

Interest Arbitration

City of Springfield, Illinois,)	
)	Illinois State Labor Relations Board
Employer)	Case No. S-MA-18
)	
and)	
)	Herbert M. Berman, Chairman
International Association of)	John P. Schmit, Employer Delegate
Fire Fighters, Local No. 37,)	Michael A. Lass, Union Delegate
AFL-CIO, CLC,)	
)	February 25, 1987
Union)	

Opinion and Awards

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OPINION AND AWARD

I. Statement of the Case

After several months of bargaining on a reopened agreement, the parties reached impasse. They exchanged final offers of settlement on October 6, 1986 (Joint Exhibits 3A and 3B).¹ The City's final offer was (Jt. Ex. 3A):

1. Wages

1% increase effective 6/1/86.
3% increase effective 10/1/86.

2. Hours of Work

53-hour workweek effective 11/1/86, or such time as it can be implemented.

3. 5% Differential in Ranks

Effective October 1, 1986.

4. Tour of Duty

No change in present contract (28 days).

The Union's final offer was (Jt. Ex. 3B):

1. 5% salary increase effective 3/1/86.

¹In the remainder of the Opinion, I shall refer to joint exhibits as "Jt. Ex. ____," to Employer or City exhibits as "City Ex. ____," and to Union exhibits as "Un. Ex. ____." I shall refer to the hearing transcript by transcript volume and page number, *v/z*, "Tr. 1, ____." Tr. 1 is the transcript of October 9th; Tr. 2 is October 10th; Tr. 3 is October 28th; and Tr. 4 is October 29th.

2. 51.3 hour work week Division I (Shift Personnel). Every 12th shift K-Day. Effective 1/1/87.
3. The work period for the computation of FLSA overtime for bargaining unit employees shall be 21 days.
4. Effective date for agreed 5% minimum differential between ranks: March 1, 1986.
5. 2% increase on the base salary for all bargaining unit employees who have or achieve a FFIII Certification, effective on or after 1/1/87.

Section 14(g) of the Illinois Public Labor Relations Act provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 6(c) of the "Ground Rules and Stipulations of the Parties" provides that "each party's last offer of settlement [shall] be considered and decided by the Arbitration Panel" (Jt. ex. 4). At the hearing, the panel and parties both identified the items set out in joint exhibits 3A and 3B as the "economic issues in dispute" (Tr. 4,233).

A hearing was held in Springfield on October 9, 10, 28 and 29, 1986. I received the Employer's post-hearing brief on January 2, 1987 and the Union's post-hearing brief on January 12, 1987. The arbitration panel met in executive session in Springfield on January 16, 1987.

Appendix H provides:

The Employer and the Union agree to resolve their current impasse and the interest arbitration initiated January 7, 1986 pursuant to Section 14 of the IPLRA according to the following terms and conditions.

- (1) The wages, hours and working conditions for the Contract and fiscal year commencing March 1, 1985 shall be those specified in the Contract to which this agreement is attached.
- (2) The wages, hours and working conditions for the current year commencing March 1, 1986 shall be continued as agreed for 1985 except that on or after June 1, 1986 the Union may reopen the Contract as to the items of wages and/or hours of work. In the event the Contract is reopened as to wages, the Employer and the Union expressly agree and stipulate that any increases in wages agreed upon may be effective March 1, 1986. The parties further agree that in the event that an impasse is reached and the pending interest arbitration

pursued, the arbitration may provide that any wage increase determined to be appropriate may be retroactive to March 1, 1986. The parties expressly agree and stipulate that if the arbitrator determines it is appropriate, he may issue an award on the disputed items retroactive to March 1, 1986 and the City expressly waives any objections to the jurisdiction of the arbitrator to award retroactive pay under the Illinois State Public Labor Relations Act. The City reserves the right to contest any award of retroactive pay on the merits.

Section 14(H) of the Act establishes the standards that must be considered in interest arbitration:

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

II. Summary of Bargaining History

The City has recognized the Union as the collective bargaining agent "of those employees holding the position or rank of Probationary Fire Fighter, Fire Fighter,

Driver Engineer, Captain, Battalion Chief, Fire Equipment Mechanic and Fire Equipment Master Mechanic," excluding "those employees holding the position or rank of Fire Chief, Division Fire Chief, Deputy Division Fire Chief, Director of Communications, and other supervisory, managerial and confidential employees, mechanics, mechanic helpers, communications operators and office clericals" (Jt. Ex. 1 (1985-1987 Agreement, Article I)).

The prior collective bargaining agreement expired on February 28, 1985 (City Ex. 53). From February 1985 until agreement was reached a year later, the parties met about fifty times (Tr. 1, 178). On October 9, 1985, the City offered, among other things, a "a five percent increase for 1985, 1986 and 1987" (City Ex. 25E, p. 4). The Union rejected this offer (Tr. 1, 36; Tr. 4, 108). On October 31, the City proposed a five percent increase on March 1, 1985 and on March 1, 1986, and a reopener "on wages, incentive pay, and hours of work" on March 1, 1987 (City Ex. 25D). The Union rejected this offer on November 8, stating that "the members feel that 7% per year on a two year contract is the minimum they will settle for based on current economic and work conditions" (Un. Ex. 33). On December 19, the Union made a proposal for a two year contract which called for a five percent salary increase on March 1, 1985, a two percent increase on January 1, 1986, a five percent increase on March 1, 1986, and a two percent increase "for all classified fire service employees completing journeyman training with the joint apprenticeship program" (City Ex. 25C). The City responded on the same day with an offer of a five percent increase on May 1, 1985, a one percent increase on January 1, 1986 "in lieu of acting up pay," and a five percent increase on April 1, 1986 (City Ex. 25B).

At some point in December 1985, the City learned that federal revenue sharing funds in fiscal year 1987 would be drastically reduced (Tr. 1, 113).² The consensus of the

²In FY 1986, the City received \$1,250,000 in revenue sharing funds; in FY 1987, it received \$549,000 in revenue sharing funds. It is anticipated that the city will receive no revenue sharing funds in FY 1988. (Tr. 4, 133; City Ex. 51).

City Council was that "they were going to live with the budget that was equal to the prior year's budget. Those that had capital improvements in prior year could use the monies for the coming year . . . (Tr. 4, 115). The council decided that "there would be no salary increases available in the coming fiscal year other than what could be taken out of the budget at the same monies that had been budgeted in the past fiscal year" (Tr. 4, 114). The City withdrew its offer of December 19; and after extensive negotiations, the parties entered into the current agreement on February 11, 1986. The current agreement is retroactive to March 1, 1985; it expires on February 28, 1987. Appendix H permitted the Union to reopen the Agreement on "wages and/or hours of work" on or after June 1, 1986. The Agreement provides, among other things, for a five percent across-the-board salary increase retroactive to March 1, 1985, an additional two percent wage increase on January 1, 1986, and a one percent salary increase on March 1, 1986 in lieu of "acting up pay" (City Ex. 25G).

In accordance with Appendix H, the Union reopened the Agreement after June 1, 1986. In their reopened negotiations, the parties agreed on longevity pay, vacations and differential salary between ranks (Jt. Ex. 2). They did not agree on salaries for March 1, 1986 through February 28, 1987, the hours of the work week, the work period to be used in computing Fair Labor Standard Act (FLSA) overtime payments, the effective date for the agreed upon five percent differential among the ranks, and a salary increase for employees who had a Firefighter 3 certification.

III. Background Evidence

A. The Commission Form of Government

Springfield is the capital of Illinois. It has a population of 101,570; the population of metropolitan Springfield is 190,146 (City Ex. 9). Since 1911, Springfield has had a Commission government.³ Under the Commission form of government,

³At the time of this hearing, the federal district court decision holding that Springfield's commission government was unconstitutional had not come down. For the purpose of this hearing, I must assume that the commission government is lawful.

electd officials have both legislative and executive responsibilities. The City Council, which is the legislative branch of government, consists of five Commissioners elected to specific executive offices. The City Council consists of individuals who have been elected to the offices of the Commissioner of Public Affairs or Mayor, the Commissioner of Finance, the Commissioner of Public Property, the Commissioner of Streets and Public Improvement, and the Commissioner of Public Health and Safety (Tr. 1, 39). Each Commissioner is the chief executive official of the Department under his jurisdiction. The Fire Department is under the jurisdiction of Public Health and Safety Commissioner John P. Ward, Sr. (Tr. 1, 39). The Public Health and Safety Department consists of three separate departments: the Department of Public Health; the Building Department; and the Fire Department (Tr. 1, 39). The Police Department is under the jurisdiction of the Commissioner of Public Affairs, the Mayor (Tr. 1, 41).

B. Summary of the Budgeting Process

The City's fiscal year is March 1 through February 28. Budget preparations begin in about November of the preceding fiscal year (Tr. 3, 109). Before the start of each fiscal year, each Commissioner proposes a budget to cover his operations. The Commissioners, acting in their capacity as Councilmen, collectively determine the overall city budget and decide how the budget is to be shared among the various departments (Tr. 1, 40-1).

Commissioner Ward testified that each department submits its proposed budget to the appropriate Commissioner, the Mayor, and the Finance Department (Tr. 3, 170). The Council then approves the budget (Tr. 3, 170). There are no "emergency or . . . contingency funds in the budget" (Tr. 3, 171). Unforeseen expenses are funded by intrabudget transfers (Tr. 3, 172).

