

**INTEREST ARBITRATION
OPINION AND AWARD**

In the Matter of Interest Arbitration
between
THE CITY OF CHICAGO
and
THE FRATERNAL ORDER OF POLICE
(FOP), CHICAGO LODGE # 7

Hearings Held

August 28, 29 & 30, 2001
September 25, 26, & 27, 2001

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BACKGROUND

The City of Chicago (the Employer; the City) and The Fraternal Order of Police, Chicago Lodge #7 (the Union; the Lodge) have been in a formal collective bargaining relationship since 1981. Their sixth and latest negotiated Agreement covers approximately 12,000 sworn patrol officers. It became effective on July 1, 1995 and expired on June 30, 1999.

The parties began negotiating a successor Agreement in May, 1999. In a total of 102 sessions over the next seventeen months, they engaged in the give-and-take of collective bargaining. The parties ultimately reached a Tentative Agreement in November, 2000. On January 12, 2001, however, the Union membership rejected it.¹ On February 2, 2001 the Union presented a demand for interest arbitration to the Illinois State Labor Relations Board.

Pursuant to §28.3B (Impasse Resolution, Ratification and Enactment) of their 1995-1999 Agreement, the parties mutually appointed Steven Briggs (the Arbitrator) to serve as the impartial member and chair of a tripartite Dispute Resolution Board (the Board). The City appointed Darka Papushkewych, Esq. as its Board representative; the Union appointed Thomas Pleines, Esq. At a May 24, 2001 pre-hearing meeting attended by the parties' advocates, selected representatives, and the Board, the Union argued strenuously that the interest arbitration hearings should be open to its membership. The City protested with equal exuberance that given the size of the bargaining unit, doing so might impede the interest arbitration process. The Arbitrator ultimately ruled that each party would be allowed to invite a maximum of fifteen observers to attend the hearings,

that the hearings would be videotaped, and that the videotapes would be made available at a later date to interested persons who did not attend the proceedings. Moreover, members of the media were not allowed entrance to the hearings and attendees were prohibited from discussing the proceedings with the media until this Opinion and Award is ultimately rendered in its final, fully-executed form.

Interest arbitration hearings were held before the Board on August 28, 29 and 30, 2001 and on September 25, 26 and 27, 2001. The parties' evidence and argument was offered through exhibits, witnesses, and advocate presentations. Their timely post hearing briefs and final offers were received by the Arbitrator on January 10, 2002, at which time the record was closed.

ISSUES

The parties mutually advanced the following issues to be resolved by the Board:

1. What will be the duration of the parties' successor labor agreement?
2. What general wage increases will be given to bargaining unit employees during the term of the agreement?
3. What compensation, if any, will be paid to:
 - a. detectives, youth investigators, and gang crime specialists
 - b. canine handlers, explosives detection canine handlers, the marine unit, and the mounted unit²
 - c. field training officers?

¹ The vote was 6304 to reject versus 2953 to ratify.

4. Shall the number of holidays be increased?³
5. What amount will employees contribute toward the premium costs of health insurance benefits, how will that amount be determined, and when will such amounts be effective?⁴
6. What amount will employees pay toward the costs of prescription drugs?
7. Whether employees who retired on or after July 1, 1997 who were 60 at the time of retirement, and those who retire thereafter at age 60 or more will be covered by the plan applicable to active employees and, if so, what, if any, costs will they be charged?⁵
8. Whether the Lodge will reimburse the Employer for the salaries and benefits of Lodge officials who are on a leave of absence.
9. How will employees select their furloughs?
10. Whether the probation period will be extended beyond one year, and, if so, for what period of time, and what rights and benefits will be granted to employees on probation?
11. For what period of time may the Employer retain disciplinary files, what types of files may be retained, and for what purposes may such files and the information contained in them be used?
12. Whether the complaint review panel will be eliminated.

² Following the Union's case-in-chief presentation on increased compensation for canine handlers, explosives detection canine handlers, the marine unit, and the mounted unit, the City agreed to the Union's proposal on those items. The Board therefore need not consider them.

³ The Lodge ultimately withdrew from the Board's consideration its proposal for an additional holiday (Lodge Post Hearing Brief, p. 174).

⁴ On September 5, 2001, the parties submitted early post hearing briefs concerning the arbitrability of this issue and asked the Board to decide the matter as soon as possible. In an October, 2001 Opinion and Award, the Board decided that it was not arbitrable.

13. Whether employees will continue to be responsible for the transportation of deceased persons.
14. Whether the Employer will have a lien for reimbursement of wages paid to injured employees while on the Medical Roll if they recover from a third party.
15. Whether police officers may be required to advise the Department, in writing, regarding secondary employment and the responsibility of the secondary employer.
16. Whether the Police Board hearings will be videotaped.
17. Whether the FOP will be provided with certain information regarding promotional exams.
18. Whether there will be restrictions on Medical Recurrences.
19. Whether "just cause" should apply to removal from certain D-2 positions.
20. Whether additional positions should be added to Section 8.7.
21. Whether duty availability pay will be increased, and if so, by what amount?
22. Whether clothing allowance will be increased, and if so, by what amount?
23. Whether the number of instances that employees' days and hours of work can be adjusted for training purposes without additional compensation will be increased, and if so, by what number?

⁵ This issue was resolved as a result of the Board's October, 2001 arbitrability decision.

24. Whether officers will pay active rates for health insurance when a determination of duty, occupational or ordinary disability is pending.⁶
25. Whether the number of units, subject to bidding under Section 23.8, should be increased, and if so, by how much?
26. Whether additional positions should be added to duty assignments subject to bidding under Section 23.9, and if so, by what number, and whether Section 23.9 should otherwise be modified.

DECISION CRITERIA

Section 28.3(B)(11) of the parties' 1995-1999 Agreement incorporates by reference the following four provisions of the Illinois Public Labor Relations Act (IPLRA; the Act):

- (h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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.

⁶ This issue was resolved as a result of the Board's October, 2001 arbitrability decision.

- (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 and 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.
- (i) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000 but those residency requirements shall not allow residency outside of Illinois) and shall not include the following: i) residency requirements in municipalities with a population of at least 1,000,000; ii) the type of equipment, other than uniforms, issued or used; iii) manning; iv) the total number of employees employed by the department; v) mutual aid and assistance agreements to other units of government; and vi) the criteria pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

- (j) Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel. The party against whom the final decision of any court shall be adverse, if such court finds such appeal or petition to be frivolous, shall pay reasonable attorneys' fees and costs to the successful party as determined by said court in its discretion. If said court's decision affirms the award of money, such award, if retroactive, shall bear interest at the rate of 12 percent per annum from the effective retroactive date.

- (m) Security officers of public employers, and Peace Officers, Fire Fighters and fire department and fire protection district paramedics, covered by this Section may not withhold services, nor may public employers lock out or prevent such employees from performing services at any time.

The parties did not incorporate the "last best offer" provision of the IPLRA into their contractual impasse resolution procedure.⁷ Thus, the Board is not constrained to select one or the other of the parties' last offers of settlement for economic issues. In fact, the Board has the latitude to design its own resolution for each and every issue in dispute.

The parties also executed a lengthy May 24, 2001 Pre-Hearing Stipulation which, among other things, formalized their agreement on the following items:

⁷ That element of the Act provides: "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 in subsection (h)." See 5 ILCS 315/14(g).

- the parties' advocates may be in attendance at any conference of the Dispute Resolution Board;
- the Board has jurisdiction and authority to rule on the issues identified, with the exception of health insurance premium contributions (No. 5) and the transportation of deceased persons (No. 13);
- the time limits set forth in Article 28 of the 1995-1999 Agreement are waived;
- the procedural prerequisites for convening the Board and the interest arbitration hearings have been met; and
- the parties waive the requirements of Article 28.3B with respect to participation of their respective Board designees concerning all preliminary hearings, evidentiary hearings and oral argument upon the record.

THE PARTIES AND THE CONTEXT

Before proceeding to analysis of the parties' positions on the issues, the Board feels compelled to discuss the special nature of this case. First, in terms of sheer size alone, the parties themselves are unlike any other employer or union in the State of Illinois. The City of Chicago's population of nearly three million people ranks it the third largest in the country. Only New York (about eight million) and Los Angeles (more than three and one-half million) are larger. With approximately 42,000 employees, the City of Chicago is the third largest employer in the State, behind the U.S. Government and the Chicago Public Schools.

The Chicago Police Department (the Department) operates on an annual budget of approximately \$1 billion, 63% of which (\$630 million) has historically been earmarked for the patrol unit. Operationally, it is divided into five Command Bureaus: (1) Operational Services, (2) Investigative Services, (3) Technical Services, (4) Staff Services, and (5) Administrative Services. The Department employs over 17,000 people across hundreds of job classifications. The bulk of that number (13,443) are sworn, occupying the ranks of patrol officer, sergeant, lieutenant, captain, and exempt (commander, chief, deputy superintendent, superintendent, etc.). Given the organizational breadth and depth of the Department, the outcomes it desires from the bargaining process are equally widespread and complex. Each Bureau has its own unique agenda, each command staff official has ideas about what his/her functional unit needs from the bargaining process. Through a time consuming and elaborate balancing act, the City's bargaining team must develop a negotiations agenda that will hopefully satisfy a majority of those needs, while at the same time will ultimately mesh with the Union's expectations.

A similar set of problems exists on the other side of the bargaining table. Representing about 12,000 police officers below the rank of sergeant in the City of Chicago, the Fraternal Order of Police Lodge No. 7 is a sophisticated, complex organization charged with protecting the job rights and economic interests of a very diverse group. To illustrate the employment diversity across the FOP bargaining unit, consider that its members are each assigned to one of 25 districts, spread across five areas of the City. They may be assigned to one or more of approximately 170 functions performed by the Department, including the Bicycle Patrol Unit, Marine Unit, Mounted

Unit, Chaplains Section, Airport Law Enforcement Section, School Patrol Unit, Public Housing Section, Foot Patrol Unit, Traffic Unit, Asset Forfeiture Unit, Vice Control Section, Forensic Photography Section, Criminal Enterprise Investigations Section, Reproduction and Graphic Arts Section, or and/or the Juvenile Court Liaison Unit. Besides assignment to a particular function, patrol officers vary by age and police experience, factors which also shape what each desires from the collective bargaining process. Given the complex weave of needs and interests across the unit, Lodge leadership must engage in a great deal of intraorganizational bargaining prior to contract negotiations with the City --- just to ensure that what it seeks in a new contract will satisfy as many unit members as possible. Through its 90 Unit Representatives, the Lodge surveys its membership, reviews its grievance records, studies the current and prior labor agreements, and otherwise identifies what might be considered "problem" areas, all for the purpose of building a bargaining agenda satisfactory to its membership.

Thus, when the City and the FOP are finally prepared to meet each other face-to-face and engage in the give-and-take of collective bargaining, they have already gathered and condensed a cornucopia of information from their respective constituents. But negotiations between the City and the Lodge do not take place in a vacuum. They occur in what might be characterized as a boiling cauldron of countervailing influences from external unions, political and civic groups, various City and State officials, the federal government, other cities, and even the occasional national celebrity. It is obvious from the intense interest such individuals and entities take in Chicago police negotiations, and the pressures they bring to bear on the negotiators themselves, that the ultimate impact of those negotiations spreads far beyond the Department and its patrol officers. Indeed, the

broad and intricate mix of provisions included in the next FOP contract will have a far-extending ripple effect difficult if not impossible to estimate.

The City's complex internal labor relations environment must be considered as well. As of July 2, 2001, nearly nine out of every ten City employees (87%; n = 36, 767) were represented by one union or another across 43 bargaining units. As noted, the FOP unit is by far the largest, with its approximately 12,000 members. Second in size is a 6200-member bargaining unit represented by the American Federation of State, County and Municipal Employees (AFSCME). The firefighter unit, represented by Local 2 of the International Association of Fire Fighters (IAFF) is third largest, with about 4800 members. As of July 2, 2001, the City had successfully completed contract negotiations covering 41 of its bargaining units; only the FOP unit and the IAFF unit remain unsettled.

Anyone with experience in a multi-unit unionized setting can imagine the intense competition among the City's 43 bargaining units for a share of its \$4.5 billion annual budget. The coercive comparison between each and all of the others is vigorous --- a fact illuminated by the "me too" clauses found in some City labor agreements. For example, the Police Captains' unit (n = 73), the Police Lieutenants' unit (n = 276), and the Police Sergeants' unit (n = 1322) all contain "me too" provisions connecting them to the FOP contract on wages, fringe benefits, health care and most other economic enhancements.⁸ There is historical parity between the FOP and IAFF units as well, as recognized in three

⁸ All three of those units are represented by the Police Benevolent and Protective Association (PBPA).

previous City of Chicago interest arbitration awards.⁹ and as reflected in the FOP bargaining team's stated goals for the successor Agreement at issue here.¹⁰

BARGAINING HISTORY

The First Two Decades. The City and the Lodge have been in a formal bargaining relationship for over two decades. Since 1981 they have managed to deal with all of the foregoing complexities and hammer out six collective bargaining agreements, though not without some attendant difficulty. The Lodge formally petitioned for interest arbitration four times, when negotiations for each of the first four contracts broke down. On two of those instances, the parties' subsequent attempts to avoid interest arbitration were unsuccessful. Their 1986-1988 contract was decided in part by Arbitrator Irwin M. Lieberman,¹¹ and their 1989-1991 Agreement was resolved in large part by Arbitrator George T. Roumell, Jr.¹² In fact, the 1995-1999 Agreement was the very first one the parties were able to negotiate without a demand for interest arbitration.

The parties' contracts have become increasingly complex as the number of issues and considerations have swelled exponentially since their first one was negotiated. That contract consisted of a mere twenty pages; the most recent one (1995-1999) contains 159 pages. The fact that the parties hammered out that Agreement without resort to a demand for interest arbitration is resounding testament to their patience, their sophistication, and

⁹ City of Chicago and Fraternal Order of Police, Lodge 7 (Roumell, 1993), 153-154; City of Chicago and Fraternal Order of Police, Lodge 7 (Lieberman, 1989), at 26; City of Chicago and Fire Fighters Union Local No. 2, Case No. 51 39 0058 84 R (Lieberman, 1982), at 13.

¹⁰ For example, Lodge President William Nolan stated in part as its second goal: "We need to achieve the same health care benefits for officers who retire at the age of 60 to 65 which the firefighters and the department's supervisors received."

¹¹ Op. Cit., Note 9.

¹² Ibid.

their labor relations expertise. Even when faced with the contemporary internal and external pressures described in the foregoing paragraphs, the parties' bargaining teams successfully forged a contract that met their respective needs for a four-year period.

The Current Negotiations. The record has convinced the Arbitrator that in negotiations for a successor to the 1995-1999 contract the parties made a Herculean effort to repeat that success and avoid the seductive, fickle temptress of interest arbitration. As noted, between May, 1999 and November, 2000 they met 102 times in an attempt to resolve all the issues on their own.

The Union began the negotiations by announcing that certain of its numerous objectives had a "special significance" and implied that they must be attained or an overall Agreement might not be reached. President Nolan characterized those objectives as follows:

1. First, is D-2A pay. We must close the salary gap between our detectives, youth officers and gang specialists and the Fire Department's engineers. For many years, there was parity in the salaries of these officers. During the mid-80's, that parity was lost and we must restore that parity in order to have any Agreement ratified.
2. Second, we need to achieve the same health care benefits for officers who retire at the age of 60 to 65 which the firefighters and the Department's supervisors received. And, we need to make this benefit retroactive to 1996 if any Agreement is to be ratified.
3. Third, we need to secure the same job security for our other D-2 ranks as we secured for our detectives, youth officers and gang specialists in the last Agreement. We need to make sure that these positions will not be eliminated from the budget and officers will not be removed from those positions without just cause. We need this protection for these officers if we expect any Agreement to be ratified.
4. Fourth, we need a substantial pay raise. The 2% or 3% raises of the past are insufficient for the future. Our country has enjoyed

eight successive years of prosperity and growth. The City of Chicago has enjoyed this prosperity and other City officials have benefited from this prosperity. It is time the City provided a greater share of this prosperity to its police officers. As everyone knows, serious crime has declined for the 7th consecutive year, according to figures from the FBI. This is directly attributable to the men and women of the bargaining unit we represent. Since the last contract the City has requested our help in matters concerning the City in Springfield, which we enthusiastically supported. We joined with the Chicago Federation of Labor and the other unions and supported the City's request to lower contributions into the Laborers' Pension Fund and the Municipal Workers Fund. That was concluded after eight months of meetings with the City and the unions, and again with our support in Springfield. To be blunt, it is payback time. I will not discuss specific numbers now, because we have yet to see what the City wants from us. But, a substantial pay raise must be given if we expect any Agreement to be ratified.

