

Interest Arbitration

The City of Loves Park,

Employer

and

Illinois Fraternal Order
of Police Labor Council,

Union

ISLRB No. S-MA-95-113
Arbitrator's File 95-180

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December 23, 1996

Opinion and Award

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Illinois State Lab Rel. Bd.
SPRINGFIELD, ILLINOIS

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I. Statement of the Case

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq. (the "Act"), a hearing was held on April 1, 1996 to establish wages for Loves Park Patrol Officers, Sergeants and Telecommunicators for fiscal years (May through April) 1995-96, 1996-97 and 1997-98 (Stipulation of Parties, Union Exhibit A).¹ The parties waived the tripartite panel described in the Act and submitted their dispute solely to me for resolution (UX A). Both parties have filed post-hearing briefs.

II. The Final Offers

The Union represents Patrol Officers, Sergeants and Telecommunicators employed by the City of Loves Park Police Department (UX F.). The most recent collective bargaining

¹In the remainder of this Opinion, I shall cite Union Exhibits as "UX ____," Employer Exhibits as "EX ____." and Joint Exhibits as "JX ____." I shall cite the Transcript of Hearing as "Tr. ____."

agreement between the parties covering these employees began May 1, 1992 and expired April 30, 1995 (UX E). In their negotiations for a successor contract, the parties agreed on a three-year term and resolved all issues except wages.² The parties have asked me to choose between final offers on all classifications for each year of the proposed three-year contract (UX A, §8).

The 1992-95 Agreement does not contain a graduated wage schedule or incremental "step system." Appendix A, Part 1.0 of this Agreement listed each employee along with his salary. Appendix A, Part 1.1 established a "starting rate." The salary of an employee hired after May 1, 1992 was to be determined by an agreed-upon formula.

A. The Union's Final Offer

The Union proposed to amend the 1992-95 Agreement by (1) substituting new language for Parts 1.0 and 1.1 of Appendix A and (2) creating a step schedule for employees which included yearly salary increases. The proposed deletions are set forth below in SMALL CAPS:

A.1.0 THE BELOW LISTED AND AGREED UPON BASE ANNUAL EARNINGS FOR THE TERM OF THIS AGREEMENT OF OFFICERS ON THE CITY PAYROLL AS OF THE DATE OF THE EXECUTION OF THIS AGREEMENT. THESE EARNINGS ARE EXPRESSED IN ANNUAL TERMS FOR ILLUSTRATIVE PURPOSES ONLY. TO OBTAIN THE BASE HOURLY RATE OF ANY OFFICER DIVIDE THE ANNUAL RATE BY 2080. NOTHING HEREIN SHALL CONSTITUTE A GUARANTEE OF EMPLOYMENT PER HOUR, DAY, MONTH, YEAR OR PAY IN LIEU THEREOF.

²In the remainder of this Opinion, "wages" shall refer to salaries plus longevity pay.

Table 1
ANNUALIZED BASE EARNINGS

NAME	MAY 1, 1992	MAY 1, 1993	MAY 1, 1994
D. ALLTON	\$29,500	\$30,680	\$31,754
G. ALLTON	29,500	30,680	31,754
L. ARNOLD	34,894	36,290	37,560
R. BARCLAY	24,000	24,960	25,709
R. BLODGETT	30,800	32,032	33,153
T. BRUBAKER	30,800	32,032	33,153
C. COOK	28,287	29,418	30,301
S. GOBLE	21,000	21,840	22,604
D. JACOBSON	29,500	30,680	31,754
R. JONES	30,800	32,032	33,153
C. LYNDE	24,000	24,960	25,709
D. MACE, SR.	29,500	30,680	31,754
T. OBERG	30,800	32,032	33,153
R. OLIVER	34,894	36,290	37,560
E. PARHAM	23,000	23,920	24,638
J. PUCKETT	34,894	36,290	37,560
J. TABLEMAN II	29,500	30,680	31,754
D. WILLIAMS	34,894	36,290	37,560
J. WHEELER	23,000	23,920	24,638
C. WILSON	21,000	21,840	22,604
J. YOUNG	34,894	36,290	37,560

A.1.1. THE WAGES OF ANY OFFICER EMPLOYED ON OR AFTER MAY 1, 1989, SHALL BE GOVERNED BY THE BELOW WAGE SCHEDULE WHICH IS EXPRESSED IN ANNUAL TERMS FOR ILLUSTRATIVE PURPOSES ONLY. THE HOURLY RATE MAY BE OBTAINED BY DIVIDING THE ANNUAL EXAMPLE BY 2080.

EFFECTIVE MAY 1, 1992
STARTING RATE \$21,000.00

ANY OFFICER EMPLOYED ON OR AFTER MAY 1, 1992 WILL ON THE NEXT FOLLOWING MAY 1 RECEIVE AN INCREASE IN THE AMOUNT OF .003 X NUMBER OF MONTHS OF ACTIVE EMPLOYMENT SINCE DATE OF HIRE (OR LAST INCREASE) X THE OFFICERS BASE SALARY.

Language offered by the Union in place of the foregoing deletions is set forth below:

A.1.0 Employees shall be paid in accordance with the following wage schedule, based upon their "years of service" with the City Police Department as a full-time employee. "Years of service," for purposes of implementing this wage schedule, shall be determined in accordance with the historical method of calculating the "COMMON ANNIVERSARY DATE" used by the City to determine when longevity pay has been earned. Specifically, an employee's COMMON ANNIVERSARY DATE is calculated to be May 1st of the year in which the employee is hired. To illustrate, the employees, their dates of hire, and

their COMMON ANNIVERSARY DATES are set forth in a graph to be attached herewith.

Employees covered by this Agreement shall receive, in addition to the wages set forth below, longevity in accordance with the schedule set forth in Appendix C.1.4. The hourly rate of pay for any employee covered by this Agreement shall be determined by dividing the employee's annual earnings (including any longevity) by 2080. Nothing in this article, however, shall be construed as a guarantee of employment, or hours of work, or pay in lieu thereof.

Table 2
PATROL OFFICERS
ANNUAL SALARY SCHEDULE³

YEARS OF SERVICE	SALARY		
	5/1/95-4/30/96 [*]	5/1/96-4/30/97 [3.5% Increase**]	5/1/97-4/30/98 [4% Increase**]
Start	\$22,000	\$22,770	\$23,681
After 1 Year	22,900	23,702	24,650
After 2 Years	23,800	24,633	25,618
After 3 Years	24,700	25,565	26,587
After 4 Years	25,600	26,496	27,556
After 5 Years	26,737	27,673	28,780
After 10 Years	33,024	34,180	35,547
After 15 Years	34,479	35,686	37,113

*For FY 95-96, the Union increased starting pay from \$21,000 to \$22,000 (4.76%) and \$900 for every year thereafter through the after-four-year step. From the after-five-year step through the after-fifteen-year step, the salary was increased by 4% from \$25,709 in FY 94-95 (Tr. 47-8.)

**Increases in FY 96 were 3.5% across the board and increases in FY 97 were 4% across the board (Tr. 12).

³I have combined salary schedules covering each employee classification into a single chart for each classification. I realize that each fiscal year represents a separate economic issue.

The Union developed a step schedule on the basis of the following calculations (the baseline salaries from which increases were calculated are in **bold print**) (UX M1; Un. Brief, 9):

Table 3
UNION FIRST YEAR OFFER

Patrol Officer	Cmm An Date	1994 Salary	1994 Longevity	1994 Total Wages	1995 Salary	1995 Longevity	1995 Total Wages	1995 % Increase
Oberg	5/1/73	\$33,153	\$2,652	\$35,805	\$34,479	\$2,758	\$37,237	4.00%
Blodgett	5/1/74	33,153	2,652	35,805	34,479	2,758	37,237	4.00%
Brubaker	5/1/76	33,153	1,989	35,142	34,479	2,069	36,548	4.00%
Jones	5/1/78	33,153	1,989	35,142	34,479	2,069	36,548	4.00%
Allton, G.	5/1/80	31,754	1,270	33,024	34,479	2,069	36,548	10.67%
Mace	5/1/80	31,754	1,270	33,024	34,479	2,069	36,548	10.67%
Jacobson	5/1/81	31,754	1,270	33,024	33,024	1,321	34,345	4.00%
Allton, D.	5/1/83	31,754	1,270	33,024	33,024	1,321	34,345	4.00%
Cook	5/1/84	30,301	1,212	31,513	33,024	1,321	34,345	8.99%
Barclay	5/1/88	25,709	514	26,223	26,737	535	27,272	4.00%
Lynde	5/1/88	25,709	514	26,223	26,737	535	27,272	4.00%
Wheeler	5/1/90	24,638	0	24,638	26,737	535	27,272	10.69%
Wilson	5/1/91	22,604	0	22,604	25,600	0	25,600	13.25%
Goble	5/1/91	22,604	0	22,604	25,600	0	25,600	13.25%
Cutler	5/1/93	21,506	0	21,506	23,800	0	23,800	10.67%
Britnell, B	5/1/94	21,213	0	21,213	22,900	0	22,900	7.95%
Czech	5/1/94	21,000	0	21,000	22,900	0	22,900	9.05%
Britnell, S	5/1/95	21,000	0	21,000	22,000	0	22,000	4.76%

