

RECEIVED SEP 16 2004

IN THE MATTER OF ARBITRATION

BETWEEN

City of EAST ST. LOUIS

AND

ILLINOIS FRATERNAL ORDER OF  
POLICE - LABOR COUNCIL

ARBITRATION AWARD:

ILLINOIS STATE LABOR  
RELATIONS BOARD CASE NO.  
S-MA-03-062  
EAST ST. LOUIS  
POLICE DEPARTMENT

Before Raymond E. McAlpin,  
Neutral Arbitrator

APPEARANCES

For the Union:

Tom Sonneborn  
Gary Bailey, Attorney

For the Employer:

John Gilbert, Attorney  
Ronald Matthews, Chief of Police

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the period January 1, 2003 through December 31, 2005 and, therefore, submitted the

matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The Parties did not request mediation services. The hearing was held in East St. Louis, Illinois on May 12, 2004. At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Briefs were received on August 25, 2004.

#### STATUTORY CRITERIA

(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 the 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:

- A. In public employment in comparable communities.
  - B. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
  6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
  7. Changes in any of the foregoing circumstances during the pendency of the Arbitration proceedings.
  8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, Arbitration or otherwise between the Parties, in the public service or in private employment.
- (I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (i) residency requirements; (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 criterion 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).

### ISSUES

	<u>Union</u>	<u>Employer</u>
1. Wages:	1/1/03 - 3% 1/1/04 - 4% 1/1/05 - 5%	1/1/03 - 3 ½% 1/1/04 - 3 ½% 1/1/05 - 3 ½%
2. Longevity:	Add'l step after 10 yrs @ 2 ½%	Status quo
3. Sergeant Vacancies:	Filling vacancies for min. of 4 hrs. by holding over or calling in a sergeant for 4 hrs. After 4 hrs. the City can fill vacancy with patrol officer.	Status quo
4. Uniform allowance:	\$750 annually	Status quo

5. 12-hr. shifts:	Status quo per current practice of 12 hr. shifts	Return to 8 hr. shifts as provided in current Collective Bargaining Agreement.
6. Minimum manning:	Specific remedy for violations of min. manning provision.	Status quo
7. Right to change work schedule:	Decisional bargaining over revisions in basic work schedules, work days or work weeks.	Status quo
8. Seniority:	Time spent out of bargaining unit would not count toward bargaining unit seniority.	Status quo
9. Doctor's note for sick leave:	Reduce 3 consecutive days to 2 consecutive days.	Status quo
10. Sick leave & secondary employment:	Status quo	New provision which would not allow working of a secondary job when an officer calls in sick within 36 hrs. of scheduled tour of duty.
11. Light duty:	Status quo	New section-while an officer is sick or injured, he may be placed on light duty at discretion of the Chief of Police.
12. Sick leave committee & discipline:	Status quo	Refer to sick leave review committee after usage of more than one sick day a month. Disciplinary levels-sick leave suspensions reviewed either through grievance procedure or the Sick Leave Review Committee.
13. Temporary assignments:	Status quo	Remove time and one-half pay for 3 days or less and over 7 days.
14. Manning:	See #5/Shift Hours	

15. Compensation Status quo  
regarding  
leave for  
criminal charges:

While the officer is on  
administrative leave,  
there will be no pay.

16. Drug Status quo  
testing:

Unit wide and changes in random  
testing provision.

### UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

1. Wages

The Union's offer is more appropriate when considering the external comparables. East St. Louis police officers are significantly behind their counterparts in earning a competitive salary. In the prior interest arbitration the Arbitrator ruled in favor of the Union with respect to wages. The Union's offer in this matter actually averages 4%, which is a decrease in the average from the last contract, which was 4.25%. This is a small attempt to bring the bargaining unit closer in wages in comparable communities. In addition the difference between the Union's offer and the City's offer is modest.

In addition to the above the Arbitrator should be aware that East St. Louis officers differ with respect to external comparables concerning their work load and health insurance

coverage. The crime rates in East St. Louis are much higher than in comparable communities, and the health insurance contribution for family coverage is 100% in contrast to comparable cities in which the officers pay only a portion of the family premium.

