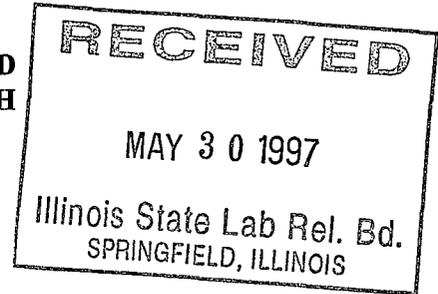


ILLINOIS STATE LABOR RELATIONS BOARD  
BEFORE ARBITRATOR ROBERT PERKOVICH



In the Matter of an  
Arbitration Between

City of North Chicago, )  
)  
Employer, )  
)  
and )  
)  
Illinois Fraternal Order of Police )  
Labor Council, )  
)  
Union. )

Case No. S-MA-96-62

**INTEREST ARBITRATION OPINION AND AWARD**

On December 20, 1996, a hearing was held before the undersigned, having been jointly selected by the parties, City of North Chicago ("Employer") and Illinois Fraternal Order of Police Labor Council ("Union").<sup>1</sup> Appearing for the Union was its representative, Becky Dragoo. Testifying for the Union were Lonnie Brown, Dean Vincent, Salvatore Cecala, Brian Carder, Rich Wilson, Darcey Brown, and Walter Holderbaum. Appearing for the Employer was its counsel, Anthony Byergo. In addition, both representatives made oral presentations at the hearing in support of their final offers. Timely post-hearing briefs were filed by the parties on March 24 and March 29, 1997.

ISSUES

Prior to the hearing the parties agreed that the following economic issues were submitted for resolution:

- A. Wages
- B. Retroactivity of Wages
- C. Uniform Allowance
- D. Personal Leave Days<sup>2</sup>
- E. Holidays
  - i. reduction in holidays
  - ii. holiday pay and work requirements
- F. Duration
- G. Funeral Leave/Sick Leave
- H. Vacation Eligibility<sup>3</sup>
- I. Catastrophic Sick Leave Pool

<sup>1</sup> Pursuant to the parties' stipulation the Arbitrator served alone.

<sup>2</sup> At the hearing the Union withdrew its final offer on this issue.

<sup>3</sup> At the hearing the parties reached an agreement with respect to this issue. Thus it is not before me.

In addition, the parties stipulated that the following non-economic issues were submitted for resolution:

- J. Pager Policy
- K. Officer Safety

## BACKGROUND

The Employer is a municipality located in Lake County, Illinois, with a population of 34,978, a significant portion of which are military personnel and their families living at the Great Lakes Naval Training Center. Although military personnel use the Employer's services, the military base and other related federal property (e.g., the Veteran's Administration Hospital) do not pay property and other taxes. Similarly, military personnel stationed at Great Lakes Naval Training Center are able to utilize services at the base, such as the Commissary, which are exempt from any sales tax collected by the Employer. The City has a crime index on a per capita basis of one index crime reported for every 21.52 residents. In addition, in 1993 there were 1,325 calls per officer with 1996 ending at 1,293 calls per officer.

The Union represents a bargaining unit consisting of 39 peace officers in a police department of 49 full-time sworn members. Prior to the arbitration the parties had successfully negotiated three previous collective bargaining agreements. The first of those agreements commenced in February of 1987, following the Union's certification in October of 1986, and terminated in August of 1990. The second began in September of 1990 and expired in August of 1993. The third collective bargaining agreement between the parties ran between August of 1993 and 1996. The arbitration in this matter is with respect to an agreement that will follow the third agreement negotiated between the parties.

In addition to its bargaining relationship with the Union the city also bargains with the International Association of Firefighters, Local 3271 (representing sworn firefighters) and the Service Employees International Union, Local 1 (representing public works and clerical employees).

Negotiations for the current collective bargaining agreement commenced sometime in the Fall of 1995. The parties met on November 29, 1995, and met again in 1996 on January 17, January 31 and February 4. Ultimately the parties engaged in mediation, meeting with the mediator on April 2 and May 2. On May 22, the city attempted through the mediator to arrange further meetings to continue the bargaining process. In addition, the Employer sent to the Union a letter on July 8, 1996, attempting to arrange further meetings. However, an additional meeting did not take place until November of 1996, and in the interim the Union filed its request for compulsory arbitration.

## FINDINGS OF FACT AND CONCLUSIONS

### A. The Statutory Criteria

Under Section 14 of the Illinois Public Labor Relations Act I am obligated to decide each of the disputed issues in consideration of the following factors:

The lawful authority of the Employer;

The stipulations of the parties;

The interest and welfare of the public;

The financial ability of the Employer to meet the costs of the competing proposals;

Comparison of wages, hours and conditions of employment with those of employees performing similar services in public employment in comparable communities and private employment in comparable communities;

The average consumer prices for goods and services;

The overall compensation presently received by employees and 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.

Moreover, with regard to economic issues, I am obligated by the Illinois Public Labor Relations Act to choose either the Employer's final offer or that of the Union. Conversely, I am empowered by the statute to choose either of those two final offers or to resolve the issue in any other manner I deem appropriate in light of the factors described above for non-economic issues.

### B. The Comparable Communities

The parties have agreed that the following communities are sufficiently comparable to the Employer for use in the resolution of the outstanding issues: Calumet City, Chicago Heights, Lansing, Burbank, and Maywood.<sup>4</sup>

The parties are in dispute with regard to three communities. The Union proposes to add to the list of comparable communities Glendale Heights and Hanover Park while the Employer contends that Zion is the only community appropriately added to the list of comparables.

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<sup>4</sup> The parties also included in their list of stipulated comparable communities the City of Harvey. However, both parties have noted that there has been no collective bargaining agreement for police officers in that jurisdiction for a number of years and in many of the parties' comparability analyses they exclude Harvey. Accordingly, I too exclude Harvey and find that despite the stipulation it will not serve as a comparable community.

As a threshold matter the Union argues that despite the fact that Glendale Heights and Hanover Park have a greater median home value, per capita income and median household income than the Employer, it is no different in that regard than the other agreed upon comparables. Therefore, the Union contends that there must be a resort to other data or factors such as the degree of change to the relative demographics, department size and finances to properly assess whether Glendale Heights and Hanover Park are indeed comparable. The Employer on the other hand contends that Glendale Heights and Hanover Park have higher levels in those categories relative to the Employer than agreed upon communities. Thus, the Employer contends that a resort to traditional criteria for determining comparability including, relative geographic location, population, extent of crime problem, extent of recruitment and retention issues, and equalized assessed valuation is appropriate.

