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INTEREST ARBITRATION: A NEW TERMINAL IMPASSE RESOLUTION PROCEDURE FOR ILLINOIS PUBLIC SECTOR EMPLOYEES

A practical analysis of the impasse procedures of the new Illinois Public Labor Relations Act by practitioners experienced in collective bargaining and impasse resolution.

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In 1983, the Illinois legislature enacted, effective July 1, 1984, the Illinois Public Labor Relations Act, a comprehensive statute to govern labor relations for a significant number of public employees within the State. The Act provides that certain essential state and municipal employees who are denied the right to strike must resolve negotiating impasses through a procedure which has as its terminal step compulsory interest arbitration. Although all other public sector employees have been granted the right to strike and are excluded from these impasse resolution provisions, it is quite possible that a number of public employers and unions voluntarily will resort to interest arbitration to resolve their impasses as a practical alternative to employee strikes.

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1. ILL. REV. STAT. ch. 48, § 1601 et seq. (1983). The Act covers the majority of state and municipal employees within the State. Educational employees are not covered; a new Illinois Educational Labor Relations Act, also enacted in 1983, governs these employees. ILL. REV. STAT. ch. 48, § 1701 et seq. (1983). Additionally, municipal police and firefighters are excluded from coverage under the Act. They were originally included in the Act, but opted out when the drafters provided that all interest arbitration awards be subject to legislative ratification, a concept which police and firefighter unions rejected. A separate collective bargaining act to cover police and fire employees was proposed in 1984, but failed to pass. Employer groups successfully lobbied against the proposed bill because it provided for compulsory interest arbitration without legislative approval, the same issue which resulted in the unions' rejection of the 1983 Act.

2. ILL. REV. STAT. ch. 48, § 1614(g); see also 80 ILL. ADMIN. CODE § 1230, Final rules of the Illinois State and Local Labor Relations Boards concerning impasse resolution. These rules, with minor amendments, mirror the Emergency Rules issued by the Boards in September, 1984. 8 ILL. REG. 17322 (Sept. 11, 1984). The Rules became final on January 25, 1985.

3. ILL. REV. STAT. ch. 48, § 1617. Illinois has become one of ten states to provide a limited right to strike to certain public employees. Illinois public employees, other than security employees, state peace officers and state firefighters, may strike if: (1) the employees are represented by an exclusive bargaining representative; (2) the collective bargaining agreement, if any, has ex-
parties may place in their collective bargaining agreements or otherwise agree on a case-by-case basis to use interest arbitration as their impasse resolution vehicle.

Thus, there is a need to examine the structural framework for compulsory interest arbitration in light of theoretical constructs and practical experiences from other states as to how the arbitration procedure can affect the collective bargaining process. Further, there is a need to develop practical guidelines to assist public employers and unions in preparing for interest arbitration.

I. THE COMPULSORY IMPASSE RESOLUTION PROCEDURE

The Illinois Public Labor Relations Act provides for a compulsory two-step impasse resolution procedure: first, mediation; then, a form of compulsory interest arbitration which combines final offer and conventional interest arbitration. This procedure is applicable to collective bargaining agreements involving units of security employees, state peace officers, state firefighters, and all employees who, pursuant to court order, have been ordered to return to work following a post-impasse strike.

Contrary to the conventional wisdom that public sector strikes are inimical to government, Illinois has granted its public employees the right to strike for pragmatic reasons. First, organized labor would not accept legislation without this feature and various elected state officials had publicly committed themselves to the bill. Second, the reality is that public employees strike regardless of whether or not such action is prohibited. The legislature, in recognition of this reality, allowed a limited right to strike, but provided for some regulation of such action by permitting courts to enjoin strikes presenting "a clear and present danger to the health and safety of the public." Third, the Illinois legislature presumably recognized that the right to strike has not adversely affected the conduct of government. Public employers have become less willing to avoid strikes at any cost. Public opinion increasingly supports this position in light of the public's understanding of the personal, economic and tax consequences of granting increases to public employees as labor costs are the largest share of government costs. See, e.g., Olson, Advances to Impasse Resolution: The Use of the Legal Right to Strike in the Public Sector, 33 LAB. L.J. 494, 495 (1982); Summer, Public Employee Bargaining: A Political Perspective, 83 YALE L. REV. 1156 (1974); Zack, Final Offer Selection—Panacea or Pandora's Box?, 19 N.Y.L.F. 567, 571 (1974).

4. The Act provides that mediation shall commence 30 days prior to the expiration date of any collective bargaining agreement involving a unit of covered employees. The compulsory interest arbitration process commences if the dispute is not resolved prior to 14 days before expiration of such agreement. ILL. REV. STAT. ch. 48, § 1614(a). See also 80 ILL. ADMIN. CODE §§ 1230.40(b) and (e), 1230.60.
5. "Security employee" means an employee who is responsible for the supervision and control of inmates at correctional facilities, and would also include other non-security employees in bargaining units having the majority of employees being responsible for the supervision and control of inmates at correctional facilities. ILL. REV. STAT. ch. 48, § 1603(o).
6. ILL. REV. STAT. ch. 48, § 1618(a).
A. The Merits of Issue-by-Issue Final Offer Arbitration Versus Conventional Arbitration

The Act structures interest arbitration as a bifurcated process. As to each economic issue, "the arbitration panel shall adopt the last offer of settlement which in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in [the Act]."\textsuperscript{7} This is the issue-by-issue method of final offer arbitration. As to non-economic items, the panel evaluates these issues in light of the statutory criteria and then decides each issue as it deems appropriate. This method of dispute resolution is conventional interest arbitration.

In reaching a final and binding arbitration award, the panel is required to call a hearing within 15 days of its selection.\textsuperscript{8} At or before the conclusion of the hearing the panel must "identify the economic issues in dispute."\textsuperscript{9} The parties then present their last offer of settlement on each economic issue during the period prescribed by the panel.\textsuperscript{10} Within 30 days after the conclusion of the hearing,\textsuperscript{11} the panel

7. ILL. REV. STAT. ch. 48, § 1614(g). Section 14(h) of the Act sets forth the eight factors which the panel must utilize in evaluating each party's proposals. These eight factors are as follows:

(1) The lawful authority of the employer.
(2) Stipulations of the parties.
(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
   (A) In public employment in comparable communities.
   (B) In private employment in comparable communities.
(5) The average consumer prices for goods and services, commonly known as the cost of living.
(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.
8. ILL. REV. STAT. ch. 48, § 1614(d).
9. ILL. REV. STAT. ch. 48, § 1614(g); see also 80 ILL. ADMIN. CODE § 1230.40 (e)(6). Additionally, § 14(g) of the Act provides that "[t]he determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive."
10. Id.
11. ILL. REV. STAT. ch. 48, § 1614(g) allows the parties to mutually agree to extend the time for the issuance of the award. But see 80 ILL. ADMIN. CODE § 1230.40(e)(9) which provides that: Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that is-
must make written findings of fact and promulgate a written opinion. The arbitration award consists of the adopted final offers on each economic issue in dispute and the panel's own resolution of non-economic issues in dispute.