2. Longevity

The longevity scale is part and parcel of the wage scale. The Union's proposal merely adds another step upon which longevity is applied. The impact of this change would add less than \$1,000 to the pay of officers with ten (10) or more years of service in the first year of the contract. The City's cost would be less under the Union's offer for the first two (2) years even with the increased longevity expenses. Even so, there still will be a dramatic disparity between the East St. Louis police officers and the external comparables. The impact of the longevity is negligible and impacts only a fraction of officers; however, it will provide some help in reducing the overall wage disparity.

3. Filling Vacancies for Sergeants

When there is a vacancy, the Union contends that a sergeant should be given first chance to fill that vacancy. The City wants the right to choose the cheapest replacement for a sergeant's vacancy. The job of sergeant is different than that of patrol officer. Special training is required. Patrol officers deserve to have an experienced and trained sergeant to serve as the shift's supervisor. Undoubtedly, there are some senior patrol officers who would

be adequate to fill these openings, but the City is not proposing that. There are similar provisions in both Collinsville and Granite City, as well as a Side Letter in Belleville.

4. Clothing Allowance

The cost of police uniforms is not exempt from the general increase of goods and services. The current allowance is the lowest among all comparables, and the Union's proposal would put East St. Louis in the mid range.

5. Shift Hours See #7

6. Safety (Manning) See #7

7. Right to Change Shift Schedule

A review of Article 13 shows that this provision was the product of time consuming negotiations over a wide variety of topics. In October, 2002 the City proposed changing the 8-hour shift to a 12-hour shift which was negotiated with the Union. This allowed the City to put more officers on the street and meet the minimum manning requirements. The 12-hour schedule went into effect November 18, 2002. There was give and take on both sides in order to make this new system work. Even so, the City did not live up to its end of the bargain resulting in a favorable arbitration award to the Union, which has proceeded to Circuit Court.

After the Union's success at arbitration, the City proposed to return to the 8-hour shift schedule. The City's Exhibit #44, Book 2 misrepresents manpower strength by including sergeants as part of the street manning, which is impermissible. The Union wants to incorporate the 12-hour negotiated agreement into the contract. The Union also wants to alter the manpower provision only to add a clear remedy when the City violates the minimum manpower clause. The City argued that these issues are within the realm of management rights and not mandatory subjects of bargaining. However, the courts in Illinois have found that these matters are mandatory subjects of bargaining. Clearly, the length of an employee's shift concerns hours. The length of the shift is not a matter of inherent managerial authority. It is a term of employment. The Parties had no problem in negotiating the current Article 13 and the Side Agreement containing 12-hour days.

In addition to the above, the changing of the shift schedule also affects terms of employment. This is not a matter of inherent managerial authority. It is quite common for negotiated terms of employment to have restrictions on their alteration when they are made part of the Collective Bargaining Agreement. The provision prohibiting the City from making changes during the term of the contract provides stability, which is a benefit to both Parties.

Finally, the Union seeks premium pay for those officers forced to work an understaffed shift. The notion of premium pay concerns wages. This merely involves the rate of compensation, which is undeniably a mandatory subject of bargaining. Therefore, the issues noted above are properly before the Arbitrator.

With respect to the merits of the above issues, if the Arbitrator chooses the City's proposal to return to 8-hour shifts, this will result in a 5% cut in pay for each officer. It was the City that determined to work 12-hour shifts, and the Union merely was able to bargain the impact of that decision. It was the City that determined that it wanted to work 12-hour shifts with an 84-hour work week. Thus, patrol officers' annual salaries increased by 5%. The City argued that the 12-hour schedule is causing overtime problems. It was the City that decided it wanted a 12-hour schedule. There was no showing provided as to how the 8-hour proposal will decrease overtime costs. In fact the Union argued that the 8-hour schedule will increase overtime costs, particularly when applied to the minimum manning requirements of the Labor Agreement. The 12-hour schedule was negotiated in good faith by the Parties, and it should not be disturbed without good cause.

