

**ILRB**  
**#229**

CITY OF URBANA, ILLINOIS	)	
	)	
Employer	)	Interest Arbitration
	)	
and	)	Marvin Hill, Jr.,
	)	Arbitrator
	)	
URBANA FIREFIGHTERS	)	ISLRB Case No. S-MA-97-245
IAFF LOCAL 1147,	)	
	)	
Union	)	

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### Appearances

For the Administration: Robert J. Smith, Jr., SEYFARTH, SHAW, FAIRWEATHER & GERALDSON, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603

For the Union: J. Dale Berry, CORNFIELD & FELDMAN, 343 South Dearborn Street, 13th Floor, Chicago, Illinois 60604-3805.

### Preliminary Statement

Pursuant to the provisions of Section 14 of the Illinois Public Labor Relations Act, ("IPLRA"), 5 ILCS 315/14, the parties selected the undersigned Arbitrator to decide the issues in dispute: wages, hours of work/Kelly Days, Company Officer differential, the formula for dependent health insurance contributions, vacations and vacation scheduling, and language regarding impact bargaining over the University of Illinois Fire Protection Services Agreement. Hearings were held at the City Building in Urbana, Illinois on December 3 and 22, 1997, and on January 23, 1998. A transcript of the testimony given at the hearing was made. The final offers of the City and the Union

were exchanged following the close of the hearing. Post-hearing briefs were submitted pursuant to the briefing schedule agreed upon between the parties and approved by the Arbitrator. In addition, one pre-trial conference and one post-hearing session was held by the Arbitrator and the parties' representatives.

## I. BACKGROUND AND FACTS

The City of Urbana, Illinois, has a population of approximately 36,380, and employs just over 250 workers. Located in Champaign County, the City occupies 9.3 square miles, a portion of which includes certain University of Illinois properties, which are not taxable. The fire department has 43 full-time sworn employees, 37 of whom are in the bargaining unit represented by the Union, i.e., 7 Company officers and 30 firefighters. The normal work schedule for shift employees is 24 hours on duty, immediately followed by 48 hours off duty. Overtime is paid for all unscheduled hours. The average seniority of a bargaining-unit employee is ten years.

There has been a long history of collective bargaining between the City and its three unions representing fire, police and public works employees. The firefighters and company officers are represented by IAFF Local 1147. The police officers and sergeants are represented by the Illinois FOP Labor Council (FOP), and the public works employees are represented by the American Federation of State, County and Municipal Employees (AFSCME). The City reached voluntary settlements with the FOP and AFSCME resulting in three-year agreements, each of which runs from July 1, 1996 to July 1, 1999.

The parties are in agreement that, to a large extent, this case centers around a single issue--the Union's demand for a reduction in regular hours of work in the form of Kelly days. According to the Administration, an award of Kelly days would constitute a major breakthrough at Urbana. "It would increase every bargaining unit employee's hourly rate of pay and, by the Union's own admission, require additional overtime work for unit employees. The costs to the City would be substantial. The Union has not offered an equivalent *quid pro quo*. The City's rejection of the Union's demand during bargaining was not unreasonable." (*Brief for the Employer* at 2). The Union asserts the opposite. According to the Union, it proposes to reduce existing benefits as a *quid pro quo* for shortening the firefighters' work week. The Union also proposes to cap employees' option to schedule comp time at a maximum of 24 hours per year. The Union would also eliminate the City's liability to pay firefighters FLSA overtime in return for a Kelly Day provision. (*Brief for the Union* at 36-37).

The remaining issues are more typical. The parties are just one-half percent apart on the amount of a base wage increase for each of the three years of the successor collective bargaining agreement.

Also at issue is dependent health insurance. The Union seeks to change the formula for

determining employee contributions for dependent health insurance by making the contribution rate 90/10. The City proposal is to maintain the status quo at 50/50.

Both sides propose an increase in the existing Company Officer differential. The existing 6.5% differential was negotiated by the Union in 1994 as part of the overall wage settlement. The only issue is the amount of the future differential, 8% proposed by the City versus the Union's demand for a 9.5% differential effective July 1, 1997 and 11% effective July 1, 1999.

Due to staffing requirements, the City has proposed some adjustment to the vacation scheduling language of the agreement, and indicated a corresponding willingness to permit employees to take vacation in 12 hour blocks, as opposed to the current minimum of 24 hours. Such a change will lessen hirebacks and provide added flexibility to firefighters in need of less than 24 hours of vacation leave. The Union, of course, resists any change to the existing vacation language.

Both sides are willing to engage in impact bargaining over an Intergovernmental Agreement between the University of Illinois and the Cities of Urbana and Champaign on the wages, hours and terms and conditions of employment of Urbana firefighters. The City's proposed language confirms that neither party waives any right they may have to such bargaining during the term of the new Agreement. Absent a waiver, insists the Administration, the Union's rights are preserved in a manner consistent with the Act. (*Brief for the Employer* at 3).

## II. DISCUSSION AND ANALYSIS

All interest arbitration awards must begin with an analysis of the applicable statutory criteria, outlined as follows:

### A. Statutory Criteria

All issues presented for resolution are economic in nature, with the exception of the University of Illinois Impact Bargaining proposals. Under the IPLRA, which governs this proceeding, "as to each economic issue the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." 5 ILCS 315/14(g). The applicable factors the Arbitrator shall base his findings upon are as follows:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment. [5 ILCS 315/14(h)].

#### B. Bench-Mark Comparables

The parties agree upon the following eleven (11) comparables as appropriate bench-mark jurisdictions:

Alton  
Belleville  
Danville  
De Kalb  
Galesburg  
Granite City  
Kankakee  
Moline  
Normal  
Pekin  
Quincy

The Union contends that the City of Champaign should also be considered comparable to Urbana. The City strongly disagrees.

### 1. The City's Position on Champaign as a Comparable Bench-Mark Jurisdiction

According to the City, interest arbitrators have recognized that, "because comparability plays such a major role in interest arbitration cases, rational approaches must be taken." Village of Libertyville and FOP, S-MA-93-148, p. 4 (January 18, 1995) (E. Benn). By agreeing that eleven other communities are comparable to Urbana, the parties have effectively agreed that those communities have common characteristics relevant for making comparisons. It therefore follows that if Champaign falls outside the range formed by the agreed upon comparables, it should be excluded. See, e.g., Village of Algonquin and MAP, S-MA-95-85, p. 17 (April 27, 1996) (Benn), in which Arbitrator Benn observed as follows: "Therefore, the question at this point is to determine how often the contested communities fall within the ranges formed by the agreed-upon comparables."

In the instant case, when traditional determinants such as population, EAV, and sales tax are considered, it is clear that Champaign falls well outside the range established by the agreed upon comparables. The City cites the following criteria which it submits eliminates Champaign as a comparable:

**Population.** Each of the eleven communities both sides consider comparable to Urbana has a population which is  $\pm$  25% of Urbana's population. Not so for Champaign, which has a population 75% larger than that of Urbana.

**EAV.** Each of the eleven agreed upon comparable communities have total EAV which ranges from 30 to 56% of Urbana's EAV for FY1995. Conversely, Champaign's EAV for the same period was 137% greater than Urbana's.

**Sales Tax.** According to the Illinois Department of Revenue, State FY 1997 Sales Tax Revenues for Urbana were \$4,196,526. Among the 11 agreed upon comparable communities, Moline had the highest sales tax, at \$10,501,618. Champaign's sales tax revenues, on the other hand, exceeded Urbana's by more than 15 million dollars, or an immense 357%.

Champaign's 1997 property tax revenue was 110% greater than Urbana's, even though Urbana is taxing at a higher rate than Champaign. New housing starts in Champaign have historically out paced Urbana, 236 in Urbana versus 1181 in Champaign for the period 1986-1996. Champaign's municipal sales tax receipts were more than four times greater than Urbana's during 1994-96. Champaign's General Fund Budget exceeds Urbana's by more than 21 million dollars, or 171%.

Similar disparities between Urbana and Champaign are revealed when workforce comparisons are made. For example, Champaign employs more than twice as many City workers

as Urbana, and Champaign's fire department has twice as many sworn employees, even when Champaign's fire inspectors are excluded from the count. Not surprisingly, Champaign's 1997 fire department budget was 122% greater than Urbana's budget.

Champaign has always paid higher wages than Urbana, in virtually all job categories. In fact, Champaign's stated policy with regard to wages and benefits is to compensate employees "at a rate that is higher than the comparable employer's average. . ." Despite the historical disparity between Urbana's wages and benefits and those of Champaign, Urbana has not lost a single firefighter to this adjacent community during the past ten years, nor has Urbana had any difficulty attracting and retaining qualified firefighters. Champaign's geographic proximity to Urbana, therefore, has had little impact on its workforce or the available labor pool.

The City rejects the argument that geographic proximity requires the Arbitrator to find Champaign comparable to Urbana. The Union's argument ignores the fact that the agreed upon comparables were not determined by geographic proximity, or the presence of mutual aid arrangements. Standing alone, proximity is a shaky foundation upon which to base comparisons." Arbitrator Elliott Goldstein observed as follows in City of Highland Park and IAFF, S-MA-94-227 (February 7, 1995):

As I have noted . . . geographic proximity is a primary, but by no means the sole, indicator of labor market comparability. By eliminating communities within an 18-mile radius that deviate from the City by more than 50 percent in population and EAV, the City has narrowed the field to communities that may more closely resemble the City. In this case the record does not contain any basis for rejecting the City's methodology, the Neutral concludes. Id., p. 20.

Similarly, in Village of Westchester and FOP, S-MA-90-167, p.11 (May 13, 1991), Arbitrator Steven Briggs noted that it was "appropriate to look next door, *provided* those communities are similar to Westchester on dimensions beyond simple geographic proximity."

The City notes that if simple geographic proximity was dispositive of the issue, then why should the nearby City of Rantoul, Illinois be excluded as a comparable? Champaign's size and wealth preclude a finding that it, unlike the 11 agreed-upon communities, is comparable to Urbana. A sufficient number of comparables exists without bringing in a markedly different community such as Champaign.

## 2. Champaign as a Comparable: The Union's Position

The Union acknowledges that reasonable men can differ greatly as to the methodology for determining "comparable communities." Despite the complexity of the task, external comparability is generally recognized as one of the primary factors for determining the relative merit of the parties' proposals. Indeed, two commentators have characterized it as the most significant of the factors to be considered by an arbitration panel. Laner and Manning, "Interest Arbitration: A New Terminal Impasse Procedure For Illinois Public Sector Employees," 60 *Chicago Kent Law Review* 839 (1984). Given this importance, a certain degree of advocacy in selecting the comparables on the part of the parties is to be expected. Nonetheless, arbitrators have not approved of methodologies designed to "cherry pick" comparables that support their position. According to the Union the following considerations mandate including Champaign as a comparable:

### a. Champaign's Contiguous Proximity to Urbana Puts it Within a Common Labor Market.

Geographic proximity is often relied upon by arbitrators as a primary criterion for determining comparability. This approach is based upon the view that geographic proximity defines a common labor market among nearby communities. An illustration of the application of this consideration is seen in Arbitrator Steven Briggs decision in Village of Arlington Heights and Arlington Heights Firefighters Association Local 3105, ISLRB No. S-MA-88-89 (January 29, 1991). In this case Arbitrator Briggs considered an objection by the village that the union's proposed comparables did not include four communities that were contiguous to Arlington Heights. The union sought to justify the exclusion based on the difference in size of the adjacent communities in comparison to Arlington Heights. However, Arbitrator Briggs adopted the village's proposal and included the four communities:

. . . The communities might differ from Arlington Heights on the dimensions of population, assessed value and/or sales tax, but as long as they contain primary employment opportunities (i.e. those with a reasonable wage benefit and promotional opportunity package) they do indeed compete with Arlington Heights for employees. *Id.* at 18.

