

**BEFORE  
EDWIN H. BENN  
ARBITRATOR**

**In the Matter of the Arbitration**

**between**

**CITY OF ROCK ISLAND**

**and**

**ILLINOIS FOP LABOR COUNCIL**

**CASE NOS.:** S-MA-11-183  
Arb. Ref. 12.204  
(Interest Arbitration -  
Command Officers)

**OPINION AND AWARD**

**APPEARANCES:**

For the City:

Matthew P. Pappas, Esq.  
Jeffrey D. Wright, Esq.  
Allison K. VanNatta, Esq.

For the FOP:

Gary L. Bailey, Esq.

Date of Hearing:

November 28, 2012

Date Briefs Received:

February 1, 2013

Date of Award: March 18, 2013

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## **I. BACKGROUND**

This is an interest arbitration proceeding between the City of Rock Island (“City”) and the Illinois Fraternal Order of Police Labor Council (“FOP”) pursuant to Section 14 of the Illinois Public Labor Relations Act (“IPLRA”).<sup>1</sup> Under the parties’ collective bargaining agreement (“Agreement”), the FOP is the certified bargaining representative for Sergeants, Lieutenants and Captains in the City’s Police Department (also called the “Command Officers” unit).<sup>2</sup> The parties’ prior Agreement was in effect from March 22, 2010 to March 20, 2011.<sup>3</sup> Presently, there are approximately ten Sergeants and six Lieutenants in the bargaining unit.<sup>4</sup>

## **II. ISSUES IN DISPUTE**

The following issues are in dispute:<sup>5</sup>

1. Duration of Agreement;
2. Wages;
3. Discipline Forum.

As required by the IPLRA, for economic items, this is a “baseball” arbitration — *i.e.*, I am constrained by the IPLRA to select one of the parties’ offers on each economic issue. Section 14(g) of the IPLRA provides that “... [a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement

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<sup>1</sup> The parties have waived the tri-partite panel requirement under Section 14(b) of the IPLRA. See Ground Rules at par. 3. City Exhs. Tab 2; FOP Exh. 1.

<sup>2</sup> FOP Exh. 5 at Article II.

<sup>3</sup> *Id.* at Article XIV.

<sup>4</sup> FOP Exh. 11.

<sup>5</sup> FOP Exh. 3; City Exhs. Tab 1. As of the commencement of the hearing, there was another issue in dispute concerning random drug testing which the City sought and the FOP opposed. *Id.* At the hearing, the City withdrew its request for imposition of random drug testing. Tr. 51; City Brief at 2, note 3; FOP Brief at 2.

which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).” I therefore have no leeway on economic issues and must choose one of the parties’ final offers, but I am not strictly bound by parties’ final offers on non-economic issues.<sup>6</sup>

The parties have designated the issues of duration and discipline forum as non-economic and wages as economic.<sup>7</sup>

### **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.

(6) The overall compensation presently received by the employees, including direct wage compensation, vaca-

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<sup>6</sup> Therefore, final offer interest arbitration on economic issues often puts arbitrators in the position of having to select an offer which is the least unreasonable.

<sup>7</sup> Ground Rules at 2, 4. City Exhs. Tab 2; FOP Exh. 1.

tions, 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**

##### **1. Duration**

The FOP proposes a three year agreement for the period March 21, 2011 to March 16, 2014.<sup>8</sup>

The City proposes a five year agreement for the period March 21, 2011 to March 27, 2016.<sup>9</sup>

Very recently, I had to address a similar issue concerning duration. See *City of Highland Park and Teamsters Local 700 (Sergeants Unit)*, S-MA-09-273 (February 25, 2013) at 14 [citations omitted].<sup>10</sup>

I have previously recognized a need to give parties a “breather” after difficult and lengthy contract negotiations and therefore have imposed longer contracts. However, I have also recognized that in unstable economic times, shorter contracts or reopeners in the out-years of an agreement are preferable so the parties can adapt to future and unknown ebbs and flows caused by the Great Recession and a struggling and still unknown recovery to more realistically address current existing economic conditions.

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<sup>8</sup> FOP Exh. 3 at 4; FOP Brief at 3, 10-14.

<sup>9</sup> City Exhs. Tab 1 at 2; City Brief at 3, 24-26. The City’s final offer seeks an expiration date of March 22, 2016. City Exhs. Tab 1 at 2. However, in its brief, the City seeks a March 27, 2016 expiration. City Brief at 24. The difference in expiration dates in the City’s final offer is not determinative.

