



BEFORE ARBITRATOR ROBERT PERKOVICH

In the Matter of an Interest Arbitration Between

City of Decatur)
and)
Police Benevolent and)
Protective Association)
Labor Committee)

Case #S-MA-93-212

INTEREST ARBITRATION OPINION AND AWARD

On November 29 and December 10, 1993 a hearing was held in the above-captioned matter before Arbitrator Robert Perkovich having been jointly selected by the parties, City of Decatur ("Employer") and Police Benevolent and Protective Association Labor Committee ("Union")1. The Employer was represented by its counsel, John Couter. Testifying for the Employer was Rich Ryan. The Union was represented by its counsel, Joel D'Alba. Testifying for the Union were Lloyd Swanson and Rich Ryan. The Employer and Union filed post-hearing briefs which were received respectively, on January 4 and 14, 19942.

STATEMENT OF THE ISSUES

The parties stipulated to the following issues:

A. The Non-Economic Issues:

- 1. Residency
2. Voluntary Change of Scheduled Duty
3. Parking
4. Drug Testing
5. Auxiliary Officers
6. Americans With Disabilities Act
7. Health and Fitness
8. Term of the Agreement: "Evergreen" Clause

B. The Economic Issues:

- 1. Base Salaries for 1993-94

1At the hearing the parties waived their right to a tripartite panel of arbitrators.

2The Union's brief was post-marked however, on January 4, 1994.

2. Base Salaries for 1994-95
3. Longevity Increases for 1993-94
4. Longevity Increases for 1994-5
5. Merit Pay
6. Reimbursement for Training Costs
7. Cap on Accumulated Sick Leave
8. Sick Leave Buy Back
9. Employee Costs for Dependent Health Care
10. Legislative Cost Increases

BACKGROUND

The Employer is a municipality located in Central Illinois with a land area of 37.1 square miles and a population between 82,000 and 84,000, for a population density of 2,234 people per square mile. Its form of government is city council/city manager. In 1992 the Employer's police department consisted of 140 sworn officers or 1.67 officers per 1,000 people and 3.77 officers per square mile. Applications to join the force increased over the three years ending 1991 from 165 to 173 and finally, 287. For the period 1987 through 1993 the turnover rate among officers, excluding retirements and probationary dismissals, was 2.19%. The unemployment rate, as of October 1993, in the city was 10.9% and the per capita income \$13,348.

The Employer's sales tax revenue for the period July 1, 1992 through June 30, 1993 was slightly over 13.5 million dollars for a per capita sales tax revenue of \$154.77. Its total equalized assessed valuation was slightly less than 467 million in 1991 and slightly less than 488 million in 1992. In 1992 there were 5,858 major crimes reported in Decatur for a crime index of 41.84 crimes.

The Union has represented a bargaining unit of permanent and full-time police patrol officers, detectives and sergeants since at least 1986. The Employer's firefighters and general service employees are also represented, respectively, by affiliates of the International Association of Firefighters and the American Federation of State, County and Municipal Employees.

Under Section 14 of the Illinois Public Labor Relations Act, in those cases in which the parties are unable to agree to a collective bargaining agreement for a bargaining unit of peace officers, they are required to submit the unresolved issues between them to arbitration. After taking evidence and considering the arguments of the parties the arbitrator is to issue an award on those issues as they relate to the following criteria:

- the lawful authority of the employer
- the stipulations of the parties
- the interests and welfare of the public and the financial ability of the employer to pay
- a comparison of the wages, hours, and terms and conditions

of employment between the bargaining unit and employees performing similar services in public and private employment
-the cost of living
-the overall compensation presently received by bargaining unit employees
-such other factors which are normally or traditionally taken into consideration in arbitration.

DISCUSSION

1. The Comparable Communities

The parties agree that the following communities are comparable to the Employer for the purposes of this arbitration: Rockford, Springfield, Peoria, Champaign, and Bloomington.

The population range for these communities is from a low of 51,972 to a high of 139,426 in land areas ranging from 13 to 45 square miles. Consequently, the population per square mile represented in these communities spans from 2,775 to 4,884. With regard to patrol forces and crime, the number of officers in these communities is as low as 80 to a high of 250 so that there are anywhere from 1.54 to 1.98 officers per 1,000 people and from 4.79 to 7.54 officers per square mile. Finally, the crime rate index among these communities spans from a low of 51.19 to a high of 61.69.

The sales tax revenues for these communities ranges from 11 million to 24.9 million, for a sales tax per capita span from \$104.15 to \$257.99. Total equalized assessed valuations for 1992 span from a low of 517.3 million to one billion. Finally, unemployment rates are at a low of 2.2% to a high of 12.3% and per capita income spans from \$13,025 to \$15,667.

The Union seeks to add to this list of comparable communities Aurora, Joliet, Elgin, and Waukegan. The Employer seeks to add Normal, Quincy, Urbana, Danville, Galesburg, and Pekin.

a. The Union's Comparables: Aurora, Joliet, Elgin and Waukegan.

In support of its proposed comparables the Union analyzes various statistical data relating to populations, number of sworn officers, crime activity and equalized assessed valuation as they compare to that same profile of the Employer and the agreed-upon comparables. Because the Employer does not contest this analysis I will not repeat, in the interest of brevity, the Union's effort.

