

INTEREST ARBITRATION

In the Matter of the
Interest Arbitration between

CITY OF EVANSTON

DECISION & AWARD
FMCS # 91-12379

and

EVANSTON FIRE FIGHTERS
UNION LOCAL 742, IAAF, AFL-CIO

BEFORE THE ARBITRATION PANEL:

MR. RONALD BRUMBACH, Union appointed member.
MS. JUDITH AIELLO, Employer appointed member.
MR. ROBERT J. MUELLER, Impartial member.

APPEARANCES:

Seyfarth, Shaw, Fairweather & Geraldson, Attorneys at Law,
by MR. JOHN T. WEISE, for the Employer.

Cornfield and Feldman, Attorneys at Law, by MR. J. DALE
BERRY, for the union.

INTRODUCTION:

The above-entitled matter came on for hearing before the panel at Evanston, Illinois on June 11, 1991, July 9, 1991, July 10, 1991, August 28, 1991, August 29, 1991, September 30, 1991 and October 1, 1991. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. The parties stipulated that the arbitration panel has authority to determine all issues existing between the parties in accordance with the ground rules and stipulations of the parties and the Illinois Public Labor Relations Act, Chapter 48 Illinois Revised Statutes Section 1614.

During the course of the hearings, the parties resolved a number of issues that existed between them at the start of the proceedings. The final offers of the parties were thereafter finalized and exchanged by the parties on November 12, 1991. Written briefs were thereafter submitted

and exchanged by the impartial member of the panel on December 30, 1991. The remaining issues must be considered and resolved by the panel by application of the factors specified in Section 14(h) of the Act. Said factors are as follows:

- (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.

ITEMS IN DISPUTE
ECONOMIC ITEMS

1. Art. IX, §9.1 - General wage increase

UNION OFFER: Increase all steps (Appendix B)
by: 5.5% effective 3/1/91 and
5.25% effective 3/1/92.

EMPLOYER OFFER: Increase all steps (Steps A-G)
of both classifications of
firefighter and fire captain as

follows: March 1, 1991 -- 4.75%
March 1, 1992 -- 5.0%

2. Art. XI, §11.2 - Group Health Insurance Premiums

UNION OFFER: As per "EXHIBIT A"

"EXHIBIT A"

Section 11.2 Group Hospital-Surgical-Major Medical Insurance. There shall be two group medical insurance plans in effect during the term of this agreement: (1) Humana-Michael Reese; (2) Partners. Employees eligible for insurance coverage may elect one of the plans. Any switch by an employee from one plan to another shall be subject to reasonable administrative rules which may be revised from time to time. In the event the City determines that one or more of the plans will no longer exist, employees are guaranteed the right to switch to a remaining or substitute plan on a non-medical basis. The Union shall have no responsibility for, nor play any part in, the administration of the group plans, the determination of benefit and premium levels (which levels may be changed by the City from time to time) or the selection of the insurance carrier or substitute insurance carrier or the decision by the City to self-insure any or all of the coverage. Former bargaining unit employees who have retired and are receiving a current Illinois fire pension may elect insurance plan coverage under the rules and regulations established by the plans, so long as the retiree pays the entire group insurance premium, without any City contribution.

Section 11.3 City and Employee Contributions. The City shall pay the entire insurance premium for employee-only and employee and family coverage, including any increase in premium during the term of this Agreement, except that employees shall contribute the following amounts each month toward the premium costs for maintaining the current level of health insurance benefits:

- a) Effective the first day of the month following execution of the new contract -\$10 per month.
- b) Effective March 1, 1992 -\$15 per month.

EMPLOYER OFFER:

2. Medical Contributions. Effective March 1, 1991, the City will pay all group medical insurance premium costs, all plans, both single and family coverage, including any increases in premium contribution which come into effect in the period March 1, 1991 through February 28, 1993, except for the following employee contribution:

	<u>Monthly Employee Contribution</u>	
	<u>Single</u>	<u>Family</u>
March 1, 1991	\$12.50	\$25.00
March 1, 1992	\$25.00	\$50.00

3. Art. IX, §9.10 Longevity Pay

UNION OFFER: Maintain existing contract language

EMPLOYER OFFER: (Add to existing language)
Longevity pay shall be paid to an employee if the employee rates highly satisfactory under the City's merit review program.

4. Art. IX, §9.11 Paramedic Differential

UNION OFFER: Maintain existing contract language.

EMPLOYER OFFER: Add to this Section the concept that employees will receive paramedic pay, on a daily basis, on any work day when the employee actually serves as a paramedic.

NON-ECONOMIC ITEMS

5. Art. VI, §6.3 Grievance Procedure - Step 3.

UNION OFFER: Add the following language to the existing Step 3 provision:
"The parties may waive this step by mutual agreement."

EMPLOYER OFFER: Substitute the following as and for Step 3 of the current agreement:

Appeal to City Manager. If the grievance is not settled in Step 2 and the Union decides to appeal, the Grievance Committee shall, within ten (10) calendar days after receipt of the Step 2 answer, file a written appeal to the City Manager. If the grievance involves a disciplinary suspension of seventy-two (72) hours or more, a demotion, or a discharge, there shall be a Step 3 meeting and a Step 3 answer from the City Manager. On all other grievances, the City Manager may elect not to hold a Step 3 meeting, in which event the City Manager shall advise the

Union in writing within ten (10) calendar days of receipt of the Step 3 appeal that the Step 2 answer of the Fire Chief is the final City answer in the grievance procedure, at which point the Union may appeal the grievance to Step 4, Arbitration, if the Union so chooses. In cases where the City Manager will hear a Step 3 grievance, a meeting between the City Manager, or his designee, and the Grievance Committee will be held at a mutually agreeable time, generally within thirty (30) calendar days. If no settlement is reached at such meeting, the City Manager, or his designee, shall give his answer in writing within twenty-one (21) calendar days of the meeting.

6. Art. X, §10.4 Overtime Distribution
(new section)

UNION OFFER: "EXHIBIT D"

"EXHIBIT D"

Section 10.4. Overtime Distribution. When there is an availability for overtime assignments, such assignments shall be distributed among bargaining unit members on a rotational basis by offering the first choice to work the available overtime to the employee with the least current previous overtime assignment date. An employee shall move to the bottom of the overtime list if he refuses or works an overtime assignment consisting of 20 hours or more. The distribution of assignments of less than 20 hours shall be subject to reasonable rules consistent with achieving to the extent feasible, an even distribution of overtime opportunities among employees.

EMPLOYER OFFER: No Contract Change

7. Art. XIX, Restricting Contracting Out of Work.
(new article)

UNION OFFER: "The City shall not subcontract or contract out any work historically performed by bargaining unit employees if there are employees at work or on layoff who are capable of performing the work."