<sup>10</sup> <http://www.state.il.us/ilrb/subsections/pdfs/arbitrationawards/S-MA-09-273.pdf>

We are still in unstable economic times. The country is coming out of the Great Recession, but the recovery is not yet certain.

According to the Congressional Budget Office's ("CBO") *The Budget and Economic Outlook: Fiscal Years 2013 to 2023* (February 2013) at 1, "[e]conomic growth will remain slow this year ...."<sup>11</sup> Further, according to that report, "[s]ince the end of the recession, the path of recovery has been difficult to predict, and outcomes in future years will no doubt hold surprises as well."<sup>12</sup>

In its *Monetary Policy Report* (February 26, 2013), the Board of Governors of the Federal Reserve System observed that:<sup>13</sup>

The U.S. economy continued to expand at a moderate rate, on average, over the second half of 2012. The housing recovery appeared to gain additional traction, consumer spending rose moderately, and business investment advanced further. Financial conditions eased over the period but credit remained tight for many households and businesses, and concerns about the course of federal fiscal policy and the ongoing European situation likely restrained private-sector demand. In addition, total government purchases continued to move lower in an environment of budget restraint, while export growth was held back by slow foreign economic growth. All told, real gross domestic product (GDP) is estimated to have increased at an average annual rate of 1-1/2 percent in the second half of the year, similar to the pace in the first half.

Given what we have all been through during the Great Recession, those are not exactly glowing statements of optimism of a strong recovery in the near term causing increased revenue streams to public employers.

Further, we are presently faced with a federal government locked in a budget crisis caused by automatic spending cuts imposed by "The Sequestra-

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<sup>11</sup> <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43907-BudgetOutlook.pdf>

<sup>12</sup> *Id.* at 36.

<sup>13</sup> [http://www.federalreserve.gov/monetarypolicy/files/20130226\\_mprfullreport.pdf](http://www.federalreserve.gov/monetarypolicy/files/20130226_mprfullreport.pdf)

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tion". According to February 27, 2013 remarks on the Senate floor by U. S. Senator Richard Durbin (D-Illinois) affecting the Rock Island area:<sup>14</sup>

At that base, the Rock Island Arsenal in the Quad Cities and Air Guard units across Illinois — Springfield, Peoria — the effect is going to be significant: 15,000 civilian personnel in Illinois will be furloughed for 22 days over the next 7 months, essentially a 20-percent pay cut. That means \$52 million is coming out of the pockets of those working families in my State who are trying to get through the worst recession we have had in decades.

\* \* \*

The loss of Guard and Reserve training in Illinois is equivalent to almost \$20 million lost. Delaying or canceling necessary military construction means it will cost more in the future to the tune of about \$27 million. In the Quad Cities, the Rock Island manufacturing hub could lose \$197 million in workload. ...

And according to remarks on the same date on the House floor by U. S. Congresswoman Cheri Bustos (D-Illinois, 17th District, including Rock Island), sequestration "... is budgetary insanity ..." [and ]job losses because of this flawed budget process will have a trickle-down effect throughout our region ... [o]ur residents will have less money to eat out, see a movie and shop in our small businesses."<sup>15</sup>

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<sup>14</sup> 159 Cong. Rec. page S909 (daily ed. Feb. 27, 2013). These remarks can also be found at: <http://www.durbin.senate.gov/public/index.cfm/videos?ID=7f45a597-55d6-4b44-971c-278194f7aac0>

<sup>15</sup> 159 Cong. Rec. page H685 (daily ed. Feb. 27, 2013):

AVERTING SEQUESTRATION

(Mrs. BUSTOS asked and was given permission to address the House for 1 minute.)  
Mrs. BUSTOS. Mr. Speaker, I rise to speak out today against the automatic cuts known as sequestration which are set to kick in days from right now. These cuts were designed to be so painful and so terrible that they would never see the light of day. This is budgetary insanity. That is why I have opposed sequestration from the start.

Earlier today, I met with the Quad Cities Chamber of Commerce and representatives from the Rock Island Arsenal. Last week, I met with a defense contractor from Rockford, Illinois, and I toured the USDA Research Lab in Peoria, Illinois. That's the place where they figured out how to mass produce penicillin, and these are the kinds of programs that are at risk. These programs are rightly worried about the impact of sequestration.

*[footnote continued]*

The Congressional Budget Office also anticipates significant problems due to existing budget difficulties at the federal level. See *The Budget and Economic Outlook, supra* at 40:

CBO's economic outlook builds on the indications of a strengthening economy in 2012, but CBO expects that real GDP will grow slowly in 2013 because of fiscal tightening by the federal government that is scheduled to occur under current law.

