

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

THE VILLAGE OF LANSING

and

**ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL**

CASE NOS.: S-MA-12-214
Arb. Ref. 14.106
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the Village: James Baird, Esq.
Roxana M. Crasovan, Esq.

For the Union: Gary L. Bailey, Esq.
Daniel G. Mahoney, Esq.

Date of Award: December 29, 2014

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I. BACKGROUND

This is an interest arbitration proceeding between the Village of Lansing (“Village” or “Lansing”) and the Illinois Fraternal Order of Police Labor Council (“Union” or “Council”) pursuant to Section 14 of the Illinois Public Labor Relations Act (“IPLRA”) to set the terms of the parties’ 2012-2016 collective bargaining agreement (“2012-2016 Agreement”).¹

The Union was certified as the bargaining representative in 1988.² The parties’ predecessor collective bargaining agreement (“2009-2012 Agreement”) was for the period May 1, 2009 through April 30, 2012.³ “[A]ll full-time sworn peace officers below the rank of sergeant ...” are represented by the Union.⁴ This will be the parties’ eighth contract.⁵ There are approximately 37 officers in the bargaining unit.⁶

II. ISSUES IN DISPUTE

The following issues are in dispute.⁷

- A. Wages
 - 1. Percentage increases
 - 2. Retroactivity language
- B. Residency
- C. Sick leave

¹ 5 ILCS 315/14.

The parties have waived the statutory tri-partite panel established by Section 14 of the IPLRA. Ground Rules and Stipulations (“Ground Rules”) at 1, par. 3.

² Union Exh. 5(A).

³ Village Exh. 13; Union Exh. 6.

⁴ 2009-2012 Agreement at Section 1.1.

⁵ Union Exh. 5(B); Tr. 8-9.

⁶ Tr. 37; Union Exh. 12; Village Exhs. 8, 9, 47.

⁷ Ground Rules at 2, pars. 5, 6.

D. Uniform allowance

The parties have designated wages, sick leave and uniform allowance as economic issues and residency as a non-economic issue.⁸ Under the IPLRA, for economic issues, I am required to select one of the parties' final offers.⁹ I am not similarly bound for non-economic issues.¹⁰

III. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

(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.

⁸ *Id.*

⁹ Section 14(g) of the IPLRA provides that "... [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)." *See also*, Ground Rules at 2, par. 5.

¹⁰ Union Brief at 24; Village Brief at 40.

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

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

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

IV. DISCUSSION

A. Wages

1. Percentage Increases

a. The Parties' Final Offers

TABLE 1

Effective	Village¹¹	Union¹²
5/1/12	1.0%	1.5%
5/1/13	2.0%	2.0%
5/1/14	2.5%	2.5%
5/1/15	2.0%	2.0%
Total	7.5%	8.0%

¹¹ Village Final Offer at Economic Issues (a); Village Brief at 10.

¹² Union Final Offer Section 17.2; Union Brief at 9.

b. Discussion

The parties are obviously not far apart on wages – 0.5% over the duration of this four-year Agreement, with that difference coming in the first year (May 1, 2012-April 30, 2013).

Under Section 14(h) of the IPLRA, interest arbitrators can consider designated factors “as applicable”.

1. External Comparability

Section 14(h)(4)(A) of the IPLRA lists one for the factors for consideration by interest arbitrators as “[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”, which is commonly referred to as “external comparability”.

At present, I do not give weight to this factor.

Since the passage of the IPLRA, parties in interest arbitrations have placed heavy weight on the external comparability factor in making their arguments for the establishment of wages, hours and working conditions. And the parties make those arguments here.¹³

As interest arbitrations followed the passage of the IPLRA, the arbitrators (including the undersigned) utilized the external comparability factor as *the*

¹³ See Village Brief at 24-27; Union Brief at 14-16.

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driving force for deciding the disputes.¹⁴ The arbitrators did so, even though the IPLRA does not define “comparable communities” and that factor is just part of one of the eight factors listed in Section 14(h). So the initial question was how do the parties and interest arbitrators identify “comparable communities”? No specific statutory guidance exists.

In addition to the lack of a definition of “comparable communities” in the IPLRA, there is no statutory guidance to answer the question of precisely what do interest arbitrators do with the comparable communities once they are identified? 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

¹⁴ See Benn, “A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act,” Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

... The parties in these proceedings often choose to give comparability the most attention. See Peter Feuille, “Compulsory Interest Arbitration Comes to Illinois,” Illinois Public Employee Relations Report, Spring, 1986 at 2 (“Based on what has happened in other states, most of the parties’ supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... [o]f these three, comparability usually is the most important.”).

See also, my awards in *Village of Streamwood and Laborers International Union of North America*, S-MA-89-89 (1989); *City of Springfield and Policemen’s Benevolent and Protective Association, Unit No. 5*, S-MA-89-74 (1990); *City of Countryside and Illinois Fraternal Order of Police Labor Council*, S-MA-92-155 (1994); *City of Naperville and Illinois Fraternal Order of Police Labor Council*, S-MA-92-98 (1994); *Village of Libertyville and Illinois Fraternal Order of Police Labor Council*, S-MA-93-148 (1995); *Village of Algonquin and Metropolitan Alliance of Police*, S-MA-95-85 (1996); *County of Will/Will County Sheriff and MAP Chapter #123*, S-MA-00-123 (2002) and *County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council*, S-MA-00-285 (2002), where issues were decided by my placing heavy emphasis on external comparable communities.

These awards can be found at the Illinois Labor Relations Board’s website:
www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm

employment in comparable communities.” But how is that “[c]omparison” to be made? Again, no specific statutory guidance is given.

With no definition of “comparable communities” or guidance about what specifically what to do with them when they are identified (or are agreed upon), as the years went by the parties in the interest arbitration process got very creative in defining “comparable communities” and how to use them through application of what appeared to be randomly chosen geographic circles, medians, averages, ranking techniques, etc.

That tailored use of comparables is what the parties are doing in this case and makes the point. The parties agreed upon the set of comparable communities.¹⁵ So selection of comparable communities is not an issue here – the parties agree upon those communities. The dispute exists over how to use those agreed-upon comparables.

In support of its position on wages, the Union argues that comparisons should be made looking at an average of wages paid in the agreed-upon comparable communities.¹⁶ The use of averages is common, but that analysis has no specific statutory support.

In support of its position on wages, the Village examines comparable communities and looks at rankings based upon projections for 25-year career earnings.¹⁷ The Village’s analysis also contains no statutory support.

¹⁵ Ground Rules at 3, par. 10 [citing my prior award between the parties for the 2005-2009 Agreement at 4 (“[t]he parties agreed that Blue Island, Calumet City, Hazel Crest, Homewood, Midlothian, Oak Forest, Park Forest and South Holland are comparable communities to Lansing.”)]. *Village of Lansing and Illinois FOP Labor Council*, S-MA-04-240 (2007).
www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Lansing%20&%20FOP%20-%20S-MA-04-240.pdf

¹⁶ Union Brief at 14-16.

¹⁷ Village Brief at 24-27.

Both approaches are interesting, but these approaches are simply *not* specifically supported by the statute. Section 14(h)(4)(A) just says I can consider comparable communities.

What the parties appeared to be doing since the passage of the IPLRA was determining comparability with the bottom line that a community was “comparable” if it paid or provided benefits at levels which were comparable to what the party was seeking for the community involved in the interest arbitration proceeding. There is nothing wrong with that – that is just good advocacy. See my award in *Village of Streamwood, supra* at 21-22:¹⁸

It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a true “comparable” is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

My approach for selecting comparable communities focused on the Section 14(h)(2) “[s]tipulations of the parties” factor. Utilizing that section, I looked to see if the parties agreed upon – *i.e.*, “stipulated” – to any communities as being “comparable” and, if they did, I used those communities to set a range and then looked at reasonably relevant factors such as population, distance from community, department size, number of employees, median income of commu-

¹⁸ www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Streamwood%20&%20Laborers%20Int%20-%20S-MA-89-89.pdf

nity, sales tax revenue, EAV, general fund revenue, etc. (or any other reasonable factors utilized by both parties in a proceeding in making their arguments – again, amounting to a “stipulation”) to see how often contested communities fell within or came close to the range of communities agreed upon by the parties as being comparable. If there were sufficient contacts with the range of agreed-upon communities, then those particular contested communities were found by me to be “comparable communities” for that case.¹⁹

I just used what I thought was a reasonable method for determining which communities were comparable to the one in dispute when the IPLRA gave absolutely no guidance on to how to do so, except for telling interest arbitrators in Section 14(h) that they *could* consider – through use of the phrase “as applicable” and not a phrase like “shall consider” – “comparable communities” as one of the factors. However, given the weight that was attached to comparables as the interest arbitration awards rolled out after passage of the IPLRA, once those comparable communities were established (by whatever means), the direction of the decision was, for all purposes, over as comparability received primary, if not determinative weight.

But then the Great Recession of 2008 hit and crushed the economy. Revenue streams dried up, massive layoffs occurred and parties in the public sector had to scramble to deal with the new landscape.

Even though I was a staunch advocate for placing heavy reliance on external comparability, after the Great Recession hit I questioned the heavy reliance on external comparables to establish wage and benefit rates in one com-

¹⁹ “A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act,” *supra*.

munity based on the experiences in other communities when the contracts that were being used for comparison purposes were negotiated before the Great Recession or were in communities that may not have all fared the same in dealing with the Great Recession and its aftermath. See my award in *City of Highland Park and Illinois Council of Police (Patrol Unit)* (2014) at 13-15, 18 [citations omitted]:²⁰

... [S]ince the jolt of the Great Recession which started in 2008 and until the economy sufficiently recovers, I have, for now, turned away from looking at external comparables to decide these cases. In a time of (and following) such a massive economic upheaval, it just does not make sense to me to impose wage and benefit rates on one community based upon experiences in other communities where contracts in those other communities may have been negotiated before the Great Recession, new contracts following the Great Recession may have been negotiated or imposed on a non-precedential basis to buffer against the uncertainties caused by the Great Recession, or where the communities in question may have experienced the long-term effects of the Great Recession in different ways.

* * *

I am still not persuaded that the “good old days” are back “where external comparables play an important role.” The economy is no doubt recovering – but that recovery is on a sluggish, shaky and roller coaster rebound.

* * *

Section 14(h) provides that I look at “... the following factors, *as applicable*” [emphasis added]. As far as I am concerned, we are not yet at a point in the recovery from the Great Recession to cause these cases to again be decided so heavily on external comparability, which literally amounts to setting a wage or benefit rate in one community based upon how other communities set their rates (either voluntarily or through the interest arbitration process) when the experiences of the comparable communities may be vastly different

²⁰ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/Highland%20Park.pdf

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coming out of the Great Recession and when, in [then-Federal Reserve Board] Chairman [Ben] Bernanke's words [in February 2014], "... the recovery clearly remains incomplete ... [and is a] slow recovery"..." As far as the economy is concerned, these kinds of reports do not cause one to be confident that we are really out of the woods.

Since the Great Recession began in 2008, my focus in deciding these disputes shifted to the economy (as reflected through the cost of living factor) along with the overall compensation factor and internal (as opposed to external) comparability so as to better reflect what is going on in the particular community where the interest arbitration is occurring.²¹

²¹ See my award in *City of Rock Island and Illinois FOP Labor Council*, S-MA-11-183 (2013) at 16-18 [emphasis in original]; www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-11-183.pdf

... As I have discussed in other interest arbitration awards, while external comparability was at one time (prior to the Great Recession) *the* driving factor in resolving wage disputes in interest arbitrations (and I was a big proponent of use of that factor), since the crash and until there is a sufficient recovery, I have turned to more reliable factors geared towards the state of the economy – particularly the cost of living. See my recent award in *City of Highland Park [and Teamsters Local 700 (Sergeants Unit)]*, S-MA-09-273 (February 25, 2013) at 11-12 [citations and footnotes omitted]:

The external comparability factor has been the source of some controversy since the country was hit with the Great Recession in 2008. As the Union points out, I have previously found that the impact of the Great Recession has caused external comparability to take a back seat to factors more geared to reflect the status of the economy, such as the cost-of-living. I do not know how the non-precedential comparable communities chosen by the parties did during the Great Recession. Were some hit harder than others? How did their experiences compare with the City's experience? Were contracts they negotiated with their various labor organizations negotiated on a non-precedential basis and therefore are of questionable reliance? While the factors in Section 14(h) are vague and in many cases not defined (*e.g.*, what *exactly* are "comparable communities" and what *exactly* are "[s]uch 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"?), under Section 14(h) those vague factors are to be chosen for analysis only "... as applicable".

