

**ILLINOIS LABOR RELATIONS BOARD  
INTEREST ARBITRATION  
BEFORE  
LISA SALKOVITZ KOHN,  
SITTING AS SOLE ARBITRATOR**

**TOWN OF CICERO,  
Employer,**

**and**

**ILLINOIS FRATERNAL ORDER OF POLICE  
LABOR COUNCIL,  
Union.**



**Case No. S-MA-11-165**

Appearances:

For the Town:

Holly L. Tomchey  
Julie E. Diemer,  
Del Galdo Law Group, LLC

For the Union:

Gary L. Bailey,  
Illinois FOP Labor Council

**ARBITRATION AWARD**

## **I. INTRODUCTION**

This is an impasse arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.*, subject to certain agreed-upon modifications set forth in the parties' Ground Rules and Stipulations, Joint Exhibit 1. The Union, the Illinois FOP Labor Council, and the Employer, the Town of Cicero, selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, waiving their respective rights to appoint Union and Employer delegates to the panel. Jt. Ex. 1, ¶¶ 1, 3. The parties have stipulated that there are no procedural matters at issue, and that the Arbitrator has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. *Id.* At the hearing, held June 13, 2012, both parties were given the opportunity to present such evidence and argument as they desired, including an examination and cross-examination of all witnesses. The Union submitted its post-hearing brief by August 24, 2012, consistent with the briefing schedule set at the hearing and subsequent extensions granted by the Arbitrator; although the Employer requested an additional extension until October 1, 2012, no post-hearing brief was ever submitted. On November 12, 2012, after additional correspondence among the Arbitrator and the parties's advocates, the Arbitrator requested an extension of the time for her Award until at least December 9, 2012. The Union agreed to an extension until December 9, 2012. The Employer has not objected to this extension.

The parties have directed that their tentative agreements on other matters, as set

forth in Joint Exhibit 4, shall be incorporated into the Arbitrator's award in this matter. Jt. Ex. 1, ¶ 7.

## **II. ISSUES**

The parties submitted the following issues to the Arbitrator, stipulating that they are mandatory issues of bargaining and economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act, and that the Arbitrator must choose either the County's offer or the Union's offer on each issue:

"Union Economic Issues:

1. Wages (Section 29.1)

"Town Economic Issues:

1. Wages (Section 29.1)
2. Health Insurance (Article 26)
3. Sick Leave Buy Back (Section 25.2)"

In addition, the parties have submitted two other issues, stipulating that they are mandatory subjects of bargaining, and are non-economic within the meaning of Section 14 (g) of the Act, and that the Arbitrator may choose either party's offer or may write her own provision:<sup>1</sup>

"Union Non-Economic Issues:

1. Duration (Article 38)

"Town Non-Economic Issues:

1. Duration (Article 38)
2. Chemical Testing – Discipline (Section 8.14)"

The parties exchanged their final offers prior to the hearing.

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<sup>1</sup>At the hearing the parties resolved an issue concerning Chemical Testing – Prohibitions (Section 8.3), and the agreement has been added to the parties' tentative agreements to be incorporated into the Arbitrator's Award.

### **III. STATUTORY FRAMEWORK**

Section 14(h) of the Act, 5 ILCS 315/14(h), provides that:

[T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities;
  - (B) In private employment in comparable communities:
- (5) The average consumer prices for goods and services commonly known as the cost of living;
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment and all other benefits received;
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, all the statutory factors, including all of the parties' stipulations, have been considered in reaching this decision and Award.

#### **IV. BACKGROUND AND EXTERNAL COMPARABLE COMMUNITIES**

The Town of Cicero has a population of 83,891, making it the tenth largest community in the State of Illinois. The Union represents its 121 Patrol Officers, and, in a separate unit, its Police Sergeants. The Police Sergeants are presently engaged in interest arbitration before a different arbitrator. The Town has 65 Firefighters and Fire Lieutenants who are represented in a single unit by IAFF Local 717, a unit of 7 Detention Officers, a unit of Part-Time Police Officers and a unit of 7 Desk Aides represented by ICOPS, a unit of 91 Public Works employees represented by IUOE Local 150, and 256 unrepresented employees.

The Union was certified as the exclusive bargaining representative for the Patrol Officers in June 1986. The parties have entered into nine collective bargaining agreements in the past. The first of these contracts was resolved in interest arbitration. *Town of Cicero and Illinois FOP, Lodge No. 2, S-MA-87-40* (Larney, 1987). The next seven contracts were reached in voluntary negotiated settlements. The parties participated in a second interest arbitration in 2009, *Town of Cicero and Illinois FOP, Lodge No. 2, S-MA-07-022* (Yaffe, 2009) ("*Yaffe*"), resulting in the current contract. However, in neither of those arbitrations did the arbitrator make any determination regarding external comparables. Thus there is no historical identification of "comparable communities" upon which an arbitrator may rely in making the comparison of "wages, hours and conditions of employment of employees involved in the arbitration proceeding" with those of employees in "comparable communities," as provided in Section 14(h)(4)(A) and (B).

The identification of comparable communities is not an exact science, though it is

often critical to the evaluation of the appropriateness and reasonableness of a final offer. See, e.g., *Village of Carol Stream and the Illinois FOP Labor Council*, S-MA-97-130 (Hill, 1998); *Village of Rock Falls and the IAFF Local 3291*, S-MA-94-163 (Nathan 1995). A selection of communities both greater than and less than the municipality by relevant measures is generally considered a reasonable way to ensure that the arbitrator's assessment of competing offers will not create an "outlier" contract in either direction, and that the result of interest arbitration will approximate that which might reasonably be expected to result from the parties' negotiations, had impasse not occurred. In selecting a pool of comparable communities, arbitrators traditionally consider a variety of factors in an effort to identify communities whose demographic, financial and other labor market characteristics approach those of the jurisdiction in arbitration sufficiently that a pattern of terms in their agreements might be relevant in determining what the arbitrating parties reasonably would have agreed to had their bargaining process not broken down.

In this arbitration, the Union has proposed the following communities as comparable to the Town of Cicero: Berwyn, Waukegan, Oak Lawn, Aurora, Evanston, Joliet and Oak Park. The Employer has proposed as comparables: Berwyn, Waukegan, Burbank, Calumet City, Carpentersville, Chicago Heights, Elgin, Hanover Park, Lansing, North Chicago and Round Lake Beach.

The Union explains its choice as follows: Looking at Illinois communities in order of population, Chicago, the largest at almost 2.7 million, is too large to be comparable, and the third, sixth and seventh communities by population, Rockford, Springfield and Peoria, respectively, should be excluded as geographically distinct from Cicero. This leaves four

communities larger than Cicero, other than Naperville, which has been excluded by both the Union and the Town as being an affluent white collar community unique in the region:

<b>Community</b>	<b>Population</b>
Aurora	197,899
Joliet	147,433
Elgin	108, 188
Waukegan	89, 078

The Union also would exclude Elgin because unlike Cicero, its Sergeants are not organized for collective bargaining. The Town, which did not include Elgin as a comparable in the 2009 Yaffe interest arbitration, would include it here. There is nothing in the statute that requires that the set of comparables be the same for all units of employees of a particular municipality, and indeed one can imagine situations where different lists of comparable might be appropriate, such as where the different employee groups were impacted by geographically distinct labor markets. However, where two bargaining units are part of the same industry and department, as are the Patrol Officers and Sergeants of the Town of Cicero, and where both units are in interest arbitration simultaneously, as here, it makes sense for the sake of internal comparability, to eliminate as comparable a community where only one of these groups is organized. Therefore of the larger communities proposed by the Union, only Joliet, Aurora, and Waukegan appear to be comparable communities to Cicero for the sake of Section 14(h)(4)(A).

