In the Matter of the Arbitration	)
	) Interest Arbitration
Between	)
	) ILRB Case No. S-MA-06-142
CITY OF ROCK ISLAND	)
	)
and	)
	)
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 26	)

APPEARANCES

For the Union

Mr. J. Dale Berry of Cornfield and Feldman, Attorney

For the Employer

Mr. Arthur W. Eggers of Califf & Harper, P.C. , Attorney

O P I N I O N A N D A W A R D

Introduction

Local 26, International Association of Firefighters, AFL-CIO, CLC ("the Union") is the certified exclusive bargaining agent for a unit of all full-time employees on permanent status in the classifications of Firefighter, Fire Lieutenant, Fire Captain, Fire Training Officer, Fire Battalion Chief, and Fire Marshall employed by the City of Rock Island, Illinois ("the City"). Excluded from the unit are the Fire Chief, Assistant Fire Chiefs, and civilian personnel of the department.

The City and the Union were unable to agree on a successor agreement to their April 1, 2003, to March 31, 2006, contract. As a result the Union initiated impasse resolution proceedings under Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* ("the Act"). The parties selected Sinclair Kossoff to serve as neutral arbitrator and waived a tripartite panel. By letter dated June 19, 2006, Sinclair Kossoff was notified of his appointment and was requested to provide available hearing dates to the parties' representatives. Hearing was held in Rock Island, Illinois, on

August 29 and 30, 2006. The parties waived the provision in Section 1230.90 a) of the Rules and Regulations that the hearing commence within 15 days following appointment of the arbitrator.

In negotiations prior to the hearing the parties reached tentative agreement on a number of contract terms. These terms will be incorporated in the final Agreement. On August 29, 2006, the parties exchanged documents listing their last offers of settlement prior to the hearing. In the course of the hearing the parties could not agree on whether general wages, longevity, and merit pay should be treated as separate issues or a single issue. The parties were permitted to brief the issue following the close of the hearing prior to the exchange of final offers. On September 13, 2006, I issued a written opinion ruling that the three wage items should be treated as a single issue under Wages.

The parties exchanged final offers on September 19, 2006. There are eight outstanding issues in dispute, four economic and four, non-economic. The economic issues are Wages (including, in addition to general wages, Longevity Pay and Merit Pay), Certification Stipends, Out-of-Rank Compensation, and Kelly Days. The non-economic issues are Discipline, Residency, Promotions, and Termination Article. It should be noted that the parties have used the terms “wages” and “salaries” interchangeably, and I shall follow the same practice. For example, Article XII of the Agreement is called “Wages,” and Section 12.1 is headed “Wages.” However, the first sentence in Section 12.1 refers to increases in the “salary schedule.”

Statutory Criteria

Section 14(h) of the Act provides that ". . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:"

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees

performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as 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.

Comparable Communities

The parties are in agreement than nine cities are comparable to Rock Island: Alton, Belleville, Danville, Galesburg, Moline, Normal, Pekin, Quincy, and Urbana. The Union contends that Granite City is also comparable. The City disagrees and, in support of its position, notes that in an interest arbitration involving these same parties Arbitrator Harvey A. Nathan rejected the Union's position that Granite City is a comparable city. Arbitrator Nathan related the interest arbitration history involving Granite City and another city not here relevant and found that the other city "and Granite City are not comparable cities because historically they have been excluded from consideration." He added, "At this juncture in the parties' bargaining history if the list of comparable cities is

to be changed it must be done so at the bargaining table."

There were two interest arbitrations involving the City following the Nathan award, but neither case involved the firefighters unit. The union in both cases was the Illinois Fraternal Order of Police Labor Council ("FOP"). The arbitrator in the first case, involving a police department command staff unit of sergeants, lieutenants, and captains, was Byron Yaffe. In the second case, involving a unit of patrol officers and investigators, the arbitrator was Robert Perkovich. Arbitrator Yaffe issued an award on August 19, 2005, finding that Granite City, as contended by the City, and Pekin, as argued by the FOP, should be included as comparable cities. On November 7, 2005, Arbitrator Perkovich held in his award that Pekin should be included, as contended by the FOP and found by Arbitrator Nathan, but that Granite City should be excluded, also as held by Arbitrator Nathan.

I have decided to rule in accordance with the decision of Arbitrator Nathan on the issue of comparable jurisdictions. It is consistent with the most recent decision on the issue--by Arbitrator Perkovich--and it is the only one of the three most recent arbitration decisions that covers the firefighters unit. The Union argues that, despite the fact that Arbitrator Nathan considered past awards and excluded Granite City in the most recent interest arbitration involving this same unit and the same parties, it should be included because the financial and demographic data it has relied on strongly support its inclusion. In County of Clay, 107 LA 527, 529 (Fredric R. Dichter, 1996), in deciding the issue of comparable jurisdictions, Arbitrator Dichter stated as follows:

> I agree with the Employer's position. I find it significant that the Employer's list is the same that was adopted by Arbitrator Miller. Arbitrator Miller also found that this was the same comparables used by previous arbitrators for the same bargaining units involved here. There are no new circumstances that warrant changing this historical pattern. Arbitrators generally attempt to provide continuity in the application of comparables absent extenuating circumstances. Consequently, I must be mindful of what transpired between the parties previously. Given that fact, this arbitrator sees no reason to deviate from the parties prior history.

See also the decision of Arbitrator Elliott H. Goldstein in City of Elgin and PBPA Unit 54 (2002) at p. 12, noting the "need for

stability" with regard to comparable jurisdictions. As noted, Arbitrator Nathan's comparable jurisdictions were also selected by Arbitrator Perkovich in the latest interest arbitration involving the City. In addition, including Granite City, which is only ten miles from St. Louis, would place three of the comparable jurisdictions within 20 miles of the large metropolitan area of St. Louis. None of the other comparable cities is joined with two other comparable jurisdictions within a relatively short distance of a large metropolitan area. For the reasons stated I am persuaded that I should not deviate from the jurisdictions selected by Arbitrator Nathan in the most recent arbitration involving firefighters.

WAGES

As previously noted, there are three parts to the wage issue: general wage increase, longevity pay, and merit pay. Following are the proposals of the parties on the three parts of wages:

A. General Wage Increase

Union Final Offer

The Union's final offer provides for the following general increases in the salary schedule:

Effective April 1, 2006: 3.5%
Effective April 1, 2007: 3.5%
Effective April 1, 2008: 3.75%

City Final Offer

The City's final offer provides for the following general increases in the salary schedule:

Effective April 1, 2006: 3.25%
Effective April 1, 2007: 3.35%
Effective April 1, 2008: 3.45%

B. Longevity

Union Final Offer

The Union final proposal on longevity pay as worded in

its Final Offer of Settlement document dated September 19, 2006, is as follows:

> Increase all steps of Salary Schedule (Appendix C) in effect 4-1-05 by +1.75%, all as described in “EXHIBIT 2".

Exhibit 2 contains the contract provisions for a general wage increase as described above plus an attached salary schedule, including longevity, for each year of the contract.

City Final Offer

The City final offer for longevity pay is to make no change from Section 12.4 of the prior contract (4/1/03 - 3/31/06). The pertinent language of that section states as follows:

> On April 1, 2005, longevity pay will be increased to $810.47 per year for each five year longevity step, upon completion of 5, 10, 15, 20, 25, and 30 years of continuous service to the City.

C. Merit Increases

Union Final Offer

The situation with regard to merit increases as of the end of the prior contract was as follows. A merit pay program for employees called “Pay for Performance” based on a point evaluation system had been suspended effective April 1, 2005. The program was known as the “B” plan or program because it had replaced a wholly discretionary merit program previously in effect. Upon suspension of the system of merit increases based on points, management agreed to restore the previously discontinued wholly discretionary merit increase program. That program is referred to by the parties as the “A” plan or program because it was the original merit pay plan. The Union’s final offer proposes to eliminate both the suspended pay for performance program based on points (Plan B) and the discretionary merit increase program (Plan A).

The Union’s final offer eliminates the existing language of Section 12.5 and substitutes the following provision:

> Section 12.5 Merit Increases

> The actual salary paid to bargaining unit employees as of March 31, 2006 is set forth in the schedule attached hereto as "APPENDIX D". Such amounts consist of base salary, longevity and historically awarded merit pay. Concurrent with the elimination of the Merit Program effective under the terms of the predecessor contract, effective April 1, 2006 the "actual salary with longevity" amounts specified in Appendix D shall be increased consistent with the parties' past practice by the general wage increase and longevity increases awarded and as otherwise applicable based on years of service.

City Final Offer

The City's final offer regarding merit increases provides for the continued suspension of the Pay for Performance merit increase program based on points (Plan B) and the continued use of the wholly discretionary merit increase program (Plan A)that was revived after suspension of Plan B. The City refers to the wholly discretionary merit pay program by the same terminology as the suspended program, namely, Pay for Performance System. The City's final offer retains the language of Section 12.5, Merit Increases, of the prior contract and adds the following additional language:

> The Pay for Performance System that has been used for firefighter employees and has been in effect since April 1, 2005 will remain the instrument used by the City to evaluate said employees.

Union Position on Wages

The Union contends that statutory factor (h) (6) in Section 14 of the Act, the "overall compensation presently received by the employees," strongly supports its position on wages and the other economic items. The Union prepared a chart, Union Exhibit 21, intended to show total compensation of all comparable jurisdictions. According to the Union's calculation, Rock Island was seventh among the ten comparable jurisdictions in total cash payments to firefighters.[1] In addition to base

[1]The Union chart includes Granite City, and Rock Island falls 7th of 11th on the chart. However, since I have not included Granite City among the comparable cities, I have read the chart as if

salary, the Union's total compensation list includes holiday pay, premium pay, paramedic certification pay, associate or other college degree pay, stipends for Fire Fighter III and Fire Fighter II certification, and First Responder pay. None of the cities on the chart provides every one of the listed forms of additional compensation.[2]

The Union also prepared a chart, Union Exhibit 22, to show what total compensation would be for the 2006-2007 contract year under its final proposal as compared with total compensation in the comparable jurisdictions. Under the Union's calculation, based on its final proposal, which is higher than the City's, Rock Island remains in seventh place with regard to total cash payments to employees.[3]

The Union contends that the City's final offer represents a serious regression from terms it had offered as a basis for settlement in April prior to the Union's decision to invoke the statutory impasse procedures. The Union cites arbitral authority in support of its position that once an employer offers a given amount of money for a wage increase, that indicates recognition by the employer that the proposed amount is a reasonable amount to raise the existing wage rate. The Union acknowledges that the City offer of April 12, 2006, contained the following footnote: "Note: This package proposal exceeds the limits that will be proposed by the City in interest arbitration because of the cost of the interest arbitration process." The

---

Granite City was not included on it. I shall apply the same method with regard to all Union exhibits or charts that include Granite City.

[2]The Union's chart also includes an hourly rate calculation which places Rock Island 7th among the 10 jurisdictions.

[3]On an hourly basis, the Union's chart shows Rock Island falling from 7th to 9th place among the 10 cities for the first year of the new contract. The chart shows only Danville with a lower hourly rate for the 2006-2007 contract year.

Union argues, however, that the costs to the employer of the arbitration proceedings is not a permissible basis under the statutory criteria for an arbitrator to permit an employer to submit a regressive final offer. The statute, in Section 14(d), the Union contends, requires that the expenses of the proceedings be borne equally by the parties to the dispute. To the extent that such costs would intend to encourage voluntary settlement, the Union asserts, it is clear that the policy of the Act is that the costs apply equally to both parties. At its core, the Union argues, the City's position is punitive.

Internal comparisons between the firefighters and the police bargaining units, the Union contends, strongly support adoption of the Union's proposal regarding the general wage increase. It argues that the 2005 interest arbitration awards of Arbitrators Byron Yaffe and Robert Perkovich respectively for the police command and patrol officers bargaining units substantially exceeded the aggregate wage and merit pay benefits offered by the City to the firefighters unit for the 2006-2007 contract year. The Union interprets the Yaffe award as awarding 3.75% for 2006, and the Perkovich award, 4%.