EMPLOYER OFFER: No Contract Change

8. Art. XXI, Physical Fitness.

UNION OFFER: (See EXHIBIT C)

EXHIBIT C

Physical Fitness Program

The parties agree that it is in their mutual interests for employees to be in good physical condition. Accordingly, a Physical Fitness Committee shall be established for the purpose of trying to reach mutual agreement on the terms and conditions of an effective program, said Committee to be composed of three members appointed by the Fire Chief and three members appointed by the Union President.

The Committee members shall meet over a period of at least 45 days at mutually agreeable times and attempt to agree upon a program. Each party's representatives shall give fair consideration to the other party's proposals. In the event the Committee members are not able to reach a consensus, any disputes as to any aspect of the City's or the Union's proposed program that constitutes a mandatory subject of bargaining shall, at the election of either party, be referred to arbitration for resolution in accordance with the procedures of §14 of the IPLRA except that the Neutral Chairman shall be selected in accordance with §6.3 of Step 4 of this Agreement.

EMPLOYER OFFER: (Attachment A)

Attachment A

Civic Center



City of Evanston

2100 Ridge Avenue
Evanston, Illinois
60201-2796

Telephone
708/328-2100

September 30, 1991

International Association of Fire Fighters
Local 742

Subject: Physical Fitness

Gentlemen:

There shall be a Physical Fitness Committee of two members selected by the City and two employee members selected by the Union to discuss physical fitness examinations.

The Committee shall meet for thirty days, or longer, if agreed. The City will not implement unilaterally any physical fitness examination rule while the Committee is meeting.

If agreement is not reached on physical fitness examination, and the City implements a rule unilaterally, any such rule will be subject to grievance and grievance arbitration under Section 6.1 and 6.3 of the labor contract.

Eric A. Anderson
City Manager

Agreed:

I.A.F.F., Local 742

By: _____
President

9. Appendix C - Side Letter Concerning Unit Clarification.

UNION OFFER: Delete Side Letter from Agreement and remand issue to parties pursuant to ILPRA, §14(f).

EMPLOYER OFFER: Retain Side Letter in the Agreement.

POSITIONS & ARGUMENTS OF THE PARTIES, ANALYSIS AND DISCUSSION

Each of the above-numbered items in dispute will be hereinafter separately discussed.

ITEM NO. 1 -GENERAL WAGE INCREASE

The parties stipulated at the outset of the hearing that the following 13 suburban municipalities in the greater Chicago area would be referred to by both parties for comparable purposes. The City conditioned its agreement on the condition that the arbitration panel consider the differing ability to pay as between the City and the comparables.

Arlington Heights
Aurora
Cicero
DesPlaines
Elgin
Joliet
Mount Prospect
Naperville
Oak Lawn
Oak Park
Skokie
Schaumburg
Waukegan

As a result of both parties having modified their final offers after the final day of hearing and subsequent to having presented numerous exhibits with analysis and comparisons based on their earlier offers, the analysis contained in such exhibits is inapplicable in large part to the final offers of each as modified. The raw data contained in the exhibits is still usable and valuable, but the analysis and comparisons contained therein are not.

In its brief, the union has extracted various raw data figures and computed comparisons thereon with the final

modified wage offers of each as follows:

MAXIMUM BASE SALARIES COMPARED AND RANKED
FOR FIREFIGHTERS IN COMPARABLE MUNICIPALITIES
-- 1991 DATA

<u>Municipality</u>	<u>1990 Maximum Salary</u>	<u>Rank</u>	<u>1991 Maximum Salary</u>	<u>Rank</u>	<u>1991 Percent Increase</u>
Arl.Hts.	36,327	4	38,525	4	6.05
Aurora	33,184	10	35,341	10	6.5 <u>2/</u>
Cicero	32,167	12	33,775	13	5
DesPlaines	37,637	2	39,627	2	5.29
Elgin	35,076	7	36,917	7 <u>3/</u>	5.25
Joliet	32,139	13	34,929	12	8.68
Mt.Prospect	36,209	5	38,019	5	5
Naperville	33,254	9	37,152	9	6
Oak Lawn	32,288	11	34,952	11	5
Oak Park	34,665	8	36,051	9 <u>4/</u>	5.85
Schaumberg	38,077	1	40,000	1	5.05
Skokie	36,701	3	38,536	3	5
Waukegan	31,535	14	32,907	14	4.35
Average	34,635		36,671		5.43
Evanston	35,196	6	City 4.75		
			36,867	8	
			Union 5.5		
			37,131	7	
Evanston Salary Above Average	1.6%		City Proposal .53%		
			Union proposal 1.25%		

2/ Lieutenants received a 9.5% increase.

3/ The City's proposal submitted to the Arbitrator is Firefighter 5.25, 5.25, 5.5; Lieutenants 7.25, 6.25, 5.5.

4/ This number does not include an additional step increase of 5% that will be awarded by the Arbitrator either on 7/1/92 as proposed by the Union or 7/1/93 as proposed by the City. An award based on the City's proposal produces an average increase over the three year term of 5.85% (Book 6, Tr. 68-69).

The main thrust of the union's argument is that the City's offer would erode the relative ranking of the firefighters in their comparative ranking as illustrated in their exhibit. The City's offer is also less than the settlements between the City and AFSCME of 4.75% for 1991 and 5.25% for 1992 and the City and the Police unit of 5.25% for 1991. The union offer (assuming a 5.0% increase to the police in 1992) would be slightly higher by 1/2 to 3/4 % over the two year period compared to the AFSCME and police units. Such advantage is substantially offset by the concessions the union has proposed in terms of health insurance contributions.

The union further contended the City's offer would not keep pace with the cost of living increase that occurred during the fiscal year of March, 1990 to March, 1991, which was 5.2 or 5.1 depending upon which index one uses. In either event, the 4.75% is farther from the CPI increase than is that of the union's final offer of 5.5%.

The City contends the panel should take into account the fact that the taxpayers of the City are making a financial effort above and beyond most of the comparables to keep their pay and benefits at favorable levels. They state in their brief:

In recognizing that Evanston is making a financial effort above and beyond most of the comparables,, it is suggested that the Arbitrator picture in his mind the inner circle and the outer circle of suburbs. The inner circle of comparable municipalities -(Evanston, Oak Park, Oak Lawn and Cicero) are each adjacent to Chicago, are older, established communities which are landlocked, have no open space to speak of, and little in the way of shopping centers, industry or regional or corporate headquarters (except that Cicero is an industrial town). The outer ring of comparable suburbs, on the other hand, are each blessed with one or more of the "big three" factors which keeps the money rolling in: (1) industry; (2) giant shopping centers on the Woodfield and Old Orchard scale; and/or (3) the large corporate or regional office campuses typified by the Motorola World Headquarters, that seemingly never-ending mile after mile of large office

centers along the toll roads and expressways, out in the country, as it were, compared to Evanston.

