

Interest Arbitration

City of Peru, Illinois

Employer

and

Illinois Fraternal Order
of Police Labor Council,

Union

ISLRB S-MA-93-153

FMCS 94-18153

Arbitrator's File 94-133

Herbert M. Berman,
Arbitrator

March 21, 1995

Opinion and Award

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I. Background

On July 20, 1990, the Illinois State Labor Relations Board certified the Union as bargaining agent for the City of Peru's "full-time sworn peace officers with the rank of patrol officer" (City Exhibit 2).¹ At the time of the hearing, there were ten patrol officers in the bargaining unit.

In June 1991, the parties reached agreement on a collective bargaining agreement for a term starting May 1, 1991 and ending April 30, 1993 (City 2). Negotiations for a successor agreement began in January 1993 (Un. 2). On December 9, 1993, the parties reached a tentative agreement (City 7), subject to joint ratification, on a two year contract, May 1, 1993-April 30, 1995 (Un. 2: Weise to Nixon, 12/9/93). The tentative agreement provided for 4% across-the-

¹In the remainder of this Opinion, I shall cite City exhibits as "City. ____," Union exhibits as "Un. ____" and joint exhibits as "Jt. ____." I shall cite testimony by the witness' last name and the appropriate page reference, for example, "Schweickert 94." I shall cite non-testimonial portions of the transcript as "Tr. ____."

board wage increases on May 1, 1993 and May 1, 1994 and contained the following vacation schedule:

<u>Full Fiscal Years of Continuous Service</u>	<u>Vacation</u>
1 year	1 week
2 years	2 weeks
10 years	3 weeks
20 years	4 weeks

The negotiators also tentatively agreed to change employees' vacation eligibility from January 1 to the anniversary date of initial hire; to change sick leave usage from daily increments to one-hour increments; to grant two additional days of compensatory time and to increase compensatory time accrual from 40 hours to 60 hours (Schweickert 110).

The membership of the Union rejected the tentative agreement on December 14, 1993 (Schweickert 109). Returning to the bargaining table, the negotiators reached a second tentative agreement. The Union ratified this understanding but the City rejected it. In effect, the Union changed its position on wages and vacation benefits, the City changed its position on longevity pay and compensatory time. Having reached impasse, the parties sought interest arbitration (City 8).

II. The Disputed Economic Issues

The parties stipulated that the following economic issues were in dispute (Un. 1):

1. Wages for 1993-94 and 1994-95
2. Vacations
3. Longevity pay
4. Compensatory time off work

The parties exchanged final offers at the start of the hearing (Un. 1; City 19):

<u>Impasse Issue</u>	<u>Union Final Offer</u>	<u>City Final Offer</u>
Wages	FY 1993-94: 4% FY 1994-95: 4.75%	FY 1993-94: 4% FY 1994-95: 4% (1st TA'd agreement)
Longevity Pay ²	1% additional compensation for each year of service, to a maximum of 20 yrs (No change from '91-93 agreement and same as 1st TA'd agreement)	Eliminate longevity for employees hired after 5/1/95
Vacations	1 week for 1 yr 2 weeks for 2 yrs 3 weeks for 7 yrs 4 weeks for 15 yrs 5 weeks for 20 yrs	1 week for 1 yr 2 weeks for 2 yr 3 weeks for 10 yrs 4 weeks for 20 yrs (No change from '91-93 agreement and same as 1st TA'd agreement)
Compensatory Time	8 hours additional comp time to each employee on 5/1/93 and 5/1/94 (1st TA'd agreement)	No additional comp time off

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

²Evidence on the longevity pay offers was confusing. In its brief at page 17 and in Employer exhibit 19 the City stated that "employees hired on or after May 1, 1995 [my emphasis] shall not be eligible for longevity pay" (see also Tr. 88). In its brief at page 5 the Union stated that the City's final offer was to "eliminate longevity for employees hired after May 1, 1993" [my emphasis].

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 conditions³. The

³Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," Tim Bornstein & Ann Gosline, eds. *Labor*

employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of primary significance.

IV. Preliminary Considerations

A. Comparability

1. Communities Proposed by the Parties

The parties agreed that the cities of LaSalle, Mendota, Ottawa, Princeton and Streator were comparable.⁴ The Union proposed that the cities of Bradley, Morris, Pontiac and Rochelle were comparable. The City proposed that the cities of Marseilles, Oglesby and Spring Valley as well as the counties of Bureau, LaSalle and Putnam were comparable. The parties' suggestions are shown by the following table:

<u>Agreed Comparables</u>	<u>City Comparables</u>	<u>Union Comparables</u>
LaSalle	Marseilles	Bradley
Mendota	Oglesby	Morris
Ottawa	Spring Valley	Pontiac
Princeton	Bureau County	Rochelle
Streator	LaSalle County	
	Putnam County	

The City selected three cities in the three-county area of LaSalle, Bureau and Putnam Counties plus the Sheriffs' Departments in these counties (City 9). Emphasizing the following factors, the Union "sought to find jurisdictions geographically proximate to the City of Peru, although not confining itself to its next-door neighbors": Employer

and *Employment Arbitration* (New York: Matthew Bender, 1991), Vol. III, ch. 63, §63.03[2], at 7.