The structure of this hybrid form of final offer arbitration, although not unique to Illinois, will have a significant impact on how the parties and arbitrators approach bargaining and the arbitration process. The drafters of this procedure selected a bifurcated structure in the belief that it would more likely encourage voluntary settlement and discourage the resort to arbitration. Specifically, for non-economic items, parties typically are fearful of the imposition of contractual language by a neutral who may be unfamiliar with the intricacies of the parties' relationship. Under the Illinois Act, therefore, parties will have every incentive to resolve non-economic issues on their own because if they do not reach agreement, the arbitration panel has the discretion, pursuant to the conventional interest arbitration procedure, to impose what it believes to be just and equitable language. On economic issues, the issue-by-issue approach under the Illinois Act should encourage the parties to make reasonable proposals and movement, as failure to do so may result in the panel's rejection of a party's final economic offer. The question that experience will answer is whether the perceptions of how this bifurcated process should operate will hold true.

A number of criticisms have been leveled against both conventional and issue-by-issue final offer arbitration. The most serious complaint against conventional arbitration is that it undermines any effective negotiations prior to arbitration. In conventional arbitration, the final award typically incorporates parts of both parties' proposals. Such awards are viewed as a compromise split of the differences between the parties' positions. As a result, the parties postpone produc-

sue. However, the arbitration panel may consider and render an award on any issue that has been declared pursuant to 80 ILL. ADMIN. CODE § 1200.140(b) [declaratory rulings by the General Counsel] to be a subject over which the parties are required to bargain. 12. Id.; see also 80 ILL. ADMIN. CODE § 1230.40(e)(7).


14. The statutory language was adopted without discussion by the Illinois legislature. However, the legislators who were involved with union and employer representatives in the drafting process were aware that this structure was the product of a significant amount of analysis and forethought and was recommended by the City of Chicago's representatives with this in mind.

15. In drafting the arbitration procedures, a total package final offer arbitration process was not seriously considered; the "all-or-nothing" nature of this form of arbitration was viewed as unpalatable to both labor and management.
tive negotiation if they believe that their dispute eventually will be settled by an arbitrator. This encourages the parties to press extreme demands on each other and the arbitrator with the hope that the arbitrator will award more than the other party would otherwise accept. This is the "chilling effect" of conventional arbitration on negotiations.

The final offer arbitration procedure, introduced in the public sector in the 1960's, was designed expressly to meet this objection. The basic objective of final offer arbitration is the advancement of collective bargaining and voluntary agreement. The final offer approach seeks to increase the cost to the parties of failing to reach agreement by eliminating the arbitrator's ability to compromise issues, and substituting a winner-take-all outcome. Proponents of final offer arbitration assume that each party will advance proposals that are both reasonable and representative of their actual bargaining position to ensure that its final offer will be selected by the arbitrator. Stated differently, the parties will narrow the differences between their proposals because of their mutual fear that the other party's offer will be selected. Consequently, it is assumed that final offer arbitration should not chill collective bargaining; its high-risk winner-take-all outcome should assure its non-use and force the parties closer together. In theory, this incentive to compromise and reach agreement is comparable to the pressure of a strike deadline in the private sector.

This theory of the effectiveness of final offer arbitration, however, is most relevant to total package final offer arbitration, a truly all-or-nothing process in which each party substitutes as a package its final offer on each issue in dispute. Issue-by-issue final offer arbitration as provided for in the Illinois Act for economic issues, on the other hand, tends to have a chilling effect on productive negotiations comparable to that of conventional arbitration. Issue-by-issue arbitration is a process of compromise; the arbitrator is free to find for one party on some issues and for the other party on others. In fact, a greater "chill" to productive negotiations may result under the issue-by-issue procedure because it tends to encourage each party to make demands on every


18. Carl Stevens in 1966 was one of the first to recommend final offer arbitration. See supra note 16.

front, knowing there is nothing to lose,\textsuperscript{20} and always a chance to gain a bit here and there. The incentives against narrowing the issues in dispute encourage parties to leave political and low priority demands on the table.\textsuperscript{21} Whatever the nature of the remaining demands, the clear result is that time and money may be wasted and the process cluttered unnecessarily. Also, under issue-by-issue arbitration the resolution of one issue at a time may result in the arbitrator losing sight of the very practical reality that contract proposals are frequently interdependent and must be decided together.\textsuperscript{22}

Yet the issue-by-issue process is not without proponents. Arbitrators consistently favor arbitration procedures which permit them to exercise discretion and, hence, in their view, allow them to arrive at an equitable result. When an arbitrator is confronted with a multi-issue dispute, the issue-by-issue process permits the arbitrator to reject certain demands which otherwise would have been included in an award under a total package final offer procedure, assuming that the overall package would otherwise have been reasonable.\textsuperscript{23} Additionally, the issue-by-issue process puts a premium on the reasonableness of final offers because of the parties' fear of rejection of their offer by the panel. Again, however, the parties still have no incentive to drop less important proposals.

Public employers tend to favor the issue-by-issue approach in those collective bargaining situations in which the employer is demanding that the union give up certain contractual rights or benefits. Under this approach, the employer has more chance of convincing the arbitrator than the union that some, if not all, of such "take backs" are warranted; under a total package final offer procedure employers feel they are less likely to prevail with the same position on an all-or-nothing basis. Finally, because a number of jurisdictions have adopted the issue-by-issue process,\textsuperscript{24} and the two jurisdictions that have most recently

\textsuperscript{20} Nelson, supra note 17, at 56.
\textsuperscript{22} Phillips, supra note 21, at 567; Zack, supra note 3, at 579. ("For example, whether certain fringe benefits should be granted, or more para-professional aides hired, depends on the total amount of money allocated to the entire package.") \textit{Cf.}, Nelson, supra note 17, at 56.
\textsuperscript{23} \textit{Cf.}, Nelson, supra note 17, at 55-56.
approved public sector collective bargaining, Illinois and Ohio, have incorporated this procedure into their impasse resolution process, the approach evidently has proven to be a politically viable impasse resolution vehicle.