* * *

Of late and until the economy sufficiently turns around so that interest arbitrators and the parties can again make "apples to apples" comparisons for comparability purposes, my focus has been on the best indicator of how the economy is doing – *i.e.*, the cost-of-living factor. ...

[footnote continued]

As I stated in the *Highland Park (Patrol Unit)* award quoted *supra*, I am still not of the opinion that the economy has sufficiently recovered from the Great Recession to allow external comparability to again drive these cases like it did before the Great Recession.

While the recovery is progressing, we are not yet on solid ground. In the Federal Reserve's December 17, 2014 Monetary Policy Release, the Federal Reserve describes the recovery as follows [emphasis added]:²²

Information received since the Federal Open Market Committee met in October suggests that economic activity is expanding at a *moderate* pace. ... Household spending is rising *moderately* and business fixed investment is advancing, while the recovery in the housing sector remains *slow*. ... The Committee expects that, with appropriate policy accommodation, economic activity will expand at a *moderate* pace ...

While unemployment rates are dropping, at her December 17, 2014 press conference, Federal Reserve Chair Janet L. Yellen described the current situation [emphasis added]:²³

[continuation of footnote]

I am still not yet satisfied that the economy has sufficiently recovered to return to a time when one municipality's fate should be determined by the outcome of interest arbitration proceedings or negotiations in other communities – even if those other communities are technically “comparable”. ... I know there is disagreement on the use of external comparables, but I am just not convinced that we are out of the woods yet ... to conclude that the economy is on sufficiently sound footing to again give such great – indeed, determinative – weight based on what happened in communities outside of the one in dispute.

I find that in this case that the external comparability factor is not an “applicable” factor under Section 14(h) and I give it no weight.

See also, *Highland Park (Patrol Unit)*, *supra* at 20-28.

²² www.federalreserve.gov/newsevents/press/monetary/20141217a.htm

²³ Transcript of Chair Yellen's December 17, 2014 press conference at 1-2.
www.federalreserve.gov/mediacenter/files/FOMCpresconf20141217.pdf

... [T]here is room for further improvement, with *too many* people who want jobs being unable to find them, too many who are working part time but would prefer full-time work, and *too many* who have given up searching for a job but would likely do so if the labor market were stronger. ...

... [R]eal GDP expanded around 2 1/2 percent over the four quarters ending in the third quarter, and the available indicators suggest that economic growth is running at roughly that pace in the current quarter. The Committee continues to expect a *moderate* pace of growth going forward.

There is certainly “moderate” optimism present for things to come – which is a far different place from where we were in the immediate years following the 2008 Great Recession. However, comments from the Federal Reserve about “slow” areas of recovery and from Chair Yellen that “... there is room for further improvement, with too many people who want jobs being unable to find them, too many who are working part time but would prefer full-time work, and too many who have given up searching for a job but would likely do so if the labor market were stronger” reveal the still-shaky footing we are on. And to the extent there is a “moderate” recovery, the immediate impact on the public sector entities is yet to be demonstrated, in fact.

From my perspective, because Section 14(h) provides that I look at “... the following factors, *as applicable* ...” [emphasis added], as far as I am concerned, we are just not yet there for the return of external comparability – where the experiences in one municipality can literally dictate the result in another municipality – as an “applicable factor” for these cases. For now, I continue as I have in the recent past. External comparability is not, in my opinion, an “applicable” factor for these cases.²⁴

²⁴ Maybe prior to the Great Recession, interest arbitrators (the undersigned included) and the parties simply put too much emphasis on one factor in deciding these cases and that emphasis left the process rudderless at a time when direction was sorely needed as the Great Recession
[footnote continued]

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[continuation of footnote]

caused such havoc on so many for so long. But the decisive weight we all gave to the external comparability factor must cause a second look (at least it does for me) as to why the successes or failures in one community should *drive* the results in another community which, although “comparable” may in reality have had different experiences (both positive and negative) during and coming out of the Great Recession.

So maybe the weight that comparability should get should be more carefully thought through. A previous case argued before me by lead counsel for the Village in this case took the comparability argument to its logical end result, with the position that if a party has negotiated itself into a “place” in the ranking of comparables (there, for the union in that case, last place), then that is where it should stay. While counsel for the Village prevailed in his argument for adoption of most of the employer’s offers in that case, it was not on the basis of the “stay in your place” argument. See *Village of Lisle and PB&PA*, S-MA-02-199 (2002) at 3-6 [footnotes omitted]:

The Village makes the argument that the officers have negotiated themselves into a place with respect to the comparable communities – *i.e.*, the bottom – and that is where any wage offer selected in this proceeding should keep them. ...

* * *

In simple terms then, according to the Village, if a union has negotiated itself into an unfavorable (*i.e.*, bottom) position with respect to other comparable communities, it cannot get out of that position through the interest arbitration process. I find that argument is not persuasive.

Section 14(h)(4) of the IPLRA says nothing about a union (or a public employer) being stuck at a certain level in the stack of comparable communities. Indeed, Section 14(h) says very little. All Section 14(h) says is that one “factor” to be considered in an interest arbitration is “[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: (A) [i]n public employment in comparable communities” Without clearer guidance from the legislature or the courts, I cannot find that an offer must be selected which keeps a union at the bottom of the stack of comparables because the union may have negotiated itself into that position in the past. “Comparability” is a factor to be considered – that is all.

Moreover, this is a two way street. What if the officers of the Village were always at the *top* of the stack of comparables in terms of wages and the officers in one of the other comparable communities negotiated a substantial increase to catapult them over the Village’s officers? Wouldn’t the Village’s theory of the parties having negotiated the officers into a certain place require the selection of an offer in this hypothetical that would restore the officers to first place - even if that offer required the Village to make an exceptionally high percentage increase (*e.g.*, 20% in one year) to already comparatively highly paid officers? Wouldn’t the Village’s theory lock the officers into a position of *always* being at the top of the stack no matter what the required increase to maintain that first place position might be? I hope not. Comparability is a factor – an important one – but, nevertheless, it is just a factor amongst several.

www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Lisle%20&%20PB&PALC,%20S-MA-02-199.pdf

If too much weight is given to external comparability, the arguments made in *Lisle* will logically follow. If that is the result, then Section 14(h) will have only one factor – external comparability.

“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.

[footnote continued]

What does my hiatus on use of external comparability do for the collective bargaining process? As I have discussed before, in theory, it forces *the parties* to settle these disputes with less of a need to go through long and drawn-out interest arbitration proceedings. As the parties tip-toe through the aftermath of the Great Recession, the wild-card external comparability factor is best kept out of the picture. The parties know what the cost of living is and what the economic projections show; they know what has happened or is going to happen internally in their communities; and they know the overall impact of the various wage and benefit offers on the bargaining units at issue and on other employees employed by the community. And they also know that the interest arbitrator (if doing the job correctly by consistently following his or her own prior decisions to provide stability) is not going to award a breakthrough or change the *status quo* either through establishing a new benefit or reducing an existing one unless there is a showing that the existing system is broken – which is a heavy burden to meet. And that means that through prior awards of the interest arbitrator, the arbitrator has effectively drawn a circle – an outer boundary – within which the parties can navigate and negotiate and if there are any major changes outside of that boundary, *the parties* will have to bargain and trade for those changes because an interest arbitrator is not going to give those changes to them.

[continuation of footnote]

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.-C.L. L. Rev.* 7, 11 (1991) (“Consistency is a virtue, but it is not the only virtue, and people who never change their minds may have simply stopped thinking.”).

Maybe we all should now take another look at the use of and weight given to external comparability.

As I have repeatedly acknowledged before, I recognize that my arbitrator colleagues may differ on this approach and many have returned to (or never left) their heavy lock-step reliance upon external comparability – whatever that really is – to decide these cases. I respect that. However, since the passage of the IPLRA, as an arbitrator and mediator, I have been involved in many interest arbitration proceedings and negotiations for collective bargaining agreements in the public sector in this state. And in the public sector arena, although we are moving forward in the recovery, we are still in uncertain and shaky times. I still see no other practical way to get through what was a nightmare caused by the Great Recession and its aftermath – one which may really not yet be over. The parties are best situated to determine their fates through negotiations focusing on what is going on as the economy impacts conditions in *their* communities. At present, what goes on everywhere else – even in communities “comparable” to their own – should be of lesser concern. Thus, I just cannot give weight to external comparability and, as I have done in the recent past since the commencement of the Great Recession, will not do so in this case.

Therefore, at the present time for this arbitrator, the more “applicable” factors that determine economic issues such as wages are cost of living as measured by the Consumer Price Index (“CPI”), internal comparability and overall compensation presently received. *See e.g.*, my awards from this year in *Village of Oak Lawn and Oak Lawn Professional Firefighters Association, Local 3405, IAFF, S-MA-13-033* (2014) at 6-14²⁵; *Village of Skokie and Skokie Fire-*

²⁵ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-13-033.pdf

fighters Local 3033, IAFF, S-MA-10-197 (2014) at 18-26²⁶; *Highland Park (Patrol Unit)*, *supra* at 13-19.

2. Cost Of Living

Current actual (non-forecasted) data as of the December 17, 2014 release from the Bureau of Labor Statistics (“BLS”) shows the following for various contract periods for which real changes to the CPI data are currently available:²⁷

²⁶ www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-10-197.pdf

²⁷ By accessing that website for the BLS data bases, the latest CPI comparisons can be made through designation of year ranges for U.S. All items, 1982-84=100 and retrieving the data. That website is:

<http://data.bls.gov/cgi-bin/surveymost?cu>

For the cost of living factor, the analysis always turns to the CPI data. That is because of the Section 14(h)(5) factor which provides for consideration of “[t]he average consumer prices for goods and services, commonly known as the cost of living.”

Not to further unduly complicate things, however, the BLS tells us that notwithstanding the IPLRA’s equating “[t]he average consumer prices for goods and services” to “the cost of living”, the CPI might not be a completely accurate measure as a cost of living index. According to the BLS’ “Frequently Asked Questions” (www.bls.gov/dolfaq/bls_ques2.htm) [emphasis added]:

Question: Is the Consumer Price Index (CPI) a cost-of-living index?

Answer: The CPI frequently is called a cost-of-living index, but it differs in important ways from a complete cost-of-living measure. The Bureau of Labor Statistics (BLS) has for some time used 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, 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 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 comprise a complete cost-of-living framework.

Traditionally, the CPI was considered an upper bound to a cost-of-living index in that the CPI did not reflect the changes in buying or consumption patterns that consumers would make to adjust to relative price changes. The ability to substitute means that the increase in the cost to consumers of maintaining their level of well-being tends to be somewhat less than the increase in the cost of the mix of goods and services they previously purchased.

Since January 1999, a geometric mean formula has been used to calculate most basic indexes within the CPI; in other words, the prices within most item categories (e.g., apples) are averaged using a geometric mean formula. This improvement moves the CPI somewhat closer to a cost-of-living measure, as the geometric mean formula allows for a modest amount of consumer substitution as relative prices within item categories change.

[footnote continued]

TABLE 2
Changes 2012-2014 All Urban Consumers (CPI-U)

Contract Year/Period	Begin	End	CPI Change
5/12 - 4/13	229.815	232.531	1.2% ²⁸
5/13 - 4/14	232.945	237.072	1.8% ²⁹
5/12 - 4/14	229.815	237.072	3.1% ³⁰
5/14 - 11/14	237.900	236.151	-0.7% ³¹

From the above, several conclusions can be drawn.

First, for the contract year May 2012-April 2013 where the parties' difference exists, the CPI increase (1.2%) is closer (barely) to the Village's offer of 1.0% than it is to the Union's offer of 1.5%.

