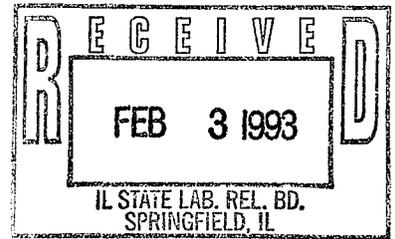


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Interest Arbitration

City of Aurora, Illinois,

Employer

and

Association of Professional
Police Officers,

Union

ISLRB Case No. S-MA-92-194
Arbitrator's File No. 92-151

Herbert M. Berman,
Arbitrator/Panel Chairman

Michael Tierney,
Union Delegate

Ernest Hegy,
Employer Delegate

January 13, 1993

Opinion and Award

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I. Statement of the Case

After about six months of bargaining, the parties reached impasse on a successor to their July 1990-December 1991 collective bargaining agreement (Joint exhibit 1).¹ Pursuant to Section 14 of the Illinois Public Labor Relations Act (Ill. Rev. Stat., Ch. 48, ¶1614),² the parties invoked interest arbitration. In accordance with the Act, a hearing was held before the arbitration panel on August 7, 10 and 11, 1992.³ Both parties filed post-hearing briefs on October 6, 1992.

At the hearing, the parties exchanged final offers and submitted agreed-upon ground rules and stipulations (Jt. 3, 3A and 4). On the final day of the hearing, I granted the parties leave to amend their final offers within seven days following receipt of the hearing transcript. Neither party submitted an amended final offer within this time, but

¹In the remainder of this opinion, I shall cite joint exhibits as "Jt. ____," Union exhibits as "Un. ____," and Employer exhibits as "Emp. ____." I shall cite the testimony of witnesses by last name and page reference, for example, "Shult 19." I shall cite other portions of the transcript as "Tr. ____."

²In the remainder of this opinion, I shall refer to the Illinois Public Labor Relations Act as "IPLRA" or the "Act."

³The arbitration panel was composed of Ernest S. Hegy, the Employer's representative, Michael Tierney, the Union's representative, and Herbert M. Berman, the impartial chairman.

the Union submitted an amended final offer on October 6, 1992, along with its post-hearing brief, which, over the Employer's objection, I agreed to consider.⁴

At the hearing, the parties stipulated, and the arbitration panel agreed, that all the proposals contained in the parties' final offers were "economic offers" within the meaning of the Act (Tr. 347).

II. The Final Offers⁵

A. Term of the Agreement

Employer: Two years

Union: Two years

B. Wages

Employer: 5.5% increase, January 1, 1992. 5.5% increase, January 1, 1993.

Union: 6% increase, January 1, 1992. 6% increase, January 1, 1993.

C. Work Schedules

Employer

City proposal on adjustable work schedules would apply to investigations, community services and NABS (Neighborhood Action Base Station) personnel beginning January 1, 1993. City's requests to adjust will be dependent solely on operational needs and would be solely on a voluntary basis. Requests to adjust will be made no later than 24 hours' prior to the time which is requested to be adjusted. Details would be worked out in a labor/management committee in order to establish the hours and goals in accordance with the mission statement of the Police Department and the concept of community oriented policing.

⁴By letter dated October 12, 1992, the Employer objected to the Union's amended final offer as untimely. I received the Union's response to the Employer's objection on November 2, 1992. On November 3, 1992, I overruled the Employer's objection and declared the hearing closed as of November 2, 1992.

⁵Except for minor editing changes, I have quoted the final offers proposed by the parties.

Union

A. City could order employees on 6-2 shift flex hours one time each month with 24 hours' prior notice.

B. The adjustable work schedule would apply to investigations, community service and NABS personnel, beginning January 1, 1993, and would be paid as follows: (1) The City could request personnel in these units to adjust their work schedules up to four times per month; (2) each employee would be allowed to flex his hours up to four times per month upon the same conditions and restrictions as the City imposes. The employee's flex time shall be allowed for personal reasons. Each party will give the other 24 hours' notice. Employees whose hours are flexed for whatever reason to any shift that pays a shift differential shall be paid accordingly.

D. No-Pyramiding Clause

Article XVII, Section A(5) of the Agreement provides:

Compensatory time shall not be turned in immediately prior to a court appearance for the purpose of obtaining additional compensatory time.

Employer

The Employer has proposed to amend this clause to read as follows:

Officers shall not receive pay for more than one activity at the same time. Further, an officer shall not be eligible for more than one minimum guarantee, as provided for in this section, within the same time period covered by the initial minimum guarantee. Compensatory time shall not be turned in immediately prior to a court appearance for the purpose of obtaining additional compensatory time.

(Pursuant to the Fair Labor Standards Act (29 U.S.C. §207(o)(3)(A)), the City will immediately begin enforcing a 480 hour (320 actual hours) maximum for compensatory time.)

Union

The Union proposed no change in Article XVII, Section A(5).

E. Health InsuranceEmployer

Employees will contribute 1% of base annual salary (payable bi-weekly) for family coverage, effective May 1, 1992 or 0.8% of base annual salary (payable bi-weekly) for single coverage, effective May 1, 1992.

Reduce 90/10% co-payment up to \$5,000 to 80/20% co-payment up to \$5,000. (Thus, maximum amount payable for insurance (exclusive of "premium" payment) would be \$1,000 + applicable deductible, per person). City will raise lifetime maximum coverage to \$1,000,000 and provide a Section 125 plan no later than April 1993.

Union

Employees will pay \$30 per month employee contribution for family coverage; \$15 per month for single employee coverage. Coinsurance will remain 90/10% up to \$5,000; City shall provide a Section 125 plan. Employees participating in HMO shall not be charged any additional premium.

F. Paid Leave

Employer

Funeral Leave: As cause for leave, add death of grandparents; stepchildren who live at home; current stepparents. Sick Leave: As cause for leave, add stepchildren who live at home.

Union

Funeral and Sickness Leave: As cause for leave, add grandparents; stepchildren who live at home; stepparents.

G. Spanish Interpreters

Employer

Starting January 1, 1993, City will adopt a program along the lines of PA86-1427. Officers who qualify would receive \$25 per month stipend (not pension eligible; not used in computing overtime benefits or health insurance costs). Officers who receive such stipend would be required to use skills whenever requested. An annual skills test would be given to an officer who desires to qualify.⁶ The test could be given by an independent

⁶At the hearing, counsel for the Employer amended its proposal by "indicat[ing] that part of the City's proposal was that there would be an annual test for certification purposes" (Tr. 347).

third party and the test would encompass oral interpretation skills as opposed to formal written type of skills. This test will be given annually.

Union

The Employer will pay Spanish speaking employees to interpret. Officers will qualify by oral examination to be given by qualified person at Waubonsie Junior College. Qualifying officers shall receive \$25 per month first year, \$50 per month second year, and \$75 per month in succeeding years. Such pay would not be added to the base salary of each officer.

H. Overtime Pay

Article IV, Section D of the Agreement provides in relevant part that “[t]he overtime rate shall be 1¹/₂ times the employee’s hourly rate of pay. The regular straight-time rate of pay shall be computed by dividing the employee’s annual salary by 2167 hours, which includes 87 straight time hours per year reporting time.”

