

Interest Arbitration

Village of Justice,
Illinois,

Employer

and

Metropolitan Alliance
of Police, Chapter 60,

Union

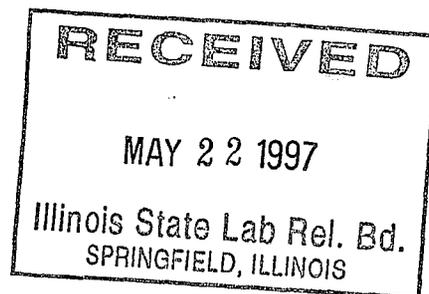
ISLRB No. S-MA-96-65
Arbitrator's File 96-134

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May 19, 1997



Opinion and Award

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I. Statement of the Case

The Union represents "all full-time sworn peace officers" employed by the Village of Justice "in the titles of Patrol Officer, Detective, and Corporal...and support service officers (dispatchers)..." (Union Exhibit 1(13), Art. I, §1.1).¹

The most recent collective bargaining agreement between the parties (UX 1(13)) commenced August 1, 1994 and expired April 30, 1996. Failing to negotiate a successor agreement, the parties invoked interest arbitration under the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq. (the "Act"). The parties waived the three-person panel prescribed by the Act and chose me as the sole arbitrator. I conducted a

¹In the remainder of this Opinion, I shall cite Union Exhibits as "UX ____" and Employer Exhibits as "EX ____." I shall cite non-testimonial portions of the transcript as "Tr. ____." I shall cite testimony by the surname of the witness and the appropriate page reference, for example, "Urbanski 20."

hearing on September 9, 1996 in Justice, Illinois. Both parties have filed post-hearing briefs.

The parties have asked me to resolve the following economic issues:

1. Holidays and Personal Days
2. Sick Leave
3. Accumulation of Sick Leave
4. Wages and Wage Scale Format

The parties agreed that the new agreement will begin May 1, 1996 and end April 30, 1998, and that all wages and benefits resolved through interest arbitration will be retroactive to May 1, 1996 (Un. Brief, 2; Emp. Brief, 3).

II. Summary of Final Offers

At appropriate points in this Opinion, I shall print the complete offers of both parties along with the pertinent provisions of the expired agreement. In the meantime, the offers may be summarized as follows:

1. *Holidays and Personal Days*

Village: 8 holidays and 3 personal days.

Union: 10 holidays and 2 personal days.

2. *Sick Leave*

Village: 4 hours per month.

Union: 6 hours per month.

3. *Accumulation of Sick Leave*

Village: 48 hours annual accumulation.

Union: 6 hours per month accumulation.

4. Wages

Village: 15¢ per hour increase at each step each year of the contract with two exceptions in the first year of the contract (5/1/96-4/30/97): 65¢ at 6-to-17-year step and 45¢ at 18-year-and-over step (EX 1(A)). Change salary schedule from 21 steps (a starting step and one step for each additional year of service to a maximum of 20 years) to 8 steps—a starting step at step 1 and one step for each year of service through step 7 (after 6 years) and a final step 8 after 18 years of service.

Union: 5% increase at each step each year of the contract. Maintain current step schedule.

III. 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 prescribed 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."² The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of major significance.

²Arvid 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.

IV. Comparability

A. The Employer's Withdrawal of Certain Comparables

With the exception of Hickory Hills, the parties do not agree on which cities are comparable to Justice:

Table 1: Proposed Comparable Cities

Union-Proposed Comparables	Employer-Proposed Comparables
Chicago Ridge	Hickory Hills
Countryside	Richton Park
Hickory Hills	Summit
LaGrange Park	Willow Springs
Markham	Worth
Matteson	
Palos Park	
Western Springs	

Prior to the hearing, the parties exchanged final offers and suggested comparable cities. In addition to the cities listed in Table 1, the Employer suggested that Indian Head Park, Bridgeview, Countryside and Chicago Ridge were comparable to Justice (Tr. 122-23). At the hearing, the Employer withdrew the latter communities from consideration (Tr. 123). The Union objected to the Employer's attempt to amend its list of comparable communities, contending that "it would be unfair for the Arbitrator to allow the Village to retract its suggested comparables after the Village has had the opportunity to evaluate its list in relation to that of the Union. Therefore, the Union shall proceed in this brief to make reference to all of the Village's stated comparables" (Un. Brief, 6).

I shall not hold the Employer to its initial list of comparable communities. Under the Act, interest arbitration (subject to judicial review or ratification by the "governing body" of the municipality under consideration) is the final step in contract negotiations—a legislatively established extension of collective bargaining. In its formal aspects, an interest arbitration proceeding is roughly comparable to litigation, but interest arbitration is not governed by similar rules of pleadings, procedures or evidence.³ Although I generally encourage the parties to exchange information and work out stipulations prior to the hearing, the Act does not compel the parties to exchange information about proposed comparables in advance. In interest arbitration, there is no provision for pleadings or pre-trial discovery, including "requests for admissions." Nor is either party bound by a pre-hearing "admission" it may have made.

There is no reason to bar either party from winnowing down a list of comparable communities disclosed prior to the hearing. Modification of a list of comparables would be precluded only if the other party were surprised by evidence damaging to its cause. In this case, there was no surprise. No new communities were added to the list. The Union did not have to respond to new evidence. Nor was the Union barred from presenting evidence and arguments on all the proposed

³ See Section 14(d) of the Act.

comparables, including those withdrawn by the Employer.⁴ Accordingly, I shall consider only the comparables ultimately proposed by the parties.

B. Analysis of the Data on the Proposed Comparable Cities

In choosing comparables, the Union "relied upon an assessment of seven criteria: population, distance from Justice, number of municipal employees, number of calls for police service, sales tax revenue, number of sworn patrol officers, and equalized assessed valuation of the community" (Un. Brief, 6). The Employer relied on the "factors of population, equalized assessed valuation, sales tax revenues, police department budget, proximity, number of patrol officers, and number of total sworn personnel..." (Emp. Brief, 7).

⁴ An arbitrator could cure surprise by means of a remand and continuance.

The proposed comparables are examined in Tables 2 and 3.

Table 2: Comparable Cities Proposed by the Union

City	Pop	Distance (miles)*	# of Emp'ees	# of Calls	Sales Tax Revenue	# of Officers	Equalized Assessed Valuation
Chicago Ridge	13,500	2-4	80	4,000	2,596,592	26	197,000,000
Countryside	6,000	2	50	7,479	4,971,484	22	177,993,000
Hickory Hills	13,021	adjacent	65	9,679	704,858	19	160,000,000
LaGrange Park	18,000	5	48	5,624	737,965	18	245,000,000
Markham	13,136	13-14	101	12,000	634,204	30	64,700,000
Matteson	12,000	18-19	130		4,547,506	28	260,000,000
Palos Park	4,100	4	22	4,477	317,140	18	460,000,000
Western Springs	11,000	4-5	62	7,000	267,236	12	206,000,000
Justice	12,000		50	9,458	211,921	12	86,000,000

*Estimated distances are based on the 1995 Rand-McNally Illinois State Map. In some instances these estimates differ from the estimates furnished by the Union.

Table 3: Comparable Cities Proposed by the Employer

City	Pop	Area Sq miles	EAV in millions	Dept Budget in millions	Distance (miles)*	Patrol Officers	Total Sworn Personnel	Union
Hickory Hills	13,021	2.5	180.20	1.96	1	18	27	
Richton Park	10,523	4	82.41	1.6	20	18	23	FOP
Summit	10,109	2.5	82.25	1.52	2.5	19	28	FOP
Willow Springs	4,509		75.16	0.95	2	21	26	FOP
Worth	11,208	2	103.00	1.36	3.5	20	25	FOP
Justice	11,137	2.5	83.34	1.46		19	29	
Rank	3		3	4				

*Estimated distances are based on the 1995 Rand-McNally Illinois State Map.

Interest arbitration is a fact-finding process that often seems to rests on problematic or indeterminate "facts." As the parties are not required to agree on stipulations of fact or to exchange information in advance of the hearing, it is not unusual for an arbitrator to be faced with disparate

and incompatible financial and demographic data on comparability (and other issues). Even if the parties agree on relevant comparability factors, the actual numbers presented may differ. In this case, for example, Hickory Hills' EAV is \$160 million according to the Union, but \$180.2 million according to the Employer. The Union's EAV for Justice is \$86 million, the Employer's \$83.34 million. Whatever the reason for these and other discrepancies, an arbitrator is bound by the record; I shall rely on the information provided to me.⁵

Comparability is a difficult issue even when all the information submitted is wholly compatible and congruent. 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.