5. Finally, we cannot agree to any provision which requires the City to do some future act, such as a change in general orders or procedures, without a specific date by which these changes will be made. We agreed to certain proposals in our last negotiations, which required the Department to make certain changes after negotiations were concluded. The Department took years to do what it had agreed to do and, in some cases, never did anything at all. For example, . . .¹³

The City had its own set of objectives for the bargaining process. It was concerned over the experience mix on watches, especially since about six of every ten patrol officers had fewer than ten years' experience, and over one-third had less than five years' experience.¹⁴ The City was also deeply committed to responding to concerns raised by the media, citizen and community groups about the percentage of rookies on particular watches. It was sensitive as well to the fact that the U.S. Department of Justice was investigating several major police departments and, in some cases, had imposed very

¹³ Union Exhibit Book 1, "Initiating Negotiations."

¹⁴ Testimony of James Franczek, Jr., August 28, 2001 (Tr 75)

restrictive consent decrees. And in a combined focus on its police mission and the demands of its constituents, the City expressed an interest in streamlining the Police Department's cumbersome internal disciplinary process.

To deal with these and a myriad of additional issues, and building on their success in negotiating the 1995-1999 Agreement, the parties implemented various components of the "interest-based bargaining model." Members of the Lodge team even attended a Harvard University seminar on this "win-win" approach to collective bargaining. The parties' full bargaining teams were composed of twelve people, six of whom were designated as the team's "core group." They established four negotiations subcommittees as well: discipline, medical, seniority and scheduling. Each subcommittee drafted reports, recommendations and tentative agreements for review by its own core group. In turn, the two core groups attempted to reconcile the subcommittees' work product into an appropriate balance between the parties' stated negotiations objectives, whereupon they presented the result to the full negotiation teams.

Over the course of the 102 bargaining sessions previously mentioned, the process described immediately above produced a collection of 76 tentative agreements (TA's). The parties acknowledge that the overall assemblage of them emerged from a variety of concessions, compromises and accommodations on both sides. The following list highlights some of the more significant TA's:

- A four-year contract (July 1, 1999 – June 30, 2003), with compounding wage increases of 2% effective July 1, 1999; 4% January 1, 2000; 4% January 1, 2001; 4% January 1, 2002, and 2% January 1, 2003 (16% total, before compounding)

- A basic health care plan (including employee contributions and prescription drug co-pays) --- the same as that already ratified by 41 other City bargaining units
- Increased pensionable duty availability pay
- Increased clothing allowance
- Additional positions at D-2A and D-2 pay levels
- Change from furlough by unit system to furlough by watch system
- Assignment enhancement program designed to encourage officers to volunteer for work in the City's most challenging districts
- Modifications to the Complaint Review Panel process
- Modifications to the disciplinary process, including the retention and use of "not sustained" files
- Extension of the probationary period from twelve to eighteen months, with enhanced training opportunities
- Union reimbursement -- the Lodge agreed to resurrect its former practice of reimbursing the City for the salaries of Lodge officers on Union leave
- Expansion of carry-over personal days
- Expansion of or increase in bidding rights to certain units or jobs and the alternate response section
- Pilot program for alternate work schedules
- Educational reimbursement for internet courses
- Approval to wear athletic-type shoes

- Videotaping of Police Board hearings

Both negotiating teams were satisfied with the way in which the entire list of TA's met their pre-stated negotiations objectives. They were satisfied as well that it was a reasonable, measured response to the host of internal and external factors which collectively composed the economic, social and legal context in which the negotiations took place. In the December, 2000 issue of its FOP News, the Lodge described the tentative settlement in the following terms:

After 17 months of difficult negotiations, the FOP Negotiating Team reached a tentative agreement following 102 meetings with over 170 items proposed by both sides. When we began this task, we set our sights on an agenda that included preserving an excellent and affordable health care plan and achieving a wage package superior to both the cost of living and the national average for collective bargaining agreements for police officers. Further, we wanted better working conditions and relief for officers who are going on disability. Your Negotiating Team believes that we have accomplished these goals and unanimously recommends that the membership ratify this agreement.¹⁵

THE FOP'S REJECTION AND ITS IMPACT ON THESE ARBITRATION PROCEEDINGS

As noted, the FOP membership rejected the Tentative Agreement on January 12, 2001 by more than a two-to-one margin. The City believes the rejection stemmed not from rational analysis of its terms, but from "... union politics, changing demographics, miscommunication and misguided leadership." Thus, the City urges, with the exception of the furlough by watch side letter and a couple of additional matters, the Board should

¹⁵ FOP News, "Contract News," December, 2000, at p. 1

adopt the Tentative Agreement negotiated by the parties' duly-authorized representatives in exhaustive, informed, good-faith negotiations.

The Union points to Section 28.3 (Impasse Resolution, Ratification and Enactment) of the 1995-1999 Agreement, noting that ratification by the Lodge membership is a prerequisite to reaching complete agreement. It notes as well that the Section provides steps to be followed in the event either the Lodge or the City rejected the recommended agreement. The Union underscores the fact that Section 28.3 does not place a particular burden on the rejecting party.

In the relatively short history of Illinois public sector interest arbitration there have been but a handful of cases where a tentative agreement was negotiated by the parties' representatives, recommended for ratification by the union bargaining team, then rejected by the union membership. The interest arbitrators to whom those cases were presented had to decide what weight, if any, should be given to the terms of the negotiated settlements. The parties to these proceedings cited each of those cases¹⁶ and quoted selectively from them in their post hearing briefs. In the interest of brevity, the undersigned Arbitrator will not repeat those quotes here. Generally, Illinois interest arbitrators have concluded that the weight to be afforded a rejected tentative agreement depends upon (1) the circumstances surrounding the negotiations that led to it (Was it negotiated in good faith by informed, responsible representatives?): (2) the nature of the tentative agreement itself (Is it an accurate reflection of the accord the parties would have

¹⁶ City of Waukegan and International Association of Firefighters, Local 473, S-MA-00-141 (Hill, 2001); City of Waterloo and Illinois Fraternal Order of Police Labor Council, S-MA-97-198 (Perkovich, 1999); City of Highland Park and Teamsters, Local 714, S-MA-96-13 (Perkovich, 1996); City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-93-153 (Berman, 1995); City of Alton and International Association of Firefighters, Local No. 1255, FMCS 95-00225 (O'Reilly, 1995); Village of Schaumburg and (continued on following page)

reached in a normal strike-driven bargaining process? Is it based upon miscalculation or other error?); and (3) the reasons for the rejection (Legitimate concern over financial and other issues? A simple, unjustified desire for more? Internal union politics?).

Turning again to the present case, it is important to recognize that the outcome of these interest arbitration proceedings must approximate what the parties themselves would have negotiated, had they reached complete agreement through free and good-faith collective bargaining. Interest arbitration was not designed to be a routinely relied-upon substitute for the parties' own judgment. It is a last resort, to be used only when the bargaining process has been exhausted. There is also a danger that it can be used more out of concern for strategy than contractual substance. For example, a bargaining unit might reject an otherwise reasonable tentative agreement in hopes of using it as a starting point in a subsequent interest arbitration proceeding. In a 43-bargaining unit city like Chicago, if such a strategy were employed successfully by one unit, the others might follow suit. The likely result would bring meaningful collective bargaining to its knees.

It is clear in the present case that the Lodge membership had the contractual right under Article 28.3 to reject the tentative agreement. The Board acknowledges the legitimacy of that right and the democratic values it reflects. On the other hand, we are absolutely convinced from the record that the process leading to the November, 2000 Tentative Agreement constituted intense, hard-fought collective bargaining between informed advocates.

Details of the parties' extended efforts to achieve a negotiated contract have already been described. It is obvious from the evidence that those efforts took into

Schaumburg Lodge No. 71, S-MA-93-155 (Fleischli, 1994); and Village of Franklin Park and Fraternal
(continued on following page)

account the historical parity relationships both within the Department and across various City bargaining units. It is equally apparent that the parties each made gains and that each demonstrated a willingness to compromise. Moreover, their logical approach to the negotiations (i.e., the four subcommittees, the two core groups, etc.) undoubtedly enabled the parties to gather, condense and scrutinize a variety of information integral to the construction of an "ecosystem" within which a variety of constituencies could exist in labor relations harmony. On balance, while the Board supports the FOP's right to reject the Tentative Agreement, it also recognizes that the Tentative Agreement reflects a delicate balance of accommodation. Any significant change in that balance --- any material modification of the ecosystem that has evolved through the collective bargaining process --- could easily inflict more harm than good on the parties, on their future relationship, and on the many other entities affected by the outcome of these proceedings. Accordingly, and for the reasons explained in the foregoing paragraphs, the Board has decided to give the Tentative Agreement significant weight. We believe such consideration falls well within the scope of the Act, in that it focuses on elements of the employment relationship "normally and traditionally" taken into account by the parties themselves at the bargaining table.

THE EXTERNAL COMPARABILITY FACTOR

Union Position. The Union asserts that any serious inquiry into comparability must give great consideration to the salaries and benefits enjoyed by police officers in communities that comprise the Chicago metropolitan area. In addition, the Union argues, it is appropriate to consider the fourteen cities which together with Chicago, represent the largest fifteen cities in the nation. Those cities are listed below:

Columbus
Dallas
Detroit
Houston
Indianapolis
Jacksonville
Los Angeles
New York
Philadelphia
Phoenix
San Antonio
San Diego
San Francisco
San Jose

City Position. The City believes it is appropriate to compare itself, on a somewhat limited basis, with a group of the ten largest U.S. cities. Excluding Chicago, they are listed here:

Dallas
Detroit
Houston
Los Angeles
New York
Philadelphia
Phoenix
San Antonio
San Diego

The City argues as well that given its size and complexity, it makes little sense to use any of the surrounding municipalities for comparability purposes.

Discussion. The Board is required by statute to consider the wages, hours and working conditions in public and private employment in “comparable communities.” We note that Chicago is surrounded by hundreds of municipalities which employ police. Police officers in many of those communities may well experience working conditions comparable to those encountered by Chicago cops in one part of the City or another. And certainly many of those communities are close enough to Chicago geographically to constitute local labor market competition for the attraction and retention of police officers. But the City of Chicago is not merely one among hundreds of northeastern Illinois municipalities. It is not merely their economic and cultural hub, either. Indeed, Chicago is a world class city comparable most directly to New York and Los Angeles. Smaller jurisdictions surrounding Chicago may have certain geographical similarities to it, but by almost any conventional measure of external comparability they are birds of an entirely different feather.

For example, population statistics alone highlight the gigantic chasm between the City of Chicago and its surrounding municipalities. The City holds fully one quarter of the State’s population and has more residents than the next nine largest cities combined. Its equalized assessed valuation is obviously not comparable to that of any single surrounding municipality, nor is the size of its police force. And the Board is not aware of any Illinois municipality ever comparing itself to the City of Chicago in an interest arbitration proceeding. On balance, then, it seems unrealistic to include the relatively small jurisdictions surrounding Chicago in the external comparables pool.

The Board is very much aware that previous interest arbitrators have relied at least in part upon medium to large size midwest cities (Milwaukee and St. Louis, for example) as they fashioned their awards.¹⁷ Nevertheless, the Board has concluded that while such cities might be comparable in some respects to the City of Chicago, they are also worlds apart from it. In terms of size, economic and labor relations complexity, Chicago is not like any other city in the midwest. The Board believes it is more comparable to the ten largest U.S. cities included in both parties' suggested comparables groupings than it is to such smaller cities such as Columbus, Indianapolis, Jacksonville, San Francisco and San Jose. And again, we place special emphasis on New York and Los Angeles when considering the external comparability factor.

THE ISSUES¹⁸

DURATION

City Position. The City proposes a four-year contract effective from July 1, 1999 through June 30, 2003. It argues that four years provide sufficient time to implement and evaluate certain operational changes in the Tentative Agreement, which it believes should be almost wholly adopted. The City also notes that a four-year term would cause the FOP contract to expire along with those now covering 41 other City of Chicago

¹⁷ Op. Cit., Note 9. In his January, 1993 interest arbitration award, for example, Arbitrator Roumell relied upon a pool of large midwestern cities (Cleveland, Kansas City, Milwaukee, Minneapolis, Pittsburg and St. Louis), largely on the basis of what he felt were unique economic conditions not shared by cities elsewhere across the nation.

¹⁸ Since the Board has full authority to craft its own resolution to all issues, without regard to whether they are economic or non-economic, they have not been divided into those two categories. Moreover, in the interest of the brevity for which both parties indicated a preference, their respective positions on the issues have been summarized only in limited form.

bargaining units.¹⁹ And even with a four-year duration, the City adds, the parties to the FOP agreement will have to begin negotiations for its successor about twelve months after these proceedings have been concluded. The City argues as well that the parties have established a historical trend towards longer-duration contracts.

Union Position. The Union proposes a three and one-half year agreement, effective July 1, 1999 and expiring January 1, 2003. It asserts that such a term would break the cycle of negotiating contracts during the middle of the City's fiscal year (January 1 – December 31), thereby restoring the pattern which the parties established between 1984 and 1991. Moreover, the Union notes, the current cycle splits annual increases over each fiscal year. The Union believes that only the City benefits from such an arrangement. It points out as well that the parties' 1995-1999 Agreement is the only one they have ever negotiated with a four-year term. The Union also asserts that the City has offered no incentive to justify a four-year contract.

Discussion. When the parties were last at the bargaining table they fashioned an overall wage/benefit package (i.e., the Tentative Agreement). As noted, it took them seventeen months to put that comprehensive package together. The record contains no evidence that there were inordinate delays in those negotiations. On the contrary, it appears from the extent to which the parties organized the bargaining process that the talks went about as smoothly as possible. There is no reason to believe that when the parties meet again at the bargaining table to negotiate a successor to the outcome of these proceedings, they will be able to wrap things up more expeditiously. Thus, with even the most optimistic estimate that an enforceable interest arbitration award in the present

¹⁹ Only the FOP and the IAFF units remain unsettled.

dispute will emerge by the end of February, 2002, the Union's proposed 3 ½-year contract would give the parties only ten months to negotiate a successor contract. Put another way, as soon as these proceedings conclude the parties would find themselves face-to-face at the bargaining table again. That seems too soon, especially given the enormous magnitude of that task compared to labor negotiations in smaller, less complicated bargaining units.

Also of concern to the Board is what appears to be a compelling need for labor peace in the Chicago police community. The parties' machinations over the contract provisions at issue here began in May, 1999. They have been embroiled in settlement attempts for well over 2 ½ years now. Against that backdrop a longer duration for their next Agreement seems advisable. Not only does it appear to be in the parties' own best interest, but it would seem to be in the public interest as well.

Labor relations stability in the City of Chicago would also likely be advanced if the FOP contract were to expire along with the City's other labor agreements. With the sole exception of the IAFF bargaining unit, all of the other City labor contracts extend for four years and expire June 30, 2003. Adding the FOP unit to that expansive group will seemingly enhance the possibility that the City can operate at least some of the time in an environment where all of its contracts are settled, all of its unionized employees are enjoying a stable employment relationship, and all of its citizens are free from the anxiety often associated with public sector labor strife.

It is also important to recognize that the Tentative Agreement forged by the parties themselves had a four-year duration. Their previous (1995-1999) Agreement, which was reached without resort to interest arbitration (or even a demand for it), also

had a four-year term. Thus, in unbridled and extensive collective bargaining the parties have twice agreed that a four-year term, with its attendant split wage increases, was appropriate. The Board understands that they previously crafted agreements of shorter duration, but is strongly influenced by the fact that in negotiations for contracts covering the eight-year period between July 1, 1995 and June 30, 2003, the parties have voluntarily settled on four-year contracts (albeit tentatively in their more recent negotiations).