Union

The Union proposed that the overtime rate shall be one and one-half times the employee’s hourly rate of pay. The regular straight time hourly rate of pay shall be computed by dividing the employee’s annual salary by 2,080 hours.

Employer

The Employer proposed no change in Article IV(D).

III. Applicable Standards under the Illinois Public Labor Relations Act

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.

- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The critical factors in economic interest arbitration are set out in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions.⁷ The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of primary significance.⁸

⁷Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," *Labor and Employment Arbitration*, eds. Tim Bornstein & Ann Gosline (New York: Matthew Bender & Co., Inc., 1990), V. III, Ch. 63, §63.03[2], at 7.

⁸The Employer has not claimed that it is unable to pay the proposed increases. As noted by arbitrator Edward Krinsky:

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

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

IV. Summary of Relevant Evidence on Comparability and Cost of Living

A. Comparability

1. External Comparability

The Employer suggested that Decatur, Elgin, Evanston, Joliet, Naperville, Peoria, Springfield, Rockford and Waukegan are comparable to Aurora. The Union agrees that Elgin and Joliet are comparable, and suggests, in addition, that Maywood and St. Charles are comparable.

The Employer offered the following data with respect to Aurora and the cities it considers comparable to Aurora (Emp. 36):

Jurisdiction	Number of Police Officers	Population 1990 Census	Equalized Assessed Valuation	Sales Tax Revenue
Aurora	154: 1991 166: 1992	98,581	\$ 836,386,716	\$ 9,281,450
Decatur	120	83,885	457,218,905	7,315,842
Elgin	95	77,010	591,754,604	5,710,461
Evanston	121	73,233	861,755,511	4,595,170
Joliet	142	76,836	481,882,433	8,601,809
Naperville	94	85,351	1,706,077,003	10,132,223
Peoria	144	113,504	638,219,894	12,736,091
Rockford	163	139,426	957,358,800	13,807,018
Springfield	157	105,227	827,363,062	13,478,252
Waukegan	86	69,400	523,554,140	6,038,011

The Union offered no demographic data on Maywood and St. Charles, suggesting only that these cities are comparable to Aurora because they are in the same county or judicial district as Aurora, have a population "pretty close" to Aurora's population and a "similar" crime rate (Biles 132).

Although the standard of comparability has been criticized,⁹ comparability "is generally regarded as the predominant criterion for determining wages in public sector

⁹As attorneys Richard W. Laner and Julia W. Manning pointed out, "[t]he heavy reliance placed upon the comparability factor has been criticized by both unions and employers. Labor organizations complain that use of this standard has a conservative effect by encouraging the rejection of new and innovative language.... Employer critics of the comparability criterion suggest that it has led to a 'domino effect' of victories for unions." Laner & Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 Chicago-Kent L.Rev. 839, 858 (1984).

interest arbitration.”¹⁰ While it is suggested that “[t]he arbitrator is required to make qualitative decisions about work equivalency[,] an inherently subjective process,” certain standards have been developed to determine comparability:¹¹

1. nearby communities
2. similar population size
3. past practice
4. parity relationships (e.g., police and firefighters)
5. extent of fire or crime problem
6. extent of recruitment and retention problem
7. comparable ability to pay, state equalized value, taxes levied
8. distinctive characteristics of the locality
9. comparable duties of the referenced group of employees
10. the peculiarities of the particular trade or profession, specifically the hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills.

Although the Employer did not submit evidence with respect to each of these factors, the factors of proximity and population favor the Employer’s suggested comparisons.¹² While it may be argued that Naperville, a rapidly growing middle-class community, and Evanston, a college town contiguous to Chicago, are not as comparable to Aurora as the other listed communities, no evidence was offered to refute the Employer’s position. Indeed, the Union offered no evidence either to support its position that St. Charles and Maywood are comparable to Aurora or to refute the Employer’s position that

¹⁰Anderson & Krause, *supra* n. 7, at p. 7.

¹¹*Ibid.*, at pp. 7-8.

¹²The Employer quoted my decision in *Village of Lombard & Local 3009, IAFF, ISLRB S-MA-87-73* (Berman 1988), at page 13, for this proposition: “Lombard is located in a major metropolitan area. It is obviously comparable to other metropolitan-area towns with a similar population, similar number of firefighters and fire department employees and similar financial resources. Immediate geographic proximity...is an important, but not an overriding, factor.”

Decatur, Evanston, Naperville and Rockford are comparable to Aurora. As the Union did not produce even the most basic evidence in support of its position, such as the population of St. Charles and Maywood, I have no choice but to conclude that the jurisdictions suggested by the Employer are comparable to Aurora and that St. Charles and Maywood are not comparable.

2. Internal Comparability

The Employer maintains that "internal comparability is the most important factor to be taken into consideration" (Emp. Brief, 14), and suggests that its agreements with the International Association of Fire Fighters (Emp. 19) and AFSCME covering a unit of "professional, technical and clerical employees" (Emp. 20) are comparable to the bargaining unit under consideration. The Union takes no position with respect to internal comparability.

Internal comparability or the comparison between public employees in the same governmental unit is generally considered a significant factor in interest arbitration, although it must be noted that Section 14(h) of the Act, unlike interest-arbitration legislation in many states, does not explicitly include this factor. Nevertheless, parity is often drawn between police officers, fire fighters and other public employees in the same jurisdiction, and I shall consider the factor of "internal comparability."

B. Cost of Living

From January 1991 through December 1991, the "all items" CPI-U rose 2.8% in the "Chicago, Gary, Lake County, IL-IN-WI," and in the "North Central Region" (Emp. 30). From June 1991 through May 1992, the "all items" CPI-U rose 2.8% in "Chicago, Gary, Lake County, IL-IN-WI," 2.6% in the "North Central Region," and 3.1% in the "United States City Average" (Emp. 29).

V. Discussion and Findings

The parties agreed that the Union would assume the "burden of proof" with respect to its proposals on sickness leave, Spanish interpreters and overtime based on

2080 hours; and the Employer would assume the “burden of proof” with respect to its proposals on adjustable work schedules, no pyramiding of extra-duty pay and health insurance. Each party assumed the burden of supporting its own wage proposal.

A. Wage Proposals

The Union’s amended proposal narrowed the gap between the initial proposals. In its amended proposal, the Union proposed a 6% wage increase January 1, 1992 and January 1, 1993. The Employer proposed a 5¹/₂% wage increase January 1, 1992 and January 1, 1993.

By withdrawing its demand for a 2.5% signing bonus and requesting a 6% increase in each of two years, the Union narrowed the gap between its proposal and the Employer’s proposal. Compounded, the Union proposal would result in a 12.36% two-year increase and the Employer proposal in an 11.3025% two-year increase—a difference of 1.0575%. While this difference is small, the evidence submitted to me does not support the Union’s position. A two-year 5.5% increase comports most closely with the data on comparable jurisdictions and employees and recent cost-of-living increases.