The Union notes that Arbitrator Perkovich provided for a 2% of base salary longevity increase in the applicable years for patrol officers. It asserts that the longevity benefit for police command officers "was increased to 2½% effective 2004, 3¼% effective in 2005 and 2006." In support of its proposal to figure longevity as a percentage of the prior longevity payment (1.75% above the prior longevity payment) instead of a fixed dollar amount of $810.47, as in the prior contract and in the City's final offer, the Union stresses that in the third year of the contract the amount of longevity pay at the five year step will be $853.77 as compared with $1,131.00 for a patrol officer at the same step. The difference in the longevity pay of firefighters and patrol officers, the Union argues, makes for significant disparities in the career earnings of the two groups of employees to the detriment of the firefighters.

The Union contends that the external comparables also favor its final offer over the City's. The Union acknowledges that Rock Island's base salary is the third highest in the group of ten but argues that this must be discounted because it takes six years to reach the base, which is longer than at any of the other comparable jurisdictions. Rock Island, the Union notes, also schedules its firefighters to work the largest number of annual hours, 2,912, of any of the comparable jurisdictions, where the average is 2,705. On Union Exhibit 9, a chart comparing base salaries for 2005, Rock Island ranks third in base

salary, but its hourly rate is seventh among the ten jurisdictions.

Union Exhibit 10 shows the percentage increase for 2006-2007 in each of the comparable jurisdictions and compares the average for those jurisdictions with Rock Island under its final proposal and the City's. The Union exhibit shows the average increase in the comparable jurisdictions, excluding Rock Island, as 3.26%. The Union exhibit, however, includes Granite City, which I have excluded. Without Granite City, the average increase for the nine jurisdictions is 3.18%.[4]

The Union concedes that "considering the percentage increase factor alone, these settlements favor the City's proposal. . . ." It argues, however, that when longevity is added to the analysis its proposal is superior to the City's. In the 2005 contract year, the Union asserts, when base salary and longevity pay are considered together the Rock Island firefighters rank highest at the five year level, where they are 4.89% above the average and rank 2 among the 10 jurisdictions. A table prepared by the Union, Union Exhibit 17, shows that after the 5 years longevity step, Rock Island firefighters' relation to the average salary of the ten jurisdictions steadily deteriorates until, at 20 years, it is 1.11 percent below the average. Between the 5 year longevity stage and the 20 year step Rock Island falls from second of ten to sixth of ten. Union Exhibit 18 shows that even under its proposal the Rock Island firefighters fall below the average of comparables as the years of employment increase when longevity is taken into account and also drop in rank from second to sixth by the 15th year. Under the City proposal the descent from above to below the average is more precipitous and the reduction in rank standing even greater.

The Union contends that its final offer to eliminate both merit plan B, which had only been suspended and therefore subject to revival, and merit plan A is a substantial concession and a quid pro quo for adoption of its wage and, in fact, its entire economic proposal. Specifically, the Union argues that the actual cost savings to the City from elimination of merit plan A and the potential savings from not having to reinstate

[4]The 3.26% average for the other jurisdictions is obtained by crediting Normal with a 4.04% increase. The actual dollar increase under the Normal contract will be 3.02% for the 2006-2007 contract year since the 4.04% amount is achieved by two wage increases of two percent each, six months apart. If 3.02% is used for Normal instead of 4.04%, the average increase for the nine jurisdictions is 3.06% instead of 3.18%.

merit plan B, as originally demanded by the Union, will offset 99.7% of the cost difference between the Union's final offer regarding general wage increase and longevity and the City's final offer.

The Union contends that the cost of living criterion supports its final offer on wages rather than the City's.

City Position on Wages

The City notes that the differences in the respective final offers of the parties would lead to $4,039 more in wages the first year of the contract; $8,861 more the second year; and $18,718 more the third year, or a total of $31,618 in additional wage costs for the life of the contract. Its general wage increase offer, the City asserts, exceeds the average increase of the other comparable cities in each contract year: 3.25% vs. 3.06% for 2006/2007; 3.35% vs. 3.07% for 2007/2008; and 3.45% vs. 3.00% for 2008/2009. The following table, taken from the City's brief, illustrates the comparisons:

Comparable City	**2006/2007**	**2007/2008**	**2008/2009**
Rock Island (City's offer)	3.25%	3.35%	3.45%
Alton	3.00%	Open	Open
Belleville	3.00%	3.00%	Open
Danville	3.50%	3.50%	3.50%
Galesburg	2.00%	2.00%	2.00%
Moline	3.30%	3.40%	Open
Normal**	3.00%	Open	Open
Pekin	3.50%	3.50%	3.50%
Quincy	3.00%	3.00%	3.00%
Urbana	3.25%	Open	Open
AVERAGE - NOT INCLUDING CITY	**3.06%**	**3.07%**	**3.00%**

OFFER			

**Normal received 2% increase in April and 2% increase in October

With regard to the 3.5% increases each year of the contract in Danville and in Pekin, the City states that Danville's and Pekin's base wages are much lower than the City's. It argues that its wage offer for 2006/2007 exceeds the general wage increases at Alton, Belleville, Galesburg, Normal, and Quincy; and is equal to Urbana's. For 2007/2008, it asserts, the City's proposal is greater than the general increases at Belleville, Galesburg, and Quincy; and equal to that at Urbana. For 2008/2009, the City points out, its general wage increase offer is greater than the negotiated increases at Galesburg and Quincy, and equal to that at Urbana. It argues that the .05% higher increases negotiated for each year of the Moline contract are not significant.

A comparison of the City's wage schedules with comparable cities, the City argues, shows that Rock Island ranks high compared to other cities' wage schedules. For 2006/2007, among the ten cities in the comparison group, the City asserts, with regard to firefighters it ranks 3rd for new hires; 2nd for 5 years of service; 3rd for 10 years' service; 4th for 15 years' service; and 5th for employees with 20 and 25 years of service. It has no firefighters with 30 years of service. Regarding wages for lieutenants, according to the City, it ranks 2nd at 5 years of service and 3rd at 10, 15, 20, and 25 years of service out of five total cities. At the level of captain, the City has employees only with 20 or 25 years of service, and it ranks 3rd of 8 in each category.

For 2007/2008, the City asserts, with Alton, Normal, and Urbana being open, Rock Island's final offer if adopted would, with regard to firefighters, rank it 1st out of 7 total cities at 5, 10, and 15 years of service; 2nd of 7 for 20 years of service; and 3rd of 7 for 25 years of service. For lieutenants, according to the City, its final offer would rank it 2nd out of 4 total cities at the levels of 10, 15, 20, and 25 years of service. It has no lieutenants with 5 or 30 years of experience in the 2007/2008 contract year. For captains, the City asserts, its proposal would place Rock Island 2nd of 6 at the 20, 25, and 30 years levels respectively at which it will employ captains in 2007/2008.

For 2008/2009, with Alton, Belleville, Moline, Normal, and Urbana open, the City's final offer, if accepted, would,

according to the City, with regard to firefighters, place it 1st among 5 total cities for new hires and those with 5, 10, 15, 20, 25, and 30 years of service. For lieutenants, the City asserts, Rock Island would rank 1st of 3 total cities at all levels of service in which lieutenants are employed; and for captains 1st of 6 total cities at all levels of service that they are employed.

With regard to the Union's wage argument based on Rock Island firefighters' number of hours of work, the City contends, first, that hours have been voluntarily negotiated, and the Union has shown no justification for reducing them; second, that hours of work, a non-economic issue, may not be used to prove the need for an adjustment of an economic issue; and, third, other comparable cities do not relate hours of work to compensation.

The cost of living criterion, the City argues, favors its final offer because in each year of the preceding contract the general wage increase was higher than the increase in the cost of living as measured both by CPI-U and CPI-W.

The internal comparability criterion, the City asserts, is less important for wage proposals than external comparability. The City has five other represented bargaining units in addition to IAFF: the command officers represented by FOP; the patrol officers and investigators represented by FOP; the clerical and professional City employees represented by AFSCME-B; craft employees represented by AFSCME-A; and the library employees represented by UAW. For 2006 the general wage increases are as follows: AFSCME-A: 2.0%; AFSCME-B: 2.36%; UAW: 3.0%; Command Officers: 3.25% awarded in interest arbitration; Patrol Officers and Investigators: 3.50% awarded in interest arbitration. For 2007/2008 the UAW unit negotiated a 2.85% wage increase, and for 2008/2009, a 3.4% increase.

The City's effort also supports selection of its proposal, it contends. It has the highest property tax rate, the City notes, and the highest property tax per capita to the general fund. Its sales tax receipts are the lowest of the ten jurisdictions. It is in the median range for total family income, which means, the City asserts, that City residents do not enjoy higher than average income to match the highest property tax rate that they pay. This shows, the City argues, a high level of effort through real estate taxes to fund City services. Further, the City stresses, it does not skimp on City services but has the fourth highest number of firefighters per capita; ranks third for firefighter funding; and ranks second as to total public safety expenditures from the general fund. These facts,

the City contends, show effort on the City's part to support its proposal.

The City argues that the Union's proposal to move from a dollar amount for longevity pay to a percentage amount that comes to a higher dollar figure each year of the contract than the City's offer is a breakthrough proposal for which the Union has not sustained its burden of proof. The City notes that the additional cost of the Union's offer comes to $1,915 for the first year of the contract; $4,623, for the second; and $6,971, for the final year, or a total of $13,149 for the three years. It argues that the facts which supported Arbitrator Perkovich's grant of a breakthrough on longevity for the patrol unit are not present here.

Regarding merit pay, the City notes Union testimony that the old merit pay system, plan A, was revived at the request of Union officers when the new point system, plan B, was suspended. The City points out that at the arbitration hearing the Union stated its preference for the suspended pay for performance merit system but that it now seeks the elimination of both merit pay plans. The City argues that no specific evidence was presented as to any individual who was mistreated under merit plan A or who would benefit if that plan, which is currently in effect, were eliminated. No good cause exists for the elimination of the current merit plan, the City contends, and it should not be eliminated as now proposed by the Union.

Arbitrator's Findings and Conclusions on Wages

The first of the eight statutory criteria, the lawful authority of the employer, does not favor either proposal over the other. The City has the authority to adopt either final offer. Nor is the second factor, stipulations of the parties, a consideration that weighs for one party more than the other.

"The interests and welfare of the public and the financial ability of the unit of government to meet those costs" is the third criterion listed in the statute. It is in the interest and welfare of the public to have an efficient fire protection force, and this requires not only well-trained and physically fit employees, but also employees who feel that they are being fairly treated. It is also in the interest and welfare of the public, however, to be able to meet their personal living expenses and other financial obligations in addition to fulfilling their civic responsibilities, including the paying of their taxes. Probably the interests and welfare of the public

will be well met, and fair treatment of employees achieved, if the wages paid by the City are in line with those paid by comparable jurisdictions.[5] There is no claim here of inability to pay, but, on the other hand, there is no evidence of a lack of effort or a shirking of responsibility on the part of the City or the citizenry in terms of raising revenue and agreeing to be taxed.

[5]There is no indication here that there is an unusual turnover of firefighters or that the City is having difficulty recruiting new employees, either of which might be indicative of a wage scale grossly out of line with other jurisdictions.

It is commonly accepted that, as a general rule, the most important criterion in interest arbitration for determining which of the competing offers on wages to choose for a public employment unit of firefighters is a comparison with the wages of other employees performing similar services in public employment in comparable communities.[6] For the 2006/2007 contract year the City's offer of a 3.25% general wage increase is equal to or higher than the amount negotiated or awarded in arbitration at six of the nine comparable jurisdictions. It is also .19% higher than the average general wage increase of 3.06% in dollar amount for all of the other nine comparable jurisdictions. For 2006/2007 clearly the City's general wage increase offer is better supported by the criterion of external comparability than the Union's.

The Union acknowledges in its brief (p. 30) that the percentage increase factor favors the City's proposal. It argues, however, that "[t]he City's evidence is offset when we consider the value of the firefighters' base salary plus longevity." I would agree that longevity must be taken into account when analyzing the respective offers of the parties. It is important, however, to consider not only longevity but also all other cash earnings that all, or the great majority of, firefighters receive under the terms of their collective bargaining agreement. In my opinion this would include both paramedic pay under the Rock Island contract and holiday pay in those jurisdictions that provide that benefit. It would also include stipends for Fire Fighter III certification, which the vast majority of firefighters in the Rock Island unit possess. City Exhibit Binder, pp. 53-54.

Arbitrator Steven Briggs took a similar approach in his award of June 4, 2004, in Village of Wilmette and Local 73, SEIU, Case No. S-MA-00-088, involving a firefighter unit. Addressing the question of the proper kind of comparison between the subject jurisdiction and the jurisdictions used for comparison, Arbitrator Briggs stated at page 22 of his decision, "In making such a comparison one must take into account several compensation elements, including longevity pay and stipends received by all

[6]A possible exception would be parity with the police unit in a jurisdiction where the evidence establishes strict parity between the units over a long period of time. The record in the present case does not show strict parity between the police and fire units over a long period of time.

firefighter/paramedics. . . ." He prepared a table comparing Wilmette with eight comparable jurisdictions in four categories: "Top Step Salary," "Longevity Pay," "Additional Salary," and "Total Pensionable Salary." At page 23 of his opinion, in footnote 16, Arbitrator Brigs stated that "Top Step Salary" in his table "[i]ncludes paramedic stipend if separate from salary." At page 24 of his discussion Arbitrator Briggs indicated that the column "Additional Salary" in his table included Fire Fighter III certification (Wilmette) and holiday pay (Winnetka). Footnote 17 to the table noted that the "Additional Salary" column included items of compensation in a particular jurisdiction "only if received by all or substantially all top step firefighter/paramedics." Accordingly such items as pay for an associate or bachelor's degree were not included. Arbitrator Briggs excluded education pay even though his decision, at page 39, noted that firefighters in Evanston, one of the comparable jurisdictions, received extra pay for educational achievement.

Section 12.9 of the Rock Island Agreement provides for an annual stipend of 5.33% of Step B of the firefighter wage schedule for employees with a paramedic certification. The Union argues that paramedic skill requires additional skill and is provided under a separate contract provision in Article 12. It cites arbitration awards by Arbitrator George R. Fleischli in City of Elgin and IAFF Local 439 (1992) and Arbitrator Neil M. Gundermann in Village of Skokie and IAFF Local 3033 (1993) supporting the treatment of paramedic pay independent of salary.

Regardless of the merit of the Union's argument in a jurisdiction where paramedic certification is not mandatory, I think that where it is mandatory and all or virtually all firefighters have obtained the certification and receive the extra pay, it should be considered part of salary in comparing salaries with other cities. The Rock Island collective bargaining agreement requires all firefighters hired after April 1, 1997, to obtain and maintain paramedic certification unless "the project Medical Director determines an employee shall be dropped from the program in the best interest of the program." In fact all firefighters in the bargaining unit have such certification except for four firefighters hired prior to the cutoff date. I agree with the approach of Arbitrator Briggs in the City of Wilmette interest arbitration where paramedic stipend was considered to be part of salary in comparing Wilmette's compensation with firefighter compensation in comparable jurisdictions. The two arbitration decisions cited by the Union in its brief did not involve the issue of whether paramedic pay should be considered part of salary in making wage comparisons.

Indeed the Union itself, in preparing comparative tables for Rock Island and the other jurisdictions, contrary to its contention that paramedic pay should not be included as part of salary in comparing wages, included the additional EMT-I certification pay of 1.03% in the salary figures for Urbana in Union Exhibits 17 and 18 comparing Rock Island's base salary and longevity pay for 2005 and 2006 with the other comparable cities. The Urbana contract shows the salaries both for employees with EMT-I certification and those without it, and the Union selected the salary figures for firefighters with EMT-I certification. Under the Urbana contract, except for employees hired prior to August 1, 2001, all firefighters are required to obtain and maintain EMT-I certification. See Joint Exhibit 5, Urbana contract, pages 27, 41, and 42.

I have prepared tables for the 2005-2006 and 2006-2007 contract years comparing cash earnings for Rock Island firefighters with those in the comparable jurisdictions both under the City's and the Union's final offers. I have used the same kinds of earnings as Arbitrator Briggs did in the Wilmette case, namely, base salary, longevity, paramedic or EMT pay, FFIII certification stipend, and holiday pay. I have made tables for starting pay and pay after 5, 10, 15, 20, 25, and 30 years of employment. The first table applies to starting pay for the 2005-2006 contract year:

Comparison of Total Cash Earnings
Among Comparable Jurisdictions
for 2005-2006 Contract Year
at Start of Service

JURIS-DICTION	START SALARY	LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII OR FFIII STIPEND	TOTAL SALARY	RANK
ALTON	41,932		1,561	2,516		46,009	1
BELLE-VILLE	38,502		775			39,277	6
DAN-VILLE	34,535					34,535	9
GALES-BURG	35,097					35,097	8

[7]Moline has 10 holidays. Employees who work a holiday are paid time and a half for the first 12 hours of the holiday. Since employees work a schedule of 24 hours on, 48 hours off, for purposes of

MOLINE	37,783		268[7]	1,482	[8]	39,533	5
NORMAL	38,304		1,354[9]			39,658	3
PEKIN	31,796		1,673	318		33,787	10
QUINCY	33,293		1,029	2,034	[10]	36,356	7
URBANA	41,144		1,424			42,568	2
AVERAGE w/o ROCK ISLAND	36,932		898	706		38,536	
ROCK ISLAND	37,271			2,086	250	39,607	4

computing holiday pay, I assumed that each employee worked one-third of total holidays. This was also the method used in City of Kewanee and IAFF Local 513, Case No. S-MA-02-138 (Marvin Hill, Jr., 2002), where the arbitrator noted the city's position that "each member works an average of 4.33 of the 13 holidays . . . ." (Decision, pages 9-10).

[8]Although Un. Exh. 21 states that Moline receives $266 for FFII certification, the Moline contract states, "No fire certification pay shall be paid to any employees of the fire department hired on or after February 1, 1985."

[9]Normal has 8 holidays. Employees who work a holiday are paid double time and a half for the first 12 hours of the holiday. As with Moline, I assumed that each employee worked on average one-third of the total holidays. See footnote 7.

[10]I have not included a Fire Fighter III stipend for Quincy because, unlike in Rock Island, it is a one time payment rather than an annual payment. Jt. Exh. 5, Quincy Contract, p. 36.

The following tables compare Rock Island with the other jurisdictions respectively after five, ten, 15, 20, 25, and 30 years of service.

Comparison of Total Cash Earnings
Among Comparable Jurisdictions
for 2005-2006 Contract Year
after Five Years of Service

JURIS-DICTION	BASE SALARY	5 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII OR FFIII STIPEND	TOTAL SALARY	RANK
ALTON	41,932	1,696	1,624	2,618		47,870	7
BELLE-VILLE	47,560		957			48,517	6
DAN-VILLE	46,046	921				46,967	8
GALES-BURG	44,794	896				45,690	9
MOLINE	42,748		303	1482		44,533	10
NORMAL	47,880		1,693			49,573	3
PEKIN	46,425		2,443	464		49,332	4
QUINCY	45,207		1,397	2,034		48,638	5
URBANA	48,892		1,692			50,584	2
AVERAGE W/O ROCK ISLAND	45,720	390	1,123	733		47,967	
ROCK ISLAND	47,569	810		2,086	250	50,715	1

Comparison of Total Cash Earnings

Among Comparable Jurisdictions
for 2005-2006 Contract Year
after Ten Years of Service

JURIS-DICTION	BASE SALARY	5 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII OR FFIII STIPEND	TOTAL SALARY	RANK
ALTON	41,932	2,798	1,665	2,684		49,079	8
BELLE-VILLE	49,417		995			50,412	5
DAN-VILLE	46,046	2,302				48,348	9
GALES-BURG	44,794	1,792				46,586	10
MOLINE	48,366		343	1,482		50,191	7
NORMAL	52,668		1,862			54,530	1
PEKIN	47,531		2,502	475		50,508	6
QUINCY	46,111	922	1,425	2,034		50,492	4
URBANA	48,892	2,934	1,692			53,518	2
AVERAGE w/o ROCK ISLAND	47,306	1,194	1,165	742		50,407	
ROCK ISLAND	47,569	1,620		2,086	250	51,525	3

Comparison of Total Cash Earnings
Among Comparable Jurisdictions
for 2005-2006 Contract Year
after 15 Years of Service

JURIS-DICTION	BASE SALARY	15 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII/FFIII STIPEND	TOTAL SALARY	RANK
ALTON	41,932	3,927	1,707	2,752		50,318	9
BELLE-VILLE	51,540		1,037			52,577	4
DAN-VILLE	46,046	4,605				50,651	8

GALES-BURG	44,794	2,688				47,482	10
MOLINE	54,721		388	1,482		56,591	2
NORMAL	55,062		1,946			57,008	1
PEKIN	48,639		2,560	486		51,685	7
QUINCY	47,016	1,881	1,453	2,034		52,384	5
URBANA	48,892	4,889	1,692			55,473	3
AVERAGE w/o ROCK ISLAND	48,738	1,999	1,198	750		52,685	
ROCK ISLAND	47,569	2,430		2,086	250	52,335	6

Comparison of Total Cash Earnings Among Comparable Jurisdictions for 2005-2006 Contract Year after 20 Years of Service

JURIS-DICTION	BASE SALARY	20 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PARAMEDIC PAY	FFII/FFIII STIPEND	TOTAL	RANK
ALTON	41,932	5,085	1,750	2,821		51,588	8
BELLE-VILLE	53,927		1,085			55,012	4
DAN-VILLE	46,046	5,526				51,572	9
GALES-BURG	44,794	3,584				48,378	10
MOLINE	58,472		408	1,482		60,362	1
NORMAL	57,456		2,031			59,487	2
PEKIN	49,747		2,618	497		52,862	6
QUINCY	47,016	1,881	1,453	2,034		52,384	7
URBANA	48,892	5,867	1,692			56,451	3
AVERAGE w/o ROCK ISLAND	49,809	2,438	1,226	759		54,233	
ROCK							

ISLAND	47,569	3,240		2,086	250	53,145	5

Comparison of Total Cash Earnings Among Comparable Jurisdictions for 2005-2006 Contract Year after 25 Years of Service

JURIS-DICTION	BASE SALARY	25 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII/FF III STIPEND	TOTAL	RANK
ALTON	41,932	6,261	1,794	2,892		52,879	8
BELLE-VILLE	54,906		1,105			56,011	5
DAN-VILLE	46,046	5,986				52,032	9
GALES-BURG	44,794	4,479				49,273	10
MOLINE	58,472		408	1,482		60,362	2
NORMAL	59,850		2,116			61,966	1
PEKIN	50,854		2,677	509		54,040	6
QUINCY	49,728	4,973	1,537	2,034		58,272	3
URBANA	48,892	6,845	1,692			57,429	4
AVERAGE w/o ROCK ISLAND	50,608	3,172	1,259	769		55,807	
ROCK ISLAND	47,569	4,050		2,086	250	53,955	7

Comparison of Total Cash Earnings
Among Comparable Jurisdictions
for 2005-2006 Contract Year
after 30 Years of Service

JURIS-DICTION	BASE SALARY	30 YEAR LONGEV-ITY PAY	HOLIDAY PAY	EMT/PA-RAMEDIC PAY	FFII/FF III STIPEND	TOTAL	RANK
ALTON	41,932	6,261	1,794	2,892		52,879	8
BELLE-VILLE	54,906		1,105			56,011	5
DAN-VILLE	46,046	5,986				52,032	9
GALES-BURG	44,794	4,479				49,273	10
MOLINE	58,472		408	1,482		60,362	2
NORMAL	59,850		2,116			61,966	1
PEKIN	51,964		2,735	520		55,219	6
QUINCY	49,728	4,973	1,537	2,034		58,272	3
URBANA	48,892	6,845	1,692			57,429	4
AVERAGE w/o ROCK ISLAND	50,732	3,172	1,265	770		55,938	
ROCK ISLAND	47,569	4860		2,086	250	54,765	7

The following table compares the total cash compensation for Rock Island firefighters under the City's final offer with the total cash compensation of firefighters in the other comparable jurisdictions at starting salary and after five, ten, 15, 20, 25, and 30 years' service for the 2006-2007 contract year. "Total cash compensation" is defined the same as for 2005-2006 contract year comparisons.

Comparison of Total Cash Earnings
Among Comparable Jurisdictions
for 2006-2007 Contract Year
at Start and after 5, 10, 15
20, 25, & 30 Years' Service

CITY	START	5 YEARS	10 YEARS	15 YEARS	20 YEARS	25 YEARS	30 YEARS	RANK at 0 5 10 15 20 25 30
ALTON	47,389	49,306	50,551	51,828	53,136	54,465	54,465	1, 7, 8, 9, 9, 9, 9
BELLE-VILLE	40,455	49,973	51,924	54,154	56,662	57,691	57,691	6, 6, 6, 4, 4, 5, 5
DAN-VILLE	35,744	48,611	50,040	52,424	53,853	55,025	55,025	9, 8, 9, 8, 8, 8, 8
GALES-BURG	35,799	46,604	47,518	48,432	49,346	50,258	50,258	8, 9, 10, 10 10, 10 10
MOLINE	40,789	45,954	51,798	58,410	62,304	62,304	62,304	5, 10, 7, 2 1, 2 2
NORMAL	40,856	51,070	56,177	58,730	61,284	63,837	63,837	4, 3, 1, 1, 2, 1, 1
PEKIN	34,970	51,059	52,276	53,494	54,712	55,931	57,152	10, 4, 4, 7, 6, 6, 6
QUINCY	37,447	50,097	52,007	53,956	53,956	60,020	60,020	7, 5, 5, 5[11], 7, 3, 3
URBANA	43,951	52,228	55,257	57,276	58,286	59,295	59,295	2, 2, 2, 3, 3, 4, 4
AVER-								

[11]Quincy ranks 5th after 15 years' service in comparison with the City's final offer. It ranks 6th at 15 years' service in comparison with the Union's final offer.

AGE w/o ROCK ISLAND	39,711	49,434	51,950	54,300	55,949	57,647	57,783	
ROCK ISLAND CITY OFFER	40,886	52,329	53,139	53,949	54,759	55,569	56,379	3, 1, 3, 6, 5, 7, 7
ROCK ISLAND UNION OFFER	40,984	52,468	53,292	54,117	54,942	55,766	56,591	3, 1, 3, 5, 5, 7, 7

I do not think that the Union's method of calculating total cash compensation (Un. Exhs. 21 and 22) is as useful as the method followed in the foregoing tables. The Union uses a single salary figure for all employees which it calls "Average Career Salary." It is an amount that represents the average of all salary positions on the salary schedule, whether or not any employee occupies that position and regardless of the fact that in Rock Island the great bulk of the work force is concentrated in the salary positions representing less than 11 years of service as a firefighter. For example, of the 38 firefighters in the bargaining unit 28 have between one and ten years' service with the City. City Exh. Binder, pp. 41-42.

The "average career salary" concept is also not a particularly useful method of salary measurement, in my opinion, in a collective bargaining situation, where the contract terms change, and wage increases are generally negotiated, every two or three years. It is somewhat of a misnomer, I think, where there is such fluidity in wages and other terms of employment to look at any single contract as representing average career salary. The Union's method of calculating total cash compensation is not one that is commonly used in the interest arbitration decisions that I have read. The single purported example it cites in its brief, Arbitrator George R. Fleischli's decision of September 18, 1997, in the interest arbitration between City of Elgin and Local 439, IAFF, in which he noted the requirement to consider the statutory criterion of "overall compensation," in no way suggests that he defined "overall compensation" as the Union would arrive at "total cash payments" in this case.

The foregoing tables show that for 2006-2007 the City's ranking relative to the other comparable jurisdictions remains the same at hire and all longevity steps under its final offer as compared with the rankings at the various steps under the prior

contract. In addition they show that in terms of the relationship to the average salaries of the comparable jurisdictions without Rock Island, the salaries of firefighters under the City's final offer will improve in relationship to the average at starting salary and five year and ten year longevity levels: from 2.7% to 2.9% above average at start of employment; from 5.7% to 5.85% above average at five years' longevity; and from 2.2% to 2.3% above average at 10 years' longevity.

Consistent with the Union's exhibits, however, although with different percentages, the foregoing tables show a marked deterioration in the earnings of Rock Island firefighters in 2006-2007 under the City's offer beginning at the 15 year longevity level and continuing on through the 20, 25, and 30 year longevity steps. At 15 years' longevity the percentage below average is actually a little bit less than under the prior contract: .6% or $351 below the average of $54,300 vs. .7% or $350 below the average of $52,685. Thereafter, however, for each longevity level, the decline in compensation is a greater percentage below average under the City's proposal than under the prior contract: 2.17% below average at 20 years under the City offer vs. 2.0 under the prior contract; 3.74% vs. 3.43% at 25 years; and 2.49% vs. 2.14% at 30 years.

Analysis of the contracts in the other jurisdictions quickly shows why the City is above average and ahead of most of the other comparable jurisdictions at start and at five and ten year steps of longevity but then begins to fall behind at 15 years and continues to do for the remaining positions on the salary scale. The reason is that several of the other jurisdictions provide for higher increases in compensation for longer service employees than those with lesser service. In some cases this is done by percentage step increases and in others by longevity pay increases.

For example, for 2006-2007 Rock Island would be ahead of Normal under the City's final offer at the five year stage with total earnings of $52,329 vs. $51,070 for Normal. The Normal contract, however, provides for a 10 percent increase in salary after 10 years' service and 5 percent each at the 15, 20, and 25 year levels. Rock Island, under the City offer, is significantly ahead of Moline at the 10 year level: $53,139 and a ranking of 3 vs. %51,798 and a ranking of 7. By 15 years, however, Moline leaves Rock Island far behind, having climbed to $58,410 and a ranking of 2 as compared with $53,949 and 6th place ranking for Rock Island. Moline accomplishes this by annual increases of 2.5% each year as compared with a single increase of $810 over a five year period under the City offer.

Other jurisdictions, behind Rock Island at the 10 year stage, overtake it at 15 years by hefty longevity increases in the later years. Quincy, for example, is behind Rock Island, under the City's offer, at 10 years but overtakes it by 15 years. Thus total salary in Quincy for 2006-2007 at 10 years is $52,007 and a ranking of 5 compared with $53,139 and a ranking of 3 at Rock Island. At 15 years, however, Quincy stands at $53,956 vs. $53,949 for Rock Island; and at 25 years, $60,020 vs. $55,569. Quincy accomplishes this by a 4% longevity increase at year 15 and a 10% longevity increase at year 23. Urbana, which is behind Rock Island under the City offer at year 5, overtakes it at year 10 and increases the amount of its lead thereafter at 15, 20, and 25 years by a longevity increase of six percent at 10 years and an additional two percent longevity increase at 12 years, 14 years, 18 years, and 25 years. Even Pekin overtakes Rock Island by year 25 by means of relatively small yearly increments that add up to more than a thousand dollars over a five year period each between the 10^{th} and 15^{th} years of service, the 15^{th} and 20^{th}, 20^{th} and 25^{th}, and 25^{th} and 30^{th} years.

The record, I think, makes out a case to rectify the situation at Rock Island, especially after the 15^{th} year of service.[12] Unfortunately, however, the Union final offer does little to repair the deterioration of the wage structure at Rock Island from the 15^{th} year on. Under the Union's offer, as with the City's, Rock Island remains below the average at 15, 20, 25, and 30 years. One could argue that a little improvement is better than nothing, but the problem is that the great majority of firefighters in the bargaining unit are fairly treated by the City's offer, and the record does not make out a case to pay them any more compensation. Thus 28 of 38[13] firefighters have 10 years or less of service as of March 31, 2006. They therefore would not attain 15 years of service during the term of the new contract. Another three have 11 or 12 years of service and, therefore, during the term of the new contract, will barely, if at all, reach a stage where they will be seriously negatively

[12]As previously noted, at 15 years Rock Island, under the City offer, is only $351 below the average of the other comparable jurisdictions and in a slightly better position, in terms of percentage below average, as compared with the other jurisdictions than under the last year of the preceding contract.

[13]Pages 41-42 and 53-54 of the City exhibit binder appear to contain complete lists of all firefighters and other ranks in the bargaining unit. These lists show 38 firefighters employed in the bargaining unit as of March 31, 2006.

affected by any wage inequity relative to the comparable jurisdictions. We are therefore talking about a very small percentage of the firefighters, at most 7 out of 38.

In addition, the Union's request for a percentage increase in longevity pay is a significant departure from the status quo over many contracts whereby the parties have always negotiated a fixed dollar amount for longevity pay. In fact, as late as the last negotiation session between the parties before impasse, the Union had not raised the issue of a percentage increase versus a fixed dollar amount. Thus the Union's response to the City's fifth and "final" offer of April 12, 2006, to maintain longevity pay at the current contract was to request an increase to $850 per step, not a percentage increase. Union Exhs. 6 and 7. I do not think that the arbitrator should order such a significant change when the parties have not even bargained the issue. This is especially true in the present case where wage inequities in the later years of the salary scale have been identified and some change in the longevity pay structure may have to be devised to remedy the problem. It is better for the parties to approach the issue with a clean slate than in the aftermath of a significant alteration in the longevity structure imposed on the parties without the benefit of what light might be shed on the problem through the negotiation process. Perhaps the parties will decide that some other means than longevity is the best route for them to take, or a combination of longevity and something else. Granting the Union's request on longevity would do little to alleviate the later years' inequities and could complicate reaching a resolution of the identified problem. In addition, as noted, I do not think it appropriate to grant the Union so significant a change in the salary structure without any prior meaningful negotiation of the issue between the parties.

There is still another consideration that militates against adoption of the Union's final offer on wages. General wage increase, longevity, and merit increase have been ruled to be a single issue. I see no sound basis for granting the Union's proposal to eliminate both merit increase plans. That would create a situation where there was no possibility for someone at the top of his (or her) salary to obtain any wage increase. I do not think that that would be in the interest of the public, the employees, or the City. I think that the public benefits when there is some monetary incentive for employees to improve their performance. A merit plan, even if entirely discretionary with the Employer, serves to motivate employees at the top of their salary to perform better and thereby perhaps earn a merit increase. Employees also benefit when they have some means available to them for a wage increase above scale, even if

discretionary with the Employer, than no means at all. The fact that it was the Union officers who argued that the suspension of merit plan B did not foreclose merit increases under the original plan A is evidence that the Union itself considered the original merit plan better than no merit plan at all.

The fact that the Union is arguing that elimination of merit plan A provides a cost saving to the City, and therefore a quid pro quo for any new benefit it may be seeking through its final proposal, is not necessarily a reason for permitting discontinuance of that plan. Since the City has proposed to continue plan A, apparently it thinks that having a merit plan is a good thing for its citizens. To discontinue something that the City wants to continue can hardly be considered a quid quo pro to the City. Nor did the City object to the Union officers' request during the term of the prior contract to continue awarding merit increases under plan A. A cost savings that comes at the price of eliminating an incentive for self-improvement among the work force and that is achieved by taking away a means for employees who may be underpaid in comparison with their counterparts in other jurisdictions to increase their earnings is not something that should be encouraged.

The difficulty I have with the Union's general wage offer is that it would provide a general wage increase to the great majority of the firefighters in the bargaining unit in an amount above what is called for by comparison with the other jurisdictions and would do very little to alleviate the deterioration in the City's wage structure beginning at the 15 year level of service. With regard to the Union's proposal on longevity, I am reluctant to grant a new contract benefit, namely, a percentage increase in longevity pay, without prior negotiation of that issue between the parties.[14] Granting that benefit could also complicate future negotiations to remedy the identified inequities in the City wage structure beginning at the 15 year longevity position on the wage scale. The slight improvement in wages for the most senior employees in the bargaining unit is not sufficient to overcome the objectionable aspects of the Union offer.[15] Finally, as noted, the Union has

[14]I am aware that the Union is not seeking longevity pay based on a percentage of base pay but rather based on a percentage increase in the dollar amount of the previous step increase in longevity pay. Nevertheless that is a significant change in the manner of setting longevity pay which, over time, can amount to a difference of many dollars in the amount of such pay.

[15]Lieutenants at 15 years' longevity and beyond are also being paid significantly below the average of the other jurisdictions that employ lieutenants in their fire departments. However, if the

not made out a case for its merit pay proposal. On balance, the City's wage proposal is to be preferred over the Union's.

I have also considered the Union's argument based on hourly wages. I agree with the City's position that for firefighters the numbers of hours worked is a separate issue from wages. It was also the position taken by Arbitrator George R. Fleischli in his February 7, 1992, decision in City of Elgin and Local 439, IAFF, Union Exh. 11, where he stated the following:

> . . . While the Union points to the relative low ranking of City firefighters, in terms of hourly rates of pay, that would appear to be a function of the hours of work, which have been partly addressed in this round of bargaining, rather than the salary schedule as such.

The prevailing approach among arbitrators in making external comparisons pertaining to salary is to limit the comparison to salaries and not to also translate the salary into an hourly figure. At least that is what I have found in reading the arbitration decisions relied on in this and in other cases.

---

wage structure is improved in the later years for firefighters, the lieutenants will also benefit since their salaries are tied to those of firefighters.

So far as the cost of living criterion is concerned, the fact that the aggregate amount of the wage increases for the three year period of the contract exceeded by more that two percentage points the total amount of the increase in the cost of living--whether the CPI-U or CPI-W is used as the measuring rod--supports the City's offer. The Union argues that deciding the question on the basis of the total amount of the increase ignores the accelerating increases during the more recent periods. Thus the Union notes that the annual increases in the CPI-U were 2.3%, 2.7%, and 3.4% respectively in 2003, 2004, and 2005. However, the BLS figures show that the not seasonally adjusted increase in the cost of living from December, 2005, to December, 2006, was 2.5% on the CPI-U and 2.4% on the CPI-W. In addition the average increase in the nine months from March, 2006, when the prior contract expired (not including any extension thereof), through December, 2006, was 1.4%. The City's final offer more closely approximates the rise in the cost of living than the Union's.[16]

Application of the internal comparability criterion results in a mixed bag. First, it should be noted that the City exhibit on internal comparisons regarding general wage increases going back to 1992, the accuracy of which has not been challenged by the Union, shows that general wage increases for firefighters have more frequently been different than the wage increases negotiated or awarded for one or both of the FOP police units (one unit of patrol officers and investigators and another for the command unit). Plainly no case has been made out in this proceeding of parity among the three units.

The Union correctly points out that Arbitrator Perkovich's interest arbitration award of a 3½ percent increase each for the 2004, 2005, and 2006 contract years favors its proposal in this case. However, I think that its contention that Arbitrator Yaffe's award of a 3¼ percent general wage increase each for 2005 and 2006 also favors its position is off the mark. The Union relies for its argument on the existence of a merit plan in the police command unit, which the Union asserts was valued at ½ percent per year. The Union's argument, however, overlooks the following statement by Arbitrator Yaffe in his decision:

[16]The January, 2007, CPI figures came out after the foregoing paragraph was written. The increase for that month was 2 percent, which, on a yearly basis, would support the City final offer.

> With respect to the parties' wage proposals for 2005-06 and 2006-07, each of which the undersigned considers a separate issue for purposes of this interest arbitration proceeding, the undersigned does not believe that merit pay, which the City at this time has no obligation to distribute, can legitimately be considered part of the wage offers in dispute. . . .

Plainly merit pay was not a consideration in Arbitrator Yaffe's decision. It must be concluded therefore that while Arbitrator Perkovich's award favors the Union's position, Arbitrator Yaffe's award favors the City's.[17]

With respect to the other three bargaining units in the City, the City's exhibit shows that none received a general wage increase for 2006 of more that three percent. The internal comparisons do not favor the Union's position in this case. It is the City's position that internal comparability is not a significant factor in this arbitration.

The Union contends that the City's wage offer is punitive because it is less for the second and third years of the contract than in the pre-arbitration "final" offer of April 12, 2005, where the City package proposal provided general wage increases of 3.25% in year one, 3.45% in year two, and 3.65% in

[17]My reading of the command officer's contract, Union Appendix Exhibit 7, Sections 10.1 and 10.2 finds no evidence of an increase in the longevity amount other than the addition of a longevity payment at 30 years of service, which already exists in the IAFF contract. Longevity pay in that contract is a flat dollar amount rather than based on a percentage of prior longevity payments or of base salary.

year three of the new contract. It has reduced its offer for the second and third years of the contract respectively to 3.35% and 3.45%. The City's April 12, 2006, proposal contained a note: "This package proposal exceeds the limits that will be proposed by the City in interest arbitration because of the cost of the interest arbitration process." Such a note, the Union contends, does not redeem the City's punitive action and contradicts the provision in Section 2 of the Act declaring the public policy of the State of Illinois to afford an alternative method to a strike for a resolution of labor disputes, including contract disputes. In the Union's view the City's action also is inconsistent with the provision in Section 14(d) of the Act that the expense of the arbitration proceedings, including the chairman's fee, be borne equally by each of the parties.

I agree with the Union that the City may not rely on the costs of arbitration as a basis for supporting its wage or other economic proposals, at least in a situation, such as here, where the City is not claiming inability to pay. Perusal of the City's brief, however, and of the transcript of these proceedings fails to turn up any instance where the City argues its case on the basis of the costs of going to arbitration. The City's case (as well as the Union's) must stand or fall on the statutory criteria in Section 14(h) of the Act.

That does not mean, however, that in designing its proposal the City must be oblivious of its attorney and other fees connected with the negotiation process. It must act in good faith and draw up a proposal that comports with the statutory criteria, but it is not prohibited from using the carrot of a slightly better wage offer than it would otherwise present as an inducement for prompt acceptance of its proposal and to avoid the expense and disruption of arbitration. Indeed that is exactly what the City did in its contract dispute before Arbitrator Howard Eglit in City of Rock Island and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-95-82. As related at page 7 of Arbitrator Eglit's decision, in early 1995, after settling with the IAFF unit for a one year contract providing for a 3.5% increase, the City approached the other bargaining units whose contracts were about to end and proposed the same arrangement. The City informed those units that if it was forced to enter into negotiations and possible arbitration, it would offer only a 3% increase. The police command unit accepted the City's offer. The patrol officers bargaining unit did not. At page 81 of his opinion, Arbitrator Eglit's award provided, "The City's final offer of a 3% wage increase is adopted, and the Union's offer of a 4% increase is rejected."

For all of the reasons stated in the foregoing discussion, I adopt the City's final offer on the wage issue, which includes general wage increase, longevity, and merit.

CERTIFICATION STIPENDS

Union Final Offer

The Union proposes to increase the certification stipends provided for in Section 12.9 of the contract both for Fire Fighter III and for EMT-B from $250 to $275 effective April 1, 2007, and to $300 effective April 1, 2008.

City Final Offer

The City proposes to make no change regarding certification stipends.

Union Position on Certification Stipends

The Union notes that in its April 12, 2006, package proposal the City had offered to increase FF III and EMT-B certification pay to $275 in the third year of the contract but now is proposing no increase at all. On the other hand, the Union points out, it (the Union) has reduced its proposal from $300 each year to $275 in the second year of the contract and $300 the third. The Union cites the testimony by a firefighter that there has been no increase in the amount of the certification stipends in the seven years of his employment with the City. By contrast, the Union asserts, police interest arbitration awards and their contracts show that police received a substantial increase for analogous certifications.

City Position on Certification Stipends

The City notes that it permits firefighters to study on the job for FF III certification and that it purchases the textbooks needed for study. It also provides, at its cost, the City asserts, the training necessary for EMT-B certification. Seven comparable cities do not have certification stipends at all, the City argues, and increasing the City's cost of certification stipends is not justified based on a comparison of comparable cities.

Arbitrator's Findings and Conclusions on Certification Stipends

The City is correct that external comparisons do not support an increase in the Fire Fighter III stipend. None of the other comparable cities provides FF III certification pay. All of the other jurisdictions that give a stipend for EMT certification do so for EMT-I certification, which is more advanced than EMT-B certification for which a stipend is paid in Rock Island. Although the Union claims that the police units receive higher stipends for analogous certifications, there was no record evidence supporting that assertion. At least the Union cites none. I would think, moreover, that it would be difficult to make comparisons between the items for which firefighters receive extra compensation and those for which police officers receive extra pay.

However, two considerations cause me to adopt the Union offer on this issue. First, in the last bargaining session between the parties, in April, 2006, the City was willing to increase the stipend by $25 for both FF III and EMT-B in the third year of the contract as part of its package proposal that provided for a higher general wage increase than it has offered in arbitration and that I have adopted. If the additional stipend was reasonable as part of a larger wage offer, it should be all the more reasonable as part of the reduced offer it has made in arbitration.[18] Second, I have found that there are inequities in the City's wage offer in total cash compensation received by firefighters beginning with the 15th year of service. Adopting the Union's offer on certification stipends will, at least to some degree, alleviate the inequities. In this connection I note that the EMT-B certifications are held mostly by the longer service employees. All of the newer employees have paramedic certification and are not affected by the increase in the EMT-B stipend. For the reasons stated I adopt the Union's offer on certification stipends.

KELLY DAYS

Union Final Offer

[18] Although certification stipend is being treated as a separate issue by the parties from wages, it is part of a firefighter's overall wage. See, for example, Arbitrator Briggs's decision in Village of Wilmette and Local 73, SEIU, Case No. S-MA-00-088, at p. 17, where he ruled that Fire Fighter III certification stipend was part of the salary issue and not a separate issue.

The Union has summarized its offer on Kelly days as follows:

> Reduce average work week by implementing two (2) Kelly Days off per year effective April 1, 2007. The scheduling of Kelly Days shall be subject to the following conditions;
>
> 1) Kelly Days shall be fully tradeable;
>
> 2) A Kelly Day shall displace one vacation slot on the shift day on which the employee is scheduled off on a Kelly Day;
>
> 3) FLSA leave shall be reduced to two (2)slots per day;
>
> 4) The Fire Chief is authorized to change the FLSA work period from the current 21 days to another work period from 7 to 28 days as authorized by FLSA;
>
> 5) Annual paid hours shall be reduced from 2,912 to 2,864 effective 4-1-07.

City Final Offer

The City notes that the prior contract does not provide for Kelly days and the City does not propose to make any change in this area.

Union Position on Kelly Days

Its proposal on Kelly days, the Union asserts, would provide firefighters on a 24/48 schedule with a Kelly day off every 60th shift, amounting to an average of two 24 hour shifts off in a year. Its final offer on Kelly days, according to the Union, "mirrors the proposal that the City had accepted in April 2006." In connection with that proposal, the Union asserts, the Union agreed to minimize the cost of the Kelly days by having one of the Kelly days displace a vacation slot so that while time off was increased, the number of employees off on a given day would be constant. Its proposal also reduces the City's costs for FLSA overtime, the Union asserts, by reducing the slots for FLSA leave to two a day and by permitting the City to lengthen the FLSA work period from the current 21 day cycle to another period up to 28 days.

The Union contends that the external comparisons strongly support its proposal on Kelly days. All of the comparable jurisdictions except Urbana, the Union asserts, provide for a Kelly day reduction in the workweek. In 2006, the Union argues, it moved even farther behind the other jurisdictions because two of them improved their workweek from 55.2 hours to 53 hours by scheduling a Kelly day every 18th shift--a gain of 4.8 Kelly days. Even when other forms of time off besides Kelly days, such as vacation, holidays, and personal time off are taken into account, the Union asserts, Rock Island remains 10th in rank among the comparable jurisdictions.

Its proposal to add Kelly days, the Union contends, is supported by public policy considerations underlying the Fair Labor Standards Act, which sets a standard for firefighters of a 53 hour workweek by requiring overtime pay for all hours worked during a specified work period that exceeds an average of 53 hours. Its proposal promotes the FLSA standard, the Union argues, by reducing the workweek to an amount closer to 53 hours and by permitting a longer work cycle, which has the effect of reducing the amount of overtime worked.

The Union contends that internal comparisons also support its position because the police and other City bargaining units work a 40 hour week and therefore enjoy a much higher hourly rate of pay. Its proposal, the Union argues, comports more with the hours of work per week and hourly rate of pay of the other City bargaining units than the City's offer.

Its proposal, the Union asserts, does not amount to a "breakthrough" since it is not a new benefit but is properly viewed either as a decrease in work hours or an increase in scheduled days off. Even, however, if it were viewed as a new benefit and subject to a breakthrough analysis, the Union argues, it has satisfied that requirement through the bargaining process by originally persuading the City to accept its proposal on Kelly days. It cites interest arbitration decisions by Arbitrators Milton Edelman and George R. Fleischli which it contends support its position in this case. The Union emphasizes that the gain it seeks is only two Kelly days in a context wherein Rock Island's other time off benefits are second from the bottom.

The Union contends that the City has overestimated the cost of its proposal on Kelly days because the City's estimate assumes that firefighters will have to be replaced on overtime whenever they receive a Kelly day off whereas the fact that Kelly days will displace what would otherwise be vacation days makes it unlikely that the existing manning will not be able to cover the

places of the firefighters who are off on Kelly days. The City's cost calculation was also wrong, the Union asserts, because it does not take into account the fact that no employee will be paid an additional sum while off on a Kelly day.

City's Position on Kelly Days

The City asserts that the Union's offer for Kelly days is the exact same offer made before Arbitrator Nathan in the interest arbitration for the 2003-2006 contract.[19] The City notes that Arbitrator Nathan rejected the Union proposal on Kelly days. It argues that Kelly days have never been a part of the collective bargaining agreement at Rock Island and therefore constitutes a "breakthrough" proposal. As such, the City contends, the Union has the burden of proof that there is a need for change. No evidence was presented that anything has changed since Arbitrator Nathan's ruling less than two years ago, the City maintains.

What the Union is really seeking through its Kelly days proposal, the City argues, is another way in which to raise the wages of employees in the bargaining unit. This is clear, the City asserts, from the fact that, at the arbitration hearing, the Union changed its Kelly day proposal providing for two additional days off per employee per year and asked, instead, for the City to agree to raise the hourly rate of employees. After the hearing, the City notes, the Union reverted to its original Kelly day offer. The City quotes Arbitrator Nathan's statement, "Kelly days are about money more than they are about hours of work," and stresses that the net effect of granting the Union's proposal on Kelly days would be to provide employees with additional compensation over and above the general wage increase.

The City argues that it is incorrect to assert, as the Union does, that Kelly days create FLSA overtime savings by breaking the 21 day overtime cycle and thereby reducing overtime. City studies show, according to the City, that on average only 38% of 21 day FLSA cycles are unbroken by absences from work. Therefore, the City argues, most FLSA cycles are already broken, and Kelly days will not result in a reduction of FLSA overtime.

[19]Although the Union, based on its brief, apparently was under the impression that, in the previous arbitration, it had proposed a more generous (for the bargaining unit) Kelly proposal calling for a Kelly day every 18th shift, the proposal as described by Arbitrator Nathan appears to have been identical to the present proposal. See Nathan opinion at page 16.

In addition, the City asserts, the absences will have to be filled, and the employees, paid overtime. Kelly days, the City maintains, represents a major cost item.

The City argues that the Union is arbitrator shopping in the hope that another arbitrator will overrule Arbitrator Nathan even though the facts and circumstances have not changed in the intervening period of time. To allow the Union to prevail on this issue, the City contends, would discourage collective bargaining and encourage the parties to resort continually to interest arbitration in the hopes that a new arbitrator will rule differently on a disputed issue.

Arbitrator's Findings and Conclusions on Kelly Days

As Arbitrator Harvey A. Nathan explained in a prior arbitration between these same two parties. "Kelly Days are scheduled days off at periodic intervals which affect an employee's normal FLSA work cycle." Kelly days, Arbitrator Nathan noted, reduce the number of hours worked in an FLSA work cycle for firefighters and thereby serve to avoid overtime which would otherwise be incurred. At the same time, however, by reducing the number of hours worked in a year, Kelly days also cause the hourly rate for overtime calculation to increase. Kelly days can thus be costly to a jurisdiction depending on the number of overtime hours worked in the bargaining unit and on whether employees off on Kelly days must be replaced in order to meet manning requirements.

External comparisons strongly support the Union proposal regarding Kelly days. All of the comparable jurisdictions have Kelly days in their contracts except for Belleville and Urbana. However, Belleville's work schedule of 24 hours on followed by 72 hours off duty assures that it will have the least number of work hours in a year. Its annual hours of work for hourly rate calculation is 2185 compared with Rock Island's 2912. Only Urbana has 2912 annual scheduled hours along with Rock Island. Clearly the Act's Section 14 factor (h)(4), comparison of the wages, hours and conditions of employment of employees in the unit with those "of other employees performing similar services . . . (A) In public employment in comparable communities" favors the Union proposal on Kelly days.[20]

[20]Section 14 (h) (4) also provides for comparison "with other employees generally" in public employment in comparable communities. It further permits comparison with the wages, hours, and conditions of employment of employees performing similar services and with other employees

The same external comparisons favored the Union's final offer on Kelly days before Arbitrator Nathan in the interest arbitration of the prior contract which this new agreement will replace. Arbitrator Nathan, however, adopted the City's proposal on that issue and permitted the status quo to continue whereby employees worked a 2,912 hour work year and did not receive any Kelly days. He stated that his "primary reason" for doing so was that "Kelly Days will affect the total earnings for employees" and that he "believe[d] that the 3.5% is an adequate wage increase and does not need a Kelly Day embellishment." His second reason for doing so, Arbitrator Nathan stated, was his "belief that collective bargaining is a better way of setting terms and conditions of employment than arbitration." Amplifying on the second reason, Arbitrator Nathan stated:

> . . . When one party or the other seeks to make a major change in contract language, that party must demonstrate that it has exhausted all reasonable efforts at collective bargaining and there is very good cause for the arbitrator to intervene. . . . The record in this case does not support the argument that there is a true need for the introduction of this major change in terms and conditions of employment which cannot otherwise be obtained at the bargaining table.

---

generally "[i]n private employment in comparable communities." No evidence was presented regarding any of these additional areas.

Arbitrator Nathan took the entire package of issues on the table before him into account and concluded that to add Kelly days to the Union's award would be excessive; that a major change should not be awarded without a showing of need; and that it is preferable for major changes in a contract to be negotiated by the parties rather than awarded by an arbitrator.[21]

The City urges that I decide the Kelly days issue the same way as Arbitrator Nathan in order to encourage collective bargaining instead of continuous resort to the arbitration process. It asserts that the Union presented no evidence that anything has changed since Arbitrator Nathan's ruling. However, I think that the record does reflect a significant change in circumstances which compels adoption of the Union offer on Kelly days.

The change in circumstances to which I refer is the "final" offer of the City on April 12, 2006, before impasse, "to settle all outstanding issues" in which, as part of its package proposal the City offered on the issue of Kelly days the following: "2 Kelley (sic) Day per year; fully tradeable; Kelley Days fill one vacation slot; reduce FLSA leave to two (2) slots per day;". The City was offering what the Union has now made part of its final proposal.

The fact that the City offered the same Kelly day proposal on April 12, 2006, together with a general wage increase that was higher than it has offered (and I have adopted)in this proceeding, removes any cogency from the primary reason relied on by Arbitrator Nathan for denying the Union proposal on Kelly days: ". . . the arbitrator believes that the 3.5% is an adequate wage increase and does not need a Kelly Day embellishment." (Arbitrator Nathan decision, p. 17). In this case the City, by its April 12, 2006, offer, showed that it considered that a

[21]See, for example, the decision of Arbitrator Steven Briggs in Village of Schaumburg and Schaumburg Professional Firefighters Assn., Case No. S-MA-96-218 (1998) at p. 11: "Absent compelling circumstances, the Arbitrator is generally reluctant to adopt contract language which departs from a contractual model formerly developed and agreed upon by the parties themselves. . . ." On that particular issue, however, Arbitrator Briggs found that the "issue involves circumstances which compel acceptance of the Union's final offer."

reasonable settlement of the contract would include both the general wage increase it proposed and the granting of two Kelly days. Having accepted the City's wage offer, which is less than what it offered on April 12, I have no reasonable basis for saying that the wage increase alone is adequate and that there is no need to add Kelly days.

In addition, the second reason cited by Arbitrator Nathan for ruling as he did would support, rather than argue against, the awarding of Kelly days. Arbitrator Nathan opposed awarding Kelly days under the prior contract because he believed "that collective bargaining is a better way of setting terms and conditions of employment than arbitration." Here the proposal in question has been refined through the crucible of collective bargaining to the stage where the City found it to be acceptable, at least as of April 12, 2006. It has offered no explanation specifically why what it had originally agreed to regarding Kelly days is no longer acceptable to it as part of an entire package that is consistent with what it was willing to accept in April, 2006.

The only explanation given by the City for withdrawing some of the proposals it made on April 12, 2006, in its "final" offer before arbitration was the general statement that "we offered more in hopes of settling this matter before arbitration." (Tr. 304). The situation on Kelly days, however, is not the same as the general wage increase issue where the City reduced its offer slightly from what it was in direct negotiations. In the case of Kelly days, the City withdrew its offer in its entirety and did not merely modify it. In addition, with regard to wages, the substitute offer on general wage increase made by the City in the arbitration proceeding was well within what the comparable jurisdictions had settled for. The opposite is true for the City's offer regarding Kelly days.

There is the question of quid pro quo for the new Kelly day benefit. I think the fact that the City had itself included what is presently the Union's proposal on Kelly days in its own final proposal shows that the City believed that the entire package offered by it, if accepted, contained sufficient quid pro quo to satisfy the City. To me that means that a package awarded in this arbitration which was substantially consistent with the City's April 12, 2006, proposal would have sufficient quid pro quo for its terms.

Aside from the foregoing consideration, the Union argues that in the negotiations and interest arbitration for the 2003-2006 contract it offered to suspend merit plan B in exchange

for acceptance of its Kelly days proposal. In fact the Union presented testimony in the present arbitration that had its Kelly days proposal been accepted "most likely" it would not be trying to get the merit plan B back. (Tr. 413). Arbitrator Nathan acknowledged in his opinion that the Union offer to suspend the merit pay system was made as a quid pro quo for obtaining the Kelly days benefit. He pointed out, however, and, I think, correctly so, that because the suspension of the merit pay plan was part of the Union wage proposal, by accepting the Union's proposal on wages he had no choice but to suspend the merit pay plan.[22]

From my reading of Arbitrator Nathan's decision, he did not use the suspension of the merit pay plan as a quid pro quo for adopting the Union's wage offer. I think that this is evident from a reading of his opinion even without reference to footnote 8 of the opinion. In footnote 8, however, he makes explicit that he was not relying on a concept of quid pro quo. Basically, therefore, the City obtained suspension of the merit pay plan B without providing any quid pro quo.

I shall adopt the Union final offer on Kelly days for the reasons explained in the preceding discussion. However, I should like to make clear that the award is not without a quid pro quo to the City. I think that the presence of a quid pro quo is implicit is the City's original willingness to accept the Union's Kelly day proposal as part of a package deal. I hasten to add, however, that this would be true only if the package awarded herein is substantially consistent with the package the City was originally willing to accept as shown by its April 12, 2006, proposal. In this connection I note that the April 12, 2006, proposal of the City provided for elimination of merit plan B. Separate and apart from the aforementioned quid pro quo, however, is the down payment of quid pro quo that the Union received in the prior interest arbitration when it was awarded suspension of merit plan B. Without elimination of plan B, however, as opposed to suspension, the quid pro quo would be no more than a chimera. In this connection I note the Union testimony in this proceeding indicating that it would be willing to give up the merit plan B entirely if it obtained Kelly days.

[22]Arbitrator Nathan had informed the parties that all aspects of wages would be treated as a single issue.

TEMPORARY ASSIGNMENT/OUT-OF-RANK PAY

Union Final Offer

The Union describes its offer regarding out-of-rank pay as follows:

> Modify Acting Pay by reducing the minimum time period required to be eligible for Acting Pay as follows:
>
> Firefighter as Lieutenant: 1 Day
>
> Captain as Battalion Chief: 1 Day
>
> Lieutenant as Captain: 2 Days

City Final Offer

The City proposes to retain the current contract language, Section 12.7, which provides that an employee must work a minimum of two consecutive scheduled workdays in the higher classification in order to receive the five percent addition to his pay.

Union Position on Out-of-Rank Pay

The Union notes, first, that its proposal on out-of-rank pay had previously been accepted by the City and was included in the City's "final" offer of April 12, 2006, before arbitration. Next, it argues that its proposal is strongly supported by external comparisons. Its Exhibit 26 shows that besides Rock Island, only Belleville requires that an employee be assigned to the higher rank for more than 24 hours to receive the higher pay. Only one jurisdiction, Moline, requires as much as 24 hours--the number of hours worked that the Union seeks to have awarded as the minimum amount necessary for receiving higher pay. Alton, Galesburg, Normal, and Pekin require 12 hours. Danville requires three hours. Quincy and Urbana allow out-of-rank pay with a minimum of one hour. All jurisdictions but Pekin and Moline, which pay less than a five percent premium, pay more than five percent above the employee's regular rank for a temporary assignment to a higher rank. The amounts range from 6.25 percent for Belleville to 15.03 percent for Alton. The average is nine percent. The Union argues that an acting officer is responsible for the entire crew, is held to the same standard as the officer

he is replacing, and has additional and expanded responsibilities related to hazardous material, river rescue, and mutual aid responses. It contends that the City has offered no justification for not granting its proposal.

City Position on Out-of-Rank Pay

The City contends that there are only a few additional duties when a firefighter is temporarily assigned to the lieutenant position. Most of the time, the City notes, a firefighter temporarily assigned to lieutenant is responsible for one other firefighter. The requirement of making a report of any incident that happens on the shift, the City asserts, "is not a difference because he is basically charged with making reports of incidents himself." The special situations mentioned by the Union witness, such as hazardous materials, rescues, and mutual aid responses, the City argues, are rare or infrequent occurrences and would involve additional responsibilities only until a higher ranking officer arrived on the scene. Nor, the City asserts, has the Union presented any evidence what effect, if any, mutual aid responses might have on firefighters' duties when they are acting out of rank. The City finds it inconsistent for the Union to propose to go from two days to one day for a firefighter working as a lieutenant or a captain working as a battalion chief but not for a lieutenant working as a captain, where the Union agrees that it should remain two days.

Arbitrator's Findings and Conclusions on Out-of-Rank Pay

Unlike the Union's Kelly day proposal, out-of-rank pay is not a new benefit. The Union is seeking improvement of the payment terms for firefighters temporarily assigned to work as a lieutenant and for captains temporarily assigned to work as a battalion chief by reducing the minimum time period required to qualify for the five percent premium from two days to one day. The treatment of this benefit in the contracts of the comparable jurisdictions strongly supports the Union position. Only Belleville has a minimum hours' requirement of more than 24 hours. In addition, the City originally agreed to the Union's proposal on out-of-rank pay and included it as part of its package proposal in its April 12, 2006, "final" proposal prior to arbitration. That would indicate that the City considered the Union offer on out-of-rank pay to be reasonable as part of an overall settlement that included a general wage increase proposal above what the City has offered in its final proposal in interest arbitration. The Union witness reasonably explained why the

Union is not seeking a reduction of the minimum hours' amount for lieutenants assigned to captain: "the change from lieutenant to captain is not as great as it is from firefighter to lieutenant or from captain to battalion chief. The level of responsibility doesn't increase as much . . . ." (Tr. 130). The record supports the adoption of the Union's proposal on this issue.

NON-ECONOMIC ISSUES

DISCIPLINE

Union Final Offer

The Union summarized its final offer regarding discipline as follows:

> Modify Discipline procedures as follows:
>
> 1) Modify §7.10, Appeals of Suspension, Demotion or Dismissal, by providing for a mutually exclusive option for employees to appeal the just cause of disciplinary action through the grievance/arbitration procedure or to the Board of Police and Fire Commissioners . . . .
>
> 2) Add violations of City harassment policy to exceptions to progressive discipline.

City Final Offer

The City final offer on discipline is to retain the status quo. Section 7.10 of the Agreement requires that any appeal of a suspension, demotion, or dismissal be made to the Board of Fire and Police Commissioners. The Board of Fire and Police Commissioners is given exclusive jurisdiction over disputes relating to suspension, demotion, or dismissal of any Board appointed employee. Such disputes are barred from the grievance and arbitration provisions of Article VII, Grievances. The City also proposes to make no change to Section 8.3, Exceptions to Progressive Disciplinary Procedures, which lists types of serious work violations for which progressive disciplinary procedures may be waived.

Union Position on Discipline

The Union contends that the City may not renew Section

7.10 of the Agreement in the new contract without the agreement of the Union to do so. Section 8 of the Act, the Union maintains, gives employees aggrieved by an action of an employer relating to the terms and conditions of employment the right to seek resolution of the grievance through a contractual grievance and arbitration procedure unless mutually agreed otherwise.

The prior contract, the Union asserts, expired on March 31, 2006. Section 7.10 of that contract, the Union notes, excluded disciplinary actions from the grievance-arbitration procedure and made them subject to the Board of Fire and Police Commissioners' exclusive jurisdiction. Since the Union has not agreed to continue these provisions into the new contract, the Union contends, the City has no authority to reimpose this language on the Union and the bargaining unit as a term or condition of employment in the new contract. Its position regarding Section 8 of the Act, the Union argues, is supported by the decisions of Arbitrator Harvey A. Nathan, involving Will County, and Arbitrator Edwin H. Benn, the City of Springfield.

The Union asserts that it has good reason to be dissatisfied with the quality of due process available to its members. Its basic concern, according to the Union, is that it feels that it has the right to have an impartial third party decide whether or not discipline of a bargaining unit member is justified. The Board of Fire and Police Commissioners is not an impartial body, the Union urges, because the parties do not share in the selection of the members of the Board. Instead, the Union notes, the Commissioners are appointed by the City mayor under the provisions of the Municipal Code. There is always the danger, the Union asserts, that those appointed will perceive their interest as doing the bidding of the mayor or fire chief. Providing a truly impartial forum for determining the merits of disciplinary action, the Union argues, would increase confidence in the disciplinary system and likely enhance the morale of the employees.

The Union points out that the Municipal Code permits the Board of Police and Fire Commissioners, upon appeal of a disciplinary suspension, to increase the period of suspension or discharge the employee. This authority is also embodied in Board Rule 8(e), the Union notes, and, it argues, is a substantial deterrent for employees to exercise their right of appeal. Further, according to the Union, it is antithetical to commonly accepted arbitral standards of due process and just cause. It is also inconsistent, the Union contends, with the contract language providing for progressive discipline.

Among the comparable communities, the Union argues, 90 percent provide in their collective bargaining agreements that firefighters may grieve discipline through the grievance procedure. Only Moline, the Union notes, does not permit arbitration of discipline disputes. In addition, the Union asserts, it has presented evidence that even communities that previously resisted permitting the arbitration of disciplinary disputes have now adopted provisions in their contracts allowing arbitration of such disputes.

Finally, the Union contends that Arbitrator Nathan's rationale for rejecting the Union proposal on discipline in the prior interest arbitration cannot be squared with his own analysis in the Will County interest arbitration case and that his decision in the prior Rock Island case fails to explain why mutual agreement in a predecessor agreement should carry over into the successor agreement if the Union is no longer willing to agree to exclude disciplinary disputes from arbitration.

City's Position on Discipline

The City relies on the holding and reasoning of Arbitrator Nathan in the arbitration of the discipline issue in the interest arbitration that resulted in the 2003-2006 collective bargaining agreement that the contract now being arbitrated will replace. The City quotes from Arbitrator Nathan's decision wherein he did not accept the argument made here by the Union based on Section 8 of the Act. In the excerpt quoted Arbitrator Nathan reasoned that since the parties, over a period of years, had voluntarily negotiated a disciplinary system that excluded suspension, demotion, and dismissal from arbitration, they "mutually agreed" to exclude such matters from arbitration as permitted by Section 8. Arbitrator Nathan stated that it was up to the Union to persuade the arbitrator of the need for a change but that it had not met that burden.

The City asserts that as a matter of law the Board of Police and Fire Commissioners cannot retaliate against firefighters for appealing discipline determinations to the Commission. The City argues that the Union failed to establish that discipline has been improperly administered and notes its own evidence that no discipline occurred during the entire term of the 2003-2006 contract. The Union, the City notes, presented a single example of a firefighter who failed to appeal discipline to the Commission for fear of retribution but may have appealed it to arbitration if he had the opportunity. The City contends that "the Union has simply failed to carry its burden that the

Commission has not worked fairly and appropriately." The City asserts that the Union is simply arbitrator shopping in the hope that a new arbitrator will rule differently than Arbitrator Nathan even though nothing has happened since the prior arbitration to justify a change.

Arbitrator's Findings and Conclusions on Discipline

I think that it is one thing to award the right to arbitrate discipline when the issue is presented in arbitration for the first time but quite another to do so in an arbitration for the contract immediately succeeding the contract for which the right to arbitrate discipline was denied in arbitration. Arbitrator Nathan's decision, I believe, must be given the same weight as if the parties had voluntarily negotiated exclusion of discipline from their 2003-2006 contract. Otherwise arbitration has little meaning, and parties are encouraged to ignore direct collective bargaining and, instead, to resort to arbitration every contract. What one arbitrator fails to give, another will be free to bestow, and the parties will be relieved of any burden of showing changed circumstances from the prior arbitration. There will be no predictability because everything is up for grabs when the contract expires.

I do not think that the foregoing is what the legislature envisioned or consistent with the principles that have developed in interest arbitration over the years. One of the principles is that when a contract term is negotiated or is awarded in arbitration, the party desiring a significant change in the provision must provide compelling evidence of the need for change. No such compelling evidence has been presented in this case. In a period of more than three years since the effective date of the preceding contract, there has been only one case of discipline. The employee involved, according to what he told his Union representative, had been suspended three days but did not want to risk retribution from the prior fire chief by appealing the discipline.

There is no reason to believe, however, that the same employee would not fear retribution by appealing his discipline to arbitration. The Union testimony that the Union, rather than the employee, could file the grievance is not persuasive. The employee would still have to cooperate in the presentation of his case in arbitration and, most probably, testify in his own behalf. There is no good reason to believe that if the employee feared retribution (no matter how unjustified) if he went before the Board of Commissioners, he would not also fear retribution by

cooperating in the presentation of his case in arbitration. In addition, the Union witness candidly admitted that there was another reason why the employee did not want to appeal his suspension. The newspaper attends Board hearings, and the employee would have been embarrassed by the publicity. However, the newspaper could also have reported on the arbitration hearing, with the same resultant embarrassment to the employee. The Union has failed to provide a compelling reason justifying a change in the arbitration provision so soon after the prior award.

I think, however, that the Union has presented a good reason to change the disciplinary provision to eliminate what is a blatant inconsistency with the existing just cause provision in the contract. Section 8.1 provides that disciplinary actions "may be imposed upon any employee in the bargaining unit for just cause." The rules of the Board of Fire and Police Commissioners, Union Exh. 30, provide, with regard to disciplinary proceedings that "[t]he board shall also have the authority to either increase or decrease the disciplinary action taken against the particular individual involved, to include any discipline which the board has authority to impose under his division."

For a disciplinary tribunal to increase the level of discipline imposed on an employee is inconsistent with the provision in the contract establishing a standard of "just cause" for discipline. Such authority on the part of the Board, moreover, would have a chilling effect on the exercise of the right of employees to appeal disciplinary actions against them. I shall therefore order that Section 7.10 of the Agreement be amended to include the following language at the end of the final paragraph of that section: "With regard to an employee's appeal of discipline or a hearing on disciplinary charges, the Board of Fire and Police Commissioners shall not have the authority to increase any discipline imposed or recommended by the Fire Chief or the City." The parties may agree to vary this language to conform with the actual disciplinary procedures in effect in the department.

I have considered the Union's argument based on Section 8 of the Act. I think that the language is ambiguous. It is not clear what constitutes "mutual agreement." Arbitrator Nathan apparently interpreted the section to include within the concept of mutual agreement a negotiated provision excluding discipline cases from arbitration that has been included by the parties in a series of prior collective bargaining agreements spanning a period of years. I am not prepared to state that Arbitrator Nathan's interpretation is wrong. In the absence of a court or

Labor Board ruling invalidating the prior arbitration award, I think that the preferred course to follow is to assume the validity of the award and to treat the awarded contract language as having the same force as if it had been negotiated by the parties in the immediately preceding contract. As such, the burden is on the Union to make a compelling case for changing the language to the extent proposed by the Union. The Union has made a compelling case for the amendment described in the preceding paragraph. It has not made a compelling case for changing the provision making the Board of Fire and Police Commissioners the exclusive tribunal for hearing appeals of suspensions, demotions, and dismissals. I shall adopt the City proposal on discipline with the amended language set forth above.

With regard to the proposal to add violation of the harassment policy to the list of violations for which progressive discipline need not be followed, insufficient information has been presented on the record regarding the terms of the harassment policy or the reasons for not making it subject to progressive discipline. The City, which originally proposed the change, has not included that proposal in its final offer. Under all of the circumstances I think it best to leave unchanged the contract language dealing with exceptions to progressive discipline.

RESIDENCY

Union Final Offer

The Union proposes a new Section 6.4 to deal with residency, which would provide as follows:

> ARTICLE VI - WORK RULES and REGULATIONS
>
> * * *
>
> Section 6.4
>
> Employees hired after June 11, 1991 shall live within an area described by a 15 mile radius measured from the “center” of the City of Rock Island on the Illinois side of the Illinois River.

City Final Offer

The City proposes a new article of the Agreement dealing with residency to provide as follows:

ARTICLE XXV - Residency

Employees covered under this agreement are subject to the following residency requirements:

1) All employees hired before June 11, 1991, are grandfathered from having to reside within the ten (10) miles of the intersection of 17th Street and 31st Avenue in Rock Island, Illinois and within the state of Illinois; and

2) All employees hired between June 11, 1991 and March 31, 2007, shall live within ten (10) miles of the intersection of 17th Street and 31st Avenue in Rock Island, Illinois and within the state of Illinois; and

3) Employees hired after March 31, 2007, shall live within the corporate boundaries of the city of Rock Island. Employees will have six (6) months after completing their probationary period to be in compliance. Employees who fail to move within the city boundaries within the specified time frame will be dismissed.

Union Position on Residency

Currently there is no contract provision dealing with residency. A city ordinance passed in 1991 requires that employees live within a ten mile radius of 17th Street and 31st Avenue in the city of Rock Island. There is no other city bargaining unit, the Union asserts, wherein employees are subject to the residency restriction the City seeks to impose in this case. Further, the Union notes, in a recent interest arbitration police officers were awarded an expansion of the radius for out-of-city residency from 10 to 15 miles. No evidence was presented of operational difficulties necessitating that firefighters live closer to the city, the Union stresses. External comparisons support the Union's position, it contends, in that only Alton and Belleville among the comparable jurisdictions have more restrictive rules than the one proposed by the city. The City offer, the Union argues, would restrict the right of the bargaining unit employees to reside where they wish and will make it more difficult for the City to hire and retain the most qualified firefighters and paramedics. The Union views the City's position on this issue as an attempt to punish the Union for going to arbitration since the City originally accepted the Union's offer on residency and has offered no rationale for backtracking other than that the City Council decided to change its position after the Union invoked interest arbitration.

City Position on Residency

This offer, the City asserts, is based on its desire to have employees reside within Rock Island where they earn their wages and be involved in developing areas and being part of

the community. The City notes that its proposal would apply prospectively and would not impact anyone currently in the bargaining unit. Its desire to have employees reside in the City where they earn their wages and have them become part of the community is both reasonable and logical, the City contends, and the arbitrator should adopt the City offer.

Arbitrator's Findings and Conclusions on Residency

The City has offered no reasonable basis for the adoption of its offer to restrict residency requirements from the present rule, which permits residency outside the city limits if the ten mile radius is not exceeded. At least seven of the comparable jurisdictions permit firefighter employees to live outside the city limits. The City cannot identify a single other bargaining unit within Rock Island wherein employees must live within the city limits.

With regard to the Union offer, on the other hand, bargaining unit employees already are permitted to live outside Rock Island's boundaries so long as they stay within the ten mile limit from 17th Street and 31st Avenue. The Union testimony that operational considerations in regard to emergency call-backs would not be adversely affected by expanding the residency radius to 15 miles was not contradicted. In addition, a strong consideration favoring the Union final offer is the fact that the City originally agreed to it in its own "final" offer of April 12, 2006, prior to arbitration. No persuasive reason has been given justifying the City's reversing itself on this non-economic issue. I shall adopt the Union offer on residency.

Promotions

Union Final Offer

The Union proposes to add to Article XIII, Promotions, Section 13.2 a definition of the term "vacancy" which tracks the statutory definition verbatim.

City Final Offer

The City proposes to retain the status quo and leave Section 13.2 and the remainder of Article XIII unchanged.

Union Position on Promotions

It is the position of the Union that Section 13.2 of the Act in its present form is unlawful in that it is inconsistent with the terms of the Fire Department Promotions Act of 2003. The objectionable language, according to the Union, is the sentence, "The [B]oard of Fire and Police Commissioners, in consultation with the Fire Chief, shall determine when a vacancy

exists." That language, the Union contends, gives the Board the authority to define vacancy using subjective criteria that are inconsistent with the Fire Department Promotion Act of 2003. The Union argues that it cannot be forced to accept such language since the Promotion Act makes any waiver of its terms a permissive subject of bargaining. The Union notes that it has not agreed to waive the statutory definition of "vacancy." In addition to the language of the Promotion Act itself, the Union relies on a declaratory ruling dated January 25, 2005, by the General Counsel of the Illinois Labor Relations Board in a dispute between Village of Elk Grove Village and IAFF Local 2340 in which she found that the Village's proposal "could be construed . . . as a waiver of the FDPA's provisions" and was "therefore a non-mandatory subject of bargaining."

City's Position on Promotions

The City notes in its brief that the Union is proposing to modify Section 13.2 of the collective bargaining agreement to define the term "vacancy" in accordance with Section 20(d) of the Promotion Act. It asserts, "The City's concerns with incorporating current law into the LA are (1) the law might change and (2) the potential exists for multiple dispute resolution forums to have jurisdiction of a controversy." The City quotes from Arbitrator Nathan's decision in the interest arbitration for the 2003-2006 contract in which he stated in relation to the promotions issue, "It must be presumed that if the present rules [of the Board of Fire and Police Commissioners] are in conflict with the statute the Fire and Police Board will adjust their rules accordingly."

The City argues that the Union has presented no evidence as to what has occurred during the last two years which would justify overturning Arbitrator Nathan's decision on the issue of promotions. It accuses the Union of forum shopping in the hope that a new arbitrator will decide differently even though the facts and circumstances have not changed. To allow the Union to prevail on this issue, the City asserts, would not further the process of collective bargaining but would discourage collective bargaining and instead encourage the parties to continuously resort to interest arbitration.

Arbitrator's Findings and Conclusions on Promotions

A fair reading of the existing language of Section 13.2 does not support the Union's contention that it is inconsistent with the Fire Department Promotion Act of 2003 because it permits the Board of Fire and Police Commissioners to determine that a vacancy exists using subjective criteria contrary to that Act. Section 13.2 must be read in conjunction with Section 13.1 which expressly provides that any rules and regulations governing promotion must be "in compliance with the Fire Department Promotions Act of 2003." In fact Arbitrator Nathan expressly stated in his opinion that if the Board's rules were not in conformity with the statute it "must be presumed" that the "Board will adjust their rules accordingly." He further stated that he assumed that the parties will apply contract language "in a lawful manner."

Nevertheless Arbitrator Nathan made clear in his decision that he had no objection

to including statutory language verbatim in the collective bargaining agreement. He noted the City's objection to reciting statutory language in the Agreement but disagreed that there was anything wrong in doing so, stating, "However, articulating the statute, or referring to it, establishes a bargaining history showing that the parties intended to follow the minimum standards of the statute and not permit additional regulations by the appointing authority."

Following Arbitrator Nathan's decision dated April 1, 2004, the City Council of the City of Rock Island passed Ordinance No. 004-2005, entitled A Special Ordinance Amending Chapter 2 of the Code of Ordinances of the City of Rock Island, Illinois. The ordinance, which is dated January 24, 2005, deals with promotions within the police department and the fire department. The ordinance, introduced into evidence as City Exh. 1, does not contain a definition of the term "vacancy."

The parties also introduced into evidence as Joint Exhibit 7 a document that contains certain rules or regulations of the Board of Fire and Police Commissioners. Chapter III, Section 2 of the document is headed "Vacancies," but it does not define the term "vacancy." No evidence was presented that any Board of Commissioners document exists defining the term "vacancy" for purposes of filling vacancies in the fire department or that the term is defined in any municipal ordinance. Under these circumstances, I believe that it would be helpful to have a definition of the term in the collective bargaining agreement. I think that defining the term will make clear that the parties are using the term in their contract in accordance with the definition in Section 20(d) of the Promotion Act and that they have not elected to adopt some other definition. As noted, Arbitrator Nathan, in his April 1, 2004, decision, expressed approval of including statutory language in a collective bargaining agreement as a way of establishing "a bargaining history showing that the parties intended to follow the minimum standards of the statute and not permit additional regulations by the appointing authority." For the reasons stated I shall adopt the Union proposal on promotions. That proposal in no way changes the meaning of the current language but clarifies it to remove any doubt how the parties are using the term "vacancy" in Article 13 of the contract.

I am not persuaded by the City's argument that the law might change. Any change in the law will, of course, apply to the parties in accordance with the terms of the change. That argument can be made about many terms in a collective bargaining agreement, but it is not a reason to refrain from setting forth in writing what the parties intend as of the effective date of the agreement. In addition, no evidence was presented that the Illinois legislature now has before it some bill that will change the law as it applies to fire department promotions.

TERMINATION

Union Final Offer

The Union proposes to change Article XXIV, Termination, to add the language in bold type to the first sentence:

> This Agreement shall be effective as of the execution of this agreement **except where a different effective date is specified in a specific Article** and shall remain in full force and effect until the 31st day of March, **2009**. . . .

City Final Offer

The City agrees that the termination date of the contract should be March 31, 2009, but does not agree to add the other language in bold print.

Union Position on Termination Article

The Union contends that the language in question is necessary because the salary schedule, stipends, and Kelly days have an effective date different from the date the contract is executed.

City Position on Termination Article

The City asserts that the Union failed to explain why this language in necessary or why the existing language has presented a problem so as to require change.

Arbitrator's Findings and Conclusions on Termination Article

I do think that it makes sense to add the additional language proposed by the Union because there are provisions in the contract that have an effective date that is different from the execution date of the Agreement. I shall therefore adopt the Union offer on this article.

Finally, it should be stated that all statutory criteria to the extent applicable were considered in the determination of every issue in dispute even though express mention may not have been made in the opinion in discussing a particular issue.

A W A R D a n d O R D E R

1. The City's final offer on Wages is adopted for the parties' collective bargaining agreement effective from April 1, 2006, through March 31, 2009 ("the Agreement").

2. The Union's final offer on Certification Stipends is adopted for the Agreement.

3. The Union's final offer on Kelly days is adopted for the Agreement.

4. The Union's final offer on Out-of-Rank Pay for temporary assignments is adopted for the Agreement.

5. The City's final offer on Discipline is adopted for the Agreement. In addition, the following sentence shall be added at the end of the final paragraph of Section 7.10 of the Agreement: "With regard to an employee's appeal of discipline or a hearing on disciplinary charges, the Board of Fire and Police Commissioners shall not have the authority to increase any discipline imposed or recommended by the Fire Chief or the City."

6. The Union's final offer on Residency is adopted for the Agreement.

7. The Union's final offer on Promotions is adopted for the Agreement.

8. The Union's final offer on the Termination article is adopted for the Agreement.

9. All terms and conditions of employment on which the parties reached tentative agreement are hereby incorporated into and made part of the Agreement. All provisions of the collective bargaining agreement between the parties effective April 1, 2003, shall remain in full force and effect except as altered, modified, or changed by this Award and Order.

Respectfully submitted,

Sinclair Kossoff
Arbitrator

Chicago, Illinois
February 27, 2007