

**BEFORE
EDWIN H. BENN
ARBITRATOR**

IN THE MATTER OF THE ARBITRATION

BETWEEN

VILLAGE OF SWANSEA

AND

ILLINOIS FOP LABOR COUNCIL

CASE NOS.: FMCS 181102-01129
Arb. Ref.: 18.067
(Interest Arbitration -
Sergeants)

OPINION AND AWARD

APPEARANCES:

For the Village: Corey L. Franklin, Esq.

For the FOP: James L. Daniels, Esq.

Date of Award: June 13, 2018

CONTENTS

I. BACKGROUND3

II. DISCUSSION3

 A. The Interest Arbitration Process3

 B. Duration.....4

 C. The Parties’ Wage Offers7

 D. The Real Impact of the Parties’ Wage Offers.....8

 E. The Cost of Living10

 F. Internal Comparability17

 G. Total Wage Increases.....18

 H. External Comparability.....18

 I. Tentative Agreements25

 J. Retroactivity.....25

III. CONCLUSION.....25

IV. AWARD.....26

I. BACKGROUND

This is an interest arbitration proceeding between the Village of Swansea (“Village”) and the Fraternal Order of Police Labor Council (“FOP”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/14 (“IPLRA”) to set the terms of the parties’ collective bargaining agreement (“Agreement”) for the period May 1, 2016 to April 30, 2021. The Agreement covers four Police Sergeants.¹

This case was presented by the parties through written positions to the undersigned followed by telephonic oral arguments on June 7, 2018.

The only disputed issue between the parties in this case is wages.

II. DISCUSSION

A. The Interest Arbitration Process

Section 14(h) of the IPLRA provides that an interest arbitrator/panel “base its findings, opinions and order upon the following factors, *as applicable*” [emphasis added].² For economic issues, the offer chosen must be one of the parties’ final offers,

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

² The relevant portions of Section 14 of the IPLRA provide:

(h) Where there is no agreement between the parties ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct

[footnote continued on next page]

with no discretion for modification by the arbitrator.³ Because this case involves wages – an economic issue – I am therefore limited to selection of one of the two final offers made by the parties.

Since the commencement of the Great Recession in 2008, I have found for Section 14(h) purposes that “... the more ‘applicable’ factors used to determine economic issues ... are [1] the cost of living as measured by the Consumer Price Index (“CPI”), [2] internal comparability and [3] overall compensation presently received.”⁴

B. Duration

As a preliminary matter (and an issue that is not in dispute between these parties, but is critical to the collective bargaining process in this Illinois), the parties have agreed to a multi-year collective bargaining agreement covering the period May 1, 2016 through April 30, 2021. In *State of Illinois v. American Federation of State, County & Municipal Employees, Council 31*, 51 N.E.3d 738, 401 Ill.Dec. 907 (2016), the Illinois Supreme Court held that although I correctly interpreted the collective bargaining agreement by requiring the State of Illinois to pay for a wage increase as it agreed to do, nevertheless, economic provisions of multi-year collective bargaining

wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

³ See Section 14(g) of the IPLRA (“As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).”).

⁴ *Village of Barrington and Illinois FOP Labor Council*, S-MA-13-167 (2015) at 6-7 and authority cited:

<https://www2.illinois.gov/ilrb/arbitration/documents/s-ma-13-167.pdf>

The parties’ arguments concerning external comparability are addressed *infra* at II(H).

agreements between the State of Illinois and AFSCME requiring specific payment obligations in out years of a negotiated contract (which were actually concessions made by AFSCME) were unenforceable because those contracts violated public policy as found in the Appropriations Clause of the Illinois Constitution (“The General Assembly by law shall make appropriations for all expenditures of public funds *by the State*”, Ill. Const. 1970, art. VIII, § 2(b) [emphasis added]). The Court made that finding because no appropriations existed to cover the wage increases (although reduced as concessions) as specified the State-AFSCME contract.

If applied to collective bargaining agreements between municipalities and other non-State public sector employers with unions representing their employees, the result of the *State v. AFSCME* finding that multi-year collective bargaining agreements violate public policy is nothing less than a disaster for all concerned. If multi-year collective bargaining agreements violate public policy, then public employers will not be able to plan and budget for longer than one year, nor will they be able to strategically negotiate contracts with starting dates in different years and then argue that internal comparability should be considered for other agreements for overlapping years; unions will very reluctant to agree to contracts in excess of one year because of lack of a guarantee that wages and benefits in the out years of those agreements will be paid as agreed, or, if they agree to multi-year agreements, they probably will require as a condition of such an agreement that employers take extraordinarily expensive steps such as providing bonds or other forms of surety to guarantee payments for future years; and interest arbitrators will have serious problems imposing contracts for greater than one year terms because of the requirement in Section 14(h)(1) of the IPLRA that awards be based on “[t]he lawful authority of the employer” (*i.e.*, if multi-year collective bargaining agreements violate public policy and entering into such agreements are thus contrary to “[t]he lawful authority of the employer”,

then how can an interest arbitrator impose a multi-year agreement?). The result of an extension of *State v. AFSCME* to multi-year collective bargaining agreements between municipalities such as the Village and unions such as the FOP would, to say the least, be destabilizing and chaotic.

