



S-MA-94-94

INTEREST ARBITRATION  
OPINION AND AWARD

In the Interest Arbitration

between

CITY OF ELGIN

and

METROPOLITAN POLICE  
ASSOCIATION, UNIT #54

Hearing Held

February 8, 1995  
Elgin City Hall  
Elgin, IL

Appearances

For the Union:

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Arbitrator

Steven Briggs

For the Employer:

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## BACKGROUND

The Employer in this matter is the City of Elgin (the City). It has been in a formal bargaining relationship with its police officers since the early 1970's. Beginning with negotiations leading to the 1990-1993 collective bargaining agreement, the City's approximately 113 police officers have been represented for collective bargaining purposes by the Metropolitan Police Association (the Union).<sup>1</sup> The present interest dispute concerns eight economic items to be included in the 1994-1996 successor to the parties' 1990-1993 agreement, which expired on December 5, 1993.

Negotiations for the successor agreement began on September 29, 1993. Thereafter, the parties engaged in formal negotiations on approximately thirteen more occasions. They attempted unsuccessfully to reach a mediated settlement in April, 1994. Pursuant to the Illinois Public Labor Relations Act (IPLRA; 5 ILCS §315/1 et seq.) and their negotiated Alternative Impasse Resolution Procedures, the parties selected Steven Briggs to decide the eight economic issues in dispute. An interest arbitration hearing was conducted on February 8, 1995, during which time both parties had full opportunity to present evidence and argument in support of their respective positions on the issues. The hearing was transcribed. After both parties had filed timely Posthearing Briefs with the Arbitrator, the record was declared closed on April 7, 1995.

## THE ISSUES

The parties have set forth the following eight economic issues for resolution by the Arbitrator:

1. Salaries for the 1995 and 1996 fiscal years (Item 4, Section a).<sup>2</sup>
2. Retroactivity of salary increases for fiscal years 1994 and 1995 (Item 4, Section a).
3. Health Care Insurance (Item 13, Section d).
4. Off-Duty Calls (Item 5, Section i).
5. Call Outs (Item 5, Section f).

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<sup>1</sup> They were formerly represented by the Policemen's Benevolent and Protective Association.

<sup>2</sup> Parenthetical references refer to the agreement section in which the issue is located.

6. Sick Leave Conversion (Item 10, Section b).
7. Holidays (Item 7).
8. Legislative Mandates (new).

### THE IPLRA STATUTORY CRITERIA

The Illinois Public Labor Relations Act requires that the interest arbitration decision in this matter shall be based upon the following eight factors:

- (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 COMPARABLE JURISDICTIONS

### City Position

The City advanced the following municipalities as the appropriate comparables pool:

Arlington Heights  
Aurora  
Des Plaines  
Evanston  
Joliet  
Oak Park  
Skokie  
Waukegan

Since the early 1970's, the City notes, the above jurisdictions have been relied upon as the appropriate comparables grouping for the City's negotiations with the police and firefighter units. Also, in its only other interest arbitration under Section 14 of the IPLRA, the City and the International Association of Firefighters (IAFF) Local 439 agreed that the above grouping should be used for comparability purposes. The City argues that the Arbitrator should give great weight to its long history of using the same eight jurisdictions as comparables and adopt them as the comparables pool in the present case.

### Union Position

The Union does not oppose adopting as comparables the eight jurisdictions proposed by the City, even though the Union did not include Des Plaines and Skokie in its list of comparable jurisdictions (Union Exhibit 12). The Union asserts, however, that an additional seven communities should be considered by the Arbitrator:

Rockford  
Springfield  
Decatur  
Naperville  
Schaumburg  
Bloomington  
Peoria

The Union notes that the City itself used "two of the the Union's comparable communities, Rockford and Waukegan" as growth rate comparables in its 1995 Budget and Financial Plan and Program Strategies.<sup>3</sup> That document characterizes the City of Elgin as a "community growing at an astounding rate." The Union agrees with that characterization and believes that the additional comparables it suggests display demographics akin to Elgin's 1990 population of over 77,000.<sup>4</sup> Essentially, the Union argues that the City of Elgin has outgrown the eight-jurisdiction comparables pool historically used. In support of that position the Union notes that its seven additional comparables parallel reasonably with Elgin on the basis of number of sworn officers, police manpower per 10,000 residents, and crimes per 100,000.

The Union also cites a 1989 interest arbitration proceeding involving City of Bloomington police officers wherein the arbitration panel adopted Elgin, Aurora, Champaign, Danville, DeKalb, Kankakee, Rockford, Springfield, Urbana, Waukegan and Peoria as appropriate comparables. Since three of the additional comparables set forth by the Union in the present case (Rockford, Springfield and Peoria) were considered comparable to Bloomington by that panel, and since Elgin was also included in the comparables pool the panel adopted, the Union argues that the Arbitrator in the present case should adopt its 15-member comparability grouping.

### Discussion

Interest arbitration procedures are intended to produce decisions which approximate the outcome of free collective bargaining. For that reason, interest arbitrators are generally inclined to embrace comparability groups historically used by the parties themselves. In the present case Counsel for the City noted that over the past two decades its eight suggested comparables have been used in negotiations with various Elgin employee groups, including the police. The Union did not refute that claim.

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<sup>3</sup> Waukegan is one of the eight jurisdictions characterized by the City as being comparable to Elgin for the purposes of this proceeding.

<sup>4</sup> The corresponding population figure in 1980 was approximately 63,800.

Arbitrator George Fleischli's February, 1992 interest arbitration award involving the City of Elgin and the IAFF confirms that the eight-member comparables pool was voluntarily adopted by those parties. That proceeding took place after the City experienced the "astounding" growth rate partially relied upon by the Union in the present matter to justify its seven additional suggested comparables. Since the IAFF and the City agreed voluntarily to the eight-member pool in early 1992, the Arbitrator is inclined to conclude that adopting it in the present case would be a reasonable approximation of what the parties might have done in the present case had it not been advanced to interest arbitration.