For all of the foregoing reasons, the Board favors a four-year contract. The successor to the parties' 1995-1999 Agreement shall therefore be effective from July 1, 1999 through June 30, 2003.

GENERAL WAGE INCREASES

City Position. The City believes that the "competitive and generous" economic package in the Tentative Agreement was the *quid pro quo* for the Lodge's agreement to furlough by watch and discipline reforms. The general wage increases included in that package amounted to a sixteen percent base wage increase, before compounding. The City maintains that position in these proceedings, proposing that the Board adopt the following general increases:

July 1, 1999 – 2%
January 1, 2000 – 4%
January 1, 2001 – 4%
January 1, 2002 – 4%
January 1, 2003 – 2%

Union Position. The Union believes that the general wage increases included in the Tentative Agreement are insufficient, especially as compared to those enjoyed by

police officers in major U.S. cities. In order to close that gap, the Union argues, and to accelerate the rate at which Chicago police officers advance to top pay, the Board should award the following general increases:

July 1, 1999 – 4%
January 1, 2000 – 4%
January 1, 2001 – 4%
January 1, 2002 – 4%

Discussion. Under the auspices of the parties' contractual impasse resolution procedure, the Board has the authority to fashion what it considers an appropriate set of general wage increases for the July 1, 1999 through June 30, 2003 City of Chicago/FOP Agreement. For the following reasons, and based upon a thorough review of all of the evidence and argument in the record, we have concluded that the increases proposed by the City are wholly appropriate. That conclusion is explained in the following paragraphs.

First, the parties themselves agreed upon the 2%, 4%, 4%, 4%, 2% general increase pattern during their intense, comprehensive contract negotiations. They were each represented by experienced professional advocates, and they were each passionate and determined to gain for their respective constituents the best deal possible. As in all labor negotiations, tradeoffs were made on various issues. There were mutual gains and concessions. Part of the economic result was a total general increase of 16% over a four-year period. With the lift provided by compounding, the total increase is approximately 17% --- a very healthy boost in salary for Chicago police officers. And the Board notes that during negotiations leading to the Tentative Agreement the Union was a vigorous proponent of the 2/4/4/4/2 pattern and cadence of increases. Though the City was

originally in favor of all increases being effective July 1 of each year, it eventually conceded that point to the Union.²⁰

Second, the 2/4/4/4/2 percentage increase pattern compares favorably with what the parties have negotiated historically. Their 1995-1999 four-year Agreement, for example, contains total increases of 12.5% (before compounding). Only in their first contract (1981-1983) did the parties ever negotiate larger consecutive increases.²¹ At that time, however, it appears from the record that national economic conditions justified such a robust salary boost.²² That is no longer the case, as explained below.

Third, the general increases the City proposes for the 1999-2003 contract compare very favorably with the cost-of-living. The Core Consumer Price Index (Core CPI-U), for example, estimates the national inflation rate for 1999 at 2.1%, for 2000 at 2.4%, and for 2001 at 2.1% (average over first six months).²³ And the Core CPI-U for Chicago contains an even lower estimate for 2001 (1.7%). Other conventional economic indicators produced similar cost-of-living figures for the same period.²⁴ The Board therefore concludes that on the cost-of-living factor the City's proposed wage increases are quite adequate.

Fourth, though the Union presented voluminous wage data concerning the external comparables, the Board notes that the parties themselves did not make such comparisons during their wage negotiations --- either to major cities across the U.S. or to

²⁰ Source: the uncontroverted testimony of City Advocate Franczek, September 25, 2001 (Tr. 381).

²¹ That three-year agreement provided total increases of 20.5%, before compounding.

²² The national inflation rate was in the 9.5% to 11% range.

²³ The Core CPI is one of the indicators used by economists to detect an out-of-the-ordinary change in inflation.

²⁴ CPI-W national estimates were 2.2% for 1999, 3.5% for 2000, and 2.5% for 2001. Comparable figures for Chicago were 1999 - 2.1%, 2000 - 3.4%, and 2001 - 2.7%.

smaller municipalities in the greater Chicago area.²⁵ Given that a fundamental purpose of interest arbitration is to approximate what the parties themselves might produce in free collective bargaining, it does not seem appropriate to afford the external comparables a great deal of weight in these proceedings. Indeed, doing so would produce an interest arbitration award based in part on data the parties did not mutually consider at the bargaining table.

Still, the external comparables lend support to the City's position. At the entry level, for example, Chicago police officers under the City's proposal would be paid at a higher rate than the average across even the Union's suggested fourteen-city comparability pool for each year of the four-year contract.²⁶ The same may be said for Chicago police officers in each and every seniority cell of the contract's salary appendix.

Under the City's proposal for 1999, those with four and one-half years of employment or less would be paid at a significantly higher rate (e.g., as much as \$13,000 more) than their counterparts in New York. Those with more than five but less than fifteen years' seniority would make slightly less than similarly situated New York police officers for 1999. And more experienced Chicago police officers would make as much as \$5400 more for 1999 than New York cops with comparable seniority. For the year 2000, Chicago police compare even more favorably to their counterparts in New York under the City's proposal. They would make a higher annual salary at each and every seniority level in the wage schedule. Salary figures for New York police officers in 2001 were not made a part of the record, as they were being determined in interest arbitration.

²⁵ The City apparently did refer to some thirty or so surrounding municipalities during the parties' negotiations concerning the police officer probationary period.

Until Chicago police officers reach the twenty-year seniority level under the City's salary proposal, similarly situated officers in Los Angeles would generally be better paid for 1999. That situation reverses itself after twenty years, however, when Los Angeles cops are already at the top step of their salary schedule and their Chicago counterparts are still receiving scheduled increases. The same general conclusion may be drawn for the years 2000 and 2001. Those statistics reveal what the Union argues is a serious drawback in the City of Chicago's police salary schedule --- it takes longer to reach top pay (thirty years) than it does in other jurisdictions. That argument would be more persuasive had the Lodge during negotiations for the Tentative Agreement proposed a reduction in the time required to reach peak salary. Since it did not do so in those protracted, intense negotiations over salary and other matters, the Board concludes that time to top pay has not been a recent meaningful issue to the parties themselves. Moreover, we are reluctant to award something in interest arbitration that the parties have not sufficiently addressed face-to-face at the bargaining table.

Turning to the City's other bargaining units for salary comparison purposes raises the so-called "apples to oranges" methodological dilemma. Sworn units in Chicago receive types of pay not enjoyed by those across civilian bargaining groups --- duty availability pay and clothing allowance, for example. Moreover, requisite job skills and market influences justify wage rate variance across classifications. For those reasons and others, it is simply not realistic to compare police officer salaries with those paid to many if not most municipal employees not involved in the protective services. Still, we note

²⁶ For 1999, Chicago entry level patrol officers would make \$34,192; the average across the Union's proposed comparables is \$31,659. For 2000, the comparable figures are \$35,560 and \$32,729. For 2001 they are \$36,983 and \$33,676.

that the salary increases contained in the City's proposal are greater than those negotiated on behalf of the City's second largest bargaining unit (AFSCME) for its 1999-2003 contract period.²⁷ Comparable percentage increase figures for the IAFF Local 2 unit have not yet been determined. Nothing in the record suggests that the historical parity between FOP Lodge 7 and IAFF Local 2 will not continue, however.

The IPLRA also compels the Board to consider the overall compensation received by Chicago police officers. Referencing the Tentative Agreement once again, the record has convinced us that it represents the richest, most expensive contract in the history of the parties' bargaining relationship. Beyond total compounded wage increases of more than sixteen percent, it includes increases in the clothing allowance and duty availability pay, the establishment of a new D-2A pay scale, the addition of new positions to the D-2 scale, and the provision of City-paid health care benefits until age sixty-five to officers who retire at age sixty. The cumulative cost of the Tentative Agreement's economic enhancements over a four-year term would total roughly \$624 million --- nearly double the cost of the parties' 1995-1999 contract. That is not to say that City negotiators "gave away the store," but it lends strong support to the City's position that it made significant financial concessions to the Lodge in exchange for gains in other areas. The Board is very reluctant to upset that balance --- one struck by the parties themselves in unencumbered negotiations --- by departing from the very reasonable set of general increases they fashioned in the Tentative Agreement.

²⁷ The City's proposed 16% total increases exceed the 11% cumulative increases, plus a \$350 cash bonus, applicable under the 1999-2003 AFSCME Agreement.

For all of the foregoing reasons, the Board adopts the City's general salary increase proposals for the parties' 1999-2003 Agreement. Moreover, we find no reason in the record to deny fully retroactive application of those increases.

DUTY AVAILABILITY PAY

Effective January 1, 1998, Chicago police officers began receiving a quarterly duty availability allowance of \$555 per quarter, which amounts to \$2,220 annually. Prior to that date they were receiving a \$455 quarterly allowance effective July 1, 1994 and a \$505 quarterly payment effective January 1, 1997. Such payments are pensionable, and officers need not be present for an entire pay period to qualify for them.

City Position. Consistent with the Tentative Agreement, the City proposes to increase the quarterly duty availability allowance with full retroactivity according to the following schedule:

Effective January 1, 2001	\$580
Effective January 1, 2002	\$605
Effective January 1, 2003	\$630

The City notes that its original willingness to provide such duty availability allowance enhancements was a concession in exchange for the Lodge's agreement to the City's key operational goals and its health care proposal.

Union Position. The Union's position on this issue would increase the duty availability allowance according to the same schedule and in the same dollar increments as would the City's proposal. The Union points out that its proposal increases officers' quarterly duty availability pay by a mere \$75 over the entire term of the contract. It

argues as well that since officers across the nationwide comparables receive many additional allowances and other forms of compensation, its duty availability allowance proposal is reasonable.

Discussion. The parties essentially agree on this issue, though they differ somewhat as to its financial impact upon the City. Under the proposal, by the end of the new contract each officer will be receiving a \$630 duty availability allowance. That figure is, as the Union correctly notes, only \$75 higher than the \$555 each is being paid currently. But that statistic is misleading. First, since the payment is made quarterly, the more revealing figures are the following: (1) in 2001 officers will receive \$100 in additional duty availability pay; (2) in 2002 they will receive \$100 more each than they did the prior year; and (3) effective January 1, 2003 each will receive an incremental \$25 per quarter in duty availability allowance. According to the City's calculation, which the Board finds no reason to challenge, the total financial impact of the proposal is approximately five million dollars over the course of the four-year contract. That figure represents a significant economic enhancement to the total compensation received by bargaining unit members. Moreover, per the terms of the predecessor Agreement and subsequently enacted legislation, duty availability allowance funds are pensionable --- a benefit not received by members of the IAFF unit.

The Board is persuaded by reason of the support both parties have given to the duty availability allowance proposal that it should be adopted. We note as well that it was a part of their own Tentative Agreement. Furthermore, and in support of the City's claim that the Tentative Agreement was constructed on the basis of give-and-take from both sides, we acknowledge Mr. Franczek's uncontroverted testimony that the City

conceded to the Union's position on this issue in exchange for its agreement on other matters.²⁸

UNIFORM ALLOWANCE²⁹

City Position. In their Tentative Agreement the parties also increased the annual clothing allowance by \$200 (to \$1300) for 2001 and by another \$200 (to \$1500) for 2002. The City notes that it agreed to these increases, and dropped its demand that the first \$300 must actually be applied to uniform expenses, in order to garner Union support for the entire Tentative Agreement.

Union Position. The Lodge believes that the increases in clothing allowance contained in the Tentative Agreement are reasonable, and that they are appropriate in light of the external comparables.

Discussion. The Board is persuaded by both parties' support of the same proposal on this issue that it should be adopted. Again, we are mindful of the fact that the proposal was drawn from the Tentative Agreement --- a complex melange of compromise and accommodation constructed by the parties themselves during free collective bargaining. We also note that the economic enhancement reflected in the clothing allowance proposal represents a cumulative cost of approximately seven million dollars to the City. And, while it can be misleading to isolate any one economic issue in Chicago and compare it to what police officers in other U.S. cities receive, the proposed increases will give Chicago police officers the highest clothing allowance across even the Union's suggested 15-city

²⁸ 9/25/01, Tr. 364.

²⁹ In common parlance, "Clothing Allowance" is called "Uniform Allowance."

external comparables group. Finally, the Board notes that officers are not compelled to use the clothing allowance toward the purchase of work-related clothing.

SPECIALTY PAY

City Position. As part of the overall Tentative Agreement package, the City notes, it agreed to the Union's demands for the following specialty pay provisions:

- The establishment of a D-2A pay step for Detectives, Investigators (formerly known as Youth Officers) and Gang Crime Specialists.
- Movement of several D-1 specialty positions to the D-2 pay level (Canine Handlers, Explosive Detection Canine Handlers, Marine Unit Officers, Mounted Patrol Unit Officers).
- Continuing the practice of paying Field Training Officers overtime for an additional one-half hour per day prior to or at the conclusion of their tour of duty.

During the September 25, 2001 hearing, the City noted it was withdrawing its earlier tentative agreement on D-2A pay because it had caused friction in the bargaining unit. In its post hearing brief, however, the City advanced its continued willingness to provide all of the foregoing economic enhancements. It urged the Board to recognize that they were tentatively agreed to as part of an overall package which included a finely-tuned mix of compromise and accommodation on both sides.³⁰

³⁰ City Advocate Franczek also acknowledged in the September 25, 2001 interest arbitration hearing that he considered the specialty pay presentation made by the Union's Becky Dragoo to be very persuasive.

Union Position. The Lodge also believes that the Tentative Agreement on specialty pay should be awarded in its entirety. It advanced in its post hearing brief and in the arbitration hearings themselves numerous reasons for doing so.

Discussion. Since the parties now seem to be in agreement on the specialty pay issue, the Board finds no reason to discuss the matter at length. We do note, however, that the movement of four formerly D-1 specialty assignments to the D-2 pay level will bring their occupants a five percent pay increase. The new D-2A pay level for Detectives, Investigators and Gang Crimes Specialists will provide those so assigned with a three percent pay boost, bringing them to parity with the Fire Department's Engineers (F-3 pay level). The Board is convinced from the record that the special skills, greater visibility and/or higher performance expectations associated to varying degrees with police specialty assignments justifies the salary increases contained in the parties' Tentative Agreement.

The Board notes as well that during negotiations leading to the Tentative Agreement, Lodge President Nolan characterized the specialty pay issue as one of high priority. We are also convinced from the record that the City at that time agreed to it reluctantly. Those aspects of the parties' experience at the bargaining table underscore once again the interconnectedness of the Tentative Agreement's many elements and the potential peril to the parties' future relationship associated with pulling it apart piece by piece. That is not to say the Board is unwilling to depart from the Tentative Agreement when doing so is appropriate for a particular issue, however.

The Board hereby adopts from the Tentative Agreement the parties' own negotiated resolution of the specialty pay issues, including their provision for retroactivity.

HOLIDAYS

Since the Lodge has withdrawn its proposal for an additional paid holiday, the Board considers this issue to be resolved.

HEALTH INSURANCE PREMIUM COSTS

Having previously ruled that this issue is not arbitrable, the Board has no jurisdiction to rule on its merits.³¹

PRESCRIPTION CO-PAYMENTS FOR BRAND NAME DRUGS WITH NO GENERIC EQUIVALENTS

During negotiations leading to the Tentative Agreement, the parties crafted a comprehensive set of amendments to the health care plan. This Board has already ruled that the majority of those amendments are not arbitrable. The remaining element concerns the parties' tentative pact for a \$20 prescription drug co-pay for brand name drugs for which there are no generic equivalents.

City Position. The City points out that all of its bargaining units have been historically covered by the same basic health care plan, including its provisions regarding

³¹ The Board notes from the record that the current AFSCME Agreement with the City contains a chart of employee contributions listed by annual salary on the vertical axis and family status (single, employee +1, family) on the horizontal axis. We believe that such a chart would be useful to Lodge 7 unit members, and recommend that the parties consider adding it to the successor Agreement.

prescription drug co-pays. It notes in addition that subsequent to its most recent contract talks with other unions, all bargaining units involved ratified agreements containing the same basic plan --- including the \$20 co-pay at issue here. The City argues as well that the \$20 co-pay is part of the parties' Tentative Agreement, and that with the Union's knowledge the co-payment has already been implemented. The City believes that if the Union were to obtain through interest arbitration a reduced co-pay for police officers, it would destroy the longstanding City-wide parity on the health care issue.