Unlike Peru, Justice is a Chicago suburb. But the problems noted in *City of Peru* exist, if to a lesser extent, in this densely populated area. Within a few miles of Justice,

⁵On occasion, I have examined information contained in government publications and other public records.

there are several cities of comparable size. Within 20 miles lie more than a dozen cities of comparable size.

Population and proximity are probably the two most important factors used to determine comparability. Thus, the "first cut," which is generally based on those factors, eliminates cities not reasonably comparable to the subject community in terms of proximity or population. With the exception of Richton Park, 20 miles from Justice, the municipalities proposed by the Employer are no more than 3¹/₂ miles from Justice. With the exception of Markham and Matteson, the Union's proposed comparables are within five miles of Justice. Within 18 to 19 miles of Justice, the distance between Matteson and Justice, there are many cities—from Schiller Park to the north and Frankfort to the south.⁶ Given the density of population and number of cities in suburban Chicago, it would seem reasonable to limit the search to cities within a smaller radius of Justice. I do not suggest that it is never appropriate to look beyond a narrow radius for comparable cities. But where there is a reasonable sample of roughly comparable cities within five miles, it would seem illogical to choose a city 18 miles or even 8 miles away. The "first cut" eliminates Markham, Matteson and Richton Park.

Let us turn to population comparisons. I am unaware of any study that might establish an appropriate population cut-

⁶ Municipalities within an 18-mile radius of Justice having a population ±50% of the population of Justice include Burr Ridge, Calumet Park, Country Club Hills, Crestwood, Flossmoor, Glenwood, Hazel Crest, Frankfort, Lemont, Lyons, Midlothian, Mokena and Riverdale.

off. In the past, I have adopted suggestions ranging from $\pm 25\%$ to $\pm 50\%$. Either choice (or any choice) may be arbitrary, but a line must be drawn. Relying on proposals advanced by the parties, I shall draw the line at $\pm 50\%$, eliminating Palos Park and Willow Springs.

One might question the validity of some of the remaining proposed comparables, especially those with EAVs at least twice that of Justice. If I eliminate these proposed comparables, I eliminate Hickory Hills, the only community considered comparable by both parties, as well as all the Union-proposed comparables. I reduce the Employer-proposed comparables to three. I would be left with a group of comparables so constricted as to be statistically invalid.

In addition, although the communities selected may provide only an approximate guide to comparability, the available information does not permit me to eliminate the other comparables the parties have proposed. When in doubt, it is appropriate to be guided by the parties' suggestions.

The comparable cities are (Union-proposed comparables are in **bold print** and Employer-proposed comparables are in SMALL CAPS):

Chicago Ridge
Countryside
Hickory Hills (proposed by both parties)
LaGrange Park
SUMMIT
Western Springs
WORTH

V. The Economic Issues

A. Ability to Pay

1. The Employer's Position

The Employer claims that "the Union's proposals represent expenditures far in excess of the Village's ability to pay," but "the Village's proposals offer a compensation package that is comparable to other communities, while at the same time meeting the pressing need to keep its budget deficit under control" (Emp. Brief, 30).⁷

⁷ The Employer has cited five awards in support of its argument that it does not have the "financial ability to meet" costs proposed by the Union in its final offers: *Logan County/Logan County Sheriff's Department & FOP Lodge 78*, S-MA-93-26 (LeRoy 1994); *City of Rock Island & Rock Island Fire Fighters Union Local 26*, S-MA-91-64 (Berman 1992); *City of Springfield & IAFF Local 37*, S-MA-18 (Berman 1987); *City of Springfield & Policemen's Benevolent and Protective Association, Unit 5*, S-MA-89-74 (Benn 1990); and *Village of Westchester & FOP Lodge 21*, S-MA-90-167 (Briggs 1991). Other awards of interest are *Village of Alsip & FOP*, S-MA-93-110 (Fletcher 1995); *Cook County/Cook County Sheriff & Teamsters Local 714*, L-MA-95-001 (Goldstein 1995); *City of East St. Louis & IAFF Local 23*, S-MA-95-13 (Edelman 1995); *Village of Maywood & SEIU Local 1*, S-MA-95-167 (Malin 1996); *McClellan County/McClellan County Sheriff & FOP Lodge 176*, S-MA-92-29 (Feuille 1993); *Village of Rock Falls & IAFF Local 3291*, S-MA-94-163 (Nathan 1995); *City of Rock Island & FOP*, S-MA-93-119 (Eglit 1995); *Village of Streamwood & Laborers Int'l Union Local 1002*, S-MA-89-89 (Benn 1989); *City of Venice & Policemen's Benevolent Labor Committee*, S-MA-92-200 (Traynor 1995).

The Employer produced its financial statements for fiscal years 1993 through 1996 (EXs 3 and 4). Salient parts of these statements are summarized in Table 4.

Table 4: Financial Statements 1993-1996

	1993	1994	1995	1996
Receipts	2,727,389	2,751,603	2,722,788	3,102,061
Expenditures	3,164,179	3,380,973	3,175,626	3,491,986
Excess/(Deficiency)	(436,790)	(629,370)	(452,838)	(389,925)
Fund Balance, start of year	858,662	602,915	165,807	(76,855)
Fund Balance, end of year	602,915	165,817	(76,855)	(201,998)
Asset to Liability Ratio	4.89	2.20	0.74	0.58

Table 5 shows the Employer's comparison of current payroll costs to the estimated payroll costs under each proposal (Emp. Brief, Exhibit 2).

Table 5: Cost of Proposals

	Current Costs	Costs Under Union Proposal	Costs Under Employer Proposal
1995-96	\$616,084		
1996-97		\$656,762	\$612,651
1997-98		\$714,674	\$661,453

The Employer has estimated the financial impact of the proposals on all economic items as follows (Emp. Brief, Exhibit 2):

Table 6: New or Additional Dollars Generated by Each Proposal

	New \$\$ 1996-97	New \$\$ 1997-98	Total New \$\$
Union	\$40,678	\$98,589	\$139,267
Employer	\$ 3,434	\$45,368	\$ 48,802

The additional cost of the Union's proposal, the Employer notes, "represents approximately 23% of the current contract costs and approximately 9.5% of the current Police Department budget" (Emp. Brief, 30). As a consequence, the Employer asserts, assuming that "revenues and expenditures in the General Fund are held at 1996 levels, the Union's proposals would increase the deficit in the General Fund to \$242,675 in 1997 and \$341,264 in 1998" (Emp. Brief, 30). Thus, the Employer argues, "[n]o matter how one views the data on the impact of the Union's proposals—as sheer dollar amounts, as a percentage of the current contract or department budget, or as an increase in the General Fund deficit—it is clear that the Union's proposals represent expenditures far in excess of the Village's ability to pay" (Emp. Brief, 30). The Employer goes on to suggest that its "proposals offer a compensation package that is comparable to other communities, while at the same time meeting the pressing need to keep its budget deficit under control" (Emp. Brief, 30).

2. The Union's Position

Citing *City of Springfield*, S-MA-89-74 (Benn 1990) for the proposition that "ability to pay" "does not focus on the uncertainty that may be caused by funding the Union's economic proposal" and *City of Aurora*, S-MA-92-194 (Berman 1993) for the principle that "inability to pay is an 'affirmative defense' to be utilized against wage and benefit increases supported by other statutory criteria," the Union argues that

the Employer did not show that it had "an actual inability to pay" (Un. Brief, 18). In particular, the Union disputed the significance of the fact, as noted by Village Trustee Melvin Van Allen (Van Allen, 101), that the Village's tax-levying authority has capped out at 2.5 percent: "the Village of Justice is not the only municipality subject to the tax cap...[;] in fact all other Cook County non-home rule municipalities, including those selected by the parties as comparable to Justice, are subject to its provisions" and the "taxes capped by statute are not the Village's only source of revenue" (Un. Brief, 18). The Union also pointed out, as conceded by Van Allen on cross-examination, that "the Village has the capacity to 'lend' and 'borrow' funds [by] transferring monies back and forth between budgeted funds for the purpose of meeting expenses and that "expenditures for the police department may be drawn from other budget line items" (Un. Brief, 18). Further, the Union notes, "it was admitted at the hearing that no major capital improvements have been made to the Police Department, and no new police-related programs have been implemented" (Un. Brief, 18).