Urbana and Champaign clearly compete. Fifteen (15) of Urbana's 38 firefighter applicants, or almost 40%, reside in either Urbana or Champaign.

The City's arguments in opposition to including Champaign center upon the disparity in the population of Champaign and Urbana. Differences in revenue parameters, such as total EAV and sales tax revenues, reflect this population disparity. Champaign is obviously a much larger community than Urbana. Nevertheless, City Exhibits 47 and 48 exaggerate the disparity in size. These Exhibits ignore the expansion in the size of Urbana's Fire Department resulting from the addition of 15 firefighters under the terms of the Champaign-Urbana University of Illinois Intergovernmental Agreement. Effective April 1 the size of the Urbana Fire Department should be reflected as 58 employees. Similarly, the Fire Department budget should be increased by \$883,000

The respective population size of the potential comparable communities is certainly a relevant criterion, but not necessarily a controlling one particularly where weight is given to labor market considerations.

If the relevant labor market is a significant criterion for determining comparability, a contiguous community like Champaign cannot be excluded because it does not meet population and size of department parameters. To do so is inconsistent with the concept and invites cherrypicking within the relevant labor market.

b. Champaign Shares Several Relevant Financial and Demographic Criteria with Urbana.

Neither Arbitrator Edelman nor Kossoff considered contiguity *per se* a determinant of comparability. They also looked to other demographic and financial criteria in reaching their conclusion. Union Exhibit 1 analyzes the relationship between Urbana and Champaign as to several frequently used financial and demographic criteria. The bold values represent a correlation within  $\pm 25\%$  of Urbana's values. The last page of Union Exhibit 1 shows that Champaign correlates with Urbana as to seven criteria. In this regard, Champaign correlates at the same level as Moline, which is a community which the parties have stipulated to be comparable. The criteria as to which Champaign correlates with Urbana are the following: per capita income, median household income, mean housing value, per cent residential EAV, per cent commercial EAV, firefighters per thousand and calls per fire department employee. These similarities are reinforced by the exceptionally strong operational integration between the Champaign and Urbana Fire Departments.

c. The Shared Responsibility of the Urbana and Champaign Fire Departments to Protect the University of Illinois Cements their Relationship.

The cities of Champaign and Urbana have entered into an intergovernmental agreement to protect the population of the University of Illinois. This agreement raises the level of operational integration of the departments to a level not seen even among adjacent communities. Chief Pessimer also testified that Urbana and Champaign have in effect an "automatic aid" agreement. Automatic aid differs from more typical "mutual aid" agreements in that the fire companies respond automatically to fire alarms on the same basis as they would if the alarm was occurring within their own city limits.

In Village of Elk Grove Village, *supra*, Arbitrator Harvey Nathan cautioned that while certain comparability factors were commonly applied, "...arbitrators can never lose sight of features which make certain communities unique." In Elk Grove Village Arbitrator Nathan noted that a significant feature that defined Elk Grove Village was the existence of a very large industrial park with a large daytime population well in excess of the residential population. As a result of this additional responsibility it had a larger department than would another community of similar residential population that did not have this additional industrial population to protect. As a result of this feature, Arbitrator Nathan concluded that it was appropriate to give greater emphasis to

relative size of departments in determining comparable communities to Elk Grove Village. Here, the singular level of operational integration and shared responsibilities between Urbana and Champaign belie the City's efforts to disconnect Champaign from Urbana and treat Urbana as a stand-alone community. Urbana and Champaign are not merely adjacent communities that share a common labor market, they are essentially merged communities with respect to providing fire protection to their citizens and the U. of I. population. Section 14(h)(4) of the Act directs that the comparisons be made between the "wages, hours and conditions of employment of other employees performing similar services. . ." Urbana firefighters perform services similar to those of firefighters in the agreed comparable communities. However, Urbana and Champaign firefighters perform the same service with respect to the University of Illinois population. This operational integration heightens the potential for dissatisfaction among employees based on disparity in compensation levels.

A primary reason for attempting to identify comparable communities is to mitigate disparities and thereby reduce dissatisfaction and conflict. IPLRA §2. As Arbitrator Kossoff noted in Oak Brook, communities that are in close proximity are ". . . the communities with which workers compare themselves in terms of wages and other job benefits." Champaign and Urbana firefighters are frequently required to work shoulder-to-shoulder. They will naturally compare their wages with the wages and benefits to those enjoyed by Champaign firefighters. The Arbitrator should reject the blinders proffered by the Employer and include Champaign among the comparable communities.

### 3. Champaign as an Appropriate Comparable

As noted by the Union in its post-hearing brief, City of Alton and IAFF Local 1255, ISLRB No. S-MA-96-91, is instructive as to the Champaign issue. In the Alton case the union disputed the city's proposal to include the City of Wood River among the agreed comparable groupings. The union argued that Wood River with a population of only 11,490 and only 10 firefighters, was too small to be comparable to Alton with a population of 33,604 and a 64 member department. Arbitrator Milton Edelman, Professor of Economics at Southern Illinois University, was persuaded that although not contiguous to Alton, Wood River was within the city of Alton's labor market and should be included. Professor Edelman explained his reasoning as follows:

*Wood River lies within the same labor market as Alton. Its geographical proximity is the first reason. After that the fact that Wood River firefighters operate under a collective bargaining agreement, and the relative closeness of most of the other criteria cited by the City argue for its inclusion as a comparable community.*

Arbitrator Sinclair Kossoff's recent award in Village of Oak Brook and Teamsters Local Union No. 714 (January 22; 1998), is a corollary to Arbitrator Edelman's ruling in Wood River. In this case the employer sought to exclude from the comparable communities three adjacent communities with much larger populations and police departments. Arbitrator Kossoff summarized

the disparity between Oak Brook and these jurisdictions as to these parameters and had this to say:

Application of the  $\pm 50\%$  standard with respect to the department sizes of the remaining communities would require removal of Downers Grove, Elmhurst and Lombard from the list since they have respectively 68, 64 and 63 sworn personnel in their police departments. In addition, Elmhurst and Lombard each have almost four times the population of Oak Brook and Downers Grove five times.

Nevertheless, Arbitrator Kossoff, relying on Arbitrator Edelman's analysis in part, concluded that Downers Grove, Elmhurst and Lombard should be included in the bench-mark groupings:

Thus based on contiguity of Downers Grove, Elmhurst and Lombard to Oak Brook plus the other measures discussed above which show that, on the whole these jurisdictions compare no less favorably with Oak Brook than the seven communities selected by the Employer, the Chairman finds that they should be included in the list of comparable communities with the seven municipalities named by the Employer and the two other selected by the Union. The Chairman would also include the Union's choice of Oak Brook Terrace, which abuts Oak Brook.

Consistent with the above awards, although not on "all fours" with the other 11 jurisdictions I hold that Champaign cannot be dismissed as an irrelevant *criterion* in an interest arbitration between Urbana and the IAFF. While it is true that because of its size, the City of Champaign is unlike the City of Urbana, because of its geographic proximity, and its relationship to Urbana in other ways (the automatic aid agreement is noteworthy), it cannot be concluded that Champaign is a non-factor in the relevant economic job market. From a labor market analysis, I find that Champaign it is more of a factor than a non-factor and, accordingly, while not dispositive of any single issue, the City of Champaign must be *considered* under the statutory mandate. As noted by Arbitrator Berman in Will County and Will County Sheriff and AFSCME, S-MA-90-85, p. 24 (March 19, 1991): "Although geographic proximity is important, it is not decisive."

### C. The Substantive Issues in Dispute

#### 1. Kelly Days/Hours of Work

##### A. The Final Offers

##### (1). The City's Position

As noted, the City's position is to maintain the "status quo" with respect to Kelly days. In support of this position the Administration makes the following arguments:

Citing Wisconsin Arbitrator Joe Kerkman's analysis (as adopted by the undersigned Arbitrator), the Administration asserts that a party seeking to change the status quo must meet the following three-part test:

- (1) a demonstration that the existing language is unworkable or inequitable;
- (2) that there is an equivalent "buy out" or quid pro quo; and
- (3) there is a compelling need.

See, City of Cedar Rapids and Cedar Rapids Association of Firefighters, pp. 5-6 (March 15, 1989) (Hill, Arb.) In the instant case, the Administration argues that the Union cannot meet this three-part test. In addition, the Administration makes the following arguments:

*There has been no showing whatsoever that the current language pertaining to hours of work is "broken" or inequitable.* Employees already receive overtime compensation for *all* unscheduled hours worked, even though the federal Fair Labor Standards Act (FLSA) only requires overtime for hours worked in excess of 204 in an employee's 27 day cycle. Employees can already exchange tours of duty, and may accrue compensatory time off in lieu of overtime pay, at their own option. Employees have ample vacation and typically take 2.5 days of compensatory time off per year. The existing contract language regarding hours of work was voluntarily agreed to during the last round of negotiations. The parties have never negotiated Kelly Days.

Management argues that *a consideration of external comparables does not compel a conclusion that the current hours of work arrangement for Urbana fire fighters is inequitable.* Among the 11 external comparables mutually agreed upon by the parties, a majority (6) do not provide Kelly days. In addition, the average 10-year fire fighter employed by Urbana already receives more time off in the form of vacation (264 hours) than he would if he worked for any of the comparable jurisdictions. Even if Champaign is considered, Urbana provides more vacation to the typical fire fighter (264 hours v. Champaign's 202).

The total hours worked by a typical Urbana fire fighter with 10 years of seniority currently amounts to 2,648, assuming he works every scheduled work day and uses his vacation allotment of 264 hours. Excluding Belleville, which does not assign their personnel to a standard 24/48 schedule, Urbana ranks 6th among the remaining mutually agreed upon comparable jurisdictions. Among the communities without Kelly days, Urbana fire fighters work the fewest number of hours, excluding Belleville. Finally, 9 of the 11 mutually-agreed-upon comparables do not provide compensatory time off, unlike the situation in Urbana.

Even though the comparability criterion clearly favors the City's proposal to maintain the status quo, *a consideration of the cost of the Union's proposal reinforces this conclusion.* First, it is undisputed that providing Urbana firefighters with additional time off will cause additional overtime. Second, if the Union's proposal to reduce annual hours from 2,912 to 2,825 as of July 1, 1998, and again to 2,760 as of July 1, 1999, were to be adopted, then every employee's hourly rate

of pay would increase, thereby further increasing the City's overtime costs.

The cost of the Union's Kelly Day proposal is set forth at City Exhibit 19. In 1998-99, when employees would receive 4 Kelly days off, and one less vacation day, the City's net productivity loss would be at least \$36,123. An additional \$22,000 would be lost in 1999-2000, when the number of Kelly Days would increase to 6.75. Separate and apart from the lost productivity, the City would incur substantial new overtime costs. If one conservatively estimates that overtime would be created 75% of the time when an employee uses a Kelly Day in Urbana, then overtime costs would increase by \$43,665 in 1998-99, and by an additional \$26,659 in 1999-2000. If the lost productivity and additional net overtime costs are considered together, the total cost as a percentage of wages equates to 5% in 1998-99, and 3% in 1999-2000. That is over and above the 3% per-year wage increase being proposed by the City, or the Union's 3.5% increase, for the same years.

These are significant costs the City will be required to bear should the Arbitrator grant this Kelly Day proposal. The Union has offered absolutely no evidence or argument to justify this whopping increase in the City's cost for fire services. Indeed, the Union is seeking to work less, and get paid substantially more for it, at the expense of the taxpayer.

