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BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

CITY OF NAPERVILLE, ILLINOIS

and

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

CASE NO.: S-MA-92-98
Arb. Ref. 93.056
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the City:	David M. Lefkow, Esq.
For the Union:	Thomas F. Sonneborn, Esq. Becky S. Dragoo, Legal Assistant

Place of Hearing:	Naperville, Illinois
Dates of Hearing:	June 18, 1993, July 2, 1993
Dates Briefs Received:	September 3, 1993 (City); September 7, 1993 (Union)
Date of Award:	January 20, 1994

CONTENTS

I. INTRODUCTION 1

II. ISSUES IN DISPUTE AND THE PARTIES' FINAL OFFERS 1

A. Wages 1

B. Medical Insurance 2

C. Holiday Compensation 3

D. Personal Leave 3

E. Court Pay 3

F. Funeral leave 3

G. Impact Bargaining 4

III. DISCUSSION 4

A. The Statutory Standards 4

B. The Comparables 5

C. Determinations Of The Issues In Dispute 23

1. Wages 23

2. Medical Insurance 28

3. Holiday Compensation 31

4. Personal Leave 36

5. Court Pay 37

6. Funeral Leave 37

7. Impact Bargaining 39

IV. CONCLUSION 41

I. INTRODUCTION

The Union was certified as the bargaining representative on August 9, 1988. Pursuant to the current Agreement at Article 1.1, recognition by the City extends to a unit of "sworn police officers of the rank of police officer, but excluding all police officers of the rank of sergeant, lieutenants, captains, Chief of Police, civilian employees, supervisory, managerial, professional and confidential employees and all other employees of the City of Naperville."

The parties have negotiated one Agreement with a term of May 1, 1989 through April 30, 1992. Negotiations commenced for a second Agreement in January 1992, which proved to be unsuccessful. Impasse was declared and interest arbitration invoked.

The parties have waived the tri-partite panel (Tr. 6).

II. ISSUES IN DISPUTE AND THE PARTIES' FINAL OFFERS

There are numerous issues in dispute. The parties positions are summarized in their briefs. *See* City Brief at 6-9; U. Brief at 6-12.[1]

A. Wages

1. City's Offer

Year	Percent
1	4%
2	3%
3	3%

Also, employees who were at the top step in the salary range of the expired Agreement (FY 1991/1992) would receive a 2% wage increase rolled into their base pay in addition to the 4% increase in the first year. Employees will move through steps each year on May 1st.

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[1] Issues concerning term of the Agreement and roll call were tentatively agreed to during these proceedings. *See* Tr. 39-40, 76-77; U. Brief at 4, n. 3 and 4.

2. Union's Offer

Date	Change
5/1/92	• Include or "roll into" the salary in Step G the 4% previously received as merit pay. • Create a new top step H which is 2.5% higher then the revised Step G. Employees reach Step H on the May 1st following their reaching Step G. • Increase the Steps in the pay plan as follows[2]: Step A - 0% Step B - 2.5% Step C - 2.5% Step D - 5.0% Step E - 5.0% Step F - 5.0% Step G - 2.5% Step H - 2.5%
5/1/93	Increase all salary Steps in the pay plan by 4% retroactively effective to May 1, 1993.
5/1/94	Parties to re-open for negotiations over salary increases to be effective May 1, 1994. Negotiations to begin on or before February 1, 1994, and any impasses in bargaining to be resolved through the use of the impasse resolution procedures of §14 of the IPLRA.

B. Medical Insurance

1. City's Offer

Year	Change
First Year	No change

Second Year	• No change in premiums, no cost sharing by employees as the City will continue to pay 100% of the premiums.
	• Effective 10/1/93 through 4/30/94 for only those employees who are participants in the traditional indemnity Blue Cross/Blue Shield Plan (not those employees enrolled in the City's HMOs for 1993/1994):
	  • Annual physicals - employee up to $200 annually, spouse subject to deductible, balance 80/20; mammograms, pap smears, prostrate tests, well baby care, all subject to deductible and balance pad at 80/20. These coverages were not available to employees prior to 10/1/93. Retiree lifetime maximum benefit will be raised from $75,000 to $2,000,000.
	  • Inpatient treatment for substance abuse will be limited to two admissions per lifetime. Currently there is no limit on the number of inpatient treatments.
	  • Update coverage for speech, hearing and physical occupational therapy to $1,000 per calendar year.
	  • Change the insurance rider for human organ transplants from $1,000,000 per year to a lifetime maximum of $2,000,000. Transplants will be covered under the major medical subject to deductible and balance paid at 80/20. Outpatient treatment for mental health and substance abuse will now be covered as any other illness with a lifetime maximum of $50,000.

Third Year	"Me-too" clause, which would ensure that the police officers would receive the same level of medical benefits as all other City employees

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[2] The Union seeks all increases retroactive to May 1, 1992. With respect to all retroactive amounts due, the Union seeks that retroactivity shall be based on all hours paid during the respective retroactively effective periods. All retroactive amounts due shall be paid to employees in the bargaining unit during the respective retroactive periods by separate check within 45 days of this award.

2. Union's Offer

No change first two years, reopen third year.

C. Holiday Compensation

1. City's Offer

Eleven paid holidays at eight hours pay at the straight time rate for each holiday. Employees who work on a designated holiday will receive one and one-half times their regular straight time hourly rate for each hour worked.

2. Union's Offer

No change.

D. Personal Leave

1. City's Offer

No change.

2. Union's Offer

Increase from two days to three days per year; the minimum portion of day in which personal leave may be taken reduced from two hours to one hour, and that personal leave may be taken in conjunction with a holiday.

E. Court Pay

1. City's Offer

No change.

2. Union's Offer

Increase from two to three hours at the overtime rate.

F. Funeral leave

1. City's Offer

No change.

2. Union's Offer

Increase from two to three days off without loss of pay.

G. Impact Bargaining

1. City's Offer

No change to Article 27.

2. Union's Offer

Amend Article 27.1 to provide that the Union has the right to impact bargaining over subject matters not specifically addressed in the Agreement.

III. DISCUSSION

A. The Statutory Standards

The statutory provisions governing the issues in this case are found in §14 of the IPLRA:

> (g) ... As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). * * *
>
> (h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
>
> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
>
> (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

B. The Comparables

The Union proposed the following municipalities as comparables for this case:

Union Comparables
Arlington Heights
Des Plaines
Elgin
Evanston
Oak Park
Schaumburg
Skokie

The City proposed the following municipalities as comparables for this case:

City's Comparables
Arlington Heights
Aurora
Downers Grove
Elk Grove Village
Elmhurst
Evanston
Lisle
Palatine
Schaumburg
Skokie
St. Charles
Wheaton

Thus, the parties agree that Arlington Heights, Evanston, Schaumburg and Skokie are comparable communities with Naperville. *See* U. Brief at 23; City Brief at 10. The Union seeks to also include Des Plaines, Elgin and Oak Park in the group of comparables. The City seeks include Aurora, Downers Grove, Elk Grove Village, Elmhurst, Lisle, Palatine, St. Charles and Wheaton.

In terms of starting the analysis, this case, as have most others where comparability is an issue, presents the usual difficulties in selecting comparables. The Legislature gave little guidance in that "comparable" is not defined in the Act and the parties choose different factors for analysis purposes.[3]

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[3] The parties recognize the difficulties. *See* U. Brief at 23 quoting Arbitrator Berman in *City of Springfield and IAFF* [who in turn cites *League of Voluntary Hospitals,* 67 LA 293, 294-295 (Gootnick, 1976)] ("Comparability is an issue pregnant with difficulty. ... [t]he best I can hope for is a guide rather than a decisive answer to appropriate increases."). *See also*, City Brief at 10, 12-13 stating "The selection

The first conclusion that is evident is that close geographic proximity to Naperville is not a factor for determining comparability in this case. While all of the agreed-upon comparables are in the Chicago metropolitan area, the parties have chosen an agreed-upon group of comparables that are scattered throughout the northern and northwest suburban areas of Chicago for comparison to Naperville which is in the western suburban area of Chicago. The agreed-upon comparables are not from the immediate surrounds of Naperville.

The City argues (City Brief at 10-11) that in selecting comparables I should give

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of a realistic grouping of comparable communities is one of the most difficult tasks that the parties face in a public sector interest arbitration proceeding" and citing from my award in *City of Springfield and PBPA Unit 5* , S-MA-89-74 (1990) at 16:

> The selection of valid comparables is a most difficult task. The statute yields little guidance in terms of how those selections (which may be determinative of a case) are to be made. The phrase "comparable" is not defined and little help comes from other sources in making this kind of decision. This chairman has already observed in *Village of Streamwood, Illinois*, S-MA-89-89 (1989) at 21-22:
>
> > It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a true "comparable" is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

Further, *see* U. Brief at 26-27 referencing the same observations. As shown by the discussion *infra* concerning the selection of comparables, the observations made in *Springfield* and *Streamwood* are underscored.

Nevertheless, as difficult as picking comparables may be and given the absolute lack of guidance from the Legislature, comparable determinations are often, as here, the ultimate determining factor of the validity of positions taken in interest arbitrations. *See* Feuille, "Compulsory Interest Arbitration Comes to Illinois", *Illinois Public Employee Relations Report*, University of Illinois Institute of Labor and Industrial Relations, Spring, 1986, Vol. 3, No. 2 at 2 ("Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... Of these three, comparability usually is the most important.").

Standing back from the dilemma created by the lack of guidance from the Legislature, perhaps there is a method to this madness. Parties are ultimately better off working out their problems at the bargaining table as opposed to taking their chances with an interest arbitration proceeding. Giving the interest arbitrator so much discretion in picking comparables because of the lack of guidance and often being faced with the fact that a sought after comparable may help in some areas but hurt in others (as proves to be the case with respect to Oak Park in the wage analysis *infra* at III(C)(1), Tables 8 and 10), the process of voluntary resolution of these disputes may ultimately be *better* served by the lack of legislative guidance. Parties at the threshold of entering this process may recognize that there are far too many unknowns and too many uncontrollable factors that lie ahead. Entering this process takes resolution of the dispute out of the parties' hands. Given the unknowns that exist particularly with the comparable selection process, parties may be more willing to take another look at their respective positions aiming towards a voluntary resolution rather than a forced one.

great deference to two prior studies conducted for the City by consulting firms—the Andersen Study (City Exh. 6) and the Waters Study (City Exh. 7). I am unable to do so.

As pointed out by the Union (U. Brief at 24-25), in the presentation of this case the City did not choose the same comparables determined comparable by the Andersen and Waters Studies. Indeed, the City has opposed some of the comparables sought by the Union, even though a Study may have determined that municipality to be comparable.