⁴In this opinion, the term "city" is meant to encompass "village" as well as "city."

similarity, occupational similarity, geographic proximity and the surrounding labor market (Un. Brief, 19-20).

The Union maintains that the following factors are critical in determining "employer similarity" (Un. Brief, 19-20):

Population

Median home value

Per capita and/or median income

Equalized assessed valuation

Number of employees

Similarity of revenues

Similarity of expenditures

Crime Rates

Using standards proposed by the Union, the suggested comparables may be charted:

Juris	County	1990 Pop	1990 Median Home Value	1990 Per Capita Income	Median Household Income	Number ⁵ of Officers	
						Emp	Un
Agreed on Comps							
LaSalle	LaSalle	9,717	\$41,600	\$11,509	\$20,903	10	17
Mendota	LaSalle	7,018	53,800	11,449	26,004	7	11
Ottawa	LaSalle	17,451	54,800	13,195	26,077	15	27
Princetn	Bureau	7,197	55,200	13,584	27,658	8	10
Streator	LaSalle	14,121	37,300	10,147	21,993	14	23
Proposed by City							
MARSEILLES	LaSalle	4,811	46,400	11,351	24,574	5	6
OGLESBY	LaSalle	3,619	43,400	11,697	23,457	4	7
SPRING VALLEY	Bureau	5,246	42,700	12,496	24,467	7	6
BUREAU COUNTY		35,688	41,800	11,915	26,248	9	28
LASALLE COUNTY		106,913	50,500	12,337	27,093	21	47
PUTNAM COUNTY		5,730	48,400	13,672	30,136	4	5
Proposed by Union							
BRADLEY	Kankakee	10,792	47,900	11,562	27,952		18
MORRIS	Grundy	10,270	73,200	14,885	31,699		19
PONTIAC	Livingstn	11,428	47,000	11,441	26,767		19
ROCHELLE	Ogle	8,769	55,800	11,759	27,465		18
Peru	LaSalle	9,302	49,100	13,531	26,946	10	18
Average All (w/o Peru)		17,251	49,320	12,200	26,166		17.4
Average City w/o Peru		27,001	45,533	12,245	25,996		16.5
Average Union (w/o Peru)		10,315	55,975	12,412	28,471		18.5
Average Agreed (w/o Peru)		11,101	48,540	11,977	24,527		17.6

⁵Presumably, the Union included non-unit police officers.

Other relevant comparisons may also be drawn:

City or County	Pop	Number of Police Officers	Crimes Per Police Officer	Total Revenue	EAV In Millions	EAV Per Police Officer
Agreed						
LaSalle	9,717	17	26.76	\$1,968,842	\$47.273	\$2,780,765
Mendota	7,018	11	14.27	2,053,953	41.027	3,729,727
Ottawa	17,451	27	25.19	4,045,775	116.191	4,303,370
Princetn	7,197	10	12.80	1,917,269	48.783	4,878,300
Streator	14,121	23	23.00	3,110,614	57.013	2,478,826
City						
MARSEILLES	4,811	6	2.17	804,012	31.439	5,239,833
OGLESBY	3,619	7	18.43	611,901	19.181	2,740,143
SPRING VALLEY	5,246	6	33.00	723,071	24.077	4,012,833
BUREAU COUNTY	35,688	28	15.68	2,998,475	253.912	9,068,286
LASALLE COUNTY	106,913	47	63.83	8,964,869	1,422.035	30,256,064
PUTNAM COUNTY	5,730	5	9.20	1,062,539	57.426	11,485,200
Union						
BRADLEY	10,792	18	44.17	4,309,143	73.324	4,073,556
MORRIS	10,270	19	20.95	3,052,591	86.758	4,566,211
PONTIAC	11,428	19	21.58	2,395,171	52.992	2,789,053
ROCHELLE	8,769	18	16.00	2,650,045	59.907	3,328,167
Peru	9,302	18	23.56	3,140,918	76.854	4,269,667
Average All (w/o Peru)	17,251	17.4	23.14	2,711,218	159.423	6,382,022
Average City (w/o Peru)	27,001	16.5	23.72	2,527,478	301.345	10,457,060
Average Union (w/o Peru)	10,315	18.5	25.67	3,101,737	68.245	3,689,247
Average Agreed (w/o Peru)	11,101	17.6	20.4	2,619,291	62.057	3,634,198

2. Standards Used to Determine Comparability

Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purposes of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study or hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in *City of Springfield & IAFF, Local 37*, S-MA-18 (Berman 1987), at 26, "[d]etermining comparability is not an exact science." Or as arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn 1989), at 21-2:

The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward 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.