On this discreet point I agree with the Employer. It seems to me that simply because the agreed upon comparables differ from the Employer by a wide margin does not in and of itself justify the departure from the traditional criteria used to measure comparability. Rather, a comparability selection is to be driven by the relative comparison of actual measures of various factors which presumably formed the basis for the wage and benefit agreements in those communities. Thus, in determining whether to add Glendale Heights and/or Hanover Park to the comparability analysis I will instead measure that question by the traditional criteria described above.

There is also a threshold issue regarding the propriety of adding Zion to the list of comparable communities. On this point, the Union argues that the Employer has arbitrarily used different ranges and time periods for Zion than the other agreed upon comparables. I express no view as to this point. Rather, I choose to compare and contrast Zion to the agreed upon comparables and the Employer without regard to any percentage difference, but rather, to the actual numerical level for each of the factors. The evidence discloses that both parties have provided data on only five discrete factors for Glendale Heights, Hanover Park, and Zion. Those factors are median home value, per capita income, median household income, equalized assessed valuation, and population. The relative data among these communities on those factors is listed below in Table 1.

**TABLE 1**

	<b>North Chicago</b>	<b>Range of Agreed Upon Comparables</b>	<b>Glendale Heights</b>	<b>Hanover Park</b>	<b>Zion</b>
Median Home Value	\$64,000	\$62,500-\$89,600	\$105,500	\$101,900	\$68,000
Per Capita Income	\$9,165	\$10,698-\$16,112	\$15,715	\$14,770	\$11,813
Median Household Income	\$25,500	\$27,551-\$37,449	\$42,822	\$44,237	\$31,159
Equalized Assessed Valuation	\$130.6m	\$127.8m-\$363.1m	\$372.1m	\$329.9m	\$368.4m
Population	34,909	27,139-37,840	27,973	32,895	21,436

As is apparent from Table 1, Glendale Heights and Hanover Park not only exceed the range of comparable communities with regard to median home value, median household income, and equalized assessed valuation, but in each instance the levels for those communities dwarfs that of the Employer. In addition, while the per capita income in Glendale Heights and Hanover Park does not exceed the range of agreed upon comparables it is at the high end of that range. This trend is interrupted only with regard to population and only in the case of Glendale Heights where the population is at the low end of the range of agreed upon comparables including the Employer.

Conversely, on the same factors and relative to the range of agreed upon comparables including the Employer, Zion falls within the low end of the range of agreed upon comparables and comports much more favorably than Glendale Heights and Hanover Park with North Chicago. For example, the median home value in Zion exceeds that of North Chicago by only \$4,000 and the per capita income of Zion exceeds that of North Chicago by only approximately \$2,500. It is only with regard to equalized assessed valuation that Zion not only exceeds the range of comparables but dwarfs that of the Employer.

On the whole I therefore conclude that as between Zion on the one hand and Glendale Heights and Hanover Park on the other, Zion better fits into the range of agreed upon comparables than Glendale Heights and Hanover Park. In addition, it compares much more favorably to the Employer on the factors on which both parties have provided data and evidence.

Accordingly, I conclude that for the purposes of comparability analysis the following communities are adequately comparable to the Employer: Calumet City, Chicago Heights, Lansing, Burbank, Maywood, and Zion.

C. Duration

On the issue of duration the Employer proposes a two year collective bargaining agreement while the Union seeks a three year agreement. On this point the Employer argues that a two year agreement will enable the parties to "take a pause" which will be in the interest of the public in light of prior extraordinary wage increases, the Employer's financial condition and the imminent election of a new mayor. Moreover, the Employer contends that a two year contract accounts for the stable consumer price index and the absence of inflation and that the parties would have chosen a two year agreement had negotiations concluded with the settlement. The Union on the other hand points out that the parties' prior collective bargaining agreements have been three years in length and that to compel the parties to commence negotiations in the fall of this year for the next contract so shortly after the conclusion of the contract at issue would impair stable collective bargaining and labor relations in the municipality.

The Employer asks me to conclude that the parties would have bilaterally agreed to deviate from a past practice of three year collective bargaining agreements, and that in doing so the parties would be faced with commencing negotiations once again four short months after the issuance of this award. I decline to do as the Employer proposes because the parties' past practice provides a compelling reason to reject that argument. More specifically, with regard to the Employer's reliance on its financial condition and the stability of the consumer price index in the absence of inflation, it appears to me that a longer rather than a shorter contract is in order, particularly in light of my disposition of the parties' competing offers on wages (see *infra* at pages 7-13). I understand that the Employer is concerned about a three year collective bargaining agreement placing restrictions on a new administration. However, this is a risk inherent in collective bargaining in the public sector. Finally, I agree with the Union that one of the central tenets of the Illinois Public Labor Relations Act, as is true of all labor regulatory statutes, is to encourage and promote stability in collective bargaining. Longer than shorter contracts generally promote stability in collective bargaining.

D. Wages<sup>5</sup>

The record reflects that as part of the preceding collective bargaining agreements the Employer and the Union agreed upon wage increases that would bring the wages of police officers in the bargaining unit closer in relation to those of the agreed upon comparables than they had been in the past. As a result, the parties agreed to wage increases that exceeded the cost of living and/or exceeded the percentage wage increase negotiated for police officers in those communities. Despite those efforts the record reflects, as shown below in Table 2, that at various points in a police officer's career working for the Employer he or she would still be paid at or near the low end of wages paid in the comparable communities deemed appropriate when paid in accordance with the parties' last collective bargaining agreement.

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<sup>5</sup> As a threshold matter the parties disagree whether wages and retroactivity are separate and distinct economic issues for resolution. For example, in its post-hearing brief at page 8 the Union states that I must issue an award incorporating "...one of the parties' final offers as to both the wage and retroactivity issues" (emphasis supplied). Upon receipt of the Union's brief the Employer submitted a letter contending that the Union's position in this regard violates the pre-hearing stipulations and that wages and retroactivity must be determined as separate and distinct economic issues. The Union responded to the Employer's letter arguing that pursuant to the parties' ground rules for negotiations the parties agreed that if the matter of wages were arbitrated the arbitrator must choose either of the parties' offers "...as to wage increases for the duration of the contract" and if the matter of duration was submitted to arbitration the parties could submit alternative offers as to wages relative to their offers on duration. Finally, the Employer on the other hand argues that wages and retroactivity are commonly treated as two separate issues.

On review I find that the parties' pre-hearing stipulations do indeed treat the issues of wages and retroactivity as separate and distinct. For example, in paragraph 4 of the pre-hearing stipulations the parties denote wages as Issue A and retroactivity of wages as Issue B. Thus, to the extent that the ground rules for negotiations differ, and upon my review I am not certain that they do, the pre-hearing stipulation governs the arbitration of this matter as opposed to the parties' negotiations. Simply put, if the Union is correct and the parties intended to combine the issues of wages and retroactivity then the parties would have chosen to denote Issue A as "wages and retroactivity" instead of noting those two issues separately.

**TABLE 2**

<u>STARTING</u>	<u>4 YEARS</u>	<u>6 YEARS</u>	<u>12 YEARS</u>	<u>TOP</u>
Calumet City \$33,554	Maywood \$42,848	Calumet City \$42,854	Calumet City \$45,235	Calumet City \$48,800
Chicago Heights \$32,382	Calumet City \$41,664	Maywood \$42,848	Maywood \$42,848	Lansing \$46,530
Lansing \$31,050	Lansing \$38,466	Lansing \$41,940	Lansing \$42,520	Maywood \$42,848
North Chicago \$26,145	Burbank \$37,838	Zion \$40,324	Burbank \$40,560	Chicago Heights \$41,928
Burbank \$25,700	Chicago Heights \$37,260	Burbank \$38,984	North Chicago \$39,814	North Chicago \$41,129
Maywood \$22,690	North Chicago \$34,557	Chicago Heights \$38,780	Chicago Heights \$39,548	Burbank \$40,500
Zion No Data	Zion No Data	North Chicago \$37,185	Zion No Data	Zion \$40,324

With regard to the proposed wage increases for the current collective bargaining agreement the parties' final offers differ greatly. For example, the Union proposes that wage increases for the first year of the collective bargaining agreement be 8% and that in the second and third year wages increase by 6% and 4% respectively. Conversely the Employer proposes that wages be increased by \$825 in the first year of the collective bargaining agreement, \$850 in the second, and \$875 in the third, i.e., between 2.01% to 3.16% on various levels of the salary schedule. Thus, the application of the parties' two final offers would have a distinct difference in the relative placement of the Employer's police officers vis-a-vis police officers in the comparable communities. This difference is set forth below in Table 3.

**TABLE 3**

<u>STARTING</u>	<u>4 YEARS</u>	<u>6 YEARS</u>	<u>12 YEARS</u>	<u>TOP</u>
Calumet City \$34,700	Maywood \$44,134	Calumet City \$44,700	Calumet City \$47,229	Calumet City \$50,925
Zion \$34,005	Calumet City \$43,533	Maywood \$44,134	Maywood \$44,134	Lansing \$48,158
Chicago Heights \$33,515	Lansing \$39,812	Lansing \$43,408	Lansing \$44,009	<b>Union</b> <b>\$44,419</b>
Lansing \$32,137	Burbank \$39,352	Zion \$41,937	<b>Union</b> <b>\$42,999</b>	Maywood \$44,134
<b>Union</b> <b>\$28,237</b>	Chicago Heights \$38,564	Burbank \$40,544	Burbank \$42,182	Chicago Heights \$43,396
<b>Employer</b> <b>\$26,970</b>	<b>Union</b> <b>\$37,322</b>	<b>Union</b> <b>\$40,160</b>	Chicago Heights \$40,932	Burbank \$42,182
Burbank \$26,200	<b>Employer</b> <b>\$35,382</b>	Chicago Heights \$40,137	<b>Employer</b> <b>\$40,635</b>	<b>Employer</b> <b>\$41,954</b>
Maywood \$23,371	Zion No Data	<b>Employer</b> <b>\$38,010</b>	Zion No Data	Zion No Data

As is apparent from Table 3, the two wage proposals place bargaining unit employees in the same or similar ranking when compared to the other agreed upon comparables at the starting level of pay and the level of pay at four years' experience and six years' experience. It is however at the level of twelve years' experience and the top rate that the parties' wage offers become quite disparate. For example, in year one, the wage proposal for the Employer would place the bargaining unit employees in fourth of the six communities whereas the Employer's offer would place the employees in last place. Similarly, with regard to the top rate of pay the Union's proposal would move the bargaining unit employees into the third rank while the Employer would again maintain those employees in the last rank.

This same phenomena largely continues for the relative final offers of the parties in the second and third year of the contract as set forth in Tables 4 and 5 below.

**TABLE 4**

<u>STARTING</u>	<u>4 YEARS</u>	<u>6 YEARS</u>	<u>12 YEARS</u>	<u>TOP</u>
Calumet City \$35,943	Calumet City \$46,332	Maywood \$45,458	Calumet City \$48,457	Calumet City \$52,282
Chicago Heights \$34,668	Maywood \$45,458	Lansing \$44,927	Union \$45,579	Lansing \$49,844
Lansing \$33,262	Lansing \$41,206	Calumet City \$43,016	Lansing \$45,549	Union \$47,084
Union \$29,931	Chicago Heights \$39,913	Union \$42,569	Maywood \$45,458	Maywood \$45,458
Employer \$27,820	Union \$39,561	Chicago Heights \$49,954	Chicago Heights \$42,365	Chicago Heights \$45,320
Maywood \$24,072	Employer \$36,232	Employer \$38,860	Employer \$41,489	Employer \$42,804
Burbank No Data	-----	-----	-----	-----
Zion No Data	-----	-----	-----	-----

**TABLE 5**

<u>STARTING</u>	<u>4 YEARS</u>	<u>6 YEARS</u>	<u>12 YEARS</u>	<u>TOP</u>
Calumet City \$37,201	Calumet City \$57,953	Calumet City \$49,273	Calumet City \$51,913	Calumet City \$55,872
Union \$31,128	Maywood \$46,822	Maywood \$46,822	Union \$47,402	Union \$48,698
Employer \$28,695	Union \$41,143	Union \$44,272	Maywood \$46,822	Maywood \$46,822
Maywood \$24,794	Employer \$37,107	Employer \$39,735	Employer \$42,364	Employer \$43,679
Burbank No Data	-----	-----	-----	-----
Chicago Heights No Data	-----	-----	-----	-----
Lansing No Data	-----	-----	-----	-----
Zion No Data	-----	-----	-----	-----

The Union justifies its wage proposal, *inter alia*, by contending that the march toward equality and/or comparability with other jurisdictions that the parties began in their prior two collective bargaining agreements should continue. The Employer responds that the parties should "take a pause" from that march because of the limited resources of the Employer and because

municipal elections are forthcoming and the new administration should not be restricted in the fashion sought by the Union.

I reject all of these arguments. With regard to that of the Union I note that there does not appear in the statutory criteria any provision allowing for wage increases that would allow employees to catch up simply because the parties have chosen to undertake those efforts in the past. Rather, I believe that because the role of the interest arbitrator is to replicate the agreement the parties would have agreed to had they not utilized arbitration, any continuing march toward equality or comparability should be undertaken through bilateral negotiations. This is particularly applicable when, as here, I am asked to select a wage offer that deviates substantially from the percentage increases negotiated in comparable jurisdictions and the cost of living.<sup>6</sup>

I also disagree with the Employer's argument that limited resources justify rejecting the Union's final offer on wages.<sup>7</sup> It is well settled in arbitral precedent that any reliance on the resources of a municipality to fund proposed wage offers by the Union turn on whether the Employer is *unable* to pay rather than *unwilling* to pay. That unwillingness may indeed be well founded on the facts and might also represent sound public policy within that jurisdiction. However, an unwillingness to pay, even for sound reasons, does not justify excluding a union's wage proposal if that proposal is otherwise appropriate with respect to comparability, cost of living, and the interest and welfare of the public that offer should be selected.

