

Under Article XV of the Agreement, the parties established the following wage structure:

1. Effective May 1 each contract year, across-the-board increases to each officer's salary, and the minimum and maximum of the salary range (Section A); and
2. Effective on the officer's anniversary date pursuant to their yearly evaluation, merit pay increases from 0 to 7% for officers who were not at maximum rate;

- or -

an equivalent bonus payment for employees at maximum rate (Referred to as Senior Employee Incentive Program or "SEIP" benefits)(Section D)(Er. Ex. 2 at 20-21; U. Ex.2 at 20-21).

This merit-based wage structure is substantially identical to that contained in the Village's very first Collective Bargaining Agreement covering police officers, first executed in April of 1984 (Er. Ex.1 at 20-21). The Union's first contract with the Village was effective in 1990, and all subsequent Union contracts have contained this same merit-based wage structure (Tr. 6,70).

There is no dispute that at the time the parties were negotiating their current Agreement, the Union was aware the Village was also in the process of having an outside consultant evaluate the need for change, if any, in its existing merit-based "Pay-For-Performance" plan." The result was the so-called "Graber Study" (Tr. 9-10). Because the Graber Study and the new evaluation form had not been completed prior to execution of this Agreement, the parties agreed to reopen the Agreement for negotiation of the following specific issues for the last year of the Agreement:

1. Wages (Article XV, §A.);
2. SEIP benefits (Article XIII); and
3. Pay for performance (Article XV, §D).

(Er. Ex.2 at 19; U. Ex.2 at 9; Tr. 6-7.)

The parties further agreed that, in the event an impasse was reached in these "reopener" negotiations, the parties would submit such dispute to interest arbitration pursuant to the Illinois Labor Relations Act, 5 ILCS 315/14 (the "Act"). (Er. Ex.2 at 19; Article XV, §A.4).

In July, 1995, the Graber Study was completed. (Er. Ex.8; Tr. 79). On April 23, 1996, and pursuant to Article XV, Section E of the Agreement, the Village notified the Union's representative of the existence of a new evaluation form for performance-based increases, and offered to discuss the new form with the Union prior to the form's use for officer evaluations occurring after May 1, 1996. (Er. Ex.6; Tr. 77). Article XV, Section E of the Agreement specifically requires the Village to give the Union 30 days' prior notice of any new or modified evaluation form and/or changes in point totals determinant of wage increases (Er. Ex.2 at 22). The Union met with Village representatives to discuss the new form on or about May 8, 1996, and took no official position regarding the new evaluation form. (Tr. 78).

On or about January 15, 1997, Village representatives acknowledged the Union's request to reopen the Agreement pursuant to Article XV, Section A.4., for negotiations on wages, pay for performance, and SEIP payments (Er. Ex.7; Tr. 78). Although the parties met and negotiated, the reopener negotiations failed to produce a new agreement regarding these items, and the parties have submitted these issues to the Arbitrator here for resolution, pursuant to the Act and in accordance with their Agreement (Er. Ex.2 at 19; Article XV, Section A.4).

II. THE PROPOSALS

As required by Section 14 (g) the Act, both parties submitted their last, best and final offer for consideration by the Arbitrator here. In summary, their proposals are as follows:

A. The Administration's Final Offer (See, *Brief for the Employer* at 3).

The major components of the Administration's final offer are as follows:

1. Effective May 1, 1997, across-the-board increases of 3% to each officer's salary, as well as to the salary range minimum/maximum.

2. Effective on the officer's anniversary date pursuant to their yearly evaluation merit pay compensation ranging from 0% to 8% in the aggregate, i.e., combined (a) base pay increases from 0% to 4.5% (for employees not at maximum rate), plus (b) an additional lump sum merit payment from 0% to 5.5% (for all employees).

3. Minor clerical changes (as characterized by the Administration), such as changing "Pay For Performance" to "Performance Management Incentive System", insofar as necessary to conform the Agreement to the revisions to the Village's merit pay system *and the new evaluation form adopted on May 1, 1996*. (Er. Ex.11).

B. The Union's Final Offer (See, *Brief for the Union* at 11-13; Appendix, *infra*).

The basics of the Union's final offer include:

1. With selected exceptions (see, Section B (Evaluations), sub-section (b) Changes to Evaluation Process), elimination of all performance-based merit pay increases and SEIP bonuses. (Er. Ex.13, Section (1)).

2. Effective May 1, 1997, increasing the maximum top rate by 3%, minimum rate by 4½%, and providing five equal steps in between, and requiring automatic placement of the officers on the

step which corresponds to their years of completed service (6 years = maximum) (Er. Ex.13, Section (2) A.).

3. The Village will conduct its evaluations of patrol officers 60 days prior to their anniversary date. (Er. Ex.13, Section (2) B.(a)).

4. The Village will use its old pay for performance evaluation form through the term of the Agreement. (Er. Ex.13, Section (2) B.(b)).

5. Extending to one year (from current 30 days) the advance notice required for any new evaluation system, and further requiring the Village to provide the Union with "clearly established and uniform standards and goals for the respective positions" required to meet "satisfactory" performance levels. (Er. Ex.13, Section (2)B.(b)).

6. Prohibiting the Village from requiring employees to be involved in any self-evaluations as part of their annual evaluation. (Er. Ex.13, Section (2) B.(b)).

7. Requiring the Village to give the Union at least 60 days' advance notice of any changes to the evaluation system, and requiring the Village to bargain with the Union if the Union determines that such changes impact upon the officer's ability to achieve a satisfactory rating and requiring any unresolved disputes regarding such changes to be subjected to interest arbitration. (Er. Ex.13, Section (2)B.(b)(i),-(ii).)

8. Providing that, on their anniversary date, all employees advance one step per year to the maximum based upon achieving minimally satisfactory standards. (Er. Ex.13, Section (2)C.).

9. Eliminating the current Agreement's language regarding removal of officers from service based upon substandard performance (Er. Ex.13, Section (2) D.(ii)).

10. Eliminating the current Agreement's language regarding the Board of Fire and Police Commissioner's jurisdiction to determine discharges for cause based on substandard performance (Er. Ex.13, Section (2) E.).

III. STIPULATIONS OF THE PARTIES

The sole issue for resolution is wages, effective May 1, 1997. (U. Ex.1, ¶5). The Village noted for the record that its agreement to enter into said stipulations did not waive its arguments that the Union's last, best and final offer was, in part or in its entirety, not arbitrable and beyond the scope of the Arbitrator's authority to award. (Tr. 4). The Village bases its challenge to arbitrability upon, the components of the Union's final offer which seek to rescind existing contractual commitments

regarding evaluations under the current Agreement. (Tr. 4, 87, 111-112). Although the parties stipulated that post-hearing briefs were to be submitted to the Arbitrator no later than 45 days from receipt of the full transcript of the hearing, the actual date set for such filing was February 17, 1998 (U. Ex.1, ¶9; Tr.119). The parties subsequently agreed to extend said filing deadline to March 6, 1998. Briefs were received and exchanged through the offices of the Arbitrator.

IV. STATUTORY CRITERIA

The parties stipulated that the Arbitrator's findings and decisions in this case shall be based upon the following factors set forth in Section 14 (h) of the Act, 5 ILCS 315/14(h), as applicable:

- (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 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.

V. POSITION OF THE ADMINISTRATION

The position of the Administration, as outlined in its lengthy post-hearing brief, is summarized as follows:

A. The Village's Proposed Comparables

The criteria used by the Village for analyzing comparables are commonly used in interest arbitration, including:

- 1996 Population
- 1997 No. of Village employees
- 1997 No. of employees in the Police Dept.
- 1997 No. of sworn officers
- 1996 Tax Year Equalized Assessed Valuation (EAV)
- 1996 EAV per person
- 1997 Fiscal Year General Corporate Revenues (GCR)
- 1997 GCR per person
- 1990 Median Household Income
- 1990 Median Home Value
- Distance from the Village (</> 20 miles)(Er. Ex.17).

In order to assess which municipalities were similar to the Village, the Administration established a +/- 28% range for all of the criteria except Median Household Income and Median Home Value. With regard to these two, the Union expressed its concern that the 28% range established by the Village was too broad as applied to such personal statistics as household data. The Village agreed, and established a +/- 20% range for household income and home value. (Er. Ex.18; Tr. 94).

Out of the eleven (11) criteria chosen, the Village argues six municipalities fell within the described ranges in at least nine (9) out of the eleven (11) categories. A seventh municipality, Hanover Park, fell within the described ranges 8 out of 11 times, and missed one category (1990 Median House Value) by only about \$2,000.00 (Hanover Park is also offered by the Union as an appropriate comparative). Finally, an eighth Village (Bloomingdale) fell in the described ranges 8 out of 11 categories. (Er. Ex.17). However, it falls within the described ranges in such key criteria as total employees for the Village, size of police department, number of sworn officers, total EAV, total general corporate revenues, median household income, and median household value. The only categories in which Bloomingdale does not fall within the described ranges are all functions of its smaller population (i.e., population, EAV/population, GGR/population). Accordingly, the Village views Bloomingdale as merely a smaller version of Carol Stream, and it should be viewed as an appropriate comparative notwithstanding the fact that its smaller population is not within the described range.

Based upon the foregoing, the Village states that the following municipalities are appropriate comparables to the Village of Carol Stream for purposes of this interest arbitration:

Addison
Bartlett
Bloomingtondale
Glendale Heights
Hanover Park
Streamwood
Wheeling
Woodridge (Er. Ex.19; Tr.95).