The above conclusion is buttressed by the absence in the record of evidence that the parties bargained over the composition of an appropriate comparables pool. Without such evidence, it is logical to reason that in juxtaposing their respective bargaining positions on the issues to the terms and conditions of employment in other communities, the parties must have looked to those communities historically used for such purposes. Adopting a set of new comparables now, as the Union urges me to do, is repugnant to the notion of approximating in interest arbitration awards the outcome of free collective bargaining. It would produce an interest arbitration award based in part on data the parties did not mutually consider at the bargaining table. As Arbitrator Neil Gundermann has stated:

While uncertainty may be a catalyst to voluntary settlements, the parties have a right to expect some predictability from the arbitration process. The decision to proceed to arbitration rather than reach a voluntary settlement should be based on something other than a "crapshoot." Presumably when the parties reach an impasse and proceed to arbitration a factor considered is what is being done in comparable communities and the possibility, if not likelihood, that the arbitrator will follow the mandate of the statute and look to the comparable communities for guidance. The parties should be looking to the same comparables, or at least be aware of their differences.<sup>5</sup>

The Arbitrator in the present case also concludes that certain of the additional communities proposed by the Union are too geographically distant from Elgin to be useful as comparables. That is, there is no evidence that Springfield, Decatur, Bloomington and Peoria exist in a local labor market with Elgin. It is not likely that people in Elgin would commute on a daily basis to be police officers in any of those communities. Accordingly, it is unrealistic to assume that Elgin must compare itself to such distant communities in order to determine a competitive level of wages, hours and working conditions for its police officers. It makes a great deal more sense for Elgin to compare itself with jurisdictions in its own local labor

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<sup>5</sup> Village of Skokie and Skokie Fire Fighters Local 3033, IAFF (July 6, 1993), at 14.

market. The eight municipalities historically adopted as comparables by the parties themselves meet that criterion.

Those eight communities also meet the traditional comparability benchmarks of population, assessed valuation, sales tax revenue, average home value, and average family income. The City of Elgin is not at the extreme end of the comparables range on any of those benchmarks, and on most it falls just about in the middle.

Based upon the foregoing analysis, the Arbitrator adopts as the comparables pool for this proceeding the eight communities historically used by the parties themselves for that purpose.

### ECONOMIC ISSUE NO. 1: SALARIES

The parties have already agreed to a 3% salary increase across Steps I - VI effective December 26, 1993. Their final offers for the 1995 fiscal year each reflect a 3% increase across those Steps as well, effective December 25, 1994. Thus, the parties' sole remaining dispute with respect to salary increases is the increase to be effective December 24, 1995 for the third year of the Agreement (fiscal year 1996).

#### The Union's Final Offer

The Union's final offer on salaries for the 1995 and 1996 fiscal years is quoted below:

Wages to be increased in Section (a) as follows:

3% increase to ranges I-VI effective 12/26/93

3% increase to ranges I-VI effective 12/25/94

Wage increase to be retroactive for years 1994, retroactive to 12/26/93, and 1995 retroactive to 12/25/94, for all regular hours compensated including all paid leave, overtime hours and holiday hours, all other language in Section (b) to remain.

The following language to be added to Item 4, Section (a):

Wages shall be effective as provided for above; provided that wages for the third year of the Contract beginning December 24, 1995 shall be reopened for negotiations on

written demand no earlier than sixty (60) days prior to the end of the second year of this Agreement. During such negotiations, the provisions of Item 4 (Wages) of this Agreement and no other article, item or provision shall be affected and any changes are to be effective December 24, 1995.

All other existing contract language changes contained in Item 4, to remain as is.

### The City's Final Offer

The City's final offer on salaries for the 1995 and 1996 fiscal years is as follows:

Effective December 25, 1994, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI
2742	2913	3206	3390	3568	3772
32904	34956	38472	40680	42816	45264

Effective December 24, 1995, the base range of employees covered by this Agreement shall be:

I	II	III	IV	V	VI
2824	3000	3302	3492	3675	3885
33888	36000	39624	41904	44100	46620

### Discussion

The Union believes that the wage reopener it proposes for the third year of the Agreement is appropriate because hard economic data for 1996 do not yet exist. And even though the City and Union have historically bargained three-year agreements without reopeners, a wage reopener is not without precedent in the City of Elgin. Moreover, the Union argues, wage reopeners are quite common in the police community and in the City's own comparable communities. For example, four of

the City's comparables (Des Plaines, Joliet, Skokie, and Waukegan) have wage reopener provisions in their agreements, and one (Oak Park) has a non-wage item reopener.<sup>6</sup>

A wage reopener provision identical to the one proposed by the Union here appears in the 1993-1995 Agreement between the City of Elgin and its Clerical/Technical Employees. The City agreed to that reopener voluntarily. Based on that instance, and on the evidence proffered by the City in the form of its comparable communities' collective bargaining agreements, the Union asserts that the inclusion of a wage reopener in its Final Offer more nearly complies with the statutory criteria than does the City's Final Offer of a 3% salary increase for fiscal 1996.

The City relies heavily on internal comparability between the police and fire fighter units in support of its Final Offer for a 3% third-year increase, noting that IAFF Local 439 voluntarily agreed to negotiated across-the-board salary increases for fire fighters of 3% effective December 25, 1994 and 3% effective December 24, 1995. Moreover, the City maintains, across-the-board salary increases for police and fire fighters have been exactly the same for nine of the past ten fiscal years.

The City also underscores the fact that for the first two fiscal years of the Agreement at issue the parties reached voluntary agreement to a 3% increase for each of the six salary steps. Those negotiated increases duplicate the 3% increases negotiated between the City and IAFF Local 439 for the same two years. Accordingly, the City argues, there is no reason to depart from the three-year pattern voluntarily bargained for the fire fighter unit.

The City argues as well that only two of the eight comparable jurisdictions (Skokie and Waukegan) provide for a true wage reopener similar to that proposed by the Union in the present case.

Consideration of the parties' respective arguments on the salary issue has caused the Arbitrator to conclude that the City's Final Offer is the more reasonable. The primary reason for that conclusion stems from the historical pattern of police-fire fighter salary increase parity established through free collective bargaining. Between 1986 and 1995 the negotiated salary increases for each of those units have been identical. The only departure from that bargained pattern was in 1992, when the fire fighter unit was awarded a 5.25% increase through interest arbitration. The corresponding increase voluntarily negotiated for the police unit was 5.5%, a figure very close to that awarded to the Elgin fire fighters.