According to the City, *the Union has not proposed an equivalent quid pro quo for the creation of 6.75 Kelly days during the term of the new agreement.* In exchange for 6.75 days off, the Union has proposed giving up 1 vacation day effective July 1, 1998, and 1 more effective July 1, 1999. Giving up two (2) duty days off in exchange for 6.75 new duty days off is not a fair trade for the City of Urbana.

A second so called quid-pro-quo proposed by the Union is to establish individual work cycles effective July 1, 1999 so as to minimize built in FLSA overtime. The benefits of such an approach would be marginal, at best, since the existing contract already provides that "paid time off will not be considered hours worked for purposes of overtime eligibility." During any cycle in which an Urbana fire fighter uses a vacation day or a sick day, for example, there would be no FLSA overtime. Further, the contract already requires the City to "authorize the absence of at least two (2) bargaining-unit members per shift concurrently for the purpose of vacation or compensatory time." Even after taking into account, on a liberal basis, the potential savings associated with establishment of individual work cycles as of July 1, 1999, the net cost of the Union's proposal exceeds 8.13% of total wages over 2 years.

Lastly, the Union has proposed no *further* accrual of compensatory time in lieu of overtime pay commencing July 1, 1998. Since employees have previously been accruing compensatory time off, subject to a maximum accrual of 168 hours, there may be little or no "savings" whatsoever to the City over the next 2 years by limiting *future* comp time accrual. Significantly, the Union has proposed no change to Section 10.2, which requires the City to permit 2 employees per shift to be off concurrently for the purpose of using vacation or compensatory time. The Union's own evidence indicated that employees take an average of 2.5 days of compensatory time off per year.

Finally, the Union's proposal is somewhat illusory, since employees can already opt for overtime pay in lieu of compensatory time.

There is a discrepancy between the contract language proposed by the Union as to compensatory time (Appendix C of Union Final Offer dated February 3, 1998) and the apparent summary of its position as set forth in the cover sheet. The cover sheet to Appendix C is silent with respect to future accrual of compensatory time, and instead suggests that employees could only use 1 day of compensatory time off per year. The contract language proposed by the Union in Appendix C, however, is silent as to any 1 day per year limitation on employee comp time usage. In fact, such an arbitrary limit on an employee's right to use compensatory time off would almost certainly be illegal under the Fair Labor Standards Act, 29 U.S.C. Section 207(o)(5).

Further supporting management's position, Arbitrator Harvey Nathan refused to award the Union a "breakthrough" in the form of Kelly Days, even though 12 of 14 comparable departments already had Kelly Days. Elk Grove Village and IAFF, S-MA-93-231, pp. 84-86 (October 1, 1994). Arbitrator Nathan noted that to provide four Kelly Days in one year would be disruptive to scheduling and "would result in a sharp cost increase to the Village." While recognizing that the Village's current system was not the best, Arbitrator Nathan nevertheless held that under the context of the "take it or leave it arbitration system under the Act, we must find that the Union's proposal of four (4) Kelly Days is out of balance and not appropriate . . ." The same reasoning warrants a similar result in the instant case.

In summary, the Union should not be allowed to reap a windfall as a result of interest arbitration. It was not unreasonable for the City to decline the Union's final offer, particularly when granting Kelly Days would increase employees' hourly rate and significantly increase the City's overtime costs. The Union's final offer on this issue should be rejected in favor of maintaining the status quo.

## (2). The Union's Position

The numerous changes sought by the Union, as set forth in Appendices A-C to its final offer, are summarized as follows:

- A Kelly Day every 30th shift effective July 1, 1998, resulting in 4.05 Kelly Days per year;
- A Kelly Day every 18th shift effective July 1, 1999, resulting in 6.75 Kelly Days per year, so as to reduce the average work week to 52.9 hours, with individualized work cycles as of the same date to eliminate automatic FLSA overtime;
- The right of a firefighter to trade Kelly Days;
- No further accrual of compensatory time, after July 1, 1998;
- One less day of vacation effective as of 7/1/98, and one less day of vacation

effective as of July 1, 1999.

The Union proposes to reduce existing benefits as a "*quid pro quo*" for shortening the firefighters' work week. At the same time as Kelly Days are implemented, the Union proposes to reduce the vacation allotment in all categories by one vacation day in 1998 and a second vacation day in 1999. The Union also proposes to cap employees' option to schedule comp time at a maximum of 24 hours per year. This represents a reduction of 1½ days from the current average of 2½ days per year. The Union's proposal would also eliminate the City's liability to pay firefighters FLSA overtime.

In support of this position the Union advances the following arguments:

a. There is a Gross Disparity Between the Annual Average Work Week of Urbana Firefighters and those Worked by Firefighters in most of the Comparable Departments

According to the Union, seven (7) of the 12 comparable cities have *work weeks* below the FLSA standard of 53. There is a very strong trend not only within the comparables but statewide to reduce firefighters' work weeks below the 56 hour level. It is likely that among the comparable communities, the number of communities working 56 hour weeks will be further reduced over the term of the contract. In the last year settlements in Normal and Champaign have produced work week reductions. The average work week for all the comparables at the time of the hearing is 52.8 hours. Urbana's 56-hour work week places them more than 6% below this average. If the average work week remains constant through the term of the contract, the Union's proposal would still leave their work at 52.9 or .23% below the current average.

The Union proposes to effectuate the reduced work week by modifying the regular 24/48 schedule to schedule Kelly Days off (i.e. what would otherwise be a 24 hour duty shift) every 30th shift in 1998 and then every 18th shift in 1999. With the exception of Belleville, this is the consistent method employed to reduce the length of firefighters' work weeks. In most cases this change has been implemented through voluntary negotiations. However, some interest arbitrators have awarded a reduction in firefighters' work weeks. See, City of Alton and IAFF Local 1255 (Milton Edelman) & Downers Grove Professional Firefighters Association Local 3234 and Village of Downers Grove, Case No. S-MA-94-246 (December 6, 1994)(John Fletcher).

The disparity in Urbana firefighters' average work week is not mitigated when other time off benefits are considered. The length of an employee's work week is a benefit that is distinct from other paid time off such as vacation or holiday time off. Nevertheless, when faced with disparities in average work week, employers have at times attempted to mitigate these disparities by pointing to total time off.

With respect to the City's argument regarding the comparatively generous vacation benefit afforded Urbana firefighters, the City Exhibits also fail to consider other time off benefits such as

personal days. Union Exhibit 22 is much more comprehensive. It considers all time off benefits and evaluates the vacation schedules based on average days off produced over a 25 year career. When total time off is considered, Urbana firefighters rank 9th out of 13 and have a benefit that is -4.86% below the average. Union Exhibit 21 also shows that implementation of the Union's proposal will modestly improve Urbana firefighters to a rank of 7 of 13 and mitigate the disparity from the average to -1.55%.

b. The Union's Work Week Reduction Proposal Includes a Substantial Quid Pro Quo

Despite the gross disparity between the average work week of Urbana firefighters and the work week enjoyed by firefighters in most of the comparable communities, the Union's proposal contains substantial benefits for the City. The City has taken the position that the Union's proposal irrespective of the amount of *quid pro quo* should be rejected because it constitutes a "breakthrough" proposal. By the City's lights, it is a "breakthrough" because it establishes an entirely new benefit; i.e. Kelly Days.

The City's objections misconstrue the issue. The existing benefit is a defined work week averaging 56 hours. The Union's proposal is to improve this benefit by reducing the number of hours in the work week. Kelly Days are simply the method of accomplishing this within the framework of a three-platoon work schedule. The Union's proposal within the language of the referenced standard is to "merely increase an existing benefit." The Union recognizes that where there is a substantial increase in an existing benefit, an arbitrator may require the Union to offer a "*quid pro quo*" to the City as part of its burden of persuasion. Union Exhibit 22 analyzes the exchanges or *quid pro quo* that were made as part of the work week reductions implemented among comparable cities. In four of the cities -- Champaign, DeKalb, Granite City and Pekin -- the only element of the exchange was the elimination of FLSA overtime liability. In the Downers Grove decision, the Kelly Day increase was based solely upon the disparity in the internal comparables. In the Alton case, the elimination of FLSA liability was found by Arbitrator Edelman to be sufficient *quid pro quo* for reducing the work week from 53.7 to 52.9 hours (5.07 to 6.76 Kelly Days). Arbitrator Edelman commented that "Reducing the City's FLSA overtime liability is important and partially offsets the cost of hiring one firefighter or paying additional overtime costs that could result from choosing the Union's offer." Overall in Alton the union traded three personal days and FLSA overtime for a work week reduction to 52.9 or 6.75 Kelly Days. The other community in which existing time off was exchanged for work week reduction was Normal. In Normal an aggregate of five personal or vacation days were exchanged to achieve a work week reduction to 52 hours (8.7 Kelly Days). Considering all of the comparable communities, the ratio of exchange of existing time off for Kelly Days is an average 6.6 to 1. The Union's offer compares very favorably to this experience. The average value of FLSA overtime is \$11,643.00. Bargaining-unit members currently average 2½ days (66.5 hours) of comp time use per year. The Union's proposal to cap this at 24 hours represents more than a day and a half (42 hours). The Union's proposal still stands as a benefit of value to the City. The Union's offer to reduce vacation allotment

by an aggregate of two days not only reduces this benefit but also exchanges a benefit that can be selected at times most preferred by the employee for a Kelly Day which is scheduled independent of the employee's preferences throughout the calendar year. This method of scheduling reduces the potential that the additional days off will result in overtime. The City's own exhibit shows that vacation time off is the highest potential for creating overtime. City Exhibit 20 calculates the correlation coefficient as .82.

The Union acknowledged that the additional cost to the City resulting from the Union's proposal cannot be quantified precisely. (*Brief for the Union* at 44). This is because overtime is a function of how many employees are off on a given duty day in relation to the minimum shift that the department maintains. In Urbana there is no contractually specified shift minimum. Therefore, the amount of overtime is a function of the Chief's discretion to maintain an administrative minimum by overtime call-backs. City Exhibits 18 and 19 purport to calculate a cost for the Union's proposal. One assumes each additional Kelly Day will result in overtime recall -- a correlation of 1.0. City Exhibit 19 puts the correlation at the "more realistic .75". Both of these Exhibits exaggerate the cost.

In assessing the cost of the Union's Kelly Day proposal, it is more appropriate to base the increased cost of the impact of the proposal on the number of slots needed (i.e. 563.5 to 675). It is this effect that may lead to increased overtime when a firefighter is sick. Accordingly, the impact in 1994 was to reduce the vacant slots from 167 to 115 or by 31%. In 1999 the vacant slots are reduced to 55 or by 67%. These reductions potentiate more overtime due to sick leave. Thus, the existing correlation coefficient for sick leave (.3529) should be increased respectively by 31% for 1998 to .46 and 67% for 1999 to .59. Applying these factors to the City's estimated overtime hours of 8900 produces an additional overtime liability attributable to sick leave of 953 hours in 1998 ( $8900 \times .46 - 8900 \times .3529$ ) and 1110 in 1999 ( $8900 \times .59 - 8900 \times .3529$ ). This is far below the City's estimate in City Exhibit 19. This calculation recognizes that there is an existing overtime cost for sick leave usage. The total additional overtime is thus 2063 or a value of 65% of the City's "realistic" estimate. Accepting the City's estimates also includes the value of \$58,160.00 representing "productivity lost," this is an abstract number which does not reflect any real dollar costs. In actual dollars, the Union submits that a better estimate of the net cost of its proposal can be calculated as \$33,711. (See, *Brief for the Union* at 47).