B. Other Features of the Compulsory Impasse Resolution Procedure

There are certain other features of the arbitration procedure in the Illinois Act which may affect the collective bargaining process and/or the conduct of the arbitration hearing and its outcome.

1. Mediation

First, mediation is a prerequisite to the compulsory interest arbitration proceeding for security employees and state peace officers and state firefighters. Mediation must commence at least 30 days prior to the expiration of collective bargaining agreements involving units of these employees. If the dispute is not resolved prior to 14 days before contract expiration, one of the parties must submit a request for arbitration. The Illinois Act empowers the Board to establish a Public Employees Mediation Roster from which the Board will select a mediator when a request for mediation is received. The Act provides that "[t]he function of the mediator shall be to communicate with the employer and exclusive representative or their representatives and to en-

25. ILL. REV. STAT. ch. 48, § 1614(a); see also 80 ILL. ADMIN. CODE § 1230.60.
26. Id.
27. Id.
28. The Act creates two Boards. The Illinois State Labor Relations Board ("State Board") has jurisdiction over collective bargaining matters between employee organizations and the State of Illinois, between employee organizations and units of local government with a population not in excess of one million, and between employee organizations and the Regional Transportation Authority. The Illinois Local Labor Relations Board ("Local Board") has jurisdiction over collective bargaining matters between employee organizations and units of local government with a population in excess of one million. ILL. REV. STAT. ch. 48, §§ 1605(a) and (b); see also 80 ILL. ADMIN. CODE § 1230.60(b) which provides that whenever the Board invokes mediation it will first supply the parties with a panel of at least three names of mediators from the Roster. The parties have seven days to choose a mediator on the panel or any other person to serve as mediator. At the end of this seven day period, if the parties have not notified the Board of their selection, a mediator will be selected by the Board from the Roster.
29. ILL. REV. STAT. ch. 48, § 1612(b); see also 80 ILL. ADMIN. CODE § 1230.60(b) which provides that whenever the Board invokes mediation it will first supply the parties with a panel of at least three names of mediators from the Roster. The parties have seven days to choose a mediator or the panel or any other person to serve as mediator. At the end of this seven day period, if the parties have not notified the Board of their selection, a mediator will be selected by the Board from the Roster.
deavor to bring about an amicable and voluntary settlement." 30 To facilitate the mediation process, the Board's Rules on impasse resolution provide for the confidentiality of communications with the mediator, and for the confidentiality of the mediator's work product. 31

The effectiveness of mediation depends upon a variety of factors. A skilled mediator can help to bring about settlement by narrowing issues, suggesting alternatives, opening up communications between the parties, and adding to the credibility of one of the parties by confirming the truth of the proponent's position. The insight of an impartial third party can help to find creative solutions in difficult situations. Thus, a mediator's value is the greatest with inexperienced bargainers and/or with groups of employees who have unrealistic expectations. However, when the parties use mediation as just a required preliminary step to arbitration, there is little true incentive to settle. Of course, even in these situations, a mediator can help to narrow the issues in dispute.

2. Voluntary Fact-Finding

The Illinois Act provides for non-binding fact-finding, 32 but not as a compulsory pre-arbitration step. In fact-finding hearings, as in arbitration, evidence is presented to a neutral third party. The parties may select a fact-finder from the Public Employees Mediation Roster established by the Board. The fact-finder evaluates the evidence and issues a written recommendation as to the most equitable resolution of the issues in dispute. The parties may decide to adopt the fact-finder's recommendations or they may utilize his or her findings as the basis for further negotiation. 33

The drafters of the Illinois Act did not make fact-finding mandatory because they did not believe it to be an effective part of the overall impasse resolution procedure. Recent experience of other states raises questions about the value of fact-finding. A number of jurisdic-

31. 80 Ill. Admin. Code § 1230.60(e) and (f) which provide as follows:
   (e) The mediator may hold joint and separate conferences with the parties. The conference shall be private unless the mediator and the parties agree otherwise;
   (f) Information disclosed by a party to a mediator in the performance of mediation functions shall not be disclosed voluntarily or by compulsion. All files, records, reports, documents, or other papers prepared by a mediator shall be considered confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding.
33. Zack, supra note 3, at 569. The Board's rules on fact-finding, 80 Ill. Admin. Code § 1230.70(d), provide that "[t]he Board shall make the [fact-finder's] report available to newspapers upon request." Such publication could put significant pressure on the parties to settle.
tions have experimented with the use of non-binding fact-finding as a mandatory step prior to final offer arbitration.\footnote{34} In many of these jurisdictions the fact-finder's report or recommendation serves as one option, in addition to the parties' proposals, that the arbitrator could select in total package final offer arbitration.\footnote{35} The experience in these jurisdictions suggests that fact-finding was an unproductive step and inimical to the policies underlying final offer arbitration.\footnote{36} Fact-finding in such settings has proved unsuccessful for two reasons. First, fact-finding places no pressure on the parties to resolve issues. In fact, the issue-by-issue resolution of impasse items allows a party to submit any number of items, many of which may be unreasonable or throwaways, without jeopardizing its other proposals.\footnote{37} Second, such fact-finding has not led to productive renegotiation so as to avoid arbitration. Instead, the fact-finder has come to resemble a master for the arbitrator as opposed to a facilitator. The arbitration, in turn, has become a show cause hearing with the sole issue being why the fact-finder's recommendations should not be adopted.\footnote{38}

Voluntary fact-finding was provided under the Act primarily as an aid to parties inexperienced in collective bargaining; that is, the Act alerts parties to both the existence and availability of this additional procedure for the resolution of interest disputes. It is unlikely that experienced negotiators will utilize fact-finding because the process typically fails to narrow the issues in dispute, is duplicative of arbitration which may be mandated by statute or contract, and is unnecessarily costly and time-consuming.

3. Tripartite Arbitration Panel

The Act's mandated tripartite arbitration panel includes a neutral member who serves as chairman, and one partisan delegate for each of


\footnote{35} Id.

\footnote{36} Phillips, supra note 21, at 554, and citations therein at footnote 48; Rehmus, Varieties of Final Offer Arbitration, 37 ARB. J. 4, 6 (Dec. 1982).