More importantly, selection of the Employer's wage proposal, although it will indeed stop the march towards equality or comparability, will not place the bargaining unit in any worse position than it currently is vis-a-vis the agreed comparables. For example, in the last year of the collective bargaining agreement the Employer's police officers at the starting rate of pay were in fourth of sixth place, at the fourth year of experience sixth of seven, in the sixth year of experience last and in the twelfth year and final year fifth of six. The Employer's wage proposal for the first year of the contract will place those employees at those same points at fifth of seventh or last, sixth of seventh, last, and last. In the second year of the collective bargaining agreement the Employer's wage proposal will place those employees fourth of fifth and last in the fourth, sixth, and twelfth years on the salary schedule plus the top rate of pay. Finally, in the last year of the collective bargaining agreement the Employer's proposal would place the bargaining unit employees second of three at the starting rate of pay and third of three at the other points in the salary schedule. Accordingly, in the last year of the prior collective bargaining agreement the employees were in last place in four of the five representative points of the salary schedule. Similarly, if the Employer's offer is selected they will again be in last place in four of those five points and in last place in three of those five points in the first year of the contract and in the second and third years of the next collective bargaining agreement.

In addition, the Employer's proposal comports far more favorably than the Union's proposal when considered against the test of internal comparability. For example, negotiated wage increases for the firefighters and janitorial employees have been 4.2% and 2.66% respectively.<sup>8</sup>

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<sup>6</sup> Indeed, the Union concedes that its wage increases are "substantial and sweeping" and I agree.

<sup>7</sup> The Employer does not argue that it is *unable* to pay.

<sup>8</sup> The Union argues that internal comparabilities can and do not compel the same result for employees in the bargaining unit that is the subject of this arbitration. In support of that proposition they cite the Opinion of Arbitrator Eglit in *Illinois Fraternal Order of Police Labor Council and City of Rock Island*, S-MA-95-82 (1996), that there could be a variety of legitimate and reasonable reasons why one bargaining

With regard to the cost of living, again the Employer's offer comports more favorably during the relevant period.<sup>9</sup> For example, for the period to be covered by the first year of the collective bargaining agreement the inflation rate was 3.56% and the consumer price index average for 1991 through 1995 was 2.66%. Clearly, the Union's final offer of an 8% wage increase far exceeds the relevant cost of living measurement for that period. The same conclusion is warranted for the second and third year of the collective bargaining agreement. For example, the inflation rate for that period is expected to be 2.49% and the consumer price index average for 1996 is projected to be 2.49%.<sup>10</sup> With regard to the third year of the collective bargaining agreement the projected consumer price increase for 1997 is 2.9%. (See e.g., "Economists Expect Good Times to Roll at Least Two Years," Wall Street Journal, February 11, 1997; see also "Wholesale Prices Fell 0.4% in February," Wall Street Journal, March 17, 1997, noting that the inflation picture is "nothing short of excellent" and given a core CPI increase of only 0.5% there is "literally no wholesale inflation.") Again that figure comports far more favorably with the Employer's wage offer than that of the Union.

Similarly, the Employer's wage proposal compares far more favorably with the average percentage increase to wages among the comparable communities for the relevant period. For example, the average percentage increase for the comparable communities in what would be the first and second years of this collective bargaining agreement was between 3% and 3.75%.

There is however one compelling argument for the Union that gives me pause. The record reflects that there has been a significant degree of turnover in the police department during the relevant period. For example, on average three police officers each year have left the department which represents approximately 6% to 8% of the total bargaining unit. As the Union points out, such a turnover rate is not in the interest and welfare of the public and notes that in *Jefferson*

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unit would find an offer acceptable and another would not. In addition, the Union argues that application of Arbitrator Eglit's view on this matter is warranted because "(o)bvously what Arbitrator Eglit predicted in Rock Island has occurred in North Chicago." I disagree. First, to conclude that internal comparability is not applicable because another bargaining unit or units might agree to a wage increase for reasons wholly unrelated to the circumstances extant in the case before would in effect render internal comparability *and* also external comparability useless as a factor for choosing between final offers. I do not have the authority to make that decision for the IPLRA clearly sets forth internal and external comparability as one of the factors. More specifically regarding this instant matter, although Arbitrator Eglit's prediction in *Rock Island* may have been true in North Chicago, there is no evidence in the record to support that claim and the Union cites to no such evidence. Finally, I rely on internal comparability as only one of several bases for my conclusion.

<sup>9</sup> The Employer urges me to scrutinize the CPI in light of media and academic reports that the CPI overstates inflation which was led the President and Congress to consider adjusting the CPI. Presumably, the Employer asks that I use the "adjusted" CPI which would make the Union's final wage offer even more disparate from the CPI than it is.

I decline the Employer's offer. First, the IPLRA makes no reference to an "adjusted" CPI. Second, the Employer asks me to do that which is more properly an action of elected officials. Moreover, the political will of those people to act on this point appears less than certain. (See e.g., "New Washington Dance: Fix Price Index, Duck Blame," Wall Street Journal, February 25, 1997.) Clearly if those charged with the responsibility of so acting do not, it would be improper and presumptuous for me to do so.

<sup>10</sup> I note that the last quarter consumer price index for 1996 was indeed 2%. (See, "Economy Soared in Quarter With Inflation Low," Wall Street Journal, February 3, 1997.)

*County and Illinois Federation of Police Labor Council, S-MA-95-18, Arbitrator Briggs found that turnover of nine employees over a ten year period was "relatively high." The Employer on the other hand contends that the evidence is insufficient to conclude that the driving force behind the employee turnover rate is low wages. Upon consideration of the entire record I find that as between the two arguments on this discrete point the Employer's argument is more persuasive. For example, upon reviewing the resignation letters placed into evidence by the Union, it is clear that wages were indeed an important consideration for those employees. However, it is equally true that resigning employees were also concerned with exposure to risks that exceeded those inherent as a police officer and the quality of life in the municipality.<sup>11</sup>*

In addition, the Union did not contradict evidence that the Employer has had little problem in recruiting replacements for those officers. Therefore, despite the fact that a constant inflow and outflow of new and more senior employees might impair involved efficiency of the police department, it does not compel a conclusion that the safety of the community is in peril. Accordingly, I conclude that despite the fact that the turnover among employees in this bargaining unit is quite high and that the turnover is due in part to the compensation levels for employees in the bargaining unit, that consideration is not a sufficiently compelling reason lying behind the resignations that appear in the record to select the Union's wage offer when it comports so unfavorably with other relevant factors such as comparability and the cost of living.