...
 Evanston with its multi-cultural, multi-racial, heterogeneous population, is almost exclusively a residential community with no land for expansion. Although precise figures are not available, no one disagrees with the fact that Evanston probably has less of its land on the tax rolls than any of the other comparable municipalities. .6 of the 7 large employers...are universities, schools, hospitals and the like...

The City contends the panel, "first and foremost" should look at the property tax. They point out that the City ranks second highest among the 14 comparables with a tax rate of \$11.624. The following comparison shows Evanston has the highest property tax per capita. (considering only the municipal portion of the property tax.)

CITY OF EVANSTON
 COMPARABLE JURISDICTIONS
PROPERTY TAX PER CAPITA (Municipal)

<u>JURISDICTION</u>	<u>PROPERTY TAX PER CAPITA</u>	<u>RANK</u>
EVANSTON	\$205	1
Joliet	157	2
Naperville	156	3
Arlington Heights	155	4
Oak Park	144	5
Elgin	139	6
Waukegan	124	7
Skokie	119	8
Aurora	104	9
Mount Prospect	91	10
Oak Lawn	88	11
DesPlaines	86	12
Schaumburg	-0-	13
Cicero	*	*

* Information not available.

At pages 19-20 of their brief they set forth the following data concerning sales tax.

CITY OF EVANSTON
COMPARABLE JURISDICTIONS
SALES TAX PER CAPITA

<u>JURISDICTION</u>	<u>SALES TAX PER CAPITA</u>	<u>RANK</u>	<u>% COMPARISON TO EVANSTON PER CAPITA SALES TAX</u>
Schaumburg	\$223	1	343%
DesPlaines	143	2	220%
Arlington Heights	132	3	203%
Oak Lawn	129	4	198%
Skokie	128	5	196%
Naperville	120	6	184%
Joliet	113	7	173%
Mount Prospect	109	8	167%
Aurora	99	9	152%
Elgin	83	10	127%
EVANSTON	65	11	--
Oak Park	57	12	87%
Waukegan	*	*	--
Cicero	*	*	--

* Information not available.

As can be seen from the foregoing percentage figures, the comparables (except Oak Park) have sales tax money which ranges from 127% to 343% higher than Evanston!

The City also argues that the panel must consider the ~~items~~ that have already been agreed upon. At pages 24-25 of their brief they list the detailed improvements as they were contained on what was referred to as the blue sheet as follows:

" 13. More Vacation Time Off. Increasing the five and seven day vacation schedule to eight, nine or ten days per employee.

14. Vacation Scheduling. Amending the vacation scheduling clause to the City's advantage in the prime time months during the summer and at Christmas by scheduling one fewer employee off at a time. Note, however, the vacation scheduling clause was also changed to open up the "unused" Kelly Day slots for vacation scheduling, which is a major benefit for the employees.

15. Saturday Work Schedule. Setting forth Saturday work scheduling provisions.

16. Subpoena Pay. Provision for paying employees who are subpoenaed to attend hearings.

17. Holiday Work Schedule. Amendment to the holiday work schedule.

18. Two New Holiday Premium Days. Add a new paid holiday at time and one-half in 1991 (Labor Day) and add a second additional paid holiday in 1992 (Martin Luther King Jr.'s Birthday).

19. Exchange of Duty. This was perhaps the most emotional issue in the negotiations (or perhaps tied with more vacation time off and the City's medical proposal). This agreed item makes major changes in the labor contract clause concerning whether employees can trade work days with other employees in order to suit the employees' convenience. Under the former contract, everything was in the City's hands, in that the employee requested the change and the Fire Chief had the authority to grant or not grant a requested trade. Under the new arrangement, with contract and side letter, there are precise contractual criteria for granting trades, up to as many as 12 trades per year, which are granted to employees as a matter of right, even permitting employees to take three trades off in a row, so that an employee with a creative trade plan can schedule himself for four "mini-vacations" of approximately 14 days each, through the trade policy, in addition to regular vacations and 13-1/2 Kelly Days (40-1/2 calendar days) which the employee gets off.

20. Promotions. Lastly, the Arbitrator can and must take into account the major promotion concessions made by the City on November 1. Though not major during negotiations, after wrapping up vacation and shift trades, the Union decided "promotion" was now a "major issue" needing more and more days of hearing. To avoid days more of hearing, the City made a never-before agreement with any Union -- to negotiate promotions rather than follow civil service. The Union has likely not achieved such a major victory in 20 years of Evanston bargaining.

In summary, the parties have already agreed on 20 changes in the 1991 contract -- many of them important and several critical (longer vacations, shift trades and promotions)."

The City suggests that the wage proposal of either party is reasonably supported by the comparables. One cannot say that either offer is clearly right or wrong. Either offer will keep Evanston employees ranked favorably with the comparables, and especially in view of the fact that a number of the comparables are ones with a much greater ability to pay.

The City listed the 1991 settlement with the police unit as being a 4.6% settlement. The union listed it as 5.25%. The record evidence shows the settlement to have been 4% effective 3/1/91 and 1.25% effective 9/1/91, for an annual cost of 4.6%. The parties agree that the AFSCME unit received 4.75% for 1991 and 5.25% for 1992. The police unit is not settled for 1992. The City contends their offer is closer to the internal settlements and for that reason should be favored.

They contend the panel should also take the overall costs of the City's offer into account. While the 4.75% and 5% city offer totals 9.75% over two years, the actual cost of the offer is 11.56% (not counting the added money the city must pay for group insurance). Additionally, the city agreed to vacation improvements that were priority items of the union. Further consideration should be given to the fact that with 13 1/2 Kelly days off per year, the average work week of 49.8 hours is the second lowest of all the comparables.

The union's view of the wage proposals of each party is similar to that of the city. The union states at page 19 of their brief,

"In truth, neither of the parties' positions with respect to wage increases are outside the zone of reasonableness when compared with wage settlements for other employee units. The City's proposal for firefighters is marginally less than the wage settlements reached with AFSCNE and the police. However, when the City's wage proposal is considered together with its other economic proposals with

respect to health insurance, paramedic pay and longevity pay, it is clear that the City is overreaching and adoption of its wage proposal together with any of its other economic proposals would place firefighters in an adverse position relative to other City employees."

The panel agrees with counsel for both parties to the fact that the wage offer, taken alone, of both parties, is reasonable, is supported by the record evidence, and can be considered reasonable and fully supported by the statutory factors. The panel is of the judgment that selection of the final offer of one or the other on the wage issue is dependent to a large extent on the selection of one or the other offer on each of the three remaining economic issues.

ITEM NO. 2 - HEALTH INSURANCE

The union argues that the city's health insurance proposal overreaches and is not justified based on the city's insurance costs. They referred to City Exhibit # 29 from which to make their argument. Such exhibit is as follows:

CITY EXHIBIT 29

CITY OF EVANSTON
COMPARABLE JURISDICTIONS
MEDICAL INSURANCE COSTS

<u>JURISDICTION</u>	<u>TOTAL PREMIUM (MONTHLY)</u>	<u>EMPLOYEE CONTRIBUTION</u>
Arlington Heights	\$275.00	\$ ---
Aurora	250.00	30.00
Cicero	324.18	---
DesPlaines	471.90	---
Joliet	381.00	---

Mount Prospect	390.00	39.00
Naperville	367.58	---
Oak Lawn	913.24	54.00
Oak Park	480.00	45.50
Skokie	545.17	65.42
Schaumburg	430.73	27.96
Waukegan	432.15	65.24
EVANSTON	308.20	77.05
		(City Proposal)

Source: 1991 Personnel Department Survey

The union analyzes such exhibit and states;

"...City exhibit 29 shows that the City's premium monthly costs at \$308.20 is lower than the premium costs of all the other comparable cities except for Arlington Heights and Aurora. This circumstance is not an accident. Under the existing contract language, the City has been free to change carriers and in the past even eliminated the indemnity coverage previously offered to firefighters. (Book 4, Tr. 119, 194) The City's current proposal would continue the current language which has no restrictions on the City's ability to change coverages and even benefits while obtaining very significant premium contributions from firefighters. (Book 4, Tr. 194-195) The City's own data with respect to health insurance costs does not justify increases in firefighters contributions of the magnitude sought here. City Exhibit 26 shows that these costs declined between 1989 and 1990 by \$26,533.00, or almost 7.4%. In 1991 the costs increased to \$364,441.00, or by only \$4,918.00 over the 1989 level. This is a 1.36% increase over the 89 level. And a 9.4% increase over the 1990 level. Yet the City is proposing that firefighters pay \$25.00 toward the premium costs in 1991. This level of contribution effectively reduces the City's contributions for premium costs by 4.78%. Thus, despite increases in the health insurance costs, the City's proposal in 1991 would mean that it would pay less towards health insurance premiums than it did in 1989!"

The city estimated that the cost of insurance would increase approximately 18% for 1992. The union argued that even if one accepts that hypothesis, such percentage would translate into an increased premium of \$363.00 per month for family coverage. If firefighters were to contribute \$50.00 per month as provided in the city's offer, the City's contribution would be \$313.00 per month. Such sum constitutes a 1.8% increase in the city's contribution for 1992 whereas the employees' contribution would be increased 100%.

As to internal comparisons, the union utilized City Exhibit 28, which is as follows;

CITY EXHIBIT 28

CITY OF EVANSTON

MEDICAL INSURANCE

EMPLOYEE CONTRIBUTIONS BY EMPLOYEE GROUP

EMPLOYEE GROUP	1990 <u>Single/Family</u>	1991 <u>Single/Family</u>	1992 <u>Single/Family</u>
AFSCME	\$ 5.00/\$10.00	\$12.50/\$25.00	10% Cap of \$20.00/\$40.00
CCPA	\$ 0/\$ 0	\$12.50/\$25.00	Open
NON-UNION	\$ 5.00/\$10.00	\$12.50/\$25.00	Open
SERGEANTS	\$ 0/\$ 0	\$12.50/\$25.00	Open
EXEMPT	\$ 0/\$ 0	10%	Open
IAFF	\$ 0/\$ 0	25%/25%	25%/25%
		City Proposal	

NOTE: 85% of fire fighters have family coverage;
70% of fire fighters are covered by the Humana-Michael Reese HMO

Such exhibit shows that contribution rates were initially set at \$10.00 per month for family coverage. In 1990 an agreement was reached with the firefighters which provided for maintaining the existing health benefits. At that time AFSCME agreed to a change calling for contributions by employees. They received a 5% wage increase whereas the firefighters received a 4 1/2 % wage increase. The city gave AFSCME more in order to get them to agree to an employee contribution formula. They are proposing to move the firefighters to a contribution formula without offering any form of quid pro quo for acceptance by the firefighters.

The union contends the "most serious overreaching" is the City's proposal to establish a \$50.00 contribution for family coverage in 1992. Such level of contribution is far in excess of any amount asked of any other employees. Such amount exceeds even the city's stated objective of achieving a contribution rate of 10% from all city employee groups.

The union further argues that the City's health insurance costs would remain among the lowest of those paid by employers within the comparable jurisdictions even if one were to accept the union's proposal. They suggest the impact of the amount of employee contributions to the total premium paid is the best measurement of impact on the city. They set forth the following computation of such comparison at page 43 of their brief.

<u>Jurisdiction</u>	<u>Net Premium Costs</u>
Arlington Heights	275.00
Aurora	220.00
Cicero	324.18
DesPlaines	471.90
Elgin	(Not Supplied)

Joliet	381.00
Mt. Prospect	351.00
Naperville	367.58
Oak Lawn	859.24
Oak Park	434.50
Skokie	479.75
Schaumburg	402.77
Waukegan	<u>366.91</u>
Average	<u>353.50</u>

Evanston @25/month 283.20

Evanston % below average -- 19.8%

Evanston % below average at 308.20 -- 12.8%

They argue that even if current premium costs were to be maintained without reduction, the city's insurance costs would still be significantly below the average of the 12 comparable jurisdictions.

The union contends that when considered in relation to the wage proposals, the union's offer is more supportable by application of the statutory factors. At page 48 of their brief the union submitted the following analytical format.

<u>PROPOSAL</u>	<u>1991 IMPACT</u>	<u>1992 IMPACT</u>	<u>NET IMPACT \$</u>	<u>2 YEAR AVG. %</u>
1. U. Wage @5.5				
+ 5.25	37,132	39,081	3885	
(-)				5.25
U. Health				
@10 + 15	-10*	-180	<u>-190</u>	
			3695	

2.	C. Wage @4.75 + 5.0	38,868	38,711	3515	
	C.Health @25 +50	-300	-600	<u>-900</u> 2615	3.71
3.	U. Wage @5.5 + 5.25 +	37,132	39,081	3885	
	C. Health @ 25 + 50	-300	-600	<u>-900</u> 2985	4.24
4.	C. Wage @4.75 + 5.0	36,868	38,711	3515	
	U. Health @10 + 15	-10	-180	<u>-190</u> 3325	4.72

* Assumes contract executed in January, 1992.

The city points out that the only issue herein is how much will firefighters contribute. The pattern of contributions by other employee groups is well established. Firefighters are the only group who have not contributed to this point in time. They pointed out that the pattern for employee groups can be broken down into three years, 1990, 1991 and 1992. They describe the three patterns at pages 38-39 of their brief as follows:

1990 Pattern. The pattern is mixed, in that four of the major employee groups (including firefighters) did not contribute, whereas the AFSCME employees and non-union employees contributed \$5.00 single and \$10.00 family (City Ex. 28).

1991 Pattern. There is indeed an undeniable pattern in 1991 (City Ex. 28). Assuming that the Arbitrator accepts the

City's insurance offer, the firefighters will be grouped precisely with all other employees, except that the highest-paid group (the exempt group) contributes a bit more:

<u>EMPLOYEE GROUP</u>	1991 <u>Single/Family</u>
AFSCME	\$12.50/\$25.00
CCPA (Police)	\$12.50/\$25.00
NON-UNION	\$12.50/\$25.00
SERGEANTS	\$12.50/\$25.00
EXEMPT	10%-which is \$30.82 family
IAFF	\$12.50/\$25.00 (City last offer)

1992 Pattern. The 1992 pattern is partly unknown, because certain groups are open, but it seems clear the AFSCME settlement shows the way. The AFSCME group, the City's lowest paid employee group (Tr. 121), is contributing \$40 for family coverage in 1992 (City Ex. 28). It seems safe to assume that the City will institute more than \$40 for the three non-union groups (non-union, sergeants and exempt) and will negotiate more than \$40 for the police. Recall the testimony showing that AFSCME in the last negotiations complained about the fact that other employee groups were not doing their proper share in paying for group medical insurance (Tr. 122).

The city also points out that city exhibit 29 reveals that 8 of the 13 comparable municipalities have employee contributions for group medical insurance. Several of the municipalities with much more ability to pay than Evanston require employee contributions. In comparison, the city contribution of \$25 for family coverage for 1991 is the lowest of any of the municipalities which call for employee

contributions. The average of the 7 who do require contributions is \$46 per month. The city contends the trend is clear in the comparable jurisdictions. Several years ago very few of the suburbs called for employee contributions to medical insurance coverage, but now the majority of the comparable jurisdictions do provide for contributions by employees for medical coverage.

The city set forth what it labeled the "clincher on medical insurance" at pages 42-43 of their brief as follows:

"The Clincher on Medical Insurance. The clincher for the Arbitrator on the medical insurance issue, making this almost a "no brainer," is the Union's first-year offer. The Union has proposed \$10 per month contribution effective the first day of the month following "execution of the contract." This means that if the new contract is signed in January, 1992, the employee insurance contribution will be for one month only, the month of February, 1992. This is an average contribution for the 1991 fiscal year of less than \$1 per month! Because this offer, of under \$1 per month, is absolutely unacceptable, the Arbitrator can virtually disregard the Union's second year offer and the City's first and second year offer. Under Illinois law, the Arbitrator must adopt the City insurance offer. There simply is no way that anyone can justify the Union's proposal of less than \$1 per month in 1991:

1991 Monthly Contributions

AFSCME	\$25
CCPA	\$25
Non-Union	\$25
Sergeants	\$25
Exempt Employees	\$30.82 (computed from City Exhibit 29)
IAFF	<u>Less than \$1 per month</u> (per Union proposal)
IAFF	\$25 (per City last offer of settlement)

(City Ex. 28)

The foregoing focuses only on family coverage because 85% of the firefighters bargaining unit have family coverage (City Ex. 28). The union medical insurance offer cannot be accepted. This leaves the Arbitrator

with only one choice -- to adopt the City's last offer."

ITEM NO. 3 - LONGEVITY PAY

The union contends the city proposal would turn the longevity pay provision into one dependent on subjective reviews by superiors. They would turn it into a merit system yet continue to call it a longevity system. The city has presented no good reason for their proposal. In fact the city acknowledged that practically every one of the employees receive "highly satisfactory" ratings under the city's merit review so that there would be very little impact on the work force.

The union argues that longevity means length of service. None of the comparable jurisdictions condition the payment of longevity pay on any sort of performance review system. Additionally, all other city employees except for non-union and exempt employees, receive longevity pay based on years of service.

The union further argues that such system would create morale problems in cases where some employees would be denied longevity pay based on a merit review. It would create more turbulence and controversy at a time when the relationship between the bargaining unit and the employer should cool down.

The city contends its offer should be accepted because the firefighters in Evanston have higher longevity pay than do other Evanston employees and higher longevity pay than many, if not most, of the comparable jurisdictions. As to the comparables, one half have longevity pay that is unrestricted while the other half have no longevity pay or are phasing it out. So long as Evanston virtually leads the pack with respect to longevity pay, converting it to a merit concept would be most appropriate in this interest arbitration.

ITEM NO. 4 - PARAMEDIC PAY

Section 9.11 of the current labor agreement provides,

Employees who are qualified as Paramedics shall receive a pay differential of \$175 per month above the employee's regular pay grade. The employee must remain qualified as a paramedic to receive the Paramedic pay.

The city's proposal would modify such provision by adding,

"the concept that employees will receive paramedic pay on a daily basis on any work day when the employee actually serves as a paramedic."

The union points out that the city's proposal does not contain any specific language to implement their proposed concept. Their proposal does not specify the actual amount of paramedic pay the employees would receive each day were the proposal to be adopted. There is no proposal to define what constitutes a day or what constitutes serving as a paramedic. At page 50 of their brief the union asks, "If an employee is scheduled to work part of a day, is he eligible? Does he have to go on an actual emergency runs to be eligible?" Such questions along with others, are raised by the lack of any language setting forth the concept in detail. The union contends that since this issue is a monetary issue, and since the panel is without authority to add clarifying language to the proposal, the panel should reject the city's proposal for that reason alone.

While the city presented an exhibit listing the amount of paramedic premium paid in other comparable jurisdictions, there is no evidence indicating that any other jurisdiction limits the payment of paramedic pay to employees in a manner similar to that proposed by the city. The union suggests that the city has not satisfied any of the criteria named in the statute to support its proposal.

The city acknowledged that the granting of its proposal would be a breakthrough in principle. They contend, however, the concept has considerable merit. The paramedic pay to employees by the city of \$175 per month is

approximately in the middle of that paid by the comparable jurisdictions, although many of the jurisdictions who pay more, are those who have a much greater ability to pay, such as Arlington Heights, Des Plaines, Naperville and Schaumburg.

CONCLUSIONS ON ECONOMIC ISSUES:

ITEM NO. 1 - WAGES

As stated earlier in the discussion section of the wage issue, the wage proposal of both parties is reasonable and substantially supportable under the applicable statutory factors. There is not a great deal of difference between the two offers. It seems that either offer is equally supportable by comparison to the comparable jurisdictions. While the city argued that consideration should be given to the lesser ability to pay of Evanston as compared to many of the richer suburban jurisdictions, the union presented evidence intended to show that Evanston was not in any financial bind to any relevant extent.

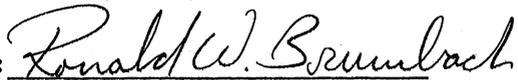
When one considers this matter from a broad viewpoint and considers that the city has granted gains to the union in other areas of the contract, particularly in the vacation area, along with a recognition that Evanston apparently does place a slightly heavier burden on their taxpayers to support the public services provided, and recognizing that comparison with internal settlements slightly favors the city offer, one comes to the final conclusion that the city's offer on item 1 should be selected.

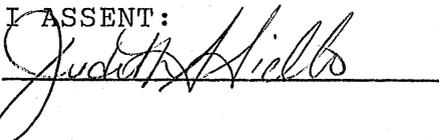
AWARD:

The city's final offer on Item 1 - Wages is selected.



Robert J. Mueller

I DISSENT: 

I ASSENT: 

ITEM NO. 2 - GROUP HEALTH INSURANCE PREMIUMS

As can be seen by the net premium comparison, set forth at pages 18-19 of this decision, Evanston has done very well in controlling the spiralling cost of health insurance. From such comparison, one can see that their net premium costs, using the assumptions applied by the union, is approximately \$70 per month less than the average of the comparables. In order to make a meaningful comparison, it is easiest to convert to cents per hour. Union exhibit 4 is helpful in setting forth a basis for such conversions. Union Exhibit 4 is as follows:

LISTING OF COMPARABLE CITIES
MAXIMUM BASE ANNUAL SALARIES FOR FIRE FIGHTERS
WITH AVERAGE ANNUAL HOURS PER WEEK, HOURLY RATES,
CITY AND UNION PROPOSALS AND RELATIVE RANKINGS
1991

NumFire	Department	MaxWage	Hrs./Wk.	Hrly/Rate
1	Arlington Hts.	\$38,525	49.8	\$14.83
2	Aurora	\$35,341	51.7	\$13.11
3	Cicero			
4	DesPlaines	\$39,627	53.0	\$14.33
5	Elgin			
6	Joliet	\$34,929	56.0	\$11.95
7	Mt. Prospect	\$38,019	50.5	\$14.43
8	Naperville	\$37,152	56.0	\$12.71
9	Oak Lawn	\$34,952	50.5	\$13.27
10	Oak Park			
11	Schaumburg	\$40,000	56.0	\$13.69
12	Skokie	\$38,536	53.7	\$13.75
13	Waukegan	\$32,907	50.3	\$12.54
Averages:		\$36,999	52.7	\$13.46
Evanston				
6.0%	Union PPL	\$37,308	49.8	\$14.36
	Rank:	6th	2nd	3th
4.5%	City PPL	\$36,780	49.8	\$14.15
	Rank:	7th	2nd	4th

If one applied the awarded city offer of 4.75 % it would yield an hourly rate slightly higher than that shown as \$14.15 by application of the earlier 4.5% city offer. For purposes of simplification and comparison to cents per hour, I will use and round off the hourly rate as being \$14 per hour. A 4.75% increase applied to a \$14 dollar per hour wage rate would thus yield 66.5 cents per hour. Such exhibit reveals that Evanston firefighters work 49.8 hours per week. If one rounds that off to 50 hours, the city's offer of 25 per month (family) for the first year would be equivalent to 12¢ per hour. The second year proposal of 50 per month by employees would be equivalent to 24¢ per hour. By comparison, the union proposal would yield zero as a contribution for the first year and second year contribution of \$15 per month would be equivalent to 7 cents per hour.

For the first year of the contract, were the city's offer of a \$25 contribution be adopted, when taken in conjunction with their wage offer, the employees would receive a net increase of approximately 54 cents per hour. In the second year of the contract, with the proposed \$50 per month contribution in place, employees would gain a 73¢ increase with the 5% wage increase which in turn would be reduced by another 12 cents per hour for insurance contributions, giving them a net increase of 61 cents per hour or slightly less than a 1% reduction. An analysis of those figures alone, would place the city's offer below the range of comparables. The union offer on the other hand, does constitute a breakthrough and recognition of employee contributions, which was a primary goal of the city. The \$15 per month contribution for the second year is equivalent to approximately 7 cents per hour.

While the contribution for the two years is significantly less than the city's offer would yield, it is more in keeping with the comparables, and there is no evidence that there were equivalent type take-aways associated with any of the other settlements.

It must be noted that the city's offer for the second year would be charting new grounds and would set a new benchmark for insurance contributions in bargaining with other employee groups whose contracts are open for negotiations for 1992.

One of the principal considerations involved in negotiations historically over the matter of employee contributions toward insurance involved the consideration of deductibility for tax purposes. The argument was that the benefit to the employee was greater when the employer paid the full premium with "before tax dollars". Contributions by employees was with after tax dollars. No evidence was presented into the record in this case as to whether the employer has a Section 125 agreement in place with the Internal Revenue Service. If none is in place, the employee contributions would be with after tax dollars.

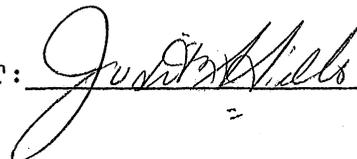
After due consideration to the record evidence and arguments of the parties and consideration of the applicable statutory criteria to the issue, the panel concludes that the union final offer on the insurance issue is subject to the greater support.

AWARD:

The union's final offer on Item 2 - Group Health Insurance Premiums is selected.


Robert J. Mueller

I ASSENT:


I DISSENT: 

ITEM NO. 3 - LONGEVITY PAY

The city's offer would further reduce the level of settlement to the firefighters. Where the city stated that practically all firefighters receive merit ratings of "highly satisfactory" which would qualify them for longevity pay, it would appear to make very little difference toward the total package cost of the two year proposal. While the city's contention that changing it to a merit system has merit, such change is inconsistent with the basis upon which longevity is predicated in the first instance. It is generally recognized as reward for an employee length of service with the employer. It is not generally considered as a reward for meritorious service for a particular year.

While the city's argument that other comparable jurisdictions are discontinuing and/or reducing longevity, there is no evidence that any have done so under the guise of converting it to a merit type payment. If the city's intent is to reduce it and/or phase it out, they should proceed to negotiate such end result directly by calling it what it is rather than attempting to convert it to a merit system. If the city really intends to reduce or phase out longevity as it contends other comparables are doing, it would seem that conversion to a merit system would open result in ever increasing numbers of employes being denied merit each year in order to achieve the goal of reducing or phasing it out. Such indirect method is not designed to improve the bargaining relationship of the parties.

The panel finds the union's final proposal on this issue to be the one best supported by the evidence.

AWARD:

The union's final offer on Item 3 - Longevity is selected.



Robert J. Mueller

I DISSENT: _____

I ASSENT:





ITEM NO. 4 - PARAMEDIC DIFFERENTIAL:

This issue is subject to much the same reasoning as was the longevity issue. There is an additional concern of the city's offer however, and that is what the union points out, to wit; insufficient clarity of language so as to give it effective application to its administration. It simply leaves unanswered, too many aspects of its administration that would lead to uncertainty and possible misunderstandings and grievances.

More importantly, however, is the fact that the city's proposal would be a new concept that is not in effect in any of the other comparable jurisdictions. The level of paramedic pay to Evanston firefighters is approximately in the middle of the comparables. It is not shown to be higher than the comparables to any extent that would support a change.

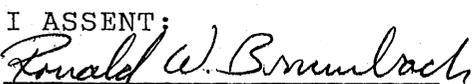
Finally, such proposal has the potential to further reduce the total package monetary increase to the employees, where the total package of the monetary items to this point is found to be reasonably adequate and neither marginally too high or too low based on all applicable statutory factors. Had the parties specifically negotiated this issue and had there been a quid pro offer by the city to the union as consideration for its acceding to the city's offer, one would have a wholly different matter for consideration. There is none shown to have been made in this case and it therefore follows that the status quo should remain.

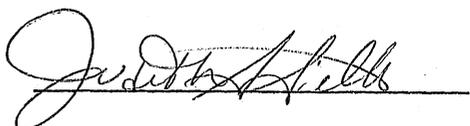
AWARD:

The union's final offer on Item 4 - Paramedic Differential is selected.


Robert J. Mueller

I DISSENT: _____

I ASSENT:




NON ECONOMIC ITEMS

ITEM NO. 5 - GRIEVANCE PROCEDURE:

The thrust of the city's proposal is to authorize the city manager to designate the answer supplied in step 2 of the grievance procedure as the step 3 answer on behalf of the city. Under such process, where the city manager advises the union within the time prescribed that the step 2 answer is the final city answer, no step 3 meeting would be held.

The union proposes to add language that the parties could waive such step by mutual agreement. The union's proposal really adds nothing to the contract. The parties have the authority even without such language to mutually agree to bypass a step in the grievance procedure. There are certain grievances where the settlement of a particular step is simply not feasible nor possible. In such cases it is an exercise in futility to conduct such type hearing where resolution is impossible.

The city wants such change because of the considerable turbulence that has existed between the parties during the past two years and because of the fact that a large number of grievances have been filed.

The union contends the step should be retained so as to afford such additional opportunity to resolve matters before they go to arbitration. The union states, "it would be inequitable to allow the city to avoid this obligation because too many grievances have been filed, when its own misdeeds have created the conflict generating the grievances."

It would seem the rationale behind the city's proposal is sound. Where, after reviewing a particular case and the step 2 answer, the city manager concludes that a step 3 meeting would not serve to change his or her mind, the need for such a meeting would not exist. Such assumption assumes, however, that there had been a full investigation and recitation of all facts relevant to a particular issue

at the step 2 meeting and that the city manager had before him or her all relevant facts relating to the issue and that no new matters would be raised at a step 3 meeting. Were the city's proposed language to be implemented, it would behoove the parties to make sure any matter was thoroughly investigated and that all facts and arguments were presented at the step 2 meeting in order to make it a workable and time saving modification.

It seems the union's objection to such change is less persuasive than is the city's reasons for proposing such change. Certainly, no one can be badly hurt by trying such procedure for the term of a contract. On the record, the city's proposal is found to be preferred.

ITEM NO. 6 - OVERTIME DISTRIBUTION

The contract contains no language requiring the distribution of overtime according to any standard. The city does, however, have in place a hire back procedure by virtue of a general order which specifies in detail the procedure to be followed. The principle of such general order is that overtime opportunities should be distributed equally to members of the bargaining unit.

The union identified several instances when overtime opportunities were not distributed equally in accordance with the policy. In fact, the union contends the then chief demonstrated a complete indifference to the policy. They expressed a concern that despite the city's verbal commitment to follow and adhere to the policy, circumstances may change and the city's viewpoint may change concerning adherence to the policy during the term of the labor agreement.

The city contends the final offer submitted by the union in this case had never previously been proposed to the city, had never been negotiated nor discussed during mediation. They contend the union has indicated it was happy with the present overtime hire back procedure.

The city contends the union was able to point up only a

small handful of misassignments of overtime and that such misassignments had nothing to do with the wording of any overtime clause. Mistakes do occur and the city makes every attempt to avoid them and/or correct them. One must recognize that the overtime hire back process is complex in any fire department. The present process works well and it should not be altered through arbitration without the parties having engaged in detailed negotiations with respect to any proposed changes.

The arbitration panel does not have the advantage of having heard the parties specifically address the union's proposed language because it constitutes a newly worded proposal submitted subsequent to the last arbitration hearing date. While it appears on its face to be consistent with the present general order on the subject, without evaluation and comment thereon by the city, one is unsure. The "hireback procedure" contained in the union's prior final offer is much more detailed. Other than several instances during the past several years where the union contends mistakes occurred, it would appear the procedure has worked to the satisfaction of all persons. It is recognized that mistakes will occur from time to time. the true test of whether the union needs contractual protection to require adherence to and correction of mistakes that might occur, is whether the city makes an honest effort to correct any such mistake and make it right. If they do not, there would be a demonstrable basis for the union obtaining protection by inclusion of a requirement in the contract.

The record evidence is found to be insufficient to justify a change in the status quo as to this issue.

ITEM NO. 7 - CONTRACTING OUT OF WORK:

The union contends its proposal is necessary to preserve the integrity of the bargaining unit's work thereby reducing the potential for future conflict that would undermine the morale of the employees. The union argues that

its concern for the integrity of the bargaining unit is justified. During the 1988 mayoral campaign a candidate raised the possibility of contracting out the paramedic services. They contend the city also reorganized and the union was required to file a unit clarification petition to protect the bargaining unit. They also pointed to a more recent situation where the city created a position of Hazardous Materials Officer and sought to exclude such position from the bargaining unit. Finally, the city compounded its injury to the union by contracting out the job of teaching the hazardous materials course to outside instructors.

The city contends there is no need for a subcontract clause in the contract. It was virtually never mentioned at bargaining and the city is unaware of any problems or complaints about subcontracting. The only problem raised by the union concerned one instance when a private ambulance beat paramedics to an injury scene and transported an injured person from the scene without the city having been called.

The city contends the comparables control this issue. Referring to city exhibit 48, 3 out of 13 of the comparable jurisdictions have a subcontracting clause in their labor agreement. In view of the comparables, the city contends the arbitration panel should award the city's proposal.

The record evidence revealed that the AFSCME bargaining unit in the city does contain a subcontracting clause. There is none found in the police contract. Perusal of the subcontracting clauses found in the comparable jurisdictions of Arlington Heights, Elgin and Skokie, reveals provisions that appear to be somewhat less restrictive than that proposed by the union in this case. Several make exceptions for mutual aid agreements while the union proposal herein does not.

This issue presents the classic conflict between the union's desire to protect the size and integrity of the

bargaining unit and the city's desire to retain the flexibility to contract out work if they deem it advisable. The union proposal in this case is very direct in that it prohibits the city from contracting out any work historically performed by employees in the bargaining unit. The subcontracting clause contained in the AFSCME contract, on the other hand, contemplates that some bargaining unit work may be contracted out and it concentrates more on protecting the continued employment of persons affected with the city in the bargaining unit or elsewhere in the city's employment.

There is no doubt but that the consideration of privatization of various types of services by public employers will be given more and more consideration as budget constraints become more acute.

It seems to me that the matter of restricting the contracting out of work is a matter of significant importance to both parties. It should not be lightly included where none exists absence hard and specific bargaining whereby all possible compromises and negotiation of criteria by which it may or may not be authorized, is taken by the parties. The city contended this issue received very little, if any, attention during negotiations. The fact that the parties have resolved a large number of issues would seem to indicate that those settled issues received more attention than did the contracting out of work issue.

The instances cited by the union as justification for the contract clause consists basically of two instances. One involved the city utilizing outside instructors to teach the hazardous materials course, while the other involved one instance when an outside ambulance service was in the immediate vicinity of an emergency, stopped at the scene, and conveyed an injured person to such scene prior to city paramedics becoming involved. There is no evidence that the

city had any part in the incident. It was simply a chance event.

The other incident involving the hazardous material matter, it seems, involved the creation of a new position and that the major argument concerned as to whether or not it should be in the bargaining unit. That argument would presumably arise regardless of whether the labor agreement contained a subcontracting restriction.

The evidence in this case does not establish any apparent or present intent on the part of the city to subcontract out any part of the bargaining unit work. The examples cited do not support any such intent. Secondly, the language proposed by the union is more limiting than any other found among the comparables. On the basis of applying the statutory factor of comparability, the city's offer is to be preferred. The panel is not inclined to suggest any modified language on such issue in the absence of evidence of bargaining and exchanges of counterproposed language by the parties.

ITEM NO. 8 - PHYSICAL FITNESS:

The arbitration panel finds the final offers of the parties to be substantially the same. The union proposal would have a committee of six members while the city would have four. That difference is not critical.

The union proposal would provide for meetings over a period of at least 45 days, whereas the city provides for 30 days of meetings or longer, if agreed. Again such differences are not crucial. The union sees a number of problems of concern in the city's proposal. They contend the city's proposal would provide for "discussions" while the union's proposal would call for "negotiations". Secondly, the city proposal deals with "physical fitness examinations" while the union proposal deals with a "program." Finally, the union contends the method of resolving differences between the two committees of disputed items is critical. The city offer would allow the city to put into effect a

disputed item and give the union the right to grieve. The union offer would preserve the union's bargaining rights over those mandatory subjects of bargaining with resolution of disputed items through interest arbitration.

The panel finds the union's arguments to be the more persuasive and their offer is therefore preferred.

ITEM 9 - SIDE LETTER CONCERNING UNIT CLARIFICATION:

The union contends the arbitration panel does not have authority to continue the side letter of agreement in the contract over the unions' objection because it involves a matter that is in the exclusive jurisdiction of the Illinois State Labor Relations Board. The ISLRB has ruled that questions of unit placement are best decided by the Board and not an arbitrator. Since the subject matter of the letter does not concern wages, hours and conditions of employment, but rather a unit determination, it is a permissive subject of bargaining and neither party can be required to include in their labor agreement a matter that one objects to. In this case the union objects to its continued inclusion in the contract.

The city argued that the union has never offered any explanation or reason for removing the side letter that the parties themselves agreed upon. The side letter will be in effect only until the court decides the issues. Since the parties have themselves agreed on the side letter and have lived with it for some time, there is no cause for removing it.

It seems to me there is little reason to either leave it as is or to remove it. As the panel understands it, there is a unit clarification matter presently pending in the courts. There has been no evidence presented that would show what effect, if any would issue from deletion of the side letter from this agreement. On the other hand, if the final determination is that the disputed classifications are in the bargaining unit, the side letter would cease to be effective and the parties would resort to resolving their

inclusion within the unit.

Removal of the side letter would appear to be more in keeping with the rulings of the ISLRB and to be consistent with the status of the law with respect to mandatory vs. permissive subjects of bargaining.

AWARDS ON NON-ECONOMIC ITEMS IN DISPUTE:

ITEM NO. 5 - GRIEVANCE PROCEDURE:

The city's final offer is selected.

Robert J. Mueller
Robert J. Mueller

I DISSENT: Ronald W. Brumback

I ASSENT: [Signature]

ITEM NO. 6 - OVERTIME DISTRIBUTION:

The City's final offer is selected.

Robert J. Mueller
Robert J. Mueller

I DISSENT: Ronald W. Brumback

I ASSENT: [Signature]

ITEM NO. 7 - CONTRACTING OUT OF WORK:

The City's final offer is selected.

Robert J. Mueller
Robert J. Mueller

I DISSENT: Ronald W. Brumback

I ASSENT: [Signature]

ITEM NO. 8 - PHYSICAL FITNESS:

The union's final offer is selected.

Robert J. Mueller
Robert J. Mueller

I DISSENT: _____

I ASSENT:

Ronald W. Brumback

Joseph Aue

ITEM NO. 9 - SIDE LETTER CONCERNING UNIT CLARIFICATION:

The union's final offer is selected.

Robert J. Mueller
Robert J. Mueller

I DISSENT: _____

I ASSENT:

Ronald W. Brumback

Joseph Aue

Dated this 10 day of February, 1992.