The City has contended that the "something" the Union offers is insufficient. The Union's proposal exceeds what was negotiated in the comparable communities. Further, it must also be recognized that the Union is seeking hours reduction at a point when the average work week among the comparables is much lower than it was when many of the comparables first negotiated their agreements. The disparity between the external comparables and the amount of *quid pro quo* required is an important consideration.

### (3). Decision on Kelly Days

I am awarding the Administration's position on Kelly Days. In support of this decision, I offer the following considerations for the record:

Arbitrator Elliott Goldstein, in City of De Kalb, S-MA-87-76, p. 8 (June 9, 1988), remarked that "interest arbitration . . . is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria." Accordingly, as Arbitrator Goldstein further observed, "going beyond negotiations to 'catch up' or give either party a 'break through' is contrary to the statutory scheme and undercuts the parties' own efforts, in rather direct contravention of the collective bargaining and negotiation process itself."

Likewise relevant is the following excerpt from Arbitrator Harvey Nathan's decision in Will County Board and Sheriff of Will County, pp. 49-50, (August 17, 1988):

If the process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining." Accordingly, interest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.

(quoting Arizona Public Serv. Co., 63 Lab. Arb. Rep. (BNA) 1189, 1196 (1974) (Harry Platt, Chmn.)). Accord, City of Aurora, S-MA-95-44, at pp. 18-19 (Sept. 8, 1995) ("Where a party proposes to modify a benefit, that party bears the burden of demonstrating a need for the change . . . [A] 'break-through' . . . is best negotiated at the bargaining table, rather than being imposed by a third-party process").

In Will County Board and Sheriff of Will County and AFSCME Local 2961 ( August 17, 1988), Arbitrator Harvey Nathan articulated this viewpoint as follows:

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

Under this specific evidence record, I believe the Union's final offer on hours of work/Kelly Days would constitute a "breakthrough" (as least in its present form) and would significantly alter the status quo. Arbitrators Goldstein and Nathan are well-respected veteran neutrals. They are right

on point with respect to so-called "breakthrough" issues. Urbana is not just a case where the Union seeks to reduce the workweek by adding vacation or other time off through a mechanism *already in place*. What is at issue here is the Union seeking to reduce the workweek through implementation of a system that never before has been operational at Urbana. It is in this sense that the implementation of time off through Kelly Days is a "breakthrough."

I also agree with management that it is a commonly-accepted principle of interest arbitration that the party seeking to change the status quo has the burden of persuading the Arbitrator that such a change is necessary and proper according to the criteria enumerated in the statute. As Arbitrator Steven Briggs pointed out in Village of Westchester and FOP, S-MA-90-167, p. 24 (May 13, 1991) "the Village is attempting to alter the status quo through interest arbitration. It must therefore, provide compelling reasons to do so." The same concept was stated a bit differently by Arbitrator Martin in Village of Bartlett and Laborers, FMCS #90-09101 (March 9, 1994) where he held:

Where a change in the agreement is proposed, a substantial showing must be made that that change is required by changed facts, or by the sense that an injustice would be done to retain existing language. Unless necessity demands otherwise, it is for the parties to negotiate changes, not for such changes to be imposed by the interest arbitrator.

In this case, the Union clearly has the burden of persuasion to establish that its position should prevail on the economic issues of Kelly Days. (Likewise, the City has the burden of persuasion on the economic issue of "vacation" as proposed by management ).

Because the Union seeks a major change in the status quo, at minimum it is required to offer "an equivalent 'buy-out' or quid pro quo." Arbitrator Elliott Goldstein used the phrase "reciprocal concessions" to describe the obligation of a party seeking to obtain a change in the status quo. Elk Grove Village and the Metropolitan Alliance of Police, S-MA-95-11, p. 104 (February 28, 1996). Arbitrator George Fleischli stated the rule in City of Park Ridge and Local 2697, International Association of Firefighters, S-MA-89-79 (October 30, 1990) as follows:

By seeking to change the status quo with regard to this working condition, the Union necessarily assumes the burden of proof to demonstrate the need for the proposed change and the reasonableness of its position, including any quid pro quo which it is willing to offer to accomplish the change. In the view of the undersigned, the Union has not met its burden of proof in either regard. Id. at 20-21.

Similarly, Arbitrator Neil Gundermann in School District of River Falls, WERC Decision No. 26296-A (July 20, 1990) stated:

The Association failed to establish a need for the change and failed to offer a quid pro quo, thus it failed to meet requirements established by arbitral authority for justifying a change in the status quo.

In City of Batavia (1995), I concluded as follows with respect to the bargaining unit's demand for Kelly Days in the parties' collective bargaining agreement:

The Kelly Day issue is a close "toss up," with comparability favoring the Union (somewhat) but economic considerations favoring the City. In this context, where (1) the parties have never negotiated Kelly Days, (2) there is serious question as to the net costs of the item, and (3) under the present scheduling system, most employees can block significant amounts of time off, I believe that Kelly Days represent a new relationship between the parties that should be reserved to the bargaining process.

Identical considerations warrant a ruling in the instant case. In fact, unlike the situation considered in Batavia, external comparability with respect to Kelly Days (not total workweek hours) favors the Administration's position. Similar to the facts in Batavia, the parties in the instant case have never negotiated Kelly Days, and I believe that significant costs would be associated with adoption of the Union's proposal. Sufficient slots already exist to schedule vacation time off, as well as compensatory time (a benefit not shared by a majority of the bench-mark jurisdictions). As argued by the Administration, I believe it is preferable to leave it to the parties to negotiate a new relationship, with a proper balance, and some agreement on costs, than for the item to be imposed by an outside arbitrator.

I am on record as noting that an interest arbitrator should not deny a party a benefit simply because no other comparable jurisdiction has adopted it. In such a case, however, the party that wants the benefit included in the collective bargaining agreement has a heavy burden to demonstrate that the opposing party is being unreasonable in rejecting the benefit desired by the proposing party. One indication of an unreasonable stance is where the proposing party offers an adequate quid pro quo and the opposing party, for no rational reason, continues rejects it. This is *not* the situation at Urbana. The Union has shown external comparability (somewhat) for a reduction in total hours. (*Brief for the Union* at 37-38). It has *not* shown comparability for a reduction in hours through implementation of Kelly Days. Also absent in this evidence record is a clear showing that the offered trade is equivalent to what is sought. Here is one case where adequacy of consideration is an appropriate area of concern.

In summary, I credit the City's argument that as to the Kelly Day issue, the Union has neither justified the need for changing the status quo *in the form desired* nor offered an equivalent quid pro quo for its proposal. The undetermined cost to the City of the Union's proposal -- a problem that the Union recognizes -- is also of concern.

## 2. WAGES

### A. The Final Offers

#### (1). The City's Position

The City is proposing a three (3) percent general increase effective as of July 1 of each year of the new three-year Agreement. The first year raise will be fully retroactive to July 1, 1997.

In support of its proposal, the City argues as follows:

*External Comparability Favors the Administration's Position.* Among the agreed upon comparable jurisdictions, Urbana ranks 11th (second to the bottom) on Sales Tax Revenues. The City also ranks 11th (second to the bottom) in terms of its General Fund Budget. The City's rank drops across-the-board if Champaign is added to the list of comparables. Also, while the City ranks 5th on total EAV, during the last several years the City has lost \$28,656 in annual property taxes due to expansion by the University of Illinois.

Despite the foregoing, adoption of the City's final wage offer will maintain or improve the City's rank among comparable jurisdictions, particularly when compared to the City's rank as of July 1, 1994, when the parties voluntarily settled on a general wage increase. The typical 10 year Urbana fire fighter's wages, including base pay and longevity, will move from 7th place in 1994 to 6th place in 1997, even if Champaign is included. Without Champaign the City's rank moves from 6th to 5th place, or substantially better than one might expect in light of the City's revenue picture. If starting pay is considered, the City's rank jumps from 10th in 1994 to 5th in 1997.

The picture is similar if total compensation, including base pay, longevity, clothing allowance, EMT stipends and holiday pay is considered. The Act requires a consideration of, not only wages, but the "overall compensation presently received by the employees." 5 ILCS 315/14(h)(6). The ranking of a typical Urbana fire fighter's compensation after 10 years improves from 7th in 1994 to 5th in 1997, even when Champaign is included. The City's starting pay rank improves from 9th to 5th.

Since the City's rank is as good (or better) among comparables as it was when the parties last reached a voluntary settlement, there can be no finding that external comparability requires wage increases greater than those offered by the City. Given the City's high position among the comparables in terms of base pay, and the fact that its proposal maintains the firefighters in their current ranking, there can be no justification to pay employees any more than what the City has proposed.

*The Union's wage exhibits are inconsistent, and, in several instances, are not supported by*

*the record evidence.* The many inaccuracies, inconsistencies and instances of unsupported data leaves the overall reliability of the Union's external comparability analysis in serious doubt.

*Lastly, the Union submitted career earning projections without acknowledging a critical point.* The "career earnings" of newly hired Urbana firefighter were adversely impacted by the voluntary settlement of the 1994-97 contract, which created a step plan for firefighters. The parties raised top base pay from \$30,052 in 1993 to \$32,191 in 1994, but also agreed to implement a step plan requiring four years to attain the new top base. The Union did not adjust its 25 year career earnings analysis to reflect this fact.

*Internal Comparability.* The other two Union's representing City employees have already entered into multi-year contracts with the City. Those agreements cover the period 1996-1999. The agreement between the City and the FOP provides a 3% raise effective July 1, 1997 and another 3% effective July 1, 1998. The agreement between the City and AFSCME provides a 3% raise effective July 1, 1997 and a 2.5% increase effective July 1, 1998.

In the only prior interest arbitration proceeding involving the City since the Act became law, Arbitrator Doering awarded the City's final offer on wages on the basis of internal comparisons, City of Urbana and IAFF, S- MA-90-214 (May 2, 1991) (Doering). There has generally been a strong history of wage parity among organized City employees, particularly among police and fire in Urbana. In fact, internal comparability has historically been the primary factor considered by the City when determining the wage package. To award the fire fighters greater percentage raises than those voluntarily negotiated by the FOP and AFSCME would be to disregard arbitral precedent and internal comparability. In addition, such an event would undermine labor relations stability and lessen the likelihood of multi-year agreements with other City Unions in the future.

*CPI Data.* Among the criteria the Arbitrator is to consider is "the average consumer prices for goods and services, commonly known as the cost of living." 5 ILCS 315/14(h)(5). While cost-of-living does not "exclusively control an interest arbitration, . . . it is certainly one factor in any fair assessment of a final offer." Kendall County Sheriff's Department and FOP, S-MA-92-216 and S-MA-92-161, p.19 (November 28, 1994) (Goldstein) (emphasis in original).

According to management, the cost-of-living criterion has generally been construed as favoring the offer which is closest to recent increases in the CPI. See Village of Skokie and IAFF, S-MA-89-123, p. 52 (March 2, 1990) (Goldstein); Village of Lombard and Local 89, P.B. & P.A., S-MA-89-153, p. 14 (November 3, 1989) (Fletcher). Interest arbitrators are divided, however, with respect to the appropriate measurement period for applying the cost-of-living criterion. One group of interest arbitrators takes the position that the parties' final salary offers should be judged against the increases or projected increases in the CPI for the period of time to be covered by the arbitrator's award. See, e.g., United States Postal Service, DLR No. 249, D-1 (Chr. Clark Kerr, December 27, 1984).