1. External Comparability Favors the Employer's Proposal

The following chart, based on Employer exhibits 38 and 39, compares the salaries of police officers in comparable jurisdictions:

Jurisdiction	Patrolman 1991	Patrolman 1992	# of Years To Reach Top	% Increase Top Patrolman Starting Patrolman
Aurora	Starting 29,471 Top- 37,251	Starting 31,377 1992 39,300	5	Emp: 5.5% 92 & 93 Un: 6% 92 & 93 All Patrolmen
Decatur	Starting 24,665 Top 29,980	Starting 26,168 Top 33,053	5	1992: 10.5% Top 6% Starting
Elgin	Starting 29,388 Top 40,440	Starting 31,008 Top 42,660	4.5	1992: 5.5%
Evanston	Starting 30,864 Top 39,528	Starting 32,652 Top 41,820	10	1992: 5.75%
Joliet	Starting 24,908 Top 31,786	Starting 26,153 Top 33,374	3	1992: 5%
Naperville	Starting 30,156 Top 38,157	Starting NA Top NA	7	NA
Peoria	Starting 24,376 Top 38,018	Starting 25,473 Top 39,729	9	1992: 4.5%
Rockford	Starting 23,189 Top 33,704	Starting 24,117 Top 35,052	10	1992: 4%
Springfield	Starting 24,903 Top 32,873	Starting 25,651 Top 34,201	3	1992: 4.25%
Waukegan	Starting 26,500 Top 39,201	Starting 27,000 1992 41,161	15	1992: 5%
All City Average excluding Aurora	Starting 26,549 Top 35,965	Starting 27,278 Top 37,631	7.4	Inc. Decatur Top: 5.56% Not Inc. Decatur Top: 4.86%

2. Internal Comparability Favors the Employer's Proposal

Pursuant to an agreement between the Employer and Management and Supervisory Personnel (Un. 3), Police Sergeants received a 6.5% wage increase in October 1991, effective for 18 months. Lieutenants and Captains received a 5% wage increase for the same period. Pursuant to an agreement with the International Association of Fire Fighters, the Employer agreed to provide a 5.5% wage increase to fire fighters January 1, 1992,

January 1, 1993 and January 1, 1994 (Emp. 19). Pursuant to an agreement with AFSCME, other City professional, clerical and technical employees, received a 5% wage increase, effective January 4, 1992 and January 4, 1993 (Emp. 20).

Bargaining units differ. The responsibilities and working conditions of police officers are different from those of fire fighters and markedly different from those of professional, clerical and technical employees. Nevertheless, internal comparability is a factor that must be considered, especially since the Union produced no countervailing or rebuttal evidence. Internal comparability favors the Employer's proposal.

3. The Employer's Proposal Exceeds Recent Cost-of-Living Increases

As noted, recent cost-of-living of increases, as measured by the Bureau of Labor Statistics, have ranged between 2.6% and 3.1%. While current low levels of inflation may not continue indefinitely, I must predicate my decision on historical considerations, not on speculation about economic conditions in the future. The Employer's proposal "more nearly complies" with the "average consumer prices for goods and services, commonly known as the cost of living."

4. The Employer's Ability to Pay Is Immaterial

Suggesting that the Employer has not adequately budgeted for additional overtime expenses arising from the fact that Aurora is growing rapidly and that "riverboat gambling is coming," the Union argues that "employees should not have to suffer because the City is irresponsible in setting its budget (Un. Brief, 7). For that reason, the Union claims, "[t]he City has not offered any evidence to prove its inability to pay. It merely has offered its 'Budget!' Because the City fails to handle budgetary responsibility is not proof of inability to pay" (Un. Brief, 7).

The Employer did not claim that it did not "have the financial ability...to meet [the] costs" associated with the Union's salary demands. It is also well settled that "a demonstrated inability to pay is viewed as a limiting factor to support an award less gen-

erous than otherwise indicated by the comparability data.”¹³ In essence, as attorneys Laner and Manning aptly point out, the “inability to pay” is an “affirmative defense” against wage and benefit increases otherwise supported by other statutory criteria, primarily comparability and cost-of-living. It is, in effect, a “shield” against the “sword” of the other statutory criteria. As noted by arbitrators James Healy and Laurence Seibel in *State of Connecticut*, 77 LA 729, at 732 (1981):

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

In short, it is immaterial that the Employer might be able to pay higher salaries than those justified by the other statutory criteria.

5. Findings

The issue-by-issue arbitration required by the Illinois Public Labor Relations Act may separate seemingly related issues. In fact, all economic issues may be related; higher wages may result in reduced health benefits and fewer holidays and vacations. Nevertheless, on the basis of the evidence presented, and understanding the interrelationship of all economic issues, I have no choice but to adopt the Employer's wage proposal of a 5.5% increase effective January 1, 1992 and a 5.5% increase effective January 1, 1993. This increase exceeds recent cost-of-living increases and is consistent, indeed slightly higher, than increases granted to police officers in five of eight comparable jurisdictions for which information was available. An annual 5¹/₂% increase would also be consistent with increases granted to other employees of the Employer. With this increase, the

¹³Laner & Manning, *supra* n. 9, 859 (1984).

starting and top wages of patrolmen and patrolwomen in 1992 would remain substantially higher than the average starting and top wages of police officers in comparable communities, and place them above the median of other comparable communities.

B. Employer Proposals

1. Adjustable Work Schedules

(a) The Current Agreement

Article IV of the current Agreement, "Hours of Work," provides:

Section A. Regular Hours. The regular hours of work each day shall be consecutive, except for interruptions for lunch periods. Reference to consecutive hours of work in the balance of this Article shall be construed generally to include lunch periods.

Section B. Work Week. The work week shall constitute 40 hours. All time over 8 hours per day and 40 hours per week shall be overtime and paid at the rate of 1^{1/2} times the employee's hourly rate of pay, per Article IV, Section D, except reporting time as hereinafter described in Article IV, Section E.

The City will implement four permanent eight hour shifts on or before January 1, 1989, within the entire Police Department for sworn personnel. The entire shift plan will be based upon seniority.

It is further agreed that all persons covered by this Agreement shall have the right to exchange days off with another employee upon five days written notice to their immediate supervisors.

Section C. Days Off. Days off work shall be selected first by rank and then according to seniority for time of service within the rank and within all divisions and each shift within each division. (E.g., Patrolmen do not pick with Sergeants and Sergeants do not pick with Lieutenants.)

Section D. Overtime. All overtime work must be authorized by the Chief of Police or his designate. The overtime rate shall be 1^{1/2} times the employee's hourly rate of pay. The regular straight time hourly rate of pay shall be computed by dividing the employee's annual salary by 2167 hours, which includes 87 straight time hours per year reporting time.

Except when required for an employee to rectify his own error or omission, overtime pay shall commence to run immediately after the eight hour duty day, and shall be figured to the next nearest quarter hour, and paid at 1^{1/2} times the employee's hourly rate of pay, or by compensatory time off at the rate of 1^{1/2} hours of off duty time for each hour of overtime worked.