Second, for the contract year May 2013-April 2014, the CPI increased 1.8% which is below the parties' agreed-upon increase of 2.0%.

[continuation of footnote]

Since the geometric mean formula is used only to average prices within item categories, it does not account for consumer substitution taking place between item categories. For example, if the price of pork increases compared to those of other meats, shoppers might shift their purchases away from pork to beef, poultry, or fish. The CPI formula does not reflect this type of consumer response to changing relative prices. In 2002, as a complement to the CPI-U and CPI-W, BLS began producing a new index intended to more closely approximate a cost-of-living index by reflecting substitution among item categories. *It is unlikely, however, that the difficult problems of defining living standards and measuring changes in the cost of their attainment over time will ever be resolved completely.*

Because "[i]t is unlikely, however, that the difficult problems of defining living standards and measuring changes in the cost of their attainment over time will ever be resolved completely, the best we can do for these cases at present is to continue to look at the CPI for the cost of living factor.

²⁸ $232.531 - 229.815 = 2.716$. $2.716/229.815 = 0.01181$ (1.2%).

²⁹ $237.072 - 232.945 = 4.127$. $4.127/232.945 = 0.01771$ (1.8%).

³⁰ $237.072 - 229.815 = 7.257$. $7.257/229.815 = 0.03157$ (3.1%).

³¹ $236.151 - 237.900 = -1.749$. $-1.749/237.900 = -0.00735$ (-0.7%).

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Third, if the first two years of the Agreement are considered (May 2012-April 2014), the increase in the CPI (3.1%) is closer to the Village's offer in the first two years (3.0%) than the Union's offer for that period (3.5%).

Fourth, for the first half of the third year of the Agreement (May 2014-November 2014), the CPI *decreased* by .07% at the same time the parties were in agreement that a 2.5% *increase* would take effect.

Therefore, based on actual *known* data concerning the CPI for all periods covered by the 2012-2016 Agreement, the Village's wage offer exceeds the changes in the CPI and is closer to those changes than is the Union's wage offer. For known data, the cost of living factor therefore favors the Village's offer.³²

³² From its website, the BLS also reports regionalized data for Chicago-Gary-Kenosha as cited by the Union. Union Brief at 13. The more regionalized data yield the same result further supporting the Village's wage offer:

**CPI Changes 2012-2014 All Urban Consumers
Chicago-Gary-Kenosha (CPI-U)**

Contract Year/Period	Begin	End	CPI Change
5/12 - 4/13	222.262	224.522	1.0%
5/13 - 4/14	225.645	229.848	1.9%
5/12 - 4/14	222.262	229.848	3.4%
5/14 - 11/14	229.612	227.184	-1.0%

**CPI Changes 2012-2014 Urban Wage Earners And Clerical Workers
Chicago-Gary-Kenosha (CPI-W)**

Contract Year/Period	Begin	End	CPI Change
5/12 - 4/13	216.829	218.875	0.9%
5/13 - 4/14	220.196	224.478	1.9%
5/12 - 4/14	216.829	224.478	3.5%
5/14 - 11/14	224.077	220.870	-1.4%

Using the Chicago-Gary-Kenosha data, for the first year of the Agreement (May 2012-April 2013), the CPI-U and CPI-W show 1.0% and 0.9% increases respectively, which are closer to the Village's 1.0% offer than the Union's 1.5% offer.

For the contract year May 2013-April 2014, both indices show a 1.9% increase, which is below the parties' agreed-upon increase of 2.0% for that year.

For the first two years of the agreement (May 2012-April 2014), the CPI-U is 3.4% and the CPI-W is 3.5%, which is obviously closer to the Union's 3.5% offer as opposed to the Village's

[footnote continued]

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There are also periods in the Agreement that must be looked at – May 2014-April 2015 and May 2015-April 2016 (the entire third and fourth years of the Agreement). For that, because we have no actual data yet for the full periods, the best that can be done is to look at the economic forecasters.

At present, the *Fourth Quarter 2014 Survey of Professional Forecasters* (November 17, 2014) from the Federal Reserve Bank of Philadelphia is forecasting increases in the CPI (Headline) for 2014 through 2016 as follows:³³

[continuation of footnote]

3.0% offer. However, that positive factor in favor of the Union's offer is dragged down by the negative CPI numbers for May 2014-November 2014 (-1.0% CPI-U and -1.4% CPI-W) which are in deeper negative territory than the non-regionalized CPI data of -0.7% (see Table 2, *supra*), when the parties have agreed to a wage *increase* in the third year of 2.5%.

While helping the Union's offer in one respect (the two-year total), overall, the Chicago-Gary-Kenosha CPI data used by the Union does not change the result in this part of the analysis. This analysis using actual known data but looking at the Chicago-Gary-Kenosha data still favors the Village's wage offer.

³³ www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2014/survq414.cfm

The *Survey of Professional Forecasters* tracks two CPI projections – “Headline CPI” and “Core CPI”. *Id.* “Headline” inflation data include more volatile indicators such as food and energy prices, while “Core” inflation data do 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.”):

<http://research.stlouisfed.org/publications/mt/20070901/cover.pdf>

For purposes of setting wage rates, I have found that “Headline” CPI data to be a more reliable indicator than “Core” data. See my award in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 25:

... With respect to the CPI, the [Federal Reserve Bank of Philadelphia's] 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. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion. ...

The *Cook County Sheriff* award can be found at:

www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Cook%20Co%20Sheriff%20%20AFSCME,%20L-MA-09-003.pdf

I recognize that “[e]conomic forecasts are always uncertain” Congressional Budget Office, *The Budget and Economic Outlook: Fiscal Years 2013 to 2023* (February 2013) at 43.

www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf

However, while perhaps uncertain, economic forecasts are one of the best tools interest arbitrators have to work with for looking into the future for CPI purposes when setting wage rates for out-years in collective bargaining agreements (and with recent significant drops in the price of gasoline – which is part of the Headline CPI formula as energy – one can reasonably expect further decreases in forecasts for Headline CPI in the upcoming periods).

TABLE 3
CPI Forecasts

Calendar Year	Forecast	Contract Year	Agreed- Upon Wage In- crease
2014	1.8%	2014-2015	2.5%
2015	1.9%	2015-2016	2.0%
2016	2.1%		

The parties are in agreement for wage increases for 2014-2015 (2.5%) and 2015-2016 (2.0%). But the point here is that with the exception of a slight up-tick in calendar 2016, forecasts for calendar years 2014-2016 are generally below what the parties have agreed to implement as wage increases.

So putting this all together, for the 2012-2016 Agreement, the actual CPI for the first two years is lower than and closer to the Village's offer; for the first six months of the third year, the CPI is in negative territory when the officers will be receiving a 2.5% increase and the economic forecast for increases in the CPI for total years three and four are generally below the parties' equal offers for those years. Given that the Village's offer exceeds the CPI in these periods and is closer to the actual and forecasted CPI for the relevant periods, the cost of living factor favors the Village's offer.

3. Internal Comparability

With respect to internal comparability, there are several represented groups of employees in the Village (sergeants and lieutenants represented by the Union; dispatch represented by the Union; firefighters represented by the IAFF; records represented by the Teamsters and public works represented by

the IUOE).³⁴ In cases involving the protective services, the most relevant internal comparisons are other police and firefighter units in the public employer.³⁵

The Union represents the command officers unit (sergeants and lieutenants). However, that unit receives the same wage increases as the police officers in this matter.³⁶ Therefore, the only relevant internal comparable in this case is the firefighters unit.

Although the firefighters do not have a contract covering 2015, in 2012, 2013 and 2014, the firefighters received the same wage increases offered by the Village in this case.³⁷ And the most important year is 2012-2013 where the parties' difference exists. In that year, the Village's firefighters received 1.0% as offered by the Village in this case.³⁸

Internal comparability therefore favors the Village's offer.

4. Total Wage Compensation – The Real Money

It is also helpful in analyzing these cases to look at the real money received by the employees, which fits into the total compensation factor (for wages).

First, flat percentage increases are misleading numbers. Even if no one moved on the salary schedule and assuming they are employed for the term of

³⁴ Village Exh. 14; Union Exh. 13; Village Brief at 23; Union Brief at 7.

³⁵ See my award in *Village of Oak Lawn, supra* at 42 (“With respect to internal comparability, aside from the two [firefighter] Agreements involved in this case and because they are public safety contracts, the two relevant contracts for comparison purposes are the MAP and FOP police contracts.”).

³⁶ Village Brief at 23; Union Brief at 12; Village Exh. 14; Union Exh. 20; Tr. 23 (“There is also a new FOP command contract that negotiated basically whatever you give to patrolmen we will get here ... [i]t's a kind of me too.”).

³⁷ Village Exh. 14; Village Brief Appendix C (at salary schedule).

³⁸ *Id.*

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the Agreement, employees will not receive 7.5% as offered by the Village or 8.0% as offered by the Union. They will receive more than the respective offers made on their behalf. That is because, like savings accounts, wage increases compound.

Based upon the parties' respective offers, the wage schedules will be as follows:³⁹

TABLE 4
The Real Money

	<u>VILLAGE OFFER (7.5%)</u>						<u>% Actual Inc.</u>
	<u>4/30/12</u> ⁴⁰	<u>5/1/12</u> 1.00%	<u>5/1/13</u> 2.00%	<u>5/1/14</u> 2.50%	<u>5/1/15</u> 2.00%	<u>Dif</u>	
Probat.	50,374.76	50,878.51	51,896.08	53,193.48	54,257.35	3,882.59	7.71%
1 yr.	56,556.33	57,121.89	58,264.33	59,720.94	60,915.36	4,359.03	7.71%
2 yrs.	59,827.79	60,426.07	61,634.59	63,175.45	64,438.96	4,611.17	7.71%
3 yrs.	62,406.20	63,030.26	64,290.87	65,898.14	67,216.10	4,809.90	7.71%
6 yrs.	68,042.12	68,722.54	70,096.99	71,849.42	73,286.41	5,244.29	7.71%
11 yrs.	73,290.17	74,023.07	75,503.53	77,391.12	78,938.94	5,648.77	7.71%
16 yrs.	75,488.89	76,243.78	77,768.65	79,712.87	81,307.13	5,818.24	7.71%

³⁹ There are slight differences between the salary computations contained in the following tables and the Village's proposed Appendix C in its final offer and its brief. Those differences are pennies and can be attributed to spread sheet rounding differences.

⁴⁰ This column is the wage rate in effect at the expiration of the 2009-2012 Agreement. *Id.* at Appendix C.

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	<u>UNION</u> <u>OFFER (8.0%)</u>					<u>Dif.</u>	<u>% Actual Inc.</u>
	<u>4/30/12</u>	<u>5/1/12</u> 1.50%	<u>5/1/13</u> 2.00%	<u>5/1/14</u> 2.50%	<u>5/1/15</u> 2.00%		
Prob.	50,374.76	51,130.38	52,152.99	53,456.81	54,525.95	4,151.19	8.24%
1 yr.	56,556.33	57,404.67	58,552.77	60,016.59	61,216.92	4,660.59	8.24%
2 yrs.	59,827.79	60,725.21	61,939.71	63,488.20	64,757.97	4,930.18	8.24%
3 yrs.	62,406.20	63,342.29	64,609.14	66,224.37	67,548.85	5,142.65	8.24%
6 yrs.	68,042.12	69,062.75	70,444.01	72,205.11	73,649.21	5,607.09	8.24%
11 yrs.	73,290.17	74,389.52	75,877.31	77,774.25	79,329.73	6,039.56	8.24%
16 yrs.	75,488.89	76,621.22	78,153.65	80,107.49	81,709.64	6,220.75	8.24%

Therefore, assuming no step movements, under the Village's offer an officer does not receive 7.5%, but receives 7.71%. Similarly, under the Union's offer, an officer does not receive 8.0%, the officer receives 8.24%.

However, many officers have made or will make step movements during the term of the Agreement thereby increasing their total dollar and percentage increases.