Another approach used in applying the cost-of-living criterion is to judge the parties' final offers on the basis of the rate of increase in the CPI during the last year of the parties' most recent collective bargaining agreement. In this case, under either approach, the cost-of-living criterion clearly favors the City's final salary offer. First, the rate of increase in the CPI for FY 1996-97, the last negotiated year of the parties' collective bargaining agreement, as shown on City Exhibit 4A, was 2.2%. The increase in inflation over the three years of the last contract was 8.15%. Base wages increased over the same three year period by 9.53% for Urbana firefighters and 11.02% for Urbana Company Officers.

In terms of projected CPI over the life of the contract, what is evident from the actual CPI numbers as well as the projections is that inflation will be minimal if nonexistent. The increase in CPI-U for calendar year 1997 was only 1.7%. This number was far below analyst's expectations 6). The same analysts and experts who overestimated the 1997 CPI, estimate that the CPI for calendar year 1998 will be somewhere between 2.2% to 2.7%. For example, a survey of 50 private analysts for Blue Chip Economic Indicators at of October 10, 1997, projected a 1998 CPI of 2.6%. That increase, projected over a three year period with compounding, would be 8%.

The City's final salary offer would result in a 3% increase for FY 1997-98, 3% for FY 1998-99 and 3% for FY 1999-00. Over a three-year period, with compounding, the total increase over the life of the contract will be 9.27%. The Union's final salary offer, on the other hand, would result in a 3.5% increase for FY 1997-98, 3.5% for FY 1998-99 and 3.5% for FY 1999-00. The Union's proposed total increase over the life of the contract: 10.87%.

No matter how the CPI is considered -- actual, projected, current versus over life of prior contract -- the Union's proposal cannot be justified. The Union's proposals are well above what is called for based on actual or projected changes in the CPI. The City's proposal is much closer to the cost of living. Accordingly, the cost-of-living criterion unquestionably favors the City's final wage proposal over the Union's final proposal.

*Ability to Pay and the "Interest and Welfare of the Public."* Section 14(h) of the Act provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in interest arbitration proceedings. 5 ILCS 315/14(h)(3). In the instant case, the City does not make an inability to pay argument. Nevertheless, as the arbitrator properly observed in City of Gresham above, the fact that a public employer "has the ability to pay an increase does not mean that the [City] ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure," noting further that a public employer "exists for the service and benefit of its residents and not for the benefit of its employees." To state that there are other competing needs for any additional dollars that might be available in the City's operating fund is to merely state the obvious. The City has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends.

Here, it is not in the public interest to provide a pay increase any greater than that offered by

the City. The City is not suffering from a recruitment or retention problem which would justify larger wage increases. In fact, the City offered compelling evidence that such an increase is totally unnecessary to recruit or retain qualified firefighters. The sufficiency of applicants demonstrates the City has not had any difficulty in finding qualified personnel. Nor does the City have a retention problem. Since 1992, not a single firefighter has left Urbana to work for another fire department. There have been 17 retirements, 1 transfer to another department for personal reasons and 1 resignation in lieu of discharge.

The recruitment and retention data provides compelling evidence that the interests and the welfare of the public do not require the wage increase sought by the Union in this proceeding. As Arbitrator Elliott Goldstein ruled in City of Highland Park:

In fact, the more probative public interest here is the City's payment of wages sufficient to attract and retain competent fire fighting personnel. As discussed above, the City's offer would place the City's firefighters comfortably within the middle of range of compensation paid by comparable communities within the 18-mile residency limit. The Union's offer would certainly satisfy these requirements, but leave less money for other civic uses. Thus, the factor of the interest and welfare of the public favors the City's offer, the majority of this Board finds.

City of Highland Park, supra, pp. 23-24. See also City of Mount Vernon and FOP, S-MA-94-215, p. 16 (August 23, 1995) (Steven Briggs) ("... it is not in the public interest for the City of Mount Vernon to pay its police officers more than the level necessary to remain competitive in the local labor market. Consequently, the factor of the interests and welfare of the public strongly favors the City's wage offer.

## (2). The Union's Position on Wages

The Union is proposing a 3.5% general increase effective as of July 1 of each year of the new three year Agreement. The first year raise will be fully retroactive to July 1, 1997. In support of this position the Union makes the following arguments:

### a. By Most Measures Urbana Firefighters' Annual Salaries Fall Well Below Average and Near the Bottom of the Comparable Group

With the exception of starting salaries, Urbana firefighters consistently rank well below average and in the lower echelon of the comparable rankings. In the case of starting salaries, Urbana ranks 4th with a starting salary that is 1.36% above average in 1996. Even as to this measure, however, adoption of the City's 3% wage proposal will drop Urbana's ranking from 4th to 5th. The Union's 3½% offer will maintain Urbana's ranking. Adoption of the Union's wage proposal will prevent further erosion in the ranking of Urbana firefighters and will move them slightly closer to

the average.

b. When Major Elements of Overall Compensation Paid to Urbana Firefighters are Considered, this Statutory Criterion Strongly Supports a Decision to Grant all of the Union's Economic Proposals

"Overall compensation" is one of the express criteria for evaluating economic offers under the Act (§14(h)(6)). This criterion is intended to be a broad and all inclusive comparison of major compensation elements. Time off benefits in the form of "vacations, holidays and other excused time" are expressly referenced as are medical and hospitalization benefits. Without question this is a difficult criterion to apply because of the difficulty of obtaining data and presenting it without miscalculations or significant omissions. By ignoring significant elements of compensation, the City's Exhibits have the effect of overstating "overall compensation". This is accomplished by selecting as a measuring stick an element of compensation, such as holiday pay, as to which Urbana firefighters enjoy a relatively high ranking. Conversely, other major elements of compensation where Urbana firefighters benefit package is weaker (e.g. health insurance, time off) are omitted. This approach cannot be squared with the requirements of Section 14(h)(6) or objective analysis and should be rejected.

The Union has prepared Exhibit 10N which takes a more comprehensive approach. Union Exhibit N considers several important elements of compensation ignored by the City. These are employee health insurance contributions and all time off benefits. The health insurance benefits are based upon data contained in Union Exhibit 10P. The analysis of time off benefits is based on Union Exhibit 14B, which will be discussed in more detail in relation to the Union's Kelly Day proposal. The Union's value for salaries is based on average career salary rather than the 10 year level which is used by the City. As Union Exhibit 10J demonstrates, this happens to be the year in which Urbana firefighters rank their highest and are closest to the average. The Exhibit also analyzes engineer pay which is a benefit not recognized for Urbana firefighters but which is recognized and paid to firefighters serving as driver-engineers in seven of the comparable communities. Other specialty and premium pays or miscellaneous payments are included under the category of premium pay. Union Exhibit 10N ranks Urbana firefighters in relation to "an actual hourly rate". This rate is calculated by taking the "total cash payments" and dividing it by the "annual hours" actually worked by firefighters. When all these major elements of cash compensation and time off benefits are considered, Urbana firefighters rank 11th of 13. Further, Urbana firefighters relation to the average balloons to a negative 9.84%. The City may dispute this methodology. However, the ranking employed in Union Exhibit 10N is based on methodology recommended by the Urban Institute in the study Public Employee Compensation--A Twelve City Comparison. The "actual hourly rate" represents a way of recognizing time off benefits. It is not to be confused with the hourly rate calculated for paying overtime. This rate is also in addition to time off that is excluded from the annual hours of work (e.g. Kelly Days). It also includes paid time off benefits such as vacation, personal days and holidays. The same analysis was presented to Arbitrator Edelman in the City of Alton, supra, case and was relied upon by Arbitrator Edelman in awarding the union's position.

c. The Percentage Increases Granted to Firefighters Employed in the Comparable Communities Supports the Union's Proposal

The Union has prepared Exhibit 10M that analyzes the percentage increases granted to firefighters employed in comparable communities. City Exhibit 12 also carries out this analysis. The range of increases granted and the average of the percentage increase is a simple and direct way to measure the "going rate" for settlements in any particular fiscal year. Both Exhibits demonstrate that the City's proposal of 3% in each of the three years of the contract is below the going rate for settlements among comparable firefighters.

Further, the City's calculated average understates the average. The Union's calculation for the 1997 average is 3.42%. The City calculates the average as 3.25%. The differences in the Exhibits relate to Kankakee where the City estimates 3% and the Union 4%. Negotiations are currently in process in Kankakee. Calculation of the percentage increases ignoring Kankakee produces an average as follows: 1997 - 3.36; 1998 - 3.38; 1999 - 3.4. Granting the Union's 3½% wage increase will produce \$1,198 for Urbana firefighters in 1997. The average value of settlements to comparable firefighters is \$1,369. This amount is a negative 12.48% below the average. The City's proposal would put Urbana firefighters almost 25% below the average!

Both the Union's and the City's Exhibits demonstrate that the percentage value of settlements are not limited by cost-of-living considerations. All of the settlements in 1997 save Alton's are the result of voluntary agreements. At least in two instances -- Normal and Pekin -- the settlements were reached in the context of interest arbitration proceedings. A further consideration is that the percentage increases were reached in conjunction with further agreements to reduce the average work week by scheduling Kelly Days (e.g. Alton, Champaign, Normal and Pekin).

There is further evidence that employers other than municipalities making up the comparable group are settling at levels that exceed cost-of-living considerations.

d. The City's 3% Wage Settlement with the Police Unit Should not Control the Arbitrator's Award Under the Circumstances of this Case

While recognizing that internal comparisons are an important and relevant fact to be considered under §14(h), the Union submits that an analysis of the differences between compensation paid to police officers and other City employees support granting the Union's proposal. The City's analysis is focused entirely upon percentage increases granted to the police and the other City units. Analysis of City Exhibit 54 as well as the accompanying graph shows that there have been variances in the amount of percentage increase settlements between the different units over the years. For example, in 1989 there was a 1.0% variance between the firefighter settlement and the police and AFSCME settlements. But the more fundamental flaw in the City's position is that it wholly ignores the actual salary differences between firefighters and police officers.

The plain fact is that the annual salaries paid to police officers are higher than those paid to firefighters. For example, at year 4 which represents the top base salary level for firefighters, Urbana police officers' annual salary is \$37,304 as compared to the Union's proposed \$34,000. The City's proposal would put the firefighters at only \$33,836. Because the police officers have a higher base salary, a 3% increase yields many more dollars annually than it does for firefighters. Thus, the disparity in dollars will expand further over the term of the contract if the City's proposal is adopted. On a career basis, the disparity is even greater. The average career earnings for police officers as compared to firefighters is as follows:

	<u>U. Proposal</u>	<u>C. Proposal</u>	<u>Police</u>	<u>Difference</u>	
1997	36,674	36,497	39,890	U-3216	C-3393
1998	37,958	37,592	41,087	U-3129	C-3495
1999	39,286	38,720	42,321	U-3035	C-3601

The dollar gap between firefighters and police increases from 1997 to 1999 by \$208 under the City's proposal while the Union's proposal reduces it by \$181. The disparities are even more significant when hourly rates are compared between firefighters and police officers and company officers and sergeants.

Union Exhibits 45-50 analyze the impact of the Union's and the City's proposals respectively when other elements of overall compensation are factored in. The following table summarizes these exhibits:

ACTUAL HOURLY RATE

<u>Police Officers</u>	<u>Firefighters Union</u>	<u>City</u>	<u>Police Sgts.</u>	<u>Company Officers Union</u>	<u>City</u>
25.29	16.60	15.69	28.38	18.29	17.11
Firefighter Difference	-8.69	-9.60		-10.09	-11.27

(Brief for the Union at 29).