According to Charles Standley, Account Technician for the Department of Public Health and Safety, only those wage increases already approved or agreed to in a collective bargaining agreement are included in the following fiscal year's budget

(Tr. 3, 107, 111). The final budget for fiscal year 1987 did not "include a figure to cover [a] salary increase [for firefighters] for fiscal year 1987" (Tr. 3, 113). Standley testified that the failure of the Public Health and Safety Commissioner to submit a proposed budget that provided for salary increases in the Fire Department "may not [have been] prudent, but . . . under the commission form of government, that's how it's been done" (Tr. 3, 115). Salary increases agreed upon after the City Council had approved the final budget would "probably" be funded from "lapse of funds" (Tr. 3, Standley 115) or "deferments of . . . proposed expenditures for the balance of the fiscal year" (Tr. 3, Ward 160). Unless other expenditures are deferred or there are unspent budgeted funds, which are known as "lapsed funds," unbudgeted salary increases cannot be funded "without council approval" (Tr. 3, 116). In the past, the Council has approved unbudgeted expenditures "only if [it had] additional sources of revenue" (Tr. 3, 116). It has never approved supplemental funds for post-budget wage increases (Tr. 3, Standley 137, Ward 160).

C. Structure of the Springfield Fire Department

At the time of the hearing the Fire Department had budgeted a department of 187 to 189 officers and firefighters, including ten command staff officers (Chief, Division Chief and Deputy Division Chief), five rookies in training, two firefighters on leave and one firefighter on suspension (Un. Ex. 35; Tr. 2, 10-11). The Fire Department consists of three separate divisions: Division 1, Operations; Division 2, Fire Safety; and Division 3, Training and Education (City Ex. 1 (Springfield Fire Department Organizational Structure); Tr. 2, 7). The Operations Division includes fire suppression and rescue, and has an authorized strength of 170 firefighters (Tr. 2, 11). The Operations Division is divided into a North Battalion and a South Battalion; each battalion operates five fire stations. There are three ladder companies, three engine squad companies, and eight engine companies (Tr. 1, 23). Under the Department's "Fire Management Area Program," each station is responsible for fire testing and safety in a prescribed area.

and each shift in each station is responsible for certain functions such as "hydro-testing and area fire flow test[ing]" (Tr. 1, 24). There are three shifts in Operations; each shift consists of twenty-four hours on duty, which is followed by forty-eight hours off duty (Tr. 2, 11). All Division 1 or Operations officers work out of the Fire Department's administrative offices in Fire Station No. 1 (Tr. 2, 11).

Division 2, the Fire Safety Division, is located in the Municipal Building and consists of a Division Chief, a Deputy Chief and seven Inspectors, who are responsible for code compliance, water supply, arson investigation and other matters (City Ex. 1). Inspectors work a normal forty-hour week. Division 3, Training and Education, is located in the Training and Education Center and consists of a Division Chief, Deputy Division Chief, a Battalion Chief, and additional personnel from other divisions as needed (Tr. 2, 12).

IV. Determination of Comparable Communities

The parties agreed that the fire departments in Rockford, Bloomington, Peoria, Champaign, Decatur and Urbana were comparable to the Springfield Fire Department. The Union, but not the City, maintained that the Normal, Aurora, Elgin and Joliet fire departments were also comparable. The City contended that Normal was not comparable because "it has an individualized rather than a standard structure" (City Brief, 30).

Arbitrator Margery Gootnick wrote in *League of Voluntary Hospitals*, 67 LA 293, 294-5 (1976):

[C]omparability is an issue pregnant with difficulty. The concept of comparing employees in one industry with those in another or of one employer with another in the same industry presents the complexities inherent in different job functions and different circumstances. Unless there is a stipulation in which the parties agree upon a standard comparability base, the best I can hope for is a guide rather than a decisive answer appropriate to the circumstances.

Nevertheless, because the Act requires me to compare "wages, hours and conditions of employment" among other employees "performing similar services and with other employees generally" in public employment and in private employment "in

comparable communities." I must first determine which communities are "comparable," even if that determination might not be a "decisive answer."

A broad range of comparisons is theoretically possible.⁴ Fortunately, the parties have narrowed their comparisons to cities of comparable population in central and northern Illinois. Assuming that Normal would be comparable to Springfield if the Normal Fire Department's salary schedule were subject to analysis, the parties disagree about whether the northern Illinois or near-Chicago cities of Joliet, Elgin and Aurora are comparable to Springfield.

It is generally accepted that "for comparability data involving comparison of employees in the private and public sector performing similar services,⁵ a party should look to such employees in the same geographic area and in jurisdictions of similar size." Richard W. Laner and Julia W. Manning, *Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees*, 60 Chicago Kent L.Rev. 839, 858 (1984). The question here is whether Joliet, Elgin and Aurora are in the same geographic and demographic area as Springfield. Arguing that Springfield is comparable to Decatur, the City cited the opinion of arbitrator Howard Eglit in *City of Decatur*, ISLRB-MA-29 (1986). In setting the salaries of the Decatur firefighters, Eglit found that "the relevant cities to be looked to are Peoria, Rockford, Springfield, Champaign, Urbana, Bloomington, Pekin, Galesburg, Danville and Quincy." Eglit, at 9. Noting that the parties disagreed about "the appropriate cities . . . to which comparisons

⁴In police and firefighter interest arbitration the "universe" considered appropriate for comparison has ranged from villages in the county in which the community was located (*City of Garfield*, 70 LA 850, 852 (Silver 1978)) to cities throughout the United States (*City of Boston*, 70 LA 154, 158 (O'Brien 1977)). Large cities such as Boston might be considered comparable only to cities of similar population, even though the labor market in these cities, cities as disparate as New Orleans and Jacksonville, might differ substantially. In theory, one might compare smaller cities such as Springfield to cities of similar population throughout the country. For practical reasons, such as an inability to gather meaningful statistics or to limit the number of comparable cities to manageable levels, it is best to limit comparisons to the nearby communities with which employees and managers are most familiar.

⁵It might be difficult to find private-sector employees who are strictly comparable to firefighters.

may properly be drawn," Eglit pointed out, without identifying the precise nature of their disagreement, that "[t]he city points to nine cities; the Union identifies, depending upon the exhibit, as few as six and as many as nineteen cities." *Ibid.* Eglit rejected comparisons with Moline because Moline, Rock Island, Bettendorf and Davenport "make up one large labor market" and the record contained no evidence about "these three [other] cities." Eglit wrote, at page 10 of his opinion—

We have also rejected looking to Chicago suburbs. The salary structures associated with contiguity to a major metropolis simply are not comparable to those of Decatur, which is situated in central Illinois at a very considerable distance from any large metropolitan area.

Eglit rejected comparisons with Cicero, Aurora, Evanston, Joliet, Arlington Heights, Skokie and Schaumburg. In addition, Eglit "ignored" references to Waukegan, East Saint Louis and Alton because "not enough information [was] offered to make any useful judgments regarding comparability" and because "these cities are close to major metropolitan areas." *Ibid.* Eglit rejected comparisons with Normal because "the data as to Normal seemed confusing . . ." The Normal firefighters contract "does not have a set salary schedule." *Ibid.*

The Union argued that Joliet, Elgin and Aurora are comparable to Springfield. Even though these cities are outside of central Illinois, the Union suggested that the City, by inviting comparison with Rockford, a northern Illinois city, "appear[ed] to concede" that "geographic proximity," while "a relevant consideration," should "not be the controlling determinant" (Union brief, 10). The Union also contended that the inclusion of Joliet, Elgin and Aurora "within the Chicago statistical area in census reports" is "not irrelevant," but "neither should [it] be controlling for the purpose of defining appropriate comparison cities under the impasse procedures of the Act" (Union brief, 10). Conceding the accuracy of Director of Personnel Karola Beahringer's opinion that people living in Chicago's "collar counties" should be included in Chicago's labor market because they commute to work in Chicago, the Union nevertheless maintained that "residency requirements for employment as a firefighter

clearly bar this kind of mobility" (Union brief, 10). The Union also pointed out that since, as Behringer testified, "Springfield recruits firefighters in all areas of the state[,] . . . cities such as Elgin, Aurora, Joliet and even Chicago can be considered . . . within the [Springfield] labor market . . ." (Union brief, 11).

The Union argued that—

A construction of Section 14(h) which limits comparison communities to those communities in close geographic proximity to Springfield risks undermining the effectiveness of the impasse procedure. It potentiates the isolation of departments within defined regions. Comparisons limited to a restricted and defined universe within a specific region will within a few years produce awards which are too predictable. . . . The impasse procedure provided for under the Act will not operate effectively to encourage bargaining between the parties if the results of arbitration are highly predictable. Such a circumstance is potentiated by the establishment of a static comparison group defined by geographic proximity. A fixed universe of a small group of comparison communities may also create incentives on the part of the cities within an established comparison group to coordinate their salary increases in ways which predetermine the arbitration results and render bargaining a meaningless exercise.

In *City of Decatur*, it was argued that suburbs contiguous to Chicago such as Skokie, Evanston and Cicero, as well as Aurora and Joliet (which are forty miles from Chicago), were comparable to Decatur. Eglit narrowed down the comparable universe to central Illinois cities of similar population, and thereby avoided having to determine whether such communities as Skokie, Cicero and Aurora had anything in common with Decatur and with each other.

Laner and Manning pointed out, 60 Kent L.Rev. at 859, that population and geographic proximity are not the only factors pertinent to comparability:

Obviously, the similarity in size of a jurisdiction being used for comparison becomes less relevant when other data suggest that the jurisdiction has a dissimilar tax base, tax burden, current and projected mandated expenditures, or legal authority to raise revenue.⁶

⁶See, for example, *City of Farmington*, 85 LA 460 (Bognanno 1985), in which the arbitrator compared cities by population, total assessed tax valuation, assessed valuation per capita, top patrolperson wages, mean patrolperson wages, and the number of full-time-equivalent police.