B. Analysis of Contested Variables.

The parties' agreement upon six (6) municipalities as being comparable to the Village allows for a conclusion that, if a contested community falls within the range formed by the agreed-upon comparables on a sufficient number of occasions, then such a municipality is also comparable to the agreed-upon set of municipalities. The suggested analysis therefore takes the following steps:

1. Agreed-upon comparable communities shall be identified. Those agreed-upon communities shall form a range of agreed-upon comparables for various factors to be used for comparison purposes to determine whether the municipalities upon which the parties could not agree are also comparable.
2. The appropriate factors for making the comparisons shall be identified. If the parties disagree on certain factors, a determination will be made as to whether those factors are appropriate measuring tools for comparison purposes.
3. The corresponding data for the relevant factors shall be compiled.
4. The municipalities shall be ranked within the appropriate factors (through tables and charts).
5. Comparisons will be made for the contested communities to determine how they compare with the range of agreed-upon comparables within the appropriate factors.

(*Brief for the Employer* at 9, citing Village of Liberville and FOP, S-MA-93-148 (Benn, 1995).

The Village suggests that the same process should be used here.

1. Agreed-Upon Communities.

Both of the parties have identified the following communities as comparables:

Addison
Glendale Heights
Hanover Park
Streamwood
Wheeling
Woodridge (Er. Ex.18; U. Ex.7; Tr. 95).

The Village states that these six (6) communities form the appropriate ranges for each of the various comparative criteria, for use by the Arbitrator here.

2. Comparison Factors.

As discussed in Section V.A. above, the Village used criteria which are commonly utilized in interest arbitration for analysis and selection of appropriate comparables. The Union's list of criteria is somewhat similar and includes the following:

1990 Population
1996 No. of sworn officers
1995 Tax Year Equalized Assessed Valuation (EAV)
1996 Fiscal Year General Corporate Fund Revenue (GCR)
1990 Per capita income
1990 Median Household Income
1990 Median Home Value
1996 Crime Statistics
Distance from Village (within 20 miles) (U. Exs. 5, 6, 7, 8, 9, 10).

3. 4. Compilation of Data

In addition to the six (6) agreed-upon comparables noted above, the Village offers the following communities as valid comparables: Bartlett & Bloomingdale (Er. Ex.18). The Union, in addition to the six (6) agreed-upon comparables noted, offers the following communities:

Lombard
Morton Grove
Niles
Palatine
Rolling Meadows
St. Charles
Villa Park
Westmont (U. Ex.7).

5. Comparison of Contested Communities to Agreed-upon Ranges.

Based on the foregoing, the Village states that the six (6) comparable communities selected by both parties generate the following ranges within each of the criteria categories articulated by the Village:

<u>CRITERION</u>	<u>RANGE</u>
1996 Population	28,500 - 35,579
1997 No. of Village employees	134 - 230
1997 No. of police dept. employees	66 - 89
1997 No. of sworn officers	37 - 59
1996 EAV	373,162,984 - 655,000,000
1996 EAV per population	10,488 - 20,276
1997 General Corporate Revenues	8,767,546 - 13,333,681
1997 GCR per population	272.63 - 401.31
1990 median household value	98,500 - 128,700
1990 median household income	39,848 - 57,018
Distance from Village	0 - 20

The task then becomes to determine how many times the challenged communities fall within the above 10 ranges. The results follow:

<u>VILLAGE</u>	<u>SCORE OF 10</u>
Bartlett	5
Bloomingtondale	5
Lombard	2
Morton Grove	5
Niles	2
Palatine	2
Rolling Meadows	4
St. Charles	3
Villa Park	6
Westmont	5

The Union appears to argue that Bartlett and Bloomingtondale are not appropriate by virtue of their omission from the Union's list of suggested comparables. If that is the case, then the Arbitrator should also find the Union's contested comparables to be inappropriate. With the exception of Villa Park, *none* of the Union's contested comparables fall in the comparable ranges more frequently than Bartlett and Bloomingtondale. In fact, five (5) of the Union's eight (8) contested comparables fall into

the comparable ranges *less* frequently than Bartlett and Bloomingdale. The Employer asserts that Niles and Villa Park should be excluded as appropriate comparables.

Accordingly, based on all the foregoing, the Village respectfully submits that either (a) the Arbitrator should adopt the Village's eight (8) comparables, or (b) if the Arbitrator is persuaded by the Union that Bartlett and Bloomingdale are not appropriate comparables to the Village in this case, then the Arbitrator must use the same standards to eliminate all eight (8) of the Union's contested proposed comparable communities, and the Arbitrator should then utilize only the six (6) comparable communities that were jointly asserted by the parties as appropriate comparables to the Village here.

C. The Union's Last, Best and Final Offer Exceeds the Authority of the Arbitrator to Award: The Arbitrability Defense

The Village has agreed to submit to arbitration only those matters which were properly within the scope of the re-opener provision of the Agreement and which were not resolved through bargaining. The parties' Agreement expressly limits these issues to "wages, pay for performance and SEIP benefits." The authority of the Arbitrator in this case is limited to consideration of only those issues which the parties expressly committed, through their Agreement, to reopen for negotiations, and that the Arbitrator has no authority to render any award beyond the scope of those issues.

Specifically, the Union's last, best and final proposal includes terms which were already settled in the parties' Agreement, and which were not subject to any agreement to reopen or renegotiate during the term of the Agreement, and therefore were not subject to interest arbitration here. Those areas in which the Union final offer "overreaches" include, *inter alia*, the Village's existing rights to evaluate its employees and to update its evaluation form, and the Agreement's incorporation of the statutory authority of the Board of Fire and Police Commissioners to discharge sworn peace officers.

Under Article III, the Management's Rights clause of the Agreement, the Village retains the right:

5. "to direct the working forces . . ."
11. "to introduce new or improved methods . . ."
13. "to establish work, productivity and performance standards . . ."

except as expressly limited elsewhere in the Agreement. (Er. Ex.2 at 2, Article III, §A.5., 11 and 13; U. Ex.2 at 2). The Agreement's only restriction on the Village's managerial right to adopt a new evaluation form for the officers' yearly evaluation appears in Article XV, Section E, which provides that the Village has the right to change, amend or modify the evaluation form upon 30 days' prior notice to the Union. (Er. Ex.2 at 22; U. Ex.2 at 22).

Under existing law, the parties' Management Rights clause constitutes the Union's waiver of bargaining over evaluations, which waiver justifies the Village's resistance to submission of this issue to arbitration. American Federation of State, County and Municipal Employees v. ISLRB and Illinois Department of Central Management Services, 274 Ill.App.3d 327, 653 N.E.2d 1357, 210 Ill.Dec. 895 (App. 1st Dist. 1995). The only language in the Agreement regarding evaluation of employees is contained in Article III (the Managements Rights clause) and Article XV, Section E (the procedural requirements regarding changes to the evaluation form). Accordingly, under AFSCME v. ISLRB & Ill.C.M.S., *supra*, the Village is not under any obligation to further bargain over changes in the evaluation form during the term of the Agreement, so long as it provided the Union with 30 days' notice of such amended form before its use. Similarly, because the Agreement's re-opener provision does not create any obligation on the part of the Village to bargain regarding evaluations or the authority of the Board of Fire and Police Commissioners, these matters cannot be part of the Arbitrator's decision.

The Village's position in this regard is further strengthened by Article XX, the Entire Agreement provision ("zipper clause") of the parties' contract, which provides that both parties have waived any right to bargain regarding any provision in the Agreement during its term. (Er. Ex.2, p.26). See, e.g., GTE Automatic Electric, 261 NLRB 1491, 110 LRRM (BNA) 1193 (1982). As noted above, the Agreement expressly provides for the Village's right to conduct evaluations as well as the procedures for implementation of any changes in the evaluation form (Er. Ex.2, p.22, Article XV, §E). Absent any express reference to these issues in the re-opener provision, the parties' Entire Agreement provision precludes any bargaining of these issues, or their submission to interest arbitration at this time. (Tr. 74).

Based on all the foregoing, it is the Village's position that the Union's last, best and final proposal is well outside the scope of the Agreement's wage re-opener provisions because it is inextricably intertwined with demands (a) to abolish the Village's existing contractual rights to evaluate employees; and (b) to alter the authority of the Board of Fire and Police Commissioners. Accordingly, the Union's final proposal should be stricken as a nullity because it exceeds the scope of both the parties' duty to bargain pursuant to the re-opener and this Arbitrator's authority to enter an award based solely on re-opener impasse issues.

D. Application of the Statutory Criteria Requires the Arbitrator's Adoption of the Village's Final Offer.

1. Applicable Burden of Persuasion. The Village's proposal leaves intact the long-standing key components to its pay structure, i.e., across-the-board wage increases on May 1, and merit increases or bonus payments on the employee's anniversary dates. The only differences in the Village's proposal are:

(a) *the use of a new form and point structure for scoring* (which, as discussed above, is well within its current contractual rights and is beyond the scope of this arbitration); and

(b) *adjustment of the maximum merit-based salary increase from 7% to 4.5%, and extension of merit-based bonus payments of up to 5.5% to all employees, not just maxed-out employees.*

In contrast, *the Union's proposal would completely eliminate any increases based on comparative merit of employee's performance. Further, the Union's proposal would eliminate the bonus payment available to maxed-out employees based upon performance.* (U. Ex.13).

There is absolutely no quid pro quo offered by the Union in this case as consideration for the replacement of the parties' historic merit-based wage structure with the Union's straight longevity step system. The Village submits that its proposal on wages is fully reasonable when measured against the statutory criteria.

2. Application of the Statutory Criteria:

(a) Lawful Authority of the Village. Neither party has introduced any evidence, nor taken the position, that adoption of either the Village's or the Union's proposal here would exceed the authority of the Village to implement. Accordingly, this statutory factor does not weigh against the Village's final offer.

(b) Stipulations of the Parties. The parties have stipulated that Wages effective May 1, 1997, to April 30, 1998, are the only issue before this Arbitrator for decision. (U. Ex.1, ¶5). Also, and as stated more fully in Section V.B. above, both parties have submitted the names of six (6) municipalities which they both assert are appropriate comparable communities to the Village in this case.

(c) Interests of the Public and Ability to Pay.

