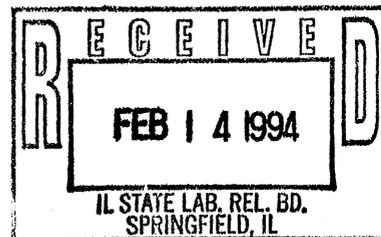


BEFORE THE ARBITRATOR



In the Matter of the Interest Arbitration of a Dispute Between

CITY OF ELGIN, ILLINOIS

and

LOCAL NO. 439, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

1991-1993 Agreement

APPEARANCES: J. DALE BERRY of Cornfield and Feldman, Attorneys at Law, appearing on behalf of the Union.

R. THEODORE CLARK, JR., of Seyfarth, Shaw, Fairweather and Geraldson, appearing on behalf of the City.

OPINION AND AWARD

The City of Elgin, Illinois, hereinafter referred to as the City or Employer, and Local No. 439, International Association of Firefighters, hereinafter referred to as the Association or Union, were parties to a collective bargaining agreement for the period January 3, 1988 to December 29, 1990. The agreement included a provision incorporating an alternative impasse resolution procedure (Appendix B) to be followed for the purpose of resolving any bargaining impasse that might occur upon expiration of the agreement. Pursuant to the provisions of Appendix B, the Union served the City with a demand for compulsory interest arbitration and the undersigned was selected by the parties to serve as arbitrator if the parties were unable to resolve the remaining issues in dispute through mediation or further bargaining.

The parties were able to resolve a number of issues through

mediation and further bargaining, but reached impasse on a number of issues. A preliminary hearing, dealing with certain procedural issues, was scheduled for August 7, 1991. With the agreement of the parties, the undersigned conducted mediation efforts prior to the start of the hearing and a number of the remaining issues were resolved.

Thereafter, in accordance with the ruling of the arbitrator on the procedural issues, the parties exchanged their final offers on the remaining issues in dispute and further hearing was scheduled on August 13, 1991. On that date, the parties participated in further mediation conducted by the arbitrator, but were unable to resolve the remaining issues in dispute.

Hearings on the remaining issues in dispute were held on October 9, 10, and 28, 1991. Verbatim transcripts of the hearings were prepared and received along with the briefs of the parties, which were exchanged on January 13, 1992. Full consideration has been given to the evidence and arguments presented in rendering the award which follows.

ISSUES IN DISPUTE

There are five remaining issues in dispute. Both parties agree that they are economic in nature and, therefore, the undersigned must select the final offer of the City or Union on each of the issues in dispute.

1. WAGE RATES

The City's fire department includes approximately 102

uniformed personnel. The collective bargaining unit includes 72 firefighters and 18 fire lieutenants. In addition, there are 6 captains and 4 deputy chiefs. The bargaining unit was voluntarily recognized many years ago and the captains have been excluded from the bargaining unit since the early 1980's.

Under the terms of the expired agreement, the following wage rates were established for firefighters and fire lieutenants, for the 1990 fiscal year:¹

	I	II	III	IV	V	VI
Firefighter	2192	2338	2485	2631	2777	2923
Fire Lieutenant				3025	3160	3290

A major difference between the parties in their negotiations over the wage rates for firefighters and fire lieutenants to be included in the new agreement concerns the question of whether the wage increases granted should be the same (in percentage terms) for both firefighters and fire lieutenants. Throughout the negotiating process, the Association took the position that the percentage increases for both ranks should be the same, but should give consideration to the fact that fire captains received a "9.55%"² wage increase for 1991. The City took the position that, if the

¹It is the parties' practice to implement annual salary increases at the beginning of the first pay period in the year, which normally falls within the last few days of the prior year.

²At the hearing, this increase was referred to as being worth 9.4% rather than 9.55%. While the difference is small, the undersigned will use the lower percentage for purposes of analysis herein.

percentage increase granted is the same for both ranks, it should reflect continuation of the "parity" relationship that has historically existed between the percentage increases granted bargaining unit personnel employed in the City's fire department and its police department and be generally consistent with increases granted by other municipalities in the comparable group of the parties have looked to in the past.

Notwithstanding these relatively inflexible positions, both parties made final offers on wage rates which reflected some compromise in their position, but were otherwise consistent with the principles they each advanced in bargaining.

Specifically, the Union proposed to accept the Employer's position that the agreement be three years in length and proposed the following with regard to the wage rates:

"ARTICLE 9. WAGES

Section a. Salary Ranges

The current sixth (6th) step of the salary range for the position of Fire Fighter and the third (3rd) step of the salary range for the position of Fire Lieutenant be increased effective December 30, 1990 by one percent (1%); effective December 29, 1991 by one percent (1%) and effective December 27, 1992 by two percent (2%).

Section b. New Fire Fighter Salary Ranges

The adjusted six (6) step salary range for the position of Fire Fighter and three (3) step salary range for the position of Fire Lieutenant be increased across-the-board; effective December 30, 1990 by five percent (5%); effective December 29, 1991 by five percent (5%); and effective December 27, 1992 by five percent (5%)."

If the above percentages are applied to the 1990 wage rates for the three years in question, with the results being rounded to the closest dollar figure, the Union's final offer would generate the following three wage schedules:

	1991					
	I	II	III	IV	V	VI
Firefighter	2302	2455	2609	2763	2916	3100
Fire Lieutenant				3176	3318	3489

	1992					
	I	II	III	IV	V	VI
Firefighter	2417	2578	2739	2901	3062	3288
Fire Lieutenant				3335	3484	3700

	1993					
	I	II	III	IV	V	VI
Firefighter	2538	2707	2876	3046	3215	3521
Fire Lieutenant				3502	3658	3973

In its final offer, the City proposes across-the-board salary increases for firefighters which are nearly identical to those granted police under the voluntary agreement reached with its representative,³ of 5.25%, 5.25%, and 5.5%. In the case of fire lieutenants, the City proposes to grant them an additional 2% in the first year and 1% in the second year, generating across-the-board increases of 7.25%, 6.25%, and 5.5%. These increases are already incorporated in its final offer, which reads as follows:

³The difference is in the second year. Under the agreement with the police, the second year across-the-board increase is 5.5% rather than 5.25%.

	I	II	III	IV	V	VI
Firefighter	2307	2461	2615	2769	2923	3076
Fire Lieutenant				3244	3389	3529
	I	II	III	IV	V	VI
Firefighter	2428	2590	2752	2914	3076	3237
Fire Lieutenant				3447	3601	3750
	I	II	III	IV	V	VI
Firefighter	2562	2732	2903	3074	3245	3415
Fire Lieutenant				3637	3799	3956

Union's Position

In advancing its position on wages and other issues, the Union first reviews the history of its bargaining relationship with the City and the purposes of the interest arbitration law. In its view, the law was necessary to redress an imbalance in bargaining power reflected in that history and should be applied in this case, with that in mind.

According to the Union, its wage proposal should be selected because it complies more nearly with the applicable statutory factors. It makes the following points in support of that position:

1. A review of the historic pay practices applied within the ranks of the department discloses that firefighters, fire lieutenants and fire captains have enjoyed similar wage increases, expressed as a percentage, over the years, until the City implemented a 9.4% increase for fire captains for 1991. This disrupted the sense of "internal equity" which had existed within

the department for many years, which is consistent with the duties of the three ranks. The captains are in charge of the engine company and the stations to which they are assigned and the lieutenants are in charge of the truck or engine company to which they are assigned and the outside stations without an assigned captain. All three ranks work the same shifts and work as a team in responding to alarms and fighting fires. Any contention that the captains are "management" personnel ignores this reality.

2. Other municipalities within the nine agreed comparables (Arlington Heights, Aurora, Des Plaines, Elgin, Evanston, Joliet, Oak Park, Skokie, and Waukegan) have encountered similar problems as a result of granting significantly higher wage increases to company officers not included in the bargaining unit. When the Village of Oak Park granted fire lieutenants a 7% increase for 1988, while only offering firefighters a 4% increase, the arbitration board, chaired by Barbara Doering, granted a Union request to add a "F" or sixth step, worth 5%, to the wage scheduled for firefighters, effective January 1, 1989. In the City of Aurora, where fire captains and higher ranks had received an 11.66% increase in 1989, the same year firefighters and fire lieutenants received 4.5% increase, the Union proposed to grant firefighters a 6.5% increase and lieutenants a 9.5% increase under the reopener for 1991. During the arbitration proceeding that ensued, the City agreed to grant a 9.5% increase to fire lieutenants and the arbitrator later rejected the City's offer of 4.5% for firefighters

and granted the Union's request for 6.5%.

