argument – i.e., that it has concluded that imposition of the FOP’s wage offer is too costly for the City. From what is before me though, that is not enough because the consequences of a higher wage or benefit offer than what has been offered by the City and imposed through the statutory interest arbitration process is now really a political and
managerial decision. See City of Highland Park and Teamsters Local 700, S-MA-09-273, Arb. Ref. 11.120, (2013) at 9:

Interest arbitrators follow statutory factors deemed applicable which are found in Section 14(h) of the IPLRA. Interest arbitrators do not make political decisions concerning the impact of their decisions – that is appropriately left to elected officials and appointed administrators. If application of the statutory factors by an interest arbitrator results in requiring payment of a benefit which proves to be too costly (here, for example, the maintenance of certain benefits), how the City reacts to having to meet its financial obligations for payment of that benefit either in terms of budgeting funds, maintaining staff levels, delivering services, etc., is not for an interest arbitrator to decide. Those kinds of decisions are for the City’s elected officials and administrators. Putting it bluntly, if maintenance of a benefit which cannot be changed through the interest arbitration process proves too costly to continue at current levels, then layoffs or leaving positions unfilled which are vacated through attrition – the “virtual” layoff – could result (either in a bargaining unit involved in the interest arbitration or in some other group of employees, represented or unrepresented) or diminished services delivered. Or, revenues may have to be increased, depending upon the importance of the service to be delivered. The dynamics of the tugging of the entitlements of the employees against the reality of what could happen if benefits prove to be too costly but are maintained and factoring in the need for providing services to the public and the costs which the taxpayers must ultimately bear, is the brew that forces realities through the collective bargaining process. Those decisions are simply not for an interest arbitrator to make.

The consequences of my imposition of a wage increase different from what the City proposed are now in the hands of the City’s elected officials and administrators.

d. Conclusion On The Wage Offer

Based on the above, the FOP’s wage offer is adopted.

64 https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-273.pdf
65 The FOP does not take issue with that result. FOP Brief at 8-9 [citing Tr. 72-74].
C. Health Insurance

Article 28, Section 1 of the prior Agreement provides, in pertinent part:

**ARTICLE 28 INSURANCE**

**Section 1 – Health and Life Insurance**

***

The Union and the Employer acknowledge that the benefit structure of group health plans will vary with changes in the insurance industry, the availability of certain types of coverage, and even alternate insurance providers. The employer agrees to maintain a $500 deductible, and individual/family stop loss ceiling no higher than $1,000/$3,000 and an 80/20 coinsurance based on major medical group plan. The remaining insurance benefits shall remain substantially equivalent (in terms of coverage amounts) to the coverage levels in effect on May 1, 2004, throughout the duration of this contract.

***

Appendix C of the prior Agreement provides:

**APPENDIX C – OFFICERS HEALTH INSURANCE**

***

The parties agree that any increase in costs for the City’s health insurance plan incurred by the City at the time of the annual renewal will be shared by the Officers. The increased contribution by the Officers at each annual renewal date of May 1st will be no more than ten percent (10%) of the amount of increase for each of the above classes. Effective March 1, 2014, Officers’ insurance contributions shall increase to fifteen (15%) percent of the then existing health insurance premium. Throughout the term of this agreement, bargaining unit Officers shall pay a five hundred ($500.00) health insurance deductible.

There are two parts to the insurance dispute – (1) level of premium contributions to made by employees; and (2) the question of whether the City must continue to provide gap coverage for the difference between the $500 deductible in Appendix
C until the policy’s deductible is met as decided in Arbitrator Marvin Hill’s award in *City of Streator and Illinois FOP Labor Council, GR-160503-ABNW, FMCS No. 1701405-01407-1, (April 2, 2018) (“Hill Award”) which found that the City must provide that gap coverage due to an established past practice. Those two issues will be separately addressed.

1. Premium Contributions

The City proposes to amend Article 28, Section 1 to provide the following language:

Employees’ contributions toward the health insurance premium amounts shall be according to the following Formula: a) The cost of employee-only coverage shall remain at the existing 85%/15% premium sharing arrangement; b) Beginning 10/1/2017, employees with dependent coverage will pay 20% of the differential portion of whatever dependent coverage they elect; c) Beginning 10/1/2018, employees with dependent coverage will pay 25% of the differential portion of whatever dependent coverage they elect.

The FOP also proposes to increase employee contributions, but limits that increase as a move from 15% to 17% to be effective January 1, 2019.67

The FOP has “... made its proposal based on the external comparable communities.”68 However, the FOP recognizes the problem with using external comparables for this issue. According to the FOP, “[s]uch comparisons are difficult, because some contributions are based on dollars while others are based on percentages.”69

66 City Final Offer at 1.
67 Tr. 97; FOP Brief at 17.
68 FOP Brief at 17.
69 Id.
The City similarly bases its proposal on external comparability. According to the City:

... [T]he increases to premium contribution shares here are simply bringing such contributions in line with levels found in the mid-west for public sector and protective services as evidenced by Bureau of Labor Statistics. By way of illustration, medical plans for all workers in state and local governments are at a 71/29%. In protective services, this breakdown is 78/22%. ... Moreover, the City’s proposal is comparable to health insurance premium sharing agreements in neighboring Ottawa (20/80%), Pontiac (50/50%), Peru (85/15 – 80/20%) and LaSalle (80/20% HOSA) ... Thus, maintaining employee share at 15% while gradually increasing dependent premium to 20% in the first year and 25% is within normal limits and represents a gradual effort to approximate the City’s premium sharing contributions provisions to prevailing standards in the area.