The foregoing calculations resulted in the following step schedule for Patrol Officers, as follows:

Table 4
1995 PATROL OFFICERS' STEP SCHEDULE CALCULATIONS

	1994				1995
Start	\$21,000	x	4.76%	=	\$ 22,000
After 1 Year	21,506				22,900 (22,000 + 900)
After 2 Years					23,800 (22,900 + 900)
After 3 Years	22,604				24,700 (23,800 + 900)
After 4 Years	24,638				25,600 (24,700 + 900)
After 5 Years	25,709	x	4.00%	=	26,737
After 10 Years	31,754	x	4.00%	=	33,024
After 15 Years	33,153	x	4.00%	=	34,479

The Union also made proposals on the wages of Sergeants and Telecommunicators:

POLICE SERGEANT
ANNUAL SALARY SCHEDULE

All Sergeants, regardless of their years of service, shall receive an annual salary equivalent to 13% above the patrol officer annual salary at the "After 15 Years Step," equivalent to \$38,961 for FY 1995-96, \$40,325 for FY 1996-97 and \$41,938 for FY 1997-98.

Table 5
TELECOMMUNICATORS
ANNUAL SALARY SCHEDULE

YEARS OF SERVICE	SALARY		
	5/1/95-4/30/96	5/1/96-4/30/97 [3.5% Increase]	5/1/97-4/30/98 [4% Increase]
Start	\$20,800	\$21,528	\$22,389
After 1 Year	21,632	22,389	23,285
After 2 Years	22,533	23,321	24,254
After 3 Years	23,296	24,111	25,076
After 4 Years	24,128	24,972	25,971
After 5 Years	24,960	25,834	26,867
After 10 Years	26,780	27,717	28,826
After 15 Years	28,808	29,816	31,009

The Union proposed that all wages for current and former employees be retroactive to May 1, 1995:

All employees covered by this Agreement as of May 1, 1995, regardless of whether they are still in the employ of the City when the Agreement is executed, shall receive retroactive wage (and longevity) payments based upon all hours paid, by separate check within forty-five (45) days of the issuance of the interest arbitrator's award.

B. The Employer's Final Offer

FY 1995-1996

Increase the base rates of Patrolmen, Sergeants and Telecommunicators 3½%.

FY 1996-1997

1. Increase the base rates of all Patrolmen and Sergeants with more than five years service by 3½%.

2. Install the step system proposed by FOP Lodge at our last meeting for all Patrolmen with less than five years service.
3. Increase telecommunicators rates by 3½%.
4. Provide a \$700 per year inequity increase...in addition to the 3½% for Patrolmen Wilson and Goble in FY 1996.
5. Increase starting rates for patrolmen to \$22,000 per year.
6. Provide a \$4000 differential between the base pay for Sergeants and the maximum base pay for Patrolmen.

FY 1997

1. Increase starting rates for Patrolmen to \$23,000.
2. Increase the rates of Patrolmen, Sergeant and Telecommunicators by not less than 3½%.

Steps as installed in FY 1996 remain unchanged except as to start date.

III. Significant Elements of the 1992-95 Agreement

Appendix C, Section C.1.4 (Longevity Pay) of the 1992-95 Agreement provided as follows (UX E43):

Each officer shall receive on May 1 of each year longevity pay based on his years of completed service since his last date of hire as a full time employee of the Police Department in accordance with the following schedule, and using the City's common anniversary date in computing years in service, and based on the officer's base wage for the previous year as in current City practice:

5 years completed service	2% of base wage
10 years completed service	4% of base wage
15 years completed service	6% of base wage
20 years completed service	8% of base wage

A chart showing the hiring date, common anniversary date (CAD) and years of service of all employees of the City on the payroll on May 1, 1995 is set forth below (see UX F1):

Table 6
HIRING DATE, COMMON ANNIVERSARY DATE & YEARS OF SERVICE

Patrol Officers	Hire Date	CAD	Years of Service as of 5/1/95
T. Oberg	9/1/73	5/1/73	22
R. Blodgett	5/13/74	5/1/74	21
T. Brubaker	6/3/76	5/1/76	19
R. Jones	8/14/78	5/1/78	17
G. Allton	1/9/80	5/1/80	15
D. Mace	4/7/80	5/1/80	15
D. Jacobson	1/5/81	5/1/81	14
C. Cook	7/31/84	5/1/84	11
R. Barclay	3/28/88	5/1/88	7
C. Lynde	3/28/88	5/1/88	7
J. Wheeler	7/30/90	5/1/90	5
C. Wilson	10/1/91	5/1/91	4
S. Goble	12/2/91	5/1/91	4
K. Cutler	8/30/93	5/1/93	2
B. Britnell	1/19/94	5/1/94	1
R. Czech	5/3/94	5/1/94	1
S. Britnell	5/1/95	5/1/95	0

Sergeants

D. Williams	9/1/68	5/1/68	27
J. Young	3/22/72	5/1/71*	24
L. Arnold	9/1/74	5/1/74	21
J. Puckett	12/1/78	5/1/78	17
J. Tableman	2/22/82	5/1/82	13

Telecommunicators

J. Kamholtz	12/7/78	5/1/78	17
K. Shank	10/12/83	5/1/83	12
E. Kriedman-Settle	8/23/84	5/1/84	11
L. DePauw	5/11/92	5/1/92	3
T. Haggerty	1/8/96	5/1/96	0

*Sgt. Young received credit for earlier part-time employment.

IV. Applicable Statutory Standards

Section 14(g) of the Act provides that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors pre-

scribed in subsection (h)." Section 14(h) of the Act sets out the factors used to evaluate economic proposals:

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

The critical factors in economic interest arbitration are contained in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector

is comparability of wages, hours and working conditions."⁴ The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of major significance.

V. Comparability

A. The Proposals

1. The Union's Proposed Comparables

The Union maintained that the following communities are comparable to Loves Park (UX J) (comparables also proposed by the Employer are in **bold print**):⁵

Table 7
UNION'S PROPOSED COMPARABLES

- | | |
|---------------------|---------------------|
| 1. Belvidere | 4. Rochelle |
| 2. Dixon | 5. Sycamore |
| 3. Freeport | 6. Woodstock |

The Union introduced the following data with respect to these communities (UX J1):

Table 8
DEMOGRAPHIC DATA ON UNION'S PROPOSED COMPARABLES

Jurisdiction	Population	Square Miles	Equalized Ass. Valuation	Total Wages & Salaries	General Fund Revenues	General Fund Expenditures
Belvidere	15,958	5.50	\$140,511,761	\$2,829,016	\$4,386,484	\$4,084,677
Dixon	15,144	5.76	71,534,329	2,978,799	2,889,151	3,329,231
Freeport	25,840	10.30	153,156,828	5,837,611	5,744,088	5,593,721
Rochelle	8,769	4.17	69,186,074	3,776,165	2,925,146	3,029,630
Sycamore	9,708	3.73	118,470,856	2,650,066	3,720,568	4,207,160
Woodstock	14,353	10.04	221,887,302	4,171,808	4,202,705	2,258,058
LOVES PARK	15,462	11.80	145,746,764	2,235,474	4,416,004	4,066,165

⁴Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," Tim Bornstein & Ann Gosline, eds. *Labor and Employment Arbitration* (New York: Matthew Bender, 1991), Vol. III, ch. 63, §63.03[2], at 7.

⁵In the remainder of this Opinion, communities considered comparable by both parties are in **bold print**.

Jurisdiction	Median Home Value	Per Capita Income	Median Household Income	Number of Police Officers	Number of Employees	Crimes Per 100,000
Belvidere	\$58,400	\$12,337	\$29,509	25	90	3423.7
Dixon	43,900	11,114	25,224	23	250	5044.5
Freeport	46,800	12,631	24,758	49	210	8552.1
Rochelle	55,800	11,759	27,465	18	130	3461.4
Sycamore	78,900	14,704	34,058	20	75	2835.0
Woodstock	92,300	13,965	31,458	27	359	3302.1
LOVESPARK	53,600	13,863	31,147	24	168	5913.4

2. The Employer's Proposed Comparables

The Employer suggested that the following cities or counties within a 51-mile radius of Loves Park, excluding those in Chicago's collar counties, were comparable to Loves Park (EX 12):

Table 9
EMPLOYER'S PROPOSED COMPARABLES

- | | |
|---------------------|----------------------|
| 1. Belvidere | 10. Oregon |
| 2. DeKalb | 11. Ottawa |
| 3. Dixon | 12. Rock Falls |
| 4. Freeport | 13. Rockton |
| 5. Harvard | 14. Sandwich |
| 6. Huntley | 15. South Beloit |
| 7. Lee County | 16. Sterling |
| 8. Machesney Park | 17. Sycamore |
| 9. Marengo | 18. Winnebago County |
| | 19. Woodstock |

The Employer presented no data to show the population, number of police officers, number of index crimes, equalized assessed valuation, median home value, per capita income, median household income, total revenue, revenue per police officer, or total payroll with respect to the communities it considers comparable to Loves Park.