The Employer agrees to grant compensatory time off when request for same is made, in writing, 60 calendar days in advance of the date sought.

The Employer will grant any other request, providing such time request does not exceed the limitations of no more than four patrolmen off at one time as set forth in Article VII, Section D, and all requests for compensatory time off of over four hours in duration requires at least an eight hour notification to any supervisor within his/her assigned division prior to start of employee's shift.

Compensatory time may be taken in cash at the option of the Employee. Any application to take compensatory time as cash must be in writing and must be made by November 30th each year. Any compensatory time not taken in cash will carry over to the next calendar year.

In addition, the Shift Commander may, at his discretion, allow additional personnel time off for compensatory time less than eight hours.

Section E. Pay for Reporting Time. It is required of every employee covered by this Agreement that he or she report to duty 20 minutes before the start of his shift. This requirement is due to the law enforcement nature of police work, and applies not only to employees assigned to patrol duties but to all functions and divisions. The time is utilized for transfer and distribution of previous shift information, assignments and equipment, and also for training and in-service education.

Said reporting time has been included in the base pay at the regular straight-time hourly rate of all personnel covered by this Agreement. Payment of reporting time shall be included in each paycheck received by employees covered hereunder for the term of this Agreement.

Section F. Application. The parties have agreed to implement a permanent eight hour shift plan before January 1, 1989, which entire plan will be based upon seniority. The parties agree that one of the purposes of this Article is intended to define the work day, week and month, for the basis of calculation and payment of overtime.

The parties recognize the right of the Employer [to] assign personnel, set work schedules, and to promote the efficiency of municipal government, all within the context of the various terms of this agreement.

Section G. Off-Duty Contact. The City agrees to pay one-half hour at straight time when an officer is contacted off duty for information by a Sergeant, Lieutenant, Captain or the Chief, except if such call is to correct officer's own error.

(b) The Employer's Proposal

The Employer's final proposal of August 6, 1992 provides, with respect to "adjustable work schedules":

City proposal on adjustable work schedules would apply to investigations, community services and NABS personnel beginning January 1, 1993. City's requests to adjust will be dependent solely on operational needs and would be solely on a voluntary basis. Requests to adjust will be made no later than 24 hours prior to the time which is requested to be adjusted.

Details would be worked out in a labor/management committee in order to establish the hours and goals in accordance with the mission statement of the Police Department and the concept of community oriented policing.

Captain Michael Nila described this proposal as follows (Nila 152):

The City's proposal regarding adjustable work schedules would apply to the investigations, community services and the NABS personnel. It would begin January 1 of 1993. Under that plan, the City would be allowed to adjust an officer's work schedule solely on a voluntary basis or with the officer's approval, and that adjustment would have to be made with a minimum of 24 hours prior to the time requested to adjust.

(c) The Union's Proposal

The Union has proposed:

A. City could order employees on 6-2 shift flex hours one time each month with 24 hours prior notice.

B. The adjustable work schedule would apply to investigations, community service and NABS personnel beginning January 1, 1993, and would be as follows:

1. The City could request personnel in these units to adjust their work schedules up to four times per month.
2. Each employee would be allowed to flex his hours up to four times per month upon the same conditions and restrictions as the City imposes. The employee's flex time shall be allowed for personal reasons. Each party will give the other 24 hours' notice. Employees whose hours are flexed for whatever reason to any shift that pays a shift differential shall be paid accordingly.

(d) Summary of the Evidence and Arguments

(i) The Employer's Arguments

The Employer presented the following arguments and evidence in support of its proposal.

1. If adopted, its proposal would affect only 48 of the City's 166 police officers (Nila 152-53; Emp. 7).

2. The "City has encountered excessive amounts of overtime in the investigations and community services divisions," particularly "since permanent shifts began in 1989" (Emp. Brief, 5-6)." It must "achieve some flexibility to help control these rising costs" (Emp. Brief, 6).

3. From 1989, when permanent shifts were instituted, through 1991 overtime costs have gone up in the affected bureaus as follows (Emp. 4):

Bureau	1989	1990	% Change	1990	1991	% Change
Investigation	\$55,648	\$ 67,765	+ 17.9	\$ 67,765	\$116,669	+72.1
Patrol	99,072	147,785	+ 49.1	147,785	210,235	+42.3
Community	7,625	25,085	+229.0	25,085	36,000	+43.5
Adminis.	55,648	134,770	+142.2	134,770	147,441	+ 9.4

4. The Union errs in suggesting that Article IV(F) reserves “no flexibility to the City” and the Union’s proposal, which permits the Employer to adjust an employee’s hours up to four times a month, “could effectively nullify any potential earnings to the City in overtime costs which the City might garner through adjusting work schedules, due to the high probability of overtime costs the City would incur to replace the officers who adjusted on their own prerogative” (Emp. Brief, 6).

5. The Community Service Bureau, consisting of five police officers, is “responsible for all of the department’s community relations programs, the police school counselor programs [and] neighborhood watch programs” (Nila 155). Community Service Officers work a normal 40-hour week, 8:00 AM to 4:00 PM Monday through Friday (Nila 155). Captain Nila testified that the Employer’s “adjustable work schedule proposal” was needed in the Community Service Bureau because many community activities in which the Bureau is involved, such as “McGruff (‘take a bite out of crime’) appearances, building tours, neighborhood watch meetings, public safety or crime prevention presentations” occur outside of normal shift and work-week hours and entail overtime pay (Nila 156-58).

6. The Investigations Bureau officers also work a normal 40-hour week, Monday through Friday. Criminal investigations, which include interviews and searches pursuant to a search warrant, cannot always be scheduled between 8:00 AM and 4:00 PM, Monday through Friday (Nila 158).

7. NABS units are assigned to trailers placed in high crime areas in “an effort to increase police presence in these areas” (Nila 160). NABS units “are principally respon-

sible for implementing a community oriented philosophy of policing”—an “effort to try and join forces with the community so that we can increase our presence and increase the knowledge of the community as to what it is that we are trying to do in the police department. And it looks at solving these crimes as problems, not as specific incidents” (Nila 160-61). Flexible hours, Nila suggested, would allow “patrol officers to work the hours and the manner in which they see fit to solve the problems in their respective communities” (Nila 161-62).

(ii) The Union’s Arguments

The Union argued that (1) management was “untrustworthy” and would, therefore, unfairly administer the flex-time program and (2) flex-time would adversely affect officers’ physical and mental health.

1. The Union contended that the Employer’s “flex-time program” would be “unworkable’ because the Employees cannot trust management” (Un. Brief, 14). Police officer and Union President Wayne Biles testified that in the past management had maintained a “good/bad book” in which it recorded “certain things that a guy would do, if he was low in tickets or if he was involved in something, they would put that in the good/bad book” (Biles 111-12). According to Biles, comp time requests were granted or denied on the basis of a police officer’s record in the good/bad book (Biles 111-12). The good/bad book was eliminated in 1988 (Biles 127; Nila 163). Captain Nila testified that the “good/bad book” or an informal, “non-permanent record of good things...the officers did” was instituted at the recommendation of the Police Training Institute at the University of Illinois (Nila 164). This book was designed, Captain Nila testified, as a log of “officers doing things right” (Nila 164). As a shift commander for five and one-half years, Nila was not aware of the book having been used for other than its “intended purpose” (Nila 164).

