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Illinois State Lab Rel. Bd.  
SPRINGFIELD, ILLINOIS

In the Matter of the Interest  
Arbitration of a Dispute Between

THE CITY OF ELGIN, ILLINOIS

and

LOCAL NO. 439, INTERNATIONAL  
ASSOCIATION OF FIREFIGHTERS

ISLRB NO. S-MA-97-63  
1997 - 1999 AGREEMENT  
SALARY RANGES  
KELLY DAYS

APPEARANCES: J. DALE BERRY of Cornfield and Feldman, Attorneys  
at Law, appearing on behalf of the Union.

R. THEODORE CLARK, JR. of Seyfarth, Shaw,  
Fairweather & Geraldson, Attorneys at Law,  
appearing on behalf of the City.

OPINION AND AWARD

The City of Elgin, Illinois, hereinafter referred to as the City or Employer, and Local No. 439, International Association of Firefighters, hereinafter referred to as the Association or Union, were parties to a collective bargaining agreement for the period December 26, 1993 to December 21, 1996. The agreement included a provision (Appendix B) setting forth certain variances in the statutory impasse resolution procedures, to be followed for the purpose of resolving any bargaining impasse that might occur upon expiration of the agreement. The parties were unable to resolve two economic issues and, pursuant to the provisions of IPLRA, Chapter 48, Section 614 and Appendix B of their agreement, selected the undersigned to serve as the sole arbitrator and issue a final and binding award resolving the two remaining issues in dispute. Hearings were held in Elgin, Illinois on March 18, 1997 and April 17, 1997, at which time the parties presented their evidence. A

verbatim transcript of the hearings was prepared and the parties filed written arguments which were received by and exchanged on July 16, 1997. Full consideration has been given to the evidence and arguments presented.

#### ISSUES AND ARGUMENTS

In bilateral negotiations, the parties were able to resolve all issues in dispute, except for two (salary ranges and Kelly days), both of which are economic in nature. The list of items agreed to includes a number which are of an economic nature. In its presentation, the City identified the following four "cost items" agreed to:

1. Increasing paramedic pay from \$187.50 per month to \$200.00 per month for 1997, to \$212.50 per month for 1998, and to \$225.00 per month for 1999.
2. Increasing mechanics pay from \$62.50 per month to \$75.00 per month for term of agreement.
3. Increasing term life insurance from \$20,000 to \$35,000.
4. Deleting requirement that employee must serve in acting capacity for at least 10 hours before becoming eligible for higher pay.

#### 1. SALARY RANGES

Under the terms of the expired agreement, the following monthly salary ranges were established for firefighters and fire

lieutenants, for the 1996 fiscal year:<sup>1</sup>

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	2800	2985	3172	3359	3546	3732
Fire Lieutenant				3974	4151	4321

These salary ranges reflect the results of the application of three, 3% increases agreed to as part of the parties' voluntary agreement reached in early 1994. That agreement included an improvement in the number of Kelly days earned as well.

The City's final offer at the time of the hearing called for across the board increases of 3.75%, 3.5% and 3.0%, during the three years covered by the new agreement. At the conclusion of the hearing, it was agreed that the parties would submit their last offer of settlement on the two remaining economic issues on April 28, 1997, and each party did so on or about that date. In its last offer of settlement on salary ranges, the City proposed across the board increases of 3.75%, 3.5% and 3.25%, during the three years covered by the new agreement.

At the conclusion of the hearing, the parties agreed that the wage rate increases for 1997, would take effect at the beginning of the pay period falling primarily within the fiscal year, i.e., December 22, 1996. They also agreed that the increases for the 1998 and 1999 fiscal years would begin on January 1 of those years.

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<sup>1</sup>In the past, it was the parties' practice to implement annual salary increases at the beginning of the first pay period falling primarily within the fiscal year which begins on January 1. For the 1996 fiscal year, the effective date of the increases was December 24, 1995.

The City calculates that under its last offer of settlement and the parties' practice in rounding figures, the following monthly salary schedules should appear in Article IX, Section a of the new agreement:

Section a. Salary Ranges. Effective December 22, 1996, the salary ranges for employees covered by this Agreement shall be:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	2905	3097	3291	3485	3679	3892
Fire Lieutenant				4123	4307	4483

Effective January 1, 1998, the salary ranges for employees covered by this Agreement shall be:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	3007	3205	3406	3607	3808	4008
Fire Lieutenant				4267	4458	4640

Effective January 1, 1999, the salary ranges for employees covered by this Agreement shall be:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	3105	3309	3517	3724	3932	4138
Fire Lieutenant				4406	4603	4791

The Union's final offer at the time of the hearing called for increases of 4.5%, 3.75% and 3.75%, during the three years covered by the new agreement. In its last offer of settlement on wage rates, the Union proposed a split increase during the first year of the agreement, of 3.75% on December 22, 1996 and .75% on July 1, 1997, and increases of 3.75% and 3.5%, during the last two years of the agreement. The Union prepared the following provision, intended to reflect the effect of the its proposed increases,

as they would appear in Article IX, Section a of the new agreement:

Section a. Salary Ranges.

Effective December 22, 1996, monthly pay and salary ranges for employees covered by this Agreement shall be increased 3.75% to:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	2905	3097	3291	3485	3679	3872
Fire Lieutenant				4123	4307	4483

Effective July 1, 1997 monthly pay and salary ranges for employees covered by this Agreement shall be increased .75% to:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	2926	3119	3315	3510	3706	3900*
Fire Lieutenant				4153	4338	4515

Effective January 1, 1998 monthly pay and salary ranges for employees covered by this Agreement shall be increased 3.75% to:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	3036	3236	3439	3642	3845	4046
Fire Lieutenant				4309	4500	4685

Effective January 1, 1999 monthly pay and salary ranges for employees covered by this Agreement shall be increased 3.5% to:

<u>Position</u>	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>IV</u>
Firefighter	3142	3349	3559	3769	3980	4188
Fire Lieutenant				4460	4658	4849

\* Figure corrected to eliminate apparent typographical error.

City's Position

The City makes the following points in support of its last offer of settlement on salary ranges:

1. External Comparisons. External comparability data

strongly support acceptance of the City's final salary offer. The parties have agreed to continue their longstanding agreement as to which jurisdictions should be used for comparability purposes. They are: Arlington Heights, Aurora, DesPlaines, Evanston, Joliet, Oak Park, Skokie, and Waukegan. (Further, the City's claim is unrebutted that, historically, four of these eight jurisdictions -- Aurora, Joliet, Waukegan and Oak Park -- have been considered to be primary comparators and that the remaining four were deemed to be secondary comparators, with the relevant figures being averaged and the average number being used as a "fifth comparable.") Notwithstanding this agreement, the parties continue to disagree over the method to deal with the differences between these jurisdictions as to the start of their fiscal year. Five of the other eight jurisdictions have fiscal years that begin on dates other than January 1. The fiscal year in Evanston and Waukegan begins on March 1 and the fiscal year in Arlington Heights, DesPlaines and Skokie begins on May 1.

2. The City's "snapshot" approach of comparing salaries and benefits as of January 1, regardless of the differences in fiscal years, is the most appropriate approach. This approach is consistent with the statutory emphasis on negotiations leading to timely settlement in relation to the budget making process and the availability of data to the parties during the period when serious negotiations should be occurring in Elgin, i.e., October, November and December. Also, the use of the "snapshot" method is well

accepted. For example, it is used by the BLS in preparing occupational classification surveys.

3. In determining what is reasonable in terms of external comparability, it is appropriate to consider the ranking established by the parties themselves through voluntary negotiations. In the last year of their three-year agreement (1996), with a base salary of \$44,784, Elgin was ahead of three of the four primary comparators (Aurora, Joliet and Waukegan) and was exactly at the median point among the nine jurisdictions. This ranking should be used as a "benchmark" against which the reasonableness of the parties' final offers are judged. In 1997, the City's final offer will continue to put Elgin ahead of three of the four primary comparators and maintain its median placement among the nine communities overall. It is also clear that the City's relative relationship to the four primary comparables and the nine communities overall will remain stable during the remaining two years of the agreement, under the City's final offer. Its offer of 3.5% and 3.25% for the 1998 and 1999 fiscal years, compares quite favorably with those communities that have already settled for one or both of those years.

4. A comparison of the across the board percentage increases offered by the City, with those agreed to in the comparable communities also supports the reasonableness of the City's offer. The City's final salary offer, with but one exception, equals or exceeds the percentage increases for all of the comparables in

years for which information is available. (Waukegan's 3.4% increase on March 1, 1999 is higher, but the total percentage adjustment provided on an un compounded basis by Waukegan is only .05% higher.)

5. While the City continues to believe that salary comparisons among comparables should be based upon the "snapshot" method, it is also possible to compare "annual salaries," i.e. the actual salaries received during the calendar years in question. When this method is employed, Elgin maintains its relative position ahead of three of the four primary comparators and at the median position.

6. The reasonableness of the City's offer is even clearer when all of the relevant elements of overall compensation are taken into account. Thus, if longevity pay (if any) and holiday pay (if any) are added to actual salaries earned in 1997 and the amount (if any) that employees pay for the cost of dependent health insurance is subtracted, the result reflects actual compensation earned. By this method, total compensation for a firefighter at the top of the range in Elgin amounts to \$47,574, which is 1.1% above the average of \$47,042 for the eight comparable jurisdictions. This places Elgin ahead of all four primary comparables and at third place among the nine communities overall.

7. Internal Comparisons. Internal comparability data also strongly support acceptance of the City's final salary offer. In the three bargaining units for which prior comparisons exist

(police, fire and public works) all increases in 1994, 1995 and 1996 were at 3%. The two bargaining units which have settled for 1997 (public works and clerical/technical) have both agreed to 3.75% increases, which is identical to the City's offer to the Union here. While the agreement with the clerical/technical unit provides for a 3.65% increase in 1998 (and a wage reopener in 1999), which is slightly higher than the City's offer to the Union here, the agreement here will include a number of additional costs in terms of the stipulated agreements and the City's Kelly day proposal. While the police unit has not settled, the strong parity relationship that exists between the police and fire bargaining units suggests that if the City's final offer on wages is accepted by the arbitrator, the police unit will receive the same salary adjustment. In his 1992 arbitration award involving this same unit, the arbitrator in this case laid heavy emphasis on internal comparisons and this parity relationship in accepting the City's final offer on salaries. Subsequently, Arbitrator Briggs accepted the City's final offer on wages for 1994, 1995 and 1996 for the police bargaining unit, for essentially the same reasons. If the arbitrator selects the Union's final offer in this case it will upset this relationship and lead to destructive whipsawing among the City's bargaining units, all to the detriment of labor relations stability. This arbitrator and others have recognized the importance of giving great deference to established internal parity relationships and that deference should be employed in this

case.

8. Cost of Living. CPI data, including the most recently released data, strongly support acceptance of the City's final salary offer. Arbitrators generally recognize that the reasonableness of the parties' final offers on salary should be judged against the rate of increase in the CPI during the last year of the most recent agreement. Using that approach here, the parties' final salary offers should be judged against the rate of increase in the CPI during the calendar year 1996. During that year both the CPI-U index and the CPI-W index rose 3.3%. The City's proposed increases of 3.75%, 3.5% and 3.25% are clearly more reasonable in relation to these measures of the cost of living, which the BLS advises users to rely upon (in lieu of the less reliable local and regional indexes). Further, the City picks up the increasing cost of health insurance and uniforms and provides other benefits, thereby decreasing the actual increase in the cost of living experienced by employees. The reasonableness of the City's final offer in relation to the cost of living criterion becomes more dramatic if consideration is given to the most recent CPI data, which is running at an annual rate of less than 3%, and the fact that there is a general consensus among experts in and out of government that the CPI index overstates the actual cost of living by between .5% and 1.5% per year.

9. Applicants and Turnover. Data on the number of qualified applicants and turnover strongly support acceptance of the City's

final salary offer. It is generally recognized that these two measures can be an indication of wages that are too low or wages that are sufficient to attract and retain the required number of qualified employees. Data presented at the hearing demonstrates that the number of applicants passing the written examination increased from 50 in 1987 to 175 in 1995 and the number of qualified applicants on the eligibility list had increased from 11 to 26 during that same time frame. The City has been able to attract nearly two dozen bargaining unit members from full-time positions with other fire departments or emergency service organizations, notwithstanding the fact that pension credits are not portable between municipalities. Voluntary turnover among firefighters in Elgin has been virtually non-existent, with only two firefighters leaving in the six years prior to the term of this agreement. One employee left to enter training to become a physician's assistant and another took a position as a training officer in a downstate fire department. The average tenure for a firefighter in the bargaining unit is 10.5 years, more than twice the national average.

10. Other Comparisons. Other collective bargaining settlements and economic data strongly support acceptance of the City's final salary offer. According to BNA, wage settlements for all industries for calendar year 1996 was 3% and a similar settlement average was being established during the first ten weeks of 1997. The employment cost index (ECI), considered by most

observers to be the most accurate gauge of wage movements in the US economy, reflects that salaries for state and local government workers increased 2.8% in 1996, down from 3.2% in 1995. In calendar 1997, federal employees received a 2.3% base pay increase, coupled with an average locality pay increase of .7%, bringing the total wage increase for 1997 to 3%.

11. Ability to Pay. The Union's reliance on the City's good fortune in being the recipient of gaming revenue is not relevant since the City is not making an inability to pay defense. The Union's attorney referred to the City's current financial resources, which have been augmented by significant gaming revenue, as "a very key point for this proceeding." However, as the City's attorney repeatedly stated, the City is not making an inability to pay defense and considers this argument to be irrelevant. Other arbitrators have recognized that the fact that an employer has the ability to pay the cost of a requested increase does not constitute justification for the increase. Further, even if consideration is given to the City's good fortune in being selected as one of the ten Illinois communities to receive revenue from a river boat casino, two additional factors should be considered. First, the City's five-year financial plan recognizes the potentially unstable nature of gaming revenues and requires that the proceeds be used for one time expenses and other conservative purposes such as paying down debt, creating reasonable financial reserves, etc. The fire department and its employees have been the beneficiaries of

capital expenditures for a fire engine and a fire ladder truck in 1995 and 1996 (at a cost of \$753,000) and will be the beneficiaries of the purchase of a new apparatus for far west service expansion (at a cost of \$890,000). Finally, a more reliable indicator of the community's long term financial health can be found in its assessed valuation, sales tax, average family income and average home value figures. The City ranks sixth out of nine for per capita assessed valuation, per capita sales tax revenue and average family income. Its average home value ranks seventh.

12. Need for "Catch up." Contrary to the Union's assertion, the City has not fallen behind and there is no need for any "catch up." While the Union has asserted that at least 1% of the 4.5% it seeks in the first year of the agreement is justified by the need to "catch up," the relevant data does not support the Union's contention. The Union relies upon the City's snapshot method of comparison to show that the City ranked third out of nine on January 1, 1990 and will rank fourth out of nine on January 1, 1997. However, a drop by one in ranking is not very startling in and of itself. Further, on January 1, 1997, Elgin will only be \$519 from the top ranked community, for a difference of only 1.1%, while it was \$666 below the top ranked comparable on January 1, 1990, for a difference of 1.9%.

13. An analysis of the relationship to the average salary figures between 1990 and 1997 yields the same result. While it is true that Elgin's top base salary of \$35,076 was 3.5% above average

in 1990, and the \$46,463 top base salary for 1997 will only put Elgin at 1.67% above average, these small differences do not establish the need for a "catch up" increase. An analysis of the data reveals that the biggest increases were in the jurisdictions that were in the bottom quartile. Aurora and Joliet were nearly \$2,000 and \$3,000, respectively, below Elgin in 1990 and will be less than \$1,000 below Elgin as of January 1, 1997. What has happened is that the lowest paid among the comparables have provided somewhat greater increases in order to "catch up" with the higher paid communities. The fact that Joliet and Aurora have "played catch up" does not in any way justify the need for a "catch up" increase for Elgin firefighters, who are demonstrably closer to the top rank among the nine communities than they were on January 1, 1990.

14. Finally, no credence should be given to the argument made at the hearing that "catch up" is justified because of the 3% annual adjustments agreed to in the last contract. Also during that contract, the parties agreed to add approximately three additional Kelly days. If any consideration were given to the increases agreed to the last contract, consideration should also be given to the total package that was agreed to, including the additional Kelly days. During the period between 1994 and 1996, Elgin was the only jurisdiction to make a change in the number of Kelly days, when it increased them from 7.16 Kelly days in 1994 to 10.15 Kelly days in 1996.

15. Total Compensation. Unlike the City's total compensation analysis, the Union's total compensation analysis does not represent what firefighters actually receive in take home compensation. First of all, the Union's analysis includes the cost of health insurance, which is not actually received by firefighters. Further, it includes the value of both paramedic pay and engineer pay, even though it is acknowledged that no firefighter can receive both those sums in the jurisdictions that provide both.

16. Parity. Since there has been no change in the percentage relationship between police officers and firefighters, the Union's reliance on the dollar differential between a top step police officer and a top step firefighter is not relevant. The City does not dispute that, historically, top step police officers have been paid more than top step firefighters. However, the percentage increases received by both police and fire from 1986 to date have been essentially the same and it is a mathematical fact that these identical across the board percentage increases have increased the dollar amount of the differential. What is important to note is that there has been no change in the percentage differential between the two classifications in question. It was 4.09% in 1993, when the parties agreed to a three-year agreement (and Arbitrator Briggs awarded comparable increases to the police) and it remains exactly the same at 4.09%. If the arbitrator were to accept the Union's argument on this point, it will have the untoward results

discussed above. Further, it should be noted that the same dollar differential argument could be used to justify a lower percentage increase for lieutenants in this case. Under both offers, the percentage differential for the top step fire lieutenant and firefighters will remain at 15.78%, while the dollar differential will increase from \$6,696 in 1993 to \$7,836 or \$7932 in 1999, depending upon which offer is accepted. The Union's failure to take note of this increasing dollar differential draws into question the credibility of its dollar differential argument vis-a-vis police officers.

17. Hourly Rates. Since the Elgin hourly rate of pay for firefighters under the City's final salary offer will be at the median and above the average for the comparables, use of an hourly rate analysis does not support acceptance of the Union's final salary offer. The Union's own exhibit (corrected at the hearing) on this point shows that Elgin's hourly rate will be \$17.34 for 1997. That rate will put the City at the median of the nine communities and 11¢ per hour above the average for the eight comparables. The City's Kelly day offer will result in a further reduction in the number of hours as of January 1, 1998 and increase the hourly rate of pay. While the Kelly day offer is not scheduled to take effect until 1998, if its impact on the hourly rate is considered in relation to the 1997 hourly rates of pay it would cause Elgin to tie with DesPlaines for fourth place and put Elgin 26¢ or 1.5% above the average. Finally, while the Union notes that

Kelly days is an issue on the table in Joliet, Joliet's hourly rate is at the bottom of the nine and it is very unlikely that the introduction of some Kelly days in Joliet will alter Elgin's ranking.

18. Exempt Personnel. The Union's belated reliance on salary increases received by exempt personnel is not relevant and should not be given any weight by the arbitrator. Many arbitrators, including the arbitrator in this proceeding, have rejected efforts by unions to draw comparisons to management personnel in an effort to justify salary increases for bargaining unit personnel.

#### Union's Position

The Union makes the following points in support of its position on salary ranges:

1. Under both final offers, a general wage increase of 3.75% will be implemented in the first year of the agreement. However, the Union's proposal would also include an "equity" increase of an additional .75%, effective in the second half of the year. (The offers also diverge in the second and third years by .25%.)

2. There are three main reasons why the Union's proposal should be selected. It is more consistent with the internal comparables, when consideration is given to the increasing differential between the pay for the top patrolman and top firefighter; it is justified by the need to "catch up" and eliminate the relative deterioration in salaries in relation to the external comparables; and this is an appropriate time for an equity

adjustment, since the City's financial capacity to pay the cost of such an adjustment has skyrocketed since the last contract was negotiated.

3. Internal comparisons. In the 1992 interest arbitration between the parties, this arbitrator found the internal comparisons, including preexisting "parity" relationships and salary structure, to be the most important consideration. The most relevant and historically honored internal comparison is found in the parity relationship between firefighters and police. In 1991, the annual maximum salary of Elgin firefighters was \$1,416 below the maximum patrol officer's salary. By 1996, that differential had increased by approximately 30% to \$1,836. It is the City's position that this parity relationship should be maintained by awarding the same percentage raises. However, because police salaries are historically higher than firefighters, applying the same percentage increases over time results in a widening of the gap between the two salary figures and periodic adjustments are required.

4. The City's handling of salary increases for fire and police command personnel demonstrates that it is the dollar differential that is the appropriate comparison to make in order to maintain the proper relationship. While the City objected to evidence concerning increases granted to fire and police command personnel as irrelevant, the Union does not rely upon the amount of those increases to justify its position. Instead, the Union relies upon

the fact that they indicate that the City has attempted to maintain a relatively constant dollar differential between command personnel in the fire and police departments.

5. Arbitrators are reluctant to eliminate historic differentials that have been established through collective bargaining, in the absence of compelling reasons to do so. The City's offer seriously disturbs the stabilized, historic differential the parties have long maintained and the Union's proposal for an equity adjustment of .75% on July 1, 1997 is a gradual move toward returning to the historic parity relationship.

6. Other internal comparisons also support the Union's final offer. When the proposed equity adjustment is set aside for purposes of comparison, the 3.75% increase is entirely consistent with what the City has provided to its other employees who bargain collectively. Pursuant to a wage reopener, the public works employees were given a 3.75% increase effective on January 1, 1997. The clerical/technical employees were given a 3.75% increase, effective on that same date, and a 3.65% increase effective on January 1, 1998. While the Union is seeking a slightly higher increase in the second year, the City's proposal for the fire department is slightly lower, at 3.5%.

7. External Comparisons. Wages paid to Elgin firefighters have been deteriorating in relation to the comparables for a number of years. The .75% equity adjustment will serve to address this problem. While the City's "snapshot" method of drawing comparisons

tends to obscure the difference, the Union's methodology overcomes this problem by comparing wage rates that become effective during the first six months of the fiscal year. It also comports with the criterion requiring the arbitrator to consider changes during the pendency of the arbitration proceeding. The Union's analysis shows that the maximum base salary for Elgin firefighters was ranked fifth among the nine comparables and was only .27% above the average in 1995 and that it dropped in relation to the average to minus .86%. (These comparisons to the average would be even lower at minus .97% and minus 2.1% if the extra pay for engineers in Joliet is included in the calculation.)

8. If the maximum hourly rates of pay are analyzed, this same downward trend can be observed. In 1996, Elgin ranked sixth out of nine at \$16.72 per hour, or .42% below the average of \$16.79. Even if the City's "snapshot" method is utilized, it reflects a deterioration in rank. Elgin ranked third among the comparables and was 3.54% above average in 1990. By 1996, it had fallen to fifth in rank and was only 1.26% above average. The City's proposal for 1997 would place Elgin at fourth in rank and 1.67% above average, a mere .41% better than 1996. The Union's proposal does the same, but would add a .75% equity increase in the second half of the year in order to adjust for Elgin's declining position relative to the comparables. While the City may argue that its offer is justified because it places Elgin at or above average, there is nothing in the law that justifies a "regression toward the

mean."

9. The relative deterioration in the position of firefighters at Elgin is most evident when consideration is given to the differential with Aurora. In the arbitration proceeding for 1992-1994, the City argued that Elgin had remained 2.49% higher than Aurora in the past and that that differential should be maintained. After the award, that differential was increased to 4.45%. However, by 1996, that differential had fallen to a mere .75%. Under the City's offer, the differential would increase to a mere .98%.

10. When wage increase percentages are compared, it discloses that Elgin has lagged behind the comparables in percentage increases for the last two years. In 1995, the average percentage increase was 3.89% and in 1996 the average was 3.72%. While the known average to date for 1997 is 3.61%, a little below the City's offer of 3.75%, this fails to make up for the disparity created by the two, 3% increases in 1995 and 1996.

11. Elgin's relative position is far more bleak, when longevity pay is factored into the analysis. Using the Union's methodology, a 1995 comparison shows that Elgin firefighters are .78% below average with 10 years of service, 1.66% below average with 15 years of service, 2.07% below average with 20 years of service and 2.32% below average with 25 years of service. In 1996, the percentages below average grew to 1.51%, 2.45%, 2.90% and 3.22%. As the City argues, Elgin firefighters tend to hold onto

their jobs and, consequently, the lack of longevity pay in Elgin is quite significant, especially at the time of retirement.

12. The wages for lieutenants have fared far worse relative to the comparables. This adds further justification to the need for an equity adjustment. Utilizing the Union's methodology, the maximum base salary for a fire lieutenant in 1995 ranked seventh out of nine and was 2.39% below average. In 1996, the rank remained the same, but the pay fell to 2.8% below average. Similar results are reached when the comparison is made to hourly wages. Similarly, the lack of longevity pay exacerbates the problem for lieutenants. Because both parties are proposing across the board increases in this proceeding, the arbitrator is not faced with the same problem that existed in the prior case, where the City's offer was preferred because it addressed the "structural inequity" between lieutenants and firefighters in a way that was consistent with preexisting parity concepts. In this case, while both proposals will leave fire lieutenants behind the average, the Union's offer will narrow the discrepancy somewhat "in a way that is consistent with preexisting parity concepts."

13. The work load in Elgin is higher than the work load in comparable jurisdictions. The IPFFA survey data is more reliable than the data reflected in the NFIRS report, which suffers from underreporting. However, both reports show that, while Elgin experiences a below average number of fire calls, the large number of EMS calls more than offsets the difference, resulting in an

above average number of total calls. (These data are also significant in that EMS calls are revenue producing.) Other evidence discloses that the City's population and geographic size have increased substantially in the last few years, placing an increasing work load demand on the fire department. While the City has recently purchased a new fire engine, it has not expanded the work force significantly. While the City ranks third in population, it ranks fourth in the number of sworn fire department employees and seventh in the number of fire department personnel per 1,000 population. This low per capita figure results in a substantial savings to the City. The cost of the equity adjustment sought is far less than the cost that the City would incur if it hired additional firefighters to deal with the heavy work load. In short, an above average work load justifies above average pay and the City will still be getting a "great bargain" for the services provided relative to the comparable communities.

14. Elgin ranks second to last in total compensation. Total compensation (including maximum base, longevity at 15 years, paramedical differential, engineer differential, holiday benefit, and employer health insurance cost) for an Elgin firefighter was second from last in 1996, with total compensation equaling \$53,790 or \$21.69 per hour. This figure was 5.8% below the average figure of \$23.02. While the City objected to the Union's methodology in computing total compensation, that method has been approved by others and the City offered no better alternative.

15. City's Increased Financial Resources. The City has experienced a dramatic growth in its financial resources over the last few years. Overall revenue has soared and property values have increased while the City's population and geographic size have expanded. While the city argues that these data are irrelevant, because the City is not making an inability to pay argument, the City misses the point. The financial boom being experienced by the City places it in a good position to address the deterioration in the salary of firefighters in relation to comparable communities.

16. In an effort to rebut this evidence, the City offered evidence that it ranks lower than average on average family income and average home value at this point in time. However, the City offered no evidence showing the progress the City has made in this regard. Union exhibits establish that medium household income increased 80% from 1980 to 1990 and that the value of the median, owner occupied dwelling rose 55% during that same period.

17. The Union presented evidence documenting the source and extent of the increase in revenue. The City is undergoing a boom period attributable, in part, to the riverboat casino. While the City argues that the increased revenue from that source is not dependable, and indicates that it has earmarked the proceeds for one time expenditures, the fact remains that the increased revenue has revitalized the community, made other revenue more readily available for the provision of services and contributed to the overall economic boom, geographic expansion and population

increase.

18. Other Evidence and Arguments. The City's other evidence and arguments do nothing to rebut the Union's evidence establishing that its offer is more reasonable. The fact that the City has experienced low turnover and no difficulty in recruiting does not justify the payment of lower wages and benefits. It also ignores the pertinent reality that the City has permitted the wages of firefighters to slip relative to comparable departments, in spite of the economic boom it has experienced. Similarly, the CPI figures relied upon by the City (and the arguments that they overstate the actual increase in the cost of living) ought not serve to distract the arbitrator from the real issues in this case. The City should not be asking its firefighters to accept less than the pay received by firefighters in comparable communities, while it is enjoying its most opulent times ever. While the cost of living criterion must be considered by the arbitrator, he has the discretion to find that it is of little weight in this proceeding in view of the extraordinary increase in revenue being experienced by the City. The fact that City employees are not required to contribute toward the cost of their medical insurance coverage is meaningless without giving consideration to the various possible differences in coverage afforded and experience ratings. The more informative figure is the amount of premium paid by the Employer on the employee's behalf.

## 2. KELLY DAYS

Prior to 1992, the City provided paid time off in the form of personal days and holiday compensatory time. In their 1992 negotiations, the parties agreed to establish a Kelly day schedule and eliminate personal days off and the option of using holiday compensatory time. The formula agreed to resulted in the creation of approximately 7.15 Kelly days per year.<sup>2</sup>

In the negotiations leading up to the voluntary agreement covering the 1994-1996 period, the parties agreed to a significant improvement in the Kelly day provisions of the agreement. Under the terms of that agreement, the frequency of scheduling Kelly days off was increased from once every 17th duty day to once every 12th duty day, during the last year of the agreement (1996). This reduced the normal work week by 2.63% from an average of 52.77 hours to an average of 51.38 hours. It also increased the number of scheduled days off by three to approximately 10.15.

This change was not accompanied by any change in the existing holiday pay provision of the agreement, which was an issue in the earlier arbitration proceeding. Under that provision, employees who work during the hours on which one of eight named holidays falls are entitled to receive an additional payment of holiday pay at straight time rates. The pay is split between the employee who

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<sup>2</sup>There were other aspects to the Kelly day agreement, one of which had to be resolved in the arbitration award issued by the undersigned on February 7, 1992.

works the 7 hours of the holiday occurring before 7:00 a.m. and the employee who works the 17 hours occurring after 7:00 a.m. The latter employee no longer has the option of taking a compensatory day off.

At the time of the hearing and in its last offer of settlement, the City has offered to increase the frequency of Kelly days off from every 12th duty day to every 11th duty day, effective during the second year of the agreement. If implemented, this will have the effect of increasing the number of Kelly days off to approximately 11.07 per year. The City's proposal is not tied to any other proposal and would leave the existing holiday pay provision unchanged.

At the hearing and in its last offer of settlement, the Union proposes to increase the frequency of Kelly days off in both the second and third years of the agreement. Under the Union's proposal, the frequency of Kelly days off would increase from every 12th duty day to every 10th duty day during the second year of the agreement and from every 10th duty day to every 9th duty day during the third year of the agreement. This would have the effect of reducing the average number of hours from 51.38 hours to 50.4 hours and 49.8 hours, respectively, during the last two years of the agreement. This would amount to a 3.1% reduction in hours compared to the 1.0% reduction provided under the City's proposal.

Tied to the Union's proposal, and identified as a *quid pro quo*, is a proposal to add a provision to the agreement establishing

new "individualized FLSA work cycles" for employees covered by the agreement for each of the three years in question. It is undisputed that the result of those changes, in the third year, would be to reduce the amount of overtime payments otherwise required under the FLSA in the approximate amount of \$20,000 per year.

#### City's Position

The City makes the following points in support of its proposal on Kelly days:

1. The reasonableness of the City's offer and the unreasonableness of the Union's offer can be determined from a simple comparison. The City's offer would result in a 9.1% increase in the number of Kelly days, while the Union's offer would increase the number of Kelly days by a staggering 33.3%. If the City's final offer on salaries is accepted, the hourly rate in 1999 under the City's final offer on Kelly days would be \$18.77, compared to \$19.17 under the Union's final offer on Kelly days. The cost for an hour of overtime would be \$28.16 under the City's offer, compared to \$28.76 under the Union's offer. While the City's final offer will result in approximately 86 additional 24-hour shifts off without any loss of pay, the Union's offer would result in approximately 314 such shifts. To maintain the same level of service, the City's offer will require the employment of one new firefighter, whereas the Union's offer will require the City to hire the equivalent of three new firefighters.

2. Acceptance of the City's final offer on Kelly days will place Elgin firefighters in the "upper tier" among the comparables, when both Kelly days and holidays/holiday pay are considered. As the arbitrator observed in his 1992 award, "those jurisdictions having the most Kelly days (or Kelly days and personal days) also tend to have no provision for holiday pay." A comparison of the situation in 1997 shows that by providing 244 Kelly day hours off and payment for 64 hours of holiday pay, Elgin will rank sixth out of nine and be eight hours below the average of 317 hours in its provision of these benefits. Under the City's offer the average number of Kelly days will increase to 11.07 and the average number of hours scheduled off will increase to 266. When combined with the 64 hours of holiday pay, Elgin will then be above average (by 13 hours) and rank fourth of nine among the comparables.

3. Under the Union's final offer, Elgin firefighters would "catapult to the top" of the comparables and would be far above average in terms of Kelly days and holiday pay. In addition to receiving one Kelly day off for every ninth shift, for an average of 324 hours off, they will continue to receive an average of 64 hours of holiday pay, for a total of 388 hours off or paid. This is 24 hours more than is now provided in the jurisdiction with the highest number of hours (Aurora at 364 total). It would also be 71 hours or 22.4% above the average of 317 hours.

4. Contrary to the Union's contention, it has not provided a *quid pro quo* for its proposed 33 1/3% increase in Kelly days.

Because the Union is seeking to change the status quo with regard to this benefit, it should be required to demonstrate the need for the proposed change, the reasonableness of its proposal and the existence of a *quid pro quo*. While the Union argues that its proposal would reduce overtime costs by approximately \$20,000, a careful analysis of its proposal discloses that it does not include a reasonable *quid pro quo*. It is true that Kelly days off serve to reduce the number of hours worked in a duty day cycle and that the Union's proposal may well result in a decrease in the amount of money spent for FLSA overtime, as such. However, this will not come anywhere close to matching the cost of the Union's Kelly day proposal. The cost of hiring three additional firefighters, in order to maintain the same level of service, would be in excess of \$150,000.

5. Further, the elimination of FLSA overtime liability occurs as a natural result of scheduling a Kelly day every ninth shift in a 27 day work cycle, not because the Union is offering to give up anything in exchange for this change. If the Union were to offer a real *quid pro quo*, it would be in the form of a proposal to eliminate holiday pay. As the arbitrator noted in his 1992 award, "it may be that the parties will see fit to agree in the future to reduce holiday pay in part or entirely, in order to provide additional Kelly days." The Union has failed to make any such offer in this proceeding, while simultaneously seeking to increase the number of Kelly days to the maximum number provided by those

among the comparables.

6. The City's final offer both improves the Kelly day benefit and continues to provide some FLSA overtime, without asking the Union to reduce the amount of holiday pay received. Since the City's offer on Kelly days is clearly the most reasonable of the two offers, it should be accepted.

#### Union's Position

The Union makes the following points in support of its proposal on Kelly days:

1. The Union's offer should be favored for three basic reasons. It is more justifiable in terms of total time off provided among the comparables; the City is below average in Kelly days among those comparables that provide Kelly days; and the Union's proposal includes a reasonable *quid pro quo*.

2. Elgin ranks eighth among the nine comparable departments, in total time off. Currently, its adjusted annual hours amount to 2,480, which is 2.46% higher than the average of 2,416 hours. This means that Elgin firefighters have 64 fewer hours and 2.67 fewer days off per year than average. In the *Alton* case,<sup>3</sup> Arbitrator Milton Edelman selected the Union's proposal to increase Kelly days off because the total annual hours worked were higher in Alton in all but two of the six comparables.

3. The City's proposal does not even bring the City up to

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<sup>3</sup>ISLRB case #S-MA-96-91, December 17, 1996.

average. Under the City's proposal, Elgin will remain 2.67 days below average for the first two years of the agreement and 1.75 days below average during the last year of the agreement. While the Union's proposal would also leave the City below average for the first two years of the agreement, it would cause the City to rise slightly above the average in the third year.

4. While the City is slightly above average in the number of Kelly days provided, Kelly days are only a portion of the full picture regarding time off. For example, Skokie provides only 6.76 Kelly days off per year, but is well above the average in time off for vacations. Elgin ranks eighth among the ten comparables in vacation time off and is 8.39% below average in that regard.

5. The bottom line is that Elgin is well below average in total time off and, conversely, well above average in annual hours worked among the comparables. The City has a range of options available to bring itself up to the average, with increasing the Kelly days being the most advantageous, because of the FLSA cost savings possible. It also allows the City to increase time off in predictable patterns.

6. If the comparison is limited to departments that have Kelly days off, Elgin falls more than a full day behind the average of 11.29. A similar comparison was found significant by the arbitrator in the 1992 proceeding. Also, it appears that the predominant pattern among the comparable jurisdictions that have Kelly days is to provide them every ninth shift (with four of the

seven doing so). Under the Union's proposal, Elgin would fall into line with this pattern, but not until 1999.

7. Unlike the City's proposal, the Union's proposal would eliminate FLSA overtime liability. In addition to the direct cost savings, the City would save administrative costs in maintaining records and computing those overtime costs. Currently, and under the City's proposal, the City must examine each work period for each employee to determine the actual hours worked. While the City claims that this cost saving will be more than offset by the need to hire back or hire additional firefighters, the City's evidence exaggerates the need to do so. Under the minimum manning rules followed by the City, there are seven slots available to cover scheduled vacation, scheduled days off (including Kelly days) and absences for various reasons. The three slots reserved for vacation time off are not always used, except during peak periods, but even assuming that they are, this leaves four slots to cover scheduled and unscheduled time off. The Union's proposal will require the use of 2.9 slots per shift in 1998 and 3.33 slots per shift in 1999. While hire back situations will undoubtedly result from time to time, depending upon when vacation is used and how many employees are ill or otherwise absent, in most cases there will be a buffer of at least one slot.

8. The City's presentation concerning the impact of the Kelly day proposals combined bargaining unit and command personnel for purposes of analysis. It assumed that all three vacation slots

would be used at all times and overstated the amount of time off taken by command personnel. However, when adjusted for these exaggerations, the City's analysis produced essentially the same results as the Union's analysis.

9. There is no doubt that some situations will arise under the Union's proposal where staffing will fall below the City's minimum manning level. The cost of dealing with those situations will depend upon how the City chooses to respond. It can hire additional personnel or use its hire back procedures on an as needed basis, or it can lower the minimum manning level if it sees fit to do so. However, the cost of the first two options must be balanced against the known savings that the City will reap in overtime costs. That savings was one of the factors relied upon by Arbitrator Edelman in his *Alton* award.

#### DISCUSSION

As the undersigned noted in the 1992 award involving these same parties, it is not necessary or particularly useful to attempt to address all of the evidence and arguments presented. It is more useful to summarize the evidence and arguments and, after considering all of the evidence and arguments, focusing on those aspects found to be the most persuasive.

In its arguments, the City notes that the law requires the undersigned to consider separately the merits of the final offers of settlement on each of the two remaining economic issues separately, and adopt the final offer of settlement which more

nearly complies with the applicable factors prescribed. For this reason, the City argues, the arbitrator should not hesitate to select one party's final offer of settlement on both issues. With one important qualification, the City's arguments in this regard are deemed to be correct. Economic issues cannot be and ought not be viewed as totally independent of each other.

The statutory criteria require the undersigned to give consideration to the stipulations of the parties. This requires, *inter alia*, that consideration be given to the items agreed to and dropped in negotiations, as part of the overall terms of settlement that will result if one parties' final offer on a particular issue in dispute is selected. Further, the criteria specifically require the undersigned to give consideration to overall compensation, as defined. When there is more than one economic issue in dispute, as in this case, the proposed selection of one final offer over another on one issue in dispute can have a significant impact on the appropriateness of selecting the final offer of the same party on another issue in dispute.

Other criteria have a less direct impact on the need to consider the overall impact of the combination of final offers selected. Thus, it is possible that a combination of final offers favoring a union might produce a result that exceeds the lawful authority of the employer or the financial ability of the employer to meet the costs involved. A combination favoring either party might be contrary to the interests and welfare of the public.

Similarly, a final offer on an economic issue, otherwise justified by the evidence, might produce a settlement far above or far below that justified by recent changes in the cost of living, when consideration is given to other changes of an economic nature to be included in the agreement. Finally, the adoption or rejection of a new benefit or improvement in an existing benefit might be otherwise supported by the evidence, but inappropriate given the existence or non existence of certain other benefits in relation to the comparables.

In reviewing the parties' final offers of settlement, the undersigned has considered separately their relative merit under the statutory criteria, for each of the two economic issues in dispute. However, consideration has also been given to the appropriateness under the statutory criteria, of an award selecting the City's final offer or the Union's final offer on both issues in dispute. For reasons to be discussed below, that consideration lends some support to the Union's final offer on wages.

The parties' final offers on wages are both reasonable. To the extent that they both propose 3.75% across the board increases in the first year of the agreement, both offers will serve to maintain the existing rank of firefighter salaries in relation to the agreed comparables, regardless of which method is used for comparison purposes, i.e., the City's "snapshot" approach, or the Union's more pragmatic approach. Further, a 3.75% increase is consistent with the percentage increases being granted by the

comparables who have settled. However, under the Union's proposal, firefighters and fire lieutenants would receive a .75% equity adjustment in the first year, along with slightly larger (by .25%) percentage increases in the second and third year.

As the City notes, the Union's claimed need to "catch up" would appear to be exaggerated. Nevertheless, the Union's analysis demonstrates that there has been some slippage in the pay received by Elgin firefighters and lieutenants in relation to the comparables. Not surprisingly, this slippage occurred in 1995 and 1996, when the last of the three, 3% increases were implemented.

The City correctly notes that these below average increases were included in the last agreement, which also included a substantial increase in the frequency of Kelly days. However, that improvement was appropriate in view of the trend among the comparables and, for reasons to be discussed below, the agreement here will include a far less generous increase in Kelly days.

There is an additional, persuasive reason for concluding that the external comparisons favor the Union's final offer on salary ranges. It will help bring the salary ranges for fire lieutenants more into line with the average among the comparables.

But what of its impact on internal comparisons? According to the City, selecting the Union's final offer on salaries will have a very disruptive effect on established internal bargaining relationships. It is true that an internal pattern of 3.75% increases for 1997 has been established, based upon the two

settlements in evidence. However, as the prior award noted, of the relationships in question, the parity relationship with the police bargaining unit is of the greatest consequence.

Police and firefighters occupy a somewhat unique status in bargaining. This is in part attributable to the uniqueness of the work they perform, which finds no real counterpart in the private sector. Thus, while it is possible to draw comparisons to the salaries paid and increases granted to other City employees and rely on those comparisons to produce reasonable and competitive salary ranges in the short run, an employer cannot allow its police and firefighter salaries to fall behind those paid by comparable communities. Even if it does not produce significant turnover or recruiting problems, it will have an adverse impact on morale and performance of these vital functions. Furthermore, under the statute, arbitrators are required to give consideration to both internal and external comparables.

In this case, the City has not yet reached agreement with its police bargaining unit, at least according to the record before the undersigned. Thus, the undersigned is not presented with a situation like that which existed in 1992, where the arbitrator was being called upon to impose a settlement through arbitration, after the City had already settled with the police bargaining unit. In those circumstances, it was far more likely that an award selecting the Union's final offer would be disruptive and destructive of established bargaining relationships.

The City can afford to and, in the view of the undersigned ought to, utilize this opportunity to keep the rates paid to firefighters and fire lieutenants in line with comparable communities. It can then address the impact of that decision on the parity relationship in its negotiations with its police bargaining unit. This could help avoid a more disruptive situation in the future.

The other evidence and arguments, including that presented by the City concerning the cost of living and increases in employment costs, that presented by the Union concerning the City's greatly improved financial condition, and that presented by both parties concerning overall compensation, have been given serious consideration in reaching this result. However, in the last analysis, it is the combination of the existence of a proven need to avoid the situation where the salaries paid by the City to firefighters and fire lieutenants falls unacceptably behind the comparables, and the existence of an opportunity to take a reasonable and otherwise justifiable step to avoid that problem, that convinces the undersigned that the Union's final offer on salary ranges should be selected. As noted above, the decision to select the City's final offer on Kelly days contributed somewhat to this decision as well.

The City's final offer on Kelly days represents a further improvement in this benefit, with no requirement that the Union grant any concessions in return. In the 1991 negotiations, the

Union agreed to make significant changes, including the dropping of personal days off and the right to take a compensatory day off in lieu of the 17 hour portions of holiday pay. In the 1994 negotiations, the Union agreed to modest, 3% increases for three years, undoubtedly in part because of the significant increase in the number of Kelly days that was also agreed to.

Here, the Union's final offer would produce a Kelly day provision which is equal to the best provisions negotiated with other, comparable departments, with no modification in the holiday pay provision or any other concession of consequence. While the Union argues that it is offering a significant *quid pro quo* in the form of a \$20,000 savings in overtime, the City is correct in its argument that the savings in question is primarily a function of the reduction of hours rather than any concession on the Union's part.<sup>4</sup>

Further, there can be little doubt that if the Union's final offer on Kelly days were selected, the City would experience a significant increase in overtime costs due to call backs, unless it took the even more costly step of hiring additional firefighters. While the Union suggests that the City might lower its minimum manning requirements, that is considered undesirable and unlikely,

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<sup>4</sup>The record does not establish what consequence might follow if the Union did not offer to put language in the agreement along the lines proposed. However, if such language is critical to achieve the savings involved, a failure on its part to do so would seriously undermine the reasonableness of its offer.

in view of the City's current healthy financial condition.

It may be that the City will eventually agree to a Kelly day schedule on the terms sought by the Union, i.e., one which will produce 13.52 days off with no reduction in holiday pay.<sup>5</sup> Under those circumstances, firefighters in Elgin would have 324 Kelly day hours off, combined with 64 hours of holiday pay, and "leap frog" to first place. It is also possible that the parties will eventually agree to modify or eliminate the holiday pay provision (perhaps as part of an exchange for the establishment of a longevity pay program). However, in the view of the undersigned, it is not appropriate to impose such a significant improvement in an existing benefit as part of the parties' 1997-1999 agreement.

If the Union's Kelly day proposal were adopted, it would amount to a 3% reduction in the number of hours of work, on top of the reasonable wage increases available under either final offer on wages and other improvements referred to in the background section of this decision. The Union's final offer on wages, which has been selected for the reasons previously stated, will produce a 12.24% lift in salary ranges over the three-year term of the agreement. That is 1.37 percentage points more than the 10.87% lift that would have been produced under the City's final offer. The .75% equity adjustment and additional .25% increases in the second and third

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<sup>5</sup>Two jurisdictions (Aurora and Evanston) do have both, but their holiday pay is limited to 40 hours and 24 hours respectively.

year of the agreement that are part of the Union's final offer on salary rates, will ultimately produce a salary rate for firefighters at the top step that is approximately \$586 more per year than that called for under the City's offer. In terms of dollars in the pocket, a firefighter already at the top step will receive approximately \$1,227 more during the term of the agreement. Taken together, these changes produce a result that strongly promotes parity with other fire departments in wages and benefits, within the time frame of a three-year agreement.

For all of these reasons, and based upon the other evidence and arguments of record, the undersigned concludes that the City's final offer on Kelly days is more reasonable and in compliance with the statutory criteria.

Now, therefore, the undersigned renders the following:

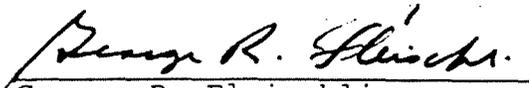
AWARD

The parties' agreement covering the 1997, 1998 and 1999 fiscal years shall include the following items, along with the matters agreed to by them in their negotiations:

1. Salary Ranges. The final offer of the Union shall be included in the agreement.

2. Kelly Days. The final offer of the City shall be included in the agreement.

Dated at Madison, Wisconsin this 18<sup>th</sup> day of September, 1997.

  
George R. Fleischli  
Arbitrator