The Union also proposes as comparable four cities with less population than Cicero:

<b>Community</b>	<b>Population</b>
Evanston	74,486
Oak Lawn	56,690
Berwyn	56,657
Oak Park	51,878

The Town agrees with the use of Berwyn, but disagrees with the other three smaller communities. All four of these communities proposed by the Union share a geographic similarity to the Town. Like Cicero, they share a border with the City of Chicago. This shared feature impacts many demographic characteristics of these communities, including housing, income and crime, with that common border providing a easy conduit for criminal and gang activity from Chicago to leech into the surrounding communities. It is true, as the Town argues, that the total number of crimes in a community in a given year does not disclose on its own whether the police deserve lower raises because they are doing a poor job, or whether they should be paid more because there are more crimes to handle. However, crime rates may reflect communities' actual or perceived need for crime-fighting resources and manpower. Similar crime rates are one factor that may indicate that communities are comparable for the purposes of Section 14(h)(4)(A), so the Union's selection of communities that share a border with Chicago is not inappropriate. The common border with Chicago may also reflect a shared geographic labor market for police officers. These geographic similarities suggest that Evanston, Oak Lawn, Berwyn and Oak Park are reasonably comparable to Cicero, even though Evanston and Oak Park have far higher median household incomes and median per capita incomes than Cicero and the other comparables suggested by the Union.



The Town proposed a group of eleven communities as comparable to Cicero, using a population cut-off of plus or minus 70% of the population of Cicero, and then rating the 60 communities within the Chicago-Metropolitan region that fell within that range on twelve factors: geographic proximity, population, size of police department, median household income, median home value, per capita income, percentage of individuals below the poverty line, EAV per capita, General Fund revenues per capita, sales tax per capita, General Fund expenditures per capita, General Fund fund balance per capita, and police department expenditures per capita. The Town selected the eleven communities that had the highest number of factors for which they were within plus or minus 50% of the Town's values.

Two of the communities selected by the Town, Waukegan and Elgin, are larger than Cicero, but as we have seen, it makes sense to disregard Elgin as a comparable in order to provide some consistency with the Cicero Sergeants unit which is now in arbitration over its contract. The Union agrees with the selection of Waukegan as a comparable community. Of the remaining nine municipalities, all smaller than Cicero, only one - Berwyn - is also on the Union's list. The rest - Burbank (population 28,925), Calumet City (37,042), Carpentersville (37,691), Chicago Heights (30,276), Hanover Park (37,973), Lansing (28,331), North Chicago (32,574) and Round Lake Beach (28,175) – are much smaller than the communities on the Union's list, the smallest of which, Oak Park, has a population of 51,878. However, Burbank and Calumet City share a border with Chicago, like Evanston, Oak Park, Berwyn, and Oak Lawn in the Union's list. Burbank and Calumet City also, like Cicero, have notably poorer populations than Evanston, Oak Park and Oak

Lawn. The economic similarity among Burbank, Calumet City and Cicero suggest that Burbank and Calumet City should be added to give balance to the Union's list.

In sum, I find that the appropriate group of comparable communities to be considered in connection with this interest arbitration is (in order of population):

**Aurora**  
**Joliet**  
**Waukegan**  
**(Cicero)**  
**Evanston**  
**Oak Lawn**  
**Berwyn**  
**Oak Park**  
**Burbank**  
**Calumet City**

Attachment A at the end of this Award provides a snapshot comparison of these communities on a variety of measures frequently deemed relevant to the assessment of parties' final offers on economic matters.

The additional statutory factors listed in Section 14 of the Act have been duly considered and are discussed below as relevant to the various issues in the parties' final offers. All factors have been considered even if not explicitly discussed herein.

## **VI. ANALYSIS AND CONCLUSIONS**

### **A. Non-Economic Issue - Duration**

The parties have raised the contract duration as a non-economic issue. The Union proposes a three-year contract; the Town proposes a five-year contract. The parties have submitted separate three-year and five-year final offers on wages and health insurance

benefits, so that they would have offers on these economic issues regardless of the arbitrator's determination of the duration issue.

The Union contends that the parties' past history favors a three-year contract. The parties have never had a five-year contract. Since 1987, the parties have had two two-year contracts, two one-year contracts, a four-year contract (1994-1997), but since 1998, all four of their contracts have been three-year agreements. Thus, the Union reasons, the Town is seeking to change the three-year-contract *status quo*, and bears the burden of justifying that change. The Town urges that a longer contract period will give the parties some respite from negotiations, which could otherwise begin almost as soon as this Award is issued.

It is generally held that when a party seeks to change a long-established term or condition of employment, the party seeking the change must show that the existing system is not working as anticipated, the existing system has created operational hardships for the employer or equitable issues for the union and the party seeking to maintain the *status quo* has resisted efforts to address the issue. See *County of Will and Sheriff of Will County and AFSCME Local 2961*, S-MA-88-009 (Nathan 1988). The Arbitrator agrees that in seeking a change from the parties' past pattern of bargaining three-year terms, the Town bears some burden to show that the past pattern is no longer applicable to current conditions.

A period of disengagement from labor negotiations might be desirable, as the Town suggests. As the arbitrator observed in *Village of Lisle and MAP Chapter #87*, S-MA-09-200 (Kenis 2011), in accepting the Union's offer of a three-year contract, rather than the four-year term offered by the Village:

The parties have engaged in extensive bargaining, mediation and finally interest arbitration in an effort to get a successor agreement in place. A shorter contract would start the process all over again in very short order. Generally, it is beneficial and in the interest of labor stability to take some time to examine the operational impact of the new contract. Having a respite period would enable the parties to negotiate a successor contract on a more informed basis than would be possible if a three-year contract with a term ending April 30, 2012 were awarded.

However, Arbitrator Kenis decided that the shorter contract was more appropriate in light of the economic conditions at that particular time:

Based on the conditions of the present economy, however, the Arbitrator is reluctant to lock the parties into a longer contract duration notwithstanding the fact that they are not far apart with respect to wage increases for the fourth year of the contract. Economic conditions continue to be uncertain and volatile. We do not know if the economy is recovering or on its way to faltering again. The economy is the pink elephant sitting in the corner of the room and it is impacting more than just wages. As Arbitrator Benn stated in *Boone County [Boone County and Illinois FOP Labor Council, S-MA-08-025 (Arb. Benn 2009)]*: "It seems in this case to make more sense for the parties to get back to the bargaining table sooner rather than later so that they can address their constituents' needs which certainly cannot be predicted at this precarious time."