Union Position. The Union asserts that the City has already reaped the benefits of the Tentative Agreement's health care amendments, and that its proposed increase to employees of the cost of prescription drugs is overreaching. In support of that claim, the Union points to the testimony of City witness Barbara Molloy, who explained that approximately 65% of prescription drugs have no generic equivalent (9/25/01, Tr. 143-144). The Union also underscores the fact that employees may have no choice but to purchase a brand name drug, since some of their individual physicians might not believe that an alternative drug with a generic equivalent would provide an effective course of treatment. And besides, the Union argues, the negotiated health care package already in place includes increased employee co-pays for brand name and non-formulary drugs. The Union believes that yet another increase is inappropriate.

With regard to the internal comparability statutory factor, the Union asserts that in exchange for AFSCME's agreement on the health care revisions the City offered economic incentives it did not make available during the FOP negotiations. Moreover, the Union strenuously argues, the brunt of the City's proposed increase will not be borne by the entire bargaining unit; rather, it will be shouldered only by those who have health

conditions that can only be treated by the newest of drugs --- by pharmaceuticals still patent-protected and for which no generic equivalent is available. The Union therefore takes the position that officers who must purchase such drugs only be required to pay the cost of the generic drug.

Discussion. The Board intensely scrutinized the Union's impassioned plea on behalf of those officers who would be financially affected by the City's proposal on this issue. We are indeed aware that the proposal might be costly to some police officers, while it might not impact many others at all. We also note, however, that the cost of group health insurance premiums to the very healthy who receive minimal medical services is the same as that paid by less fortunate persons who, through no fault of their own, make frequent visits to doctors and hospitals. Neither situation is fair. That is one of the basic underpinnings of group health plans --- they allow insurance providers to amalgamate their risk across a large group while simultaneously exerting a downward influence on premium costs to individuals. The Board appreciates the Union's concern for police officers who must necessarily purchase brand name drugs for which there are no generic equivalents. We recognize that such individuals will be impacted financially by any increase in the non-covered cost of such drugs, and that other persons will not. But that is the nature of co-pays --- which are characteristic of modern health care plans. To completely address the Union's articulate and passionate concern on behalf of those affected by the co-pays in question, the Board would be forced to reevaluate the very role of employee co-payments as a method to minimize the cost of health insurance premiums. That task, while important, is beyond the scope of our present mission.

The Board is persuaded by the internal comparable data that the City's proposal on this issue is reasonable. All City employees, whether unionized or not, have historically been covered by the same basic health care plan --- including prescription drug co-payments. That uniformity has been maintained between the City and its unions through years of bargaining, and through the interest arbitration process as well.³² The Board is therefore reluctant to disturb it.

Against such a backdrop of internal parity, the Board is concerned about what adoption of the Union's position on this issue might do. Arguably, it could result in a chain of events that could put labor relations in the City of Chicago in a downward spiral. First, consider the so-called "me too" clauses currently contained in the Captains, Lieutenants and Sergeants contracts. Any reduced prescription drug co-pays ordered for police officers in these proceedings would automatically apply to members of those three bargaining units. That result would undoubtedly have an impact on the City's pending negotiations with IAFF Local 2 on behalf of nearly 5000 firefighters, since they too have the same basic health plan, including drug co-payments. Unions representing the other 40 or so City bargaining units would then be compelled to go after a reduced co-pay when their current contracts expire. In short, disturbing in these interest arbitration proceedings the historical and all-encompassing health care parity for City of Chicago employees would create a labor relations migraine. The Board finds no compelling reason in the record to do so.

³² See, for example, City of Chicago and Fraternal Order of Police, Lodge 7 (Roumell, 1993).

We note as well that the City's health care plan currently covers about 100,000 people (i.e., approximately 42,000 employees and their families).³³ Various unions, including the FOP in the Tentative Agreement, have accepted it voluntarily, despite the \$20 co-pay for brand name drugs for which there are no generic equivalents. That element of the overall plan, like other forms of co-payments and deductibles, is designed to place downward pressure on health care premiums --- an effect which benefits not only the FOP bargaining unit, but also the larger group of all City employees and their families. Moreover, based upon the sheer size of such a large, uniform health care plan, the City has leverage to negotiate favorable contracts with health care providers and claims administrators, while avoiding the added administrative expenses associated with multiple plans. Those considerations are bound to benefit City employees over the long term.

Finally, the Board emphasizes once again the issue balance established by the parties themselves in negotiations leading to the Tentative Agreement. Absent persuasive and compelling reasons, we find no justification for altering it on an issue-by-issue basis. The result of such an approach, especially on an issue of health care parity so firmly stitched into the City's labor relations tapestry, would be an ultimate disservice to both parties.

PROBATIONARY PERIOD

Police officers in the City of Chicago currently experience an intense twelve-month probationary period. They receive academic instruction at the City's Police

³³ When covered retirees and their families are included, that figure increases to approximately 134,000.

Academy for the first eight and one-half months. After that, probationary police officers (PPO's) receive field instruction from three different Field Training Officers (FTO's) over three different twenty-eight day "police periods." Once they are field qualified through that experience, PPO's receive on-the-job training with an incumbent officer in the districts to which they have been assigned. During those remaining few weeks of their probationary period, PPO's are not allowed to work a beat, patrol in a squad car, or function in a rapid response capacity alone or in only the presence of another PPO.

The Lodge does not represent PPO's. Once they have completed the twelve-month probationary period, though, PPO's become full-fledged Chicago police officers and enjoy the full benefits and protections of the FOP Agreement. Thus, the length of the probationary period is of significant concern to the Lodge in its representational role.

City Position. The City proposes that the current twelve-month probationary period be lengthened to eighteen months --- an extension included in the parties' Tentative Agreement. Based upon recent technological and legal developments in law enforcement, it argues, there is compelling need for the change. Moreover, the City adds, the Department currently has but a few weeks to observe PPO's on the job, without the protective oversight of an FTO. The City notes also that in response to relatively recent police corruption scandals,³⁴ the Commission on Police Integrity recommended five preventive measures. One of those recommendations was to extend the probationary period to eighteen months in order to allow for a full year of on-the-street experience. Overall, the City believes that the additional six months' probationary period will allow the Department to more fully evaluate PPOs' skills and integrity, and that it will give

³⁴ The Austin and Gresham debacles, for example.

PPOs an extended opportunity to prove that they are qualified to be City of Chicago Police Officers.

Union Position. The Lodge proposes no change to the current twelve-month probationary period. It points out that between 1995 and 2000, of 157 PPO's who did not complete probation, only 21 were terminated or quit during the last of the twelve months. Given the fact that the City hires 800-900 PPO's annually, the Lodge argues, the current probationary period is of sufficient length. It further asserts that the City's real agenda in proposing a six-month extension is merely to drag out PPOs' at-will status. The Lodge argues as well that any additional training the Department believes is necessary could be given to new police officers regardless of whether they were still on probationary status.

Discussion. The Board understands full well the impact upon future new hires of extending the probationary period from twelve to eighteen months. We also note, however, that such an extension was part of the Tentative Agreement, set upon a scale the balance of which was established by the parties themselves. Taking away one or more of the Tentative Agreement's significant elements would no doubt tip the scale toward an imbalance the parties tried in 102 bargaining sessions to avoid.

As part of that balance, the Board notes, during negotiations the City addressed all of the concerns expressed by the Lodge. It agreed as part of the Tentative Agreement that upon the completion of the first twelve months of the new probationary period PPOs would receive all of the financial benefits enjoyed by full-fledged police officers. The City agreed as well that PPOs on Injured On Duty (IOD) status, and whose probationary period was extended as a result, would be entitled to the same benefits as their probationary classmates who graduated on time. The City agreed to the Lodge's demand

that if a PPO and a non-probationary officer were disciplined for the same incident, the PPO's discipline would be later reduced if the non-probationary officer were to obtain a lesser penalty through the disciplinary process or the grievance procedure. And the City agreed that PPOs would be treated as first-year officers for the purpose of bidding to details. Those tentative agreements strongly suggest that the City's proposed six-month extension to the probationary period was not motivated by economics or a desire to extend the at-will status of PPOs.

The Board also notes that the City has no legitimate interest in terminating PPOs unreasonably. With each day of probation the Department's financial investment in a PPO has grown. Thus, a PPO is worth much more to the Department after fifteen months than he or she was at, say, eleven months. It makes no sense to think that extending the probationary period would somehow cause the Department to "lick its chops" in anticipation of being able to terminate a greater percentage of probationers. And besides, the Lodge introduced no evidence to suggest that the Department has arbitrarily or unreasonably terminated PPOs in the past. There is no reason to conclude it would begin doing so simply because the probation period was extended.

The City's argument that it needs more time to evaluate PPOs is well taken. First, an extension of the probationary period was recommended by the so-called "Webb Report."³⁵ That Report stemmed from a study by the Commission on Police Integrity appointed by Chicago's Mayor Richard M. Daley on February 7, 1997, following the indictment of seven Chicago police officers on charges of conspiracy, racketeering and

³⁵ Known formally as the "Report of the Commission on Police Integrity" (November, 1997).

extortion in the Department's Austin District. It contained the following specific recommendation:

Probation period. The Commission recommends that the CPD extend the probationary period for new police officers. Under current rules, the probationary period for new officers is one year, which includes the six months spent in the Training Academy. In the Commission's opinion, the remaining six months is too short a time for the Department to fully assess whether that person possesses the qualities necessary to be a police officer. If the probationary term were extended to allow for a full year of on-the-street experience, Chicago would be closer to the practices used by other law enforcement agencies. Los Angeles, for example, has a probationary period of eighteen months for new officers which includes their first seven months in the training academy. The FBI requires a full year of probationary status after graduation from their training center.³⁶

The Board has studied the Webb Report in its entirety, and believes that the foregoing recommendation is sound.

Second, and as noted in the Report, Los Angeles police officers have an eighteen-month probationary period. The probationary period for New York police officers is twenty-four months. Numerous Chicago-area municipalities and Illinois' second largest city (Rockford) have implemented police probationary periods of between eighteen and twenty-four months.³⁷ Accordingly, the Board concludes that an eighteen-month probationary period for police officers is entirely within the bounds of what is considered reasonable in other police jurisdictions.

Third, the extension of the police probationary period from twelve to eighteen months is in the public interest. Doing so will enhance the Department's ability to ensure that PPOs unfit for duty will be culled out. The judgment necessary for police officers to

³⁶ Ibid, at 19.

perform appropriately on the street, in a law enforcement capacity, is critical to the safety and dignity of all Chicago citizens. The Board is convinced from the record that the Department will be better able to evaluate PPOs for evidence of such judgment by extending the period over which they are street-assigned during their probationary period.

It also seems reasonable to conclude that extension of the current probationary period will enhance the safety of other Chicago police officers. Newspaper accounts remind us daily of the dangers inherent in police work. It is also common knowledge that police officers depend on each other for backup. Extension of the probationary period should help ensure that newly-minted active officers have the full capability to do so.

Overall, the Board is convinced from the record that the Department's only interest in extending the probationary period is in terminating PPOs who have not demonstrated the requisite skills and/or attitude necessary to enforce the law and protect the citizens of Chicago. Requiring an additional period of on-the-street training and experience for PPOs will better enable the Department to make that decision in an informed, pragmatic fashion. For all of the foregoing reasons, the Board adopts the parties' tentative agreement on this issue, including the side letter included as pages 37-38 in Appendix A of the City's post hearing brief. We also note that the amended probationary period will apply only to PPOs hired after the date upon which the City Council may ratify this Award.

³⁷ The probationary period in Rockford is eighteen months. It is between eighteen months and two years in Berwyn, Deerfield, Lombard, Mount Prospect, Palatine, Park Ridge, Arlington Heights, Hoffman Estates, Morton Grove, Naperville, Orland Park, Rolling Meadows, Waukegan and Wilmette.

TRAINING SCHEDULES

An issue related to the length of the probationary period concerns the extent to which the Department can change police officers' work schedules and day-off groups for training purposes without incurring premium pay costs. During negotiations leading to the comprehensive Tentative Agreement, the parties executed two component documents which (1) increased the number of times the Department could do so; and (2) established a new element of "individualized training" to Sections 20.7(A) (Change of Schedule) and 20.9(A) (Day Off Change) of the 1995-1999 Agreement.

City Position. The City proposes an increase in the number of times it can change officers' work schedules and day off groups for training purposes without incurring overtime costs. It argues that the increasingly complex nature of police officer duties and responsibilities has caused the Department to implement training above and beyond that contemplated in the 1995-1999 Agreement. The "absurd result," the City opines, is that the Department is often required to provide premium pay to officers who attended training programs integral to their job duties. The City also notes that when selecting officers for additional training, Department supervisors sometimes consider whether premium pay costs will be incurred. Under its proposal, the City contends, they would be more inclined to focus on training needs.

Union Position. The Lodge fully endorses the merit of additional training for police officers. It asserts, however, that the City's position on this issue is entirely about money --- that the Department does not want to pay overtime and wants the flexibility to change officers' schedules (and therefore their days off) without incurring additional costs. The Lodge notes as well that the current Agreement already expands the number

of training programs covered by §20.7 and the occasions under §20.9 when days off can be changed. It further argues that the Department does not fully use the contractual right it currently has to change officers' days off for training purposes. In any event, the Lodge argues, if there is a bona fide training need, and the officers in question have already experienced the maximum schedule and day off changes under Sections 20.7 and 20.9, the Department should shoulder its share of the burden and provide premium pay for further inconveniencing the affected officers. The Lodge therefore proposes that those Sections remain unchanged.

Discussion. The changes proposed by the City in these proceedings were part of the overall Tentative Agreement negotiated by the parties. As such, they are connected in part to its other elements. As noted, the Board is reluctant to disconnect any single element of that Tentative Agreement without a compelling reason. We find no such justification in the record with regard to this issue.

The Board fully acknowledges the negative impact upon police officers' personal lives when their work schedules and days off are changed --- no matter what the reason. We find no evidence in the record, however, to suggest that any individual Chicago police officer's personal life has been unduly burdened by training assignments in the past. Second, the Department now schedules training programs on the second and third watches, which somewhat minimizes the need to make schedule changes.³⁸ And officers are contractually entitled to seven days' notice of schedule or day off group changes. These considerations suggest that the changes proposed by the City --- and endorsed by

³⁸ Testimony of recently retired Deputy Superintendent Jeanne Clark, 8/29/01 (Tr. 104).

the parties' respective bargaining teams in the Tentative Agreement --- would have minimal impact upon the bargaining unit.

The Board also notes that the City's proposal adds a new "individualized training" component to Sections 20.7(A) and 20.9(A). It would allow the Department to schedule individual officers for non-disciplinary training, as a substitute for or in addition to disciplinary action. According to Ms. Clark's uncontroverted testimony, that approach was especially attractive to the Lodge.³⁹ The Board also sees merit to the "individualized training" approach as a disciplinary alternative or enhancement, in that it provides obvious benefit to the Department and to police officers alike. As we noted in our discussion of the probationary period issue, additional training enhances the safety not only of those officers who receive it, but also of those with whom they work.

Based upon the foregoing considerations, the Board adopts the City's proposal (i.e., the parties' tentative agreement) on this issue.

UNION REIMBURSEMENT

The parties' current Agreement provides at §17.2 that the Lodge President and six Lodge officers may take leave from their police duties to work full-time for the Lodge. Significantly, it also indicates that the City will continue to pay such officers "all salary and maintain all benefits, including pension contributions and seniority accruals" just as if they had continued their full duty with the Department. This issue concerns whether the Lodge should reimburse the City for the salaries and benefits it pays to Lodge officers under such circumstances.

³⁹ Ibid (Tr. 132-135).