Differences of these magnitudes in the amounts of base salary, career earnings, hourly rates and overall compensation offer compelling justification for granting firefighters a variance in percentage increases over the term of the proposed agreement. To restrict the analysis of internal relationships between firefighter and police officers solely to a fixed percentage increase is not required by criterion 14(h)(4)(A) comparability and exacerbates real and growing disparities in compensation. It is time to take a fresh look at the internal relationships and to consider an equitable adjustment. The 1½ percent differential between the City's and the Union's proposals over the term of the contract represents a modest movement towards mitigating these disparities. Arbitrators have properly given consideration to internal settlements in the interest of maintaining stability. These interests are strongest when there is dollar for dollar parity between police officers and firefighters. (*Brief for the Union* at 29-30).

e. The City Wage Proposal Ignores Significant Productivity Gains that it has Secured From the Bargaining Unit Over the Term of the Previous Agreement

Union President Cheryl Horvath explained the changes in staffing levels and expansion of work duties implemented under the Chief's administration. These included a major reduction in the level of staffing from 45.2 to the current 43. This was accomplished by eliminating two bargaining-unit positions: a Fire Inspector and a fire suppression position. The inspection duties previously performed by a full time Fire Inspector holding the rank of Lieutenant have been reassigned to shift personnel as part of their regular duties. The inspection duties were instituted in 1994 and the amount of inspections has increased progressively each year. The Union recognizes the value of these productivity and workload increases to the quality of services provided by the Department. However, with the exception of additional compensation provided for EMTI certification, the City proposes only a minimal general wage increase (measured against the average percentage wage increase for the comparables) for firefighters and company officers over the term of the new contract. Firefighters expect more recognition.

**(3). Award on Wages**

I find that the Union advances the better case with respect to its wage package and offer the following considerations in support of this award:

In City of DeKalb and DeKalb Professional Firefighters Association Local 1236, ISLRB No. S-MA-87-26 (June 13, 1983), a case cited by the Union in its post-hearing brief, Arbitrator Elliott Goldstein placed heavy reliance on evidence that there had been significant increases in productivity and workload in adopting the union's wage proposal. Arbitrator Goldstein explained his ruling as follows:

The neutral chairman rejects management's claim that there has been no discernible increase on demands of its bargaining unit personnel or in their productivity. It should be patently obviously [sic] that certainly the reduction through attrition and to a lesser degree, the

increase in demand on personnel during ordinary working hours and on shift time, even though based on good management principles and appropriate business judgment, have in fact increased the efforts and productivity of bargaining unit employees substantially. Under these facts employees have a right to demand extra compensation for this particular fiscal year as the Union contends.

I credit Cheryl Horvath's testimony regarding the changes in staffing levels and expansion of work duties implemented under the Chief's administration. These included a reduction in the level of staffing from 45.2 to the current 43. The productivity argument favors the Union.

More important, the Union had demonstrated that its proposal is more in line with external criteria than the Administration's 3.0 percent proposal. Three percent, while not unreasonable, is clearly below the average for settlements in the bench-mark jurisdictions. (See Union Ex. 10M (3.42%) & City Ex. 12 (3.25%)). The Union's final offer recognizes that market forces among the comparable communities are driving wage increases at a rate higher than 3%. The Union's offer is more in line with these forces and is to be preferred to that of the Administration's offer.

I also credit the Union's analysis regarding the average value of a percentage increase to Urbana firefighters. Granting the Union's offers will produce \$1,198 for Urbana firefighters in 1997. The average value of settlements to comparable firefighters is \$1,369. (*Brief for the Union* at 24-25). The Union's numbers place Urbana 12.48 percent below the average. The City's proposal would put Urbana firefighters almost 25 percent below the average. *Id.* Again, external comparability favors the Union's proposal.

What of the Administration's argument regarding *internal criteria* and the effect of the FOP and AFSCME settlements? There is no doubt that internal comparability is an important criterion in determining the reasonableness of the parties' respective position. This is especially the case with respect to fringe benefits, such as health and dependent coverage. The problem for interest neutrals is determining what exactly is comparable internally. Simply because all employees are granted three percent does not necessarily make salaries "internally comparable." Overtime, longevity, time to maximum salary, vacation days, compensatory time off, and other perks enter into the entire "salary matrix."

There is yet another consideration, as recognized by Arbitrator Herbert Berman, in City of Rock Island and Rock Island Firefighters Union IAFF Local 26, ISLRB Case No. S-MA-91-64 (March 13, 1992). Unchecked, mechanical application of internal settlements may be "unsuitable and mischievous." As stated by Arbitrator Berman:

[M]echanical and automatic application of the 'internal comparability factor is unsuitable and mischievous. Using internal comparable as a sole or overriding factor may give rise to two possibilities detrimental to the bargaining process. . . 2) the wages agreed to by the first unit of organized employees to negotiate a contract would set a nearly unbreakable pattern for the

remaining units. If interest arbitration invariably followed this pattern, subsequent negotiations anticipating arbitration would be reduced to a nullity.

Arbitrator Harvey Nathan likewise made the following observation in Village of Elk Grove Village:

In some cases the 'employer's so-called pattern' is self-serving. It settles with the weakest bargaining unit first and then argues that the other units must accept this 'pattern' it has established. Moreover, there may have been special needs and considerations which led one unit to settle for certain terms which are not as applicable to the unit in question. *Internal comparability should not be used as a straitjacket which inhibits the consideration of the separate needs of particular units.* (*Supra* at 23, emphasis added)

The point is this: Internal comparability is an important criterion, especially for fringe benefits such as health and life insurance (more on this later) where what is given is easily ascertainable. But it is rarely dispositive in a wage dispute such as Urbana where only 1/2 percent per year separates the parties and where the evidence record indicates salary variances between firefighter and police settlements over the years. (See, *Brief for the Employer* at 27). I find the Union's 3 1/2 percent offer not off base from an internal perspective. This allocation is all the more justified when the average workweek is considered relative to external comparables.

For the above reasons, I rule for the Union and adopt its proposal on wages.

### 3. DEPENDENT INSURANCE CONTRIBUTIONS

#### A. The Final Offers

##### (1). The City's Position

The City's proposal is to *retain existing contract language*, which provides as follows:

#### Section 12.1 Group Insurance.

(A) The City shall pay the full cost of the premium for the standard health insurance plan currently in effect for each employee covered by this Agreement. The "standard health insurance plan" shall be defined as that insurance plan provided to employees as of June 30, 1982 or its successors and does not refer to any prepaid health care plan that the City may offer its employees as an alternative to the standard plan. If an employee chooses an alternative health care plan provided by the City, the City shall contribute the amount of the cost of the standard health insurance plan toward such alternative plan, and the employee shall pay the difference.

(B) The employee shall pay one hundred percent of the cost of dependent coverage, but the employer and the employee shall split (50/50) any increases in premiums for dependent coverage commencing April 1, 1995.

In support of this position, the Administration advances the following arguments:

First, *internal comparability supports the City's Offer to maintain the status quo.* The firefighters already pay ten dollars per month *less* for dependant coverage than other bargaining unit employees represented by the FOP and AFSCME. If the Union's final offer is accepted, this differential will only be exacerbated. Arbitrators have noted that "internal comparability evidence deserves the most weight among all the available evidence bearing on the resolution of insurance issues. City of Elmhurst, FMCS #92-27609, p. 41 (July 2, 1993) (Feuille). Internal comparability warrants adoption of the City's proposal.

Secondly, *while the Union seeks a change to the status quo, it has offered nothing to the City in the form of a quid pro quo.* The current formula of splitting future increases in dependent coverage on a 50/50 basis was voluntarily negotiated between the City and the IAFF quite recently, and became effective with the last agreement. Absent a quid pro quo, the Union should not be permitted to change a very recently negotiated formula in this proceeding.

*There is no compelling reason to change the current contract language.* During the past three years, insurance premiums under the City's two programs have only increased by an annual average of 3.3% and 3.85% respectively. Such increases have been below the average annual premium increase of 8.5% since 1989. Since firefighters have only been required to pay 50% of any such increase since 1995 under the current formula, there can be no finding that they have been seriously disadvantaged by the bargain they made under the last contract.

*The public interest warrants the adoption of the City's proposal.* Employee health insurance costs constitute a significant and costly employee benefit. Premium sharing is one of the few things public employers can do to control rising benefit costs. Employers, public and private alike, in an attempt to share the burden of this benefit with employees, have begun requiring employees to contribute towards health insurance premiums. In the instant case, there is no reason to change the negotiated formula for allocating increases in dependent insurance premiums.

## (2). The Union's Position

The Union proposes to add the following new language to the existing insurance provision cited above:

Effective April 1, 1998 an employee receiving dependent insurance shall pay \$210.00 per month toward the cost of dependent health insurance and the cost of any increases in the cost

of dependent insurance shall be respectively apportioned 90/10 between the Employer and the employee.

In support of this contract demand, the Union advances the following arguments:

a. The City asks the Arbitrator to Maintain a Formula that is the Most Penurious Among all the Comparable Communities

Union Exhibit 10P analyzes the formulae for sharing costs for dependent health care premiums among the comparable communities. Under the existing formula, Urbana firefighters pay \$210 a month. This amount is exceeded only by the \$219 paid by Galesburg firefighters. However, Galesburg's contributions are for a premium of \$574 a month as compared to Urbana's \$434. Thus, on a percentage basis Urbana firefighters rank at the bottom paying more than 75% of the dependent premium as compared to Galesburg's 67.6%. Overall, the average employee contribution for dependent coverage is \$87.63. This represents 27.6% of the dependent component of the premium. Urbana's formula is also the least favorable. All of the other comparable cities have formulae in place that either place a maximum cap on the amount of employee contributions (e.g. Alton) or have in place a percentage formula that is much more favorable than the formula the City seeks to maintain. There are some 50% formulae in effect but they are much more favorable than the one that the City proposes to maintain. For example, in Quincy the employee pays 50% of the entire dependent component of the premium. This holds true in Champaign as well. In Belleville, employees pay 50% of the amount over \$307.

The Union's proposal for a 90/10 split would essentially stabilize the employee percentage at the current level. It will prevent Urbana firefighters from losing further ground in relation to comparable firefighters.

In summary, the Union points out that the amount of health care contributions have a significant impact on firefighters' overall compensation. The average contribution among the comparables for dependent insurance costs is \$1,143. However, Urbana firefighters contribute \$2,520. Thus, Urbana firefighters lose \$1,377 to comparable firefighters on this element of overall compensation. The external comparables strongly favor the Union's proposal.

b. The Internal Comparables Should not Control the Arbitrator's Deliberations on this Item

The predecessor agreement reflects a clear departure from the historic practice of having employees pay 100% of dependent health care premiums. City Exhibit 56 shows the impact of the new formula applied to firefighters. Further, the City cannot contend there that reaching an independent agreement with firefighters will necessarily have a disruptive effect on its negotiations with other City bargaining units. Analysis of the contracts for AFSCME and FOP demonstrate that the City's agreement to change the formula with firefighters had no impact on the contracts

subsequently negotiated with these two units. Sections 12.2 and 16.2 are the contract provisions in the AFSCME and FOP contracts that are analogous to Section 12.1b in the firefighters contract. Both Sections 12.2 and 16.2 appear to be identical and provide that employees electing dependent insurance coverage are responsible for the full cost of dependent premium.

On this record, the Union's modest proposal to stabilize the very high level of contribution required of employees for dependent health care must be preferred over the City's offer.

### (3). Award on Dependent Health Insurance

The Administration's position on dependent health insurance is awarded. While I recognize that the City's other employees in the FOP and AFSCME units pay the full cost of dependent premiums, I find internal comparability considerations to be of sufficient importance to warrant ruling for the Administration on this issue. Also of note is this: The current 50/50 split was arrived at through the give and take of bargaining. Any further allocation should be reserved to the parties until such time as the evidence record indicates that one party is unreasonable in not expanding paid coverage. That time is not now and, accordingly, I hold for the Administration on this issue.