\* \* \*

Economic growth is projected to slow in 2013 primarily because of federal fiscal tightening. Federal spending on goods and services drops significantly in CBO's projections, primarily as a result of the automatic spending reductions specified in current law. ...

A City exhibit also makes that point about the mandatory budget cuts now taking effect. See "...for the Common Defense" (August 22, 2012).<sup>16</sup>

#### **Defense cuts could cost Quad-Cities businesses \$31 million**

Looming national defense cuts will eliminate about \$31 million in federal contracts for Quad-Cities businesses, according to a new report from The Center for Security Policy, a Washington, D.C.-based organization.

\* \* \*

"The impact would be devastating to Rock Island Arsenal, ... If no contracts are let out, a lot of my tenants won't want to be here."

\* \* \*

In Rock Island County, the government has a total of \$80.7 million in 2011 contracts, and an 18 percent cut — which is the estimated

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[continuation of footnote]

We will see job losses because of this flawed budget process, and it will have a trickle-down effect throughout the region that I represent. Our residents will have less money to eat out. They'll have less money to see a movie or to shop at our small businesses. We cannot afford to have this happen.

These remarks can also be found at:

<http://beta.congress.gov/crec/2013/02/27/CREC-2013-02-27-pt1-PgH685-4.pdf>

<http://bustos.house.gov/media-center/press-releases/video-congresswoman-cheri-bustos-gives-floor-speech-on-serious-impact-of>

<sup>16</sup> City Exhs. Tab 3, City Exh. 3 at 11.



impact — would be \$14.5 million, with an even greater projected loss in Scott County — \$17 million, out of its contracts worth \$94.7 million, according to the new report.

\* \* \*

Finally, the economic condition of the State of Illinois is in more than serious trouble. Citation to Illinois' present economic difficulties is really not necessary, but just looking at what the January 11, 2013 *Report of Governor's Office of Management and Budget* states at 3, "Illinois faces tremendous fiscal challenges in the coming three years."<sup>17</sup>

Given those factors — *i.e.*, the sluggish recovery, the uncertainty of what is to come over the upcoming months and years and the inability (or unwillingness) of our elected officials to agree and take steps to fix the problems the economy faces at both the federal and state levels — a shorter duration for the Agreement is the best choice. Even if the Sequestration issue is resolved at the federal level, the extent of cuts in programs, the ripple effect on the economy (and particular in the Quad-Cities area) and the long-term problems facing the State of Illinois will not be solved in the near term. With a shorter duration for the Agreement, the parties will have a better ability to adjust to actual economic conditions on the ground as they unfold and be able to do so in the near term through the bargaining process rather than being locked into fixed costs for extended periods of time when the future is really unknown.

The parties have designated duration as a non-economic issue.<sup>18</sup> As discussed *supra* at II, I therefore have leeway to formulate something different than the parties' final offers. However, given the above considerations, I see no

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<sup>17</sup> <http://www.state.il.us/budget/financial%20reports/fiscalandeconomicpolicyreport2013.pdf>

<sup>18</sup> Ground Rules at 2, 4. City Exhs. Tab 2; FOP Exh. 1.

reason to do so. I therefore adopt the FOP's proposal for a three year Agreement for the period commencing March 21, 2011.<sup>19</sup>

<sup>19</sup> At the time of the hearing on November 28, 2012, an issue existed concerning the validity of multi-year collective bargaining agreements in the State of Illinois stemming from an arbitration award I issued requiring the State to pay a 2% wage increase in July 2011 as it agreed in a contract and the State's position that notwithstanding the contractual requirement to pay the increase, it was not obligated to make that payment because the money for that wage increase had not been fully appropriated by the Legislature. Tr. 90-95. See my award in *State of Illinois and AFSCME Council 31 (July 1, 2011 Increases)* (July 19, 2011) which is found at:

<http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/State%20of%20Illinois%20&%20AFSCME,%20pay%20raises.pdf>

Upon review of the *July 1, 2011 Increases* award, in *State of Illinois, Department of Central Management Services v. American Federation of State, County and Municipal Employees, Council 31*, 2011-CH-25352 (Cir. Ct. Cook County, July 9, 2012), Judge Richard Billik of the Circuit Court of Cook County found that even though a collective bargaining agreement requires payment of specified wage increases, there is an overriding public policy that prohibits the State from disbursing public funds to pay the wage increases without the lawful authority to do so in terms of an appropriation for the expenditure of those funds. Judge Billik then remanded the case to me "... for a further proceeding to allow plaintiff to establish its public policy defense." See *slip op.*, *id.* at 24, 32. I declined to take the remand by a Supplemental Opinion and Award dated July 16, 2012 because arbitrators do not determine public policy matters, with the result being that I returned the case to Judge Billik to make his own public policy findings. That history can be traced in my *Chicago Board of Education and Chicago Teachers Union (Fact Finding Report)* (July 16, 2012) at 30-35:

[http://www.suntimes.com/csp/cms/sites/STM/dt.common.streams.StreamServer.cls?STREAMOID=5o5WjoG4zWnid\\_\\$4DH239sy4AoOal0gNXOcTVklVjjV58t6Y7BwSfTqoLk\\$17uql4Aw\\$6wU9GSUcqt9hs3TFeZCn0vq69IZViKeqDZhqNLziaXiKGOK\\_ms4C2keQo54&CONTENTTYPE=application/pdf&CONTENTDISPOSITION=factfind-CST-071912.pdf](http://www.suntimes.com/csp/cms/sites/STM/dt.common.streams.StreamServer.cls?STREAMOID=5o5WjoG4zWnid_$4DH239sy4AoOal0gNXOcTVklVjjV58t6Y7BwSfTqoLk$17uql4Aw$6wU9GSUcqt9hs3TFeZCn0vq69IZViKeqDZhqNLziaXiKGOK_ms4C2keQo54&CONTENTTYPE=application/pdf&CONTENTDISPOSITION=factfind-CST-071912.pdf)

See also:

<http://www.afscme31.org/news/arbitrator-declines-further-review-of-pay-case>

As the City notes, ultimately (on December 10, 2012 and after I declined the remand), Judge Billik ordered the State to pay the wage increase when it could, but adding a 7% interest requirement. City Brief at 28-29. See also:

<http://www.afscme31.org/news/pay-case-decided>

The State and AFSCME have both appealed Judge Billik's decision and the case is now before the First District Appellate Court. See:

<https://w3.courtlink.lexisnexis.com/cookcounty/Finddock.asp?DocketKey=CABBOCH0CFDFCOCH>

The point of all of this — and the reason the issue came up — is that if Judge Billik's decision is upheld to the extent that a public employer can negotiate a multi-year collective bargaining agreement and then in the out years not fund that agreement and thereby escape responsibility for paying previously negotiated wage or benefit increases, the multi-year collective bargaining agreement is, for all purposes, probably dead as unions (or, for that matter, anyone contracting with the public entity) will be reluctant to enter into such agreements and interest arbitrators will be reluctant to impose lengthier agreements (which employers want for stability purposes) without some real assurances that the agreements will be honored. See Cummings and Kelly, *Multi-Year Collective Bargaining Agreements and the AFSCME/State of Illinois Dispute*, Illinois Public Employee Relations Report, Vol. 29, Issue 3 (Summer 2012).

For this dispute, questions over validity of the multi-year collective bargaining agreement may be moot because for reasons other than that issue, I have selected the FOP's proposal for a three year contract and the parties are now (within days) of moving into the third year of that

[footnote continued]

## **2. Wages**

The parties' wage proposals are as follows:<sup>20</sup>

<b>Effective</b>	<b>FOP</b>	<b>City</b>
3/11	1.0%	0.00%
3/12	2.0%	2.00%
3/13	3.0%	
4/13		1.25%
1/14		1.50%

### **a. Cost of Living**

Given the duration of the contract years — March through February — and because the Agreement will commence in March 2011, we now have a complete and accurate look at the first two years of the three year Agreement and can make actual comparisons to the cost of living (“CPI” — Section

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*[continuation of footnote]*

Agreement, making funding disputes for the out years of the Agreement an academic question. Moreover, in disagreement with the State's position, the City takes the position that multi-year collective bargaining agreements *are* enforceable. City Brief at 26-29. Finally, I note that in recent days, the State of Illinois and AFSCME have agreed upon a new multi-year collective bargaining agreement which is in the ratification process and, if ratified and followed, may result in the withdrawal of the appeals in that dispute.

<http://www.afscme31.org/news/tentative-agreement-reached-on-state-contract>

For now, the fight over validity of multi-year collective bargaining agreements may have simmered down, but given Judge Billik's decision that even though the State previously negotiated a contract obligating it to make wage increases, there is an overriding public policy that prohibits the State from disbursing public funds to pay the wage increases without the lawful authority to do so in terms of an appropriation for the expenditure of those funds, that fight may resurface in the future (either with the State or some other public employer) only to the detriment to one of the most stabilizing forces in the collective bargaining process — *i.e.*, the multi-year agreement.