City Position. The City notes that during the parties' extensive negotiations prior to these proceedings it proposed that the Lodge reimburse it for the salaries and benefits of officers covered by §17.2. It maintains that position in these proceedings. The City also argues that Union reimbursement removes the appearance of impropriety from the Lodge-City relationship. It points out in addition that Union reimbursement has been the status quo for the majority of years the parties have had a bargaining relationship, and that it was eliminated for the first time in their 1995-1999 contract. The City also argues that reinstating Union reimbursement was part of the parties' compromise on the secondary employment and liens issues when they painstakingly negotiated the comprehensive Tentative Agreement.

Union Position. The Lodge asserts that the reimbursement provision in the Tentative Agreement was a breakthrough for the City, and that it reflects an annual cost of approximately three-quarters of a million dollars. It notes as well that police unions in other major U.S. cities do not reimburse city government for the salaries of union officers on released time. The Lodge therefore believes that it should not be contractually obligated to reimburse the City for the Lodge officers' salaries in dispute.

Discussion. Both parties have advanced persuasive arguments on this issue. On the one hand, when the City covers salary and benefit costs for Lodge officers on leave from their regular police duties, some might say there is an appearance of impropriety. After all, the argument goes, the Lodge and the City are adversaries in a collective bargaining relationship, and if the City pays certain Lodge officers to perform union business, what impact does such an arrangement have on their loyalties? On the other hand, it is very common across a great many industries for employers to grant union

officials paid released time to conduct union business, and the philosophy behind doing so is sound. When union officials file grievances and negotiate contracts, they are helping manage the inevitable conflict that arises in the employment relationship. Since managing that conflict is in the interest of both parties, paid released time for conducting union business can be a sound employer investment.

When the Lodge and the City reached their tentative pact on the union reimbursement issue, they undoubtedly took both of the foregoing perspectives into account. Each was represented by an experienced bargaining team composed of lawyers and high level administrators. Each party had a cadre of labor relations specialists at its disposal. Surely both parties considered the union reimbursement practices of other major U.S. cities (where support for their respective positions is mixed), and of the City's other bargaining units (where support for reimbursement is strong). Using all of that information, and in the midst of constructing an overall Tentative Agreement which balanced their respective needs and interests, the parties agreed that effective July 1, 2001 the Lodge would once again reimburse the City for the salaries and benefits of the seven Lodge officers who are granted leave from the Department to conduct union business full time. It is clear from the record that in doing so the parties were influenced by what both agree was a "firestorm of adverse publicity" over the elimination of union reimbursement in the 1995-1999 IAFF Local 2 Agreement. The Board believes that was a reasonable accommodation to the public interest, and finds no reason in the record to disturb the pact the parties reached on this issue --- especially since it is only one part of their multi-issue Tentative Agreement.

SECONDARY EMPLOYMENT

City Position. The City is very concerned about its potential liability for the conduct of officers while engaged in secondary employment. It therefore proposes that police officers who wish to be so engaged must become signatory to the following Affidavit:

I _____ certify that I have read and understand General Order 89-8 regarding Secondary Employment and that my Secondary Employment conforms to the requirements and restrictions of G.O. 89-8. The Chicago Police Department will not assume liability for my actions during the actual hours of work in Secondary Employment. My secondary employer has proper and sufficient liability insurance covering such actions. I certify that I will not represent myself as a Chicago Police Officer nor wear the prescribed uniform during secondary employment without the written permission of the Superintendent of Police.

The City believes that its proposal establishes a proper balance between allowing officers to engage in secondary employment and preventing the City from becoming liable for their actions when so employed. If, however, the Board does not disturb the parties' tentative agreement on the union reimbursement issue, the City withdraws the above proposal and is willing to accept their tentative pact on the secondary employment issue as well.

Union Position. The Lodge notes that the parties have long agreed by contract that the City can restrict secondary employment "for good cause." It points out as well that the City attempted to obtain from Arbitrator Roumell in 1992 what it is seeking in these proceedings --- the avoidance of liability concerning officers' secondary employment activities.⁴⁰ Roumell rejected that proposed change to the status quo, the Lodge explains, due to the longstanding history of the existing contract language, the lack

of internal comparability, and the apparent willingness of the City to reach agreement on other issues in the absence of any concessions from the Lodge on the secondary employment issue. The Lodge urges the Board to reject the City's current proposal for the same reasons.

Discussion. The Board is mindful of the fact that the parties reached a provisional meeting of the minds on this issue, subject of course to ratification by the bargaining unit. Both the Lodge and the City have expressed a willingness to adhere to that tentative pact, except that the City's offer to do so is predicated upon the Board's acceptance of its position on the union reimbursement issue.

We have reviewed the parties' tentative pact on secondary employment, and believe that it sufficiently balances their respective interests. Under its terms, police officers are free to engage in secondary employment unless the Department "has reasonable cause to believe" that the number of hours they spend doing so adversely affects their performance as police officers. We also note that in its most recent negotiations with the Captains, Sergeants and Lieutenants units, the City has not insisted on the language it proposes here. Accordingly, the Board accepts the position of the Lodge on the secondary employment issue, thereby maintaining the status quo.

WAGE LIENS

The parties have a colorful background on this issue. According to §18.2 of the current Agreement, officers receive "full pay and benefits" for twelve (12) months if they are absent from work due to an illness or injury that did not occur while they were on

⁴⁰ City of Chicago and Fraternal Order of Police, Lodge 7 (Roumell, 1993), 62-65.

duty. In 1997, the City began attaching “liens” against settlements police officers might receive from third parties (e.g., insurance companies, parties responsible for officers’ injuries). Lodge Attorney Tom Pleines alerted the bargaining unit to that development and urged them to consult with legal counsel if it affected them. Several did just that, with the result being lawsuits protesting City-initiated liens against their personal injury settlements. The parties discussed the issue at the bargaining table and, during the pendency of those negotiations, the City terminated all of its wage lien actions.

City Position. The City asserts that the wage lien issue was part of the parties’ union reimbursement - secondary employment - wage lien “mini-deal.” It remains willing to adhere to that compromise and advance no wage lien proposal; however, if the Board does not embrace that three-issue package in its entirety, the City proposes contract language supporting its right to impose salary liens under the circumstances described above. The City adds that between 1996 and 2001 it paid nearly \$7.5 million in wages to officers who also recovered lost wages from third parties. Thus, the City argues, its withdrawal of the wage lien proposal during negotiations represented a significant compromise.

Union Position. The Lodge strenuously asserts that the City’s resurrection of this issue in interest arbitration is inappropriate. After all, it notes, the City voluntarily abandoned its previous attempts to recover wage payments from officers who prevail in actions against third parties responsible for their off-duty illnesses or injuries. The Lodge points out as well that Chicago firefighters are not subject to a contractual wage lien provision. Accordingly, the Lodge asserts, the City’s proposal on this issue should fall.

Discussion. The Board agrees with the Lodge on this issue. While we understand the City's desire to preserve budgetary dollars responsibly, we are also influenced by the fact that the City voluntarily withdrew its wage lien proposal during negotiations leading to the Tentative Agreement. We also find no compelling reason to dismantle the parity which now exists between the FOP and IAFF units on this issue, though we acknowledge that the much smaller Lieutenants and Sergeants units have accepted wage lien provisions. Overall, though, the Board wishes to uphold the multi-issue balance that the Tentative Agreement represents. We find no justification to disturb that balance by surgically altering one part of it. The Board therefore retains the status quo on the wage lien issue.

VIDEOTAPING OF POLICE BOARD HEARINGS

The Police Board is a nine-member, independent civilian oversight panel charged with reviewing police officer terminations and suspensions of six days or more. For suspensions of between six and thirty days, it determines whether to reverse, uphold or modify such penalties, based solely on review of case documentation. Suspensions of greater than thirty days and terminations are placed before a hearing officer in an adversarial setting. The Police Board then meets with the hearing officer, who summarizes various elements of the matter for them. Following that meeting, the Police Board reviews the hearing transcript and the officer's Complaint Record (CR) file, then renders a decision. Such decisions may be appealed to the Cook County Circuit Court.

As part of the Tentative Agreement, and in response to the Lodge's concern that Police Board members should observe actual witness demeanor, the City agreed in side

letter format to videotape the hearings and require them to review the taped witness testimony prior to participating in any disciplinary recommendation or action.

City Position. The City argues that its willingness to videotape disciplinary hearings and require Police Board members to review the resulting tapes represented the first time ever that it has stepped into internal Police Board operating procedures. It asserts that it did so reluctantly, and in an effort to secure FOP members' support for the Tentative Agreement in its entirety. Thus, the City explains, its willingness to abide by the side letter is contingent upon whether the Tentative Agreement remains unaltered in these proceedings.

Union Position. The Lodge believes that the parties' side letter on the videotaping issue should be upheld. It notes that unlike its suburban counterparts, the City of Chicago Police Board does not conduct actual disciplinary or discharge hearings. Rather, its members review case materials (transcripts, etc.) on their own time, after working at their primary jobs. And for the years 1997-1999, the Lodge notes, the Police Board reviewed 517 cases. At that rate its members were required to review one set of case materials every other day. The Lodge notes that Police Board members have no formal training or background in employee discipline, and that they essentially volunteer their time. Accordingly, the Lodge asserts, requiring Police Board members to view videotapes of the actual disciplinary hearings constitutes a step toward enabling them to make credibility determinations.

Discussion. The parties' tentative agreement on this issue strongly suggests that the adoption of its elements here would not be inordinately burdensome on the City. We recognize that the videotaping of the disciplinary hearings at issue represents a significant

procedural change. Moreover, the requirement that Police Board members must watch the videotapes prior to participating in related disciplinary recommendations or actions constitutes a material addition to the heavy workload they already carry. But the Lodge has successfully impressed upon us --- and apparently upon City negotiators as well --- how important this due process enhancement is to its members. We agree that the changes embodied in the parties' Tentative Agreement would bolster the Police Board's ability to make informed decisions, and that they would enhance for members of the FOP unit the credibility of the Police Board review process. Accordingly, we adopt the provisions of the parties' Tentative Agreement on this issue.

PROMOTIONAL EXAMINATIONS

Since there are four police bargaining units in the City of Chicago, promotion across unit lines (e.g., from patrol officer to Sergeant) is not a mandatory subject of bargaining. Thus, this issue concerns only examinations for promotion from D-1 to D-2 positions and from D-2 to D-2A positions. Moreover, with the exception of a reference to breaking ties by seniority, the parties' 1995-1999 contract contains no language governing promotional exams.

As part of the Tentative Agreement the parties reached an accord on the following points (1) the City would provide the Lodge with copies of Department-level directives announcing the appointment and selection process for the positions in question; (2) the City would provide the Lodge with sixty days' notice prior to administering D-2A examinations; (3) the City would furnish D-2A position applicants with copies of their own answer sheets and give them opportunity to review and challenge the qualifying test;

and (4) the City would give the Lodge copies of the promotional examination, the answer key, and a list of the successful applicants.

City Position. The City emphasizes that it remains willing to adhere to the parties' tentative bargain on this issue, but underscores the fact that it was part of their overall package resolution of all disputed items. The City also notes that its willingness to accede to the Lodge's interests on this issue reflects a compromise on its part.

Union Position. The Lodge strongly encourages the Board to adopt the Tentative Agreement on the promotional examination issue. It asserts that the information sought in its proposal is necessary to carry out its role as representative of the bargaining unit. Moreover, the Lodge notes, the City has long provided similar information to its firefighters, and there is no reason not to do so for the FOP bargaining unit.

Discussion. Fairness and objectivity in the promotional examination process is a fundamental element of sound human resource administration. Both parties recognize the importance of that principle, and the provisions of their Tentative Agreement on this issue reflect that recognition. The Board trusts that when the parties' crafted the language the Lodge proposes here they did so very carefully, to ensure that it only encompasses information the City can reasonably provide at the times specified therein. In addition, we note that the proposed language was an element of the parties' overall Tentative Agreement on all issues in dispute, and we find no compelling reason in the evidence concerning this issue to deviate from that comprehensive pact. The Board therefore adopts the parties' Tentative Agreement on the promotional examination issue.

MEDICAL RECURRENCE RESTRICTIONS

There are times when police officers injured on duty (IOD) suffer “recurrences” or “flare ups” of past IOD injuries. Disputes often arise between the Department and such officers as to whether their current symptoms are really recurrences of former IOD injuries, or whether they are related to new, non-IOD injuries not covered by the IOD policy. Appendix N of the parties’ 1995-1999 contract sets forth a mechanism for resolving such disputes.

Pursuant to the terms of Appendix N, officers claiming a medical recurrence are evaluated by a Medical Services Section (MSS) physician. If the MSS doctor concludes the current symptoms are not related to a former IOD injury as claimed, affected officers may obtain an opinion from another doctor --- a referral physician selected by them from a group of three identified by the Department. Where possible, one of the three is the doctor who originally treated the officer for the original IOD injury. When either the officer or the Department disagrees with the referral physician, they may seek a second opinion; if the disagreement continues, yet a third referral physician’s opinion may be obtained. The Department and the involved police officer are bound by the majority opinion of the three reviewing physicians (i.e., two out of the three).

City Position. The City argues that approximately ten percent of the five hundred medical recurrence claims received annually by DSS physicians lack merit, frequently because the symptoms cited are not related to the body part originally injured, or they arise after a long period of time has passed from the date of the original injury. Accordingly, the City asserts, Appendix N should be modified to exclude (1) claims relating to a part of the body not involved in the original IOD, and (2) claims submitted

more than three years after the original IOD, or more than two years after the date of the last medical treatment for it, whichever is later.

The City notes that two recent grievance arbitration awards contain support for the reasoning behind its proposal.⁴¹ It also cites the testimony of Department physician Kathryn Pajak, M.D., highlighting the fact that she has reversed recurrence claim denials when affected officers have provided documentation to demonstrate that their current symptoms were legitimate medical recurrences.

The City acknowledges that during negotiations leading to the Tentative Agreement it withdrew a proposal identical to the one it advances in these proceedings. Still, the City argues, the proposal is more than reasonable and should be embraced by the Board if the Tentative Agreement is otherwise modified.

Union Position. The Lodge argues that the City's proposal would unreasonably subject officers' on duty injuries to a fixed three-year closure date. Doing so reflects little respect for the physical risks City of Chicago police officers take daily in their efforts to protect its citizens. Moreover, the Lodge maintains, Dr. Pajak acknowledged in her testimony that she might err in making judgments about whether current symptoms constitute a medical recurrence. She surmised that under such circumstances affected police officers could still seek care through "private insurance." The Lodge believes that placing final authority for such decisions in the hands of just one doctor --- one on the City's payroll --- is patently unfair. It notes as well that Chicago police officers are not covered by the same workers' compensation statutes as their counterparts in other Illinois

⁴¹ Fraternal Order of Police, Lodge No. 7 and City of Chicago, Gr. No. 123-99-065/444 (Feuille, 2001), and City of Chicago and Fraternal Order of Police, Lodge No. 7, Gr. No. 129-00-086 (Hill, 2001). Both of those awards restricted medical recurrence claims to body parts affected by the original IOD injuries.

jurisdictions. Overall, the Lodge asserts, the City's medical occurrence proposal is arbitrary and unfair.

Discussion. The Board notes that Appendix N is a relatively recent addition to the parties' negotiated agreement. In fact, it first appeared in the 1995-1999 contract. The Appendix was developed by the parties to reduce the number of grievances arising from denials of medical recurrence claims, and we find no evidence in the record to suggest that it has not done so.

The Board is also mindful of the fact that Chicago police officers do not qualify for workers' compensation benefits. They are completely dependent upon the City for the cost of their on the job injuries and illnesses. In the face of such circumstances, and absent evidence of a compelling need to place a fixed duration on the time during which medical recurrence claims can be considered, the Board sees no reason to change the status quo. Likewise, we find no justification to amend Appendix N's negotiated provisions with a specification that a medical recurrence claim must relate to the same body part injured in the original IOD. Reviewing physicians under the present language of the Appendix have the flexibility to conclude that since a recurrence claim is unrelated physically to an original IOD injury, it should not be considered valid.

Finally, the Board underscores the fact that revisions to the parties' negotiated medical recurrence mechanism were not a part of their Tentative Agreement. Consistent with our previously described general perspective on that subject, we do not believe it would be appropriate to resurrect the City's medical recurrence proposal and adopt it through the interest arbitration process.