Rather, the Employer's principle objection to these proposed comparables lies in the fact that these communities are "...part of the Chicago metropolitan area." More specifically, the Employer cites prior arbitration awards, including that of Arbitrator Eglit

involving the collective bargaining agreement between the Employer and its firefighters, and argues that the wages in these cities are higher than those of communities in central Illinois because they are influenced by the Chicago economy and the higher cost of living in the Chicago area.

The Union on the other hand contends that the Eglit award is not precedential with regard to his rejection of Chicago Area Metropolitan communities because the factual basis relied upon by Eglit and the other arbitrators who have declined to use Chicago metropolitan communities as comparables is no longer true³. Finally, the Union cites two awards by Arbitrator Berman finding that Chicago Metropolitan communities are not, in and of themselves, distinguishable from central Illinois communities⁴.

Before turning to an analysis of the competing views of arbitrators on this point, I first deal with the Union's argument that the factual basis upon which arbitrators Eglit, in the award dealing with the Employer's firefighters, and Benn, in City of Springfield, S-MA-89-74 (1990), is no longer true. To support this point the Union relies on the fact that currently, unlike earlier years, the police wage disparity between central Illinois and the Chicago Metropolitan area has been reduced or eliminated. Specifically, the Union relies on the fact that at the starting rate and at ten years of service the wage disparity has lessened or, in some cases, has been eliminated such that rates of pay at those points in time in central Illinois communities exceed that of communities in the Chicago Metropolitan area. However, when that same rigorous analysis is used for other points in time, for example at five, fifteen, twenty, and twenty-five years of service, the inescapable conclusion is that the Chicago Metropolitan areas are always grouped at or near the top rate of salaries paid. Accordingly, I do not believe that the record supports the argument that the factual basis on which arbitrators Benn and Eglit relied is obsolete.

³The Union also urges that Eglit's award cannot be considered precedential on this point because he used the comparables that the parties agreed upon. However, in deciding which communities were comparable Eglit specifically discussed the Chicago area cities proposed and rejected them. Therefore, insofar as those communities are concerned, his award is in fact entitled to some deference.

⁴Arbitrator Larney also relied upon Chicago area communities in his award in City of Bloomington, S-MA-89-120 (1990). However, he did so in reliance upon what has come to be known as the "cluster analysis." Because the Union does not argue that the "cluster analysis" justifies selecting their comparables, I make no judgment on the wisdom of such an approach.

The Union attacks the rationale of arbitrators Benn and Eglit on a more fundamental level however. Specifically, it argues that to use wage levels to determine comparability is inappropriate because comparability is to be based on other factors such as equalized assess valuation, sales tax revenue, and other criteria in order to determine what wages should be. However, I believe that the Union reads the prior opinions too narrowly on this point. For example, at page 11 of his opinion in Springfield, Arbitrator Benn asserts that Chicago Metropolitan communities "...are too closely contiguous to the Chicago Metropolitan area and hence, too intertwined with that economy..." to serve as comparables for a downstate community. Also, Arbitrator Feuille, in City of Peoria, S-MA-92-67 (1992), in rejecting the use of Chicago Metropolitan communities as comparables for central Illinois, stated that "...it is well known that the general level of wages and the overall level of the cost of living are higher in the Chicago area than in the downstate portion of Illinois." Accordingly, I find that those arbitrators who have rejected the use of Chicago area communities as comparables to central Illinois areas have done so on a basis broader than mere wage disparities. I adopt their approach⁵.

b. The Employer's Comparables: Normal, Quincy, Urbana, Danville, Galesburg, and Pekin.

The first relevant point in analyzing the Employer's proposed comparables is that Arbitrator Eglit in his 1986 award between the Employer and its firefighters deemed all but Normal as comparable⁶. The Union argues that Eglit's determination is not precedential because they were deemed comparable by virtue of an agreement between the parties. However, a close reading of Arbitrator Eglit's opinion shows that the parties did not agree regarding Pekin and Quincy and Eglit deemed those two communities comparable as well. Moreover, although the parties agreed regarding Urbana, Danville, and Galesburg, Eglit nonetheless undertook an analysis of various statistical factors relevant to those communities before he determined that they were comparable.

The population of these communities ranges from 32,354 to

⁵It is true that in City of Springfield, S-MA-18 (1987) and in City of Aurora, S-MA-92-184 Arbitrator Berman found that certain Chicago metropolitan communities were comparable to other central Illinois communities. However, he did so based on the factual record before him regarding those communities. To the extent that his opinions may stand for the proposition that as a general rule the Chicago metropolitan area is comparable to central Illinois, I disagree.

⁶At the time Normal did not have a similar compensation system.

40,023 which is less than that of the Employer and any of the agreed upon comparables. The equalized assessed valuation of the proffered communities spans from 169 million to 301.9 million as compared to the Employer and the smallest of the agreed upon comparables which has an equalized assessed valuation of 517.3 million. Sales tax revenues among the Employer's proposed comparables are at a low of 3.6 million, a sales tax per capita low point of 93.40, to a high of 7.2 million in sales taxes and a per capita figure high point of 181.95. The lowest level of sales tax revenues among the agreed-upon comparables is 11 million and for sales taxes per capita a low of \$104.15. Finally the lowest per capita income among the agreed upon communities is \$13,025 while the highest among the communities suggested by the Employer is \$12,401.