If the Arbitrator awards the Union the 12-hour schedule but makes no changes to the City's right to change the schedule, the City will exercise its right to go back to the 8-hour schedule soon after the arbitration award issues. From the most practical point of view the Arbitrator cannot permit the City to override his award by allowing it the power to change the work schedule at its own whim. The City has twice exercised this provision within 13 months. The Union is always open to ideas that will improve its members' standard of living. If the City has proposals, the Union would be more than pleased to discuss those.

The Union also proposed minimum remedies for violations of the minimum manning provisions. There is an arbitration award which found in favor of the Union but provided no

remedy. Therefore, the City has no incentive to follow the manning provisions. The only recourse for the Union is to include a remedy into the Agreement for these violations. The Union's proposed remedy is fair and just. It is only through this proposal that the City will respect the minimum manning provision.

8. Seniority

The Union seeks to change the seniority provision to clarify rights of officers who leave the bargaining unit for an exempt position. The Agreement does not now address the resolution of this particular type of seniority dispute. If such a dispute arises, the Union would find itself in the difficult position of having to resolve the internal dispute by taking a position which would favor one member over another. The City does not want a disincentive for accepting a promotion or, for that matter, a demotion. The City is not offering a contrasting provision but an absence of a provision. This absence will only create litigation. The Union's offer is far more reasonable and attempts to pre-resolve the question over this application of seniority.

The City also had a number of proposals. They are as follows:

9. Doctor's Note for Sick Leave

The City argued that it has problems with sick leave abuse, and its solution is to reduce

the number of days required for a doctor's certificate from three to two consecutive days. The number of officers suspected of abuse is only a handful, and sick abuse rates have not increased over the past year. The City provided no evidence as to what is excessive sick leave or sick leave abuse. The Union, for its part, does not condone sick leave abuse regardless of the number of officers suspected. The Chief recognized that the contract currently permits him to refer suspected sick leave abuse to the Sick Leave Review Committee. The comparables show that they do not support the City's final offer, therefore, this proposal should be rejected.

10. Sick Leave and Secondary Employment

The City contended that this provision will deter officers from calling in sick. There was no evidence to corroborate this theory. There was even no evidence that the handful of officers suspected of sick leave abuse were even engaged in secondary employment. Therefore, there was no showing that the sick leave abusers would alter any of their actions. This proposal would also punish those who were not sick leave abusers but have second jobs. If the City wanted to restrict these employment opportunities for those who were guilty of sick leave abuse, it should have added that sanction to bring before the Sick Leave Review Committee. There was no support within the comparables for this provision. Therefore, it should be rejected.

11. Light Duty

The Parties stipulated that, even though on the surface it seems to be non-economic, this issue actually is an economic issue. If the provision had provided for an element of approval by the officer's physician, the Union would be more amenable. The Union would also note that aggravating an off-duty injury while on duty could turn this into a Worker's Compensation issue. The counsel for the City agreed that the Union's formulation of the light duty provision was appropriate and, therefore, it should be selected as part of the Union's offer.

12. Sick Leave Committee and Discipline

The City sought to make changes in the Sick Leave Review Committee and significant changes to discipline regarding sick leave abuse. Proposals by the City will change nothing. The City cannot demonstrate that the current system is unable to handle this issue. The City has never suspended anyone for abusing sick leave, and the Chief's overtime concerns have never been realized. The Union strongly objects to calculating just cause so as to stipulate the precise amount of discipline that would be applicable in every case. The Union further objected to allowing officers the choice of an in-house committee to review discipline. There is nothing in the external or internal comparables that would support the Employer's position and, therefore, it should be rejected.

13. Temporary Assignments

The City sought to eliminate language in the contract regarding compensation for

working on temporary assignments. The City argued that its proposal will save money. This proposal was made as a result of several grievance arbitration awards against the City, which is now liable to pay for such temporary assignments. Because of the losses in the arbitration arena, the City now proposes to get rid of temporary assignment pay for the next time it tries to avoid making timely promotions. This is a very important issue to the Union that fought hard to make changes in Articles 13 and 26. The City can still make temporary assignments but with financial repercussions. The Arbitrator can just imagine how "temporary" some assignments would become without this provision. The Union understands that temporary assignments are sometimes necessary but there should be payments for such assignments.

