

**BEFORE
EDWIN H. BENN
ARBITRATOR**

IN THE MATTER OF THE ARBITRATION

BETWEEN

VILLAGE OF FLOSSMOOR

AND

ILLINOIS FOP LABOR COUNCIL

CASE NOS.: S-MA-17-193
Arb. Ref.: 18.248
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the Village: James Baird, Esq.
Roxana Underwood, Esq.

For the FOP: Jeffrey Burke, Esq.

Date of Award: March 13, 2019

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I. BACKGROUND

This is an interest arbitration proceeding between the Village of Flossmoor (“Village”, “Employer” or “Flossmoor”) and the Fraternal Order of Police Labor Council (“FOP” or “Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/14 (“IPLRA”), to set the terms of the parties’ collective bargaining agreement (“Agreement”) replacing their May 1, 2014 – April 30, 2017 contract.¹ The employees covered by the Agreement are full-time sworn police officers.² There are approximately 15 employees covered by the Agreement.³

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

¹ Joint Exhibit 1.

The parties have waived the requirement for a tri-partite panel found in Section 14 of the IPLRA. Joint Exhibit 4 at par. 1.

This award contains hyperlinks to various websites. If viewed on a computer or other device and selecting a hyperlink does not work, copy and paste the link into a browser.

² Joint Exhibit 1 at Section 1.1.

³ Village Exhibit 2 at 2; Village Brief at 7; Tr. 57; FOP Exhibit 11; FOP Brief at 1.

⁴ The relevant portions of Section 14 of the IPLRA provide:

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

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

[footnote continued on next page]

The following issues are in dispute:⁵

1. Duration
2. Wages
3. Stipends
4. Insurance
5. Retroactivity

II. THE USE OF EXTERNAL COMPARABLES

To support their respective positions and for comparison purposes, the parties offered evidence and argument on external comparability – *i.e.*, terms and conditions of collective bargaining agreements covering police officers in other comparable communities. The FOP argues that “[m]any interest arbitrators have cited the statutory factor of ‘external comparability’ as the main factor for deciding the appropriateness and reasonableness of a final offer.”⁶ Likewise, the Village argues that for specific offers made, external comparability supports its positions.⁷

According to the Illinois Labor Relations Board’s website, this award is my 100th interest arbitration decision since my first in 1989 – that’s 30 years of deciding these disputes.⁸ As explained most recently in *City of Streator and Illinois FOP Labor Council*, S-MA-17-142 (2018) at 4-17 and awards cited, over those many years

[continuation of footnote]

(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.

⁵ There was an issue concerning floating holidays which the parties resolved at the commencement of the hearing. Tr. 10-12; FOP Brief at 13, note 9; Village Brief at 2.

⁶ See FOP Brief at 4.

⁷ See *e.g.*, Village Brief at 2, 11, 18, 48.

⁸ <https://www2.illinois.gov/ilrb/arbitration/Pages/default.aspx>

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and decisions, I have changed my approach about application of the weight that should be given to the external comparability factor.⁹ As more fully explained in *Streator* at 5-7 [citing *Village of Swansea and Illinois FOP Labor Council*, S-MA-16-213 (2018) at 19-21¹⁰ and *Cook County Sheriff/County of Cook and AFSCME Council 31*, L-MA-13-005-008 (2016) at 38-52¹¹], my views on the weight to be given to external comparability have changed going [emphasis in original]:

... 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 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.

⁹ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>

¹⁰ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-213ArbAward.pdf>

¹¹ <https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf>

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Those concerns dramatically play out in the external comparables used by the parties in this case – Glenwood, Lynwood, Olympia Fields, Orland Hills, Palos Heights, Richton Park and Palos Park.¹²

As discussed *infra* at (III)(1), duration of the Agreement is one of the issues in this case (with the FOP seeking a term of three years – May 1, 2017 to April 30, 2020 and the Village seeking a term of four years – May 1, 2017 to April 30, 2021).¹³

For duration of the agreements in the external comparables offered by the parties – and using the most recent contracts for those municipalities for equivalent groups of employees along with the parties’ offers in this case for duration – the external comparability pool shows the following durations of contracts:

Municipality/Union	Start	End
Glenwood (MAP) ¹⁴	1/1/15	12/31/18
Lynwood (FOP) ¹⁵	5/1/16	4/30/20
Olympia Fields (MAP) ¹⁶	5/1/17	4/30/20
Orland Hills (IBT) ¹⁷	5/1/15	4/30/19
Palos Heights (FOP) ¹⁸	1/1/15	12/31/18

¹² Joint Exhibit 4 at 2, par. 5. Palos Park is not specifically mentioned in the pre-hearing stipulated agreed-upon comparables. *Id.* However, in making their arguments on different proposals, the parties both make comparisons to Palos Park. See FOP Brief at 8; Village Brief at 7, 14. See also, Tr. 62. The Village has also included a contract from Palos Park (Village Exhibit 27) while the FOP has not (see FOP Exhibit 1).

For purposes of discussion on the use of external comparability *for this case only*, I will include Palos Park in the analysis. The result with or without Palos Park in the mix will be no different.

¹³ Joint Exhibit 2 at 1, par. 6; Joint Exhibit 3 at 1; FOP Brief at 16; Village Brief at 18-21.

¹⁴ FOP Exhibit 1(k); Village Exhibit 27.

¹⁵ FOP Exhibit 1(p); Village Exhibit 27.

¹⁶ Village Exhibit 27. The FOP produced the contract for 2013-2017. FOP Exhibit 1(q). The Village’s exhibit is the contract from May 2017-April 2020. Village Exhibit 27. The Village’s exhibit has been used as it is the more recent.

¹⁷ FOP Exhibit 1(t); Village Exhibit 27.

¹⁸ FOP Exhibit 1(x); Village Exhibit 27.

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Municipality/Union	Start	End
Palos Park (MAP) ¹⁹	5/1/14	4/30/18
Richton Park (FOP) ²⁰	5/1/16	4/30/20
FLOSSMOOR (FOP OFFER) ²¹	5/1/17	4/30/20
FLOSSMOOR (VILLAGE OFFER) ²²	5/1/17	4/30/21

The durations of the agreed-upon comparable communities compared to the duration of the Agreement sought in this case look like this (indicated months are inclusive of the entire month):

DURATIONS OF COMPARABLES' CONTRACTS AND PARTIES' OFFERS

	5/14-12/14	1/15-4/15	5/15-12/15	1/16-4/16	5/16-12/16	1/17-4/17	5/17-12/17	1/18-4/18	5/18-12/18	1/19-4/19	5/19-12/19	1/20-4/20	5/20-12/20	1/21-4/21		
Glenwood																
Lynwood																
Olympia Fields																
Orland Hills																
Palos Heights																
Palos Park																
Richton Park																
<u>DURATION OFFERS</u>																
VILLAGE (FOP)																
VILLAGE (VILL)																

Using the comparables' contracts is not helpful.

First, how can rational comparisons with "comparable" communities be made for the parties' offers on duration when, in varying degrees, those comparable

¹⁹ Village Exhibit 27. See note 12, *supra*, with respect to the use of Palos Park.

²⁰ FOP Exhibit 1(zzz); Village Exhibit 27.

²¹ Joint Exhibit 2 at 1, par. 6; FOP Brief at 16.

²² Joint Exhibit 3 at 1; Village Brief at 18-21.

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contracts commence and expire so strikingly up to years in advance of both proposals for this Agreement?

Specifically, three of the seven comparables carry expiration dates equivalent to the FOP's proposal (Lynwood, Olympia Fields and Richton Park); no comparables carry expiration dates equivalent to the Village's proposal; and only one of the seven contracts (Olympia Fields) matches in duration for the FOP proposal with no comparables matching in duration for the Village's proposal. What really jumps out is that all but one of the comparables (again, Olympia Fields) commence from one to *three* years prior to the parties' agreed-upon May 1, 2017 commencement date for this Agreement.

Second, in *all* of the comparables, the municipalities were obviously different. And in four of the seven comparables, the unions were different from the FOP (MAP or IBT). The obvious result of this is that the collective bargaining relationship in this case – the Village and the FOP – was not at the bargaining tables when the contracts for the comparables were negotiated or imposed through interest arbitration (if such was necessary). This collective bargaining relationship had no input into formation of the comparable contracts that the parties are seeking to foist upon the collective bargaining relationship in this case.

Third, just focusing on the commencement dates of the contracts in the comparable communities, take a hypothetical officer in the Village who has a base salary of \$70,000 as of the agreed-upon commencement date of this Agreement (May 1, 2017). It doesn't matter whether the Village's or the FOP's offer is selected or even if such an officer at that pay rate exists. Just assume for this discussion that the employee makes \$70,000 at the commencement of the Agreement on May 1, 2017. In terms of buying power, compare that employee to the other employees in the comparable

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communities at the commencement of their contracts and assume that they also made \$70,000 when those contracts commenced.

As will be discussed *infra* at III(2)(c)(1), the cost of living is a relevant factor for consideration. Here, for external comparability, a useful tool is the Inflation Calculator from the Bureau of Labor Statistics (“BLS”) which, as of this writing, uses data available through February 2019. With the exception of Olympia Fields which has the same commencement date as the parties’ Agreement, that \$70,000 as of May 1, 2017 commencement date of this Agreement has significantly *less* buying power than it did on the commencement dates of the other comparable communities as follows:²³

²³ <https://data.bls.gov/cgi-bin/cpicalc.pl>

Insert the relevant periods in the Calculator using \$70,000 as of May 2017 (the commencement date of this Agreement) in the upper monetary amount and date category; the commencement date of the comparable contract in the date after “has the same buying power as” and then press “Calculate.”