(i) Public Interest. While compensation increases have been tied to patrol officers' performance, Department surveys of the public have shown that the public has a high approval rating of the Department:

- . 93% of the public rated their initial contact person as very friendly or friendly.
- . 91% rated officer response time as prompt or acceptable.
- . 96% rated the responding officer as very friendly or friendly.
- . 91% rated the responding officer as effective.
- . 88% rated officer follow-up as exceptionally well or well.
- . 91% rated the officers' professional demeanor as very professional or above average.

93% rated their overall impression of the Carol Stream Police Department as very professional or above average.

(Union Ex.11 at 4, Carol Stream Police Department 1996 Annual Report).

In light of recent strains on its cash reserves, the Village became concerned that, with a 3% COLA increase and up to an additional 7% performance-based increase in salary, employees could regularly receive 10% increases in each year until they reached maximum pay. (U. Ex.20 at 16-17; Tr. 101-102). The Village sought to adjust the merit-based pay system to continue to reward employees, while slowing compounded increases in salaries. If the Village reduced the current pay for performance system without introducing other incentives, the net effect would be to decrease the motivational component of pay. (U. Ex.20 at 16). In fact, in the Graber Study, it was especially found that: "Reducing pay for performance would reduce the motivational component of pay system and could result in a loss of employee morale and performance." (Union Ex.25, pp.18-19).

The best information available to the Village indicated there was a high degree of correlation between merit pay, employee morale and public confidence in the Village's police officers.

(ii) Ability to Pay. The total cost of the Union's proposal is approximately \$137,466, or approximately 8.87% over total wages and bonus payment costs for the year ending April 30, 1997. (Er. Ex.14). By contrast, the Village's proposal would cost \$117,372, or 7.57% over the cost for wages and bonus payments for the year ending April 30, 1997. (Er. Ex.12). Although the Union's proposal exceeds the Village's by approximately one percent, it is the difference in distribution of individual increases, rather than the aggregate cost, which the Village argues is excessive here. (More on this later).

(d) Comparison to Other employees

(i) Internal Comparables. All internal comparability factors support the Village's proposal in this case. The Village's 3% across-the-board increase is the same as for all other Village employees, except for one group, a Public Works Department bargaining unit, comprised of only eight (8) employees. These employees received a 5% increase on May 1, 1997, one year later than the officers here, as a "delayed parity" measure. The merit-based pay plan proposed by the Village is applicable to all Village employees other than the police officers. Conversely, the Union has not, and indeed cannot, demonstrate that there is any employee group which receives its annual compensation on the same basis as proposed by the Union here, i.e., straight longevity-based increases without regard to relative performance or evaluation annual results. As such, this statutory criterion weighs in favor of the Village's proposal.

(ii) External Comparables

(A) Status Quo. The community's confidence in the Department's operation and its officers flourished under the existing merit-based compensation structure. In preparing for these proceedings, the Village reviewed how officers had fared on their evaluation scores in 1995 and 1996. The 2-year average evaluation score for officers in the bargaining unit was 80.13. (Er. Ex.4). Under the incumbent merit-based system, employees averaged nine (9) years to reach the maximum rate of pay. (Er. Ex. 30).

On the limited issue of the form of salary increases (i.e., "step" or "merit" plan), it almost doesn't matter what the list of comparables looks like. The Village's merit plan is admittedly not the typical plan contained in FOP Agreements (U. Ex.16; Er. Ex.20). However, it must be remembered that this is the system that has been negotiated between the parties throughout their entire collective bargaining history. The Village argues the Union must show that there is a much more compelling need to eliminate merit pay than simply because most villages do not have it.

(B) Impact of Village Proposal. In order to make a reasonable assessment of the costs of the Village's proposal, it was necessary to make certain assumptions regarding based upon employees' projected annual evaluation scores. The Village took the percentage equivalent scores from the officers' 1995 and 1996 evaluations, and averaged them for the two-year period. The Village used a two-year average to avoid a one-year "spike" in an officer's performance giving a misleading projection of costs. Seven officers had already received their evaluations and scores under the new form prior to the arbitration hearing. These scores, ranging from 0 to 5, were also converted to percent equivalents for comparison to the two-year average. In every case, the officer's 1997 score under the new form exceeded the two-year average under the old form.

Based on this information, the Village felt secure in predicting that, on the average, officers would do at least as well on the new evaluation form scores as their two-year average under the prior form.

Furthermore, because of the flaws in the Union's original premises for creating comparisons, its graphs based on such premises are similarly infirm and useless.

(C) Impact of Union Proposal. Arbitrators have considered the effect on the parties' final proposals upon the status quo in determining which proposal is to be accepted. Examination and comparison of the rankings generated by the parties' proposals as compared to the *status quo* rankings is illuminating as to the "Robin Hood" nature of the Union's proposal. Under the Village's plan, 20 out of the 36 officers improve their ranking as compared with the April 30, 1997 status quo. Of the remaining 16, three retain the same ranking as they did on April 30, 1997, and the remainder of the unit drops only one or two rankings from April 30, 1997 (Er. Rev. Ex.21, 23). In other words, the comparability results flowing from adoption of the Village's proposal is consistent with, and actually improves upon, the parties' bargaining history.

The rankings generated by the Union's proposal, however, generates much wilder swings in the rankings of the status quo. The Union's proposal would create profound upheaval, and would give the greatest rewards to officers whose own lack of exceptional performance has determined their present salary.

Further, the FOP proposal does not simply seek some sort of parity with the comparables, it seeks to go well beyond "making up" any existing "bow." Of the 23 employees who are not currently at the maximum rate, the FOP's proposal would place 22 of them in the top half of the comparables, 18 of which would be ranked 2 or 3. Such a drastic change in the status quo is not merely an attempt to correct the "bow." Rather, the Union's efforts would turn the parties' collective bargaining history inside out and should not be permitted here. It would be unconscionable to permit the Union to utterly negate any benefit that the Village has received over the years in exchange for its concessions to the Union in prior negotiations. *Certainly, the Union has not offered any substantive quid pro quo which would warrant the granting of the Union's demand for so extraordinary a change in the Village's compensation system.* Accordingly, the external comparability factors support the reasonableness of the Village's proposal.

(iii) Private Sector Comparisons

As the Union correctly notes, growing trends in private sector comparison patterns favor the Village's approach. The Graber Study acknowledges this ethic as part of its recommendation to adopt the revised evaluation form and adjusted bonus payment structure. (Tr.10, 11, 58). By the Union's own admission, any consideration of private sector comparables favor the Village's proposal here.

(e) Consumer Price Index (CPI)

As of May 1, 1997, annual CPI-U for the Chicago area was 2.7%. As of the date of the hearing, CPI had continued to decrease to 2.2%. Under the Village's proposal, all employees get, at an absolute minimum, a 3% across-the-board increase to their base wage. When performance-based salary increases and bonuses are factored in, projections based upon the employee's prior scoring on annual evaluations, the total net increases under the Village's proposal ranges from 4.2% to 11.2%. Clearly, the Village's offer, which under any scenario clearly exceeds the CPI-U, does not by itself detract from an officer's efforts to keep pace with cost of living increases.

Finally, the Union strategically omits the Village's proposals to pay any performance-based salary increases, and/or lump sum bonus payments on the employee's anniversary date during the year starting May 1, 1997. The Union continues to compound this infirm analysis on Page 2 of its Exhibit 32, basing its chart on the fatally-flawed (and wholly untrue) premise that an employee's salary will have not moved from May 1, 1996 through October 1, 1997. For all these reasons, the Union's arguments regarding CPI, and its Exhibits in support thereof, should be completely rejected.

(f) Overall Compensation

The Graber Study states that the overall compensation package for patrol officers of the Village is competitive. The Union introduced no evidence which would indicate that the relative assets/detriments of the remainder of the compensation package supports adoption of the Union's wage proposal. Accordingly, this statutory criterion does not weigh against the Village's proposal.

(g) Other Factors

A key concern with the pay-for-performance system was the employee's dissatisfaction with the evaluation format itself. Specifically, employees felt that there was too much "mystery" and "secrecy" surrounding the evaluation process. In order to address this concern, part of the revision of the plan was to incorporate the employee's participation and create better communication between the employee and their supervisor regarding the past year's performance, and goals for improvement in the next year.

An additional concern was that the Village's prior annual evaluation form was a "generic" form that was applied to all employees, regardless of department or function. (Er. Ex.3; Tr.74). The new performance review document was created to be specifically tailored to each employee's classification/position, but at the same time contain certain common elements and consistency within the departments for internal equity. (Er. Ex. 8 at 5).

Because the changes in the evaluation instrument were, in many respects, employee-driven, and are intended to be used to more accurately assess the successful performance of patrol officer's duties in their employment, the Village respectfully submits that these factors weigh in favor of adoption of the Village's proposal.

The Union has consistently chanted its mantra that it seeks its current wage proposal to undo "unfairness" and "inequities." (Tr. 69). First, the Village states that the Union's characterization of the Village's current pay plan as "unfair" is based upon its inexcusable understatement of the compensation paid to the employees through the merit-based system. Second, and most importantly, a merit-based compensation system is the system which the Union has consistently bargained for and made the Village grant concessions to retain. Even if the system were inequitable (which the Village denies), arbitrators have consistently held that it is not their province to undo every inequity. The Union should not be permitted to extort through interest arbitration what it has never responsibly pursued at the table through the give-and-take of good faith negotiations.

* * *

Based on all the foregoing, the Village respectfully submits that the Union has not met its burden to establish that there is any compelling need to change to its proposed straight seniority step

salary increase structure, or that it has offered an appropriate quid pro quo in exchange for the complete elimination of merit-based pay from the Village's compensation system. Because the Union has not met these standards, and because the Village's proposal is not in any way unreasonable in light of all the statutory criteria, the Village respectfully submits that this Arbitrator must enter his award implementing the Village's wage proposal.