In addition to population and proximity, critical factors are the number of bargaining unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes.

3. I Reject the City's Proposed Comparables

I do not consider Bureau, Putnam and LaSalle Counties comparable to the City of Peru. While I do not rule out the possibility that a County Sheriff's Department may (or will) be considered comparable to a municipal police department, I am generally in agreement with arbitrator Peter Feuille that-

[C]ounties are far more similar to each other as public employers than cities are to counties,...deputy sheriffs...are more similar to other county deputy sheriffs than they are to city police, and...there is a county seat-county wage pattern that indicates that it is the norm for the county seat to generally pay more for city police than the respective county pays for deputy sheriffs. (*County of McLean/McLean County Sheriff & Illinois FOP, Lodge 176, S-MA-92-29 (Feuille 1993), at 20.*)

In the case at issue, the evidence did not establish sufficient similarities between Peru and the proposed counties to overcome the premise that sheriff departments and police departments, even in overlapping areas, are generally too dissimilar to be considered comparable for intelligent wage and benefit comparisons.

With a population of 107,000, LaSalle County is 11^{1/2} times more populous than Peru. LaSalle County employs more than twice the number of police officers than Peru; its revenue is almost three times that of Peru; and its Equal

Assessed Valuation (EAV) per police officer is more than seven times that of Peru. Although per capita income, median home value and median household income in Peru and LaSalle County are roughly comparable, the larger population of LaSalle County, its greater revenues and the intrinsic differences between the duties of police officers and sheriffs' deputies combine to make LaSalle County an inappropriate comparison to Peru.

Bureau County has four times the population of Peru but only 95% of Peru's revenue. In a larger area with a greater population, Bureau County has 67% of the index crimes per police officer as Peru and its EAV per police officer is more than double that of Peru. In short, Bureau County is not as statistically dissimilar from Peru as LaSalle County, but it is not comparable to Peru.

Putnam County presents another problem. It is a sparsely populated rural county. The Putnam county Sheriff's Department employs five deputies; its index crimes per police officer are 39% of index crimes per police officer in Peru; and its EAV per police officer is 270 percent higher than Peru. There would seem to be little in common between this rural county and Peru, a regional business hub.

The cities of Marseilles, Oglesby and Spring Valley, the three cities proposed by the City, border Peru and presumably draw from the same labor market as Peru. But they are not

comparable to Peru in other ways.⁶ They have small populations and limited resources. Their EAVs range from 25% (Oglesby) to 41% (Marseilles) of Peru's EAV. Their police forces are one-third the size of Peru's. The total revenue of Marseilles, the wealthiest of the three, is 25 percent of Peru's. In short, the financial resources of these three neighboring communities do not match Peru's financial resources; I do not consider them comparable to Peru.

4. I Reject the Union's Proposed Comparables

The City argues that "the Union's selection method...leaves open the considerable question whether the Union used the 'cherry picking' method, i.e., selected municipalities for comparison which had high wage rates and/or benefit levels" (City Brief, 6-7). As the City suggests, there are at least 40 cities of comparable population within about 80 miles of Peru—the distance between Peru and Bradley, the most distant of the suggested comparables. Some of these unlisted cities may be comparable to Peru, and no reason was given for limiting comparison to Bradley, Morris, Pontiac and Rochelle.

With the exception of LaSalle County, the comparables suggested by the parties fall within an acceptable statistical range of comparison. With LaSalle county omitted, Peru falls generally within a range of $\pm 25\%$ (+28% on total revenue) of the average of all the suggested comparables.

⁶As I noted in *Village of Lombard & IAFF, Local 3009, S-MA-87-73* (1988), at 13, "Immediate geographic proximity...is an important, but not an overriding, factor."

Since, however, the Union neither explained why the four somewhat widely scattered communities it suggested were the only appropriate comparisons nor why any number of other communities within 80 miles were inappropriate, I cannot ignore the issue of "cherry-picking." For this reason, I must reject the Union's comparables.

The problem of comparability with respect to small communities cannot be exaggerated. It is difficult to develop rational and practical comparisons to a city of 10,000 people. There are hundreds of cities in Illinois, and many within 80 miles of Peru, with a population of 5,000 to 15,000. An arbitrator must be mindful that within a large range of possibilities a party may have selected only those cities that support its position. When in doubt, it makes sense to fall back on the comparables the parties themselves have selected. This cautious approach may also have the virtue of encouraging parties to agree on comparables, thereby enhancing the possibility of settlement.