It is clear from the foregoing that all of the Employer's proposed comparables are smaller in all relevant measures than those other communities agreed upon by the parties⁷. However, the gap between them on some measures, for example sales taxes per capita and per capita income, is not significant. Also, the disparity between those communities and the Employer in some cases is significantly small. For example, the highest equalized assessed valuation of the Employer's proposed comparables is 301.9 million as compared to that of the Employer at 487.9 million. Although it is not unwarranted to compare proposed comparables to those agreed upon in addition to comparing them to the employer in question, it seems to me that the critical analysis should be the comparison to the Employer in the first instance and only to the agreed upon comparables secondarily⁸. Accordingly, I find that the disparity between the Employer's proposed comparables and the agreed upon comparables do not warrant rejecting them. Finally, I note that the Union, unlike the Employer's argument against its proposed comparables, did not attack the Employer's proposed comparables on the basis of a disparate cost of living. In light of this fact, plus the fact that Arbitrator Eglit deemed those same communities comparable and the fact that any disparities between those communities and the Employer itself are not significant, I find that the Employer's proposed comparables should be accepted⁹.

⁷The only exception is the unemployment rate. The rate among the agreed upon comparables ranges from 2.2% to 12.3%. Among the Employer's proposed comparables the range is 2.2% to 9.6%.

⁸Indeed, the parties may have agreed to various comparables for reasons unrelated to any objective analysis.

⁹The Union also relies on the divergent crime rates and the differing nature of crimes between the Employer and its proposed comparables. Although the Act does not list this criterion among those to be considered it has in fact been used in prior cases. However, I do not believe that on the basis of this record, set

In light of the foregoing, I find the relevant comparables in this matter are Rockford, Springfield, Peoria, Champaign, Bloomington, Normal, Quincy, Urbana, Danville, Galesburg, and Pekin.

2. The Non-Economic Issues

a. Residency

In its final offer and its post-hearing brief the Union withdrew its proposal from consideration in this matter. Therefore, I pass no judgement on the Union's proposal and note that its final offer is identical to that of the Employer.

b. Voluntary Change of Scheduled Duty, Training Reimbursement, Drug Testing, Auxiliary Officers, Health and Fitness, and Americans With Disabilities

In Will County Board and Sheriff of Will County, (1988) Arbitrator Nathan, at pages 50-53, described the interest arbitration process and the burdens of proof in such proceedings. After first noting that the interest arbitration process is an "extension of the bargaining process...(which)...develop(s) a resolution the parties themselves might have achieved..." he concluded that it is "essentially conservative." He then held that when one party seeks to implement entirely new benefits or procedures or wishes to markedly change the product of previous negotiations "...the onus (is) on the party seeking the change." More specifically, Arbitrator Nathan described that the arbitrator must

...examine how the old system operated, whether there were administrative problems, whether inquiries were created, or unforeseen dilemmas ...(whether)...the old system or procedure has not worked as anticipated when originally agreed to or that the existing system or procedure has created operational hardships...and that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address the problems.

In the instant matter both parties seek various clauses in the collective bargaining agreement without meeting the burden of

forth above, this factor is dispositive. If the difficulty of policing were relied upon without regard to other factors, then areas quite remote from the situs of the dispute could be deemed comparable. Rather, I believe that the crime rate is only one factor of many and, on this record, does not compel a different result.

proof, as described by Arbitrator Nathan, necessary to justify imposing their proposals over the objection of the other. Therefore, I decline to order these clauses be included in the Agreement.

However, before describing my holding in each instance, I note that I am well aware of my authority, on non-economic issues, to devise solutions that lie somewhere between those of the parties. Nonetheless, before I will do so I must still be persuaded, on the record, that such authority is warranted and can be exercised in a sound and supportable manner. Indeed, one could describe this dichotomy as a "higher" burden of proof to justify imposition of one's final offer over than of another and a "lower" burden of proof to justify imposition of something other than that sought by either party.

On the issues noted above, the parties have failed, as described below, to meet either standard. Therefore, I decline to exercise my authority to craft an alternative solution under such circumstances for to do so takes risks that the solution crafted is without a factual foundation and indeed, perhaps unwise or harmful to the parties, their bargaining process, and potentially, the public. If the parties choose to impose any obligations on one another, through bargaining, without the benefit of demonstrated need, that is a far different matter from the imposition of such obligations by an arbitrator.

On the issue of Voluntary Change of Scheduled Duty the Employer seeks language in the agreement to provide that "(E)mloyees assigned to the First, Second, and Third shifts may change their duty schedule with agreement by the Chief of Police and the officers involved." In the Union's final offer it agrees to that language; however the Union seeks to add a proviso that would limit the circumstances under which such changes can be made and to protect employees from adverse action in the event that they do not agree to any proposed change. The record contains no evidence as to the need for this language or any experience which might have given rise to operations that were compromised in some way by the absence of such language. Accordingly, I find that the Employer has failed to meet its burden of proof and decline to order that this language be included in the agreement¹⁰.