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<sup>6</sup> The Union's arguments with regard to the additional jurisdictions it proposed as comparables are not addressed in the remainder of this Opinion and Award, because as discussed earlier, those jurisdictions were rejected by the Arbitrator for comparability purposes.

The advisability of maintaining the historical negotiated salary increase parity between the Elgin police and fire fighter units is quite clear. First, and as already noted herein, interest arbitration awards should approximate the outcome of free collective bargaining. Since each and every negotiated salary increase for Elgin police officers has been the same as those negotiated for Elgin fire fighters over the last ten years, the Union must show compelling reason to deviate from that pattern. Emphasis on the uncertainty associated with predicting economic conditions in 1996 is not enough. The City of Elgin and its police officers have dealt with that uncertainty every time they have negotiated three year agreements, and there is no evidence in the record to suggest that either has suffered inordinately as a result.

Interest arbitration awards should not create unrest in what prior to their issuance was a stable, well-established comparison relationship between police and fire fighter bargaining units in a particular municipality. As this Arbitrator noted in an interest arbitration proceeding involving fire fighters in the Village of Arlington Heights:

In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a particular public sector jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called "me too" clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want.

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... Indeed, granting the firefighters percentage increases higher than those negotiated by the FOP would quite likely instill in the latter the motivation to redress the balance during future negotiations. This produces a whipsaw effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability of the bargaining process.<sup>7</sup>

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<sup>7</sup> Village of Arlington Heights and Arlington Heights Fire Fighters Association, Local 3105, IAFF (January 29, 1991).

In Arlington Heights the union sought a wage reopener for the third year of the contract. The employer proposed a specific salary increase for the third year. In part, the Arbitrator adopted the employer's final offer on that issue to save the parties the time and expense of entering salary negotiations again within a year after the issuance of the award. The same circumstances are present in the instant case. Were I to embrace the Union's final offer on the salary issue, the parties could find themselves back at the bargaining table in just a few short months after this interest dispute is resolved. An award inducing such action would do little to enhance the stability of their collective bargaining relationship..

On the basis of the foregoing analysis the Arbitrator has decided that the City's final offer on the salary issue more closely adheres to the statutory criteria than does the Union's final offer on that issue.

## ECONOMIC ISSUE NO. 2: RETROACTIVITY

### The City's Final Offer

The City's final offer with respect to retroactivity of salary increases for the 1994 and 1995 fiscal years is quoted below:

Section c. Retroactivity. Employees covered by this Agreement who are still on the active payroll the beginning of the next payroll period immediately following the ratification of this Agreement by both parties shall receive a retroactive payment. Said payment shall be made at a rate reflective of the difference between the pay ranges existing immediately prior to the effective date of Arbitrator Briggs' award and the new salary ranges reflected in Section a. above, which are effective December 26, 1993 and December 25, 1994, respectively. Payment shall reflect this difference on an hour by hour basis for all regular hours compensated since December 26, 1993. Included in regular hours compensated shall be all paid leave and holiday additional hours; overtime hours shall not be included.

### The Union's Final Offer

The Union's final offer on retroactivity maintains the *status quo*. It differs from the City's final offer only in that it provides retroactive pay for overtime hours.

## Discussion

Adoption of either party's final offer on this issue will result in full retroactive pay for all regular hours of work between December 26, 1993 and the effective date of the Award contained herein. The retroactive pay for that period will include all paid leave and holiday hours. The narrow issue before the Arbitrator is whether retroactivity should apply to overtime hours as well.

The City argues that it should not. It points to what it characterizes as the parties' frequent historical agreement to exclude overtime hours from the scope of retroactive pay. The City is quite correct in its contention that the 1978-79, 1980-81, 1982-84 and 1985-88 Agreements do not apply salary increase retroactivity to overtime hours worked. The City also notes that its current Clerical/Technical Agreement does not extend retroactivity to overtime hours.

The City argues as well that the extension of retroactive pay to overtime hours would be administratively burdensome. The task would involve computation of retroactive pay across all overtime hours worked in fiscal years 1994 and 1995.

The Union argues that the extension of retroactive salary increases to overtime hours would maintain the parties' more recent voluntary settlement pattern. It cites the 1988-1990 and 1990-1993 police contracts as examples. The Union also notes that the Elgin/IAFF Agreements for 1991-1993 and 1994-1996 each contain provisions which extend retroactivity to overtime hours. Finally, the Union cites Arbitrator Fleischli's 1992 interest arbitration award involving the City of Elgin and the IAFF. In that Award Fleischli soundly rejected the City's "administrative burden" argument.

The Arbitrator has determined after consideration of the parties' respective arguments that the Union's final offer on the retroactivity question is the more appropriate. First, the Union and the City have voluntarily agreed in the two most recent police contracts to apply salary increase retroactivity to overtime hours. That fact leads the Arbitrator to believe that they might likely have done so again, had they been able to resolve the present dispute between themselves at the bargaining table. Second, the fact that the City voluntarily extended retroactivity to overtime hours in its latest negotiations with the IAFF is most persuasive. The City's strong emphasis on the importance of salary increase parity between the fire fighter and police units is as applicable to the retroactivity issue as it was to the salary issue itself. Finally, while the clerical task of applying retroactive pay to overtime hours worked by police officers in fiscal years 1994 and 1995 may constitute an administrative burden, that fact alone is not persuasive, particularly against the backdrop of the 1988-1990 and 1990-1993 Elgin police contracts voluntarily agreed to by the City.

### ECONOMIC ISSUE NO. 3: HEALTH CARE INSURANCE

#### The Union's Final Offer

The Union proposes no change to the health care insurance language found in Item 13, Section (d) of the parties' 1990-1993 Agreement. That language is quoted in its entirety below:

Section d. Medical Insurance Plan Variations. In addition to the coverage of the City's basic comprehensive major medical insurance plan, the employees and their dependents covered by this Agreement shall have included as part of their insurance plan the following features: 1) a \$100 family deductible and 2) a \$300 co-insurance provision.