B. Discussion and Findings on Comparability

1. The Parties' Mutual Choices

Following the parties' lead, I consider Belvidere, Dixon, Freeport, Sycamore and Woodstock comparable to Loves

Park. As I noted in *City of Peru & Illinois FOP*, S-MA-93-153 (1995), at page 13:

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

2. Comparable Communities Not Agreed Upon by Both Parties

(a) The Union's Proposed Comparables

With the exception of Rochelle, the Employer agreed that all the comparables suggested by the Union are comparable to Loves Park. I agree with the Employer that Rochelle is not comparable to Loves Park. Loves Park's population is 75% greater than Rochelle's, and Loves Park is wealthier than Rochelle by every standard generally employed to measure comparability. Loves Park's equalized assessed valuation is more than double that of Rochelle's. Rochelle's total "wages and salaries" are 169% higher than Loves Park while its "general fund revenues" are 150% lower than Loves Park. Rochelle's "total wages" exceed its "general fund revenues" by \$851,000 or 129%, but Loves Park's total wages are about 50% of its total revenue. Because Rochelle does not appear to be in the same financial league as Loves Park, one would normally expect its payroll to be relatively less than Loves Park at

each step of the pay schedule.⁶ As it turns out, this is not the case, which may account for the Union's decision to include Rochelle on its list of suggested comparables.

(b) The Employer's Proposed Comparables

The comparables proposed by the Employer are incomplete in terms of its own geographic standards. Like the suggested comparables of Marengo, Rockton and South Beloit, the excluded communities of Antioch, Fox Lake, Genoa, Mt. Morris, Lena, Plano, and Polo have a population between 2500 and 10,000 and are within a 51-mile radius of Loves Park (EX 11).⁷ Although a small portion of Crystal Lake lies within the area the Employer considers metropolitan Chicago, Crystal Lake is within 51 miles of Loves Park and, like Woodstock, an agreed-upon comparable, has a population of about 26,000. Similarly, McHenry, with a population of about 16,000, is within 51 miles of Loves Park. Oddly enough, the Employer included Ottawa, a city about 65 miles away from Loves Park, in its list of comparable communities. Once Ottawa is included, there can be no reason to exclude such towns, all within the same radius, as LaSalle, Peru, Savanna and Morrison.

Even assuming that the geographic limit of 51/52 miles suggested by the Employer is appropriate, some of the

⁶With wages substantially exceeding revenues, Rochelle, unlike Loves Park, would seem to be in a precarious financial position.

⁷Employer Exhibit 12 is an Illinois road map with a radius of 51 miles drawn from Loves Park (excluding metropolitan Chicago) to show comparable towns and villages. At page 17 of its brief, however, the Employer wrote that "City Exhibit 12 shows the median wages for patrolmen for selected cities in a 52-mile radius."

Employer's proposed comparables are beyond 52 miles; and the Employer does not list other presumably comparable communities within 52 miles of Loves Park. In short, the evidence did not establish why the communities proposed by the Employer are comparable when other similar communities within the geographic boundaries proposed by the Employer are not comparable.

Nor did the Employer explain why a 51- or 52-mile cut-off was appropriate, as opposed to, let us say, a 50-mile or 55-mile cut-off. A 50-mile cut-off would have eliminated Sterling (over 10,000 population); a 55-mile cut-off would have brought in Mendota, Rock Falls (5,000-10,000 population) and Yorkville (2,500-5,000 population).

Finally, the evidence did not show that Employer's suggested comparables were developed on the basis of any of the factors traditionally considered in interest arbitration. The only item explicitly noted by the Employer was geographical proximity. Without evidence, among other matters, on population, the number of police officers, number of index crimes, equalized assessed valuation, median home value, per capita income, median household income, total revenue, revenue per officer, or total payrolls in the included communities,⁸ I have no basis for determining their comparability.

⁸Arbitrators Anderson and Krause suggest that the most "common factors used to establish comparability are":

(1) nearby communities; (2) similar population size; (3) past practice; (4) parity relationships (e.g., police and fire-fighters); (5) extent of fire or crime problem; (6) extent of recruitment and retention problem; (7) comparable ability to pay, state equalized value, taxes levied; (8) distinct characteristics

The Employer has not only suggested that Loves Park should be considered comparable to selected communities within a 51- or 52-mile radius of Loves Park (without providing data to make appropriate comparisons), it has made two additional suggestions for benchmark comparison: (1) the median wages of all Illinois wage earners; and (2) the relative economic position of Loves Park Police Department employees to employees of major Loves Park employers. This data is of interest; and in a close case it might be relevant—particularly if the parties have referred to it in prior negotiations. But these criteria are hardly consistent with the principal comparability requirement prescribed by the Act—"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...*" [my italics]. While "comparability" encompasses "other employees generally,"⁹ the most important criterion has long been

of the locality; (9) comparable duties of the referenced group of employees; and (10) the peculiarities of the particular trade or profession, specifically the hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. (Anderson & Krause, *supra* n. 4, at §63.03[2].)

None of these factors was explicated by the Employer.

⁹Commentators Richard Laner and Julia Manning have pointed out:

The Illinois Act provides that comparisons with both private and public sector employees are permissible. Obviously, there are pitfalls to comparing wages, hours and conditions of employment in the public sector with those in the private sector. Private sector comparisons appear valid only in those instances where the private and public sector work is of a similar character.

recognized as "other employees performing similar services...."¹⁰

I would be constrained to pay close attention to the criteria suggested by the Employer—the median wage of all Illinois employees or benchmark wages in local industry—had the evidence demonstrated (which it did not) that the parties themselves had relied on these criteria in previous contract negotiations. Absent such evidence, I find that the data provided by the Employer is not on point. In one instance—that of median Illinois wages—it is too broad and general to be considered relevant. In the other instance—that of median local benchmark wages—the data, although relevant to the lesser standard of the comparability of the wages of "other employees generally, "is immaterial to the issue of the comparability of the wages of "other employees performing similar services."

I am also puzzled by the Employer's use of "median" instead of "arithmetic mean," the statistical comparison usually employed in interest arbitration. I realize that

Laner & Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 Chicago Kent L.Rev. 839, 857-58 (1984).

¹⁰As professors Elkouri and Elkouri put it (without reference to statutory criteria): "In the final analysis it may well be that the prevailing practice which properly should be used for comparison is that of the employer's competitors, whether within or without the area, or that of other firms or industries so situated that there is a sufficient similarity of interests between them and the employer in question for it to be reasonable to use their practice as the standard; comparison with others similarly situated within the industry or area thus may be the crux of the matter" [footnotes omitted]. Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works*, 4th ed. (Washington: Bureau of National Affairs, 1985), 808.

average or mean is a statistical abstraction, but it would seem a far better basis for comparing wages than median—the “middle value in a distribution.” In a “perfect” distribution of values, median and mean would match, but in the real and mathematically imperfect world the median wage is of little practical significance.¹¹ Only where the evidence shows that a few extremely high or extremely low numbers have skewed the mean artificially high or artificially low would median be an appropriate measuring rod. No such evidence was produced here.

One additional matter warrants review. The Employer warns that “where comparability is used as the sole or principal standard in determining appropriate wages as between communities, ...the principle of Gresham’s Law will erode a sound wage structure” (Emp. Brief, 18). The “Labor Relations practices of the least well-run city [will be] forced down the throat of the best run city” (Emp. Brief, 18). Further, the Employer maintains, “there is no such thing as two cities which are totally comparable one to another” (Emp. Brief, 19).

These arguments are not without appeal. As attorneys Laner and Manning point out:

The heavy reliance placed upon the comparability factor has been criticized by both unions and employers. Labor organizations complain that use of this standard has a conservative effect by encouraging the rejection of new and innovative language.

¹¹In the arithmetically regular distribution of 100, 75, and 50, 75 is both median and mean. In any irregular distribution of numbers, however, the median will differ from the mean.

... Employer critics of the comparability criterion suggest that it has led to a 'domino effect' of victories for unions."¹²

This criticism and the analogy to Gresham's Law notwithstanding (and this is an imaginative, if flawed, analogy),¹³ "many commentators have indicated that external comparability...is indeed the most important factor in the usual interest arbitration case."¹⁴

¹²Laner & Manning, *supra* n. 9, at 858.