However, the Appropriations Clause of the Illinois Constitution which was the basis for the Court’s holding in *State v. AFSCME* only applies to “the state.” The Village is governed by the Illinois Municipal Code, which specifically allows for parties such as these to enter into enforceable multi-year collective bargaining agreements. *See* 65 ILCS 5/8-1-7(d) (carving out an exception to the statutory requirement of prior appropriations for municipal contracts to be deemed valid and not “null and void”):

(d) In order to promote orderly collective bargaining relationships, to prevent labor strife and to protect the interests of the public and the health and safety of the citizens of Illinois, this Section shall not apply to multi-year collective bargaining agreements between public employers and exclusive representatives governed by the provisions of the Illinois Public Labor Relations Act.

Notwithstanding any provision of this Code to the contrary, the corporate authorities of any municipality may enter into multi-year collective bargaining agreements with exclusive representatives under the provisions of the Illinois Public Labor Relations Act.

The Supreme Court’s decision in *State v. AFSCME* does not apply to municipalities and only applies to the State of Illinois. Because of the provisions of 65 ILCS 5/8-1-7(d) of the Municipal Code, under Section 14(h)(1) of the Act – “[t]he lawful authority of the employer” – the Village as a municipality can enter into valid and

enforceable multi-year collective bargaining agreements. See my award in *Village of Richton Park and Illinois FOP Labor Council*, S-MA-16-012 (2018) at 1-5.⁵

C. The Parties' Wage Offers

The parties' wage proposals are as follows:

TABLE 1
WAGE OFFERS

Effective Date	Village	FOP
5/1/16	2.50%	2.50%
5/1/17	2.00%	2.50%
5/1/18	2.00%	2.50%
5/1/19	2.00%	2.50%
5/1/20	2.50%	2.75%
Total	11.00%	12.75%

The annual salary schedules from the parties' offers will be as follows:⁶

⁵ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-012ArbAward.pdf>

⁶ The 2012-16 Agreement at Appendix A specifies hourly base rates – the last rate effective May 1, 2015 being \$34.45 per hour. Section 19.2 of that Agreement specifies longevity payments according to the following schedule:

four through seven years	3% of the sergeant base wage rate
eight through eleven years	4% of the sergeant base wage rate
twelve through fifteen years	6% of the sergeant base wage rate
sixteen through nineteen years	8% of the sergeant base wage rate
twenty or more years of service	10% of the sergeant base wage rate

Because of 12-hour shifts and resulting 2,184 hours work, the salary schedules have been annualized (applicable hourly rate x 2,184). The schedules are constructed by first using the effective dates'

[footnote continued on next page]

TABLE 2
VILLAGE WAGE OFFER

Effective Date	Base	4-7 Years	8-11 Years	12-15 Years	16-19 Years	20 Years
Last Contract	75,238.80	77,495.96	78,248.35	79,753.13	81,257.90	82,762.68
5/1/16 (2.5%)	77,119.77	79,433.36	80,204.56	81,746.96	83,289.35	84,831.75
5/1/17 (2.0%)	78,662.17	81,022.03	81,808.65	83,381.90	84,955.14	86,528.38
5/1/18 (2.0%)	80,235.41	82,642.47	83,444.82	85,049.54	86,654.24	88,258.95
5/1/19 (2.0%)	81,840.12	84,295.32	85,113.72	86,750.53	88,387.33	90,024.13
5/1/20 (2.5%)	83,886.12	86,402.70	87,241.56	88,919.29	90,597.01	92,274.73

TABLE 3
FOP WAGE OFFER

Effective Date	Base	4-7 Years	8-11 Years	12-15 Years	16-19 Years	20 Years
Last Contract	75,238.80	77,495.96	78,248.35	79,753.13	81,257.90	82,762.68
5/1/16 (2.5)	77,119.77	79,433.36	80,204.56	81,746.96	83,289.35	84,831.75
5/1/17 (2.5)	79,047.76	81,419.19	82,209.67	83,790.63	85,371.58	86,952.54
5/1/18 (2.5)	81,023.96	83,454.67	84,264.91	85,885.40	87,505.87	89,126.35
5/1/19 (2.5)	83,049.56	85,541.04	86,371.54	88,032.53	89,693.52	91,354.51
5/1/20 (2.75)	85,333.42	87,893.42	88,746.75	90,453.43	92,160.09	93,866.76

D. The Real Impact of the Parties' Wage Offers

The parties' offers of 11.00% (Village) and 12.75% (FOP) are not a true picture of the actual percentage wage increases as applied over the life of the Agreement. Those percentages are simply an addition of the percentage wage offers proposed for each year. However, to get a true picture of how the wage proposals work, it must be

applicable hourly base rate and then adding the applicable longevity pay based on years of service.