2. Police officer Steven Bonnie, a member of the Union’s board of directors, testified that the Union has “fought long and hard to obtain permanent shifts” and for rea-

sons of physical and emotional health does not “want to go back to the old ways” (Bonnie 52). Bonnie cited “switching shifts” as partially responsible for domestic stress and the “incidence of divorce...in the ranks of law enforcement people” (Bonnie 53; 75). Officer Bonnie also stated that morale has improved and the amount of sick time has gone down since permanent shifts were instituted in 1988 (Bonnie 53).

(e) Findings

The Employer presented substantial evidence in support of its proposal. The Union’s claims were largely unsupported and scarcely material, if material at all. With respect to the claim that rotating shifts were unhealthy, the Employer’s records showed that the number of sick days increased significantly after permanent shifts were instituted in 1989 (App. A to Emp. Brief). From 1985 through 1988, sick days on rotating shifts went up from 0.3 to 0.49 average sick days per month per patrolman. The following chart shows the number of sick days since permanent shifts were instituted in 1989:

	Average Sick Days Per Patrol Officer Per Month			
	1989	1990	1991	1992
7-3 Shift	0.67	0.72	1.27	1.54
3-11 Shift	0.32	0.45	1.28	0.74
11-7 Shift	0.42	0.38	-----	0.58

I am in general agreement with the Union that fixed shifts are emotionally and psychologically easier than rotating shifts. Nevertheless, I am bound by the record produced in this case. The union’s argument that rotating shifts adversely affected employee well-being was based on anecdotal evidence, and was refuted by evidence concerning the actual sick days used by police officers.

Finally, contrary to the Union’s contention, the evidence did not demonstrate that police officers could not trust management to administer a flex program properly because of management’s supposed misuse of the good/bad book four or more years ago. In essence, the Union’s argument was rhetorical. Not only was its complaint that the

Employer played favorites with the “good/bad book” ill-founded, this complaint would be more properly expressed as a grievance or an unfair labor practice.

In sum, the Employer’s modest proposal on adjustable hours, which affects a minority of employees in four departments and which seems carefully calculated to deal with specific problems, was supported by reasonable evidence and argument. From 1989 through 1991 overtime costs in the four bureaus under consideration more than doubled. Management has a legitimate interest in containing rapidly escalating overtime costs.

Most of us would prefer regular, predictable hours of work; but in the absence of evidence that health and well-being were jeopardized by rotating shifts, I cannot disregard or overrule the substantial evidence submitted by the Employer. The Employer’s proposal to control overtime costs is neither burdensome nor arbitrary. I adopt it.

2. Extra Duty—No Pyramiding Proposal

(a) The Current Agreement

Article XVII, Section A of the current Agreement provides:

Extra Duty

Section A. Court Time and Extra Duty. Any employee called to work outside his regularly scheduled shift, shall be paid a minimum of three hours at a rate of 1¹/₂ times the employee’s base hourly salary. Any employee called to testify before the following courts or bodies shall be paid at the rate set opposite the designation of such court or body.

1. Circuit Court and Coroner’s Inquest in Geneva and Wheaton

Minimum four hours pay at rate of 1¹/₂ times employee’s base hourly salary; (employee shall be paid for actual time spent over four hours at time and one-half of regular hourly rate of pay.

2. Coroner’s Inquest in Aurora; Circuit Court in Aurora

Pretrial conferences in Aurora with City Attorney or State’s Attorney will be paid at the minimum of three hours plus actual time spent after three hours at 1¹/₂ times the employee’s regular hourly rate of pay.

3. Arbitration Hearing in Aurora

Paid at the minimum of two hours at the employee's regular rate of pay provided the City called them to testify. The City will not pay time for the officer charged.

In computing additional pay, all time shall be rounded off to the nearest quarter hour.

4. However, if an officer is called to duty 1¹/₂ hours before his regular shift, he shall be paid according to his regular overtime rate.

5. No Pyramiding

Compensatory time shall not be turned in immediately prior to a court appearance for the purpose of obtaining additional compensatory time.

(b) The Employer's Proposal

The Employer has proposed to substitute the following for Article XVII(A)(5):

Officers shall not receive pay for more than one activity at the same time. Further, an officer shall not be eligible for more than one minimum guarantee, as provided for in this section, within the same time period covered by the initial minimum guarantee. Compensatory time shall not be turned in immediately prior to a court appearance for the purpose of obtaining additional compensatory time.

The Employer argued that employees have abused the system of extra-duty pay (Emp. Brief, 11). In one of the examples cited by the Employer, a police officer was paid four hours for a court appearance and returning to the police station from the court to pick up evidence that had been forgotten (Emp. 9). He filed a grievance claiming that, although he had actually worked only 1¹/₂ hours, he was entitled to eight hours' pay—four hours for appearing in court and four hours for retrieving evidence needed in court (Emp. 9). On another occasion, an officer required to testify in the DuPage County Circuit Court at 8:30 AM and in the Kane County Circuit Court an hour and one-half later turned in two overtime chits for a total of eight hours pay at time and one-half (Nila, 173-4; Emp. 10).

The Employer also noted that all the comparable jurisdictions except Joliet and Springfield have a "no pyramiding" clause or policy similar to the clause proposed by the

Employer (Emp. Brief, 12). Not denying, as the Union suggested, that the instances of "abuse" are "minor," the Employer nevertheless maintained that the "pattern of abuse is escalating and needs to be stopped" (Emp. Brief, 12).

(c) The Union's Position

The Union argued that "the City has failed to sustain its burden. Five or six cases of attempted 'double dipping' (and only one accepted by the Union to file a grievance) shows the present language is working quite well" (Un. Brief, 15).

(d) Finding

It is immaterial that "double dipping" may not be a major problem. The point is, as most of the comparable jurisdictions have recognized, it's wrong. It's wrong to have to pay double or triple overtime for the same hours worked. This loophole may not have been anticipated when the extra-duty language was agreed to in 1990; but it is now time to close the loophole. I adopt the Employer's proposal on pyramiding.

3. Health Insurance

(a) The Current Agreement

Article XII, Insurance, provides:

Section A. Group Life and Hospitalization Insurance. The Employer presently has in force a complete group life and hospitalization insurance program, as per the parties' Labor Agreement which was executed November 20, 1979, covering employees and their eligible dependents which provides benefits that are effective 90 days after commencement of full-time employment. With respect thereto, the Employer agrees to continue to pay the full and total premiums thereon without any contribution from the employee. Further, such insurance shall be reviewed each year with a view toward improving the coverage, but in no event shall the benefits be lowered or reduced....

Provided, however, anyone who was hired on or after May 1, 1986 will be required to pay \$15 per month toward the premium for single coverage and \$15 per month toward the premium [for] dependent coverage at a cost not to exceed \$30 per month for the term of this Agreement.