VI. POSITION OF THE ASSOCIATION

The Association's position, as outlined in its post-hearing brief, is summarized as follows:

A. The Arbitrability Issue Raised by the Employer

While the language of the two articles cited by the Employer may have some import in a grievance arbitration setting, they are not supportive of the Employer's position in these interest arbitration proceedings. Both the management rights and entire agreement provisions contemplated future changes to the language of the agreement. Article XX provides in part:

Therefore, the Village and the Council, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right and, except as expressly provided elsewhere in this Agreement, each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter to specifically referred to, or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. (Un. Exh. 2 at 26).

The agreement "expressly" provided a re-opener of the terms of the contract concerning wages, SEIP and pay-for-performance in Article XV. Pursuant to this re-opener the parties negotiated and exchanged proposals not only on wages, but also on the subject of evaluations. It is simply not possible to separate the "evaluation" portion of the wage issue from either party's final offer. The two are inextricably tied to each other. The Employer's proposed changes to the evaluation system, and the Union's unwillingness to agree to those changes, is the very issue that brings these parties before the Arbitrator.

Similarly, the management rights clause of the agreement is a general declaration of rights reservation, subject to the express remaining terms of the agreement:

It is understood and agreed that the Village possesses the sole right and authority to operate and direct the employees of the Village and its various departments in all aspects, including,

but not limited to, all rights and authority exercised by the Village prior to the execution of this Agreement, except as modified in this Agreement. (Union Ex. 2 at 2).

The parties contemplated modifying the terms of the collective bargaining agreement as they related to wages, SEIP benefits and pay-for-performance when they agreed to the re-opener. If the Employer truly believed that wages, and wages only, were to be the subject of those negotiations why did it attempt to involve the Union in the development of the plan? Why did the Employer insist upon the re-opener that included the sections of the contract dealing with "pay-for-performance" and "SEIP" benefits? The obvious answer is that it is not possible to deal with the wages of the agreement without also considering the means by which increases to those wages are determined. Merit pay plans can hardly be the subject of meaningful negotiations unless the system for achieving the merit pay is discussed – and the evaluation system is central to achieving merit pay.

This is also supported by the fact that the Employer's final offer proposes changes in the very same sections of the contract that it wishes to restrict the Union from proposing:

Section B. Pay-For-Performance Plan. The Employer re-titles this Section as "Performance Management Incentive System".

Section D. Pay-For-Performance Procedures and Amounts. The employer's proposal completely guts this section of the contract, replacing it with new formulas for wage increases and bonus pay based upon its new evaluation system.

Section E. Below Standard Evaluations. The Employer has also changed portions of this section in order to set new standards for achieving the status of a "below standard employee".

Finally, the Union sees its inclusion of some form of evaluations in its final offer as movement towards the Employer's position. The fact that the Union attempted to reach an agreement short of arbitration should not now be held against it in the form of an arbitrability argument. Whether employees move through a step plan with satisfactory evaluations via the Union's proposal or receive increases or bonuses via the Employer's proposal, they are both based upon an evaluation. It is for these reasons that the Employer's assertions on the issue of arbitrability must fail.

B. The Statutory Factors

Among the eight factors set forth in Section 14 (h), there are three that have been consistently identified by Illinois arbitrators as being the most critical in interest arbitration. In nearly every economic award issued to-date, arbitrators have typically looked to pay and benefits received by

other similarly situated employees, what effect inflation has had on the employees' purchasing power, and whether the employer has the ability to pay the wages that the arbitrator deems appropriate. The Union asserts its final offer will more closely achieve the "equitable and effective" resolution of this labor dispute as envisioned by the Legislature in the Act.

C. The Union's Comparables are Appropriate for Adoption by the Arbitrator

The Village has in effect "gerrymandered" its comparables. It is for this reason that the Arbitrator should reject the Employer's approach to comparability. Similar strict mathematical approaches have been rejected in several other interest arbitration proceedings. See, City of Springfield & Police Benevolent and Protective Association, Unit No. 5, (Benn) and City of DeKalb and DeKalb Professional Firefighters Association, Local No. 1236, (Goldstein)(discussed *infra*). In this respect the Union asserts that communities only need be similar -- not identical -- as defined by some arbitrary percentages. The Union's proposed jurisdictions are representative of the labor market surrounding Carol Stream as well as falling in line with Carol Stream on a number of demographic and financial statistics:

Labor Market: All of the Union's proposed comparable jurisdictions are located within 20 miles of the Village of Carol Stream. (Union Ex. 5) Twenty miles was chosen due to the dissimilarity of jurisdictions and/or lack of jurisdictions beyond the 20-mile mark.

Population: All of the Union's proposed comparable jurisdictions fall roughly within 30% +/- Carol Stream's 1990 Census population. Two jurisdictions, Villa Park and Westmont are so close to being within 30% of Carol Stream's population that it seemed reasonable to include them. These two communities also lined up demographically with the remaining jurisdictions. (Union Ex. 6).

30% Population Range:	22,400	to	41,600
Carol Stream's Population:	31,716		

Demographics: All of the Union's proposed comparable jurisdictions have similar demographic statistics. (See, Union Ex. 7, reprinted *infra*).

Equalized Assessed Valuation: All of the Union's proposed comparable jurisdictions have similar Equalized Assessed Valuations as reported in the 1996 Annual Financial Reports filed with the Comptroller of the State of Illinois. (Union Ex. 8).

General Fund Revenue: All of the jurisdictions proposed by the Union reported similar General Fund Revenues for the fiscal year ending in 1996. (Union Ex. 9).

Total Full-Time Sworn Officers: The police departments in the jurisdictions proposed by the Union have a similar number of full-time sworn police officers. (Union Ex. 10)

Activity Statistics: Each jurisdiction reported a similar number of index crimes in 1996. (Union Ex. 11)

To illustrate the problems inherent with the Employer's approach to comparability, the Union applied the Employer's arbitrary selection of percentage ranges to its points of comparison:

Range	Jurisdictions Falling Within Range
+/- 30% Population:	All jurisdictions except Villa Park & Westmont
+/- 30% Median Home Value:	All jurisdictions
+/- 30% Per Capita Income:	All jurisdictions
+/- 30% Median Household Inc.	All jurisdictions
+/- 35% EAV:	All jurisdictions except Palatine

Range	Jurisdictions Falling Within Range
+/- 35% General Fund Revenue:	All jurisdictions except Niles
+/- 35% Total Sworn Officers:	All jurisdictions except Palatine
+/- 35% Index Crimes:	All jurisdictions

While all of the jurisdictions fall within the established ranges at least "6 out of 8" times, if the Union moved these "arbitrary" percentages slightly it could also incorporate those that slightly missed the mark on two occasions. This is exactly why it makes more sense to view the data in the manner in which the statute envisioned as opposed to with "mathematical" precision. The Arbitrator needs benchmarks to evaluate the reasonableness of the parties' proposals – not arbitrary formulae purporting to yield "twin" cities to Carol Stream.

While each arbitrator finds his or her own method of sorting out the data and settling comparability disputes, the Union urges this Arbitrator not to merely adopt only those jurisdictions which are "mutually" agreed to by the parties (i.e., those which appear on both lists). The notion that the arbitrator's quest for a set of comparables should begin and end with those jurisdictions simultaneously appearing on both parties' lists can lead to absurd results. The jurisdictions in common cannot be relied up to set the sole parameters of comparison.

The Union's list of comparables were drawn from those communities geographically close to Carol Stream. Each community on the list has characteristics in common with Carol Stream. That is not to say they are identical, but rather appropriate for comparables. What the Union has attempted to provide the Arbitrator is a general picture of the labor market by examining a number of communities.

The statutory direction to examine "comparable" communities does not envision an arbitral quest for twin cities. It was a call from the Legislature for the parties and the arbitrator to examine jurisdictions with characteristics in common, note similarities and dissimilarities, and draw general conclusions concerning appropriate wages, hours, term and conditions based on that examination. The only conclusion that can be drawn after examining the wages in fourteen surrounding jurisdictions is that the police officers in Carol Stream are not being paid in a manner similar to their counterparts.

D. The Jurisdictions Located Within Carol Stream Labor Market Support Adoption of the Union's Final Offer

The "collective wisdom" of the fourteen jurisdictions surrounding Carol Stream demonstrates more persuasively than any other evidence submitted by the parties that there is a problem with the pay plan of the Carol Stream police officers, particularly as proposed in the Employer's final offer. Twelve of the Union's proposed jurisdictions have wage rates in place for fiscal year 1997. (Union Ex. 12). In the two remaining jurisdictions, Lombard's salaries reflect that Village's current offer of 3.5% while St. Charles' salaries are based upon an estimated 3% "cost-of-living" increase effective May 1st.

In order to evaluate where Carol Stream police officers are paid in relationship to the counterparts in similar jurisdictions, the Union examines wages from two different perspectives. First, the salaries are evaluated in terms of the averages at various years of service from start pay through 20 years. (Union Ex. 12). Those averages demonstrate that Carol Stream cops are behind other police officers at each and every point of their careers.

Years of Service	Average of Comparables	Carol Stream Current	\$ Diff. w. Average	% Diff. w/ Average
Start	\$ 35,388	\$ 32,521	(\$2,867)	-8.82%
1 Year	\$ 38,449	\$ 32,521	(\$5,928)	-18.23%
2 Years	\$ 40,670	\$ 33,659	(\$7,011)	-20.83%
3 Years	\$ 42,770	\$ 35,854	(\$6,916)	-19.29%

4 Years	\$ 45,115	\$ 36,226	(\$8,889)	-24.54%
5 Years	\$ 47,087	\$ 38,195	(\$8,892)	-23.28%
6 Years	\$ 48,786	\$ 41,597	(\$7,189)	-17.28%
10 Years	\$ 49,672	\$ 46,056	(\$3,616)	-7.85%
15 Years	\$ 50,293	\$ 47,591	(\$2,702)	-5.68%
20 Years	\$ 50,370	\$ 47,591	(\$2,779)	-5.84%

(Union Ex. 13).