As set forth in the above salary grids, the Agreement provides for six steps after the probationary step, with officers topping out at the 16th year.⁴¹ Therefore, over the four-year period covered by the Agreement and in accord with the salary schedule, the following step movements and corresponding actual increases are possible:

⁴¹ *Id.*

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TABLE 5
Village Offer With Step Movements

Step And Step Movements	No. of Step Move-ments	4/30/12 (End of 2009-2012 Agreement)	4/30/16 (End of Agreement)	Total Increase	Actual Percentage Wage Increase
Start to 3 yrs.	3	50,374.76	67,216.10	16,841.34	33.43%
1 yr. to 3 yrs.	2	56,556.33	67,216.10	10,659.77	18.84%
2 yrs. to 3 yrs.	1	59,827.79	67,216.10	7,388.31	12.35%
2 yrs. to 6 yrs.	2	59,827.79	73,286.41	13,458.62	22.49%
3 yrs. to 6 yrs.	1	62,406.20	73,286.41	10,880.21	17.43%
6 yrs. to 6 yrs.	0	68,042.12	73,286.41	5,244.29	7.71%
6 yrs. to 11 yrs.	1	68,042.12	78,938.94	10,896.82	16.01%
11 yrs. to 11 yrs.	0	73,290.17	78,938.94	5,648.77	7.71%
11 yrs. to 16 yrs.	1	73,290.17	81,307.13	8,016.96	10.94%
16 yrs.+	0	75,488.89	81,307.13	5,818.24	7.71%

TABLE 6
Union Offer With Step Movements

Step And Step Movements	No. of Step Move-ments	4/30/12 (End of 2009-2012 Agreement)	4/30/16 (End of Agreement)	Total Increase	Actual Percentage Wage Increase
Start to 3 yrs.	3	50,374.76	67,548.85	17,174.09	34.09%
1 yr. to 3 yrs.	2	56,556.33	67,548.85	10,992.52	19.44%
2 yrs. to 3 yrs.	1	59,827.79	67,548.85	7,721.06	12.90%
2 yrs. to 6 yrs.	2	59,827.79	73,649.21	13,821.42	23.10%
3 yrs. to 6 yrs.	1	62,406.20	73,649.21	11,243.01	18.01%
6 yrs. to 6 yrs.	0	68,042.12	73,649.21	5,607.09	8.24%
6 yrs. to 11 yrs.	1	68,042.12	79,329.73	11,287.61	16.59%
11 yrs. to 11 yrs.	0	73,290.17	79,329.73	6,039.56	8.24%
11 yrs. to 16 yrs.	1	73,290.17	81,709.64	8,419.47	11.49%
16 yrs.+	0	75,488.89	81,709.64	6,220.75	8.24%

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Looking at Tables 5 and 6, in terms of *real* money through compounding of the wage increases and taking into account step movements, the Village's 7.5% offer produces wage increases between 7.71% and 33.43%, while the Union's 8.0% offer produces wage increases between 8.24% and 34.09%.

But that is just in terms of potential real wage increases. Let's look at the actual impact on the bargaining unit based upon the employees' dates of hire.

According to the Village's census of the employees, the following numbers of employees will actually be making the step movements and receiving the amounts and percentage wage increases set forth above:⁴²

TABLE 7
Village Offer With Actual Step Movements

Step And Step Movements	No. of Step Move-ments	No. of Officers Making Movements	4/30/12 (End of 2009-2012 Agreement)	4/30/16 (End of Agreement)	Total Increase	Actual Percentage Wage Increase
2 yrs. to 6 yrs.	2	3	59,827.79	73,286.41	13,458.62	22.49%
3 yrs. to 6 yrs.	1	3	62,406.20	73,286.41	10,880.21	17.43%
6 yrs. to 6 yrs.	0	1	68,042.12	73,286.41	5,244.29	7.71%
6 yrs. to 11 yrs.	1	7	68,042.12	78,938.94	10,896.82	16.01%
11 yrs. to 11 yrs.	0	3	73,290.17	78,938.94	5,648.77	7.71%
11 yrs. to 16 yrs.	1	8	73,290.17	81,307.13	8,016.96	10.94%
16 yrs.+	0	10	75,488.89	81,307.13	5,818.24	7.71%

⁴² Village Exhs. 8(C) and (D). These exhibits are based on 35 officers in the bargaining unit which will be used for the analysis in this section. *Id.* The number of officers have varied over the years. See Village Exh. 47 (36 officers) and Union Exh. 12 (37 officers). The differences are not significant.

TABLE 8
Union Offer With Actual Step Movements

Step And Step Movements	No. of Step Movements	No. of Officers Making Movements	4/30/12 (End of 2009-2012 Agreement)	4/30/16 (End of Agreement)	Total Increase	Actual Percentage Wage Increase
2 yrs. to 6 yrs.	2	3	59,827.79	73,649.21	13,821.42	23.10%
3 yrs. to 6 yrs.	1	3	62,406.20	73,649.21	11,243.01	18.01%
6 yrs. to 6 yrs.	0	1	68,042.12	73,649.21	5,607.09	8.24%
6 yrs. to 11 yrs.	1	7	68,042.12	79,329.73	11,287.61	16.59%
11 yrs. to 11 yrs.	0	3	73,290.17	79,329.73	6,039.56	8.24%
11 yrs. to 16 yrs.	1	8	73,290.17	81,709.64	8,419.47	11.49%
16 yrs.+	0	10	75,488.89	81,709.64	6,220.75	8.24%

Therefore, while 14 officers will make no step movements during the term of the Agreement, 18 officers will make one step movement and 3 officers will make 2 step movements.

Under the Village's offer, that translates to 7.71% for the 14 officers with no step movements; between 10.94% and 17.43% for the 18 officers making one step movement and 22.49% for the 3 officers making two step movements.

Under the Union's offer, that translates to 8.24% for the 14 officers with no step movements; between 11.49% and 18.01% for the 21 officers making one step movement and 23.10% for the two officers making two step movements.

With an actual CPI for the first two years of the Agreement at 3.1% and forecasts for 1.9% and 2.1% for calendar years 2015 and 2016 for a total of 7.1%, the actual impact of the Village's offer – *i.e.*, real new money in the officers' pockets which ranges from 7.71% to 22.49% – far outpaces increases in

the CPI. The Union's offer goes well beyond that. And when the internal comparable firefighter unit is considered (which received the same increase offered by the Village for the first three years of the Agreement), the conclusion that the Village's wage offer is the more reasonable becomes very clear.

The Village's wage percentage offer is therefore adopted.

2. Retroactivity Language

Article XVII of the 2009-2012 Agreement provided for wage increases, but contained no language with respect to retroactivity of the wage increases. The parties both seek to add language to the 2012-2016 Agreement to cover retroactivity.

The Union proposes to add the following language:⁴³

Wage increases are retroactive on all compensated hours for those employed on the date the contract is ratified by both parties (or the date an interest arbitration award issues, if a voluntary settlement is not reached), or who have retired in good standing (in accordance with Illinois law) or been awarded a pension disability (in accordance with Illinois law) during the period of retroactive pay.

The Village proposes the following language:⁴⁴

Wage increases to be retroactive on all compensated hours for all those bargaining unit employees employed on the date the contract is ratified by both parties, or who have retired in good standing and in accordance with Illinois law during the period of retroactive pay.

The differences in the proposed language are that the Union's proposal includes those officers who received a disability pension during the retroactive

⁴³ Union Final Offer at Section 17.2; Union Brief at 17-19.

⁴⁴ Village Final Offer at Economic Issues (a).

period while the Village's does not do so and the Village's offer is silent on the issue of retroactive pay when an interest arbitration award issues (and the Union holds no ratification vote).

The Union's offer must be selected for two reasons:

First, at the hearing, the Village stated:⁴⁵

MR. BAIRD: ...

First of all, to answer Mr. Bailey's question about retroactivity, please understand that under the Village's proposal and under the Union's proposal it's the Village's intention that it would apply retroactively to those who retired in good standing, were on a disability pension or on the payroll at the time the new contract becomes effective. ... [T]he Village intends this to be fully retroactive, the award for -- I guess, whatever the appropriate years would be, first and second, first, second and third or however it shakes out when the arbitrator issues a decision. I just wanted to clarify that for the record.

Therefore the Village's expressed intent is similar to the Union's proposed language.⁴⁶

Second, with respect to retroactivity coming as a result of an interest arbitration award as opposed to negotiations and ratification requirements, I addressed this issue in *Oak Lawn, supra* at 50 [footnote omitted]:

... [T]his is an interest arbitration. Therefore, as the Union correctly points out, "[u]nder Section 14 of the Act, the Union clearly has no right to ratify the Agreement" Technically, whether intended or not, that is what the Village proposes by adding the phrase "[u]pon ratification of this Agreement by both parties" If this were a normal negotia-

⁴⁵ Tr. 51-52.

⁴⁶ The Village also stated "[f]urthermore, both parties are in agreement that wages should be retroactive to May 1, 2012." Village Brief at 11.

tion with no interest arbitration proceeding, such a proposal might make some sense. But where there is no ability of one party (here, the Union) to ratify the terms of the interest arbitration, the Village's proposed language requiring ratification cannot be added.

As in *Oak Lawn, supra*, the Village's proposed language here fails to take into account that under the IPLRA the Union does not have the ability to ratify a contract which is the product of an interest arbitration. The Union's language covers that circumstance while the Village's does not.

Given that the parties' intentions on retroactivity are similar with respect to employees eligible to receive retroactive payments and that the Union's proposal more specifically covers that mutual intention and also covers the circumstance when a contract is imposed through interest arbitration with the Union's inability to ratify, the Union's proposed language on retroactivity is adopted.

B. Residency

Sometimes interest arbitrators are faced with issues that are perplexing. This is certainly one of those times.

The Union sees this as "... the strangest 'Residency' case ever tried."⁴⁷ While it may be hard to test that proposition, from my experience, the Union may well be correct. The Village asserts that "[t]he Arbitrator has no choice to but select the Village's residency proposal."⁴⁸ As discussed *infra* at IV(B)(3), on that assertion the Village is correct.

⁴⁷ Union Brief at 28.

⁴⁸ Village Brief at 38.

In simple terms, the Village is geographically located on the Illinois/Indiana border.⁴⁹ In the past, officers desired to have the ability to reside in Indiana but, with very limited exception for officers close to retirement, have not been allowed to live outside of the Village.⁵⁰

In the 2009-2012 Agreement there was a major breakthrough on residency as the parties agreed that officers with more than 10 years of service could establish residence outside of Illinois and continue to be able to work as officers for the Village.⁵¹ That change prompted eight officers – *20% of the bargaining unit* – to take advantage of the newly acquired ability and move to Indiana.⁵²

The officers who now reside in Indiana live between 2.7 and 17.4 miles from Village Hall, with drive times between 7 and 25 minutes.⁵³

For this Agreement – the very *next* contract following that agreed-upon breakthrough on residency and the following migration to Indiana by 20% of the bargaining unit – the Village now seeks to restrict residency to locations in Illinois. If adopted, the Village's position in this matter would force the officers who just recently moved to Indiana to now move back to Illinois else be in jeopardy of being disciplined up to discharge for doing exactly what the parties agreed those officers could do in the last Agreement. To me, that is perplexing.

And now for some detail.

⁴⁹ Village Exh. 1.

⁵⁰ Tr. 41; Union Brief at 24-25.

⁵¹ 2009-2012 Agreement at Section 25.1.

⁵² Tr. 77; Village Exh. 47; Union Exh. 34; Village Brief at 38 ("The Village's proposal will affect approximately 20% of the bargaining unit because only eight of the individuals currently reside outside of the State of Illinois.").

⁵³ Village Exh. 47 and Google Maps. *See also*, Tr. 77 (correcting Village Exh. 47).

1. History

For purposes of this case, the history concerning the residency requirements begins with my previous interest award between the parties for the 2005-2009 Agreement. *Lansing, supra*.