¹⁰Because the Union repeats the language sought by the Employer but adds a proviso, I could conclude that the parties agree to the initial language, but not regarding the proviso which, since it is a Union proposal, must be justified by the Union. However, I decline to do so. Based on the record before me I do not know to what extent, if any, the Union's apparent agreement to the initial language is conditioned on the proviso. Therefore it is best for me to decline to include any of the language. In this way, if the Union's intention was to agree with the initial language suggested

Similarly, the Employer seeks inclusion in the Agreement requiring that employees hired after the effective date of the Agreement reimburse the Employer for certain costs incurred as a result of training if an employee terminates his or her employment within twenty four months. The Employer justifies its request by arguing that employees who leave within twenty four months of employment after they have been trained reap a windfall that should not be countenanced. However, the record contains no evidence that this has been a problem for the Employer. For example, I do not know the rate of turnover, if any, among employees with less than two years of service and what financial impact has been felt by the Employer. Therefore, I decline to order that this language be included in the Agreement¹¹.

The parties disagree on the subject of health and fitness training. The Employer seeks a proposal that employees be subject to such training and testing and its language sets forth various elements of such a program. However, the record contains no evidence regarding the current level of fitness of the police force and how, if at all, it is lacking or impacting on department effectiveness¹². Accordingly, I decline to order the inclusion of any such language in the Agreement.

by the Employer, the parties may still agree to that language, or any modification thereof, despite the provisions of my award.

¹¹The parties also disagree whether this is a mandatory subject of bargaining and properly before me. In light of my ruling on the burden of proof, it is unnecessary for me to resolve this conflict.

¹²It is true that Lieutenant Ryan testified regarding the benefits that would inure to the department as a result of requiring and maintaining a certain level of health and fitness. I suspect that these concerns are unassailable. However, his testimony does not provide the basis that there is an identifiable need to justify imposition of this item.

The Employer cites Parker v. District of Columbia, 850 F.2d. 708 (D.C. Cir. 1988) for the proposition that if it fails to provide for a health and fitness regimen it may be liable for damages resulting from a civil rights claim. That case however, is distinguishable. There, the governmental unit was liable for damages arising out of civil rights claim involving police brutality because there was evidence of deliberate indifference to adequate training, supervision and discipline. I certainly do not wish to predict how a reviewing court may evaluate the Employer in similar circumstances, but it appears to me that attempts to secure its health and fitness program, both in collective bargaining and interest arbitration, is a far cry from "deliberate indifference."

The parties expired Agreement contained provisions relating to drug testing. However, the Employer seeks to alter those provisions to apply to all employees in the bargaining unit and to provide for random testing. Again, the record is devoid of any evidence that the current provisions have been inadequate or obstructed by the Union in their implementation. As a result, I decline to award the language sought by the Employer on this issue¹³.

As noted above, the Employer has failed to meet its burden of proof on a number of issues. The Union too has failed in its obligation as well.

First, the Union seeks inclusion of language in the Agreement providing that if any "reasonable accommodation" taken by the Employer under the Americans With Disabilities Act (ADA) conflicts with any provision of the Agreement, the Employer will notify the Union and if agreement is not possible the matter will be submitted to arbitration. Of course, because the Act is so new there is no evidence of a problem that requires correction. Therefore the Union's perceived need is anticipatory at best or speculative at worst. More importantly, even without such language if Employer action impairs any express or implied contractual right the Union and the aggrieved employee have available the contractual grievance procedure. In the event that contractual rights are not involved, but the "reasonable accommodation" impairs or affects wages, hours, or conditions of employment the Employer's right to bargain under the IPLRA is applicable. Therefore, because of the inconclusive nature of the need for such language and the existence of alternatives to the Union's suggested language to address these issues, I decline to award the Union's language on this point.

The second item on which the Union has also failed to meet its burden of proof is with respect to its proposal that the agreement contain language, to which the Employer objects in its entirety, that the use of auxiliary officers be limited to those circumstances set forth in Illinois law and that any such use can not result in the erosion of the number of bargaining unit jobs or bargaining unit work. In support the Union points out that over time the number of auxiliary officers used by the Employer, and the number of hours worked by those individuals, has increased and that the public safety and interest demands that the use of those

¹³In a very similar situation Arbitrator Kossoff, in Village of Westchester, FMCS 90-23906 (1991), nonetheless crafted language to be included in the parties' agreement. For the reasons set forth above at page 8, supra, I decline to do so. Moreover, in an area such as drug testing, which involves important and sensitive rights and obligations relating to privacy and public safety, my reluctance to act unilaterally and without adequate basis is magnified.

individuals, who receive less training than bargaining unit employees, be restricted.