For those employees who have elected to participate in a health maintenance organization in lieu of the aforesaid coverage, the Employer agrees to pay an equivalent amount on behalf of such employees toward the premiums of said organization. Employees having elected such participation shall be bound until the next annual de-enrollment period.

(b) The Employer's Proposal

Currently, employees hired before May 1, 1986 do not pay any portion of health insurance premiums. The Employer has proposed co-payment premiums and a reduction in the Employer's reimbursement co-payments, as follows:

1. Effective May 1, 1992 Employees would pay 1% of base annual salary, payable bi-weekly, for family coverage and 0.8% of base annual salary, payable bi-weekly, for single coverage.
2. The current 90/10% co-payment up to \$5,000 would be reduced to an 80/20% co-payment up to \$5,000.

The plan proposed by the Employer would add the following benefits (Emp. 33):

1. Mammogram after age 35.
2. Routine gynecological exam, including Pap-smear test.
3. Voluntary second surgery opinion.
4. Outpatient hospital/surgical center coverage.
5. Immunizations up to age 7.
6. Nursery care for newborn.
7. Well baby care up to age 2.
8. Outpatient psychiatric care up to \$5,000 per calendar year.
9. Maximum lifetime for mental and nervous: \$50,000.
10. Maximum lifetime for health: \$1,000,000.

(c) The Union's Counter-Proposal

The Union's final offer contains a counter-proposal on insurance (Jt. 3A):

Article XII—Insurance—Section A. Group Life and Hospitalization Insurance

APPO proposes to pay \$30.00 per month for family coverage; \$15.00 per month for single employee coverage. Further, that the coinsurance remained at 90/10 up to \$5,000.00 and that the City would provide a Section 125 plan. Also, that employees paying into HMO would not be charged any additional premium.

(d) The Employer's Position

The Employer made the following points:

1. The City's overall health insurance costs have risen on an average of more than 17% annually since 1988 and the health insurance costs in the Police Department have risen on an average of more than 14% annually since 1988 (Emp. Brief, 13).

2. IAFF and AFSCME have accepted the changes now proposed by the Employer and these changes have also been implemented for the City's non-union employees (Emp.

Brief, 14). The City “did not offer more in wages that it has herein to ‘buy’ these changes” (Emp. Brief, 15).

3. Only Decatur and Peoria still provide a 90/10% copayment; the “vast majority of public—as well as private—employers...have a copayment percentage of 80/20 (Emp. Brief, 15). “Six of the ten comparables provide some form of copayment” (Emp. Brief, 15).

4. On the basis of the City’s proposed wage increases for 1992, single coverage for an average police officer would amount to \$26.20 per month for single coverage and \$32.75 for family coverage (Emp. Brief, 16). This amounts to a 0.9% increase in family coverage for officers hired after 1986 (Emp. Brief, 16).

5. The Employer has offered additional benefits that “mitigate the additional cost to the employee of the City proposal” (Emp. Brief, 16).

6. The Union proposal “adds into the premium payment system 63 people who are enrolled in the City’s self-insured program who were employed prior to May 1, 1986 and are not now paying a premium” but it “removes 34 employees enrolled in an HMO program who currently pay a premium” (Emp. Brief, 17).

The Employer also disputed the Union’s contention that the third sentence of Article XII, Section A “precludes the city from increasing the share of the cost of such insurance to the employee” (Emp. Brief, 18).¹⁴ The Employer argued that Section A “does not preclude our current proposal on increasing the employee’s share of the cost of health insurance. Especially, where, as here, the City is increasing the actual coverage.” (Emp. Brief, 18.) In 1986, the Union did not suggest that Section A precluded introduction of \$15 and \$30 co-payments (Emp. Brief, 18).

¹⁴As noted, this sentence provides that “...such insurance shall be reviewed each year with a view toward improving the coverage but in no event shall the benefits be lowered or reduced....”

(e) The Union's Position

The Union argued that the City "wants a 1% salary contribution and it wants to reduce the coverage" (Un. Brief, 13). The Union suggested that the Employer failed to meet its burden of proof because the figures it presented "did not accurately portray the cost of patrol officers alone, and the figures were, therefore, 'tainted'" (Un. Brief, 13).

The Union pointed out that "[t]he City proposes that employees pay 10% (sic) of their annual salary for health insurance premiums," thereby "reduc[ing] the offered pay increase from 5.5% to 4.5%" (Un. Brief, 12). The Union also argued that Section A of Article XII of the Agreement forecloses a 1% salary contribution (Un. Brief, 13).

(f) Findings

A review of insurance costs in comparable communities may be instructive (Emp. 22-28):

Jurisdiction	Deductible Single/Fam	% of Co-payment	Lifetime Max	Employee yrly out-of-pocket cost Single/Fam	Co-payment of Premium By Employee	Average Annual Increase By Percent
*Aurora	100/300	80/20	\$1 million	1100/3300	.8-.1% salary	17.35
Decatur	100/300	90/10	Unknown	1000/3000	None	NA
Elgin	100/100	80/20	\$250,000	‡400/400	‡None	20
Evanston	HMO's only	HMO	Unlimited	HMO's only	HMO's only	30/12 in '91
Joliet	150/350	80/20	Unlimited	1500 per yr	None	NA
Naperville	100/300	80/20	\$1 million	1100/3300	None	5.16
Peoria	250/500	90/10	Unknown	*475/850	None-single	NA
Rockford	125/375	80/20	\$1 million	725/2175	\$15-\$25/mo.	20
Springfield	100/300	80/20	\$1 million	1100/3300	\$200-800/yr.	NA
Waukegan	200/500	80/20	\$1 million	800/3300	\$32/\$86	25/91; 5/92

*Per Employer's Proposal. ‡No Family Limit. †Cost containment implemented only if coverage remains the same. •\$475-600/single; \$600-850/family.

Section A of Article XII does not preclude additional employee contributions. First, as the Employer pointed out, in 1986 the parties, despite Section A, agreed to require employee contributions (Emp. Brief, 18). Having agreed that Section A did not preclude employee contributions, one of the parties to that agreement cannot reasonably contend that Section A precludes raising contributions. Second, the Employer has not proposed to "reduce benefits" but to "increase employee contributions."

External comparability data supports the Employer's proposal for an 80/20% benefit copayment. Standing alone, the external comparability data neither supports nor refutes the Employer's proposal to increase employees' premium costs. Police officers in at least four of the comparable communities pay no premiums. I have no authority to split the proposal; I must adopt it or reject it in its entirety. In its entirety, the proposal is designed to contain spiraling, almost out-of-control increases in the cost of health insurance. On this basis, and in light of the factor of internal comparability, the Employer's entire proposal is justified, particularly since the Union presented no rebuttal evidence and argued only that Article XII(A) precluded the proposed premium copayment, that the Employer intended to reduce coverage and that the Employer's cost figures were inaccurate.

The Union's arguments are tenuous. As noted, the argument regarding Section A is without merit. The Employer is increasing, not reducing, coverage; and the Employer's cost figures were broken down into categories sufficiently discrete to assess the impact of the proposed increase on police officers.