5. I Adopt the Agreed-On Comparables

The parties have agreed that LaSalle, Mendota, Ottawa, Princeton and Streator are comparable to Peru. Respecting the "stipulations of the parties," as instructed by Section 14(h)(2) of the Act, and having eliminated the other proposed municipalities, I shall settle on the five stipulated communities, considering those comparable to Peru for purposes of this arbitration.

B. Significance of the Tentative Agreements

Citing a number of awards,⁷ the City argues that an arbitrator must try to put himself in the position of the parties by "plac[ing] key importance on what the parties themselves would have negotiated" (City Brief, 10).⁸ The City suggests that I have "a clearly marked superhighway to the correct award—what the parties themselves negotiated" (City Brief, 10). The City quotes extensively from arbitrator Fleischli's opinion and award in *Village of Schaumburg* (at pages 33-34) for the proposition that "[i]f the Union membership feels free to turn down the Union's own agreement, the negotiation process itself is undermined" (City Brief, 13):

It is important that the authority of the parties' respective bargaining teams not be unnecessarily

⁷See *City of Rock Island & IAFF Local 26*, S-MA-91-64 (Berman 1992); *City of Aurora & Assn. of Professional Police Officers*, S-MA-90-38 (Winton 1991); *Village of Arlington Heights & IAFF Local 3105*, S-MA-88-89 (Briggs 1991); *Village of Schaumburg & Illinois FOP Lodge 71*, S-MA-93-155 (Fleischli 1994).

⁸The City cited my *Rock Island* decision at page 18 for this dictum:
While an arbitrator can only speculate about what settlement might have resulted from successful bargaining, it is appropriate for an arbitrator, using the factors set out in the statute, to attempt to reproduce the agreement the parties might have reached in the course of successful negotiations.

* * *

The obvious flaw in this argument is that interest arbitration is the consequence of *unsuccessful* bargaining; it is difficult to determine what a successful bargain might have produced. [Since strikes are barred, the failure of the parties to reach agreement does not necessarily reflect a realistic commitment by the parties to their proposals or to the parties' relative economic leverage and power.] Nevertheless, as an interest arbitrator, I am committed to the fiction that I stand in the place of the parties themselves so that I may achieve the same result they presumably *should have achieved*. (The bracketed sentence was deleted from excerpts quoted in the City's brief.)

Similar sentiments were voiced in *City of Aurora* (Winton), *Village of Arlington Heights* (Briggs) and *Village of Schaumburg* (Fleischli 1994). See also the article by arbitrator Arnold Zack cited by the City: Zack, "Improving Mediation and Fact-Finding," 21 Lab. L.J. 259, 270-71 (1970).

undermined. Specifically, in the case of the Union, its bargaining team ought not to be discouraged from exercising leadership. Some risk taking must occur on both sides, if voluntary collective bargaining is to work and arbitration avoided, where possible. Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements.

...[If] the terms are rejected, simply because of a belief that it might have been possible to "do a little better," the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations.

...Many arbitrators have expressed the view that it is the function of the interest arbitration to attempt to approximate the terms of agreement that the parties would have or should have reached themselves, had they been able to do so.

Arbitrator Fleischli also noted, however, at page 33 of his opinion, that "[i]t would be clearly inappropriate, under the law, to treat the terms of the tentative agreement as controlling. He went on to write, at pages 34-35:

The undersigned subscribes to this view, with one important proviso. The imposition of a statutory interest arbitration procedure itself has an impact on the relative bargaining strength of both parties. If it is a balanced procedure, it generally has a moderating influence on any pre-existing imbalance. Therefore, the function of the arbitrator should be to try and approximate the agreement the parties would have or should have reached themselves, knowing that either party could force the impasse into an interest arbitration proceeding. The tentative agreement in this case has been considered in this way.

Here, the evidence shows, the Union's membership concluded that its bargaining team could have and should have done a little better through arbitration, if necessary, by holding down the level of

deductibles and (possibly) securing a slightly higher percentage increase in the third year. A review of the evidence and arguments, under the statutory criteria, fails to support that view.

The two awards cited by the Union stand for the proposition that a rejected tentative agreement should have little, if any, significance in the arbitrator's decision-making process.⁹

In *Franklin Park*, arbitrator Robert Perkovich dealt with the issue of whether "the Employer's final offer [should] be imposed because it was the basis for a tentative agreement" (*Franklin Park*, at 8):

[T]he Employer urges that its final offer on the three disputed issues be imposed because it was agreed to by the Union's negotiating team only to be rejected by the Union membership. The Employer argues that if I do not impose its offer under these circumstances bargaining unit employees will perceive tentative agreements to constitute a "floor" for final agreements and will be encouraged to reject tentative agreements. As a result, free and bilateral collective bargaining will be impaired contrary to the public policy of Illinois as set forth in the Illinois Public Employee Relations Act. The Union on the other hand simply points out that ratification is a right enjoyed by the membership and that they should not be prejudiced for exercising that right.

