

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of Interest Arbitration :
Between :
City of Elgin :
and :
Local 439, IAFF :

Appearances: Seyfarth Shaw by Mr. R. Theodore Clark, Jr. for the City
Feldman Cornfield and Feldman by Mr. J. Dale Berry and Mr. Gilbert
for the Union

The above-captioned parties were unable to resolve a dispute over the economic and non-economic issues to be included in their 2004-2006 Agreement. They selected Edward B. Krinsky as arbitrator to make a final and binding determination of the dispute.

A hearing was held on August 30 and 31, and October 26, 2004 at Elgin, Illinois. A transcript of the hearing was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The arbitrator received the parties' briefs on May 5, 2005.

The arbitration is conducted pursuant to Section 14 of the Illinois Labor Relations Act. The statute requires the arbitrator to choose either party's final offer on each of the economic items, and to consider each non-economic issue separately in determining which final offer should be implemented. There are six unresolved economic issues, and two unresolved non-economic issues. Each issue is discussed in turn, below.

Final Offers on Economic Issues:

Economic Issue 1 - Salary Range

City:

For 2004, the City offers to increase the monthly and yearly salary ranges for both Firefighters and Lieutenants by 5.0% of which three quarters of one percent (0.75%) is an internal/external equity adjustment.

For 2005 the City offers to increase the monthly and yearly salary ranges of Firefighters by 4.25%. The City offers to increase the monthly and yearly salary ranges of Lieutenants by 4.75% of which one-half of one percent (0.50%) is an internal/external equity adjustment.

For 2006 the City offers to increase the monthly and yearly salary ranges of Firefighters by 3.75%. The City offers to increase the monthly and yearly salary ranges of Lieutenants by 4.5% of which three quarters of one percent (0.75%) is an internal/external equity adjustment.

The foregoing salary increases are in addition to all in-range step increases...which employees may be eligible for on their anniversary dates during the term of this Agreement.

Union

For 2004 the Union offers to increase salaries of Firefighters and Lieutenants by 6%.
For 2005 the Union offers to increase salaries of Firefighters and Lieutenants by 6%.
For 2006 the Union offers to increase salaries of Firefighters and Lieutenants by 5%.

Discussion of Economic Issue 1 - Salary Range

The City notes that in 17 of the previous 18 years, the percentage salary increases of the Elgin Firefighters and Police have been the same. The City acknowledges that its offer to the Firefighters in the present dispute is not identical to what it has offered to Police, but the City's offer to the Firefighters is closer to what the Police received, than is the Firefighters' offer. The Police contract calls for increases of 4.5% for 2004, 4.5% for 2005, 2% for the first half of 2006 and an additional 2% for the second half of 2006.

The City argues, that the City's final salary offer on percentage salary adjustments does not match up precisely with the Police PBPA contract has more to do with the City's obligation to negotiate in good faith with the PBPA and the fact that the City's final salary offer in this case was submitted several months before the Police PBPA contract was negotiated. The City argues that if the lift to wages is considered, the increase received by the Police for the three year period is 13%, which is also what the City has offered to the Firefighters. The Union's offer is a 17% increase.

The internal comparisons include the two bargaining units represented by SEIU. Those units accepted a 3.5% increase in each of two years. The City's offer is closer to those increases than is the Union's offer.

The parties agree that the following jurisdictions are appropriate comparables: Arlington Heights, Aurora, Des Plaines, Evanston, Joliet, Oak Park, Skokie and Waukegan. These eight external comparables have three sets of fiscal years among them. Three, like Elgin, use January 1st; three have a May 1st fiscal year, and two have a March 1st fiscal year. The City makes comparisons based on a snapshot of where wages are on

January 1st of each year. The Union's comparisons include all adjustments made between January 1st and June 30th, a method to which the City objects because it includes adjustments to salary and benefits, even though the particular salary or benefit does not become effective until many months after the January 1 start of Elgin's fiscal year.

The City argues that its offer maintains the same ranking among the comparables which resulted from the voluntary agreement with the Union in the last negotiations, which was 6 of 9 as of January 1, 2000. It is the case that on January 1, 2004 under the City's offer, the rank is 7 of 9, and Elgin's top Firefighters salary is \$ 605 below the average, a differential of 1%, but as of January 1, 2005 under the City's offer Elgin's rank is once again 6 of 9, and Elgin's top Firefighters salary is \$225 below the average, a differential of .04%.

The City views its offer as more reasonable than the Union's when looked at in percentage terms. The average increase among the comparables for 2004 is 3.81%, while the City's offer is 5%, and the Union's offer is 6%. Of the six known settlements to date for 2005 the average percentage increase is 3.63%, while the City's offer is 4.25% for Firefighters and 4.75% for Lieutenants, and the Union's offer for both classifications is 6%. The average of the three known 2006 settlements is a 3.58% increase, while the City is offering 3.75% to Firefighters and 4.5% to Lieutenants, and the Union's offer for both classifications is 5%.