¹³According to Sir Thomas Gresham, "bad money tends to drive good money out of circulation" because people tend to hoard (valuable or "good") gold and spend (worthless or "bad") paper. I am uncertain how this "hoarding" comparison might apply here. The "domino effect" suggested by Laner and Manning (see n. 9) is a more pointed analogy to the follow-the-leader effect of comparability in interest arbitration. Undoubtedly, one effect of comparability is to bring communities closer with respect to their labor costs. Presumably, a system of perfect state-wide economic comparability would resemble a bell-shaped curve with most communities clustered at the middle of the curve and the outriders at both ends. The underlying assumption, somewhat subtly introduced by the Employer, is that the "best run city" is the one with the lowest wage and benefit structure. This assumption should probably not pass without challenge. As noted by two prominent commentators:

The success of a public agency's compensation policy can best be judged by the degree to which it facilitates better public service. Its objective should be to support the agency's mission by enhancing the recruitment, retention, and motivation of competent and superior employees.

* * *

A public agency's compensation policy must take into account the labor market—that is, the availability of potential employees and the ability of present employees to seek other opportunities with other employers.

Charles A. Pounian & Jeffrey J. Fuller, "Compensating Public Employees," *HANDBOOK OF PUBLIC ADMINISTRATION, SECOND EDITION*, James L. Perry, ed. (San Francisco: Jossey-Bass, 1996), 405, 406.

¹⁴*County of Cook/Sheriff of Cook County & Teamsters Local 714*, LLRB L-MA-95-001 (Goldstein 1995), at 13. Accord: Anderson & Krause, n. 4, at §63.03[2]: "Comparability is generally regarded as the predominant criterion for determining wages in public sector interest arbitration." See also *County of Lawrence/Sheriff of Lawrence County & Illinois FOP*, S-MA-96-31 (Nathan 1996), at 7: "[T]he parties and the arbitrator can better gauge the appropriateness of one offer over another by comparing it against the collective wisdom of parties in demographically similar communities. Provided that the comparability group is large enough to be statistically meaningful, the marketplace of contract terms is a powerful tool for demonstrating appropriateness." Laner and Manning concur: "The fourth listed factor, commonly known as 'comparability,' clearly is

VI. The Economic Issues

A. Issue 1: 1995-96 Salaries

1. Positions of the Parties

(a) The Union's Position

(i) Patrol Officers

1. The "real problem" in the pay schedule is the "first five years of service" (Un. Brief, 7). Loves Park "patrol officers with five years or less years of service are vastly underpaid in comparison to their counterparts (at or around a 20% deficit)" (Un. Brief, 7). The disparity at the more-than-five-year level is "remarkably negligible" (Un. Brief, 7).

The comparisons are shown below (UX M5):

Table 10
PATROL OFFICER SALARY COMPARISONS FOR 1994

Juris	Start	After 1 Year	After 2 Years	After 3 Years	After 4 Years	After 5 Years	After 10 Years	After 15 Years	After 20 Years
Belvidere	24,419	24,419	27,120	27,120	29,899	29,199	32,211	33,821	33,821
Dixon	23,673	25,964	27,607	29,574	31,592	31,592	31,592	31,592	31,592
Freeport	24,788	26,863	27,977	29,135	29,135	31,166	31,952	32,760	33,590
Sycamore	24,808	29,933	31,690	32,704	33,704	34,551	35,971	35,971	35,971
Woodstock	27,500	28,596	29,450	30,323	31,214	32,125	36,995	41,317	41,317
LOVES PARK	21,000	21,506	22,055	22,604	24,638	26,223	33,024	35,142	35,805
Average w/o Loves Park	25,038	27,155	28,769	29,771	31,109	31,727	33,744	35,092	35,258
Difference	-16.13%	-20.8%	-23.34%	-24.07%	-20.8%	-17.35%	-2.13%	0.14%	1.55%

2. The Longevity Plan, which the parties have agreed to retain, provides for twenty years of service, with increases of 2%, 4%, 6% and 8%, respectively, of the base wage (Un.

the most important factor to arbitrators." Laner & Manning, *supra* n. 9, at 856.

Brief, 7). No increases are currently provided to officers with fewer than five years of service; they receive only "across-the-board" increases in their wages in each year of the contract" (Un. Brief, 7-8). As a result, salaries in the first five years of service are depressed (Un. Brief, 8).

3. The Union's first-year offer "reduces the wide disparity between the salaries of Loves Park officers with five or less years of service and their counterparts in a temperate manner"—from between 16-23% to between 14-17%—while keeping the "slight disparity at ten or more years... virtually the same (below 2%)" (Un. Brief, 8) as shown below (UX M6):

Table 11
PATROL OFFICER SALARY COMPARISONS FOR 1995

Jurisdiction	Start	After 1 Yr	After 2 Yrs	After 3 Yrs	After 4 Yrs	After 5 Yrs	After 10 Yrs	After 15 Yrs	After 20 Yrs
Belvidere	25,151	25,151	27,950	27,950	30,795	30,795	33,137	36,577	36,577
Dixon	24,384	26,409	28,436	30,462	32,540	32,540	32,540	32,540	32,540
Freeport	24,788	26,863	27,977	29,135	29,135	32,258	33,066	33,896	34,747
Sycamore	I/N	I/N	I/N	I/N	I/N	I/N	I/N	I/N	I/N
Woodstock	28,325	29,454	30,334	31,233	32,150	33,089	38,105	42,557	42,557
Average	25,662	26,969	28,674	29,695	31,155	32,170	34,212	36,392	36,605
L Park 94	21,000	21,506	22,055	22,604	24,638	26,223	33,024	35,142	35,805
Difference	-18.2%	-20.3%	-23.1%	-23.9%	-20.9%	-18.5%	-3.5%	-3.4%	-2.2%
City Offer	21,735	21,735	22,259	22,287	23,395	26,010	34,180	36,372	37,058
Difference	-15.3%	-19.4%	-22.4%	-25%	-25%	-19.1%	-0.1%	-0.1%	1.2%
Un Offer	22,000	22,900	23,800	24,700	25,600	27,272	34,345	36,548	37,237
Difference	-14.3%	-15.1%	-17%	-16.8%	-17.8%	-15.2%	0.4%	0.4%	1.2%

4. The Union's 1995 proposal was derived from the 1994 pay of officers with "certain years of service" (see Table 2 at page 4 herein). Instead of proposing to "eliminate the differential inequities...between the salaries of the Loves

Park officers and the salaries of those in comparable communities," the Union has sought only to achieve a "standard step scale" (Un. Brief, 10-11). Accordingly, the Union's first-year offer "keeps costs at a minimum" (Un. Brief, 11). Of all officers with five or more years of service, only four would receive more than a four percent increase in the first year; the "jump to a different longevity step" accounts for the "extra increase" of three of the officers (Un. Brief, 11).

5. The Union's first-year offer "accomplishes the following:

- "1) moderate reduction in the below-average disparity for the officers with five or less years of service;
- "2) little or no change in the near-zero disparity for officers with ten or more years of service;
- "3) creation of a standard step pay plan to reduce future problems in the pay structure;
- "4) incorporation of current pay rates to create the new pay plan, thereby keeping costs at a minimum; and
- "5) implementation of the same definition for 'years of service' in the pay plan as in the longevity system" (Un. Brief, 11).

6. The Union seeks only to "readjust" salaries "to a more average level" without causing the City to incur "excessive costs" (Un. Brief, 11-12).

7. Under the City's offer, the disparity between officers with three to five years of service and their counterparts in comparable police department would widen (Un. Brief, 12).

8. The City's reliance on the "'median' salary in the police department" results in an "unrealistic snapshot... skewed by the age of the officers in the department" (Un. Brief, 13).

9. Currently, the rise in cost-of-living, like the Union's offer, "is relatively moderate" (Un. Brief, 13). If Loves Park Police Officers were at or near the top of the comparables, a "cost-of-living raise would be arguably appropriate," but it is "injurious" for an arbitrator to give cost-of-living too much weight if a cost-of-living raise "does not assist a group of employees in staying with the comparables" (Un. Brief, 13-14).

10. This is "an excellent time to make these necessary adjustments" (Un. Brief, 14). The "City's financial condition is sound and it has just recently experienced a drop in insurance costs" (Un. Brief, 14). Further, "all of the comparable communities have established incremental pay scales," a "very common and basic benefit for police officers" (Un. Brief, 14). The absence of an incremental pay scale "is the root of the current problem" (Un. Brief, 14).

(ii) Sergeants

1. As the "comparable information for the sergeants is not conducive to any analysis," the Union "does not rely on comparables as its primary argument" respecting its proposal on Sergeants' salaries (Un. Brief, 14). The first-year offer regarding Sergeants "is more reasonable because it maintains

the past method of calculating sergeants' pay" (Un. Brief, 14-15).