In addition, Arbitrator Kenis observed that the majority of the contracts recently negotiated in the comparable communities were of three years duration or less.

In this case, the comparable communities do not suggest any overwhelming trend as to contract duration. One of the nine comparable communities' most recent contracts was a five-year contract (Burbank); two were four-year contracts; one was a 40-month contract with a one year reopener; one was 3 years and one month; and four were three-year contracts:<sup>2</sup>

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<sup>2</sup>Oak Park's most recent contract was not available at the time of the hearing but was submitted by the Union as an attachment to its post-hearing brief pursuant to Section 14(h)(7) of the Act. It is hereby accepted into the record.

<b>Community</b>	<b>Duration</b>	<b>Contract Dates</b>	<b>Execution Date</b>
Aurora	3 years	3/10 - 3/12	unknown
Berwyn	3 years	1/1/09 - 12/31/11	6/7/10
Burbank	5 years	1/1/08 - 12/31/12	6/3/08
Calumet City	3 years + 1yr	4/1/08 - 4/30/11 5/1/11 - 4/30/12	3/10/09 7/19/11
Evanston	3 years	3/09 - 2/12	
Joliet	4 years	1/09 - 12/12	
Oak Lawn	4 years	1/11 - 12/14	
Oak Park	3 years	1/11 - 12/13	3/23/12
Waukegan	3 years + 1 mo.	4/1/09 - 4/30/12	10/26/09

These wide variations in a very small sample do not suggest any trends or patterns, except to note that Burbank's choice of a five-year contract, made before the Fall 2008 economic crisis, was unique among the comparable communities. In this case, external comparisons are of little guidance in determining the most reasonable duration for the parties' new contract.

With respect to the internal comparables, only the Firefighters have a five-year contract. The Town's Detention Officers and Part-Time Police Officers, represented by ICOPS, have four-year contracts. The Police Sergeants' most recent agreement was a four-year contract as well. The Public Works employees have a three year contract, as did the Patrol Officers in their last agreement.<sup>3</sup> These internal comparisons do not particularly

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<sup>3</sup>The Desk Aides represented by ICOPS are in the process of negotiating their first agreement.

favor either a five-year or a three-year agreement either.

The parties have stipulated that duration is a non-economic issue, so that the Arbitrator is empowered to designate a duration other than one of the parties' final offers. The most frequent contract duration among the Town's represented units is the four-year agreement. This suggests the possibility that the Arbitrator could follow that trend, and set the duration of the Patrol Officers' contract at four years. However, the parties did not provide final offers on the economic issues for anything other than a three-year or a five-year contract, indicating their mutual disinterest in a four-year solution. In addition, by selecting a four-year duration, the Arbitrator would be forced to include a provision for a reopener to allow the parties to negotiate the wages and health insurance provisions for the fourth year, beginning January 1, 2013. Selecting the Union's three-year duration offer will send the parties back to negotiations for an agreement beginning on that date as well. For these reasons, it makes no sense to deviate from the parties' final offers on this non-economic term, despite the trend among the other represented units.

Overall it appears that the parties' past practice of negotiating three-year contracts for the Patrol Officers since 1998 is the most compelling consideration here. To be sure, the recession that began in the fall of 2008 changed the economic landscape dramatically in Illinois. (See *City of Chicago and FOP Lodge No. 7* (Benn 2009) for an early discussion of that impact on the national, state and Chicago economy.) But the Town does not argue that its five-year proposal is based on unusual economic uncertainty. The Town simply objects that a three-year contract would require almost immediate commencement of negotiations, which might last several years, and asserts that it would be preferable "to

have at least some degree of knowledge of where we're going to go over the next five years certainly for budget purposes, for financial planning purposes.”

Because the parties' past four agreements have been of three years' duration, and in the absence of a compelling trend among the comparable communities or among the Town's other represented employees towards a five-year agreement, the Arbitrator finds that the Union's final offer of a three-year contract duration is the more reasonable. Perhaps the need to return shortly to the bargaining table will provide an incentive to reach a swift voluntary agreement on the next contract, rather than resorting to interest arbitration for the third time in a row. The Union's final offer on duration is adopted.

**B. Economic Issue - Wages**

The parties' final offers on wages for a three year contract are as follows:

**UNION:<sup>4</sup>**

Section 29.1 Wage Rates

All Patrol Officers covered by the terms of this Agreement shall receive wage increases in accordance with the below schedule which shall be based on a 2080-hour work year:

<u>Years of Service</u>	<u>Current Salary</u>	<u>(+2.0%) As of 1/1/10</u>	<u>(+2.0%) As of 1/1/11</u>	<u>(+2.0%) As of 1/1/12</u>
Start	\$58,175.42	\$59,338.93	\$60,525.71	\$61,736.22
After 1 Year	\$60,945.62	\$62,164.53	\$63,407.82	\$64,675.98
After 2 Years	\$70,551.01	\$71,962.03	\$73,401.27	\$74,869.30

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<sup>4</sup>It is noted for the record that the Union's offer for a five-year contract was for a 2.0% increase effective each of 1/1/2010, 1/1/2011, 1/1/2012, and a 3.0% increase effective each of 1/1/2013 and 1/1/2014.

**TOWN:<sup>5</sup>**

1/1/2010	1.50%
1/1/2011	1.50%
1/1/2012	1.50%

**Discussion:**

The difference between the wage offers at the starting level is \$291 in the first year, \$592 in the second year, and \$ 903 in the third year; at the top level (after 25 years) the difference is \$395 in the first year, \$800 in the second year, and \$1221 in the third year. According to the Town, the difference between the two final wage offers over the life of the contract is \$121, 000.

In considering how the Town's Patrol Officers' wage rates would compare to those in the comparable communities, it is important to understand where the Town's Patrol Officers stand with respect to their peers immediately before the new contract begins.

Reviewing the contracts in the record, we find as follows:<sup>6</sup>

2009	<b>Start</b>	<b>Aft. 5 yrs.</b>	<b>Aft. 10 yrs</b>	<b>Aft 15 yrs</b>	<b>Aft 20 yrs</b>	<b>Top pay</b>
Aurora	\$67,246	\$83,242	\$84,032	\$84,469	\$84,864	\$85,259
Berwyn	\$50,979	\$68,773	\$70,452	\$72,503	\$73,871	\$76,856
Burbank	\$45,902	\$63,650	\$69,719	\$69,719	\$69,719	\$69,719
Cal. City	na	na	na	na	na	na
<b>CICERO</b>	<b>\$58,175.42</b>	<b>\$72,314.79</b>	<b>\$74,122.65</b>	<b>\$75,605.11</b>	<b>\$78,659.55</b>	<b>\$78,659.55</b>

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<sup>5</sup>It is noted that the Town's offer for a five-year contract was for no increase until 7/1/2010, a 1.0% increase effective each of 7/1/2010, 1/1/2011, 7/1/2011, a 2.0% increase effective 1/1/2012, a 2.25% effective 1/1/2013 and a 3.00 % increase effective 1/1/2014.