<sup>20</sup> FOP Exh. 3; FOP Brief at 3, 15-27; City Exhs. Tab 1; City Brief at 3, 8-24.

The effective dates for the wage increases do not precisely match up. The FOP's effective dates are March 21, 2011, March 19, 2012 and March 18, 2013. FOP Exh. 3. The City's effective dates for the third year of the Agreement are April 1, 2013 (for the 1.25% increase) and January 6, 2014 (for the 1.50% increase). City Exhs. Tab 1.

The City made an alternative wage proposal for a five year Agreement (2011/2012 - 0%; 2012/2013 - 2.0%; 2013/2014 - 2.5%; 2014/2015 - 2.0%; 2015/2016 - 2.25%). *Id.* Because the three year duration for the Agreement has been adopted, the City's wage proposal for a five year Agreement need not be discussed.

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14(h)(5)) as reported by the Bureau of Labor Statistics (“BLS”), which yields the following:<sup>21</sup>

**CPI From March 2011 Through February 2013**

Year	Begin (March)	End (February)	Yearly Percent Increase	Total Percent Increase
2011	223.467	227.663	1.88% <sup>22</sup>	
2012	229.392	232.166	1.21% <sup>23</sup>	
				3.89% <sup>24</sup>

The differences in the parties’ offers compared to the actual increases for the CPI for the years of the Agreement are as follows:

**Wage Offers Compared To CPI Increases**

Year	CPI Actual Change	City Offer	City Difference	FOP Offer	FOP Difference
3/11-2/12	1.88%	0.0%	-1.88%	1.0%	-0.88%
3/12-2/13	1.21%	2.0%	+0.79%	2.0%	+0.79%
3/11-2/13	3.89%	2.0%	-1.89%	3.0%	-0.89%

<sup>21</sup> <http://data.bls.gov/cgi-bin/surveymost?cu>

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, retrieving the data and then, if further specificity is desired, by using the link to “more formatting options” and again retrieving the data.

There are many ways to view CPI changes — e.g., quarter over quarter, calendar year, fiscal year, several years, etc. From my perspective, the most reasonable way to compare CPI changes to wage offers is to overlap changes in the CPI for a designated contract year and duration of the contract — i.e., if employees receive a percentage increase in a contract year which runs from March to February, that same period should be examined for determining CPI changes. Therefore, in this case, because the parties use a March through February contract year, I will be looking at the CPI numbers in the March through February time periods of the Agreement and then look at the CPI changes for the duration of the Agreement. The CPI changes will therefore correspond to the contract years and the total term of the Agreement.

<sup>22</sup>  $227.663 - 223.467 = 4.196$ .  $4.196 / 223.467 = .01877$  (1.88%).

<sup>23</sup>  $232.166 - 229.392 = 2.774$ .  $2.774 / 229.392 = .01209$  (1.21%).

<sup>24</sup>  $232.166 - 223.467 = 8.699$ .  $8.699 / 223.467 = .03892$  (3.89%).

For the first two years of the Agreement and using *actual* changes in the CPI and comparing those changes to the parties' wage proposals for the first two years of the Agreement shows that (1) the FOP's wage offer for the first year (1%) is below the actual change in the CPI (1.88%), but closer to change in the CPI than is the City's offer (0%); (2) both parties agree on the second year (2% — which is slightly above the change in the CPI for that year (by .79%)) and for the first two years of the Agreement, both offers are below the total change in the CPI (3.89%), but the FOP's offer is closer to the change in the CPI than is the City's offer (-.89% versus -1.89%). Thus, using the actual CPI data, the FOP's offer for the first two years of the Agreement more closely conforms to the cost of living factor in Section 14(h)(5).

But what about the third year of the Agreement? Obviously, there are no hard data for that period yet. For the third year, I must turn to the economic forecasters. But before that is done, the wage offers for the third year must be closely examined.

The FOP seeks a straight 3.0% increase in the third year — March 2013 - February 2014. The City's wage offer for the third year is broken up with 1.25% effective April 2013 and another 1.5% effective January 2014. Although adding up to 2.75%, in reality, because of the phase-in, the City's offer for the third year is not 2.75% — it is 1.40%. A simple computation will demonstrate the point.