The 2001-2005 Agreement (the predecessor to the 2005-2009 Agreement) required officers to live within the Village with an exception for officers who were within two years of retirement eligibility. Those officers could live outside the Village if they retired within two years of moving outside the Village. Specifically, the 2001-2005 Agreement provided:⁵⁴

ARTICLE XXV

RESIDENCY

Employees shall be required to reside within the Village of Lansing. If an employee is within 2 years of retirement eligibility, that employee can establish residency outside of the village, provided that such employee signs a written agreement committing to retire within 2 years of moving outside of the Village.

* * *

In the case before me for the 2005-2009 Agreement, both parties sought to change the residency requirement, with the Union seeking a much broader geographic area than the limits of the geographic boundaries of Lansing and the limited exception for retiring employees.⁵⁵ For the 2005-2009 Agreement, the Village sought to retain the residency requirement within the Village, but

⁵⁴ *Lansing, supra* at 10.

⁵⁵ The Union sought "... a boundary of Archer Avenue to West 79th Street to Lake Michigan on the north; the Illinois State line and Lake Michigan on the east; US Route 45 on the west; and Beecher/Peotone road to West Governors Highway to Wilmington Road on the South with the further provision that the border would include any area within the above boundaries and anywhere in the incorporated or unincorporated area of a community that has a portion of its border located within or touching this border, with the exception of the City of Chicago, where the actual border line of the City of Chicago would be used." *Lansing, supra* at 10-11.

over the course of that Agreement, relaxed the requirement for employees nearing retirement.⁵⁶ For the 2005-2009 Agreement, I adopted the Village's proposal.⁵⁷ The 2005-2009 Agreement provided the following for residency:⁵⁸

ARTICLE XXV

RESIDENCY

Employees shall be required to reside within the Village of Lansing. If an employee is within 2 years of retirement eligibility, that employee can establish residency outside of the Village, provided that such employee signs a written agreement committing to retire within 2 years of moving outside of the Village.

If an employee is within 3 years of retirement eligibility, that employee can establish residency within 12 air miles of Village Hall in the State of Illinois, provided that such employee signs a written agreement committing to retire within 3 years of moving outside of the Village. Effective January 1, 2008 and January 1, 2009, the three year requirement would be relaxed to four years and then five years respectively.

Thus, for the 2001-2005 and 2005-2009 Agreements, residency within the Village was required, with limited exception for retiring employees in the 2001-2005 Agreement, which was somewhat relaxed for retiring employees in the 2005-2009 Agreement. But still, at the end of the 2005-2009 Agreement, only those employees nearing retirement and agreeing to retire had the ability

⁵⁶ The Village sought to relax the residency requirement with "[t]he Village proposes that the requirement to reside within the Village shall remain, but if an employee is within three years of retirement eligibility, that employee can establish residency within 12 miles of Village Hall in the State of Illinois, provided that the employee signs a written agreement committing to retire within three years of moving outside of the Village and that effective January 1, 2008 and January 1, 2009, the three year requirement would be relaxed to four years and then five years, respectively." *Lansing, supra* at 11.

⁵⁷ *Lansing, supra* at 10-16.

⁵⁸ Village Exh. 3 (2005-2009 Agreement).

to reside outside of the Village and there were still certain geographic restrictions on where they could establish residency.

The 2009-2012 Agreement was not the product of an interest arbitration, but was negotiated by the parties. The 2009-2012 Agreement negotiated by the parties contained a major relaxation on the residency requirement that was not geared towards those nearing retirement, but was constructed to allow employees with more than 10 years of service to reside outside of the Village *and* outside the State of Illinois (*i.e.*, in nearby Indiana):⁵⁹

ARTICLE XXV
RESIDENCY

Section 25.1: Residency Requirement

Employees shall be required to reside within the Village of Lansing. After an employee completes ten (10) full years of service, that employee can establish residency outside of the Village of Lansing, without restriction, to include establishing residency outside of the State of Illinois.

* * *

As a result of the relaxed residency requirement in the 2009-2012 Agreement, eight officers moved to Indiana – *i.e.*, 20% of the bargaining unit –

⁵⁹ Village Exh. 3 (2009-2012 Agreement).

and now reside between 2.7 and 17.4 miles from Village Hall, with drive times between 7 and 25 minutes.⁶⁰

2. The Parties' Final Offers

After agreeing in the 2009-2012 Agreement to allow officers with more than 10 years of service to maintain residence outside the State of Illinois, in the very next contract (the present dispute), the Village now seeks to require residency *within* the State of Illinois – indeed, anywhere within the State of Illinois – but officers can no longer have residency in Indiana. The Village proposes the following language change to Section 25.1 of the Agreement:⁶¹

Employees shall be required to reside within the Village of Lansing. After an employee completes ten (10) full years of service, that employee can establish residency outside of the

⁶⁰ Village Exh. 47; Village Brief at 38; Google Maps. *See also*, Tr. 77 (correcting Village Exh. 47).

Village Exh. 47 and Google Maps show the distances and travel times for the eight affected officers who presently reside in Indiana:

Officer	Distance (miles)	Travel Time (minutes)
1	12.0	24
2	10.0	20
3	11.6	23
4	10.2	19
5	13.8	25
6	2.7	7
7	17.4	25
8	11.3	25

Recent events concerning interactions in other communities between police officers and members of the public require that Village Exh. 47 be redacted in certain aspects. Because of the officers' personal information contained in Village Exh. 47 and the lack of any further need for the specifics contained in that exhibit, for those officers residing in Indiana, the parties are ordered to redact all of the names and street addresses contained in that exhibit and substitute the information contained in the above table with a reference to "Indiana". Similar redaction should occur for the officers residing in Illinois and for those officers, only the word "Illinois" should appear after the redacted name.

⁶¹ Village Final Offer at 3(a); Village Brief at 37-38.

Village of Lansing, ~~without restriction, to include establishing residency outside of~~ anywhere within the State of Illinois.

The Union seeks to maintain the *status quo* – i.e., residency within the Village but officers who have completed 10 years of service can have residency anywhere, including Indiana.⁶²

3. The IPLRA Dictates The Result In This Case

The *status quo* on this issue is that officers with more than 10 years of service can reside anywhere, including nearby Indiana. The Village seeks to change that *status quo* to now restrict officers from residing outside of Illinois, which means that officers who moved to Indiana as permitted by the 2009-2012 Agreement must now return from Indiana and establish residency in Illinois.

Normally, the analysis that is used in cases where a party seeks to change the *status quo* is that the party seeking the change must demonstrate that the existing condition is broken and “good ideas” alone do not satisfy that party’s burden. See my award in *Highland Park (Sergeants Unit)*, *supra* at 5 [emphasis in original]:

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 em-

⁶² Union Final Offer at 2; Union Brief at 23.

ployment on the parties – must be the *absolute* last resort.

...

Under that analysis, there is nothing “broken” about the current residency provisions which allow officers with more than 10 years of service to live in Indiana. As discussed *supra* at IV(B)(1), over the years, the parties have relaxed the residency requirement for officers nearing retirement and in the 2009-2012 Agreement, *agreed on their own* that retirement was not part of the mix in order to allow officers to have residence outside of the Village, with the *agreement* that all officers who completed 10 years of service could, if they chose, have residence anywhere, including Indiana. From an operational standpoint, there has been no showing by the Village that officers who have residence in nearby Indiana are in anyway hindering the Village’s ability to provide services to the citizens of the Village to the extent that the relaxed residency provision is broken. The officers who now reside in Indiana are within short distances of the Village – between 2.7 and 17.4 miles, with drive times between 7 and 25 minutes.⁶³

If anything, to now take that ability to reside in Indiana away after eight officers and their families opted to take advantage of the relaxed residency requirement is a potential morale buster as the officers and their families must now decide whether to uproot just after being given permission to move to Indiana and now move back to Illinois or face potential discipline up to discharge and thus either voluntarily or involuntarily leave employment with the Village as police officers. “The interests and welfare of the public” (Section 14(h)(3) of the IPLRA) are certainly not served by the Village’s proposal as good officers

⁶³ Village Exh. 47 and Google Maps.

may opt to not move back to Illinois from Indiana and thus leave employment with the Village, thereby depriving the citizens of the Village of the experience and competence of those officers who served the Village and its citizens for a minimum of more than 10 years.

From a tactical bargaining standpoint, the Village had a reason for making this proposal – it was trying to get the Union to move off its position on sick leave (discussed *infra* at VII) and offered variations on the residency language in exchange for concessions on the sick leave issue.⁶⁴ However, standing alone, the Village’s residency proposal which will potentially cause substantial disruption to up to 20% of the bargaining unit in this contract immediately following the contract in which the Village agreed to language to allow officers to move to Indiana is still *very* perplexing.

Notwithstanding how perplexing the Village’s proposal may be and how no change in the *status quo* is justified under the analysis used for such changes (the Village’s proposal is not even a “good idea”), as the Village correctly argues, I am required to adopt the Village’s proposal.

The Village argues that “... although the Village is seeking a change in the *status quo*, this change is not subject to the general breakthrough analysis ...” and “[t]he Arbitrator has no choice to but select the Village’s residency proposal.”⁶⁵ As a matter of law, the Village is absolutely correct.

As a matter of statute, Section 14(i) of IPLRA prevents me from deciding a residency dispute with adoption of an offer which allows officers to live outside the State of Illinois [emphasis added]:

⁶⁴ Tr. 74-75; Village Exh. 43; Village Brief at 39.

⁶⁵ Village Brief at 38.

(i) In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, *but those residency requirements shall not allow residency outside of Illinois*)

Just like the provisions in Section 8 of the IPLRA which mandate that an arbitration provision be awarded if requested by a party (“[t]he collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise” [emphasis added]), there is also no “show me its broken” analysis that can be used on this residency issue. Even if a fire and police commission has been functioning well for years with no problems for anyone involved, a party’s request to have arbitration of grievances – made for whatever reason – must, as a matter of statute, be granted and placed into a contract through interest arbitration. So too, if a party asks for a residency provision which requires residency inside the State of Illinois, that request must also be granted.⁶⁶

⁶⁶ Without regard to a showing of anything other than the language in the IPLRA, in the award for the 2005-2009 Agreement, the Union obtained the ability to arbitrate discipline under the language of Section 8 of the IPLRA. *Lansing, supra* at 16-21. That result was required even though “[t]he Village argues that the *status quo* must be maintained because the Union has not shown that the current system is broken and comparability considerations require that no change be imposed.” *Id.* at 17. Because of the statutory requirements in Section 8, the Union’s proposal to include arbitration of discipline was imposed because “[t]he resolution of this issue is required by the Act ... [and] that language leaves me with no discretion” *Id.* at 18, 21. See also, my awards in *City of Rock Island and FOP, supra* at 21-23; *City of Springfield and PBPA Unit 5, S-MA-89-74* (1990) at 4; *City of Highland Park and Teamsters Local Union 714, S-MA-98-219* (1999) at 10-11.

Like the statutory provisions requiring arbitration in Section 8 of the IPLRA, the result on residency in this case is similarly statutorily required by the IPLRA – here, Section 14(i).

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Therefore, I simply have no choice. As required by Section 14(i) of the IPLRA, the Village's offer must be adopted.⁶⁷

⁶⁷ The Labor Board's General Counsel has weighed in on the issue consistent with the Village's position. Following a request made by the Village, in a Declaratory Ruling (*Illinois Fraternal Order of Police and Village of Lansing*, Case No. S-DR-15-002, August 25, 2014), the Labor Board's General Counsel stated "... that the Union's proposal [to maintain the *status quo* with Indiana residency permitted after 10 years of service] addresses a mandatory subject of bargaining even though the arbitrator may not award the Union's proposal in this case." *Id.* at 10.

Under the Village's proposal which I am adopting, employees who have completed 10 years of service can now "... establish residency ... anywhere within the State of Illinois." I have previously rejected such a proposal when made by a union and opposed by the public employer. See *City of Highland Park and Teamsters, Local 714, supra* at 8-9 where the union in that case proposed residency on a state-wide basis and the city proposed a multi-county geographic area for residency closer to the City ("an area including the north side of Chicago and the north and northwest suburbs of the Chicago metropolitan area and some of the more rural areas towards the Wisconsin state line.").