14. Manning

This is part of the Union's proposal as to safety in shifts and was previously discussed.

15. Compensating Leave for Criminal Charges

The City asserted that, if an officer has been charged with a crime, he/she should be placed on unpaid administrative leave until final disposition. The City further asserted that, if the officer is acquitted and returned to work, he/she should not receive any compensation for lost time. This proposal again is the result of a grievance arbitration case which the Union

won. Officers have not historically fought the assignment to unpaid administrative leave because they know once they are acquitted, they will not have lost anything monetarily. There was no support for this proposal in either the external or internal comparables.

16. Drug Testing

The City proposed to alter both the random testing process and the unit wide testing process, and the Union seeks to maintain the status quo. The purpose for unit wide testing is to surprise everyone in the department. If there are some officers exempt, the test might just as well never occur. The City's proposal regarding random testing is too broad, and even the City acknowledged that its proposal is too broad.

Finally, the Union argued that all of the statutory criteria (reproduced above) supports the Union's position and, for each and every issue, it is the Union's position that finds both support in the record and among the criteria. Therefore, it is the Union's position that should be adopted by this Arbitrator.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

1. Wages

While the City is pleased that the Union backed off its original demand, the City's current proposal is more reasonable and should be adopted by the Arbitrator. The final year of the current Collective Bargaining Agreement contained a 7% increase and to place on top of that increases proposed by the Union would be far too expensive and unreasonable when the Parties agree that comparable cities have experience between a 3 and 4% increase for each of the three years of their contract renewals.

In addition to the above the City's financial situation is plagued with problems. The City is subject to the financially distressed City Law and the Financial Advisory Authority thereunder. The City has developed a Deficit Reduction Plan to address the problems of the general fund from which police officers are paid. The Union's proposal would interfere with the City's progress in its deficit reduction mandate. While the Police Department was scheduled for a positive increase in its budget, other departments have taken serious negative changes in order to balance the budget. The City does not mind compensating its Police Department employees within a sensible and reasonable budget subject to the Deficit Reduction Plan. The City noted that its proposal is the more reasonable position given the circumstances.

2. Longevity

The Union's longevity proposal would upset the delicate condition of the City budget. The money is simply not there to pay for this proposal. This is a substantial departure from previous contracts since they have not contained longevity increases after ten (10) years. This step would impact slightly less than half of the members of the bargaining unit, which is an unreasonable and unaffordable result and, therefore, should be denied by the Arbitrator.

3. Sergeant Vacancies

The Union has proposed substantially increasing overtime payments among sergeants by this proposal. This will lead to a significant increase in overtime payments by the City. The record in this case shows that the Police Department over the years has had just too much overtime, and this proposal will only add to that problem. In addition the City contended that there is an unreasonable amount of sick leave being taken by members of the Collective Bargaining Unit, and it is reasonable to conclude that there may be frequent sergeant vacancies. Currently, the City is filling these vacancies with patrol officers who receive step up but not overtime pay. This is the most reasonable resolution of this issue since the City has no effective control over sick leave. The Union's proposal should be rejected.

4. Uniform Allowance

The current \$500 allowance is consistent with comparable departments. Given the overall compensation of the Department, there is no support within the record for the Union's

50% increase proposal.

5. 12-Hour Shifts

The Union proposed to place the current schedule within the contract, and the City desires to return to 8-hour shifts which are currently provided for in the Collective Bargaining Agreement. The City believes it has made its case for the return to the 8-hour shift. The 12-hour shift was made in order to try and save on oppressive overtime costs based on the frequent failure of unit members to show up for work. This change in work hours did not cure the problem. In fact it led to additional costs because additional hours had to be paid to each officer under the 12-hour shift. The experiment failed. The City desires to return to the status quo.