Take a hypothetical employee who, at the end of the second year of the Agreement earns a hypothetical \$75,000 per year. Under the FOP's offer of 3%

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in the third year, at the end of the Agreement that employee will earn \$77,250.<sup>25</sup>

The City's bifurcated phased-in offer in the third year which does not initially take effect until April 2013 (one month into the third year of the Agreement) will have that hypothetical employee's wage rate for the third year calculated as follows:

Date	% Increase	Annual Wage Rate	Actual Monthly Wage Rate
3/13	0.00%	\$75,000.00	\$6,250.00
4/13	1.25%	\$75,937.50	\$6,328.12
5/13			\$6,328.12
6/13			\$6,328.12
7/13			\$6,328.12
8/13			\$6,328.12
9/13			\$6,328.12
10/13			\$6,328.12
11/13			\$6,328.12
12/13			\$6,328.12
1/14	1.50%	\$77,076.56	\$6,423.05
2/14			\$6,423.05
Total Actual			\$76,049.18
Total Increase For Year			1,6049.18 <sup>26</sup>
Total Actual Percentage Increase			1.40% <sup>27</sup>

Thus, under the City's wage offer for the third year, this hypothetical employee will earn \$1,049.18 more in the third year of the Agreement — an *actual* increase of 1.40%. Because of the phase-in of the City's third year offer,

<sup>25</sup>  $\$75,000 \times .03 = \$2,250$ .  $\$2,250 + \$75,000 = \$77,250$ .

<sup>26</sup>  $\$76,049.18 - \$75,000 = \$1,049.18$ .

<sup>27</sup>  $\$76,049.18 - \$75,000 = \$1,049.18$ .  $\$1,049.18 / \$75,000 = 0.01398$  (1.40%).

the true percentage for analyzing the City's third year wage offer is therefore 1.40% and not the simple total of wage the increases of 2.75%.<sup>28</sup>

Returning to the economic forecasters (and using a relatively conservative one), for 2013 and 2014, the Federal Reserve Bank of Philadelphia's *First Quarter 2013 Survey of Professional Forecasters* (February 15, 2013) shows forecasted increases in the CPI of 2.0% in 2013 and 2.2% in 2014.<sup>29</sup>

What this means is that I have the City in the third year of the Agreement for periods in 2013-2014 offering an effective wage increase of 1.4% and the FOP offering a wage increase of 3.0% with the forecasters presently looking at increases in the CPI of 2.0 in 2013 and 2.2% in 2014.<sup>30</sup> The City's offer is between .6 and .8% below the forecasted increases in the CPI and the FOP's offer is between .8 and 1.0% above the forecasted increases in the CPI. Given that these are really forecasts and have been subject to change and further

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<sup>28</sup> Given the percentage increases, the same will result for all employees receiving those increases, irrespective of actual wage rate.

<sup>29</sup> <http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2013/survq113.cfm>

The Federal Reserve Bank of Philadelphia's *Survey of Professional Forecasters* tracks two cost of living projections — "Headline CPI" and "Core CPI". "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" cost of living data to be a more reliable indicator. See my award *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:

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

<sup>30</sup> Again, these are "Headline" (inclusive of more volatile food and energy prices) and not "Core" (exclusive of food and energy) CPI forecasts.

given how close the differences are between the parties' third year offers, the third year analysis yields essentially a wash.<sup>31</sup>

For purposes of the cost of living factor, the FOP's offer most closely complies with that factor.

**b. External Comparability**

The parties both argue that external comparability (Section 14(h)(4)(A)) favors their positions.<sup>32</sup> 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 supra* 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

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<sup>31</sup> For example, the Federal Reserve Bank of Philadelphia's *Fourth Quarter 2012 Survey of Professional Forecasters* (November 9, 2012) which immediately preceded the current report forecasted CPI increases for 2.2% in 2013 and 2.3% in 2014:

<http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2012/survq412.cfm>

Just a few months later, that has now been revised downward to the current 2.0 for 2013 and 2.2% for 2014 as reflected in the current *Survey of Professional Forecasters* report.

And as the CBO's *The Budget and Economic Outlook: Fiscal Years 2013 to 2023* (February 2013), *supra* observes at 43, "[e]conomic forecasts are always uncertain ...."

<sup>32</sup> FOP Brief at 17-20; City Brief at 19-21.



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”.

The rationale is further explained in my award in *North Maine Fire Protection District and North Maine Firefighters Association* (2009) at 12-13:<sup>33</sup>

Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for “apples to apples” comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.

Instead of relying upon comparables, in *ISP [State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-262 (2009)]* and *Boone County [County of Boone and Boone County Sheriff and Illinois Fraternal Order of Po-*

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<sup>33</sup><http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/North%20Maine%20FPD%20&%20IAFF.pdf>

*lice Labor Council, S-MA-08-010 [025] (2009)*], I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index (“CPI”).

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. That focus de-emphasizing reliance upon external comparability was particularly appropriate where contract periods involved overlapped the Great Recession.