The union's offer for state-wide residency was rejected by me in *Highland Park* because (*id.* at 9):

Ultimately, the question really goes to the reasonableness of the offers. The City's proposal gives officers the ability to live in a vast assortment of communities in Chicago and the Chicago metropolitan area and at the same time be available for service if needed to protect the lives and property of citizens of Highland Park. The Union's offer allows officers whose services may be necessary for emergency situations to live hundreds of miles away effectively making them unavailable for such calls. The City's offer is the far more reasonable.

This is obviously different from *Highland Park*, because the Village's proposal for state-wide residency after 10 years of service is the only viable offer of the two made that I can select and apparently the Village is comfortable here, as opposed to the city in *Highland Park*, with having officers "... live hundreds of miles away effectively making them unavailable for such [emergency] calls." *Id.* at 9.

Although because this is a non-economic issue, I am not bound by the parties' final offers and therefore I have the ability to draw geographic lines different from those proposed by the Village, I choose not to do so. In the 2009-2012 Agreement, the parties agreed that after 10 years of service, officers "... can establish residency outside of the Village of Lansing" If the Village was previously agreeable then to allow officers to reside anywhere in Illinois, I see no reason to change that part of the residency provisions of the 2009-2012 Agreement. My determination that an offer different from the Village's offer in this case should not be used follows what I did in the 2005-2009 Agreement. *Village of Lansing, supra* at 16, note 41 ("Although residency is a non-economic item, which allows for formulation of a term different from either party's proposal, there is no demonstrated reason why some boundary on residency other than the parties' proposals should be considered.").

4. The Union's Arguments

The Union generally recognizes that Section 14(i) of IPLRA drives the result in this case (“... while the Arbitrator cannot issue a *status quo* award ...”).⁶⁸ The following exchange at the hearing further makes the point:⁶⁹

ARBITRATOR BENN: So when the smoke clears, can I put anybody outside of Illinois?

MR. BAILEY: I don't think you can do that

ARBITRATOR BENN: It's what the statute said.

MR. BAILEY: That's right.

The Union argues, however, that a number of options are available to me as an interest arbitrator to protect those officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement. Those arguments do not change the result which flows from the statutory mandate in Section 14(i) of the IPLRA.

First, the Union points to the Fire and Police Commissioners Act, 65 ILCS 5/10-2.1-6(b), which provides that “[r]esidency requirements in effect at the time an individual enters the fire or police service of a municipality ... cannot be made more restrictive for that individual during his period of service for that municipality ...” The Union argues that this provision “... certainly demonstrates the Illinois General Assembly's distaste for villages tightening existing residency rules for police officers.”⁷⁰

⁶⁸ Union Brief at 32.

⁶⁹ Tr. 37.

⁷⁰ Union Brief at 29.

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As an interest arbitrator, I cannot use the residency provisions of the Fire and Police Commissioners Act to protect those officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement.

The Union recognizes that I cannot resolve conflicts between the residency provisions of the Fire and Police Commissioners Act and the IPLRA.⁷¹ If there are conflicts, sorting out those conflicts is a task for the courts – not for me as an interest arbitrator. My authority as an interest arbitrator is limited by the provisions of the IPLRA. If there are conflicts between the IPLRA and the Fire and Police Commissioners Act, some forum other than this one will have to sort that all out.⁷²

⁷¹ According to the Union, "... the Arbitrator is not being asked to resolve this potential unlawful conflict (instituting a more restrictive residency requirement as it might apply to a half-dozen officers hired during the terms of the Current Agreement)" *Id.*

⁷² This "conflict of laws" argument is no different from situations where arbitrators are faced with arguments that enforcement of language in a collective bargaining agreement may conflict with statutory and constitutional provisions or public policy. In those cases, the asserted conflicts are to be resolved by the courts and not by arbitrators. See *Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 53-54, 57 (1974) [quoting *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)]:

[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement ...

* * *

... Thus the arbitrator has authority to resolve only questions of contractual rights

* * *

... [T]he specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land [T]he resolution of statutory or constitutional issues is a primary responsibility of courts

See also, *State of Illinois v. AFSCME*, 2014 IL App (1st) 130262, (September 30, 2014), slip op. at 10, 12, where the First District Appellate Court enforced one of my awards after I refused to consider arguments based upon authority outside of the collective bargaining agreement in that case:

... The contract for arbitration defines the arbitrator's authority, and if that contract does not permit the arbitrator to consider questions of public policy, he should not consider questions of public policy.

* * *

... [T]he CBA expressly limited his powers, and did not permit him to rewrite the CBA and the CSAs, nor did it permit him to ignore the promises therein.

[footnote continued]

Second, the Union argues that the penalty for non-compliance with residency requirements is also part of this dispute as there are other provisions in Article XXV of the 2009-2012 Agreement governing residency which should be changed to protect those officers who relied upon the terms of the 2009-2012 Agreement and moved to Indiana.⁷³

Section 25.3 of the 2009-2012 Agreement provides, in pertinent part:

Section 25.3: Enforcement of Residency Requirement:

* * *

Enforcement of Noncompliance with Residency Requirement

If the Chief is aware or believes that an Employee is not in full compliance with the Residency Requirement, the Chief shall:

* * *

(ii) Immediately issue the Employee a written Notice requiring the Employee to prove his compliance with the Residency Requirement, and if the Employee cannot prove compliance with the Residency Requirement, the Notice shall require the Employee to show cause why his employment should not be terminated for just cause because of his failure to comply with the Residency Requirement. ...

* * *

(iii) ... The Mayor shall ... have full authority to recommend what discipline shall be administered to Employees who fail to comply with the Residency Requirement. The Council agrees that it shall assist the Village, when requested, in compliance with the Residency Requirement.

The Union requests on behalf of the eight officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the

[continuation of footnote]

The same analysis applies here. I have no authority to resolve the conflict issue raised by the Union.

⁷³ Union Brief at 29-32.

2009-2012 Agreement, that I “rewrite” these provisions to “shield these employees from any discipline the Village can issue ... rewrite Section 25.3 and provide that the existing section is inapplicable for those officers having to re-establish residency in Illinois” or “... re-define ‘residency’ ... to include ‘domicile’
....”⁷⁴

As an *interest* arbitrator, for me to “rewrite” the provisions of Section 25.3 of the Agreement concerning enforcement of the residency provisions as the Union asks to “shield these employees from any discipline the Village can issue” or otherwise exempt those officers from the residency requirements when these employees relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement, would, in my opinion, indirectly do what Section 14(i) of IPLRA prohibits me from doing. Shielding these officers from discipline through an *interest* arbitration proceeding as the Union asks will, for all purposes, be tantamount to issuing an interest award that goes against the strict admonition in Section 14(i) of the IPLRA that my interest award “... shall not allow residency outside of Illinois ...” To “shield” those officers from discipline or by re-writing provisions of Section 25.3 to make the residency requirements inapplicable to these officers as the Union requests will have the same effect as if I inserted a provision that allows the officers to reside in Indiana. Under Section 14(i) of the IPLRA, as an *interest* arbitrator, I do not have that authority. Under that section I am prohibited from doing what the Union requests.

But that is as an *interest* arbitrator. A *grievance* arbitrator may have a different view of disciplinary actions taken against those officers who relied

⁷⁴ *Id.* at 30-31.

upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement which the Village now successfully has taken away.

In the end, Section 25.3 of the Agreement does not make discipline or discharge automatic for violation of the residency requirements. Section 25.3(ii) of the 2009-2012 Agreement provides for issuance of a notice "... to show cause why his employment should not be terminated for just cause because of his failure to comply with the Residency Requirement", thereby indicating an agreement between the parties that officers who violate the residency requirements *could* "... be terminated ..." – not that the officer automatically "shall" be terminated.

The issue concerning the eight officers who moved to Indiana is not the typical residency issue arbitrators face where employees are charged with hiding their true residence in an effort to avoid residency requirements. Under the 2009-2012 Agreement, these eight officers were given permission to move to Indiana. Because of the "show cause" provisions in Section 25.3(ii) and not an automatic requirement for discharge, these officers who moved to Indiana after being told it was permissible to do so may well have a very good "show cause" defense against termination, with the simple statement that "Well, you told me I could move to Indiana and I relied upon what you told me."

And Section 25.3(iii) appears to indicate that something *less* than discharge can be imposed for a residency violation. That section provides that "[t]he Mayor shall ... have full authority to recommend *what discipline* shall be administered to Employees who fail to comply with the Residency Requirement" [emphasis added]. If the Mayor can recommend "... what discipline shall be

administered ...”, it appears that something less than “... be terminated ...” can be recommended and imposed for those officers who relied upon the Village’s permission for them to move to Indiana. If the parties intended termination as the *only* level of discipline for a residency violation, they could have easily said so with language such as “shall be terminated” rather than giving the Mayor the ability to recommend “*what* discipline shall be administered ...” [emphasis added].

However, most important from a *grievance* arbitrator’s standpoint, Section 25.3(ii) contains the critical requirement that any discipline or discharge for a residency violation must be for “just cause”. The “just cause” requirement for discipline also appears in Article XXII of the Agreement:

ARTICLE XXII
DISCIPLINE

Employees shall be disciplined only for just cause, which shall include failure to fully comply with the Residency Requirement set forth in Article XXV. Any suspension or discharge may be appealed by the affected employee either to the Board of Fire and Police Commissioners or through the grievance and arbitration procedure, but not both.

That being the case, should the Village opt to take disciplinary action against an officer who moved to Indiana in reliance upon and as permitted by the 2009-2012 Agreement, to demonstrate “just cause” for such discipline under the 2012-2016 Agreement, and if the matter is progressed to arbitration (as opposed to the Board of Fire and Police Commissioners as an option under Article XXII), the burden will be on the Village to show: (1) that the officer en-

gaged in the charged misconduct and (2) that the amount of any discipline was appropriate.⁷⁵

For those officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement and who now do not move back to Illinois, the first showing of a residency violation under this Agreement will be easy for the Village to demonstrate. If the officers have residence in Indiana, they violate the requirement that they have residence in Illinois.

The second showing – *i.e.*, that the amount of discipline was appropriate – is where the Village may run into *great* difficulty.

Along the lines of the discussion concerning Section 25.3, discharge for a residency violation is not automatic under Article XXII. Under Article XXII, employees can be “... disciplined ... [f]or failure to fully comply with the Residency Requirement ...”, but there is nothing in Article XXII that automatically *requires* the penalty of discharge for a residency violation. Therefore, for those officers who moved to Indiana because they were clearly permitted to do so under the 2009-2012 Agreement, something less than discharge can be imposed

⁷⁵ *The Common Law of the Workplace* (BNA, 2nd ed., 2005), 54-55, 190:
In a discipline case the employer best knows why it penalized an employee, often with grave repercussions for the individual. For these reasons the burden of proof in such cases traditionally has been placed on the employer.

* * *

The employer bears the burden of proving just cause for discipline. That includes proof that the level of discipline imposed was appropriate.
See also, Elkouri and Elkouri, How Arbitration Works (BNA, 5th ed.), 905 [footnote omitted]:
There are two areas of proof in the arbitration of discharge and discipline cases. The first involves proof of wrongdoing; the second, assuming the guilt of wrongdoing is established and the arbitrator is empowered to modify penalties, concerns the question of whether the punishment assessed by management should be upheld or modified.

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for violation of the Illinois-only residency requirement which I am statutorily compelled to impose for the 2012-2016 Agreement.

Further, in a grievance arbitration, principles of estoppel⁷⁶; the overall broad discretion of arbitrators to reduce or nullify disciplinary actions⁷⁷; and arbitrators' abilities to formulate remedies⁷⁸ may end up preventing the disci-

⁷⁶ Estoppel principles are well recognized in arbitrations. *How Arbitration Works, supra* at 575-576, 578-579, 891 [footnotes omitted]:

Frequently one party to a collective agreement will charge that the other party has waived or is estopped from asserting a right under the agreement. Arbitrators generally do not appear to be concerned with all of the fine legal distinctions between the term "waiver" and the term "estoppel", but they have often applied the underlying principle.

* * *

Sometimes arbitrators decide issues specifically on the basis of estoppel.