The most notable disparities between Carol Stream's salaries and the comparables are between the 1st and 6th years of service. The cause? The merit plan -- a fact which the Village acknowledged during its presentation. The Village attempts to minimize the impact of these disparities by using wage rates that are a year behind in its exhibits. In other words, rather than examining wages for the year that is in dispute (1997- 1998), the Employer presents wages in effect in its comparable jurisdictions the last day of the 1996 fiscal year. (Tr. 96-97). Though the Employer may tout them as 1997 wages because they are in effect on April 30, 1997, April 30th is the last day of the 1996-1997 fiscal year -- and therefore appropriately are viewed as 1996 wages. If the Arbitrator is to evaluate the parties' wage proposals which become effective May 1, 1997, it is not only more accurate, but more relevant, to examine the wages paid in the comparable jurisdictions during the same time period. There is simply no reason to go back a year in time other than to portray Carol Stream officers to be in better shape than what they really are.

The Union also asserts that Carol Stream Police are also behind their counterparts in terms of rankings. Carol Streams' current salaries rank dead last at each and every year of service from start through twenty years. (Union Ex. 15). It is predictable that if the Employer's final offer is adopted in these proceedings the police officers' wages in Carol Stream will continue to lag further and further behind those of their counterparts. It is a trend that will never be broken until the officers are paid in a manner similar to police officers in the surrounding jurisdictions. This can only be accomplished by putting a structured pay plan, commonly referred to as a "step" pay plan in place in Carol Stream.

All fourteen jurisdictions proposed by the Union have a step-based pay plan in place. (Union Ex. 16). This common form of compensation involves advancement through incremental pay steps based upon years of service. In seven of the collective bargaining agreements, employees advance automatically to the subsequent pay step on their anniversary date of hire. In the seven remaining jurisdictions, movement is not only based upon the anniversary date, but employees must meet also meet "average" or "satisfactory" standards. (Union Ex. 17). The Union's wage proposal is consistent

with the comparables in that it also encompasses movement based upon anniversary date as well as meeting satisfactory or average standards.

When the Union set about developing its proposed pay plan, it took into consideration several factors:

- Maintaining the current years of service necessary to reach top pay;
- Addressing the wage inequities with the comparables at specific years of service;
- Symmetry in between the steps of the plan;

In order to achieve these goals, the Union formulated the step plan as follows: The current starting salary was increased by 4.5% and the current top pay was increased by 3%. The steps between start and top were formulated by subtracting the starting salary from the top salary, with the remainder being equally divided into 5 steps. The dollar amount between each step is \$2,505.71. (See Union's Final Offer) The resulting schedule brings Carol Stream's wages more in line with the comparable jurisdictions (Union Ex.. 13, 14, & 15):

Years of Service	Average of Comparables	Union's Proposal	\$ Diff. w/ Average	% Diff. w/ Average
Start	\$ 35,388	\$ 33,984	(\$1,404)	-4.13%
1 Year	\$ 38,449	\$ 36,490	(\$1,959)	-5.37%
2 Years	\$ 40,670	\$ 38,996	(\$1,674)	-4.29%
3 Years	\$ 42,770	\$ 41,502	(\$1,268)	-3.06%
4 Years	\$ 45,115	\$ 44,007	(\$1,108)	-2.52%
5 Years	\$ 47,087	\$ 46,513	(\$ 574)	-1.23%
6 Years	\$ 48,786	\$ 49,019	\$ 233	.47%
10 Years	\$ 49,672	\$ 49,019	(\$ 653)	-1.33%
15 Years	\$ 50,293	\$ 49,019	(\$1,274)	-2.60%
20 Years	\$ 50,370	\$ 49,019	(\$1,351)	-2.76%

The Union's proposal specifically addresses the overwhelming need for catch-up at the middle years of service. Though Carol Stream will be ever so slightly ahead of the average of the

comparables at the sixth year of service by \$233, the Employer also proposes that "top pay" be increased to \$49,019. In spite of the fact that it acknowledges problems in the pay plan at the early years of service, the Employer proposes a new evaluation and merit system that will continue to perpetuate depressed salaries during the earlier years of service.

In spite of the controversy surrounding the Graber study (discussed at *Brief* at 28-31), and the Chief's concerns about a mass exodus of his officers as a result of increasing the years of service to top pay, the Village continued full speed ahead on its course to institute a predominantly private sector plan for all of its employees. On July 31, 1995 the Village announced the new compensation and evaluation system would go into effect on May 1, 1996, and would be used to form the basis of wage increases effective with the fiscal year beginning May 1, 1997. Though the Union and Employer had not yet begun negotiations on the re-opener, the adoption of the largely private-sector pay plan had already set the stage ripe for dispute.

E. Ability to Pay and the Interest and Welfare of the Public

The Employer's stated at the hearing that it "is not our intent to plead poverty." (Tr. at 79). The audited financial statements of the Village indicate that Carol Stream enjoys a sound economic status (Union Ex. 4). The Village has had the ability to pay off its current liabilities with accumulated cash and investments for each fiscal year from 1993 through 1997. In addition, the Village enjoys such a significant revenue stream from sales tax, that it has no need to levy any property taxes upon the citizenry of Carol Stream. Sales taxes have increased from \$6,824,922 in 1993 to nearly \$9.5 million in 1997. Further, Carol Stream surpasses every comparable jurisdiction in terms of its Ending General Fund Balance.

The efficient operation of the Carol Stream Police Department reduces the dangers to the public that accompany crime: injuries and death to the citizenry, loss and damage to personal business property, loss of income, and the more difficult to quantify, but no less important, loss of the feeling of safety and security in the homes and daily lives of the citizens of Carol Stream. That efficient operation in part, is accomplished by hiring and maintaining competent and comparatively appropriately paid police officers.

F. Cost of Living Criteria

While the effects of inflation are a factor that the Arbitrator is empowered to consider in weighing the appropriateness of final offers, the Union does not believe it should be the controlling factor in this case. The wage disparities between Carol Stream officers and their counterparts in the comparable jurisdictions are not about inflation. These employees are behind the comparable jurisdictions because they have lived under an outdated merit plan.

G. Conclusion

In summary, the Union maintains each party seeks a departure from the status quo. Neither can be said to bear the extraordinary burden of supporting a "breakthrough" in arbitration. Rather, each party's final offer must be examined on the basis of its merit and how it comports with the statutory factors of Section 14 (h).

The Employer asks the Arbitrator to adopt a system of establishing officers' pay that is fraught with subjectivity and the false illusion of mathematically certain determinations of relative merit and worth. The fact the Village claims to have the ability to make fine line distinctions should serve as a caution to all involved in these proceedings. Whether this claim of ability is based in arrogance or a belief in one's own mystical powers, it is nonetheless ominous. It forebodes employee discontent, disaffection and disruptions in the stability of labor-management relations in the Carol Stream Police Department – one of the central purposes for which the Illinois Public Labor Relations Act was made applicable to police officer collective bargaining.

The Village asserts the employees' opposition to the new pay plan was based on the fear of the unknown. If the Village's final offer is adopted, the police officers in Carol Stream will be forever chained to an inequitable and absurd pay plan. The number of years to top pay will be increased, most of their salary increases will be in the form of bonus pay that lapses each year, and the Carol Stream officers will forever lag behind even the most underpaid of their comparable counterparts. These are not the unknown – they are the known, and the prospect of their occurrence is rightfully frightening to the officers.

That there were problems in the previously existing merit pay plan was evident. Both parties came to the hearing offering a cure. The Union's offer is consistent with the comparables, maintains an element of merit, but one which is definable and attainable, and places these officers on the road to internal and external pay equity. The cure the Village offers is worse than the problems it was designed to alleviate. The Union seeks a comparable pay system and internal equity among similarly situated employees. The Employer is gravitating toward the private sector – bonuses, disparate increases for similarly situated employees, and internal competition judged on subjective notions of comparable worth among employees.

VI. DISCUSSION

A. Arbitrability

As already noted, the Administration asserts that it has agreed to submit to arbitration only those matters which were properly within the scope of the re-opener provision of the Agreement and which were not resolved through bargaining. Since the parties' collective bargaining agreement expressly limits these issues to "wages, pay for performance and SEIP benefits," the Arbitrator has

no authority to render any award beyond the scope of those issues. As such, since the Union's last, best and final proposal includes terms which were already settled in the parties' Agreement, and which were not subject to any agreement to reopen or renegotiate during the term of the Agreement, they are not subject to interest arbitration here. According to management, "those areas in which the Union final offer "overreaches" include, *inter alia*, the Village's existing rights to evaluate its employees and to update its evaluation form, and the Agreement's incorporation of the statutory authority of the Board of Fire and Police Commissioners to discharge sworn peace officers."

Management asserts the only language in the Agreement regarding evaluation of employees is contained in Article III (the Managements Rights clause) and Article XV, Section E (the procedural requirements regarding changes to the evaluation form). Because the Agreement's re-opener provision does not create any obligation on the part of the Village to bargain regarding evaluations or the authority of the Board of Fire and Police Commissioners, these matters cannot be part of the Arbitrator's decision. The Administration also cited the so-called "zipper clause" of the parties' contract, which provides that both parties have waived any right to bargain regarding any provision in the Agreement during its term.

Based on all the foregoing, it is the Village's position that the Union's last, best and final proposal is well outside the scope of the Agreement's wage re-opener provisions because it is inextricably intertwined with demands (a) to abolish the Village's existing contractual rights to evaluate employees; and (b) to alter the authority of the Board of Fire and Police Commissioners.

The Association points out that the parties' collective bargaining agreement "expressly" provided for re-opening of the terms of the contract concerning wages, SEIP and pay-for-performance in Article XV. Pursuant to this re-opener the parties negotiated and exchanged proposals not only on wages, but also on the subject of evaluations. As noted by the Union, "it is simply not possible to separate the "evaluation" portion of the wage issue from either party's final offer. The two are inextricably tied to each other. The Employer's proposed changes to the evaluation system, and the Union's unwillingness to agree to those changes, is the very issue that brings these parties before the Arbitrator." (*Brief for the Union* at 14).