<sup>6</sup>Specific wage rates for Calumet City are not available in this record; that contract states only the percentage increase in wages, without listing wage rates in dollar amounts. Evanston uses a mix of education- and service-based steps, along with the longevity increases in the table. Oak Park has eliminated longevity pay for employees hired after July 11, 1997, substituting an educational incentive of \$90 per month for a bachelor's degree and \$110 per month for a master's degree; the wage rates shown are under the older longevity system and top out at \$360 per year more than the educational incentive. Waukegan has an annual longevity payment of \$800 for officers after 20 years of service; this has been included in the amounts below.



Evanston	\$58,347		2.75%	3.5%	5.0%	
Joliet	\$44,206	\$75,819	\$83,591	\$89,443	\$89,443	\$89,443
Oak Lawn	\$51,027	\$73,950	\$74,690	\$75,437	\$76,191	\$76,953
Oak Park	\$55,666	\$78,529	\$79,669	\$79,909	\$80,209	\$80,209
Waukegan	\$51,472	\$70,643	\$78,820	\$78,820	\$79,620	\$79,620
<b>Cicero's rank</b>	<b>3<sup>rd</sup> of 9</b>	<b>5<sup>th</sup> of 8</b>	<b>6<sup>th</sup> of 8</b>	<b>5<sup>th</sup> of 8</b>	<b>5<sup>th</sup> of 8</b>	<b>5<sup>th</sup> of 8</b>

In other words, at the end of the 2006-2009 contract, the Town's Patrol Officers enjoyed a higher starting salary than their peers in most of the other comparable communities, but the Town's salary scale was otherwise in the lower half of the comparable communities.

Since 2009, wage increases in the comparable communities have been as follows:

	<u>2010</u>	<u>2011</u>	<u>2012</u>
<b>Aurora</b>	<b>March</b> <b>1.19%</b>	<b>January</b> <b>1.18%</b>	<b>March</b> <b>2.0%</b>
<b>Berwyn</b>	<b>January</b> <b>1.0%</b>	<b>January 3.0%</b>	<b>January</b> <b>1.0%</b>
	<b>December</b> <b>2.0%</b>		
<b>Burbank</b>	<b>January</b> <b>3.95%</b>	<b>January</b> <b>3.95%</b>	<b>January</b> <b>3.95%</b>
<b>Calumet City</b>	<b>May</b> <b>4.0%</b>	<b>May</b> <b>2.0%</b>	
<b>Evanston</b>	<b>March</b> <b>0.0%</b>	<b>March</b> <b>2.0%</b>	
		<b>September</b> <b>1.0%</b>	
<b>Joliet</b>	<b>October</b> <b>4.0%</b>	<b>July</b> <b>4.0%</b>	<b>January</b> <b>4.0%</b>
<b>Oak Lawn</b>	<b>January</b> <b>3.75%</b>	<b>July 1.0%</b>	<b>January 2.5%</b>
<b>Oak Park</b>	<b>January</b> <b>3.0%</b>	<b>January</b> <b>2.0%</b>	<b>January</b> <b>2.0%</b>
<b>Waukegan</b>	<b>April</b> <b>3.0%</b>	<b>April</b> <b>3.25%</b>	

	<b>November</b>	<b>November</b>	
	<b>1.1%</b>	<b>1.1%</b>	
<b>% Average</b>	<b>3.0%</b>	<b>2.70%</b>	<b>2.58%</b>

It appears that both the Union's offer of 2.00% in January of each year of the contract, and the Town's offer of a 1.50% increase in January of each year of the contract, are notably below the average increases in the comparable communities. At the end of the three years, the Patrol Officers would lag 2.28% behind the average increases granted in the same period in the comparable communities under the Union's final offer, and would lag 3.78% under the Town's offer. Thus, as the Union contends, this is not a case where the employees are seeking to better themselves significantly in comparison to their peers in the comparable communities. On the other hand, under the Town's offer, the Patrol Officers will lose ground within the group of comparables over the course of the contract.

The Town does not claim to be constrained by an inability to pay. However, it does cite the indicia of a community under "financial stress." The Town's population dropped by 2.0% between the 2000 and the 2010 censuses. The Town's unemployment rate of 11.50% in April 2012 is significantly higher than the rate for the entire Chicago Metropolitan area (9.00%) and Cook County (9.30%), as well as the state of Illinois and the nation as a whole. The EAV (equalized assessed valuation) of property in the Town plummeted 25.82% from 2010 to 2011. The average home sale price dropped from \$79,387.01 in 2011 to \$72,796.00 in 2012. As of June 10, 2012 there were 1120 Cicero homes in foreclosure. Its median household income ranked 309<sup>th</sup> out of 326 communities in the Chicago Metropolitan Region, and its per capita income ranked 322<sup>nd</sup> out of those 326

communities. 8.59% of Cicero's population is below the poverty level. According to a Standard & Poor's analysis, the Town has unfunded actuarial accrued liabilities of \$47.4 million for police pensions, and \$52.3 million for fire fighter pensions. However, the Town's sales tax receipts remain strong, and the Town is expecting some economic improvement from a new Walmart store that will open in the near term.

The Town notes that step increases alone would increase the payroll for Patrol Officers by \$264,660 or 3.5% over the life of the new 2010-2012 contract. Under its final offer of 1.5% increases each year, the cumulative increase (including "roll-up") will be 8.23% over the life of the contract. Under the Union final offer of 2.0% increases each year, the cumulative increase will be 9.84% over the life of the contract. By the Town's calculation, the Union's final offer on wages will cost the Town \$121,396 more over the life of the contract than the Town's final offer. This is slightly more than \$1000 per Patrol Officer.

Internal parity between the Firefighters and the Patrol Officers (and the Police Sergeants) was broken in the last contract, when the Firefighters received an increase of 4.0% in January 2009, while the Patrol Officers and Sergeants received only 3.5%. Public Works employees, who have been represented since 2007, received the same increases as the Patrol Officers in 2007, 2008 and 2009. Unrepresented employees received the same increase as the Patrol Officers in 2003, 2005, and 2007, but received no raise in 2004, 2006 and 2009, and only 3.0% in 2008, when the Patrol Officers received 3.5%. Thus internal comparability of wage increases among the Town's employees has not been an overriding consideration for these parties in the past.

The parties have also provided the commonly-cited cost-of-living indices. Having given full consideration to the data, I find that the cost-of-living indices do not alter the analysis of the parties' offers overall.

In this case, as in many, the external comparables are overall the most telling factor, even after considering all those listed in Section 14(h) of the Act. The Union's final offer of 2.0% at the beginning of each year of the contract is less than the average increases to police officers in the comparable communities, but is closer to that average than the Town's final offer of 1.5% each contract year. The Union's final offer does not appear to place undue strain on the Town's resources. Accordingly, the Union's final offer is adopted.

**C. Economic Issue - Health Insurance**

**UNION:**

The Union's offer on insurance is the status quo:

**ARTICLE 26**  
**INSURANCE**

The Town will offer to Patrol Officers covered by this Agreement Life and Medical Insurance under the terms and conditions and at substantially the same benefit levels in effect as of the date of this Agreement for other employees of the Town. A copy of the Health Care Benefits Summary Plan Description is attached hereto as Appendix C.