* * *

Sometimes, too, arbitrators decide issues essentially on the basis of estoppel without so stating specifically and without requiring as clear a showing of the elements of estoppel as might be required by a court of law. In the latter type of cases emphasis is often placed upon equity, with something like a "fair and just result" standard being applied.

* * *

⁷⁷ *Monfort Packing Co.*, 66 LA 286, 293-294 (Goodman, 1976):

While this Arbitrator is reluctant to substitute his judgment for those who are left to shoulder that judgment, he is also mindful that the concept of just and sufficient cause mandates not only a determination that the employee was guilty of the infraction, but that the reasons for the discharge were fair and just under the circumstances:

In many disciplinary cases the reasonableness of the penalty imposed on the employee rather than the existence of proper cause for disciplining him is the question an arbitrator must decide ... In disciplinary cases generally, therefore, most arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe, under all the circumstances of the situation. This right is deemed to be inherent in the arbitrator's power to discipline and in his authority to finally settle and adjust the dispute beforehand. Platt, *The Arbitration Process in the Settlement of Labor Disputes* 31 J. Am. Jud. Soc. 54, 58 (1947).

See also, *Kaiser Sand and Gravel*, 49 LA 190, 193 (Koven, 1967) (where the arbitrator stated that the "right of the arbitrator to change or modify penalties found to be improper or too severe may be deemed to be inherent in his power to decide the sufficiency of cause.").

⁷⁸ Arbitrators have very broad discretion to formulate remedies. See *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, *supra* 363 U.S. at 597:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of

[footnote continued]

pline or discharge of officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement and now find themselves being subject to discipline or discharge for doing so.

Should the Village opt to discipline or discharge officers for doing what the 2009-2012 Agreement specifically permitted them to do (*i.e.*, move to Indiana), in a proceeding before a grievance arbitrator, the Village may find itself estopped from taking any disciplinary action; find that only a very minor disciplinary action is all that can be imposed (*i.e.*, a counseling, warning or minimal suspension); or, if the Village forces officers to make the choice and move back, find that as part of any ability to do so, a substantial amount of time will be given to those officers to make the appropriate moving arrangements with the further condition that before the officers are compelled to return their residence to Illinois, the Village must first pay for all of the officers' moving, relocation and other related expenses incurred by officers in their efforts to return their residence back to Illinois. Add to those potential costs the litigation expenses that will come and the time it will take as the Village seeks to enforce the resi-

[continuation of footnote]

situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

See also, *Local 369 Bakery and Confectionery Workers International Union of America v. Cotton Baking Company, Inc.*, 514 F.2d 1235, 1237, *reh. denied*, 520 F.2d 943 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 and cases cited therein:

In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator's flexibility.

Additionally, see *Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62, 67 (2000) [citations omitted]:

... [C]ourts will set aside the arbitrator's interpretation of what their agreement means only in rare instances.

* * *

We recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here. But both employer and union have agreed to entrust this remedial decision to an arbitrator.

Finally, see Hill and Sinicropi, *Remedies in Arbitration* (BNA, 2nd ed.), 62 ("... [M]ost arbitrators take the view that broad remedy power is implied").

gency language it is getting in this case against those officers. Enforcement of the language I am imposing at the Village's request against the eight officers who moved to Indiana with the penalty of discharge may ultimately prove unsuccessful, incomplete, time consuming and costly. But then again, the Village may, in the end, be able to persuade an arbitrator that given the language in the 2012-2016 Agreement, the arbitrator must uphold discharge for those officers who moved to Indiana even after being lulled into believing that they could do so.

There's a big and costly gamble here – for all involved. And the perplexing aspect of all of this is that there is no real operational reason for the Village's position to obtain the no out-of-state residency requirement that I am compelled to impose in this case, other than the fact that Section 14(i) of the IPLRA allows the Village to obtain that prohibition. The Village's proposal that I am compelled to adopt to the extent that residency outside of the Illinois is prohibited, requires officers who live in Indiana between 2.7 and 17.4 miles away from the Village with driving times between 7 and 25 minutes to make the choice of whether to remain at their newly established Indiana residences and quit or potentially be discharged or uproot and return to residence in Illinois. At the same time, because the Village's proposal which continues that portion of the 2009-2012 Agreement, officers can reside *anywhere* in Illinois – indeed, in theory, as far away as Cairo, Illinois (358 miles from Village Hall, 5 hours, 12 minutes driving time) which would make it impossible for officers residing at far distances from the Village (as the Village's proposal would allow them to do) to timely make it back to work in the event of an overtime call-back

or emergency.⁷⁹ Given those realities, the Village's right to require residency in Illinois may become a public relations nightmare for the Village as it may have to explain to the public why it is forcing these officers to move back from short distances away in Indiana and causing potential personal havoc to those officers and their families when just a few years ago the Village agreed that those officers could move to Indiana while allowing other officers (if they choose) to live great distances from the Village in Illinois – and, in the end, getting nothing in return from this proceeding to justify such a draconian position. Quite frankly, the residency issue standing alone, makes absolutely no sense to me.⁸⁰

But again, as an *interest* arbitrator, I cannot do what the Union asks to “rewrite” Section 25.3 of the Agreement to shield officers who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement and then find themselves being subject to discipline or discharge for doing so. The real answer to this may be years and many tens of thousands of dollars down the road. All of this is just may well be a waste of valuable time and resources.

⁷⁹ Google Maps.

In *City of Highland Park and Teamsters, Local 714, supra* at 9, I rejected the union's residency proposal which allowed officers to live anywhere in Illinois for precisely those reasons (“The Union's offer allows officers whose services may be necessary for emergency situations to live hundreds of miles away effectively making them unavailable for such calls ... [t]he City's offer is the far more reasonable.”). Here, the Village believes it is permissible to have officers residing great distances from the Village, but not close by just across the border in Indiana.

⁸⁰ But see discussion *infra* at VII concerning the reasons for the Village's proposals.

From Village Exh. 47, excluding the officers who have moved to Indiana, the remaining officers in the bargaining unit currently live close distances to work. However, under the Village's proposed language which I am compelled to adopt in this case, “... [a]fter an employee completes ten (10) full years of service, that employee can establish residency outside of the Village of Lansing, *anywhere within the State of Illinois*” [emphasis added]. Officers with greater than 10 years of service can move anywhere in Illinois – but they can't move close by in Indiana.

Third, the Union argues that in order to get residency requirements relaxed to permit officers to move to Indiana as sanctioned by the 2009-2012 Agreement, “[t]he bargaining unit membership agreed to accept two years without any wage increases: 2009-2010 and 2010-2011.”⁸¹ With what the Union now sees as the Village’s reneging on what the Union “... membership thought ... was ... a permanent residency exemption”, the Union asks that I “... award the entire bargaining unit their lost wages for 2009-2010 and 2010-2011 as part of the award.”⁸² I cannot do that.

In this award, the Village is getting what it is legally entitled to receive under Section 14(i) of the IPLRA – a prohibition against residency outside the State of Illinois. As an interest arbitrator, I have no authority to make the Village pay to get what it is legally entitled to receive. Indeed, taken to its logical end result, unions that allowed boards of fire and police commissioners to continue to decide discipline of firefighters and police officers for so many years under collective bargaining agreements after the IPLRA gave unions the ability to have arbitration of discipline merely by asking for it, but then changed to impose arbitration simply because the IPLRA required arbitration (as here in my award for the parties’ 2005-2009 Agreement) would be subject to the same “refund” argument made by the Union as public employers may have given additional wages and benefits over the years as part of an effort to keep unions from seeking an interest award containing an arbitration of discipline provision.

⁸¹ Union Brief at 24.

⁸² *Id.* at 31.

Is the result of adopting the Village's proposal on this issue "unfair" to the officers (and their families) who relied upon the ability to move to Indiana as negotiated by the parties and permitted by the 2009-2012 Agreement and now find themselves in a position of potential discipline or discharge if they do not move back to Illinois? Of course it is. However, because of the language in Section 14(i) of the IPLRA that my award "... shall not allow residency outside of Illinois ...", as the Village correctly argues, as an interest arbitrator I have absolutely no choice or discretion on this issue.

The Village's proposal on residency is therefore adopted.

C. Sick Leave

Article XIII of the 2009-2012 Agreement provides as follows:⁸³

ARTICLE XIII

SICK LEAVE

Section 13.1: Purpose

Sick leave shall be used for the purpose for which it was intended, that being to provide an officer protection against a full day's loss of pay due to illness of the officer. Sick leave may not be converted into any other form of compensation. To the extent permitted by law, sick employees are expected to remain at home unless hospitalized, visiting their doctor or acting pursuant to reasonable instructions for care.

Section 13.2: Sick Leave

Employees who are unable to work due to their personal illness shall be compensated for their sick leave absence up to one year. Requests for paid sick leave shall not unreasonably be denied by the Chief. Sick leave for illness involving a member of the officer's immediate family residing in the officer's immediate household may be granted on a

⁸³ Village Exh. 3 (2009-2012 Agreement).

case-by-case basis as solely determined appropriate by the Chief or his designee.

Section 13.3: Sick Days Used

If an employee is unable to work due to illness, the employee must inform his supervisor at least one (1) hour prior to the start of his scheduled workday. An employee's failure to inform his supervisor each day of absence, or at agreed intervals in the event of an extended illness, shall result in a loss of that day's sick pay and may result in disciplinary action as well.

Section 13.4: Abuse of Sick Leave

Abuse of sick leave is a serious matter. The Village retains the right to take corrective steps to deal with abuse of sick leave. Such corrective steps may include, but are not limited to, medical consultations and informal or formal disciplinary action where abuse is shown. The Council agrees to use its best efforts as may be requested by the Village to assist the Village in ferreting out sick leave abuse wherever it may occur.

Sick leave may not be used for absence due to a work-related injury for which compensation is provided under the Illinois Workers' Compensation Act.

The Village seeks to add the following language at the end of Section 13.2:⁸⁴

Effective January 1, 2015, employees will earn ninety-six (96) paid sick leave hours per year, or eight (8) hours for each month of completed service. At the end of each year, all unused sick leave hours will be automatically transferred to the employee's Sick Leave Bank. The Village agrees to retroactively supply each employee's Sick Leave Bank, using the same calculation that was used to determine the Sick Leave Bank for exempt police department employees who converted from unlimited sick time: The employee's new Sick Leave Bank will be calculated as if the employee had been under this new sick leave policy from January 1, 2001 or the date of full-time hire (whichever is later), assuming there has been continuous full-time employment. Unused hours from each year of employment will be added to the sick leave

⁸⁴ Village Final Offer at 2; Village Brief at 28-29.

bank, up to the maximum of nine hundred and sixty (960) hours.

In addition, within 60 days of ratification of the initial contract containing these sick leave provisions, the Village will provide each then-current bargaining unit member with a one-time bonus payment equal to 1% of their May 1, 2014 annual base wage or, at the employee's election, a dollar equivalent number of sick leave hours (based upon the employee's May 1, 2014 hourly rate of pay) will be placed in each bargaining unit member's Sick Leave Bank.

The Union proposes to maintain the *status quo*.⁸⁵

Because the Village seeks to change the *status quo*, the standard to be applied here is for the Village to demonstrate the existing sick leave provisions are "... broken and 'good ideas' alone do not satisfy that ... burden." *Highland Park (Sergeants Unit)*, *supra* at 5.

Section 13.2 provides that "[e]mployees who are unable to work due to their personal illness shall be compensated for their sick leave absence up to one year." That is a substantial benefit. According to the Village, "[t]he Village's current sick leave system is broken."⁸⁶ The Village asserts that "[t]he current system is abused and misused ... [and a]pproximately 20% of the bargaining unit misuses or abuses the Village's more than generous sick leave benefit."⁸⁷

The Village has not met its burden. If sick leave is being "... abused and misused ...", then the Village already has the vehicle in existing language in Article XIII to address the problem. As the parties agreed in Section 13.1, "[s]ick leave shall be used for the purpose for which it was intended, that being to

⁸⁵ Union Final Offer at 5; Union Brief at 33.

⁸⁶ Village Brief at 29.

