

Illinois State Labor Relations Board
Interest Arbitration

Village of Lombard, Illinois,

Employer

and

Lombard Professional Fire Fighters,
Local 3009 of the International
Association of Fire Fighters,
AFL-CIO, CLC,

Union

ISLRB No. ~~S-MA-87-73~~
Herbert M. Berman,
Chairman

Rita Elsner,
Employer Delegate

Bill Robertson,
Union Delegate

January , 1988

Opinion and Award

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Employer		Herbert M. Berman, Chairman
and		Rita Elsner Employer Delegate
Lombard Professional Fire Fighters, Local 3009 of the International Associa- tion of Fire Fighters, AFL-CIO, CLC,		Bill Robertson Union Delegate
Union		January , 1988

Opinion and Award

I. Statement of the Case

On December 19, 1986 the Village and the Union entered into a collective bargaining agreement, effective December 20, 1986 and ending May 31, 1989 (Jt. ex. 1).¹ In February 1987, in accordance with Article XXX of the Agreement, the Union opened the Agreement for renegotiation of salaries (Sections 29.1 through 29.4). In relevant part, Article XXX provides:

After the giving of such notice, neither party shall request the other to bargain or negotiate with respect to any other matter during such reopened negotiations. Within fifteen (15) days after receiving the notice the parties shall meet to negotiate with respect to a possible change in those items referenced above and none others. If no agreement is reached by May 15, 1987, concerning the properly reopened article(s) or section(s), either party

¹The parties made salaries retroactive to June 1, 1986, the start of the 1986-87 fiscal year.

ing differences according to Section 1614 of the Illinois Public Labor Relations Act, as amended. During and after the arbitration process, all terms and provisions of this Agreement shall remain in full force and effect, except that those specific changes in the designated article/section shall be amended to reflect the parties negotiated agreement or the arbitrator's award as soon as that agreement or award becomes effective according to law.

From February 1, 1987 until about May 16, 1987, the parties met seven or eight times before they reached impasse. On August 10, 1987, they submitted their differences to interest arbitration in accordance with "Ground Rules and Stipulations of the Parties" (Jt. ex. 3).

For the purpose of interest arbitration, the Union made a final offer on August 10th (Jt. ex. 2A):

Article XXIX—WAGES

Section 29.1

Effective June 1, 1987, the employees covered by this Agreement shall be paid in accordance with the schedule in 29.2.

Section 29.2

(a) The established step system for all employees shall be as follows:

<u>Step No.</u>	<u>Description</u>	<u>Annual Salary</u>
1	Less than one full year	\$22,574
2	One year one day to two years	23,757
3	Two years one day to three years	25,006
4	Three years one day to four years	26,444
5	Four years one day to five years	27,964
6	Five years one day and after	30,757

Annual progression through these steps shall be granted to the employee as he completes the above anniversary dates. Once an employee has reached the sixth step the employee shall receive the negotiated pay increases, 29.2 (b) and/or any other stated provisions in this contract.

(b) Employees with a minimum of eight (8) years one day shall receive the negotiated salary plus one (1) percent.

(c) All employees covered by this Agreement shall receive four (4) days off (Garcia Days) in lieu of FLSA monies. These days shall be scheduled during any normal twenty-eight (28) [day] cycle (one per quarter).

Section 29.3

Base salary shall be fully retroactive to June 1, 1987, for all members of the bargaining unit except those discharged prior to the signing of the Agreement. The Village shall issue a separate check, for those affected fire fighters, including all retroactive pay within thirty (30) days of the ratification of the arbitration award by the Village.

Section 29.4

Any negotiated increase as a result of the re-openers in 1988 negotiations as set forth in Article XXXI shall be added to all base salaries in Section 29.2.

The Employer also made a final offer for the purpose of interest arbitration on August 10, 1987:

Article XXIX—WAGES

Section 29.1

Effective with ratification of both parties, the employees covered by this Agreement shall be paid in accordance with the schedule of wages in Section 29.2.

Section 29.2

<u>Step No.</u>	<u>Description</u>	<u>Annual Salary</u>
1	Less than one full year	\$22,253
2	One year one day to two years	23,366
3	Two years one day to three years	24,650
4	Three years one day to four years	26,006
5	Four years one day to five years	27,502
6	Five years one day to six years	29,083
7	Six years one day and after	30,757

Annual progression through these steps shall be based upon an acceptable performance evaluation as evidenced

by a rating of standard or above and shall be granted within the first complete pay period following the employee's anniversary date. Once an employee has reached the seventh step, he shall only be eligible for a pay increase as negotiated between the parties.

Section 29.3

Any negotiated increase as a result of the re-opened wage negotiations as set forth in Article XXXI shall be added to the base salaries as set forth in Article 29.2.

After August 10th, the Union withdrew its Garcia-Days proposal and its proposal that salary progression not be contingent upon "satisfactory performance." The maximum salary proposed by both parties was \$30,757— the sixth step of the Union proposal and the seventh step of the Employer proposal.