Patrol Officers who retire at age Fifty (50) with Twenty (20) years of service and elect to continue to receive medical insurance, shall be entitled to coverage under the Town plan then in effect for the Patrol Officer and the Patrol Officer's spouse (not children or other dependents). The cost of the medical insurance shall be paid 75% by the Town and 25% by the retired Patrol Officer. Upon the Patrol Officer or the Patrol Officer's spouse becoming entitled to Medicare, only the Medicare supplement shall be paid 50% by the Town and 50% by the Patrol Officer. Patrol Officers must elect to continue medical coverage at the time of retirement. It is not available at a later date. This Article shall apply only to Patrol Officers

covered by this Agreement who retire after the effective date of this Agreement.<sup>7</sup>

**TOWN:**

The Town proposes the status quo effective 1/1/2010, 1/1/2011, and 1/1/2012, and effective 7/1/2012, the following language in Article 26 (deleted language struck out, new language underlined):

**ARTICLE 26**  
**INSURANCE**

Except as provided herein, ~~The Town will offer to Patrol Officers covered by this Agreement Life and Medical Insurance under the terms and conditions and at substantially the same benefit levels in effect as of the date of this Agreement. A copy of the Health Care Benefits Summary Plan Description is attached hereto as Appendix C.~~

The Town reserves the right to continue to self-insure, become fully insured, and/or to participate in a health maintenance organization as it deems appropriate, so long as the Town provides substantially similar group Health and Hospitalization, Dental, and Optical Insurance coverage and benefits as are provided to the bargaining unit members as of the date of this Agreement.

Further, the Town reserves the right to institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remain substantially the same. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.

However, prior to making changes to the coverage and benefits of the group Health and Hospitalization Plan, Dental Plan, Optical Plan, and prior to any agreements with insurers that would change group Health and Hospitalization, Dental, and-or Optical insurance coverage and benefits, the Town will notify the Union at least thirty (30) days in advance of such contemplated changes and of the precise nature of those changes.

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<sup>7</sup>As a final offer in the event of a five-year contract, the Union's final offer was to delete the first sentence of Article 26 and to substitute:

The Town will offer to Patrol Officers covered by this Agreement the Life and Medical Insurance plan in effect for all Town employs when this Agreement is ratified and it shall be continued during the term of this Agreement, provided the coverage and benefits are substantially similar to those which predated this Agreement. Employees may elect single, single "plus", or family coverage in the Town's Medical Insurance plan. The employee shall pay two percent (2%) of the premium cost of the chosen coverage under the Town's Medical Insurance Health Plan and the Town shall pay the balance of the premium cost.

Upon request, the Town will meet with the Union for purposes of obtaining the Union's input regarding these changes. The notice is to provide the Union with the framework for discussions so the Town can obtain the Union's views and suggestions prior to the Town exercising its authority to implement changes to insurance benefits and coverage as provided herein.

**PREMIUM SHARING**

Police Officers shall pay the percentage of the monthly premium cost for Town-provided single or dependent health insurance coverage (medical, dental, and vision) as follows:

<u>Date</u>	<u>Employee Contribution for Single Coverage</u>	<u>Employee Contribution for Dependent Coverage</u>
<u>July 1, 2012</u>	<u>The lesser of (a) 5% or (b) the percent contributed by unrepresented employees**</u>	<u>The lesser of (a) 5% or (b) the percent contributed by unrepresented employees**</u>

\*\*As used herein the term "unrepresented employees" specifically excludes members of other bargaining units, elected officials, and appointed members of boards and commissions, and specifically includes full-time employees who are not represented by any bargaining unit.

**TERMS OF POLICIES GOVERN**

The extent of coverage under the insurance policies referred to herein shall be governed by the terms and conditions of the Plan Documents. Any questions concerning coverage shall be resolved in accordance with the terms and conditions in Plan Documents and shall not be subject to the grievance procedures set forth in this Agreement.

**RETIREE INSURANCE**

Patrol Officers who retire at age Fifty (50) with Twenty (20) years of service and elect to continue to receive medical insurance, shall be entitled to coverage under the Town plan then in effect for the Patrol Officer and the Patrol Officer's spouse (not children or other dependents). The cost of the medical insurance shall be paid 75% by the Town and 25% by the retired Patrol Officer. Upon the Patrol Officer or the Patrol Officer's spouse becoming entitled to Medicare, only the Medicare supplement shall be paid 50% by the Town and 50% by the Patrol Officer. Patrol Officers must elect to continue medical coverage at the time of retirement. It is not available at a later date. This Article shall apply only to Patrol Officers covered by this Agreement who retire after the effective date of this Agreement.<sup>8</sup>

**Discussion:**

The current premium cost for Patrol Officers is \$740 per month for single coverage, \$1384 per month for single plus one coverage, and \$2093 per month for family coverage.

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<sup>8</sup>The Town's health insurance offer for a five-year agreement is identical to its three year offer, except that the employee contribution for single and dependent coverage would rise to the lesser of 10% or the percent contributed by unrepresented employees, effective January 1, 2013.

The Town has been paying the entire cost of coverage. The Town proposes that effective July 1, 2012, Patrol Officers begin to contribute to the plan the amount contributed by unrepresented employees, up to a maximum of 5% of the premium, for single or dependent coverage. Because unrepresented employees have not yet been required to contribute to the cost of the plan, there would be no retroactive contribution requirement through the December 31, 2012 expiration of the contract, were the Town's offer to be adopted. Nonetheless, the Town proposal represents a significant change in the cost structure of the health insurance program.

All of the Town's employees, other than the Public Works employees, participate in the same health insurance program.<sup>9</sup> However, the Town does not have a uniform cost structure for all employees. The Town's non-represented employees, approximately 45% of its workforce, are not required to contribute anything to the cost of their health insurance premiums. Under the Town's agreement with the IAFF, the firefighters employed before January 1, 2010 contribute nothing to the cost of health insurance premiums, but firefighters hired after that date are required to contribute 10% of the cost of the premiums. Under the Town's agreement with ICOPS, the seven Detention Officers will not contribute to the cost of premiums until unrepresented employees (excluding appointed and elected Town officials) are required to contribute, with a cap through the end of 2013 of 15% for single coverage and 17% for family coverage. The Police Sergeants are currently in arbitration over their next agreement as well; under the expired agreement, they do not

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<sup>9</sup>The Public Works employees are covered by a different health insurance plan, maintained by their Union. Part-time Officers represented by ICOPS receive no health benefits.

contribute to the cost of premiums.

Employee premium contributions among comparable communities vary:

	Single	Family
<b>Aurora</b>	12.75%	10.00%
<b>Berwyn</b>	10.00%	10.00%
<b>Burbank</b>	22.00%	22.00%
<b>Calumet City</b>	20.00%	20.00%
<b>Evanston</b>	\$88/mo (HMO) \$115/mo (PPO)	\$143 (HMO) \$203.50 (PPO)
<b>Joliet</b>	0	0
<b>Oak Lawn</b>	10%	10%
<b>Oak Park</b>	\$58.34/mo (HMO) \$63.20/mo (HMO) \$99.70/mo (PPO) \$113.06/mo (PPO)	\$170.18/mo (HMO) \$185.98/mo (HMO) \$237.06/mo (PPO) \$273.48/mo (PPO)
<b>Waukegan</b>	20.00%	20.00%

This variation reflects such a wide range of approaches both to health care benefits and to the allocation of costs for those benefits that there is little information to be drawn from the comparison except to note the compelling fact that only Joliet and Cicero, of all the comparable communities, pay the entire cost of health insurance for their Patrol Officers. The trend is clearly towards employee contribution to the cost of both single and family coverage.