Clearly, the Association advances the better argument. The re-opener language covers "wages." It would be non-sensical to hold that under Article XV the parties are obligated to discuss wages but not how wages are awarded. I also credit the Union's argument that management proposes changes in the very sections of the contract that it wishes to restrict the Union from proposing. (See *Brief for the Union* at 15).

B. Decision on the Merits

1. Relevant Bench-Mark Jurisdictions

At the heart of most interest disputes are arguments that salary or other economic adjustments should reflect the external "market." The significance of this criterion has been noted by Irving Bernstein.

[Comparisons] are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of the other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have "the appeal and precedent and . . . awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public."

Howard S. Block, *Criteria in Public Sector Interest Disputes*, in ARBITRATION AND THE PUBLIC INTEREST PROCEEDINGS OF THE 24TH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS 161, 165-66 (Gerald G. Somers, et al. eds., 1971) (quoting IRVING BERNSTEIN, *Arbitration of Wages*, in PUBLICATIONS OF THE INSTITUTE OF INDUSTRIAL RELATIONS 54 (1954)).

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute, Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in City of Havre v. International Association of Firefighters, Local 601, 76 LA (BNA) 789, 791 (1979), when he stated:

Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Veblen stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.

In City of Winona, 95 LA (BNA) 708, 712 (1990), Arbitrator William Berquist had this to say regarding the utility of external comparisons for good labor relations:

It is axiomatic in labor relations involving law enforcement personnel that for one unit to be paid substantially less than a like unit or units elsewhere within a reasonable proximity

thereto, such is not conducive to good and effective labor relations and effective and efficient operations upon the part of the lower paid unit.

Rarely, if ever, are the parties in agreement as to the relevant jurisdictions that can serve as valid benchmarks for comparative purposes. Moreover, even if the parties can agree upon the proper groups, they will likely disagree as to the inferences that can be drawn from these benchmarks.

The Union asserts that communities only need be similar -- not identical -- as defined by some arbitrary percentages. To this end the Union maintains its proposed jurisdictions are representative of the labor market surrounding Carol Stream as well as falling in line with Carol Stream on a number of demographic and financial statistics. (*Brief for the Union* at 19). Two decisions cited by the Union in its post-hearing brief are particularly instructive.

In City of Springfield & Police Benevolent and Protective Association, Unit No. 5, Arbitrator Edwin Benn, rejecting precise mathematical approach to determining relevant comparables, stated:

[F]rom a practical view (which this [arbitration] process envisions), by advocating such a mechanistic approach which yields the curious results set forth above wherein Chicago metropolitan suburbs are found to be more comparable to Springfield than the more economically self-sustaining down state communities already recognized by the parties as comparable to Springfield, the authors may be missing the mark of understanding the larger picture resulting from the statutory scheme. **Absent clear direction from the Legislature or the courts that such a rigid mathematical approach was intended, we reject the cluster analysis in this case.** S-MA-89-74 (Edwin H. Benn, Arb., April 10, 1990, fn. 15 at 14, cited *Brief for the Union* at 19).

In City of DeKalb and DeKalb Professional Firefighters Association, Local No. 1236, Arbitrator Elliott Goldstein rejected the same mathematical analysis stating that “. . . the Union’s claim of so narrow and precise a universe as being the only proper source of comparison or comparability seems quite far-fetched as the only possible basis for comparison. . .” (S-MA-87-76, p. 22).

In a recent interest arbitration in Lawrence County, Case No. S-MA-96-131 (September 9, 1996), Arbitrator Harvey Nathan ruled:

No two communities have precisely the same characteristics. Every employing entity is unique and each one has its own strengths and weaknesses. Arbitration awards are not the result of some automatic application of relativity scales. Rather, the parties and the arbitrator can better gauge the appropriateness of one offer over another by comparing it against the collective wisdom of parties in demographically and geographically similar communities. Provided that the comparability group is large enough to be statistically

meaningful, the marketplace of contract terms is a powerful tool for demonstrating appropriateness.

* * *

This is not the first interest arbitration where both parties accuse the other of “cherry-picking” and “gerrymandering” the comparables. (The problem of picking comparables really is one of finding the “twin sons of different mothers.” Cf. Tr. 13). Both parties concede the following are proper comparables: Addison, Glendale Heights, Hanover Park, Streamwood, Wheeling, and Woodridge. (*Brief for the Employer* at 9). In addition to these six agreed-upon comparables, the Village offers the following communities: Bartlet and Bloomingdale. Should others be added?

As pointed out in its *Brief*, all 14 of the Union’s proposed comparable jurisdictions (Union Ex. 7) have demographic statistics similar to Carol Stream:

Proposed Jurisdiction	Median Home Value	Per Capita Income	Median Household Income
Addison *	\$126,000	\$15,944	\$41,375
Glendale Heights*	\$105,500	\$15,715	\$42,822
Hanover Park*	\$101,900	\$14,700	\$44,237
Lombard	\$118,000	\$18,281	\$44,210
Morton Grove	\$150,700	\$20,206	\$47,808
Niles	\$140,700	\$17,422	\$38,718
Palatine	\$149,600	\$22,098	\$48,668
Rolling Meadows	\$127,300	\$20,045	\$45,764
St. Charles	\$137,400	\$20,794	\$46,655
Streamwood*	\$107,100	\$16,416	\$48,758
Villa Park	\$109,600	\$16,412	\$41,316
Westmont	\$129,200	\$17,874	\$37,315
Wheeling*	\$113,400	\$18,480	\$39,848
Woodridge*	\$120,500	\$17,730	\$44,570
Carol Stream	\$128,700	\$16,697	\$45,141

I agree with the Administration’s argument that “there are more significant criteria for purposes of assessing the comparability of . . . Carol Stream than are the 1990 figures for household, median and median home value.” (*Brief for the Employer* at 15).

The Village states that the following eight (8) municipalities (Er. Ex. 19) are appropriate comparables to the Village of Carol Stream for purposes of this interest arbitration:

Addison
Bartlett
Bloomingtondale
Glendale Heights
Hanover Park
Streamwood
Wheeling
Woodridge

I agree with the Union's contention that the statute contemplates that communities need only be similar, not identical, to serve as appropriate comparables. (See, *Brief for the Union* at 19). If, in fact, mathematical precision were required, arbitrators would be required to perform a multiple regression analysis with the dependent variable "salary" being regressed against a number of independent variables (population, median income, general fund, internal wages, sworn officers, past contracts, etc.).¹ I also agree with Arbitrator Berman's analysis in *City of Batavia & ILFOP* where he rejected just using the jurisdictions both parties agree should be included. He noted that "extremes at both ends of the range will tend to balance out if the sample is large enough." (His analysis is arguably a form of the central limit theorem which holds that as the number of observations (sample size) "n" approaches 29, all distributions start to mirror a normal distribution. This is why, as Berman stated, "a large sample is more reliable than a small sample." (*Brief for the Union* at 23, n.16).

Where does this leave the parties?

Notwithstanding my agreement with the Union's "flexibility approach" (it's simplicity is appealing), I adopt the Administration's comparables for purpose of *this* arbitration. As it turns out, in this case such a ruling is less important than would otherwise be the case, since the determinative criterion is the form of the evaluation system, not the number of jurisdictions that have adopted it. I am convinced that management's methodology is more sound than the Union's. Hopefully this discussion will pave the way for a settlement during the next round of negotiations.

2. The Wage Issue and the Proposed Merit Evaluation System

a. The Administration's Claim that the Union is Requesting a Significant Change to the Salary Structure

¹ The parties will recognize this formula as $Y = a + BX_i + BX_{ii} + \dots + BX_n$, with Y being the dependent variable (wages) and X_i being the independent variables. If the variable is statistically significant as a predictor of wages (i.e., if the *Beta* weight "matters"), it can serve as a legitimate comparative criterion.

Management asserts that the Union's proposal dramatically affects the parties' burdens of persuasion in this case. According to the Employer, the Union claims that, because both parties are seeking a "change" to the status quo with their final offers, the burdens of persuasion are equal on both parties. (Tr. 68). In management's eyes, the Union's assertion runs counter to the great weight of arbitral authority.

Noting this, management points out the Union's proposal completely abolishes merit pay increases based upon comparative employee performance, which has been a key component of the collectively-bargained and agreed-upon wage compensation structure since 1984. (Er. Ex.1 at 20; Tr. 70). According to the Employer:

The Union's proposal would seek to create an entirely new wage-progression structure based solely upon longevity for those officers who pass the most minimal of acceptable standards. (Er. Ex.13; Tr.14). Based on the great weight of arbitral precedent, the Union, as the party seeking to entirely abolish merit pay, bears the burden to establish that (i) the Village's proposal is unreasonable or unworkable, (ii) that there is a compelling need for the change, and (iii) that the Union has offered an appropriate quid pro quo as consideration which would justify the elimination of benefits received by the Village through negotiations.

The wage issues in this case are nearly identical to the wage issues in Village of Oak Brook and Teamsters Local Union No. 714 (Kossoff 1998). In Village of Oak Brook, the employer's final offer regarding the wage structure was very similar to that here, i.e.:

To maintain the status quo without change, i.e., specify a minimum and maximum of the range for police officer... and continue to provide for movement through the range based on performance increases...

(The specific amounts of the minimum and maximum salary, and the performance increases, were the subject of other parts of the Village's final offers.)