#### The City's Final Offer

The City proposes that the above language be amended to read as follows:

Section d. Medical Insurance Plan Variations. Effective the first full month following the effective date of Arbitrator Briggs' award, the deductibles amounts will be \$200 and \$600 for employee and dependent coverage, respectively, the co-payment will be 80/20 of the first \$2,500, and major medical coverage will be \$500,000.

#### Discussion

The Union argues that adoption of the City's final offer on this issue would have a dramatic effect on employees' out-of-pocket health care expenditures. The maximum annual expense a police officer can incur under the current plan is \$400 per family. Under the City's final offer that amount would increase to \$1,100. Thus, the Union notes, adoption of the City's offer equates to a potential increase in out-of-pocket expenses of 275%.

The City's Agreement with the Service Employees' International Union (SEIU) covering public works employees currently provides the same level of benefits as those in the 1990-1993 police agreement. The Union points to that Agreement as evidence that there is no City-wide pattern to justify selection of the City's final offer on health care insurance.

Furthermore, the Union notes, the present level of health care benefits provided to Elgin police officers was established over ten years ago through the collective bargaining process. The Union claims as well that during negotiations for the 1994-1996 contract the City offered no *quid pro quo* in exchange for its proposal to increase employee health care costs. Finally, the Union argues, the City has provided no compelling reason why the level of insurance benefits should be increased at Union members' expense.

The City asserts that its proposal on health care insurance is modest when compared with the cost increases of more than 400 percent that it has incurred over the last eleven years to provide health care insurance to the police bargaining unit.<sup>8</sup> The City also notes that its proposal does not call for employees to pay anything toward the cost of health care insurance premiums. That is, the City would continue to pay 100 percent of the premium costs during the term of the Agreement covered by this Award.

On the internal comparability dimension the City underscores the fact that adoption of its final offer would bring the police unit in line with the deductible, maximum co-pay and lifetime cap features that fire fighters have had for many years. The City notes as well that the changes embodied in its final offer already apply to all City of Elgin employees except rank-and-file police officers and SEIU-represented public works personnel.

The City also argues that the external comparability data support acceptance of its final offer on health care insurance. Under its offer, the City asserts, only two of the eight comparables (Aurora and Joliet) would have lower deductibles. The City touts the merits of its offer in terms of co-payments as well. The maximum amount an employee would pay under the 80/20 split of the first \$2,500 would be \$500 --- a figure significantly lower than that paid by police officers in all comparable municipalities except Evanston. The City also highlights the fact that only two of the eight comparable jurisdictions provide fully-paid insurance premiums for their police officers.

For the following reasons, the Arbitrator has adopted the City's final offer on health insurance. First, the internal comparison factor supports it. The Arbitrator was influenced quite heavily by the fact that almost all City of Elgin employees already are subject to the same deductibles, co-payments and lifetime cap as those contained in the City's final offer. Non-represented Police Department personnel from the Chief on down are included in that expansive group. There are only two exceptions: the police unit and the public works unit. In its current negotiations with the SEIU, the City has proposed deductibles, co-payments and a cap identical to those it advances in the present case. The City's final offer here seems reasonable

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<sup>8</sup>The 1983 cost to the City was \$141,027; the corresponding figure for 1994 was \$632,636.

indeed when viewed within the context of other City of Elgin employee groups. The validity of that conclusion is supported by recent Illinois interest arbitration decisions as well, one of which involved a member of the eight-jurisdiction comparability grouping adopted in this case.<sup>9</sup>

The external comparability factor also favors adoption of the City's final offer, as illustrated in Table 1:

TABLE 1  
HEALTH CARE INSURANCE COMPARISON

<u>Jurisdiction</u>	<u>Deductibles</u>		<u>Co-Payment</u>	<u>Max Pmt</u>	<u>Ee Prem.</u> (sgl /fam)
	(sgl)	(fam)			
Arlington Heights	\$250	\$750	80/20 of 1st \$10,000	\$2,000	\$11.96/\$19.98
Aurora	\$100	\$300	80/20 of 1st \$5,000	\$1,000	\$29.58/\$37.00
Des Plaines (Indemnity) (Union Plan)	\$200 n/a	\$600 n/a	80/20 of 1st \$6,500 n/a	\$1,300 n/a	0/0 \$75.26/\$124.11
Elgin (City's Offer)	\$200	\$600	80/20 of 1st \$2,500	\$500	0/0
Elgin (status quo)	\$100	\$100	80/20 of 1st \$1,500	\$300	0/0
Evanston (In Network)	0	0	0		\$27.00/\$49.00
(Not in Network)	\$250	\$500	80/20 of 1st \$10,000 (f)	\$2,000	\$27.00/\$49.00
Joliet (In PPO)	0	0	80/20 of 1st \$5,000	\$1,000	0/0
(Not in PPO)	\$150	\$450	80/20 of 1st \$15,000	\$3,000	0/0
Oak Park (Indemnity)	\$250	\$500	70/30 of 1st \$5,000	\$1,500	\$29.50/\$72.00
(PPO)	n/a	n/a	n/a	n/a	\$22.50/\$59.00
Skokie	\$200	\$600	80/20 of 1st \$4,200	\$840	\$28.23/\$81.27
Waukegan	\$200	\$500	80/20 of 1st \$3,000	\$600	\$43.34/\$115.29

Table I confirms the City's argument that under its final offer Elgin police officers are still much better off than their counterparts in comparable municipalities. Significantly, they continue to pay no monthly premium costs for health care insurance. Police officers in seven out of the eight comparable jurisdictions pay a

<sup>9</sup> City of Aurora and Association of Professional Police Officers (Berman, 1993). Also see City of Peoria and IAFF (Feuille, 1992); and City of Elmhurst and Illinois FOP Labor Council (Feuille, 1993).

portion of the monthly premiums out of their own pockets. Moreover, the maximum co-payment in Elgin is the lowest in the entire comparability pool. And while the City's proposed deductibles move Elgin police officers from a position where they paid the lowest deductibles in the comparability pool, their deductibles under the City's final offer will still be equal to or lower than those paid by police officers in five of the comparable jurisdictions for single coverage and in three of them for family coverage.