For example, using the Glenwood/MAP contract with a January 1, 2015 effective date, the Calculator will look as follows:

The image shows a screenshot of the "CPI Inflation Calculator" interface. At the top, there is a red header with the text "CPI Inflation Calculator" in white. Below the header, the calculator displays the following information: a monetary amount of "\$ 70,000.00" in a text box; a dropdown menu for the month set to "May" and a dropdown menu for the year set to "2017"; the text "has the same buying power as"; a highlighted box containing the result "\$66,846.28"; a dropdown menu for the month set to "January" and a dropdown menu for the year set to "2015"; and a "Calculate" button at the bottom.

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Municipality/Union	Commencement Date of Comparable Contract	Buying Power of \$70,000 Earned in May 2017 compared to \$70,000 Earned at Commencement Date of Comparables' Contracts	Difference in Buying Power of \$70,000 in May 2017	Percent. Decrease in Buying Power
Glenwood (MAP)	1/1/15	\$66,846.28	-\$3,153.72	-4.50%
Lynwood (FOP)	5/1/16	\$68,711.74	-\$1,288.26	-1.84%
Olympia Fields (MAP)	5/1/17	\$70,000.00	\$0.00	0.00%
Orland Hills	5/1/15	\$68,018.41	-\$1,981.50	-2.83%
Palos Heights (FOP)	1/1/15	\$66,846.28	-\$3,153.72	-4.50%
Palos Park (MAP)	5/1/14	\$68,045.58	-\$1,954.42	-2.79%
Richton Park (FOP)	5/1/16	\$68,711.74	-\$1,288.26	-1.84%

With respect to buying power as impacted by changes in the Consumer Price Index (“CPI”) – and because of the wide variances in commencement dates of the various comparable contracts – how can rational comparisons be made when the contracts for the comparables in this case put the Village’s employees so far below the employees in the other communities at the commencement date of those contracts in the comparable communities?

Fourth, and then there is the fundamental question that if external comparables are used, then in what manner? *See Cook County Sheriff, supra* at 41-42:²⁴

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

²⁴ <https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf>

“[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.

The trend has been to use averages of pay in the comparables to make the comparisons. However, *see Streator, supra* at 8-9 [footnote omitted]:²⁵

A review of the past several years of interest arbitration awards using external comparability as a basis for determining the result shows the parties and arbitrators relying upon the “average” of the pool of external comparables to apply the external comparability factor (and doing so even though the IPLRA is silent on how to use external comparables).

Why?

The IPLRA is silent with respect to how to use external comparables once they are determined (and even how they are to be determined). An example was given in *Streator, supra* at 7-11, where a minor wage rate change in just one of the six contracts from the external comparables caused a different outcome as the average of the total comparables’ wage increases changed. Giving the kind of weight to external comparability as parties in these cases continue to do is just not a reliable measure for setting wage and benefit rates.

Fifth, from an arbitrator’s decision-writing perspective, working with external comparables is often a nightmare. Unless the arbitrator takes the expedient way out and merely looks at averages of the comparables – a method which entirely disregards

²⁵ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>

the fact that each community in the comparable pool has different wages and benefits; different reasons for setting those wages and benefit structures as they did; often different contract durations (as discussed *supra*); and can result in different conclusions if there were slight changes in the wages and benefits paid in the comparable pool (again, *see* the example in *Streator, supra* at 7-11 where a minor change in one of the six hypothetical comparables' wage rates resulted in a change in the outcome of the case) – then the arbitrator is left struggling with whether changes in rankings in the comparable rankings should be considered and, if so, how? That change of ranking examination often leads to finding out that some step ranges – *i.e.*, years in steps and number of steps (if they even match the ranges of the contract in dispute) move up in the rankings; other step ranges move down; or even make no movements – which, for me, caused many head-scratching moments.

With respect to movement in rankings in the comparables and the lack of guidance from the IPLRA, the inevitable occurred in *Village of Skokie and Skokie Firefighters Local 3033, IAFF S-MA-10-197, Arb. Ref. 12.150 (2014)* at 21 where the parties used the same data from the external comparables and came up with different results, causing this observation [footnotes omitted, emphasis in original]:²⁶

... So with the same information in the public domain, the Village concludes that by 2013, "... Skokie's ranking improves ... to 8th place ..." and the Union concludes, "... the [Village's] rank decreases again to 11."

How can there be such a disparity if the parties are using the same information? The answer is that "comparable communities" is not defined by the statute; is wide-open to interpretation; and, through good advocacy, its use can be easily manipulated. But the external comparability factor was (and for some continues to be) *the* driving force for resolving these disputes. It is no wonder these cases became hard to settle.

²⁶

<https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-10-197.pdf>

Same data – different results.

That difficulty was also observed in a follow-on arbitration in Skokie in 2017 by Arbitrator Martin Malin. *See Village of Skokie and Skokie FireFighters Local 3033, IAFF*, S-MA-16-150 (Malin, 2017) at 15 [footnote omitted]:²⁷

The parties' approach to the external comparables in this case illustrates one of the drawbacks of using external comparability. Both parties have sliced and diced the data to their maximum benefit. ...

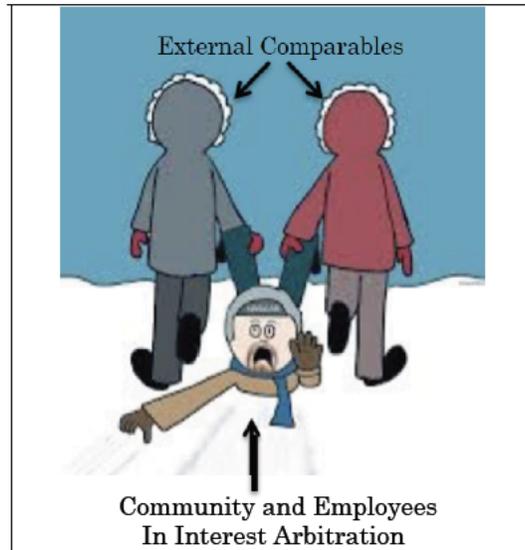
A general rule of thumb for writing an arbitration award is that if the logic of what you have written makes you feel like a pretzel to get to the end result, then the decision is wrong. Decision writing really incorporates Occam's Razor – *i.e.*, that simpler solutions are more likely to be the correct than complex ones. Struggling with comparables often had me wandering through complex iterations of comparability analysis and in the end left me feeling like a very large pretzel with many loops.

The questioning of why external comparability should be given such heavy weight as the parties in these interest arbitration cases give it applies strongly in this case. It just makes no sense for collective bargaining relationships that are strangers to the relationship between *these* parties – where there may well be different concerns (economic and non-economic) – to literally drag this relationship into the terms and conditions of a contract that just does not address this relationship's individual needs (for better or worse). In an illustration I have used before to explain the problems with giving heavy reliance to external comparability, the picture of giving heavy and often-time determinative weight to external comparability in this case really looks like this:

²⁷

<https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-150ArbAward.pdf>

THE EFFECT OF EXTERNAL COMPARABILITY



By using comparable communities in this case, the “collective” in “collective bargaining” becomes the “collection” of the comparables that had no input from the relationship in this case and the “bargaining” for this relationship is done by those strangers to the bargaining relationship in this case. As concluded in *Streator, supra* at 11, with respect to giving heavy, if not determinative weight to the external comparability factor, “[t]hat is no way to set contract terms.” I therefore will give no weight to external comparability in this matter.²⁸

²⁸ The FOP asserts that “[t]he Arbitrator should declare in the award that he considered all of the factors in arriving at his decision to insulate against judicial attack.” FOP Brief at 4. I have obviously done so giving appropriate weight to “the arbitration panel shall base its findings, opinions and order upon the following factors, *as applicable*” as specified in Section 14(h) of the IPLRA [emphasis added]. For reasons discussed, after considering the parties’ arguments on external comparability, I do not find that giving that factor the weight the parties seek is an “applicable” consideration for resolving this dispute. In any event, *see City of Decatur and International Association of Firefighters, Local 505, S-MA-86-029* (Eglit, 1986) at 3-4 [footnote omitted]:

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

<https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-86-029.pdf>

III. RESOLUTION OF THE ISSUES

1. Duration

The Village seeks a four-year term (May 1, 2017 – April 30, 2021) while the FOP seeks a three-year term (May 1, 2017 – April 30, 2020).²⁹

The parties have a lengthy collective bargaining relationship going back to 1986.³⁰ With the exception of the 2001 – 2005 contract (a four-year agreement), the prior contracts were for three-year periods.³¹ In a prior interest arbitration between the parties, the FOP's offer for a three-year term was selected over the Village's offer for a four-year term, which resulted in the 2005 – 2008 contract. *Village of Flossmoor and FOP Labor Council*, S-MA-05-138 (Finkin, 2007) at 20-23.³²

The Village urges a four-year contract for this case because "... the parties have historically provided for ... a lengthy relief between the end of one set of negotiations and the onset of a new set of bargaining meetings ... [and a] three-year agreement will only force these disputants back to the bargaining table prematurely, to renew their fundamental wage disagreements."³³ Aside from pointing to a history of mainly three-year agreements, the FOP argues that "[t]he Employer's additional year requires too much speculation about wages, insurance costs, the state of the economy, and other significant items ... [and t]here will be sufficient time between rounds of negotiations to allow for a 'cooling off' period."³⁴

The FOP's offer for a three-year term is adopted.

²⁹ Joint Exhibits 2, 3; Village Brief at 18-26; FOP Brief at 16.

³⁰ See FOP Exhibit 1.

³¹ *Id.*

³² <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-05-138.pdf>

³³ Village Brief at 20-21, 24.

³⁴ FOP Brief at 16.

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First, the stock market may not be an exact indicator of the condition of the economy, but it is an indicator to be considered when assessing the strength of the economy.³⁵

This is what the stock market has looked like since the expiration of the prior Agreement on April 30, 2017:³⁶



³⁵

As with so much in predicting the strength of the economy, there is disagreement over how the stock market should be used to assess the future strength of the economy. *See e.g.*, Irwin, “Ignore the Stock Market. The Economy Looks Fine” (New York Times, February 6, 2018) (“... what really matters — the well-being of the economy and the ability for individuals and companies to prosper in the years ahead — look first to fundamental economic data, especially those that tend to be leading indicators. Second, look to the bond market and other financial market indicators that are more reliable measures of investors’ expectations than stock prices.”).

<https://www.nytimes.com/2018/02/06/upshot/ignore-the-stock-market-the-economy-looks-fine.html>

Compare, Phillips, “Turbulent Stock Market Is Flashing a Warning About the Economy” (New York Times, November 20, 2018) (“The stock market’s struggles may seem incongruous against the backdrop of strong economic growth. But stocks often act as an early warning system, picking up subtle changes before they appear in the economic data.”).

<https://www.nytimes.com/2018/11/20/business/stock-market-drop-economy.html>

Even those who downplay the relevance of the stock market as an indicator of the strength of the economy recognize that the market is a factor in that assessment. Irwin, *supra* (“The stock market can, when looked at in concert with these other indicators, provide some useful insight.”).

³⁶

This is the picture at the close of trading prior to the date of this Award. For current data, *see, e.g.*, Federal Reserve Bank of St. Louis, Economic Research and insert relevant dates in the DJIA date range finder (or any other similar Dow Jones historical data tracker):

<https://fred.stlouisfed.org/series/DJIA>

While the above may be likened to a picture of the Himalayas and although there have been significant overall gains, this picture does not exactly instill complete confidence that economic matters are on stable footing. The market crash in 2008 which was such an important indicator of the Great Recession still has its imprint burned into the minds of employers, unions, employees and the economy as a whole. In the market, recent months look like a roller coaster raising questions about things to come.³⁷

Second, those experts who claim to be able to predict the future give conflicting (sometimes self-contradicting) views of what is coming our way. *See e.g.*, Federal Reserve Chairman Jerome H. Powell's "Semiannual Monetary Policy Report to the Congress" (February 26, 2019):³⁸

* * *

While we view current economic conditions as healthy and the economic outlook as favorable, over the past few months we have seen some crosscurrents and conflicting signals. Financial markets became more volatile toward year-end, and financial conditions are now less supportive of growth than they were earlier last year. Growth has slowed in some major foreign economies, particularly China and Europe. And uncertainty is elevated around several unresolved government policy issues, including Brexit and ongoing trade negotiations.

* * *

... And it is widely agreed that federal government debt is on an unsustainable path. ...

³⁷ "You don't need a weather man to know which way the wind blows." Bob Dylan, *Subterranean Homesick Blues* (Columbia Records, 1965). When the stock market was in the midst of dropping from 13,907 on July 13, 2007 to 6,547 on March 9, 2009 (a drop to 47% of its prior value), we did not need much more to know that the economy was tanking and in the throes of the Great Recession.

³⁸ <https://finance.yahoo.com/quote/%5EDJI/history/>
<https://www.federalreserve.gov/newsevents/testimony/powell20190226a.htm>

Chairman Powell followed that assessment two days later on February 28, 2019 with a speech to the Citizens Budget Commission 87th Annual Awards Dinner, in New York, “Recent Economic Development and Long-Term Challenges” where he stated [footnote omitted]:³⁹

* * *

Beginning with the here and now, Congress has charged the Federal Reserve with achieving maximum employment and stable prices, two objectives that together are called the dual mandate. I am pleased to say that, judged against these goals, the economy is in a good place.

* * *

While the data I have discussed so far give a favorable picture of the economy, it is also important to acknowledge that not everyone has shared in the benefits of the expansion to the same extent, and that too many households still struggle to make ends meet. In addition, over the past few months we have seen some cross-currents and conflicting signals about the near-term outlook. For instance, growth has slowed in some major economies, particularly China and Europe. Uncertainty is elevated around some unresolved government policy issues, including Brexit and ongoing trade negotiations. And financial conditions have tightened since last fall. While most of the incoming domestic economic data have been solid, some surveys of business and consumer sentiment have moved lower. Unexpectedly weak retail sales data for December also give reason for caution.

Although couched in optimism and confidence, the phrases “crosscurrents and conflicting signals ... more volatile toward year-end, and financial conditions are now less supportive of growth ... uncertainty ... federal government debt is on an unsustainable path ... not everyone has shared in the benefits of the expansion to the same extent, and that too many households still struggle to make ends meet ... [w]hile most of the incoming domestic economic data have been solid, some surveys of business

³⁹

<https://www.federalreserve.gov/newsevents/speech/powell20190228b.htm>

and consumer sentiment have moved lower [and u]nexpectedly weak retail sales data for December also give reason for caution” coming for the Chairman of the Federal Reserve must give pause to anyone thinking that all is economically sound.

And there is more. *See* “Economists Expect the Next Recession to Hit by 2021” (Bloomberg, October 2, 2018):⁴⁰

Two-thirds of business economists in the U.S. expect a recession to begin by the end of 2020, while a plurality of respondents say trade policy is the greatest risk to the expansion, according to a new survey.

And *see* “What Are the Odds of a U.S. Recession by 2020? Larry Summers Says They're Pretty High” (Fortune, November 16, 2018):⁴¹

Harvard economist Larry Summers believes there’s an almost 50% chance the U.S. will fall into recession by 2020 ... [a] survey this summer of business economists revealed that a majority also think the next recession will arrive by 2020.”

Further, *see* “Three-fourths of business economists expect a recession by 2021, survey finds” (Yahoo Finance, February 25, 2019).⁴²

And finally, the economic policies of President Trump have caused uncertainty. Wolfers, “An A- for the U.S. Economy, but Failing Grades for Trump’s Policies” (New York Times, February 4, 2019):⁴³

To provide a nonpartisan appraisal, I’ve reviewed [surveys of about 50 leading economists](#) — liberals and conservatives — run by the University of Chicago. What is startling is that the economists are nearly unanimous in concluding that Mr. Trump’s policies are

⁴⁰ <http://fortune.com/2018/10/02/the-next-recession-economists/>

⁴¹ <http://fortune.com/2018/11/16/larry-summers-recession-by-2020/>

⁴² <https://finance.yahoo.com/news/nabe-economic-policy-survey-171131067.html>

⁴³ <https://www.nytimes.com/2019/02/04/business/us-economy-trump-taxes-trade.html>

destructive. That is why many economists are uneasy about his presidency, even though the economy earns solid grades.

* * *

The more frightening explanation is that the downside of Mr. Trump's policies are yet to become evident. The chaos of his administration's policy process has created uncertainty and probably scared off some investors, although their absence is difficult to measure. In addition, Mr. Trump's unfunded tax cuts are creating a debt that future generations will have to repay. And by undermining the Fed's independence, he may have made it less effective at fighting inflation.

It is obviously not my function here to predict if, when and/or to what extent, an economic downturn may be coming. In that regard, I am absolutely incapable of making even an educated guess. I don't have the tools to do so, nor do I have a crystal ball.

However, it is my function to set a duration for a collective bargaining agreement to deal with potential economic difficulties and uncertainties that have legitimately been raised by those who should have some insight. Brushing aside political smoke characterizing how the economy looks now and will look in the future, for reasons discussed above, it appears as the FOP argues that a shorter rather than longer duration for the Agreement is more reasonable in this case. The shorter duration will give the parties the ability to address the potential of what many with knowledge say is coming – another recession. And if that predicted economic downturn does not occur when this Agreement is expiring, the parties will be in a good position to also assess that situation on the ground and deal with it accordingly.⁴⁴

⁴⁴ Indeed, if the predictions of a coming recession or the “chaos” and the “destructive” nature and effect of the current administration's policies having an adverse impact the economy are accurate to any degree and if the Village's offer of a 3.25% increase effective May 1, 2020 for the fourth year of the Agreement is imposed, that percentage increase may prove to be an unintended economic jolt to the Village and the taxpayers at a time when it will not be needed. But *see* the discussion on wages *infra* at III(2).

However, the Village's argument that "breathers" are sometimes better advised in order to keep parties away from having to address issues across the bargaining table does not fall on deaf ears. As the Village points out, in the past I have considered that factor.⁴⁵ But in times of somewhat economic uncertainty, shorter durations are the better course. *See Skokie, supra* at 7:⁴⁶

We are in a slow and uncertain economic recovery from the Great Recession. Although "breathers" are often valuable to give parties the ability to just stay away from each other in the bargaining process so that they can hopefully be more objective during the next round of negotiations, on balance and given the uncertain recovery, the parties should get back to the bargaining table sooner rather than later to address how the terms and conditions of the next Agreement should reflect the slow and yet uncertain economic recovery.

And with that I turn to Village Manager Bridget Wachtel's testimony where she describes that "... we have a history of having a very amicable relationship with employees"⁴⁷ During the Great Recession and its aftermath, similar amicable relationships (and even those that were the antithesis of amicability) put their differences aside and rationally dealt with the economic devastation that public employers, unions, employees and taxpayers had to address. According to Village Manager Wachtel's description of "a very amicable relationship", the relationship between the Village and the FOP is obviously not a toxic one. There is no reason to believe based upon this record that if faced with the predictions of those experts who see troubled times ahead that the parties here will simply professionally put their differences aside and rationally address economic difficulties which may be on the horizon.

⁴⁵ Village Brief at 23.

⁴⁶ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-10-197.pdf>

⁴⁷ Tr. 84.

On balance, the FOP's proposal for a three-year Agreement is therefore adopted.

2. Wages

a. The Parties' Offers

The parties' wage offers (base rate) are as follows:⁴⁸

Effective Date	Village	FOP
5/1/17	0.00%	2.38%
5/1/18	2.25%	2.40%
5/1/19	2.75%	2.30%
Total	5.00%	7.08%

It is noted that the Ground Rules provide that “[c]ontract duration being an issue in dispute, the Parties agree that both may submit alternative wage proposals to account for different durations.”⁴⁹

Consistent with that provision, in the event a four-year duration is found appropriate, the FOP offered a 2.50% increase for the fourth year.⁵⁰

The Village had 3.25% increase as a final offer for a fourth year.⁵¹ For a three-year Agreement, the alternative wage proposal from the Village remained unchanged

⁴⁸ Joint Exhibits 3 at 1, Section 15.5; 2 at 2, par 7; Village Brief at 28-50; FOP Brief at 17-23.

⁴⁹ Joint Exhibit 4 at 2, par. 6.

⁵⁰ Tr. 15 (“[i]f the arbitrator thinks that a four-year deal is more appropriate we are proposing a 2.5 percent for the fourth year of contract.”); FOP Brief at 2, note 2 (“The Union also proposes 2.5% wage increases annually for every additional year beyond three.”).

⁵¹ Village Final Offer – Joint Exhibit 3. *See also*, Village Brief at 29 (designated as 3.50% in the fourth year, but noting (*id.* at note 15), that the referenced percentage includes a 0.25% increase to the National PEHP under Appendix B of the Agreement which places that amount on the base wage rate – *i.e.*, an add-on).

for the first three years – *i.e.*, dropping the 3.25% fourth year proposed increase and keeping the first three years in place (0.00%, 2.25% and 2.75%).⁵²

As discussed *supra* at III(1), the FOP’s offer for a three-year Agreement expiring April 30, 2020 has been adopted. The FOP’s offer for a 2.50% increase on base wages for a fourth year is therefore moot. The Village’s wage offer on base wages for a three-year contract is therefore 0.00%, 2.25% and 2.75%.

b. Stipends as Part of Wage Rates

The starting point in the wage increase analysis is the Village’s argument that while it believes that its offer on stipends should be adopted, stipends should be considered as part of the wage offer (“[t]he issue of wages cannot and should not be looked at in isolation ... [t]his Arbitrator must consider the value of the proposed increases to stipends as well ...”).⁵³ The FOP’s analysis seeks to keep stipends separate from the wage analysis.⁵⁴

The evidence shows that not all members of the bargaining unit receive additional stipend compensation. For example, six of the 15 bargaining unit members listed as of May 1, 2017 (the effective date of this Agreement) did not receive stipends for Shift Leader, Acting Shift Leader or Detective (which the Agreement specifies at Sections 15.3, 15.4 and 15.5 go on the base rate).⁵⁵ And of those six, at the expiration of the prior Agreement, four are not listed as having received Paramedic/EMT-B

⁵² Tr. 67 (“[i]f you ... select the three-year book the proposed wage increase is 5 percent ... a three-year proposal, zero, 2.25, 2.75 ...”); Village Brief at 29 (referencing its 5.00% – 0%, 2.25% and 2.75%) offer for a three-year Agreement); Village Exhibit 13 (projecting the impact of a “Village Three (3) Year Base Wage Proposal”); Village Exhibit 14 (further costing of a three-year – 0.00%, 2.25% and 2.75% proposal).

⁵³ Village Brief at 28.

⁵⁴ FOP Brief at 14-15, 17-23.

⁵⁵ FOP Exhibit 12 at 5. *See also*, Village Exhibit 2 at 2 (similarly showing six officers without such stipends as of April 30, 2017).

payments for the prior year.⁵⁶ A significant part of the bargaining unit does not get this additional compensation which the Village seeks to be counted for selecting offers on the base pay in this proceeding. And as provided in the Agreement, stipends that are paid are in varying amounts.⁵⁷ Given the number of the bargaining unit employees who do not receive the additional compensation and that stipends that are paid are in differing amounts to some employees in the bargaining unit, I find that stipends should not be included for setting the base wage rate for all employees in the bargaining unit. There are too many parts and variations to the stipends benefit.

Further, the parties recognize in the Agreement that the wage rate to be used in these kinds of proceedings is the base rate without the stipends the Village seeks to include. Although I have not used external comparables in this case, Appendix B, Section 2 of the prior Agreement provides that “[f]or purposes of comparing comparable communities’ base wages, the amounts paid by the Village, under this subparagraph, shall be added to the amounts shown in in section 1 above.” The referenced subparagraph is “... the Nationwide PEHP for patrol officers ...” The “base wage” as understood by the parties in the Agreement to be used if comparisons to comparable communities are made did not include the stipends the Village seeks to utilize in this case. If the parties agreed that stipends should not be used for comparison purposes

⁵⁶ FOP Exhibit 12 at 14.

⁵⁷ See e.g., Section 15.3 and 15.4 of the prior Agreement (Shift Leader and Detective) which are the same; Section 15.5 (Acting Shift Leader – which is different from Shift Leader and dependent upon time worked). There are further (and, again, different) stipends for Field Training Officer (Section 15.7) and Paramedic/EMT B (Appendix B, Section 4 – again, in differing amounts from other stipends).

for determining the base wage rate for external comparability purposes, then those elements of pay should also not be used for other comparison purposes.⁵⁸

Finally, when the parties litigated wage rates in the prior interest award before Arbitrator Finkin, stipends were not discussed as part of the wage rates urged. There is no reason this case should be any different.

A common denominator is needed to rationally set the base wage rate. The non-payment of stipends to some members of the bargaining unit and the differing amounts for those who are paid along with how the parties treated stipends and base rates in Appendix B lead to the conclusion that the stipends sought by the Village to be included should therefore be kept separate from the base wage rate analysis.

c. Analysis

Since the commencement of the Great Recession in 2008 and my movement away from use of external comparables, I have found for Section 14(h) purposes that “applicable” factors used to determine wage increases of simple percentage rates (*i.e.*, added up) are [1] the cost of living as measured by the Consumer Price Index, [2]

⁵⁸ Although this is an interest arbitration and not a grievance arbitration, there is a rule of contract construction that supports the exclusion of stipends urged by the Village to be included. One of the fundamental rules of contract construction (and I am looking at a contract provision here) is that to express one thing is to exclude another. See *Elkouri and Elkouri, How Arbitration Works* (BNA, 5th ed.), 497 [footnotes omitted]:

Frequently arbitrators apply the principle that to expressly include one or more of a class in a written instrument must be taken as an exclusion of all others. To expressly state certain exceptions indicates that there are no other exceptions. To expressly include some guarantees in an agreement is to exclude other guarantees.

See also, *In Re Globe Building Materials, Incorporated*, 663 F.3d 631, 635 (7th Cir. 2006) (referring to “... the concept *expressio unius est exclusio alterius*, ‘to express or include the one thing implies the exclusion of the other’”).

Here, the parties *specifically* included only the provisions of the Nationwide Plan in Appendix B, Section 2 “[f]or purposes of comparing base wages” Applying the above rule of contract construction, the other contractual stipends now sought by the Village were therefore intended by the parties to be excluded from consideration.

internal comparability and [3] overall actual wage compensation. *Streator, supra* at 20-21 and authority cited:⁵⁹

Specifically, to evaluate wage offers, the analysis I have been following in other cases has looked at the simple percentage increases; the compounded percentage increases; the actual cost of living for periods that have passed and for which data exist as reflected by the CPI from the Bureau of Labor Statistics (“BLS”); projected cost of living increases from economic forecasters; the effect of step movements; and internal comparables.

That analysis will be used for this issue.

(1). Cost of Living

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

(a) The Consumer Price Index as a Cost of Living

The FOP argues that the “... cost of living data is notoriously misleading ...”⁶⁰ citing Smith, “It’s Time to Ditch the Consumer Price Index (CPI)” (blog, April 6, 2014)⁶¹ and Boring, “If You Want to Know the Real Rate of Inflation, Don’t Bother With the CPI” (Forbes, February 3, 2014).⁶² *See also*, Greenless and McClelland, “Addressing Misconceptions about the Consumer Price Index” (Monthly Labor Review August 2008).⁶³

⁵⁹ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>

⁶⁰ FOP Brief at 9 and *id.* at note 6.

⁶¹ <http://charleshughsmith.blogspot.com/2014/04/its-time-to-ditch-consumer-price-index.html>

⁶² <https://www.forbes.com/sites/perianneboring/2014/02/03/if-you-want-to-know-the-real-rate-of-inflation-dont-bother-with-the-cpi/-10fd9242200b>

⁶³ <https://www.bls.gov/opub/mlr/2008/08/art1full.pdf>

The Bureau of Labor Statistics does not necessarily disagree with the FOP's assertion, noting that the CPI may not be an accurate measure of the cost of living. See BLS Frequently Asked Questions regarding the CPI:⁶⁴

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

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

* * *

The problem is that notwithstanding the above criticism and distinctions, the IPLRA *directly* equates the CPI with the cost of living. Again, Section 14(h)(5) provides consideration of “[t]he average consumer prices for goods and services, *commonly known as the cost of living*” [emphasis added].

Right or wrong, the IPLRA's direct statutory tie of the CPI to the cost of living therefore answers the question for purposes of this proceeding of whether the CPI is

⁶⁴ https://www.bls.gov/cpi/questions-and-answers.htm - Question_9

the same as a cost of living. As far as the IPLRA (which governs my decision in this case) is concerned, it is. The CPI shall therefore be considered as the cost of living factor under Section 14(h)(5) of the IPLRA.

(b) Application of the Cost of Living Factor

As of this writing, the BLS has provided CPI data running through February 2019 (issued March 12, 2019).⁶⁵ As found *supra* at III(1), the term of this Agreement is May 1, 2017 – April 30, 2020. Therefore, actual data exist for the first year of the Agreement (May 1, 2017 – April 30, 2018), but not for the complete contract years following May 1, 2018 (May 1, 2018 – April 30, 2019 and May 1, 2019 – April 30, 2020). It is therefore necessary to turn to the economic forecasters for the out years of the Agreement.

For determining CPI data for future periods, I have used the Federal Reserve Bank of Philadelphia’s Survey of Professional Forecasters (“Philadelphia Fed Survey of Professional Forecasters”) as it “... is the oldest quarterly survey of macroeconomic forecasts in the United States.”⁶⁶ While certainly not 100% accurate as no one has a

⁶⁵ Until the next news release (when this month’s release will be archived by the BLS), the March 12, 2019 report with February 2019 data can be found at:
<https://www.bls.gov/news.release/pdf/cpi.pdf>

⁶⁶ 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/>

crystal ball for predicting inflation, the Philadelphia Fed Survey of Professional Forecasters is a useful tool for forecasting the impact of future inflation on wage rates.⁶⁷

The FOP has relied upon the BLS data for the CPI in the Midwest urban area.⁶⁸ While disagreeing with the FOP's selection of the geographical area for CPI analysis ("... the Village believes the Chicago-Gary-Kenosha CPI is more relevant than any other CPI measure"), the Village agreed for this case to use the Midwest urban geographic area for the CPI analysis.⁶⁹ Given that stipulation for this case, the Midwest urban CPI data will therefore be used.⁷⁰

⁶⁷

The most recent version of the Philadelphia Fed Survey of Professional Forecasters (Fourth Quarter 2018) issued November 13, 2018.

<https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2018/survq418>

While it was hoped that the First Quarter Survey for 2019 would have issued for use in this award, the Philadelphia Fed has delayed issuance of that survey from February 15, 2019 to March 22, 2019.

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

The Philadelphia Fed Survey of Professional Forecasters 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.

⁶⁸

See Tr. 48-49 [questioning of FOP counsel by Village Counsel]:

Q. You used in your cost of living Midwest urban?

A. Yes.

Q. Any particular reason you picked that one?

A. Years ago I looked into this and settled on Midwest urban as being the best alternative and that's what I use.

The FOP also presented data from the BLS utilizing the Midwest Urban geographic area. FOP Exhibit 7.

⁶⁹

Village Brief at 3, note 2:

... While the Village believes the Chicago-Gary-Kenosha CPI is more relevant than any other CPI measure, the Village will join the Union here and stipulate, for purposes of this proceeding only, that the Midwest CPI is the proper CPI measure for the Arbitrator to utilize. Therefore, all references herein will be to the Midwest CPI.

⁷⁰

See Section 14(h)(2) of the IPLRA – the factor "[s]tipulations of the parties."

The CPI data from the BLS show the following for the relevant time periods in agreed-upon Midwest urban geographic area:⁷¹

**CPI-All Urban Consumers
Area: Midwest**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017	228.279	228.633	228.824	229.682	229.705	229.780	229.820	230.443	231.030	230.660	231.084	230.548
2018	232.028	232.512	232.931	233.913	235.065	235.455	235.346	235.276	235.524	235.680	234.292	233.458
2019	233.837	235.444										

The Philadelphia Fed Survey of Professional Forecasters shows the following for CPI:⁷²

**Median Short-Run and Long-Run Projections for Inflation
(Annualized Points)**

Headline CPI	
Current	
Quarterly	
2018:Q4	2.3
2019:Q1	2.4
2019:Q2	2.3
2019:Q3	2.3
2019:Q4	2.4
Q4/Q4 Annual Averages	
2018	2.4
2019	2.3
2020	2.3

Using the CPI data (actual and forecasted set forth above) for the term of the Agreement, the CPI increases for the years covered by the Agreement are currently:

⁷¹ For the Midwest urban geographic area, go to:
<https://data.bls.gov/cgi-bin/surveymost?cu>
Select “Midwest Region All Items, 1982-84 = 100” and then “Retrieve data”.

⁷² <https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2018/survyq418>

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Contract Year	CPI Midwest
5/1/17 - 4/30/18	1.83% ⁷³
5/1/18 - 4/30/19	2.30% ⁷⁴
5/1/19 - 4/30/20	2.30% ⁷⁵
Total	6.43%

Putting the CPI and the parties' wage offers together yields the following:

⁷³

This is actual and not forecasted data. According to the BLS and utilizing the CPI-Midwest geographic area, May 2017 reported at 229.705 and April 2018 reported at 233.913. See BLS CPI data set forth above. Therefore, the CPI increased during the May 1, 2017 – April 30, 2018 period as follows:
 $233.913 - 229.705 = 4.208$. $4.208 / 229.705 = 0.0183191$ (1.83%).

The parties used the same data sets from the BLS for the CPI - Midwest urban. See Village Brief at 34; FOP Exhibit 7.

The period May 2017 through April 2018 rather than May 2017 through May 2018 is used for this calculation because the purpose is to overlay a 12-month contract year in a collective bargaining agreement with the CPI changes in that *specific* contract year. Thus, there are 11 changes in the CPI for any 12-month contract year. To do otherwise (*i.e.*, here, measure from May 2017 through May 2018 as opposed to the contract year May 2017 through April 2018) would result in counting a CPI change in a different contract year – the change from April 2018 to May 2018 where May 2018 is in the next contract year. Specifically, the employees start out with a wage rate in May 2017 and the first CPI change for that contract year does not come until June 2017 and further adjustments to the CPI continue through April 2018. To measure from May 2017 through May 2018 as opposed to only through April 2018 would be measuring into the first month of next contract year as May 2018 is in the contract year 2018-2019 and not 2017-2018 which is the year for comparison with the actual CPI changes. See *Cook County Sheriff, supra* at 16, note 24. While an actual May-to-May measure may work for economists looking at CPI trends, that period does not work for examination of actual CPI changes in a contract year for collective bargaining agreements.

⁷⁴

This is forecasted data. The Philadelphia Fed Survey of Professional Forecasters forecasts Headline CPI for 2019 with quarterly comparisons (averages for the four quarters of 2019 compared to the same periods in 2018).

The 2019:Q2 (April – June 2019 projected average compared to April – June 2018 projected average) is the closest to the May 1, 2018 – April 30, 2019 contract period for the second year of the Agreement, which the Philadelphia Fed Survey of Professional Forecasters forecasts to be 2.3% for Headline CPI. While the measuring periods are different for the forecasts than they are for the computation when actual CPI data exist and there are no geographic distinctions for the forecasts (*i.e.*, Midwest versus U.S. city average or IL-IN-WI), the short answer is that this is the best data that is available and must be worked with as forecasts.

⁷⁵

This is also forecasted data. The current Philadelphia Fed Survey of Professional Forecasters does not give quarterly forecasts for 2020, but gives an annual forecast of 2.30% increase for Headline CPI in 2020 based on Q4/Q4. For this analysis, that is 2.30% and given that 2019 is forecasted at 2.30%, 2.30% as forecasted is a reasonable number to also use for 2019-2020.

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Contract Year	Village Offer	CPI	Difference	FOP Offer	CPI	Difference
5/1/17 - 4/30/18	0.00%	1.83%	-1.83%	2.38%	1.83%	0.55%
5/1/18 - 4/30/19	2.25%	2.30%	-0.05%	2.40%	2.30%	0.10%
5/1/19 - 4/30/20	2.75%	2.30%	0.45%	2.30%	2.30%	0.00%
Totals	5.00%	6.43%	-1.43%	7.08%	6.43%	0.65%

The Village’s wage offer falls 1.43% below the CPI over the life of the Agreement and in two of the three contract years (2017-2018 and 2018-2019) is below the CPI for those years; with the real difficulty for the Village coming in the first year of the Agreement where its 0.00% wage offer is 1.83% *below* the *actual* CPI change.

The FOP’s wage offer misses the CPI changes by only 0.65% over the life of the Agreement; matches the CPI in the third year of the Agreement and is a fraction of a point above the CPI in the first two years of the Agreement.

The Village’s proposed 0.00% wage increase in the first year (where it will have the largest adverse impact on the employees’ roll-up money in the Agreement) is really the offer that completely undermines the Village’s position on this factor.

The cost of living factor therefore supports the FOP’s wage offer.⁷⁶

⁷⁶ Although the parties are in agreement for this case to use BLS data from the CPI-Midwest urban geographic area (which shows a 1.83% increase in the CPI for the contract year May 1, 2017 – April 30, 2018), it seems that because of Flossmoor’s geographic proximity to Chicago, the more relevant data set is for the IL-IN-WI geographic area (Chicago-Naperville-Elgin). Using the same retrieval procedure from the BLS website but selecting “Chicago All Items”, use of that data set shows a 1.93% increase in the CPI for the May 1, 2017 – April 30, 2018 contract year ($237.940 - 233.443 = 4.507$ $4.507 / 233.443 = 0.0193066$ (1.93%)), the ultimate effect being, as now discussed, that the Village’s wage offer would have been further below the CPI than using the CPI-Midwest urban geographic area (which yielded a 1.83% increase in the CPI) as the parties have agreed to do in this case. Similarly, had the parties used the U.S. city average from the BLS (retrieving on “U.S. All items, 1982-84=100”), the increase in the CPI would have been 2.38% for the May 1, 2017 – April 30, 2018 contract year ($250.546 - 244.733 = 5.813$ $5.813 / 244.733 = 0.0237524$ (2.38%)), thus even further pushing down the Village’s wage offer when compared to the increase in the CPI.

However, again, the parties have agreed in this case to use the CPI data from the CPI-Midwest urban geographic area and that is what will be used in the analysis. The bottom line with all of these numbers is that by using the CPI-Midwest urban geographic area which yields the lowest CPI increase of the three relevant measures, the Village has received the benefit of all possible doubt.

(2). Internal Comparability

The focus now turns to internal comparability.

According to the Village, “[a]ll other employees have accepted the 0% wage increase for Fiscal Year 2018 in light of the hardships the Village faced.”⁷⁷ Further, according to the Village, it “... acknowledges that the other employee groups are not represented by a labor union.”⁷⁸ The FOP similarly points out that “[t]his Employer does not employ any other Section 14 employee groups ... [and f]or this reason, there are no internal comparables.”⁷⁹

The FOP is correct – there are no real internal comparables. *See Streator, supra* at 30 that even when there were other represented employee groups [footnotes omitted]:⁸⁰

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

The Village argues that internal comparability supports its position – particularly with respect to the 0.00% wage offer in the first year of the Agreement (“[a]ll other employees have accepted the 0% wage increase for Fiscal Year 2018 in light of the hardships the Village faced”).⁸¹ However, that 0% wage freeze was not negotiated,

⁷⁷ Village Brief at 49.

⁷⁸ *Id.*, citing Tr. 69.

⁷⁹ FOP Brief at 4.

⁸⁰ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>

⁸¹ Village Brief at 49.

but was imposed by the Village on the unrepresented employees. *See* the May 1, 2017 memo from Village Manager Wachtel to full-time non-union employees and qualifying part-time employees:⁸²

... The following decision was tough: there will be no salary increases for any positions this year. ...

There are no internal comparables. Internal comparability does not support the either party's position in this case.

(3). Overall Wage Compensation – The Real Money

Examination of simple wage percentage offers (*i.e.*, the 5.0% offer from the Village and the 7.08% offer from the FOP) is misleading and results in lower numbers for the wage increases than amounts actually received. That is because (1) wage increases compound (like a savings account, the second year's simple percentage increase is added to the first year's rate and the following years' simple percentages are applied to the preceding years' rates which results in compounding); and (2) employees who are not at the top step of the salary schedule can make step movements during the life of a collective bargaining agreement gaining the increased step wage rate along with the general wage increase for the year and similarly throughout the remainder of the contract.

Compounding and step movements constitute the "real money" impact of wage percentage increases. Those two elements now need to be examined.

The base rate salary schedules formed by the parties' offers will look like this:⁸³

⁸² Village Exhibit 20 at 2.

⁸³ Steps are annual until topped out at Step 6. *See e.g.*, Arbitrator Finkin's award in *Flossmoor*, *supra* at 4-5 showing annual step movements.

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VILLAGE OFFER (5.0%)

Effective	Start	Step 2	Step 3	Step 4	Step 5	Step 6
Last Contract	52,199	61,278	67,064	72,838	78,616	85,581
5/1/17 (0.0%)	52,199	61,278	67,064	72,838	78,616	85,581
5/1/18 (2.25%)	53,373	62,657	68,573	74,477	80,385	87,507
5/1/19 (2.75%)	54,841	64,380	70,459	76,525	82,595	89,913
Increase Over Life of Agreement ⁸⁴	2,642	3,102	3,395	3,687	3,979	4,332
Compounded Increase ⁸⁵	5.06%	5.06%	5.06%	5.06%	5.06%	5.06%

FOP OFFER (7.08%)

Effective	Start	Step 2	Step 3	Step 4	Step 5	Step 6
Last Contract	52,199	61,278	67,064	72,838	78,616	85,581
5/1/17 (2.38%)	53,441	62,736	68,660	74,572	80,487	87,618
5/1/18 (2.40%)	54,724	64,242	70,308	76,361	82,419	89,721
5/1/19 (2.30%)	55,983	65,720	71,925	78,118	84,314	91,784
Increase Over Life of Agreement	3,784	4,442	4,861	5,280	5,698	6,203
Compounded Increase	7.25%	7.25%	7.25%	7.25%	7.25%	7.25%

Therefore, the Village's 5.0% offer compounds to 5.06% and the FOP's 7.08% offer compounds to 7.25%. That is the real percentage value of the wage increases over the life of the Agreement.

With respect to annual step movements, the seniority lists provided by the parties show that ten officers have seniority dates on or before August 27, 2010.⁸⁶ Those

⁸⁴ May 1, 2019 wage rate – Last Contract wage rate.

⁸⁵ Increase over Life of Agreement / Last Contract wage rate.

⁸⁶ See FOP Exhibit 11; Village Exhibit 2 at 2. While the parties do not match on two of the seniority dates, there is no dispute that those employees' years of service place them at the top step as of the commencement date of the Agreement – May 1, 2017.

ten officers were therefore at the top step of the salary schedule as of May 1, 2017.⁸⁷

Those ten employees will make no step movements under this Agreement.

Further examining the seniority dates of the employees, the balance of the bargaining unit will make between one and four step movements during the life of the Agreement.⁸⁸ Those step movements look like this:

STEP MOVEMENTS VILLAGE OFFER (5.0%)

Effective	Start	Step 2	Step 3	Step 4	Step 5	Step 6
Last Contract	52,199	61,278	67,064	72,838	78,616	85,581
5/1/17 (0.0%)	52,199	61,278	67,064	72,838	78,616	85,581
5/1/18 (2.25%)	53,373	62,657	68,573	74,477	80,385	87,507
5/1/19 (2.75%)	54,841	64,380	70,459	76,525	82,595	89,913

STEP MOVEMENTS FOP OFFER (7.08%)

Effective	Start	Step 2	Step 3	Step 4	Step 5	Step 6
Last Contract	52,199	61,278	67,064	72,838	78,616	85,581
5/1/17 (2.38%)	53,441	62,736	68,660	74,572	80,487	87,618
5/1/18 (2.40%)	54,724	64,242	70,308	76,361	82,419	89,721
5/1/19 (2.30%)	55,983	65,720	71,925	78,118	84,314	91,784

⁸⁷ *Id.*

⁸⁸ *Id.*

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Seniority Date	No. of Employees ⁸⁹	Step From/To	Diff. (Village Offer)	Percent Change (Village Offer)	Diff. (FOP Offer)	Percent Change (FOP Offer)
Before 8/10	10	6 to 6	4,332	5.06%	6,203	7.25%
8/12	1	5 to 6	11,297	14.37%	13,168	16.75%
4/13	1	5 to 6	11,297	14.37%	13,168	16.75%
3/15	1	3 to 6	22,849	34.07%	24,720	36.86%
1/17	1	Start to 4	24,326	46.60%	25,919	49.65%
6/17 ⁹⁰	1	Start to 3	18,260	34.98%	18,484	34.59%

Thus, with the step increases showing the actual step movements over the life of the Agreement, the Village’s offer increases employees actual base wages from between 5.06% to 46.60% and the FOP’s offer takes employees from between 7.25% to 49.65%. That’s the real money impact of the parties’ offers on the wage schedule.

While the high-end percentages from both offers may at first seem staggering, as the FOP argues, the number of employees receiving more than just the compounded wage increase (5.06% for the Village and 7.25% for the FOP) are in the vast minority compared to the bargaining unit as a whole.⁹¹ As shown above, 10 of the 15

⁸⁹ The FOP asserts that “... there are only three members of this bargaining unit who are moving through the steps.” FOP Brief at 20. Using the FOP’s seniority list (FOP Exhibit 11), as of 2019 that is accurate due to step movements already made by two employees with August 2012 and April 2013 seniority dates as they moved from Step 5 to Step 6 in August 2017 and April 2018 respectively. However, *during the life of the Agreement* (which is the accurate measure) there will be a total of five employees who will have moved through the steps. Again, looking to the FOP’s seniority list (FOP Exhibit 11), in addition to the two who have already made step movements to Step 6, the three employees with March 2015, January 2017 and June 2017 seniority dates will continue making step movements prior to expiration of the Agreement on April 30, 2020.

As discussed *infra*, in the end it really doesn’t matter whether the number of employees making step movements is three or five. The relevant fact is that the vast majority of the unit (10 employees) are topped out and not making step movements.

⁹⁰ This employee with a June 2017 seniority date began working in the first year of the Agreement and therefore will be at the start rate in effect as of May 1, 2017 and not the start rate in effect under the last contract (which, in the case of the Village’s 0.0% offer in the first year of the Agreement was the same start rate under the last contract).

⁹¹ FOP Brief at 20.

members of the bargaining unit are topped out at Step 6 as of the commencement date of the Agreement and over the life of the Agreement will only receive the compounded wage increase, with no increases tied to step movements. And the five members moving through the steps are relatively new hires. The reality is that the vast majority of the bargaining unit will not see those high percentages of real money generated by step movements. The relative few who will be making movements in the step schedule should not change the result that the Village's compounded wage offer (5.06%) for the vast majority of the bargaining unit who have topped out is significantly below the cost of living increase (6.43%), while the FOP's compounded wage offer (7.25%) for that significant portion of the bargaining unit who have topped-out is more reasonably closer to that 6.43% cost of living increase.

This analysis favors the FOP's position.

d. Conclusion on the Wage Offers

Based on the above, the cost of living factor favors the FOP position; internal comparability favors neither party's position; and analysis of the real money resulting from the wage offers favors the FOP's position. The FOP's wage offer is therefore adopted.

However, the Village argues:⁹²

The Village has a finite amount of money. As such, the Village faces countless competing demands for that finite amount of money. ...

* * *

In this case, the Village in Fiscal Year 2018 was faced with serious challenges requiring immediate action. The Village's General Fund Revenues simply could not keep up with the growth in the General Fund Expenses.

⁹² Village Brief at 44-47 [record citations omitted].

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* * *

... [T]he Village’s revenue has not been able to recover from the Recession at the same rate as the Village’s budget has increased

....

* * *

... [A]mong other things, the State of Illinois reduced the Village’s share of the State Income Tax by 10% in Fiscal Year 2018.

* * *

... [T]he financial difficulties plaguing other communities were somewhat delayed in hitting Flossmoor, hitting Flossmoor the hardest leading up to Fiscal Year 2018. ...

As it must, the Village concedes that it “... is not claiming a technical inability to pay”⁹³ And it may be that the result of the wage offer adopted in this case will place a financial burden on the Village – a position disputed by the FOP (“[t]he Employer here enjoys financial health that would make most other communities envious.”).⁹⁴ However, this wage offer is adopted in accord with the statutory interest arbitration process under the IPLRA. The consequences of the selection of the FOP’s wage offer, if any, are now in the hands of the political and administrative structures within the Village. *See Streator, supra* at 33-34 [footnotes omitted and authority cited]:⁹⁵

For purposes of discussion, I accept the premise of the City’s argument – *i.e.*, that it has concluded that imposition of the FOP’s wage offer is too costly for the City. From what is before me though, that is not enough because the *consequences* of a higher wage or benefit offer than what has been offered by the City and imposed through the statutory interest arbitration process is now

⁹³ *Id.* at 47.

⁹⁴ FOP Brief at 12.

⁹⁵ <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>
The cited authority, *Highland Park*, is posted at:
<https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-273.pdf>

really a political and managerial decision. *See City of Highland Park and Teamsters Local 700*, S-MA-09-273, Arb. Ref. 11.120, (2013) at 9:

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

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

The FOP's wage offer is therefore adopted.⁹⁶

3. Stipends

The parties offer the following increases to stipends (also referred to as “add-ons”):⁹⁷

Stipend	Village (Effective 5/1/17)	FOP (Effective 5/1/18)
Shift Leader (Section 15.3)	Increase by 2.25%	Increase from \$119.00 to \$124.00 per pay period.
Detective (Section 15.4)	Increase by 2.25%	Increase from \$119.00 to \$124.00 per pay period.

⁹⁶ I recognize that with respect to stipends as part of the base wage rate discussed *supra* at III(2)(b), part of the rationale for excluding stipends from computation of the base wage rate which the Village sought to include was that six bargaining unit employees did not receive stipends for Shift Leader, Acting Shift Leader or Detective; four of those did not receive Paramedic/EMT-B stipends; and that here, five employees will be moving through the steps receiving significant real money increases but that is not sufficient to cause the Village's offered wage increase to be selected. The number of affected employees (six for stipends versus five for base wage rates) may not, at first, seem justifiable. That would not be an accurate assessment.

As earlier discussed concerning stipends, stipends were not considered for base wages for *a number* of reasons. Specifically, not only did I consider the number of employees receiving the benefit, but also relevant were the fact that the stipends varied in amounts and the parties had specified in Appendix B, Section 2 that only the Nationwide PEHP would be considered as an add-on for base wage comparisons, which, under the rules of contract construction means that no other add-ons were contemplated for base wage purposes. Here, with respect to wages, the bottom-line fact is that because they are topped-out at Step 6, ten of the approximate 15 bargaining unit members will not receive anything beyond the compounded wage increase of 7.25% offered by the FOP or 5.06% offered by the Village. Under the Village's offer of 5.06% compounded, that offer is still far below the CPI increase of 6.43% for a large portion of the bargaining unit.

Section 14(g) of the IPLRA provides that economic issues are to be decided on a final offer basis (“[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)”). I cannot select a wage offer that drives the vast majority of the bargaining unit below the increases in the cost-of-living as the Village's offer does – even when that offer is compounded.

⁹⁷ Village Final Offer – Joint Exhibit 3; Village Brief at 15; FOP Final Offer – Joint Exhibit 2; FOP Brief at 14.

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Stipend	Village (Effective 5/1/17)	FOP (Effective 5/1/18)
Acting Shift Leader (Section 15.5)	Increase by 2.25%	Increase from \$55.50 to \$58.00 per month. Also increase from \$27.75 to \$29.00 for time as specified.
Paramedic (8 yrs. or less service) (Appendix B, Section 4)	Increase by 2.25%	Increase from \$207.50 to \$215.00 per month.
Paramedic (after 8 yrs. service) (Appendix B, Section 4)	Increase by 2.25%	Increase from \$240.50 to \$248.00 per month
EMT-B (50% of Paramedic stipend applicable to years of service)	Increase by 2.25%	50% of Paramedic stipend applicable to years of service

The differences in the parties' proposals is as follows:

Position	Last Contract Payment	Village Offer (2.25%) per Final Offer	Village Offer Percent Increase Over Last Contract	FOP Offer (set amounts per Final Offer)	FOP Offer Percent Increase Over Last Contract	Difference Between Offers
Detectives and Shift Leaders	\$119 per pay period ⁹⁸	\$121.68 per pay period ⁹⁹	2.25%	\$124.00 per pay period	4.20% ¹⁰⁰	\$2.32 per pay period ¹⁰¹

⁹⁸ Prior Agreement at Sections 15.3 and 15.4.

⁹⁹ \$119.00 + 2.25% = \$121.68.

¹⁰⁰ \$124.00 – \$119.00 = \$5.00. \$5.00 / \$119.00 = 0.0420 (4.2%).

¹⁰¹ \$124.00 – \$121.68 = \$2.32.

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Position	Last Contract Payment	Village Offer (2.25%) per Final Offer	Village Offer Percent Increase Over Last Contract	FOP Offer (set amounts per Final Offer)	FOP Offer Percent Increase Over Last Contract	Difference Between Offers
Acting Shift Leaders	\$55.50 per month and \$27.75 for each duty 4 or more hours ¹⁰²	\$56.75 per month and \$28.37 for each duty 4 or more hours as specified ¹⁰³	2.25%	\$58.00 per month and \$29.00 for each duty 4 or more hours as specified	4.50% and 4.50% ¹⁰⁴	\$1.25 and \$0.63 per month ¹⁰⁵
Paramedics (8 yrs. or less service)	\$207.50 per month ¹⁰⁶	\$212.17 per month ¹⁰⁷	2.25%	\$215.00 per Month	3.61% ¹⁰⁸	\$2.83 per month ¹⁰⁹
Paramedics (after 8 yrs. service)	\$240.50 per month ¹¹⁰	\$245.91 per month ¹¹¹	2.25%	\$248.00 per month	3.12% ¹¹²	\$2.09 per month ¹¹³

¹⁰² Prior Agreement at Section 15.9.

¹⁰³ $\$55.50 + 2.25\% = \56.75 .

¹⁰⁴ $\$58.00 - \$55.50 = \$2.50$. $\$2.50 / \$55.00 = 0.0450$ (4.50%). $\$29.00 - \$27.75 = \$1.25$. $\$1.25 / \$27.75 = 0.0450$ (4.50%).

¹⁰⁵ $\$58.00 - \$56.75 = \$1.25$. $\$29.00 - \$28.37 = \$0.63$.

¹⁰⁶ Prior Agreement at Appendix B, Section 4.

¹⁰⁷ $\$207.50 + 2.25\% = \212.17 .