The Union argued that this will cause a tremendous personal inconvenience to members of the Union. This is not a factor in determining provisions of a Collective Bargaining Agreement. There was no showing that the City has abused the current provisions of the Collective Bargaining Agreement under which the City can alter shifts upon appropriate notice and effects bargaining. The City has only exercised its option to change shifts one time. Eight-hour shifts are in the best interest of the City and its citizens and are what is called for in the current Collective Bargaining Agreement and have a long history within the Department. Therefore, the City urged the Arbitrator to reject the Union proposal and maintain the current language in the Collective Bargaining Agreement.

6. Work Schedules 7. Changes in Work Schedules

The Union is proposing decisional bargaining over revisions in basic work schedules, workdays or work weeks. The City urged the Arbitrator to reject this proposal. It is a substantial departure from the bargaining history of these Parties from previous Collective Bargaining Agreements. The justification offered by the Union is insufficient to support such a fundamental change.

In addition to the above this interferes with the legitimate and inherent management rights of the City of East St. Louis and has support within the court decisions cited. As noted above, the City has not abused this provision. Only once has the City exercised its rights under Article 13.

8. Seniority

The Union has proposed a change to the seniority provision which would steal seniority from members of the bargaining unit who serve in positions outside of the bargaining unit. This is fundamentally unfair and prejudicial to the members of the bargaining unit who were successful in achieving ranks outside of the bargaining unit. This is an effort by the Union to punish members of the unit who are appointed to administrative positions. There is no rational basis for robbing a member of his/her seniority within the Collective Bargaining Unit. When such promotions and assignments occur, the person who receives that promotion does

not stop being a police officer or accruing experience, knowledge and ability. There is no rational basis for a provision of this kind, and it should be rejected.

The Employer also made proposals to change the Collective Bargaining Agreement, and they are as follows:

9. Doctor's Note for Sick Leave

Currently, if an officer is absent for three (3) days, he/she does not have to furnish proof of sick leave and can combine that with a furlough day and thus take off an entire week without demonstrating that the officer was actually sick. This provision encourages sick leave abuse. The City has a serious staffing problem with regard to staffing shifts, especially the 12-hour shifts. The main reason is sick leave. The current provision encourages sick leave and does not require proof. This current provision contributes to the short shifts and staffing problems experienced by the Department.

Of what possible harm is there to a police officer by requiring evidence of illness after being off three (3) days instead of four (4). It is a small burden on the officers but results in a tremendous benefit to the City as well as the citizens of East St. Louis. There is support for the Employer's position within the comparables.

10. Sick Leave & Secondary Employment

The City's proposal is based on the premise that, if an officer is truly sick, that officer should not be able to work his/her secondary job. The basis for this proposal is the substantial evidence provided of sick leave abuse within the Department. This will provide an incentive for officers who are not sick to not call in sick. It will help the City address its sick leave problem from both the staffing and financial standpoints. If it were not for the sick leave abuse, the City would not have to propose such a provision. There is substantial evidence for the Arbitrator to make this part of the new Collective Bargaining Agreement.

11. Light Duty

12. Sick Leave Committee & Discipline

The City has proposed to refer cases to the Sick Leave Committee when an officer calls in sick more than once per month. The Sick Leave Committee will then determine whether or not an officer is abusing sick leave. This would provide an incentive for all officers not to abuse sick leave and provide a constructive control over abuse. If the officer is found then to be in violation, the City can address the situation. If the City was not suffering from such abuse, this proposal would not be offered. This change does not place a significant burden on the unit and is a reasonable alternative to address a serious problem.

The City has also proposed a change in the disciplinary matters. The officers can appeal that discipline through the grievance procedure or the Sick Leave Review Committee. It provides options which maximize the alternatives available to officers in the event of

discipline and should be made part of the contract.

13. Temporary Assignments

The City has proposed changes during temporary assignments which occur frequently. There is no reasonable basis on which to pay time and one-half for the first three (3) days of a temporary assignment and certainly no reasonable basis for time and one-half after the seventh (7<sup>th</sup>) day of temporary work. This current provision penalizes the City for temporary assignments even when temporary assignments are completely justified. The City simply cannot afford this kind of penalty for temporary assignments. The City noted that it stated in its proposal that under no circumstances shall a temporary assignment last for more than thirty (30) days. This change does not place a significant burden on the Collective Bargaining Unit since the assignments can last only for thirty (30) days. The City's proposal is to allow temporary assignments for thirty (30) days at the regular pay subject to step-up pay if applicable.