Examination of the Andersen Study (City Exh. 6(a) at 6-7) and the Waters Study (City Exh. 7 at 2-3) compared to the positions on comparables taken in this case yields the following table:

TABLE 1
COMPARISON OF COMPARABLES CHOSEN BY THE CITY'S STUDIES AND THE PARTIES' POSITIONS

Andersen Study	Waters Study	City's Proposed Comparables	Union's Proposed Comparables
Arlington Heights	Arlington Heights	Arlington Heights	Arlington Heights
Aurora		Aurora	
			Des Plaines
Downers Grove	Downers Grove	Downers Grove	
		Elk Grove Village	
Elgin			Elgin
Elmhurst	Elmhurst	Elmhurst	
Evanston	Evanston	Evanston	Evanston
Joliet			
		Lisle	
	Northbrook		
Oak Park			Oak Park
		Palatine	
	Rockford		
Schaumburg	Schaumburg	Schaumburg	Schaumburg
Skokie	Skokie	Skokie	Skokie
	Springfield		
	St. Charles	St. Charles	
Wheaton	Wheaton	Wheaton	

Several conclusions are readily apparent:

First, the Studies differ on whether Aurora, Elgin, Joliet, Northbrook, Oak Park, Rockford, Springfield and St. Charles are comparable to Naperville. It is not material that neither side proposed some of these cities as comparable in this case (*i.e.*, Joliet, Northbrook, Rockford, and Springfield have not been proposed by either side) and the fact that the geographic scope of the Studies may have been approached differently. The

point is that I am being asked to give these Studies weight but the Studies are in disagreement on what is a comparable community to Naperville.

Second, the City proposed three comparables (Elk Grove Village, Lisle and Palatine) which appear in *neither* of the Studies. Thus, the City proposed these three comparables notwithstanding the fact that its own Studies have apparently rejected them as being comparable communities.

Third, two of the comparables proposed by the Union (Elgin and Oak Park) have been rejected by the City as comparable but *have* been found comparable to Naperville by the Andersen Study.[4]

I need go no further in analyzing the Andersen and Waters Studies in terms of methodology. The internal contradictions between the two Studies and the contradictions between the City's position on comparables in this case and the results of the Studies (indeed, the fact that one of the Studies supports the Union's position on two of three comparables proposed by the Union) cause me to find that I can give those Studies no weight. The comparability determinations in this case must be made *de novo*.

The Union offered data concerning a number of categories—population, median home value, per capita income, number of officers, total employed, EAV, total salaries, receipts (property tax, sales tax, utility tax, other tax, total local, total state, total other), expenditures (general government, public safety, public works, health & welfare, culture & recreation, development, debt service, other), and ending fund balances. *See* U. Exh 5 at 1-5. However, as the City points out (City Brief at 11-12), examination of the Union's data, particularly its information on the categories of total employed, EAV, total salaries, receipts (property tax, sales tax, utility tax, other tax, total local, total state, total other), expenditures (general government, public safety, public works, health & welfare, culture & recreation, development, debt service, other), and ending fund balances (U. Exh. 5 at 2-5) shows the information to be incomplete. Much of the data for the communities in dis-

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[4] If anything, the fact that the City's Andersen Study found Elgin and Oak Park comparable to Naperville can be viewed as an admission against interest.

pute is not available.[5] Given the number of municipalities in dispute in this case, it is most difficult to make comparisons with such large gaps of missing data. In this case I therefore cannot use a category where data is missing.

However, the parties did offer data on all communities in the categories of population, median home value, per capita income and number of officers—all of which appear to be very valid measures of comparability. *See* U. Exh. 5 at 1, 6; City Brief Exh. B.

Charting the data which is available for all municipalities shows the following for all of the proposed comparables (agreed-upon and disputed)[6]:

TABLE 2
POPULATION, MEDIAN HOME VALUE, PER CAPITA INCOME AND NUMBER OF OFFICERS

City	Population	Median Home Value	Per Capita Income	No. Of Officers
Arlington Heights	75460	169100	22864	104
Aurora	99581	81900	13335	104
Des Plaines	53223	130000	18231	98
Downers Grove	46858	143900	20891	68
Elgin	77010	96800	13929	114
Elk Grove Village	33429	137900	19262	95
Elmhurst	42029	135600	21005	64
Evanston	73233	184800	22346	152
Lisle	19512	162800	23952	35
Naperville	85351	176500	23934	112
Oak Park	53648	138700	21269	120
Palatine	39253	149600	22098	69
Schaumburg	68586	133500	20826	133
Skokie	59432	149400	20595	106
St. Charles	22620	137100	20928	42
Wheaton	51464	148700	22433	57

In terms of ranking, the above data translates as follows (Union's sought comparables lightly shaded, City's sought comparables darkly shaded, agreed-upon comparables unshaded):

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5 Examination of the U. Exh. 5 at 2-5 shows in many instances data for three of the seven municipalities addressed are not available.

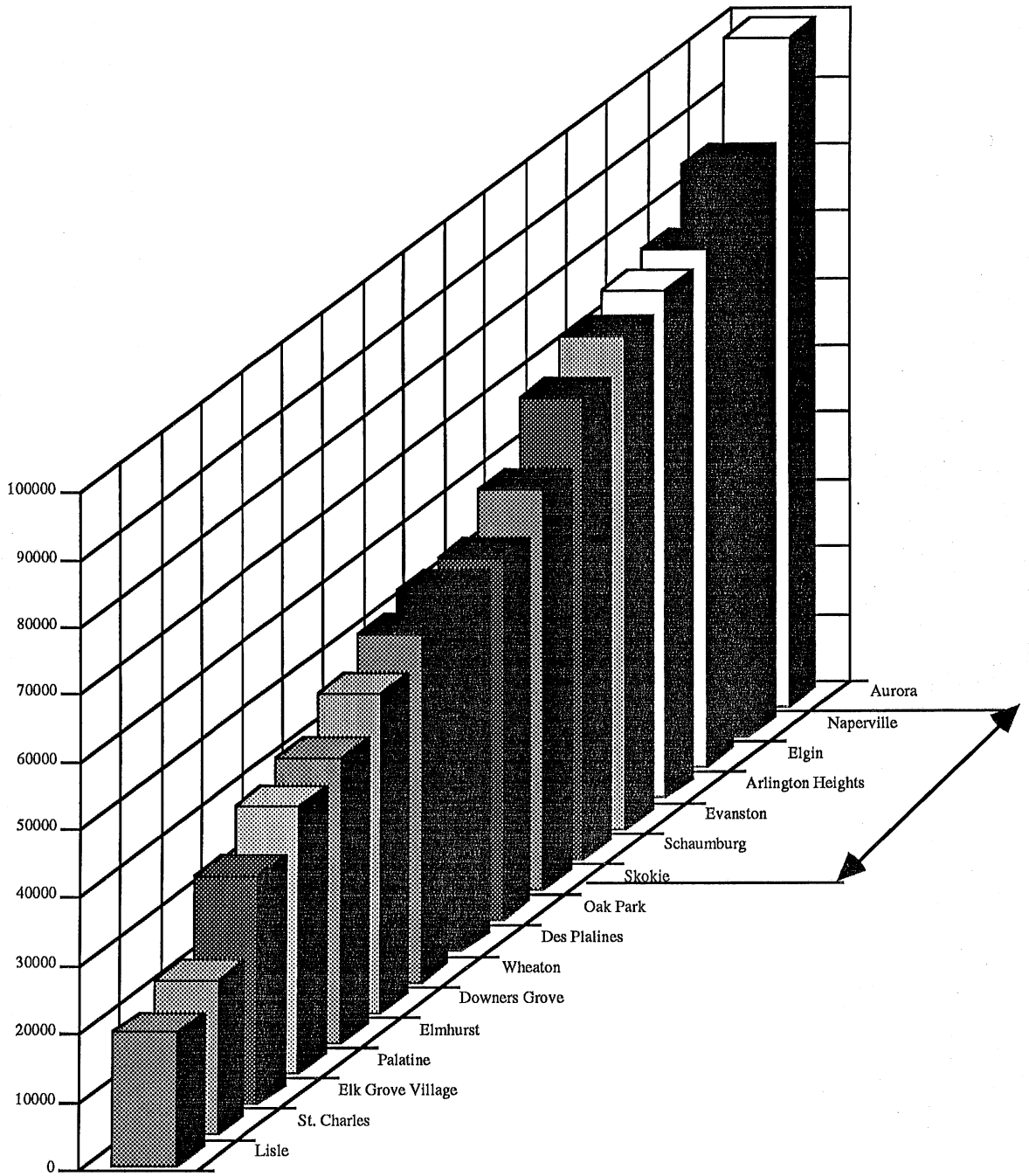
6 While the parties dispute the inclusion of some of these municipalities, examination of the data (U. Exh. 5 at 1, 6; City Brief Exh. B) shows the numbers are not disputed.

TABLE 3
RANKINGS OF PROPOSED COMPARABLES BASED ON POPULATION, MEDIAN HOME VALUE, PER CAPITA INCOME AND NUMBER OF OFFICERS

Population	Median Home Value	Per Capita Income	No. Of Officers
Lisle	Aurora	Aurora	Lisle
St. Charles	Elgin	Elgin	St. Charles
Elk Grove Village	Des Plaines	Des Plaines	Wheaton
Palatine	Schaumburg	Elk Grove Village	Elmhurst
Elmhurst	Elmhurst	Skokie	Downers Grove
Downers Grove	St. Charles	Schaumburg	Palatine
Wheaton	Elk Grove Village	Downers Grove	Elk Grove Village
Des Plaines	Oak Park	St. Charles	Des Plaines
Oak Park	Downers Grove	Elmhurst	Aurora
Skokie	Wheaton	Oak Park	Arlington Heights
Schaumburg	Skokie	Palatine	Skokie
Evanston	Palatine	Evanston	Naperville
Arlington Heights	Lisle	Wheaton	Elgin
Elgin	Arlington Heights	Arlington Heights	Oak Park
Naperville	Naperville	Naperville	Schaumburg
Aurora	Evanston	Lisle	Evanston

Graphically, the rankings display as follows (the arrows showing the range formed by the agreed-upon comparables including Naperville and all the disputed comparables which fall within the range formed by the agreed-upon comparables):