\footnote{37} Id. Additionally, when issue-by-issue final offer arbitration is the next step, a party is encouraged to adhere to its unreasonable proposals, assuming the fact-finder's proposal is relatively unobjectionable, because the party's chances are two-out-of-three for a favorable award.\footnote{38} Id.

\footnote{38} Note, Final Offer, supra note 16, at 113-14. State studies, in fact, indicate that: (1) arbitrators treat the arbitration hearing as one where the burden of persuasion is on the party seeking to overturn the fact-finder's report; and (2) arbitrators tend to undertake little independent analysis. Phillips, supra note 21, at 562; Gallagher, Interest Arbitration Under the Iowa Public Employment Relations Act, 33 ARB. J. 30, 34 (1978); Anderson, MacDonald and O'Reilly, Impasse Resolution in Public Sector Collective Bargaining—An Examination of Compulsory Interest Arbitration in New York, 51 ST. JOHN'S L. REV. 453, 464 (1977).
the parties.\textsuperscript{39} A number of other jurisdictions have similar tripartite panels composed of one neutral and two partisans.\textsuperscript{40} The experience in those jurisdictions is that the presence of the two partisan arbitrators conveniently permits the neutral arbitrator’s role to become that of a mediator.\textsuperscript{41} On the other hand, the existence of partisans on the panel may simply result in the reargument of the case by the partisans to the neutral and hence, merely delay the issuance of the award.\textsuperscript{42} The potential positive effects of a tripartite panel, however, outweigh the possibility of undue delay. The panel can facilitate negotiations between parties with little bargaining experience. Our experience confirms that of other commentators which indicates that the partisan panel members facilitate the flow of communication between the parties and between the parties and the neutral chairman. In fact, numerous disputes have been settled by the parties during arbitration after feedback from the chairman on the parties’ respective positions.\textsuperscript{43} The tripartite panel structure allows for necessary informal communication with the chairman, facilitates on-going negotiations and often encourages settlement prior to a final award.

In light of the important role of the neutral chairman, he or she should not only be experienced in labor relations and arbitration, but where possible, should also demonstrate some knowledge and understanding of municipal planning, budget preparation, municipal tax structures and related fiscal matters.\textsuperscript{44} The Act provides that unless the parties have agreed upon an arbitrator or have agreed to use an alternate source of interest arbitrators, the Board will select seven names from the Public Employee Labor Mediation Roster to serve as nominees. The parties strike names to arrive at the designee.\textsuperscript{45} The parties thus will have an opportunity to review, before their choice is made, the experience, qualifications, labor or management leanings, past arbitration awards, and availability of the nominees.

The selection of a partisan panel member requires the use of different criteria. The most important attributes of a partisan arbitrator

\textsuperscript{39} Ill. Rev. Stat. ch. 48, §§ 1614(b) and (c).
\textsuperscript{40} A survey of the types of arbitration panels adopted in various states between 1950 and 1974 indicates that 20.3\% had a tripartite panel like the one provided for in the Illinois Act; 63\% had a single neutral arbitrator; and 8\% had three neutral arbitrators. \textit{See}, 17 Lab. L.J. 297 (1977) (Sources: Lab. Arb. (BNA) (1950-74) and Lab. Arb. Awards, (CCH) (1960-74)).
\textsuperscript{41} \textit{See}, e.g., \textit{Newman, Interest Arbitration: Impressions of a PERB Chairman}, 37 Arb. J. 7, 8 (Dec. 1982).
\textsuperscript{42} Zack, \textit{supra} note 3, at 582.
\textsuperscript{43} Nelson, \textit{supra} note 17, at 54-55.
\textsuperscript{44} \textit{Note, Final Offer Arbitration in Massachusetts}, 12 New Eng. L. Rev. 693, 708 (1977).
\textsuperscript{45} Ill. Rev. Stat. ch. 48 §§ 1614 (b) and (c); 80 Ill. Admin. Code §§ 1230.40(e)(1)-(3).
are familiarity with the operation of and intricacies of employment in the governmental unit, and the ability to advocate the party's position in executive sessions to assure that the chairman has a clear understanding of the party's interests and priorities. Typically, this dictates that each party's chief negotiator will serve as a partisan member of the arbitration panel. The chief negotiator's presence is particularly critical if the neutral is also to be used as a mediator. The partisan representative must know the guidelines of the party's position and strategy and should be given the authority to make commitments in executive sessions within these guidelines without the need to seek additional approval. In sum, if the partisan is not the chief negotiator he or she must be given the authority traditionally accorded such a negotiator in collective bargaining.

4. Mediation-Arbitration—"Med-Arb"

The Illinois Act provides that the neutral chairman of the panel may remand the dispute to the parties for further collective bargaining for a period not to exceed two weeks at any time prior to rendering an award, if this would be useful or beneficial. By exercising this option the chairman may be assuming the role of mediator. Thus, in addition to the discretion lodged in the panel because of the issue-by-issue final offer process for economic issues and the conventional arbitration process for non-economic issues, the chairman's "med-arb" role provides the chairman with enormous leverage over the parties. Originally, the term "med-arb" was used to describe an impasse resolution process in which the parties select a mediator with the understanding that any issue that cannot be resolved in mediation will finally be arbitrated by that same individual. Such a procedure is used in New Jersey. Today, "med-arb" has a broader meaning and refers to all situations in which one individual fills the role of mediator and arbitrator.

The "med-arb" process tends to encourage settlement prior to the issuance of awards because if the parties do not settle their differences, they are, for all practical purposes, forced to go along with the neutral's recommendation because a failure to do so will ordinarily result in an order to do so. Parties, however, may choose to have a settlement imposed upon them, as opposed to reaching their own settlement, if, for

47. Id.
example, the result contains politically unpopular compromises. The “med-arb” process can be effective because first, it encourages the parties to settle in arbitration and second, the “parties participate in the outcome, challenging the arbitrator to justify and explain settlements suggested or compromises proposed.” The partisans, in informally communicating with the arbitrator, can clarify their party’s priorities and point out which issues are politically sensitive.