14. Manning

The City has proposed 12-hour shifts with 6-person minimums or an 8-hour shift with 8-person minimums. This item has been discussed previously under the issue of 8-hour versus 12-hour shifts.

15. Compensating Leave for Criminal Charges

The City does not wish to pay back pay to employees who are returned to work after being charged with criminal offenses. The City has no way of knowing how long that officer will be off duty until the charges are resolved. The Union would want the City to take on an open-ended obligation with no corresponding benefit. The City noted that it must pay another officer to serve in the suspended officer's place. This creates a potential of double compensation over an uncontrollable and unlimited period of time which is patently unreasonable and inconsistent with the factors that the Arbitrator must consider.

16. Drug Testing & Drug Offenses

The City has proposed changes that, when unit wide testing is done, those officers who are on leave will not be called in but will be tested when they return to work. The City must avoid the burden of overtime payments to call in officers who are not working for a drug test. The burden on the unit is virtually non-existent and is only common sense. The City also wishes to provide random testing of officers who have been convicted of drug related offenses or alcohol related offense at any time during their employment. It is in the best interest of the citizens of East St. Louis and is eminently reasonable and should be adopted by the Arbitrator.

The City believes that it is its proposals that meet the criteria expressed in the statute for the Arbitrator to consider when determining the appropriate result of Collective

Bargaining. The City is trying to operate its Police Department in a physically sensible manner. The Union argued that the City was trying to address some unacceptable grievance arbitration awards. This is the appropriate venue to address those problems as viewed by the City, and this should not discourage the Arbitrator from adopting the City's proposals. They are a good faith attempt to resolve disputes. In addition staffing levels are not met by the Employer because of the inordinate amount of sick leave taken by the bargaining unit. The return to 8-hour shifts would enhance the City's ability to staff shifts and, therefore, enhance safety. The safety argument, as a basis to retain 12-hour shifts or to support the Union's proposal for decisional bargaining, has no support in the record. Likewise, there is no support for paying time and one-half for an understaffed shift. The City would, therefore, be making payments for services not provided. If the City makes reasonable attempts to staff a shift, it should not be penalized if it is unable to do so through no fault of its own. The City would argue that, with respect to contract proposals by the Union which have no precedent, particularly the change in seniority, there are prejudicial effects on current members and no support for drastically changing the past practice and provisions of previous Collective Bargaining Agreements.

The Act authorizes the Arbitrator to consider cost of living. The cost of living was low during the contract years in question. The City's proposal is in excess of cost of living during the three (3) years which preceded the expiration of the current Collective Bargaining Agreement.

Finally, the Arbitrator knows that issues of manning are not permitted to be considered by the Arbitrator unless there is a serious risk to the safety of officers beyond that which is inherent in the job. The Union failed to provide any evidence of such risk, therefore, that proposal should be denied.

Considering the standards required under the Act and particularly the interest and welfare of the public and the financial ability of the City to meet the costs, it is the Employer's position that should be found to be most appropriate with respect to all proposals.

#### DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute compulsory interest arbitration for a potential strike involving security officers. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in each area of disagreement the last best economic offer of one side over the other. The Arbitrator must find for each open issue which side has the most equitable position. We use the term "most equitable" because

in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and/or there is a compelling need for this change. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a proven and compelling need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

The Arbitrator would, however, say to the bargaining unit that interest arbitration is an

essentially conservative process. The Arbitrator is bound by the criteria placed upon him by the State of Illinois and the Parties respective positions. The criteria for change, as noted in the above paragraphs, are difficult to achieve. Quantum leaps in interest arbitration are, therefore, difficult to attain. The Collective Bargaining/Interest Arbitration process in the public sector is generally one of small steps over a period of time to achieve an overall goal except under the most extraordinary circumstances.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