Therefore, for a hypothetical 20+ year Sergeant and effective May 1, 2015 (the rate increase date effective until the last day of the 2012-16 Agreement), that employee earned \$34.45 x 2,184 = \$75,238.80 base pay. Because of the longevity calculation (10% of the sergeant base wage rate), an additional sum of \$3.445 x 2,184 = \$7,523.88 is added. The total annualized wage for that employee at the end of the 2012-16 Agreement is therefore \$75,238.80 + \$7,523.88 = \$82,762.68. Spread sheets performing those calculations and then applying the percentage increases offered by the parties make up the salary schedules used in this award. I note that with the exception of a few very minor rounding differences, the Village's calculations on its offer are the same as mine. *Compare*, Table 2 with Village Exhibit E.

Village of Swansea and FOP
Interest Arbitration – Sergeants
Page 9

recognized that wage increases compound. Like a savings account, the interest achieved in one year forms the number upon which the next year’s percentage is applied. The same holds for wage increases. After the first year of a contract, wage increases are set on percentages applied to numbers which have been established by applying prior percentage wage increases – *i.e.*, a compounding of the percentage wage increase.

The actual compounding effect of the parties’ proposed wage increases is shown by looking at where the employees started prior to the effective date of the first wage increase and where they end up as of the effective date of the last wage increase. For this case and the offers made, that is as follows:⁷

TABLE 4
VILLAGE WAGE OFFER (COMPOUNDED)

Effective Date	Base	4-7 Years	8-11 Years	12-15 Years	16-19 Years	20 Years
Last Contract	75,238.80	77,495.96	78,248.35	79,753.13	81,257.90	82,762.68
5/1/20 Inc.	83,886.12	86,402.70	87,241.56	88,919.29	90,597.01	92,274.73
Difference	8,647.32	8,906.74	8,993.21	9,166.16	9,339.11	9,512.05
Compounded Wage Increase	11.49%	11.49%	11.49%	11.49%	11.49%	11.49%

⁷ The calculation is to take the wage rate after the last wage increase of the Agreement effective May 1, 2020; subtract the wage rate prior to the start of the Agreement in effect as of April 30, 2016; and then divide by the wage rate prior to the start of the Agreement.

To demonstrate the calculation, look again at a hypothetical 20+ year Sergeant. Prior to the wage offers being applied, that employee earned \$82,762.68 as of the last day of the prior contract. As shown by the above salary schedules, during the life of the Agreement the Village’s 11.00% wage offer takes that employee to \$92,274.73. The Village’s actual compounded wage offer is therefore as follows:

$$\$92,274.73 - \$82,762.68 = \$9,512.05. \quad \$9,512.05 / \$82,762.68 = 0.1149316 \text{ (11.49\%)}$$

Using the same hypothetical employee and performing that calculation, under the FOP’s wage offer, that employee will see the following compounded wage increase:

$$\$93,866.76 - \$82,762.68 = \$11,104.08. \quad \$11,104.08 / \$82,762.68 = 0.1341677 \text{ (13.42\%)}$$

The calculations for other employees at the different longevity levels are consistent with that approach.

TABLE 5
FOP WAGE OFFER (COMPOUNDED)

Effective Date	Base	4-7 Years	8-11 Years	12-15 Years	16-19 Years	20 Years
Last Contract Wage Rate	75,238.80	77,495.96	78,248.35	79,753.13	81,257.90	82,762.68
5/1/20 Increase	85,333.42	87,893.42	88,746.75	90,453.43	92,160.09	93,866.76
Difference	10,094.62	10,397.46	10,498.40	10,700.30	10,902.19	11,104.08
Compounded Wage Increase	13.42%	13.42%	13.42%	13.42%	13.42%	13.42%

Simply stated, in terms of *real* money, under the Village’s 11.00% wage offer, the salary schedules show that over the life of the Agreement employees will see salary increases ranging from \$8,647.32 to \$9,512.05, or 11.49%. Similarly, under the FOP’s 12.75% wage offer, employees will see salary increases ranging from \$10,094.62 to \$11,104.08, or 13.42%.

E. The Cost of Living

Section 14(h)(5) of the IPLRA lists the cost of living factor for consideration (“[t]he average consumer prices for goods and services, commonly known as the cost of living.”).

As reported by the Bureau of Labor Statistics (“BLS”), actual data exists for the cost of living changes for the first two years of the Agreement (May 1, 2016 - April 30, 2017 and May 1, 2017 - April 30, 2018). The most recent BLS report prior to issuance of this award released June 12, 2018.⁸

For the out years of the Agreement (2018-2019, 2019-2020 and 2020-2021), obviously, no actual data exist. I therefore have to turn to the professional economic forecasters.

⁸ <http://data.bls.gov/cgi-bin/surveymost?cu>
Select “U.S. All Items, 1982-84 = 100” and then “Retrieve data”.