The bilateral resolution of collective bargaining differences is not only the public policy of Illinois, but has long been a bulwark of labor relations on a national level as well for decades. For this reason the parties have invest[ed] their efforts and interests, and indeed may subordinate other interests, in favor of a joint resolution. Therefore, interest arbitration is regarded as an extension or supplement of this bilateral effort such that it has been said that the arbitrator should regard the inquiry as one to determine what

⁹See *Village of Franklin Park & FOP Lodge 47*, S-MA-92-113 (Perkovich 1993); *City of Park Ridge & FOP Labor Council, Lodge 16*, S-MA-93-179 (Fisher 1994)

the parties would have agreed to had they done so. Accordingly, to award something significantly superior to that which the parties would have likely agreed to through bargaining will entice the winner to eschew collective bargaining the next time in favor of arbitration.

In the instant case these precepts might be viewed as particularly compelling because the Employer's final offer was tentatively agreed to by the Union's negotiating team. However, the negotiations were undertaken with the knowledge that both teams were bargaining under conditions where ratification by the principals was necessary. Therefore, any tentative agreement was simply an agreement between the agents and not the principals and the parties assumed the risk of rejection irrespective of the terms of the tentative agreement. Under such circumstances, it is not enough to say that because the agents reached a tentative agreement the terms of that agreement must be imposed by a third party when they were rejected by the principals. To do so would render the right of ratification illusory. I decline to do so.

*Accordingly, ratification is an essential part of the free collective bargaining process that the Employer seeks to preserve.

I cannot disregard arbitrator Fleischli's perception that "the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations," but I also agree with arbitrator Perkovich that "...any tentative agreement [is] simply an agreement between the agents and not the principals and the parties assumed the risk of rejection irrespective of the terms of the tentative agreement." If arbitrators perfunctorily adopt tentative agreements, the ratification step is redundant, even meaningless.¹⁰

¹⁰Principals may give their bargaining agents final authority to negotiate and execute a binding agreement. In my experience, however, this situation is rare.

A rejected tentative agreement can be a problem in interest arbitration. The rejected understanding may indeed embody "the agreement the parties might have reached in...successful negotiations." But it cannot be denied that a tentative agreement is something less than a legally binding agreement. Until ratified by both parties, a tentative agreement is precisely what the word "tentative" suggests—provisional and uncertain.

Interest arbitration under the Act distorts the normal strike-driven bargaining process. Since strikes are barred, it is difficult to know whether a tentative agreement represents the agreement the parties would have reached had they relied solely on their ability to prosecute or withstand a work stoppage. Because sophisticated and experienced negotiators can usually hone their differences to a fine point, interest arbitration is generally less risky than a work stoppage. It is not unheard of for negotiators discouraged with bargaining to start positioning themselves for arbitration, implicitly allowing future litigation to take precedence over current negotiations. Nor may I disregard the fact that "tentative agreements" are not among the factors listed in Section 14(g) of the Act. A tentative agreement may be considered, but it is not dispositive. The weight to be given a tentative agreement necessarily varies with circumstances, but it does not have the same weight as the factors set out in Section 14(g).

V. The Final Offers

A. Wages and Longevity Pay

Both wages and longevity pay represent cash out of pocket for the City and cash in pocket for police officers. For the purpose of analysis, I can separate the salary and longevity offers, but I realize that in the context of a time-step wage schedule, wages and longevity pay are indivisible; they represent different forms of direct remuneration. I therefore agree with the Union that "[b]ase salaries and longevity go hand in hand in establishing pay rates within a given police bargaining unit. To consider one without examining the other is a virtual guarantee of a distorted view of employee pay" (Un. Brief, 32). The proposals are balanced on opposite ends of a seesaw: Adoption of the Union's wage offer makes the City's longevity offer look better; adoption of the City's wage offer makes the Union's longevity offer look better. Accordingly, I shall consider the wage and longevity proposals as separate elements of a total wage package. Consistent, however, with my duty to consider "the last offer of settlement" "as to each economic issue," I shall make a separate determination on wages and longevity.

The Union proposed a wage increase of 4 percent in 1993-94 and 4.75 percent in 1994-95. It proposed longevity pay of 1 percent additional compensation for each year of service up to a maximum of 20 years. The City proposed a wage increase of 4 percent in 1993-94 and 4 percent in 1994-95. It

proposed to eliminate longevity pay for employees hired after May 1, 1995 (or, according to the Union, May 1, 1993).