1. Wages

Of the issues presented to this Arbitrator, wages are among the easiest to decide. It is true that this unit received a large increase in the last year of the current contract. This was granted because of the relative position between this bargaining unit and the external comparables. For this round of bargaining the Union is not asking for an extraordinary increase but a total of 12% over the 3-year term versus the Employer's 10 ½%. The City argued that the % increases offered were in line with the comparables. This Arbitrator has often noted that % increases will not buy groceries only dollars will. The City further argued that its financial condition would preclude the Union's request for wage increases, and it certainly made some effective arguments in this area. However, the difference between the Union proposal and the Employer proposal is relatively small, and the difference between the wages paid in East St. Louis and other comparable communities is large. Given the work load and health insurance differences, it is clear to this Arbitrator that the Union's proposal more closely meets the requirements of the statutory criteria, and the Arbitrator will find that the Union's position with respect to wages is the most appropriate.

2. Longevity

The Union is departing from the status quo and, as noted above, it bears the burden in this matter. As with wages above, the Union's ability to show the disparity between this group of officers and the external comparables overrides the City's arguments with respect to its

budget deficit. Since this proposal affects only the most senior officers and there is a substantial showing in the record of a significant differential between senior East St. Louis officers and senior officers in other comparable communities, particularly when one takes into account the cost of health care coverage for family benefits, and it is more likely that more senior officers would have family coverage than junior officers, the Arbitrator finds that the Union has made its case with respect to longevity.

3. Sergeant Vacancies

It is the Union that wishes to deviate from the status quo. There is no showing in the record that the Employer has abused its right to fill sergeant vacancies generally as it sees fit. In the absence of such showing the Union has failed to meet its burden with respect to this issue, and the status quo will remain. The Arbitrator would urge the City to continue to use this right responsibly.

4. Uniform Allowance

Again, it is the Union that bears the burden in this issue. The record shows that, while the current allowance is at the low end of the comparables, there is no support within the record for the Union's 50% increase proposal and, therefore, the status quo will remain for the time being.

5. Shift Hours 6. Safety (Manning) 7. Changes in Work Schedules

These issues are intertwined. The Union and the City negotiated a 12-hour shift schedule approximately two years ago. By virtue of those negotiations, that schedule is now part of the Contract and is the status quo. The City argued that its reason for wishing to change to the 12-hour shift in the first place was to save on overtime. The Parties spent a good deal of time negotiating this new system, and there was give and take on both sides in order to make this an effective program. There is, however, no showing in the record that returning to an 8-hour schedule would in any meaningful way reduce overtime costs. The main contributor to excessive overtime is the sick leave issue which will be discussed later in this award. The 12-hour shift schedule is the status quo and, since the City has failed to meet its burden for changes in the status quo, this Arbitrator will not order the Parties to return to the 8-hour schedule. However, the Arbitrator also feels that he does not have the authority to preclude the City from exercising its rights under the Collective Bargaining Agreement to change work schedules upon appropriate notice and effects bargaining. The Arbitrator would urge the City, however, before it makes such a change to review other ways to control overtime costs besides returning to the 8-hour schedule. The Arbitrator finds that the status quo with respect to the current schedule and the rights of management contained in the current Collective Bargaining Agreement will remain and not be changed by this award.

8. Seniority

The Union is proposing that those who are promoted to positions outside the bargaining unit lose seniority for the time that they spent out of the bargaining unit. There was no showing in the record that the Union has in any way met its burden of changing the status quo with respect to these individuals. It is clear to this Arbitrator that this would make it more difficult for the City to promote individuals from the bargaining unit if in fact they felt they would suffer a loss of seniority as a result of this promotion. The Union has not met its burden and, therefore, the status quo will remain.

9. Doctor's Note for Sick Leave 10. Sick Leave and Secondary Employment

The City has shown the difficult overtime problem which has, as one of its main sources, use of sick leave provided in the Collective Bargaining Agreement.