However, the Union has not demonstrated that the increase in the use of auxiliary officers has translated into lost opportunities for bargaining unit personnel. Indeed, the record demonstrates that standard practice in the department is that patrols are one officer units and that the auxiliary officers, when not serving in the specific roles allowed in Illinois law, "ride along" in those units. Therefore, the auxiliary officers have not displaced bargaining unit personnel. Finally, with regard to the public interest, the Union has failed to demonstrate any instances where law enforcement capabilities have been impaired by the use of auxiliary officers. (See, Champaign County Sheriff's Department, (Cox, 1991). Accordingly, I reject the Union's proposal regarding auxiliary officers.

d. "Evergreen" Clause

On this point the Union seeks inclusion in the Agreement language that the Agreement "...shall be automatically renewed from year to year...unless either party notifies the other in writing of its desire to amend the Agreement on or before February 1, 1995 or on or before February 1st of any subsequent year." In support of its demand the Union asserts that the proffered language serves the legitimate and laudatory purpose of maintaining collective bargaining stability. Moreover, the Union correctly points out that the agreements of the comparable communities of Bloomington, Champaign, Peoria and Springfield contain similar, if not identical, language¹⁴.

The Employer opposes inclusion of the language set forth above arguing that it is superfluous because Section 14(1) of the IPLRA provides a legal obligation on the parties that serves the goal that the Union seeks to obtain¹⁵.

Although on its face the Union's suggested language and

¹⁴The record also reflects that the agreements between the Employer and its firefighters and service employees have an "evergreen" clause as well.

¹⁵Section 14(1) provides as follows:

During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this Act.

Section 14(1) may appear to be duplicative, a closer analysis yields a substantial difference. Section 14(1) imposes an obligation couched in the familiar language of mandatory subjects of bargaining, i.e. "wages, hours, and terms and conditions of employment." A collective bargaining agreement however, may include permissive subjects of bargaining that may or may not be covered under the purview of Section 14(1) and the general statutory duty to bargain. If so, the only means of enforcing an agreement regarding these matters are those existing as a matter of contract. Therefore an "evergreen" clause continues those agreements after formal expiration of the agreement and the primary statutory goal of collective bargaining stability is met¹⁶. For this reason, as well as the fact that comparable communities and internal comparables bear in favor of inclusion, I find that the Agreement shall include the language sought by the Union.

d. Parking

The Employer currently provides free parking to members of the bargaining unit and offers to continue that practice. The Union on the other hand seeks to obligate the Employer to provide free parking "...in a manner similar to the parking arrangements in effect on 11/19/93."

A witness for the Union testified that free parking proximate to employees' designated workplace has been provided so that they may drive their patrol car to their personal vehicle to take from the latter various equipment they must carry on duty. This witness testified that such an arrangement was necessary because lockers provided in the workplace are inadequate for storing all of the equipment in question. Finally, it appears that the Union has placed this matter into issue because of concerns that the Employer may at some point yield ownership of the land in question¹⁷. A witness for the Employer on the other hand disagreed whether all the equipment used by officers in their patrol cars was required and/or necessary. However, he did agree that due to the fact that nearby parking is provided by the Employer, officers carried equipment that might not fit in the lockers provided by the

¹⁶I am well aware of the fact that there is less than total accord among adjudicatory bodies regarding the applicability of grievance and arbitration provisions following the expiration of a collective bargaining agreement. However, I do not believe it necessary to analyze or resolve that conflict. The sole issue before me is not what meaning to give to this language, but only whether the language should be included in the parties' Agreement.

¹⁷At the hearing the Union's witness also testified that suitable parking is available in nearby parking garages and that using those garages would be agreeable if parking fees were paid by the Employer.

Employer.

The Union contends that its language should be included in the Agreement because it memorializes past practice, is necessary because lockers provided by the Employer are inadequate, the current conditions may no longer be available to employees, and because some of the comparable communities' agreements contain similar language. (For e.g., Rockford (parking provided within three blocks of headquarters), Springfield (requiring that "sufficient" parking be provided) and Peoria (requiring that "adequate" parking be provided)). It also argues that the Employer's offer to provide free parking is inadequate because it does not address the question of proximity. The Employer on the other hand asserts that the Union's language should be rejected because it is vague, is not included in the agreements with the firefighters and service personnel, may require the Employer to forego the use of the property in question for valid purposes, and is unnecessary because locker space provided is adequate.

Although the record is inadequate for me to resolve the question of the adequacy of the current locker space provided by the Employer, there appears to be no question that the past practice between the parties, which should be respected to the fullest extent possible, is such that it has affected the degree to which officers use equipment while on duty. However, I do agree that the Union's proposal is vague and may invite conflict in the future.

More importantly however, the parties have in fact developed an adequate record to enable me to devise a solution that lies somewhere between their opposing points of view. For example, the record establishes the current practice and the desirability of continuing that practice. Moreover, the relevant concerns expressed by the parties on the record, the fear that the property may no longer be available to employees and the need for flexibility on the part of the Employer to use property for legitimate purposes; meets the "lower" burden of proof described above at page 8. Therefore, I deem this to be the type of situation where the drafters of the IPLRA contemplated that the arbitrator should craft a solution of his or her own. In doing so I have attempted to respect past practice, provide flexibility for the Employer to use its property for legitimate purposes, and to minimize ambiguity. Accordingly, I find that the Agreement shall read as follows with regard to parking:

The City shall continue to provide free parking to bargaining unit members; provided however that should it seek to alter the conditions in effect on 11/29/93 it shall do so only after providing notice of its intent to do so and after providing adequate storage space for the equipment used by bargaining unit members at the time said notice was given.