1. Parties' Positions

(a) The Union

The Union argues that "[s]imply, the Peru cops are behind in salary, and if the City's final offer is adopted, they'll fall even further behind" (Un. Brief, 27). The wages "paid in the comparable municipal police agencies," the Union suggests, support the claim of "obvious pay inequities" (Un. Brief, 28):

- (1) At starting Pay: Peru is \$759 behind the average
- (2) After 1 year: Peru falls to \$2,301 behind the average
- (3) After 5 years: Peru trails the average by \$3,474
- (4) After 10 years: The disparity has increased to \$3,942
- (5) After 15 years: Some of the difference is made up, but Peru still remains \$3,641 behind
- (6) After 20 years: Peru is still \$2,989 behind the average

The Union also states that adoption of the City's proposal to eliminate longevity pay for police officers hired after May 1, 1993 will "make top pay in Peru \$26,819, when the average top pay among the comparables is \$32,349" (Un. Brief, 28).

(b) The Employer

1. If the 1% longevity benefit remains in the contract, 4%/4% proposal "is really 5%-5%" (Emp. Brief, 14).

2. Peru's maximum salary is 14% above the average of comparable communities.

3. Longevity "is somewhat of a wild card" (Emp. Brief, 17). Some communities provide longevity pay. Others do not, and "it is difficult to make sense of the structure" of longevity pay in comparable communities. In any event, the two-tiered system proposed by the Employer may be remedied in 1995 negotiations. (Emp. Brief, 17).

4. While the Employer's proposal to eliminate longevity pay for new hires is inconsistent with the Employer's contention that "both parties should be bound by their tentative agreement," it is "a sufficiently moderate modification...that it should be considered favorably..." (Emp. Brief, 18).

2. Discussion

The evidence on comparable salary is inconsistent. The City and the Union do not agree on the average salary of police officers at five-year intervals in Peru and other municipalities.

City exhibit 12 contains information on the maximum salaries in Peru and in comparable municipalities:

Municipality	Wage	Effective Date
Peru	\$32,183.70	5/1/94
LaSalle	30,819.36	5/1/94
Ottawa	29,971.41	4/1/93 to 3/31/94
Princeton	29,090.25	1994
Mendota	29,016.00	5/1/94
Streator	23,650.00	5/1/94

Average without Peru \$28,509.40
Average with Peru \$29,121.79

The Union's comparable-salary exhibits are more detailed. The Union's exhibits show comparable salaries at each five-year point in 1993-1994 and 1994-1995. According to evidence produced by the Union, the salary for each step of the comparable municipalities for 1993 may be charted:

	Peru	LaSalle	Ottawa	Princtn	Mendota	Streatr	Average
Start	\$24,796	\$28,018	\$25,651	\$22,381	\$22,464	Merit Plan	\$24,662
After 1 Year	25,044	28,018	25,867	24,190	23,462	NA	\$25,316
After 5 Years	26,036	28,578	26,731	28,683	25,958	NA	\$27,197
After 10 Years	27,276	29,699	27,811	28,683	27,976	NA	\$28,289
After 15 Years	28,516	30,819	28,891	28,683	27,976	NA	\$28,977
After 20 Years	29,756	30,819	29,971	28,683	27,976	NA	\$29,441
Top Pay	29,756	30,819	29,971	28,683	27,976	NA	\$29,441

The average without Peru for each point in the salary table is:

Start	\$24,628
After 1 Year	25,384
After 5 Years	27,487
After 10 Years	28,542
After 15 Years	29,092
After 20 Years	29,362
Top Pay	29,362

The 1994 comparisons look like this:

	Peru	LaSalle	Ottawa	Princtn	Mendota	Streatr	Average
Start	\$24,796	\$28,018	Bargning for new contract	\$22,901	\$23,504	Merit Plan	\$24,805
After 1 Year	25,044	28,974		24,710	24,502	NA	\$25,807
After 5 Years	26,036	29,554		29,203	26,250	NA	\$27,761
After 10 Years	27,276	30,713		29,203	29,016	NA	\$29,052
After 15 Years	28,516	31,872		29,203	29,016	NA	\$29,652
After 20 Years	29,756	31,872		29,203	29,016	NA	\$29,962
Top Pay	29,756	31,872		29,203	29,016	NA	\$29,962

The average without Peru is:

Start	\$24,808
After 1 Year	26,062
After 5 Years	28,336
After 10 Years	29,644
After 15 Years	30,030
After 20 Years	30,030
Top Pay	30,030

The Union also prepared an exhibit to show the impact of each party's final wage offer (Un. 5, p. 3):

	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs
Current Pay	\$24,796	\$25,044	\$26,036	\$27,276	\$28,516	\$29,756
Union	27,013	27,283	28,363	29,714	31,065	32,416
City Existing E's	26,819	27,088	28,160	29,501	30,842	32,183
City New Hires	26,819	26,819	26,819	26,819	26,819	26,819