Over the years in deciding these cases, I have relied upon the Federal Reserve Bank of Philadelphia Survey of Professional Forecasters as it “... is the oldest quarterly survey of macroeconomic forecasts in the United States.”⁹ While certainly not 100% accurate as no one has a crystal ball for predicting inflation, the Survey of Professional Forecasters is a useful tool for forecasting the impact of future inflation on wage rates.¹⁰ According to the most recent May 11, 2018 Survey of Professional Forecasters:¹¹

⁹ According to the Federal Reserve Bank of Philadelphia:

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

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

<https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/>

See discussion in my award in *Cook County Sheriff/County of Cook and AFSCME Council 31, L-MA-13-005 - 008* (2016) at 15-19 found at:

<https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf>

¹⁰ The most recent version of the Survey of Professional Forecasters (Second Quarter 2018) issued May 11, 2018:

www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2018/survq218

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

<https://files.stlouisfed.org/files/htdocs/publications/mt/20070901/cover.pdf>

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

¹¹ See

www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2018/survq218

TABLE 6
FORECASTS

Year	Forecasted CPI Increase
2018	2.50%
2019	2.20%
2020	2.30%
2021	2.20%

The Village has pointed to data from the BLS showing cost of living changes in the St. Louis, MO-IL Metropolitan Area. And I note that the Village is located approximately 17 miles from St. Louis, which underpins the logic of the Village’s argument to rely upon that data.

The problem with that data from the BLS relied upon by the Village for the St. Louis, MO-IL Metropolitan Area is that the data sets are only presented in six-month intervals; the data sets do not precisely overlap the relevant contract periods of May-April in this case; and the reported BLS data for St. Louis, MO-IL ends in 2017 and we are now halfway through 2018.¹²

However, to give the parties the benefit of the doubt and given that cost of living increases can differ depending upon geographic locations, for the first two years of the Agreement for which complete data exist, I will look at BLS data for the CPI-U U.S. City Average and, because the St. Louis Metro area is in the Midwest, I will also consider the BLS CPI-U Midwest Urban data.¹³

For the last three years of the Agreement and because the Agreement runs from May of a year through April of the next year, it is necessary to pro-rate the

¹² <https://beta.bls.gov/dataViewer/view/timeseries/CUUSS24BSA0>

¹³ <http://data.bls.gov/cgi-bin/surveymost?cu>
Select “Midwest Region All Items, 1982-84 = 100” and then “Retrieve data”.

forecasted changes using 8/12 of the forecasted change from a given year to (to cover the eight-month period May - December, inclusive) and 4/12 of the forecasted change for the next year (to cover the four-month period January - April, inclusive).

And of particular importance in this case is that the evidence shows that during the life of the Agreement three of the four bargaining unit employees will be making one movement each to a higher longevity level which, for those employees, amounts to a 2.00% increase calculated on the base Sergeant rate, further driving up their actual percentage rates as impacted by that 2.00% increase.¹⁴

Putting the actual BLS data for the first two years of the Agreement together with the forecasts from the Survey of Professional Forecasters for the last three years of the Agreement (which have to be pro-rated due to the effective mid-year dates of the contract wage increases) and taking into account that three of the four bargaining unit employees will be making movements to a higher longevity level and comparing those results to the parties' offers show the following:

¹⁴ The relevant section of the 2012-16 Agreement provides:

Section 19.2 Longevity Pay. ... Effective 5/1/10 and each year thereafter, in recognition of extended service, employees shall receive longevity pay, paid as a one time bonus in increments as listed below. The longevity premium is calculated by multiplying the base wage rate as set forth in this agreement times the longevity increment, then multiplying the figure derived by the base schedule of hours ... paid on the next pay period after the employee's anniversary date of employment.

Under that provision, during the life of the Agreement, three of the four bargaining unit employees will receive see two-percent of the base rate added to their existing rates.

The fact that payment for longevity is accomplished on a once per year basis as a bonus does not change the fact that longevity pay is wage compensation to be considered as part of an employee's yearly wage.

Village of Swansea and FOP
Interest Arbitration – Sergeants

TABLE 7

Period	Increase in CPI (All Cities)	Increase in CPI (Midwest)	Village Offer (Simple)	Village Offer (Compounded)	Village Offer (With Longev.)	FOP Offer (Simple)	FOP Offer (Compounded)	FOP Offer (With Longev.)
5/16 - 4/18 (actual)	4.29% ¹⁵	3.28% ¹⁶						
5/18 - 4/19	2.15% ¹⁷	2.15% ¹⁸						
5/19 - 4/20	2.24% ¹⁹	2.24%						
5/20 - 4/21	2.26% ²⁰	2.26%						
Total	10.94%	9.93%	11.00%	11.49%	13.64% ²¹	12.75%	13.42%	15.60% ²²

¹⁵ Using BLS data CPI-U U.S. City Average: May 2016 - April 2018: 250.546 (April 2018) - 240.229 (May 2016) = 10.317. $10.317 / 240.229 = 0.0429465$ (4.29%).

¹⁶ Using BLS data CPI-U U.S. Midwest Urban: May 2016 - April 2018: 33.913 (April 2018) - 226.476 (May 2016) = 7.437. $7.437 / 226.476 = 0.0328379$ (3.28%).

¹⁷ The actual BLS data for the CPI increase from January through April 2018 is 1.08%. $250.546 - 247.867 = 2.679$. $2.679 / 247.867 = 0.0108082$ (1.08%). The forecast from the Survey of Professional Forecasters for 2018 is 2.50%. Therefore, the remainder of 2018 is $2.50\% - 1.08\% = 1.42\%$. The forecast for 2019 is 2.2%. The January through April 2019 pro-rata is $4/12 \times 2.2\% = 0.73\%$. Therefore, for the 2018-2019 contract year, the applicable percentage increase is $1.42\% + 0.73\% = 2.15\%$.