The astronomical increases in health care insurance costs over the last decade have caused a steady decline in the number of employers willing to cover the entire monthly premium costs of health care insurance for employees. That trend is reflected by the last column in Table I. In the Arbitrator's view, the City's final offer on this issue reflects a modest move in the direction of health care cost containment, while still preserving for Elgin Police Officers the enviable position of having their employer pay the entire monthly health insurance premiums.

#### ECONOMIC ISSUE NO. 4: OFF-DUTY CALLS

The Off-Duty Calls issue is covered in the parties' 1990-1993 Agreement at Item 5, Section i. That Section is quoted in its entirety below:

##### Item 5. Hours of Work and Overtime

Section i. Off Duty Calls. If an officer is required to make an off duty telephone call, the officer shall receive one-half hour pay at time and one-half.

##### The City's Final Offer

The City's final offer with respect to off-duty calls is to delete in its entirety Section i of Item 5.

##### The Union's Final Offer

The Union's final offer on this issue is to retain without change Item 5, Section i as it appears in the parties' 1990-1993 collective bargaining agreement.

## Discussion

The City's final offer is based upon its objection to the payment of half an hour's pay at the overtime rate for a telephone call that might last only a couple of minutes. According to Deputy Chief Burns, as a result of this premium payment there are times that supervisors do not contact off-duty police officers even though it is desirable to do so. And the City notes that seven of the eight comparable jurisdictions do not have any minimum pay guarantees for receiving or making an off-duty telephone call. The City emphasizes that its offer does not mean officers would not be paid if required to spend more than a *de minimis* amount of time engaged in an off-duty call. Rather, they would be paid for such calls at their applicable hourly rate, including overtime in appropriate cases.

Finally, the Union argues that since the City introduced no evidence that Item 5, Section i has caused it any undue financial hardship, there is no compelling reason to delete it.

The Arbitrator agrees with the Union on this issue. The Off-Duty Calls provision which first appeared in the parties' 1990-1993 agreement is the outcome of free collective bargaining. According to Deputy Chief Burns, it is invoked perhaps once or twice per month. There is no evidence in the record to suggest that Elgin police officers have attempted to abuse the provision. On the contrary, the testimony of Deputy Chief Burns leads the Arbitrator to conclude that the provision is working as the parties must have intended.

Burns testified that there are times when a supervisor does not call an off-duty officer because doing so might trigger premium payment under Item 5, Section i.<sup>10</sup> In such instances, it is reasonable to assume that the supervisor decides contact with the officer can wait. When the need for telephone contact with an officer is more immediate, the call is most likely made. Thus, the volume of calls made by supervisors to off-duty officers is limited by the premium pay provision. That is the very purpose of such provisions. They are designed to give employers financial disincentive to contact employees about work-related issues when they are on their own time.

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<sup>10</sup> On its face, Item 5, Section i does not seem to cover the situation where a police officer receives an off-duty call, but is not required to make one. There is no evidence in the record as to the parties' pay practice under such circumstances. Accordingly, the Arbitrator has made the conscious decision not to address that narrow question in the process of determining which of the parties' final offers on the off-duty calls issue is the more reasonable.

## ECONOMIC ISSUE NO. 5: CALL OUTS

Off duty police officers called back to work receive premium pay under Item 5, Section f (Callout) of the 1990-1993 Agreement. It is quoted in its entirety below:

Section f. Callout. An employee called back to work (excluding court calls in other than a court standby situation) while off duty after having completed his/her assigned work shall receive a minimum of two (2) hours compensation, or his/her actual time, whichever is greater, at one and one-half (1 1/2) times the employee's straight-time hourly rate of pay. This section shall not apply to holdovers.

The foregoing minimum of two (2) hours compensation for a callout shall not be applicable where there is reason to call an employee back to correct an error or omission which needs to be done before the employee's next scheduled shift. If the Association believes that the City is arbitrarily and unreasonably using this provision without sufficient justification, the Association may grieve the matter. If an arbitrator upholds the Association's grievance, the provisions of this paragraph shall not be implemented for the balance of the term of this Agreement.

### The City's Final Offer

The City's final offer would amend the last sentence of the first paragraph of Item 5, Section f to read as follows:

This section shall not apply to holdovers or to voluntary participation in either meetings or training. (emphasis added to indicate change)

### The Union's Final Offer

The Union proposes that Item 5, Section i of the parties' 1990-1993 collective bargaining agreement remain unchanged.

## Discussion

The City argues that application of the callout provision to most voluntary committee meetings causes the payment of two hours compensation at the overtime rate for about an hour of the involved officer's time. It maintains that undue expense under this provision is also incurred about a dozen times a year when officers may be involved in voluntary training during off-duty hours.

Moreover, the City notes, the basic purpose of call out provisions is to compensate the police officer called out in the middle of the night to handle an emergency, after having completed his or her last regularly scheduled shift. That purpose is not served, the City opines, by paying police officers for their voluntary, predictable participation in meetings and/or training.

The Union argues that there is no compelling reason to change the call out provision of the 1990-1993 Agreement. It notes as well that the City of Elgin/IAFF 1994-1996 Agreement does not exclude voluntary off-duty attendance at meetings and/or training from its call out pay provision, and that the current language in the police Agreement has been in existence since 1988.

After due consideration of the parties' respective arguments on the call out issue, the Arbitrator favors the Union's position. The call out provision in their 1990-1993 Agreement first appeared in the 1988-1990 Police Agreement as Item 5, Section e. It was the product of free collective bargaining between informed bargaining teams. The Arbitrator is therefore reluctant to order a departure from that language unless presented with compelling evidence to do so. The record before me contains no such evidence.

The call out provision pays officers for their attendance at voluntary committee meetings, which according to Deputy Chief Burns typically last about an hour (Tr-149). But as Union Counsel noted during the arbitration hearing, officers expend travel time to and from the meetings as well. The two-hour minimum provided by Item 5, Section i does not seem unreasonable within that context.