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”. And here, because this case involves wages for years including 2011 and 2012 — this dispute does not cover periods when we have been sufficiently far removed from the dark days of the Great Recession. 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 (and particularly given the discussion *supra* at IV(1) about the economic uncertainties which lie ahead) 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.

**c. Internal Comparability**

While external comparability is not helpful but cost of living is, internal comparability — *i.e.*, how the City and its other bargaining units have negotiated contracts — is also relevant. *See Highland Park, supra* at 13:

... The driving factor in this case (as in the others where I have moved away from the former arbitral dependency on external comparables to decide these cases) is the factor that is, for now, more closely geared to the economic conditions — *i.e.*, the cost-of-living. Further, the City's experience can also be measured by looking to *internal* comparables — *i.e.*, contracts for bargaining units negotiated by the City with its other labor organizations, particularly in the protective services.

The City produced an exhibit showing the following history of wage increases in other bargaining units with negotiated contracts:<sup>34</sup>

	Com. Officers (This Unit)	IAFF (Fire)	FOP (Patrol)	Parks	AFSCME B	AFSCME A	UAW
2000	4.00%	4.50%	3.39%	3.50%	4.00%	4.00%	3.00%
2001	3.01%	4.50%	3.00%	3.50%	3.00%	2.00%	3.00
2002	3.80%	4.50%	3.01%	3.60%	3.00%	4.00%	3.595%
2003	4.00%	3.50%	4.00%	3.00%	4.00%	4.00%	2.00%
2004	2.50%	3.50%	3.50%	2.00%	2.00%	2.00%	2.75%
2005	3.25%	3.50%	3.50%	2.25%	2.00%	2.00%	3.00%
2006	3.25%	3.25%	3.50%	3.00%	2.36%	2.00%	2.75%
2007	2.67%	3.35%	4.00%	3.00%	3.00%	2.00%	2.85%
2008	5.00%	3.45%	3.85%	3.25%	3.00%	3.00%	3.40%
2009	5.20%	3.00%	4.00%	2.00%	3.85%	5.00%	2.00%
2010	2.50%	2.50%	2.50%	1.00%	1.00%	1.00%	1.00%
2011		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
2012		2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
2013		2.75%	2.75%		2.75%	2.75%	2.75%
2014			3.00%		3.00%	3.00%	3.00%
2015			2.50%				

<sup>34</sup> City Exh. 26.

The City is correct that every other bargaining unit took a freeze in 2011.<sup>35</sup> However, just looking at the above chart, it is apparent that there is no history of parity amongst the bargaining units — particularly in the more relevant police and fire units. While in some years, percentage wage increases were the same, in other years, percentage wage increases had substantial variations across the bargaining units. Further, just looking at the 2.75% wage increase in the Patrol unit, that was a flat percentage increase made effective April 1, 2013.<sup>36</sup> As discussed *supra* at IV(2)(a), the City's 2.75% increase offer for 2013 in the Command Officers unit is not a flat 2.75% (as given in the Patrol unit), but is split up with 1.25% implemented in April 2013 and the balance of 1.50% delayed until January 2014 — which is an effective 1.40% wage offer for the third year of the Agreement. That is not a 2.75% wage offer for the third year.

The parties have designated wages as an economic issue.<sup>37</sup> As discussed *supra* at II, Section 14(g) of the IPLRA constrains me on economic issues to selection of one of the parties' final offers and does not permit leeway in the formulation of the wage provisions. Given the considerations discussed above, on balance, the cost of living factor drives this issue, which causes the FOP's wage offer to be adopted.

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<sup>35</sup> City Brief at 16.

<sup>36</sup> FOP Exh. 17(B) — the 2011-2016 Patrol Contract) at Section 14.1 ("Annual base salaries for employees covered by this Agreement shall be compensated ... April 1, 2013 with a general wage increase of 2.75% ..."). See also, FOP Brief at 21-22 pointing out the differences in the 2.75% offer.

<sup>37</sup> Ground Rules at 2, 4. City Exhs. Tab 2; FOP Exh. 1.

### **3. Discipline Forum**

Under the prior Agreement at Section 5.10, disciplinary matters could be appealed to the Board of Fire and Police Commissioners (“BFPC”).

The FOP seeks arbitration of all disciplinary matters.<sup>38</sup>

The City agrees to arbitration of disciplinary matters, but seeks to give employees the option of choosing the grievance and arbitration procedures for demotions, dismissals or suspensions of more than five days, with the BFPC having jurisdiction for suspensions of five days or less and no ability to increase the amount of a suspension.<sup>39</sup>

This issue is resolved by the clear language of Section 8 of the IPLRA:

**Sec. 8. Grievance Procedure.** The 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. Any agreement containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. ...

