

JUN 10 1988

State of Illinois

Illinois State Labor Relations Board II. State Labor Relations Bd.

Before Arbitrator Elliott H. Goldstein, Chairman
William Robertson, Union Delegate
and
Jordan Gallagher, Employer Delegate

In the Matter of an Interest Arbitration

Between

City of DeKalb

and

DeKalb Professional Firefighters
Association, Local No. 1236, I.A.F.F.

ISLRB No. S-MA-87-76
ARB. NO. 87/127

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## I. INTRODUCTION

This proceeding arises under Chapter 48, Par. 1614 (h), of the Illinois Public Labor Relations Act, Chapter 48, Par. 1601 et seq., Ill. Rev. Stat. Pursuant to the statutorily prescribed procedures, on January 9, January 10, March 22 and March 25, 1988, a hearing was held in DeKalb on only one issue: "Is the City's final offer of a 2% salary increase effective July 1, 1987, or the Union's final offer of a 4.5% salary increase, effective July 1, 1987, more appropriate and reasonable pursuant to the applicable statutory criteria?" It should be noted that demand for compulsory interest arbitration was filed prior to the commencement of the current fiscal year, and the panel therefore has statutory authority to award a wage increase fully retroactive to July 1, 1987. Moreover, the parties stipulated that the arbitration panel has jurisdiction and authority to render a decision consistent with one of the parties' last offers, since all contractual or statutory procedures have been complied with, or are waived, and further that this matter is properly before the arbitration board for resolution. At the hearings the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. A 1,033 page stenographic transcript of the hearings was made; each party filed a post-hearing brief, the second of which (the Union's) was received on May 9, 1988.

With reference to the standards to be used by the arbitration panel, the parties have stipulated that those set

forth in the applicable Illinois statute are to be used by this arbitration board. Chapter 48, Par. 1614 (h), Ill. Rev. Stat. provides:

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

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

Chapter 48, par. 1614 (i) provides in relevant part:

In the case of the fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following matters: i) residency requirements; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreement to other units of government; and v) the criterion pursuant to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

The Union, stressing particularly factors 4 (A) and (B) and 5 from the standards set out in Section 14 (h) of the IPLRA argued that its proposal of 4.5% retroactive to July 1, 1987 was equitable and reasonable. The City, on the other hand, argues that each proponent must advance proposals that are both reasonable and representative of their bargaining position taken throughout the negotiations. The City insists that the Union has constantly vacillated and changed its point of attack throughout

this process and that this should weigh against it in the consideration of the comparative reasonableness of the two proposals. Management also urges the panel to analyze the data in light of all the statutory factors, taken as a whole, rather than singling out any factor individually as being dispositive of the case. It believes its proposal is fairest.

## II. HISTORY OF THE PARTIES' DISPUTE

The City of DeKalb is a Home Rule unit authority with a 1980 census population of 33, 157. City Ex. 2. Currently the City of DeKalb has approximately forty bargaining unit firefighters in the department, divided into three shifts. On each shift there are ten firefighters, with two lieutenants and one captain. The administration of the department is currently comprised of two assistant fire chiefs and one fire chief and one civilian secretary. Seventeen of the firefighters are state certified paramedics, for which the City pays a "paramedic bonus" of \$1,050 on top of the base wage scale for each of those certified paramedics. In addition, if not certified as paramedics, firefighters receive an educational bonus: after a firefighter achieves one-half of an Associate's Degree he is eligible for \$125 bonus; after he has finished his Associate's Degree he is eligible for a \$250 bonus.

As noted above, there are currently 39 fire department personnel working shift work: three 13-man shifts. Another firefighter is assigned to a 40-work week. For firefighters assigned to shift work, a firefighter works 24 hours on and is

off for 48 hours; he is placed on a 27-day work cycle in order to comply with the federal Fair Labor Standards Act.

The parties' collective bargaining agreement was admitted into evidence as Joint Exhibit 1. Article XXXV of the 1986-1988 Agreement contained an automatic reopener with respect to wages, for the period of July 1, 1987 through June 30, 1988. On April 13, 1987, the parties exchanged opening proposals and commenced negotiations with respect to the wage reopener. There were approximately six negotiating sessions between April 13, and May 20, 1987.

The City's opening wage proposal was a wage freeze. Joint Exhibit 3. The Union's opening proposal was a 7% increase, plus a cost-of-living adjustment based on the Chicago price index change for the period of June 1, 1986 through June 30, 1987. Joint Exhibit 2. The City's chief negotiator, Gary Boden, first offered a salary increase when he made the last and final offer on behalf of the City on May 20. That offer was a 2% base salary increase effective July 1, 1987, plus a \$200 signing bonus. See Union Exhibit 2. The Union rejected this offer and countered with a demand for a 6% base salary increase. Both parties maintained their respective positions from that point until the last day of the arbitration hearing, when the Union reduced its demands to a 4.5% base salary increase and the City agreed that its 2% offer would be retroactive to July 1, 1987.

### III. DISCUSSION AND FINDING

#### (1) Preliminary Matters

Several preliminary points merit attention. First, for the purposes of the neutral chairman, it is important to remember that final offer arbitration, introduced in Illinois in 1984 with the effective date of the Illinois Public Labor Relations Act (IPLRA) has, as its objective, the advancement of collective bargaining and the negotiation process and also voluntary agreement between the parties. This brand of interest arbitration was clearly intended to supplement the bargaining process, not supersede it. Third-party neutrals are not given authority to override the political process or directly interject themselves into the decisions of Home Rule municipalities with reference to public financing or allocation of resources. As was pointed out by Richard W. Laner and Julia W. Manning in their commentary on the IPLRA in the CHICAGO KENT LAW REVIEW at the time of the passage of the act:

The final offer approach seeks to increase the cost to the parties of failing to reach agreement by eliminating the arbitrator's ability to compromise issues, and substituting a winner-take-all outcome. Proponents of final offer arbitration assume that each party will advance proposals that are both reasonable and representative of their actual bargaining position to ensure that its final offer will be selected by the arbitrator. Stated differently, the parties will narrow the differences between their proposals because of their mutual fear that the other party's offer will be selected.

Laner and Manning, "Interest Arbitration: A New Terminal Impasses Resolution Procedure for Illinois Public Sector Employees," 60 Chicago Ken L.Rev. 839, 843 (1984).

The City correctly notes that the key to the final offer approach, as is indicated by the authors in the passage quoted above, is that during bargaining each negotiating team must advance proposals that are both reasonable and representative of their bargaining position. Each party in the ordinary course of affairs, should and must be able to present data sufficient to justify their proposal; any "break throughs" or changes in the status quo should be bargained for and negotiated out at the table. Otherwise, both the particular bargaining unit involved in this dispute, Local 1236 of the IAFF, and the other collective bargaining units negotiating with the City, may be less inclined to resolve their disputes outside of arbitration. Were it otherwise, each proponent would hold back or wait out the bargaining process, anticipating interest arbitration, where they hoped to "get more" from an outside, third party neutral.

Interest arbitration, on the other hand, using the final offer approach, is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria. Drastic revamping of the terms of the contract does not grow out of the statutory criteria and should be obtained through direct, face-to-face bargaining. Going beyond negotiations to "catch up" or give either party a "break through" is contrary to the statutory scheme and undercuts the parties' own efforts, in a rather direct contravention of the collective bargaining and negotiation process itself. Accordingly, last best offer interest arbitration, as envisioned

by the statute, focuses on maintenance of the status quo and reasonableness and equity in that context, not in the abstract.

Given this conceptual framework adhered to by at least the neutral chairman of the arbitration panel as the charter for this proceeding, the panel reiterates that it is guided by the standards for interest arbitration codified in Section 14 (h) of the IPLRA.

(2) Ability to Pay

As reviewed in detail in the parties' briefs, the Union and the City disagree about the weight the arbitration panel should give the Employer's ability to pay the wage increase proposal by the Union.\*

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\* The statutory factors "have not been listed by the legislature in order of importance, nor does the Act state what weight is to be accorded these factors. There importance and weight are left for argument and may be critical to the award .... "Laner & Manning, Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees, 60 Chicago Ken L. Rev. 839, 856 (1984). See also Houston Chronicle Publishing Co., 56 LA 487, 491 (Platt, 1971); "While there are familiar objective wage criteria to guide an arbitrator in a case of this kind, there is an area of discretion left to him in deciding which criteria are most appropriate or controlling." "Ability to pay," characterized as the "financial ability of the unit of government to meet those costs," is the third factor listed in Section 14 (h).

The Union argues that Management has conceded that it has the "ability to pay" even the 6% wage increase demand which the Union had maintained as its offer until its final, last best offer was formally presented at the conclusion of this hearing. The Union contends that Management's interrelated argument that the interest and welfare of the public require it to maintain the 2% offer goes not to inability to pay but to the desirability of expending public funds. The Union argues that the financial inability of cities to pay firefighters a proper wage has generally depressed firefighter wages, and that wages in a relatively wealthy and well-managed municipality like DeKalb should be permitted to rise to a level commensurate with its "ability to pay." Through the testimony of its expert, Dr. Bingham, the Union insists that the Employer can afford to fund its wage proposal, without an increase in taxes or a cut in services. It suggests that the City has a surplus in its general fund for the fiscal year involved in this dispute, and that that surplus may indeed be growing. At any rate, according to Dr. Bingham and the Union, the property tax rate in the city is quite low, and there is substantial room to fund this increase along with other demands through that source of funds, if necessary. Essentially, this argument justifies higher wages in a well-managed city which is using several taxation devices for public finance, in addition to the traditional property tax base, and criticizes the City of DeKalb's use of what the Union believes to be its specious comparability data and generalized claims relating to the interest and the welfare of the public to hold wages down.

The City argues that an employer's ability (or inability) to pay is not generally used in interest arbitration matters to justify higher wages, but only is relevant to support an employer's claim that it cannot afford the pay-raise a Union demands - not the case at all in the instant dispute.

It is the opinion of the chairman of the panel that, in interest arbitration, it is well settled that "a demonstrated inability to pay is viewed as a limiting factor to support an award less generous than otherwise indicated by the comparability data." See Laner & Manning, supra at 859. In the private sector, it is generally recognized that "large profits do not alone justify demands for wages substantially higher than those which are standard within an industry and that small profits do not justify the payments of substandard wages." Elkouri & Elkouri, How Arbitration Works, (4th Ed., 1985) at 825. And as Arbitrator Arnold Zack stated in Arlington Education Assn., 54 LA 492, at 494, in setting salaries for teachers employed by wealthy Arlington County, Virginia:

Although it may be true that this county enjoys an advantageous tax position, and has not fully exploited its taxing ability, the political considerations facing the Board make it unwilling to risk a confrontation with the taxpayers, in view of the increasing costs of other community services in addition to education. Despite these rising costs we find that the Board and the County Board do have the ability to pay for increases. But "ability to pay" is not the sole criterion for determining the propriety of a salary increase any more than "inability to pay" should be a complete defense against paying salary increases if other conditions warrant such increases. The School Board and the County Board have responsibility for the successful operation of the educational facilities in an economically sound manner. The determination of appropriate compensation for teachers must be made on

the basis of several other criteria besides that of the community's ability to pay.

Similarly, in State of Connecticut, 77 LA 729, 732 (Healy & Seibel, 1981), the panel, considering state retirement benefits, found:

A claim of inability to pay ordinarily is a type of affirmative argument that would be applicable only if it were initially determined that, on the merits, the arguments of the Bargaining Groups were valid, i.e., that the present retirement system would be continued and improved. A state's ability to pay cannot be the starting point of any analysis; the fact that a state may have a large budget surplus, in and of itself, would not justify an improvement in fair and adequate retirement benefits. Similarly, budgetary problems, in and of themselves, would not justify reducing retirement benefits, as opposed to social programs or other state services, if those retirement benefits were found to be reasonable and appropriate in light of all relevant circumstances.

The argument presented by both the Union and the Employer with regard to "ability to pay" therefore seem to the chair of the panel, at least, to be largely off point. The Union spent a great deal of time and effort in attempting to convince the panel that Management "could afford" to pay the increase demanded. It suggested that property taxes could be raised to fund such an increase, if necessary. The Union's expert, Dr. Bingham, testified in great detail as to the funding requirements and particular techniques used by the City which would make such funds available. There was an explicit suggestion that the City was not making an inability to pay argument, but was instead contending that it had no desire to expend public funds for the

pay increase the Union sought, and it believed that a lesser increase would be fair and equitable. On the other hand, the City presented counter evidence to show that its belt was pulled much tighter than the Union's expert believed. It relied on its obligation to protect the interest and welfare of the public as its basis for denying the Union's demand for a larger pay increase than the City deemed necessary. To the City, clear financial constraints, including the relatively great tax burden on DeKalb citizens which exists because of the demands for taxes of other governmental bodies, primarily the school board, meant that the City as employer must hold the line whenever possible. It also suggested that the political realities require it to hold the line, since a property tax increase would be politically impossible or certainly extremely difficult given the use of sales taxes and other methods to raise money as a promised exchange for keeping the City's tax rate on property relatively low.

The neutral chairman finds that much of this argument was in fact irrelevant to the resolution of the dispute. As noted above, this arbitration panel is not authorized to interject itself into what is the political question of overall allocation of resources. It cannot order the City of DeKalb to raise taxes, either by concluding that the property tax "has room" to be increased or by indicating that other funding sources are available and might be utilized. That is simply not the function of the arbitration panel, as the chair understands it. Instead, economic data is evaluated solely with regard to the narrow issue

of the propriety of each party's final offer. The whole question of "ability to pay," as desirability to expend funds in a certain manner, rather than the more usual issue of inability to meet financial demands, is not properly before the panel, as the chair understands interest arbitration principles and the meaning of the Illinois statute. We so hold.

The neutral chair agrees with the statement of Arbitrator George Roumel, citing Arbitrator Charles Killingsworth, in City of Southfield, 78 LA 153, 155 (1982), that "the employer's ability to pay may probably be taken into consideration only within the limits of 'zone of reasonableness'. This zone is determined by examining wage rates in other cities for similarly situated employees." As the evidence has actually been placed on this record, it is plain that either offer set out above does fall within that zone of reasonableness described by Arbitrators Roumel and Killingsworth. Therefore, the ability to pay, in the sense of the desirability to obtain funds versus the interest of tax payers in avoiding unnecessary expenditures, is not involved in this case.

In sum, the Employer's admitted ability to pay the wage increase proposal by the Union is considered only in terms of a "zone of reasonableness" established through a review of salary data in comparable municipalities. Such a review discloses that both offers fall within that zone.

(3) Comparability

The arbitration panel recognizes that, as in any case involving interest arbitration, comparability plays a special role. In fact, many commentators have indicated that comparability is indeed the most important factor in the usual interest arbitration case. Accurate comparabilities are the traditional yardstick of looking at what others are getting and that in turn is of crucial significance in determining the reasonableness of each parties respective final offer.

The neutral chairman recognizes that "heavy reliance placed upon the comparability factor has been criticized by both unions and employers. Labor organizations complain that the use of this standard has a conservative effect by encouraging the rejection of new and innovative language. ...Employer critics of the comparability criterion suggests that it has led to a domino effect' of victory for unions." Laner & Manning, supra at 858. Nevertheless, comparability "clearly is the most important factors to arbitrators." Ibid. at 856. With that general sentiment, the panel agrees.

The parties have insistently and extensively disputed what should be the applicable universe of comparable municipalities. Management argues that a grouping of 22 communities outside the Chicago metropolitan area is the relevant group of cities to be considered. The City's list of comparable communities includes all downstate Illinois cities of a population of 20,000 to 60,000 with full-time firefighter crews. Moreover, according to the City, it has historically used these cities listed as a means of

comparison of DeKalb in areas of wages, municipal revenue, municipal expenditures, as well as in collective bargaining with the firefighters and the other two bargaining units. Management believes that the geographic location of the city, in terms of a rural versus an urban location, and the population census are two of the key figures generally utilized to determine what cities should constitute the appropriate "universe." The City has also used equalized assessed valuation, and per capita income as a basis for creating its cluster of comparables. City Exhibit 2 is a chart which compares DeKalb to the universe the Employer believes most pertinent, as follows:

**CITY SUPPLIED COMPARABLE COMMUNITIES**  
**ALL DOWNSTATE ILLINOIS COMMUNITIES**  
**Population: 20,000-60,000**  
**Full-time Firefighter Crews**

City	County	1980 Population	Firefighter Top Scale Rank	1983	1984
				Per Capita Income	Per Capita E.A.V.
Alton	Madison	34,171	\$22,272 (20)	\$8,329 (18)	\$3,767 (20)
Belleville	St. Clair	41,580	\$27,242 (7)	\$10,282 (3)	\$5,094 (8)
Bloomington	McLean	44,189	\$32,208 (1)	\$11,197 (1)	\$7,707 (1)
Carbondale	Jackson	26,414	\$22,064 (21)	\$6,615 (21)	\$3,922 (19)
Champaign	Champaign	58,391	\$25,565 (11)	\$9,528 (6)	\$6,091 (5)
Danville	Vermilion	38,985	\$22,700 (19)	\$9,253 (11)	\$4,696 (11)
DeKalb	DeKalb	33,157	\$26,330 (8)	\$8,041 (19)	\$4,423 (15)
***With 2% Increase***			\$26,857 (8)		
East Moline	Rock Island	20,907	\$25,701 (10)	\$9,291 (10)	\$6,489 (3)
East Peoria	Tazewell	22,385	\$30,566 (4)	\$9,347 (9)	\$6,210 (4)
East St. Louis	St. Clair	55,200	\$23,271 (17)	\$4,997 (22)	\$885 (22)
Freeport	Stephenson	26,266	\$23,244 (18)	\$10,054 (4)	\$4,775 (9)
Salesburg	Knox	35,305	\$23,962 (16)	\$9,927 (5)	\$4,464 (14)
Granite City	Madison	36,815	\$25,364 (12)	\$9,160 (12)	\$5,189 (7)
Jacksonville	Morgan	20,284	\$25,800 (9)	\$9,508 (7)	\$4,152 (17)
Kankakee	Kankakee	30,166	\$24,216 (15)	\$8,504 (17)	\$4,014 (18)
Macomb	McDonough	20,628	\$20,070 (22)	\$7,431 (20)	\$3,172 (21)
Moline	Rock Island	46,407	\$27,525 (6)	\$10,874 (2)	\$7,026 (2)
Normal	McLean	35,672	\$31,117 (3)	\$9,131 (13)	\$4,674 (12)
Pekin	Tazewell	33,967	\$28,664 (5)	\$8,993 (14)	\$4,765 (10)
Quincy	Adams	42,554	\$25,221 (13)	\$8,901 (15)	\$4,188 (16)
Rock Island	Rock Island	46,821	\$31,118 (2)	\$9,478 (8)	\$5,370 (6)
Urbana	Champaign	35,978	\$24,447 (14)	\$8,779 (16)	\$4,598 (13)
*** Mean ***		35,738	\$25,849	\$8,983	\$4,803
*** Median ***		35,489	\$25,465	\$9,207	\$4,685

**NOTES:**

1. Rantoul is excluded because this community has a volunteer fire department
2. UPDATE COMPLETED JANUARY 4, 1988.
3. ALL SALARIES ARE BASE SALARIES AS OF JULY 1, 1987

b:iaffcomp

As this chart illustrates, the Employer's offer would maintain DeKalb in its eighth position out of 22 among comparable cities. That is consistent with Management's final offer, as the Employer views its case.

The Union, on the other hand, presented its expert, Dr. Bingham, to testify that seven factors require a cluster of only five communities to be considered. To the Union, the universe consists of Champaign, Normal, Urbana and Carbondale, along with DeKalb. Obviously, these are the downstate communities where a state-supported university is located. According to Bingham, the appropriate spreadsheet analysis discloses that only this narrow universe of comparable communities should dictate any fair comparison of wage rates and other benefits.

The Employer, of course, argues strenuously that this cluster of five cities is much too limited to make any sense. It also notes that there is substantial geographic distance between these communities, so that they cannot constitute the same market place for job services and certainly do not compete for the services of the DeKalb firefighters directly. Moreover, each particular municipality uses a different mix of funding sources to finance its general fund. Carbondale, for example, is apparently a regional shopping center, according to the record evidence. It therefore relies heavily on sales or user taxes and does not place such great reliance on the property tax as an instrument to finance government. Normal and Champaign are going through a boom period, and are rapidly expanding economies,

Management argues. It stresses that, according to the evidence adduced, DeKalb has been stagnant at best in its economic growth for a number of years. Therefore, according to the Employer, although the four communities the Union wishes to serve as the model for comparison are indeed included in Management's list, the universe of comparables constructed by the Union is unfair and should not be used as the only basis for comparison.

Peculiarly, after expending so much energy and time on the above contentions, Management also argued that the use of the Union's list actually would make no difference in the assessment of comparable wage rate and overall compensation. That is because DeKalb ranks second among the five clusters in salary and compensation levels, even according to the Union's own economic data, the Employer points out. See Union Exhibit 10, for example. Compare City Exhibit 7, which the Employer argues verifies DeKalb's position as second on a list of five communities in this particular cluster both before and after the City's proposed 2% increase.

The Union is not emphasizing this narrow universe of comparables for nothing, however. To the Union, the crucial use of the five communities is not for comparison of relative overall compensation, but because it argues that the percentage of base pay increases in the comparable communities for the year in question are substantially higher than that offered by the City of DeKalb. In Appendix A to its brief, the Union sets out the following:

APPENDIX A

**SUMMARY OF RECENT FIREFIGHTERS' BASE PAY INCREASES  
IN COMPARABLE COMMUNITIES**

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<u>City</u>	<u>Effective</u>	<u>Percent Increase</u>	<u>Union Exh. No.</u>	<u>Page</u>
Carbondale	May 1, 1987	2.53%	34	5-6
Champaign	July 6, 1987	4.00%	30	30
Normal	April, 1987	3.00%	28	App. B
	October, 1987	3.00%	28	App. B
<b>Total for 1987-88 Fiscal Yr.</b>		<b>6.00%</b>		
	April, 1988	3.00%	36	App. B
	October, 1988	2.00%	36	App. B
<b>Total for 1988-89 Fiscal Yr.</b>		<b>5.00%</b>		
Urbana	July 1, 1987	3.50%	29	20

This chart, the Union stresses, indicates that the average increase, rather than what other employees are getting, should be the yardstick to measure the reasonableness of the City's offer. The average increase for comparable communities at the times in question was approximately 4%, according to the Union. The highest increase was the 6% granted by Normal. The next lowest increase to that offered by DeKalb was that given by Carbondale, which was in the amount of 2.53%. The Union spent considerable time in its brief, however, contending that Carbondale is the least similar of the four comparison communities and that its offer should therefore be "the least controlling" on the analysis and determination of this dispute.

Generally speaking, the neutral chairman notes that it is very unusual to use the extremely narrow and limited universe proposed by the Union as the only point of comparison in cases similar to the one in dispute here, at least in the chair's experience. Of course, there are communities that are so alike that a strong cluster can obviously be developed through spreadsheet analysis or otherwise. For example, the communities on the North Shore in the Chicago area really do form a natural cluster for comparison. Aside from such peculiar situations, where the geography and the market place for competing employment is so obvious, it seems peculiar that the Union would focus on communities which are physically so far apart as being part of the relevant employment market place as a yard stick for comparison for salaries and overall compensation.

Geographic proximity and the idea of the job market as important in setting the price of labor run directly counter to its claim, as the Union effectively concedes in its cost-of-living argument. For cost-of-living, it is to be remembered, the Union attempts to place DeKalb for comparison purposes within the Chicago metropolitan area. As the Union pointed out in that context, DeKalb and Sycamore are only four to six miles from Kane County, and Kane County is now included in the seven or eight collar counties surrounding Chicago. Although Management also attempts to distinguish on bases other than geography, except as between "rural and urban," the fact of geographic proximity as important for labor cost comparability cannot be so completely discounted. Therefore, there are serious problems, in the neutral's view, with building a wall around the Chicago metropolitan area, as Management has done, but also with using a five-town universe, as the Union wants to do.

The Union's claim of so narrow and precise a universe as being the only proper source of comparison or comparability seems quite far-fetched as the only possible basis for comparison. Very frankly, the Arbitrator believes that some municipalities in DuPage or Kane County would be more comparable to DeKalb than the cities of East Peoria, East Moline or Alton, but Chicago or the North Shore are equally inappropriate if these are the only comparables to be used. Therefore, both lists of comparable communities leave something to be desired, to say the least.

After this rather intensive discussion of the battle between the parties over choice of the universe of comparability, it is extremely interesting to note the actual evidence with regard to this crucial factor really did very little for the Union's case. As the Employer emphasized, even using the Union's list of comparables (Union Ex. 10), the City of DeKalb ranks second out of five in the top-of-the-scale salaries, according to the Union's figures.

According to the Union, though, while DeKalb firefighter salaries may be second out of five in its cluster group and eight out of 22 in the Employer's comparability list, the crucial fact is that the rate of pay increases given for the pertinent time period involved was substantially lower in the cluster group than the offer presented by DeKalb. The Union stresses that the average percentage given by the four other communities was over 4%. It recognizes that Carbondale granted only a 2.53% increase, but goes to considerable effort to argue that Carbondale is the least comparable or representative of the communities, based on geographic distant and other differentiating factors. At any rate, according to the Union, no other community in the five city cluster granted a pay increase in the percentage range offered by DeKalb. Because the Union's offer of 4.5 increase in base salary falls closer to the average point, the arbitration panel should accept its offer as being most reasonable and equitable, according to its contention.

The problem, however, is that comparability is generally recognized as the crucial factor in resolving interest arbitration disputes when based on a comparison of overall compensation, not on a one year assessment of percentage raises granted. The base and overall compensation are the critical factors to be compared. Because of the absence of the inability to pay financial factor in this case, accurate comparability, the other traditional yardstick of looking at what others are getting, should theoretically be of much significance in this case. It is, but comparability as a factor, whether the Union's list or the Employer's is used, favors Management.

In light of the evidence that the 2% pay increase offered by the City will maintain comparability, the chair finds the Union's claim that the relevant analysis should be directed merely to a review of the percentage of increase granted to be unpersuasive. Therefore, if external comparability were the only factor involved, Management would win this case.

#### (4) Internal Comparability

As the neutral chair understands the Union's argument, central to its position that 4.5% is a more reasonable wage increase is its further contention concerning the unfair degree of disparity between wages paid firefighters and wages paid to police officers within the City of DeKalb. The Union takes the position "that perhaps some disparity is the norm," but that the disparity which exists between firefighters and police officers in this City "is far beyond the norm." The City, on the other

hand, submits that the "disparity argument" is the "driving wedge" that led to the interest arbitration now before the panel. It was not really the issues of comparability with other municipalities, cost-of-living or ability to pay, but the fact that the Union is upset at the "relevant historical wage position" that it has found itself in with respect to members of the local Fraternal Order of Police (FOP) which really is at the bottom of this arbitration, Management insists.

The Union and the Employer have both presented substantial data comparing the various terms and conditions of the collective bargaining agreements of Local 1236 and the FOP local. The Employer strenuously argues that the degree of disparity between these collective bargaining groups is not as great as the Union would have the arbitration panel believe. To the City, the actual difference is 4.76%, which has been the approximate difference since 1975. And, since the Union has acknowledged that some disparity is the "norm," Management further submits that the disparity between the two collective bargaining units falls within that norm.

The Union counters that the testimony of Michael Lass, a labor relations consultant for firefighter unions, is that there is in fact an 11.8% degree of disparity in wages in favor of the FOP. Management argues that the wage disparity is substantially less because Lass used the wrong year's data to make his comparison (1986 for the firefighters, 1987 for the FOP). At any rate, according to the Employer, "overall compensation" is the

true basis upon which any determination of comparability, or any conclusions as to disparity, should be measured. To the Employer, overall compensation has traditionally included factoring in both direct wages and fringe benefits, including holidays, longevity payments, shift differentials, vacations, sick leave, medical insurance and personal leave. See City of Boston and International Association of Firefighters, Local 1718, 70 LA 154 (O'Brien, 1977). Management also relies on the language of Section 14 (h) (6) as demanding a comparison based on overall compensation. When that comparison is made, according to the evidence and data presented by the Employer, the disparity which exists is the 4.76% mentioned above. The Union believes that the comparison of percentage increases in base salary only on the effect of cost-of-living on these salaries between the two units from 1980 to 1988 clearly reveals the slippage of the firefighter wage benefit package and the fact that the FOP has pulled ahead. Disparity cannot be permitted to widen, according to the Union. Therefore, the panel should grant the Union's final proposal.

As the neutral chair indicated in the preliminary remarks, it is a central purpose of the act to encourage the parties to engage in genuine arms length collective bargaining. It is not the responsibility of the arbitration panel to correct previously negotiated wage inequities, if any. The concern of the panel and its authority to evaluate comparisons is limited to the current agreement. This is because the parties themselves had control

over salaries and benefits previously negotiated. They alone decided whether the "disparity" in either base pay or overall compensation between the FOP and IAFF was a pertinent consideration in their deliberations; and if so, whether the agreed-upon salaries and overall compensation would meet, exceed or fall below either FOP or the AFSCME unit. The chair must presume that in the past the parties reached agreement in good faith and considered all the factors they believed pertinent. Otherwise, this interest arbitration would be relitigating the issues of 1975 - long before the statute itself was passed.

Other so called "internal" comparability data beyond the AFSCME and FOP units cannot be considered to merit great weight or consideration. The pay raises of the teachers in the public school system and the employees at Northern Illinois University are not directly comparable to firefighters or other City employees. The arbitration panel notes that the City relied on such an assessment, and apparently had incomplete or inaccurate data at that. That is one factor that detracts from the City's overall position, although it is certainly not dispositive of the case. The attempt to bring in the management compensation plan, as an available comparable, is, as Management argued, irrelevant and inappropriate. That evidence has not been considered by the panel.

Therefore, with regard to "internal comparability," the panel finds that the issue of disparity between the IAFF Local 1236 and the FOP cannot be the factor to make the 4.5% Union

demand more reasonable and equitable than Management's offer. The disparity has existed historically and has remained in relative equilibrium despite the claims of the Union since at least 1975, the record evidence shows. Moreover, the critical Union claim that the contracts are "substantially similar" in terms and conditions is not true, since there are differences in hours of work, premium pay and overtime compensation, calculation of sick days, and the use of Kelley days by the firefighters for extra time off for the mutual benefit of Management and the bargaining unit employees. Under these circumstances, readjustments of the ratio between police and firefighters should be left to the bargaining table where the claim of "catch up" is more appropriate. The other factors presented by the Union as proving that "internal comparability" dictates a 4.5% increase are equally unpersuasive. We so hold.

(5) Cost-Of-Living

The Union contends that the Chicago metropolitan area index for consumer prices should be the base from which to measure changes in the cost-of-living. It argues that geographic area and the job market available to residents of the City of DeKalb is really the western portion of Chicagoland. The Union believes that this is the marketplace in which the City is competing and that firefighters, as well as other City employees, share many of the same "community of interest" with residents of these adjacent counties.

The Employer suggests that the north central CPI or the CPI for the United States, the CPI-U, is a more relevant data base from which to measure comparative increases and salary and the cost-of-living. The Union's data presented at the hearing shows that nationally, consumer prices rose 4.5% during the twelve month period ending November, 1987. The Union's data also showed that nationally, the CPI-U had risen 3.9% during the period of July, 1986 through June, 1987. The north central index, however, showed a 3.6% rise in that time period, Management strenuously argues.

In the judgment of the chair, all data not relating to July, 1986 through June, 1987, is not relevant, since that is the appropriate base year. It is well settled that "generally, the date of the last interest arbitration award or of the parties' last wage negotiations is to be used as the base date." Elkouri & Elkouri, supra at 821. As Arbitrator Benjamin Aaron pointed out in Los Angeles Transit Lines, 11 LA 118, 130 (1948):

In determining the amount of wage increase necessary to offset a rise in living costs the general practice is to measure only the change in living costs occurring after the parties' last waived negotiation, since there is a presumption that all pertinent factors were considered in the previous bargaining.

It is also true that the data in dispute before the panel relate not to cost-of-living increases in the current year, i.e., 1988, but the data available for the July 1, 1987 beginning point of bargaining, since the parties now agree that whichever offer is accepted by the panel will be retroactive to that point.

Obviously, whichever geographic unit is used as the base for analysis, the cost-of-living rose at a rate higher than the 2% offered by the Employer. Management recognizes this, but counters that increases in the prior three years had exceeded inflation and that therefore "coming in at the low end" of what was then a projection of inflation was permissible.\*\* It also argues that the data available when negotiations occurred indicated a lower rate of inflation than actually proved to be true, i.e., a range of two to four percent as the predicted increase. These factors, Management urges, should offset the obvious fact that the cost-of-living did rise at a rate much closer to the Union final offer than Management's proposal.

Despite the Management argument, it is clear that the Union's proposal is much more closely in line with inflation than that of the Employer. However, the neutral chair notes that cost-of-living is perhaps the slipperiest and most difficult of the statutory criteria to apply in a fair manner. The real question at bottom is how much did the cost-of-living actually

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\*\* Although the 2% offer is below the CPI-U, the projection available at the time bargaining was occurring was that the range of increase due to inflation was 2%-4%. Moreover, the employer's position on this issue is that the offer is not unreasonable when one considers that "the cumulative total of wage increases in the three fiscal years ending June 30, 1987 (12.76%) as compared to the cumulative CPI-U over the same time period (9.36%)." (City Ex. 30)

rise in DeKalb and for the particular affected employees. The data presented, no matter which CPI is used, are only rough approximations of what in fact occurred relating to the cost-of-living in this particular city and that is all they can ever be. Moreover, if, for example, no firefighter purchased a home during this period, the single most significant factor in the increase CPI would not have had any impact on the particular unit. All this is by way of saying that the neutral chairman does not believe cost-of-living can exclusively control an interest arbitration, albeit it is certainly one factor in any fair assessment of a final offer. In this instance, cost-of-living increases are most clearly in line with the Union offer and favors its acceptance. We so find.

(5) Other Factors

Section 14 (h) (8) of the IPLRA provides that the panel consider factors "traditionally taken into consideration" in the determination of wages, hours, and conditions of employment through voluntary collective bargaining. In this case, these other factors are quite significant, and include consideration of claims by the Union of substantially increased productivity and also its argument that Management affectively prevented genuine bargaining by its take it or leave it approach. These factors will now be considered.

(a) Productivity

One traditional factor used in collective bargaining to justify a pay increase is whether the duties of a particular employee group have changed substantially or whether new techniques of Management, technology or other factors have substantially increased production and demands for work on the part of bargaining unit employees. As Management noted, the Union spent several hundred pages of transcript introducing evidence to show that such changes have occurred in this particular bargaining unit. Management, however, rather cavalierly dismisses the claim of increased productivity as "nonsense." After careful consideration of all the evidence presented, the neutral chair completely disagrees.

First, it is to be noted that there is no dispute that late 1985 and 1986-87, during the relative time period prior to commencement of bargaining for the 1987-1988 reopener three firefighters, one from each shift, were eliminated by attrition. There were several reasons why this action was taken and all made good business sense.\*\*\* The fact remains, however, that what

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\*\*\* One reason was the work-related injury of a fire captain and his subsequent retirement. This led to the decision to eliminate two other slots on a "trial basis" to save money. According to Chief Long, the reduction brought the staffing back to 1983-1984 levels. Regardless, the record reveals that reduced manpower was expected to do the same or more work.

normally would have been a fourteen person shift, staffed by approximately four officers and ten rank and file firefighters, became a thirteen person shift, staffed by four officers and nine firefighters or three officers and ten firefighters. One individual firefighter was eliminated from work during the 24 hour period which constitutes the normal work shift. Whether during routine assigned tasks from 8:00 a.m. to 5:00 p.m., or when the complement was called to the fire ground, normal tasks had to be accomplished with the workforce reduced by one. Employer witness and Fire Chief Long testified that this attrition plan was an "experiment." He also indicated that it was "on trial" and that he was recommending that the fire department go back to full staffing in the future. However, as noted above, the arbitration panel must limit its consideration to the actual terms and conditions of employment for the fiscal year July 1, 1987 until June 30, 1988. At this time, and during this period, each shift functioned short-handed, the evidence discloses.

This reduction in force occurred at a time when Chief Long admittedly had been attempting to make better use of the time of the bargaining unit employees by applying sound Management techniques. The goal is to make firefighters more productive during the time periods in which they are on duty, including their "on-call."

An example of this change in Management is that fire department personnel now spend 6.29% more time in fire suppression training. Fire fighting hours are up 15.89%. See Union Ex. 25, 26 and 27. See also Union Ex. 14. At the same time, according to the testimony of several witnesses, overtime expenditures with respect to these personnel have been reduced. In unrefuted testimony, Union witnesses testified that off-duty time for family sickness, death in family, self sickness, and off-duty injury were all down substantially in fiscal year 1986-87. Union Exhibit 36.

Moreover, Chief Long testified that it has been his goal to make sure that there is an increased number of firefighters at the fireground, at least with regard to the number of people who respond to a first-alarm basis. This has been accomplished by switching the duties of employees assigned to ambulances, to also direct that they report to the fire ground when an alarm comes in.

Additionally, there was instituted a mandatory physical fitness training program in the summer of 1987. This program is conducted pursuant to the order of Chief Long on the firefighters "on-duty time." Although, the Employer believes this is a benefit to bargaining unit employees because of health improvements attendant on physical exercise, the program does require that a given employee perform exercises on what would normally be "on-call" time.

Furthermore, Management has put into place the so-called expanded work schedule, which means that an employee who does not complete an assigned task by 5:00 p.m., is to continue working until completion or 9:00 p.m. that night. Management contends that this device is designed to make sure that work is evenly distributed, or gets done during customary work hours. At any rate, according to the Employer, firefighters are on duty 24 hours and therefore should have no complaint. Last, Management asserts that if there is a grievance, the Union or employees could have used the arbitration route or filed a charge with the Illinois State Labor Relations Board to protest this particular order rather than arguing that the "expanded work schedule" plan justified a pay increase. Chief Long testified that the plan was also placed in effect only on "trial basis" and should not be considered as a regular aspect of a firefighter's work.

The neutral chairman rejects Management's claim that there has been no discernible increase on demands of its bargaining unit personnel or in their productivity. It should be patently obvious that certainly the reduction through attrition and, to a lesser degree, the increases in demand on personnel during ordinary working hours and on-shift time, even though based on good management principles and appropriate business judgment, have in fact increased the efforts and productivity of bargaining unit employees substantially. Under these facts, the employees have a right to demand extra compensation for this particular fiscal year, as the Union contends.

The Employer avers that the Union's "productivity" argument is completely spurious and ill-founded. Management notes that the Union presented considerable testimony and argument attempting to present a case for the proposition that because bargaining unit employees are, in their view, more "productive", they are entitled to a wage increase. Simply put, Management believes that this is nonsense. To the Employer, what Fire Chief Long has actually attempted to do since moving into the head Management position in the fire department is to use better techniques to manage time to make bargaining unit firefighters more productive during the time periods in which they are on duty and being paid to work. Such increases should not be considered in formulating a compensation package, Management insists. Specifically, simply because the number of logged hours spent in emergency types of operations has shown an increase, this fact does not necessarily mean that there are more fire alarms or that the firefighters are physically longer at the scene. This is only reflective of the changes in rules and regulations requiring more people to respond on a first-alarm basis, the Employer argues.

The problem with the argument is that the testimony of all witnesses who were queried on the point discloses that there has been a discernible increase on demands made on bargaining unit personnel in their productivity. It should be clear that greater output is one basic way to justify greater compensation, whether the productivity increase occurs for private or public

sector employees. To argue, as does the Employer, that these increased demands are not genuine because they occur during the 24 hour period when the firefighter is "on-shift" and being compensated already, misses the point.

The cumulative effect of the record evidence is that volume of fires, time spent on the fireground and other actions most directly related to the central mission of the department - the suppression of fires - had increased in fiscal year 1986-1987, while the workforce was decreased by three firefighters out of a workforce of 39 or 40 on-shift bargaining unit employees. The arbitration panel does not accept Management's claim that this cannot and should not be used at all to assess the fairness and equity of the final offer presented. Although the Employer believed nothing distinguishes the firefighter unit from the AFSCME or FOP unit, this crucial fact does make the Employer's position that a 2% increase is "fair for all" seem inequitable for the year in question. We so hold.

(b) Patterns of Bargaining

Ultimately, perhaps the most crucial aspect of this case to the neutral Arbitrator is the manner in which the City has bargained with its respective Unions over the last few years. The Union has indicated that Management came to the table and in essence told it that the maximum pay increase would be 2%. According to Union witnesses, the Employer representative told the bargaining committee of the Union that that was the decision

of the City Council, and that that was the amount that would be given to all three organized bargaining units. The City denied having any firm or inflexible position on this matter, and in fact stated that in prior years, it had been forced to "move off" or modify its final offer during the course of negotiations. However, City Exhibit 9 discloses a pattern where all three units affectively are in lock-step. That reinforces the Union argument that in fact the City has a pattern of developing a firm, fair and final offer that it presents to all three bargaining units, with little or no intention to modify or negotiate once that figure has been determined.

The City's own brief reinforces and clarifies that bargaining posture. As the attorney for the City notes, at pages 23 and 24, "the City Council came up with a 'final position' to be presented to all collective bargaining units of two percent." Management goes on to argue that this particular offer was not unreasonable based on all the various factors.

Significantly, the Employer presents an extra argument, however. According to Management, each year staff personnel analyze the budget for the City and look to comparability and equity issues. The Management employees look for any parity or equity issues to determine if there are any problems with the position of a particular union. After such consideration, and a balancing of the equities between the bargaining units, the City

comes up with a figure to be presented in bargaining. Despite its protestations, the evidence discloses that consistently the analysis results in a determination that each bargaining unit is entitled to the same percentage increase.

Accordingly, as the neutral understands the bargaining strategy, the City comes into negotiations with a firm stand and a defined position. It indicates that this position applies to all three bargaining units, and will be maintained, absent extremely unusual circumstances. In the particular case of the bargaining with Local 1236 for fiscal year 1987-1988, the chief negotiator for the Employer determined that the Union claims of increased productivity unique to the fire department were specious and "nonsense." Therefore, the assessment of individual facts, and the application of the statutory criteria, were all done unilaterally by Management prior to negotiations. The Union was neither privy to the data being used, nor it could it participate in the process.

This is, of course, the very antithesis of genuine collective bargaining. It is to be remembered that the Union does not have the fulcrum of the strike or threat of collective action because of the fact that the work of firefighters so directly affects the public welfare. Therefore, the City has been able to develop a technique which effectively mirrors

boulwarism,\*\*\*\* without having the countervailing force of the strike or threat of strike to move negotiations off impasse. All the cards are in the City's hand under these circumstances. It is simply impossible for the Union to negotiate for the bargaining unit as a unique and individual grouping of employees, which may have special needs and interests which set it apart from the AFSCME or FOP units.

The neutral chair believes that this pattern of bargaining does not permit a fair assessment of how the statutory criteria discussed above apply to the particular bargaining situation. In this specific instance, no serious discussion over increases in productivity or the use of attrition to reduce staffing was possible. No consideration of added compensation based on these peculiar factors was entertained. Yet, as noted above, the increase in productivity seems to the neutral chairman, at least, to have been genuine and to have entitled the Union to some compensation for the increase in demands on the individual employees.

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\*\*\*\* See Cooper, Boulwarism and the Duty to Bargain in Good Faith, 20 Rutgers L.Rev. 653 (1966); Gross, Cullen & Hanslowe, Good Faith in Labor Negotiations: Tests and Remedies, 53 Cornell L.Rev. 1009 (1968); H. Northrup, Boulwarism (1964); Note, Boulwareism: Legality and Effect, 76 Harv.L.Rev. 807 (1963).

Under these special facts, therefore, I do believe that the City acted unreasonably in the specific case and that the Union's final offer is more fair and equitable than that of Management.

(5) Concluding Findings

In this arbitration, the panel is required to choose between competing "final offers." The panel has not been asked to rely on its informed judgment to set the levels of salaries it finds appropriate in light of the evidence and arguments of the parties. The economic package, in this case a single issue, has been fashioned by both parties and the only choice is which is more reasonable and equitable.

In light of the evidence that the Union's offer most reflects the unique circumstances of the changes in productivity proved at hearing, the majority of the panel concludes that the Union's final offer, as set forth in Union Exhibit 48, is reasonable. The arbitration panel adopts it. In reaching this conclusion the Board has considered all the pertinent statutory factors set out in Section 14 (h) of the IPLRA. Particularly, the panel has considered ability to pay, external and internal comparability, cost-of-living, the overall compensation presently received by the employees, and such other factors, not confined to the foregoing, which are normally traditionally taken into consideration in the determination of wages, hours and conditions of employment in collective bargaining.

IV. AWARD

(1) Firefighters' Salaries. The majority of the arbitration panel adopts the Union's position on the wage increase. This offer is as follows:

Four and one-half (4-1/2%) increase to the base wages listed in "Appendix A" to be effective July 1, 1987.

(2) All relevant statutory criteria set out in Section 14 (h) of IPLRA as being prescribed standards for interest arbitration for firefighters have been duly considered in rendering this award.

6-9-88  
Date

  
Elliott H. Goldstein, Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jordan Gallagher, Employer Delegate

\_\_\_\_\_  
Date

\_\_\_\_\_  
William Robertson, Union Delegate

June 1, 1988  
Chicago, Illinois