* * *

Arbitrator Kossoff similarly noted with approval the decision in Village of Lombard, ISLRB Case No. S-MA-87-73 (Berman, 1988), where the arbitrator held that, without compelling evidence, it was inappropriate for him "to disturb a wage structure that the parties had agreed to in prior negotiations." Arbitrator Kossoff went on to hold that, because the union's proposal sought to abolish the existing salary structure that was the creation of prior contracts between the parties, such a proposal:

Significantly alters the bargaining relationship. . . The proponent of such change must fully justify that change, and provide strong reasons and a proven need. This is an extra burden of proof. The proponent of such change must fully justify that change

by exceptional arguments under the statutory criteria or show a quid pro quo was given or that other groups were able to obtain this change without a quid pro quo. Lincoln County, 97 LA 786, 789 (McAlpin, 1991).

The Association asserts that the Administration's plan is more than "form over substance." In its words:

Increasing the years to achieve top pay from eight to twenty-three is hardly a change in form. Reducing the percentage base increases and increasing bonus pay can only be viewed as substantive. The Village is proposing a merit system gone mad. In the face of such dramatic proposed changes, the Union seeks a compensation system that retains an element of merit, but respects the basic principle of predictability and equity that are common place in police compensation plans. (*Brief for the Union* at 2).

* * *

There is no question that 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, the burden in interest arbitration is to place the onus on the party seeking such change. See, Hill, Sinicropi & Evenson, Winning Arbitration Advocacy (BNA Books, 1997), ch.. 9 (discussing public-sector interest arbitration).

Working against the Administration and its arguments regarding "novel" changes to an existing salary structure is this: *The Administration has not elected to stay pat with its current salary structure*. Instead, it proposes changes in the entire evaluation system and corresponding merits of its components. According to the Union, "the Village's new system was far worse than what the employees had lived under in years prior to the change." (*Brief for the Union* at 4). Bonus pay is now incorporated into all levels of the pay plan as opposed to just the top pay step. Employees are now required to engage in self-evaluation (which, contrary to the Union's position, is not unreasonable). The years are increased to reach the top step from eight to twenty-three. Finally, there is the issue whether "boundless subjectivity" (the Union's words) has replaced a relative objective process.

I hold that both parties are effectively seeking sufficient departures from the status quo (the Employer more so than the Union) so that neither party can be said to "bear the burden" traditionally required of parties in this position. That there were problems in the previously existing merit pay plan was evident. Remember: both parties are in arbitration offering a cure to problems with an existing system.

Is the "cure" the Village offers worse than the problems it was designed to alleviate?

b. The Administration's Proposed Merit-Based Evaluation Plan

The *former evaluation* form identified each evaluation category, its corresponding weight in the overall evaluation, and what score was necessary to achieve an evaluation resulting in the maximum merit increase. (Union Ex. 19). The *new form* is separated into two sections. The first section deals with "Core Values," and the second with "Customer and Service Standards." (Union Ex. 27). Each of these broad categories are worth from 20 – 60 percent in terms of their weight in the overall evaluation. (*Id.*).

Within each broad category are areas of responsibility. When conducting evaluations, the evaluator determines whether an employee has performed "outstanding", "very good", "good", or "needs improvement" as to each category and enters a corresponding score (5, 4, 3, or 1). This differs from the old form, which provided different descriptions of how an employee performed each area of responsibility. (Union Ex. 19). Those descriptions and scores have been removed from the new form, leaving it in the supervisor's hands to define the difference between "outstanding" or just "very good." Based upon the evaluator's distinctions, an employee receives a score of 5, 4, 3 or 1 in each area of responsibility.

While the so-called "how to" manual (Union Ex. 27) can serve as a guide to conducting employee evaluations, the critical element it doesn't provide are instructions on how to make the determination of a 5 and a 4 or a 4 and a 3 rating. Nor does it give the supervisor guidance in determining if an employee is an "outstanding" performer or merely a "very good" performer. Thus, there is no guidance on the difference between a 5 and a 4, a 4 and a 3, yet the difference between the scores directly determines the amount of pay an employee is eligible to receive. The amount of the salary increase is yet another change under the new evaluation system.

There's more: Consistent with the Graber study, employees will receive lower base increases, but coupled with a bonus. The table below identifies the significant differences in base increases under the old and new evaluation systems:

Category of Employee	Old System Increase	New System Increase
Distinguished	7%	2.5 – 4.5%
Exceptional	6%	2.1 – 4.37%
Exceeds Standards	5%	1.7 – 3.97%
Above Standards	4%	1.3 – 3.57%
Standard	3%	.50 – 3.17%

The reason that the "new" system percentage increases are set forth in a range is that an employee's increase depends upon whether he or she ranks in the lower, middle, or upper third of the bargaining unit's total years of service. (See, Union Ex. 27 at 23; Er. Ex. 10). Three examples are helpful in illustrating the Employer's new approach to salary increases:

Employee	Seniority	Evaluation Score	Base Increase	Bonus
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A	Lower Third	Exceeds Standards	3.7% - 3.97%	2.3% - 2.7%
B	Middle Third	Exceptional	3.1% - 3.37%	3.9% - 4.3%
C	Upper Third	Distinguished	2.50%	5.50%

As argued by the Union, it is impossible to determine exactly what percent base wage increase an employee will receive under the Employer's system. The difference between one point on an evaluation score can reduce an officer's salary potential by as much as .27% and the bonus by .40%.

Another factor pointed out by the Union that can have an impact on salary increases are changes in the composition of the bargaining unit. The division of the bargaining unit into thirds based upon seniority is subject to constant change due to the hiring of new officers or by the retirement of more senior employees. Therefore, which "set" of increases for which an employee is eligible will constantly fluctuate depending upon the aggregate years of service of all of the employees in the unit.

Faced with a very similar employer proposal in one of the first public safety interest arbitrations in Illinois, Arbitrator Anthony Sinicropi found:

First, the Employer's program of salary administration is indeed "theoretically" well founded but its operation has not conformed to those theoretical foundations. For example, the overlap in wages for various job classifications is so great that it is difficult to find that any classifications can be identified by a wage structure. Secondly, the amount of flexibility afforded the Employer in this area effectively undermines the bargaining ability of the Union. **Because such wide discretion is left to the Employer, any negotiated increase the Union would achieve would be distributed as the Employer would see fit.** Thus there would be no collective bargaining but rather a series of individual bargains. While the Employer might not savor the bargaining requirements the Union has achieved through legal means, once a bargaining plateau or status has been achieved it merits the requirements of that status.

Notwithstanding the above analysis, a telling critical aspect of the Employer's defense is its evaluation of employees. For the system the Employer espouses to be fair, equitable, and acceptable, it must be predicated upon objective evaluation of employees. The record has demonstrated in an unrefuted fashion this was not the case, at least as reflected by the unrefuted testimony of two Union witnesses.

Some of the key elements of internal wage and salary administration require the system to be rational, objective, predictable, and demonstrate a reasonable relationship between and among jobs. In addition, wage and salary administration is based upon rating jobs and their relationship to one another, not people. The Employer's system seems to ignore job requirements but rather goes to rating the individuals. As stated earlier, even

this alternative might be acceptable if the results seemed to be objectively fair. The record shows otherwise.

In sum, because the external market forces show that the employees as a group are justified with an increase equal to the Union's proposal, and because the County's capacity to meet these demands is demonstrably present, and because the present system of compensation has been found to be inadequate – at least to the extent it is presently being administered – the Union proposal on this issue must be accepted. (Emphasis mine).

The Sinicropi award is right on point with respect to the salary offer proposed by the Administration. To this effect, an explanatory note is in order regarding the use of evaluation systems.

c. Requirements of Evaluations Systems

There are two basic requirements in any salary-based evaluation system, at least any system that purports to be a fair evaluation system:

(1) *First, the employee must know prior to the actual evaluation the criteria upon which he or she will be evaluated.* To this end, employees should be evaluated on their conduct *not* personality traits. The absolute worse criterion to evaluate an employee is "attitude," something that is routinely done with faculty and students in Catholic Schools. What is the meaning of "attitude?" Can it be observed? Experts in evaluation and wage and salary systems know that competent evaluation systems evaluate "conduct," not personality traits. If employees know and understand the criteria, there should be no surprises at evaluation time. For example, if a basketball coach at a Division I school is going to be evaluated with respect to whether his players graduate in four years with degrees, fundamental fairness requires that he knows this before he is evaluated by his Athletic Director. The Carol Stream Police are not unreasonable in asserting that it really is unclear how a police officer will be rated under the Administration's final offer.

(2) *Second, and equally important, the employee should be informed exactly how the evaluation process translates into salary increases.* What is the relationship between the evaluation process and the reward structure? Theoretically, there is a certain appeal in asserting that employees shall be paid "according to merit." Indeed, it is difficult to announce that one is *not* for merit pay, whether in education or some other field. The top performers should be paid more. The problem is formulating an evaluation system that fits a public-sector model where the mission of the Employer is to provide a standard, homogeneous service, such as police and fire protection. A pay-for-performance system works better for a used-car salesman or a waitress than for high-school calculus teachers or police officers. Attempts to impose *carte blanc* the private-sector model to the public sector are traditionally met with skepticism and resistance, and with good reason: it is difficult to outline with specificity the individual accomplishments of an employee where the good provided is

a standard service offered by a monopolistic organization. Indeed, the Graber study recognizes this by asserting, "There are no clear private-sector equivalents for some jobs (e.g., Police Chief, Inspector, fire fighter)." In this respect he is right.

The infirmity in the Administration's wage proposal is *not* that it seeks to impose merit pay on the bargaining unit, although as I have noted this is an especially difficult task in the protective services. Nor do I find the Administration "wrong" in requiring employees to engage in some form of self evaluation. The Employer simply went too far in attempting to substitute a new evaluation system for an old one that arguably accomplished many of its objectives with less subjectivity and fewer questions regarding the relationship between an employee's evaluation and how it translates into salary increases. Other considerations equal, I find the Association's merit plan and evaluation system less infirm than the one proposed by the Administration as a cure for the so-called evils of the old. The Association's wage offer requires employees to have been evaluated as "standard" or "satisfactory" in order to move to the next salary step. (See, *Union's Final Offer on Wages*, Section B (b)). When compared to the relevant bench-mark communities, in its present form the Administration's plan is simply too novel *to be awarded by an Arbitrator*. I believe there is an acceptable median that can be reached by serious bargaining.