⁸⁷ *Id.* at 30.

provide an officer protection against a full day's loss of pay due to illness of the officer." In Section 13.4, the parties further agreed that "[a]buse of sick leave is a serious matter ... [t]he Village retains the right to take corrective steps to deal with abuse of sick leave ... [and s]uch corrective steps may include, but are not limited to, medical consultations and informal or formal disciplinary action where abuse is shown." In simple terms, the sick leave benefit is not an added days-off benefit for use for something other than officers being sick.

Abuse or misuse of sick leave is a very common basis for discipline. Employees have to come to work on a regular basis. To determine whether discipline for sick leave abuse or misuse is warranted, patterns of absences can be looked at – *i.e.*, are sick days frequently taken?; are sick days repeated over a period of time taken before or after days off (non-scheduled days, vacations, holidays, etc.)? If the Village has officers who are abusing or misusing sick leave, then the Agreement gives the Village the clear right in Section 13.4 to discipline those offending officers. Even without the language in Section 13.4, the Village would have the right to discipline officers for abusing or misusing sick leave. The Village has not made sufficient efforts in that regard to rein in what it contends is abuse or misuse of sick leave through disciplinary action. With respect to the sick leave benefit, in and of itself, there is nothing broken here.

The Union's proposal to maintain the *status quo* on sick leave is therefore adopted.

D. Uniform Allowance

Article XIX of the 2009-2012 Agreement provides:

**ARTICLE XIX
UNIFORM ALLOWANCE**

Section 19.1: Coverage

The Village will provide initial uniform items, and replacement uniforms to employees on a reimbursement system as it has in the past. A list of the current initial uniform items is attached hereto as Appendix D. Each September 1, uniformed employees will receive a clothing allowance check of \$599.00 per year (new hires shall also receive the clothing allowance check upon beginning employment). Plain clothes employees will also receive a check for \$599.00 per year.

Section 19.2: Repair/Replacement of Personal Property

The Village shall bear the reasonable cost of repair or replacement of prescription eyeglasses, contact lenses, sun glasses, wrist watches, shoes/boots, cellular phones, uniform shirt or pants, belonging to an officer, to the extent of damage to same resulting from action occurring in the line of duty. Any incident resulting in such damage shall be documented and immediately reported to the immediate supervisor of the officer. Each incident will be reviewed and approved by the Chief of Police or designee. Replacement value of any single item shall not exceed \$150.00. In the event that any restitution is made, the Village shall be subrogated for the amount paid to the employee under this section.

The Village seeks to add the following language to Section 19.1:⁸⁸

Effective January 1, 2015, and on each January 1 thereafter, uniformed and plain clothes employees will be eligible for a clothing allowance reimbursement up to \$700 per year (new hires receive an immediate reimbursement upon beginning employment) upon the presentation of appropriate receipts. The list of eligible items shall be inclusive of all items that are part of the required uniform, as determined by the Chief.

⁸⁸ Village Final Offer at 3; Village Brief at 36.

The Union seeks to maintain the existing language in Section 19.1, but desires to add the following:⁸⁹

The allowances shall be increased to \$700. effective September 1, 2014 and increased to \$725 effective September 1, 2015.

The parties are in agreement that the uniform allowance should be increased in the first year to \$700. However, the Union seeks that increase be consistent with prior years (on September 1), while the Village seeks to move the increase back to January (“[e]ffective January 1, 2015, and on each January 1 thereafter ...”). The Village also seeks to cap the allowance (“... reimbursement *up to* \$700 ...”) [emphasis added], while the Union, because it only seeks an increase in the amount from \$599 per year to \$700 per year, seeks to maintain that the allowance as a definite amount (“... will receive a clothing allowance check of \$...”). Another difference is that the Village conditions payment “... upon the presentation of appropriate receipts” which is not contained in the existing language of Section 19.2 and which the Union is not in agreement. Finally, the Union has an additional increase of \$25 per year (to \$725) effective September 1, 2015, which is not contained in the Village’s proposal.

As the Village points out, “[t]he cost difference between the parties’ proposal is minor – approximately \$4,400.”⁹⁰ The issue from the Village’s perspective is about the added requirement to produce receipts, which is contained in

⁸⁹ Union Final Offer at 3; Union Brief at 20.

⁹⁰ Village Brief at 36, [citing Village Exh. 35; Tr. 69]

the Village's proposal, but not in existing language which is part of the Union's proposal.⁹¹ That prompted the following exchange at the hearing:⁹²

ARBITRATOR BENN: What's broken about not having to provide receipts? Have you had any problems?

MR. BAIRD: We don't know where the money is being spent. We cannot in any way account for the fact that the money is actually being spent on uniforms. That's our concern.

For the very reasons stated by counsel for the Village, the Village's preference for receipts is a "good idea". However, given that "good ideas" are not enough to meet the Village's burden to change the *status quo*, without more, I cannot find the existing system concerning how the uniform allowance is handled is broken. There is no definitive evidence of problems with the current system. Add to that a backing up by four months for the increase to take effect (January 1 as proposed by the Village instead of the previously effective date of September 1) and the Village's capping of the amount of the allowance instead of a providing a flat amount as before, I cannot find the Village has sufficiently demonstrated the need for the change along the lines it seeks. Because this is an economic issue, I can only adopt one of the offers presented.

The Union's proposal on uniform allowance is therefore adopted.

V. TENTATIVE AGREEMENTS

Tentative agreements reached by the parties outside of the issues discussed in this award are incorporated into this award.⁹³

⁹¹ Village Brief at 36-37.

⁹² Tr. 69.

⁹³ Ground Rules at 2, par. 7.

VI. DRAFTING OF LANGUAGE AND RETENTION OF JURISDICTION

This matter is now remanded to the parties for drafting of language consistent with the terms of this award and tentative agreements reached by the parties on other issues. I will retain jurisdiction to resolve disputes which may arise concerning that language.

Further, I will retain jurisdiction for any other disputes agreed to by the parties for submission.

VII. CONCLUSION

This is a first for me. I am asking that the parties *not* put into the final version of the 2012-2016 Agreement one of determinations made in this case – specifically, my adoption of the Village’s residency proposal discussed *supra* at IV(B).

As a result of the requirement in Section 14(i) of IPLRA (“... the arbitration decision ... may include residency requirements ... but those residency requirements shall not allow residency outside of Illinois”), the Village is absolutely correct that “[t]he Arbitrator has no choice to but select the Village’s residency proposal” which prevents me from determining a residency dispute with a result that officers (and their families) can have residence in Indiana.⁹⁴ That result will require eight officers – *20% of the bargaining unit* – to potentially make a choice to either move back from Indiana to Illinois after they were lulled into believing that they could move to Indiana because the parties negotiated language in the 2009-2012 Agreement that permitted them to make such a move or be subject to potential discipline up to and including discharge. That result is simply a morale buster. Not only will that result adversely im-

⁹⁴ Village Brief at 38.

pact the eight officers and their families, but that result will potentially deprive the Village and its citizens of the services of eight experienced police officers. *No one* wins with that outcome. However, that result is required by Section 14(i) of IPLRA and, as the Village argues, I have no choice.

And that “lose-lose” result on the residency issue becomes even more apparent when the Village’s goal for raising the residency issue is considered.

Using the residency issue as a bargaining wedge, the Village’s goal was to get relief on what it views as a costly sick leave benefit which it contends is not under control and not being used for the stated intent of benefit. According to the Village:⁹⁵

The Village has made efforts, in pre-hearing negotiations as well as in post-hearing talks to give its employees the most reasonable terms and benefits. Pre-hearing, the Village has made on the record proposals to maintain the *status quo* on residency for at least two more agreement cycles. That is, the Village proposed to drop its residency proposal and maintain the current language through 2020, at the very least. In exchange for this concession, the Village proposed that the Union agree to some concessions on the sick leave buy-back.

The Village has also made efforts to negotiate a residency provision favorable to all parties even after the close of hearing. ...

The Village’s goal to achieve a change in the sick leave provisions has not been accomplished through this proceeding. As discussed *supra* at IV(C), because the Village has not met its burden to demonstrate the sick leave provisions are broken, the sick leave provisions remain unchanged. But now, with my adoption of the Village’s proposal on residency and my rejection of the Vil-

⁹⁵ Village Brief at 38-39 [citations omitted].

lage's proposed changes on sick leave, 20% of the bargaining unit is in jeopardy of discipline or discharge for merely relying on the ability to move to Indiana as the parties previously agreed they could and there is no relief for the Village on the sick leave issue which was the reason the Village advanced the restrictive residency proposal.

When the smoke clears, the overall problem still remains. Unless the Village takes strong disciplinary action against those it believes are abusing or misusing sick leave, if there are abusers, the abuse or misuse will continue and the costly sick leave benefit will still face the Village as it remains unchanged. If there are abusers of the sick leave benefit, then the other officers in the bargaining unit are adversely impacted as they become subject to mandated overtime to cover shifts not worked by those taking off. Overtime may be desirable to some, but not when it forces officers to change personal plans because other officers have decided to take off when not sick.⁹⁶ And the Union has not really yielded because it remains steadfast in maintaining the sick leave benefit, even with the possibility that by maintaining its position, 20% of the bargaining unit is now in potential jeopardy of discipline or discharge for failing to comply with the new residency requirements. If there is abuse or misuse of sick leave, that has to be proven and, if demonstrated, stopped. However, officers who relied upon the ability to move to Indiana should not be punished because of unrelated sick leave issues.

But the real bottom line here is that unless the parties act, because 20% of the bargaining unit is affected by the residency determination in this case –

⁹⁶ Under Section 6.8 of the 2009-2012 Agreement, overtime is offered to volunteers and if not filled through volunteers, overtime is mandated based on qualifications and reverse seniority.

the Village, its citizens and eight experienced police officers who have long served the Village and its citizens are *all* harmed – and *nothing* has been accomplished through this proceeding or the parties' previous bargaining efforts to avoid an inevitable upcoming confrontation over the issue.

So someone has to blink. Common sense – not statutory prohibitions – dictates that this result cannot be allowed to be put in place.

And so I ask that the parties agree *not* to implement the residency portion of this award. There are ways out of this and that is through further give and take at the bargaining table.

Although Section 14(f) of the IPLRA allows me to "... remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks", I am not going to use that section to require further negotiations. I am only suggesting that cooler heads must now prevail, else many lives will potentially be disrupted and the experience these officers have to offer to the Village and its citizens may be lost because of hard-line and ultimately unsuccessful positions taken at the bargaining table – by both sides. The advocates in this case are as skilled, experienced and professional as they come. The advocates don't need me to persuade them of the need to get back to the bargaining table to resolve this so I will not use Section 14(f) as a club to achieve that result. The parties represented by these advocates must literally come to their senses and agree to again try to attempt work this out to avoid a potentially substantial amount of hardship. If requested, I can attempt to assist in achieving an amicable resolution.

But for now, the award in this matter on the issues in dispute is summarized as follows:

VIII. AWARD

A. Wages

1. Percentage increases

(Village offer):

Effective	Percentage
5/1/12	1.0%
5/1/13	2.0%
5/1/14	2.5%
5/1/15	2.0%
Total	7.5%

2. Retroactivity language

(Union offer):

Wage increases are retroactive on all compensated hours for those employed on the date the contract is ratified by both parties (or the date an interest arbitration award issues, if a voluntary settlement is not reached), or who have retired in good standing (in accordance with Illinois law) or been awarded a pension disability (in accordance with Illinois law) during the period of retroactive pay.

B. Residency

(Village offer):

Employees shall be required to reside within the Village of Lansing. After an employee completes ten (10) full years of service, that employee can establish residency outside of the Village of Lansing, ~~without restriction, to include establishing residency outside of any~~ where within the State of Illinois.

C. Sick leave

(Union offer):

Status quo.

D. Uniform allowance

(Union offer):

The allowances shall be increased to \$700 effective September 1, 2014 and increased to \$725 effective September 1, 2015.

A handwritten signature in black ink, appearing to read "Edwin H. Benn", written over a horizontal line.

Edwin H. Benn
Arbitrator

Dated: December 29, 2014