I realize that the Employer's proposal has the effect of reducing its wage offer. Nevertheless, on the basis of the evidence presented at this hearing, I have no choice but to adopt the Employer's proposal.

C. Union Proposals

1. Funeral and Sickness Leave

The Union proposed to add grandparents, stepchildren who live in the employee's home and stepparents to the three-day sickness-and-death paid-leave provisions of Article X. The Employer proposed to provide three days' paid leave for the death of an employee's grandparents and stepparents and for the death or sickness of stepchildren who live at home. Thus, both parties agreed that employees should be granted leave for the sickness of stepchildren who live at home; and for the death of grandparents, step-

parents and stepchildren who live at home. The Employer did not agree that employees should be granted leave for the sickness of grandparents and stepparents.

The Union's argument may be quoted in its entirety: "The Union argues that the emergency of serious illness for grandparents, stepchildren residing with employees, and stepparents is no different than the emergency caused by death" (Un. Brief, 3). Provisions contained in the Elgin and Decatur contracts are relevant. The Elgin-Metropolitan Police Association agreement (Jt. 8) provides leave for the illness or death of "wife, husband, children, mother, father, brother, sister, mother-in-law or father-in-law." The Decatur-Decatur Police Benevolent and Protective Association Labor Committee agreement (Jt. 10) provides leave for a "serious or unexpected emergency" to the employee's spouse, children, sons- and daughters-in-law, parents, parents-in-law, brothers and sisters, brothers- and sisters-in-law, grandchildren, grandparents and grandparents-in-law.

Article X, Section A(3) of the current Agreement provides that "...the employee may be granted any additional time with pay for emergency purposes in connection with death upon application to and approval of the Chief of the Department."

As the Employer argued, quoting professors Elkouri and Elkouri, "[i]t is an elemental rule of arbitration that: 'The burden is upon the parties to submit evidence which is both factual and material, for arbitrators can be expected to be unwilling to enter into the field of speculation.'" Elkouri and Elkouri, How Arbitration Works, 4th Ed., p. 806" (Emp. Brief, 18). In this case, moreover, the Union accepted the burden of presenting evidence in support of this proposal.

The Union's proposal is appealing, but little evidence was offered in support of it. No cost analysis and little in the way of comparative data was provided. No evidence was produced to establish how often and for how long family members in the Union's proposed categories had been ill, and whether any employee had requested and received paid leave on such occasions. In short, although the Union proposal may have sentimental appeal, no significant *evidence meeting the requirements of Section 14(h) of the Act* was

produced. The two contract clauses with more liberal leave policies (clauses not brought to my attention by way of argument) do not justify the changes sought by the Union. With some reluctance, I must therefore deny the Union's proposal and adopt the Employer's proposal.

2. Spanish Interpreters

The Union proposes that officers who qualify under the law to act as Spanish interpreters receive an additional stipend of \$25 per month the first year of the contract, \$50 a month the second year and \$75 a month the third year. The Employer agrees to a \$25-per-month stipend, starting January 1, 1993. Under the Employer's proposal, the additional \$25-per-month would not be considered part of a police officer's base salary upon which pension and insurance contributions would be paid or overtime pay calculated.

The Union presented no evidence and made no argument in support of its proposal. The Employer's position may be summarized: 1. Retroactivity is not required because the certification of Spanish interpreters is required by law and the contract under review will expire December 31, 1993; 2. PA86-1427, the mutually accepted model for this clause, does not provide for folding this "specialty pay" into base pay, and the Union has not demonstrated a need to do so (Emp. Brief, 19-20).¹⁵

In essence, this proposal was not supported by evidence or argument. I was offered no reason, within the constraints of Section 14(h), to adopt this proposal. The Employer at least made an argument and gave me some basis, however tenuous, to adopt its proposal. By agreement of the parties, the Union had the burden of proof. The Union did not meet its burden. I deny its proposal and adopt the Employer's proposal.

¹⁵In its amended proposal, the Union proposed that specialty pay not be added to base salary.

3. Overtime

(a) The Current Agreement

Article IV, Section D of the Agreement provides in relevant part that “[t]he overtime rate shall be 1¹/₂ times the employee’s hourly rate of pay. The regular straight time rate of pay shall be computed by dividing the employee’s annual salary by 2167 hours, which includes 87 straight time hours per year reporting time.”

(b) The Proposals

The Union has proposed that the overtime rate shall be “1¹/₂ times the Employee’s hourly rate of pay. The regular straight time hourly rate of pay shall be computed by dividing the employee’s annual salary by 2080 hours.” The Employer has proposed that Article IV(D) remain unchanged.

(c) The Union’s Position

The Union makes several arguments in support of its proposal:

1. Courts have held that the Fair Labor Standards Act (FLSA) should be “liberally construed” to effect its purpose of wage equalization among the states, the equalization of overtime among employees of a particular employer, and the establishment of a wage floor (Un. Brief, 9). In addition, the FLSA imposes “absolute obligations upon employers to pay overtime where it is required by the Act” (Un. Brief, 9).

2. The amount of “excessive overtime” alleged was not, as claimed by the Employer, the result of switching from rotating to permanent shifts. The parties “merely agreed to adopt the rotating shift schedule as it was, making those shifts permanent. Manpower requirements did not change....” (Un. Brief, 10.) As “the City would be paying the same amount of overtime if the shifts were rotating,” it is clear that “the work load has increased” (Un. Brief, 10). “It is not the responsibility of the individual police officers to assume the burden of...increased cost,” caused by increased “calls for police service,” by “‘volunteering’ to adjust their hours and disrupt the stability of their families” (Un. Brief, 10)

3. The City's "refusal to pay overtime based on 2080 hours, and the City's request for adjustable work hours" are both "contrary to public policy, as initially set forth by Congress in adopting the FLSA" (Un. Brief, 10). "In 1985 the parties agreed to roll the reporting time into the base pay, and compute overtime on the basis of 2167 hours rather than 2080 hours. This provision turns out to be contrary to the provisions of the FLSA...." (Un. Brief, 11.)

4. "Public employees initially were the exception to the FLSA. The FLSA has been amended many times since 1938, but police officers remain one of the 'exceptions' to the rule. They are forbidden to strike like other employees. The Employer knows that police officers have lost their leverage." (Un. Brief, 9).

5. Evanston, Waukegan, Naperville, Peoria, Rockford, Joliet and Decatur pay overtime after 40 hours per week or 2080 hours per year; Elgin pays overtime after 41¹/₄ hours per week or 2145 hours per year (Un. Brief, 12).

(d) The Employer's Position

The Employer contends that the Union's proposal is without merit and should not be adopted for the following reasons:

1. In July 1985, 87 hours of reporting time were added to base annual hours (BAH), increasing BAH from 2080 to 2167. The amount of hours on which pension was paid also went from 2080 hours to 2167 hours (Emp. Brief, 20). In the same negotiations, "Union members also received a 7.05% wage increase (over 2 years) while the CPI...was 3.81% and 1.56% respectively" (Emp. Brief, 20).