Finally, the Union argues, the "costout of offers" submitted by the Village was inaccurate because "it assumes salary payments being made to twenty-one officers" even though "the current complement of officers is only sixteen," and "there is no guarantee that the Village will hire the necessary additions to its police force at all, and certainly no proof that it will do so within the period covered by the

Collective Bargaining Agreement at issue here" (Un. Brief, 19). Thus, "the data presented by the Village is...speculative at best..." (Un. Brief, 19). Table 7 depicts the Union's understanding of the cost of its wage proposal (Un. Brief, Appendix A):

Table 7: Union Cost-Out Chart

Step	As of 8/1/94	#	Annual Cost	95-96 Step	#	Annual Cost
Start	11.31	3	70,602	11.96	3	74,659
1 year	11.81	5	122,871	12.46	3	77,780
2 yrs	12.31	3	76,844	12.96	5	134,836
3 yrs	12.81	2	53,310	13.46	3	84,023
4 yrs	13.31	2	53,391	13.96	2	58,096
5 yrs	13.81	2*	54,472	14.46	1	30,088
6 yrs	14.31	0		14.96	2*	62,258
7 yrs	14.81	0		15.56	0	
8 yrs	15.31	0		15.96	0	
9 yrs	15.81	0		16.46	0	
10 yrs	16.31	0		16.96	0	
11 yrs	16.71	0		17.36	0	
12 yrs	17.11	1*	35,602	17.76	0	
13 yrs	17.51	0		18.16	1*	37,787
14 yrs	17.91	0		18.56	0	
15 yrs	18.31	0		18.96	0	
16 yrs	18.61	0		19.26	0	
17 yrs	18.91	0		19.56	0	
18 yrs	19.21	1*	39,972	19.86	0	
19 yrs	19.51	0		20.16	1*	41,949
20 yrs	19.81	0		20.46	0	
		Total	512,064			601,476
					NEW \$\$	89,412

•All totals were prepared assuming a single officer works 2080.8 hours per year. This is consistent with the Village's "cost-out" submitted on October 11, 1996.

*Indicates all officers holding the non-sworn rank of corporal. Pursuant to the expired Collective Bargaining Agreement, these officers were compensated at one seniority step higher than their actual seniority step.

3. Discussion and Findings

The "financial ability of the unit of government" to meet the costs of proposals is an overarching factor pertinent to all economic issues. Although an employer may be able

to "afford" one additional holiday without being able to "afford" a significant wage increase, an employer's "inability to pay" has an across-the-board impact on all economic issues in dispute. I must determine whether the evidence produced by the Employer established "a real inability to pay the costs of the Union wage proposals in the current case" (*Cook County*, at 27).

A "demonstrated inability to pay is viewed as a limiting factor to support an award less generous than otherwise indicated by the comparability data."⁸ For that reason, inability to pay must be considered an affirmative defense to higher wages or benefits otherwise appropriate under Section 14(h). In *County of Cook/Sheriff of Cook County & Teamsters Local 714*, L-MA-95-001 (Goldstein 1995), at 26-27, arbitrator Elliott Goldstein wrote:

[T]he extent of the proof of inability to pay has not meant that it is a factor that can merely be presented as a generalized argument. Some benefits to the taxpayer in Cook County will be realized from smaller or no pay raises, of course. However, it is also well-established that "[e]mployers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea." Elkouri & Elkouri, How Arbitration Works (BNA, 4th Ed., 1985), at p. 830. The presentation of evidence that a political body

⁸ *City of Rock Island & Rock Island Fire Fighters Union*, S-MA-91-64 (Berman 1992), *supra*, at 19, quoting Richard Laner and Julia Manning, "Interest Arbitration: A New Terminal Impasse Procedure, for Illinois Public Sector Employees," 60 *Chicago-Kent L.Rev.* 839, at 859. However, as the Employer points out, citing *City of Rock Island*, *supra*, "it is not inappropriate, when determining comparability, to consider an employer's distressed circumstances, and to give more weight to the comparability factors of other employers in similar circumstances." Thus, the "distressed circumstances" may be relevant to the issue of comparability but irrelevant to the issue of the employer's ability to pay. See *City of Rock Island*, *supra*, at 19.

would face a certain degree of financial uncertainty or even adversity in having to fund a Union's proposals has been held by the majority of interest arbitrators called upon to interpret §14(h)(3) of the Act to not satisfy the burden under that particular provision. "Inability to pay" has been found to mean "financial inability...to meet these costs." City of Springfield, Case No. S-MA-89-74 (Benn, 1990), at pp. 17-18.

There thus has to be not only benefits realized from the kind of or amount granted for pay increases as proposed by the Joint Employers, consistent with their overall fiscal responsibility, but also a real inability to pay the costs of the Union wage proposals in the current case, as the applicable section of the Act, Section 14(h)(3), has been consistently applied. There is in every public sector workplace a need for savings or at least containment of overall costs....

Arbitrator Michael LeRoy expressed similar principles in *Logan County/Logan County Sheriff*, S-MA-93-26 (1994), an award cited by the Employer. Arbitrator LeRoy declined an invitation to compare "Logan County expenditures to those made by comparable counties." He noted that Section 14(h)(4) of the Act "speaks to the issue of comparable *compensation, ...not...comparable expenditures* [italics in original] (*Logan County*, at 17): "I therefore view as irrelevant evidence of how comparable counties are budgeting and expending public revenues" (*Logan County*, at 17-18). Thus, arbitrator LeRoy suggested, "[t]he relevant evidence in weighing the County's ability-to-pay argument is found in its own budget" (*Logan County*, at 18).

In *City of Venice*, S-MA-92-200 (Traynor 1995), arbitrator Duane Traynor, dealing with an extreme "inability to pay," was asked to determine police officers' wages for fis-

cal year 1994. At the end of FY 1993, the City of Venice had "overspent" by \$101,358 and was running a general fund deficit of \$2,442,799 (*City of Venice*, 11). In addition, the City of Venice had just bounced three checks totaling almost \$12,000 and was "barely able to pay its bills" (*City of Venice*, 12). It owed "approximately \$200,000 in outstanding debts" which it "was unable to pay" (*City of Venice*, 13). Arbitrator Traynor held at page 19 that—

...while there is a need, based upon cost of living, which would justify a need to increase the salaries of the City of Venice Police Officers and the interest and welfare of the public certainly dictates that the City's Police Officers are in need of increased salaries, the Arbitrator has to conclude...that an Award adopting the Union's offer, modest though it may be, cannot be adopted as the City is now using all possible avenues generating income and is still not able to meet its obligations. For all practical purposes, it is bankrupt. Thus, the final offer of the City is adopted.

City of East St. Louis, S-MA-95-13 (Edelman 1995), is an interesting case. Although East St. Louis was the only city in Illinois classified as "financially distressed" under the Illinois Financially Distressed City Law" (65 ILCS 5/8-12-1 et seq.), arbitrator Milton Edelman did not find that East St. Louis was unable to pay the wages proposed by the Union.

There was a reason for this apparent anomaly. The City of East St. Louis did not argue that it was unable to pay the wages sought. Rather, it insisted, East St. Louis, the only "financially distressed" city in Illinois, was unique and comparable to no other city. Arbitrator Edelman rejected this argument (Edelman, at 6-7):

If the City's position on external comparisons were to be adopted—comparison with other financially distressed cities only—it would be tantamount to giving sole consideration to the second factor—and only a portion of the factor at that—the financial ability of the City. In fact, East St. Louis does not plead poverty; it does not say it lacks the financial ability to meet the Union's proposed wages and benefits.⁹

Arbitrator Arvid Anderson and Trial Examiner Loren Krause have raised a number of intriguing questions concerning the ability-to-pay test:¹⁰

1. Should ability to pay be accorded greater weight than the other statutory criteria?
2. What evidence should the arbitrator rely upon to find ability or inability to pay?
3. Should the arbitrator accept the budget as prepared and presented by the public employer without further inquiry? Must the arbitrator conclude that the employer lacks the ability to pay if the budget does not permit the granting of benefits sought by the union?
4. To what extent can the arbitrator question the priorities in the budget and to what extent may the award directly or indirectly result in the reordering of priorities?
5. Can the arbitrator directly or indirectly require the public employer to borrow or to increase taxes if the funds necessary to implement the award would only be available through those means? and
6. Should the arbitrator consider the public employer's ability to pay simply in light of the demands of the bargaining unit involved in the proceeding or should the arbitrator consider ability to pay in light of the public employer's funding of increases to its other employees?

⁹ But see note 9, *supra*, at p. 17.

¹⁰ See Anderson & Krause, *supra*, n. 2, §63.03[3].

Anderson and Krause go on to suggest (*Ibid.*, at 10-11):

When ability to pay is raised as an issue in interest arbitration proceedings, it can only be fairly and intelligently considered if the arbitrator is presented with evidence pertaining to revenue from the collection of taxes, constitutional debt limitations, economic trends in the jurisdiction and the surrounding area, and recent settlements by the employer with its other employees.

In applying the "ability to pay test," the employer's budget must be taken into account, but the following matters should also be taken into account:

1. Whether the employer has in its preparation of prior budgets underestimated its revenue and overestimated its expenses;
2. whether the employer could have obtained a tax increase, but declined to submit the issue to the electorate;
3. whether major repairs and capital improvements could be amortized over a number of years, rather than budgeted as a one year expenditure; and
4. whether repairs, capital improvements and increases in services have been given priority over a just and reasonable wage increase.

The Employer's general fund has run and is continuing to run at a deficit. However, as the list of suggested inquiries implies, many relevant questions remain unanswered. Even though the general fund is operating at a deficit there are too many imponderable and problematic budget, tax and accounting questions that remain unanswered for me to conclude that in fact that the Employer is "unable to pay" the wages or benefits, or both, proposed by the Union. It is not enough to assert that an employer cannot afford the increases

sought. The assertion must be proved by sound, probative evidence.

Two additional cases cited by the Employer, *City of Westchester*, S-MA-90-167 (Briggs 1991), and *City of Springfield*, S-MA-89-74 (Benn 1990), are not on point. In *City of Westchester*, arbitrator Steven Briggs found the employer's "'limited ability to pay' argument" unpersuasive. He considered Westchester's favorable general fund balance, recent substantial increases in revenue, its asset/liability ratio of 2.11, and its recent reduction in expenditures as a percentage of its general fund significant factors in finding that "Westchester is a financially healthy community" (*City of Westchester*, 18-19). In *City of Springfield*, arbitrator Edwin Benn cited Elkouri and Elkouri for the principle that "[it] is well established that 'Employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support the plea'"¹¹ (*City of Springfield*, at 18).

B. Holidays and Personal Days: Section 9.1 of the Agreement

1. Relevant Provisions of the 8/1/94-4/30/96 Agreement

Section 9.1. Holidays and Personal Days. The paid holidays to be observed shall be as follows:

New Year's Day (traditional day)
 Lincoln's Birthday (traditional date)
 Good Friday (traditional date)
 Memorial Day (Observed date)

¹¹ Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works*, 4th ed. (Washington: BNA Books, 1985).

Independence Day (traditional date)
 Labor Day (Observed date)
 Columbus Day (Observed date)
 Thanksgiving Day (traditional date)
 Christmas Day (traditional date)

Each employee shall be entitled to one Personal Day off exclusive of Holidays.

2. The Proposals

(a) Union Proposal

The Union proposed to amend Section 9.1 as follows (additions to the expired agreement are underlined; deletions are ~~lined out~~):

Section 9.1. Holidays and Personal Days. The paid holidays to be observed shall be as follows:

New Year's Day (traditional day)
Martin Luther King Jr. Birthday (traditional date)
 Lincoln's Birthday (traditional date)
 Good Friday (traditional date)
 Memorial Day (Observed date)
 Independence Day (traditional date)
 Labor Day (Observed date)
 Columbus Day (Observed date)
 Thanksgiving day (traditional date)
 Christmas day (traditional date)

Each employee shall be entitled to ~~one~~ two Personal Days off exclusive of Holidays.

(b) Employer Proposal

The Employer proposed to delete one holiday and add two personal days for a total of three personal days.

3. Summary of Arguments

(a) The Union

1. Under the Union's proposal, paid holidays would "exceed the average number of holidays for the Union's comparable communities by only one-half, and exceed the number of holidays recognized by the Village's comparables by one,

while the Village's proposal ranges from one to one and one-half holidays less than the average of the pertinent comparable communities" (Un. Brief, 8).

2. The Village's proposal to add a personal day in conjunction with elimination of a scheduled holiday "would have a considerable economic impact on Justice police officers, by reducing...the opportunity to earn holiday premium pay at time and one-half...in addition to eight hours of holiday pay" (Un. Brief, 8-9).

3. Personal days were benefits "previously negotiated," and it is well settled that a party that "'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'" has the burden of proof (Un. Brief, 9, citing *City of Markham*, S-MA-95-63 (Berman 1995)). Further, "'without economic or operational justification, it is inappropriate [for an arbitrator] to take away employees' benefits" (Un. Brief, 9, citing *City of Springfield*, S-MA-18 (Berman 1987)).

4. The total number of holidays and personal days proposed by the Union "is closest to the average" of 11.67 days per year of the agreed-on comparables (Un. Brief, 9-10).

5. The Union proposes to increase personal days to two per year and the Employer proposes to increase personal days to three per year. When viewed in light of the police officers' "overall compensation" this benefit does not compensate

for the fact that Justice police officers are "grossly underpaid" (Un. Brief, 10-11).

(b) The Employer

1. The "Village proposal brings personal day policy into line with other Village employees" (Emp. Brief, 18).

2. The Village proposal is "more reasonable" because "an increase in personal days does not have the impact on Village expenditures that...additional holidays would have. Because holidays must often be paid for at double time and a half, the police department's planning and budgeting may be significantly disrupted by a grant of additional holidays" (Emp. Brief, 18). Three personal days "accommodates the Union's desire for additional days off but without the disruptive effect of extra holidays" (Emp. Brief, 18). The Union's "concern for loss of overtime pay is effectively met by the Village's agreement to an award of overtime pay for time in excess of 160 hours in a 28-day period, rather than 168 under the current contract" (Emp. Brief, 18).

3. The Village proposal "is quite comparable to the holiday and personal day policies in the Village's comparable communities" (Emp. Brief, 19). The "average number of holidays beyond the first step for the Village comparables is 8.5" and the "average number of holidays for the Union's comparable municipalities is 9.5..." (Emp. Brief, 19).

4. Discussion and Findings

The Union has separated its offers on holidays and personal days and asks that each separate offer be considered

apart from the other. But it argues that "when the parties' proposals for holidays are *viewed in conjunction* [my italics] with the proposals for personal days,...the Union's proposal reflects the trend in comparable communities" (Un. Brief, 9).¹² The Employer considers holidays and personal days "interconnected" and a single economic issue: "The Village contends that [holidays] and personal days represent paid, non-sick days off for police officers. They are different forms of paid days off. They should be examined together to avoid distorting the impact of this particular benefit" (Emp. Brief, 18).

I agree with the Employer. First, as the Employer points out, citing *City of Peru & Illinois FOP*, S-MA-93-153 (Berman 1995), holidays and personal days are "different forms of paid days off." Even though it is more likely that far more employees will have to be scheduled to work overtime on a holiday than on any given personal day, all paid days off are simply a debit on one side of the ledger and a credit on the other side. One holiday = one personal day = one day of sick leave. Second, by placing these items in the same section of the Agreement under the heading "Holidays and Personal Days" the parties themselves demonstrated that they consider these items a single benefit. This conclusion is reinforced by the fact that (1) Union exhibits compare all

¹² Notwithstanding its suggestion that holidays and personal days are separate benefits that must be considered separately, Union exhibits 1(2) and 1(3) compare "total paid days off"—holidays, personal days and sick leave.

forms of "paid days off" and (2) the Union's final offer combines holidays and personal days into a single economic item (UX 1(2)).

When compared to a holiday, a personal day offers an employee advantages and disadvantages. A personal day is a flexible day off that an employee may use with some discretion, but a personal day does not offer any employee an opportunity for double-and-one-half time pay. Nevertheless, both personal days and holidays are days off work with pay, and from that perspective they are interchangeable benefits. I shall consider them together as a single benefit. I shall also take into consideration the ratio of holidays to personal days.

The Union cited two of my awards—*City of Springfield* and *City of Markham*—for related propositions. In *City of Springfield* I held that an employer should provide "economic or operational justification" to support a proposal to "take away an employee's benefits." In *City of Markham* I held that an employer has the burden of proof when it "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." Here the Employer's proposal falls into the category of "increasing or decreasing existing benefits" rather than an "entirely new benefit or procedure" or a "marked change" in the "product of previous negotiations." Personal days and holidays are not an "entirely new benefit or procedure." Nor

is a change in the structure of these days off or an increase in one form of day-off accompanied by a decrease in the other a "marked change" in the contract. Benefits may go up or down without changing the underlying structure or purpose of the contract, particularly where, as here, the days-off represent similar (indeed interchangeable) benefits.¹³

Currently, employees are entitled to nine holidays and one personal day for a total of 10 paid days off work. The Union proposes two additional paid days off (one additional holiday and one additional personal day) for a total of 12 days off and the Employer proposes one additional paid day off (one less holiday and two additional personal days) for a total of 11 days off. Both parties have made comparisons respecting "paid days off" (Emp. Brief, 20; UX 1(2)). Only the Employer includes vacation days in these comparisons. Extrapolating from these figures, I come up with the information contained in Table 8.

¹³ In *City of Markham*, I dealt with a proposal that, if adopted, would have resulted in a "marked change" in disciplinary standards and procedures—the elimination of arbitration for grievances involving disciplinary suspension or discharge. I cited *Will County* (Nathan 1988), for the proposition, among others, that a "substantially different system for the resolution of grievances" represented an "entirely new benefit or procedure" and a "marked change [in] the product of previous negotiations."

Table 8: Holidays and Personal Days

City	Holidays	Personal Days	Vacation Days (2nd step-final step)	Sick Days
Chicago Ridge	10	1	NA	12
Countryside	10	3	NA	12
Hickory Hills	7	4/0*	10-20	12
LaGrange Park	10	1	NA	12
Summit	8	6	5-20	12
Western Springs	9	1	NA	12
Worth	8	3.75	5-20	12 (10 hr day)
AVERAGE	9	3/2.3		
Justice	9	1	12-24	6
Justice:Emp	10	2		9
Justice:Union	8	3		6

*4 personal days according to the Union; No personal days according to the Employer.

Because the information submitted with respect to vacation days was incomplete, I have not examined the "total days off" in the comparable communities. Even if it were possible to make these cross-category comparisons and to reduce all wages and benefits to dollar-per-hour calculations, mathematical calculations do not capture the essence of collective bargaining.¹⁴

From either party's perspective, some benefits may be more important than others to which they are monetarily equivalent. A day off may be monetarily equivalent to a day of wages without being equivalent to it in other respects. An employee might consider a day off preferable to an equivalent amount of wages; an employer might rather give a day off than pay an equivalent amount of wages. Reducing all benefits to dollars and cents without considering other, less tangible

¹⁴ I have not disregarded Section 14(h)(6) of the Act, which requires an arbitrator to consider "overall compensation." Nevertheless, "overall compensation" is not dispositive (although it may tip the balance) with respect to any particular economic issue.

advantages and disadvantages could reduce collective bargaining to a sterile mathematical exercise. It would become impossible to evaluate the critical importance of one benefit *vis-à-vis* another in non-economic as well as economic terms.¹⁵ As there is no absolute standard in this regard, an arbitrator should be guided by the parties' expressed intentions.

The parties' intentions are demonstrated by their decision to group holidays and personal days together in the same contract clause. I shall consider them together. Sick leave is also a form of direct remuneration. As requested by the parties, I shall consider the parties' sick-leave proposals and holiday/personal day proposals separately, but I shall consider the effect of each on the other.

For the following reasons, I adopt the Employer's proposal on Article IX, Section 9.1 of the Agreement, "Holidays and Personal Days":

1. The total number of holidays and personal days in both proposals is close enough to the average of comparable communities to be virtually indistinguishable.
2. The Employer proposes to increase paid days off by one, the Union by two. The Union's proposal would increase the number of scheduled days off and require the Employer to schedule more police officers to work at double and one-half time pay. This is a selective benefit not shared equally among all employees in the unit. To that extent, it is less equitable than other forms of remuneration—direct and indirect.

¹⁵ There are many examples, but it might suffice to point out that employees may be willing to trade higher wages for more days of vacations, more comprehensive health insurance, or better pensions. Indeed, a union may be willing to forego a wage increase for increased fringe benefits not equal to the wage increase.

3. Employees are not entitled to work on holidays. Holiday overtime may almost be described as a windfall for those employees willing (or compelled) to swap time off for money.
4. From an operational point of view, it serves the interest of employee flexibility and employer scheduling needs to increase unscheduled personal days and reduce scheduled holidays. The loss of overtime opportunities caused by reducing scheduled holidays is, as suggested, the loss of an ancillary benefit not shared equally by all employees in the bargaining unit and thus less significant on balance than the Employer's need for more flexible scheduling.

My determination was not heavily influenced by the usual factors. As noted in paragraph 1 above, comparability was not a critical factor. Cost-of-living with respect to one additional paid day was not stressed by the parties, and I would not normally consider cost-of-living a significant consideration when a bargaining unit is one-half day behind or ahead of the median in comparable communities.

The "interests and welfare of the public" were not explicated by the parties, but it would clearly seem in the public interest to have an adequate number of police on duty at all times, including holidays. Indeed, there are holidays on which more, not fewer, police officers are needed.

I realize that the amount of premium pay lost to employees who would have worked on a holiday is money saved by the Employer. Since, however, paid days off for holidays are generally intended to give employees an opportunity to celebrate commonly observed holidays without monetary loss, and not merely to give *some employees* a bonus, it would seem

more equitable, if the goal is additional compensation, to increase wages instead of the number of paid holidays.

C. Sick Leave

1. **Relevant Provisions of the Current Agreement: Article XI (Sick Leave), Section 11.2 (Sick Leave), Section 11.4 (Accumulation of Sick Leave), Section 11.5 (Sick Leave Buy Back) and Section 11.6 (Additional Non-Duty Related Sick Leave)**

Section 11.2. Sick Leave

a. Each full-time non-probationary employee shall earn sick leave time at the rate of four (4) hours for each complete month worked per twelve month period. Each such employee shall be granted the use of their accrued sick leave time whenever he/she is medically incapable of performing his/her work duties.

b. The twelve month period governing this sick leave provision shall commence upon the 1st day of the month of May in each calendar year and terminate upon the 30th day of the month of April the next year; whereupon, it shall continue to commence and terminate for each current full-time non-probationary employee until otherwise specified by law.

c. Any accrued sick leave time granted for use and thus properly observed by any full-time non-probationary employee shall be paid in full at that employee's current regular rate of hourly pay.

d. No full-time non-probationary employee shall be granted the use of any accrued sick leave time unless he/she has appropriately applied for the use of such in accordance with the rules and regulations of the Village's police department.

e. Any full-time employee who is absent from duty for twenty-four (24) or more consecutive work hours due to a non-duty related personal physical illness or injury shall have a doctor's release before returning to any duty. Such release shall be from a licensed medical doctor stating the medical cause for that absence, and, also, stating that such cause no longer exists thus enabling that employee to return to full duty. The aforesaid release shall be written upon the aforesaid doctor's letterhead. Such release shall be submitted to that employee's current shift supervisor prior to returning to any duty.

Section 11.4. Accumulation of Sick Leave

a. Full-time non-probationary employees may each accrue up to forty-eight (48) hours of sick leave time for authorized use within the twelve month period during which such sick leave time was earned; however, no amount of accrued sick leave time will be carried for any such use beyond the prescribed termination date of that same twelve month period.

b. Full-time non-probationary employees shall become entitled to earn and accrue sick leave time commencing upon the 1st day of the full calendar month which immediately follows the successful completion of their probationary period. Example: a full-time probationary employee that successfully completes his/her probationary period on the 10th day of June shall not begin earning any sick leave time until the 1st day of July.

Section 11.5. Sick Leave Buyback

a. At any time prior to the termination of each twelve month period governing this sick leave provision, an employee may file a written request with the Chief of Police [f]or the buy back of all or a portion of that employee's accrued sick leave time; whereupon, the Village shall buy back that accrued leave time at the regular hourly rate of pay at the time such accrued leave time was earned.

b. Upon termination of each twelve month period governing this sick leave provision, each full-time non-probationary employee shall sell back to the Village all of their unused accrued sick leave time at the employee's regular hourly rate of pay at the time such pay was earned.

c. Any accrued sick leave time which has in any way been processed for either buy back or sell back payment shall no longer be available for the employee's sick leave time use.

d. Buy back requests received by the Chief of Police on or between the 1st and 9th day of the current month will be paid to the employee on the first pay day of that month. Buy back requests received after the 9th day of the current month will be paid to the employee on the last pay day of the month.

e. Sell back payment will be made to the employee on the first pay day of the month of May of each year.

Section 11.6. Additional Non-Duty Related Sick Leave. For the term of this Agreement, the Village will continue to provide the 45 days of additional non-duty related sick leave to full-time non-probationary employees as currently set out in Section 9-22(a)(10)a.-j. of the Village Code.

2. The Proposals

(a) The Union

The Union proposed to amend Section 11.2 to permit each full-time non-probationary employee to earn six hours instead of four hours of sick leave time "for each complete month worked per twelve month period" and to amend Section 11.4 to permit full-time non-probationary employees to accrue up to 72 instead of 48 "hours of sick leave time for authorized use within the twelve month period during which such sick leave time was earned."

(b) The Employer

The Employer proposed that Sections 11.2 and 11.4 remain unchanged.

3. Summary of Arguments

(a) The Union

1. In comparison to "every one of the parties' comparable communities," "Justice police officers are woefully below the norm in terms of sick leave available for use on an annual basis" (Un. Brief, 11).

2. Contrary to the contention of the Employer, "the availability of medical excused days (MX days)" does not eliminate "the need to increase the number of 'regular' sick days" (Un. Brief, 11). There are restrictions on MX days. A police officer is not "eligible for...MX days until after he has visited and received confirmation of a minimum five-day illness from two separate physicians" (Un. Brief, 11).

3. The "low number of available sick days" causes officers who are ill to report to work (Un. Brief, 12).

(b) The Employer

1. "In Justice, a patrol officer who suffers a serious illness or injury and is expected to be off work for more than five days may apply for a medically excused absence, up to 45 days with full pay" (Emp. Brief, 21). The six days (48 hours) of sick days provided to police officers in Justice is "considerably below the average" of 11.8 in the comparable communities, but "this shortfall must be considered in light of the Village's provision of 45 medically excused days" (Emp. Brief, 21). "No other municipality on either the Village's or Union's list provides such a benefit" (Emp. Brief, 21).

2. In the past, the employees were contractually entitled to five days of sick leave (Emp. Brief, 21). Since the parties agreed in 1994 that employees could accumulate four hours of sick leave per month for 12 months, "there has been a marked decline in use of sick days"; and "the Village is reluctant to agree to any proposal that subverts the purposes and policy of sick leave provisions" (Emp. Brief, 21-2).

3. Other Village employees receive six sick days per year; the "Union has presented no rationale or justification for its proposal for more sick leave days than received by other Village employees" (Emp. Brief, 22).

4. Sections 11.2 and 11.4 must be considered together. If there are nine sick days annually under Section 11.2,

"Section 11.4 would also be changed to allow an accumulation of nine days annually" (Emp. Brief, 22).

5. The Village proposal for the 1996-97 contract year would permit "patrol officers over a 20-year career [to] enjoy 960 hours (120 days) of sick leave with pay. If the officer uses no sick days, the department will buy the annual 48-hour accumulation for a total of \$15,182 over 20 years"—a "considerable benefit" (Emp. Brief, 23).

6. The "Union's proposal for accumulation represents a dramatic 50% increase in these numbers"—from 120 days of accumulation to 180 days of accumulation (Emp. Brief, 23). The "value of those days in annual sell-backs is \$25,500.24," a "30% increase in the sick leave accumulation benefit" (Emp. Brief, 23). Given the "Village's existing policy on medically excused absences," an "expansion of sick leave accumulation is unnecessary" (Emp. Brief, 23-4).

4. Discussion and Findings

Comparisons between Justice and the comparable cities respecting total sick leave days are shown in Table 9:

Table 9: Sick Leave Benefits

	Annual Days of Leave	Total Sick Leave (Hours)	Accumulated Sick Leave Allowed (Hours)	Total Value of Sellback (\$)
Chicago Ridge	12	NA	NA	0
Countryside	12	NA	NA	NA
Hickory Hills	12	2016	1920	14,711.04
LaGrange Park	12	NA	NA	NA
Summit	12	2016	2016	14,575.81
Western Springs	12	NA	NA	NA
Worth	12	2520	2400	0
AVERAGE	12	Insufficient Information	Insufficient Information	Insufficient Information
Justice	6	960	8160	15,182.40
Justice: Emp	6	960	8160	15,182.40
Justice: Union	9	1440	8640	25,500.24

As shown above, Justice ranks substantially below the mean of the comparable communities with respect to annual sick days. Although the 50% increase in the number of sick days proposed by the Union is substantial, adoption of this proposal will still leave the Union about 25% below the mean of comparable communities.

Standing alone, paid sick leave is a contingent benefit. Unless used, it has no value. However, by allowing employees to convert accrued sick leave into a bonus, Section 11.5 changes a contingent benefit into a guaranteed benefit. Under the current Agreement, non-probationary employees are entitled to six days of paid sick leave annually or an annual bonus equivalent to six days' wages. The Union proposal would increase the entitlement to nine days of leave/bonus.

The Union has provided comparability data on "total paid days off" including sick leave. Comparing Justice to eight communities,¹⁶ the Union makes the following comparisons:

Table 10: Total Paid Days Off

	Holidays	Personal Days	Sick Leave	Total
Average (excluding Justice)	9.5	1.75	11.75	23
Justice	9	1	6	16
Justice Union	10	2	9	21
Justice Emp	8	3	6	17

The Employer uses a different approach. First, utilizing the communities it considers comparable to Justice,¹⁷ it compares the annual number of "total paid days off," including holidays, personal days and vacation days, at the 1st, 2nd, 6th, 11th, 16th and 21st years of service. Second, assuming that the average police officer will have a career of 20 years, the Employer has compared career totals showing "total sick leave," "accumulated sick leave allowed" and "total value of sellback" (Emp. Brief, 22-3). In calculating the number and monetary value of total days off, the Employer included "45 medical excused days" in its total of "accumulated sick leave allowed" over the term of a 20-year career.

¹⁶ Chicago Ridge, Countryside, Hickory Hills, LaGrange Park, Markham, Matteson, Palos Park and Western Springs.

¹⁷ Hickory Hills, Richton Park, Summit, Willow Springs and Worth.

The information provided by the Employer is shown in Table 11:

Table 11: Employer Comparisons on Sick Leave

	Total Sick Leave (hours)	Accumulated Sick Leave Allowed (hours)	Total Value of Sellback (\$)
Hickory Hills	2016	1920	14,711
Richton Park	2008	2008	0
Summit	2016	2016	14,576
Retirement at 15 yrs		672	3,037
Retirement at 20 yrs		672	9,561
Willow Springs	1344	1152	12,306
Worth	2520	2400	0
Justice Village	960	8160	15,182
Justice Union	1440	8640	25,500

Note: Accumulation for Justice includes 45 medical excused days.

The monetary value of any benefit is magnified, even exaggerated, when extended out over many years. A wage increase of 50¢ per hour (the amount of each annual step increase for steps 1 through 9 under the 1994-96 Agreement) extended out over 20 years comes to \$20,800 (50¢ x 2080 x 20). In making a decision on a two-year contract, I do not consider it appropriate to project out the cost of any particular benefit over 20 years.

I also consider it inappropriate to compare unlike things such as medically excused (MX) days and sick leave. Forty-five MX days are a substantial benefit to officers unable to work because of illness or injury for "more than 40 consecutive work hours" (EX 2). Unlike sick leave, however, MX days cannot be cashed out. As MX days are a contingent benefit to be used only if needed, a dollar value cannot be placed on them. They cannot be considered equivalent to or a

substitute for the sick-leave buy-out/sell-out provisions of Article XI.

On balance, and in view of the fact that Justice Patrol Officers will still remain substantially below the median of sick leave benefits in comparable communities, I shall adopt the Union's proposal on Sections 11.2 and 11.4 of the Agreement.

D. Wages

1. Current Wages

The wage scale contained in Appendix A of the 1994-96 Agreement is set forth in Table 12:

Table 12: Current Wages

Step	8-1-94 to 4-30-95	5-1-95 to 4-30-96
Start	\$11.31 per hour	\$11.96 per hour
1 Year	11.81	12.46
2 Years	12.31	12.96
3 Years	12.81	13.46
4 Years	13.31	13.96
5 Years	13.81	14.46
6 Years	14.31	14.96
7 Years	14.81	15.56
8 Years	15.31	15.96
9 Years	15.81	16.46
10 Years	16.31	16.96
11 Years	16.71	17.36
12 Years	17.11	17.76
13 Years	17.51	18.16
14 Years	17.91	18.56
15 Years	18.31	18.96
16 Years	18.61	19.26
17 Years	18.91	19.56
18 Years	19.21	18.86 (sic)
19 Years	19.51	20.16
20 Years	19.81	20.46

Corporal Stipend

Each officer covered by this Agreement who is serving in the rank of Corporal shall receive as a stipend an advancement of one step year added to the effected (sic) Officer's base pay at the beginning of each year that Officer serves in the rank of Corporal.

Retroactive Pay

The Village agrees that all retroactive payments due under this contract shall be made no later than sixty (60) days after ratification and execution of this document.

2. Final Offers

(a) The Union's Offer

The Union has proposed a 5% across-the-board increase for Patrol Officers in each year of a two-year agreement. The wage schedule would read as follows:

Table 13: Union's Final Offer

Step	5-1-96 to 4-30-97 5%	5-1-97 to 4-30-98 5%
Start	\$12.56 per hour	\$13.19 per hour
1 Year	13.08	13.74
2 Years	13.61	14.29
3 Years	14.13	14.84
4 Years	14.66	15.39
5 Years	15.18	15.94
6 Years	15.71	16.49
7 Years	16.34	17.15
8 Years	16.76	17.60
9 Years	17.28	18.15
10 Years	17.81	18.70
11 Years	18.23	19.14
12 Years	18.65	19.58
13 Years	19.07	20.02
14 Years	19.49	20.46
15 Years	19.91	20.90
16 Years	20.22	21.23
17 Years	20.54	21.56
18 Years	20.85	21.90
19 Years	21.17	22.23
20 Years	21.48	22.56

Corporal Stipend

Each officer covered by this Agreement who is serving in the rank of Corporal shall receive as a stipend an advancement of the step year added to the effected (sic) Officer's base pay at the beginning of each year that Officer serves in the rank of Corporal.

Retroactive Pay

All wages shall be retroactive to May 1, 1996. The Village agrees that all retroactive payments due under this contract shall be made no later than sixty (60) days after ratification and execution of this document.

(b) The Employer's Offer

The "Village has proposed a 15¢ per hour increase across steps in each year of the contract, resulting in a 65¢ per hour increase for officers each year" (Emp. Brief, 26). In

addition, the Employer has proposed a reduction in the number of steps on the wage schedule.

The Employer's proposal is set forth in Table 14:

Table 14: Employer's Final Offer

Step	5-1-96 to 4-30-97	5-1-97 to 4-30-98
Start	\$12.11 per hour	\$12.26 per hour
1 Year	12.61	12.76
2 Years	13.11	13.26
3 Years	13.61	13.76
4 Years	14.11	14.26
5 Years	14.61	14.76
6-17 Years	15.61	15.76
18 Years and Over	20.31	20.46

Corporal 50¢/hour stipend¹⁸

3. Summary of Arguments

(a) The Union

1. The Union's proposal, "which incorporates the existing wage scale..., will provide an overall increase greater than 10% over two years for most officers..." and so "allow Justice police officers to close the gap between their salaries and those of officers in comparable communities" (Un. Brief, 13). The "only additional compensation earned by Justice police officers is the corporal stipend" and these officers, unlike officers in comparable communities, "are not compensated in any other ways." Thus, "[i]t is important to

¹⁸ The parties have stipulated that corporals will receive an additional 50¢ per hour stipend (Tr. 8, 18).

view the...wage offers in light of the 'overall compensation' [of] Justice police officers" (Un. Brief, 15).

2. The Union's offer is consistent with bargaining history in that there was "an increase in the **steps** [emphasis in original] of the wage scale in the final year of the expired Agreement that ranged from 3.3% at the top step to 5.7% at the starting pay step" (Un. Brief, 16). Most officers fell into the three- to seven-year range; and wage increases at these steps ranged from 8.7% to 9% (Un. Brief, 16).

3. In most police departments, "annual increases to wage steps" range from 3% to 6%, but the Employer "has proposed increases ranging from 1.0% to 2.7% per year, with the elimination of any step movement from an officer's sixth to eighteenth years of service" (Un. Brief, 16-17).

4. Because of "general dissatisfaction with employment by the Village," many officers have quit; ten of the sixteen police officers have been employed less than four years (Un. Brief, 17).

5. The Village has inaccurately compared the cost of the two proposals because "it assumes salary payments...to twenty-one officers"; currently there are sixteen officers on the payroll and "no guarantee" that the Village will hire more (Un. Brief, 19). A "costout" based on the "actual number of officers" employed shows that "the Union's proposal is consistent with the wage increases" in the recently expired Agreement (Un. Brief, 19).

6. Contrary to the Employer's position, "'internal consistency' with respect to the payment of wages to Village employees" should not be considered (Un. Brief, 19). The "wages and benefits of employees...not similarly situated to those at issue are not relevant and should not [underlining in original] be relied upon by the arbitrator in making his award" (Un. Brief, 19). The "Village's reliance upon part-time salaries paid to elected or appointed officials, and to individuals in other bargaining units who have no job responsibilities in common with police officers is misplaced" (Un. Brief, 19).

7. The evidence shows that "different employees require differing compensation and benefits," and that the Village's attempt "to compare police officers to janitors, clerical workers and telecommunicators is irrelevant and should be disregarded" (Un. Brief, 20).

8. The Village has the burden of proving that the new wage schedule format it has proposed is necessary (Un. Brief, 21). A wage scale "similar to that proposed by the Village was negotiated in an earlier collective bargaining agreement," but that "wage scale included longevity payments which are not part of the Village's final offer...and...was discarded by the parties through subsequent negotiations" (Un. Brief, 21).

(b) The Employer

1. Under the Act, the "arbitrator must consider '[t]he 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'" (Emp. Brief, 24). The "Village recognizes that its wage scale has historically been lower than either its own or the Union's comparable communities," but these "lower wages are offset by other benefits, such that its total compensation package is well within the ranges of comparable communities" (Emp. Brief, 25). Justice "ranks fifth of six communities in total value of compensation at start and in years 6, 11, and 16, fourth of six at the second step of the Village's proposed agreement, and first at year 21" (Emp. Brief, 25). In "some cases...the Village exceeds the average compensation for comparable communities when total compensation is considered" (Emp. Brief, 25).

2. The 15¢ per hour increase across steps in each year of the contract will result in a 65¢ per hour increase for officers each year or "an average percentage increase of 5.52% for the first six steps in the 1996-97 contract" (Emp. Brief, 26). This "increase is the same as those negotiated with most other Village employees" and "well above cost of living increases, which the parties have stipulated to be 2.5%" (Emp. Brief, 26).

3. The Union's proposal of a 5% increase across steps in each year of the contract "translates into an average increase of 8.99% for each of the first 6 steps for both years

of the contract" (Emp. Brief, 26). At "step 1 of the 1996-97 contract, the Union's proposal represents a 9.36% increase in basic wage rates." Over two years, "officers will receive on average a wage increase of nearly 18%" (Emp. Brief, 26). These increases are "exorbitant" (Emp. Brief, 26).

4. Discussion and Findings

(a) Comparability

Wage and total-compensation comparisons are shown in Tables 15 and 16. Table 15, based on a Union exhibit, shows wage comparisons for all the proposed comparables, including those withdrawn by the Employer. Table 16, based on data provided by the Employer, includes only the Employer's proposed comparables with respect to "total compensation."

Table 15: Union Wage Comparisons (the established comparables are in SMALL CAPS) (Union Exhibit 1(6))

Municipality	Wages Start	Wages 5 yrs	Wages Top	Years to Top
Bridgeview	29,419	38,146	39,686*	6
CHICAGO RIDGE	30,342	41,119	41,119*	4
COUNTRYSIDE	30,521	46,011	46,011*	4
HICKORY HILLS	28,912	42,090	44,850*	6
Indian Head Park	26,000	30,000	43,000	No Steps
LAGRANGE PARK	32,120	43,187	45,859	6
Markham	31,140	36,636	36,637*	3
Matteson	36,717	42,068	44,630*	6
Palos Heights	30,008	No Data	50,035	6
Palos Hills	26,600	38,000	38,000*	5
Palos Park	29,003	35,905	38,308*	7
Richton Park	29,500	38,000	43,000*	No Steps
SUMMIT	25,700	36,900	36,900*	4
WESTERN SPRINGS	33,734	40,340	44,007*	6
Willow Springs	24,198	30,648	30,648*	5
WORTH	27,266	34,764	42,692	7
Justice: Union (1st yr)	26,125	31,574	44,678	20
Justice: Union (2nd yr)	27,435	33,155	46,925	2
Justice: Emp (1st yr)	25,189	30,389	42,245	20
Justice: Emp (2nd yr)	25,501	30,701	42,557	20
Justice: Current	24,877	30,077	42,557	20

* Indicates officers receive longevity pay in addition to top pay.

Table 16: Employer Total Compensation Comparisons
(Employer's Brief, page 25)

	Start	2nd	6th	11th	16th	21st
Hickory Hills	37,416	42,083	57,167	58,030	58,030	58,030
Richton Park	38,139	40,050	47,536	50,882	54,498	54,748
Summit	36,500	39,978	51,227	51,587	52,671	54,869
Willow Springs	31,994	37,918	40,621	41,910	42,609	42,609
Worth	32,928	34,801	47,420	48,847	50,298	51,034
Justice	32,453	39,288	45,334	48,054	48,054	61,812
Rank	5	4	5	5	5	1
Average of comps	35,395	38,966	48,794	50,251	51,621	52,258
Median of comps	36,500	39,978	47,536	50,882	52,671	54,748

Although comparability is probably the most important factor in interest arbitration, I cannot rely on the comparisons proposed in this case. The suggested comparisons are not comparable in any meaningful way. First, with the exception of Hickory Hills, the Employer has offered no information on the Union's proposed comparables. Second, I cannot compare unlike things—"total compensation" and "wages." As there is no way to reconcile these disparities, I cannot place substantial weight on comparability. In any event, even though Justice police officers do not generally measure up—their pay is "below average"¹⁹—without evidence showing how Justice police officers have traditionally stood in comparison to police officers in comparable communities, their standing relative to their peers is not determinative.²⁰ In short, comparability is not a dispositive, or even a decisive, factor.

¹⁹ Obviously, all police departments cannot have "above average" pay.

²⁰ Data provided by the Union (Table 15) shows that Justice currently ranks below average among the communities I found comparable at "start," "five years" and "top." The "total compensation" information provided by the Employer (Table 16) indicates that Justice ranks 4th or 5th out of 6 at all points on the salary schedule except for year 21.

(b) Cost of Living

The parties have stipulated that recent cost of living increases are 2.5% (Emp. Brief, 26), a figure I can and shall adopt. Standing alone, the 5% increase proposed by the Union is substantially in excess of 2.5%. When automatic annual step increases are taken into consideration, the Union's proposal would substantially exceed cost-of-living factors. The Employer maintains that the Union proposal "translates into an average percentage increase of 8.99% for each of the first 6 steps for both years of the contract" (Emp. Brief, 26). The Employer computes the total percentage increases, including step increases, it has proposed at 5.52% for 1996-97 and 5.46% for 1997-98 (Emp. Brief, 26). Discounting the effect of step increases, the 15¢-per-hour increase proposed by the Employer is substantially below recent cost-of-living increases, ranging from 1.2% after 1 year, to 0.88% after 10 years, to 0.73% after 20 years.

(c) A Substantial Change in the Salary Schedule

I cannot ignore the single most critical element of the Employer's proposal—the substantial, indeed radical, change in the wage schedule, in the method of computing wages. The Employer would reduce the number of steps from 21 to 8, compressing the 6th to 17th years of service into a single step at Step 7.

The Union cited *City of Springfield*, S-MA-18 (Berman 1987) for the proposition that "[w]ithout economic or operational justification, it is inappropriate [for an arbitrator]

to take away employees' benefits" and *City of Markham*, S-MA-95-63 (Berman 1995) and *Will County* (Nathan 1988), for the principle that

...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.

I remain reluctant to "markedly change the product of previous negotiations" by implementing "entirely new procedures," particularly those involving the most basic element of employee remuneration—wage computation. Since only one employee had reached Step 7 by the time of this writing, one could argue that the suggested modification of the current step schedule is academic, that few employees will be critically affected. However, in labor relations, as in physics, inertia is a powerful force; and it may be almost as difficult to change an established condition of employment—particularly a condition of employment as significant and basic as a wage schedule—as to change the course of a heavy object in gravitational free-fall.

In the absence of any substantial justification, I shall not modify the step schedule the parties have negotiated. Only one police officer has more than five years of service (UX 9), and without some countervailing reason I do not consider it appropriate to adopt a new step schedule that would further encourage police officers to resign after they have gained some degree of on-the-job experience.

(d) Conclusion

The Employer argues that the 50¢-per-hour step increase must be taken into consideration when calculating wages. Annual step increases should not be taken for granted. They represent money in hand for employees and money out of pocket for the Employer. Nevertheless, this benefit, which amounts to a tangible recognition of the importance of seniority and on-the-job experience, is not necessarily equivalent to percentage wage increases.²¹

Had the Employer's wage proposal been less penurious and not coupled with a radically new step schedule, the annual 50¢-per-hour step increase might weigh decisively in the Employer's favor.²² On balance, however, the Union's somewhat extravagant wage proposal, when coupled with retention of the current step schedule, is more equitable than the Employer's proposal of a somewhat stingy wage increase coupled with a radical change in the step schedule. It is difficult to take away police officers' current step schedule and leave them with a mere 15¢-per-hour wage increase. Finally, although, as noted, comparability is not dispositive, I cannot help but

²¹ Traditionally, unions insist that step increases should not be counted as part of the cost of a new package—that step-increases are simply part of the base to which percentage or cents-per-hour increases are added. Maintaining that "money is money," employers often take a contrary position. In interest arbitration, either position would seem valid, depending, to a great extent, on how the parties themselves have viewed step increases in past negotiations. In this case, there was little evidence of bargaining history with respect to the treatment of step increases.

²² Based on current wages, a 50¢-per-hour step increase amounts to a 4% increase after the first year, a 2.9% increase after the 10th year and a 2.4% increase after the 20th year.

realize that Justice police officers are relatively poorly compensated.

I must choose one of the competing proposals; I cannot select parts of one and parts of another or effect a compromise. It is difficult to justify a wage increase substantially in excess of the cost of living. It is even more difficult to justify a new wage schedule that would freeze employees on the same step for 11 years.

In *Loves Park & Illinois FOP*, S-MA-95-113 (1996), I wrote at page 40 that,

the danger of final-offer arbitration, perhaps rare (but critical when it occurs) is an 'inequitable settlement.' Where...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,' an arbitrator may well be compelled to choose between two *inequitable offers*—offers that are widely divergent rather than prudently narrow.²³

It is not an exaggeration to characterize the competing offers submitted here as "widely divergent." Unconstrained, I might combine the best features of both offers. But I cannot. On balance, I consider the Union's wage proposal more equitable and more consistent with Section 14(h) of the Act.

VI. Summary of Award

In summary, I have made the following determinations with respect to the issues in dispute:

1. Holidays and Personal Days: I adopt the Employer's final offer.

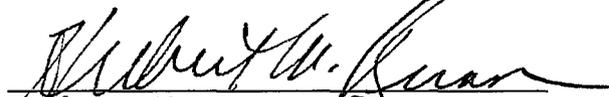
²³ See Anderson & Krause, *supra*, n. 2, ch. 63, §63.03[1] and Laner & Manning, *supra*, n. 7, at 843, respectively.

2. Sick Leave: I adopt the Union's final offer.

3. Accumulation of Sick Leave: I adopt the Union's final offer.

4. Wages and Wage Scale Format: I adopt the Union's final offer.

All tentative agreements reached by the parties are incorporated herein and made a part hereof by reference. All wages and benefits shall be retroactive to May 1, 1996.


Herbert M. Berman
Arbitrator

May 19, 1997