Indeed, the Union is now on record that it would consider some form of cost-sharing in the next contract term. Although the Union's final offer is to leave the status quo unchanged for a three-year term, its final offer on health insurance for a five-year agreement included the provision that employees would begin to contribute 2.0% of the premium costs beginning January 1, 2013. Moreover, the Union's advocate stated at the hearing (Tr. 57-58):



Well, by proposing it in interest arbitration in a final offer [for the five-year alternative] that we were willing to pay already, I think that kind of commits us. . . . We're willing to pay when the time's appropriate. We just don't think the first three years of the contract is appropriate.

In its post-hearing brief, the Union also states, at p. 38:

The Union asserts that its five-year proposal will make it impossible for it to "back track" and propose zero contributions when the Union sits down at the bargaining table.

Thus the parties agree that employees should contribute to the cost of their health insurance, at some point. The Town's final offer is the only final offer that would institute such contributions during a three-year contract and thereby bring the Town's Patrol Officers into line with those of all the comparable communities other than Joliet. However, the employee contribution provision is only one part of the Town's final offer. Because health insurance is an economic issue, the Arbitrator has no authority to modify a party's final offer, and the remaining terms of the Town's offer must also be evaluated to determine whether its offer on health insurance is the more reasonable.

In addition to seeking to institute employee contributions for the first time, the Town in its three-year offer also proposes language reserving to itself the right to change the form of the plan from self-insured to fully insured or HMO participation "as it deems appropriate," as long as it continues to provide "substantially similar" insurance coverage and benefits as of the date of the contract. The Town proposal separately reserves to it the right to "institute cost containment measures," such as mandatory second opinions and other potentially restrictive features, as long as "the basic level of insurance benefits remain substantially the same." The Town proposes to give the Union an opportunity to have input into proposed changes but the authority to make the enumerated changes

remains with the Town. These are all entirely new provisions, which have no analogy in the language of the current agreement.

It is clear from the record that the Town has been attempting to contain the cost of employee health insurance coverage, and has sought to address this issue in its most recent negotiations with all of its represented employees, including the Patrol Officers. However, these are apparently the first discussions that have taken place between the Union and the Town. The Union's objections are first, that this is a "breakthrough" that requires additional discussion before making changes of the magnitude of waiving the Union's right to bargain over the form of insurance (PPO, HMO or other plan) provided, or over substantive cost containment features such as "mandatory second opinions for elective surgery, pre-admission and continuing admission review, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures."

In addition, these restrictions on bargaining appear to violate the IPLRA. In *Byron Fire Protection District/Byron Professional Firefighters, IAFF Local 4755, S-MA12-005* (Arb. Hill 2012), Arbitrator Marvin Hill stated, at p. 23:

The language of the healthcare final offer in the fourth paragraph reserved the right to institute cost containment measures relative to insurance coverage and gives examples of what kind of measures might be implemented. However, glaringly missing from this proposal is the right to engage in collective bargaining negotiations over such changes. In *City of Rockford*, ISLRB Case No. S-MA-06-103 (Berman, Arb.) (2008), the arbitrator held that a similar proposal should be rejected because healthcare is a mandatory subject of bargaining.

Arbitrator Hill also observed, p. 23:

The compelled waiver of a statutory right is a permissive subject of bargaining. *University of Illinois (Chicago)*, 8 PERI 1014 (1991), *aff'd* 244 Ill.App.3d 945, 612 N.E.2d 1365 (4th Dist 1993). Because the IPLRA requires mid-term bargaining over mandatory subjects of bargaining, and the District's proposal does not provide for the union to have a right to

bargain mid-term over such subjects, the proposal should be rejected.

While a Union might lawfully agree to such a waiver, it would be inappropriate for the Arbitrator to those terms in the form of an interest arbitration award. Thus, notwithstanding that the institution of employee contributions to the cost of health insurance would on its own be a more reasonable contract term than the preservation of the no-contribution *status quo*, the inappropriate structural changes that are also part of the Town's offer bar its adoption.

The Union's final offer on health insurance is adopted as the more reasonable overall. However, the Arbitrator adopts the Union's offer specifically in light of the representations of the Union's advocate quoted above, and in recognition that, with the three-year contract to expire shortly, the parties will have the opportunity to return to the bargaining table promptly to negotiate appropriate and mutually acceptable cost containment and cost sharing provisions into their next agreement.

**D. Economic Issue - Sick Leave Buy Back**

**Town:**

The Town's final offer is to amend Section 25.2, Sick Leave Accrual, as follows:

Section 25.2 Sick Leave Accrual

All Patrol Officers covered by the terms of this Agreement shall be entitled to sick leave benefits in accordance with the following provisions:

1. Paid sick leave shall be earned and accumulated at the rate of one (1) day per month.
2. Paid sick leave may be accumulated to a maximum of two hundred (200) days.

3.
  - a. For Patrol Officers who are currently employed as of June 13, 2012, upon separation in good standing, the Town will buy back a maximum of one hundred fifty (150) days.
  - b. For Patrol Officers who are hired after June 13, 2012, upon separation in good standing, the Town will buy back a maximum of one hundred fifty (150) days at 50%.
4. Patrol Officers who currently have in excess of ninety-six (96) sick days banked as of December 31, 1997, shall retain said accumulation then apply #1 above from that point forward.

**Union:**

The Union's final offer is to maintain the status quo.

**Discussion:**

The Town proposes to leave the sick leave buy back at the current level, a maximum of 150 days at full value, for employees who were employed as of June 13, 2012, but to reduce the benefit for employees hired after that date to a maximum of 150 days at 50%. The purpose of the Town's offer, according to its advocate (Tr. 129), is to reduce the amount paid out at the end of an officer's career. The Town's rationale for the two-tier system is the Town's recognition that current employees may have been saving sick leave in reliance on the existing benefit amount, but new employees would have no such expectation, and could plan their sick leave use according to the lower buyback level.

The value of the sick leave buy back benefit in the Town and comparable communities, using each community's 2011 top pay for comparison, is as follows:

	2011 Top Pay	2011 Hourly	Buyback: Days	Buyback: Hrs	Buyback rate	Value
Cicero	\$ 79,839	\$38.38	150	1200	100%	\$46,061
***Aurora			NA	NA		
Berwyn	\$86,166	\$41.43	40	320	100%	\$13,256
*Burbank	\$75,335	\$36.22	NA	NA		
Cal. City	\$82,012	\$39.43	120	960	100%	\$37,852
****Evanston	\$78,161	\$37.77	55	440	100%	\$16,619
Joliet	\$100,612	\$48.37		1012	40%	\$19,590
*****Oak Lawn	\$82,653	\$39.73	30	240	100%	\$9,535
*Oak Park	\$84,152	\$40.46	NA	NA		
**Waukegan	\$85,553	\$41.13	90	720	50%	\$14,807

\*Burbank does not provide buyback at separation; instead, it has an annual buyback of 60% for days accrued in excess of 60. Similarly, Oak Park has an annual buyback of 100% for days accrued in excess of 240.