The City notes that during the arbitration hearing it was persuaded by the Union's arguments that there was a need to do more for Lieutenants, in relationship to Firefighter salaries, and thus the City has offered a larger increase in pay to Lieutenants. It argues that under its offer, the spread between firefighters and lieutenants will approximate the spread for the eight external comparables... and it will move Elgin to the median of the external comparables. The City, notes, too that after arguing for a larger increase for Lieutenants, the Union in its final offer dropped the wage compression issue, and offered the same percentage increase for Firefighters and Lieutenants. As a result, the spread between firefighters and lieutenants will remain exactly the same. Only the City's final offer addresses the compression issue. As a result, the City's final salary offer is definitely more reasonable on this score. This accounts also for the fact that firefighters received somewhat less in the second and third years under the City's final offer... because the City responded affirmatively to the Union contention that lieutenants should receive somewhat more. This, the City argues, adds to the reasonableness of its offer.

The City notes that one of the statutory factors to be considered is the cost of living increase. It presented CPI figures for 2004 showing increases of 3.3% or 3.4% nationally, depending on which index is used, and of 2.2% or 2.4% for the Chicago Metropolitan area.

The Union argues that in recent years there has been a growing disparity between Police and Firefighter wages in Elgin. At the top rank, Firefighters were behind Police by 4.09% in 1996 and 4.85% in 2003. In dollar terms the disparity has grown from

\$1,836 to \$2,788. Under the final offers in the present dispute, the disparity will remain under the City's offer, while it will be reduced to .97% under the Union's offer. The City offer applies the same percentage increases, but because of the existing disparity, the result is an increase in the dollar gap. The Union notes that in his 1997 arbitration decision, Arbitrator Fleischli awarded catch up pay when the dollar differential had been only \$ 1,416,Ó much less than the current differential. The Union notes, too, that Arbitrator Fleischli awarded an equity adjustment, rejecting the City's position that its offer should be implemented because it offered the same percentage increase to both Police and Firefighters.

The Union argues that in 2003 the average percentage settlement among the comparables was 4.47%, while the settlement in Elgin was only 3.25%. The result was that as of January 1, 2003 Elgin ranked 8 of 9. The current negotiations should take account of that 1.22% disparity. The Union discounts the City's argument that because the 2000-2003 Agreement was a voluntary one, the disparity should be ignored. The Union states, the plain fact is that this contract is the Union's first opportunity to address the inequities exacerbated during the term of the predecessor contract, 1999-2003.Ó

The Union's exhibits were prepared prior to the settlements reached in Evanston and Skokie. Also, the Union assumed for any unsettled jurisdiction that there would be a wage increase of 4%. For purposes of analysis, the arbitrator has kept those assumptions, but has included the Evanston and Skokie settlements. The Union's revised exhibits show that for 2003, the top firefighter rate in Elgin was \$ 22.06, which ranks 7 of 9, which was 3.7% below the average. For 2004, the Union's offer would rank Elgin 8 of 9, which is 2.9% below the average, while the City's offer results in Elgin being ranked 8 of 9, and 3.8% below the average. Viewed as an hourly rate, for 2004 Elgin's top salary offered by the Union of \$22.95 per hour is 7 of 9, and 1.5% below the average, while the City's offer of \$ 23.17 is 7 of 9 and 3.4% below the average.

The revised Union tables show that for 2005, the Union's offer results in Elgin having a rank of 7 of 9 among the comparables, at the average salary of the comparables, and fractionally above the average hourly pay. The City's offer would be 7 of 9 and 2.4% below the average salary and 1.1% below the average hourly pay. By the end of 2006, again using the assumption of 4% increases in the unsettled comparables, the Union's offer results in Elgin being ranked 5 of 9 and above the average salary by 1.1% and above the hourly rate by 3%, while the City's offer results in Elgin being ranked 7 of 9 and 2.6% below the average salary and 1.3% below the average hourly pay.

The Union acknowledges that the City addresses the continuing inequity for Lieutenants, but not as well as the Union's offer does, and it views the City's proposal, even with equity adjustments, as too little too late. The Union's comparison data for Lieutenants show that in 2003 Elgin's Fire Lieutenants were paid \$ 12,192 less than Police Sergeants, a differential of 18.29% The Union's external comparisons show Elgin's Lieutenants ranked 9 of 9, a differential of 7.30% below the average. (The Union notes that in 1996, Elgin's Lieutenants were ranked 7 of 9)

The Union calculates that for 2005, its offer would result in a ranking for Lieutenants of 8 of 9, and 3.7% below the average salary and 2.3% below the hourly rate. The City's offer would rank 9 of 9 and 6.7% below the average salary and 4.4% below the hourly rate.

The Union calculates that for 2006, its offer would result in a ranking for Lieutenants of 8 of 9, 2.8% below the average salary and 1.3% below the hourly rate. The City's offer would rank 9 of 9 and 5.3% below the average salary and 3.9% below the hourly rate.