Turning to the internal comparability factor, the Arbitrator duly notes that the call out provision in the City's collective bargaining agreement with the IAFF also provides a two-hour minimum payment at the overtime rate and does not exclude attendance at voluntary meetings and training sessions. Thus, the Union's final offer here appears preferable against that factor as well.

## ECONOMIC ISSUE NO. 6: SICK LEAVE CONVERSION

The sick leave conversion and sick leave bonus provisions of the parties' 1990-1993 collective bargaining agreement are quoted in their entirety below:

### Item 10. Sick Leave

Section b. Conversion. In recognition of non-use of sick leave, employees may convert accumulated sick leave for additional vacation leave or for severance pay. Such conversion shall be at the rate of three (3) days of sick leave for one (1) vacation day or one (1) day of severance pay.

- 1) Vacation leave conversion requires an accumulation of sick leave of over 60 accrued sick days which is the equivalent of 480 hours of sick leave. Such conversion is limited to a maximum of five (5) days of vacation leave in any one year.
- 2) Retirement or severance pay is predicated on leaving the City's employment in good standing and requires an accumulation of sick leave of over 90 accrued sick days which is the equivalent of 720 hours of sick leave. Such conversion is limited to a maximum of 20 days of 160 hours upon separation.
- 3) In the process of converting sick leave to additional vacation or severance pay, the remaining balance of unused sick leave may not total less than the required base accumulation of 60 or 90 days.

Section e. Sick Leave Bonus. All employees covered by this Agreement on the active payroll as of December 26, 1992, and those on the active payroll the beginning of each subsequent payroll year, shall have established a \$150 sick leave occurrence bank. For each occurrence of charged sick leave during a payroll year, \$25.00 shall be deducted from the employee's individual bank. Employees on the payroll at the end of the payroll year shall receive a voucher payment equal to the balance remaining in their individual occurrence bank.

The City's Final Offer

The City's final offer is to retain Item 10, Section b with no changes.

The Union's Final Offer

The Union's final offer is to change the provisions of Item 10, section b "Conversion," and to eliminate Item 10, section e in its entirety. The Union proposes the following language for Section b:

Section (b) Sick Leave Buyout Plan. In recognition of non-use of sick leave, officers who retire or leave the City's employment with 20 or more years of service as a sworn police officer, shall be paid at their final hourly rate for all accumulated unused sick leave according to the following schedule:

Hours Accrued

Less than 500	0%
500-599	50%
600-699	55%
700-799	60%
800-899	65%
900-999	70%
1000-1099	80%
1100-1199	90%
1200 and over	100%

Discussion

The Union asserts that its final offer merely restructures the conversion ratio so that police officers are given true incentive to avoid the use of sick leave. As evidence that the present conversion system does not do so, the Union cites the fact that over the eleven years prior to the present proceeding Elgin police officers have used an average of about 72% of their available sick hours. The Union also cites the minutes of the November 23, 1994 Supervisors' meeting as evidence that excessive use of sick time has been a problem in the Elgin Police Department. The ineffectiveness of the present conversion system is further highlighted, the Union maintains, by the extremely high sick hour usage by police officers during the year

prior to their retirement. In support of that claim the Union points to the experience of eight officers who retired between 1986 and 1993, and to the City's own Exhibit 51B, which confirms that very few officers take advantage of the conversion program. The Union argues as well that the sick leave buyout plans across the comparable communities support adoption of its final offer on this issue. It also maintains that its final offer will not have a significant effect on the City's negotiations with other bargaining units, because there is no evidence that sick leave abuse is widespread in those units.

The Union further notes that the cost of its sick leave buyout plan represents an extremely small fraction of the City's annual budget. And besides, the Union asserts, if the Union's final offer is not adopted the City will potentially pay in sick leave benefits an amount equivalent to what the Union's final offer would have cost.

The Union also points to the 1989 interest arbitration award of Arbitrator Larney, *et al*, in the City of Bloomington. In that case the arbitration panel adopted a union-proposed sick leave buyout plan virtually identical to the one at issue here. The Union argues as well that since its final offer will deter excessive sick leave abuse, it will have a beneficial effect on the documented "on-going manpower shortages" in the Elgin Police Department (Union Exhibit 14G). Likewise, the Union asserts, reducing the manpower shortages will improve safety conditions for police officers.

The City maintains that the Union's final offer on this issue should be rejected for three fundamental reasons. First, the present sick leave conversion program in the 1990-1993 collective bargaining agreement is the same program which applies city-wide. The clerical/technical and fire fighter contracts, for example, contain the same 3 to 1 conversion ratio employed in the police contract. Moreover, the Arbitrator should not plow new ground with innovative but untested benefit features which might raise unforeseeable internal equity and administrative problems.

The City also believes the external comparables support rejection of the Union's final offer. It notes that the eight hours of sick leave per month that Elgin police officers accrue equals the accrual rate in six of the eight comparable jurisdictions. And of the five jurisdictions that place a maximum on the number of sick leave hours police officers can accumulate, only one (Arlington Heights) matches the 1,920 hours that can be accumulated by Elgin police officers. Moreover, the City argues, three of the comparable municipalities have no provisions for a pay back of unused sick leave upon termination. Four of the five that do use a formula similar to the one used in Elgin. The City notes as well that five of the eight comparables have no provision to permit the annual conversion of unused sick leave to pay or additional time off. And in Des Plaines, the City adds, the only officers who can use

such provisions are those who were grandfathered --- the provisions have been eliminated for everyone else.

The City believes it is important to look at all three forms of additional compensation it provides officers for the non-use of sick leave (i.e., buy back upon termination, annual buy back and bonus). It argues that consideration of all three shows the *status quo* is reasonable and fully in line with the comparables, and that the Union's final offer is unreasonable in the extreme.

The City's third basic argument against the Union's final offer relates to its cost and the requirement that the City would have to carry on its books an ever increasing, unfunded liability. The cost of its final offer if all eligible officers retired in 1994 would be \$122,713 --- an amount equal to nearly a 4.4% salary increase. The City does not believe that any current sick leave abuse should justify increasing the incentives now in place for minimizing the use of sick leave.