The current final offers may be summarized:

<u>Final Offers of the Parties</u>	
VILLAGE	UNION
<u>1. Wages</u>	
4%	5.5% at bottom step; 4% at top step; maximum individual increase of 10%; compression of steps from 7 to 6
<u>2. Longevity</u>	
None (Outside scope of reopener and beyond arbitrator's jurisdiction)	1% increase at 8 years, 1 day
<u>3. Effective Date of New Wages</u>	
Upon Ratification by Both Parties	June 1, 1987

A hearing was held in Lombard on August 12 and 13, 1987. Prior to the close of the hearing, the parties identified the issues listed in joint exhibits 2A and 2B as the "economic issues in dispute" (Transcript of August 13, 1987, pp. 222-23).²

I received the Union's post-hearing brief on October 26, 1987 and the Employer's post-hearing brief on October 27, 1987. The panel met in executive session on December 12, 1987.

II. Pertinent Rules, Regulations and Statutes

Sections 14(g) and (h) of the Illinois Public Labor Relations Act (the "Act")³ and Section 1230.100(b) of the Rules and Regulations of the Illinois Public Labor Relations Board (the "Board")⁴ provide that "with respect to each economic issue in dispute, the panel shall adopt the final offer of one of the parties, based on the following factors":

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 and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with employees generally:
 - A. In public employment in comparable communities.

²In the remainder of this opinion, I shall cite the August 12, 1987 transcript as "Tr. I ____" and the August 13, 1987 transcript as "Tr. II ____". I shall cite joint exhibits as "Jt. ____", Employer exhibits as "Emp. ____", and Union exhibits as "Un. ____".

³Ill.Rev.Stat., ch. 48, ¶¶ 14(g) and (h).

⁴80 Ill.Adm. Code 1230.100(b).

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.

III. Background

Lombard is a western suburb of Chicago with a population of about 38,000. The Lombard Fire Department employs 42 people, 27 of whom are firefighters represented by the Union. The Department is headed by the Fire Chief, who administers three separate sections or bureaus: Operations Section; the Bureau of Emergency Preparedness; and the Bureau of Inspection Services. The Operations Section, under the Deputy Fire Chief for Fire/Rescue Service, is responsible for fire suppression and emergency medical services, as well as training and public education. The Bureau of Inspection Services, also headed by a Deputy Fire Chief, is responsible for fire and building inspection.

Lombard firefighters work a three-platoon, 24-hours-on-duty, 48-hours-off-duty schedule, for an average of 56 hours per week. Fourteen of the 27 firefighters are certified paramedics for which

they receive additional paramedic pay ranging from \$1000 to \$1750 a year. The 13 firefighters who are not paramedics are emergency medical technicians who receive an additional \$250 per year in EMT pay. Twelve firefighters received an additional \$300 per year because of their "advanced firefighter" certifications. Ten firefighters are eligible for "education pay" under the collective bargaining agreement, which provides for premium pay for hours of college credit.

From 1980 through May 31, 1986 the parties "met and conferred" on firefighters' wages, hours and terms and conditions of employment, entering into agreements characterized as "memoranda of understanding" (Un. 7A-D). The current agreement (Jt. 1) was signed on December 19, 1986. It became effective on December 20, 1986, and it expires on May 31, 1989, subject to reopening on June 1, 1987 and June 1, 1988 for the negotiation of specified items (Jt. 1, Articles XXX & XXXI). Under Article XXX, the 1987 reopener was limited to "Wages—Sections 29.1, 2, 3, and 4." As noted, the Union reopened the agreement in February 1987; the parties exchanged proposals and met about seven times without reaching agreement. The Union requested arbitration on May 13, 1987 (Un. 2).

IV. Comparability

(A) Background

Despite criticism by unions that comparability has a conservative impact on awards and criticism by employers that compara-

bility "has led to a 'domino effect' of victories for unions,"⁵ comparability or "prevailing practice" is "without question the most extensively used standard in interest arbitration."⁶ If "the parties cannot reach agreement as to the basis of comparison, the responsibility is that of the arbitrator to determine, from the facts and circumstances of the case as indicated by the evidence, the appropriate basis for comparison."⁷ Factors considered significant in determining comparability are geographic proximity, occupational similarity, employer similarity, and the comparisons the parties have used in past negotiations.

(B) Possible Bases of Comparison

The Employer suggested three "possible bases of comparison" (Emp. 1):

1. All jurisdictions in Regions 3 and 4 within a population range of 25% more or less than Lombard—the "relevant population range." Regions 3 and 4 include jurisdictions within the relevant population range that are bordered by I-294 on the east, I-290 on the north, and East-West Tollway on the south. These jurisdictions are Elk Grove Village, Hanover Park, Hoffman Estates, Palatine, Park Ridge, Addison, Bolingbrook, Downers Grove, Elmhurst, Maywood and Wheaton. Lisle/Woodridge and Naperville were omitted because their populations are too large and Villa Park was omitted because its population is too small.
2. All jurisdictions in Region 4, which are known as the DuPage Eight and which the parties traditionally used

⁵Laner & Manning, *Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees*, 60 Chicago-Kent L.Rev. 839, 858 (1984).

⁶Elkouri & Elkouri, *How Arbitration Works*, 4th ed. (Washington: BNA Books, 1985), 804. See also Laner & Manning, at 856: "The fourth listed factor [of Section 14(h) of the Act], commonly known as 'comparability,' clearly is the most important factor to arbitrators."

⁷*Ibid.*, at 808.

to make wage and benefit comparisons. The DuPage Eight communities are Addison, Downers Grove, Elmhurst, Glen Ellyn, Lombard, Naperville, Villa Park and Wheaton.

3. The "Neighborhood," which consists of all jurisdictions in Region 4 in the relevant population range, except Glen Ellyn, which has a volunteer fire department, Downers Grove, which works on a 4 day-a-week, 11 hour-a-day schedule, Naperville, whose population is too large, and Villa Park, whose population is too small. The Neighborhood thus consists of Lombard, Wheaton, Addison and Elmhurst. Addison and Wheaton are also in Region 3.

The Union characterized the Employer's DuPage Eight and Neighborhood communities as "historically comparable" communities. The following chart, which is based upon Union exhibit 4 and Employer exhibits 1 and 2, compares the towns or jurisdictions the Union and the Employer consider comparable to Lombard:

Jurisdictions Considered
Comparable by Union and Employer

JURISDICTION	POP ⁸ (000)	# FFS ⁹	# EMP	EMP CATEGORY	UNION CATEGORY
Addison FPD	29.8*	NA	51	Neighborhood	Historical
Bolingbrook	38.9	32	45/46	Reg 4	Western Suburb
Broadview	8.6*	NA	31	Not Listed	Western Suburb
Downers Grove	42.5	36	37/36	DuPage 8	Historical
Elk Grove	30.5	63	97	Reg 3	Not Listed
Elmhurst	44.2	27	39	Neighborhood	Historical
Franklin Park	17.3*	NA	49	Not Listed	Western Suburb

⁸The population figures are based upon those contained in Employer exhibit 2, which derived information from the "29th Semi-Annual Regional Government Salary-Fringe Benefit Survey" published by the Cook County Bureau of Administration Position Classifications Agency in January 1987 (the "Cook County Survey"). The population figures contained in Union exhibit 4 were based on a "1986 Municipal Compensation Survey." I shall use the more recent survey data. If jurisdictions are not listed by the Employer, I shall note the entry with an asterisk and use the Union's population figures.

⁹Where there is a difference in the total employee number produced by the parties, I have listed the Union number followed by the Employer number, viz., "52/53." The Union did not separately break out the total number of fire-fighters.

Hanover Park	28.8	21	27	Reg 3	Not Listed
Highland Park	31.0*	NA	45	Not Listed	Western Suburb
Hoffman Est	40.0	62	80	Reg 3	Not Listed
Lisle/Woodridge	72.0	29	35/42	Reg 4	Adjacent
Lombard	38.0	27	39/42		
Maywood	30.0	NA	39	Reg 4	Western Suburb
Meirose Park	20.7*	NA	50	Not Listed	Western Suburb
Naperville	72.0	46	63/77	DuPage 8	Historical
Niles	30.4*	NA	46	Not Listed	Nearly Identical
Northbrook	30.7*	NA	45	Not Listed	Nearly Identical
Oak Brook	7.0*	NA	34	Not Listed	Adjacent
Oak Park	54.3*	NA	85	Not Listed	Western Suburb
Palatine	34.3	40	55	Reg 3	Not listed
Park Ridge	54.9*	NA	38	Not Listed	Nearly Identical
Villa Park	23.2	13	20/18	DuPage 8	Historical
Wheaton	43.0	12	17/20	Neighborhood	Historical

Addison, Downers Grove, Elmhurst, Glen Ellyn, Lombard, Naperville, Villa Park and Wheaton are on the Union's "comparison-cities" list and the Employer's DuPage Eight or "traditional-comparison" cities list. Wheaton, Addison and Elmhurst are on the Union's comparison-cities list and the Employer's "Neighborhood" list.

Forty-five applicants, or 59.2% of the applicants who took Lombard's 1986 Firefighters' Examination, resided either in Lombard (18 applicants) or in the adjacent communities of Addison, Carol Stream, Elmhurst, Glen Ellyn, Villa Park or Wheaton (Emp. 5). Fifty-eight applicants, or 76.3% of applicants, resided in Lombard, adjacent communities, or in other communities in Region 4 (Emp. 5).

Employer exhibit 4, a chart comparing the economic statistics of all jurisdictions in Regions 3 and 4, is also instructive:

Comparative Economic Data—Regions 3 and 4

JURIS	'86 PER CAPITA INCOME (\$)	RANK	'85-86 GEN. FUND (\$000 000)	RANK	'85 ASS'D VAL'N REVENUE (\$000 000)	RANK
Elk Grove	12,683	6	10.7	5	675	1
Hanover Pk	10,054	10	1.6	NA	162	NA
Hoffman Est	12,580	7	21.5	1	309	8
Palatine	13,827	4	5.7	9	298	9
Park Ridge	15,654	1	9.5	6	407	5
Addison	10,514	9	2.4	NA	359	7
Bolingbrook	NA	NA	9.1	7	198	10
Downers Gr	14,032	2	13.9	4	478	2
Elmhurst	13,239	5	15.5	3	418	4
Lombard	12,296	8	7.9	8	360	6
Maywood	8,308	11	NA	NA	NA	NA
Wheaton	13,890	3	17.8	2	419	3
Lisle/Wood	13,020		2.4		488	
Naperville	14,517		20.2		782	
Villa Park	11,231		10.1		184	

Pointing out that because of Lombard's location in the "suburbs of a major metropolitan area" the "number of possible jurisdictions which could be used for comparison is particularly large," the Employer contended that the cities it selected for comparison, unlike the cities selected by the Union, met objective standards of population and geographical proximity derived from a single source of data (Emp. brief, 13). The broadest base of comparison consists of cities of comparable population ($\pm 25\%$ of Lombard) in Regions 3 and 4. Cities of comparable population in Region 4 would narrow the base somewhat. Finally, the Employer proposes for comparison either the eight cities usually compared to Lombard—the DuPage Eight—or the Neighborhood, which consists of the DuPage Eight excluding Glen Ellyn, which has a volunteer fire department; Villa Park, whose population is too

small; Naperville, whose population is too large, and Downers Grove, which "has a radically different shift schedule." The Employer suggests that the Neighborhood communities of Addison, Elmhurst and Wheaton are the most comparable.

The Union presented no argument in support of the comparison cities it has proposed. Several of the cities it has proposed may be easily eliminated. Highland Park, a North Shore suburb, was misidentified as a town in the Western Suburbs. The North Shore suburbs of Northbrook and Niles and the Northwest suburb of Park Ridge were identified as "nearly identical" to Lombard. While the population and number of fire department employees in these communities closely resembled Lombard, no data with respect to per capita income, general fund assets or assessed valuation was produced. The neighboring town of Oak Brook and the western suburbs of Broadview and Franklin Park have a population more than 25 percent smaller than Lombard's population, and the historically comparable community of Naperville and the western suburb of Oak Park have a population more than 25 percent larger than Lombard's population.

Finally unless such similarly populated towns as Calumet City, Chicago Heights, Elk Grove Village, Glenview, Hanover Park, Hoffman Estates, Lansing, Palatine and North Chicago¹⁰ are compared to Lombard, it is inappropriate to compare Lombard to Northbrook, Niles and Park Ridge. If Oak Park, with a population of about 54,000, is comparable to Lombard, Mount Prospect (52,600), Berwyn (52,502),

¹⁰See Employer exhibit 6.

and Des Plaines (55,374), would also seem comparable.¹¹ In sum, the comparisons made by the Union, while useful in part, are flawed and inadequate. Some of the communities offered for comparison, such as the Neighborhood communities of Addison, Elmhurst and Wheaton are clearly comparable. Others, such as Maywood, and the DuPage Eight communities of Lisle/Woodridge, Naperville and Villa Park are arguably comparable.¹² The Union did not show how the remaining communities it proposed were comparable, and it omitted communities obviously comparable to those it had proposed.

(C) Findings on Comparability

Lombard is located in a major metropolitan area. It is obviously comparable to other metropolitan-area towns with a similar population, similar number of firefighters and fire department employees and similar financial resources. Immediate geographic proximity, a factor emphasized by the Employer, is an important, but not an overriding, factor. It is conceivable that a North Shore suburb such as Highland Park may be comparable to Lombard, because of other factors. However, it would seem illogical to compare such north suburban communities as Highland Park, Niles and Northbrook to Lombard without also comparing such communities as Glenview, Calumet City, Chicago Heights and Lansing, about which no information was made available. For that reason, I consider the broadest possible base for comparison those communities with a similar population ($\pm 25\%$ of the population of Lombard) in Regions 3

¹¹These population figures are taken from Employer exhibit 7.

¹²The DuPage Eight town of Glen Ellyn has a volunteer fire department; it cannot be compared to a professional fire department.

and 4 upon which the parties have agreed: Addison, Bolingbrook, Downers Grove, Elmhurst, Maywood and Wheaton. With a population of 72,000—almost twice the population of Lombard—the burgeoning community of Naperville, although historically considered by the parties, is not comparable to Lombard. Oak Brook, although adjacent to Lombard, is a small community that cannot be considered comparable to Lombard. Downers Grove, while historically and demographically comparable to Lombard, has a working schedule different from the other fire departments in the area that makes comparisons somewhat difficult. Ultimately, the "most comparable" communities are the "neighborhood" villages of Wheaton, Addison and Elmhurst. Since, however, a sample restricted to these communities would be limited and unrepresentative of the large metropolitan area in which Lombard is located, I shall not limit comparisons to them.

V. Salaries and Salary Schedule

(A) Background

Pointing out that the Act prohibits it from striking, the Union suggests that the Act requires Section 14(h) to be "liberally construed" so that "both parties... perceive that the costs of not reaching settlement exceed the costs of settlement." For impasse interest arbitration "to be effective," the Union argues, it—

must not be either too comfortable or too predictable in its outcome to the parties. An equitable and effective award will construe the terms and other points of dispute between the parties in a manner that will serve to reinforce the inclination of the parties to resolve their labor dispute through direct negotiations.

Union brief, 6.

Noting that arbitration serves the dual objectives of resolving the dispute that gave rise to arbitration and of encouraging the parties to solve future disputes at the bargaining table, the Employer argues that the award must encourage negotiations and discourage arbitration by declining to "award funds beyond what is reasonable in light of objective criteria" (Emp. brief, 3, citing Arnold Zack, "Improving Mediation and Fact-Finding in the Public Sector," 21 Lab. L.J. 259, 270-71 (1970)). Zack wrote:

There is a tendency to abandon mediation and to invoke fact-finding even when the terms and conditions offered by the employer in mediation are equitable in light of all objective criteria. This tendency to go for a little bit more, which the employees sense will come from the settlement-oriented fact finding, will most certainly elicit a negative reaction from the employer in the next round of negotiations. Why offer as much, if going to fact finding is inevitable and if there is a reasonable expectation that the fact finder will award funds beyond what is reasonable in light of objective criteria. During the next round of negotiations the employer will hold back and entrench, thus frustrating mediation and forcing the matter to fact-finding and, perhaps, leading to a level of recommendation that could have been attained by good-faith bargaining. The awarding of that little extra amount by the fact finder, while it might resolve the dispute for the current year, risks making the employee organization even more confident of the fact process and thus more militant next time....

With these admonitions in mind, I turn to the specific proposals of the parties.

(B) Positions of the Parties

In executive session, the Employer and Union delegates agreed that the proposals on salaries and the number of steps on the salary schedule are inseparable. The economic impact of the Union and Employer proposals may be compared (See Emp. 13):

Economic Impact of Final Offers

Village	Union
<u>WAGE INCREASE</u>	
4%	5.5%—10%
<u>TOTAL WAGE COST</u>	
\$29,761 or 4.22% ¹³	\$44,498 or 6.31% Cost reflects compression of steps from 7 to 6.

(1) The Union

The Union notes that the proposed reduction from a 7-step to a 6-step salary schedule is the "single issue which has been at dispute for the longest period of time between the Union and the Village," and that there have been "several years of negotiation, litigation and unionization as a result of the change from a five year step system [six steps] to a six year step system [seven steps]" (Un. brief, 8). According to the Union, "the previous unilateral decisions by the Village in 1983 to freeze employee step increases, along with the expansion of the step plan in 1984, created inequities acknowledged by both parties"; and the "bargaining unit has consistently and persistently pressed the Five Year Step Plan to their employer and the mutually agreed re-opener clearly has its roots in that issue" (Un. brief, 9). The Union's Step proposal has the "minimal impact" of moving "one individual to top salary" (Un. brief, 9). In comparable

¹³The 4.22% is the cost computed by the Employer without retroactivity. According to Employer exhibit 33, the total cost of the Employer's proposal, which includes individual adjustments, would be 5.62%.

communities, a firefighter reaches top pay in an average of 4.8 years (Un. brief, 9; see Un. 5).

Pointing out that the Union's proposed starting salary of \$22,574 is "but \$322 or 1.44% more" than the Village's final offer" (Un. brief, 10), the Union argues that Lombard competes with neighboring communities to recruit firefighters at the entry level, and that the "early career salary levels in Lombard may be somewhat inadequate for retention of trained or skilled employees" (Un. brief, 10). The Union also notes (Un. brief, 10):

The cost differences over current salaries, on this item ... is... approximately 2.09%. Testimony by Mr. Breinig regarding the Village's cost analysis in its Exhibit 13, did not include the cost of, "1.62% in individual adjustments" (based on 1986 costs),... for normal advancement in the steps... This translates into a net difference of 0.47% in the parties cost analysis on this disputed item.

The Union went on to suggest that approval of the "Union's request on this item will remove the last of pay step inequities resulting from the unilateral decision making of the Village" (Un. brief, 10).

(2) The Employer

The Employer argues that the current 7-step schedule was "the product of the long bargaining process which produced the current agreement and which entailed, inter alia, the conversion of the previous range structure into the present step system" and that it should "not be lightly or prematurely discarded" (Emp. brief, 31). As the "wage structure" was "forged in the crucible of collective bargaining [it] is particularly susceptible for resolution through collective bargaining." Absent compelling evidence, not shown here,

the Panel should not take it upon itself to resolve this issue for the parties" (Emp. brief, 32). Union exhibit 6 shows that, "of the most relevant comparison cities, only Addison has a 5-year structure..., while Elmhurst and Wheaton, like Lombard have 6-year structures" (Emp. brief, 32).

The Employer pointed out that "the Union's offer would cost "the Village approximately \$18,232 more than the Village's offer" (Emp. brief, 32-3). The Employer argued that:

1. Relevant "comparisons with other jurisdictions favor the Village's offer" (Emp. brief, 19). The Village's offer is consistent with its compensation policy of "plac[ing] its total salary practice on or near the fiftieth percentile of the prevailing rate model for jobs of similar content within each salary practice group's relevant survey market segment" (Emp. brief, 20).
2. Settlements "in other jurisdictions favor the Village's offer" (Emp. brief, 24). The Union's "overall wage increase proposal aggregates to 6.31%," which "is out of line with other settlements involving comparable jurisdictions" (Emp. brief, 24). With the exception of "Naperville's restructuring of its wage schedule, no other jurisdiction agreed to more than a 4% increase for its firefighters!" [emphasis in original] (Emp. brief, 24). The "Village's wage offer is in line with wage settlements in comparable communities and is calculated to maintain, if not enhance, the Village's position in the comparison rankings. The Union's offer... is out of line with current settlements and cannot be justified by external comparability criteria" (Emp. brief, 25).
3. The "overall compensation received by employees," statutory factor 6, favors the Village's proposal.
4. The "cost of living factor (statutory factor 5) strongly favors the Village, especially when the term of the Collective Bargaining Agreement is considered, not just the period covered by the re-opener" (Emp. brief, 28).
5. There are "internal equity considerations," such as the fact non-bargaining unit employees received a general 4% wage increase in 1987-88, and the fact that "the

Union's Final Offer represents an increase over what it was prepared to accept at the bargaining table" [emphasis in original] (Emp. brief, 30).

6. Although the Village "is not making a strict 'ability to pay' argument, " statutory factor 3 is not irrelevant. The "public interest and welfare... is served by having a well-trained, well-paid fire service [and] that interest is not better served by the Union's offer than by the Village's lower cost offer.

(C) Discussion and Findings on Salary Schedule

(1) Salary Comparability

The data on comparability offers little to distinguish the two salary proposals. The starting salary of \$22,574 proposed by the Union would place Lombard sixth among the eleven comparable jurisdictions in regions 3 and 4. The starting salary of \$22,253 proposed by the Employer would place Lombard seventh among the same eleven comparable jurisdictions (see Emp. 15). The identical top rate proposed by both parties would place Lombard sixth among the eleven comparable communities (see Emp. 18).

(2) Comparative Percentage Increases and Cost of Living

Sharper distinctions emerge when the proposed percentage-increases are compared. As noted, the Employer has proposed a 4% general increase in wages, and the Union's proposal amounts to a total 6.3% increase in wages. Among the nine Region 3 and 4 communities for which data was available, increases in May or June, 1987 ranged from a low of 2% to a high of 4% and averaged 3.67% (see Emp. 33). Five settlements were less than 4%.

From June 1986 through June 1987, the Consumer Price Index (Chicago CPI-W) went up 15 points from 315.6 to 330.6, or 4.8%.¹⁴ If the CPI-W increases in 1987-88 are the same as they were in 1986-87, the aggregate increase will be 9.6% over two years and the impact increase will be 7.6%. During the same period, wages increased 13.88%, in part because of salary reclassifications.¹⁵ Under the Employer's proposal, the aggregate wage increase over two years would be 19.5% (13.38% + 5.62%); the impact increase would be 18.1% (13.88% + 4.22%) (see Emp. 33, p. 2). The Union's proposed wage increase, with adjustments, of 6.31% plus 0.5% in longevity pay would be 20.69% (13.88% + 6.31% + 0.5%).

(3) The Salary Schedule: 6 Steps vs. 7 Steps

Comparison of percentage increases proposed by each party with the cost-of-living data establishes a more substantial difference between the Union and the Employer proposals, and favors the Employer's proposal. Since, however, both parties agree that the issue of the salary adjustment is inseparable from the issue of the number of steps on the salary schedule, the basic issue is whether the Union's 6-step proposal is sufficiently fair and reasonable to overcome the advantage enjoyed by the Employer's salary proposal. In making this analysis, I turn to Factor 8, which permits me to con-

¹⁴The "impact" increase during this period was 3.8%. The impact of the change over a 12-month period is computed by multiplying each month's increase or decrease by the number of months it was in effect, and then dividing that sum by 12.

¹⁵Although the salary schedule increased almost 14%, interim raises lost because of the salary freeze were not made up.

sider "other factors... normally or traditionally taken into consideration...."

The primary distinction between the two salary proposals, as both parties have recognized, is the difference between the Employer's proposed 7-step schedule and the Union's proposed 6-step schedule. Here again, the comparability data offers little to distinguish the two proposals. Two of the nineteen communities the Union considers comparable are on a merit-pay plan. Of the remaining seventeen communities, Franklin Park reaches maximum step (at \$27,426, one of the lowest surveyed) in two years; Niles reaches maximum step (at \$30,757, the highest surveyed) in eight years. The average "years to maximum step" among the seventeen communities with incremental pay systems is 4.8. The Union's 6-step proposal would move Lombard from fifteenth to twelfth among these communities; the Employer's 7-step proposal would move Lombard from fifteenth to fourteenth. Among the comparable Region 3 and Region 4 cities with a salary-step system listed on Union exhibit 6— Park Ridge, Bolingbrook, Elmhurst, Wheaton and Addison the average "years to maximum step" is 5.2. Park Ridge, reaches maximum step in four years, Bolingbrook and Addison reach maximum step in five years, and Elmhurst and Wheaton reach maximum step in six years.

From 1980 until negotiation of the current agreement in 1987, the Employer entered into voluntary "understandings" with the Firefighters Negotiating Committee on a "meet and confer" basis (Un. 7A-7D). The 1980-81 "memorandum of understanding" provided for a six-step pay system. On May 15, 1981 the Negotiating Committee and

the Employer entered into a 1981-82 Memorandum of Understanding that provided for a six-step system (U. 7B). On June 1, 1984, the Employer froze step increases (Un. 7A), which, by limiting firefighters to merit-pay increases, eliminated the salary-step system. According to Local Union President Michael Tonne, the wage freeze caused wage disparities because it froze some firefighters in the "middle of the salary steps" (Tr. I, 50). On September 25, 1985, the Employer and "the shift personnel" entered into a memorandum of understanding (Un. 7D), in which the Employer "agreed to institute a series of meetings with representatives of the Fire Department to discuss the issue of discrepancies in pay with the intent of reaching a mutually accepted resolution." Before such a "mutually accepted resolution" could be worked out, the Act went into effect, the Union was certified as the bargaining representative of firefighters, and the parties entered into the current agreement, which provides for a 7-step salary schedule. During the 1986 negotiations, the parties agreed to restore firefighters whose salaries had been frozen to the appropriate step (Jt. I, App. C).

I am constrained to agree with the Employer that a wage structure is "particularly susceptible for resolution through collective bargaining," and that the current salary schedule, the product of recent negotiations, "should not be lightly or prematurely discarded" (Emp. brief, 31). Without "compelling evidence" (Emp. brief, 31), it is inappropriate for an arbitrator to disturb a wage structure the parties have agreed to in negotiations concluded within the year. The Union, newly certified under a new law, had its hands full in negotiating an initial contract and in trying to correct what its member-

ship considered substantial inequities. But inequities, real or perceived, exist in every bargaining relationship. They are the result of differences in the negotiating skill, power base and determination of the contending parties, and may favor the Union or the Employer in any particular negotiation. A union that can neither strike nor threaten to strike is inhibited by the loss of a basic tool of persuasion. An arbitrator cannot, however, adopt a proposal on the ground the union might have secured it by striking or by threatening to strike. I must assume that the contract expressed the parties' mutual understanding. Without a compelling reason to modify a just-negotiated salary schedule, it is best to permit the parties themselves to work out a new schedule. The Union did not advance, nor did the record establish, any compelling, objective basis for modifying the parties' recent decision to establish a 7-step salary schedule.'

For the foregoing reasons, I adopt the Board's final offer on salaries, as set forth in joint exhibit 2A, under Section 29.2, subsection A.

VI. Longevity

(A) Positions of the Parties

(1) The Union

Longevity is subject to arbitration under the Union's right to reopen Sections 29.1 through 29.4 of the Agreement. Section 29.2 provides that "once an employee has reached the seventh step, he shall be eligible for a pay increase as negotiated between the parties." Longevity pay is a form of wages or "pay" the Union seeks to increase.

(2) The Employer

The Employer contends that longevity pay is a "premium pay proposal... falling within Section 29.5 and therefore outside the scope of the 1987 re-opener" (Emp. brief, 34). The premium pay provisions, "in addition to being set forth in Section 29.5 instead of Sections 29.1 to 29.4, are characterized by the fact that they are payments over and above the basic wage rate which are independent of the satisfactory performance requirement," and therefore "inconsistent with the basic wage structure" (Emp. brief, 35).

According to the Employer, longevity pay, even if a legitimate subject of arbitration, is not justified. Six of eleven comparable jurisdictions do not provide for longevity pay and nine of the "19 Union-selected cities" do not provide longevity pay. Finally, the Union dropped its longevity-pay proposal in its next-to-last offer (Emp. 35) and resurrected it for arbitration. Accordingly, the Employer argues, "selection of the the Union's offer on longevity would send a clear, unmistakable and very unfortunate signal to the Union and other employee groups that it pays to go to arbitration rather than to bargain" (Emp. brief, 36).

(B) Discussion and Findings on Longevity Pay

Longevity pay could be considered either a "super step," the final step of an incremental salary schedule, or a form of premium pay not covered by the salary-step system described in Article 29.2. I am reluctant to decline to consider a proposal unless clearly persuaded that it is outside the reopened negotiations. Absent persuasive evidence that the parties intended to limit proposals under Article 29.2 to those dealing with salaries based upon a conventional system

of steps or increments, I shall consider the longevity-pay proposal of the Union. Presumably, a proposal to scrap the incremental salary schedule, add ten steps to it, or to eliminate the requirement of advancement on condition of "acceptable performance" would be subject to arbitration. A salary proposal—a proposal dealing with cash remuneration for work performed by employees—remains a salary proposal when it calls for radical changes in the salary structure. I must, therefore, deny the Employer's contention that the longevity pay proposal is outside the scope of Article 29.2 because it is not contingent on satisfactory performance.

In any event, Article 29.2 provides that "once an employee has reached the seventh step, he shall only be eligible for a pay increase as negotiated between the parties." This language is open-ended; it does not specify the nature of the pay increase contemplated. An additional "longevity step" is a form of "pay increase."

Finally, an argument would lie that the "premium pay benefits" are limited to benefits the same as or similar to those specified in Article 29.5—additional pay for additional certification—rather than to additional pay on the basis of seniority. Raises based on time-in-service, whether labeled "longevity pay," or "seniority pay," are more akin to annual incremental increases than to raises for additional skills or certification.

The Union, however, offered no argument to support adoption of its longevity-pay proposal. Nor did the comparability data compel adoption of the Union's proposal. Of the nineteen cities considered comparable by the Union, ten provide longevity pay (Un. 8). Of the eleven cities considered comparable by the Employer, five provide

longevity pay (Emp. 28). Militating against adoption of the Union proposal is the fact that the Union's final offer at the conclusion of negotiations in May 1987 made no mention of longevity pay (Emp. 35). I'm reluctant to adopt a proposal the Union failed to make or withdrew in the course of negotiations. Interest arbitration is the final step of collective bargaining, a statutory substitute for a work stoppage. I do not believe that it was designed to permit a negotiating party to make a new demand or to resurrect a demand it has withdrawn. As I noted in *City of Springfield, Illinois*, ISLRB S-MA-18 (1987), at 44:

The "final-offer process works to increase the incentive to bargain by posing the possibility of an unfavorable arbitrator's decision."¹⁶ 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.

For the foregoing reasons, I decline to adopt the Union's proposal on longevity pay.

VII. Retroactivity

(A) Positions of the Parties

(1) The Union

The Union proposes that the award be made retroactive to June 1, 1987, the start of the Employer's fiscal year, contending

¹⁶Joyce Najito & Helen Tanimoto, *Interest Disputes Resolution: Final-Offer Arbitration*, Industrial Relations Center, U. of Hawaii (Jan. 1975).

that—(1) wages have historically been made effective at the start of the fiscal year; and (2) prior to its settlement proposal of August 10, 1987 the Employer did not suggest that the settlement not be made retroactive (Un. brief, 7). Nor, the Union argued, should the Employer be "rewarded for delays in the process, which if employed as a bargaining strategy, work to the exclusive advantage of the employer" (Un. brief, 7).

(2) The Employer

The Employer argues that it "should not automatically or necessarily be held responsible in the form of retroactive payments, for the necessary delays resulting from... arbitration. An award declining to grant retroactivity... would send a powerful message to those who believe arbitration is, or should be, risk-free" (Emp. brief, 37).

(B) Discussion and Findings on Retroactivity

Historically, salaries have been effective at the start of the Employer's fiscal year. The current agreement was signed on December 19, 1986 and went into effect the next day. Salaries, however, were made retroactive to June 1, 1986. Absent a compelling countervailing consideration—a consideration not made apparent here—it would be inappropriate to ignore this precedent. The parties have established a practice—a practice I am compelled to respect—of making new salaries effective at the start of the fiscal year. The delays inherent in interest arbitration are the mutual responsibility of the parties, not solely the responsibility of the Union. The Union should not solely bear the burden of delay. I would respect a practice

of granting wage increases upon contract ratification. Similarly, I shall respect the practice of retroactive wage increases.

For the foregoing reasons, the wage increases are made retroactive to June 1, 1986.

VIII. Summary of Awards

A. By a vote of 2-1, the Panel makes the following award:

It adopts the salary schedule proposed by the Employer set out in joint exhibit 2B, Section 29.2. It declines to adopt the Employer's proposal on the effective date of salary increases set out in joint exhibit 2B, Section 29.1.

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

Rita Elsner, Employer Delegate

B. By a vote of 2-1, the Panel makes the following Award:

It adopts the retroactivity proposal of the Union set out in joint exhibit 2A, Sections 29.1 and 29.3. It declines to adopt the salary schedule and other proposals of the Union set out in joint exhibit 2A, Section 29.2.

Dated: _____

Herbert M. Berman, Chairman

Dated: _____

Bill Robertson, Union Delegate