¹⁸ The Survey of Professional Forecasters does not break out the Midwest from national forecasts. Therefore, the national forecast will have to be used.

¹⁹ The forecast for 2019 is 2.2%. The pro-rated period of May through December 2019 is $8/12 \times 2.2\% = 1.47\%$. The forecast for 2020 is 2.3%. The pro-rated period of January through April 2020 is $4/12 \times 2.3\% = 0.77\%$. Therefore, for the 2019-20 contract year, the applicable percentage increase is $1.47\% + 0.77\% = 2.24\%$.

²⁰ The forecast for 2020 is 2.3%. The pro-rated period of May through December 2020 is $8/12 \times 2.3\% = 1.53\%$. The forecast for 2021 is 2.2%. The pro-rated period of January through April 2021 is $4/12 \times 2.2\% = 0.73\%$. Therefore, for the 2020-21 contract year, the applicable percentage increase is $1.53\% + 0.73\% = 2.26\%$.

²¹ As noted, during the life of the Agreement, three of the four bargaining unit employees will be moving to a higher longevity step level amounting to a 2.00% increase on the base rate added to their salaries. The calculation used here is on the 2.00% for those moving from 8-11 years to 12-15 years in the longevity schedule.

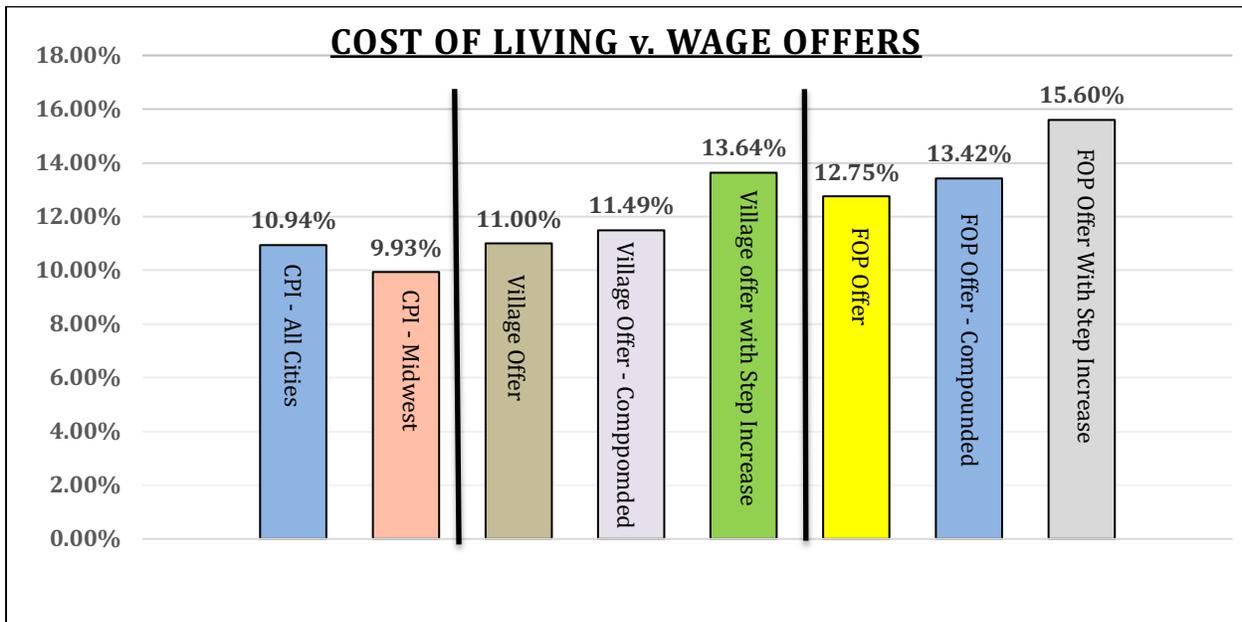
Under the Village's offer, these employees move from \$78,248.35 from the prior contract from the 8-11 years level to finish at \$88,919.29 at the end of the Agreement at the 12-15 years level. That is a 13.64% actual increase. $\$88,919.29 - \$78,248.35 = \$10,670.94$. $10,670.94 / \$78,248.35 = 0.1363727$ (13.64%).

²² Using the same employees just discussed who move with a 2.00% longevity increase during the life of the Agreement, under the FOP's offer those employees move from \$78,248.35 from the prior contract from the 8-11 years level to finish at \$90,453.43 at the end of the Agreement at the 12-15 years level. That is a 15.69% actual increase. $\$90,453.43 - \$78,248.35 = \$12,205.08$. $\$12,205.08 / \$78,248.35 = 0.1559787$ (15.60%).