ADDING ADDITIONAL POSITIONS TO SECTION 8.7

The City agreed during negotiations leading to the parties' 1995-1999 contract that it would not eliminate from its budget the ranks of Detective, Youth Officer or Gang Crime Specialist. That agreement is memorialized in the second paragraph of Agreement Section 8.7. As part of the successor Tentative Agreement, and stemming from a Lodge proposal, the parties added to that paragraph the ranks of Evidence Technician, Police Laboratory Technician, Forensic Investigator and Field Training Officer.

City Position. The City maintains that securing §8.7 protection for a broader scope of classifications was a significant goal for the Lodge and a major element of its overall desire to enhance job security in the bargaining unit. The City further asserts that it conceded to the Lodge's proposal on this issue in order to secure its support for the entire Tentative Agreement. Thus, the City argues, the classifications should only be added to §8.7 if the Tentative Agreement is wholly adopted by the Board.

Union Position. The Lodge believes that the parties' placement of four additional classifications to the second paragraph of §8.7 should be honored by the Board and incorporated into the current Agreement's successor.

Discussion. Job security is a very important issue, especially in economically troubled times such as these, when layoffs abound in the greater Chicago area. The City's acceptance of the Lodge's proposal to guarantee the future existence of four additional classifications under §8.7 is therefore quite meaningful. The fact that the City did so willingly, fully mindful of the potential budgetary and managerial consequences, bolsters even more the notion that the individual elements of the Tentative Agreement are interconnected.

The Board finds no reason in the record to deviate from the parties' meeting of the minds on this issue. Accordingly, we approve the addition of the Evidence Technician, Police Laboratory Technician, Forensic Investigator and Field Training Officer positions to the second paragraph of §8.7.

REMOVAL FROM D-2 POSITIONS FOR JUST CAUSE

This issue relates to the first paragraph of §8.7, which states:

The Employer agrees not to remove officers in the positions of Detective, Youth Officer, or Gang Crime Specialist except for just cause.

During negotiations for the successor to the parties' current Agreement they disagreed as to the meaning of the above provision. The Lodge took the position that the listing of the three specific positions was not intended to exclude other D-2 job titles from the protective mantle of the just cause standard. The Department argued that just cause was not the appropriate standard of review in all cases where it contemplated removing or demoting an officer from a D-2 position. It asserted as well that such demotion or removal could be justified for non-disciplinary reasons (i.e., where the Department demonstrates that an individual officer is unable or unwilling to satisfy the reasonable requirements of the D-2 position). The parties executed a November 8, 2000 side letter setting forth those positions, and indicating that in the event the Department should seek to demote or remove an officer from a D-2 position other than Detective, Youth Officer, or Gang Crime Specialist, each of them reserved the right to argue "whether just cause is the appropriate standard" of reviewing such departmental actions. That side letter was included in the comprehensive Tentative Agreement.

City Position. The City believes that the November 8, 2000 side letter minimizes any ambiguity created by the tentative agreement for §8.7 and reserves to each party the right to assert their respective positions on the appropriateness of using the just cause standard in removal or demotion actions involving D-2 positions. It asserts that given the increased number of positions the parties added to the D-2 pay scale, the “insurance policy” of the side letter was especially important to the Lodge. The City therefore argues that the side letter was a concession it made to the Lodge, as part of the overall Tentative Agreement. The City urges the Board not to include the side letter in its Award unless the entire Tentative Agreement is retained.

Union Position. The Lodge believes the side letter should be adopted by the Board, as it clarifies the parties’ positions concerning the appropriate review standard to be used in case the Department decides to remove or demote an officer from a D-2 position.

Discussion. The Board sees merit to adopting the side letter, in that it clarifies the parties’ respective interpretations of §8.7 and preserves for each the right to argue whether the positions added to the D-2 pay level but not listed in that Section are also protected by its terms. We are also influenced by the parties’ inclusion of the side letter in their Tentative Agreement, and find no reason to excise it from the overall balance of give-and-take that Agreement represents.

SECTIONS 23.8 AND 23.9

As part of the Tentative Agreement the parties agreed to a complex set of changes to contract Sections 23.8 and 23.9. They are quoted below:

Section 23.8 – Filling Recognized Vacancies.

This Section shall apply only to the following: ~~Data Center Network Control Unit~~; Public Transportation Section including the Public Transportation Canine Unit, Public Housing Sections North and South, the Special Activity Section, Traffic Section/Detail Unit, Traffic Enforcement Unit, Traffic Court/Records Unit, Traffic Safety & Training Unit, Major Accident Investigation Unit, Loop Traffic, District Law Enforcement, Airport Law Enforcement North and South, ~~Traffic Records Section~~, ~~Traffic Court Section~~, ~~Traffic Enforcement Section~~, ~~Traffic Safety Section~~, ~~Major Traffic Investigation~~, ~~Loop Intersection Control Unit~~, Mounted Unit, Marine Unit, Gun Registration Section, Records Inquiry Section, Field Inquiry Section, Evidence & Recovered Property Section, Police Document Services Section, Central Detention Section, Auto Pound Section (D-1 Officers), electronics and Motor Maintenance Division (D-1 Officers), Office of Emergency Communications and Motor Maintenance Division (D-1 Officers), Office of Emergency Communications (excluding the Alternate Response Section), Area Criminal Investigations, ~~Youth Division~~ Missing Persons Section, ~~Youth Division~~ Juvenile Court Liaison Section, School Patrol Unit and ~~Youth Division~~ Investigation Group Areas (excluding Youth Division Investigation Group Administration), Auto Theft Section, Bomb and Arson Section (except bomb technicians), excluding the immediate staff of each exempt commanding officer not to exceed two (2) staff members.

(No change to paragraphs two, three, four, five of this Section)

Upon the effective date of this Agreement, an exception to the above paragraph will apply to Airport Law Enforcement North and South, the School Patrol Unit, and the Traffic Section/Detail Unit, 33% of all recognized vacancies in each of these units occurring after the ratification of the contract through June 30, 2003 shall be filled by bid.

Bidding procedures will be done in conformance with the Memorandum of Understanding in this Agreement. The successful bidder may not bid for another recognized vacancy for one (1) year unless reassigned by the Employer during that year. A successful bidder may not be reassigned ~~for one (1) year~~, except for (1) emergencies for the duration of the emergency, (2) for just cause or (3) where the Superintendent determines that the officer's continued assignment would interfere with the officer's effectiveness in that assignment. When there are no qualified bidders, the Employer may fill the recognized vacancy within its discretion.⁴²

⁴² City Exhibit 189. Strike throughs represent deleted language; underlined language is new.

Section 23.9 – Filling Unit Duty Assignments

This Section shall apply only to the following jobs within the units set forth in Section 23.8: Warrant Clerk, summary Investigation Detective, Review Investigation Detective, Review Officers, Detective Division Administrative Desk Duty Assignment, Area Youth Investigations Administrative Desk Duty Assignments (limited to one bid position each for the second and third watch in each area); and District Desk, District Watch Relief, Lockup, or Airport Law Enforcement Section Explosive Detection Canine Officer only as specifically set forth below. The Employer agrees not to eliminate any Unit Duty Assignments listed in this Section for the duration of this contract.

An opening in a unit duty assignment for purposes of this Section (“recognized opening”) exists when an officer performing the above unit duty assignments is to be transferred, resigns, retires, dies, is discharged, when there are new unit duty assignments created, or when the Department increases the number of employees in a unit, except for details for not more than three (3) months. An officer’s assignment to a detail shall not be rolled over solely for the purpose of avoiding the effect of this Section.

The Employer shall determine at any time before said opening is filled whether or not a recognized opening shall be filled. If the Employer decides to fill a recognized opening utilizing Section 18.4, the Employer must provide the Lodge with the name of the limited duty officer within ten (10) days of filling the recognized opening. If and when the Employer determines to fill a recognized opening other than utilizing Section 18.4, this Section shall apply. Further, there is nor recognized opening created as a result of emergencies, or when an officer is removed for disciplinary reasons for up to thirty (30) days. When an officer is removed for disciplinary reasons for more than thirty (30) days or when an officer is relieved of his/her police powers for more than ninety (90) days for reasons other than placement on the medical roll, a recognized opening is created.

In the event a recognized opening is to be bid under this Section, ~~the~~ The Employer shall post within the unit on the first Wednesday of the next police period a list of recognized openings therein, if any, stating the requirements needed to fill the opening, ~~at least twelve (12) days before the start of the 28 day police period.~~ This list will remain posted for seven (7) calendar days. A copy of such postings shall be given to the Lodge at the time of the bid posting. Non-probationary officers within the same unit and within the same D-1 salary grade ~~or, D-2 or D-2A~~ job classification, ~~within 72 hours of the time the list has been posted,~~ may bid on a recognized opening in writing on a form to be supplied by the

Employer. One copy of the bid shall be presented to the Employer, one copy shall be forwarded to the Lodge; and one copy shall be retained by the officer.

The Employer shall respond to the successful bidder and the Lodge no later than three (3) days prior to the change day for the new 28-day police period. During the bidding and selection process, the Employer may temporarily fill a recognized opening by assigning an officer to said opening until the recognized opening is filled by bid; however, the Employer may not assign officers to a vacated position to avoid bidding the recognized opening.

An eligible bidder shall be an officer who is able to perform in the recognized opening to the satisfaction of the Employer after orientation. The Employer shall select the most senior qualified bidder when the qualifications of the officers involved are equal. In determining qualifications, the Employer shall not be arbitrary or capricious, but shall consider training, education, experience, skills, ability, demeanor and performance.

The successful bidder may not bid for another recognized duty assignment opening for one (1) police period year (sic). A successful bidder may not be reassigned ~~for one (1) year~~, except for (1) emergencies for the duration of the emergency, (2) for just cause, (3) where the Superintendent determines that the officer's continued assignment would interfere with the officer's effectiveness in that assignment, or (4) temporary unit duty assignments for operational needs, provided the Employer shall not fill the vacated unit duty assignment. When there are no qualified bidders, the Employer may fill the recognized opening within its discretion. Unit duty assignments in District Desk, District Watch Relief, or Lock-up shall be treated in accordance with this Section 23.9 in all respects except the following: (1) only non-probationary officers within the same watch and with⁹in the same D-1 salary grade shall be eligible to bid for recognized openings in such assignments.

The District Watch Secretary position may be filled at the Employer's discretion. These positions are limited to one (1) position per watch in each district. If the Employer decides to fill the District Watch Secretary position, the daily unit duty assignment sheets will identify the officer assigned to the District Watch Secretary position. The duties and responsibilities of the District Watch Secretary are to be determined by the Employer provided that the lockup, review and the desk officer bid positions as set forth in the Agreement shall be filled by either the bid officer or district watch relief personnel prior to filling these positions with the district Watch Secretary.

City Position. In response to the Lodge's concern for various seniority rights, the City asserts, and in exchange for its own furlough by watch proposal, the City agreed to the foregoing amendments to Sections 23.8 and 23.9. Also in exchange for furlough by watch, the City adds, it agreed to the Lodge's suggested changes regarding Alternate Response Section Bidding (i.e., §31.2) and a Memorandum of Understanding that altogether increased bidding rights for the Traffic, Airport Law Enforcement and School Patrol Units; increased bidding rights to recognized vacancies in Unit Duty Assignments; extended bidding rights to the Alternate Response Section; and extended bidding rights to at least seventy-five additional District Desk, District Lockup and District Watch Relief positions. The City remained willing to comply with those many compromises, it asserts, until the Lodge submitted the furlough by watch issue to interest arbitration. The City urges the Board to adopt those complicated, highly-calibrated seniority provisions if, and only if, it adopts furlough by watch.

Union Position. The Lodge agrees that Sections 23.8 and 23.9 contain comprehensive, detailed and intricate provisions about the filling of recognized vacancies and unit duty assignments. Moreover, the Lodge adds, they affect the bidding rights of patrol officers and the operational needs of the Department. It believes that the parties' tentative agreements on such complex issues should not be altered without extensive testimony, explanation and discussion, because doing so could result in inadvertent yet significant operational problems for the Department and could damage officers' rights. The Lodge further notes that there is absolutely no testimony in the record as to why the parties included or excluded certain positions, the percentage of positions available and not available for bid, the timing and procedures associated with bidding, or any other

aspect of the process. The Lodge therefore proposes that the parties' tentative agreements on Sections 23.8 and 23.9 be adopted by the Board in their entirety.

Discussion. It is clear from the surgical precision with which they added and deleted language from Sections §23.8 and §23.9 that the parties reached a finite and solid meeting of the minds about the cornucopia of matters those Sections contain. Without sufficient evidence as to the reasoning behind those amendments, the delicate balance they represent should not be disturbed in a third-party process such as this one. The Board has no such evidence at its disposal. We therefore adopt the parties' tentative agreements concerning Sections 23.8 and 23.9. The question of whether they were part of a trade off for furlough by watch will be evaluated in the "Discussion" section to follow.

FURLOUGH BY WATCH

Chicago police officers bid for watch assignments. The first watch ("midnights") begins at midnight and ends at 8:00 a.m. The second and most preferred watch ("days") starts at 8:00 a.m. and lasts until 4:00 p.m. The third watch ("afternoons") runs from 4:00 p.m. to midnight. According to §31.3 of the current Agreement, 80% of the positions on each watch shall be selected by seniority. More specifically, the biddable opening on each watch is awarded to "the most senior qualified bidder within that district or unit who has the present ability to perform all of the available duties to the reasonable satisfaction of the Employer." While such a provision rewards service to the Department by granting senior qualified officers opportunity to obtain what they consider desirable watch assignments, it also creates a seniority imbalance on certain watches. And, as both

parties acknowledge, the current seniority distribution across watches raises very serious operational concerns. A recent Department survey identified the problem more specifically. The City described it as follows:

In May 2001, a snapshot of the watches in each district showed that 64% of the third watches (16 out of 25) had 50% or more manpower with 1-5 years of experience. On the first watches, 68% (17 out of 25) had 50% or more manpower with 1-5 years of experience. When these percentages are recalculated with a benchmark of 1-10 years of experience, 84% of the third watches (21 out of 25) and 80% of the first watches (20 out of 25) had 60% or more manpower with under 10 years of experience. Finally, a review of the City's seniority data for each district illustrates that all of the third and first watches are imbalanced compared to the second watches. As a result of these demographics, inexperienced officers are regularly paired with equally inexperienced officers on the third and first watches.⁴³

The problem is exacerbated by furloughs (i.e., vacations) during the summer months. Under the current system of steady watch with furlough by unit, officers first bid for furloughs, then for watches. Typically, senior officers obtain furloughs during peak vacation periods (i.e., the summer months and/or winter holiday). They later characteristically bid onto the second watch (i.e., the day shift). During peak furlough months the second watch suffers related manpower shortages --- a vacancy rate of approximately twenty percent. Those posted vacancies are filled by senior officers from the first and third watches, thereby rendering the seniority imbalance even more acute. If concomitant staffing shortages occur on the first and third watches, they are "backfilled" by inexperienced officers from the second watch on the basis of an inverse seniority principle. That exacerbates the seniority imbalance even more.

City Position. The City notes that furlough by watch is an element of the parties' Tentative Agreement, and that it made many seniority-based concessions to the Lodge in

exchange for it. The City further asserts that adopting it in these proceedings would not depart from the parties' negotiation history; that is, it would not change a voluntarily adopted system because the current one was imposed by Arbitrator Roumell in his 1993 interest arbitration award. The City maintains as well that the parties thoroughly analyzed this issue at the bargaining table, with both teams concluding that furlough by watch was the only acceptable solution to the experience mix problem. They rejected such alternatives as a shift differential and a City-wide ten-hour watch, for example. Moreover, the City emphasizes, it conceded to all of the Lodge's seniority proposals as a *quid pro quo* for a furlough by watch system. Finally, the City argues that the passage of time since the Tentative Agreement was reached has made it impractical to implement furlough by watch experimentally, and that it should become a permanent part of the parties' new contract.