The “med-arb” process is not without pitfalls or short-comings. The partisan arbitration panel members, at worst, can lose their case in mediation with the chairman, and at best, may have to be very circumspect in communicating with the chairman. An honest softening of one position, as part of an overall offer to settle, may “prejudice” the neutral to mistakenly assume that adoption of this softened position may be acceptable to the offering party when, in fact, a better result could have been attained if no such offer had been made in mediation. For example, if a party’s negotiation final offer is a 2% wage increase, the partisan in arbitration may be able to justify this position. If the partisan, on the other hand, in mediation with the chairman serving as mediator, were to suggest that his or her party may be willing to move to 4%, not only is the chairman likely to reject that party’s 2% “final offer”, but the party and its partisan may lose all credibility on other issues with the chairman. Finally, the settlements reached through the “med-arb” process are arguably coerced and artificial in the sense that they may not necessarily represent the settlement the parties themselves might have reached through bargaining.

5. Timing of the Final Offer

The Illinois Act provides that at or before the conclusion of the hearing and after the panel has identified the economic issues in dispute, the parties are to present their final offers on each economic issue. The timing of the final offer may have a significant impact on how the arbitration proceeds. The timing established in the Illinois Act allows the parties to adjust their positions in light of the recommendations of the neutral chairman, in his or her mediator role, thereby allowing each party to increase its chances that the panel will select its final offer. Some have suggested that the final offer should come at the commencement of the arbitration hearing because that gives “the parties the opportunity to develop fully the preferability of their proposal

49. Rehmus, supra note 36, at 6.
50. ILL. REV. STAT. ch. 48, § 1614(g).
over their opponent's" and gives the arbitrator "the opportunity to question both parties on their respective positions."\(^{51}\) This position is typically advanced by those who favor building into the process the maximum number of incentives for settlement by adding uncertainty and risks to the arbitration process so as to discourage its use.\(^{52}\) The procedure in the Illinois Act, in this respect, by contrast, tends to tip the scale away from encouraging settlement in the negotiations process and instead, appears to give the parties greater flexibility to use the process to their best advantage in arbitration.

6. Legislative Approval

Finally, one of the Act's most significant provisions requires legislative approval of all collective bargaining provisions which in whole or in part are the result of compulsory interest arbitration orders. Such agreements must "be submitted to the public employer's governing body for ratification and adoption by law, ordinance, or the equivalent appropriate means."\(^{53}\) If the governing body neither accepts nor rejects the arbitration panel's decision within 20 days of issuance, the term or terms of the panel's decision will automatically become part of the parties' collective bargaining agreement.\(^{54}\) If the governing body rejects the panel's decision, the governing body must explain such rejection, and thereafter, the parties are remanded to arbitration for supplemental proceedings and issuance of a supplemental decision with respect to the rejected terms.\(^{55}\) Then, the parties must again seek legislative approval of the resulting award.\(^{56}\) The employer must assume the total cost of all supplemental proceedings, including the reasonable attorney's fees of the union.\(^{57}\)

When the Act originally passed the Illinois Senate it did not provide for the right of the governing body to reject all or part of a compulsory interest arbitration award. The City of Chicago and other Illinois public employers vigorously opposed the concept that the decision of a third party in a statutorily mandated dispute resolution process should be binding upon a political subdivision without the

\(^{51}\) Zack, supra note 3, at 581.

\(^{52}\) In Wisconsin, the final offer must be presented prior to the arbitration hearing and cannot be changed thereafter. (Wis. Stat. Ann. § 111.70 (1984)). Commentators suggest this may well encourage settlement. See, e.g., Rehmus, supra note 36.

\(^{53}\) Ill. Rev. Stat. ch. 48, § 1614(m); 80 Ill. Admin. Code §§ 1230.40(e)(10) and (11).

\(^{54}\) Id.

\(^{55}\) Id.

\(^{56}\) Id.

\(^{57}\) Ill. Rev. Stat. ch. 48, § 1614(n); 80 Ill. Admin. Code § 1230.40(e)(10).
approval of the legislative body. When the bill reached the House, ne-
gotiations between the City of Chicago’s representatives, organized la-
bor and the House and Senate leadership eventually resulted, among
other things, in the provision which currently is in the Act, giving the
governing legislative body the right to reject compulsory interest arbi-
tration awards.

From the public employer’s standpoint, this provision is essential.
A third party should not be able to impose upon a political subdivision,
without the legislature’s approval, an economic settlement which is fis-
cally irresponsible or would require a substantial reallocation of the
political subdivision’s resources. As a practical matter, if a legislative
body were not empowered to reject such an award, it could refuse to
appropriate the necessary monies to fund the award. Costly and time-
consuming litigation would ensue and the resulting strain on communi-
cation between the parties to the arbitration would make effective labor
relations impossible.

C. The Anticipated Effects of the Compulsory Interest Arbitration
Procedure

The experience in other jurisdictions with final offer interest arbi-
tration may provide guidance as to how this arbitration process will
operate in Illinois. Despite the similarity of the structure of the final
offer arbitration procedures in Illinois and other jurisdictions, it must
be noted that factors such as the number of mandated impasse resolu-
tion steps, the type of employees who have access to the process, and
the demographic and political attributes of the governmental unit at
issue, will affect the validity of any attempted comparison.

1. The Size of Arbitration Awards

Will arbitration awards be larger than negotiated settlements? The
experience in other jurisdictions has been mixed. In Wisconsin,
for example, statistics indicate that there has been little difference in
economic outcomes between negotiations which do not use the “med-
arb” process and those which do.58 Similarly, in New York, where the
police and fire contracts called for binding interest arbitration, arbitra-
tion awards for police and fire were less than settlements achieved by
other unions in bargaining.59

58. Clune and Hyde, Final Offer Interest Arbitration in Wisconsin: Legislative History, Par-
An early in-depth economic analysis of final offer arbitration based on experience with public safety employees in several states found that, initially, final offer arbitration results in relatively higher wage gains than would otherwise be won in the normal course of collective bargaining, but that the relative gains under arbitration tended to level off after the first few years. Yet statistics from the first few years of experience under the Massachusetts mandatory final offer arbitration law for police and fire indicate that awards favored unions two-to-one and that such awards were costlier than settlements achieved elsewhere in the public sector.

2. Reliance on the Arbitration Process

Will the institution of mandatory interest arbitration for certain employees result in a reliance by the parties on the process? If parties voluntarily agree to resort to interest arbitration, will this result in permanent reliance on the process? The structure of the arbitration procedure creates certain incentives and disincentives for its use. The experience of other states may suggest whether parties in Illinois will come to rely on the process, presumably because of these incentives and disincentives.