2. The Economic Issues

a. Legislative Cost Increases

On this point the Employer seeks to include in the Agreement language that would enable it to charge employees the cost of any legislation "...benefitting employees or immediate families of employees..." when such cost is to increase costs in its budget of more than one percent per annum over current costs." The proposed language also defines, by way of example that is not all inclusive, legislation "benefitting employees..." and provides for discussion with the Union to ascertain what, if any, alternatives to wage deductions may be available. In support the Employer cites the problems faced by it and other local units of government from unfunded mandates, the fact that such legislation provides a "windfall" for employees, and that these costs would be otherwise paid by employees through concessions in collective bargaining.

The Union opposes inclusion of any such language in the Agreement. In doing so it argues that the Employer provided no evidence of such rising costs or "windfalls", that employees have no control over any such legislation, that the proffered language does not provide that employees be compensated in the event that legislation decreases benefits, and that similar language has been rejected by other arbitrators.

The record contains no evidence that the Employer has unduly suffered from the burdens of any such legislation and such evidence that is necessary before an obligation can be imposed through arbitration as discussed above at page 8. Moreover, I believe that Arbitrator Briggs was correct in Village of Arlington Heights, S-MA-88-89 where, in rejecting such a clause, he relied on the fact that when parties negotiate a collective bargaining agreement they do so with the full understanding that conditions may change and that not all of those changes can or should be accounted for prospectively. Accordingly, I find that the Agreement should not contain the legislative cost increase proposal of the Employer¹⁸.

¹⁸However, in doing so I do not rely on the Union's argument that employees can not or have not influenced the passage of any legislation that benefits them. It has been my experience that it is not unusual for matters relating to public sector employment, ordinarily covered in bargaining in the private sector, to be shaped and molded in the legislative process. This process is often influenced, actively or passively, by public employees, unions, and employers, either for public policy, political reasons, or the real or perceived interest of those parties.

b. Sick Leave¹⁹

In their expired collective bargaining agreement the parties provided that upon retirement employees would be paid \$25 per day for each day of unused accumulated sick leave up to 200 days. In their final offers the Union seeks to increase the amount of buy back to \$50 while the Employer seeks an escalating rate as follows:

Less than 49 days accumulated:	\$25 per day
50 to 74 days accumulated:	\$30 per day
75 to 99 days accumulated:	\$35 per day
100 to 124 days accumulated:	\$40 per day
125 to 149 days accumulated:	\$45 per day
150 to 200 days accumulated:	\$50 per day

The Union argues that its offer should be accepted because it would provide parity with the agreement between the Employer and its firefighters. The Employer on the other hand argues that true parity is a myth because the work and responsibilities of police officers and firefighters are diverse and that to rely on internal parity would permit whipsawing by the labor organizations and would ignore the concessions that might have been made by the firefighters in securing the discrete benefit in question.

The Employer's arguments regarding the wisdom of using internal comparables may be correct as a matter of public policy. However, the same point can be made regarding the use of external comparables represented by the union which is a party to the arbitration. Moreover, there is a long history of the use of internal comparables²⁰. I will not reject the internal comparables of the firefighters, particularly since that agreement is of recent vintage, absent any evidence of the quid pro quo in the firefighter negotiations for this discrete benefit that was not applicable here. Because the Union's proposal compares favorably with the same benefit conferred by the Employer with respect to its firefighters, I find that the cap on the buy back of accumulated sick leave be

¹⁹In their final offers the parties, unlike at hearing, agreed that the cap on accumulated sick leave should read as follows:

Full-time employees in the classified service shall accrue one duty day with pay sick leave for each month of continuous service uninterrupted by resignation or discharge up to a maximum accumulation of 200 days.

²⁰See e.g., Interest Arbitration in the Public Sector: Standards and Procedures, Anderson, in Labor and Employment Arbitration, Bornstein and Gosline, editors.

raised to \$50 per day²¹.

c. Employee Payment for Dependent Health Care

The expired collective bargaining agreement between the parties provided that the Employer pay \$175.83 each month with a subsequent increase to \$250. The annual employee cost for the coverage was \$153.96

The Employer seeks that its portion of the cost for dependent health care coverage be increased in the first year of the agreement to \$260, or the actual rate, per month and in the second year of the agreement to \$275 or the actual rate, whichever is less. As a result, an employee's annual cost for the coverage will be anywhere from \$347 to \$394.32²². The Union however seeks to limit the employees share of the costs for dependent health care to 5% of premium. As a result, an employee's annual cost will be approximately \$174.

The Union first objects to the Employer's proposal asserting that it had failed to show any need for the increase. However, the Employer relies on its Exhibit 33 which shows that its health insurance program costs have increased from just over 1 million dollars in 1985 to just over 2.5 millions dollars in 1992. Moreover, the increase between 1991 and 1992 alone was from approximately 2 million to over 2.5 million dollars.