2. From FY 1989 through FY 1991 Sergeants were paid 13.33% above the top Patrol Officer's salary (Un. Brief, 15). For FY 1992 through FY 1994, the differential was reduced to 13.29% (Un. Brief, 15). The Union "maintains this method," decreasing the "differential to 13%, to stabilize the dollar difference between sergeants pay and patrol officer pay" (Un. Brief, 15). The City has "abandon[ed] the past to create (temporarily) a new pay system for the sergeants" (Un. Brief, 15). Offering no explanation, the City "seeks to impose a flat across-the-board wage increase..." (Un. Brief, 15).

3. The difference between the Union proposal of \$38,961 and the City proposal of \$38,875 is less than \$100, but the "method used to calculate these figures is clearly different" (Un. Brief, 15). As "there is nothing to suggest the parties disagree over sergeants' pay," there "is no reason to change the methodology for calculating the pay rate" (Un. Brief, 15-16).

(iii) Telecommunicators

1. As shown below, the Telecommunicators' step scale was derived from the "same factors" used to develop the Patrol Officers' step scale (Un. Brief, 16):

Table 12
UNION FIRST YEAR OFFER ON TELECOMMUNICATORS

Employee	Seniority	1994 Salary	1994 Longevity	1994 Wages	1995 Salary	1995 Longevity	1995 Wages	1995 Increase
Kamholtz	5/1/78	27,699	1,662	29,361	28,808	1,728	30,536	4.00%
Shank	5/1/83	25,750	1,030	26,780	26,780	1,071	27,851	4.00%
Settle	5/1/84	25,750	1,030	26,780	26,780	1,071	27,851	4.00%
DePauw	5/1/92	21,666	0	21,666	23,296	0	23,296	7.52%

Table 13
CALCULATION OF TELECOMMUNICATORS' 1995-96
SALARY STEP INCREASES PROPOSED BY UNION
(Current Pay Rates are in **Bold Print**)

	1994			1995
Start	20,000	x	4.00%	= 20,800
After 1 Year	20,800	x	4.00%	= 21,632
After 2 Years	21,666	x	4.00%	= 22,533
After 3 Years	22,400	x	4.00%	= 23,296
After 4 Years	23,200	x	4.00%	= 24,128
After 5 Years	24,000	x	4.00%	= 24,960
After 10 Years	25,750	x	4.00%	= 26,780
After 15 Years	27,700	x	4.00%	= 28,808

2. After "start pay in 1994 is set at \$20,000 and five year pay is increased to \$26,737 (4.0%), the 1995 steps can be evenly placed in approximately \$800 increments. These \$800 steps end at the five year level, just as in the patrol officers scale"; increases of 4% over 1994 complete the schedule (Un. Brief, 17). Under this plan, Telecommunicators will receive a 4% wage increase exclusive of any step increase (Un. Brief, 17).

3. The across-the-board increase proposed by the Employer "furthers the problems...discussed"; a "step scale

to ensure the viability of an appropriate wage rate is necessary" (Un. Brief, 18).

4. The "comparables for telecommunicators are not thorough" and the Union's proposal "is based upon creating a scale similar in nature to that for the police officers (for ease of administration), not mainly on comparability" (Un. Brief, 18).

5. The proposed wage scale "will enable telecommunicators to maintain reasonable salary levels"; this scale "is not out of line with the cost of living and it establishes a good foundation for future wage increases" (Un. Brief, 18).

(b) The Employer's Position

1. The Employer's approach is fundamentally different from the Union's. The Employer breaks down the labor market into the following categories (Emp. Brief, 4):

1. The statewide labor market;
2. The countywide labor market;
3. The citywide labor market;
4. The internal city wage structure; and
5. Internal wage seniority coherence.

Relying on the July 1995 OCCUPATION WAGE SURVEY published by the Illinois Department of Employment Security, the Employer breaks down 491,653 workers employed in more than 500 occupations by more than 7000 employers across the state of Illinois into "successive population groups of 25,000 people" (Emp. Brief, 4). The Employer then draws the following data from this study (Emp. Brief, 5):

1. Loves Park Patrolmen are in the 80.10 percentile of median wages statewide.

2. Loves Park Sergeants are in the 94.61 percentile of median wages statewide.
3. Loves park Telecommunicators are in the 75.11 percentile of median wages statewide.

2. The unemployment rate in Loves Park and the state of Illinois is 5.7%; accordingly, the Loves Park employees "are in a 5.7% higher percentile of wages [than] the presented data suggests and the graphs show" (Emp. Brief, 5). These employees do not experience the "employment interruptions experienced by the private sector personnel" and thus "actually earn 100% of the rates shown for them, while private sector personnel experience on average a 5.7% reduction" (Emp. Brief, 6). "Adjusted for the unemployment rate," Patrolmen fall into the 85.8 percentile of all wage earners, Sergeants the 100 percentile and Telecommunicators the 80.81 percentile (Emp. Brief, 6).

3. Without reference to the 5.7% unemployment factor, the median wages of Loves Park employees compare to other wage earners in Winnebago County as follows (Emp. Brief, 7):

Loves Park Patrolmen

Current median wage	88.96 percentile
City proposed median wage	90.37 percentile

Loves Park Telecommunicators

Current median wage	85.58 percentile
City proposed median wage	86.20 percentile

Loves Park Sergeants

Current median wage	98.64 percentile
City proposed median wage	99.16 percentile

4. The median wages of Loves Park Police Department employees may be compared to the median wages of "Loves Park core employees" as follows (Emp. Brief, 8; EXs 7, 8, 10):

A. Rockford Powertrain

<u>Rockford Powertrain</u>	<u>City of Loves Park 1995 Proposed (3.5% raise)</u>			
	<u>Sergeant</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Skilled Trade Hire Rate: \$10.93 - \$11.92	Minimum	\$19.44	\$20.12	\$20.82
Skilled Trade Max rate: \$13.85 - \$15.31	Maximum	\$20.18	\$20.89	\$21.62
	<u>Patrolman</u>			
Machine Shop Hire Rate: \$ 8.41 - \$ 9.36	Minimum	\$10.45	\$10.82	\$11.19
Machine Shop Max Rate \$11.76 - \$12.43	Maximum	\$17.82	\$18.44	\$19.09
	<u>Telecommunicator</u>			
A-Z () Rates Hire: \$ 7.82 - \$ 8.35	Minimum	\$10.35	\$10.71	\$11.09
A-Z () Rates Hire: \$11.76 - \$12.43	Maximum	\$14.33	\$14.84	\$15.36
A-Z (C) Rates Hire: \$ 7.67 - \$ 7.73				
A-Z (C) Rates Max: \$11.44 - \$11.59				

B. Wolohan Lumber

<u>Wolohan Lumber 1996 Rates</u>	<u>City of Loves Park Proposed (3.5% Rates)</u>			
	<u>Sergeant</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Top Rates: <u>Min. Max.</u>	Minimum	\$19.44	\$20.12	\$20.82
\$8.79 - \$12.74	Maximum	\$20.18	\$20.89	\$21.62
	<u>Patrolman</u>			
Mid Rates: \$5.33 - \$7.47	Minimum	\$10.45	\$10.82	\$11.19
	Maximum	\$17.82	\$18.44	\$19.09
	<u>Telecommunicator</u>			
Bottom Rates: \$4.25 - \$5.73	Minimum	\$10.35	\$10.71	\$11.09
	Maximum	\$14.33	\$14.84	\$15.36

C. Harlin School District

The Patrolmen's median wage (as proposed by the Employer) exceeds the earnings of a teacher with a Bachelor's degree and eight credit hours toward a Master's degree and nine years of seniority or a teacher with a Master's degree

and 24 hours toward a Doctorate with three years of seniority (Emp. Brief, 10).

5. The median wage of Patrolmen, Sergeants and Telecommunicators exceeds the actual wages of all non-union Police Department employees except the Chief and Lieutenant (Emp. Brief, 11). In the Street Department, "only the Superintendent is paid more than the Sergeant, and the median wage for Patrolmen and Telecommunicators exceeds every one of all but three classifications" (Emp. Brief, 11). The median wage for Patrolmen, Sergeants and Telecommunicators "exceeds all but two actual wages for classifications in the Water Department" (Emp. Brief, 11).

6. The current system is coherent. "There is not a single exception wherein a union Police Department employee with less service is making more than an employee with greater service" (Emp. Brief, 12). There "is a 100% correlation between salary and service" (Emp. Brief, 12). The salaries of the unionized Police Department employees "are completely coherent with their years of service and quite generally superior to their fellow City employees" (Emp. Brief, 13).