Generally, public sector employers have less incentive to resolve interest disputes through arbitration than unions. Employers are usually in a defensive position in bargaining because it is typically the union that is demanding improvements. Consequently, the employer's attitude is that if the union really desires changes it will have to seek them in interest arbitration. On the other hand, public employers are less likely to want to give up their control of governmental operations to an arbitration panel. However, if hotly contested political issues are in dispute, the public employer may wish to leave the decision to the arbitration panel. The arbitration process may thus insulate the public employer from recriminations from its constituents. A public employer may also resort to arbitration in those instances where it is demanding that the union give up certain contractual rights or benefits.


61. Note, Final Offer, supra note 16, at 112. Note. On November 4, 1980, the passage of Ballot Question 2 in Massachusetts resulted in the repeal of compulsory interest arbitration for police and fire. 889 Gov'T Empl. REL. REP. (BNA) 12 (1980). A subsequent interpretation of this Ballot Question by the State's Attorney General held that the State's Joint Labor-Management Committee, established by statute, continued to have the authority to arbitrate police and fire interest disputes. Committee awards, however, would not have any binding effect on state and local legislative bodies. 907 Gov'T Empl. REL. REP. (BNA) 19 (1981).

The union is unlikely to agree to such changes in negotiations; therefore, the employer's only chance of gaining such concessions is in arbitration. Finally, public employers inexperienced in collective bargaining negotiations and unable to resolve employer-union negotiation disputes may initially find security in the process because they may be incapable of producing a settlement where there are wide differences in bargaining positions.

Conversely, the incentives for unions to seek resolution of interest disputes by an arbitrator are overwhelming. The likely result, therefore, is that unions will not try as hard to avoid bargaining impasses when arbitration is available. Also, interest arbitration clearly provides bargaining leverage to unions which are incapable of striking effectively.\textsuperscript{63} Moreover, when the economic climate mandates wage freezes and union concessions, resort to arbitration insulates union leaders from criticism by their membership.\textsuperscript{64} Unions typically have little to lose in the process; they can ask for anything they wish, yet can fare no worse than the employer's last offer on each issue, and they may do better on any one or more issues if the panel selects the union's final position. Finally, our experience suggests that once a party has resorted to arbitration, a precedent may be set and the party thereafter may be less inclined to resolve interest disputes outside of arbitration.

The experience of other states is mixed. In Iowa, where the statutory impasse process calls for mediation, fact-finding and issue-by-issue final offer arbitration, statistics on the first six years under the process indicate that arbitration awards were limited to 4.5 to 7.1 percent of all contracts negotiated.\textsuperscript{65} In Michigan, where the impasse procedure for police and fire is identical to that in the Illinois Act, available data indicates that from 10 to 15 percent of all public safety negotiations resulted in arbitration awards. Statistics between 1973 and 1977 in Michigan indicate that there were an average of 100 requests for arbitration per year, and about 30 formal awards issued each year. The demographic breakdown of these statistics indicate that the state’s largest cities were more likely to resort to arbitration.\textsuperscript{66} In New Jersey, which utilizes a "med-arb" procedure, observers have found that the

\begin{enumerate}
\item The authors' experiences in interest arbitration are confirmed in Murray, \textit{Interest Arbitration in New Jersey: An Advocate's Reaction}, 37 \textit{Arb. J.} 13 (Dec. 1982).
\item Id. (citing \textit{Final-Offer Arbitration, supra} note 16); Benjamin, \textit{Final-Offer Arbitration Awards in Michigan, 1973-1977} (1978) (mimeograph); Michigan Department of Labor, Labor Reg-
process has caused excessive reliance on neutrals. The statistics demonstrate that the number of petitions for interest arbitration each year has been constant while the number of awards issued has declined each year. This trend is accounted for by the fact that “med-arb” is viewed by some parties as “mediation with a club,” i.e., if the parties do not agree to the mediator’s recommendations, the mediator, when he or she assumes the arbitrator’s role, is likely to require the adoption of such recommendations. The first four years of experience in Massachusetts showed the number of impasses had increased, and analysts there conclude that final offer arbitration has failed to promote settlement at earlier steps of negotiation.

D. Conclusion

The drafters’ intent underlying this impasse resolution process was to provide an alternative to strikes in those situations where the public interest rejected strikes as a way to resolve impasse, yet still encourage voluntary settlement and discourage the resort to arbitration.

Practically, the most powerful incentives for “voluntary” settlement appear to lie with the statutory provisions which call for “med-arb,” as opposed to the final offer method of resolving impasses over economic issues. “Voluntary” settlement in this context, however, as suggested above, is somewhat of a misnomer. In reality, the parties will tend to follow the neutral chairman’s mediatory recommendations, for such recommendations eventually will take the form of mandates once an arbitration award is rendered. An exception may occur where the chairman, as mediator, gives the parties broad guidelines as to acceptable final offers and then remands the dispute to the parties for further bargaining. If the parties at this juncture resolve their differences, the settlement is of the parties’ own making and is, therefore, more truly voluntary. What this suggests, however, is that the parties still have little incentive to settle in the pre-arbitration impasse steps. Thus, the second objective of the impasse resolution process may not be achievable under this new structure in Illinois.

68. Weitzman and Stochaj, supra note 19, at 29.
II. PREPARATION FOR INTEREST ARBITRATION

A. The Statutory Criteria

The Act prescribes the criteria on which the arbitration panel must base its award. Although slight variations exist, such factors are common to all final offer arbitration statutes. Illinois enumerates a number of factors: (1) lawful authority of the employer; (2) stipulations of the parties; (3) public welfare and financial ability of the governmental unit; (4) comparisons of wages, hours and conditions of employment of the employees involved in the arbitration with those of employees performing similar services and with other employees generally in both public and private employment in comparable communities; (5) cost of living; (6) overall compensation, including fringe benefits, presently received by the employees; (7) changes in circumstances during the arbitration proceedings; and (8) such other factors normally and traditionally considered in determining wages, hours and conditions of employment. These factors have not been listed by the legislature in order of importance, nor does the Act state what weight is to be accorded these factors. Thus, importance and weight are left for argument and may be critical to the award by the arbitrator.

B. The Application of Statutory Criteria

1. Comparability

Recently published surveys of how arbitrators apply such statutory criteria, and a review of published interest arbitration awards, provide a clearer picture of the relative importance arbitrators attribute to such statutory criteria. The fourth listed factor, commonly known as "comparability," clearly is the most important factor to arbitrators. One survey of arbitrators indicates that seventy-five percent of the arbitrators interviewed placed the most reliance on this factor. Arbitrators suggest that there are economic, ethical and practical reasons for this heavy reliance on comparability. The economic justification for such reliance is based on a market theory, i.e., a public employer must look to sur-


72. For example, if the employer pleads inability to pay, and successfully argues that this is a threshold issue and that no other criteria can be considered unless and until the arbitrator finds that the employer does have the ability to pay, the dispute may be resolved on this sole factor. See infra note 86.

73. Weitzman and Stochaj, supra note 19, at 31.
rounding comparable communities in establishing terms and conditions of employment to assure it can attract the necessary complement of employees.\textsuperscript{74} One arbitrator states that there is an "ethical or semi-ethical" basis for relying on wage comparisons—"it is a claim for wage parity for work requiring the same or similar skills, duties, and responsibilities and offering relatively the same advantages and disadvantages."\textsuperscript{75} Finally, the pioneering and oft-cited study of Ervin Bernstein on interest arbitration suggests that comparisons are the predominant criteria because all parties at interest derive benefit from them. Specifically, Bernstein stated that:

To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have "the appeal of precedent and . . . awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public."\textsuperscript{76}

The Illinois Act provides that comparisons with both private and public sector employees are permissible. Obviously, there are pitfalls to comparing wages, hours and conditions of employment in the public sector with those in the private sector. Private sector comparisons ap-

\textsuperscript{74} See City of Garfield, 70 LAB. ARB. (BNA) 850, 852 (1978) (Silver, Arb.) (N.J. police): Comparisons of the economic facts in other localities bearing on the same type of employee are relevant because Garfield police do not exist in an economic vacuum. Both they and their management look to salary levels in other communities particularly those close by. This is so because what other localities are paying and other police officers are receiving for the same or similar work bear directly on the ability of each geographically proximate community to recruit and hold the kind of police officer who will perform his responsibilities to the public in an effective and career like manner. Comparisons of salaries and working conditions take into account that which the economists place under the heading of labor market—immediate and secondary. It is the rise and fall of the price of the terms of employment of the same labor working at similar tasks in the market place as seen by competing buyers and sellers that underpins the concept of comparability.

\textsuperscript{75} Arizona Public Service Co., 63 LAB. ARB. (BNA) 1189, 1195-96 (1974) (Platt, Chairman); see also County of Monroe, 58 LAB. ARB. (BNA) 55, 57 (1974) (Roumell, Arb.) (The county admitted that by only recommending a limited increase in wages it was asking these county employees to subsidize county government work for less than their counterparts in comparable counties; the fact-finder would not permit this.).

\textsuperscript{76} E. BERNSTEIN, ARBITRATION OF WAGES, Institute of Industrial Relations, Berkley, University of California Press (1954).
pear valid only in those instances where the private and public sector work is of a similar character. 77 Private sector comparisons are less valuable when rates vary greatly for a particular type of work, and such comparisons are artificial when the work involved is unique to public employment. 78 Additionally, practitioners, commentators and arbitrators alike agree that the most valid public sector comparisons are those that have resulted from negotiated settlements and not from interest arbitration. 79 The rationale is that "if arbitration is to function successfully as a dispute-setting process, it must not yield substantially different results than could be obtained by the parties through bargaining." 80

The heavy reliance placed upon the comparability factor has been criticized by both unions and employers. Labor organizations complain that use of this standard has a conservative effect by encouraging the rejection of new and innovative language. 81 This criticism has some validity because we find that arbitrators tend to prefer to leave innovation to negotiation between the parties and are concerned that an innovative award might serve as precedent for other arbitrators' decisions. 82 Employer critics of the comparability criterion suggest that it has led to a "domino effect" of victories for unions. Although arbitrators tend to avoid innovative awards, labor organizations, upon occasion, have been successful in pushing through new provisions which in turn are adopted by other arbitrators. 83

Despite criticism of the heavy reliance on comparability, with sufficient research all parties are usually able to establish statistics favorable to their position. For comparability data involving comparisons of employees in the private and public sector performing similar services, a party should look to such employees in the same geographic area and in jurisdictions of similar size. The following list suggests that

77. For example, an analysis of private sector rates for craft employees, which have been reached through collective bargaining, to determine public sector craft rates could be valid in some cases. See Grodin, supra note 63, at 685.
78. Id. See also, Weitzman and Stochaj, supra note 19, at 32 (a survey of arbitrators who chaired police and fire hearings indicated that 94% paid little attention to private sector comparisons); and City of Beaumont, Texas, 65 LAB. ARB. (BNA) 1048, 1051 (1975) (Bailey, Chairman).
79. See, e.g., Grodin, supra note 63, at 685.
80. Arizona Public Service Co., supra note 74, at 1196.
82. Nelson, supra note 17, at 57; Commonwealth Edison, 72 LAB. ARB. (BNA) 90, 95 (1978) (Goldberg, Arb.) (public utility interest arbitration) ("An arbitrator's response to a request for innovation must be tempered by a considerable degree of respect for past practice and the reasonable expectation of the parties in entering into arbitration.").
83. Clune and Hyde, supra note 58, at 474.
type of comparative data which arbitrators have considered relevant in arbitration: number of employees; wages (e.g., weighted average, minimum and maximum, rate or grade); hours; and benefits (leave time, paid holidays, insurance, pension, special allowances, etc.). Additionally, each party may develop descriptive statistics from the jurisdictions with which it and/or the opposing party compares the jurisdiction at issue. Obviously, the similarity in size of a jurisdiction being used for comparison purposes becomes less relevant when other data suggests that the jurisdiction has a dissimilar tax base, tax burden, current and projected mandated expenditures, or legal authority to raise revenue.

2. Ability to Pay and Cost of Living

Generally, comparability data is used as the starting point; it suggests the “going rate.” Thereafter, arbitrators consider other factors to determine whether anything militates against using the “going rate.” Typically, the public employer’s “ability to pay,” listed as the third factor in the Act as the “financial ability of the governmental unit,” and the cost of living, the fifth factor in the Act, are the two factors most often analyzed in light of the comparability data which the arbitrator deems relevant. A demonstrated inability to pay is viewed as a limiting factor to support an award less generous than otherwise indicated by the comparability data.

The question arises as to how a public employer demonstrates an inability to pay. Arbitrators have tended to place a heavy burden on public employers because arbitrators believe that to do otherwise would render ability to pay the controlling factor. Arbitrators also seem to unrealistically believe that notwithstanding a plea of inability to pay, priorities can be altered, taxes raised, etc., to pay a salary increase to public employees. In fact, the third statutory criteria in-

84. The data which the authors have found necessary to an effective presentation is confirmed in Bowers, supra note 46, at 402.
85. Id.
86. But see, Nevada, Nev. Rev. Stat. Title 23, § 288.010 et seq. (1979) in which ability to pay must be established first, then traditional standards used in interest disputes are applied.
cludes both ability to pay and "the interests and welfare of the public." Arbitrators interpret this clause to require a balance between the public's concern over the increased tax burden related to any contemplated compensation increase and the public's interest in quality services. In essence, this is the evaluation of a public employer's priorities which arbitrators undertake in analyzing arguments of ability to pay.

The common approach taken by arbitrators on the ability to pay issue is unrealistic, impractical, often fiscally irresponsible and politically untenable. A third party should not be able to single-handedly alter the fiscal priorities of a political subdivision. In fact, it was this trend which contributed to the City of Chicago's and other public employers' strong position that the Illinois Act had to provide for the right of the legislative body to reject an interest arbitration award.

Cost of living, invariably a relevant factor, takes on added importance in times of sharply rising prices and inflation and in times of economic recession. The rationale for including this as a statutory criterion is "rooted in the ethical notion that workers' real wages should not be allowed to diminish by reason of price movements beyond their control since their needs do not diminish." And, conversely, employers who invariably suffer in recessionary periods should be able to raise cost of living as an issue and demand similar consideration. Parties inevitably manipulate figures and statistics to arrive at those most favorable to their position. Therefore, in the area of cost of living, the arbitrator's task is to determine over what period of time any increase in cost of living should be measured. Typically, arbitrators look to the change in the cost of living from the date of the employees' last pay adjustment.

3. Other Statutory Criteria

Finally, general comments can be made about certain of the remaining statutory criteria which might elucidate how they can best be used. The seventh factor is relevant changes in circumstances during the arbitration proceeding. Changed circumstances could include contract settlements within the governmental unit or the emergence of new economic data. The first statutory factor relates to the legal authority

91. See, e.g., City of Boston, 70 LAB. ARB. (BNA) 154, 157 (1977) (O'Brien, Chairman).
92. Arizona Public Service Co., supra note 74, at 1195.
93. Id. See also City of Boston, supra note 90 at 159. (Cost of living increase over 10 years was 85% and during that period fire salaries increased 102.7%; yet, the cost of living increase over 2 years (date of last wage increase) was only 10.1%).
94. See, e.g., City of Boston, supra note 90, at 160, wherein the City noted two such changes: (1) the largest City bargaining units had settled contracts providing for no wage increases; and
of the public employer. This factor is relevant to the employer's legal ability to implement the arbitration award. Presumably, if the labor organization's proposal necessitates an increase in local revenues, and the public employer has no legal right to raise revenues unilaterally, the arbitrator will have to consider how such an award can realistically be implemented, or reject the proposal.

The final factor, a catch-all, would presumably include consideration of bargaining history, both of past contracts and of bargaining leading up to the arbitration. History of prior negotiations often assist arbitrators in understanding what criteria the parties themselves relied upon in reaching agreement. The following illustration also suggests the persuasive value of bargaining history: if the union demands a clothing allowance and the employer can prove that this demand has been successfully resisted in the past, the employer might argue that the union cannot expect to achieve through arbitration that which it has been consistently unable to obtain in collective bargaining. But, should a party in interest arbitration submit evidence of the bargaining that led up to the arbitration? The down side to offering evidence of one's own concessions during bargaining is that it may be used by the arbitrator to justify further concessions. However, offering evidence of one's own concessions can have a positive effect by establishing good faith, and thus, it may discourage further compromise by the arbitrator.

C. Further Preparation Strategy

In addition to developing persuasive evidence as to why a party's proposals are justified in accordance with the statutory criteria, certain further strategies for presenting evidence are suggested by the structure of the compulsory arbitration process. First, because economic and non-economic issues are decided on an issue-by-issue basis, parties

(2) two fact-finding reports had issued which were more sympathetic to the City's inability to pay arguments.

97. *Id.*, citing the following as an example of how bargaining history can be used to one's advantage:

The union demanded an increase of four paid holidays at the beginning of negotiations. Labor representatives expressed a willingness to accept two paid holidays at the end of negotiations and in arbitration. However, management refused to increase paid holidays throughout negotiations and has maintained that stance in the arbitration proceeding. Other things being equal, presentation of this type of evidence by the union in arbitration may provide a rationale for the arbitrator to accede to the union in the award.

In fact, the opposite result is true. If the employer has justified its position, a failure to compromise will not typically be penalized.
must not only prepare arguments to support their own positions, but they must also be prepared to refute each item the other side proposes, even if they do not have a corresponding proposal, for failure to do so can result in loss by default. Second, because the issue-by-issue process typically results in package splitting, it is crucial that parties provide the chairman with a clear understanding of those issues which they must win and those issues that they can afford to lose. Third, there is little risk in including controversial items with this type of decision-making as there is with total package final offer arbitration. Perhaps the only risk to forwarding numerous or controversial issues is that this will affect the party's credibility before the neutral arbitrator. Finally, because of the interdependent nature of many proposals, the parties must continually make the chairman aware of the shape of the overall package that is evolving out of the panel's decisions on each issue.  

Conclusion

Interest arbitration, while having only limited impact under the new Illinois statute, will probably find favor, at least initially, with public employers and unions who voluntarily choose this vehicle to resolve their negotiation impasses rather than suffer strikes. Although the Illinois Act's issue-by-issue/conventional interest arbitration bifurcated approach was intended to encourage the parties to enter into voluntary settlement, there is some doubt that it will significantly accomplish this goal. Once the process starts, however, mediation by the neutral chairman selected by the parties in arbitration more likely will result in impasse settlements. The most controversial and significant provision of the new procedure, legislative approval of interest arbitration awards, will be audited carefully to see how it will affect the viability of the new impasse resolution procedure. This will determine whether or not parties voluntarily also will add this aspect to any agreement to arbitrate interest disputes.

As Illinois public labor relations matures in the years to come, we will see less of interest arbitration as an impasse resolution procedure and correspondingly a greater number of settlements between the parties; as employers and unions get more comfortable in their adversarial relationship, experience shows that expensive and time consuming arbitration, other litigation and strikes will become less necessary as a means to resolve labor-management impasses.

98. See Bowers, supra note 46, at 404.