The Union argues that no weight should be given to consideration of the cost-of-living increases because both parties recognize the need to give equity adjustments which exceed the CPI increase.

The arbitrator is required by statute to select one final offer or the other. There is no issue about the City's ability to pay what the Union is proposing, although the arbitrator has noted the City's arguments that the City has felt the need to institute a hiring freeze and lay off a number of workers in other bargaining units to achieve budgetary savings. The Union has put into evidence exhibits showing that in relationship to the external comparables, Elgin ranks at the bottom with respect to Firefighters career earnings, although there is no evidence that this is a new development, and at or near the bottom with respect to various financial incentives, for example for paramedics, and incentive pay, although in its final offer the Union has not sought increases in these areas. It appears that there is support for the Union's arguments that the Firefighters should receive greater compensation. The issue before the arbitrator is limited to the amount of salary increase, however. Both final offers exceed the cost of living increase and the average increase given to external comparables, and in so doing provide some equity increases to Firefighters and Lieutenants, although the Union's final offer does not designate them as such. The City's final offer more closely tracks the increases given to its other three bargaining units, all of which have reached voluntary settlements. The Union's final offer would be a substantially larger settlement, and would deviate from the traditional parity in Elgin between Police and Fire across the board wage increases.

There is a related matter which should be noted. The Union has cited an interest arbitration award in Elgin by Arbitrator Fleischli in which he selected the Union's final offer on wages to reduce what he viewed as an inequitable differential with the Police. He made it clear, however, that what allowed him to do that was that the City and Police had not yet reached a settlement, and therefore he was not as constrained by the arguments about historical parity between Police and Fire settlements as he otherwise would have been. In the present case, the Police have reached a voluntary settlement with the City, which the arbitrator has had to take into account.

The arbitrator has weighed the evidence and the statutory factors and has decided that on this issue, the City's final offer should be selected.

Economic Issue 2 - Longevity Pay

City:

Effective January 1, 2005 employees with continuous service with the City in a position covered by this Agreement shall receive annual longevity pay in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Amount of Longevity Pay</u>
10 years but less than 15 years	\$ 500
15 years but less than 20 years	\$ 750
20 years or more	\$1000

Effective January 1, 2006 employees with continuous service with the City in a position covered by this Agreement shall receive annual longevity pay in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Amount of Longevity Pay</u>
10 years but less than 15 years	\$ 600
15 years but less than 20 years	\$ 950
20 years or more	\$1200

Union

Article 8, Section d. Longevity Pay. In addition to the base salary provided for in Article 8, Section a, employees shall receive increased pay based upon their years of service in accordance with the following schedule:

After 10 years of service	\$ 600
After 15 years of service	\$ 1200
After 20 years of service	\$ 1800

Discussion of Economic Issue 2 - Longevity Pay

The City notes that despite there being a bargaining relationship between these parties since the 1970s and despite there having been two prior arbitrations, the parties have never included longevity benefits in their Agreement. The City notes that by 1996, 7 of the 8 comparables had longevity, and the 8th has it as of January 1, 2004. In this context, the City views its offer as generous and more reasonable than the Union's offer. The City views this history as supportive of its position that there is no imperative or compelling justification to award the substantially higher amounts of longevity pay that are provided in the Union's final offer. The City notes also that the Union's offer with respect to longevity is higher than 4 of the 8 comparables.

The City views as important also that the longevity pay which it offers, ...tracks verbatim with the longevity pay provisions negotiated in the City's new contract with the PBPA for the Police bargaining unit it offers the same amounts, years of service, and effective dates.

The Union notes that all of the comparables have had longevity for a long time. Both parties offers recognize that longevity is needed, and thus it is irrelevant that this is the first time the City has offered a longevity benefit. Under the City's offer Elgin would rank last, while under the Union's offer the ranking would be in the middle.

The City's offer provides to the Firefighters the same longevity benefits which are provided to the Police under the recently negotiated Police contract. The arbitrator supports the proposition that where possible, an employer should provide uniform benefits to its employees. The City's offer of longevity achieves that with the Firefighters and Police, while the Union's offer does not.

With respect to the external comparables, the Union's offer falls close to the middle for those with 20 years or more of service (ranked 5 of 9), while the City's offer is at the bottom. The data show that for 2003, the average longevity benefit among the comparables for a Firefighter with 20 years of service was \$ 1999. The Union proposes an \$1800 longevity benefit beginning in 2004. The City's proposal is a \$ 1000 benefit in 2005 and a \$ 1200 benefit in 2006

As noted above, longevity benefits have been bargained for many years by the comparables, but this is the first time that these parties have bargained about them. Both parties have now recognized the desirability of having longevity benefits. Their difference is in what amount is appropriate.

Given that this is a new benefit, which the parties will be able to build on in subsequent Agreements if they deem improved longevity benefits to be a matter of some priority, it is the arbitrator's view that for this round of bargaining more weight should be given to maintaining uniformity of this new benefit with the Police than to catching up to the longevity benefits among the comparables, and thus the arbitrator favors the City's offer.