The Arbitrator has concluded from the record that the Union's final offer on sick leave conversion should be rejected for the following reasons. First and foremost, I am reluctant to impose through an interest arbitration award such a sweeping departure from the parties' own negotiated *status quo*. The current sick leave conversion system in Elgin was hammered out at the bargaining table by police officers and supervisors who thought it was fair at the time. The record before me contains no compelling evidence to abandon it altogether and establish an entirely new system.<sup>11</sup>

Second, I am convinced from a review of the current sick leave conversion system in the Elgin Police Department that in general it compares favorably to those in place across the eight jurisdictions being used for comparison purposes. For example, Elgin and Des Plaines are the only two out of the nine-member pool that include all three of the following provisions in a comprehensive sick leave buy back plan: (1) sick leave buy back upon termination, (2) annual buy back, and (3) a bonus for non-use of sick leave hours. Looking at just one element of sick leave conversion systems at a time, Elgin is higher than the average for some and lower than the average for others. For example, officers in Elgin can accumulate a maximum of 1,920 hours of unused sick leave. That figure compares very favorably with what police officers in other jurisdictions are allowed to accumulate. In contrast, Elgin police officers can convert upon termination a maximum of only 160 unused sick leave hours, whereas officers in Waukegan, Joliet, Evanston and Des Plaines can convert considerably more. It should be noted, though, that police

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<sup>11</sup> That is not to say the Union's final offer has no merit. Its potential impact on the reported manpower shortages in the Elgin Police Department might have a corresponding beneficial effect to the community. But such arguments are speculative; accordingly, they do not in and of themselves constitute solid ground upon which to impose through interest arbitration the Union's new, untested sick leave payback system.

officers in Aurora, Oak Park and Skokie have no sick leave buy-back benefit upon termination. Table 2 illustrates those and other comparisons:

TABLE 2  
 SICK LEAVE CONVERSION FEATURES

<u>Jurisdiction</u>	<u>Buy Back At Termination</u>	<u>Max. Hours</u>	<u>Annual Buy Back</u>	<u>Bonus</u>	<u>Monthly Accrual</u>	<u>Maximum Accumulation</u>
Arlington Heights	Yes	*	No	No	8 hrs	1920 hrs
Aurora	No	n/a	No	No	n/a***	n/a
Des Plaines	Yes	176	Yes	Yes	8 hrs	720 hrs
Elgin	Yes	160**	Yes	Yes	8 hrs	1920 hrs
Evanston	Yes	240	Yes	No	8 hrs	1800 hrs
Joliet	Yes	405	No	No	8 hrs	no maximum
Oak Park	No	n/a	No	No	8 hrs	520 hrs
Skokie	No	n/a	No	No	8 hrs	none allowed
Waukegan	Yes	360	Yes	No	8 hrs	720 hrs

\* 16 months of insurance coverage

\*\* Under the Union's final offer the figure would be 1,920.

\*\*\* Up to 180 calendar days leave available for each separate illness

Note: The "Monthly Accrual" column contains certain generalizations: (1) In Evanston officers accrue only 4 hours per month during their first year of employment; (2) Joliet officers with 10-15 years of service can accrue 10 hours per month until they have accumulated 1,012 hours, whereupon the rate then drops to 8 hours per month again; officers with more than 15 years of service accumulate 12 hours per month up to an accumulation of 1,012, then drop to a monthly accumulation of 8 hours again; (3) Oak Park officers get one sick leave day per month during the first six months of employment; they get three weeks after six months, six weeks after two years, and thirteen weeks after five years of service.

On balance, the Arbitrator is convinced from Table 2 and the parties' exhibits that the current sick leave conversion system for Elgin police officers is reasonably competitive with the sick leave conversion systems employed across the external

comparables.

A third reason for maintaining the *status quo* on this issue relates to the potential impact of the Union's final offer on the internal comparability groups. The conversion program used for Elgin police officers is the same as that used for employees city-wide. Such a strong pattern of internal consistency is rarely broken in interest arbitration, and when it is, compelling reasons to do so must be present. The Arbitrator finds no circumstances here of sufficient import to justify the Union's vast departure from the current sick leave conversion system in the Elgin police department.

The record seems to support the Union's claim that sick leave is being abused by some Elgin police officers. One retired Elgin officer even testified that in the year before retirement officers attempt to use up their accumulated sick leave because they know they will lose a good deal of it upon retirement. While the officer's claim may be true, the abuse of sick leave by some officers does not justify paying them off as an inducement to stop the practice. Employers have at their disposal a variety of means to curb sick leave abuse, and most of them are more cost effective than the Union's final offer.

The City did not argue that it is unable to pay the cost of the Union's final offer, which by the Union's own calculation would be \$122,713.16 for 1994, an estimated \$166,157.30 for 1995, and \$226,705.55 for 1996. But those costs represent a substantial departure from the cost to the City of the present sick leave conversion program. The record has not convinced the Arbitrator that the City's payment of such markedly increased costs under the Union's final offer would be in the public interest. The fact that such costs represent a small percentage of the Police Department's overall budget is not persuasive.

#### ECONOMIC ISSUE NO. 7: HOLIDAYS

Item 7 of the parties' 1990-1993 contract covers holidays. The first paragraph of that provision is quoted below:

The employees covered by this Agreement shall have the following eleven (11) days considered as holidays: New Year's Day; President's Day (third Monday in February); Easter Sunday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; the afternoon four (4) hours on Christmas Eve; Christmas Day; and the afternoon four (4) hours on New Year's Eve.

### The Union's Final Offer

The Union proposes the addition of Martin Luther King, Jr.'s birthday to the foregoing list, bring to twelve the number of paid holidays for City of Elgin police officers. In addition, its final offer would substitute the phrase "all employees covered by this Agreement" in Section c (Remuneration) for the phrase "All employees assigned to the Patrol, Traffic or Major Investigative Divisions."

### The City's Final Offer

The City proposes no change to Item 7 of the parties' 1990-1993 collective bargaining agreement.