Union Position. The Lodge believes that the City's real concern is not the seniority imbalance across watches, but its aim to ease the administrative and operational burdens associated with the current method of furlough selection. Moreover, the Lodge notes, why would an officer be willing to work 92% of the year on midnights, just for the opportunity to vacation the remaining 8% at a more attractive time? The Lodge believes there is little logic to the City's proposal, and asserts that it will not solve the seniority imbalance problem. Moreover, the Lodge notes, even senior officers in the Second District (one of the least desirable) selected first watch assignments. Under the current system they did so not to exercise a furlough preference, but for other reasons --- family needs, school needs, or even a simple preference for working those hours.

⁴³ City's post hearing brief, 54-55.

The Lodge points out that at the bargaining table the parties discussed well over thirty potential solutions to the Department's seniority imbalance problem. Among them were (1) wait it out --- the passage of time will age the Department's police officer workforce; (2) use management's 20% more effectively to move experienced officers to the first and third watches; (3) eliminate the recently imposed mandatory 63-year-old retirement age; (4) establish a shift differential as an incentive for senior officers to bid to the first and third watches; and (5) adopt an alternative work schedule.

The Lodge urges the Board to deny the City's proposed breakthrough on furlough by watch and maintain the contractual status quo. And, the Lodge adds, should the Board decide to modify the status quo, such modification should be implemented on an experimental basis, consistent with the provisions of the Tentative Agreement.

Discussion. It is not often in interest arbitration that both parties acknowledge the existence of operational problems associated with a current contract provision. Here, though they differ somewhat about how meaningful the seniority imbalance issue really is, both the Lodge and the City make no bones about the fact that it needs to be remedied.

Unfortunately, the Department's experience mix dilemma has ramifications far beyond those associated with the administrative burdens of the current furlough selection system. Indeed, in recent years it has become the subject of public scrutiny. Whenever a Chicago police officer is involved in a shooting, for example, especially in what are considered dangerous police districts, media attention has often focused on the officer's experience level --- especially if he or she happens to be a rookie. We understand that concern. The citizens of Chicago have a vested interest in the implementation of an

appropriate mix of experience on each watch across the 25 police districts. In deciding this issue the Board is especially mindful of that interest.

That is not to say that some of the alternatives set forth by the Lodge in these proceedings would be any less effective than furlough by watch as a remedy to the experience mix problem. The record suggests there may be several ways to address it. But the Board underscores the fact that the parties themselves considered all of those alternatives --- more than thirty of them. They began with the Seniority Subcommittee, which determined that furlough by watch was the least onerous of all the options. It was then evaluated and agreed to by the Core Group, and finally approved by the full negotiation teams. The Lodge even polled its membership before embracing the option at the bargaining table.⁴⁴ Under such intense, informed scrutiny the parties chose to implement a furlough by watch system. Obviously, then, that outcome is an accurate approximation of what the parties would agree to in free collective bargaining.

The Board has also concluded from the record that the City secured the Lodge's agreement to the furlough by watch system in exchange for making numerous seniority-based tradeoffs. Indeed, Lodge leadership acknowledged those tradeoffs in a written response to a so-called "Frequently Asked Question" in the December, 2000 issue of its

FOP News:

- Q. Please explain the Furlough By Watch proposal and how it came about. Was this part of the survey I saw a while ago?
- A. The contract will provide that furloughs for 2002 and 2003 will be selected by watch. At negotiations this was identified by the City as their number one operational proposal. In fact, the FOP was able to attain agreement on all the other seniority issues in

⁴⁴ The survey revealed that furlough by watch was supported overwhelmingly by officers with 1-10 years experience --- a group which composes approximately 60% of the bargaining unit.

exchange for this one City proposal. The Lodge received increases in bid jobs; a guarantee of bid assignments to School Patrol; Detail Unit, Midway & O'Hare; steady watch selection for the ARP unit, etc. . . .

The Board has also considered the Lodge's argument that the City had a hidden agenda behind its furlough by watch proposal --- simply to ease the administrative burdens associated with the current system. We find from the record that the City made no attempt to mask that objective at the bargaining table, and conclude that if watch assignments become more steady on account of furlough by watch, FOP members might enjoy a benefit some of them did not anticipate. At the very least, furlough by watch should alleviate some of the operational burden caused by the experience mix problem that compound during peak furlough seasons.

We note from the record that furlough by watch is characteristic of all major U.S. cities using a steady watch approach to staffing. It is common across Illinois municipalities as well. The Board also recognizes that furlough by watch was essentially the parties' "best guess" as to which of many options might minimize the Department's experience mix dilemma. For that reason, and consistent with the Tentative Agreement, we do not think it should be institutionalized permanently through interest arbitration. Accordingly, we adopt the parties' own tentative accord on the furlough by watch issue -- - complete with its provision (1) to establish a joint committee to evaluate how the mechanism works and decide whether it should be continued; and (2) to employ expedited interest arbitration to resolve any impasse the joint committee might reach concerning how furloughs should be selected in the future. Given the passage of time since that tentative agreement was entered into by the parties, the dates they specified

therein now need revision. The Board directs the parties to make the appropriate date changes to the "Addendum Regarding Furlough by Watch," such that it is implemented for calendar years 2003 and 2004.

RETENTION AND USE OF "NOT SUSTAINED" FILES

The vast majority of Chicago police officers do not engage in behavior that should subject them to discipline. Many of those who are disciplined legitimately learn from that experience and shape their future conduct to avoid being disciplined again. That is the aim of the "corrective" discipline to which both parties subscribe. A small collection of Chicago police officers who are appropriately disciplined do not reap any educational benefit from it. Their continued misconduct leads in stepwise fashion to the most ultimate and progressive form of employee discipline --- discharge.

It is also important to recognize that in any employee discipline system there are those who are wrongly accused by employers. Still others receive penalties more severe than their offenses justify. Given the size and complexity of the Chicago Police Department, both of those phenomena are bound to occur.

To deal with all of the above disciplinary considerations the parties have worked out an elaborate, extremely complicated disciplinary system. It has several objectives, not the least of which is to ensure that Chicago citizens are treated fairly and respectfully by their police force. The system is also designed to protect the vast majority of Chicago police officers from the negative impact of the few within their ranks who might be called "habitual violators" of the Department's rules and regulations.

The current disciplinary process begins with the filing of a complaint. Complaints can be lodged by a citizen, a supervisor, or a fellow officer against officers of any rank or even against civilian employees. They are initially registered with the Office of Professional Standards (OPS), which assigns a Complaint Register (CR) number to each. Complaints which allege an officer (1) used excessive force, (2) engaged in domestic violence, (3) caused injuries with a weapon, or (4) was connected to a death in custody, are retained by OPS and investigated by its own staff of civilian investigators. All other allegations are sent to the Internal Affairs Division (IAD).

During either an OPS or an IAD investigation, evidence is gathered and witnesses are interviewed. The accused officer then has the opportunity, with an advocate present (i.e., a private attorney or a Lodge representative), to respond to the allegations. At the conclusion of the investigatory process the investigator recommends one of the following four findings: (1) sustained – a Department rule was violated by the accused officer; (2) not sustained – the facts neither prove nor disprove the allegation; (3) unfounded – the alleged behavior did not occur; or (4) exonerated – the alleged behavior occurred, but the accused officer’s conduct was proper under the circumstances. This issue concerns the retention and use complaints which are “not sustained.”

City Position. The City argues that high-profile officer misconduct incidents in recent years have generated pressure for reforming the disciplinary system. It notes that public outrage over such incidents has been compounded by the perception that officers were not being disciplined for their misconduct. The City believes its current disciplinary system is flawed because “not sustained” complaints cannot be considered in new investigations, even if they might suggest a pattern of inappropriate conduct. The City is

also concerned that a failure to institute disciplinary reform measures might encourage federal intervention. Indeed, notes the City, one of the reasons the Justice Department has relied upon for obtaining comprehensive consent decrees against certain cities is a policy of not considering an officer's prior complaint history when investigating allegations of excessive force.⁴⁵

The City underscores the parties' own accord in the Tentative Agreement regarding "not sustained" complaints, adding that it was part of a comprehensive, bargained-for exchange. Consistent with that resolution, the City proposes that "not sustained" criminal and use of force CR files should be retained and used for notice purposes. The City proposes as well that such files should be used to assess credibility and to determine the appropriate level of disciplinary action in subsequent proceedings, because they may mirror a pattern of conduct that needs to be corrected. Moreover, the City notes, appropriate protections against managerial misuse of such information is built into the Tentative Agreement and into the parties' November 14, 2000 side letter restricting the retention and use of "not sustained" files.

Union Position. The Lodge acknowledges that the Department has been under external pressure to reform its disciplinary system. It also emphasizes, however, that police officers understand and are conditioned to the maxim that prior arrests cannot be used to obtain a criminal conviction. The conflict between that tenet of fairness and what the City proposes is obvious, the Lodge emphatically declares. In addition, the Lodge

⁴⁵ Consent decrees have been issued in Los Angeles, California; Pittsburgh, Pennsylvania; Steubenville, Ohio; and Washington, D.C. By the end of 2000 the Justice Department had initiated formal investigations in fourteen municipalities, and had conducted informal ones in at least sixty-eight other jurisdictions.

argues, the Department has a history of stamping files “not sustained” when the evidence called for “unfounded” or “exonerated” findings.

The Lodge also highlights another dilemma faced by Chicago police officers. They are directed to rid the City of the criminal element --- especially gangs and drug traffickers --- while at the same time the public is being encouraged to file with the Department any complaints they may have against the police. The potential for false complaints under those conflicting influences is enormous, the Lodge posits. Easily, for example, gang members could file multiple false excessive force claims against a particular officer, the result of which would be a pattern of “not sustained” CR cases.

Citing the Los Angeles Police Department’s experience with using a system similar in some respects to what the City proposes here, the Lodge notes that it will likely have a very negative effect on police officer morale. The Lodge also points to the absurdity of keeping “not sustained” CR files for seven years under the City’s proposal -- - two years longer than sustained CR files are retained. And with regard to the internal protective service bargaining units, the Lodge highlights the fact that the City did not secure a similar provision in negotiations with the Sergeants, Lieutenants or Captains. If it is such an important issue, the Lodge protests, why were supervisors and command staff omitted?

The Lodge urges the Board to reject the use of “not sustained” complaints in determining the appropriateness of disciplinary action. As for the “notice” aspect of retaining them, it believes there would be little harm in the Department’s using them to demonstrate that an officer had been advised of, say, a particular Department rule. And as for credibility, the Lodge believes “not sustained” CR files should be used to help

make such determinations only if appropriate procedural safeguards (i.e., those contained in the parties' November 14, 2000 side letter) are established.

Discussion. It is abundantly clear from the record that the Department's current disciplinary system is in need of reform. Understandably, negotiators from both sides felt considerable public pressure to make it better able to identify police officers guilty of criminal conduct and/or use of excessive force. And such pressure has focused quite specifically on the "not sustained" CR issue in dispute here. The following excerpt from a February 16, 2000 *Chicago Tribune* article is illustrative:

Cop's File Thick With Brutality Reports - Dozens of Complaints Lodged Over 15 Years

....

Faced with the first reports of Hayes' background roughly a year ago, (Police Superintendent) Hillard promised to change the department's disciplinary system. Yet nothing substantive appears to have been accomplished so far – although police hope to make changes soon.

Officials have long claimed that is in part because of the city's contract with the police union, which makes it difficult to view abuse complaints in context. Each complaint is investigated by the Office of Professional Standards in a vacuum.

Past unsubstantiated complaints – even if they might suggest a pattern of brutality – cannot be used during a new investigation, unlike in many other big-city police departments. In Hayes' cases, that means that repeated allegations that he choked someone or used his baton are irrelevant.

The police contract is being renegotiated, and officials hope to win concessions from the union that would allow the department to consider unproven complaints against an officer when investigating a new complaint.⁴⁶

....

⁴⁶ City Exhibit 219. Parenthetical explanation added.

The record is replete with other examples of very visible public sentiment in support of police disciplinary reform, and the Board sees no need to review it here. We also acknowledge, though, that retaining “not sustained” complaints and using them to make future discipline decisions seems fundamentally unfair in some if not the majority of cases. After all, and as the Lodge persuasively argued, such a finding means there was not sufficient evidence to prove the officer did anything wrong.

In deciding this issue we must strike an appropriate balance between the public interest on the one hand and due process for police officers on the other. We note in attempting to do so that the parties’ own Tentative Agreement provides (1) that “not sustained” CR files alleging criminal conduct or excessive force will be retained for seven years after such incidents; and (2) that such files can be used in future investigatory proceedings against an officer for notice, credibility and appropriateness of penalty purposes. We acknowledge as well that the retention of complaint information is a central component of the U.S. Justice Department’s inquiries and consent decrees,⁴⁷ that it is recommended in the Webb Report,⁴⁸ and that it seems to be widely perceived as a “best practices” standard for law enforcement.

Moreover, the Board has concluded from the record that the retention of “not sustained” files might assist the Department in identifying problem officers --- perhaps even early enough to correct their aberrant behavior through additional training. With appropriate safeguards, therefore, we believe the thrust of Department’s proposal on this issue has merit.

⁴⁷ City Exhibits 235-237.

⁴⁸ “Report of the Commission on Police Integrity” (November, 1997); City Exhibit 214.

Clearly, there are no due process issues associated with the use of prior “not sustained” complaints to demonstrate that an officer was aware of the rules and/or regulations allegedly violated. With the procedural protections contained in the parties’ November 14, 2000 side letter and in the current disciplinary system, the retention of “not sustained” complaints should not compromise the disciplinary fairness Chicago police officers deserve. Among those protections are the following: (1) a “not sustained” cannot automatically be determinative of notice, credibility and penalty; (2) the Department retains the burden of proving just cause for discipline; and (3) the Lodge reserves the right to challenge “not sustained” files’ similarity, validity, relevance and weight. We agree with the Lodge’s conclusion that such safeguards and the others contained in the November 14, 2000 side letter afford police officers meaningful opportunity to challenge the use of previous “not sustained” matters in subsequent disciplinary proceedings involving more recent allegations against them.

While the Board agrees with the thrust of the parties’ tentative accord on this issue, however, we do not believe it is appropriate to use “not sustained” CR files to determine the disciplinary penalty a police officer should receive. As we understand it, in “not sustained” cases the Department does not provide officers with detailed information about the allegations, the witness statements, or other investigative details. If and when the Department decided to use such cases to determine the appropriate penalty for some subsequent offense --- as much as seven years later under the City’s proposal --- those officers’ ability to refute the significance of the earlier cases would be substantially compromised. And even without the ability to use earlier “not sustained” cases to determine appropriate penalties in subsequent disciplinary matters, the Department can

still use them to identify patterns of suspected misconduct about which the public and regulatory agencies are so intensely and legitimately concerned.

For all of the foregoing reasons the Board hereby adopts the parties' tentative agreement on this issue, including their November 14, 2000 side letter, but excluding any provisions granting the City the right to use "not sustained" CR files for the purpose of determining the appropriate penalty in subsequent disciplinary actions.

THE COMPLAINT REVIEW PANEL PROCESS

Sustained complaints against an officer are processed differently from those that are "not sustained." The investigators' initial findings and recommendations are forwarded through Command Channel Review (CCR). At that level, the accused officers' supervisors review the files and note their concurrence or disagreement with the findings and recommended penalty. They may also reject the preliminary findings and return the files for additional investigation. At the end of the CCR process, the head of OPS or IAD, as appropriate, reviews the file and can change the recommended finding and penalty on the basis of the CCR results.

Accused officers are then notified of the recommended finding and penalty, at which point they can agree with the recommendation or not. If the finding is "exonerated," "not sustained," or "unfounded," the case is closed out. When findings are sustained, the accused officers may accept them, whereupon the case files are forwarded to the Superintendent for review and implementation. Officers who disagree with such findings may request a Disciplinary Screening Process (DSP) review, which is currently available for officers whose recommended penalty ranges from "violation noted" to a

five-day suspension. At this stage of the disciplinary mechanism, a Lodge representative reviews the file, discusses the matter with the officer involved, and meets with a Department representative to discuss the case. Officers who face discipline (excluding discharge) may request a Complaint Review Panel (CRP) hearing. The CRP is a peer review group composed of three sworn members (typically, a patrol officer, a sergeant and a lieutenant) who review the file, listen to an oral presentation from the officer or his representative, and to one from either IAD or OPS staff. The CRP then issues an advisory recommendation, either agreeing with the findings and recommended penalty or crafting its own recommendation. Once the foregoing advisory processes have been completed, the Superintendent reviews the files and decides upon the appropriate disciplinary action.