3. While the Union here does not propose to deal with the inequity in the same way, its proposal is tailored to fit the circumstances and the historical practices in Elgin. Under its proposal, both ranks would receive 5% increases across-the-board and additional percentage adjustments would be made in the sixth step for firefighters and fire lieutenants in the second and third year, to maintain the historic differential between the top step for those two ranks. Under this proposal, the first year cost would be less than under the City's proposal and the additional cost in the second year would be modest (\$5,920.00). In the third year, the difference would increase to \$46,927.00 or 1.2%.

4. While the City notes that the annual salary difference between the fifth and sixth steps would increase significantly under the Union's proposal, bargaining unit members would find that change acceptable, because they could all look forward to reaching the sixth step eventually.

5. The City should not be heard to object to any impact the Union's proposal might have on the differential between the top firefighters step and the first fire lieutenant step, because the procedure it followed, of first addressing the rank differential issue in its final offer, precluded negotiations over this aspect of the Union's proposal under circumstances where the Union could change its proposal.

6. The City's wage proposal ignores the equity interests of

firefighters and compounds the discord between ranks created by the 9.4% increase granted to fire captains in 1991. For a number of years, the differential between the top steps for firefighters and fire lieutenants has been maintained at 12.5% and that differential would be increased to 14.69% in 1991 and 15.78% thereafter. On the other hand, the Union's proposal would result in nearly the same salary for fire lieutenants at the top step, while providing a higher top step rate for firefighters, to maintain the existing differential.

7. Under the City's proposal, the differential between fire lieutenants and fire captains, which will jump to 18.22% in 1991, will be reduced to 17.11% in 1992 and thereafter (assuming fire captains receive no greater increases in the future), which is still higher than the 11 to 12% range that existed before or the 15.9% high that existed at one time.

8. The City relies upon external comparables to support its position on rank differentials. While those comparisons may demonstrate that the prevailing differential between firefighters and fire lieutenants of 12.56% is in the low end of the range, it equals the percentage differential established by the arbitrator in Aurora and external comparables are but one factor to be considered. More important to the bargaining unit in Elgin is the evidence indicating that the Union did not seek to increase the differentials and that its members, including all those lieutenants who have expressed their views, object to increasing the

differential. Further, the average differentials are inflated by the numbers at Oak Park and Waukegan, where lieutenants are excluded from the bargaining unit. The situation in Oak Park has led to strife and the City's own negotiator admits that the Waukegan differential is "off the charts."

9. Internal comparables support the Union's position. While the City argues that the increase granted fire captains was necessary to maintain internal parity between the ranks of police lieutenant and fire captain (at 2.11%), the police sergeants, whose rank is compared to fire lieutenants, received a 9% increase, while the City proposed no larger increase for fire lieutenants, until it filed its final offer. While the City attempts to explain its initial position and its change of position by referring to the Union's position and the situation in Aurora, those explanations will not bear scrutiny. Just as the arbitrator in Aurora was not diverted by the City's tactic there, he should not be diverted here. The large increase granted fire captains should weigh heavily in favor of the Union's position for firefighters. To do otherwise would exacerbate the friction created by the City's action and adversely affect morale, contrary to the criterion which refers to the interests and welfare of the public.

10. The importance attached to maintaining internal equities is underscored in this case, by the Union's willingness to make the significant concession of accepting the City's proposed three-year term. In the Village of Oak Park arbitration proceeding, the

arbitrator recognized that the Union had made a similar "major concession," which she considered to be fair consideration for granting the Union's additional 5% step.

11. The City's attempts to show that it is compensating firefighters with "above average" wages even though it is in the "bottom half" of the comparable communities in terms of financial resources will also not bear scrutiny. It uses a method of comparison which excludes relevant data from consideration, i.e., increases granted by comparable communities after January 1, 1991, but during the same fiscal year. If the Union's data is utilized, it becomes clear that Elgin firefighters ranked 5 out of 9 based upon maximum salary and 8 out of 9 based upon hourly rates in 1990. Contrary to the assertion of the City's negotiator, the City's "snapshot" method of drawing comparisons is not supported by bargaining history between the parties or the desirability of settling contracts prior to the start of the fiscal year. Union witnesses disputed the City's contention and the City's negotiator did not employ a similar "snapshot" approach in other arbitration proceedings involving comparables. While surveys conducted by various organizations necessarily employ specific dates, they also recognize the important impact the selection of the date has on the comparisons drawn. Further, the City's method ignores the statutory criterion which requires the arbitrator to consider changes in the enumerated circumstances which occur during the pendency of the arbitration proceeding.

12. The Union's proposal would allow the Union to catch up with the compensation levels paid to firefighters in other, comparable jurisdictions. While both final offers would allow firefighters to move up one rung in ranking, they would still be near the bottom in terms of hourly rate, ranking only above Waukegan and Joliet. When this consideration is combined with the Union's evidence demonstrating that Elgin firefighters are also near the bottom in terms of overall compensation, the Union's proposal to increase the top step for firefighters must be strongly favored over the City's proposal.

13. The Union's wage proposal is also necessary in order to avoid further erosion of the position of firefighters in relation to patrolmen. The dollar disparity would increase to \$1,411.00 in 1991 and \$1,667.00 in 1992 over the term of the agreement, if the City's proposal is accepted. The Union's proposal would reduce this differential to \$411.00. Even so, patrolmen would continue to receive the numerous advantages in compensation detailed in the testimony and evidence. Also, the fact that comparable jurisdictions do not pursue a policy of parity which is based upon actual rates for the top step in each service, does not serve to justify the City's position in this proceeding. Other arbitrators have looked at such growing dollar differences as a basis for justifying adjustments and it would be wrong to accept the City's heavy reliance upon its parity argument. Such an approach ignores the responsibility of the arbitrator to make necessary adjustments

in compensation if the equities require it. Further, the City's offer is not entirely consistent with its own parity argument. While the City no doubt has an "explanation" for its discrepancy, that explanation fails to address the question of why it is also proposing a major change in health insurance for firefighters, which would not be applicable to police, who already enjoy lower deductibles and co-insurance features.

14. While the City also relies upon the agreements on Kelly days and other matters to justify its rejection of the Union's wage proposal, that argument also must fail. Most of the agreements, other than the agreement on Kelly days, were of no great consequence. Further, the agreement on Kelly days included major concessions by the Union, which justify its treatment as a stand alone agreement, redressing a serious deficiency in the hours of work and resulting hourly rate for Elgin firefighters.

15. The City's financial resources cannot serve as a reason for selecting the City's wage proposal over the Union's wage proposal. The City admits that it is not claiming an inability to pay the costs of either proposal and the evidence it now offers, which is intended to demonstrate relative difficulty in paying those costs, ignores the fact that the City of Elgin is a very healthy and growing community. As a home rule community, it is not dependent upon the declining sales tax revenues or property tax revenues and it is experiencing a significant increase in EAV. In its own report, the City's director of finance indicated that the

current recession was expected to have a minor impact on the community, which has a great deal of flexibility, if needed, to obtain additional revenue. Contrary to the City's contention, it is not making an above average effort, because that contention is based upon outdated and distorted data concerning its relative EAV circumstances.

City's Position

At the outset of its arguments in support of its final offers, the City reviews the facts and statistics contained in the record, concerning the City and the staffing and operation of its fire department. It also reviews, in some detail, the history of its bargaining relationship with the Union and the union representing police personnel.

It is significant, according to the City, that the duration of agreements and percentage increases granted firefighters and police have been nearly identical for many years, including those covered by the last three, three-year agreements. In only one year (1985) did police receive one-half of 1% more than firefighters and the new three-year agreement with police provides for percentage increases which are again, nearly identical to those offered by the City in this proceeding. While the City acknowledges that it has not included a "me too" clause in its agreement with the police, it asserts that it has given their representative its assurances that it would seek to avoid an agreement with the firefighters which would "upset the apple cart." The City also points out that this

proceeding represents the first time that arbitration has been invoked in the City of Elgin and notes that it is occurring in a round of negotiations which produced an unusually large number of agreements, nearly all of which were initiated by the Union and benefit the Union and its members.