7. It is a "common practice" for a statutorily based interest arbitration award "to be largely driven by external comparability factors, i.e., the other police departments" (Emp. Brief, 13). "This may be so because the parties failed to deliver to the Arbitrator a coherent argument set on any other base" (Emp. Brief, 13). The statute itself "does not

stipulate what weight [the arbitrator] must give each" element listed in the statute (Emp. Brief, 13).

8. The "City has demonstrated that there is no requirement to radically change its wage scale and policy as the Union proposes" (Emp. Brief, 14). "There is no dislocation of Patrolmen, Sergeants and Telecommunicators employee wages as compared to: (1) the State labor market; (2) Winnebago County labor market; (3) City of Loves Park labor market; (4) internal City of Loves Park pay structures; and (5) internal wage-seniority coherence" (Emp. Brief, 14). A "prudent man would not adjust the wage scale beyond the City's offer" (Emp. Brief, 14).

9. The Loves Park longevity system operates as follows (Emp. Brief, 14; EX 18):

<u>Years</u>	<u>Longevity</u>
0-5	0% of earnings
5-10	2% of earnings
10-15	4% of earnings
15-20	6% of earnings
20+	8% of earnings

From 1995 through 1998, longevity will increase Patrolmen's wages by an average of 3.69% (EX 18).

10. Wages "should be adjusted annually to counteract the effect of inflation" (Emp. Brief, 15). "Informed opinion views the Labor Department version(s) of the CPI with suspicion, concern and doubt"; the inflation rate is "between .07% and 2%, the BLS/CPI notwithstanding" (Emp. Brief, 15; EX 23).

11. Cost-of-living adjustments (COLA) for "the various elements controlled by the U.S. Government" are as follows (Emp. Brief, 15-16):

Social Security

1995 (Dec)	43,387,000 recipients	2.8%
1996		2.6%

Federal Government Employees

1995	1,417,134 employees	2.0%
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Civil Service Retirement

1995	2,282,800 retirees	2.8%
1996		2.0%

Military Personnel Retired

1995	1,844,318	2.6%
1996		2.4%

Active Duty Military Personnel

August 1995	1,569,020	2.6%
1996		2.4%

Total:	<u>50,500,272</u>	
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Loves Park "accepts 2.5% as a reasonable COLA rate" (Emp. Brief, 16).

12. Patrolmen's "median wage proposed by the City of \$14.36 falls within the range of approximately" all "selected cities in a 52-mile radius" (Emp. Brief, 17). This median "exceeds the maximum of the lower one-third" and "in the balance of two-thirds, ... falls at or above the midpoint in all but four cities" (Emp. Brief, 17).

13. The "proposed median rate for Sergeants exceeds the maximum rate of all but five cities and is close to the maximum in those five" (Emp. Brief, 17).

14. The "Telecommunicators' proposed median rate is at or above the maximum in all but four cities and in those four cities, it is close to the maximum and well above the midpoint in the fifth" (Emp. Brief, 17).

15. The Employer is "discussing a median wage rate *vis a vis* rate ranges" (Emp. Brief, 17). For example, "as compared to Dixon, the median wage rate is above the midpoint of the Dixon range" (Emp. Brief, 17).

2. Discussion and Findings

For the following reasons, I adopt the Union's final offer on employees' wages for fiscal year 1995-96.

(a) Patrol Officers' Wages

(i) The Union's Proposal Is Appropriate Even Though Inconsistent with the Cost of Living

Were cost of living the sole or even predominant consideration, I would reject the Union's proposal. The Union accurately characterized recent cost-of-living increases as "moderate" (Un. Brief, 13), and these increases were well below the wage increases requested by the Union. From May 1994 to May 1995 the CPI-U index rose 3.66% from 147.6 to 153 (UX K1).¹⁵

¹⁵The Employer, along with a number of experts, among them Federal Reserve Chairman Alan Greenspan, argue that inflation data is "overstated" (see EX 23). I realize that a panel appointed by the Senate Finance Committee and chaired by former Bush administration economic advisor Michael Boskin has recommended that the "CPI be reduced to more accurately reflect changes in prices that consumers pay for goods and services." Frank James, "Price Index Overstates Inflation, Panel Says," *Chicago Tribune*, Wednesday, 4 Dec. 1996, §1, p. 1. Nevertheless, as I noted in *City of Batavia*, S-MA-95-15 (1996), at 30: "...I cannot ignore the fact that the only reasonably accurate yardstick available to the parties, and the one almost universally relied upon by unions, employers

It is rare, if not unprecedented, for an arbitrator to sanction a wage increase 3% in excess of the cost-of-living increase as measured by one of the standard indices. As shown in Table 3 at page 5, adoption of the Union's proposal would not have the same impact on every officer. Many officers would receive a 4% increase, but officers with a common anniversary date of 1991 would receive an increase of 13.25%. Other individual increases range from 4.76% to 10.69%. The Union argues that such substantial raises are necessary "to put into effect a standard pay scale which, over time, will help to readjust the salaries of the officers in Loves Park to a more average level" (Un. Brief, 11-12).

Standing alone, the 3½% increase proposed by the Employer is not unreasonable. In comparison to recent cost-of-living changes, it may even be called generous. It does not, however, deal with two pressing problems addressed by the Union's proposal: (1) the comparative salary disadvantage

and arbitrators, is one of the BLS cost-of-living indices, primarily the CPI-U relied on in this case." Not having the resources to measure and monitor the constantly changing cost of goods and services to the consumer, it would be presumptuous of me to disregard these indices. Nor can I anticipate congressional and administrative action. It might be noted that the recommendations of the Boskin Commission have been criticized as politically inspired. See, e.g., Dean Baker, "The Inflated Case against the CPI," *The American Prospect* no. 24 (Winter 1995): 86-89 (<http://epn.org/prospect/24/24bake.html>):

Though the group includes some eminent economists, all had previously testified on the CPI's supposed bias. All were chosen as known quantities who could be reliably counted upon to recommend a downward revision. Other eminent economists such as former BLS Commissioner Janet Norwood, who took the opposite view, were ignored. The panel was appointed in June 1995 and announced its 1% solution in mid-September. It conducted no original research. Instead, it used rough rules of thumb to reach its conclusions.

of Loves Park Police Officers, particularly those with five or less years of service, vis-a-vis police officers in the comparable communities; and (2) the current lack of a rational system of wage administration.

The Union's proposal (1) reduces the disparity between the average wages of Loves Park officers with less than five years of service and the average wages of their peers in comparable communities (Table 11, p. 20) and (2) creates a standardized system of wage administration resting on longevity and measurable, standardized steps from point to point on the salary schedule. These are laudable objectives and consistent with comparability and the "other factors" standards contained in Section 14(h) of the Act. It bears repeating to point out that the 1994 salaries of Loves Park Patrol Officers with five or less years of service range from 18% to 24% below the 1995 average salaries of police officers in the comparable communities.

The Employer's offer would reduce this difference at the start, and at the first and second years but increase it at the third, fourth and fifth years (Table 11). The Union's offer would reduce this disparity at each of the first five years of service.

As shown by the following table, the current differences between Loves Park and the average of comparable communities at the lower seniority levels are stark:

Table 14
SALARY COMPARISONS

	Start	After 1 Yr	After 2 Yrs	After 3 Yrs	After 4 Yrs	After 5 Yrs	After 10 Yrs	After 15 Yrs	After 20 Yrs
95 Average	25,662	26,969	28,674	29,695	31,155	32,170	34,212	36,392	36,605
L Park 94	21,000	21,506	22,055	22,604	24,638	26,223	33,024	35,142	35,805
Difference	-18.2%	-20.3%	-23.1%	-23.9%	-20.9%	-18.5%	-3.5%	-3.4%	-2.2%
City Offer	21,735	21,735	22,259	22,287	23,395	26,010	34,180	36,372	37,058
Difference	-15.3%	-19.3%	-22.4%	-25%	-25%	-19.1%	-0.1%	-0.1%	1.2%
Un Offer	22,000	22,900	23,800	24,700	25,600	27,272	34,345	36,548	37,237
Difference	-14.3%	-15.1%	-17%	-16.8%	-17.8%	-15.2%	0.4%	0.4%	1.2%

On any reasonable scale of comparability, the Union's offer would seem closer to parity than the Employer's offer.

The question, of course, is whether this attempt at parity is too costly—whether the increases needed to achieve even modest movement toward parity are so inconsistent with the recent and even more modest increase in the cost of living as to be unacceptable. A snapshot of the current Patrol Officer payroll shows that the Union offer would increase total Patrol Officers' wages (salaries plus longevity) 6.985% (\$512,516 to \$548,317) from FY 1994 to FY 1995 (UX M1). Total salaries would go up from \$495,912 to \$528,959 or 6.66% (UX M1).