POPULATION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90000
80000
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60000
50000
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20000
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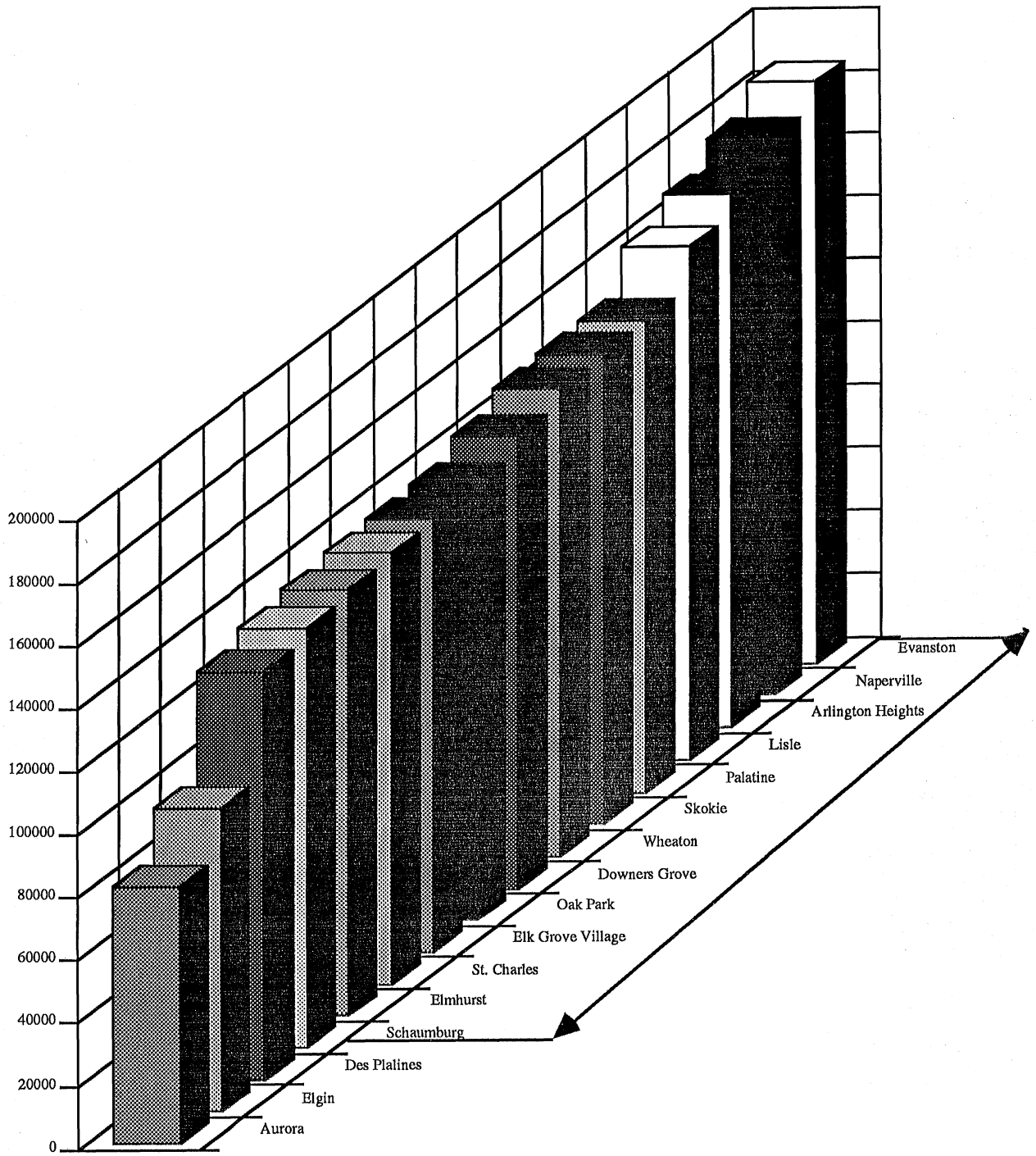
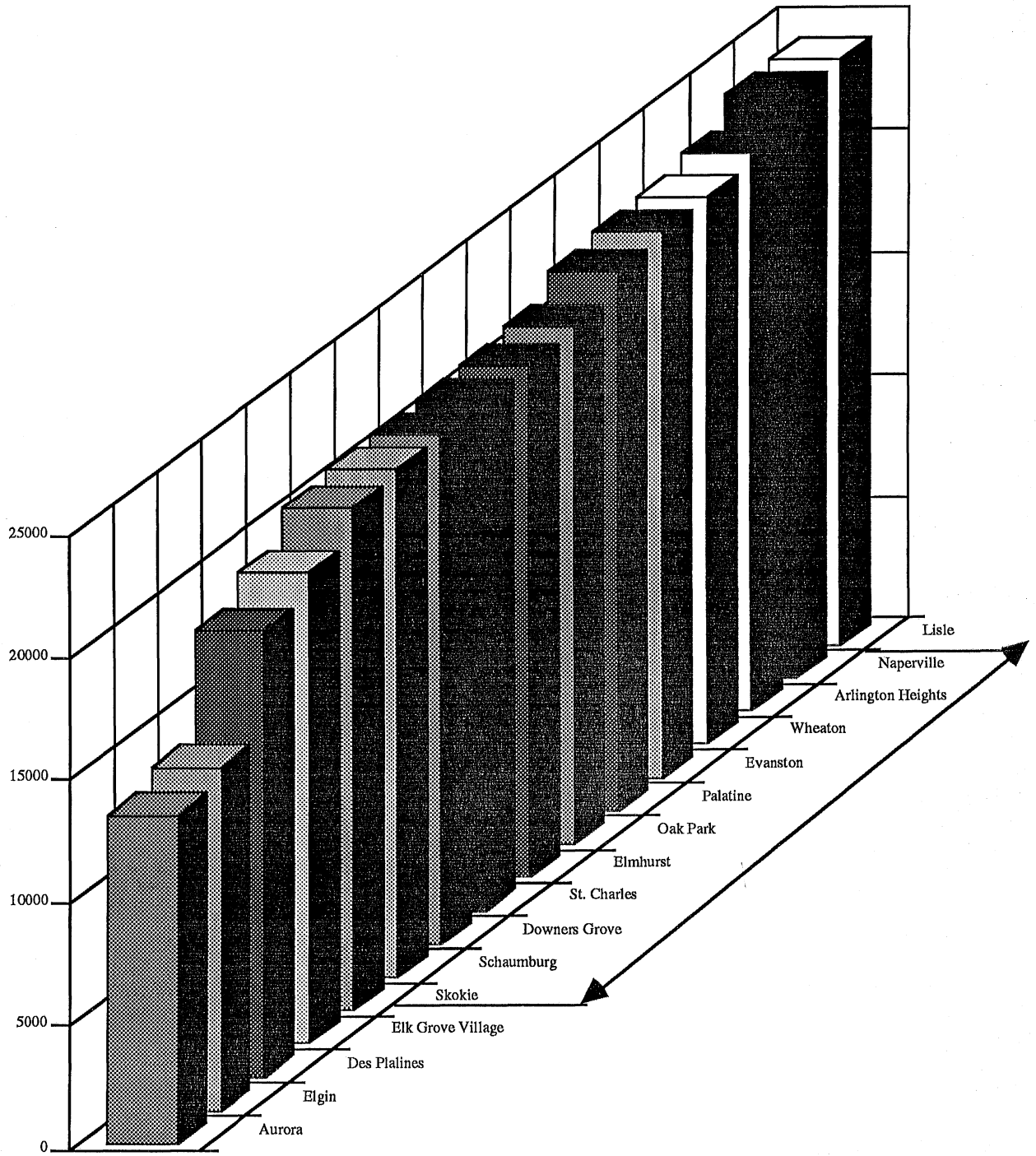
Aurora
Naperville
Elgin
Arlington Heights
Evanston
Schaumburg
Skokie
Oak Park
Des Plaines
Wheaton
Downers Grove
Elmhurst
Palatine
Elk Grove Village
St. Charles
Lisle

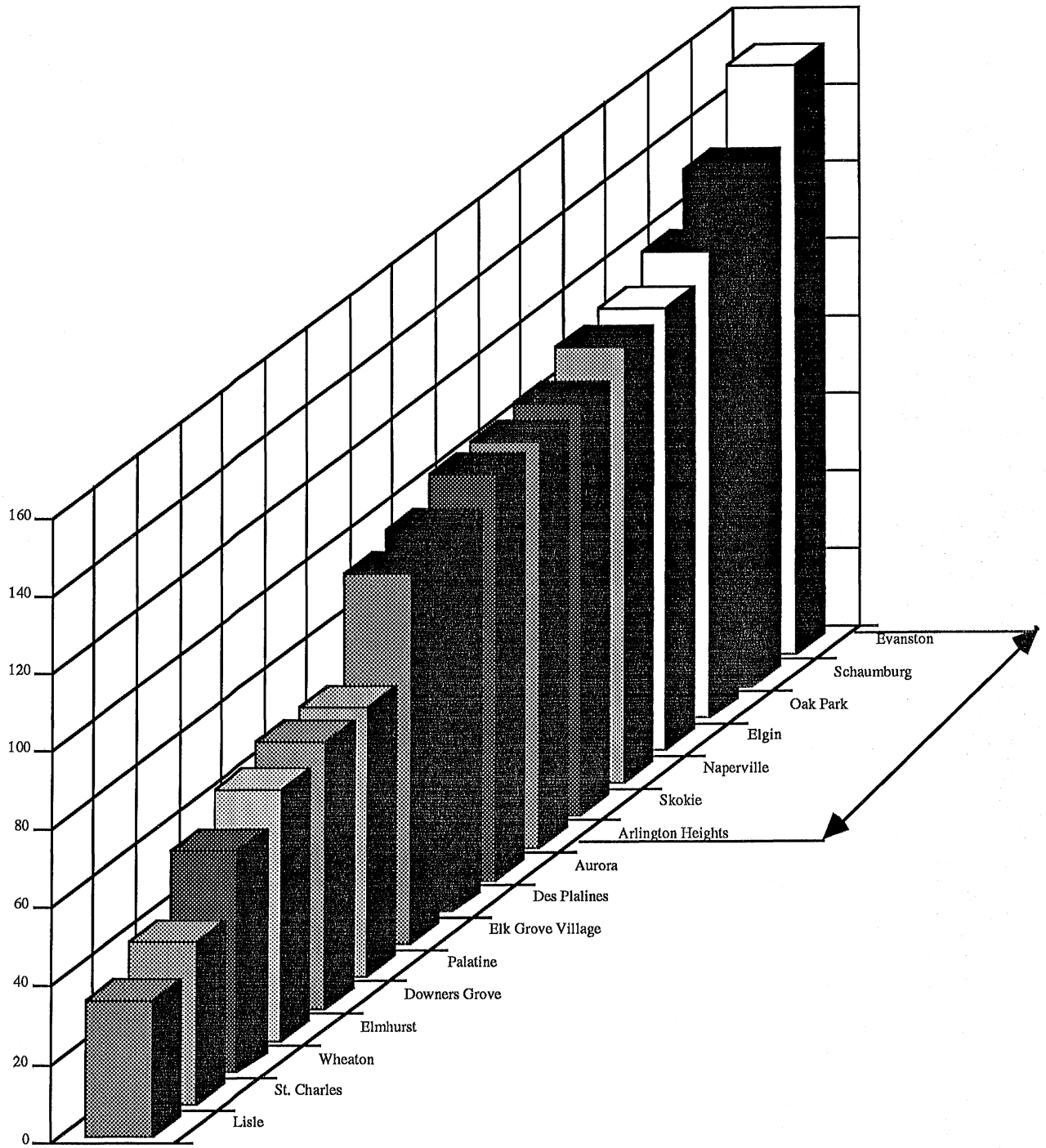
MEDIAN HOME VALUE



PER CAPITA INCOME



NUMBER OF OFFICERS



The City tendered further information concerning total calls, calls per officer and calls per capita. *See* City Exh. 18 at 7; City Brief Exh. B.[7] Those categories present a rational basis for comparison of communities—specifically the numbers of calls demonstrate activity levels of the various departments. The data on calls shows the following:

TABLE 4
TOTAL CALLS, CALLS PER OFFICER AND CALLS PER CAPITA

City	Total Calls	Calls Per Officer	Calls Per Capita
Arlington Heights	36304	349	1.59
Aurora	100000	962	7.50
Des Plaines	47090	481	2.58
Downers Grove	24250	357	1.16
Elgin	52281	459	3.75
Elk Grove Village	23215	244	1.21
Elmhurst	10000	156	0.48
Evanston	56200	370	2.51
Lisle	10685	305	0.45
Naperville	43933	392	1.84
Oak Park	46772	390	2.20
Palatine	21548	312	0.98
Schaumburg	45119	339	2.17
Skokie	25000	236	1.21
St. Charles	15634	372	0.75
Wheaton	24310	426	1.08