### Discussion

The City argues that the external comparables do not support adoption of the Union's final offer on this issue, noting that the number of holidays granted to police officers across all eight of them did not change between 1991 and 1994. The City also believes that the way in which employees are compensated for holidays is an important consideration. In Elgin, employees in the patrol, traffic and major investigative divisions receive an extra eight hours pay regardless of whether the holiday falls on a regularly scheduled work day or not. In contrast, the City points out, police officers in some comparable jurisdictions (Arlington Heights and Skokie, for example) are given the equivalent days off to be taken later in the calendar year but they do not get additional compensation beyond their regular salary.

The City also believes that the majority of the bargaining unit assigned to the patrol, traffic or major investigative divisions actually receive the equivalent of twelve holidays in additional pay. In explanation of that claim the City notes that when such officers actually work on New Year's Day, Independence Day or Christmas Day, they receive an additional four hours holiday pay, bringing the total to twelve hours holiday pay.

The Union argues that Elgin with eleven paid holidays Elgin is below the average across comparable jurisdictions. With regard to the internal comparability groups, the Union notes that the clerical/technical group enjoys eight paid holidays and four personal days. Moreover, employees in that group who elect not to use their personal days can convert them to cash. The total potential paid holiday benefit thus totals twelve. The Union also cites the Elgin fire fighter unit, where

employees receive eight paid holidays and a number of Kelly days (additional days off without loss of compensation).

The Arbitrator has concluded from the record that there is not sufficient justification to adopt the Union's final offer on this issue. First, the paid holiday package currently in place for Elgin police officers falls in line with the holiday packages across comparable jurisdictions. Police officers in Aurora and Skokie, for example, receive eleven holidays. Des Plaines police officers get 10.5. Waukegan, Oak Park and Arlington Heights police officers receive twelve paid holidays per year, and those in Evanston receive thirteen.

Arguably, Elgin police officers are positioned at the lower end of the paid holiday range across the external comparables. But that fact alone does not justify the addition of another holiday through an interest arbitration proceeding. If that were the case, the number of paid holidays across comparable jurisdictions would escalate in an upward spiral as each sought to improve its competitive position through interest arbitration. Such an outcome would not be in the public interest.

Second, it is important to recognize that paid holidays are only one element of the overall compensation package. The record in this matter clearly demonstrates that the overall compensation package in Elgin is sufficient to attract qualified candidates and retain them as police officers. Thus, the addition of another paid holiday is not necessary from a labor market perspective.

Third, the record is incomplete on this issue with regard to the internal comparables. The primary internal comparability group is the fire fighter unit. While the Union correctly argued that Elgin fire fighters receive eight paid holidays and additional time off without loss of compensation in the form of "Kelly days," the record is not clear as to exactly how many Kelly days fire fighters receive.<sup>12</sup> Moreover, comparison of police officers to fire fighters on the hours of work dimension can be misleading because of their vastly different work scheduling methods. Police officers generally work eight-hour shifts, while fire fighters typically are on duty for twenty-four consecutive hours and off thereafter for forty-eight consecutive hours.

Finally, in their Posthearing Briefs the parties did not address the significance of the Union's proposal to amend the language of Item 7, Section c. The Arbitrator therefore concludes that the amendment is not nearly so significant to them as the addition of Martin Luther King Jr.'s birthday to the holiday list, and reasons that there is no need to discuss it here.

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<sup>12</sup> According to Article 11 (Hours of Work and Overtime), Section b of the 1994-1996 Elgin fire fighters' contract, a Kelly day is currently scheduled off every thirteenth duty day. The exact number of duty days, however, is not specified.

## ECONOMIC ISSUE NO. 8: LEGISLATIVE MANDATES

### The City's Final Offer

The City proposes the addition of the following language to the collective bargaining agreement:

Legislative Mandates. Legislative mandates granting employees covered by this Agreement new economic benefits (excluding only pensions) not covered in this Agreement shall be subject to bargaining and shall not be implemented until bargaining has been successfully concluded.

### The Union's Final Offer

The Union's final offer on this issue is retention of the *status quo*, namely, that the agreement contain no provision requiring it to bargain with the City for benefits conferred by legislative enactments.

### Discussion

The City argues that when it enters into a collective bargaining agreement it is able to compute its overall costs for the term of the agreement, and that such computations are factored into the decisions it makes during the bargaining process. Thus, the City argues, it should not be forced to provide additional economic benefits which might subsequently come to bargaining unit employees through unfunded legislative mandates.

The Union notes that none of the comparable jurisdictions have adopted a similar "legislative mandates" provision in their police agreements. It makes the same argument with regard to other City of Elgin bargaining units. From the Union's perspective, the City's final offer would unfairly force Elgin police officers to bargain over mandated benefits that employees in both external and internal comparable groups would get automatically.

The Arbitrator agrees with the Union on this issue. There is simply no justification in the record to compel a change in the *status quo*. Not one of the external comparables has adopted language akin to what the City seeks here, nor does such language appear in the City's contracts with any of its bargaining units. If the City

wishes to make such an innovative departure from its police agreements of the past, the preferable forum for doing so is at the bargaining table.

AWARD

Based upon full consideration of the record before me, including the applicable statutory criteria and the evidence and argument submitted by the parties, the Arbitrator awards the following with respect to their 1994-1996 collective bargaining agreement:

- (1) Economic Issue No. 1: Salaries - the City's final offer is adopted.
- (2) Economic Issue No. 2: Retroactivity - the Union's final offer is adopted.
- (3) Economic Issue No. 3: Health Care Insurance - the City's final offer is adopted.
- (4) Economic Issue No. 4: Off-Duty Calls - the Union's final offer is adopted.
- (5) Economic Issue No. 5: Call Outs - the Union's final offer is adopted.
- (6) Economic Issue No. 6: Sick Leave Conversion - the City's final offer is adopted.
- (7) Economic Issue No. 7: Holidays - the City's final offer is adopted.
- (8) Economic Issue No. 8: Legislative Mandate - the Union's final offer is adopted.
- (9) Additional items upon which the parties have reached agreement between themselves shall also be incorporated into their 1994-1996 collective bargaining agreement.

Signed by me at Chicago, Illinois, this 27th day of June, 1995.

  
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Steven Briggs