In light of the foregoing the Employer's proposal on wages for each of the three years of the collective bargaining agreement is adopted.

E. Retroactivity

The main point of contention with regard to the issue of retroactivity deals with the first year of the collective bargaining agreement. More specifically the Union asks that the wage increases be retroactive to May 1 which comports with the expiration of the prior collective bargaining agreement. The Employer on the other hand contends that wages should be retroactive only to November 1 and relies upon the fact that the parties did not engage in negotiations between the second mediation session of May 2, 1996 and November 1996, despite the Employer's efforts seeking a resumption of negotiations. In addition, the Employer contends that to routinely provide for retroactivity is unhealthy to collective bargaining for there will be little or no incentive on the part of the Union to agree upon wages in a timely fashion.

On this issue I find in favor of the Union. First, despite the fact that a delay to negotiations is less than desirable it is my experience, particularly in public sector collective bargaining, that a delay of approximately six months is not uncommon. Moreover, to the extent that the Employer states or implies that the Union was guilty of bad faith bargaining, the appropriate remedy for such a claim is to file an unfair labor practice with the Illinois State Labor Relations Board under the Act. Finally, although conceptually the Employer may be correct that the routine application of retroactivity will provide a disincentive for quick resolution to wages, in light of the fact that this is the first interest arbitration between these parties I am hard pressed to conclude that an award of retroactivity in this case will be "routine".

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<sup>11</sup> Indeed, the degree to which the risk factor was a critical element in the decision of various employees to resign is demonstrated by the fact that the Union has made a proposal which is before me for consideration on the issue of officer safety.

Accordingly, the Union's final offer on retroactivity is awarded.

F. Uniforms

With regard to the issue of uniforms the parties disagree as to the amount by which the uniform allowance should be increased and whether the collective bargaining agreement should include language governing the manner in which the Employer provides uniforms and equipment and a mechanism by which employees may grieve the Employer's efforts in this regard. More particularly, the Union contends that the uniform allowance should be increased from \$450 per year to \$535 per year and that the collective bargaining agreement include language requiring the Employer to respond "within a reasonable amount of time" to requests for uniform clothing and personal equipment and that such requests shall not be "unreasonably denied". The Union's proposal further provides that if grievances do not remedy the Employer's efforts in this regard, either party may reopen negotiations for the purpose of converting from the current quartermaster system to a clothing allowance system. Conversely the Employer proposes that the uniform allowance be increased from \$450 to \$500 and that any language proposals proffered by the Union in this regard be rejected.

In support of their contrasting positions on the amount by which the uniform allowance should be increased the Employer argues that its proposal comports more favorably with the comparables in that its proposal will place the employees in a tie for second place in rank among the comparables whereas the Union's offer would place the employees indisputably in second place. In response the Union argues that its proposal is not "excessive" in a "mixed bag" of comparables. In addition, the Union contends that the employees in the bargaining unit are so far behind in total compensation relative to officers in the comparable communities that its uniform allowance proposal should be granted. The Employer's final argument with regard to the increase to the uniform allowance relates to the cost of living and again the Employer argues that its increase better matches the cost of living.

On the issue of the Union's proposed language changes the Employer opposes inclusion of this language arguing that there is no similar language in the contracts of the comparable communities, that the problems inherent in the operation of the quartermaster system lie largely at the doorstep of the suppliers and not the Employer, and that the language proposal is a breakthrough which should not be granted absent extraordinary circumstances. In reply the Union concedes that there is no such language in the collective bargaining agreements of the comparable communities but asserts that the police officers in this municipality should receive what other police officers "take for granted."

An important point in the analysis of the uniform allowance issue is the fact that the parties have agreed that the increase to the uniform allowance and the proposed language from the Union are a single issue that is economic in nature. Therefore, I am constrained from separating the language issue from the amount of the increase to the uniform allowance and I must choose between the competing proposals in their entirety. In comparing the two proposals with regard to the uniform allowance increase I find that the Union's proposal is the more reasonable for it does not differ substantially from that of the Employer with respect to the ranking of employees among officers in the comparable communities and is a small step towards addressing the disparity between the total composition of employees in this bargaining unit and those in other municipalities. However, the Union's proposal with regard to language is not reasonable and thus cannot be selected over the Employer's objection. The Union's proposal fails because the Union

does not dispute that the problems with the current quartermaster system are caused by a third party. Therefore providing that disputes over those problems may be grieved between the Employer and the Union will not remedy those concerns. In addition, there is no comparability evidence in support of the Union's final offer on this point.

Accordingly, since I must decide these two subjects together as an economic issue, and because the Union's language proposal is not acceptable while the Employer's economic proposal does not differ substantially from that of the Union, I hereby adopt the Employer's proposal on the issue of uniform allowance.

#### G. Holidays

On the issue of holidays the instant matter presents a situation that differs from one ordinarily encountered. The issue of holidays usually involves a union seeking to add additional holidays to the collective bargaining agreement with the Employer taking a contrary position. In this matter however the Employer proposes that the number of holidays provided to employees be reduced by the exclusion of Good Friday from the list of holidays.

In support of its final offer to delete Good Friday from the list of holidays provided in the collective bargaining agreement the Employer relies on the fact that in some federal court legislation it has been determined that under certain circumstances a public employer violates the First Amendment of the Constitution by permitting its employees to observe what is a religious but not adequately secularized holiday. The Union on the other hand argues that the holiday provision should not be altered and relies primarily on the fact that four of the six comparable communities also permit their police officers to regard Good Friday as a holiday.

Upon review of my authority under the IPLRA and the factors on which I may exercise that authority I do not perceive an authorization to make a first amendment determination in the context of this interest arbitration.<sup>12</sup> In addition, if the Employer is concerned that by allowing employees to use Good Friday as a holiday it violates the First Amendment it has available to it the process for securing a declaratory judgment from the courts.

There is however one compelling reason included among those factors that I may consider as part of my authority in resolving this matter to adopt the Union's proposal on this issue. Simply put, the evidence with regard to comparability is compelling in that four of the six comparable communities also permit their police officers to regard Good Friday as a holiday. Therefore, I conclude that the Union's proposal on this issue be adopted.<sup>13</sup>

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<sup>12</sup> I am mindful of the fact that Section 14 of the Act provides that I may regard other factors not confined to those listed therein including those which are "normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment." However, the Employer cites no practice or trend between the parties to collective bargaining to make their bargaining resolutions turn on a first amendment analysis.

<sup>13</sup> I note that in the parties' pre-hearing stipulation included in the issue of holidays was the subject "holiday pay and work requirements." However, my review of the record shows that neither parties submitted a final offer on this issue nor was the issue discussed in their post-hearing briefs. Accordingly, I make no award on that point.

## H. Funeral/Sick Leave

The parties have agreed that the sick leave allowance for the collective bargaining agreement shall be twelve days per year with a cap of 70. Moreover, the parties have agreed that each year 50% of accumulated unused sick leave that exceeds the cap may be repurchased by the Employer on a dollar for dollar basis with the remaining banked into a catastrophic leave pool if an employee agrees to do so. (See discussion below.) In the expired collective bargaining agreement the parties also agreed that up to three days of accumulated sick leave may be used in the event of a death in an employee's immediate family and have defined immediate family to include the employee's spouse, children, step-children, adopted children, parents, parents of spouse, step-parents, grandparents, brothers and sisters, brothers and sisters-in-law, and grandchildren.

The Union seeks to retain the existing provisions and to include in addition to the twelve days of sick leave three additional days of funeral leave. The Union also proposes to add to the definition of immediate family sons and daughters-in-law and step-brothers and step-sisters. The Employer proposes that the sick leave allowance remain unchanged. However, the Employer does propose that the allowance for sick leave be extended to "a member of the employee's immediate family who reasonably needs personal care afforded by the employee" in lieu of the existing list of relationships included within the definition of an employee's immediate family.

The comparability evidence on this issue indicates that in all of the agreed upon comparables employees receive a funeral leave allowance in addition to a sick leave allowance. Moreover, the sick leave allowances in all of the comparable communities is similar if not identical to that in the parties' collective bargaining agreement, including the portion available for funeral leave, with the exception of Maywood. Therefore, it is clear that the employees in the bargaining unit receive at or near the same level of sick leave but no additional funeral leave, unlike their counterparts in all of the agreed upon communities. Moreover, the Union's proposal for three funeral leave days is at the low end of the agreed upon comparables with respect to the amount of the funeral leave allowance. For example, in Burbank, Calumet City, Chicago Heights, Lansing, and Maywood, employees get at least three days of funeral leave. In Calumet City, Chicago Heights, and Maywood, additional days may be added under certain circumstances. Thus, with regard to the provision for funeral leave and the amount of the leave the Union's final offer is reasonable and comports favorably with the comparables.

That leaves then on this issue the question of the definition of "immediate family." Interestingly, both parties have provided a final offer on this point but neither has argued in support of those proposals nor offered any evidence. Therefore, I find that the Union's final offer with regard to the provision for funeral leave in the amount of three days is reasonable and is hereby adopted. Conversely, I decline to adopt either of the parties' proposals on the definition of immediate family.<sup>14</sup>

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<sup>14</sup> I am mindful of my statutory obligation to choose between the final offers which implies that I may not reject both. However, it is clear that as both parties proposed changes to this definition they both bear a burden of proof as to a justification that their proposal should be adopted over that of the other side. In this regard both parties have failed to meet that burden of proof. Thus, to decline to select either offer is appropriate under the circumstances.

## I. Catastrophic Sick Leave Pool

The parties' most recent collective bargaining agreement provides for a somewhat unique benefit called the Catastrophic Sick Leave Pool. Under the expired agreement a catastrophic sick leave pool is established to which employees may contribute unused sick leave in excess of the maximum accumulation plus whatever voluntary contributions employees may wish to make. In the event that an employee's available sick days have been exhausted but additional sick leave days are required a distribution is made to that employee from the catastrophic sick leave pool. The determination whether to make the distribution is made by committee consisting of the chief of police or his designee, a representative of the lodge, and the mayor or his designee.

Again, both parties propose changes to this provision. The Union proposes that the catastrophic sick leave pool remain unchanged with respect to employee contributions but that the committee that determines claims for catastrophic sick leave consist of the chief of police, the mayor, and two members of the Union as opposed to a single representative. Moreover, apparently recognizing that this composition would create the possibility of a tie vote the Union proposes that the Union may refer the dispute to an expedited grievance arbitration procedure. The Employer on the other hand proposes to abolish the catastrophic sick leave pool in its entirety and to replace that benefit with a provision permitting the transfer of sick and other leave directly from one employee to another in cases where an employee suffers a catastrophic illness and his or her leave has been exhausted.

In support of the proposal to abolish the sick leave pool in its entirety the Employer argues that the current practice among employees is that employees do not donate to the catastrophic leave pool until they know which employee requires the sick leave. In addition, to provide that employees are the sole judge whether to donate sick leave to another employee enables both the Employer and the Union to remove themselves from any such disputes and therefore avoid lawsuits and/or "potential conflicts".

As noted above in footnote 8 the proponent of any language bears the burden of proof to establish the need for that change. This is particularly true in the case of a proposal to abolish a provision, and the party proposing the change must demonstrate that the prior terms and/or practice under the governing terms of the collective bargaining agreement has been unwieldy and/or burdensome. In this regard, the Employer has failed to meet its burden for it has provided no evidence with regard to the efficiency or operation of the catastrophic sick leave pool. Moreover, the Employer's attempt to characterize its proposal as a benefit to it and the Union with regard to potential lawsuits and "other conflicts" is speculative.

With regard to the Union's final offer for a change in the composition of the catastrophic sick leave committee and for a procedure in the event of a tie, the Union relies primarily on the fact that the current committee composition is weighted more heavily towards the Employer and that employees deserve a greater voice in this issue. The Employer responds that to take these decisions away from the Union and Employer and give it to employees will enhance employee voice to the fullest extent possible. In addition, the Employer objects to the fact that the committee constitution proposed by the Union might result in a tie vote.

As is true with respect to the issue of uniforms, I find myself faced with an issue the parties have characterized as economic, therefore compelling me to choose one offer or the other. Unfortunately, both final offers are again problematic, at least with respect to the composition of

the committee and its operation. As noted above the Employer's proposal to abolish the catastrophic leave pool is unreasonable and I will not adopt it. However, the Union's proposal with regard to the constitution of the catastrophic leave pool committee is problematic for a variety of reasons. For example, a committee composed of an equal number of representatives for each party is not the most efficacious way to resolve a dispute because it might lead to a tie vote. It is true that the Union's proposal provides for an escape in the event of a tie through the use of an expedited grievance arbitration procedure. However, such a provision might very well lead to delay, additional costs, and additional conflict between the parties.<sup>15</sup> Therefore, because this is indeed one single economic issue and because the Employer's proposal to abolish the catastrophic sick leave pool is rejected, I adopt the Union's proposal in its entirety because it retains the catastrophic sick leave pool, retains the process for bilateral determination of events, and, despite other more effective methodologies, provides an avenue for resolving a tie vote.

#### J. Pager Policy

The pager policy is the first of the two non-economic issues presented to me for resolution. On this point both parties propose a new provision to the collective bargaining agreement to deal with this issue. The Union's final offer provides that employees who must carry a pager and/or be on call while off duty shall be placed on call only at reasonable intervals and shall be provided notice in writing when they are placed on call. The Union also proposes that employees shall not be disciplined for failure and/or inability to respond to a page where they have not been notified in writing that they are on call and/or under circumstances where mechanical problems preclude the Employer from contacting the employees in question.

The Employer on the other hand proposes certain restrictions both as to the time during which employees must respond to a page and the geographic distance within which employees must remain while on call. More specifically, the Employer proposes that an employee who is on call shall respond by telephone to any page within 15 minutes and shall respond in person within 45 minutes if required to do so. With regard to the geographic limitation the Employer proposes that any employee on call should remain within 25 miles of the city limits. Despite those obligations the Employer proposes that the collective bargaining agreement recognize that employees may have personal obligations preventing them from answering a page, and to address this possibility the Employer proposes that any employee on call may find another employee to cover for him or her provided the employee receives advance approval which will not be "unreasonably denied." Moreover, the Employer's final offer provides that employees shall be responsible for the safe keeping and working order of pagers and that mechanical problems and dead paging areas should be reported immediately and will be dealt with "on an individual basis." Finally, the Employer's final offer also addresses the issue of discipline and provides that failure to properly respond without "good" excuse or repeatedly failing to respond will result in disciplinary action.

As noted above the parties have agreed that this is a non-economic issue. Thus, I have the choice of adopting either of the final offers or crafting another provision that I deem appropriate

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<sup>15</sup> In this regard some other form of alternative dispute resolution might be more advisable, for example, mediation. To the extent that the parties might be concerned with the cost of mediation it is well known that there are various organizations in the Chicago area that will provide mediation services free of charge. However, since neither party has suggested mediation and because this is an economic issue I do not alter the final offers in this fashion but instead implore the parties, as they may, to consider other approaches.

under the circumstances. As a general matter the Union argues that the Employer's proposal contains specificity that should be the product of bilateral negotiations while the Union's proposal is narrow in scope and presumably better suited to a unilateral imposition of contract terms. In response the Employer argues that during negotiations for a collective bargaining agreement the parties reached a tentative agreement on the issue of pager policy and that the tentative agreement provided that the parties would work to arrive at a pager policy dealing with "...response time, geographic restrictions, etc." Therefore, the Employer argues that its final offer is more consistent with the tentative agreement than that of the Union. On this discrete point I disagree with the Employer. First, although the Employer is correct that tentative agreements should be given substantial weight and that arbitrators have done so, the tentative agreement presented here is so vague and ambiguous (...response time, geographic restrictions, *etc.*) that it does not control.

In light of my conclusion that the Union's final offer on this issue does not exceed the terms of the tentative agreement or is otherwise restricted by the terms of the tentative agreement, I now turn to the merits of the precise components of their final offers. First I begin with those elements of the two proposals that I deem inappropriate. With regard to the Union's proposal I am troubled by its suggestion that employees be placed on call only at "reasonable intervals". First, the term reasonable is of course much like the term "beauty" in that it lies in the eyes of the beholder. If the parties wish to bilaterally choose a vague and ambiguous term that is one thing. But for an interest arbitrator to impose such a vague and ambiguous term which might only lead to additional conflict during the administration of the contract is not in the interests of stable collective bargaining. Moreover, the "reasonable interval" restriction bears on the Employer's ability to staff the police department for law enforcement needs and therefore impinges on the interests and welfare of the Employer. The Employer's proposal however contains elements which are also suitably inappropriate. For example, its final offer states that the geographic restrictions are a "general" outline and that mechanical paging problems and dead paging areas will be "dealt with on an individual basis." Again, these terms are vague and ambiguous and peculiarly unsuited for imposition by a third party. In addition, the Employer's proposal that employees may cover for one another when personal obligations make it difficult for them to meet their obligations while on call is inappropriate for a reason suggested by the Employer in support of its proposal in general. More specifically, the Employer concedes that employees have particular skills that require them to be on call at certain times. Accordingly, to provide a blanket right to find employees to cover for one another does not take into account these differing particular skills. Thus, these elements of the Employer's final offer are rejected.

There remains then my discretion to craft a solution other than that provided by the parties. I do so by incorporating and/or revising those elements of both provisions that I deem appropriate and reasonable. For example, the Union includes in its proposal that the Employer shall notify employees in writing when they are placed on call. There is no record evidence that any such obligation would be burdensome and indeed notice to employees is a fundamental element of industrial and employment due process. Accordingly, I adopt that part of the Union's final offer with regard to pager policy. Similarly, the Employer's proposal as to the amount of time within which employees must respond in telephone and/or in person to a page are also reasonable. They are reasonable in the first instance because the Employer should be entitled to expect a response within a certain period of time and employees should be required to respond in that fashion. In addition, the time frames chosen by the Employer in its final offer comport favorably with decisions of federal courts in reviewing the reasonableness of such restrictions for the purposes of overtime pay under the Fair Labor Standards Act. Accordingly, the Employer's proposal insofar

as it requires a 15 minute response time by telephone and a 45 minute response time in person if necessary are adopted.

The next issue on the matter of pager policy is that part of the Employer's final offer where the Employer recognizes that an employee may have personal obligations which would make it difficult for him or her to meet on call obligations. In this sensitive area where demands are placed on employees while off duty, such an acknowledgment can only serve to enhance the parties' bargaining relationship. Thus, I adopt that portion of the Employer's final offer.

Finally, although the parties in their final offers concede that there should be some provisions relating to those cases in which employees are unable to respond to a page while on call during off duty hours they disagree on the specifics. The Union on the one hand proposes that discipline in those cases is warranted only when the employee has not been notified in writing and/or under circumstances where mechanical problems preclude the Employer from contacting them. This proposal seems to be unreasonable in that it fails to recognize that other factors might legitimately cause an employee to fail to respond to a page. Similarly, the Employer's proposal that a failure to properly respond to pages will result in disciplinary action unless there is a "good" excuse is vague and ambiguous. However, because both parties appear to concede that some provision is necessary it will not do to simply reject both parties' proposals on this point. As a result, I offer the following alternative. A review of the parties' collective bargaining agreement indicates that employees may not be disciplined, suspended or discharged without good cause. As the parties are undoubtedly aware, an element of determining good cause in the event that an employee is disciplined, suspended, or discharged is a consideration whether the discipline meted out was proportionate to the offense. Accordingly, it appears to me that the parties' concern as to how discipline will be handled in the event that an employee is unable or fails to respond to a page can be covered under their just cause provisions. Therefore, I find it unnecessary that the parties' pager policy provision in their collective bargaining agreement make reference to the manner in which discipline will be administered other than an inclusion of those issues in the just cause provisions of the agreement.

Accordingly, I find that the parties' pager policy provision in their collective bargaining agreement shall read as follows:

#### **PAGER POLICY**

Employees who are required to carry a pager and/or be on call during off duty hours in connection with their duties as police officers or in connection with special assignments shall receive notice from the Employer, in writing, when they are placed on call and expected to respond during off duty hours.

While placed on call each employee will be required to respond by telephone to all pages within fifteen (15) minutes of receiving a page and in person within forty-five (45) minutes of the page if required to do so.

The Employer recognizes that from time to time an employee may have personal obligations which would make it difficult for him or her to meet his or her on call obligations. Accordingly, the parties

agree that cases where discipline is assessed when an employee fails to respond to a page the discipline shall be subject to the just cause provisions of the collective bargaining agreement and may be grieved.

Employees shall be responsible for the safekeeping of pagers assigned to them and shall keep such devices in working order.

K. Officer Safety

The final issue presented to me for disposition relates to that of officer safety, an issue that the parties have deemed non-economic in nature and therefore one for which I may choose between the final offers or devise another solution of my own suggestion.

More specifically, the Union proposes that the collective bargaining agreement provide that the Employer take all reasonable steps necessary to avoid any serious safety risks beyond those normally inherent in police duties and that employees shall report any safety risks as soon as they arise. In addition, the Union proposes that any issues relating to serious safety risks will be addressed promptly by the safety committee or other appropriate means when the issues are of an emergency nature. Finally, the Union's proposal provides that disputes regarding safety risks shall be resolved in the grievance procedure. Conversely, the Employer contends that no such provision shall be placed in the parties' collective bargaining agreement.

The Union has made a passionate appeal which would otherwise move me to resolve this issue differently than I choose to do so if not constrained as described below. That passionate appeal consisted of the testimony of numerous police officers who described instances when they were placed at risk not simply because they were involved in the apprehension of suspects and the cessation of criminal activity, but also because the operation of the Employer's telecommunication center was responsible at least in part for the risks that they faced. Thus, the Union believes, and perhaps quite correctly, that these are "serious safety risks" that must be addressed. In addition, the Union has presented compelling evidence that a number of police officers have resigned relying on this very consideration.

However, my discretion on this issue may be exercised only if the matter is a mandatory subject of bargaining. The Employer argues that this issue is not a mandatory subject of bargaining because it relates to matters outside the bargaining unit since dispatchers and employees in the telecommunication center are not represented by the Union. In response, the Union contends that I do indeed have authority to decide this issue because its ground rules for negotiation provide that "all mandatory subjects of bargaining" will be submitted to arbitration and because the ground rules for arbitration further provide that "the following issues are submitted...for resolution" including officer safety. The Union further argues that under Section 14(l) of the Illinois Public Labor Relations Act issues related to equipment or manning, which would otherwise be outside the purview of interest arbitration, may be considered by an arbitrator if the equipment or manning considerations are of a "specific work assignment that involve a serious risk to safety...beyond that which is commonly inherent" to the duties of police officers.

Despite the gravity of this issue for all involved - employees, Employer, Union, and the citizens of this municipality - I must conclude that this matter is not a mandatory subject of bargaining both as a matter of law and under the parties' stipulations for arbitration. More

specifically, the cited provisions of the parties' stipulation do not empower me to resolve the matter simply because they include officer safety in the list of issues presented and characterized as mandatory subjects of bargaining. Simply put, the debate clearly placed before me by including officer safety in the list of issues is whether or not it is a mandatory subject of bargaining. On this point the Employer is quite correct that issues relating to employees outside the bargaining unit are not a mandatory subject of bargaining. Thus, the Union may bring this issue into my purview only if it meets the terms of Section 14(l) of the IPLRA. I conclude that it does not. Clearly Section 14(l) provides that arbitrators may consider equipment and manning issues but only those of a "specific work assignment." In distinction to this statutory requirement the Union's evidence clearly shows that the employees' complaint is not of a "specific" work assignment but rather their work generally. Indeed, the Union's very offer on this point underscores the breadth and scope of their concern beyond that which might involve a particular work assignment. Accordingly, I conclude that the matter is a permissive subject of bargaining and one that I may not consider.

Despite the fact that I decline to rule on this issue I feel compelled to note that during the hearing and in its post-hearing brief the Employer did not vigorously contend the employees' complaints in this regard. Thus, it appears that both of the parties see this as a serious issue. Indeed, they are correct. Moreover, my consideration of the issue leads me to the conclusion that it is not best addressed from a "rights" perspective which is inherent in the inclusion in a collective bargaining agreement of contractual rights on the one hand and obligations on the other. Rather, my assessment of this issue is that it will be better addressed from a "interests" perspective. Thus, I implore the parties to consider using "interest based" discussions to resolve this difficult, serious, and potentially life-threatening issue. For example, one avenue or vehicle for this approach that the parties have already included in their collective bargaining agreement is the labor management committee. Perhaps instead of litigating these issues because they are contained in the listing of rights and obligations in the contract, it will be better to problem solve these issues in the collaborative setting.

Accordingly, I decline to adopt the Union's proposal on this issue.

#### AWARD

The following constitutes the award in this matter:

Issue 1: The Employer's proposal on wages is adopted.

Issue 2: The Union's proposal on retroactivity is adopted.

Issue 3: The Employer's proposal on uniforms is adopted.

Issue 4: The Union's proposal on holidays is adopted.

Issue 5: The Union's proposal on funeral/sick leave is adopted, but only insofar as it relates to allowing three days in addition to employees' sick leave allowances. Neither party's proposal regarding the definition is awarded.

Issue 6: The Union's proposal on catastrophic sick leave pool is adopted.

Issue 7: The Union's proposal on duration is adopted.

Issue 8: The parties' collective bargaining agreement shall provide with respect to pager policy as follows:

Employees who are required to carry a pager and/or be on call during off duty hours in connection with their duties as police officers or in connection with special assignments shall receive notice from the Employer, in writing, when they are placed on call and expected to respond during off duty hours.

While placed on call each employee will be required to respond by telephone to all pages within fifteen (15) minutes of receiving a page and in person within forty-five (45) minutes of the page if required to do so.

The Employer recognizes that from time to time an employee may have personal obligations which would make it difficult for him or her to meet his or her on call obligations. Accordingly, the parties agree that cases where discipline is assessed when an employee fails to respond to a page the discipline shall be subject to the just cause provisions of the collective bargaining agreement and may be grieved.

Employees shall be responsible for the safekeeping of pagers assigned to them and shall keep such devices in working order.

Issue 9: No proposal on officer safety is adopted.

Issue 8: The parties' tentative agreements on all other provisions are hereby incorporated by reference into this award.

Dated: April 30, 1997

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Robert Perkovich