In terms of ranking, the analysis of calls yields the following (Union's sought comparables lightly shaded, City's sought comparables darkly shaded):

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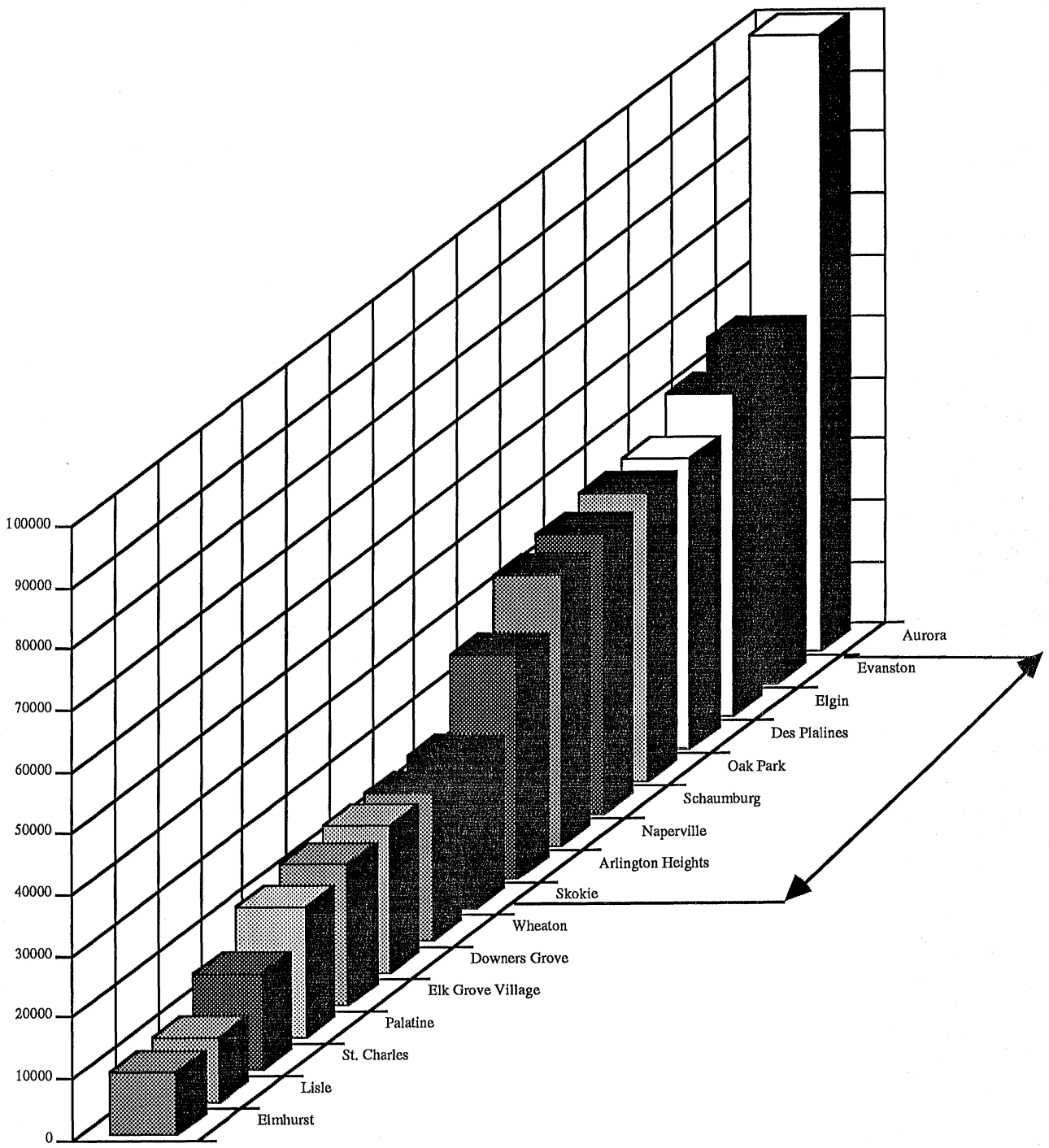
7 Also included in City Brief Exh. B is a break down of calls as Part I and II calls. However, information on all municipalities involved in this dispute is not available (Elgin, Elmhurst and Palatine are missing). For reasons discussed earlier, rational conclusions on comparability cannot be drawn in this case where such substantial data is not available. The categories of Part I and II calls will therefore not be considered.

TABLE 5
RANKINGS OF PROPOSED COMPARABLES BASED ON TOTAL CALLS, CALLS PER OFFICER AND CALLS PER CAPITA

Total Calls	Calls Per Officer	Calls Per Capita
Elmhurst	Elmhurst	Lisle
Lisle	Skokie	Elmhurst
St. Charles	Elk Grove Village	St. Charles
Palatine	Lisle	Palatine
Elk Grove Village	Palatine	Wheaton
Downers Grove	Schaumburg	Downers Grove
Wheaton	Arlington Heights	Skokie
Skokie	Downers Grove	Elk Grove Village
Arlington Heights	Evanston	Arlington Heights
Naperville	St. Charles	Naperville
Schaumburg	Oak Park	Schaumburg
Oak Park	Naperville	Oak Park
Des Plaines	Wheaton	Evanston
Elgin	Elgin	Des Plaines
Evanston	Des Plaines	Elgin
Aurora	Aurora	Aurora

Graphically, this data displays the following (again, the arrows showing the range formed by the agreed-upon comparables including Naperville and all the disputed comparables which fall within the range formed by the agreed-upon comparables):

TOTAL CALLS


100000
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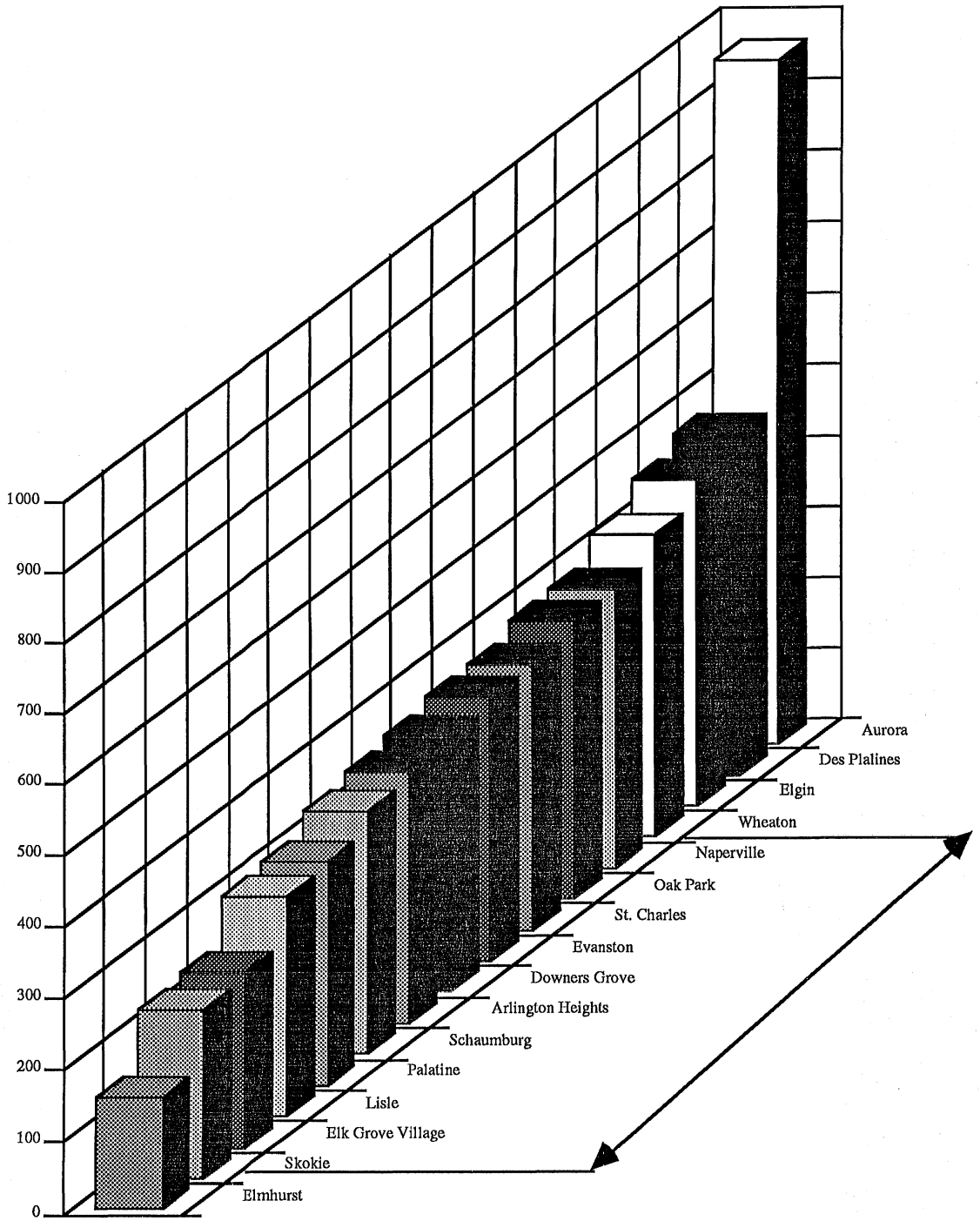
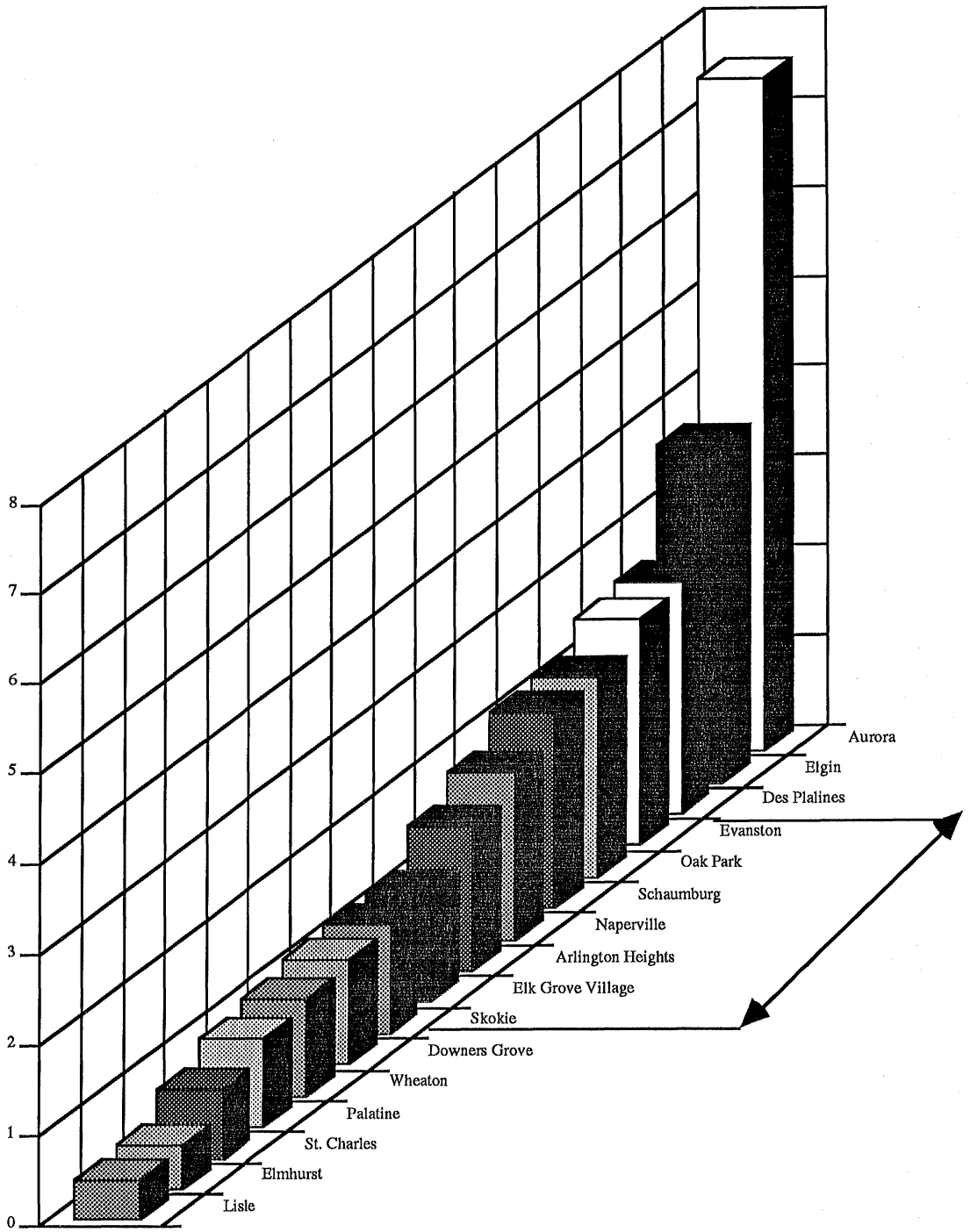
30000
20000
10000
0
Elmhurst
Lisle
St. Charles
Palatine
Elk Grove Village
Downers Grove
Wheaton
Skokie
Arlington Heights
Naperville
Schaumburg
Oak Park
Des Plaines
Elgin
Evanston
Aurora