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<sup>38</sup> FOP Exh. 3 at 5-8; FOP Brief at 27-34.

<sup>39</sup> City Exhs. Tab 1 at 2-3; City Brief at 29-30. Under the Board of Fire and Police Commissioners statute, an employee appealing a five day or less suspension could end up receiving a lengthier suspension or could even be discharged. See 65 ILCS 5/10-2.1-17 (“Any policeman or fireman so suspended may appeal to the board of fire and police commissioners for a review of the suspension ... and upon such appeal, the board may sustain the action of the chief of the department, may reverse it with instructions that the man receive his pay for the period involved, or may suspend the officer for an additional period of not more than 30 days or discharge him, depending upon the facts presented.”). The City’s offer seeks to remove the possibility of increased discipline.

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I have previously found that, if requested, the statutory language in Section 8 of the IPLRA requires arbitration of discipline. See my award in *Village of Lansing and Illinois FOP Labor Council*, S-MA-04-240 (2007) at 20-21:<sup>40</sup>

The language in Section 8 of the Act that “[t]he collective bargaining agreement ... 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] leaves little to the imagination and, most important, that language leaves me with no discretion.

See also, my awards in *City of Springfield and PBPA, Unit 5*, S-MA-89-74 (1990) at 2 (“[s]ince the parties have not ‘mutually agreed otherwise’, the language ‘shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement’ [emphasis added] determines this question and requires the expansion of the right to arbitration as sought by the Union”)<sup>41</sup> and *City of Highland Park and Teamsters Local Union No. 714*, S-MA-98-219 (1999) at 10-11 (“According to Section 8 of the Act, there must be an ability to appeal to arbitration over the ‘administration or interpretation of the agreement’ which includes the provisions concerning discipline.”).<sup>42</sup>

Because the parties are presently in disagreement over the extent of inclusion of arbitration of discipline, they have not “ ... mutually agreed otherwise” as required in Section 8 of the IPLRA so as to exclude an arbitration provision from being inserted into the Agreement. And there is nothing in the

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<sup>40</sup><http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Lansing%20&%20FOP%20-%20S-MA-04-240.pdf>

<sup>41</sup><http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Springfield%20&%20PBPA,%20S-MA-89-074.pdf>

<sup>42</sup><http://www.state.il.us/ilrb/subsections/pdfs/ArbitrationAwards/Highland%20Park%20&%20Teamsters%20-%20S-MA-98-219.pdf>

IPLRA permitting a parsing of that statutory entitlement to arbitration of disciplinary matters through the agreement-forming interest arbitration process leaving certain minor disciplinary actions such as suspensions of five days or less under the authority of a BFPC or providing for options for an employee to choose between a BFPC or the arbitration process for protests over disciplinary actions.

The parties have designated discipline forum as non-economic.<sup>43</sup> As discussed *supra* at II, I therefore have leeway to formulate something different than the parties' final offers. However, given the above considerations concerning the statutory requirements, I see no reason to do so. I therefore adopt the FOP's proposal for full arbitration of discipline.

The parties will have to address the specific language of the arbitration provisions in the first instance. As provided *infra* at VI, with the parties' consent, I will retain jurisdiction to resolve any disputes which may arise over the drafting of that language.

#### **V. PRIOR TENTATIVE AGREEMENTS**

The parties' Ground Rules provide that "... the Arbitrator shall award and incorporate into the collective bargaining agreement any tentative agreements reached during negotiations between the parties."<sup>44</sup> Those prior tentative agreements are therefore incorporated into this award.

#### **VI. RETAINED JURISDICTION**

The matter is now remanded to the parties for the drafting of language consistent with the provisions of this Award. With the consent of the parties, I

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<sup>43</sup> Ground Rules at 2, 4. City Exhs. Tab 2; FOP Exh. 1.

<sup>44</sup> City Exhs. Tab 2, page 2, par. 7; FOP Exh. 1 at page 2, par. 7.

will retain jurisdiction to resolve any disputes which may arise concerning the drafting of that language.

**VII. CONCLUSION**

The disputed issues are resolved as follows:

**1. Duration of agreement:**

FOP proposal — three years commencing March 21, 2011.

**2. Wages:**

FOP proposal:

Effective	Increase
3/11	1.0%
3/12	2.0%
3/13	3.0%

**3. Discipline forum:**

FOP proposal — arbitration of all discipline.



Edwin H. Benn  
Arbitrator

Dated: March 18, 2013