## 4. COMPANY OFFICER DIFFERENTIAL

### A. The Final Offers

#### (1). The City's Proposal

The City has proposed increasing the Company Officer differential from the current 6.55% to 8%, retroactive to July 1, 1997.

In support of its position, the Administration advances the following arguments:

The difference between a firefighter's top base pay and a Company Officer's salary was reduced to 6.55% as a result of the voluntary wage settlement reached between the parties in connection with the 1994-97 collective bargaining agreement. During the 1992-94 collective bargaining agreement, a 10.8% differential existed. When the parties settled the 1994-97 Agreement, however, a new salary schedule was implemented, which reduced the differential.

*The Union is attempting to have the Arbitrator restore the same differential which the Union willingly bargained away during the last round of negotiations.* During the current round of negotiations, the Union offered nothing in exchange for its demand to restore the previous differential. The Union's failure to offer a quid pro quo is particularly noteworthy when the cost of the Union's proposal is taken into account. The cost of the Union's proposal, over and above the

increase being offered by the City, amounts to more than \$12,000, or almost 1% of total base wages for everyone in the bargaining unit.

Despite the City's willingness to increase the differential beyond the amount negotiated in the previous negotiations, without any return concessions, the Union demands more. It erroneously argues that Company Officers must be paid more because a larger differential exists between Police Department Sergeants and Police Officers in Urbana. While a 12.4% differential does exist between Sergeants and Police Officers hired with an Associate's degree, the duties and responsibilities of a Police Department Sergeant differ significantly from those of a Fire Department Company Officer. Differing levels of responsibility is one reason why the City requires at least 2 years of College for the position of Sergeant, as opposed to a high school degree or its equivalent for a Company Officer. Sergeants typically supervise 7-9 employees, as opposed to 2-4 supervised by the Company Officers.

*The bargaining history supports maintaining the current 6.5% salary differential between firefighters and Company Officers.* Yet, without any concessions, the Union will receive an increase in the current differential if the City's final offer of an 8% differential is awarded. While external comparability arguably tends to support the Union's proposal somewhat more than the City's offer as to this particular issue, the cost of living factor clearly supports the City's position. Also, the City has had no difficulty attracting and retaining employees in the position of Company Officer in the Urbana Fire Department.

A consideration of the bargaining history and all the relevant factors warrants adoption of the City's final offer as to the Company Officer Differential.

## (2). The Union's Proposal

The Union has proposed increasing the Company Officer differential from the current 6.55% to 9.5% effective July 1, 1997 and 11% effective July 1, 1999. In this respect the Union submits that there are three good reasons for adopting the Union's proposal for Company Officers rank differential.

### a. The Fire Chief Has Specified The Salary Level For Company Officers Under The Terms Of The Intergovernmental Agreement (Union Exhibit 2) At A Salary That Is 9½% Above Firefighter Base Salary

The Intergovernmental Agreement signed between the University of Illinois and the cities of Urbana and Champaign specifies the salaries to be paid to firefighters and Company Officers. The Agreement calls for three Company Officers to staff the University of Illinois substation under the terms of the Intergovernmental Agreement. The salary figures assigned to Company Officers were the basis for the calculation of the University of Illinois' payments to the City of Urbana to provide fire services to the University of Illinois under the contract. The salary value specified for Company Officers is \$40,339. The actual salary of Company Officers with eight years of service

under the terms of the existing contract, assuming a 3% increase assumed by the Chief, is \$39,075. The salary value for an eight year firefighter with the same assumed 3% increase is \$36,661. The Chief's stipulated Company Officer salary of \$40,339 thus represents a 10% rank differential over firefighter base salary.

The City has submitted an exhibit reflecting the increased costs of the Union's proposal. This estimate is exaggerated in at least two respects. It calculates the cost based on 12% rather than the 9½% and 11% reflected in the Union's Final Offer. Further, it ignores the extra .5% the City will receive from the University of Illinois under the terms of the contract. The Union's proposal cost only 9½% in 1997 as opposed to the 10% specified in the contract for three Company Officers. During the hearing the City offered no explanation for the disparity between its 8% proposal and the 10% differential reflected in the Intergovernmental Agreement.

b. Compensation for Urbana Company Officers is Subpar in Comparison to Salaries Paid to Most Company Officers Employed in the Comparable Jurisdictions

In terms of the amount of salary, Union Exhibit 13 demonstrates that Urbana's Company Officers even with the Union's proposal will rank in the lower echelon of the comparables and receive a salary that is -4.36% below the average. Under the City's proposal, Company Officers will rank 10th of 13 and more than 6% below the average. By way of further comparison, the salary received by Company Officers previously employed by the University of Illinois was \$44,874.

When the salary is analyzed in terms of the percentage and differential over firefighter base salary, Urbana Company Officers fare no better. The existing rank differential is 6.55%. The average among the comparables is 11.28%. The Union's proposal to increase the rank differential in 1997 to 9½% would still place Company Officers 15.78% below the average. The City's 8% proposal would leave them more than 29% below the average.

Comparing Company Officers base salaries with firefighters' base salaries, it can be seen that the disparity for Company Officers is even greater than for firefighters. Firefighters' 1997 base salaries would put them -3.16% below average. The City's proposal would almost double that to 6.13% below the average. The Union's proposal would mitigate this disparity to -4.36% below the average.

The City has offered a modest proposal to improve the rank differential to 8%. However, the City's proposal is too little too late. If adopted, it will preserve the existing disparity for the three years of the contract.

c. Internal Comparisons with the Police Offer Further Support for the Union's Proposal.

The rank within the police chain of command that is analogous to Company Officer is the Police Sergeant. Union Exhibit 13B shows that there is a dollar difference of \$5,433 as compared

to \$2,244 for firefighters and a percentage difference of 15.75 as compared to the current 6.55. The Union's proposal would still leave the Company Officer's base salary 4.75% short of the differential between police officer and police sergeant.

City Exhibit 15 analyzes the percent differential for the salaries of firefighters and Company Officers between 1993 and 1994. The Exhibit shows that the differential was 10.8 in 1993 and 6.55 in 1994. Apparently the City will attempt to contend that this circumstances somehow bars the Union from attempting to restore the rank differential in this contract. In fact, the Union did win an improvement in the maximum base salary for firefighters as part of the predecessor agreement. As a result of this agreement the salary schedule was restructured so that a higher base salary was achieved after four years. A uniform general percentage wage increase was then applied to the new salary including Company Officer base salary. The 1994 settlement was clearly a catchup equity adjustment for firefighters. There is nothing in this agreement which the City can cite as a waiver on the Union's part to seek a similar catchup equity adjustment for Company Officers in later contracts. It is evident in analyzing Union Exhibits 10C and D that even with this equity adjustment, Urbana firefighters still fall more than 3% below the average. Without the mutually agreed improvement in 1994, their status would be even more inferior.

### (3). Award of Company Officer Differential

The existing rank differential is 6.55 percent. Moreover, the City's offer to increase the differential to 8.0 percent is not unreasonable. Still, I hold for the Union and offer the following considerations for the record:

Working in the Union's favor on this issue is the differential figure reflected in the University of Illinois governmental agreement. The Union submits that if the Fire Chief believed that \$40,339 is the salary value that the City should be compensated for by the University of Illinois for the three Company Officers assigned to the U. of I. substation, presumptively this is the salary that should be paid to Urbana's Company Officers generally. It is of note that the salary received by Company Officers previously employed by the University of Illinois was \$44,874, well below the \$40,339 figure proposed by the Chief.

Further working in the Union's favor is Union Ex. 13. As pointed out by the Union, under the City's proposal, Company Officers will rank 10th of 13 and more than 6 percent below the average. A three-year agreement would lock the firefighters in an inequitable position.

Finally, the Union advances the better argument regarding internal comparability with the police officers. (*Brief for the Union* at 56).

## 5. VACATIONS AND VACATION SCHEDULING

A. The Final Offers

(1). The City's Final Offer

The City proposes revising both Sections 10.2 and 10.4 to provide as follows:

Section 10.2 Vacation Scheduling.

Vacations shall be scheduled from the individual's anniversary date of employment of each vacation year, and insofar as practicable, be granted at times selected by each employee in accordance with their seniority. ~~The City shall authorize the absence of at least two (2) bargaining unit members per shift concurrently for the purpose of vacation or compensatory time.~~

The City shall authorize the absence of at least two (2) bargaining unit members per shift concurrently for the purpose of guaranteed vacation for any day within the period from May 1 through September 30, and December 15 through January 15. During the period from October 1 through April 30 (excluding the period December 15 through January 15), the City shall authorize the absence of at least one (1) bargaining unit member per shift for the purpose of guaranteed vacation. Guaranteed vacation shall consist of those days selected for vacation during the semi-annual vacation sign-up period.

The City shall authorize the absence of an additional bargaining unit member for the purpose of available time vacation, as long as said available time vacation does not result in the need to call back any off-duty personnel on an overtime basis either directly or indirectly.

Employees may not subsequently alter or trade guaranteed vacation time, unless approved by the Fire Chief.

Section 10.4 Minimum Vacation Period.

For employees assigned to a schedule of twenty-four (24) hours on duty immediately followed by forty-eight (48) hours off duty, a twenty-four (24) hour period shall be the minimum allowable period of guaranteed vacation. Available time vacation may be taken in increments of twelve (12) hours.

In support of its proposal, the Administration advances the following arguments:

Due to current staffing levels, the City is often required to incur overtime liability when employees take their vacation. In an effort to reduce future overtime liability, the City has proposed

reducing the number of months per year it would be required to permit 2 employees to be off concurrently from 12 months to 6 months. Currently, at least two of the agreed upon comparable jurisdictions, Galesburg and Kanakakee, have similar vacation scheduling provisions in effect. While the City would, hopefully, see some reduction in overtime costs if its proposal is adopted, there would still be ample slots for employees to use earned vacation.

In exchange for the vacation scheduling changes being sought by the City, it has offered to permit employees to use accrued vacation in 12 hour increments, as opposed to the current 24 hour minimum block. This should provide employees with greater flexibility.

The City's proposed changes to Sections 10.2 and 10.4 should be awarded because the City has a need to control or reduce overtime occasioned by vacation, similar scheduling restrictions are in use by some of the comparable jurisdictions, and because the City has offered to permit personnel to use vacation in 12 hour increments as a "trade off" for this change in the existing contract language.

## (2). The Union's Final Offer

The Union proposes to maintain the existing language. This is a benefit that is in the Union's view affected by the University of Illinois' Intergovernmental Agreement. It is the Union's position that the addition of fifteen U. of I. firefighters to the bargaining unit pursuant to the terms of this agreement will require an expansion of the existing vacation slots. Subject to the process that is ultimately awarded, it is the Union's position that the impact of this change will require an increase in vacation/Kelly Day slots to three per shift.