\*\*Waukegan has a 50% buyback when an office retires with 20 yrs service; there is also a buy back of 75% for each sick day over 90 days for officers with less than 20 yrs, 100% for each sick day over 90 days for officers with more than 20 yrs

\*\*\*Aurora has no sick leave buyback but has a "severance pay" for employees who leave in good standing

\*\*\*\*Evanston also has an annual buyback system for employees with 75 days accrued, for days in excess of 2 days accrued but unused during that year.

\*\*\*\*\*Oak Lawn's buyback is limited to employees hired before January 1, 1979, and goes up to 120 days for those hired before January 1, 1970.

While it appears that the Town's current buyback benefit is more generous than that offered in comparable communities, comparisons are difficult because of the variations in the benefit from municipality to municipality. These figures also do not take into account variations in the rate at which sick leave is earned.

However, where a party seeks to reduce an established benefit, interest arbitrators generally require the exchange of a *quid pro quo* for the reductions. In *County of DeWitt*

and DeWitt County Sheriff and Illinois FOP Labor Council, S-MA-11-055 (Reynolds 2012), the Employer sought to reduce existing annual sick leave buy back benefits, but the arbitrator find that the requirements to change the *status quo*, including the offer of a *quid pro quo*, had not been met, *County of Dewitt*, p. 7:

Traditionally, the party wanting to change the status quo must show a compelling need for the change, that the current system is broken, that the proposed change would correct it, and that the other party rejected a benefit of equal value in exchange for the breakthrough. None of these factors are present in this case.

Similarly, in *County of Macoupin and Macoupin County Sheriff and Police Benevolent Labor Committee*, S-MA-09-065 and S-MA-09-066 (Goldstein 2012), the Joint Employers proposed to dilute existing sick leave buy back benefits. The arbitrator rejected the Joint Employers' proposal, observing, at p. 37:

Whether I view the Joint Employers' proposal as embodying a breakthrough or simply a change in current benefits, it must be justified not simply as one would support a bargaining proposal at the bargaining table but, more than that, as something that I should impose here.

The arbitrator also noted that "Every employer desires to save money. . . ." However, the arbitrator concluded that this was not enough to justify his imposition on the parties of a change in the sick leave buy back benefit, where the criteria for changing the *status quo* in arbitration had not been met.

Here as in *County of DeWitt* and *County of Macoupin* the Employer has failed to demonstrate that "the current system is broken, that the proposed change would correct it, and that the other party rejected a benefit of equal value in exchange for the breakthrough [or change in *status quo*]." The Town has not explained why this Arbitrator should impose on the parties a modification that they could not agree on in the give-and-

take of collective bargaining. Accordingly the Union's final offer, to maintain the status quo on sick leave buy back, is adopted.

**E. Non-Economic Issue - Chemical Testing (Discipline)**

**Town:**

The Town's final offer for either a three-year or a five-year agreement is to modify Section 8.14, Discipline, as follows (deleted language struck out, new language underlined):

All discipline is situations involving a positive drug/alcohol test shall be administered as follows:

**A. First Positive**

In the first instance that an employee tests positive on the confirmatory test for drugs or is found to be under the influence of alcohol, the employees may be subject to a not to exceed thirty(30) five (5) calendar days. The foregoing limit on suspension is conditioned upon the employee's agreeing to:

1. Undergo appropriate treatment as determined by the physician(s) involved.
2. Discontinue use of illegal drugs or abuse of alcohol;
3. Complete the course of treatment prescribed, including and "after-care" group for a period of up to twelve (12) months;
4. Submit to random testing during working hours during the period of after-care treatment

Employees who do not agree to or who do not act in accordance with the foregoing, or who test positive a second ~~or subsequent~~ time shall be subject to discipline, up to and including discharge.

**B. Second Positive**

Employees who test positive on the confirmatory test of drugs or alcohol while the employee is then undergoing treatment, as provided in A (1) and (3) of Section 8.14, above, shall be subject to discharge, ~~provided that the discharge penalty shall be commuted to a suspension not to exceed thirty (30) calendar days if hte employee agrees to renew his treatment program as provided in paragraph A of this Section.~~

~~**G. Any Additional Positive**~~

~~Employees who test positive on the confirmatory test for drugs or alcohol on a second occasion when not undergoing treatment as provided in (1) and (3) of Section 8.14 or on a~~

~~third occasion at any time shall be subject to discharge without possibility of mitigation or commutation.~~

The Superintendent is hereby empowered by contract to impose such penalty, and neither the Board of Fire and Police Commissioners nor an arbitrator shall have jurisdiction to review, set aside or modify such penalty.

This Section 8.14 shall in no way limit discipline for other offenses arising out of, related to or aggravated by alcohol or drug abuse, including but not limited to discipline or discharge.

1. Because the employee's condition is such that he is unable to properly perform his duties due to the effects of drugs or alcohol;
2. For selling, purchasing or delivering any illegal drug during the workday while off duty or for using any illegal drug while on duty;
3. An employee's failure to cooperate in drug and/or alcohol testing (as described in Section 24.15 of this Article);
4. An employee's falsification or attempt to falsify in any way the result of his/her own or any other person's drug and/or alcohol tests
5. Any employee committing any of the acts prohibited in Section 8.3 herein: or
6. An employee's failure to perform any of the requirements found in Section 8.4 herein.

In cases of misconduct arising out of, related to, or aggravated by alcohol or drug abuse, the discipline imposed shall be based upon the extent, severity, and/or consequences of the misconduct (including whether such misconduct is a violation of public law) or inability to perform (including the risk of damage to public or Police Department life, limb or property).

**UNION:**

The Union's final offer is to maintain the status quo, and leave Section 8.14 unchanged.

**Discussion:**

The Chemical Testing article in the Patrol Officers' contract has been changed repeatedly over the years. The discipline provision alone has changed from discipline for first and second positive tests, in the 1994-1997 contract, to no mention of discipline in the 1998-2000 contract, to discipline for a first positive tests in the 2001-2003 contract, to the current provision for discipline for first, second and third positive tests in the 2004-2006 contract. The Town proposed to eliminate the third positive test in the interest arbitration



before Arbitrator Yaffe, but he rejected that proposal and continued the 2004-2006 discipline provision in the 2007-2009 contract.

The Town's other employees are subject to the following discipline provisions:

Non-represented employees	1 <sup>st</sup> positive - discharge
Police Sergeants (2006-2009 agt.)	Same as Patrol Officers 2007-2009 (Discharge for 2 <sup>nd</sup> positive while in treatment or any 3 <sup>rd</sup> positive)
Firefighters (2010-2014 agt.)	Discharge for 2 <sup>nd</sup> positive (while in treatment), or subsequent <sup>10</sup>
Public Works (2011-2013 agt.)	1 <sup>st</sup> positive - discharge
Detention Officers (2010 - 2013 agt.)	1 <sup>st</sup> positive - discipline up to and including discharge

The Town in its final offer seeks to increase the discipline allowed to be issued for a first positive from a maximum 5-day suspension to a maximum 30-day suspension, and seeks to remove one of the "strikes" from the current three-strike provision in Section 28.14.