(ii) The "Other Factors" Standard

Cost-of-living favors the Employer. Comparability favors the Union. But neither of these principal statutory standards checkmates the other, and the "game" (the term used narrowly

as in "game theory")¹⁶ would thus seem to end in stalemate. Accordingly two other statutory factors must come into play: (1) "The interests and welfare of the public and the financial ability of the unit of government to meet those costs"; and (2) "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 Employer did not contend that it lacked "the financial ability...to meet [the] costs" of the Union's proposal. Nor was any coherent argument developed with respect to the "interests and welfare of the public." At times, the public interest may be served by reducing or at least maintaining current labor costs. At other times, this interest may best be served by a wage scale that attracts and holds good police officers. At times, one factor may be tempered or preempted by another. Costs may have to be reduced to relieve overburdened taxpayers. Or wages may have to be raised to maintain a viable police department.

In this case, the evidence did not demonstrate that either factor was decisive. For that reason, I cannot hold

¹⁶Game theory: "Branch of mathematics that deals with strategic problems (such as those that arise in business, commerce, and warfare) by assuming that the people involved invariably try to win—that is, they are assumed to employ strategies that should give the greatest gain and the smallest loss." Anne-Lucie Norton, ed., *QPB Dictionary of Ideas* (New York: Book of the Month Club, 1996).

that either proposal is necessarily in the "interests and welfare of the public." Each may serve a different aspect of public interest—frugality in service of the public's financial interest, competence in service of the public's social interest. Without supporting evidence, however, my opinion respecting the various public interests amounts to uninformed speculation.

The "other factors" standard is commonly referred to as a "catch-all." This factor might also be termed a "safety valve." By "suggest[ing] that the arbitrator may rely upon the criteria that he deems most important in a particular case, as long as regard is paid in the opinion to the other statutory standards,"¹⁷ the arbitrator is not tied down to rules and standards that, while formally appropriate, may lead to inequitable results. It may be argued that the General Assembly intended to give some latitude to arbitrators, that it meant to allow them to consider the prior collective experience of arbitrators, mediators and contract negotiators. In any event, it is unlikely that this standard would support an arbitral finding not supported by one of the more significant standards such as cost of living or comparability. Indeed, wages not warranted by any of the major criteria would probably fail to meet the "other factors" standard. In a close case, however, "other factors" may tip the balance.

¹⁷Anderson & Krause, *supra* n. 4, §63.03[6].

In this case, the "other factors" standard is useful in determining an appropriate wage structure. Although no evidence was produced to show either the percentage or absolute number of municipal police departments in Illinois with a standard step scale, a review of awards published under the Act reveals that a "step scale" is common, indeed virtually unchallenged, among Illinois municipal police departments. All the comparable departments use a time-in-service or incremental wage schedule (UX Q-V), thus bringing the "other factors" standard into line with the comparability standard. For this reason, the Union proposal on Patrol Officers' wages for FY 1995-96 is appropriate, even though it raises wages substantially above those warranted solely by recent increases in the cost of living.¹⁸ I have also considered the Union's argument that the cost of living should not be given

¹⁸A seniority-based wage schedule has not escaped criticism by experts in the field of public administration. Pounian and Fuller (n. 13) have made the following observations:

Traditional government personnel systems have often undermined this objective [of "enhancing the recruitment, retention, and motivation of competent and superior employees"] by constraining managerial judgment through excessive regulation. Public managers are typically given limited discretion in making critical personnel-related decisions, including setting employee compensation. The usual pattern provides for a step plan, with designated starting salaries and increases based on seniority, supplemented by cost-of-living adjustments. Any links to recruitment objectives, performance criteria, or other aspects of human resource management are often lacking. (See Pounian & Fuller, n. 13, 405).

I am not insensitive to this criticism of incremental compensation systems. However, not only are market realities (comparability) critical, the evidence did not show the Employer's pay-plan advanced "recruitment objectives, performance criteria, or other aspects of human resource management" better than the Union's pay plan. In any event, as Pounian and Fuller also point out (at 412), a typical job classification system groups similar positions into one classification and requires that all positions in that classification be treated the same with respect to compensation and other personnel actions. The Union's proposal meets this objective.

as much weight as it might warrant if a cost-of-living raise "does not assist a group of employees in staying with the comparables" (Un. Brief, 14).

**(iii) The Issue of an Inappropriate
"Breakthrough"**

I have not disregarded the usual arbitral reluctance to embrace an entirely new or "breakthrough" proposal. I agree with arbitrator Harvey Nathan's cautious statement in *Will County Board*, S-MA-88-9 (Nathan 1988), at page 50:

In the present case, the Employer seeks to make substantial changes in the language of the Agreement.... The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change.

In *City of Markham*, S-MA-95-63 (Berman 1995) and *Village of Skokie*, S-MA-93-181 (Berman 1995), I endorsed, and continue to endorse, this principle.

The question, of course, is whether the Union, the "party seeking the change," met the "onus" or burden of justifying the need for change. I say yes. First, the comparability data in support of an incremental wage scale is overwhelming. Second, on a practical level, the continuation of an unsystematic compensation scheme is inherently inequitable and unworkable in the long run.

The present compensation program is not wholly unsystematic. Pay corresponds to years of service. Nevertheless, as one might expect in a program that has simply evolved, no rationale has been developed to warrant particular salaries

at particular points of service. Rather, the Union constructed a schedule inferentially from salaries actually paid:

Table 15

<u>YEARS OF SERVICE</u>	<u>TOTAL WAGES</u>
Start	\$22,000
1 year	\$22,900
2 years	\$23,800
4 years	\$25,600
5 years	\$27,272
11 years	\$34,345
15 years	\$36,548
21 years	\$37,237

There is no third-year step and the difference between wages at adjacent post-five years "steps" ranges from \$689 to \$7,073. Most importantly, this improvised wage structure does not deal effectively with the most significant disparity shown by the comparability data—that of Patrol Officers with no more than five years of service.

(iv) The "Inequitable Settlement" Issue

One additional point warrants consideration. The Employer argues that I should not sanction a "time-based/step wage program" on top of the "step longevity program" currently in place (Emp. Brief, 27). The Employer maintains that (1) none of the comparables enumerated by the Union has a "dual step program" (Emp. Brief, 27); and (2) the "officers do not want to relinquish their generous Longevity Step Program..." but only to "add a Base Wage Step Program on top of the Step Longevity Program" (Emp. Brief, 28).

This argument is cogent, and were this conventional interest arbitration instead of final-offer arbitration, it might well be persuasive. In conventional arbitration, I

could mix and match proposals—choosing the best, rejecting the worst. I could “adopt a compromise position on each issue in dispute.”¹⁹ I could even impose novel solutions. But I am not a free agent. I may select only one offer in its entirety on each economic issue.²⁰ Since the competing offers are structured in terms of contract years, each representing one year for all three employee categories, I cannot even select one party’s FY 1995 offer on, let us say, Patrol Officers and the other’s offer on Sergeants or Telecommunicators.

As noted by Anderson and Krause (see n. 21), the danger of final-offer arbitration, perhaps rare (but critical when it occurs), is an “inequitable settlement.” Where, as here, the competing offers do not result in a narrowing of “differences between...proposals because of...mutual fear that the other party’s offer will be selected,”²¹ an arbitrator may well be compelled to choose between two *inequitable offers*—offers that are widely divergent rather than prudently narrow. If, as here, the difference between the parties is not merely a difference measured in dollars or percentage of change—\$1000 v. \$2000 or 2½% v. 3%—but a difference in the fundamental premise upon which the compensation system rests, the arbitrator must simply choose the offer most consistent with statutory standards.

¹⁹Anderson & Krause, *supra* n. 4, at §63.02.

²⁰It is generally believed that final offer arbitration moves the parties closer together in bargaining and increases the possibility of settlements. However, “critics of final offer selection contend that it may result in inequitable settlements....” Anderson & Krause, *supra* n. 4, at §63.03[1].

²¹Laner & Manning, *supra* n. 9, at 843.

In this case, the gap between the competing offers was not narrowed. Each party must have gambled that the other's offer was so unreasonable that no reasonable, prudent arbitrator would select it. In terms of "game theory," each party, attempting to maximize gain and minimize loss, left the arbitrator with a choice between two widely divergent offers.²² Had the parties truly "narrowed their differences" or, in terms appropriate to this case, settled on a single system of salary administration, they could have foreclosed the possibility of inequitable consequences.