A 4%/4% wage increase would put Peru near or above the average of the comparable communities at each five-year point, as shown by this chart:

	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs
Current Peru x 1.04 for each of two years	\$26,819	\$27,088	\$28,161	\$29,502	\$30,843	\$32,184
Average Without Peru	\$24,808	\$26,062	\$28,336	\$29,644	\$30,030	\$30,030

A 4%/4.75% increase yields the following information:

	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs
Current Peru x 1.04 1st year and 1.0475 2nd year	\$27,013	\$27,283	\$28,363	\$29,714	\$31,065	\$32,416
Average Without Peru	\$24,808	\$26,062	\$28,336	\$29,644	\$30,030	\$30,030

The 4/4 proposal places Peru near or above the average of the comparable communities at each five-year point. The 4/4.75 proposal places Peru more than \$2000 above the average

at the starting point and 20 years, \$1000 above average at 1 year and 15 years and slightly above average at 5 years and 10 years.

If the Union's comparables are figured in along with the agreed comparables, Peru does not compare favorably:

	Start	1 Year	5 Yrs	10 Yrs	15 Yrs	20 Yrs
Current Peru x 1.04 for each of 2 years	\$26,819	\$27,088	\$28,161	\$29,502	\$30,843	\$32,184
Average Un Comps Without Peru for 1994	\$25,556	\$27,345	\$29,510	\$31,218	\$32,157	\$32,745

However, if Morris, the highest-wage jurisdiction (by amounts ranging from \$6087 to \$7617 at each 5-year step), is removed from the list of comparables, Peru looks better:

	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs
Current Peru x 1.04 for each of 2 years	\$26,819	\$27,088	\$28,161	\$29,502	\$30,843	\$32,184
Average Un Comps W/O Peru and Morris for 1994	\$24,286	\$26,179	\$28,370	\$30,211	\$30,896	\$31,370

This chart not only illustrates the standard statistical procedure of removing the occasional "outrider" or aberration from a universe of like things, it illustrates the problem of trying to find cities comparable to a relatively small city. The question is this: Should cities be selected solely because of the similarity of their demographic features or in part, at least, because of the current and historical

similarity of wages and benefits? If the former, the universe of comparables may be too large and unwieldy; if the latter, selection may predetermine result. Fortunately, since the parties have agreed on a reasonable number of comparable communities, I do not face that problem in this case.

3. Findings on Wages

For the following reason, I adopt the Employer's proposal on wages:

1. As no evidence of the relative standing of Peru and the comparable communities over a period of time was produced, the historical ranking of Peru and these communities cannot be determined. Having no evidence on how Peru has stacked up historically to the comparable communities, I conclude that a raise that places Peru at or above the average of comparable communities at each five-year point is equitable and appropriate.

2. The cost of living, perhaps the second most important factor used by arbitrators to determine which proposal to adopt, favors the 4/4 proposal.

City exhibit 16 compares wage increases from 1991 through 1994 to cost-of-living increases:

	<u>CPI-U</u>	<u>% Wage Increase</u>
1991	4.95%	4.75
1992	3.02%	4.75
1993	3.22%	4.00
1994	2.29%	??

A four percent raise in 1993 and 1994 would exceed cost-of-living increases by a substantial margin. In light of comparability, which favors the 4/4 proposal, it is difficult

to justify a raise 24 percent higher than the cost of living in 1993 and more than 100 percent higher, assuming a 4.75 percent raise, in 1994.

The Union argues that since employees have not had a salary increase since May 1992 they have fallen behind the wage-eroding impact of inflation. From May 1992 through September 1994, employees have experienced a 6.63% "loss of buying power." While retroactive increases do not fully make up for the loss of buying power in the past, retroactive salary increases substantially in excess of past cost-of-living increases will go a long way toward repairing damage caused by the eroding effects of recent inflation.

3. "Overall compensation presently received by employees" is a statutory factor favoring the 4/4 proposal. When coupled with a one percent longevity increase for each year of service, the 4/4 offer is substantially improved.

4. Findings on Longevity Pay

Despite the Employer's not-unreasonable argument that the longevity-pay plans in comparable communities are too varied for comparison, I adopt the Union's stand-pat position on longevity. As shown by Union exhibit 6, every comparable community provides either a longevity or step plan for police officers.

I also agree with the Union that "[b]ase salaries and longevity go hand in hand in establishing pay rates within a given police bargaining unit. To consider one without

examining the other is a virtual guarantee of a distorted view of employee pay." (Un. Brief, 32.)

It would also seem self-evident, as suggested by the Union, that "two-tiered pay plans" are fertile soil for "internal dissension and employee conflict" (Un. Brief, 32). At the very least, no overriding financial justification was produced to support a two-tiered salary schedule that will become more inequitable every year. The Employer's suggestion that the parties could correct any problem caused by a two-tier salary schedule may be accurate, but if an arbitrator does not create the problem in the first place, the parties will not be called upon to correct it—to waste valuable time and effort, at the cost of neglecting other concerns, to correct an error that should never have been made.