For the above table, the relevant actual CPI data ends with April 2018.²³

Visually, the parties’ wage offers bumped up against the cost of living changes look like this:

TABLE 8
OVERALL COMPARISONS



²³

The June 12, 2018 BLS data release showing the new May 2018 data is not relevant here. The entire portion of the contract year for 2018 – May - December, 2018 – is relevant, and we obviously do not yet have all of that actual data. Thus, the relevant period must be the pro-rated forecast for the period after the known data from January – April 2018 (*i.e.*, the pro-rated forecasted period for May - December 2018). Simply put, we have actual data for the first two years of the Agreement – and that actual data ends with the April 2018 data from the BLS. The forecasts take over commencing in May 2018. In any event, the June 2018 BLS report shows no real significant changes for May 2018 which is now covered and is not material for this analysis because we have the first two years of the Agreement covered by actual data. Further, given the discussion below showing how the percentages really break out (compounding and step increase considerations), even if considered, the June 2018 BLS report showing actual data for May 2018 would not change the result.

The above-discussion demonstrates the following:

- With respect to the Village's non-compounded wage offer (11.00%), over the life of the Agreement that wage offer minimally exceeds the cost of living increase (actual and forecasted) at the national level (10.94%) by 0.06%, but exceeds the Midwest cost of living increase (9.93%) by 1.07%.
- With respect to the FOP's non-compounded wage offer (12.75%), over the life of the Agreement that wage offer exceeds the cost of living increase (actual and forecasted) at the national level (10.94%) by 1.81% and exceeds the Midwest cost of living increases (9.93%) by 2.82%.
- Turning to the real impact of the Village's wage offer – as it is compounded – that offer (11.49%) exceeds the cost of living increase (actual and forecasted) at the national level (10.94%) by 0.55% and exceeds the Midwest cost of living increase (9.93%) by 1.56%.
- And turning to the real impact of the FOP's wage offer – as it is compounded – that offer (13.42%) exceeds the cost of living increase (actual and forecasted) at the national level (10.94%) by 2.48% and exceeds the Midwest cost of living increase (9.93%) by 3.49%.
- But the reality here is that during the life of the Agreement three of the four bargaining unit employees will be moving to a higher longevity step increasing their wages by 2.00% of the base Sergeant rate. For 75% of the bargaining unit, that drives *the real money impact* to 13.64% under the Village's offer and 15.60% under the FOP's offer.

In sum, the Village's wage offer exceeds the cost of living increases in all relevant respects – and in the end, substantially so. When the *real* impact of the Village's offer plays out which results in an actual 13.64% wage increase over the life of the Agreement for 75% of the bargaining unit with the cost of living increase at the national level (from what we can now forecast) during the Agreement at 10.94% and in the Midwest at 9.93%, I can find no justification under this factor to adopt the

proposal as made by the FOP (which increases wages by 15.60% for 75% of the bargaining unit).

The cost of living factor therefore favors the Village's proposal.

F. Internal Comparability

I have been provided the May 1, 2017 - April 30, 2021 collective bargaining agreement between the Village and the FOP covering the Village's Patrol Officers. The Patrol Officers agreed to the same percentage wage increases as offered by the Village for the Sergeants for the corresponding overlapping periods (2.00% effective 5/1/17; 2.00% effective 5/1/18; 2.00% effective 5/1/19; and 2.5% effective 5/1/20).

The current Patrol Agreement covers the period May 1, 2017 through April 30, 2021, while the Sergeants Agreement covers the period May 1, 2016 through April 30, 2021. However, the parties advise me that for the period May 1, 2016 through April 30, 2017, the Patrol Officers had a one-year contract providing for a 2.5% increase. Thus, the percentage offer made by the Village for the life of the May 1, 2016 – April 30, 2021 Sergeants Agreement precisely matches the percentage increases negotiated by the Patrol Officers under their Agreements for the May 1, 2016 through April 30, 2021 period.

The FOP argues that there has been no demonstration of a requirement of parity between the two bargaining units. My looking at the percentage increases agreed to by the FOP under the Patrol Agreements covering the period May 1, 2016 - April 30, 2021 as the same increases offered by the Village for the Sergeants Agreement in this case for that same period is not imposing parity. For this case, that is a consideration of internal comparability – one factor of several – and not an imposition of a wage offer solely on the basis of a parity requirement.

Given that for the period May 1, 2016 - April 30, 2021 the percentage increases negotiated by the Patrol Officers match the Village's percentage increases offered to the Sergeants, internal comparability favors the Village's offer.

G. Total Wage Increases

As set forth in the wage schedules *supra* at II(D) (Table 4), over the life of the Agreement and depending on longevity placement, the Village's wage offer increases the Sergeants' wages from the prior contract in amounts ranging from \$8,647.32 to \$9,512.05. Putting aside cost of living considerations and other benefit increases tied to wages, because the Sergeants are at a high pay scale commensurate with their positions, those actual dollar increases are significant. Under Section 14(h)(6) of the IPLRA ("overall compensation"), that result is favorable to the Village's offer.

H. External Comparability

The parties argue that external comparability supports their respective positions.²⁴

Out of the gate, the first problem with looking at external comparables in this case is obvious. The Village compiled a series of wage comparison charts contrasting the Village to a set of eight other comparable communities.²⁵ The Agreement in this case is for the period 2016-2021. For the asserted comparable communities, there are no data entries for four of the eight communities for the period 2018-19; five of the eight communities for 2019-20; and seven of the eight communities for 2020-21.²⁶ And the reason for the lack of data is simple. As the Village states, no data entries

²⁴ Section 14(h)(4) of the IPLRA.

²⁵ Village Exhibits C-E.

²⁶ *Id.*

exist because “... there is not yet a contract in place covering those rates”²⁷ How can “apples to apples” comparisons even begin to be made when most of the asserted comparables do not yet have contracts for comparison purposes? Matching up with comparable communities has always been a moving target due to different expiration dates on contracts and this case clearly underscores that problem.

However, in *Cook County Sheriff/County of Cook and AFSCME Council 31, supra* at 38-52,²⁸ I traced my personal history of deciding interest arbitrations in this state since my first interest award in 1989 – now over 95 awards/orders setting terms for contracts as collected at the Illinois State Labor Relations Board website.²⁹ With respect to external comparability, there has been an evolution on my part which occurred as a result of hearing and deciding so many of these disputes.

As explained in *Cook County Sheriff, supra* at 38-42, my looking at the external comparability factor evolved from an almost blind adherence to reliance on external comparability as *the* determining factor (as did my arbitrator colleagues and the advocates in interest arbitrations); to not giving weight to that factor when the Great Recession hit in 2008 (because that economic upheaval impacted former comparable communities in different fashions); to a general questioning of the wisdom of giving that factor determinative weight as urged by parties in those cases. That general questioning of giving such heavy and often determinative weight to the use of external comparables came from a practical perspective. That was because the result of giving heavy weight to external comparability meant that wage and benefit rates were being set for employees in particular cases before me by other parties in the

²⁷ Village Exhibit D.

²⁸ <https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf>

²⁹ The ISLRB website collecting interest awards is found at:
<https://www2.illinois.gov/ilrb/arbitration/Pages/default.aspx>

external comparables pool when the parties in the cases before me were not at the bargaining table when those other parties determined what their wages and benefit levels were going to be. The parties in the cases before me simply had *no* input into the terms that were being forced upon them flowing from the results of the contracts from the external comparables. The result just wasn't fair – to either management or labor.

After passage of the IPLRA, selection of comparables was the main issue. *Cook County Sheriff, supra* at 40-41 [footnote omitted]:

The initial wave of cases focused on the selection of the pool of comparables for use in evaluating economic offers. The advocates became very creative in the methods for choosing comparables (again, the IPLRA gave no guidance). In the early years of the interest arbitration process in Illinois, the advocates were using what appeared to be perhaps randomly chosen geographic circles or other methods of comparisons to bring communities favorable to their respective positions into the comparable pool. One got the feeling that the definition of a “comparable” was any public employer that paid wages or provided benefits “comparable” to what a party was seeking in the case being decided.

That selection process was solved (at least, for me) by examining how often disputed “comparables” fell within the range of agreed-upon comparables and the employer in dispute based on relevant factors.³⁰

³⁰ Relevant factors for comparison purposes to determine comparability were population, distance from the public employer in a case, department size, number of employees, median income sales tax revenue, EAV, total general fund revenue, etc. See Benn, “A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act”, Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998): https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1058&context=iperr&sei-redir=1&referer=https%253A%252F%252Fscholar.google.com%252Fscholar%253Fhl%253Den%2526as_sdt%253D0%25252C14%2526q%253D%252522A%252BPractical%252BApproach%252Bto%252BSelecting%252BComparable%252522%2526btnG%253D-search%253D-Practical+Approach+Selecting+Comparable

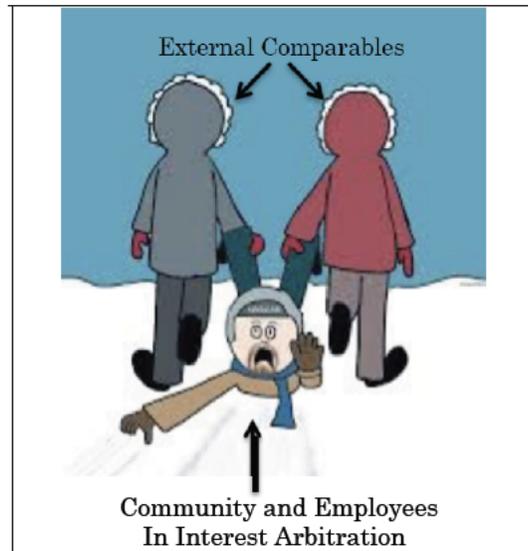
The problem then was not the selection of which communities were comparable, but was what to do with the comparables once it was figured out who they were.

Cook County Sheriff, supra at 41:

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

With the blind and lock-step adherence to external comparability as *the* driving factor for setting wage and benefit rates for one community based on the product of negotiations or interest arbitrations in other communities, the collective bargaining process was, in my opinion, reduced to the following picture:

THE EFFECT OF EXTERNAL COMPARABILITY



And that result was a double-edged sword – potentially favorable to the employees or to the employers depending on how the results of the comparables ended up – results that were *totally* out of the control of the parties in a specific interest arbitration who ended up being stuck with the results from the comparables, even though they may have had special needs or circumstances that were not considered by the external comparables when they formulated their contracts.