According to the City, there are two "fundamental considerations" which the arbitrator should bear in mind in his review of the issues in dispute. First, is the well recognized principle that uniform wage and fringe benefit policies established by an employer in its negotiations with multiple unions ought not be disturbed in the absence of a compelling justification. Second is the expectation that there should be an appropriate quid pro quo for changes sought by either party, such as the agreement reached with the Union here to institute 7.15 Kelly days per year and grant numerous other changes which benefit firefighters.

Specifically with regard to the wage issue, the City makes the following points:

1. Internal comparisons strongly support the City's final offer on salary. While the City's offer for the second year is one quarter of a percent less than the settlement with the police, that minor difference is accounted for by the additional costs of the agreement with the Union, especially the cost of implementing the Kelly day provision in the second year.

2. The importance of the internal relationship between the settlement with the police and the City's proposal in this

proceeding cannot be over emphasized. Across-the-board salary increases for police and firefighters have been identical for seven of the past eight fiscal years, including the last five fiscal years. Thus, the parties themselves have recognized the importance of this relationship.

3. Other arbitrators, including the arbitrator in the City of Chicago decision in 1989, have acknowledged the importance of maintaining the principle of parity, where the parties have recognized it in their bargaining relationship over the years. Arbitrator Steven Briggs held, in a recent Arlington Heights fire department arbitration, that he would not depart from such a relationship established in free collective bargaining, absent clear and convincing evidence of the need for an inequity adjustment. The arbitrator in this proceeding has likewise recognized the disruptive effect that an award can have, when it involves a significant departure from established internal patterns and parity practices.

4. An equally compelling reason for rejecting the Union's final offer lies in the fact that it departs from the parties' consistent past practice of negotiating uniform, across-the-board adjustments for all steps of the salary schedule. The Union's final offer would destroy the integrity of the previously agreed to step system. The damage is especially great in the third year. The parties established nearly equal dollar differences between steps in the third year of the expired agreement and the relatively

uniform dollar differences would be maintained under the City's final offer. Under the Union's final offer the difference between steps 5 and 6 would jump to \$3,684.00 in the third year, or approximately \$1,656.00 above the norm of \$2,028.00. This distortion would dramatically change the status quo in terms of the agreed to steps and the relation between firefighter and police salaries.

5. Arbitrator Goldstein rejected the Village of Skokie's offer for 1989, even though it was otherwise supported by the comparables, because of the changes it would cause in the agreed to salary schedule.

6. External comparability data also strongly support the City's final offer. The parties agree on the communities deemed comparable, but disagree over the fiscal year data which should be used for comparison purposes. The City's "snapshot" approach, based upon salaries in effect on January 1, is more logical than the Union's approach, which would compare salaries established on later dates in some of the other comparables. Further, the City has always used such an approach in bargaining and so advised the Union in this round of bargaining, notwithstanding the claim of one of the Union's bargaining team members (who was not its spokesperson) to the contrary.

7. The City's methodology is also supported by the law, which requires bargaining in meetings held in advance of the budget making process. Also, the timetable for mediation and interest

arbitration is geared to the commencement of the public employer's fiscal year.

8. The City's "snapshot" methodology is also consistent with the methodology employed by organizations conducting wage and benefit surveys.

9. In determining what is reasonable in relation to comparability data, it is appropriate to consider as a benchmark, the relationship the parties themselves have established in terms of the comparables. For the 1990 fiscal year, the top step for firefighters was \$35,076.00, which ranked third among the nine comparable communities. That figure was \$1,101.00 higher than the average January 1, 1990 salary for all nine communities. On the other hand, the top step for fire lieutenants on that date was \$39,480.00, which ranked sixth out of nine and was \$618.00 below the average. Under the City's final offer the top step for firefighters will be \$36,917.00 in 1991, which will move the City ahead of Skokie, second only to Des Plaines on the list of nine comparable communities, as of January 1, 1991. The top step for firefighters on that date will be \$1,251.00 higher than the average for the nine communities. Improvement in relation to the comparable communities is even more dramatic in the case of fire lieutenants. Their annual salary will be \$42,348.00 on January 1, 1991, which will reduce the amount by which the fire lieutenants are paid a below average salary to \$248.00. Even so, the above average increase for fire lieutenants will still not put them above

average, like the firefighters, in the first year of the agreement.

10. Another way to compare salaries for reasonableness, is to review percentage adjustments for each classification. The City's proposed adjustment of 5.25% in the first year exceeds the percentage increase for five of the eight comparables (Skokie, Arlington Heights, Evanston, Waukegan, and Oak Park). While three others will grant larger percentage increases, the difference in Des Plaines is only 5/100ths of a percent and the above average increases in Aurora and Joliet will not change their relative rank, which will remain below Elgin. In the case of the fire lieutenants, the City's final offer would be exceeded by only one of the comparable jurisdictions (Aurora), which will remain dead last in the comparisons, in spite of the 9.5% increase it granted fire lieutenants.

11. In the second and third years of the agreement, the percentage across-the-board increases provided in the City's offer compare favorably with those jurisdictions for which information is currently available. They exceed the across-the-board increases negotiated for Arlington Heights, Oak Park, Skokie and Waukegan. While Des Plaines and Joliet have negotiated future increases that exceed the percentages contained in the City's final offer, they do so by only 4/100ths of a percent and one-quarter of a percent. Given the worsening state of the economy and the continuing decline in the rate of increase in the cost-of-living, it is reasonable to conclude that the City's final offer for the second and third years

will not jeopardize its standing among the comparables.

12. Even if the City's "snapshot" approach is not followed, and actual salary figures for the calendar year are computed, the comparability data still supports the City's final offer. Using that method, Elgin ranks fourth out of nine for calendar year 1990 and its salary of \$35,076.00 is \$559.00 above average for all nine jurisdictions. Using that same methodology, Elgin will remain in fourth place out of nine in 1991, with a salary of \$36,917.00, which is \$558.00 above average.

13. One final external comparison, i.e., the historic relationship between the City and Aurora, also supports the City's final offer. As the Union's negotiator stated at the hearing, Elgin and Aurora are free standing communities, having many of the same characteristics in terms of age, type of housing, population mix, etc., and both have experienced substantial population increases between 1980 and 1990. Elgin firefighters have enjoyed a positive salary differential advantage which has averaged 2.49% over the last ten years. While the differential hit a high of 6.23% in 1989, due to a wage freeze in Aurora, that differential will be brought back into line by the arbitrated 6.5% adjustment for 1991. Under the City's final offer the differential will still amount to 4.46%, in the City's favor, which is nearly twice the historic average.

14. Data concerning increases in the cost-of-living also support the City's final offer. While data for 1991 were

incomplete as of the date of the hearing, the arbitrator has authority to consider official data that becomes available after the hearing. In either case, the prospects for cost-of-living increases during the term of the new agreement, which is the most relevant consideration, indicate that increases in the range of 2.6% to 2.8% will occur in the Chicago metropolitan area. These numbers strongly support the City's final offer, especially when consideration is given to the City's pick up of the increased costs of various fringe benefits. Also, projections concerning cost-of-living increases in 1992 and 1993 support the City's offer.

15. In determining whether salaries are reasonable, it is appropriate to consider evidence of the City's ability to attract qualified applicants and voluntary turnover. The testimony and evidence establishes that the department has experienced no difficulty in attracting qualified applicants and has been successful in attracting applicants from other departments. Similarly, voluntary turnover has been very infrequent. Most of those who have quit their employment have done so for reasons unrelated to any possible dissatisfaction with salary levels.

16. The interests and welfare of the public strongly support the City's final offer. While the City does not make a pure "inability to pay" argument, it has the responsibility to insure that the public will be served by the expenditure for salaries, since public employers exist for the service and benefit of their residents, not their employees, and must insure that there are

sufficient dollars available for competing needs.

17. Also, the evidence indicates that the City's fiscal condition is changing for the worse. At the time of the hearing, the City's director of finance noted that he is currently projecting a significant shortfall, based on actual receipts of taxes, particularly sales taxes. That shortfall, combined with projected increases in expenditures for FY 1991, may result in a difference between expenditures and receipts in the general fund of nearly 1.4 million dollars. Thus, the interest and welfare of the public strongly supports the City's final offer as being more reasonable than the Union's final offer. Changes during the pendency of this proceeding also strongly support the City's final offer. Those changes include a dramatic decline in the rate of increase in the cost-of-living; the deterioration in the City's fiscal condition; the deteriorating state of the nation's economy and the state's economy; and continuing increases in the already high rate of unemployment in the state, to 8.4% as of the second week of November 1991.

18. Union arguments made to support its final offer are without merit. There is no evidentiary support for the Union's attempt to tie firefighter salaries to fire lieutenant salaries and the Union's "total compensation" arguments are based on exhibits which are of dubious value.

19. The additional 2% and 1% increases included in the City's final offer for the first and second year for fire lieutenants is

justified by the available data concerning salary differentials between firefighters and fire lieutenants in other comparable jurisdictions. While the Union protests mightily about the City's decision to address this discrepancy in its final offer, Union witnesses acknowledged that comparability judgments must be made on a classification by classification basis.

20. By tying its position on firefighter salaries to the fire lieutenants, the Union is engaging in a classic case of trying to have the "tail wag the dog." The arbitrator should reject this blatant attempt to obtain a top step increase for firefighters which is far greater than warranted by any of the other evidence introduced into the proceeding.

21. There are at least five other reasons why the Union's proposal for the top step for firefighters should be rejected: In other jurisdictions, affiliated locals of the Union sought and succeeded in obtaining additional increases for fire lieutenants, over and above those sought for firefighters; the Union is inconsistent in relying upon external comparisons to support its position on paramedic pay, but ignoring them for purposes of fire lieutenant pay; the increase in the differential caused by the 9.4% increase for fire captains in Elgin is not comparable to the dramatic increase in the differential created in Aurora (27.47%) and both the arbitrator and the parties there acknowledged the need to grant a greater increase for fire lieutenants, while the additional step granted in Oak Park was likewise intended to deal

with an unusually large and "above market" differential; while the differential between firefighters and fire lieutenants has remained essentially constant for approximately 10 years, that does not mean that outside comparisons should be ignored, as the Union did in preparing its data, nor does it mean that internal comparisons should be ignored and, the evidence shows, fire captains' salaries in Elgin had fallen behind; and the evidence demonstrates that there is an historic parity relationship between fire captains and police lieutenants, but that no similar parity relationship exists between fire captains and the two bargaining unit classifications.

22. While the Union attempts to attach great importance to the exhibits it prepared concerning total compensation, it is important to note that the Union's arguments in that regard have been raised over the years in bargaining and are reflected in the voluntary settlements reached by the parties, including their settlements on other issues in this round of bargaining. Even so, an analysis of those exhibits discloses that they include numerous instances of "double counting" and are otherwise unreliable.

Discussion

While the parties' failure to reach voluntary agreement on the remaining issues in dispute related to an inability to agree to a appropriate combination of compromised proposals, wage rates are the most significant issue in dispute, based upon the final offers and the parties' presentations. The parties presented numerous exhibits, extensive testimony, and lengthy arguments, addressing a

number of relevant statutory criteria in relation to the new wage rates to be established under the agreement. No effort will be made to address all aspects of the evidence and arguments. Instead, the discussion herein will be confined primarily to those matters deemed significant enough to be controlling or potentially controlling in nature.

The matters which are deemed to be of such significance are, in order of importance, internal comparisons (including preexisting "parity" relationships and salary structure); external comparisons (including relative rank, general increases being granted elsewhere and differential relationships); and those aspects of the interests and welfare of the public specifically referred to by the parties in their arguments (including economic data and the "morale" problems foreseen by the Union). On balance, these considerations weigh in favor of the City's final offer. While the cost-of-living data introduced into evidence by the City also tends to favor the City's position, it would not appear to be of controlling significance in this proceeding, in view of the fact that the City's across-the-board offer actually exceeds the Union's across-the-board offer, with the main difference being found in the two different approaches to the maintenance of internal equity.

Like Arbitrator Goldstein and numerous other arbitrators, I am reluctant to give serious consideration to the Union's final offer on wages, because of the potential disruptive impact it will have on future bargaining in the City, unless the record demonstrates

that the Union's approach is necessary to deal with existing wage inequities.⁴ In my view, it does not. On the other hand, the City's proposal to treat the two wage classifications separately does address a structural inequity, between fire classifications, which ought to be addressed and it does so in a way that is consistent with preexisting parity concepts.

While it can be argued that the City "created" this problem by granting a 9.4% increase to fire captains, the evidence discloses that its reasons for doing so were reasonable and necessary, given the need to maintain competitive rates for police lieutenants, police sergeants and fire captains. The evidence supporting its action in the case of fire captains can be found in the cumulative history of increases, going back to the early 1980's and in external comparisons.

While the Union obviously feels strongly about the matter and anticipates morale problems -- a legitimate consideration under the criterion dealing with the interests and welfare of the public -- consideration of the other factors referred to are found to outweigh that legitimate concern. For instance, the impact of granting larger increases to fire lieutenants in the first and second year of a three-year agreement must be weighed against the

⁴The Union points to a number of areas where, in its view, the City is failing to provide "overall compensation" which compares favorably to the agreed comparables. Some of those matters have been addressed by the parties in this round of negotiations and those that remain can best be addressed directly rather than adjustments in the top step of the wage rates.

impact that the Union's alternative approach would have on future bargaining. Further, the Union's approach would cause a distortion in the structure of the salary schedule, which was only recently agreed to. An example of this distortion, can be easily found by comparing the top rate for firefighters in the third year of the agreement with the starting rate for fire lieutenants in that same year. Thus, the Union's final offer not only has a potential for encouraging leapfrogging between bargaining units, it would also create pressure to grant future increases to both firefighters and lieutenants who have not yet reached the top step, in order to restore the prior structure of the salary schedule.

In terms of external comparisons, the undersigned must agree that the City's methodology -- whether agreed to in the past or not -- tends to distort the rank comparisons. However, ignoring the differences in the start of the fiscal year among the various comparables also involves a distortion, since it ignores the fact that firefighters in Elgin receive their increase in wages that much sooner. However, these concerns, which cannot be resolved entirely, can easily be dealt with by employing other methods of comparison, as both parties have done.

When the alternative methods of comparison used by the City and by the Union are employed, the wage rates for City firefighters tend to fall within the mid point of the range and this would remain true under either final offer. When comparisons are made to average firefighter salaries, the City also fairs well and will

continue to do so under either final offer. This is not true in the case of fire lieutenants. Also, their standing in terms of average percentage differential will improve under the City's final offer. While the Union points to the relative low ranking of City firefighters, in terms of hourly rates of pay, that would appear to be a function of the hours of work, which have been partly addressed in this round of bargaining, rather than the salary schedule as such.

It is also important to note that the percentage increases offered by the City for firefighters are within range, among the comparables, and would appear to be sufficient to keep pace with the comparables in the next two years, especially in the current economic environment.

Finally, it should be noted that it would cost significantly more in 1993 and the future to implement the Union's final offer, in spite of some of the negative aspects of that offer discussed above. That too weights against its adoption under the circumstances.

2. PARAMEDIC PAY

Under the terms of the expired agreement, firefighters and fire lieutenants who were certified and assigned to work as paramedics received a monthly stipend. Over the terms of that three-year agreement, the monthly stipend increased from \$25.00 per month to \$50.00 per month and finally to \$75.00 per month in the third year.

The Union proposes to increase this stipend to \$100.00, \$125.00, and \$150.00 per month over the three years of the new agreement. The City also proposes increases in the stipend in each year of the agreement. However, under the City's final offer the stipend would increase to \$90.00, \$100.00, and \$110.00 over the three-year period.

Union's Position

According to the Union, "the time is long overdue to improve the last place ranking of Elgin's paramedic pay." In support of that position it makes the following points:

1. Paramedic pay was initiated on July 1, 1988, at the rate of \$25.00 per month. Thereafter, it was increased to \$50.00 per month on January 1, 1989 and to \$75.00 a month on December 30, 1989. This amounts to \$900.00 per year, which is more than \$1,000.00 be low average, when compared to the rates in effect during 1991 for paramedics working in the other eight comparable departments.

2. The testimony establishes that paramedic service is valuable to the community and that maintaining certification as a paramedic involves a demanding regimen. The number of EMS alarms has increased significantly in the last several years, to a total of 4,952 in 1990.

3. In recent years, the department has been able to save money on training costs by scheduling the training activities and clinical work during duty time, rather than off duty hours at

overtime rates.

4. While the City objects to the rate of increase proposed by the Union, the rate of increased proposed by the City is inadequate and significantly less than the rate of increase established under the prior contract.

5. Under the Union's proposal, annual compensation for paramedics would increase to \$1,800.00 in the third year of the agreement, bringing the City closer in line to the average, but leaving the City ranked seven out of nine, if it is assumed that paramedic pay in the other jurisdictions does not increase in the meantime. In fact, two of the comparables which will remain ahead of Elgin (Joliet and Oak Park) base their paramedic stipend on a percentage rate.

6. It is also significant that paramedics in the comparable jurisdictions have been receiving their current rates for a number of years. In Evanston, paramedics have been receiving \$2,100.00 per year for at least six years. Thus, the City has already accrued considerable savings relative to other jurisdictions, by holding down its paramedic stipend.

7. If the City's approach of prolonging the increases in the stipend is followed in the future, at the rate of \$10.00 per month increases, it will take until 1999 before the stipend reaches the average rate for 1991.

City's Position

It is the City's position that the arbitrator should accept

the City's final offer on paramedic pay, which will increase paramedic pay by nearly 47% over the contract term, since it is the most reasonable under all of the circumstances presented. In support of this position, the City makes the following points:

1. Deference should be given to the past agreements of the parties, which presumably were reached in good faith and took into account all the factors they believed relevant. The parties agreed to establish a stipend of \$75.00 per month or \$900.00 per year, even though it was less than what other comparable jurisdictions were paying at the time it was agreed to.

2. While the City offers to increase the stipend by 46.7% over the term of the agreement, the Union is asking for an increase of 100%, which is far less reasonable.

3. While the City's January 1, 1990 stipend of \$900.00 was \$919.00 below average, the City's first year offer will increase the stipend by 20% and reduce the amount by which it is below average to \$801.00. Thus, under the City's final offer, Elgin paramedics will not only keep pace with the increases received by paramedics in comparable jurisdictions, it will actually close the difference between its rate and the average rate by \$118.00. It also provides significant increases in the second and third year.

4. Four of the comparable jurisdictions (Aurora, Evanston, Skokie and Waukegan) have flat amounts and Skokie's flat amount of \$1,150.00 preceded 1991 and will continue into 1992 and 1993. Waukegan's flat amount of \$1,020.00 has remained the same for at

least three years and Evanston's flat amount has been the same for at least two contracts.

5. The sheer magnitude of the Union's final offer compels that it be rejected. It would increase the stipend by \$300.00 for each of the three years of the agreement and increase the stipend by 100%. While the current stipend is somewhat modest in comparison to other jurisdictions, Elgin paramedics received no stipend for approximately 15 years, even though the Union was aware of the fact that paramedics in other comparable jurisdictions received additional compensation. It is unreasonable of the Union to expect such a significant change during the term of the next agreement.

Discussion

Because of the heavy emphasis both parties have placed on the wage rate issue, it would be an easy matter to underestimate the significance of the paramedic pay issue. Only a portion of the bargaining unit -- approximately 40 to 42 firefighters and fire lieutenants according to the testimony -- is affected by the issue and the difference between the parties' final offers of \$10.00, \$15.00, and \$15.00 per month does not appear to be particularly significant in relation to employees receiving in excess of \$36,000.00 a year in base salary alone.

However, by its offer, the City proposes to pay an additional \$36,900.00 in base pay alone, over the three years of the agreement, if it is assumed that 41 employees will be entitled to

receive the increased payments. Under the Union's final offer, the City would be required to pay that additional amount in the third year alone (and in future years) and it would be required to pay out an additional \$73,800.00 over the three years of the agreement.

Utilizing the City's cost data, which takes into account increases in fringe benefits as well as base pay, the City's final offer on paramedic pay would cost less than a quarter of a percent in each of the three years, on average. On the other hand, the Union's proposal would cost nearly one-half of one percent in each of the three years.

Thus, even though the Union's proposal would appear to be justified under the criterion deemed to be the most compelling (external comparisons), these considerations must be weighed in the balance, along with the other relevant considerations raised by the parties in their presentation of evidence and arguments. Even so, on balance, the undersigned is persuaded that the Union's offer on this issue should be favored.

Unlike the wage rate issue, internal comparisons do not have any particular relevance to this issue. On the other hand, external comparisons are not only very relevant, they strongly favor the Union's position. While the City relies upon the past history of agreeing to no compensation or below market compensation for the performance of this work, that same bargaining history demonstrates a recognition on the part of both parties, in 1988, that the City needs to significantly increase compensation for

paramedics in order to "catch up" with the pay already being provided by comparable departments.

While there is no reason to believe that the City needs to achieve a leadership position in this area, the Union's proposal would do no more than bring paramedic pay into line, in terms of relative rank and average compensation, with the wage rates traditionally paid by the City. In the last analysis, the difficult question is whether the Union's proposal is too ambitious in terms of the time frame for doing so.⁵

In some ways, the dispute over paramedic pay is like the dispute over pay for the fire lieutenants. Both issues deal with the need to address inadequate compensation for a relatively small group of employees. In some ways, changes of that type are easier to accomplish through arbitration, where the coercive effect of comparisons can help overcome any inertia that may exist on either side of the table. As the Union points out in its arguments, the coercive impact of those comparisons is not likely to go away, and the City's proposal would merely prolong the process, which will have taken a total of six years into the Union's final offer. In terms of the additional cost, the fact that the City's offer on wage rates has been accepted, should help

⁵While both final offers on paramedic pay far exceed the current rate of increase in the cost-of-living, that criterion would appear to have little relevance on the question of addressing inequities in compensation, except to the extent of the difference in the overall cost, i.e., one-quarter of a percent versus one-half of a percent per year.

soften the impact of the Union's proposal on paramedic pay. Further, the City will be in a better comparative position in future bargaining, under such a combination of proposals.

3. HEALTH INSURANCE

For a number of years, the parties' agreement has contained a provision requiring the City to offer a group medical insurance plan for bargaining unit employees and their dependents, with the City contributing an amount equal to the full premium liability under the terms of the plan. Since June 1, 1988, bargaining unit employees have been required to pay deductible amounts of \$200.00 and \$600.00 for employee and dependent coverage, up to a maximum of \$600.00 per year, with an 80/20 co-pay requirement up to that same amount.

As part of its final offer, the City proposes to require employees to begin contributing \$10.00 per month toward the cost of such coverage, effective January 1, 1992, and to increase that amount to \$20.00 per month, effective January 1, 1993. Under the terms of its final offer, the Union proposes to continue the terms of the expired agreement, as they apply to the City's group medical insurance plan.

City's Position

According to the City, its proposal would require employees to pay a "modest amount" toward the cost of medical insurance, consistent with external comparability data and the "unquestionable national trend" toward having employees pick up at least a portion

of the cost of medical insurance. It makes the following points in support of its position:

1. Over the past ten years, the total cost to the City for medical insurance coverage for bargaining unit employees has increased from \$72,852.00 to \$398,674.00.

2. The City is not unique in experiencing such dramatic increases in cost and, available evidence indicates, employees are increasingly being called upon to contribute toward the cost of insurance coverage or to increase the size of the contributions they have already been making toward that cost.

3. Of the eight comparables, four (Aurora, Oak Park, Skokie, and Waukegan) require employees to pick up some portion of the cost of medical insurance coverage and, in Evanston, the issue is pending in interest arbitration proceedings.

4. The average employee contribution toward the cost of health insurance coverage among the eight comparables, by the Union's own calculations, is \$9.91 per month for single coverage and \$22.68 per month for family coverage. These figures support the City's proposal to require employees to contribute \$10.00 per month during the second year of the agreement and \$20.00 per month during the third year of the agreement. Such a requirement would also be consistent with the national trend toward requiring such payments.

5. While the Union points to the fact that the police agreement does not provide for such employee contributions, it

should be noted that the police agreement also does not include costly benefits such as those already agreed to or to be awarded, such as paramedic pay. The agreement with the Union includes additional paid time off, in the form of two 24-hour shifts, without loss of pay, and a large percentage of the bargaining unit will be receiving additional paramedic pay in each year of the agreement. In short, economic cost items already agreed to or proposed fully justify acceptance of the City's final offer on this issue.

Union's Position

The Union contends, with regard to this issue and the other two remaining issues, that the City must show a "compelling need" to justify its proposals, which represent a substantial reduction in existing benefits. The Union notes that other arbitrators have held that employers must show, through evidence of economic or operational problems, that there is a compelling need to reduce or eliminate existing benefits. In the case of the health insurance benefits, the Union makes the following points in support of its position that the City has failed to meet its burden of proof:

1. Even if firefighter health insurance contributions are not increased over the term of the agreement, the City's costs of health insurance will remain among the lowest of those paid by employers within the comparable group.

2. Under the existing arrangement, employees with single coverage must pay a deductible of \$200.00 and employees with family

coverage must pay a deductible of \$600.00 and the Union proposes no change in those requirements.

3. While the City is undoubtedly correct in its principal contention that its costs of providing health insurance have increased dramatically, that argument does not justify the major step of requiring bargaining unit employees to contribute toward the cost of premiums.

4. While the comparability data relied upon by the City establishes that employees in some of the comparable jurisdictions are required to contribute toward the cost of health insurance premiums, employees in four jurisdictions (Arlington Heights, Des Plaines, Evanston, and Joliet) make no such contributions. Further, in Aurora, only those employees hired after June 10, 1986 are required to make contributions.

5. The Union's exhibit (No. 41) on health insurance benefits provides more detailed analysis of the practices among the comparables. It shows that in most of the jurisdictions where employees are required to contribute, the total cost of health insurance benefits is significantly higher than the \$395.51 established for Elgin in 1991. In fact, the premium costs in Elgin ranked the fourth lowest within the comparable group. In Oak Park and Skokie, where employees make significant contributions, the net cost to the employer is still comparable to or higher than the cost of the current arrangement to the City. Also, analysis shows, Elgin maintains deductible amounts which are at the highest level

among the comparables.

6. The City is attempting to use this arbitration proceeding to obtain a major break through for purposes of using it in its negotiations with other employee groups within the City. Other arbitrators have refused to allow employers to accomplish such a purpose, especially in circumstances where comparability data fails to provide compelling support for its effort.

7. By its proposal, the City is seeking to reduce its costs for providing health insurance coverage, even though it never sought to do so in bargaining, prior to filing its final offer. In bargaining, the City limited its proposals to proposals which would establish dollar caps which were unreasonably low. By changing its approach in its final offer, the City has engaged in "gamesmanship" which ought to be rejected as being inconsistent with the bargaining process intended to be established under the act. While the parties have agreed to a procedure which prevents modifications in proposals after the start of the hearing, they did not intend to allow such last minute changes, which frustrate the objective of encouraging direct negotiations. This remains true, even though the parties did engage in negotiations after the exchange of final offers, since the parties could not reach agreement on the remaining issues.

8. The City's proposal would impose on bargaining unit members, the highest contributions among City employees, over the term of the contract. The City has reached agreement with police

to maintain their current benefits, unchanged, through 1993. Further, it should be noted that the monthly premium cost for health insurance for police is nearly \$100.00 more per month. Also, firefighters already contribute more to the cost of their health insurance, in the form of higher deductible amounts, than any other group of City employees.

Discussion

The factors deemed most relevant for purposes of resolving this issue include both internal and external comparables and the cost considerations referred to by the Employer. However, the significance and persuasiveness of the internal comparisons, especially with the police bargaining unit, so far outweigh the significance and persuasiveness of the external comparisons and cost considerations, to render the Union's proposal more reasonable under the circumstances.

Bargaining unit employees are already contributing toward the cost of health insurance by absorbing significant deductibles, combined with a co-insurance feature. Unlike contributions toward insurance premiums, this approach to cost sharing is also much more likely to produce cost containment.

As the Union points out, the City's proposal to require bargaining unit employees to contribute toward the premium costs of health insurance coverage would be unique among the various City groups. No other City group would be required to make such contributions during the two years in question and, in particular,

employees in the police department would not be required to do so. Unlike paramedic pay, health insurance benefits are a benefit of nearly equal importance to all groups and most employers endeavor to maintain consistent internal practices with regard to such benefits.

The City is undoubtedly correct in its contention that employers are increasingly asking employees to help contain the cost, or at least share the cost, of spiralling medical insurance premiums. That general phenomenon is reflected in the available evidence concerning the eight comparable municipalities.⁶ However, as the Union's detailed exhibit demonstrates, there is no clear pattern of favoring contributions toward premium over other approaches to cost containment or cost sharing and, overall, the City's arrangement with the Union compares quite favorably with the eight comparables. On the one hand, Evanston, which also has relatively low premium costs, currently requires no contributions by employees in its firefighter unit and has no deductible or co-insurance requirements. On the other extreme, Skokie, which has the highest premium costs and also provides dental coverage, not only requires significant contributions towards premium costs, but has deductible and co-insurance features at least as high as Elgin. Joliet, which also provides dental coverage, requires no contribution and has lower deductibles. While Aurora now requires

⁶It is also evidenced by the relatively high deductibles in co-insurance features of the existing arrangement.

both, the contribution requirement only applies to new employees hired since the agreement was reached.

It may well be that, at some point in the future, the City may be able to negotiate changes of the type proposed here with all of its employee groups. Or, the external comparisons may become so compelling that it may succeed in imposing them through arbitration. In the absence of such circumstances, the undersigned concludes that the Union's offer is more reasonable at this time.

4. HOLIDAY PAY

Like most firefighting personnel, firefighters, fire lieutenants, and fire captains, work 24-hour shifts. The practice in the department is to change shifts at 7:00 A.M.

Under the terms of the expired agreement, employees were eligible for eight holidays.⁷ Under prior scheduling practices, the chances of being scheduled to work on a holiday (or at least 17 hours of the holiday) were roughly one in three. Under the terms of the agreement such employees were entitled to receive holiday compensation at their straight time hourly rate "on an hour-to-hour basis for all hours worked on the actual holiday" in addition to their regular pay. The same was true for employees who were called out to work on a holiday. The employee who worked seven hours on the holiday received holiday pay for the seven hours worked. The

⁷They were also entitled to receive three personal days off, a provision which has significance to this issue for reasons to be discussed.

employee who worked 17 hours on a holiday had the option of taking compensatory time off at the rate of 24 hours for each such 17-hour period, up to a maximum of 3 during the payroll year.

Simply put, it is the City's proposal to eliminate any additional payment of holiday pay to those employees who work the 7-hour segment of time that falls on a holiday. It proposes to make this change as part of what it considers to be the quid pro quo for a rather complex agreement negotiated by the parties, under which the City has begun to provide employees with Kelly days.

The Union proposes to make no change in the holiday pay provision, as it pertains to the employees who work the seven hours in question and challenges the City's contention that its proposal should be considered in relation to the agreement on Kelly days. In the Union's view, that agreement, which does represent a "break through" as the City argues, also contains sufficient give and take to stand on its own.

City's Position

According to the City, the arbitrator should accept its final offer on holiday pay in order to "complete" the parties' break through agreement on Kelly days. The City notes that its failure to provide Kelly days has been an issue in bargaining with the Union for many years, with the Union noting, as far back as 1981, that the average number of Kelly days for the 8 comparables jurisdictions was 6.5, with 2 jurisdictions providing a total of 12. While the City did not provide Kelly days as such it did

provide 2 alternative forms of paid time off, personal days and holiday compensatory time. Approximately 35% of the time in 1990, or 68, of the 194 occasions when firefighters worked 17 hours on one of the 8 holidays, it was converted into a 24-hour paid day off. According to Union figures, the average firefighter took 3.75 days off in the form of personal days or holiday compensation time.

In order to establish a total of 7.15 Kelly days per year (i.e., 1 Kelly day every 17th duty shift), the parties agreed to eliminate the 3 personal days off and to provide that those who work 17 hours on a holiday must accept holiday pay at straight time rates, with no option to convert it to paid time off. Further, in an effort to even out the increased amount of time off to be taken, the parties agreed to add 2 "slots" on the scheduled time off chart for the scheduling of Kelly days, while reducing the number of "vacation slots" from 3 to 2.⁸

According to the Employer, this agreement left "one remaining piece to the Kelly day puzzle" which was not resolved by the parties, as evidenced by the document they initialed, which contained the following note:

"[Note: There is an open issue with respect to whether employees should receive holiday compensation for employees who are scheduled to work seven hours on the

⁸This reduction in the number of vacation slots is only applicable until all vacation slots have been picked. Then the third slot is again made available for any remaining vacation picks.

actual holiday; the Union proposes that the employee receive such holiday compensation and the City proposes that no such holiday compensation be paid.]"

The City makes the following points in support of its position that its final offer should be accepted as an appropriate quid pro quo for the agreement on Kelly days:

1. The agreement the parties reached did not really provide the City with a definite economic quid pro quo for its agreement to implement Kelly days.

2. Under the agreement, employees received increased time off equivalent to 82.8 hours, without any loss of pay.

3. This reduction in the number of hours will have the affect of increasing the hourly rate of pay for purposes of computing overtime and other premium pay by 6.1%.

4. If it is assumed that the same number of employees work the 17-hour segment and the 7-hour segment of a holiday as in the past, the additional amount of holiday pay that will be paid out (as a result of eliminating the compensatory time provision) will offset the elimination of holiday pay for the 7-hour segment. Employees will receive holiday pay for an additional 3,298 hours, which is nearly equal to the number of holiday pay hours payable under the prior system (3,490). In making this comparison, it should be remembered that employees will receive a 6.1% increase in their straight time hourly rate of pay so the actual cash value of the 3,298 hours will exceed, by a small margin, the cash value of the 3,490 hours.

5. Under the City's final offer, the average firefighter will receive approximately two hours' less holiday pay than received during the calendar year 1990, but will receive more than 80 hours of additional time off, without loss of pay.

6. External comparability data also supports the City's position on this issue. It shows that five of the eight comparable jurisdictions (Arlington Heights, Des Plaines, Oak Park, Skokie, and Waukegan) do not provide any additional pay for work on a designated holiday. Aurora provides an average of 28 hours of additional pay; Evanston provides 20 hours; and Joliet provides 96 hours. Excluding Elgin, the average number of additional hours provided among the comparables is 18 hours. In Elgin the average number will be 45.33 hours, which is more than double the average, with only Joliet providing more compensation.

Union's Position

According to the Union, the City "overreaches" by its proposal to reduce holiday pay. In support of that position, it makes the following points:

1. Under the current arrangement, firefighters who work on holidays receive premium pay for each hour worked, but it is split between the two shifts working on the 24-hour holiday. This arrangement was agreed to, because the Union preferred to spread the benefit among more members of the bargaining unit.

2. A separate aspect of the existing benefit was the option on the part of the employee who worked 17 hours, to convert his

premium pay into 24 hours of compensatory time off. As part of the Kelly day agreement, the Union agreed to eliminate that option.

3. While the City proposes to reduce its liability for premium pay from 24 hours to 17 hours, there is no specific date provided in the City's proposal. Thus, it must be assumed that the City proposes to make it effective December 30, 1990, even though the Kelly day agreement is not effective until 1992. Since 24 hours of premium pay has a value of \$825.00 in 1991, based on the Union's wage proposal, the City's proposal would reduce the value of holiday pay by \$240.00 to \$584.00.

4. While the City argues that its proposal should be included in the agreement as part of the quid pro quo for the Kelly day agreement, the Union consistently resisted the proposal during bargaining and the agreement already contains all of the other concessions the Union was willing to make, i.e., elimination of two regular and one "short term" personal days and the establishment of a maximum of four slots off per day. The Kelly day agreement is a "done deal" and the arbitrator should resist the City's request that he "redo it" on terms more favorable to the City.

5. The City's reliance on comparisons is based upon evidence which is inaccurate and incomplete. While Oak Park and Skokie have no holiday pay provisions, they do provide a holiday benefit in the form of three additional days off. While Des Plaines also has no holiday pay provision, its employees receive five days off. While Evanston used to provide 12 hours of pay for 5 holidays in 1990,

that benefit has been expanded to 7 holidays in 1991. In Arlington Heights employees assigned to 24-hour shifts do not receive time off or additional holiday pay, but those assigned to 40-hour shifts get 8 hours off with pay on the City's 13 recognized holidays.

6. The Union's evidence of comparability is more accurate. It shows that the preservation of 24 hours of holiday pay in Elgin will cause Elgin to rank 5 out of 9 within the comparable communities. Even so, all 5 communities ranked below Elgin receive more Kelly days off than will be provided in Elgin during the second year of the agreement.

7. The existing amount of holiday pay received by Elgin firefighters falls short of the holiday pay received by Elgin patrolmen by \$444.00.

8. The agreement reached on Kelly days could have been viewed as a "win-win agreement," because it provides for Kelly days and increased time off, while minimizing the cost to the City by redistributing the time off throughout the year to hold down overtime costs. However, the City was not satisfied and seeks to diminish one of the few benefits that causes Elgin firefighters to be ranked in the "middle of the pack." An analysis of the Union's exhibits dealing with overall compensation serve to demonstrate this reality. While the City sought to show that the Union's exhibits on overall compensation were inaccurate, that effort was largely unsuccessful. It is admittedly difficult to produce accurate data regarding overall compensation, which is one of the

statutory criteria. However, the Union's exhibits are reasonably accurate and constitute one of the most important considerations in this proceeding.

Discussion

Both parties acknowledge that the new agreement on Kelly days is a break through agreement, made possible by give and take bargaining. Unfortunately, just as the parties could not agree to a combination of compromises on the remaining issues in dispute, they failed to agree on the appropriate combination of compromises on this important issue.⁹

If the City's proposal on holiday pay is compared to existing provisions on holiday pay among the comparables, without regard to the City's own practice in the past or the practice among the comparables in providing Kelly days or personal days or similar time off, the City's proposal compares favorably. Under the City's proposal, employees would receive 45.33 hours of additional pay, on average, for working on designated holidays. That is nearly twice the amount of pay made available in two of the other three jurisdictions having such provisions (Aurora and Evanston in 1991).

⁹The undersigned cannot accept the Union's contention that the agreement on Kelly days should be allowed to stand on its own, with a requirement that the City justify its proposal on holiday pay without reference to the elements of that incomplete agreement. Nor does the undersigned accept the Union's suggestion that the City's proposal on holiday pay should be interpreted to be effective December 30, 1990. Its effective date is governed by the terms of the agreement on Kelly days, not the general provisions of Article 31.

Only Joliet would have a more generous provision, worth approximately 96 hours. The other five jurisdictions (Arlington Heights, Des Plaines, Oak Park, Skokie, and Waukegan) have no such provision.¹⁰

However, it is not reasonable to compare the City's final offer on holiday pay, without taking into consideration the fact that it represents a reduction in an existing benefit. More importantly, it is not reasonable to compare it, without taking into account the relationship between the City's proposal to reduce this benefit and the provision of Kelly days and personal days by the comparable municipalities. By the City's own argument, its proposal on holiday pay is inseparable from the yet to be completed agreement on Kelly days.

By their nature, interest disputes are difficult, because they require that consideration be given to multiple factors, the persuasive value of which vary in each situation, making it impossible to develop a formula or equation to provide guidance as to which final offer should be deemed the most reasonable. The dispute over holiday pay in this case provides a somewhat unique example of that problem. It requires that the arbitrator take into account the value of the other elements of the agreement on Kelly days to both parties and make a judgment as to which party is being

¹⁰Apparently Arlington Heights does have a provision for holiday pay for employees who work 40-hour weeks, but that would appear to be irrelevant for present purposes.

the most reasonable with regard to this last aspect of their agreement on Kelly days.

While the Union disputes the City's claim and methodology, there is good reason to believe that the Kelly day agreement may require the City to hire additional firefighters at considerable cost. In order to obtain the Kelly days, bargaining unit members had to agree to eliminate the three personal days, including the one personal day which they were able to schedule on "short notice." They also had to agree to sacrifice some flexibility in terms of vacation picks, etc. During the hearing, the undersigned was also led to believe that potential future dissatisfaction with the Kelly day agreement may arise on both sides of the table, depending upon actual experience.

While the undersigned recognizes that the new Kelly day provision will increase the hourly rate of pay and that fact, combined with the elimination of the option of taking time off in lieu of holiday pay may well offset the economic impact of the City's proposal, other factors must also be considered in striking a balance on this issue. The purpose of the new agreement is to provide Kelly days in Elgin. At 7.15 days per year Elgin will have the second lowest number of Kelly days from among those comparables who have Kelly days. (Only Joliet, which provides 96 or more days of holiday pay will be without Kelly days in 1991.) The average among the eight municipalities then having Kelly days will be 10.9 days. This disregards the fact that four jurisdictions also have

personal days, including Des Plaines which has five personal days and will therefore be ahead of Elgin and at the average, if its Kelly days and personal days are combined for purposes of analysis.

It may be that the parties will see fit to agree in the future to reduce holiday pay in part or entirely, in order to provide additional Kelly days. Such an agreement would certainly fall in line with the data, which reflects that those jurisdictions having the most Kelly days (or Kelly days and personal days) also tend to have no provision for holiday pay. On the facts presented, the undersigned believes that should be left for further bargaining, after the parties have had some experience under the terms of the new Kelly day agreement.

5. RETROACTIVITY

In their agreement establishing an alternative impasse resolution procedure (Appendix B) the parties expressly give the arbitrator authority and jurisdiction to award increases or decreases in wages and all other forms of compensation retroactive to January 1, 1991. As part of that agreement, they also agreed as follows:

"Discretion and Judgment of Arbitrator. The parties do not intend by this Agreement to predetermine or stipulate whether any award of increased or decreased wages or other forms of compensation should in fact be retroactive, but rather intend to insure that the arbitrator has the jurisdiction and authority to so award retroactive increases or decreases, provided a timely Demand for Compulsory Interest Arbitration has been submitted by one party, should he in his discretion and judgment believe such an award is appropriate."

In the wage article of the 1988-1990 agreement, the parties included a retroactivity provision, reflecting the manner in which they dealt with that issue during the negotiations leading up to that agreement. It read as follows:

"Section c. Retroactivity. Employees covered by this Agreement who are still on the active payroll the beginning of the next payroll period immediately following the ratification of this Agreement by both parties shall receive a retroactive payment. Said retroactive payment shall be made at a rate reflective of the difference between the pay ranges in effect immediately prior to the ratification of this Agreement and the new salary ranges reflected in Sections a. and b. above which are effective the first payroll period following ratification. Payment shall be on an hour for hour basis for all regular hours actually worked since January 3, 1988, including all hours of paid leave, holiday additional pay or overtime hours between January 3, 1988 and the first payroll period following ratification."

In its final offer, the City proposes to change the wording of the retroactivity provision to read as follows:

"Section b. Retroactivity. Employees covered by this Agreement who are still on the active payroll the beginning of the next payroll period immediately following the ratification of this Agreement by both parties or the effective date of an interest arbitration award, whichever occurs earlier, shall receive a retroactive payment, provided that any employee who retired on or after December 30, 1990 shall also be eligible to receive retroactive pay based on the hours worked between December 30, 1990 and the date of retirement. Said retroactive payment shall be made at a rate reflective of the difference between the pay ranges in effect immediately prior to the ratification of this Agreement by both parties or the effective date of an interest arbitration award, whichever occurs earlier, and the new salary ranges reflected in Sections a. above. Payment shall be on an hour for hour basis for all regular hours actually worked on or after December 30, 1990, including all hours of paid leave between December 30, 1990 and the first payroll period following

ratification of this agreement by both parties or the effective date of an interest arbitration award, whichever occurs earlier. For the purpose of application of this retroactivity provision, no increased adjustments shall be made for any additional holiday pay or overtime hours worked between December 30, 1990 and the first payroll period following ratification of this agreement by both parties or the effective date of an interest arbitration award, whichever occurs earlier. In addition to the foregoing, the increases in paramedic pay and mechanics pay shall be retroactive to December 30, 1990 for employees eligible to receive such pay."

In its final offer, the Union proposes no changes in the retroactivity section of the wage article, except to amend the date to December 30, 1990.

City's Position

The City advances essentially two arguments in support of its position on wage rate retroactivity. First, it argues that its position is supported by past bargaining history. Second, it argues that its proposal would avoid the tremendous administrative burden which would be involved in computing retroactivity the matters excluded.

In support of these arguments, the City makes the following points:

1. The issue on retroactivity is a narrow one. Under both parties' final offers, full retroactivity will be paid for all regular hours of work between the last day of the old contract and the first payroll period following ratification of the new agreement. The City has also agreed to extend full retroactivity to any firefighter who may have retired.

2. In the past, the parties have reached agreements providing for full retroactivity and retroactivity limited to base salary, as proposed in the City's final offer. Thus, in their 1982-1984 collective bargaining agreement, which was executed in February, the parties agreed to full retroactivity. In their 1985-1987 agreement, which was executed on July 17, 1985, more than seven and a half months into the fiscal year, they agreed not to provide for full retroactivity.

3. The administrative burden that would be entailed in computing full retroactivity in this case is substantial. The length of time involved is nearly twice as long as that involved in the agreement in 1985. Further, the retroactivity period now extends beyond FY 1991 and into FY 1992. The Union must bear some of the responsibility for the delay taking this proceeding into the second fiscal year, since it made the initial request to delay the filing of briefs.

Union's Position

According to the Union, the City's proposal on retroactivity is regressive by seeking to "turn the clock back to 1985." It should be rejected, in the Union's view, for the following reasons:

1. The existing retroactivity clause already represents a compromise. It does not provide retroactivity to employees who are no longer on the active payroll following ratification of the agreement.

2. While the City did agree to soften the impact of the

provision by agreeing to treat firefighters who retire during the pendency of the proceeding as if they were on the active payroll, that concession ought not be allowed to obscure the significance of the limitation it still contains. Under the terms of the City's proposal, valuable benefits, such as holiday premium pay and overtime rates will be frozen at their 1990 rate.

3. The City's cost analysis presented at the hearing ignores the significant cost savings that would be involved if its proposal were accepted.

4. The City's proposal is intended to serve as an economic disincentive, to deter the Union from invoking arbitration.

5. While the City relies upon bargaining history, that bargaining history actually demonstrates that the City now seeks to eliminate the expansion of retroactivity rights which the Union fought for and achieved in its last negotiations.

6. The City's claim that it will constitute an administrative burden to calculate retroactive payments for premium pay hours is not credible. Most payroll systems isolate premium pay hours from regular hours as a matter of course.

7. The City put forward no justification or substantive reasons in support of its proposal on retroactivity during negotiations. This supports the Union's belief that this proposal is merely intended to keep the Union on a "treadmill" in negotiations and prevent the Union from achieving needed improvements.

Discussion

The undersigned cannot accept the Union's contention that this issue should be viewed as a proposal by the City to change the status quo or take away an existing benefit. If it were not for the terms of the parties' agreement in Appendix B, there might be a serious legal impediment, preventing the undersigned from granting the Union's request to continue the quoted provision with a modified date. As part of that same agreement, the parties agreed that the issue of retroactivity should be treated as an open issue in bargaining. This represents a pragmatic and sensible agreement, which recognizes the realities of collective bargaining.

The granting or withholding of retroactivity ought not be used to reward or punish either party, based upon the arbitrator's perception of the reasonableness of their positions or behavior during bargaining. However, flexibility in this area can serve a useful purpose for the parties or the arbitrator, by saving money or making money available for other purposes or serving as a "sweetener" one way or the other.

In this case, all employees on the active payroll and retired employees (of which there is at least one) will receive retroactive payments under either proposal. The City makes no claim that its retroactivity provision is needed to provide funds necessary to pay for the cost of the agreement. In effect, it asks for a limitation on the retroactivity provision in the form of a "sweetener," to make its job easier in computing retroactive payments due. The

undersigned tends to agree with the Union in its contention that the City has not made a strong case concerning the significance of that alleged administrative burden. Further, the fact that the parties have agreed to both full and less than full retroactivity in the past, merely serves to support the above analysis, that this issue should be treated as an open issue rather than one where either party bears a heavy burden of proof.

The undersigned does not doubt that there will be some additional administrative burden occasioned by the need to calculate back pay for overtime and additional holiday pay hours. However, when that additional administrative burden is compared to the negative impact the City's proposal will have on firefighters who do not qualify for paramedic pay, the undersigned concludes that the Union's proposal should be favored in this proceeding.

For the above and foregoing reasons, the undersigned renders the following

AWARD

The parties' agreement should be three years in length, with duration as reflected in their final offers and shall include the following items, along with the matters agreed to by them in their negotiations:

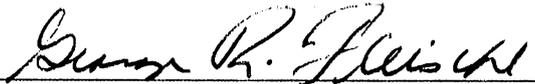
1. Wage Rates. The final offer of the City shall be included in the agreement.
2. Paramedic Pay. The final offer of the Union shall be included in the agreement.

3. Health Insurance. The final offer of the Union shall be included in the agreement.

4. Holiday Pay. The final offer of the Union shall be included in the agreement.

5. Retroactivity. The final offer of the Union shall be included in the agreement.

Dated at Madison, Wisconsin, this 7th day of February, 1992.



George R. Fleischli
Arbitrator