In reaching this conclusion, I am mindful that the parties seem to disagree about the effective date of the City's proposal. The principle is the same, however, regardless of whether a two-tiered pay scale is effective in 1993 or 1995. Indeed, since a 1995 starting date would have no impact on the contract under consideration, serving only as a foundation for negotiations with respect to a new contract, it is largely irrelevant. The parties are free to negotiate prospectively, and the judgment of an arbitrator about what they might agree to in the future would serve only to distort negotiations. Denying longevity pay for 1995 would have no impact on the agreement under review; as a practical matter, however, it would at least require the Union to

justify its claim that longevity pay is appropriate. I will not change the parties' established practice in this regard. I am establishing wages for 1993 and 1994. The parties, who are now or soon will be in negotiations, are in the best position to deal with current and future wages. I shall leave the parties free to continue longevity pay at the same, lower or higher levels, eliminate it altogether or swap it for other benefits.

B. Vacations and Compensatory Time

The Union characterizes its vacation proposal as "more time off," "a straight 'comp' issue" (Un. Brief, 38). Using its comparables, the Union argues that the current "Peru vacation schedule statistically lags behind the comparables average at each year of service throughout a 25 year career" (Un. Brief, 39). The Union also points out that its "proposal for eight hours additional compensatory time off is...an adjunct to the vacation request," and that it "was designed to pick up one more day off for each employee...should the Union's vacation proposal not be accepted by the Employer (and now should it not be adopted by the Arbitrator)" (Un. Brief, 42).

The Employer concedes that the "comparable data does not make the City of Peru vacation benefit look particularly good," but "Peru's top ranking in wages must be taken into account in looking at vacation benefits." The Employer also asserts that the 16 hours of additional compensatory time off tentatively agreed to by the parties "was granted to 'clinch'

the contract at the table, a true 'last-ditch' agreement..." designed to "get a contract short of interest arbitration" (Emp. Brief, 20).

For the following reasons, I adopt the Employer's proposal on vacation benefits and the Union's proposal on compensatory time:

1. The Employer concedes, and I agree, that the comparable data "does not make the City of Peru vacation benefit look particularly good." Improvement in either vacation benefits or some other form of "time off" is warranted.

2. The Union concedes that it would be inappropriate to adopt its proposals on vacation benefits and compensatory time. In effect, it has proposed that I adopt one or the other, but not both.

3. The Employer's concession that its current vacation benefits are not "particularly good" amounts, at least implicitly, to a concession that "more time off" is an appropriate benefit; it is consistent with the Union's either/or approach.

4. Additional compensatory time benefits more employees more immediately than additional vacations.

5. I respect the Employer's argument that the original offer of 16 hours of compensatory time was a "one-time-not-in-contract" proposal distinguishable from putting "extra hours off in the contract for current and all future years" (Emp. Brief, 21). But in final-offer arbitration I do not

have the luxury of crafting an award not embodied in either proposal; I may only choose or reject proposals. It is virtually conceded that Peru police officers are entitled to more time off work. Consistent with statutory criteria, I shall choose the proposal that advances the agreed-upon goal of more time off that benefits the most employees.

The factors of comparability and cost-of-living primarily relied upon by arbitrators do not permit me to choose readily between Union and Employer proposals on time off work. With respect to vacations, for example, two of the agreed-on comparable cities provide a fifth week of vacation, hardly a ringing endorsement of either vacation proposal. The subordinate catch-all standard of "other factors...normally or traditionally taken into consideration" obviously gives an arbitrator substantial discretion to apply his knowledge and experience in making a decision that does not fit into the usual pigeonhole. Having considered the equity of spreading additional time off among a larger group of employees as well as the tacit understanding that police officers are entitled to more time off, I adopt the Union's proposal on compensatory time and the Employer's proposal on vacations.

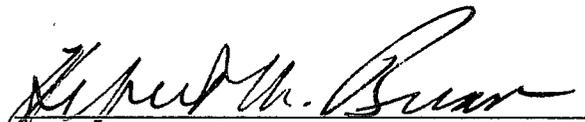
VI. Conclusion

There is an irony. I have turned down the Employer's suggestion to adopt the first tentative agreement, but I have largely adopted the proposals embodied in the first tentative agreement. Perhaps this happenstance, this fortuity, testifies to the skill of the negotiators—to their ability to

reach an understanding that reasonably met the needs of their principals.

Award

I adopt the Union's final offer on longevity pay and additional compensatory time. I adopt the Employer's final offer on wages and vacations.


Herbert M. Berman
Arbitrator

March 21, 1995