Other pertinent factors might include per capita or family income, data on commuting, access to expressways or commuter rail lines, the scope of the labor market for the jobs in question, and other economic and demographic data.⁷ The Union submitted demographic data on Springfield and the ten other cities it considers comparable to Springfield (Un. Ex. 2):

City	Pop.	Sq. Mi.	*Housing Units	Median Value Housing Units	Median Income	% below Poverty Line	Debt Per Cap	Moody Bond Rating
Aurora	81,000	25.5	29,406	\$49,100	\$23,035	8.7	\$ 187	Aa
B'mington	45,000	14.2	20,050	46,300	21,640	9.9	378	Aa1
C'paign	58,000	11.3	22,543	49,000	22,149	18.5	217	Aa1
Decatur	94,000	37.1	38,437	38,500	20,868	11.8	469	A
Elgin	65,500	19.3	24,897	62,200	23,193	7.6	153	Aa
Joliet	78,000	23.5	29,816	45,700	22,694	12.0	1926	A
Normal	38,000	8.4	10,369	62,700	26,452	17.2	197	Aa1
Peoria	125,100	41.0	50,871	46,400	22,694	12.3	950	Aa
Rockford	135,500	38.8	54,674	42,500	21,826	10.3	125	A
Urbana	36,000	6.5	12,757	50,700	20,717	17.7	609	Aa
S'Field	150,000⁸	100+	43,970	44,500	21,524	10.5	396	Aa

The average population of the seven comparable cities, excluding Joliet, Elgin and Aurora, is 75,943. The average population of Joliet, Elgin and Aurora is 74,833. The average population of all ten comparable cities is 75,610. The Union suggests that these cities are the "ten cities in eight urban areas which represent the eight largest urban areas in Illinois *outside Chicago and its surrounding suburbs* [italics added] with fire departments of comparable size" (Un. Ex. 2). The Employer argues that Joliet, Elgin and Aurora "are part of the Chicago metropolitan area and are affected by that City's higher standard of living and wage scales" (City Brief, 29).

Union exhibit 3 compares "fire service" data between Springfield and the ten allegedly comparable cities for 1986. I have abstracted information from this exhibit in order to compare Springfield to certain "averages" in the ten allegedly comparable

⁷Two adjoining communities may be economically dissimilar, viz., Flossmoor and Chicago Heights.

⁸The population of Springfield proper is 101,570 (City Ex. 9). The population of 150,000 includes neighboring areas served by the Springfield Fire Department.

cities, the seven admittedly comparable cities, and the three cities—Joliet, Elgin and Aurora—in dispute:

	Springfield	Av 10 depts	Av 7 depts	Av 3 depts
* of employees	185	104	107	106
* of calls	2687	1689	1825	1372
* EMS calls	2925	2369	1898	4136
* runs to fires	747	430	373	564
* total runs	6359	4626	4006	6072
Fire Loss	\$2,090,000	\$1,293,000	\$1,387,714	\$1,073,333

Because of the wide range in each category, these averages are somewhat misleading. The number of employees, for example, ranges from a low of 34 at Normal, 18% of Springfield's employee complement, to a high of 245 at Rockford, 132% of Springfield's employee complement. The average of the ten fire departments is 56% of Springfield's employee complement. Aurora, with 122 employees, has 66% of Springfield's employee complement, and the three cities in dispute have an average of 58% of Springfield's employee complement. Total runs start with a minimum of 1,602 at Champaign to a maximum of 12,265 at Rockford. Fire losses run from a minimum of \$183,000 at Urbana to \$2,782,000 at Peoria. Although these statistics are widely divergent, Joliet, Elgin and Aurora appear clearly within the range of comparability in all areas. ISO ratings range from 2, the highest in the state, at Champaign and Springfield, to a low of 5 at Bloomington and Normal.

Joliet, Elgin and Aurora are part of the Chicago-Gary-Lake County-Wisconsin Consolidated Metropolitan Statistical Area (CMSA) (City Ex. 7). Aurora and Elgin lie partly in the Chicago-Gary-Lake County Primary Metropolitan Statistical Area (PMSA) and partly in the Aurora-Elgin PMSA (City Ex. 9) and their Standard Metropolitan Statistical Area (SMSA) labor market code is the same as Chicago's (City Ex. 8). Part of

Elgin is in Cook County; and Joliet, Aurora and part of Elgin are in the "collar counties" contiguous to Cook County (Tr. 3, 13-14).⁹

Determining comparability is not an exact science. An arbitrator is limited in the first instance by the choices the parties present to him. The arbitrator would have to respect the parties' stipulation, for example, that Springfield compared only to Rockford, Illinois; or on the other hand, to hundreds of cities throughout the United States. In this instance, there is no particular reason why Rockford, but not Waukegan, Illinois, Madison, Wisconsin, and Evansville, Indiana, should be considered comparable to Springfield. Choices among the examples offered may be placed on a graded continuum from most to least comparable. While there may be little difference between any two contiguous examples on the continuum, there may be a significant difference between the most and least comparable example, between Normal and Rockford, for example. Exclusion of Joliet, Elgin and Aurora solely on the ground that they are forty miles from Chicago and within the Chicago-Gary-Lake County-Wisconsin CMSA and that Elgin and Aurora are partly within the Chicago-Gary-Lake County PMSA is unwarranted. Elgin and Aurora are the two major cities in the Elgin-Aurora PMSA, and Joliet is the major city in the Joliet PMSA. The evidence did not determine that the economy of these cities, which developed alongside of rather than as part of Chicago, was closely tied to the Chicago economy, that many of their residents commuted to Chicago for work, or that substantial numbers of Chicagoans commuted to Joliet, Elgin and Aurora for work. While we may assume that the level of wages in suburban

⁹On June 30, 1983 the Office of Management and Budget (OMB) set up guidelines for the new categories of PMSA and CMSA and redefined SMSA. The smallest or most discrete metropolitan area is the Metropolitan Statistical Area (MSA), which must have one city or a Census-Bureau defined urban area with 50,000 or more inhabitants and a total MSA population (outside of New England) of at least 100,000. See *Statistical Abstract of the United States 1986*, p. 867. A population center of at least one million is a PMSA. Any larger population area containing a PMSA is a CMSA. Aurora-Elgin is one of six PMSA's within the Chicago-Gary-Lake County-Wisconsin CMSA, which has a population in excess of eight million. The Aurora-Elgin PMSA has a population of 331,000. The Joliet PMSA has a population of 364,000. The Chicago PMSA has a population in excess of 6 million. See *Statistical Abstract*, p. 871.

communities is affected by the level of wages in Chicago, and vice-versa, I cannot assume that the salaries of Chicago firefighters affect the salaries of Elgin firefighters more than they might affect the salaries of Kankakee, Waukegan, Carpentersville or Libertyville firefighters.¹⁰ Joliet, Elgin and Aurora are less likely to be within the Chicago ambit than Skokie and Cicero (which may nevertheless have different salary schedules because of differences unrelated to their proximity to Chicago).

Firefighters, unlike employees in the private sector, are usually required to live in the city in which they work. They are less mobile than private-sector employees. In sum, OMB's conclusion that Joliet, Elgin and Aurora are part of a huge Chicago-centered metropolitan complex (the Chicago CMSA) is not the only factor to be considered in determining comparability. The Chicago CMSA covers hundreds of miles and includes eight million people. Hundreds of communities with wholly dissimilar economic and social characteristics lie within this CMSA. Within the Chicago CMSA are the separate Joliet and Elgin-Aurora PMSA's. Joliet, Elgin and Aurora are sufficiently comparable to Springfield and to the other admittedly comparable cities to be considered in determining which proposals to adopt. Normal, while an admittedly comparable city, has individualized salaries that are difficult to use for the purpose of comparison, even though an average of these salaries may have some relevance.

V. The Proposals

ITEM 1—SALARIES

The Union proposed a five percent across-the-board salary increase effective March 1, 1986. The City proposed a one percent increase effective June 1, 1986 and a three percent increase effective October 1, 1986. The Union suggests that the "real difference between the City and the Union's position is the actual amount of additional money that will be received by firefighters during the 86-87 contract year." The salary

¹⁰Chicago firefighters' salaries might have more of an impact on firefighters' salaries in New York, Los Angeles and Detroit than on firefighters' salaries in the Chicago suburbs of Winnetka and Robbins. In these suburbs, factors other than their proximity to Chicago might be determinative.

base would go up four percent; but firefighters would receive an average of \$482.63 in additional yearly wages, or less than a four percent increase. "The fully retroactive Union proposal would result in additional wages of \$2,206.60 during the contract year" (Union brief, 8). According to Union exhibit 17, the current average annual salary among firefighters is \$24,132.

A. Comparability

(1) Comparable Communities

The parties submitted a number of comparisons between the salaries of Springfield firefighters and the salaries of firefighters in comparable cities. Union exhibit 5 compares Springfield firefighters' salaries (adjusted to exclude longevity increases) to firefighters' salaries in the ten comparable cities when newly hired, and at later intervals of six months, one year, two years, three years, four years, ten years, and finally at the maximum or final step. According to Union exhibit 5, the average Springfield firefighter's salary after four years was \$24,132, compared to a ten-city average (excluding Springfield) of \$25,663; the average salary ranked six out of the eleven comparison cities. The City's proposal would raise the four-year average from \$24,132 to \$25,104; the Union's proposal would raise it to \$25,338. With longevity increments included, the average salary of the eleven comparable cities after five years was \$26,270, and the average Springfield salary was \$24,553.¹¹ With the Union's five percent proposal, the average five-year salary would go up to \$25,845, and rank six out of the eleven comparable cities (Un. Ex. 6). Assuming adoption of the Union's five percent proposal, comparisons at different points in time are of interest:

¹¹ Union exhibit 6 listed the average Springfield salary plus the Union proposal of five percent at \$25,845. Ninety-five percent of \$25,845 is \$24,552.75.

Salary Comparisons and Ranking of Springfield With Respect to Salaries

	Springfield Salary	Springfield Rank	Salary of Comparable Cities*
Base	\$25,338	4 of 9	\$24,957
After 5 yrs	25,845	6 of 11	26,270
After 10 yrs	26,351	6 of 9	26,831
After 15 yrs	26,858	6 of 8	28,003
After 20 yrs	27,365	5 of 7	28,263
Maximum	27,872	8 of 11	28,500

*Number of cities on which data was available shown by last number in rank column.

The City showed the average salaries of non-probationary firefighters after three years of service (City Ex. 17A) and ten years of service (City Ex. 17B), maximum base salaries (City Ex. 18), and the average hourly wage rate after three years (City Ex. 19). Review of these exhibits is in order.

Non-probationary Firefighter Salaries After 3 & 10 Years of Service

City	Annual Salary Rate After 3 years	Annual Salary After 10 years
Bloomington	\$26,158	\$27,989
Springfield (Union Offer)	25,339	26,304
Springfield (City Offer)	25,104	26,062
Decatur	24,644	26,394
Champaign	24,580	25,809
Urbana	24,092	25,982
Springfield	24,072*	24,989*
Rockford	23,558	27,281
Peoria	20,686	26,929
Joliet	28,555	28,555
Elgin	26,989	29,988
Aurora	26,168	28,559
Normal	NA	NA
Average of 9 cities (without Springfield)	\$25,047	\$27,497

*Figure not on charts. Computed by taking 95% of proposed Union salary.

Maximum Base or Top Firefighter Salary Without Longevity

City	Maximum Base Salary	Time to Reach Maximum
Rockford	\$26,232	10 years
Bloomington	26,158	3 years
Peoria	26,893	12 years
Decatur	25,876	4 years
Springfield (Union offer)	25,339	3 years
Springfield (City Offer)	25,104	3 years
Champaign	24,580	1 year
Springfield	24,072*	3 years
Urbana	23,620	Immediate
Elgin	29,988	4 1/2 years
Aurora	28,559	5 years
Joliet	28,555	3 years
Normal	NA	NA
Average without Springfield	\$26,718	4.7 years

*Figure not on chart. Computed by taking 95% of proposed Union salary.

Hourly Wage Rate after 3 Years

City	Hours Worked Annually	Hourly Wage Rate
Springfield (Union Offer)	2652	\$9.55
Bloomington	2768	9.45
Springfield (City Offer)	2756	9.11
Rockford	2704	8.71
Decatur	2912	8.46
Champaign	2912	8.44
Urbana	2912	8.27
Peoria	2912	7.10
Normal	2912	NA
Joliet	2912	9.81
Aurora	2816	9.29
Elgin	2912	9.27
Average without Springfield	2867	8.76

Aggregate Increase 1985-1987
(City Exhibit 22)

City	% Increases	Specific Increases
Rockford	14.05	5.3% 1/1/85; 5.5% 1/1/86; 3.25% 7/1/86; 0% 1987
Springfield (City Offer)	12.0	5% 5/1/85; 2% 1/1/86; 1% 3/1/86; 1% 6/1/86; 3% 10/1/86. Does not include rank differential and longevity steps.
Normal	11.44	5.44% 4/1/85; 2% 4/1/86; 4% 10/1/86. Does not include \$1900 1-time only buyout of overtime.
Decatur	8.5	4% 5/1/85; 4.5% 5/1/86
Bloomington	8.0	4% 5/1/85; \$1250 or 4% average 5/1/86
Champaign	8.0	4% 7/1/85; 4% 7/1/86
Urbana	7.5	4% 7/1/85; 3.5% 7/1/86
Elgin	8.25	4.25% 1/1/85; 4% 1/1/86
Joliet	7.0	0% 7/1/85; 2% 1/1/86; 2% 7/1/86; 3% 1/1/87
Aurora	5.0	5% 10/1/85; 0% 10/1/86
Peoria	0.0	Merit increases in 1985; no increases in 1986

(2) Internal Comparability: The Springfield Police Department

The City maintains that "Springfield does not attempt to maintain 'parity' between" firefighters and police (City Brief, 36). Nevertheless, Commissioner Ward testified that "over the years [City Council has] attempted to keep the salaries as close together as possible" (Tr. 1, 41). In the past, consistent with the norm throughout the state, police salaries have been slightly ahead of firefighter salaries (Tr. 3, 59). The City argues that its proposal "maintains a rough comparability" between police and firefighter salaries, but the Union proposal makes firefighters' salaries, especially at the higher ranks, greater than police salaries (City Brief, 37). (See City exhibit 35.) The City also asserted that the police officers' 2¹/₂ hours guaranteed overtime a week "is roughly equivalent to hireback for firefighters" (City Brief, 37). Police officers earn approximately \$70 more a month in overtime than firefighters earn in hirebacks, which "helps to maintain the slight historic salary differential between police and firefighters . . ." [T]he Union's proposal would reverse [this differential], both on the face of the salary schedules and in terms of average salaries" (City Brief, 38). (See City exhibit 37.)

Pointing out that the Springfield police received a 2% increase on March 1, 1986 and an additional 3% on August 1, 1986 (which is equivalent to a base increase of 5% and an annualized salary increase of 3.75%), the Union maintains that the "City's proposed increase is . . . inferior to that negotiated with the Police" (Union brief, 16). The City's salary comparisons do not police officers' "guaranteed annual overtime," as well as overtime for court time and unscheduled court appearances (Union brief, 17). According to City exhibit 45C, the "annual overtime income of firefighters in fiscal year 87 has been reduced to \$1,570.47 per man as compared to the previous year's total of . . . \$2,908.26 per man. This is \$857.00 less than the guaranteed overtime received by police officers from unscheduled hireback and court time" (Union brief, 17).

B. Ability to Pay; Budget

Paragraph 7 of the Ground Rules and Stipulations of the Parties provides that "the Union, as the moving party in Arbitration, shall proceed with its case first, followed by the City, with the provision that any 'inability to pay' argument raised by the City shall be treated as an affirmative defense with respect to which the City will bear the burden of going forward."

The City has computed the cost of the proposals (City Ex. 47):

Cost Differences Between City and Union Proposals

Union

Basic Cost	\$312,623.15
Hireback Cost (1/1/87-2/28/87)	16,821.49
Work Period (FLSA) Change	<u>2,573.00</u>
Total Cost	\$332,019.64 ¹²

City

Basic Cost	\$128,730.76. ¹³
Hireback Savings	<u>(19,647.00)</u>
Total Cost	\$109,083.76
Cost Difference	\$222,935.88 ¹⁴

(1) City's Position

1. The City "believes very strongly" that "statutory criterion number (3), 'the interests and welfare of the public and financial ability of the unit of government to meet those costs' must be considered by the Panel in the same way as the other statutory criteria are considered" [underlining in original] (City Brief, 9). First, the City points out that the third criterion refers to the "interests and welfare of the public" as well as the "ability to pay" (City Brief, 9). Second, contrary to the approach of some arbitrators, the Act does not "suggest a 'sword-and-shield approach' to the application of the various criteria" (City Brief, 9). This approach "eliminates the third criterion as a factor . . . unless the Union [prevails] in the application of the other seven criteria." According to the City, this approach is "unwarranted by the statute and . . . deprives the

¹²The Union estimated that its proposal would cost \$311,378 in new money, broken down into \$270,301 for salaries, \$8,352 for a holiday, \$16,725 for overtime and \$16,000 for FF-3 certification (Un. Ex. 21).

¹³The Union did not dispute the City's estimate of this "basic cost" (Union brief, 46). However, the Union suggested that the City has underestimated the potential "hireback savings"; according to the Union, City exhibit 45B estimates potential hireback savings resulting from a 53 hour workweek at \$121,545 (which may also be underestimated) and may "result in no additional costs" in the first year of the contract (Union brief, 46).

¹⁴Using the same figures, City exhibit 14 miscalculated the cost difference as \$223,904.88

employer of its right to have the public interest and welfare considered affirmatively, and not merely as a defense to a union offer otherwise deemed to be appropriate" (City Brief, 9-10).

2. The Corporate Fund is the budgetary source of employees' salaries. For fiscal year 1987, city and state sales taxes made up about two-thirds of the revenue in the Corporate Fund. Property taxes are not used to fund Corporate Fund expenditures; they are "dedicated to six other programs" (City Brief, 20). For FY 1988, it is projected that the "proportion of Corporate Fund revenues accounted for by sales taxes [will] rise to 73%, as revenue sharing drops out of the picture altogether" (City Brief, 20). Over two years, the City has lost \$1,125,000 in federal revenue sharing monies. In FY 1986, \$549,000 in revenue sharing was available; there will no revenue sharing money for FY 1987 (City Brief, 21). The loss of revenue sharing dollars produced stringent budgetary controls, including "funding for personal services at the 98% level and the omission of a budget for capital improvements in the Department of Public Health and Safety" (City Brief, 21). By the time this award is received, the FY 1987 budget "will have been in place some eleven months, and the budgetary process for FY '88 budget will be well along" (City Brief, 21).

3. The cost of the Union's proposal is \$332,019 (see p. 20, supra) in new money. The City's proposal, when hireback savings are computed, will cost \$109,083 in new money, a difference of almost \$223,000 (City Brief, 21-2). Costs must be funded out of the budget of the Department of Public Health and Safety. The City Council has indicated that "there will not be a supplemental appropriation for firefighters' wages and benefits" (City Brief, 23). It is "politically unrealistic to expect that the additional sums would come from another departmental budget," and, according to Comptroller Kane, an "additional \$223,000 . . . appropriated for Fire Department personnel services" would jeopardize "meeting payrolls and . . . accounts payable" (City Brief, 23). Kane estimated that the balance in the Corporate Fund at the close of FY 1987 may be as low as \$750,000.

Payment of the additional cost of the Union's offer "would reduce that projected cash reserve level to \$525,000, or less than is required to meet a two-week City Payroll" [underlining in original] (City Brief, 23). In addition, because of the delay in receiving sales tax receipts at the start of the fiscal year, the City "must be prepared to fund the first payroll of the fiscal year out of cash reserves" (City Brief, 24).

4. Funding for the additional costs must "come from lapsed funds within the Department" (City Brief, 24). There are "no other sources of funding for increases within the Department other than lapsed funds" (City Brief, 24). According to Commissioner Ward, funding from lapsed funds would be "impossible" without layoffs, as many as three firefighters per shift (City Brief, 24). Projected lapsed funds in the Fire Department are \$86,287, and \$214,394 in the Department of Public Health and Safety. Commissioner Ward is unwilling to defer all other expenditures to be paid out of lapsed funds. In any event, the Union's \$332,000 offer cannot be funded out of projected lapsed funds" (City Brief, 24).

5. Layoffs are not "in the public interest or welfare" (City Brief, 25). The City's Class 2 ISO rating, the highest in the state, "is a source of pride" and it reduces insurance premiums paid by businesses (City Brief, 25). Layoffs might compromise service (City Brief, 25).

6. Comptroller Kane's estimate of a \$750,000 balance in the Corporate Fund at the close of FY 1987 is "admittedly conservative," but it was "the best, most prudent estimate of City fiscal authorities as of the time of the hearing" [underlining in original] (City Brief, 26).

7. If the City's projections are correct, "an award of the Union's proposals, and especially its costly wage proposal, would not be within the City's ability to pay consistent with other important public welfare objectives, including the valued Class 2 rating" [underlining in original] (City Brief, 27). The Panel should not take the risk "that other factors so militate in favor of the Union proposal that . . . the unencumbered

fund balances at year end will be sufficient to fund the increases sought by the Union" (City Brief, 27). The evidence presented in this matter resembles *Thornton Community College*, not the *City of Alton*. In *Thornton*, arbitrator Peter Feuille, aware of "the Board's tight financial circumstances," still "gave heed to pay comparability data," and turned down the union's request for substantial increases (City Brief, 28). In *Alton*, the city proposed no increase.

(2) Union's Position

1. Contrary to the City, the Union argues that the "inability to pay claim is treated as an affirmative defense," and the "City must carry the burden of proof" (Union brief, 40). The Union suggests that the "parties recognize this under Paragraph 7 of their ground rules (Jt. exh. 4)" (Union brief, 40).

2. The Union suggests that "the reference point for the City's definition of its inability to pay claim is primarily the fiscal year 1987 budget for the Department of Public Health and Safety" (Union brief, 40). Noting that Commissioner Ward maintained that additional funds "cannot be obtained from other parts of the corporate budget through fund transfers or supplemental appropriations," but "only by deferring expenditures for certain items" (Union brief, 40), the Union argued:

The City's definition of inability to pay must be recognized for what it is: a frontal assault on the viability of Section 14 impasse procedures. The City's definition transcends even the "difficulty of paying" theory advanced by the Cities of Decatur and Alton and rejected by Arbitrators Eglit and Traynor. [A]ny absence of funds in the Departmental budget is a result of a decision by Commissioner Ward to request no monies for Firefighter salary increases in fiscal 1987. . . . The . . . City took no action to compensate for the loss of revenue sharing funds by raising additional revenues. The City thus seeks to present the Panel with a fait accompli. The City seeks to predetermine the outcome of arbitration proceedings under the Act through unilateral budgetary action. (Union brief, 41.)

3. The Union argued further that "an inability to pay claim is most accurately tested by a strike," and the "fact that strikes by Firefighters are prohibited . . . is testimony of the power they possess in this regard" (Union brief, 43). The Union suggests that "there is little question that if the City were under the pressure of a strike

the sophistic claims that are currently made as to their inability to pay would crumble rapidly" (Union brief, 43).

4. According to the Union, as there is "little likelihood that the Panel can construe the . . . Act in a manner that will afford Firefighters full value for their power in the labor market . . . and as an "arbitration proceeding is inherently 'turf' which is more advantageous to the City" (Union brief, 43), the City's inability to pay defense should be narrowly construed. Accordingly, "to defeat the claim the Union need only identify a source of revenue that could potentially be tapped to cover the claimed deficiency. If a city has the legal authority to raise sufficient funds to cover the disputed amounts by, for example establishing a utility tax, its inability to pay claim would fail" (Union brief, 44).

5. City exhibit 55 shows projected lapsed funds for FY 1987 in the amount of \$214,394 for the Department of Public Health & Safety and projected charges against lapsed funds in the amount of \$142,314, for a balance of \$72,080. The Union argues that the projected charges were not budgeted, and that Commissioner Ward apprised Account Technician Standley about them the day before Standley testified. The Union thereby implies that the projected charges are not legitimate. City exhibit 51 shows that the City expects the corporate fund balance (or lapsed funds) for FY 1987 to be \$865,000, which may be "appropriated to purposes the City wants to fund" (Union brief, 48).

6. Financial Consultant Ed Fennell testified as an expert witness on behalf of the Union. Fennell testified that from 1982 through 1986 the "City's budgetary assumptions uniformly underestimated the [actual] fund balances . . . by a wide margin" (Union brief, 49). Fennell also testified that at "the halfway point in the budget year 53.8% of the budgeted monies had been expended" and "revenues were running 1.1% above estimates" (Union brief, 49). Revenue estimates were based on August receipts and did "not reflect the substantial revenues generated in the fall months due to increased auto sales" (Union brief, 49). Pointing out that "budgetary projection is not an exact

science," the Union asserts that "the [vagaries] of . . . budgetary assumptions, the complexity of analyzing their validity and time necessary to do so are all reasons why the statutory definition of inability to pay should be construed to exclude such budgetary matters from the hearing . . . by adopting the Union's proposed definition of inability to pay" (Union brief, 50-1).

7. In any event, the Union argues, the City has the "capacity to fund any shortfall within fiscal year 1987 with minimal effort" (Union brief, 50). Pointing out that as of August 1986 Springfield's unemployment rate was 6.1% compared to a state average of 7.9%, the Union asserts that Springfield has a greater ability to fund salaries than many comparable cities, such as Aurora, Joliet, Rockford and Decatur, that pay higher firefighter salaries (Union brief, 51). Forty-five percent of Springfield's revenues are derived from sales taxes; as Springfield is the state capitol and a convention and tourist center, much revenue is derived from non-resident visitors (Union brief, 51). In 1984, there was a reduction of the real estate property tax when a one cent sales tax was adopted; as a result in FY 1986, there was a decline in property "taxes of more than three million dollars" (Union brief, 51). (See FY 1986 Financial Report, City exhibit 49, p. 119.) As a home rule city, Springfield has "a variety of options for raising money," including additional utility taxes, increased parking fees and others. In "all probability, any shortfall of funds in the fiscal 1987 budget can be compensated for by appropriations in the fiscal 1988 budget," a procedure used "to fund part of the negotiated salary increases provided for in the first year (fiscal year 1986) of the contract" (Union brief, 52). In short, the Union suggests that the City's inability to pay "represents nothing more than an 'unwillingness to pay'" (Union brief, 52).

C. The Cost of Living

From March 1985 through August 1986, the CPI-W All Cities index increased from 315.3 to 323.4, an increase of 2.57% (City Ex. 32). The CPI-W index (unadjusted) rose 1.2% in the twelve month period ending August 1986 (Un. Ex. 22), and the CPI-W index

(unadjusted) rose 2.6% in the three month period ending August 1986 (Un. Ex. 22). In the twelve month period ending August 1986, the CPI-U index (unadjusted) went up 1.6%, and the CPI-U index compound annual rate for the three months ending August 1986 went up 2.7% (Un. Ex. 22).¹⁵ From January 1986 through November 1986 the all-city CPI-U rose 0.34% and the CPI-W rose 0.73%. See 1 CCH Public Employee Bargaining ¶4741.

According to Union exhibits 13 and 14, the average wage settlements in major collective bargaining contracts for state and local government workers in the first half of 1986 rose 6.1% in the first contract year and 6% annually for the life of the labor contract; total compensation rose 6.7% in the first year of the contract and 6.4% over the life of the contract. For the first six months of 1986, the average effective wage adjustment—the average wage adjustment for those workers whose wages were changed—for state and local government workers was 4.9%; and the average adjustment for all workers was 1.8% (Un. ex. 13, p. 2).

The United States Department of Labor reported that wages rose an average of 1.2% in the first year of 1986 collective bargaining agreements, and an average of 1.8% a year over the life of the agreements.¹⁶ For private-sector employees, total compensation, including fringe benefits, increased 3.2% in 1986. The total compensation of non-union workers increased 3.6%, compared to an increase of 2.1% for union workers.

¹⁵Before revision in 1978, the CPI for Urban Wage Earners and Clerical Employees was the only national index. In 1978, the BLS established the CPI-U for "all urban consumers" and the Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised Series) (CPI-W). The CPI-U "reflects the buying habits of about 80 percent of the noninstitutional civilian population of the United States. Broadening the coverage added several groups whose incomes are higher than average: The self-employed, professional, white-collar and other salaried workers. Also included are several groups whose incomes tend to be lower: Retired persons, others not in the labor force, and the unemployed." CCH Labor Law Reports, ¶ 7760.20, p. 12,905.

¹⁶Cathy Twist, "Wage Increases in Labor set in '86 Average 1.8% Yearly, Smallest Since '68," Wall Street Journal, Jan. 28, 1987, p. 56.

D. Other Factors

According to City exhibit 43, the City's salary offer would produce wage increases ranging from 4.03% to 7.75%. The City considers these increases "healthy . . . compared to the cost of living, other comparable employee group settlements and settlements in comparable jurisdictions" (City Brief, 40). The City suggests that the "real issue" is "one of back pay," and that "however much the firefighters might 'deserve' the backpay they seek, this consideration is heavily outweighed by the logic of the City's position (City Brief, 40).

The City also produced evidence that, in accordance with statutory factor 6, it has easily attracted and retained employees. For example, 346 of 592 applicants passed the recently administered firefighters' exam. The 346 successful test-takers almost double the number of firefighters employed by Springfield, and about ten times [underlining in original] the number of firefighters hired during the years when the prior list was in effect" (City Brief, 39). Five police officers have applied for firefighter jobs.

Paragraph 6 of Section 14(H) of the Act requires the panel to consider "the overall compensation presently received by the employees." As this award will determine wages and other benefits during the term of a reopened contract, employees' overall compensation is particularly relevant; any award of additional salaries is part of an ongoing contract and must be considered in the context of that contract. City Exhibit 25G lists the new benefits already agreed to by the parties in their 1985-87 contract, "apart from issues in arbitration." Among these new benefits were: an 8% increase in the overall rate of base pay from May 5, 1985 to March 1, 1986; the addition of a new longevity step after 25 years of service and computation of longevity on the basis of rank rather than top rate; \$65 a month incentive pay for inspectors; guaranteed rank differential; time and one-half pay instead of straight-time pay for hireback; a new "sick-time sellback" provision; additional vacations; one additional

holiday; two personal days; and disciplinary time off reduced from 24 to 12 hours. As the City pointed out, these benefits are part of an "attractive package." They should be weighed in considering which wage offer to adopt.

E. Discussion and Finding

The City's final offer of a 1% increase effective June 1, 1986 and a 3% increase effective October 1, 1986 would raise the salary base 4% and would amount to a 2% increase.¹⁷ As shown, however, by City exhibit 43, the City's offer combined with longevity step increases and rank differentials would produce increases ranging from 4.03% to 7.75%. The Union's final offer of a 5% increase effective March 1, 1986 would raise the salary base 5% and would also amount to a 5% increase in salaries, without considering the impact of longevity steps and rank differentials. The City's suggestion that the issue is not "really one of wage levels" but of back pay is accurate. This award will determine salaries retroactively, not prospectively. It will also, of course, set the base from which the parties will negotiate when this contract expires on March 1 of this year.

The economy is not inflationary. Prices are stable. State and local government workers, perhaps because of a need to catch up to other workers, have generally enjoyed greater wage increases than private-sector workers. The Springfield firefighters, of course, should be compared primarily to firefighters in comparable communities, not to other workers in government or in the private sector. The Union and the City agree that the Union's proposed 5% increase would raise the base pay of Springfield firefighters to at least \$25,338.¹⁸ According to City exhibit 17A, the City's proposed incremental increases of 1% and 3% would raise the base to \$25,104. Each party has calculated how its proposal would affect its ranking among comparable

¹⁷1% for 9 months - .75%. 3% for 5 months - 1.25%. If the compounding factor is taken into consideration, the increase would actually come to 2.0125%.

¹⁸According to Union exhibit 6, the base pay would be \$25,338. City exhibit 17A lists the base pay at \$25,339.

departments at various levels of seniority. Union exhibit 6 illustrates the effect of the Union's proposed 5% raise on its ranking among comparable departments:

<u>Base</u>	<u>5 years</u>	<u>10 years</u>	<u>15 years</u>	<u>20 years</u>	<u>Maximum</u>
4 of 9*	6 of 11	6 of 9*	6 of 8*	5 of 7*	8 of 11

*Data was available only on the number of departments noted.

According to the City, which excluded Normal from its calculations, if either proposal were adopted, Springfield would rank fifth out of ten after three years, eighth out of ten after ten years, and eighth out of ten at the maximum step (City Exs. 17A, 17B and 18).

The Union's proposal would place the \$26,605 salary of Driver Engineers first among six comparable cities; the City's proposal would raise the salary of Driver Engineers to \$26,360 and place it third among six comparable cities (City Ex. 20). The Union's proposal would raise Captains' annual base salary to \$27,936; the City's proposal would raise Captain's salary to \$27,678 (City Ex. 21). Either proposal would place the salary of Captains sixth among eight comparable cities.

Assuming a 51.3 hour work week, or 2652 hours of work annually per employee, as proposed by the Union, the Union's 5% raise would result in an average hourly wage of \$9.55; and the City's incremental raise of 1% and 3% would result in an average hourly wage of \$9.47 (City Ex. 19).¹⁹ Either increase would give Springfield firefighters the second highest hourly wage among all comparable departments except Normal. Assuming a 53-hour work week, the Union proposal would yield an average hourly wage of \$9.19 and the City proposal would yield an hourly wage of \$9.11, both sixth highest among comparable departments. For 1985-1987, the City proposal would result in an aggregate increase of 12%, and the Union proposal would result in an aggregate

¹⁹City exhibit 19 did not list the hourly cost of the City's proposed increase if the average firefighter worked a 51.3 hour week. I extrapolated the hourly wage of 9.47 as follows: \$9.11 x 2756 hours (a 53 hour week) - \$25,107 \$25,107 ÷ 2652 (a 51.3 hour week) - \$9.47. A similar computation was performed to calculate the hourly wage of an employee who worked a 53 hour week and received a 5% increase.

increase of 13%, second highest for both proposals among the comparable cities (City Ex. 22). The City's offer of 1% on June 1, 1986 and 3% on October 1 1986 will raise the base rate 4% but raise the actual payments to employees only 2%. Both proposals will maintain roughly the same parity between Springfield and comparable cities, placing the Springfield firefighters at or just below median salaries paid by comparable departments at various levels on the salary schedule.

The firefighters, the Union and the City are proud of the fire department's ISO-2 rating and are determined to maintain high standards, but other considerations are more relevant in determining which proposal to adopt. The City's proposal would maintain salaries at levels commensurate to those paid by comparable communities, but hold down the dollars received by the firefighters to amounts equivalent to recent increases in the consumer price indexes. The Union's proposal would also maintain firefighters' salaries at levels commensurate to those paid by comparable communities—and at various points on the salary grid result in higher average salaries than the City's proposal. Actual dollars received by firefighters under the Union's proposal, however, would be substantially higher than recent increases in the consumer price indexes. The Union has suggested that the annualized change of 2.7% in the CPI-U index and 2.7 in the CPI-W index for the three months ending August 1986 "is more likely to reflect the the change in the cost of living for the 12 month period ending March 1, 1987" than the 1.6% CPI-U and 1.2% CPI-W changes for the 12-month period ending August 1986. It appears, however, that the trend is a slow, gradual rise in consumer prices, well under 2% annually. As the wage increase awarded will cover the period from August 1986 through February 1987, predictions about future inflationary trends are irrelevant.

I adopt the City's final offer on salaries. It provides for actual increases consistent with recent increases in consumer price indexes, results in an increase on

base one percent below the Union's proposal, and maintains roughly the same parity with comparable fire departments as the Union's proposal.

Although the City reduced its salary offer after learning about "Gramm-Rudman" cuts in federal funds, I do not have the duty to decide, nor would I presume to decide, whether the anticipated loss of federal revenue justified the new offer. My sole responsibility is to adopt one of the final offers made by the parties. In adopting the City's proposal, I have not weighed the City's "inability to pay" on the same scale as the other statutory criteria. Consistent with the parties' agreement to treat "inability to pay" as an "affirmative defense" by the City (Jt. Ex. 4), I have considered inability to pay a "shield" against the "sword" of the other statutory criteria. Because evidence on the other criteria was dispositive, it was not necessary to raise the inability-to-pay shield.

ITEM 2—HOURS OF WORK

A. The Current Schedule; The Proposals

Article V, Section 5.2(A) of the current Agreement (Jt. Ex. 1) provides:

The work day for Division 1 personnel shall consist of twenty-four (24) consecutive hours; the work shall consist of an average of fifty-two (52) hours on a schedule of twenty-four hours on duty, immediately followed by forty-eight (48) hours off duty, except that every 14th shift as assigned by the Chief with the approval of the Union shall be a "Kelly Day" on which the employee shall also be off duty.

The Employer may designate a work period of up to 28 (twenty-eight) days for determining overtime liability under the FLSA. The implementation of any such work period shall be in conformity with the requirements of the FLSA.

The Union has proposed a 51.3-hour workweek with a Kelly Day—a day off—every twelfth shift (Jt. Ex. 3B). The City has proposed a 53-hour workweek with a Kelly Day every fourteenth shift.

B. Criticism of the Current Schedule

A Kelly Day every fourteenth shift results in a fifty-two hour week under the current schedule of twenty-four hours on duty and forty-eight hours off duty. The current schedule has two major drawbacks: (1) firefighters always have the same day off; and (2) about twenty-five percent of the work force gets most of the overtime. Both parties have proposed a change in hours as a way of producing a rotating Kelly Day cycle.

C. Effect of the Proposals

City exhibit 4 shows the effect on one shift of the current Kelly Day schedule of one day off every fourteenth shift. The shift chosen for the purpose of illustrating the effect of the current Kelly Day schedules would receive nine Kelly Days a year. Union exhibit 35, however, demonstrates that one shift would receive eight Kelly Days a year and that for all shifts an average of "8.6 Kelly Days [a year] corresponds to a 32 hour work week" (Union brief, 21).

Under Article V, Section 5.6 of the Agreement, "hireback," or overtime work by firefighters, is rotated among firefighters and paid at the rate of time and one-half pay. The parties disagreed about how much additional hireback the Union's proposal would cause. Citing the testimony of Department of Public Health and Safety Account Technician Standley, the City asserted that the Fire Department's current "hire back needs" are "in excess of 3 men per shift" (City Brief, 44). In computing this figure, the City projected the current minimum manning requirement of 46 firefighters per shift with an average of 12.3 firefighters off per shift, and it assumed a maximum availability of 164 firefighters, or 54.67 firefighters per shift.²⁰ The City went on to assert that if the five rookies in training at the time of the hearing became available for assignment, available manpower would go up from 54.67 to 56.63 firefighters per shift, and hireback requirements would be reduced to less than two firefighters per

²⁰For budgeting purposes technician Charles Standley estimated 13.4 firefighters off per shift (Tr. 3, 97-8).

shift. The City estimated that the Union's proposed 51.3 hour workweek would cost an additional \$104,000 a year less a "small FLSA cost savings," which would equal "about 1/3 of the basic cost of [the Union's] wage proposal . . ." (City Brief, 42).

The Union maintained that the City's estimate of the cost of the Union's proposal was "wildly exaggerated" (Union brief, 25). Under the Union proposal, each firefighter would get 10.14 Kelly days a year, 1.45 Kelly Days more than the current 8.69 Kelly Days a year. The Union asserted that the City did not calculate the savings caused by absences resulting from unpaid leaves, turnover, and suspension (Union brief, 26). The Union also criticized Standley's assumption that the City will always have to hire back a firefighter at overtime pay to "cover the additional time off under the Union's proposal" (Union brief, 26). Union exhibit 35 assumed that each firefighter works 102.20 days per year under the current schedule and would work 100.75 days per year under the Union's schedule.²¹ The Union then divided 16,790, the total man days per year,²² by 102.20 and by 100.75. On the basis of this calculation, the Union determined that a total of 164.29 firefighters were needed to staff the force under the current schedule and 166.65 firefighters would be needed to staff the force under the Union's proposal. On the basis of these calculations, the Union came up with a "manning factor" by dividing the total number of firefighters by 46, the minimum manning requirement. Under the current schedule the manning factor was 3.57; under the Union proposal the manning factor was 3.62. If the manning factor is multiplied by the minimum manning requirement, total manpower needs may be determined. Under the current agreement, the manpower requirement would be 3.57×46 or 164.2. Under the Union's proposal, the manpower requirement would be 3.62×46 or 166.5. At the time of the hearing, 164 firefighters were available for shift duty. Five were rookies in

²¹The Union assumed 121.66 days per shift per year; 7.77 vacation days; 3 sick days; 8.69 Kelly Days under the current schedule; and 10.14 Kelly Days under the Union proposal.

²² 365×46 (minimum firefighters per shift) = 16,790.

training and scheduled to go on regular duty about the first of the year (Tr. 2, 75); three firefighters were on leave or suspension (Un. Ex. 35, p. 4).

In making his calculations, Standley assumed a minimum manning requirement of 46 firefighters per shift and 171 available firefighters. One-seventy-one divided by 3 (the number of shifts) - 57, the manpower available on each shift. However, when the City subtracts 12.3, the average number of firefighters off per shift, from 57, the available manpower is reduced to 44.7, or 1.3 men fewer than required to meet minimum requirements of 46 men per shift.²³

As the Union pointed out, "Mr. Standley was questioned closely as to the basis for his calculation of the 12.3 factor" (Union brief, 27). Standley was in substantial agreement with the Union regarding assumptions the Union used to calculate time off for sick leave, illness and injury, and vacations (Tr. 4, 216-225). According to Standley's testimony on cross-examination, the experience factors on absences other than "vacancies" added up to 10.09 men absent per shift (Tr. 4, 225-6). The difference between 12.3 and 10.09 of 2.21 was accounted for, according to Standley, by "vacancies" (Tr. 4, 226), leaves and suspensions (Tr. 4, 229). At the time of the hearing, there were three vacant and unfilled positions (Tr. 4, 226). At the time of the hearing, five rookies were scheduled to go on regular duty before the first of the year (Tr. 2, 75); one firefighter was scheduled to return from leave within thirty days (Tr. 2, 125); and a suspended firefighter was expected to return by February 1, 1987 (Tr. 2, 123). It was thus anticipated that there would soon be seven additional men available, for a total of 171 men, to make up for the five vacancies Standley used in his calculation of a 12.3 absence factor.

The Union estimated that the manpower needed to staff the current 52-hour week was 164.29 men. The 51.3-hour week would require 166.65, or three additional, men. The "Union's proposal will require 248 additional shifts to be covered in 1987"

²³The same result is reached by adding 12.3 to 46, which adds up 58.3 or 1.3 men more than the 57 men available per shift.

(Union brief, 30).²⁴ If five more rookies are worked into the regular-shift schedule, the Fire Department will gain more than 500 shifts per year.

Using Standley's assumptions, the City asserted that hireback costs would go up .78 man per shift, if five rookies became available (City Brief, 44). The Union calculated that the Employer's 53-hour work week with a Kelly Day every fourteenth shift would result in 6.4 Kelly Days per year, and a manpower requirement of 160.69 (Un. Ex. 35). The Union's calculations on the manpower required to staff the department are based upon reasonable assumptions that neither understate nor overstate projected manpower needs. Because of its assumption that it will remain understaffed in 1987, despite the addition of five regular firefighters to the regular-shift schedule, the City's calculations seemed somewhat overstated. The addition of five rookies would seem to obviate much of the need to hire back personnel.

D. Arguments

(1) Position of the Union

The Union contended that there is a trend in the direction of a shorter workweek for firefighters. While the Union's proposal of a 51.3-hour week "would unquestionably move Springfield firefighters to the first rank," the "improvement would not be extreme," but only a "slight improvement" (Union brief, 21-2). The Union asserted that the City's proposal on workweek would "modify the existing Kelly Day benefit to a greater degree than . . . the Union's proposal" and reduce the "manpower needed to staff Division 1 . . . by at least three men"—from 164.29 to 160.69 (Union brief, 31). Pointing out that on December 19, 1985 the City had offered to reduce the workweek to 51.7 hours, the Union contended that the current proposal for a 53-hour workweek would "most likely reduce the City's hireback overtime expenses to zero, result in a "loss

²⁴Asserting that the real difference between the current schedule and the Union proposal is the difference of 1.45 in the number of Kelly Days (10.14 less 8.69), the Union multiplied 1.45 by 171 (the number of men to be assigned to Division 1 in 1987) to arrive at 247.95.

of income to firefighters and "contradict Commissioner Ward's stated policy of keeping firefighter and police salaries 'as close together as possible'" (Union brief, 31).

(2) Position of the City

The City pointed out that "splitting issues for the sake of compromise is . . . lethal to the objectives of the arbitration process" and that the Act requires the panel to adopt one of the last offers "as to each economic issue" (City Brief, 4). Nevertheless, as both parties have recognized, there is a connection among the proposals and among the issues to be resolved. The City argues that its "hours of work proposal is tied in with its wage proposal. Only by allowing for the projected hireback saving . . . was the City able to come up with the necessary money in the budget to offer the wage proposal it did" (City Brief, 42). The City argues that its proposal achieves a rotating cycle and evens out overtime at "far less cost" (City Brief, 42).

The City pointed out that the 1986 Illinois Professional Firefighters Association Survey showed that only 15.7% of all departments employing at least fifteen firefighters had workweeks of 51.3 or fewer hours and 81.4% had workweeks of 53 hours or more (City Brief, 45). The average workweek for firefighters "among the jurisdictions surveyed was 54.45" and the average workweek in the comparable jurisdictions was 55 (City Brief, 45-6). Among the comparable cities only Rockford had a shorter workweek than the workweek proposed by the City; and the Union's proposal would give "Springfield the shortest workweek in the comparison group" (City Brief, 45-6).

F. Discussion and Findings

I cannot compromise the difference between the parties' final economic offers. I must choose one of them—the "better" or more equitable of the two. On balance, the Union's workweek proposal is more equitable than the City's proposal:

1. As noted, the assumptions made by the City to calculate the cost of the Union's proposal result in overstated cost projections. The Union's

assumptions are more realistic. Adding five firefighters to the staff and filling several vacant positions should reduce hireback costs to manageable levels.

2. Without economic or operational justification, it is inappropriate to take away employees' benefits. The evidence did not justify reducing the number of Kelly Days. The City maintained that costs saved by reason of its workweek proposal allowed it to come "up with the money for its wage proposal." This assertion assumes that the City would be unable to pay for the wage increase it has proposed, and that I have adopted, without reducing other costs. I am not persuaded that the City would be *unable* to meet the additional cost of the wage increases it has proposed and the 51.3-hour workweek the Union has proposed. I consider the Union's proposal to reduce working hours more equitable than the City's proposal to increase working hours, even though, as the Union conceded, a 51.3-hour week would "move Springfield firefighters to the first rank with respect to their work week" (Union brief, 21).

ITEM 3—TOUR OF DUTY

A. The Current Agreement; The Proposals

The second paragraph of Article V, Section 5.2(A) of the current Agreement provides:

The Employer may designate a work period of up to 28 (twenty-eight) days for determining overtime liability under the FLSA. The implementation of any such work shall be in conformity with the requirements of the FLSA.

The Union has proposed that "the work period for the computation of "FLSA" overtime for bargaining unit employees shall be 21 days" (Jt. Ex. 3B). The City opposes any change in the 28-day work period or "tour of duty."²⁵

B. Background

(1) The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) permits the City to establish a work period for firefighters of no less than seven and no more than twenty-eight consecutive days.²⁶ Under FLSA regulations, firefighters are limited to a maximum of 212 hours worked in any twenty-eight consecutive-day period.²⁷

(2) History of Negotiations

Initially, during negotiations on the reopened contract, the Union proposed to reduce the work period to seven days (Tr. 1, 208; Tr. 2, 141, 144; Un. Ex. 25). During negotiations, however, the Union submitted a package proposal in which it agreed, among other things, to a 28-day work period (Tr. 1, 208; Tr. 2, 145). When the City rejected the Union's package proposal, the Union proposed a 21-day work period (Tr. 1, 209), the proposal now in issue.²⁸

C. Effect of the Union's Proposal

The Union pointed out that a long work cycle minimizes overtime because "the City may avoid liability if scheduled shifts are not worked" and "the longer the work period the higher probability" that some firefighters will be absent (Union brief, 33).

²⁵29 CFR 553.13 defines "tour of duty" for "fire protection and law enforcement" employees as "the period during which an employee is on duty. It may be a scheduled or an unscheduled period. Scheduled periods refer to shifts, i.e., the period of time which elapses between scheduled arrival and departure times, or to scheduled periods outside the shift, as in the case of a special detail . . ." (City Ex. 30).

²⁶See "State and Local Government Employees under the Fair Labor Standards Act," WH Publication 1459 (May 1985), City Ex. 29, p. 19.

²⁷Ibid. See also 29 CFR part 553, Federal Register, V. 48, No. 175, p. 40519, Sept. 8, 1983, City Ex. 28.

²⁸The Union, anticipating that the City would argue that the panel had no jurisdiction to consider its 21-day work period proposal because the proposal was made after impasse had been reached, argued that a party's position should not be frozen at the point of impasse. In its post-hearing brief, however, the City did not object to arbitral consideration of the Union's proposal; and the panel has no basis for not reviewing the proposal on its merits.

The City calculated that its current FLSA costs are \$37,447. If the City's wage proposal were adopted and the FLSA work period were to remain the same at twenty-eight days, FLSA costs would come to \$72,294; a twenty-one day work period would increase costs to \$77,922, an additional \$5,628 (City Ex. 46A).

The Union wants to "correlate the FLSA work period with the natural cycle of the platoon system. With a 28 day work period FLSA overtime shifts are consistently worked by the same shift. . . . With a 21 day work period, the premium shifts would roll through each platoon and result in a uniform distribution of premium shifts" (Union brief, 33-4). Firefighter Robert Berberet, Secretary of Local 37, testified that with a 52-hour workweek and 28-day work period "and the fact that our Kelly day falls every 14th shift, . . . the same positions . . . are always entitled to more overtime" (Tr. 1, 200). About "a fourth of the men will always be entitled to the most overtime" (Tr. 1, 200). On cross-examination, Berberet conceded that "if the panel selects either the 53 hour work week or the 51.3 hour work week that will throw the objectionable cycle off" and it was not necessary to reduce the cycle to twenty-one days "to accomplish that result" (Tr. 1, 205-6). Captain James Wanless, Treasurer of Local 37, testified, however, that "the 21 day [period] is the only period that really divides it fairly among all of the men . . ." (Tr. 1, 206-7).

D. Finding

The evidence that only a 21-day work period would eliminate the unfair distribution of overtime work was equivocal. It appears that the Union's proposed 51.3-hour work week, a proposal I have adopted, would accomplish the same result without changing the work cycle. I therefore adopt the City's proposal not to change the 28-day work period contained in Article V, Section 5.2(A) of the current Agreement.

Item 4—Effective Date of the Rank Differential Guarantee

The parties have agreed to maintain a five percent differential between ranks. The Union proposed to make the differential retroactive to March 1, 1986 (Jt. Ex. 3B); the City proposed to make the differential retroactive to October 1, 1986 (Jt. Ex.3A).

A. Positions of the Parties

(1) The Union

The Union argues that "it would appear that the City's justification" to postpone implementation of the rank differential "is an extension of its inability to pay the claim" (Union brief, 36). Therefore, the Union claims, "if the panel is not persuaded by the City's claim in this regard," the higher ranks "should receive the full benefits of this provision during the current year," especially "in view of the relatively low rank held by Springfield's promoted ranks in relation to salaries paid to equivalent ranks in other comparison cities" (Union brief, 36).

(2) The City

The City, noting that the "only question is the amount of backpay to be paid to those driver engineers and captains who are entitled to it," argues that there is "no reason why the effective date of the rank differential should differ from the wage increase effective date" (City Brief, 46). Accordingly, the City maintains, "if the Panel selects . . . the City's wage offer, it should also select the City's effective date proposal of 10/1" (City Brief, 46).

B. Discussion and Finding

Obviously, the later the differential is implemented, the more money the City would save and the more money the promoted ranks would lose. The City's proposed wage increase would make the annual base salary of Captain \$27,678, sixth among the nine comparable cities who have Captains in the bargaining unit (City Ex. 21).

The effective date of the first wage increase is June 1, 1986, three months after the Union's proposed rank-differential date and four months before the second wage increase on October 1, 1986, the City's proposed rank differential date. If I could compromise the offers, I would make the effective date of the differential correspond to the date of the first wage increase on June 1, 1986. Since, however, I must choose between the offers, I find that the most equitable and rational date for implementation of the rank differential corresponds to the date of the second wage increase on October 1, 1986. A wage differential establishes a fixed percentage difference between the wages paid to different ranks. It is tied to wage increases, and it should take effect at the time of wage increases. If it does not correspond to wage increases, it would produce either slightly higher wages (before the next increase) or slightly lower wages (after the last increase). I adopt the Board's final offer of October 1, 1986 as the effective date of the 5% differential between ranks.

Item 5—Firefighter III Certification Incentive

A. The Union's Proposal

The Union has proposed a "2% increase on the base salary for all bargaining unit employees who have [achieved] or achieve a FFIII certification, effective on or after 1/1/87" (Jt. Ex. 3B). The City opposes the Union's offer.

B. Negotiations

Chief Armstead testified that the Union did not propose a Firefighter-3 incentive during negotiations (Tr. 2, 68). On December 19, 1985, the Union proposed, among other things, that classified fire service employees who complete journeyman training with the joint apprenticeship program receive a 2% salary increase (Tr. 2, 68; City Ex. 25C). Completion of this program is not equivalent to passing a Firefighter-3 exam and securing Firefighter-3 certification.

C. Positions of the Parties

(1) The Union

Noting that the City had calculated that the Union's proposal would cost an additional \$2,953 and about \$16,000 more if all firefighters achieved a Firefighter-3 certification, the Union argued that-

This proposal serves a long range interest of the citizens of Springfield. It reinforces the Department's commitment to excellence. It introduces a qualitative factor which can be utilized for comparison purposes in the event of future impasses. (Union brief, 39.)

(2) The City

The City characterizes this issue "as a throw-in by the Union, an attempt to get what Arnold Zack called 'that little extra amount'" (City Brief, 47). The City contended that "the issue was not truly an impasse issue, and should not be a part of these proceedings" (City Brief, 47).

D. Discussion and Finding

As the City points out, this issue "was not truly an impasse issue." It was not placed on the bargaining table during the course of extensive negotiations. Nevertheless, as the Union submitted it to the City before the hearing and it was identified as an "economic issue" before the hearing concluded, I may consider it.

However, I agree with the City that this issue was "thrown in" at the last minute. Although a monetary incentive for completing an apprenticeship was proposed and then withdrawn by the Union, the specific proposal in dispute was never discussed during negotiations. Neither the long-term interests of the parties nor the statutory objective of "an alternate (sic), expeditious, equitable and effective procedure for the resolution of labor disputes"²⁹ would be served by adopting an item not considered in negotiations. Conventional interest arbitration on non-economic items and issue-by-issue, final-offer arbitration on economic items were designed "to encourage voluntary

²⁹From Section 2, paragraph 3 of the Act.

settlement and discourage the resort to arbitration."³⁰ Commentators Joyce Najita and Helen Tanimoto point out that, "the final-offer process works to increase the incentive to bargain by posing the possibility of an unfavorable arbitrator's decision."³¹ Arbitral consideration of an issue not considered during negotiations would discourage meaningful bargaining and distort the arbitration process. Not only would it permit a negotiator to avoid the risk of concession or compromise inherent in bargaining, it would encourage him "to get a little extra" in arbitration. It holds out hope that through arbitration a party might secure a concession it was unwilling to propose during negotiations. I decline to adopt the Union's proposal on additional pay for employees who have received and who will receive Firefighter-3 certification.

³⁰Laner and Manning, *supra* at page 9, 60 Chicago-Kent L.Rev. 839, 842 (1984).

³¹Najito and Tanimoto, *Interest Disputes Resolution: Final-Offer Arbitration*, Industrial Relations Center, U. of Hawaii (Jan. 1975).

Summary of Awards

(A) By a 2-1 vote, the Panel makes the following awards:

1. It adopts the City's final offer on wages (Item No. 1, Joint exhibit 3A).
2. It adopts the City's final offer on tour of duty (Item No. 4, Joint exhibit 3A).
3. It adopts the City's final offer on the effective date of rank differential (Item No. 3, Joint exhibit 3A).
4. It declines to adopt the Union's final offer on a 2% base salary increase for firefighters who achieve Firefighter-3 certification (Item No. 5, Joint Exhibit 3B); and it adopts the City's opposition to that final offer.

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

John P. Schmit, Employer Delegate

(B) By a 2-1 vote, the Panel makes the following Award:

It adopts the Union's final offer on work week (Item No. 2, Joint exhibit 3B).

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

Michael A. Lass, Union Delegate

Summary of Awards

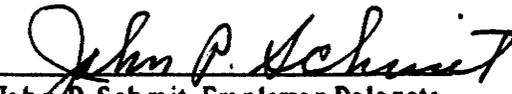
(A) By a 2-1 vote, the Panel makes the following awards:

1. It adopts the City's final offer on wages (Item No. 1, Joint exhibit 3A).
2. It adopts the City's final offer on tour of duty (Item No. 4, Joint exhibit 3A).
3. It adopts the City's final offer on the effective date of rank differential (Item No. 3, Joint exhibit 3A).
4. It declines to adopt the Union's final offer on a 2% base salary increase for firefighters who achieve Firefighter-3 certification (Item No. 5, Joint Exhibit 3B); and it adopts the City's opposition to that final offer.

Dated: 2/18/87


Herbert M. Berman, Chairman

Dated: 1-24-87


John P. Schmit, Employer Delegate

(B) By a 2-1 vote, the Panel makes the following Award:

It adopts the Union's final offer on work week (Item No. 2, Joint exhibit 3B).

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

Michael A. Lass, Union Delegate

Summary of Awards

(A) By a 2-1 vote, the Panel makes the following awards:

1. It adopts the City's final offer on wages (Item No. 1, Joint exhibit 3A).
2. It adopts the City's final offer on tour of duty (Item No. 4, Joint exhibit 3A).
3. It adopts the City's final offer on the effective date of rank differential (Item No. 3, Joint exhibit 3A).
4. It declines to adopt the Union's final offer on a 2% base salary increase for firefighters who achieve Firefighter-3 certification (Item No. 5, Joint Exhibit 3B); and it adopts the City's opposition to that final offer.

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

John P. Schmit, Employer Delegate

(B) By a 2-1 vote, the Panel makes the following Award:

It adopts the Union's final offer on work week (Item No. 2, Joint exhibit 3B).

Dated: 2/18/87

Herbert M. Berman
Herbert M. Berman, Chairman

Dated: 2/21/1987

Michael A. Lass
Michael A. Lass, Union Delegate