¹⁰⁸ $\$215.00 - \$207.50 = \$7.50$. $\$7.50 / 207.50 = 0.03614$ (3.61%)

¹⁰⁹ $\$215.00 - \$212.17 = \$2.83$.

¹¹⁰ Prior Agreement at Appendix B, Section 4.

¹¹¹ $\$240.50 + 2.25\% = \245.91 .

¹¹² $\$248.00 - \$240.50 = \$7.50$. $\$7.50 / \$240.50 = 0.03118$ (3.12%).

¹¹³ $\$248.00 - \$245.91 = \$2.09$.

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Position	Last Contract Payment	Village Offer (2.25%) per Final Offer	Village Offer Percent Increase Over Last Contract	FOP Offer (set amounts per Final Offer)	FOP Offer Percent Increase Over Last Contract	Difference Between Offers
EMT-Bs	\$103.75 and \$120.25 per month ¹¹⁴	\$106.08 and \$122.95 per month ¹¹⁵	2.25%	\$107.50 and \$124.00 per month ¹¹⁶	3.61% and 3.12% ¹¹⁷	\$1.42 and \$1.05 per month ¹¹⁸

As shown by the above, for those employees who receive these stipends, the parties' differences (monetary and percentage) are not really significant. But that is not the point. The parties are at impasse on this issue and it has to be resolved.

I return to the result from the base wage rate discussed *supra* at III(2). The FOP's offer was adopted and the employees did well – particularly given the 0.00% offered by the Village for the first year of the Agreement (which I rejected) which would have adversely affected the employees' roll-up money throughout the Agreement – and beyond; the employees will receive wages in excess of the cost of living as we now know it (or can reasonably predict it); and the portion of the bargaining unit moving through steps – although not that many – will receive substantial increases over the life of the Agreement. The simple question is notwithstanding those gains to the base rate (upon which other benefits such as overtime and pensionable payments exist), are the employees entitled to more than the increases in stipends offered by the Village?

¹¹⁴ Prior Agreement at Appendix B, Section 4 (one-half of Paramedic payment equivalent to years of service).

¹¹⁵ $\$212.17 / 2 = \106.08 . $\$245.91 / 2 = \122.95 .

¹¹⁶ $\$215.00 / 2 = \107.50 . $\$248.00 / 2 = \124.00 .

¹¹⁷ $\$107.50 - \$103.75 = \$3.75$. $\$3.75 / 103.75 = 0.036144$ (3.61%). $\$124.00 - \$120.25 = \$3.75$. $\$3.75 / \$120.25 = 0.03118$ (3.12%).

¹¹⁸ $\$107.50 - \$106.08 = \$1.42$. $\$124.00 - \$122.95 = \$1.05$.

This really comes down to justifying a larger increase in the face of an already good wage offer achieved by the FOP and a reasonable stipend offer made by the Village. Given the reasonable increase offered by the Village on stipends and considering the overall compensation received by the employees, I find no reason to further increase the economic benefits already achieved by the FOP in this case.

The Village's offer is therefore adopted.

4. Insurance

The FOP seeks to change Section 17.2 of the prior Agreement to read [new language underscored]:¹¹⁹

ARTICLE XVII INSURANCE

* * *

The Village will continue to pay a minimum of 80% of the cost of the premiums for full-time employees' individual coverage and a minimum of 80% of the cost of the premiums for fulltime employees' dependent group health and hospitalization coverage during this agreement.

The Village seeks to maintain the *status quo* with no change to existing language.¹²⁰

According to the FOP:¹²¹

The Union's proposal is to add the phrase "a minimum of to the provision requiring the Employer to pay "80% of the cost of the premiums" for health insurance; Article 17, Section 17.2. As the Union explained at the hearing, this language does not mandate that the Employer pay more than eighty percent, it merely allows for it. It is based on the belief that the current language could be

¹¹⁹ FOP Final Offer – Joint Exhibit 2; FOP Brief at 15.

¹²⁰ Village Final Offer – Joint Exhibit 3; Village Brief at 10-11.

¹²¹ FOP Brief at 15.

read to prohibit the Employer from paying more than eighty percent if it wanted, and that the Employer has paid greater than eighty percent of the insurance premium for other employees. The Union's proposal would allow the Employer to voluntarily do the same.

“In this conservative interest arbitration process, in order to change a *status quo* condition, there must be a showing by the party seeking the change that the existing *status quo* is broken.” *Streator, supra* at 18 and authority cited.¹²² Thus, the FOP has the burden to show that the language in Section 17.2 – which is the *status quo* – is broken. The FOP has not met that burden.

First, the FOP's concern is hypothetical. Nothing has happened to activate the language the FOP seeks. It is not the function of this proceeding to address such hypothetical concerns. *See Village of Barrington and Illinois FOP Labor Council, S-MA-13-167* (2014) at 20 [emphasis in original]:¹²³

... Given the very conservative nature of interest arbitration and the need of the moving party to show that an existing condition is broken before the *status quo* is changed, *at this time*, the Village's concerns are really hypothetical, at best. No doubt this issue *could* cause problems down the road, but as the Union correctly points out, “[i]t is simply too soon to bargain over health insurance in 2018, since no one knows what the landscape will be then.” If for some reason bargaining for the next Agreement drags on as the Village points out may happen, then if the Cadillac Tax becomes an issue, the parties will have to address any ramifications when the issue becomes (or is closer to becoming) ripe. For now, the Village's concerns are hypothetical and not sufficient to cause a change in the *status quo*.

Second, at best, the FOP's proposal is a “good idea.” However, a “good idea” is not enough to meet the FOP's burden. *Barrington, id.* at 5:

¹²² <https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf>

¹²³ <https://www2.illinois.gov/ilrb/arbitration/documents/s-ma-13-167.pdf>

In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that “good ideas” alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken).

...

Third, should the Village take the position raised by the FOP (which the Village has not done), the route for relief, if any, is through the grievance procedure in the Agreement and not in the interest arbitration process.

The Village’s position to maintain the *status quo* is therefore adopted.

5. Retroactivity

The FOP seeks to change Appendix B, Section of the prior Agreement to read [new language underscored]:¹²⁴

APPENDIX “B”

* * *

Section 3. Retroactivity.

All officers covered by this Agreement who are at the top rate of pay and who are still on the active payroll as of the beginning of the payroll period immediately following ratification of this Agreement by both parties, and all former bargaining unit members who left the bargaining unit during the term of this agreement due to promotion, retirement (including retirement due to disability), and/or disability shall receive a retroactive wage payment, based upon the annual wage increase, for all compensated time between May 1, 2014 and said payroll period. Those officers within the step plan shall receive a retroactive payment based upon the wage increase of their step. Retroactive pay shall not apply to special assignments which have occurred as of the date of execution and were specifically funded by government grants for purpose (Hireback and Roadside Safety Checks). Payment shall be made in a separate check within 60 days of execution.

¹²⁴ FOP Final Offer – Joint Exhibit 2; FOP Brief at 15.

The Village seeks to maintain the *status quo* with no change to existing language.¹²⁵

According to the FOP:¹²⁶

The Union proposes expanding the pool of employees eligible to receive retroactive pay by adding “all former bargaining unit members who left the bargaining unit during the term of this agreement due to promotion, retirement (including retirement due to disability) and/or disability.” There are at least one, possibly two former bargaining unit members who would be affected by this. One was promoted out of the unit, another has been on sick or injury leave and may not return to duty. The Union’s proposed language is limited to three discrete classes of former bargaining unit member: those who are promoted out of the unit, and those who become sick or injured, and those who retire. It is beneficial to both Parties that retirees and promoted employees receive retroactive pay. It encourages more senior, hence more expensive, employees to retire knowing that they will receive retroactive pay, rather than staying until the contract is resolved, possibly years later. Similarly, employees who would like to seek promotion—and who the Employer would like to promote—could do that without concern for losing possibly thousands of dollars in retroactive pay. The third group—those who leave due to disability—should not lose out on retroactive pay because they can no longer work due to no fault of their own. ...

From the FOP’s perspective, its proposal (which in similar variations can be found in many contracts to cover employees who may have left the bargaining unit after a contract has expired and during the pendency of negotiations or the interest arbitration process for a new contract) is perhaps a “good idea.” However, again and as with the FOP’s insurance proposal discussed *supra* at III(4), in the conservative interest arbitration process, a “good idea” is not enough to change a *status quo*

¹²⁵ Village Final Offer – Joint Exhibit 3; Village Brief at 12-14.

¹²⁶ FOP Brief at 24.

because there must be a showing by the party seeking the change that the existing *status quo* is broken. *Barrington, supra* at 5.

The Village's offer on retroactivity is therefore adopted.

IV. AWARD

The following is awarded:

1. Duration

FOP Offer:

Three years (May 1, 2017 through April 30, 2020).

2. Wages

FOP Offer:

Effective Date	Increase
5/1/17	2.38%
5/1/18	2.40%
5/1/19	2.30%
Total	7.08%

3. Stipends

Village Offer:

2.25% increase to designated stipend positions as proposed.

4. Insurance

Village Offer:

No change – *status quo*.

5. Retroactivity

Village Offer:

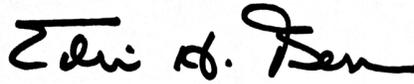
No change – *status quo*.

6. Prior Tentative Agreements

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

7. Remand and Retention of Jurisdiction

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



Edwin H. Benn
Arbitrator

Dated: March 13, 2019