The Union acknowledges that an employer's proposal for a takeback is not beyond the pale of interest arbitration. However, as Arbitrator Herbert Berman has stated: "Without economic or operational justification it is inappropriate to take away employee benefits." City of Springfield and IAFF Local 37 (February 27, 1987), at 38. The amount of vacation slots that are available and into which employees can schedule vacation is an important component of an employee's vacation benefit. The quality of the time off is a function of an employee's ability to schedule it when he wants it. This is particularly true with respect to employees of lower seniority on a shift. If more senior employees select their vacation on slots for the shift day that a less senior employee desires, the less senior employee must pick a different vacation period. Union Exhibit 14C and City Exhibit 25 analyze the current availability of vacation slots. There are currently 730 slots available for current members of the bargaining unit. The City proposes to reduce the available vacation slots from 730 to 548, or by 25%. The City has presented no compelling operational or financial justification for this reduction. The thrust of City Exhibit 25 appears to be that if the existing time off can be scheduled within the available slots with some left over (85.5), then reduction is justified. This perspective totally ignores the qualitative value to employees of being able to schedule their vacations at times that they and their families prefer. The City has offered no "*quid pro quo*" for this

reduction and can show no inequity based on comparability factors. The City proposal may very well allow the City to avoid overtime costs. Union Exhibit 27 demonstrates that the City's decision to staff two shifts with 12 employees and the third shift with 13 is the source of overtime. Union Exhibit 28 examines this staffing pattern in comparison to those in effect in comparable communities. Without exception among comparable departments the maximum staffing per shift less the vacation/Kelly Day slots equals minimum staffing. Urbana is the only department that staffs two shifts at a negative level. In addition, Union Exhibit 28 shows that the average in terms of availability of vacation slots is 3.6. The existing benefit of two slots puts Urbana last among the comparables.

The Union insists that the City's proposal makes even less sense in light of this: effective April 1, 1998 the size of the bargaining unit will be increased by 15 employees. Assuming the average vacation and comp time usage employed in City Exhibit 25, it is evident that if the City's proposal were adopted there would not be enough slots to schedule the vacation and comp time needed for these additional 15 bargaining unit employees. This is true whether or not the existing vacation schedule is maintained or the reduced vacation schedule plus Kelly Days proposed by the Union is adopted. Under the existing vacation schedule the additional 15 employees will require 108 (15 x 7) duty days and 37 comp days (15 x 2.5) or 145 total slots in 1999. If the Union's Kelly Day proposal were adopted, 165 slots will be required (15 x 6 vacation days)(+ 15 x 1 comp days)(+ 15 x 4 Kelly Days). This deficiency in the City's proposal is reason enough to reject it. But when we also consider the deficiency of Urbana firefighters in overall compensation, a proposal that exacerbates a deficiency must be emphatically rejected.

### (3). Award on Vacation Benefits

I award the Union's proposal on vacation benefits. Simply stated, the Administration has not met its burden of demonstrating a compelling need for having an interest arbitrator effect a reduction of benefits, a position rarely taken by labor arbitrators. I also agree with the Union's analysis that in view of the projected increase in the bargaining unit, adoption of the City's proposal will leave the parties short regarding the number of slots needed to schedule vacation and comp time. By all accounts the Union advances the better argument with respect to Vacation Benefits.

## 6. THE UNIVERSITY OF ILLINOIS IMPACT ISSUES (Non-Economic Issue)

### A. The Final Offers

#### (1). The City's Final Offer

The City has proposed adding the following new section to Article XIX (Entire Agreement):

Section 19.3. Neither side waives any right they may have to bargain during the term of this Agreement with respect to the impact or effects of an "Intergovernmental Agreement between the University of Illinois and the Cities of Urbana and Champaign for Fire Protection Services" upon the wages, hours and terms and conditions of employment of bargaining-unit employees. To the extent either party desires such negotiations, such party shall submit a timely demand to bargain upon the other party.

The City asserts that adoption of its offer adequately preserves the Union's right to bargain over the impact or effects of the U. of I. Agreement.

Section 19.1 of the current agreement (Jt. Ex. 1) provides as follows:

This Agreement constitutes the entire Agreement between the parties and concludes the collective bargaining on any subject, whether included in this Agreement or not, for the term of this Agreement.

The City's final offer to add an exception in the form of Section 19.3 preserves any right the Union may have to bargain over the impact or effects of the "Intergovernmental Agreement between the University of Illinois and the Cities of Urbana and Champaign for Fire Protection Services" upon the wages, hours and terms and conditions of employment of bargaining unit employees under the Act.

The Union's final language should be rejected for several reasons. First, it is vague and ambiguous. The Union's new clause appears to obligate the City to bargain with respect to "issues previously raised" without identifying such issues. Such broad language, if awarded, could be cited by the Union in an effort to renegotiate subjects already covered by the existing agreement or which may be the subject of the Arbitrator's award in this very proceeding. The scope of an employer's impact bargaining obligation is much more narrow. See, e.g., Community College Dist. 508 (City Colleges of Chicago), 13 PERI 1045 (IELRB, March, 1997), in which the IELRB adopted the NLRB's *Litton* standard and held that an employer would only be obligated to bargain over matters that were "an inevitable consequence" of the employer's decision to consolidate or close campus sites. Section 15.1 of the IPLRA provides that the Illinois State Labor Relations Board shall consider final decisions of the IELRB. The language of Section 4 of the IPLRA, moreover, is substantially identical to Section 4 of the IELRA.

The Union's proposed language also attempts to define the length of the parties' obligation to bargain in good faith over the foregoing ill-defined issues, eliminates mediation, and purports to obligate the City to submit unresolved issues to a single arbitrator chosen in a manner different than the procedure specified under Section 14 of the IPLRA. At the outset of the hearing in this case, the City stated that it was not waiving any of its rights under the Act with respect to the U. of I. issues (Tr. 2-3; 6-7). The City strongly objects to the Union's attempt to redefine the law governing any mid-term bargaining obligation the City may have, as well as the resolution of any impasse in such

negotiations. In the absence of mutual agreement, such matters are best left for resolution by the Illinois State Labor Relations Board in accordance with the Act.

Despite the presence of a waiver clause in the agreement, the City has offered a new clause expressly confirming the Union's right to mid-term impact bargaining in accordance with the Act. Nothing more is required to preserve the Union's rights under the Act. The City's proposed language for a new Section 19.3 should be awarded.

## (2). The Union's Final Offer

The Union has proposed adding the following new section to Article XIX (Entire Agreement):

### UNIVERSITY OF ILLINOIS INTERGOVERNMENTAL AGREEMENT, §19.3:

Within fifteen (15) days of the hiring of new employees pursuant to the University of Illinois, City of Urbana and City of Champaign Intergovernmental Agreement and the City of Urbana "Experienced Fire Fighter Hiring" Ordinance #9798-48, either party may serve a written request to bargain with respect to issues previously raised which remain unresolved relating to the implementation of the Intergovernmental Agreement and its impact and effects upon bargaining-unit members. After service of such request on the other party, the parties shall meet and negotiate as to such unresolved issues for a period of at least thirty (30) days (or longer if mutually agreed). If no agreement is reached, either party may invoke interest arbitration to resolve any issues that constitute mandatory subjects of bargaining that remain in dispute. The interest arbitration shall be conducted in accordance with Section 14 of the IPLRA, except that the mediator and the tripartite panel shall be waived. In the event that the parties do not agree upon the impartial arbitrator, the arbitrator shall be selected in accordance with the procedures of Section 5.3 of the parties' agreement.

The Union's proposal is keyed to the actual hiring of new employees pursuant to the Intergovernmental Agreement. The Union's language provides for more structured bargaining with respect to the impact of the hiring of these additional employees. According to the Union, the City's language ignores this issue. The Union proposes language which would allow either party to "invoke interest arbitration to resolve any issues that constitute mandatory subjects of bargaining that remain in dispute" after the negotiation period.

The Union asserts that the addition of 15 experienced firefighters previously employed by the University of Illinois will have a severe and potentially disruptive impact upon the members of the existing bargaining unit. The terms of the Intergovernmental Agreement did not become a reality until the Urbana City Council enacted an ordinance authorizing the agreement on October 21, 1997. At this point the parties were well into negotiations relating to the existing members of the bargaining unit. Initial efforts on the part of the Union to address some of the impact issues were

rebuffed by the City which took the position that bargaining as to these issues was premature until the agreement was finally approved and executed by all parties including the University of Illinois. The agreement was executed during the pendency of these proceedings. The terms included a commitment to hire an additional 15 experienced University of Illinois firefighters by April 1, 1998. The Union presented the City with a formal proposal regarding impact issues dated December 31, 1997. The City formally responded to this proposal by letter dated January 15, 1998. This letter agrees to "meet and discuss" as to some of the Union's impact proposals. Further, it asserts the position that "some or all of the Union's proposals do not fall within the scope of any 'impact bargaining' obligation that might exist under the Act." The City's reluctance to fully engage in negotiations with respect to impact issues is evident. The language the Administration has put forward offers no commitment to negotiate and resolve any of the impact issues raised.

Against this backdrop, the Union's proposed language is necessary. It is highly unlikely that any resolution as to any of the impact issues will occur in the absence of an option to invoke interest arbitration to resolve any impasse. The Union recognizes that the City has some objections as to whether some of the impact issues are mandatory subjects of bargaining. The Union's proposed language preserves the City's objections in this regard in that it provides that the interest arbitration procedures of Section 14 (h) would only be available to issues that constitute mandatory subjects of bargaining. It is unnecessary to resolve disputes as to which items may or may not be mandatory subjects of bargaining in this proceeding. The Act provides a mechanism to resolve such disputes either through its unfair labor practice procedure or declaratory ruling procedure (ISLRB Rules and Regulations, Section 1200.140).

To the extent that the City's objections were based on the fact that the U. of I. employees were not yet members of the bargaining unit, that objection is now moot since during the pendency of these proceedings the employees will be hired and become members of the bargaining unit effective no later than April 1, 1998.

Other arbitrators, including the Impartial Chairman in this proceeding, have issued awards designed to preserve the union's full bargaining rights under the Act. In City of Batavia and Batavia Firefighters Association IAFF Local 3436, ISLRB Case No. S-MA-95-36 (March 23, 1995), the arbitrator was presented with a dispute between the parties as to the proposed language relating to the scope of bargaining as to issues not covered by the contract's express terms that might arise midterm. In Batavia, the union's concern was with respect to unilateral changes that the city might initiate as to wages, hours or working conditions that were not explicitly covered by the express terms of the contract. The union proposed language providing that any proposals by the city to make such change would require notification to the union and negotiations to resolve such issues. The language provided that existing conditions of employment would remain in place during the period of such negotiations. Over objections from the city, Arbitrator Hill adopted the union's proposal stating his finding that "The Union's proposal is more faithful to the existing language and the statutory policy requiring bargaining of mandatory subjects and arguably does no more than required of the administration under the Act."

### III. SUMMARY

For the above reasons the following award is made regarding the issues in dispute:

#### A. Economic Issues

- |                                       |   |
|---------------------------------------|---|
| 1. Hours of Work (Kelly Day Proposal) | The Administration's Position (status quo) is Awarded |
| 2. Wages                              | The Union's Position is Awarded                       |
| 3. Company Officer Rank Differential  | The Union's Position is Awarded                       |
| 4. Dependent Health Insurance         | The Administration's Position is Awarded              |
| 5. Reduction of Vacation Slots        | The Union's Position (status quo) is Awarded          |

#### B. Non-Economic Issues

6. University of Illinois Impact Bargaining Language

The following University of Illinois Impact Bargaining Language is awarded:

Section 19.3. Neither side waives any right it may have to bargain during the term of this Agreement with respect to the impact or effects of an "Intergovernmental Agreement between the University of Illinois and the Cities of Urbana and Champaign for Fire Protection Services" regarding the wages, hours and other mandatory terms and conditions of employment of bargaining-unit employees. To the extent either party desires such negotiations, such party shall submit a timely demand to bargain upon the other party. If no agreement is reached, either party may invoke impasse procedures including interest arbitration to resolve any issues that constitute mandatory subjects of bargaining that remain in dispute. Interest arbitration shall be conducted in accordance with Section 14 of the IPLRA. In the event that the parties do not agree upon the impartial arbitrator, the arbitrator shall be selected in accordance with the procedures of Section 5.3 of the parties' agreement.

Dated this 7th of May, 1998,  
DeKalb, Illinois.

  
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Marvin Hill, Jr.,  
Arbitrator