In *Cook County Sheriff, supra*, I analyzed the cases I had decided since the 2008 Great Recession which was when I stopped using comparables as the determinative factor (27 awards at the time of issuance of *Cook County Sheriff* in May 2016). *Id.* at 44-50. The conclusion from all of my cases analyzed which issued after the Great Recession hit resulted in the following (*id.* at 50):

What this all shows is that by staying away from the wild-card external comparability factor and instead, as I have been doing, focusing on the cost of living, total compensation for wages and internal comparables, for now, employees are by the vast majority staying *well* ahead of inflation. And these are just the base wage

increases with no other benefits tied to wages considered and without step movements.

To me, the effect and result of this approach of staying away from external comparability for now is obvious. By staying away from external comparability and focusing upon the cost of living, total compensation for wages and internal comparability[s], because this is final offer interest arbitration where only one party's offer can be selected, the above results clearly show that:

- Union offers are being driven down to realistically address the economic conditions on the ground;
- Employer offers are being driven up to match changes in the economy but also so as not to diminish employees' wages while also being at a level the employers can afford; and
- The final result is that, as an overwhelming general rule, employees are not losing ground to inflation or just treading water, but instead are making substantial gains.

That is my take on what I see as the unreasonable weight that has been and continues to be given to external comparability. That weight was given way back when IPLRA (and the undersigned) were young and only for reasons of "because that's how it's done" – and that weight is now, in my opinion, blindly and too often unreasonably followed. Over the years, my perspective on the issue has changed. And that constant questioning and examining what we as arbitrators are doing in these so important cases where the parties place in our hands sometimes total responsibility for making binding economic decisions affecting employees, management (and ultimately taxpayers) are required – even in cases like this where there are only four employees involved. *See Cook County Sheriff, supra* at 52, note 68:

"Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, dissenting). *See also, Commonwealth of Massachusetts, et al. v.*

United States, 333 U.S. 611, 639-640 (1948) (Jackson, dissenting) (“I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.”); Justin Driver, *Judicial Inconsistency as Virtue: The Case of Justice Stevens*, 99 *Georgetown Law Journal* 1263, 1272-1273 (2011) quoting Richard S. Arnold, *Mr. Justice Brennan – An Appreciation*, 26 *Harv. C.R.-C.L. L. Rev.* 7, 11 (1991) (“Consistency is a virtue, but it is not the only virtue, and people who never change their minds may have simply stopped thinking.”). ...

I recognize that a number of my colleagues and the advocates who appear before me disagree with my view on external comparability – indeed, some strongly so. And that’s fine. This process amounts to a sometimes inexact exercise with the ultimate goal that the parties somehow, someday end up with a collective bargaining agreement they can live with. With all the moving parts in these cases, we all can just do the best we can. My goal is to be predictable so as to permit the parties to chart their own fates without the need of an outsider like me as a last resort to impose terms and conditions upon them.

Turning to this case, here the parties have argued external comparability. And because they have done so and out of respect for this process where the parties get to pick and choose the issues and arguments they desire to present, I will consider those arguments.

To give the FOP the benefit of the doubt that external comparability favors its position, I will assume that to be fact (although disputed by the Village). However, in this case, that assumption cannot change the result.

In this case, the Village’s offer exceeds the cost of living – and in ways discussed *supra* at II(E) – ultimately substantially so when the actual impact of the Village’s offer is sorted out. Moreover, the Village’s offer is the same as negotiated and accepted by the FOP for the Patrol Officers – thereby placing internal comparability in the Village’s favor. And what really tips the scale in this case is the fact that under

the Village's offer, three of the four bargaining unit members – *i.e.*, 75% of the unit – will receive 2.00% wage longevity increases, driving the *actual* percentage wage increase they will receive from the Village's offer up to 13.64% with the resultant increase in *actual* wages across the entire salary schedule ranging from \$8,647.32 to \$9,512.05.

Therefore, even assuming the external comparability factor favors the FOP's position (which the Village disputes), the result of the cost of living, internal comparability and total wage compensation factors outweigh the FOP's arguments that external comparability favors selection of its wage offer.

Notwithstanding the strong arguments made by the FOP, the Village's wage offer must therefore be adopted.

I. Tentative Agreements

The parties advise me that during negotiations they reached tentative agreements on a number of issues other than wages. Those agreements are incorporated into this award.

J. Retroactivity

As in the 2012-16 Agreement at Section 19.4, “[a]ll wages and compensation are ... retroactive to their effective dates on all compensable hours.”

III. CONCLUSION

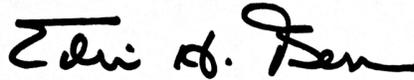
The Village's wage offer is adopted. This matter is now remanded to the parties to draft language consistent with the terms of this award. With the consent of the parties, I will retain jurisdiction for a period of 45 days from the date of this award (or to a date agreed upon by the parties) to consider disputes which may arise out of the drafting of such language.

IV. AWARD

The Village's wage offer is as follows:

Effective Date	Village
5/1/16	2.50%
5/1/17	2.00%
5/1/18	2.00%
5/1/19	2.00%
5/1/20	2.50%
Total	11.00%

The Village's wage offer is adopted.



Edwin H. Benn
Arbitrator

Dated: June 13, 2018