If the Superintendent decides upon a five-day or less suspension, the officer can file a grievance under the FOP Agreement. Suspensions of six to thirty days may also be grieved, or they may initially be appeal to the nine-member Police Board, which can (1) reverse the sustained finding, (2) uphold the disciplinary action, or (3) uphold the sustained finding but lower the penalty imposed. Officers who choose the Police Board process and are not satisfied with the results can then grieve under the FOP contract. As noted earlier, when the Superintendent recommends termination or a suspension of more than thirty days, a Police Board hearing officer conducts a hearing, the transcript of which (and now a videotape) is studied by Police Board members. The issue presently before the Dispute Resolution Board concerns the role of the CRP in the overall disciplinary process.

City Position. The City notes that arranging for and completing the CRP process is a logistical nightmare that can take up to a year. It argues in addition that the CRP contributes little to the ultimate resolution of complaints. And rarely, the City asserts, are suspensions of 16-30 days altered as a result of the CRP review. The City therefore proposes that the CRP step should be eliminated for suspensions between sixteen and thirty days in length. It points out that even without access to a CRP, officers still have the contractual right to “just cause” and the ultimate right to grieve disciplinary action against them. The City also underscores the fact that the elimination of the CRP step for suspensions of 16-30 days was part of the parties’ Tentative Agreement.

Union Position. The Lodge notes that the CRP process has been in place for a considerable period of time and is part of the Department’s tradition. It also points out that though the Webb Commission recommended streamlining of the disciplinary process, it did not recommend elimination of the CRP, either in its entirety or for suspensions of 16 to 30 days. The Lodge argues that eliminating access to a CRP for such suspensions leaves police officers without a forum in which to tell their side of the story. Thus, they would be denied due process unless or until filing a grievance. Moreover, the Lodge asserts, the City’s proposal ignores the fact that much of the delay in administering discipline takes place prior to the decision to discipline. That is, after OPS or IAD has recommended that discipline be implemented, the Department undertakes its laborious Command Channel Review --- which takes weeks and even months to complete. Thus, the Lodge posits, the City’s focus on the CRP process is misdirected. Any acceleration in the disciplinary process should be applied to the time

between the alleged infraction and the time discipline is imposed, not to the time it might take to appeal the discipline.

The Lodge also predicts that elimination of the CRP for 16 to 30-day suspensions will increase the rate of grievance arbitration between the parties. If the CRP appellate door is closed, disciplined officers will simply open another one --- arbitration. That process takes months to complete as well. Besides, the Lodge adds, the CRP process has worked. While in 1999 none of the 25 cases of suspensions from 16 to 30 days were reduced by the Superintendent after a CRP recommendation, in 1998 the Superintendent was influenced in 15 of the 55 cases involving such suspensions to reduce them as a result of CRP recommendations.

The Lodge opposes the elimination of the CRP process, either in whole or in part, and asks that the Board restore the status quo that existed prior to the Tentative Agreement. It does not oppose the portion of that Agreement that expanded the successful DSP to cover suspensions of 6 to 15 days, but notes that the CRP issue is unrelated.

Discussion. The parties agree that the Department's current discipline system is inordinately protracted. Even a cursory glance at City Exhibit 276 ("Complaint Register Investigation and Review Procedure") reveals that it is needlessly complex as well. Closer inspection of that document and an understanding of how each of its many elements is administered supports full well the City's argument that it is an "administrative nightmare."

To be effective and fair, employee discipline should follow reasonably close behind the infractions which generate it --- allowing, of course, complete due process

rights to affected employees. In the Chicago Police Department over the years, that timeliness principle has been lost. Layer upon layer of review and appeal procedures have been incrementally laminated upon one another, so that the evolutionary result is an overly-complex series of mechanisms that collectively have put the brakes on timely discipline and swift resolution of related appeals.

As both parties acknowledge, the public and the media have placed them under enormous pressure to reform the CR investigation and review procedures. The need for doing so was also addressed in the Webb Commission Report, which we quote in pertinent part below:

There is some truth to the saying that justice delayed is justice denied. The Commission believes that the amount of time that passes between an infraction of the Department's rules and the imposition of a sanction sends the message that the misconduct is not being taken seriously. While this may require . . . an effort to address this issue in the next collective bargaining agreement, the Commission is confident that a more efficient and less time-consuming disciplinary process will be better for all of the Department's members.⁴⁹

We note that the Webb Commission highlighted the need for a “more efficient and less time-consuming disciplinary process,” and that the parties were urged to address the matter at the bargaining table. It seems counterproductive to argue back and forth about which aspect of the overall CR investigation and review procedure needs the most immediate attention. The more important consideration is that it is too complicated and too lengthy overall, and that the time has come for prudent, balanced reform.

This particular Dispute Resolution Board has an estimated eighty years' combined experience in dealing with employee discipline matters. We could no doubt study the

⁴⁹ Ibid.

current disciplinary and appeals system and develop our own ideas about where and when reform should take place. But we emphasize once again that one of our primary objectives is to approximate in our Award the result the parties might reach themselves at the bargaining table. In the present matter the Tentative Agreement is the logical place to find that approximation. Within the context of compromise on a myriad of issues, the City and the Lodge rolled up their sleeves and took a long, hard look at the entire CR system. They decided in part that the CRP process should be eliminated for suspensions of between 16 and 30 days. Upon review of the massive quantity of evidence in the record with regard to discipline generally, the Board has concluded that their decision to do so was reasonable.

The elimination contemplated and agreed to by the parties bargaining teams will not deprive Chicago police officers of due process. Indeed, by virtue of the “just cause” provision in the collective bargaining agreement they have a contractual guarantee to what is considered by many labor leaders to be the Cadillac of due process packages. The “just cause” standard affords officers the widest possible array of procedural rights, and holds the Department to a very comprehensive set of guidelines and limitations. In the face of those guarantees, and given the pressures the parties were under (and still are) to streamline the CR review process, the Board concludes that their Tentative Agreement on this issue is a reasonable first step.

We note as well that police officers suspended for the term at issue have the right to grieve their suspensions. Under Article 9 of the collective bargaining agreement such grievances proceed through a series of steps, allowing grievants (with Union representation) the opportunity to explain their perspectives to management at various

levels. A mediation step is included as well. The Board understands the Lodge's fear that elimination of the CRP process for the suspensions in question might generate an increase in the number of cases certified for arbitration. We note, however, that the Lodge has a responsibility to counsel such officers as to the merits of their claims, supporting them at the arbitration step when grievances appear valid, and discouraging them from moving forward when they do not. Moreover, since the contractual grievance procedure provides for the expedited arbitration of disciplinary matters, grievances advanced to that level should be resolved in timely fashion. The contractual provision that the loser pays (§9.7) should also prevent frivolous grievances from creating a bottleneck in the parties' arbitration system.

Based upon the foregoing analysis, the Board adopts the parties' own Tentative Agreement on the CRP issue. We view it as a logical first step toward streamlining the CR investigation and review procedure, while not compromising officers' due process rights, and we encourage the parties to continue their disciplinary reform efforts. Indeed, doing so is in the best interest of the Department, the Lodge, the police officers it represents, and the public at large.

TRANSPORTATION OF DECEASED PERSONS

Between 1997 and 1999 Chicago police officers transported over 18,200 of the 22,217 deceased persons in the City. The decedents may be categorized as follows (1) homicide victims, (2) individuals whose cause of death is unknown or under investigation pending a coroner's report, and (3) persons whose death is not suspect. The parties have disagreed for years as to whether officers should be responsible for transporting deceased

persons in the third category and, during their most recent negotiations, they reached a tentative accord on the subject, memorialized in the following November 8, 2000 letter from City Advocate James Franczek to Lodge Advocate Thomas Pleines:

This letter memorializes our conversations during negotiations regarding the transportation of deceased persons by Chicago Police Officers. We have advised you that the City is in agreement with the F.O.P. that your members should not be required to transport deceased persons. We are further in agreement that the County of Cook should assume this responsibility. We also have advised you that high level discussions have been and will continue to occur between the City and the County to facilitate the transition of this function to the County. In this respect, the City has committed and has so advised the County that it is prepared to assist the County financially and otherwise to expedite this matter.

Since this is an important and sensitive matter not only to your members, the City and the County, but also to the citizens of the City of Chicago and the County of Cook, details by necessity must be worked out. We are optimistic that the transition to the County can be worked out in the very near future.

We look forward to bringing this matter to a successful conclusion as soon as possible.

As of the first hearing date in these interest arbitration proceedings (August 28, 2001), the matter had not yet been resolved.

City Position. The City asserts that the assignment of the dead body transportation task is a matter of inherent managerial authority.⁵⁰ It also argues that the issue is not a mandatory subject of bargaining because it necessarily involves negotiations with the Cook County Board. Moreover, the City notes, it cannot guarantee the Lodge anything tied to the potential outcome of negotiations with a third-party entity.

⁵⁰ Citing Central City Education Association, IEA/NEA v. Illinois Educational Labor Relations Board, 149 Ill.2d 496, 599 N.E.2d 892 (1992); confirmed in City of Belvidere v. Illinois State Labor Relations Board, 181 Ill.2d 191, 692 N.E.2d 295 (1998).

The City therefore urges the Board to consider the transportation of deceased persons to be a non-mandatory subject and to exclude it from further consideration in these proceedings.

Union Position. The Lodge proposes that the Tentative Agreement be enforced on this issue, with one additional element --- a mechanism for resolution if the City's "high level" talks with the County do not result in the transfer of these duties from the patrol officers. That mechanism should be the undersigned Dispute Resolution Board, the Lodge suggests, so that if the City has not achieved the duty transfer by January 31, 2003, the Board would reconvene and decide what contract language, remedy or other action is appropriate.

The Lodge believes that its proposal constitutes a mandatory subject of bargaining, in that it does not necessarily have to involve the Cook County Board.⁵¹ The City could assign the task to another existing City agency or department, for example. One logical alternative is the medical examiner's office. The City could also establish a new entity to transport deceased persons, the Lodge argues. The Lodge therefore asks that the Board adopt its revised proposal on this issue.

Discussion. The Board believes from the evidence presented that the Lodge's proposal on this issue constitutes a mandatory subject of bargaining. For the most part, it simply embodies the parties' own tentative accord, which does not require the City to bargain a resolution with Cook County or any other third-party. Rather, the tentative agreement simply confirms that discussions with the County have taken place and that the City will continue that effort. It indicates that the City is optimistic about a resolution

through that approach, but makes no guarantees. And clearly, the tentative agreement does not bind the County of Cook to anything.

Neither are we convinced from the record that the transportation of deceased persons falls within the Department's inherent managerial authority. It constitutes a condition of employment --- a job duty which the bargaining unit reasonably feels is less than pleasant. With certain exclusions not relevant to the parties' dispute on this issue,⁵² police officer job duties under Illinois law are traditionally bargained.

The Board is also mindful of the fact that the parties have been wrestling with this important issue for some time now, and that they agree it is not appropriate to require police officers to transport deceased persons. Using police vehicles not exclusively designated for that purpose raises an array of health questions, a consideration no reasonable person could deny. In response to that and additional problems associated with this issue (e.g., inefficient use of police officers' time and expertise), the parties crafted the tentative agreement memorialized in Mr. Franczek's November 8, 2000 letter to Mr. Pleines. The Board supports the parties' good faith efforts in that regard, but also agrees with the Lodge concerning the need to bring the matter to closure.

Accordingly, the Board adopts the November 8, 2000 tentative accord reached by the parties themselves. We direct them to continue those efforts. Should the parties not reach a resolution to the matter by January 30, 2003, either may return to the Dispute Resolution Board for one. We hereby retain jurisdiction for that purpose.

⁵¹ The ISLRB has declared to be non-mandatory a proposal that necessarily involves a third-party. See Village of Bensonville, 14 PERI ¶ 2042. (Briggs, 1998).

⁵² Use of force, hiring requirements, and the overall municipal budget, for example.

CONCLUDING COMMENTS

The Board emphasizes once again that the parties' Tentative Agreement was not easily born. It evolved as a result of 102 bargaining sessions over a 17-month period of time. With the exceptions noted, we find it to be a reasonable blend of compromise by both parties. Moreover, we have concluded from the record in these proceedings that the Tentative Agreement was constructed with appropriate concern for the public interest.

AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Dispute Resolution Board has reached the following decisions with regard to the successor to the parties' June 1, 1995 through June 30, 1999 collective bargaining agreement:

1. Duration – The parties' tentative agreement is adopted. The duration of the successor Agreement shall be four years, from July 1, 1999 through June 30, 2003.
2. General Wage Increases – The parties' tentative agreement is adopted. The successor Agreement shall include the following general wage increases and effective dates: July 1, 1999 – 2%; January 1, 2000 – 4%; January 1, 2001 – 4%; January 1, 2002 – 4%; and January 1, 2003 – 2%. All of these general increases shall be fully retroactive.
3. Duty Availability Pay – The parties' tentative agreement is adopted. The successor Agreement shall include the following quarterly duty availability allowances: effective January 1, 2001 - \$580; effective January 1, 2002 - \$605; effective January 1, 2003 - \$630.
4. Clothing Allowance – The parties' tentative agreement is adopted. The successor Agreement shall include increases to annual clothing allowance of \$200 for 2001 and \$200 for 2002.
5. Specialty Pay – The parties' tentative agreement is adopted, including full retroactivity.
6. Holidays – (resolved by the parties themselves)

7. Health Insurance Premium Costs (previously declared not arbitrable)
8. Prescription Co-Payments for Brand Name Drugs With No Generic Equivalents – The parties’ tentative agreement is adopted.
9. Probationary Period – The parties’ tentative agreement is adopted.
10. Training Schedules – The parties’ tentative agreement is adopted.
11. Union Reimbursement – The parties’ tentative agreement is adopted.
12. Secondary Employment – The parties’ tentative agreement is adopted.
13. Wage Liens – The position of the Lodge is upheld. The successor Agreement shall contain no language permitting the City to impose wage liens in cases where police officers have received personal injury settlements from third parties.
14. Videotaping of Police Board Hearings – The parties’ tentative agreement is adopted.
15. Promotional Examinations – The parties’ tentative agreement is adopted.
16. Medical Recurrence Restrictions – The position of the Lodge is upheld. The successor Agreement shall not contain any amendment to its existing medical recurrence provisions.
17. Adding Additional Positions to Section 8.7 – The parties’ tentative agreement is adopted.
18. Removal From D-2 Positions for Just Cause – The parties’ tentative agreement is adopted.
19. Sections 23.8 and 23.9 – The parties’ tentative agreements are adopted.

20. Furlough By Watch – The parties’ tentative agreement is adopted, with the amendments previously noted.
21. Retention and Use of “Not Sustained” Files – The parties’ tentative agreement is adopted, as is their November 14, 2000 side letter. Excluded from this Award are any provisions granting the City the right to use “not sustained” CR files for the purpose of determining the appropriate penalty in subsequent disciplinary actions.
22. The Complaint Review Panel Process – The parties’ tentative agreement is adopted.
23. Transportation of Deceased Persons – The parties’ tentative agreement is adopted. Should the parties’ not reach final resolution of this issue between themselves by January 30, 2003, either may return to the Dispute Resolution Board for one. We hereby retain jurisdiction for that purpose.

(Board signatures on following page)

Signed by me at Chicago, Illinois this 5th day of February, 2002.

Steven Briggs
Steven Briggs, Impartial Member

Signed by me at Chicago, Illinois this 5th day of February, 2002.

Thomas J. Pleines
Thomas J. Pleines, Esq., Lodge-Appointed Member

Concurring as to Award Items: 3, 4, 5, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23

Dissenting as to Award Items: 1, 2 (in part), 8, 9, 10, 11, 20, 22

Signed by me at Chicago, Illinois this 5th day of February, 2002.

Darka Papushkewych
Darka Papushkewych, Esq., City-Appointed Member

Concurring as to Award Items: 1-23, 21 (in part)

Dissenting as to Award Items: _____