(b) Sergeants' Wages

Maintaining the traditional differential between the pay of Sergeants and the top Patrol Officer base pay in the 13% range, as suggested by the Union, would result in Sergeants' pay of \$38,961 in FY 1995-96 (UX N1). The Employer's offer of a 3.5% increase would result in pay of \$38,875, or \$86 less, for FY 1995-96 (UX N1). As the Union noted, data on Sergeants' pay in the comparable jurisdictions (UX N4) was scant, and of little help in resolving this issue. Once the Union's offer on Patrol Officer pay is adopted, other schedules fall into place. No persuasive reason not to for-

²²Where each party is unshakably attached to a particular system of wage administration, each may be left with no rational choice but to marshal all available evidence and arguments and hope for the best. In short, this case may be one in which the "narrowing of differences" theory does not work. As Judge Posner writes, "We should be pragmatic about theory. It is a tool, rather than a glimpse of ultimate truth, and the criterion of a tool is its utility." Richard Posner, *Overcoming Law* (Cambridge, MA & London: Harvard University Press, 1995), 431.

malize the 13% differential between Sergeants and Patrol Officers was advanced.

(c) Telecommunicators' Wages

The Employer proposes to increase Telecommunicators' salaries 3½% (UX C1). The Union proposes a "step scale" for telecommunicators as follows (Un. Brief, 16):

Table 16
UNION'S FIRST-YEAR OFFER ON TELECOMMUNICATORS

Employee		1994 Salary	1994 Long.	1994 Wages	1995 Salary	1995 Long.	1995 Wages	1995 Increase
Kanholtz	5/1/78	27,699*	1,662	29,361	28,808	1,728	30,536	4.00%
Shank	5/1/83	25,750	1,030	26,780	26,780	1,071	27,851	4.00%
Settle	5/1/84	25,750	1,030	26,780	26,780	1,071	27,851	4.00%
DePauw	5/1/92	21,666	0	21,666	23,296	0	23,296	7.52%
		1994			1995			
Start		20,000	x	4.00%	=		20,800	
After 1 Yr		20,800	x	4.00%	=		21,632	
After 2 Yrs		21,666	x	4.00%	=		22,533	
After 3 Yrs		22,400	x	4.00%	=		23,296	
After 4 Yrs		23,200	x	4.00%	=		24,128	
After 5 Yrs		24,000	x	4.00%	=		24,960	
After 10 Yrs		25,750	x	4.00%	=		26,780	
After 15 Yrs		27,700	x	4.00%	=		28,808	

*Numbers in **bold print** represent actual 1994 salaries.

As the union notes, if starting pay "is set at \$20,000 and five year pay is increased to \$26,737 (4%), the 1995 steps can be evenly placed in approximately \$800 increments," which end at the five year level (Un. Brief, 17).

Comparability data is lacking, and the total first-year wage increase of 4.73% (\$104,587 to \$109,535) exceeds the rise in cost of living for the 12-month period in question. But I reiterate that need for a rational and systematic compensation plan overrides the usual inhibitions otherwise associated with the cost-of-living standard.

B. Issue 2: 1996-97 Salaries

For the following reasons, I adopt the Union's final offer on employees' wages for fiscal year 1996-97.

1. The Employer's FY 1996 Patrol Officer Proposal Is Flawed

As the parties themselves suggest, wages in the second and third years of the contract are contingent upon the offer adopted for the first year. Having adopted the Union's proposal on a step schedule for Patrol Officers in FY 1995, it would be illogical, indeed counterproductive, to modify or undermine that schedule in FY 1996. Indeed, the Employer has implicitly endorsed the concept of a step schedule by proposing that it be adopted in FY 1996 for "Patrolmen with less than five years of service."

Were I to adopt the Employer's second-year offer, I would undermine the incremental pay system established in the first year for officers with five or more years of service. These officers would be on the step schedule in FY 1995 and off the step schedule in FY 1996. Presumably, the inequities of a personalized system of salary administration would simply recur after five years of service. Further undermining the step schedule are the personalized \$700 equity raises to Patrol Officers Wilson and Goble. Were Wilson and Goble to quit, transfer or be promoted before the close of FY 1996, the Wilson/Goble proposal would evaporate; it would amount to nothing. In short, the unsystematic *ad hominem* program proposed by the Employer is inconsistent with a sound program of salary administration related to job classifications and

positions rather than to the individuals who happen to fill a particular position at any given time.²³

2. The Union's Proposals With Respect to Sergeants and Telecommunicators in FY 1996 Is Consistent With Its Proposal on Patrol Officers

As in FY 1995, the Union's proposed FY 1996 salary schedules for Sergeants and Telecommunicators are consistent with its proposed FY 1996 salary schedule for Patrol Officers. Sergeants are paid a proportionate amount more than Patrol Officers and Telecommunicators, like Patrol Officers, are placed on a salary step schedule. In any event, because of the way the final offers were structured, I do not have the option of adopting the Union's proposal on Patrol Officers and the Employer's proposal on either Sergeants or Telecommunicators.

C. Issue 3: 1997-98 Salaries

I adopt the Union's final offer on employees' wages for fiscal year 1997-98. I would have adopted the Employer's offer had it been limited to a \$23,000 Patrol Officer

²³As Pounian and Fuller point out in describing the "basic elements of a compensation policy" (see n. 18):

Job Classifications. Positions are generally grouped into classes. All the positions within a class have similar duties and responsibilities and are of the same relative value to the organization. All positions in the same class may be treated on the same basis for a variety of personnel actions, such as selection, promotion, *compensation* (my italics), and training.

Implicit in any system of compensation established by any organization is the tension between equity (equal wages for equal work) and initiative (rewarding the good and penalizing the bad). The Union's proposal addresses the equity issue. The Employer's proposal does not address the employee initiative issue.

starting salary and a 3½% increase for Patrol Officers.²⁴ While it is not possible to predict inflationary trends years in the future, a three and one-half percent raise is clearly more consistent with current cost-of-living increases than a four percent raise. Nor, couched in these terms, would the Employer's proposal throw the step schedule into disequilibrium.

However, I cannot adopt the Employer's FY 1997 proposal; it requires that "steps as installed in FY 1996 remain unchanged...." This proposal is tied to the Employer's FY 1996 proposal. It is predicated on and presumes adoption of the Employer's FY 1996 proposal. But I have adopted the Union's FY 1995 proposal; steps will be installed in FY 1995, not FY 1996. As I have not adopted the predicate upon which the Employer's FY 1997 proposal was based—the installation of steps in FY 1996—I cannot adopt the Employer's FY 1997 proposal.²⁵

D. The Difference in the Total Cost Over Three Years Between the Competing Offers on Sergeants and Telecommunicators Is Negligible

As noted, the wage schedules for Sergeants and Telecommunicators are largely contingent upon the schedules adopted

²⁴I assume that the Employer is not proposing "not less than" a 3½% increase, but an increase of exactly 3½%.

²⁵It is the responsibility of the party making the proposal to make its proposal clear. Proposals made during bargaining may not achieve their intended result when precisely reproduced and re-offered in interest arbitration. In negotiations, a party may almost always withdraw or modify a proposal. In interest arbitration under the Act, however, a proposal is not only fixed, the arbitrator's options are limited to choosing the final economic offer of one side or the other *in toto*. An arbitrator cannot "repair" an offer by modifying or ignoring one of its elements.

for Patrol Officers. For that reason, I have concentrated on Patrol Officers, recognizing, as the Employer has pointed out, that the difference in cost between the Union's and the Employer's offers with respect to Sergeants and Telecommunicators is respectively "so close as to be identical" (Emp. Brief, 32) and "so close...that light barely passes between the gap created by their respective offers" (Emp. Brief, 33).

E. Conclusion

The Employer notes that increases for Patrol Officers over three years comes to 17.2% under the Union's proposal (assuming, of course, no change in personnel) and 12.1% under the Employer's proposal (Emp. Brief, 33). Most of these increases, which are generated by the Union's FY 1995 proposal, would increase Patrol Officers' wages higher than might seem warranted by recent cost-of-living increases. Nevertheless, once the step plan is in place for FY 1995—a step plan I have adopted for reasons I consider sound and rational—I cannot dismantle it without some compelling countervailing reason. Cost of living is a significant countervailing reason. Wage comparability and a rational system of salary administration—an incremental step system that was also consistent with standards of comparability—were more persuasive reasons.

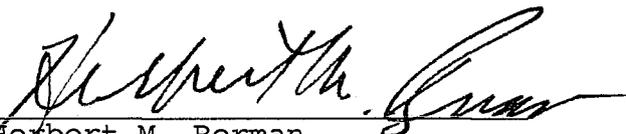
Award

I adopt the Union's final offers on (1) wages for Patrol Officers, Sergeants and Telecommunicators, effective June 1, 1995; (2) wages for Patrol Officers, Sergeants and

Telecommunicators, effective June 1, 1996; and (3) wages for Patrol Officers, Sergeants and Telecommunicators, effective June 1, 1997.

As I have adopted the Union's proposals, that portion of those proposals relating to retroactivity for current and former police officers on the payroll as of May 1, 1995 (see p. 6, *supra*) is automatically adopted.

All contract items tentatively agreed to by the parties are incorporated herein and made a part of this Award by reference.


Herbert M. Berman
Arbitrator

December 23, 1996