For the reason conceded by the FOP (“[s]uch comparisons are difficult, because some contributions are based on dollars while others are based on percentages”) and for the reasons discussed supra at II concerning the problems with external comparables for determining these disputes, external comparability is just not an “applicable” factor under Section 14(h) to resolve this issue and will not be considered in this case. And the percentage versus dollars types of comparisons really shows why the use of external comparables is just not helpful.

The FOP argues that the City has not provided insurance costs to justify its insurance offer (the costs “... are a secret the City kept from the Union and the Arbitrator at the hearing.”). The FOP further asserts that because those costs were not

70 City Brief at 12 [record citations omitted].
71 FOP Brief at 17.
72 Id.
provided “[t]he City’s final offer, which would drastically increase ... costs to the officers, is unreasonable, unnecessary and unsupported by the record.”

The City attached the premium cost information to its Brief – City Exhibit 20. Notwithstanding the FOP’s protests over the providing of information by the City, I will consider that exhibit.

To justify its position that employee premium contributions should be increased from the existing 15% to 20% for employees with dependent coverage effective October 1, 2017 and then increased again to 25% for employees with dependent coverage effective October 1, 2018, the City argues that its insurance “... costs continue to increase in excess of regional rates of inflation.” To further support its position – “[i]n an effort to provide a clearer picture of the health insurance costs, and pursuant to the request made at arbitration, the City has also attached ... a detailed listing of group employee health costs (City Exhibit 20).”

In pertinent part, City Exhibit 20 shows the following:

73 Id. at 18.
74 City Brief at 13.
75 Id.
### Effective 1/1/14

<table>
<thead>
<tr>
<th>Type of Coverage</th>
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<tbody>
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<td>Employee + Family</td>
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<td>Employee + Medicare</td>
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[Total $120,593.04]

### Effective 5/1/15

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<tr>
<td>Employee + Family</td>
<td>$27,970.92</td>
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<tr>
<td>Employee + Family w/Medicare spouse</td>
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[Total $177,085.56]
## Effective 1/1/16

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[Total $174,963.00]

## Effective 5/1/16

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<td>Medicare &amp; Spouse</td>
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[Total $173,171.04]
### Effective 5/1/17

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<td>Employee + Child</td>
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<tr>
<td>Employee + Family Medical Only</td>
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<tr>
<td>Medicare Only</td>
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<tr>
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[Total $150,122.52]

### Effective 5/1/18

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[Total $176,849.64]

The real question here is what has the City’s premium experience been – *i.e.*, has the City incurred increased premiums to justify the changes it seeks in added premium contributions from the employees?

The prior Agreement was in effect from May 1, 2014 to April 30, 2017. To determine whether there were premium increases experienced by the City, it makes sense to look at the premiums the City paid which were in effect during the period of
the prior Agreement up to the period for which current data are available (City Exhibit 20 attached to the City’s Brief).

The above tables showing the City’s premium payments demonstrate the following:

<table>
<thead>
<tr>
<th>Premium Effective Date</th>
<th>Total Annual Premium</th>
<th>Increase Over Prior Period</th>
<th>Percentage Increase Over Prior Insurance Period</th>
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<tbody>
<tr>
<td>1/1/14</td>
<td>$120,593.04</td>
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<tr>
<td>5/1/15</td>
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<td>$56,492.52</td>
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<tr>
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<td>-13.81%</td>
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<tr>
<td>5/1/18</td>
<td>$176,849.64</td>
<td>$26,727.12</td>
<td>17.80%</td>
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</tbody>
</table>

The City also provided information for an insurance period which commenced May 1, 2013 which I deem not relevant as it was for insurance prior to the May 1, 2014 - April 30, 2017 Agreement and was superseded by an insurance period commencing January 1, 2014 which was in effect during the beginning of the prior Agreement which commenced May 1, 2014.\(^{76}\)

The total annual premiums paid by the City which were in effect during the term of the prior May 1, 2014 - April 30, 2017 Agreement were those changing rates in effect as of January 1, 2014 ($120,593.04) through May 1, 2016 ($173,171.04) – an increase of $52,578.00, or 43.60%.\(^{77}\) At first look that is a very substantial rate increase and fits the City’s position that premium rates have dramatically increased.

\(^{76}\) City Exhibit 20 at pp. 6-7.

\(^{77}\) $173,171.04 - $120,593.04 = $52,578.00. $52,578.00 / 120,593.04 = 0.4359953 (43.60%).
However, looking at the insurance premiums paid by the City from January 1, 2014 through the change effective May 1, 2016 which yielded that 43.60% increase is misleading. That is because the City’s insurance program during the period January 1, 2014 until the new period began May 1, 2015 had premium experience in significantly less categories of insurance – and therefore appears to have cost the City less which does not allow for rational comparisons needed for analyzing the City’s insurance premium experience.

As shown by City Exhibit 20 attached to the City’s Brief (and the table above for that period), during the period January 1, 2014 until May 1, 2015, the City paid premiums for seven insurance options for a total annual premium of $120,593.04. Effective May 1, 2015, the City paid in three additional options of coverage which carried a total annual cost of $43,165.68 in those added categories of coverage. Thereafter, the City had premium experience in the same basic number of categories of coverage (10 categories) with the exception of the period effective May 1, 2017 when City had premium experience in nine categories of coverage.

“Apples to apples” comparisons are again needed. It does not make sense to look at a period of premium experience which began before the effective date of the prior Agreement where the City had substantially less premium expense due to the fact that it had premium experience in substantially less categories of coverage. In simple terms, the City's premium experience for the period covered from January 1,
2014 to May 1, 2015 had premium costs in seven categories of coverage as opposed to subsequent periods which had nine categories of coverage (one period) and ten categories of coverage (four periods). Because there are so fewer categories of coverage for which the City had premium experience, the period effective January 1, 2014 is therefore an outlier and not relevant for making comparisons to determine the City’s overall premium experience.

Looking at the relevant periods shows the following:

First, under the prior May 1, 2014 - April 30, 2017 Agreement, which was overlapped by relevant premium effective dates of May 1, 2015, January 1, 2016 and May 1, 2016, the City’s premium experience went down after the first relevant period commencing May 1, 2015:

<table>
<thead>
<tr>
<th>Premium Effective Date</th>
<th>Total Annual Premium</th>
<th>Increase Over Prior Period</th>
<th>Percentage Increase Over Prior Insurance Period</th>
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</thead>
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<tr>
<td>5/1/15</td>
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<td>n/a</td>
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<td>$173,171.04</td>
<td>-$1,791.96</td>
<td>-1.02%</td>
</tr>
</tbody>
</table>

Second, the City’s proposal is that it wants to increase the employees’ premium contribution of 15% found in Appendix C of the prior Agreement to “beginning 10/1/2017, employees with dependent coverage will pay 20% of the differential portion

81 City Exhibit 20 at p. 6.
82 The period effective May 1, 2017. City Exhibit 20 at p. 2.
83 The periods effective May 1, 2015, January 1, 2016, May 1, 2016 and May 1, 2018. City Exhibit 20 at pp. 5, 4, 3, 1.
84 City Exhibit 20.
of whatever dependent coverage they elect ....”

However, as of October 1, 2017 – the date the City seeks to increase the employee contribution percentage from 15% to 20% – the May 1, 2017 premium experience was in effect which showed that the City’s premium experience had decreased by $23,048.52 (-13.31%) from the prior period which followed on the heels of a prior decrease of $1,791.96 (-1.02%):

<table>
<thead>
<tr>
<th>Premium Effective Date</th>
<th>Total Annual Premium</th>
<th>Increase Over Prior Period</th>
<th>Percentage Increase Over Prior Insurance Period</th>
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<tbody>
<tr>
<td>5/1/16</td>
<td>$173,171.04</td>
<td>-$1,791.96</td>
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<tr>
<td>5/1/17</td>
<td>$150,122.52</td>
<td>-$23,048.52</td>
<td>-13.31%</td>
</tr>
</tbody>
</table>

How can the City justify a 5.0% increase in premium contributions from the employees effective October 1, 2017 when the City just had periods of such substantial decreases in premium experience? It can’t.

Third – and moving forward to the next premium payment increase sought by the City – “[b]eginning 10/1/2018, employees with dependent coverage will pay 25% of the differential portion of whatever dependent coverage they elect”, as of May 1, 2018 there was an increase in the City’s premium experience of $26,727.12 (17.80%) over May 1, 2017 which, giving the City the benefit of the doubt, is consistent with an argument supporting an increase (even though it followed a period showing a 13.31% decrease).

---

85 City Final Offer at 1.
86 City Exhibit 20.
87 City Final Offer at 1.
However, the totality of the City’s proposed increase in employee contributions for the new Agreement (10%) must be bumped up against the City’s total premium experience for the past several years. That is the key evidence presented in City Exhibit 20 attached to the City’s Brief. From the insurance periods where the City had premium experience in the nine or ten areas of coverage offered (i.e., those beginning May 1, 2015 through the current insurance period effective May 1, 2018), the City’s total annual premium actually minimally decreased:

<table>
<thead>
<tr>
<th>Premium Effective Date</th>
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<th>Increase Over Prior Period</th>
<th>Percentage Increase Over Prior Insurance Period</th>
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<tr>
<td>5/1/17</td>
<td>$150,122.52</td>
<td>-$23,048.52</td>
<td>-13.31%</td>
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<tr>
<td>5/1/18</td>
<td>$176,849.64</td>
<td>$26,727.12</td>
<td>17.80%</td>
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</table>

The City simply cannot justify its proposed 10% increase in employee contributions when its actual premium experience has not changed (and, indeed, minimally decreased) over the past several years. See Village of Oak Brook and Teamsters Local #714, S-MA-09-73 (1996) at 9 where the employer’s proposal to increase premium contributions was rejected because its premium experience decreased [emphasis in original]:

<table>
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<tr>
<td>5/1/18</td>
<td>$176,849.64</td>
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</tbody>
</table>

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88 City Exhibit 20 at pp. 5, 1.
89 [https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-96-073.pdf](https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-96-073.pdf)
... There is no evidence before me to show that the Village had an overall adverse experience with respect to insurance costs. On the contrary, the evidence strongly suggests that, in many respects over the course of the Agreement, the Village's costs have gone down. ...

The FOP’s proposal is to increase employee contributions from 15% to 17% effective January 1, 2019. The FOP’s offer reasonably takes into account the increase experienced by the City effective for the May 1, 2018 insurance period (even after extended periods of premium decreases just discussed). Given the City's actual premium experience, the FOP’s offer is certainly more reasonable than the 10% increase sought by the City after the City had such extended total premium decreases but sustained an increase effective May 1, 2018.

The FOP’s proposed increase in employee contributions from 15% to 17% effective January 1, 2019 is therefore selected.

2. Gap Coverage

The Hill Award found a past practice existed whereby after the employees met a $500 deductible, the City paid 100% of health insurance costs up to the deductible specified in the insurance policies – i.e., “gap coverage”. According to Arbitrator Hill:

... [S]ince at least 1999, the City has been paying 100% of an employee’s medical expenses (up to a designated number, sometimes changed, now $1,000/$3,000) after the $500 deductible is met. Accordingly, once the employee’s deductible ($500) was paid the employee, he or she would submit subsequent insurance bills to the Employer’s Human Resources Department and the Employer would then pay those bills at 100% until the deductible of the

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90 Tr. 97; FOP Brief at 17.
91 FOP Exhibits at Tab 21.
92 Id. at 10.
Employer’s purchased plan was reached. At that point the employee would then pay 20% of the bills and the Employer would pay 80% up to the maximum out-of-pocket amount ($1,000/$3,000) as set forth in the parties’ collective bargaining agreement.

Arbitrator Hill described the City’s change to the past practice as follows [emphasis in original]:

... [T]he practice continued up until April 2014 until the Administration unilaterally changed it to the detriment of the unit. Notwithstanding the long-term practice of paying employees’ medical expenses at 100% after the employees’ deductible was met, the City went to a straight 80/20 sharing of expenses. Around the same time the Administration changed its high deductible Blue Cross/Blue Shield Plan from a $2,500 deductible for single coverage and a $7,500 deductible for family coverage to an even higher deductible plan with a $5,000 deductible for single coverage and a $10,200 deductible plan for family coverage. ...

For years the Administration elected to interpret Article 28 as the Union asserted (paying 100% of health insurance costs after a $500 employee deductible) over five collective bargaining agreements. ... Management was not authorized to change the practice unilaterally in year three of an existing contract. ...

Arbitrator Hill then sustained the FOP’s grievance finding that the past practice of administering the insurance provision had been violated.  

Arbitrator Hill next emphasized the narrow nature of his decision as falling under parties’ prior Agreement:

... Once the 2014-2017 agreement had expired (the current situation), the parties are free to negotiate whatever matrix of reimbursements is warranted given economic and market dictates. Accordingly, my holding goes only to the City’s decision to

93 Id. at 11.
94 Id. at 11-12.
95 Id. at 12.
unilaterally terminate a long-term benefit under the 2014-2017 contract. What past practices the parties include in the successor collective bargaining agreement is their prerogative and independent of this decision.

By letter dated April 10, 2018 – a date after the contractual expiration date of the prior Agreement – the City notified the FOP that effective with the expiration of the prior Agreement (April 30, 2017), the City was discontinuing the past practice for gap coverage found by Arbitrator Hill and the City “... will cease making such payments ....”

In this case, the FOP seeks to add the following sentence into Article 28, Section 1 codifying the results of the Hill Award:

The City will pay 100% of employee deductible costs after $500, until the deductible is satisfied.

The City opposes inclusion of that language.

The initial inquiry here is what is the status quo going into this Agreement?

While Arbitrator Hill confined his award to the prior Agreement, the fact is that he restored the past practice of the City’s having to pay the gap coverage after the employees meet the $500 deductible up to the point where the insurance coverage kicks in when the policy’s higher deductible is met. Arbitrator Hill very carefully noted that with that proper limitation imposed by him “[w]hat past practices the parties include in the successor collective bargaining agreement is their prerogative and independent of this decision.”

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96 FOP Exhibits at Tab 22.
97 Tr. 97; FOP Brief at 17.
98 Hill Award at 12.
With respect to the gap payment issue the parties did not agree on “[w]hat past practices the parties include in the successor collective bargaining agreement ...” per the Hill Award. The reasons they could not agree are not relevant to this proceeding. This is not an unfair labor practice case where one party is alleged to have not bargained in good faith or unilaterally acted without negotiations. The only relevant fact for me is that the parties did not agree and my job as an interest arbitrator is to decide whether or not to include a proposal in the Agreement.

The City argues that the FOP’s seeking to codify the past practice found by Arbitrator Hill “... is not the status quo ... [but] such a proposal represents a new term seeking to incorporate a discontinued past practice as part of the Contract ....” 99

I disagree.

Bona fide past practices rise to the level of explicit terms of the Agreement. See Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 581-582 (1960):

The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts.

***

The labor arbitrator’s source of law is not confined to the express provisions of the contract, as the industrial common law—the practice of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it.

See also, Fairweather’s Practice and Procedure in Labor Arbitration (3rd ed.), 182 (“... the so-called practice is considered an actual contract enforceable apart from any other provision, ... [t]he practice becomes elevated to the status of a contractual right ....”); Metal Specialty Co., 39 LA 1265, 1269 (Volz, 1962) (“[d]ay-to-day practices mutually accepted by the parties may attain the status of contractual rights and

99 City Brief at 11.
duties, particularly where they are not at variance with any written provision negotiated into the contract by the parties and where they are of long standing and were not changed during contract negotiations.

Because Arbitrator Hill restored the gap payment past practice into the prior Agreement, for purposes of this interest arbitration that gap payment responsibility by the City is the status quo coming into this Agreement. Arbitrator Hill expressly noted that fact:

... The health insurance benefit at issue, significant to be sure, is part and parcel of the 2014-2017 collective bargaining agreement and remains a starting point in bargaining a successor collective bargaining agreement.

The FOP’s proposed language that it seeks to be added to the Agreement (“[t]he City will pay 100% of employee deductible costs after $500, until the deductible is satisfied”) codifies the status quo from the prior Agreement.

By letter dated April 10, 2018 from City Manager Wrighton to the FOP, the City informed the FOP that it was discontinuing the past practice restored by the Hill Award:

* * *

Please be advised in light of Arbitrator Marvin Hill’s award that a past practice was established with respect to payments of 100% of the health insurance gap deductible, the City will discontinue such past practice and will cease making such payments effective upon the expiration of the 2014-2017 collective bargaining agreement.

As you know, the arbitrator remanded the resolution to the parties to attempt to resolve. The arbitrator also wrote that once the agreement expired, the parties were free to negotiate whatever

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100 Hill Award at 11 [emphasis added].
101 FOP Exhibits at Tab 22.
“matrix of reimbursement is warranted given economic and market dictates.” The city believes that what the union has now established as a “past practice” does not conform to what is generally available to comparable public and private employees in the group insurance market.

For purposes of an interest arbitration – and not a grievance arbitration – the City cannot make that past practice (which for all purposes has the authority of a contract term) which is the status quo from the 2014 - 2017 Agreement go away by merely writing a letter after the expiration of the Agreement stating that the practice no longer exists. Because of the Hill Award, the city’s gap payment obligation is the status quo. To change the status quo in an interest arbitration, the City must do more than write a letter saying a condition constituting the status quo no longer exists. That would be true for any past practice between the parties. Barring any contract terms to the contrary, if the FOP wanted to change a bona fide past practice through the interest arbitration process after it was ruled upon by a grievance arbitrator, the FOP would similarly be required to demonstrate the need for the change of a status quo. And here, so does the City. For purposes of an interest arbitration, the City needs to demonstrate that the status quo should be changed.

The City’s seeking to remove the past practice gap payment responsibility which Arbitrator Hill described as one which existed “...over five collective bargaining agreements ...”\(^\text{102}\) is therefore plainly an effort to eliminate the status quo gap payment requirement.

Because the gap payment requirement is the status quo and in effect rising to the level of a contract term (Warrior & Gulf Navigation Co; Fairweather’s Practice and Procedure in Labor Arbitration; Metal Specialty Co., quoted above, supra) – and because this is an interest arbitration where the terms of the successor Agreement

\(^{102}\) Id. [emphasis in original].
are determined, the City’s efforts to again eliminate the gap payment requirement amounts to an elimination of a provision of the prior Agreement changing the status quo which “... imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change.” Village of Barrington, supra at 5 [and authority cited therein].

There is insufficient reason to reject the FOP’s proposal to codify the status quo into the Agreement.

In the City Manager’s April 10, 2018 letter, the City takes the position that “[t]he City believes that what the union has now established as a ‘past practice’ does not conform to what is generally available to comparable public and private employees in the group insurance market.” However, as discussed supra at II, external comparables are not being used to resolve the issues in this case. There is just no showing by the City why the status quo of paying the gap benefit should be changed.

It may be that such a benefit is costly – a benefit that Arbitrator Hill found was “... significant to be sure ....” But that is not enough to change a status quo. See Village of Oak Lawn and Local 3405 IAFF, S-MA-13-033 (2014) at 60 where the employer sought to change an existing status quo condition (manning) because of cost implications:

... [J]ust because a system is costly does not mean that the system is broken and must be changed by an interest arbitrator in this very conservative process.

104 FOP Exhibits at Tab 22.
105 Hill Award at 11.
The City’s burden here is to show that there is a need to change a broken status quo requiring the City to pay the gap benefit. The City has not done so. The FOP’s proposal to adopt that status quo as an explicit contract term with the phrase “[t]he City will pay 100% of employee deductible costs after $500, until the deductible is satisfied” is adopted.

**D. Part-Time Employees**

The Illinois Municipal Code, 65 ILCS 5/3.1-30-21 allows the City to utilize part-time police officers:

**Sec. 3.1-30-21. Part-time police.** A municipality may appoint, discipline, and discharge part-time police officers. A municipality that employs part-time police officers shall, by ordinance, establish hiring standards for part-time police officers and shall submit those standards to the Illinois Law Enforcement Training Standards Board.

Part-time police officers shall be members of the regular police department, except for pension purposes. Part-time police officers shall not be assigned under any circumstances to supervise or direct full-time police officers of a police department. Part-time police officers shall not be used as permanent replacements for permanent full-time police officers.

Part-time police officers shall be trained under the Intergovernmental Law Enforcement Officer's In-Service Training Act in accordance with the procedures for part-time police officers established by the Illinois Law Enforcement Training Standards Board. A part-time police officer hired after January 1, 1996 who has not yet received certification under Section 8.2 of the Illinois Police Training Act shall be directly supervised.
The statutory ability of the City to hire part-time police officers is the underpinning of the parties’ offers on this issue. The prior Agreement is silent on the issue of the City’s use of part-time employees. 107

The FOP proposes the following: 108

The City may utilize the services of certified part time officers to perform bargaining unit work in accordance with 65 ILCS 5/3.1-30-21, as amended, provided that the use of part-time officers will not result in any layoffs or reduction of work hours or overtime hours worked by full-time bargaining unit members. Part-time officers will not work more than 1000 hours per year and will not be assigned to an assignment—unless such assignment is offered first to full-time members of the bargaining unit consistent with current language in Article 27 Section 1. Work time for part-time officers maybe scheduled by the City, but the City shall post the opportunity fourteen (14) days in advance of the anticipated schedule time, which posting will remain up until forty-eight (48) hours before the beginning of the scheduled time. During the time that part-time work hours are posted, eligible full-time officers shall have the option to sign up to work posted work time. When full-time officers sign up for posted part-time work, overtime assignments shall be awarded to full-time officers based on relative seniority of those who requested to work the posted assignments. If no eligible full-time officer signs up, then part-time officers scheduled to work the posted hours shall be permitted to do so.

Unscheduled overtime (for example, due to illness) may be worked by a part-time officer in the event that reasonable efforts have been made to notify all eligible full-time officers of the work opportunity, and no eligible full-time Officer has accepted the opportunity.

The City proposes the following: 109

107 According to the FOP “[t]he parties have each made proposals for a new provision regarding the use of part-time police officers.” FOP Brief at 19.
108 Tr. 98; FOP Exhibits at Tab 30; FOP Brief at 19-23.
109 City Final Offer at 1-2; City Brief at 13-18.
The City may utilize the services of certified part-time officers to perform the statutory duties of Illinois peace officers in accordance with 65 ILCS 5/3.1-30-21, as amended. Each part-time officer will not work more than 1000 hours per year and will not be assigned to work unscheduled overtime as defined herein until such assignments are offered first to full-time members of the bargaining unit consistent with Article 27, Section 1.

To facilitate overall scheduling and administration, part-time officers are permitted to work scheduled shifts set more than 7 days in advance, plus special events. Scheduled overtime or other shift coverages by part-time officers shall mean any assignment made at least one week (7 days) in advance of the start of the shift. All unscheduled shift coverage (less than 7 days’ notice) will be offered first to bargaining unit members. If no eligible full-time officer accepts these opportunities (for unscheduled overtime required with less than 7 days’ notice), then part-time officers scheduled to work the hours shall be permitted to take those shift assignments.

Unscheduled overtime (meaning it is scheduled with less than 7 days’ notice; for example, due to illness) may be worked by a part-time officer in the event that reasonable efforts have been made to notify all eligible full-time officers of the work opportunity, and no eligible full-time officer has voluntarily accepted the opportunity.

The parties agree on several basic concepts: (1) 65 ILCS 5/3.1-30-21 governs; (2) part-time officers will not work more than 1000 hours per year and; (3) unscheduled overtime (e.g., call-offs caused by illness) can be worked by part-time officers after reasonable efforts to offer the overtime are made to full-time officers and the opportunity is not voluntarily taken by the full-time officers.

The parties then differ on subjects such as the time for full-time officers to have a right of first refusal for assignments (regular or overtime) before those assignments can be assigned to part-time officers (assignments with less than seven days advance notice according to the City can be taken by full-time officers compared to 48 hours before an assignment with a 14-day posting requirement according to the FOP). The
FOP adds a guarantee that use of part-time officers will not result in layoffs or reduction of work hours or overtime hours with no corresponding guarantee by the City.

The FOP views the City’s offer as an effort “... to prevent full-time employees from normal and regular overtime opportunities” with the FOP’s view that the City has the “... intention to replace full-time officers permanently with part-time police officers.” 110 The City views its proposal as “... a relatively minor change to the status quo ...” and the FOP’s proposal as one that causes “... the City part-time use would be strictly dictated by the Union’s unfettered discretion ... [that] pays lip service to the use of part-time officers [and with] a 14 day posting and 48-hour holding period, the City would simply be unable to feasibly schedule any part-time officers as such individuals typically have other employment and need to have sufficient notice of available shifts.” 111 The City asserts that “... the purpose of its proposal is to lessen the already unsustainable costs related to personnel.” 112

The parties also differ on whether the other party’s proposal constitutes a “breakthrough” and, if so, which party has the burden and what that burden must show. 113

I need not decide the breakthrough issue because of the fact that use of part-time officers was not a provision in the prior Agreement and because both parties have made proposals, both parties are seeking to change the status quo.

110 FOP Brief at 22.
111 City Brief at 15-16.
112 Id. at 16.
113 City Brief at 14-17; FOP Brief at 19-20.
I agree in this case with the City that under the circumstances “... the proposals need only be evaluated as to which one of the competing proposal[s] is the more reasonable and appropriate.”\textsuperscript{114}

There is no question that a contract provision providing for the use of part-time officers is new. The parties have not done this before. Therefore, under the circumstances, the proposal that causes the least change to the \textit{status quo} should be tried out.

And that is what happened in \textit{Richton Park, supra}, on the issue of use of part-time police officers (\textit{id. at 5}):\textsuperscript{115}

\textbf{... Use of Part-Time Officers}

The Village has the right to use part-time officers. However, part-time officers shall only be used to supplement and not to supplant the use of regularly assigned bargaining unit officers or to erode the bargaining unit. The right to determine levels of police staffing remains with the Chief of Police (or the Chief’s duly-delegated designee(s)) per policy set by the Police Department.

This provision shall be effective for the duration of the 2016-2020 Agreement and shall not be considered as a \textit{status quo} for subsequent contract negotiations or interest arbitration proceedings.

The same holding shall apply to this case. That really is because the parties have not actually tried using part-time officers and the actual impact of their proposals is based on speculation and argument. The offer chosen shall be effective only for the duration of this Agreement expiring December 31, 2019 and will not be considered as a \textit{status quo} going into the next round of negotiations. The parties shall

\textsuperscript{114} City Brief at 17.
\textsuperscript{115} \url{https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-012ArbAward.pdf}
then be free to renew the provision or start from scratch without being saddled with the implications of an existing status quo.  

But which offer is the least deviation from the status quo of non-use of part-time officers? While the City views the FOP’s offer as restrictive with respect to the City’s ability to use part-time officers, that view (which is supported by a reading of the FOP’s proposal) demonstrates that the FOP’s proposal is the one that least deviates from the status quo of not previously using part-time officers. On that basis and to allow this new provision to play out so that the parties can see how it actually works and where shortcomings may exist and what needs to be tweaked or substantially changed during the negotiations following this Agreement, the FOP’s offer is adopted.

E. Education Stipend

Article 29, Section 5(B)(6) of the prior Agreement provides:

ARTICLE 29 WAGES AND SEVERANCE PAY

* * *

Section 5 – Work Experience Adjustment and Higher Education Reimbursement

* * *

6. Officer’s [sic] who currently hold a higher education degree from a State of Illinois community college or university shall, after verification of the degree, receive dollar amounts added to their base pay on the last two pay full pay periods

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The City apparently does not object to such a procedure (City Brief at 14):

As a first point, the City would maintain that nothing in the Municipal Code makes the use of part-time officer[s] a mandatory subject of bargaining. Accordingly, without waiving its right to assert such a position in the future, and in light of the fact that the parties did bargain on the use of part-time officers, the City is willing to submit this issue to the Arbitrator for purposes of this contract only.

I need not address whether this issue is a mandatory subject of bargaining. The point here is that I have implemented a similar trial period prior to this (Richton Park, supra) and the City has no objection to a similar approach in this case on the same issue.
immediately preceding the Officer’s retirement. Officers who are eligible per this paragraph are listed in Appendix H along with the associated dollar amounts which are not lump sum payments, but will result in the adjustment to the hourly rate of pay for the last two full pay periods prior to the Officer’s retirement. All officers who provide the verification of a higher education degree, subsequent to the inception date of this contract shall receive the aforementioned education benefit.

* * *

APPENDIX H – OFFICERS HOLDING DEGREES ON MAY 1, 2014

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<tr>
<td>Bachelor</td>
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* * *

The City proposes the following:

Officers who currently hold a higher education degree from a State of Illinois community college or university shall, after verification of the degree, receive an education bonus of $2,500 for an Associate’s Degree and a $5,000 bonus for a Bachelor’s Degree as an annual stipend payable to the employees on September 30th. The higher education bonus shall not be payable to employees hired after the effective date of this Contract and shall not be part of the employee’s base salary for pension purposes.

The City explains its offer as follows:

... The City's proposal is that while employees currently in the Union will continue to receive the applicable stipends, the paid sums will not be part of their pensionable pay. A second objective is to cease payment for employees who are not in the unit as of the effective date of the contract. As such, all current employees would be grandfathered and would continue to receive the education stipend.

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117 City Final Offer at 2; City Brief at 23-24.
118 City Brief at 18.
The FOP proposes that the status quo be kept for current officers but that new hires will receive the education pay as an annual stipend and not put on the employees’ base pay.\textsuperscript{119} The FOP explains its offer as follows: \textsuperscript{120}

... The Union proposes the status quo for all current officers but is willing to have the education pay turned into a stipend for all new hires. As a result, the education pay would not attach to the base pay of a new hire and would reduce the pension costs of the City.

According to the FOP, the education benefit is a “[o]ne-time inclusion” to an officer’s base pay and not to be granted until after four years of service.\textsuperscript{121}

According to the City, “... what was originally intended solely as a pension spiking measure was later modified to be an annual benefit.”\textsuperscript{122} Further, according to City Manager Wrighton:\textsuperscript{123}

\textbf{CITY MANAGER WRIGHTON:} ... [W]hat’s been done here bears no relationship to the language in the contract. So it’s a snafu in that because it basically says that - - what the contract says is this won’t even kick in until four years out from retirement, but there was a mistake made some years ago, long ago, and so that it created a past practice. So this isn’t just a desire to control the pension obligation, the looming pension obligation, but also to clean up language that has been inaccurate since I don’t know how long.

The City attempts to more significantly change the status quo for the entire bargaining unit by changing the benefit for current employees from a salary adjustment (thereby, according to the City, making the benefit pensionable) to a stipend

\begin{itemize}
\item \textsuperscript{119} Tr. 98; FOP Brief at 23-24.
\item \textsuperscript{120} FOP Brief at 24.
\item \textsuperscript{121} Tr. 41-45.
\item \textsuperscript{122} City Brief at 19.
\item \textsuperscript{123} Tr. 85.
\end{itemize}
(according the City, eliminating the pension ramifications and reducing its costs) and then entirely eliminating the benefit for those not yet hired. The FOP agrees to a two-tier approach, but only for those not yet hired by changing the benefit from a salary adjustment to a stipend for new hires.

In this proceeding, I do not determine what is pensionable and what is not – that’s for the pension board. For my purposes, all that is relevant is that both parties seek to change the status quo.

The key is the City’s effort to totally eliminate this benefit for employees yet to be hired – i.e., “... to cease payment for employees who are not in the unit as of the effective date of the contract.”124 There has to be a demonstration of a substantial need by the City to accomplish that goal. The City sees this as a cost-savings move – and no doubt, it would be. However, the City’s proposal to totally eliminate a benefit for a group of employees (those yet to be hired – the “unborn”) is a drastic change. And it must be remembered that this is a conservative process. Oak Lawn, supra at 60 (“... just because a system is costly does not mean that the system is broken and must be changed by an interest arbitrator in this very conservative process.”).125

Under that standard, the FOP’s proposal is the less drastic of the two proposals made. Without more of a showing from the City why future employees should be totally stripped of a negotiated benefit, the FOP’s offer must be adopted. Again, the consequences of a decision imposed by the interest arbitration process that does not achieve a complete goal of a cost savings as desired by the City falls to the City’s elected officials and administrators and not to this arbitrator.

124 City Brief at 18.
F. Prior Tentative Agreements

Prior tentative agreements reached by the parties during negotiations are incorporated into this award.

IV. AWARD

Based on the above, the following is awarded:

1. Duration

   FOP Offer:
   
   May 1, 2017 through December 31, 2019.

2. Wages

   FOP Offer:

<table>
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<th>Percent Increase</th>
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<tr>
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3. Health Insurance

   FOP Offers:
   
   1. Employee premium contribution increase from 15% to 17% effective January 1, 2019.
   
   2. Insert “The City will pay 100% of employee deductible costs after $500, until the deductible is satisfied” in Article 28, Section 1 which codifies the five-contract past practice and restoration of the status quo in the 2014-2017 Agreement consistent with the results of the grievance award in City of Streator and Illinois POP Labor Council, GR-160503 ABNW, FMCS No. 1701405-01407-1, (Marvin Hill, April 2, 2018).
4. Part-Time Employees

**FOP Offer:**
FOP offer on use of part-time employees, but effective for the duration of the Agreement and which shall not be considered as a *status quo* for subsequent contract negotiations or interest arbitration proceedings.

5. Education Stipend

**FOP Offer:**
Current employees – *status quo* and grandfathered to the benefit per the 2014-2017 Agreement.

New hires – receive the education pay as a stipend and not put on base pay.

6. Prior Tentative Agreements

Prior tentative agreements reached by the parties during negotiations are incorporated into this award.

7. Retroactivity

Where applicable, provisions of this award are retroactive on all hours paid.

8. Remand and Retention of Jurisdiction

This matter is now remanded to the parties to draft language consistent with the terms of this award. I will retain jurisdiction to resolve any disputes between the parties falling under the umbrella of this remand.

---

Edwin H. Benn  
Arbitrator

Dated: November 26, 2018