Economic Issue 3 - Health Insurance Premiums

City

Medical Insurance (PP0)

Effective January 1, 2005 the City will pay 92.5% of the specified premium for the coverage selected (i.e., single, single plus 1 or family) and the employee will pay via payroll deduction the remaining 7.5% of the specified premium.

Effective January 1, 2006 the City will pay 91.5% of the specified premium for the coverage selected (i.e., single, single plus 1, or family) and the employee will pay via payroll deduction the remaining 8.5% of the specified premium.

Health Maintenance Organization (HMO)

The City offers the same percentages of premiums for the HMO as are shown for Medical Insurance (PP0) above.

In addition, the City offer includes the addition of a new Article 16, Section f:

Section f. Section 125 Plan. Effective as soon as possible after issuance of Arbitrator Krinsky's interest arbitration award, the City will implement a Section 125 plan that will enable employees to tax shelter the amount they pay towards the cost of insurance coverage, as well as tax shelter amounts used to pay for unreimbursed medical expenses and child care/dependent care expenses.

Union

The Union offers to establish employee contribution to insurance premium costs for PPO and HMO plans as follows:

Effective March 1, 2005 the City shall contribute to this program a cost equal to the full premium and liability of the City's basic comprehensive major medical insurance plan less the amount of employee contributions to such premium costs as follows:

Effective 3-1-2005

Single	\$ 10.00 / pay period
Single+1	\$ 12.50 / pay period
Family	\$ 15.00 / pay period

Effective 3-1-2006

Single	\$ 15.00 / pay period
Single+1	\$ 17.50 / pay period
Family	\$ 25.00 / pay period

Discussion of Economic Issue 3 - Health Insurance Premiums

The City is attempting to negotiate health benefits which are the same for all bargaining units. During the course of this arbitration the City and all four bargaining units (including the Firefighters unit) reached agreement on a structure of health insurance benefits. Subsequently, the City reached agreement with the Police that effective

March 1, 2005, employees will pay 7.5% of the total cost of the PPO or HMO premium. The two SEIU units had a provision in their Agreements that they would adopt whatever the Police or Firefighter units would accept whichever one reached agreement first. Thus three of the four units have accepted employee payment of 7.5% of the premium. The City's final offer is that the Firefighters unit pay 7.5 in 2005, effective as of the first month following the arbitration award.

The City's offer includes an increase of the employee's payment to 8.5% for coverage selected as of January 1, 2006. In its brief, the City states: "...Again, based on the City's frequently stated desire to maintain City-wide uniformity with respect to health insurance, the City has authorized the undersigned to unequivocally state that if the Arbitrator accepts the City's final offer on health insurance, City will not require the IAFF bargaining unit to pay 8.5% of the costs of health insurance premium. Rather, the City will extend to the IAFF bargaining unit the same cost sharing arrangement that is in effect for the PBPA and SEIU bargaining units for the entire term of the parties 2004-2006 collective bargaining agreement

The City argues that even without this pledge regarding the 2006 increase, its position on the health insurance issue is still more reasonable than the Union's. The City argues, also, that in return for requiring the bargaining unit to contribute to health insurance premiums, it offered longevity benefits as a *quid pro quo*. The City notes, also, that its offer includes a Section 125 plan which will tax shelter the cost of the health insurance coverage, and amounts used to pay for unreimbursed medical expenses and child care/dependent expenses.

With respect to the external comparables, the City argues, there is a definite and pronounced trend toward requiring employees to pay a greater share of the cost of the health insurance premiums. The City notes that the contributions of employees in 7 of the 8 comparables have basically doubled in the last 7 years while Elgin's Firefighters have made no contribution to health premiums. The City notes that under its offer the premiums paid by the Elgin Firefighters will be the lowest among the comparables.

Counsel for the Union noted the City's pledge made in its brief. In a letter to the arbitrator of May 13, 2005, Counsel protested the City's action:

This statement [that is, the pledge], despite the attempts at camouflage, is in fact and effect a revision of the City's final offer. The effect intended is to induce the Arbitrator to improve a deficiency in the City's original final offer. The City wants to have its cake and eat it too. The Arbitrator has no authority to award this revised final offer...

If the City's offer is implemented, the Union argues, there will not be uniformity of benefits within the City. The Firefighters will be making a larger contribution as of 2006 than any of the other three units. Also, in 2005 under the City's retroactivity proposal,

the result will be that the Firefighters will make health insurance contributions three months before the Police and other bargaining units.

The Union notes that the City has argued in terms of wages that there should be parity between Firefighters and Police but, by agreeing to 7.5% with the Police for 2006, the City has itself agreed to break parity on health insurance premium contributions between Police and Fire, since the Firefighters will be paying 8.5%.

The Union notes that the aforementioned agreement between the City and the four bargaining units about the health benefits structure, occurred at the initiative of the Union. By the Union's estimate, the City should save about \$ 500,000 compared to what the costs would have been if the projected costs of the old plan had taken effect. In its view, the City should give the Union credit for these savings, which it has not done.

With respect to the external comparables, the Union argues that Even without any employee contribution Elgin's premium cost is only \$ 12,271, the second lowest and 16.07% below the average cost of \$ 14,621. What this data demonstrates is that Elgin's deductible and co-pays are relatively high and produce premium savings. Combining this fact with the savings achieved by the City under the new structure, the City's additional proposed savings under its offer by requiring a 7.5% / 8.5% contribution is an overreach.

The Union characterizes its offer with respect to payment of health insurance premiums as follows: These are modest but significant amounts, particularly given the disparity in salary and overall compensation externally and internally. It will certainly improve Elgin's relationship to the average health insurance costs paid in comparable cities and with the constraints on cost increases embodied in the new plan design, ensure that Elgin will remain last in its payments toward Firefighters health benefits.

The arbitrator agrees with the Union that the City should not be permitted to modify its final offer unilaterally in its brief, as the City proposes to do, whether or not the City ultimately decides to implement its pledge if the arbitrator rules in its favor. Thus, the arbitrator will evaluate the parties positions on this issue as they were stated in their final offers.

With respect to the internal comparables, if the City's final offer is selected the result will be that the Firefighters will pay the same premiums as the City's other employees for 2004, while in 2005 and 2006 they will pay 1% more. If the Union's final offer is selected, the Firefighters will pay substantially smaller premiums than the other employees will pay during each of the three years of the Agreement. While neither offer will achieve uniformity of benefits internally, the City's offer comes much closer to achieving that goal. The parties stipulated to the amount which the SEIU units will contribute to health insurance as of March 1, 2005, which is \$ 86.96 per month for PPO family coverage and \$ 57.30 per month for HMO family coverage. The SEIU and Police units are paying the same percentage of premiums. These premiums are substantially

greater than the amounts proposed by the Union, \$ 15 per two week pay period, which translates to \$ 32.50 per month.

With respect to the external comparables, both offers will result in Elgin's Firefighters paying much lower premiums than the other municipalities. Figures in the record for the external comparables show that the average employee contribution (including in the average Joliet, where employees make no contribution) for family coverage is \$ 113.15 per month.

Given that the City's offer achieves internal consistency to a much greater degree than the Union's offer, and that both offers result in employees paying significantly smaller premiums than employees in the comparable jurisdictions, the arbitrator favors the City's offer with respect to Health Insurance Premiums.

Economic Issue 4 - Retroactivity (Health Insurance Premium Only)

City

The City offers to add the following second paragraph to Article 9, Section b:

Notwithstanding the above, for each full month between January 1, 2005 and the date that Arbitrator Krinsky issues his interest arbitration award, an amount equal to 7.5% of the specified premium for the health insurance plan (PPO or HMO) and coverage selected by the employee shall be deducted from the employee's salary retroactivity payment.

Union

The Union's offer does not address this issue.

Discussion of Economic Issue 4 - Retroactivity (Health Insurance Premium Only)

The City, in its brief, withdraws its offer to require retroactivity of health insurance premiums. The Union's letter of May 13, 2005, discussed earlier, asks the arbitrator not to allow the City to change its final offer in its brief.

The arbitrator agrees with the Union that the City should not be permitted to modify its final offer unilaterally in its brief, as the City proposes to do. Thus, the arbitrator will evaluate the parties positions on this issue as they were stated in their final offers.

The City's agreement with the Police provides that the 7.5% employee contribution be effective as of March 1, 2005. There is no reason for the arbitrator to order retroactivity of employee contributions to January 1, 2005 which is what is provided in the City's final offer to the Firefighters. Given the fact that the arbitrator has selected the City's final

offer on Health Insurance Payments, and that offer provides for a greater contribution by Firefighters than Police, the arbitrator views the Union's final offer on retroactivity, which is to say that there will be no retroactivity, as more reasonable. On this issue, the Union's final offer is selected.

Economic Issue 5 - Holiday Pay

City

The City's offer is to maintain the status quo.

Union

The Union offers to add the equivalent of two new holidays to the holiday pay provisions of Article 13: Martin Luther King's Birthday, Christmas Eve (1/2 day), and New Year's Eve (1/2 day)

Discussion of Economic Issue 5 - Holiday Pay

With respect to the internal comparables, the City acknowledges that the Police do in fact receive more holiday pay than the Firefighters, and this has been in place for at least a decade or a decade and a half. The City notes that Police work an 8-hour day, 40 hour week, while Firefighters work 24 hour shifts 1 day on, 2 days off, and have 13 1/2 Kelly days. The two units have a completely different work schedule and therefore, the City argues, a comparison of the two is not relevant.

The Union views the difference between the Police and Firefighters with respect to holiday pay as compelling. The police have 12 holidays, and receive \$ 4640 for holiday pay (\$1856 when not working; \$ 2784 when working), compared to Firefighters who receive \$1412.

The City argues that the external comparables favor its offer, noting that 4 of the 8 comparables don't provide holiday pay. Of the 4 which do, Elgin pays more than 3 of them. Elgin pays for 16 hours more holiday pay than the average number of hours paid by those four comparables. Two additional comparables, Aurora and Evanston used to pay separately for holiday pay, but they converted holiday pay to base salary.

In its analysis the City views Oak Park and Skokie as not having paid holidays. The arbitrator agrees with the Union that these jurisdictions should be included in an analysis of holiday provisions. In Oak Park additional vacation time is given in lieu of eleven paid holidays, while in Skokie three days are given as floating holidays.

The Union argues, the Union's...proposal to increase the number of recognized holidays from 8 to 10 is moderately supported by external comparables and strongly supported

by internal comparables and factor 14(h)(6) overall compensation. For its part, the City sees no justification for an increase in the number of holidays.

With respect to the external comparables, the Union argues, Elgin's rank is 4 of 9 with respect to the number of holidays. The arbitrator notes that the Union's analysis includes Aurora and Evanston, but it is undisputed that in those jurisdictions, holiday pay was converted to salary, and is no longer paid as a separate item. Thus, without consideration of Aurora and Evanston, Elgin's rank is 3 of 7. Elgin has 8 holidays; the average of the comparables is 6.6, and the arbitrator notes that the median is 7.2 holidays. The Union has calculated the dollar value of the holiday in the various jurisdictions. Elgin is ranked 4 of 7. Elgin's value is \$ 1412, while the average is \$ 1440 and the median is \$ 1175.

The arbitrator notes from the external comparables that Firefighters tend to have fewer paid holidays than other employees, the difference being related undoubtedly to their 24 hour schedules and Kelly days which non-Firefighters do not have. Thus, it may not be particularly important that Firefighters in Elgin have fewer holidays than employees in the Police and SEIU units, although there still is something to be said about the differential dollar value of holiday pay to Police and Firefighters. The more important comparison is with the other fire departments.

While the City is apparently correct that its Police have received more holidays and holiday pay than Firefighters for many years, it offers no compelling reason in its arguments for maintaining the differential which now exists.

If the Union's offer were implemented, Elgin's rank would still be 2 of 7 with respect to the number of holidays, and would be 3 of 7 with respect to the value of the holiday, a change from 4 of 7 as now exists. To the individual Firefighter, the increase in value would be approximately \$ 350.

The City urges the arbitrator to analyze salary and holiday pay together, since two of the comparables have converted holiday pay to salary. The arbitrator has done so, and by that measure Elgin ranks 5 of 9 whether or not Elgin Firefighters receive additional holiday pay.

The arbitrator is persuaded more by the Union's arguments on this issue than by the City's. There should be a smaller differential between Police and Firefighter pay than now exists, but for reasons discussed in Economic Issue 1, the City has the more persuasive argument with respect to limiting the size of the across the board pay increase. The additional holiday pay sought by the Union enables the Firefighters to reduce the differential in the dollar value of their holidays in relation to Police without significantly changing the relationship to the external comparables with respect to the holiday benefit.

On this issue, the Union's final offer is selected.

Economic Issue 6 - Sick Leave Conversion

City

The City's offer is to maintain the status quo.

Union

The Union offers to modify the non-use of sick leave incentive to provide for conversion to severance pay at rate of 50% of unused accrual, as follows:

Article 15 (Sick Leave)

Section d. Conversion. In recognition of non-use of sick leave, employees may convert accumulated sick leave for additional vacation leave or for severance pay **set forth below**:

(1) ~~Such~~ **Annual conversions for vacation leave** shall be at the rate of three (3) 12-hour days of sick leave for one (1) 12-hour period of vacation ~~or one (1) 12-hour period of severance pay~~. Vacation leave conversion requires an accumulation of sick leave of over 60 accrued sick days which is the equivalent of 720 hours of sick leave. Such conversion is limited to a maximum of five (5) 12-hour periods of vacation leave in any one year.

~~(3)~~ In the process of converting sick leave to additional vacation ~~or severance pay~~, the remaining balance of unused sick leave may not total less than ~~the required base accumulations of 60 or 90~~ 12-hour sick days.

(2) Conversions **at retirement for severance pay** is predicated on leaving the City's employment in good standing and requires an accumulation of sick leave of over 90 accrued sick days which is the equivalent of 1080 hours of sick leave. **For eligible employees** this type of conversion is limited to a maximum of twenty (20) 12-hour periods ~~or 240 hours upon separation~~ **paid at the rate of 50% of the employees unused accrual.**

Discussion of Economic Issue 6 - Sick Leave Conversion

The City argues that its other three bargaining units have a sick leave conversion benefit which is the same as the existing benefit for Firefighters. It sees no justification for the Unions offer, and a ruling in the Union's favor would disturb the existing internal consistency and would create a target for the other Union's in their bargaining with the City. The City notes also, that its recently negotiated contract with the Police does not contain a change in the sick leave provision.

The Union does not base any of its arguments on comparisons with other bargaining units in the City.

The parties are in agreement that 6 of the 8 external comparables have a sick leave conversion benefit of some type. The City argues that of the 8 comparables, 3 do not provide for buy back of unused sick leave at termination. Four of the comparables have buy back at termination formulas like Elgin's. Of those four, Elgin pays the lowest benefit. The City describes itself in relationship to these comparables as reasonably competitive, when it comes to sick leave conversion and above the norm in terms of the amount of sick leave that a firefighter can earn and accumulate.

The City views the Union's offer as extreme and unreasonable, asserting that the Union has Ò...totally revamped and dramatically increased the amount of compensation that an employee would be eligible to receive upon termination. Were the Union's offer to be implemented, the benefit to someone who terminates or retires with 20 or more years of service would be more than three times as much as the next closest comparable jurisdiction.

The Union argues that Elgin's benefit is clearly substandard in relation to these comparables with the exception of Skokie. It offers to maintain the component of converting sick leave into vacation leave, but it proposes to give up conversion to severance pay as a *quid pro quo* for increasing the percentage pay out at retirement. The Union notes that under the present system, 2280 hours of sick leave can be accumulated, but there is a cap of 240 hours on what can be converted to pay at retirement, a conversion ratio of 8.3%. In order to get a pay out at retirement, the employee must have accumulated 1,080 hours of sick leave, but there is no incentive to accumulate more than that. The Union proposes to eliminate this cap and pay out at a conversion rate of 50% of unused accruals. The Union argues that under its offer, there would be an incentive for employees to accumulate sick leave, and this would have the effect of reducing the City's overtime costs.

The internal comparables clearly favor the City. Moreover, in the arbitrator's view, an item such as the administration of sick leave benefits should be uniform within a municipality wherever possible, in order to avoid confusion and unfairness. The external comparables also do not support the Union's offer on this issue.

Although the Union may be correct that a more generous pay out formula upon retirement would be beneficial to the employees and perhaps also to the City, this is a benefit which should be bargained, not imposed by an arbitrator under present circumstances.

On the issue of Sick Leave Conversion, the arbitrator favors the City's offer which maintains the existing contractual language.

Non-Economic Issue 1 - Drug and Alcohol Testing

City

The City's offer is to revise the first paragraph of Article 24 to eliminate the last sentence, and to add a new second paragraph. The new first and second paragraphs of Article 24 will be as follows:

The City may require an employee to submit to urine and/or blood tests if the City determines there is reasonable suspicion for such testing. Upon request, the City shall provide any employee who is ordered to submit to any such test with a written statement of the basis for the City's reasonable suspicion within 48 hours of the request.

In addition, effective January 1, 2006, the City may conduct random drug and alcohol testing up to two times per calendar year. The total number of random tests each time shall not exceed 25% of the total number of sworn employees in the Elgin Fire Department. If the City exercises its right to conduct such random tests, the group from which employees will be selected randomly will include all sworn employees in the rank of firefighter and above. The selection of employees to be randomly tested shall be provided by the outside contractor that the City uses to randomly select the employees who are to be tested. If an employee tests positive in any such random test, the results shall not be sent to the City, but rather the employee shall be advised confidentially to seek assistance through the City's Employee Assistance Program (EAP). If the same employee tests positive a second time, the test results shall be submitted to the Fire Chief for appropriate action.

Union

The Union's offer is to maintain existing procedure of reasonable suspicion based testing.

Discussion of Non-Economic Issue 1 - Drug and Alcohol Testing

The City is proposing the same random drug testing language which has been accepted by the Police bargaining unit, and which is in place also for public works employees who are required to have a CDL. Thus, the City argues, internal comparability favors its position. The City notes the acknowledgment by a Union witness that it is important that Firefighters be drug and alcohol free. Under its proposal, "all sworn employees in the rank of firefighter and above, that is everyone in the department from the Chief on down, will be subject to random testing.

The Union discounts the comparison with the Police contract because, it asserts, although the Police contract has random drug testing language, the City has never used it.

With respect to external comparables, the City argues that there is a major trend beyond the agreed upon comparables toward the inclusion of random drug and alcohol testing provisions in Illinois firefighter contracts. The City provided evidence that 3 Illinois cities including Chicago, and six villages now have random drug testing provisions for Firefighters. It is undisputed, however, that at the present time only 2 of the 8 comparables have random drug testing for Firefighters.

The City acknowledges that in most interest arbitrations in Illinois, arbitrators have not imposed random drug testing provisions but, it argues, those decisions were made when the constitutionality of random drug testing was in question, which is no longer the case.

The City acknowledges also that there is no known drug problem in the Fire Department. It wants to be proactive, however, and it views random testing as a deterrent to drug use and in the interest of the citizenry. It argues further, since it is the City that would shoulder the liability, it is the City that must have the right to try to make sure that its Firefighters and fire Lieutenants are not under the influence of drugs and/or alcohol. It is for that reason that the City is seeking to obtain the right to randomly test for drugs and alcohol...

The Union sees random drug testing as an invasion of privacy and a deprivation of civil liberties which, it argues, should be negotiated, not mandated by an arbitrator. It views random drug testing as having a negative impact on morale, and it fears that it could be used punitively and to harass individuals. It argues that there is no evidence that the current system, based on reasonable suspicion, has impeded City efforts to prohibit drug use. Also, the Union argues, the fact that random testing has been ruled to be constitutional is not in itself valid reason to require that Firefighters be subject to random testing.

The internal comparables provide some support for the City's offer with respect to random drug and alcohol testing, since the Police unit has random testing. However, the arbitrator notes the Union's argument that the City has not implemented the random testing language which is contained in the Police contract. This suggests that there is no compelling need for the language at this time. There is also no evidence that the present drug testing program is not adequate, or that there is a problem in the Fire Department with drugs or alcohol which lends urgency to adoption of random testing.

The City may be correct that there is a growing list of Illinois municipalities which have adopted random testing, but the list is still very small, and does not include most of the external comparables. While this is likely to change in the coming years, the arbitrator is not persuaded by the City's arguments that random testing needs to be put into effect now. The arbitrator is also supportive of the Union's position that such procedures should be negotiated, if possible, not imposed through arbitration.

On this issue, the Union's final offer, to maintain the existing contractual provision, is selected.

Non-Economic Issue 2 - Subcontracting

City

The City offers to maintain the status quo, i.e. Article 6, Section b (Subcontracting) and continuation of a side letter with the dates revised to match the term of the parties new three-year contract.

Union

The Union offers to add a new second paragraph to Article 6, Section b, and to delete the 2001-2003 Side letter:

Article 6. Duties of Employees

Section b. Subcontracting. The City reserves the right to contract out any work it deems necessary in the interest of efficiency and economy, and in emergency situations. No employee shall be laid off as a result of any decision by the City to subcontract any work performed by employees covered by this Agreement.

In the event the City is actively considering entering into an agreement with an entity to provide fire protection and/or EMS services at locations within the corporate limits of the City which have been historically performed by members of the bargaining unit and where such

services may be performed by persons not hired from an eligibility list established by the City's Fire and Police Commission as provided by 65 ILCS 5/10-2.1-4, then before any such persons are hired or contract is executed the City shall notify the Union of its proposal and upon request shall bargain with the union as to such proposal. Such bargaining shall continue for a period of at least sixty (60) days or longer if the parties agree. If no agreement is reached, either party may invoke interest arbitration and the dispute shall be submitted to interest arbitration in accordance with the impasse procedures of Article 14 of the Illinois Labor Relations Act (ILRA)

Discussion of Non-Economic Issue 2 - Subcontracting

The City argues that there is no justification for the Union's proposal which would require that the City negotiate over any decision to subcontract fire protection and/or EMS services that have been performed in the past by bargaining unit members even though no employee would be laid off. In addition, it argues, none of the three other bargaining units in Elgin have a requirement that there be mid-term bargaining over subcontracting.

With respect to the external comparables, the City argues, significantly, none of the seven contracts that specifically or implicitly give the municipality the right to subcontract require that the municipality run the gamut of collective bargaining/interest arbitration before the municipality can make the subcontracting decision. It argues, a fair interpretation of the contracts [other than Oak Park which prohibits subcontracting]...shows that those municipalities have the right to subcontract as long as contractual limitations or established arbitral standards are met.

The City notes that there has been no change in circumstances within Elgin since the last negotiations which would suggest the need for a change in the subcontracting language, and the Union has offered no *quid pro quo* for this change.

The Union makes no arguments with respect to internal comparability. It argues that 6 of the 8 comparables have language that supports the Union proposal.

The Union offers as its reason for seeking the change in subcontracting language, the fact that Elgin has been experiencing substantial growth. Apparently the Union is fearful that this growth increases the likelihood that the City will be likely to subcontract mid-term in order to assure delivery of services.

The arbitrator has concluded that the Union's subcontracting offer is not supported by the internal comparables. The external comparables which have subcontracting

language, do not have the same language proposed by the Union, and do not have the same restrictions which the Union's language would impose. Thus, the Union has provided no compelling justification for its proposed change.

On this issue, the arbitrator favors the City's offer, which is to maintain the present contractual provision.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

Economic Issue #1, Salary Range: the City's final offer is selected

Economic Issue #2, Longevity Pay: the City's final offer is selected

Economic Issue #3, Health Insurance Premiums: the City's final offer is selected

Economic Issue #4, Retroactivity (Health Insurance Premium Only): the Union's final offer is selected.

Economic Issue # 5, Holiday Pay: the Union's final offer is selected

Economic Issue #6, Sick Leave Conversion: the City's final offer is selected

Non-Economic Issue #1, Drug and Alcohol Testing: the Union's final offer is selected

Non-Economic Issue #2, Subcontracting: the City's final offer is selected

Dated this ____ day of June, 2005 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator