

Interest Arbitration

City of Rock Island, Illinois,

Employer

and

Rock Island Fire Fighters Union,  
IAFF, Local 26, AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-91-64  
Arbitrator's Case No. 91-131

Herbert M. Berman,  
Arbitrator

March 13, 1992

---

**Opinion and Award**

---

## Contents

	page
I. Background.....	1
II. Issues.....	2
A. Economic Issues: (1) Wages; (2) Contract Term; (3) Promotion Wage Increase; and (4) Retroactivity: .....	2
B. Non-Economic Issues: (1) Management Rights; (2) Seniority; and (3) Subcontracting.....	2
III. Applicable Standards Under The Illinois Public Labor Relations Act .....	4
IV. Summary of Relevant Evidence on Economic Factors .....	5
A. Comparability.....	5
1. External Comparability.....	5
2. Internal Comparability .....	10
B. Cost of Living .....	12
V. Positions of the Parties on Economic Issues.....	12
A. The Union.....	12
B. The Employer.....	14
VI. Discussion and Findings on Economic Issues.....	17
A. Wages: Relevant Factors and Considerations.....	17
1. The Recession.....	17
2. Comparability .....	18
B. Duration of the Contract.....	20
C. Promotion Wage Increase.....	20
D. Retroactivity .....	21
VII. Discussion and Findings on Non-Economic Issues .....	22
A. Management Rights—Article II, Section 2.1 .....	22
B. Seniority—Article XI, Section 11.5 .....	23
C. Subcontracting—Article XX, Section 20.1.....	24
VIII. Summary of Award.....	25

## Interest Arbitration

City of Rock Island, Illinois,

Employer

and

Rock Island Fire Fighters Union,  
IAFF, Local 26, AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-91-64  
Arbitrator's Case No. 91-131

Herbert M. Berman,  
Arbitrator

March 13, 1992

---

## Decision

### I. Background

The Union represents Firefighters, Fire Lieutenants, Fire Captains, Fire Training Officers, Fire Battalion Chiefs and Fire Marshals employed by the Employer, the City of Rock Island. The most recent collective bargaining agreement between the Employer and the Union expired March 31, 1991 (joint exhibit 1).<sup>1</sup> Unable to reach agreement, the parties submitted unresolved issues to interest arbitration in accordance with Section 14 of the Illinois Public Labor Relations Act (IPLRA) (Ill. Rev. Stat., ch. 48, § 1614).

The Union and the Employer submitted final offers (Jt. 3A & 3B) at the start of the hearing on August 16, 1991. Waiving the arbitration panel, the parties instructed me to reach a decision on each issue (Tr. 5). The parties also identified the economic and non-economic issues, which I adopted (Tr. 7-8). They did not limit me to the last, best offer on non-economic issues, but agreed that I could "write [my] own language" (Tr. 8-9). At the close of the hearing, I gave the Union leave to amend its final offer within 10 days and the Employer 10 days to respond. The Union, but not the Employer, amended its final offer.

---

<sup>1</sup>In the remainder of this decision, I shall cite joint exhibits as "Jt. \_\_\_\_," Union exhibits as "Un. \_\_\_\_" and Employer exhibits as "Emp. \_\_\_\_." I shall cite the transcript by the name of the witness and the relevant page number, for example, "Lass 40."

## II. Issues

### A. Economic Issues: (1) Wages; (2) Contract Term; (3) Promotion Wage Increase; and (4) Retroactivity

#### 1. Wages (Article XII, § 12.1, Appendices A & B)

##### Union Offer

4/1/91: 5% across-the-board  
4/1/92: 5% across-the-board

##### Employer Offer

4/1/91: 3.5% across-the-board  
4/1/92: 4% across-the-board  
4/1/93: 4% across-the-board

#### 2. Contract Term (Article XXIV, § 24.1)

##### Union Offer

2 years: 4/1/91-3/31/93

##### Employer Offer

3 years: 4/1/91-3/31/94

#### 3. Promotion Wage Increase (Article XIII, § 13.1)

##### Union Offer

7.5% increase in base salary  
for promotion to captain

##### Employer Offer

Current agreement: Not less than  
5% increase of base salary for promotion  
to captain

#### 4. Retroactivity

##### Union Offer

Wage increases retroactive to  
April 1, 1991 to all employees  
then or currently on payroll

##### Employer Offer

Wage increases retroactive to April 1, 1991  
to all employees on payroll at time of con-  
tract ratification

### B. Non-Economic Issues: (1) Management Rights; (2) Seniority; and (3) Subcontracting

#### 1. Management Rights

The Employer proposes to amend Section 2.1 by inserting the phrase "to assign bargaining unit employees work not in Section 1.1" after the word "efficiency" and before the word "provided." The Union proposes no change in Section 2.1.

Article I, Section 1.1, Recognition, provides:

The City formally recognizes IAFF #26 as the sole and exclusive bargaining agent for full-time employees on permanent status in the following class specifications:

<u>Class Code</u>	<u>Class Specification</u>
331	Firefighter
365	Fire Lieutenant
373	Fire Captain
382	Fire Training Officer
381	Fire Battalion Chief
387	Fire Marshal

The Fire Chief, Assistant Fire Chiefs and any civilian personnel of the Rock Island Fire Department are excluded from the bargaining unit.

Article II, Section 2.1, Management Rights, provides:

The City shall maintain all rights reserved to it pursuant to state law. The employer retains the exclusive right to manage operations, determine policies, budget and operations, the manner of exercise of statutory functions and the direction of working forces including, but not limited to the right to hire, promote, demote, transfer, evaluate, allocate and assign employees; to discipline, suspend and discharge for just cause; (probationary employees without cause); to relieve employees from duty because of lack of work or other legitimate reasons; to determine the size and composition of the work force; to make and enforce rules of conduct and regulations; to determine the departments, divisions and section and work to be performed therein; to determine the number of shifts per work week; to establish work schedules and assignments; to introduce new methods of operation; to eliminate, contract out, relocate or transfer work and maintain efficiency; provided, however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement.

## 2. Seniority

The Employer proposes to amend Section 11.5 by adding the following to it as subsection (g): "An employee is absent due to illness or injury for more than eighteen (18) months." The Union proposes no change in Section 11.5.

Article XI, Seniority, Section 11.5, Termination of Seniority, provides:

An employee's seniority shall terminate for any of the following reasons:

- a) An employee is terminated for any reason by the City,
- b) An employee terminates his employment with the City for any reason,
- c) An employee fails to report to work after the expiration of an authorized leave of absence,
- d) An employee engages in any type of work stoppage, work slow-down, or other type of work interruption,

- e) An employee is terminated or terminates his employment with the City to accept a permanent disability pension,
- f) An employee is absent for three (3) consecutive scheduled work days without proper notification or authorization.

### **3. Subcontracting**

The Employer proposes to delete Article XX, Section 20.1, Subcontracting. The Union proposes no change in Article XX, Section 20.1.

Section 20.1, Subcontracting, provides:

In no event shall the City subcontract for the provision of any services currently performed by the bargaining unit, including but not limited to, fire suppression, fire inspection, fire investigation, fire education and emergency medical service during the term of this Agreement.

### **III. Applicable Standards Under The Illinois Public Labor Relations Act**

Section 14(g) of the Illinois Public Labor Relations Act provides that “[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).” Section 14(h) of the Act sets out eight factors to be used in evaluating economic proposals:

- (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.

The critical factors in economic interest arbitration are set out in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions" and this standard is "generally regarded as the predominant criterion for determining wages in public sector interest arbitration."<sup>2</sup> The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of primary significance.<sup>3</sup>

#### IV. Summary of Relevant Evidence on Economic Factors

##### A. Comparability

##### 1. External Comparability

The parties agreed that cities with a population of 10,000 more or less than Rock Island, a variation of  $\pm 25\%$ , were comparable to Rock Island. Based on 1986 U.S. Census

<sup>2</sup>Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," *Labor and Employment Arbitration*, eds. Tim Bornstein & Ann Gosline (New York: Matthew Bender & Co., Inc., 1990), V. III, Ch. 63, §63.03[2], at 7. See also Laner & Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 *Chicago-Kent L.Rev.* 839, 858 (1984).

<sup>3</sup>In this case, neither party has raised the issue of the Employer's "ability to pay" the salary increases proposed by the Union. The Employer has not claimed that it is unable to pay the proposed increases. As noted by arbitrator Edward Krinsky:

Arbitrators generally do not consider the ability to pay issue unless it is raised seriously. If a simple assertion is made about ability to pay and is not supported by detailed evidence, the arbitrator is not likely to consider the argument further except perhaps to mention it in the award so that a reviewing court or agency knows what was done with the issue and how it was presented and argued. Employers who seriously argue the issue of ability to pay realize the importance of documentation.

Edward B. Krinsky, "Interest Arbitration and Ability to Pay," *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting of the National Academy of Arbitrators, ed. Gladys W. Gruenberg (Washington: BNA Books, 1989), ch. 7, at 200.

Bureau estimates, the Union maintained that the following communities were considered comparable to Rock Island (Un. 2):<sup>4</sup>

City	Pop	Sq mi	-----Housing-----		-----Total Taxes-----		
			Total Units	Median Value	Gen Rev Mil \$\$	Total Mil \$\$	Per Cap Total
1. Belleville	42,840	12.7	17,133	\$42,100	\$ 6.4	\$150	\$ 252
2. Bloomington	46,250	15.0	20,050	46,300	12.5	270	415
3. Danville	36,660	14.7	16,551	33,900	7.2	196	402
4. Granite City	35,150	8.2	14,149	33,200	6.5	184	349
5. Moline	44,500	14.2	18,620	49,200	11.5	259	1007
6. Normal	36,790	10.4	10,369	62,700	5.8	159	269
7. Quincy	39,600	12.7	17,986	35,000	6.1	155	456
8. Urbana	35,770	9.4	12,757	50,700	17.2	231	537
Averages	40,780	12.20	16,279	41,044	9.3	206	451
Rock Island	43,720	17.1	18,349	44,600	10.7	245	661
Rank	3rd	1st	3rd	5th	4th	3rd	2nd

The Employer agreed that Belleville, Danville, Granite City, Moline, Normal, Quincy and Urbana were comparable to Rock Island. The Employer did not consider Bloomington comparable, and suggested that Alton, DeKalb, Galesburg and Pekin were also comparable to Rock Island. The Union maintained that "the addition of Alton, DeKalb, Galesburg and Pekin, all of which have higher fire fighter base salaries than Rock Island only confirms the relative low standing of Rock Island, in a larger pool of comparables" (Un. Brief, 9).

<sup>4</sup>Both parties considered East St. Louis comparable, but deleted all reference to East St. Louis because of the absence of complete data.

Using 1990 U.S. census figures, the Employer made the following comparisons

(Emp. 1-12):<sup>5</sup>

	<u>Alton</u> Moline	<u>Belleville</u> Normal	<u>Danville</u> Pekin	<u>Galesburg</u> Quincy	<u>Granite City</u> Urbana	Rock Island	Rank
Population	<u>33,000</u> 43,000	<u>43,000</u> 40,000	<u>34,000</u> 32,000	<u>33,500</u> 40,000	<u>33,000</u> 36,000	41,000	3rd
Gen Fund (in Millions)	<u>\$1.9</u> \$8.5	<u>1.3</u> 2.7	<u>1.8</u> 1.5	<u>3.1</u> 0.75	<u>2.8</u> 2.2	1.2	10th
Tax Rev Per Person (In Millions)	<u>\$560</u> \$640	<u>400</u> 430	<u>570</u> 420	<u>500</u> 520	<u>400</u> 440	460	6th
Assessed Valuations (In Millions)	<u>\$150</u> \$270	<u>240</u> 340	<u>185</u> 150	<u>160</u> 180	<u>220</u> 205	185 <sup>6</sup>	7th <sup>7</sup>
Assessed Valuation Per Person	<u>\$4600</u> \$6300	<u>5600</u> 8500	<u>5400</u> 4600	<u>4800</u> 4500	<u>6600</u> 5600	4500	10th
Prop Tax Levy (Millions)	<u>\$3.1</u> \$6.4	<u>2.1</u> 3.8	<u>2.9</u> 4.3	<u>3.4</u> 3.2	<u>2.8</u> 3.0	7.6	1st
Prop Tax Rates (Per \$100 valuation)	<u>\$2.05</u> \$2.35	<u>0.85</u> 1.30	<u>1.60</u> 2.85	<u>2.10</u> 1.80	<u>1.50</u> 1.50	4.10	1st
Sales Tax (Millions)	<u>\$5.4</u> \$7.5	<u>5.2</u> 4.0	<u>6.1</u> 2.8	<u>5.2</u> 6.3	<u>3.3</u> 3.7	2.2 <sup>8</sup>	11th
Sales Tax Per Person	<u>\$163</u> \$176	<u>122</u> 100	<u>178</u> 86	<u>154</u> 159	<u>102</u> 103	54	11th
Income Tax Revenue (Millions)	<u>\$1.8</u> \$3.2	<u>2.0</u> 1.9	<u>2.6</u> 2.4	<u>1.85</u> 2.5	<u>1.6</u> 2.2	2.2	7th

<sup>5</sup>As the bar-charts set out in Employer exhibits 1-12 are difficult to interpret precisely, I have estimated the data as accurately as possible. The Union's "overview of comparable jurisdictions" (Un. 2) is based on 1986 Census Bureau estimates. As this data is less up-to-date and therefore less accurate and relevant than the 1990 data submitted by the Employer, I have disregarded it in favor of the data submitted by the Employer.

<sup>6</sup>According to Union exhibit 2, Rock Island's assessed valuation is \$245 million. City Finance Director William Scott testified without contradiction that this figure was not "current" (Scott: 156-57).

<sup>7</sup>The Rock Island Fire Department is funded by the General Revenue Fund. Property taxes account for 35.9% of Rock Island's General Revenue Fund. Personnel costs represent 64.9% of General Revenue Fund expenditures (Emp. 2).

<sup>8</sup>Sales tax accounts for 15.5% of contributions to the General Revenue Fund (Emp. 2).

The Employer has compared the 1980 and 1990 populations of the cities it considers comparable (Emp. 1):<sup>9</sup>

City	1980	1990	Percentage Change
Alton	34,171	32,905	<4>
Belleville	41,580	42,785	3
Danville	38,985	33,828	<15>
Galesburg	35,305	33,530	<5>
Granite City	36,815	32,862	<12>
Moline	45,709	43,202	<6>
Normal	35,672	40,023	11
Quincy	42,554	39,681	<7>
Pekin	33,967	32,254	<5>
Urbana	35,978	36,344	1
Rock Island	47,036	40,552	<14>

The Employer maintains that "population change is a critical factor," that, as City Finance Director William Scott testified, "a decline in population is a matter of concern because '...that means there is less revenue, less chance of revenue as far as taxes and growth to continue financing of the operations'" (Emp. Brief, 12). Rock Island's population declined 14% between 1980 and 1990 (Emp. 1). Two cities the Employer considers the most comparable to Rock Island lost population between 1980 and 1990: Danville lost 15% of its population and Granite City lost 12% of its population.

The parties agreed that Belleville, Danville, Granite City, Moline, Normal, Quincy and Urbana are comparable to Rock Island (Un. Brief, 8). No reason other than "disagreement...related to the use of 1986 or 1990 census data" was advanced to suggest that Alton, DeKalb, Galesburg and Pekin were not comparable to Rock Island (Un. Brief, 9). As 1990 data is obviously more relevant than 1986 data, I shall compare Rock Island to the cities the Employer considers comparable. While Bloomington may be comparable to Rock Island, I shall not consider it because 1990 data on Bloomington was unavailable.

<sup>9</sup>The Employer included DeKalb in this exhibit, but left DeKalb out of exhibits dealing with comparative financial data. For that reason, I have omitted DeKalb from this chart.

The Employer presented two exhibits comparing percentage wage increases (Emp. 20 & 21; Un. 7):<sup>10</sup>

City	# of Employees in Unit	% Wage Increases 1991-1992	Rank	% Wage Increases 1992-1993	Rank
Alton	66	5%	4	N/A	
Belleville	52	N/A		N/A	
*Danville	54	7%	3	N/A	
Galesburg	43	9%	2	N/A	
*Granite City	56	N/A		N/A	
Moline	61	4.53%	1	N/A	
Normal	36	5%	4	N/A	
Pekin	59	5%	4	4%	1
Quincy	48	3%	7	N/A	
Urbana	37	4%	5	NA	
*Rock Island	60	3.5%	6	4%	1

\*Cities whose population declined at least 10% between 1980 and 1990

The Employer also submitted data on Rock Island Firefighters and Firefighters in comparable cities with respect to base wages and wages at various intervals (Emp. 22 & 23):<sup>11</sup>

City	Base Rank	5 Yrs Rank	10 Yrs Rank	15 Yrs Rank	20 Yrs Rank	Max Rank
<u>Alton</u>						
Firefighters	26,558 4	27,620 6	29,415 6	32,062 4	35,749 1	35,749 2
Lieutenants	27,874 6	28,989 9	29,686 9	30,383 9	31,080 7	31,776 8
<u>Belleville</u>						
Firefighters	24,882 6	26,607 10	27,711 11	28,973 10	30,392 9	30,392 10
Lieutenants	N/A					
<u>*Danville</u>						
Firefighters	27,886 3	28,444 5	29,280 8	30,674 6	30,953 5	30,953 8
Lieutenants	30,117 4	30,719 4	31,623 6	33,129 5	33,319 4	33,319 5
<u>Galesburg</u>						
Firefighters	23,285 7	28,869 4	29,435 5	30,001 8	30,567 8	31,133 6
Lieutenants	N/A					
<u>*Granite City</u>						
Firefighters	25,654 5	26,397 11	27,450 12	27,706 13	27,706 13	27,706 13
Lieutenants	28,462 9	29,885 7	30,454 7	30,739 8	30,739 8	30,739 9

<sup>10</sup>Employer exhibit 21 overstated Moline's wage increase for 1991-1992 as 10%; in fact, as reflected in Union exhibit 7, the correct increase was 4.53% (See Employer Brief, page 34).

<sup>11</sup>I have altered the rankings to reflect the deletion of East St. Louis and DeKalb.

City	Base Rank	5 Yrs Rank	10 Yrs Rank	15 Yrs Rank	20 Yrs Rank	Max Rank						
<u>Moline</u>												
Firefighters	28,545	1	31,031	2	34,038	1	34,168	1	34,298	3	34,428	3
Lieutenants	33,769	1	36,868	1	39,262	1	39,392	1	39,522	1	39,652	1
<u>Normal</u>												
Firefighters	22,000	8	24,164	13	32,221	3	32,265	3	35,613	2	38,052	1
Lieutenants	N/A											
<u>Pekin</u>												
Firefighters	21,000	10	31,979	1	32,284	2	32,589	2	32,894	4	32,894	4
Lieutenants	N/A											
<u>Quincy</u>												
Firefighters	21,965	9	26,623	9	27,945	10	27,945	12	27,945	12	27,945	12
Lieutenants	33,034	2	33,034	2	33,034	3	33,034	6	33,034	5	33,034	6
<u>Urbana</u>												
Firefighters	28,052	2	29,174	3	30,857	4	30,857	5	30,857	6	30,857	9
Lieutenants	31,089	3	32,333	3	34,198	2	34,198	2	34,198	3	34,198	4
<u>Rock Island</u>												
Firefighters	19,884	13	26,077	12	27,346	13	28,046	11	28,746	11	29,446	11
Emp. Offer	20,579	12	26,965	8	28,978	9	29,678	9	30,378	10	31,078	7
Un. Offer	20,878	11	27,346	7	29,378	7	30,078	7	30,778	7	31,478	5
<u>Rock Island</u>												
Lieutenants	28,669	8	29,369	8	30,069	8	30,769	7	31,469	6	32,169	7
Emp. Offer	29,672	7	30,372	6	32,556	5	33,256	4	-----		34,656	3
Un. Offer	30,102	5	30,802	5	33,007	4	33,707	3	34,407	2	35,107	2

\*Cities whose population declined at least 10% between 1980 and 1990

## 2. Internal Comparability

Like most interest arbitration statutes, Section 14 of the IPLRA "require[s] the arbitrator to compare the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of: (1) public employees in the same governmental unit (referred to as internal comparability); and (2) public and private sector employees performing similar work in other jurisdictions (referred to as external comparability)."<sup>12</sup>

<sup>12</sup>Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," *Labor and Employment Arbitration*, eds. Tim Bornstein and Ann Gosline (New York: Matthew Bender & Co., Inc., 1990), V. III, ch. 63, p. 63-7. According to a survey undertaken by Professor Gregory Dell'Omo, "[a]lthough the responses were generally conditional, the majority of arbitrators...stated that they place more importance on internal comparability" than external comparability. Gregory Dell'Omo, "Wage

There are four bargaining units in Rock Island: (1) a unit of production, maintenance and clerical employees represented by AFSCME (Jt. 5); (2) a unit of Police Officers and Investigators represented by FOP (Jt. 6); (3) a unit of Police Sergeants, Lieutenants and Captains or Command Officers (Jt. 7) represented by FOP; and (4) the fire-fighters unit in question (Jt. 1). A number of City employees are not affiliated with any labor organization.

Since 1990, all employees of the City, organized and unorganized, have received the following wage increases (Emp. 14):

	Unaffiliated	AFSCME	Non-Command FOP	Command FOP	IAFF
1990	3 %	3%	3%	3%	3%
1991	3.5%	3.5%	3.5%	3.5%	
1992		4%	4%	4%	
1993		4%			

Using 1991 data, the Union has analyzed the wage differentials among ranking fire department officers in Rock Island and seven comparable cities (Un. 15):

Rank Differentials at Maximum Base Without Longevity

City	Fireman	Lieut.	% Diff	Captain	% Diff	Batt Ch	% Diff
Bloomington	\$32,293	\$34,715	7.5%	\$36,714	5.67%		
Danville	27,886	29,838	7.00	32,830	10.03	\$35,830	9.14%
Granite City '90	27,454			29,481		30,501	3.46
Moline	32,153	37,910	17.91	39,411	3.96		
Normal	39,052	39,814	4.63			41,816	
Quincy	28,785	33,033	14.67			39,662	
Urbana	28,052	31,089	10.83			38,000	
Rock Island (Per Un proposal)	27,978	29,377	5.00	32,315	10.00	33,931	5.00

At page 12 of its brief, the Union compared the wage/rank differentials of Rock Island firefighters to the two Rock Island Police officer bargaining units (at the last step of the wage schedule):

1990-1991		
Police Officer	% to	% Above Patrolman
Investigator	7.60	7.60
Sergeant	10.35	18.73
Lieutenant	5.52	25.29
Captain	7.95	34.12

Fire Fighter	% to	% Above Fire Fighter
EMT-1	1.93	1.93
Lieutenant	10.84	12.98
Captain	8.14	22.18
Battalion Chief	5.00	28.28
Training Officer	5.00	28.28
Fire Marshall	5.00	28.28

The two FOP agreements are three-year agreements beginning April 1, 1990 and ending March 31, 1993 (Jt. 6 & 7). The AFSCME agreement is also a three-year agreement; it began April 1, 1991 and continues through March 31, 1994 (Jt. 5).

#### B. Cost of Living

From April 1, 1989 through March 31, 1991 the cost of living as measured by the Consumer Price Index for All Urban Consumers (CPI-U) rose 9.66% (Emp. 19).<sup>13</sup>

### V. Positions of the Parties on Economic Issues

#### A. The Union

The Union argues that "proper application" of statutory standards "requires more than a mechanical toting up of evidentiary points scored by each party" (Emp. Brief, 6).

Firefighters are prohibited from striking. Under the Act—

[I]t is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alter-

<sup>13</sup>Since 1978, the Bureau of Labor Statistics has published two indexes: the CPI-W, a continuation of the index begun started during World War I, which covers "Urban Wage Earners and Clerical Employees"; and the CPI-U, a more broadly based index, which covers "All Urban Consumers." The CPI-U represents 81 percent of the U.S. population. See BNA LRX 430:704 (Emp. 19). Unless evidence establishes that the CPI-W is relevant to the unit of employees under consideration, I generally consider the CPI-U the appropriate index.

nat[ive], expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.

"To be effective," the Union suggests, "the alternative procedure must not be either too comfortable or too predictable..." and "[f]actors such as the determination of 'comparable' groups and definitions of 'inability to pay' have strategic impact beyond the issues presented by the instant proceeding" (Un. Brief, 7). An "effective award" will "reinforce the inclination of the parties to resolve their labor dispute through direct negotiations" (Un. Brief, 7-8).

2. Upon the basis of "cost of living and other settlement factors," employees deserve the wage increase proposed by the Union (Un. Brief, 10). From April 1, 1989 through March 31, 1991, wages went up 6 percent and the CPI-U went up 9.6 percent, a "loss to inflation" of 3.6 percent (Un. Brief, 10). "Coupling the losses...to inflation, the current level of inflation...and the average settlements in comparable departments, all of which equals or exceeds that proposed by the Union, requires that the Union's proposed wage increase be considered...more equitable" (Un. Brief, 10).

3. Upon the basis of "bargaining history and market place comparability," Captains, Battalion Chiefs, the Training Officer and the Fire Marshal "deserve an increase in their rank differential" (Un. Brief, 11). When paid overtime, Lieutenants were "occasionally" paid more in a given pay period than higher ranking officers, an "inequity" that "has had an adverse effect on morale and affected...staffing when working out of class was required" (Un. Brief, 11). The City has offered Police Officers benefits "above the basic wage increases," such as "salary increases for the Neighborhood Foot Patrol employees, shift differential increases for the second and third shifts...and a signing bonus" (also offered to employees in the AFSCME unit) (Un. Brief, 11-12). In addition, the difference between the salaries of ranking Police Officers and rank-and-file Police Officers is greater than the difference between salaries of ranking Firefighters and rank-and-file Firefighters (Un. Brief, 12).

4. Retroactive pay is proper. "Absent a legitimate inability to pay, the City should not gain a windfall savings due to the parties' failure to reach a voluntary agreement. Likewise the Union should not be penalized" (Un. Brief, 13). Under Section 12.1 of the current agreement, adjustments "are effective for the fiscal year" and paid on the first pay period after the start of the fiscal year (Un. Brief, 13).

5. A three-year contract term "would force the Union to accept...1993...rates without negotiations" (Un. Brief, 14). The economy is "uncertain," and the Union does not wish "to limit its right to bargain as frequently as practicable" (Un. Brief, 14). The new paramedic program, along with the City's proposal to expand management rights and to eliminate restrictions on subcontracting, underscores the Union's need to keep up with changes in conditions of employment (Un. Brief, 14).

#### **B. The Employer**

1. Contending that Rock Island should be compared to the other three cities "with a double digit population decline" since 1980, the Employer notes that "Rock Island compares very favorably with these cities," ranking fourth in base wage, third after five years, third after ten years, second after twenty years and second in maximum pay (Emp. Brief, 22). In prior contracts, the parties agreed upon a step plan that was comparatively high in the later steps and comparatively low in the early steps (Emp. Brief, 23). The Employer's wage proposal moves the City from third to second after ten years and from second to first at the maximum-pay level (Emp. Brief, 23).

2. The Union proposal "does not justify its high cost in terms of change in rankings" (Emp. Brief, 23). It would not affect rankings at the base wage, the 15-year step, the 20-year step and the maximum step; only at the 5-year and 10-year steps would the "Union proposal...have a different [e]ffect on ranking than the City proposal" (Emp. Brief, 23-4).

3. The City's offer "moves it solidly into second place of cities with a double digit decline in population" (Emp. Brief, 25).

4. With respect to Lieutenant's wages, Rock Island is second among the four comparable cities with at least a 10% decline in population at the base step, third at the 5-year level, third at the 10-year level, second at the 15-year level, second at the 20-year level and second at the maximum level (Emp. Brief, 26-7). The City proposal would have the following effect on the comparative standing of Lieutenant's wages: Base, no change at second position; 5 years, from third to second place; 10 years, from third to first place; 15 years, from second to first place; 20 years, from second to first place; maximum, from second to first place. The Union proposal results in "little improvement"; only at the five-year step would the Union proposal improve upon the City proposal, moving employees from third to first place.

5. With respect to Captains' wages, Rock Island now ranks first at each step among cities with a 10% or larger decline in population (Emp. Brief, 31). With respect to other comparable cities, Captains' wages rank fourth of eight at the base-wage, the five-year and ten-year step; third at the fifteen-year, twenty-year and maximum step (Emp. Brief, 31-2). The City proposal moves Rock Island to first at the base, five-year, ten year and maximum step (Emp. Brief, 32). The Union proposal would result in a ranking different from the City proposal only at the 20-year step, moving Captains' wages to second instead of third.

6. With respect to cities that have had a double-digit decline in population, "Rock Island compares very favorably with regard to percentage wage increases" (Emp. Brief, 32). Rock Island Firefighters received a 3% increase in 1990 and the City proposes a 4% increase in 1992 and 1993 (Emp. Brief, 33). Of the cities experiencing a double-digit decline in population, only Danville, which agreed to a 7% increase for 1991, has granted a higher percentage wage increase than Rock Island (Emp. Brief, 33); and Danville's financial situation is much better than Rock Island's (Emp. Brief, 33).

7. Compared to all cities with a population of 30,000 to 50,000, the City proposal with respect to percentage wage increase is very reasonable (Emp. Brief, 33-6).

8. In a two-year agreement, the City proposal would increase labor costs \$179,082 and the Union proposal would increase labor costs \$245,182 (Emp. Brief, 37). The extra \$66,100 cost of the Union proposal is "outrageous," given "the facts of this case" (Emp. Brief, 37).

9. The Union's argument that under the 1989-1991 agreement bargaining unit members' ranking "slipped" in comparison to members of other bargaining units compares "apples and oranges" (Emp. Brief, 37). The Union did not compare Rock Island to cities that have "experienced a 10% loss in population and have a financial profile as bad as that of Rock Island" (Emp. Brief, 37). "Looking only at firefighters," there has been no "slippage" (Emp. Brief, 38). Using the "Union's flawed data," the "City had only a negligible drop in ranking from 5.7 to 6" (Emp. Brief, 38; see also Emp. Brief, 38-41).

10. In addition, the Union's population figures are based on a 1986 estimate rather than the 1990 census and the "Union has compared only Firefighters and has not compared lieutenants or captains" (Emp. Brief, 37-8). "Lieutenants and captains match up even better with other bargaining units than do the firefighters" (Emp. Brief, 38).

11. Union exhibit 3, which purports to show the weekly rates of pay of Firefighters in various cities is "seriously flawed" (Emp. Brief, 42). It takes into consideration the fact that "some cities grant employees paid time off ('Kelly' days) on a monthly basis," but "ignores the other types of paid time off that are given employees in Article XIV" (Emp. Brief, 42).

12. The Union's proposal for a two-year contract would allow only ten months between negotiations (Emp. Brief, 44). The Employer proposal for a three-year contract is more appropriate because it would "allow the parties a significant time between negotiations" (Emp. Brief, 45). See, for example, *Village of Arlington Heights*, S-MA-88-89 (Briggs 1991). All labor contracts negotiated by Rock Island have been for three years. The AFSCME contract has the same "effective and expiration dates as the City proposes for the Firefighters" (Emp. Brief, 46).

13. The Agreement should not be retroactive to April 1, 1991 (Emp. Brief, 46). All “labor agreements negotiated by the City of Rock Island since 1990 have provided that only those employees employed at the time of ratification by both parties receive retroactive pay” (Emp. Brief, 47). Only the current Firefighters’ contract does not limit retroactivity (Emp. Brief, 47). The City’s proposal on retroactivity would limit gains to employees who have maintained their employment and “would not be a windfall” to former employees (Emp. Brief, 47-8).

14. The Union’s argument in support of its proposal of a base salary increase of not less than 7.5% for Captains is not based on internal or external comparability (Emp. Brief, 48). Instead, the Union uses the “boot-strap argument” that in prior negotiations the parties agreed to treat Lieutenants as if they were covered by the Fair Labor Standards Act (Emp. Brief, 48). The Union proposal would increase labor \$15,497 over a period of two years (Emp. Brief, 49).

## **VI. Discussion and Findings on Economic Issues**

### **A. Wages: Relevant Factors and Considerations**

#### **1. The Recession**

A nearly two-decade decline in manufacturing and the current recession have taken their toll. In many cities, including Rock Island, population has shrunk and wages, real estate values, sales and tax revenues have declined. Like many industrial cities, Rock Island has lost much of its economic foundation. At about \$54 per year, Rock Island’s per capita sales-tax revenue is the lowest among all comparable cities.<sup>14</sup>

The recession, if not resulting in declining wages (among those still employed), has slowed down the rate of wage increases, particularly among government employees. As shown by the Bureau of Labor Statistic’s year-end Employment Cost Index, “[t]he employee group most affected by the 1991 recession was state and local government work-

---

<sup>14</sup>This loss is offset by Rock Island’s receipt of \$2.2 million in income tax from the state of Illinois.

ers.”<sup>15</sup> Wages and salaries for state and local government employees rose an average of 5.3% in 1990 and 3.5% in 1991.<sup>16</sup> Salaries in private industry rose 4.3% in 1990 and 3.6% in 1991. From April 1, 1989 through March 31, 1991, the CPI-U rose 9.66% or an average of 4.83% a year (Emp. 19). The CPI-U rose 6.1% in 1990 and 3.1% in 1991.

## 2. Comparability

For the 1991-92 fiscal year, the average Firefighter’s wage increase among comparable communities for whom data was available was 5.72% (Emp. 21). At 5%, the median and the modal increases were identical. In 1990, other Rock Island employees, including Police Officers, received a 3% raise. In 1991, these employees’ wages rose 4% in 1991 and are scheduled to rise 4% in 1992 (Emp. 14).

Although both unions and employers have criticized the emphasis placed on comparability, the “most significant standard for interest arbitration in the public sector is comparability....”<sup>17</sup> Unions argue, with some merit, that over-reliance on comparability “has a conservative effect,” and employers argue, also with some merit, that over-reliance on comparability “has led to a ‘domino effect’ of victories for unions.”<sup>18</sup> Ultimately, reliance on comparability is justified on the theory that “if arbitration is to function successfully as a dispute-settling process, it must not yield substantially different results than could be obtained by the parties through bargaining.”<sup>19</sup> While an arbitrator can only speculate about what settlement might have resulted from successful bargaining, it is appropriate for an arbitrator, using the factors set out in the statute, to attempt to reproduce the agreement the parties might have reached in the course of successful negotiations.<sup>20</sup>

---

<sup>15</sup>CCH-Human Resources Management, Report Letter No. 123 (2/10/92).

<sup>16</sup>Ibid.

<sup>17</sup>Anderson & Krause, *supra* n. 2, at 7.

<sup>18</sup>Laner & Manning, *supra* n. 2, at 858.

<sup>19</sup>*Arizona Public Service Co.*, 63 LA 1189, 1196 (Platt 1974).

<sup>20</sup>The obvious flaw in this argument is that interest arbitration is the consequence of *unsuccessful* bargaining; it is difficult to determine what a successful bargain might have produced. Since strikes are barred, the failure of the parties to reach agreement does not necessarily reflect a realistic commitment by the parties to their proposals or to the parties’ relative economic leverage and power. Nevertheless, as an interest arbitra-

“Generally, comparability data is used as the starting point; it suggests the ‘going rate.’ Thereafter, arbitrators consider other factors to determine whether anything militates against using the ‘going rate.’”<sup>21</sup> In this case, “internal comparability,” the wages of public employees in the same governmental unit, supports the Employer’s proposal, and “external comparability,” the wages of public and private sector employees performing similar work in other jurisdictions, supports the Union’s proposal.

A mechanical and automatic application of the “internal comparability” factor is unsuitable and mischievous. Using internal comparability as the sole or overriding factor may give rise to two possibilities detrimental to the bargaining process:

1. The Employer’s unilateral decision on the wages of its unorganized employees would establish a pattern for interest arbitration, reducing the arbitrator’s decision to a formality—a rubber stamp of the Employer’s decision.
2. The wages agreed to by the first unit of organized employees to negotiate a contract would set a nearly unbreakable pattern for the remaining units. If interest arbitration invariably followed this pattern, subsequent negotiations, anticipating arbitration, would be reduced to a nullity.

Nevertheless, internal comparability supports the Employer’s proposal. This is especially true when internal comparability is considered in concert with the recent modest increases in the cost of living and the fact that Rock Island, although generally comparable to the cities suggested, may be more accurately compared to cities whose population and industrial and tax bases have declined in recent years.

Although the Employer does not contend that it is “unable to pay” the wages proposed by the Union,<sup>22</sup> it is not inappropriate, when determining comparability, to consider an employer’s distressed circumstances, and to give more weight to the comparability factors of other employers in similar circumstances. Rock Island’s declining tax base is

---

tor, I am committed to the fiction that I stand in the place of the parties themselves so that I may achieve the same result they presumably *should have* achieved.

<sup>21</sup>Laner & Manning, *supra*, n. 2, at 859.

<sup>22</sup>It is well established 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” (*Ibid*).

reflected in the relatively low balance in its general fund. It is a depressed community, and the "interests and welfare of the public" would seem to necessitate a percentage wage increase consistent with that of other similar communities, as well as that granted "other employees performing similar services" in the City of Rock Island.

For the foregoing reasons, I adopt the Employer's wage proposal of a 3.5% across-the-board wage increase effective April 1, 1991 and a 4% across-the-board wage increase effective April 1, 1992.

### **B. Duration of the Contract**

I respect arbitrator Stephen Briggs' judgment that a year between receipt of an interest arbitration award and negotiations for a new contract "is just too soon given the time, effort and money...expended" in negotiations.<sup>23</sup> Nevertheless, although a two-year contract will require the parties to negotiate again in the near future, I adopt the Union's proposal for a two-year contract. The American economy is not only in a recession, which may or may not deepen into a severe depression, the world's social and political structure, and the economy upon which it is based, are changing quickly and radically. As Alvin Toffler has pointed out, "Power is shifting at so astonishing a rate that world leaders are being swept along by events rather than imposing order on them. There is strong reason to believe that the forces now shaking power at every level of the human system will become more intense and pervasive in the years immediately ahead."<sup>24</sup> In this unpredictable and rapidly changing economy, the public interest and welfare do not justify imposing a three-year contract on the parties.

### **C. Promotion Wage Increase**

I adopt the Employer's offer on "promotion wage increase" (Article XIII, § 13.1). The Union argued that an inequity created by the parties in their 1989 negotiations should

<sup>23</sup>*Village of Arlington Heights*, ISLRB No. S-MA-88-89 (Briggs 1989)

<sup>24</sup>See Alvin Toffler, *Power Shift: Knowledge Wealth and Violence at the Edge of the 21st Century* (New York: Bantam Books, 1990), 4. See also Paul Leinberger & Bruce Tucker, *The New Individualists: The Generation After the Organization Man* (New York: HarperCollins, 1991), *passim*, 166-67.

now be corrected. In 1989, the parties agreed that Lieutenants would receive time and one-half overtime pay. As a result, the Union notes, "lieutenants' pay checks with overtime pay, occasionally exceeded the bi-weekly pay checks received by employees of higher rank" (Un. Brief, 11). Although, as the Union contends, the salaries of Rock Island Police Captains compared to Police Lieutenants are proportionately higher than the salaries of Rock Island Fire Captains and Fire Marshals compared to lower ranks in comparable departments, the current relatively high wages of captains do not justify the Union's 7.5% wage differential. As shown by Employer exhibit 28, Captains' wages currently rank fifth or sixth at various steps among comparable cities; the Employer's proposal would raise this ranking to fourth at all steps and the Union's proposal would increase the ranking to second or third at various steps.

The parties created the alleged inequity by treating Lieutenants as if they were covered by the Wage-Hour law, and they have the power to undo it. That inequity may be corrected in one of two ways: (1) Increasing the salaries of Captains; or (2) reducing salaries of Lieutenants. The comparability factors do not justify the former.

#### **D. Retroactivity**

I adopt the Union's proposal on retroactivity. I agree with the Employer that "the City should be most concerned with people who have remained employed..." (Emp. Brief, 47). Nevertheless, I cannot justify penalizing employees for the parties' delay or for the delays built into the system of collective bargaining and interest arbitration. Equally as important, it is not in the public interest and welfare to encourage delay by permitting the Employer to profit from turnover and employee attrition—factors largely beyond the control of both parties.

The "comparability factors" do not compel adoption of the Employer's proposal. On an issue of this nature, comparison with the parties' own just-expired agreement is as valid as a comparison to other agreements negotiated by the Employer.

## VII. Discussion and Findings on Non-Economic Issues

The parties have authorized me to “write language” on non-economic issues, but I have elected instead to select the “last, best offer” on each of these issues. Without submitting counter-proposals of its own, the Union objected to the Employer’s proposals. In each case, the Union supports the status quo. Under these circumstances, there can be no compromise. Any language I might develop independently would necessarily embody some portion of, or amount to a variation of, the Employer’s proposal. If I reject a proposal in principle, it would be senseless to impose some variation of it on the parties. Only if I were to agree in principle with the Employer, would it be appropriate for me to modify language that, in my judgment, was unclear.

For the following reasons, I have rejected the Employer’s non-economic proposals.

### A. Management Rights—Article II, Section 2.1

I reject the Employer’s proposal that it be given the explicit right to “assign bargaining unit employees work not in Section 1.1.” Personnel Director Mari Macomber testified that this proposal would permit the City to assign bargaining-unit employees work “outside the bargaining unit” in order “to better utilize employees, be more efficient, and save the taxpayers’ money” (Macomber 226-27). Specific assignments under consideration are “water rescue” and visiting youth centers to serve as “role models” (Macomber 227-28). The Employer concedes, however, that it “may already have the right to assign bargaining unit employees work that has not been done by bargaining unit employees on a regular basis,” but maintains that it needs “to clarify the contract” (Emp. Brief, 49-50).

The proposed change is too unclear to warrant endorsement. The language used does not embody a clear purpose or principle. If the Employer may assign new work to employees under the current management rights clause, the proposal is redundant and unnecessary. If some other purpose or meaning is intended, the proposal requires clarification. The Employer’s proposal may merit serious consideration in negotiations—where the

give-and-take of open discussions might reveal its meaning and implications. But I will not incorporate unclear, open-ended language into a collective bargaining agreement.

### **B. Seniority—Article XI, Section 11.5**

I reject the Employer's proposal on seniority. Standing alone, the adoption of the employer's proposed limitation by unions representing other Rock Island employees is unpersuasive. While internal comparability is a significant factor, it is not the sole or even the decisive factor with respect to a non-economic proposal. It is far easier to compare monetary benefits than non-monetary benefits. A wage increase is a benefit enjoyed by all employees everywhere in fairly equal measure; and it is possible to establish a rough economic parity even among different classifications of employees in different bargaining units. This is the foundation upon which the comparability standard rests.

For this reason, even though the "findings, opinions and order" on non-economic issues "shall be based on the applicable factors prescribed in subsection (h)," it would seem clear that the factor of "internal comparability," while important, should not have overriding or presumptive importance. Although some working conditions of Firefighters, Police Officers and Clerks are similar, the differences with respect to the scheduling of work, the nature of the work performed and the work hazards encountered, to name a few, are critical.

Fire fighting is dangerous and injuries are common. Other than internal comparability, no reason was advanced to justify terminating a Firefighter's seniority after an 18-month absence "due to illness or injury." In theory, holding a job open for an injured or ill employee "poses a problem" because the departments "have to try to mix up the work to try to get the job done" (Macomber 230). The Employer, however, did not show that it ever had "to mix up work" or rearrange schedules or jobs in order to hold a job open for an absent employee. On a practical level, one could almost assume that an employee out of work more than 18 months because of illness or injury is either too ill or injured to return to his old job. But I have no right to make such an assumption. Instead, believing that it is in

the best interest of the public, the parties and the employees, I shall compel the negotiators to confront this issue. The record did not establish that this issue, which may profoundly affect the lives of employees and their families, as well as protections afforded to the public by experienced Firefighters, had been explored in negotiations; I cannot adopt the Employer's proposal on the basis of the somewhat sketchy and hypothetical evidence produced to support it.

### C. Subcontracting—Article XX, Section 20.1

I reject the Employer's proposal to delete Section 20.1, "Subcontracting," from the Agreement. In my decision in *Village of Westchester*, S-MA-89-93 (1989), at page 26, I wrote: "Subcontracting 'is one of the most troublesome and perplexing problems in labor-management relations. It affects the concern of the recognized collective bargaining agent and the preservation of the bargaining unit. It triggers the fear of job loss and unemployment.' *American Air Filter Co.*, 50 LA 1251, 1254 (Dolnick 1970)." I also noted, at page 28, that the Union's apprehension was not limited to the possible loss of bargaining unit jobs:

[J]obs might not be lost but the bargaining unit would be weakened and standards of employment eroded. In both cases, separate units of employees with separate standards of employment would be commingled. Commingling increases the possibility of rift and imperils discipline—a result inconsistent with the "interests and welfare of the public."

I realize that the Employer must "tak[e] care of the needs of riverboats, which are new to the Quad Cities" (Emp. Brief, 54). But the Rock Island Fire Department should be accustomed to responding to emergencies on the river. Riverboats are not new. And while riverboat casinos carrying hundreds of passengers are novel, and may require the Department to hire and train additional personnel, the Employer has not demonstrated that this need compels me to eliminate a solemnly negotiated ban on subcontracting. The need to devote *some* additional resources to riverboat emergencies is not parallel to the elimination of *all* restrictions on subcontracting. The introduction of riverboat casinos may require the

parties to reconsider present systems to determine how to deal with riverboat inspections and water-safety problems, but it does not require elimination of the subcontracting ban.

The solution proposed is wider and deeper than the need it addresses. The ban on subcontracting affects all the duties performed by bargaining unit employees, not just the duties involved in dealing with riverboat-casino inspections and emergencies. It would seem appropriate for the parties themselves to deal with this issue at the bargaining table on the basis of information offered and arguments presented.

### VIII. Summary of Award

1. Wages (Article XII, § 12.1; Appendices A & B). I adopt the Employer's proposal of a 3.5% across-the-board wage increase effective April 1, 1991 and a 4% across-the-board wage increase effective April 1, 1992.

2. Contract Term (Article XXIV, § 24.1). I adopt the Union's proposal for a two-year contract.

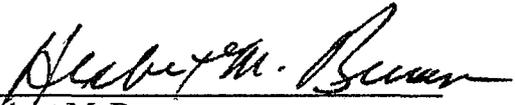
3. Promotion Wage Increase (Article XIII, § 13.1). I adopt the Employer's proposal to retain the current language of Article XIII, Section 13.1.

4. Retroactivity. I adopt the Union's proposal to make wage increases retroactive to April 1, 1991 to all employees then or currently on the payroll.

5. Management Rights (Article II, § 2.1). I adopt the Union's proposal to retain the current language of Article II, Section 2.1.

6. Seniority (Article XI, § 11.5). I adopt the Union's proposal to retain the current language of Article XI, Section 11.5.

7. Subcontracting (Article XX, § 20.1). I adopt the Union's proposal to retain the current language of Article XX, Section 20.1.

  
 \_\_\_\_\_  
 Herbert M. Berman  
 Arbitrator  
 Deerfield, Illinois  
 March 13, 1992