CALLS PER OFFICER



CALLS PER CAPITA



The question now is whether the above information yields anything conclusive for determining comparability. A cursory examination of the tables and graphs on the municipalities shows a good deal of scatter. That scatter is a direct result of the fact that the agreed-upon comparables (Skokie, Schaumburg, Evanston and Arlington Heights) are themselves scattered in may cases when compared with the disputed municipalities. *See* median home value, per capita income and the data concerning calls. Because of the scatter (perhaps with the exception of Aurora which is highest in the three calls categories and population and lowest in the categories of median home value and per capita income), nothing really jumps out. Again, that is a direct result of the universe of agreed-upon comparables. But, the parties have not agreed on 11 municipalities and in order to resolve this case I still must draw some conclusions on comparability through an orderly procedure.[8]

The task then is to formulate an analysis for making the comparisons. The Act gives no guidance, so therefore a "rational" method must be chosen.

The parties have agreed that the part of the relevant universe of comparables must include Skokie, Schaumburg, Evanston and Arlington Heights. I am therefore bound by that agreement—indeed, the Act requires that I abide by "stipulations of the parties". *See* §14(h)(2). The fact that the parties have agreed upon those municipalities as being comparable to Naperville allows for a conclusion that they intended that any other municipality which sufficiently falls within the range established by the set of agreed-upon comparables requires a finding that such a municipality is also comparable to the agreed-upon set of municipalities.[9]

Therefore, using the above tables and graphs to determine the frequency that a contested comparable falls within the range of the agreed-upon comparables including

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[8] It would be arbitrary on my part to exclude or include all of the disputed comparables merely because the parties disagreed on such a large number of proposed municipalities. That would be precedent for stacking lists.

[9] For example, in terms of population, only Elgin falls within the range established by the agreed-upon comparables of Skokie, Schaumburg, Evanston, Arlington Heights and Naperville. *See* Tables 2 and 3 and the Population Graph.

Naperville in the categories that have provided sufficient data in this case, the following distribution is shown[10]:

TABLE 6
FREQUENCY OF CONTESTED COMPARABLES' FALLING WITHIN RANGE OF AGREED-UPON COMPARABLES

Aurora	Des Plaines	Downers Grove	Elgin	Elk Grove Village	Elmhurst	Lisle	Oak Park	Palatine	St. Charles	Wheaton
	Tot. Calls	Per Cap	Pop.	MHV	Per Cap	MHV	Per Cap	Per Cap	Per Cap	Per Cap
		MHV	No. Police	Calls PC	MHV	Calls PO	MHV	MHV	MHV	MHV
		Calls PO	Tot. Calls	Calls PO			No. Police	Calls PO	Calls PO	
							Calls PC			
							Calls PO			
							Tot. Calls			

Thus, by taking the agreed-upon comparables and including Naperville and using that set of municipalities as a range for examination in the seven categories for which data is available for all of the municipalities involved in this case (population, median home value, per capita income, number of officers, total calls, calls per officer and calls per capita), a distinct pattern *does* emerge—*only* Oak Park consistently falls within the range established by agreed-upon comparables and Naperville. Aurora never falls within that range; Des Plaines only falls within that range once; Elmhurst, Lisle and Wheaton fall within the range twice; and Downers Grove, Elgin, Elk Grove Village, Palatine and St. Charles fall within the range three times. Oak Park, on the other hand, falls within the range established by the agreement of the parties in *six* of the seven categories that have

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10 A legend for the abbreviations in this table is as follows:

Abbreviation	Category
Calls PC	Calls Per Capita
Calls PO	Calls Per Officer
MHV	Median Home Value
No. Police	Number Of Officers
Per Cap	Per Capita Income
Pop.	Population
Tot. Calls	Total Calls

been presented allowing for a full analysis of the data on comparability.[11] I therefore find that as dictated by the agreement of the parties which established a range for examination in the relevant categories, the only disputed comparable that can be included along with Naperville and the agreed-upon comparables of Arlington Heights, Evanston, Schaumburg and Skokie is Oak Park because Oak Park fell within that range in six of the seven categories available for comparison. The remainder of the disputed municipalities fell within the range on too few occasions to be considered as comparable in this case. The next highest frequency was three (Downers Grove, Elgin, Elk Grove Village, Palatine and St. Charles). I do not find that municipalities that favorably compare to the range of comparables established by agreement of the parties only 43% of the time can be considered as a comparable community to Naperville. Certainly those with a lesser frequency of favorable comparison than three (Aurora (0%), Des Plaines (14%), Elmhurst (29%), Lisle (29%) and Wheaton (29%)) also cannot be considered comparable.[12]

In sum then, for the comparability factor, in resolving the wage and benefit questions in this case Naperville will be compared to the following municipalities:

Arlington Heights
Evanston
Oak Park
Schaumburg
Skokie

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[11] Indeed, in the one category where Oak Park did not fall within the range established by the parties (population), Oak Park was next in order to Skokie—an agreed-upon comparable at the lower end of the population range. *See* Tables 2 and 3 and the Population Graph.

[12] The methodology I have chosen for picking comparables in this case has been dictated by the facts of *this* particular case. The parties have presented certain municipalities which they have agreed upon. The record also discloses that only certain categories of information were complete for all of the contested municipalities. By making the comparability determination through the type of analysis accomplished in this case, I do not find that only the categories looked at are relevant for comparability analysis and that only this kind of analysis is appropriate. Certainly there are many more categories that allow for valid comparisons. The bottom line is that I am guided by what the parties present to me and I have to deal with the information accordingly. Different cases require different approaches and, in the past, I have looked at comparability determinations in different ways given the context in which the issue presents itself. Others have taken completely different approaches. Such is the result of the lack of guidance from the Legislature on specifically what a "comparable" is. The basis for analysis I have chosen in this case is a rational one given the hand I have been dealt. In light of the vast area of disagreement in this case, this method is, in my opinion, the best means for resolving the issue.

C. Determinations Of The Issues In Dispute

1. Wages

The Union has proposed effective May 1, 1992 a revision of the Step Plan that requires a rolling into Step G a previously received 4% merit pay; the creation of a new Step H which is 2.5% higher than the revised Step G and increases of 0% at Step A, 2.5% at Steps B, C, G and H and 5.0% at Steps D, E and F. Effective May 1, 1993, the Union seeks a 4% increase. For the third year, effective May 1, 1994, the Union seeks to reopen the Agreement on wages for negotiations to commence on or before February 1, 1994.

The City offers 4% the first year and 3% for the second and third years.

The parties have computed how their respective offers will translate into wages. *See* City Exhs. 18, 19; U. Exh 6 at 1-2. Examination of those exhibits shows that the parties have arrived at different numbers in many of the categories. The difference is attributable to the fact that the City has performed its computations excluding longevity pay while the Union has included longevity pay. *See* City Brief at 15 ("It is important to examine the Union's salary data and understand that the comparable communities it has selected include longevity pay in their salary structures where as the City of Naperville does not."); U. Brief at 28 ("Longevity is merely another form of salary payment, and ignoring its impact on gross pay presents a false view of comparability.").

For the communities found comparable, the computations based on the Union's data (which include longevity pay—U. Exh. 6 at 1) show the following[13]:

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[13] The City takes issue (City Brief at 19-20) with the comparisons "based upon salaries after one year, five years, ten years, 15 years and 20 years". However, the data has been presented to me in this fashion by both sides (*compare* U. Exh. 6 and City Exhs. 18, 19) and I can only work with what I have. Further, I find this spread of categories to give a good yardstick for comparison purposes.

TABLE 7
IMPACT OF PARTIES' PROPOSALS YEAR 1 (LONGEVITY PAY INCLUDED) PER UNION CALCULATIONS[14]

City	Effective Date	Starting Salary	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	5/1/92	27377	31692	42921	43021	43121	43221
Evanston	3/1/92	32652	34056	40164	41820	43074	43283
Naperville	Current	30160	31366	36691	38157	38157	38157
Naperville (U)	5/1/92	30160	32150	38526	41692	41692	41692
Naperville (C)	5/1/92	31366	31366	36254	40456	40456	40456
Oak Park	1/1/92	28651	30110	40658	40898	40898	40898
Schaumburg	5/1/92	27787	31527	42650	42800	43100	43400
Skokie	5/1/92	32045	33670	42221	42281	42341	42401

The Union's computations yield the following rankings amongst the comparables:

TABLE 8
RANKINGS OF COMPARABLES BASED ON PARTIES' PROPOSALS YEAR 1 (LONGEVITY PAY INCLUDED) PER UNION CALCULATIONS (LOW TO HIGH)

Starting Salary	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	Oak Park	Naperville (C)	Naperville	Naperville	Naperville
Schaumburg	Naperville	Naperville	Naperville (C)	Naperville (C)	Naperville (C)
Oak Park	Naperville (C)	Naperville (U)	Oak Park	Oak Park	Oak Park
Naperville	Schaumburg	Evanston	Naperville (U)	Naperville (U)	Naperville (U)
Naperville (U)	Arl. Hts.	Oak Park	Evanston	Skokie	Skokie
Naperville (C)	Naperville (U)	Skokie	Skokie	Evanston	Arl. Hts.
Skokie	Skokie	Schaumburg	Schaumburg	Schaumburg	Evanston
Evanston	Evanston	Arl. Hts.	Arl. Hts.	Arl. Hts.	Schaumburg

Using the same approach, but instead using the City's computations (which exclude longevity pay) the following is shown (City Exhs 18-19):

TABLE 9
IMPACT OF PARTIES' PROPOSALS YEAR 1 (LONGEVITY PAY EXCLUDED) PER CITY CALCULATIONS

City	Effective Date	Starting Salary	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	5/1/92	27377	31692	42471	42471	42471	42471
Evanston	3/1/92	32652	34056	40164	41820	41820	41820
Naperville (C)	5/1/92	31366	33093	37378	40456	40456	40456
Naperville (U)	5/1/92	30160	32150	38526	41692	41692	41692
Oak Park	1/1/92	28651	30110	40418	40418	40418	40418
Schaumburg	5/1/92	27787	31527	42200	42200	42200	42200
Skokie	5/1/92	32045	33670	41921	41921	41921	41921

[14] "Naperville" is the salary from the current Agreement; "Naperville (U)" represents the Union's offer; "Naperville (C)" represents the City's offer.

TABLE 10
RANKINGS OF COMPARABLES BASED ON PARTIES' PROPOSALS YEAR 1 (LONGEVITY PAY EXCLUDED) PER CITY CALCULATIONS (LOW TO HIGH)

Starting Salary	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	Oak Park	Naperville (C)	Oak Park	Oak Park	Oak Park
Schaumburg	Schaumburg	Naperville (U)	Naperville (C)	Naperville (C)	Naperville (C)
Oak Park	Arl. Hts.	Evanston	Naperville (U)	Naperville (U)	Naperville (U)
Naperville (U)	Naperville (U)	Oak Park	Evanston	Evanston	Evanston
Naperville (C)	Naperville (C)	Skokie	Skokie	Skokie	Skokie
Skokie	Skokie	Schaumburg	Schaumburg	Schaumburg	Schaumburg
Evanston	Evanston	Arl. Hts.	Arl. Hts.	Arl. Hts.	Arl. Hts.

In terms of the analysis, whether longevity is included or excluded from the calculations is a moot issue. Examination of Tables 8 and 10 shows that, for all purposes, the patterns remain the same whether longevity is included or excluded insofar as where Naperville fits when compared to the other municipalities found comparable in this case.

But, what does this say about the wage offers? Giving the City the benefit of the doubt and using its computations (*i.e.*, looking at the computations excluding longevity pay from the comparison of the comparables), the Union's wage offer is favored by examination of the manner in which Naperville compares to the municipalities found comparable in this case. Tables 8 and 10 show the Union's offer for the first year of the Agreement places Naperville in the mid-range of the comparables in the staring and after one year categories but places Naperville at the lowest end of the comparables in the after five year category. The City's offer tends to lower the Naperville's rankings in the after five year categories and, places the Naperville at the lowest point in the after five year category and the second lowest in the after 10, 15 and 20 year categories. In short, the City's offer places the officers more at the low end of the comparables than does the Union's offer. However, the Union's offer does not skew Naperville's standing when compared to the comparables. In terms of comparability analysis, the Union's offer must therefore be chosen.[15]

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[15] The parties' dispute over the inclusion of Oak Park as a comparable worked opposite to their positions in the wage analysis. The City sought to exclude and the Union sought to include Oak Park. But, Oak Park appears at the very low end of the wage comparisons.

With respect to the parties' offers for the second year of the Agreement, there is little information available in this record.[16] U. Exh. 6 at 2 shows that all of those municipalities found to be comparable in this case were in negotiations or arbitration for 1993 contracts. Given that the parties here are essentially 1% apart for 1993 wages, (the Union offering 4% and the City offering 3%) and further given how the rankings of comparables lined up for the first year with Naperville towards the bottom under both parties' offers, there is no basis to defeat the Union's proposal for the second year so as to undercut the package it seeks on wages. Particularly given that the relative rankings disclosed by Tables 8 and 10 place Naperville at the low end of the rankings, the 4% sought by the Union is reasonable.

For the third year, the Union seeks to reopen on wages and the City offers 3%. The wage offers have been presented as a package. Given the statutory requirement to pick one final offer I cannot pick and choose within the offers. There is no evidence to support a justification for 3% for the third year. As usual, a definite figure for a year in the future is speculative.[17] It may ultimately be that 3% (perhaps more or even less) is justified. However, based on what is before me and given the restrictions placed upon me to choose one side's offer, a reopener is more justified than a specified wage increase for the third year. A reopener will allow the parties to better assess where Naperville stands in light of the comparables found appropriate in this case and further in light of the fact that more data will be available on the comparables due to the passage of time since the parties constructed their surveys.

The City's well-framed arguments do not change the result on the wage determination.

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[16] City Brief Exh. D calculates the differences between the respective offers over the life of the new Agreement. But, there is no specific data to use for comparisons with external comparables. Further, *see* Tr. 28:

> MR. SONNEBORN: ... So in terms of analyzing these comparables to see where the second year should be, it's very difficult to do.

[17] *See* Tr. 28:

> MR. SONNEBORN: ... In terms of what the third year should be, it's damn near impossible. We have no data to analyze.

First, the City acknowledges (City Brief at 16) that Naperville "has never been at the very top of the salary ladder ...." but asserts that "[i]t's goal has been to maintain its salary level around the 50th percentile based upon policy set by the City Council". *See also,* City Brief at 22 ("The City Council has determined that with regard to compensation practices that it wishes to pay its employees so that they are at approximately the 50th percentile with regard to surrounding communities (TR 100)." Putting aside the extent such a goal might be binding upon an interest arbitrator, examination of Tables 7-10 shows that the Union's offer stays within the City Council's desired framework for the relevant comparables.

Second, the fact that the City has followed the same basic structure over the years consistent with the various plans utilized (the prior Andersen or new Waters) and that the City "moved along the same path for all of its union employees" (City Brief at 16-17) do not dictate a different conclusion in this case. Those are certainly relevant factors—indeed, internal comparability is a statutory consideration. *See* §14(h)(4) of the IPLRA. But I find that Naperville's comparison to *external* comparables which show the distinct low end rankings demonstrated in Tables 7-10 outweigh the factors relied upon by the City in this case.

Third, the City points out (City Brief at 17) that when base salary and overtime are examined "the final offers are separated by a large gulf filled with City funds", specifically, the parties are "from $730,000 to $780,000 apart in their respective wage positions." Assuming those calculations to be correct, the fact remains that the City ranks low when the comparisons are made to the municipalities determined to be comparable to Naperville. The difference between the offers may be quite significant. However, as established by record, "The City has not claimed an inability to pay." *See* City Brief at 19. For reasons discussed above and the fact that I must choose one offer over the other, the Union's offer must be selected.

Fourth, nor would concepts of "historical parity" (City Brief at 17-18) between police and fire which evolved as a result of prior use of the Andersen Plan change the

outcome. That is a factor to be weighed, but in this case it is not the determinative factor. The results of the external comparisons and the low ranking pattern shown by Naperville outweigh concepts of historical parity.

The fact that the City has been able to attract and retain qualified employees through the manner in which it compensates employees (City Brief at 22-24; City Exh. 9; City Brief Exh. H) also does not, in my opinion, tip the scale any differently. The fact remains, no matter how scientific the City has been in implementing the results of the compensation studies and even though a pool of potential employees exists, Naperville ranks low when compared to the communities found comparable in this case. Given that fact and further given that inability to pay is not an issue, the balance still tips in favor of the Union's offer.

The cost of living factor also does not change the result. The City argues (City Brief at 24) that its offer "continues to equal or exceed the cost of living for the Chicagoland area in the first and second year of the contract." The Union asserts (U. Brief at 40-43) that the employees' purchasing power has decreased over the years. I find cost of living to be a non-persuasive factor in this case for either side. Stripped to its essence, the point is these are basically non-inflationary times and that fact tends to negate the impact of cost of living arguments when balanced against comparability determinations.

Considering all of the above, the Union's offer on wages is adopted.

2. Medical Insurance

The Union proposes maintenance of the status quo for the first two years of the Agreement and to reopen for the third year. The City seeks no change in the first year and no change with respect to premiums in the second year. However, in the second year the City seeks certain changes for non-HMO participants concerning annual physicals, inpatient treatment for substance abuse, speech, hearing and physical occupational therapy, organ transplants and out patient treatment for mental health and substance abuse. *See* the August 19, 1993 memo from Human Resources Manager Michelle Emond (City

Brief Exh. A). For the third year the City proposes (City Brief at 31) that the officers agree to a "'me too' clause which would effectively ensure that they would receive the same insurance coverage as all other City employees, both union and non-union."

Clearly, a change is being sought by the City. The burden is on the City to justify that change.[18] I find it has not done so.

The City's argument supporting the change is (City Brief at 31) "The FOP is the only union which rejected the City's proposed 'me too' clause for medical insurance." The basis for seeking such a change comes from "William Mercer's report ... and suggest administrative belt tightening." *See* City Brief at 32.

But, "[t]he City has not claimed an inability to pay." *See* City Brief at 19. The fact that the City might be able hold the costs down or pay less for insurance does not carry the same weight that a difficulty in paying would carry. Further, the "me too" aspect of the proposal makes the proposal a speculative one. Under that kind of proposal, it cannot be stated with any degree of certainty what any group of employees will get in the future.[19] Certainly, health care costs are spiraling. But, the standard here requires the City to justify the change it seeks. Given the lack of inability to pay coupled with the speculative nature of the City's proposal, the Union's proposal to maintain the status quo at least for the first two years must be adopted.

The Union's prevailing position of maintenance of the status quo on this issue is a two-edged sword. The trends appear to be for cuts in the insurance area, be they through increased employee contributions, decreased benefits or other cost containment measures.

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[18] *See Will County Board and Sheriff of Will County* (Nathan, 1988) at 50 ("in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change."). The City acknowledges that burden. *See* City Brief at 34-35 ("It is the City's position that the applicable standard for analysis and selection of an offer ... places the burden of proof upon the party ... seeking the change.").

[19] It may be that another unit of employees might not have the need for the type of coverages that the police officers do (*e.g.*, another unit may have a high concentration of young single employees whose interests lie elsewhere than the benefits of, for example, good family coverage) and that unit may be more willing to trade away certain aspects of insurance coverage to get something that is more relevant to that unit's population. Adoption of the City's proposal will dictate the imposition of those potential trade offs upon this unit without the benefit of collective bargaining.

See U. Brief at 31 ("The Union readily recognizes that medical costs are spiraling in the United States, and that employers and labor unions are wrestling with issues of cost containment and cost shifting."). The parties will be bargaining again in the near future on the wage reopener for this Agreement as well as for future Agreements. Assuming agreement is not reached on wages (or any other economic benefit) in future negotiations, in making selections between offers in the economic area, §14(h)(6) of the IPLRA requires interest arbitrators to take into account "overall compensation" received by the employees, including "insurance". Maintenance of the status quo in the area of medical insurance when trends may be to the contrary may detract from what otherwise may seem to be a reasonable wage (or other economic) offer sought by the Union in future negotiations.

Perhaps in recognition of its position, at the hearing the Union stated that it was going to modify its original proposal to maintain the status quo on this issue for the duration of the Agreement to seek a reopener for the third year of the Agreement. *See* Tr. 44-45, 48:

> MR. SONNEBORN: ... I would like to add that the Union is more than willing to reopen on the subject of insurance as well. The City's -- the reason why the Union is resistant to the City's proposal on insurance is we don't know what the hell is going on next year, and they only have an idea. They don't have concrete figures, numbers, facts, decisions. The Union would be more than happy -- in fact, we'll state that as part of our final position on insurance. We will reopen next year on the subject of insurance along with the subject of wages.
>
> * * *
>
> Insurance, as I said, we propose no change in the current contract but are willing to reopen for purposes of negotiations along with the wage reopener, both to be effective 5-1-94.

Given that position and my rejection of the City's proposal, a reopener will be directed for the third year of the Agreement.

Given what I have in this case, the above discussion requires that for this Agreement, the Union's offer on medical insurance (with the added reopener for the third year) must be selected. There is no basis established in this record to presently justify the change sought by the City.

3. Holiday Compensation

Article 18.1 of the Agreement specifies 11 holidays. Article 18.2 states:

> **Section 18.2 Payment in Lieu of Holidays.**
>
> Employees will receive compensation in the form of an extra day's pay at one and one-half (1-1/2) times the employee's regular hourly rate for all holidays. When a holiday falls on a normal day off for such employees, they will receive the same benefits as if the holiday fell on the day of work.

* * *

The City seeks to eliminate the payment of holiday pay at 1-1/2 times the regular hourly rate of pay for eight hours for each holiday without regard to whether the officer works. The City proposes that officers receive eight hours of pay at their regular straight time hourly rate for each holiday, but officers who work on a designated holiday receive 1-1/2 times their regular straight time rate. The Union proposes to maintain the status quo.

Again, the burden here is upon the City to demonstrate the need for the reduction in this benefit. Given that the City is not claiming an inability to pay, the City's burden in this regard remains.

The City makes a comparability argument relying upon external and internal comparables. *See* City Brief at 33.

With respect to external comparables, City Brief Exh. M discloses the following information for the relevant comparables:

TABLE 11
HOLIDAY PAY FOR COMPARABLE MUNICIPALITIES
(BASED ON CITY'S DATA)

City	No. Of Holidays	Description
Naperville	11	1-1/2 rate of pay if worked or not worked
Skokie	11	8 hrs. regular pay if not worked; 1-1/2 rate if worked
Arlington Heights	12	Receive 12 additional days off during the year in lieu of holidays
Oak Park	12	Accrues 1 day off as each holiday occurs; if worked receives and additional 4 hrs. pay or comp. time
Schaumburg	12	8 hrs. regular pay if not worked; 1-1/2 rate of pay or comp time if worked
Evanston	13	Charged as compensatory time in hours. If actual worked on July 4, Halloween, X-mas or New Year's paid at double time.

The City sees its compensation of officers for holidays as "truly unique" (City Brief at 34) because officers receive the holiday pay benefit irrespective of whether or not they work. However, I am not satisfied that the information contained in Table 11 amounts to an "apples to apples" comparison. As discussed in the description section of Table 11, there are a variety of methods for holiday compensation amongst the comparables. Moreover, although the difference is not of tremendous significance (a range of two days), Naperville officers have the least number of holidays amongst the comparables—a fact that must weigh against any further reduction of the benefit.

The City also argues that its officers receive hundreds of dollars more per year than the comparables (*see* City Brief Exh. M; City Brief at 33-34—$575.00 above the average for the example the City describes as Scenario 1 where no holidays are worked and $423.00 above the average for the example it describes as Scenario 2 where it is assumed that 5 holidays are worked).

However, I believe a better measure for examining the impact of this benefit is to see how this benefit affects the rankings of the comparables in terms of total income. To do that analysis, I will add in holiday pay for the comparables to wages and compare the result to Naperville using the wage rate that has been chosen as appropriate in this matter (the Union's offer). That analysis appears more consistent with the statutory mandate in §14(h)(6) of the IPLRA which requires interest arbitrators to take into account "overall compensation" received by the employees, including "holidays".[20]

Therefore, turning back to Table 7, which shows the salaries for the comparable communities, the first step is to determine the hourly rate under the wage rate earlier found appropriate (*i.e.*, the Union's offer).[21] This is accomplished by taking the yearly

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[20] The City asserts (City Brief at 33-34; City Brief Exh. M) that the holiday benefit is worth $2100.00 to a Naperville officer with one year's experience for working five holidays as "Scenarios 2" hypothesized by the City. That $2100.00 figure is consistent with the City's offer on wages and the structure for holiday pay compensation set forth in Article 18.2 of the Agreement.

[21] Because §14(h)(6) of the IPLRA looks to "overall compensation", I will use Table 7 which includes longevity pay in accord with the Union's computations as opposed to Table 9 which excludes longevity in accord with the City's computations. In this review of the comparables, longevity should be factored in as this statutory criteria examines "overall compensation ... and all other benefits received".

salary and dividing by 2080 hours which yields the following:

TABLE 12
HOURLY RATES OF PAY

City	Starting	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	13.16	15.24	20.64	20.68	20.73	20.78
Evanston	15.70	16.37	19.31	20.11	20.71	20.81
Naperville	14.50	15.46	18.52	20.04	20.04	20.04
Oak Park	13.77	14.48	19.55	19.66	19.66	19.66
Schaumburg	13.36	15.16	20.50	20.58	20.72	20.87
Skokie	15.41	16.19	20.30	20.33	20.36	20.39

The next step is to compute the value of the holiday benefit for the comparable communities and Naperville. Here, the City is entitled to the benefit of the doubt. The City has presented two scenarios. As earlier noted, Scenario 1 assumes no holidays are worked. Scenario 2 assumes that five holidays are worked. *See* City Brief Exh. M; City Brief at 33-34. The City's computations under Scenario 1 show a greater differential in favor of the officers ($575.00)—*i.e.*, a larger value of the benefit) than do its computations under Scenario 2 ($423.00). For purposes of analysis and to give the City the benefit of the doubt, I shall assume the circumstances posited by the City in Scenario 1 where no holidays are worked.

City Brief Exh. M shows the formula for each comparable community to be used in determining the yearly value of the holiday pay benefit.[22] For each comparable I will therefore multiply the hourly rate times the applicable factor which yields the following

[22] City Brief Exh. M yields the following information for the relevant comparables. In that exhibit, the City chose an officer after one year at an hourly rate it has argued appropriate. The hourly rate chosen by the City is not relevant because the comparisons in this analysis are based upon what the officers will be receiving under this award. The methodology used by the City, however, is quite relevant. The factor in the final column of the chart below is the number of holidays multiplied by eight hours per day for all municipalities except Naperville. For example, as computed by the City, Naperville's factor is 132 (11 holidays multiplied by 12 hours (*i.e.*, the time and one half rate)). The hourly rate chosen by the City validates the determination of the factor for multiplication (*e.g.*, with a factor of 132 for Naperville 132 x $15.91 per hour = $2100.12, the value of the holiday determined by the City).

City	No. Of Holidays	Hourly Wage	Total Holiday Wages	Factor
Arl. Hts.	12	15.24	1463	96
Evanston	13	16.37	1702	104
Naperville	11	15.91	2100	132
Oak Park	12	14.48	1390	96
Schaumburg	12	15.16	1455	96
Skokie	11	16.19	1425	88

table:

TABLE 13
VALUE OF HOLIDAY PAY BENEFIT (YEAR 1)

City	Starting	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts. (hr. rate x 96)	1263.36	1463.04	1981.44	1985.28	1990.08	1994.88
Evanston (hr. rate x 104)	1632.80	1702.48	2008.24	2091.44	2153.84	2164.24
Naperville (hr. rate x 132)	1914.00	2040.72	2444.64	2645.28	2645.28	2645.28
Oak Park (hr. rate x 96)	1321.92	1390.08	1876.80	1887.36	1887.36	1887.36
Schaumburg (hr. rate x 96)	1282.56	1455.36	1968.00	1975.68	1989.12	2003.52
Skokie (hr. rate x 88)	1356.08	1424.72	1786.40	1789.04	1791.68	1794.32

The next step is to add the yearly value of the holiday benefit to the salary of the officers in the comparable communities. The following table shows that result:

TABLE 14
VALUE OF HOLIDAY BENEFIT ADDED TO YEARLY SALARY

City	Starting	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	28640.36	33155.04	44902.44	45006.28	45111.08	45215.88
Evanston	34284.80	35758.48	42172.24	43911.44	45227.84	45447.24
Naperville	32074.00	34190.72	40970.64	44337.28	44337.28	44337.28
Oak Park	29972.92	31500.08	42534.80	42785.36	42785.36	42785.36
Schaumburg	29069.56	32982.36	44618.00	44775.68	45089.12	45403.52
Skokie	33401.08	35094.72	44007.40	44070.04	44132.68	44195.32

As before, to see how that added benefit affects the officers in comparison to officers in the comparable communities, it then becomes necessary to rank the comparables:

TABLE 15
RANKING OF COMPARABLES WITH VALUE OF HOLIDAY BENEFIT ADDED TO SALARY

Starting	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	Oak Park	Naperville	Oak Park	Oak Park	Oak Park
Schaumburg	Schaumburg	Evanston	Evanston	Skokie	Skokie
Oak Park	Arl. Hts.	Oak Park	Skokie	Naperville	Naperville
Naperville	Naperville	Skokie	Naperville	Schaumburg	Arl. Hts.
Skokie	Skokie	Schaumburg	Schaumburg	Arl. Hts.	Schaumburg
Evanston	Evanston	Arl. Hts.	Arl. Hts.	Evanston	Evanston

I chose the Union's wage offer in great part because of the fact that Naperville

ranked low amongst the comparables. *See supra* at III(C)(1). Clearly, in terms of total value under this scenario, with respect to holiday pay the Naperville officers receive a more favorable benefit than do the comparables. *See* Table 13. But the real question here is whether that benefit added to their salary increases awarded in this case skews the rankings of the comparables as a result of the wage offer adopted in this matter. Examination of Table 15 when compared to Table 8 shows that the same basic patterns exist.[23] For ease of comparison, the final rankings established by Table 8 are:

TABLE 16
RANKING OF COMPARABLES AFTER AWARD OF WAGE INCREASE PER TABLE 8

Starting	After 1 Year	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Arl. Hts.	Oak Park	Naperville	Oak Park	Oak Park	Oak Park
Schaumburg	Schaumburg	Evanston	Naperville	Naperville	Naperville
Oak Park	Arl. Hts.	Oak Park	Evanston	Skokie	Skokie
Naperville	Naperville	Skokie	Skokie	Evanston	Arl. Hts.
Skokie	Skokie	Schaumburg	Schaumburg	Schaumburg	Evanston
Evanston	Evanston	Arl. Hts.	Arl. Hts.	Arl. Hts.	Schaumburg

The maintenance of this holiday pay benefit does not catapult the Naperville officers to unreasonable positions in the ranking of comparables when the wages awarded in this case are factored in. When the holiday benefit is factored into wages and the rankings set forth in Tables 15 and 16 are compared, there are no ranking changes in the starting, after one and five year categories (Naperville remains fourth in the starting and after one year categories and lowest after five years); in the after 10 year category Naperville moved up two places (from second lowest to fourth); and in the remaining categories Naperville moved up one place (second lowest to third in the 15 and 20 year categories.). But essentially, the patterns dictating the adoption of the Union's offer on the wage increase remain the same with this benefit maintained as the Union argues. Even when this benefit is added in to salary, Naperville remains pretty much in the center consistent with the desires of the City Council.[24]

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[23] The same conclusion is warranted even if the City's figures excluding longevity are used as set forth in Table 10.

[24] *See* City Brief at 16 "[i]t's goal has been to maintain its salary level around the 50th percentile based

Finally, the City's argument that internal comparables require a changing of this benefit (City Brief at 32-33) is not persuasive under the circumstances. At best, that is a factor in the City's favor. But, when the true "apples to apples" comparison is made to other police officers in the comparable communities, that factor outweighs the rest.

The Union's offer of maintenance of the status quo is therefore adopted.

4. Personal Leave

Article 19.1 of the Agreement provides for "two (2) days' leave for personal business during each year of this contract without loss of pay or deduction of sick leave." The Union seeks to increase that amount to three days per year; the minimum portion of day in which personal leave may be taken be reduced from two hours to one hour; and that personal leave may be taken in conjunction with a holiday. The City seeks to maintain the status quo.

U. Exh. 6 at 6 and City Exh. 18 at 8 demonstrate the relevant data for the comparables:

TABLE 17
PERSONAL LEAVE

City	No. of Days
Arlington Heights	0
Evanston	0
Naperville	2
Oak Park	0
Schaumburg	2
Skokie	0

Clearly, Naperville excels in the area of personal leave. The burden is on the Union to justify the change it seeks. The Union recognizes its difficult task. *See* U. Brief at 36 ("The impact of the 'comparables' on the issue of personal leave for the Union is the thorn. Naperville is already ahead of many of the comparables on the subject of personal leave.").

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upon policy set by the City Council". *See also*, City Brief at 22 ("The City Council has determined that with regard to compensation practices that it wishes to pay its employees so that they are at approximately the 50th percentile with regard to surrounding communities (TR 100)."

And again, this entire discussion on how the rankings look with the benefit added gives the City the benefit of the doubt in that Scenario 1 was used which showed the greatest difference in the benefit.

No sufficient reason exists to justify the change sought by the Union. The City's offer is adopted.

5. Court Pay

Article 17.4 of the Agreement states:

> **Section 17.4 Court Time**
>
> Employees covered by the terms of this Agreement, who are required to appear in court, coroner's inquest or other similar proceeding, while on their off-duty time shall receive a minimum of two (2) hours pay at their overtime rate.

The Union seeks to increase court pay from two to three hours. The City seeks to maintain the status quo.

The comparables show the following (City Exh. 18 at 3; U. Exh. 6 at 5):

TABLE 18
COURT PAY

City	Court Time Rate of Pay
Arlington Heights	2.5 hrs. at the overtime rate
Evanston	Minimum 4 hrs. pay at straight time or overtime for actual hours in court whichever is greater. Travel time paid if officer required to stop at station.
Naperville	2 hrs at overtime rate
Oak Park	If off duty, 2 hrs at overtime rate for in town; 3 hrs at overtime rate for out of town. If abuts paid at applicable straight or overtime rate. 1 day off per year in recognition of court days.
Schaumburg	Min. 3 hrs at overtime rate
Skokie	Off duty min. 2 hrs at overtime rate. 1-1/2 hrs. travel time for Chicago appearances and 2 hrs. for Elgin Mental Health hearings at 1-1/2 rate if travel time is during normal hrs.

There are a number of variations on this benefit throughout the comparable communities depending on when and where the court appearance is. If the increase is granted, however, Naperville will, in certain aspects of the benefit, be ahead of Arlington Heights, Oak Park, and Skokie and will be on a par with Schaumburg. I can find no basis in this record to justify such a reordering of the rankings.

The City's offer will therefore be adopted.

6. Funeral Leave

Article 19.2 of the Agreement states:

> **Section 19.2 Funeral Leave**
>
> Where there is a death in the immediate family of an employee, said em-

ployee shall be granted up to two (2) days off without loss of pay and without charge to accrued sick leave. Additional time, up to three (3) days off, may be taken at the discretion of the employee with approval of the Department Head or his designee and shall be chargeable to the accrued sick leave of the employee. Any additional time needed for death leave purposes shall be at the discretion of the Department Head and shall likewise be chargeable to the accrued sick leave.

* * *

The Union seeks to increase the contractual provision to state three days off without loss of pay instead of two.

The City seeks to maintain the status quo as stated in the Agreement.

The comparables show the following (U. Exh. 6 at 8; City Exh. 18 at 4):

TABLE 19
FUNERAL LEAVE

City	Amount Of Funeral Leave	Variables
Arlington Heights	Yes	Day of death through day of funeral
Evanston	Contract Silent	
Naperville	2	
Oak Park	3	May be extended by Village
Schaumburg	5	
Skokie	3	

For those comparables where days are designated, Naperville is at the bottom. Comparisons to Evanston cannot be made due to the absence of contract language and Arlington Heights may be more or less than Naperville depending when the funeral is in relationship to the day of death. However, given the above, it is fair to conclude that Naperville is at the lower end of the scale on the issue of funeral leave.

But while the City officially seeks to maintain the status quo of the two day provision found in Article 19.2, *the Department* appears to apply the increased benefit sought by the Union. *See* Chief of Police David Dahl's May 7, 1993 Memo (U. Exh. 6 at 9 and the accompanying instructions (*id.* at 10 [emphasis added]):

<u>POLICE OFFICER TIME RECORD INSTRUCTIONS</u>

* * *

<u>Regular Hours:</u>

Use this section to record all regular working hours paid at straight time.

* * *

> Funeral (code 15): When there is a death in the immediate family, an employee shall be granted up to *three* working days off without loss of pay and without charge to accrued leave between the date of death and the date of the funeral (see employee handbook for definition of immediate family). Time taken in addition to *three* days funeral leave shall be chargeable to other accrued leaves.

Therefore, the Union has shown that Naperville ranks low on the comparable scale with respect to funeral leave and, in any event, the Department has already granted the change the Union seeks. The Union's offer will therefore be adopted so as to embody that change in the Agreement.

7. Impact Bargaining

Article 27 of the Agreement states:

> ARTICLE 27
> COMPLETE AGREEMENT
>
> Section 27.1
>
> The parties acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining. This Agreement supersedes and cancels all prior practices and agreements, whether written or oral, which conflict with the express terms of this Agreement. If a past practice is not addressed in the Agreement, it may be changed by the Employer as provided in the Management Rights Clause, Article [4]. The understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Except as may be stated in this Agreement, each party voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated and signed this Agreement. The Lodge specifically waives any right it might have to impact or effects bargaining for the life of this Agreement.

The Union seeks to amend Article 27 so that it has a right to impact bargaining. The City seeks to maintain the status quo.

Thus, the Union seeks to negate the effect of a previously negotiated broad zipper provision. At the hearing, the following exchange occurred (Tr. 49-50):

> THE ARBITRATOR: Is there anything in the [offing] that the Union perceives as -- that will occur within the next several years that would require this kind of language? You've got a pretty broad zipper clause.

> MR. SONNEBORN: Two of the examples I used earlier I think are -- I don't know if they're going to become issues in Naperville. I hope not. But that's the Americans with Disabilities Act and the Family Medical Leave Act that goes into effect August 5th this summer where parties have a collective bargaining agreement delayed to February 5 of next year, as I recall. Those laws directly relate to terms and conditions of employment. Americans with Disabilities Act, it's the whole concept of the reasonable accommodations.
>
> Again, I'm using these as hypotheticals. I'm not suggesting there will be a problem here. But shift selection and work assignments which heretofore maybe the parties had a particular way of dealing with it and taking into account certain factors. Those laws may require those practices to be revisited.
>
> THE ARBITRATOR: Is there anything that occurred during bargaining that the Union pulled from the table that might fall into that category?
>
> MR. SONNEBORN: No, absolutely not. If we pulled it during negotiations, we pulled it for the term of the agreement.

Based on the above, it is fair to conclude that nothing has occurred that has specifically caused problems. As the Union concedes, its concerns are "hypotheticals" and "I'm not suggesting there will be a problem here."

The Union further concedes (U. Brief at 38-39):

> However, the reality is that the Union participated in the creation of this monster zipper clause, and now stands before the Arbitrator equally culpable for its existence.

But again, the burden rests with the Union to justify the change it seeks. No problems have occurred—the Union's complaint concerning loss of bargaining rights is hypothetical only. In any event, this language appears in the Agreement as the direct result of negotiations. As restrictive as it might appear in theory to the Union, I can only assume that this language made its way into the Agreement in exchange for something the Union found more palatable.

There have been no problems with this language and no practical reason exists to justify the change the Union seeks. I am unwilling to upset language that exists as the result of mutual agreement because down the road one party in hindsight does not like how the language presently looks. To permit a change on that kind of theory would open the door to challenges to long existing language because one party now thinks it was a bad deal. Notions of stability in bargaining relationships would then call only for lip service.

The balance of bargaining power dictated the deal in this case that resulted in Article 27. This process has been referred to an extension of the bargaining process. I cannot change the deal.

The Union cannot justify the change it seeks. The City's offer is adopted.

IV. CONCLUSION

Based on the above, the following offers have been adopted:

ISSUE	FINAL OFFERS	FINAL OFFER ADOPTED
Wages	Various increases 1st year, 4% 2nd year, reopener 3rd year (Union) 4%, 3%, 3% (City)	Various increases 1st year, 4% 2nd year, reopener 3rd year (Union)
Medical Insurance	Status quo 1st and 2nd years, reopener 3rd year (Union) No change 1st year, various benefit changes 2nd year, "me too" provision 3rd year (City)	Status quo 1st and 2nd years, reopener 3rd year (Union)
Holiday Compensation	Status quo (Union) 8 hrs. pay if not worked, 1 1/2 time if worked (City)	Status quo (Union's offer)
Personal Leave	Increase from 2 to 3 days (Union) Status quo (City)	Status quo (City's offer)
Court Pay	Increase from 2 to 3 hours (Union) Status quo (City)	Status quo (City's offer)
Funeral Leave	Increase from 2 to 3 days (Union) Status quo (City)	Increase to 3 days consistent with practice (Union's offer)
Impact Bargaining	Eliminate zipper (Union) Status quo (City)	Status quo (City's offer)

Edwin H. Benn
Arbitrator

Dated: January 20, 1994