On the issue of comparability, in the agreed-upon comparables (Peoria, Rockford, Bloomington, Champaign, and Springfield) annual employee costs are respectively, \$496 or \$745, \$120 or \$480²³, \$1861, \$1242, and zero. Among the other communities deemed comparable herein (Pekin, Danville, Quincy, Galesburg, Normal, and Urbana) the range of annual employee costs for the coverage in question is zero to \$1,749. Finally, in the agreement between the firefighters and the Employer, employees do not contribute toward the cost of dependent health care coverage.

It appears from the foregoing that the Employer's proposal is a significant increase over the obligation assumed by employees in the prior contract and is in conflict with the internal comparables. However, it is not out of line with the comparable

²¹I agree with the Union that the external comparables are of little use due to the varying schemes used for calculation of the sick leave buy back.

²²The data submitted by the parties on this point is in conflict.

²³Again the data submitted by the parties on this point is in conflict.

communities and with the record evidence, and the generally well-known reality that health care costs are soaring in this day and age.

On the other hand, the Union's proposal, because it is only expressed as a percentage of total cost is not susceptible to this same type of analysis. Indeed, although a comparison of the impact of the Union's proposal with the cost of coverage in comparable communities can be made at this point in time, because it is expressed as a percentage that same comparison cannot be made at any point hereafter. Therefore, the impact of the Union's proposal may not favorably comport with the same benefit in other communities either because it is too generous or too stingy. Moreover, a 95/5% split between the Employer and employees may be inadequate in the face of rising medical costs and is not the rate of shared expense ordinarily seen when such matters are agreed upon by employers and unions, particularly those agreements in the comparable communities²⁴.

Accordingly, because the Employer's proposal compares favorably with the comparable communities and because the Union's proposal is otherwise flawed I find for the Employer on this point.

d. Wages²⁵

1. The Across-the-Board Wage Increase for 1993-1994

The Union has proposed a 2% wage increase effective May 1, 1993 and another 2% increase effective November 1, 1993. Conversely, the Employer has proposed a 3% wage increase effective May 1.

The record shows that the cost of living has increased at approximately 3.5% or less for each of the past two years. However, the agreement between the firefighters and the Employer provides for a 4% wage increase and, factoring out those communities where there has been no agreement or award, the average wage increase among the external comparables has been 3.55%. In light of these factors it is apparent that the Employer's offer more closely matches the cost of living, but lags behind the internal and external comparables. On the other hand, the Union's proposal more closely matches the comparables, but exceeds the cost of living. Moreover, the degree by which the proposals vary from

²⁴I note also that the Employer opposed sharing the cost of the premium on a percentage basis.

²⁵The parties stipulated that the wage and longevity increases for each of the two years of the Agreement be treated as separate economic issues.

these benchmarks is not substantial.

In reconciling these close, but diverse, circumstances I find that the Union's proposal should be adopted. The Union's offer squares more favorably with the comparables, well-accepted as the predominant criteria on these issues, (see e.g.. Bornstein and Gosline, supra at page 63-7) and does so without exceeding the cost of living to any significant degree.

2. The Across-the-Board Wage Increase for 1994-95

Here the Union seeks a 4% wage increase while the Employer offers an increase of 3%. On this point, for one reason or another, the parties agree that the record is less than complete. For example, because of the expiration date of the applicable agreements, no internal comparables are available and the external comparables are not conclusive²⁶. Secondly, available cost of living statistics do not cover the period in question.

Nonetheless, recent events in the news may be helpful. During recent days the media have been filled with reports of concern on the part of the federal government regarding economic growth and the predicted rate of inflation. For example, the Office of Management and Budget, in unveiling the Clinton administration budget for the next fiscal year, noted that inflation in 1992 was at 3.1% and estimated that for 1993, 1994, 1995, and 1996, respectively, the rate of inflation is forecasted at 2.8%, 3%, 3.2%, and 3.3%. (Wall Street Journal, page A12, February 8, 1994. See also, "Year's First Price Data Show Little Inflation," New York Times, February 12, 1994.)

Without commenting on the reliability of these figures, I note only that they seem to demonstrate that despite fears of inflation, the estimated rate of increase is not expected to match the wage increase sought by the Union and indeed more closely comports with the Employer's proposal. Therefore, this fact, combined with the absence of any meaningful comparisons both internally and externally, compel me to award the Employer's offer of an across-the-board wage increase in the second year of the Agreement of 3%.

3. Longevity Increases for 1994-95 at the 15, 20 and 25 Year Level²⁷

²⁶The wage increase for the relevant period in Champaign is 4% and in Peoria 3.5%. However, the agreements in Rockford, Springfield, and Bloomington are not helpful.

²⁷In their final offers the parties agree as to the longevity increases in the first year of the Agreement and, for the second year, as to the increases at the 5 and 10 year levels.

For the second year of the Agreement the Union seeks a longevity rate increase, at the 15, 20 and 25 year level, of 6%, 8%, and 10%. Conversely, the Employer offers 5.5%, 7% and 8.5%.