The two proposals by the City will not, in this Arbitrator's opinion, curb sick leave abuse but merely place an additional burden on those officers who do not abuse sick leave but only use it for legitimate purposes. Both the Union and the Employer have a vested interest for controlling sick leave abuse. If this problem continues, the current sick leave program which has been negotiated over a significant period of years may be in some jeopardy. The way to curb sick leave abuse is to go after the abusers. This is a unit of government that conducts investigations as a main part of its portfolio. The East St. Louis Police Department does not need to be lectured by this Arbitrator as to how to conduct investigations. By the City's own testimony there are relatively few officers who are abusing this program. With

some effort on the part of the Department these individuals can be ferreted out and dealt with accordingly. There is no showing in the record that proposals #9 and #10 would in any way solve this problem. Therefore, the status quo will remain.

11. Light Duty

It appears that the Parties have settled this issue based on the Union's response to the City's proposal. If this is not the case, the Arbitrator will retain jurisdiction for a period of ninety calendar days from receipt in order to resolve this particular issue.

12. Sick Leave Committee and Discipline

The Employer has proposed that, if an officer calls in sick more than once per month, he/she will be referred to the Sick Leave Committee. There is no showing in the record that this would in any way reduce overtime or curb sick leave abuse, which is the overall purpose of this proposal. The overall result would be to bring officers before the Sick Leave Committee who have never in any way abused the sick leave program. The Arbitrator would refer the City to his discussion above regarding sick leave abuse. The City has not met its burden to change the status quo.

13. Temporary Assignments

This clause in the Collective Bargaining Agreement which requires overtime payments for temporary assignments, except between the 4<sup>th</sup> and 7<sup>th</sup> day, is in this Arbitrator's experience somewhat unusual. There is no showing in the record that any of the comparables have such a provision. From the Union's standpoint this Arbitrator knows that it is concerned with the City abusing this right to make temporary assignments and, since the City has put in its proposal a limit of 30 days on a temporary assignment, the Arbitrator would find that it is the City's proposal that is most reasonable and meets the information contained in the external comparables. The Arbitrator will specifically caution the City not to abuse this management/contractual right. The Arbitrator finds that it is the City's proposal that most closely meets the statutory criteria, and it shall be included in the new Collective Bargaining Agreement.

14. Manning

This area has been discussed in the 12-hour versus 8-hour provisions noted above.

15. Compensating Leave for Criminal Charges

It is up to the Employer to determine whether or not it wishes to place on administrative leave those who have been charged with criminal offenses. The City in its proposal wants to be able to do this but, even if the person is found not guilty at a later date, not to pay back pay to the vindicated officer. The Arbitrator finds no support in the record for this proposal nor does he feel that it is particularly fair to those officers who have been

improperly accused. Therefore, the Arbitrator will find that the status quo is appropriate.

16. Drug Testing and Drug Offenses

The Arbitrator finds that the proposal made by the City in this area, not only conforms to the criteria expressed in the Act, but also meets the tests of fundamental fairness. These proposals seem reasonable to this Arbitrator, and he knows that both Parties have a vested interest in making sure that impaired officers are not on duty and on the streets of East St. Louis. The Arbitrator finds that the City has met the criteria for changes in the status quo and will order that its proposal be made part of the Collective Bargaining Agreement.

The Arbitrator orders that the above be included in the Collective Bargaining Agreement covering January 1, 2003 through December 31, 2005.

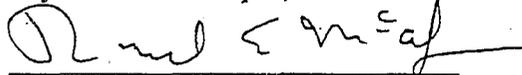
AWARD

Under the authority vested in the Arbitrator by Section XIV of the Illinois Public Employees Labor Relations Act, the Arbitrator selects the last best offers as noted above.

The Arbitrator directs that the provisions noted above along with the predecessor agreement as modified by the tentative agreements previously agreed to will constitute the January 1, 2003 through December 31, 2005 Collective Bargaining Agreement between the Parties.

Dated at Chicago, Illinois this 10<sup>th</sup> Day of September, 2004.

Raymond E. McAlpin, Arbitrator

A handwritten signature in black ink, appearing to read "Raymond E. McAlpin", written over a horizontal line.