In summary, there is no validity to the Administration's argument that the granting of the Union's demand amounts to "so extraordinary a change in the Village's compensation system." (*Brief for the Employer* at 33). Again, it is the Village and not the Union that seeks a substantial and untested change. The Union proposed use of "the evaluation process and form hereto used by the Village prior to May 1, 1997" is *at threshold* a merit-based system. It is, as noted by Mr. Sonneborn during his opening statement, "a final offer which incorporates an element of merit in an effort at conciliation." (Tr. 8). An employee must receive a standard evaluation in order to move to the next step. The Union's proposal is more in line with the *status quo* than the Administration's pay-for-performance plan.

For the reasons stated above, the better alternative is the Union's position.

d. Other Comparability Criteria

A note is in order on external and internal comparability criteria.

(1) External Comparability. I credit the Union's argument that the Administration's claim that its final offer will bring the least senior officers' salaries in line with the comparables is illusory. Whatever comparability grouping is used, the bargaining unit is behind comparable jurisdictions by double-digit percentages and thousands of dollars. Unless bonuses end up in the base (although included in overtime rates, at least under the Administration's proposal), employees will have a difficult, if not impossible, task of keeping up with other units in comparable jurisdictions.

Also noteworthy is this: historically, Carol Stream averaged eight years for an officer to receive top pay. When the Gerber consultants used 22 jurisdictions in a comparative analysis, the average was seven years. The average years to top step in the Union's comparables is seven years. (Union Ex. 18). The average performer, by the Administration's own estimates, will take approximately 23 years to get to the top pay. The number of levels or steps proposed by the Village lack external comparability. The external comparability factors support the Union on all accounts.

(2) Internal Comparability. This favors the Administration's proposal. The Village's 3% across-the-board proposal is the same as for all other Village employees, except for one group, a small public works department bargaining unit who received a 5.0% increase on May 1, 1997. The Administration can also claim internal comparability with respect to its merit-based pay plan. Accordingly, this criterion weighs in favor of management.

e. Ability-to-Pay Criterion

The Administration has not entered an inability-to-pay argument. (Tr. 79). Still, this does not mean that an Arbitrator is free to award whatever the other side wants. The proposals must still be examined to ascertain whether they are consistent with the financial constraints of the Administration. Such considerations as the source of funding is important. For example, recurring salary costs should not be funded with non-recurring expenses.

If the Administration's numbers are used, the total cost of the Union's proposals are \$137,466, or approximately 8.87% over the total wages and bonus payment costs for the year ending April 30, 1997. (Er. Ex. 14). By contrast, the Village's proposal would cost \$117,372, or 7.57 percent over the cost for wages and bonus payments for the year ending April 30, 1997. (Er. Ex. 12; compare with Union Ex. 32). In contrast, the Union asserts that the City is offering more money than the Union is requesting, that the only item standing in the way to settlement was the Administration's new evaluation form. (Tr. 11-12). Again, even crediting the Administration's numbers, the Union's proposal is just one percent over the Administration's. Accordingly, I find that the Administration clearly has the ability to meet the costs of the Union's proposal. Its ending fund balance has been in the double digit millions, although it dropped in 1997. (Tr. 22). Clearly, the ability-to-pay criterion favors the Union's proposal.

f. Other Considerations in Making an Award²

In its post-hearing summary the Union argued that:

The Village asserts the employees' opposition to the new pay plan was based on the fear of the unknown. If the Village's final offer is adopted, the police officers in Carol Stream will *be forever chained to an inequitable and absurd pay plan.* (*Brief for the Union* at 45; emphasis mine).

This award is made pursuant to a re-opener provision (Article XV, Wage Schedule and Pay-For-Performance) for the third year of a collective bargaining agreement. (Jt. Ex. 2 at 19). I hold only that applying the statutory criteria, the Union's proposal is the better alternative relative to the Administration's. The hardest cases arbitrators decide is where both parties are right or both parties are wrong. For the record, I find problems with both proposals and, as the parties know, no party will be "forever chained to an inequitable pay plan" or a "messed-up" pay-for-performance system given the applicable term of the collective bargaining agreement, *an agreement that has already expired.* (Article XXV, Term of Agreement; Jt. Ex. 2 at 30). Interest arbitrators are not like circuit riders dispensing their own brand of industrial justice as they see fit. Their function, I believe, is to make an award based on some determined, rational, based-in-fact estimate of where the parties would have ended up if the bargaining unit went on strike and the public employer elected to take such a strike. I believe this award reflects this perspective.

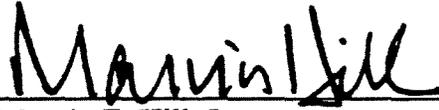
² With the parties lengthy post-hearing briefs (some 50 pages each), and over 1,000 pages of exhibits and approximately 1,000 pages of contracts, this was a massive record for a single issue. The fact that every issue and/or argument was not addressed in this opinion is not an indication that it was not considered. The statute requires an opinion, not a book, although this is truly a case where one can write a book.

Cf. "If they'd ask me, I could write a book." *I Could Write A Book*, from *Pal Joey* (1940); music by Richard Rodgers, lyrics by Lorenz Hart.

VII. AWARD

For the reasons stated above, the Union's final offer (see attached) is awarded.

Dated this 3rd day of April, 1998,
DeKalb, Illinois, 60115.

A handwritten signature in cursive script that reads "Marvin Hill". The signature is written in black ink and is positioned above a horizontal line.

Marvin F. Hill, Jr.,
Arbitrator

UNION'S FINAL OFFER ON WAGES

The Union proposes as its final offer on the impasse issue of wages that:

- (1) Article XIII (B) of the parties' collective bargaining agreement be deleted; and
- (2) Article XV of the Agreement be amended to read as follows:

ARTICLE XV
WAGE SCHEDULE

Section A. Wages: Effective May 1, 1997, officers shall be paid according to the following schedule, based on their years of completed service, subject to the requirements of Section C below. Advancement through the schedule shall be effective upon the officer's completion of the required years of service, based on his or her anniversary date of hire.

Starting Pay:	\$ 33,984.45
After One Year:	\$ 36,490.16
After Two Years:	\$ 38,995.87
After Three Years:	\$ 41,501.59
After Four Years:	\$ 44,007.30
After Five Years:	\$ 46,513.02
After Six Years:	\$ 49,018.73

Note: This wage schedule represents a 4.5% increase to the current starting salary and a 3.0% increase to the current top pay. The "after one," "after two," "after three," "after four," and "after five" year steps were determined by the following formula:

$$\begin{array}{r} \$ 46,513.02 \quad (\text{i.e. After Six Year or "Top Pay"}) \\ - 33,984.45 \quad (\text{i.e. Starting Salary}) \\ \hline \$ 12,528.57 \\ \text{divided by:} \quad \underline{5} \quad (\text{i.e. \# of steps between Starting and Top Pay}) \\ \hline = \quad \$ 2,505.71 \quad (\text{i.e. dollar amount between each step in schedule}) \end{array}$$

Section B. Evaluations: At least once each anniversary year of employment, the Village shall conduct a written evaluation of the officer's performance during the preceding year.

(a) **Conduct of Evaluations:** Such evaluation shall be performed not less than sixty (60) calendar days prior to the officer's anniversary date of hire. The officer's performance shall be determined through a formal evaluation process established by the Village which considers the employee's abilities, training, and service record compared to the levels and guidelines established for the position.

(b) **Changes to Evaluation Process:** For purposes of the performance evaluations to be conducted on employees for 1996 and 1997, the Village shall use the evaluation process and form heretofore used by the Village prior to May 1, 1997. Thereafter, the Village may adopt such evaluation process as it deems appropriate, provided the same gives the officers at least one year's advance notice of clearly established and uniform standards and goals for the respective position(s) which must be met in order to achieve a rating of satisfactory or standard performance. Officers shall not be required to perform self-evaluations as part of any evaluation process which affects their movement through the steps in the wage schedule.

(i) The Village shall give the Union not less than sixty (60) days advance written notice of any changes to be made to the evaluation process. If the Village proposes to make substantial changes to the evaluation process which will impact on the officers' ability to achieve to a satisfactory or standard performance evaluation, the Union shall have the right to serve a demand to bargain on the Village within fourteen (14) calendar days of receipt of notice from the Village.

(ii) Any agreements reached as a result of such bargaining shall be reduced to writing and made a part of the parties' collective bargaining agreement. Absent agreement, the parties shall resolve their disputes regarding such proposed changes by means of interest arbitration as set forth in the Illinois Public Labor Relations Act.

Section C: Advancement through Schedule: In order to advance to the next step in the wage schedule on his or her anniversary date, an officer's performance must have been evaluated as satisfactory or standard (i.e. average performer). If an officer receives an unsatisfactory or below standard evaluation, the officer shall not advance to the next step in wage schedule on his or her anniversary date.

Section D: Unsatisfactory Evaluations:

(i) **Notice:** When the Village believes an officer is in danger of receiving an evaluation unsatisfactory or below standard evaluation for an employment anniversary year, the officer will be notified in writing at the end of the officer's anniversary quarter in question of the sub-standard deficiencies involved and the reasons therefor, and that the officer's failure to cure said deficiencies may result in the officer's annual evaluation being rated substandard.

(ii) **Quarterly Evaluations:** Officers who receive an unsatisfactory or substandard evaluation shall be reevaluated quarterly. Until such time as an officer receives a satisfactory or standard performance evaluation, he or she shall not advance to the next step in the salary schedule. Upon receipt of a satisfactory or standard performance evaluation, advancement shall occur.

Section E: Disputes

Disputes regarding an officer's failure to receive a satisfactory or standard performance evaluation and failure to advance within the wage schedule shall be subject to the grievance procedure.