In rejecting the Town's similar offer for the 2007-2009 contract (which included proposed testing changes as well), Arbitrator Yaffe acknowledged that "The Town's proposal, though understandable from a number of legitimate perspectives, is not supported by the factual circumstances herein." He enumerated the problems with the Town's offer, including, *Yaffe*, p.12-13:

Secondly, and most importantly, no factual deficiencies or problems have been manifested in the bargaining unit affected by the proposal. Although the policy in effect in the Department may have caused difficulties elsewhere among the Town's other employees, such difficulties need to be addressed in the employee groups where problems exist. While what the undersigned suggests may be easier said than done, where, as here, a complex

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<sup>10</sup>The Firefighters contract language is substantially identical to the Town's final offer on discipline here, with one significant exception: The possibility of a "subsequent" positive after the second positive has not been deleted from Section 24.14.A, "First Positive."

policy has been negotiated and accepted by both parties, changes need to be supported by need, and that need, with respect to this bargaining unit, has not been determined in this case.

Arbitrator Yaffe concluded, *Yaffe*, p. 13:

In so ruling, the undersigned also acknowledges that there may be a need for more stringent regulations among certain employee groups than others, and that uniformity need not govern in all cases for all employee groups. However, where as here, no evidence exists that a mutually agreed policy is causing problems, a significant burden exists for the party seeking to change the policy in proceedings such as this, to prove that the policy needs changing and that burden has not been met herein.

In this case, the Town has failed to present any compelling reason to change the *status quo* on discipline. There have been no positive tests of Patrol Officers during the contract period. Nothing has changed since Arbitrator Yaffe's observation in May 2009, other than the changes accepted by other bargaining units. The Town seeks these changes in order to move toward "zero tolerance" of substance abuse and to achieve "consistency" among its employees. However, as Arbitrator Yaffe observed, "uniformity need not govern in all cases for all employee groups." In a similar situation, Arbitrator McAllister recently rejected changes to an existing drug and alcohol testing provision where there had been no demonstration of problems in the bargaining unit, even though the changes had been accepted by other internal union groups. *Village of Schaumburg and IAFF*, S-MA-02-264 (McAllister, 2012). Moreover, there is no suggestion that the Union was offered a *quid pro quo* for the adoption of stricter discipline standards in Section 28.14. In sum, the Town has failed to establish a basis for changing the *status quo* here, and the Union's final offer is adopted as the most reasonable.

**V. AWARD**

For the reasons stated above, the issues are resolved as follows:

1. Contract Duration: The Union's final offer is selected.
2. Wages: The Union's final offer is selected.
3. Health Insurance: The Union's final offer is selected.
4. Sick Leave Buyback: The Union's final offer is selected.
5. Chemical Testing: The Union's final offer is selected.
6. Tentative Agreements: As provided in the parties' Ground Rules and Pre-Hearing Stipulations, ¶ 7, the Arbitrator hereby incorporates into this Award and the collective bargaining agreement all tentative agreements and resolved contractual provisions reached during negotiations between the parties. Pursuant to ¶ 11 of the Ground Rules, this includes the parties' tentative agreement with respect to Section 8.3 which was reached after the submission of Final Offers but prior to the hearing.

December 9, 2012

  
Lisa Salkovitz Kohn  
Arbitrator

## ATTACHMENT A - S-MA-11-165

### Summary of Comparable Data - Drawn from Both Parties' Exhibits

	Population	Median		Housing Units	Median		Per Capita Income	Total Crime Index	Crimes Per 100,000
		Home Value	Household Income		Household Income	Per Capita Income			
<b>Aurora</b>	197,899	\$205,600	\$60,689	67,273	\$60,689	\$25,491	3,467	2,901.7	
<b>Berwyn</b>	56,657	\$244,100	\$48,710	20,719	\$48,710	\$20,562	1,595	3,195.2	
<b>Burbank</b>	28,925	\$235,900	\$56,386	*	\$56,386	\$21,290	*	*	
<b>Calumet City</b>	37,042	\$142,100	\$43,851	*	\$43,851	\$20,617	*	*	
<b>Evanston</b>	74,486	\$395,000	\$68,107	33,181	\$68,107	\$42,925	2,626	3,380.0	
<b>Joliet</b>	147,433	\$195,300	\$60,714	51,285	\$60,714	\$22,572	4,367	3,078.4	
<b>Oak Lawn</b>	56,690	\$231,000	\$59,050	23,517	\$59,050	\$29,296	1,114	2,092.3	
<b>Oak Park</b>	51,878	\$393,300	\$73,068	24,519	\$73,068	\$45,150	2,178	4,394.9	
<b>Waukegan</b>	89,078	\$165,200	\$47,987	30,746	\$47,987	\$20,093	3,331	3,669.0	
<b>CICERO</b>	83,891	\$219,800	\$43,799	24,329	\$43,799	\$14,312	2,706	3,365.1	
		<b>FY 2010 Gen Fund Revenues</b>	<b>FY 2010 Gen Fund Expenses</b>	<b>FY 2010 Gen Fund Balance</b>	<b>FY 2010 Gen Fund Balance</b>	<b>2010 EAV</b>	<b>Full-Time Employees</b>	<b>Number Full-Time Sworn Police</b>	
<b>Aurora</b>	<b>Kane</b>	\$145,491,727	\$145,525,083	\$20,355,089	\$20,355,089	*	1,032	300	
<b>Berwyn</b>	<b>Cook</b>	\$44,310,824	\$47,045,930	\$1,980,916	\$1,980,916	\$934,702,103	359	104	
<b>Burbank</b>	<b>Cook</b>	\$14,569,579	\$16,563,437	\$4,635,203	\$4,635,203	\$635,833,792	*	53	
<b>Calumet City</b>	<b>Cook</b>	\$29,007,001	\$34,326,240	\$2,261,425	\$2,261,425	\$594,817,476	*	93	
<b>Evanston</b>	<b>Cook</b>	\$79,749,329	\$87,050,168	\$20,187,549	\$20,187,549	\$3,305,989,369	708	165	
<b>Joliet</b>	<b>Will</b>	\$52,949,920	\$52,744,277	\$41,489,334	\$41,489,334	*	842	269	
<b>Oak Lawn</b>	<b>Cook</b>	\$37,528,567	\$39,656,051	-\$2,305,485	-\$2,305,485	\$1,504,752,813	351	103	
<b>Oak Park</b>	<b>Cook</b>	\$42,803,360	\$42,580,408	\$9,190,796	\$9,190,796	\$1,850,649,808	447	116	
<b>Waukegan</b>	<b>Lake</b>	\$52,278,097	\$68,095,991	\$105,248	\$105,248	\$1,565,570,467	507	147	
<b>CICERO</b>	<b>Cook</b>	\$67,644,164	\$67,225,540	\$13,592,004	\$13,592,004	\$913,614,341	610	147	

\*Information not in the record