The record shows that Springfield longevity increases at these same levels are 6%, 9%, and 11%, while those of Bloomington and Champaign are, respectively, 9, 11, and 13% and 7.5, 10, and 10%. The same level increases at Peoria are, at the last level, lower than those offered by the Union and, in the case of Rockford, identical at all levels. Accordingly, the Union's proposal is identical, or very close to, two of the five. It also compares favorably to a third and is lower than the remaining two. Conversely, the Employer's offer is less than all five²⁸. In light of the foregoing, I find that the Union's offer for longevity increases in the second year of the Agreement, and at the 15, 20, and 25 year level be awarded.

4. Merit Pay

The Employer has proposed that the Agreement provide that for all police officers hired after May 1, 1993 advancement through the pay grade classification be based on a satisfactory rating on performance evaluations. The Union objects to the proposal in its entirety.

The motivational aspect of merit pay or pay-for-performance is well documented in human resource annals and I do not necessarily reject those theories. Indeed, it may be axiomatic that one will work harder, faster, and/or better if he or she knows that the reward will be there for them when they do. However, my award must be based on the record put before me and not on any generalized notions of the wisdom of merit pay systems. In this matter, the record shows that the Employer has provided no evidence as to the need for a merit pay system. For example, it has not shown why a merit pay system may be justified nor any reason that the current pay system is faulty or undesirable. Moreover, it has proffered no evidence regarding comparable communities as well.

In light of the foregoing, and for the reasons stated at page 8, supra, I find for the Union and reject the Employer's merit pay proposal.

AWARD

IT IS HEREBY ORDERED THAT, with respect to each of the following:

²⁸For this comparability analysis I use only the five agreed-upon comparables because no evidence on this point was placed into the record with respect to those additional communities.

1. The issue of residency is deemed withdrawn and the agreement shall read in accordance with the parties' identical final offers.

2. The Employer's proposal regarding voluntary change of scheduled duty is rejected.

3. The Union's proposal regarding auxiliary officers is rejected.

4. The Employer's proposal regarding training reimbursement is rejected.

5. The Employer's proposal regarding drug testing is rejected.

6. The Union's proposal regarding Americans with Disabilities Act is rejected.

7. Article 26, Section 1 shall read as follows:

This Agreement shall become effective, May 1, 1993 and shall remain in full force and effect until April 30, 1995. It shall be automatically renewed from year to year thereafter unless either party notifies the other in writing of its desire to amend the Agreement on or before February 1, 1995 or on or before February 1st of any subsequent year. If either party submits such written notice, the parties designated representative shall commence negotiations not later than March 31, 1995 or March 31 of any subsequent year. Notwithstanding the expiration date set forth above, this entire agreement shall remain in full force and effect during the period of negotiations and until a successor agreement is ratified by both parties.

8. Article 16, Section 5 shall read as follows:

The City shall provide free parking to bargaining unit members; provided however, that should it seek to alter the conditions in effect on 11/29/93 it shall do so only after providing notice of its intent to do so and after providing adequate storage space for the equipment used by bargaining unit members at the time notice was given.

9. The Employer's proposal regarding legislative cost increases is rejected.

10. Article 12, Section 1 shall read as follows:

Full-time employees in the classified service shall accrue one duty day with pay sick leave for each month of continuous service uninterrupted by resignation or discharge up to a maximum of 200 days.

11. Article 12, Section 6 shall read as follows:

Upon retirement from the classified service, an employee shall be paid \$50.00 for each day of his unused accumulated sick leave up to 200 days.

12. Article 16, Section 2 shall read as follows:

The City shall pay \$250.00 per month or the actual rate, whichever is less, for employee dependent group insurance for each employee with such coverage. Effective 11/1/94, the City shall pay \$275.00 per month or the actual rate, whichever is less, for employee dependent group insurance for each employee with such coverage.

13. There shall be a 2% increase to base salary effective May 1, 1993 and another 2% increase effective November 1, 1993.

14. There shall be a 3% increase to base salary effective May 1, 1994.

15. Article 6, Section 3 shall read as follows:

Those employees in the police service who have occupied position classifications as set forth in Exhibit A for not less than five years shall receive longevity pay, in addition to the wage set out in said Exhibit A as provided in Section 1 hereof, according to the following schedule:

Employee with not less than 5 years but fewer than 10 years -	2%
Employees with not less than 10 years but fewer than 15 years -	3.5%
Employees with not less than 15 years but fewer than 20 years -	5%
Employees with not less than 20 years but fewer than 25 years -	6.5%

Employees with not less than 25 years 8%

16. Article 6, Section 4 shall read as follows:

Effective May 1, 1994, those employees in the police service who have occupied classifications as set forth in Exhibit B for not less than five years shall receive longevity pay, in addition to the wages set out in said Exhibit B as provided in Section 2 hereof, according to the following] schedule:

Employees with not less than 5 years
but fewer than 10 years - 2%

Employees with not less than 10 years
but fewer than 15 years - 4%

Employees with not less than 15 years
but fewer than 20 years - 6%

Employees with not less than 20 years
but fewer than 25 years - 8%

Employees with not less than 25 years 10%

17. The Employer's proposal regarding merit pay is rejected.

18. The parties are to include in the agreement, along with the provisions set forth above, all tentative agreements that they have agreed upon up to and including the date of this Award.

DATED:

February 25, 1994

Robert Beckman