2. The FLSA does not require 2080 hours for overtime computation (Emp. Brief, 21). The Police Department of the City of Aurora is exempted from the overtime provisions of the FLSA (Emp. Brief, 21).¹⁶

¹⁶29 C.F.R. §553.230 provides in relevant part:

(b) For those employees engaged in law enforcement activities...who have a work period of at least 7 but less than 28 consecutive days, no overtime compensation is required under section 7(k) until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

3. "Adding a potential 87 hours per officer for overtime purposes...would catastrophically impact the entire departmental budget" (Emp. Brief, 22).

4. Internal comparability is "vitaly important." The overtime computation hours of Sergeants in the Aurora Police Department is also 2167 hours per year. (Emp. Brief, 22.)

5. The "Union failed to prove a need for the change in hours from 2167 down to 2080" (Emp. Brief, 23).

6. The FLSA does not mandate overtime pay after 2080 hours per year for employees in this bargaining unit.

(e) Findings

The majority of comparable jurisdictions pay overtime to police officers after 2080 hours. Unlike Aurora, however, these jurisdictions have not included 87 hours of reporting pay in police officers' base annual hours. Since unlike things are being compared, Aurora is not comparable to any other jurisdiction with respect to overtime pay.

In 1984, base annual hours (BAH) were 2080. In 1985, police officers received a 7.05% wage increase, and 87 hours of reporting time were rolled into BAH, raising BAH from 2080 to 2167 (Emp. 34). Thus, in exchange for an agreement to pay pension on 87 hours of reporting time, the Union agreed that overtime would not be paid on these hours. If I should now require overtime to be paid on these hours, I would unravel this bargain. I would improperly eliminate the consideration received by the Employer in exchange for its promise to pay pension benefits on reporting-time hours. As the comparative data did

(c) The ratio of 212 hours to 28 days for employees engaged in fire protection activities is 7.57 hours per day (rounded) and the ratio of 171 hours to 28 days for employees engaged in law enforcement activities is 6.11 hours per day (rounded). Accordingly overtime compensation (in premium pay or compensatory time) is required for all hours worked in excess of the following maximum hours standards (rounded to the nearest whole hour):

<u>Work Period (days)</u>	<u>Maximum Hours Standards</u>	
	<u>Law Enforcement</u>	
28	171	

not reveal whether other parties have reached similar agreements on pension contributions, the data is inconclusive. I reject the Union's proposal and adopt the Employer's proposal.

D. Conclusion

It is unusual for an arbitrator to adopt every proposal made by one party and reject every proposal made by the other. But I am not engaged in mediation—a process normally involving “horse-trading” and compromise. I cannot “trade” one proposal for another or suggest changes designed to narrow differences. In their negotiations preceding arbitration, the parties should have exhausted the opportunities presented by conventional, give-and-take bargaining. Presumably, the compromises that could be made were made.

Interest arbitration might well be considered an extension of bargaining by a different method, but that difference is critical. Under the Illinois Public Labor Relations Act, I must apply statutory criteria separately to each final offer on each economic issue.¹⁷ Even if a contract is negotiated as a single, interrelated package, and even if the parties have compromised or sacrificed one economic issue in exchange for another considered more important, my hands are tied. “As to each economic issue,” I must “adopt the last offer of settlement which more nearly complies with the applicable factors prescribed in subsection (h).”

¹⁷Arguing that “package vs. package” arbitration is superior to “issue vs. issue” arbitration, professors Peter Feuille and Gary Long wrote “...entire package selection prevents arbitrators from imposing their version of desirable compromises upon the parties in multi-issue disputes, a freedom they would appear to have under issue-by-issue selection.” Feuille & Long, “The Public Administrator and Final Offer Arbitration,” *Public Administrative Review* 575, 578 (Nov/Dec 1974). Similarly, attorneys Laner and Manning have noted that “[i]ssue-by-issue arbitration is a process of compromise; the arbitrator is free to find for one party on some issues and for the other party on others. In fact, a greater ‘chill’ to productive negotiations may result under the issue-by-issue procedure because it tends to encourage each party to make demands on every front, knowing there is nothing to lose, and always a chance to gain a bit here and there. The incentives against narrowing the issues in dispute encourage parties to leave political and low priority demands on the table. Whatever the nature of the remaining demands, the clear result is that time and money may be wasted and the process cluttered unnecessarily. Also, under issue-by-issue arbitration the resolution of one issue at a time may result in the arbitrator losing sight of the very practical reality that contract proposals are frequently interdependent and must be decided together.” Laner & Manning, *supra* n. 9, 843-44.

During the hearing I repeatedly directed the parties' attention to the statutory standards, suggesting that evidence unrelated to statutory standards would be immaterial, and that the decision of the panel on each issue must rest on evidence related to these standards.¹⁸ I have based my award on evidence material to these standards.

¹⁸See, for example, the following:

1. Transcript, at 99-100: "Mr. Berman: What I have to deal with now are the final offers to the parties that are on the table and may be amended at some point. And how you got there may give some insight into the nature of the proposals, but you really have to scrutinize the proposals as they stand. It seems to me...that's what I'm looking for, whatever facts and data you have to justify those proposals."
2. Transcript, at 113: "Arbitrator Berman [to Union Counsel]: I [am] getting a little perplexed, and I don't mean to be disrespectful, but perhaps you can enlighten me as to how this testimony relates to what is set forth in Section 14(h) of the Statute."
3. Transcript, at 118-19: "Arbitrator Berman [to Union Counsel]: I would direct your attention to the elements set forth in the statute. That's really what I'm interested in. That's really what I am interested in. And to the extent that any of these elements in the statute or any of the cases that you have read that pertain to [or] interpret some of these elements, but I don't really want to get into negotiation history to any great depth, quite frankly, because that's not my concern. We are here because the parties failed to come to an agreement. And how they got to the point of impasse really isn't my concern. I am not judging the good faith bargaining of the employer. That's another forum altogether."
4. Transcript, at 135: "Arbitrator Berman [to Union Counsel]: It's all very interesting and it may be somewhat related, but I am still wanting to zero in on the factors contained in the statute. That's what I'm interested in."
5. Transcript, at 202: "Arbitrator Berman: ...Let me tell you what [I believe] the purpose of an interest arbitration hearing is. I think there is a two-fold purpose. One is to present evidence to the panel, [to] me as the neutral in the panel, that will support your position and give me enough information to select one of the two offers on each economic issue that you have presented. I mean that's the statutory purpose of an interest arbitration...."
6. Transcript, at 252: "Arbitrator Berman: The numbers are there. I mean, does it really matter what his opinion is. I mean, you can ask him, but I'm just giving you my guidance here. I don't really care what his opinion is. It doesn't matter to me that much. I have got cold, hard numbers in front of me."

Award

On the basis of the evidence, I adopt the Employer's proposal on each issue and reject the Union's proposal on each issue. Each party shall pay an equal share of my fees and expenses.

Herbert M. Berman
Arbitrator/Panel Chairman
January 13, 1993

I concur in this opinion and award.

I dissent from this opinion and award.

Ernest Hegy
Employer Delegate
Date:

Michael Tierney
Union Delegate
Date: