In the Matter of the Arbitration	
	Interest Arbitration
Between	
	ILRB Case No. S-MA-05-078
CITY OF MARKHAM	
and	
MARKHAM PROFESSIONAL FIREFIGHTERS' ASSOCIATION, LOCAL 3209, IAFF, AFL-CIO	

APPEARANCES

For the Union

Ms. Lisa B. Moss of Carmell Charone Widmer Mathews & Moss, Attorney

For the Employer

Mr. Thomas F. McGuire of Thomas F. McGuire & Associates, Ltd., Attorney, who withdrew as counsel prior to filing of briefs; Mr. Kevin P. Camden of Odelson & Sterk, Ltd.

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

Introduction

Markham Professional Firefighters' Association, Local 3209, IAFF ("the Union" or "Local 3209") was certified as the exclusive bargaining agent for a unit of all employees hired by the Board of Fire and Police Commissioners of the City of Markham, excluding the Fire Chief, Deputy Chief, Assistant Chief, Administrative Captain, and all civilian personnel of the Fire Department on August 8, 1989. Included in the unit are employees with job titles of Firefighter, Engineer, and Lieutenant.

The first contract between the parties was effective May 1, 1990 to April 30, 1993. This was followed by successive contracts effective from May 1, 1990, to April 30, 1993; May 1, 1993, to April 30, 1998; and May 1, 1998, to April 30, 2001. The 1998 to 2001 Agreement was not signed by the parties until November, 2002.

Negotiations for the current agreement began in April,

2003. A request for a mediation panel was filed with the Illinois Labor Relations Board on April 4, 2001. On April 9, 2004, the parties jointly requested mediation through the offices of the Federal Mediation and Conciliation Service. Mediation efforts were not successful, and on October 5, 2004, the Union filed a Demand for Compulsory Interest Arbitration with the Illinois Labor Relations Board pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq. ("the Act").

On November 22, 2004, the Illinois Labor Relations Board appointed the undersigned to act as Chairman of an interest arbitration panel after he was jointly selected by the parties to serve as interest arbitrator in this dispute. The other members of the panel are George W. Hopman, President of Local 3209, chosen by the Union, and Ralph Schauer, appointed by the City of Markham ("the Employer" or "the City"). Hearings were held in the City offices in Markham, Illinois, on January 31, February 3, March 17, and March 21, 2005. At the conclusion of the February 3 hearing the arbitrator remanded the case to the parties for 14 days so that they might attempt to negotiate a settlement, but no agreement was reached. On April 11, 2005, Mr. McGuire withdrew as counsel for the City and was subsequently replaced by the law firm of Odelson & Sterk, Ltd.

The parties exchanged final offers on June 1, 2005. There are eight outstanding issues in dispute, six economic and two, noneconomic. The economic issues are Wages and Rates of Pay, Longevity Pay, Health Insurance, Sick Leave, Vacation, and Personal Days[1]. The noneconomic issues are Promotions, and Duration and Renegotiations. A third noneconomic issue, Residency, on which both parties originally made proposals, was removed from the table as of their final offers. It should be noted that the parties have used the terms "wages" and "salaries" interchangeably, and I will follow the same practice. For example, Appendix B of the 1998-2001 Agreement is headed "Wages," but in the text refers to the "base annual salary" of "the employees covered by this Agreement."

[1]The parties reached agreement on the issue of personal days during the course of the hearing, with the only question left open being whether the personal day agreement would accumulate if not used in a particular year. The final offers of the parties were in agreement that if not used, the personal day would accumulate.

Statutory Criteria

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

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

(6) The overall compensation presently received by the employees including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of he 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.

The outstanding issues will now be considered.

WAGES

Union Final Offer

The Union's final offer on Article V - Wages and Rates of Pay, Section 5.1, Annual Salary Schedule, provides for the following wage increases for the three classifications, Firefighter, Engineer, and Lieutenant:

Effective May 1, 2001: 5.00%
Effective May 1, 2002: 5.00%
Effective May 1, 2003: 5.00%
Effective May 1, 2004: 5.00%
Effective May 1, 2005: 5.00%
Effective May 1, 2006: 5.00%
Effective May 1, 2007: 5.00%

The Union has also proposed that effective May 1, 2001, the Engineer salary shall be 6% over top Firefighter pay; and the Lieutenant salary shall be 13% over top Firefighter pay. This would result in a 5.3% increase (instead of 5%) for the Engineer classification effective May 1, 2001; and a 6.79% increase (instead of 5%) for the Lieutenant classification effective May 1, 2001.

City Final Offer

The City's final offer on Article V - Wages and Rates of Pay, Section 5.1, Annual Salary Schedule, provides for the following wage increases for the three classifications, Firefighter, Engineer, and Lieutenant:

Effective May 1, 2001: 3.00%
Effective May 1, 2002: 3.00%
Effective May 1, 2003: 3.00%
Effective May 1, 2004: 3.00%

For each contract (and fiscal) year beginning May 1, the 3% increase is to be calculated on the basis of the salary existing on April 30 of the preceding contract (and fiscal) year. The City's final offer also provides for no steps. The City makes no wage proposal for its fiscal year beginning May 1, 2005, because its final offer on Duration provides for termination of the Agreement on the date of this award.

Union Position on Wages

The Union contends that the internal comparables support its final offer on wages. It notes that the current police contract provides for the following wage increases: May 1, 2001 - 3%; May 1, 2002 - 3.25%; May 1, 2003 - 3.5%; and May 1, 2004 - 3.75%. In addition, the Union points out, beginning May 1, 2002, police employees received an additional $1,000 added to their salary for each year. Also supporting its proposal, the Union contends, is the fact that under its offer for 2004 a top firefighter at step 4 would earn $39,128.57 as compared with $49,889.61 for a top patrol officer at step 4.

Similarly, the Union argues, the current AFSCME contract for Markham employees supports its proposal because that bargaining unit has received higher wage increases for the years covered than offered to the firefighters: May 1, 2001 - 3.25%; May 1, 2002 - 3.5%; May 1, 2003 - 3.5%.

The external comparables also support its wage proposal, the Union contends. There is not a single comparable community, the Union asserts, that is paid as low as each rank of employees whose wages are the subject of this arbitration. This is true, according to the Union, even if Harvey (the City's selection as a comparable jurisdiction) is included in the comparison.

The Union argues that the City's proposal is "incomprehensible." In this connection the Union notes that the City's proposal does not include a wage chart. It argues that this would make for great confusion in setting the salary for any newly hired firefighter. With regard to the issue of steps in the wage schedule, the Union asserts, "Not only does the City's police unit have such a step system, but every external comparable pays its firefighters in the same manner." The Union notes that six out of 15 bargaining unit employees remain in the existing step system and argues that the effect of the City's proposal for these employees would be a reduction of pay under the new contract as compared to what they would be receiving under the old contract with its provision for step increases. The Union calls attention to the City's failure to provide an explanation for its proposal to do away with steps in the salary schedule although specifically requested by the arbitration panel to give one. With regard to the Union's proposal to give larger wage increases the first year for Engineers and Lieutenants than the 5% proposed for Firefighters, the Union argues that "it is not unusual that Engineers and Lieutenants are paid a percentage above the top firefighter pay" and that "two of the external comparables specifically express the wages of these two ranks as

a percentage above top firefighter." These, according to the Union, are Country Club Hills and Worth, although, as the Union notes, Worth has no Engineer classification.

The Union argues that the statutory criterion "interests and welfare of the public and the financial ability of the unit of government to meet those costs" also favors its proposal. It is in the interest and welfare of the public to pay the Local 3209 bargaining unit employees a fair and reasonable wage for the work they perform, the Union asserts. A proposal that will cut pay is hardly fair and reasonable, the Union states. It is also not in the interest of the public, the Union argues, to fail to maintain a steady group of firefighters. In the life of the 1998-2001 Agreement, the Union asserts, seven employees left the bargaining unit to seek employment with other fire departments. The Union attributes this to poor pay and substandard working conditions with the City.

The Union disputes the City's contention that meeting the Union's demands would create financial hardship for the City. An audit just for the single fiscal year ending April 30, 2004, is inadequate in the Union's view to give a true picture of the City's financial condition. According to the Union the audits for 2000 through 2003 and an unaudited financial statement for the fiscal year ending April 30, 2005, at a minimum, should have been presented. The accumulated deficit of $2,433,000 in the General Fund, the Union argues, must be balanced against the following facts: the operating deficit for the fiscal year ending April 30, 2004, was only $162,371; the Water, Sewer and Garbage funds have positive net assets of $530,773; the Federal, State and Local Grant Fund has a positive fund balance of $1,526,368; the Debt Service funds relating to TIF #1 and TIF #2 have a positive fund balance totaling $1,568,937; and the TIF #3 and TIF #4 funds have positive fund balances in the total amount of $3,467,856. In addition, the Union asserts, the net assets for Primary Government were $1,583,445 greater at the end of the year than at the beginning. Further, the Union argues, although the City stated that it did not collect 100% of its property tax assessments, the actual property tax collections were greater than the budgeted amount by $238,883.

The cost of living criterion, the Union contends, should have no bearing in this matter because of "the dramatically low wages of Local 3209 bargaining unit employees, and the fact that the Union's proposal does not move Markham up in rank amongst the comparables. . . ." Its position on cost of living is further supported, the Union asserts, by the fact that the City's proposal to do away with steps "will result in a wage reduction for almost half of the bargaining unit employees." The

Union argues that for the employees who will take a wage cut its proposal is closer to the cost of living increases than the City's.

The statutory criterion of "overall compensation," the Union contends, favors its proposal because "[a] review of the collective bargaining agreements for the comparable communities, even if Harvey were included, reveals that the Local 3209 bargaining unit employees do not receive any benefit (including no contribution to health insurance) that would make up for its extremely low wages."

City Position on Wages

The City asserts that the Union's proposal of 5% wage increases retroactive to the expiration of the prior Agreement and continuing until 2007 is significantly higher than its offer of annual wage increases of 3% and than that granted to either of the other internal bargaining units. This is true, the City asserts, "[e]ven if one were persuaded by the Union's unsupported argument that the Employer gave the police a $1000.00 bonus and the clerks a $750.00 bonus in each of their prior agreements to 'incentivize' them to take the Employer's insurance contribution language . . . ."

The City finds disturbing "that the Union fails to pay any heed to either the economic circumstance of the City of Markham, as testified to by the City Treasurer, or the historically low wages offered by Markham relative to other departments." It contends that the Union is utilizing "inappropriate comparable communities" and attempting "to foist high wages upon the Employer under the guise of the marketplace."

The City faults the Union for making "no mention of the annual cost of living or CPI as limiting the increase that should be awarded to the Union members" and for failing "to take into account longevity and/or specialty pay or stipends as part of the compensation its members receive." The City argues that "looking at the salary charts produced in Union 21 does not paint an accurate picture of what Union members in Markham earn, inclusive of seniority and specialty certifications."

Arbitrator's Findings and Conclusions on Wages

Comparable Communities

The Union has held up six communities as comparable to Markham: Hazel Crest, Riverdale, Worth, Country Club Hills, La Grange, and Midlothian. The City has selected Midlothian and Harvey. The Union picked its comparable jurisdictions on the basis of 11 criteria: 1) proximity; 2) population; 3) number of fire department employees; 4) amount of State income tax disbursements; 5) amount of State sales tax disbursements; 6) total of State income and sales tax disbursements; 7) assessed valuation; 8) total of disbursements by Illinois Gaming Board; 9) firefighters/1000 population; 10) per capita income; 11) mean household income. Using a comparability range of +/- 50%, the Union included all jurisdictions that met 8 of the 11 criteria.

One problem I have with the Union's criteria is that they are duplicative to the extent that they count income tax and sales tax separately as two criteria and then combine the two as an additional third criterion. Sales tax disbursement as a separate criterion makes sense to the extent that it reflects the nature of the community in terms of whether there are retail enterprises that are a source of income to the community. Of course the income it provides the community is also important. Income tax disbursement is important solely for the revenue it provides the jurisdiction. I think that to the extent that the two are combined, the effect can be to diminish the importance of sales tax as a separate standard. The same reasoning that would combine state disbursements for income and sales tax as an additional criterion should also include combined total state disbursements from the Illinois Gaming Board, income tax, and sales tax as a fourth independent criterion. I would not combine income tax and sales tax as a third and separate criterion.

Another criticism that can be made of the Union's criteria is that they consider only total assessed valuation and completely ignore per capita assessed valuation. Many think that per capita assessed valuation is an even better indicator than total assessed valuation of the relevant wealth or ability to pay of different communities. In any event I think that it should be given at least equal weight with total assessed valuation.

Excluding for the moment Midlothian, I think that the evidence presented by the Union together with the relevant demographic data provided in the census information relied on by the City would justify the inclusion of all of the jurisdictions relied on by the Union except for La Grange and Worth. The record would also support the inclusion of Harvey as a comparable jurisdiction. As previously noted Midlothian was proposed as a comparable jurisdiction by both parties, and that generally is considered a sufficient basis in interest arbitration for finding

a community to be comparable. The relevant jurisdictions for comparison I therefore find are Country Club Hills, Harvey, Hazel Crest, Midlothian, and Riverdale. In making these findings I have used a comparability range of +/- 50%, which is probably the most common range used in interest arbitration in making these comparisons. In most cases the spread was substantially less than 50%.

Riverdale, Hazel Crest, and Country Club Hills should clearly be included because they meet all of the criteria of the Union's, except, in the case of Riverdale and Country Club Hills, State disbursements for sales tax. Both jurisdictions, however, have combined State disbursements for income and sales tax very close to that of Markham: $2,061,007.00[2] and $2,057,890.27 for Hazel Crest and Country Club Hills respectively as compared with $2,369,755.00 for Markham. The per capita assessed valuation of Riverdale, Hazel Crest, and Country Club Hills (respectively $7,815.37, 8,342.96, and 7,296.53) are well within +/- 50% of Markham's per capita assessed valuation of $6,476.02. I shall consider a jurisdiction which meets either the total assessed valuation or per capita assessed valuation as satisfying the assessed valuation criterion.

Riverdale, Hazel Crest, and Country Club Hills also meet, on a +/- 50% standard, the following additional criteria found in the census data submitted and relied on by the City: Median Family Income ($41,892, $54,049, and $61,577 as compared with Markham's $44,149); Median Household Income ($38,321, 50,576, and $57,701 as compared with $41,592); Median Home Value ($82,600, $98,700, and $109,400 as compared with $75,200); Median Monthly Mortgage Payment $956, $1,158, and $1,205 as compared with $894), and Median Monthly Rent Payment ($652, $934, and $972 as compared with $776).

I would exclude Worth because it fails to meet the

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[2]All dollar figures and other data used in discussing comparability are taken from the pertinent Union exhibits and the City's census data. Neither side has challenged the accuracy of the data submitted by the other party. I have made per capita calculations based on the pertinent dollar and population figures found in the parties' exhibits.

criterion of assessed valuation either on a total or on a per capita basis. On an a per capita basis Worth's assessed valuation exceeds Markham's by 77.9%. Assessed valuation of property is an important criterion for firefighters whose main job is to protect lives and property. Perhaps the disparity as to assessed valuation would not have been enough by itself to exclude Worth, but perusal of the map shows many jurisdictions much nearer to Markham that were skipped over without discussion of their demographics. These include Tinley Park, Oak Forest, Crestwood, Alsip, Blue Island, Robbins, Calumet Park, and Calumet City, some of which are on a direct line between Markham and Worth. Under these circumstances I think that I should be strict when so important a criterion as assessed valuation is not met by such a large margin.

Exclusion of Worth is also supported by a comparison of the poverty rates in the two jurisdictions. The City?s U. S. Census Bureau figures for 2000 show 7.0% and 9.3% percent of families and individuals respectively below poverty level in Worth as opposed to 13.9% and 16.9% in Markham. Markham exceeds the national average of 9.2% and 12.4% respectively for families and individuals below poverty level while Worth is below the national average in both categories. The rate of poverty in a jurisdiction significantly affects the amount and kinds of social services that a community must provide its residents, and it is often used as a criterion in comparing communities. I note also that the median home value in Worth is $141,400, 88% higher than the $75,200 median cost of a home in Markham.

The Union argues that "the fact that Midlothian, an agreed upon jurisdiction, differs from Markham in a particular criterion means that another municipality should not be excluded from the group of comparables merely because it fails to fall within the range for the same criterion." Thus the Union would contend that since the City has agreed to include as a comparable jurisdiction Midlothian, which also fails to meet the assessed valuation criterion, the fact that Worth does not meet that criterion should not be deemed significant. However, the spread between Markham and Worth is much greater as to per capita assessed valuation than between Markham and Midlothian: 58.6% vs. 77.9%. In addition, Midlothian barely misses the +50% criterion for median home value, at 52.6%, as compared with the 88% that Worth exceeds the standard. Even more important is the fact that Midlothian is an immediately adjacent community to Markham, only three miles away, as compared with 12 miles for Worth. For these reasons the fact that Midlothian is an agreed upon comparable community does not require that Worth also be included in the group of comparable jurisdictions.

La Grange should be excluded as a much wealthier community than Markham. Its assessed valuation figure is more than three times that of Markham both as to total valuation and per capita valuation. In addition it exceeds by a very large margin the +/- 50% comparability range for the Union criteria of Per Capita Income ($34,887 vs. $14,870 for Markham) and Mean Household Income ($92,545 vs. $47,870). It also goes way over the +/-50% limit for the following additional demographic criteria listed in the census data introduced into evidence by the City: Median Family Income ($95,554 as compared with $44,149 for Markham); Median Household Income ($80,342 compared with $41,592); Median Home Value ($271,800 compared with $75,200); and Monthly Mortgage Payment ($1,802 vs. $894). I find that La Grange is not a comparable community with Markham.

On the other hand, I would include Harvey in the group of comparable jurisdictions even though its population of 30,000 exceeds Markham's by more than 50%. I believe that the other criteria make up for the disparity in population. Harvey is only four miles from Markham. Its per capita assessed valuation is very close to Markham's: $5,876.27 vs. $6,476.02 for Markham. State disbursements for income tax and sales tax are each within +/-50% of each other. The total State disbursements for income and sales taxes are quite close to each other on a per capita basis: $176.59 for Harvey as compared with $187.78 for Markham. Similarly total State disbursements through the Illinois Gaming Board are close to each other on a per capita basis: $494.74 for Harvey and $514.82 for Markham. The two jurisdictions are within +/- 50% of each other on the criterion of Firefighters/1000 Population: 1.73 for Harvey as compared with 1.27 for Markham. In addition Harvey and Markham are near to each other in most of the criteria discussed above taken from the census data relied on by the City and within the +/- 50% range for all of these criteria: Median Family Income ($35,378 for Harvey vs. $44,149 for Markham); Median Household Income ($31,958 vs. $41,592); Median Home Value ($70,500 vs. $75,200); Median Monthly Mortgage Payment ($879 vs. $894); and Median Monthly Rental Payment ($879 vs. $894). I find that Harvey is a comparable jurisdiction with Markham for purposes of this interest arbitration.

In summary I have found that the comparable jurisdictions with Markham for purposes of this interest arbitration proceeding are Country Club Hills, Harvey, Hazel Crest, Midlothian, and Riverdale.

Findings and Conclusions on Wages

The parties' most recent contract, in effect from May 1, 1998, through April 30, 2001, contained the following wage scale:

		May 1, 1998	May 1, 1999	May 1, 2000
Fire-fighter	Step 1	$25,298.22	$26,310.15	$27,362.55
	Step 2	$26,785.90	$27,857.33	$28,971.62
	Step 3	$28,274.87	$29,405.86	$30,582.09
	Step 4	$29,762.55	$30,953.05	$32,191.17
Engineer		$31,457.74	$32,716.04	$34,024.68
Lieutenant		$33,067.34	$34,390.03	$35,765.63

The Union's final offer would result in the following salary scale for the period May 1, 2001, through April 30, 2005:

		May 1, 2001 - 5%*	May 1, 2002 - 5%	May 1, 2003 - 5%	May 1, 2004 - 5%
Fire-fighter	Step 1	$28,730.68	$30,167.21	$31,675.57	33,259.35
	Step 2	$30,420.20	$31,941.21	$33,538.27	35,215.19
	Step 3	$32,111.19	$33,716.75	$35,402.59	37,172.72
	Step 4	$33,800.73	$35,490.76	$37,265.30	39,128.57
Engineer		$35,828.77 (5.3%)	$37,620.21	$39,501.22	41,476.28
Lieu-tenant		$38,194.82 (6.79%)	$40,104.56	$42,109.79	44,215.28

*Effective 5-1-01 the Engineer salary shall be 6% over top Firefighter pay

*Effective 5-1-01 the Lieutenant salary shall be 13%

over top Firefighter pay

The City final offer on Wages does not contain a salary schedule. It provides for a 3% salary increase on May 1, 2001, May 1, 2002, May 1, 2003, and May 1, 2004, in the amount of 3% over the salary earned on April 30 of each of those calendar years. The same formula applies to Firefighters, Engineers, and Lieutenants.

Following are the wages or salaries for the same period of time, to the extent applicable, for the communities found to be comparable to Markham:

Country Club Hills

The agreement effective May 1, 2004, to April 30, 2009, seems to be the first contract for Country Club Hills fire fighting employees. The following table shows the wage rate for 2004 for each of the three classifications covered by the contract, Firefighter, Engineer, Lieutenant.

		May 1, 2004
Firefighter	Start	$40,325.53
	Year 1	$43,415.53
	Year 2	$46,494.20
	Year 3	$49,383.35
	Year 4	$53,230.40
Engineer		6.25% over current salary
Lieutenant		13.5% over year 4 salary (60,416.50)

Harvey

The record shows that Harvey and IAFF Local 471 have been parties to collective bargaining agreements going back at least until May 1, 1998. However, the only agreement introduced into evidence for Harvey is the contract effective as to salaries from May 1, 2002, to April 30, 2006. The following table shows the salaries in effect at Harvey for the Firefighter (called Pipeman), Engineer, and Lieutenant classifications for May 1, 2002, through April 30, 2005:

		5-1-01	5-1-02	5-1-03	5-1-04	11-1
Pipeman	Start	29,538.85	29,538.85	29,538.85	29,538.85	29,5
	Year 1	34,293.58	36,008.26	37,722.94	38,854.63	40,0
	Year 2	35,106.75	36,862.08	38,617.42	39,775.94	40,9
	Year 3	36,197.73	38,007.62	39,817.50	41,012.03	42,2
Engineer	Base	37,019.58	38,870.56	40,721.54	41,943.18	43,2
Lieu-tenant	Base	39,780.32	41,769.34	43,758.35	45,071.10	46,4

Hazel Crest

The Hazel Crest agreement appears to be a first contract for that jurisdiction. It is effective from May 1, 2002, to April 30, 2006, and covers "all full-time sworn career firefighters/paramedics in the rank of Lieutenant and below . . . ." The following table shows the wages in effect under the contract from May 1, 2002, to April 30, 2005:

		May 1, 2002	May 1, 2003	May 1, 2004
Fire-fighter/ Paramedic	Start	$37,143.00	$38,279.29	$39,405.01
	Year 1	$39,643.00	$40,832.29	$42,057.26
	Year 2	$42,143.00	$43,407.29	$44,709.51
	Year 3	$44,643.00	$45,982.29	$47,361.76
	Year 4	$47,143.00	$48,557.29	$50,014.01
	Year 5	$49,643.00	$51,132.29	$52,666.26
	Year 6	$52,143.00	$53,707.29	$55,318.51
Lieutenant/ Paramedic	Start	$57,683.00	$59,413.00	$61,195.00
	Year 1	$58,943.00	$60,711.00	$62,532.00

	Year 2	$62,614.00	$64,492.00	$66,426.00
	Year 3	$63,922.00	$65,839.00	$67,814.00

Midlothian

The Midlothian contract recognizes the union as the exclusive bargaining representative "for all sworn or commissioned full-time paid firefighters below the rank of Deputy Chief . . . ." The contract contains a single seven step wage schedule. Wage increases become effective on November 1 of each year. The current agreement covers wages from November 1, 2002, through October 31, 2006, with a wage reopener on August 1, 2006, for the sole issue of wages on November 1, 2006, and November 1, 2007. There is a single seven-step wage schedule covering all bargaining unit employees. The following table shows the wages in effect at Midlothian under the prior and the present contracts for the period November 1, 2000, through November 1, 2004:

	11-1-00	11-1-01	11-1-02	11-1-03	11-1-04
Star Start	$32,888.00	$33,875.00	$34,891.00	$35,938.00	$37,016.00
Year Year 1	$36,409.00	$37,683.00	$38,813.00	$39,977.00	$41,176.00
Year Year 2	$38,884.00	$40,245.00	$41,452.00	$42,696.00	$43,977.00
Year Year 3	$41,359.00	$42,806.00	$44,090.00	$45,413.00	$46,775.00
Year Year 4	$43,834.00	$45,368.00	$46,729.00	$48,131.00	$49,575.00
Year Year 5	$46,309.00	$47,929.00	$49,367.00	$50,848.00	$52,373.00
Year Year 6	$48,784.00	$50,491.00	$52,006.00	$53,566.00	$55,173.00

Riverdale

The collective bargaining agreement for Riverdale recognizes the union as the exclusive bargaining agent for "all fire fighters in the bargaining unit." The bargaining unit is described as including "Commissioned Uniformed Fire Fighters, Lieutenants and Fire Engineers." The contract defines "Fire Fighter" as "refer[ring] to all Fire Lieutenants, Fire Engineers and Fire Fighters employed within the Village of Riverdale."

The Riverdale salary schedule is different from that of

all of the other jurisdictions because it has longevity increases built into the base salary. In addition, there is no Firefighter classification, only Fire Engineer and Lieutenant. The reason for this is that no one may be hired as a fire fighter in Riverdale without Fire Fighter II certification before being hired. The salary schedule also states, "All Fire Fighters hired after October 1, 1992, must have and must maintain" either EMT-B or EMT-P certification. "Failure to maintain at least an EMT-B certification," according to the contract, "may result in dismissal."

The Lieutenant position requires 3 years on the job and certification by the Office of the State Fire Marshall as a Fire Fighter III and a Fire Officer 1. The salary schedule also provides additional compensation for various certifications based on training. The table below does not include the training certifications expect for Lieutenant, who must have the certifications mentioned above to be eligible for promotion to that rank. Since a Lieutenant must have at least three years on the job, the first entry for Lieutenant is at the three-year level.

		5-1-01	5-1-02	5-1-03	5-1-04	11-1-04
Engine-er	Start	33,265	33,265	34,429	35,118	35,820
	Year 1	37,506	37,506	38,819	39,595	40,387
	Year 3	42,288	42,288	43,768	44,643	45,536
	Year 5	44,403	44,403	45,956	46,876	47,813
	Year 10	45,957	45,957	47,565	48,516	49,487
	Year 15	47,565	47,565	49,230	50,214	51,219
	Year 20	49,230	49,230	50,953	51,972	53,011
Lieu-tenant	Year 3	49,589	49,589	51,324	52,350	53,397
Lieu-tenant	Year 5	52,068	52,068	53,890	54,968	56,067
	Year 10	53,891	53,891	55,776	56,892	58,030
	Year 15	55,777	55,777	57,729	58,883	60,061

	Year 20	57,729	57,729	59,749	60,944	62,163

I have calculated the percentage increase in wages for all of the comparable jurisdictions, where the figures are available, for the years May 1, 2001 through May 1, 2004. Because the contract year in Midlothian begins in November, I have used November as the starting point for my calculations for that jurisdiction. For any classification with automatic annual step increases the highest step was used for the calculation. The percentage increases may be summarized as follows:

Harvey

May 1, 2001 No Information

May 1, 2002 5% Increase

May 1, 2003 4.76% Increase

May 1, 2004 3% Increase

Nov. 1, 2004 3% Increase

Hazel Crest

May 1, 2001 No Information

May 1, 2002 No Information

May 1, 2003 3% Increase

May 1, 2004 3% Increase

Midlothian

Nov. 1, 2001 3?% Increase

Nov. 1, 2002 3% Increase

Nov. 1, 2003 3% Increase

Nov. 1, 2004 3% Increase

Riverdale

May 1, 2001	3?% Increase
May 1, 2002	No Increase
May 1, 2003	3?% Increase
May 1, 2004	2% Increase
Nov. 1, 2004	2% Increase

It is commonly accepted that the most important criterion in determining wages or salary is a comparison with the results of collective bargaining or arbitration in setting wages in public employment in comparable communities--what is usually called the "external comparables" standard. The 5 percent wage increases for each year proposed by the Union are high based on a comparison of the wage settlements for the years involved in the comparable jurisdictions. The increases for the years 2001 through 2004 were well below 5% in the majority of the comparable jurisdictions, namely Riverdale, Midlothian, and Hazel Crest, none of which communities had an increase above 3?% for any year. Hazel Crest did not have a contract until May, 2004. Harvey was the only jurisdiction with a 5% wage increase during the period 2001 to 2004, namely in 2002 and possibly in 2001. In 2003 and 2004, however, the amount of the wage increase was slightly below 5% in each year. Certainly the average of all the comparable jurisdictions for each of the years from 2001 through 2004 would result in a wage increase well below 5%.

Even when we look at the years after 2004 we find that the Union's 5% proposal is high. In 2005 the increase in Hazel Crest was only 3%. In Midlothian it was 3.25%. In Riverdale there were two 2% increases, an effective dollar increase for the year of approximately 3%. In Harvey there were two 3% increases, respectively in May and November, for a total dollar increase of approximately 4?%. Only Country Club Hills had a wage increase of approximately 5% (actually 4.94%). The average among the comparable jurisdictions for the contract year 2005 was well below 5%

On the other hand, the tables above show very clearly the great disparity in salaries between Markham and every other comparable community but Harvey. For example under the Union's offer in the 2001 contract year a top rated firefighter in Markham would earn only $33,800.73 compared with $50,491.00 in Midlothian. Even a Harvey firefighter would earn more at $36,197.73. With a 5% increase in each of the years 2002, 2003, and 2004, a top rated Markham firefighter would earn in 2004 a

base salary of $39,128.57 as compared with $53,230.40 in Country Club Hills and $55,173 in Midlothian. He would still earn less than the Harvey firefighter although he would have closed the gap by a substantial amount. A Markham Lieutenant in 2004, under the Union's proposal, would earn a base salary of $44,215.28 compared with a Lieutenant's earnings of $60,416.50 in Country Club Hills, at least $61,195 in Hazel Crest, $55,173 in Midlothian, and $52,873 in Riverdale.

Many arbitrators would be persuaded by the comparisons in the preceding paragraph to find that Markham is entitled to a higher settlement than the comparable jurisdictions on the principle of "catch-up." See the discussion in Elkouri and Elkouri, How Arbitration Works (Sixth Ed., Ruben Ed.-in-Chief, 2003) at 1407-1408, 1413, 1416, 1417, 1418, and 1419. Many other arbitrators, however, would not hold that evidence of a disparity in wages between the subject jurisdiction and comparable communities by itself was a sufficient basis for awarding employees a significantly higher percentage wage increase than prevails among the comparable jurisdictions. See Saint Mary's Hospital, 120 LA 1707, 1715 (Fredric R. Dichter, 2004) and cases cited therein.

The decision on wages would be difficult in this case but for one consideration, namely, the inclusion as part of the City's final proposal the elimination of steps in the salary schedule. There is no support in the record for that request. Every comparable jurisdiction, without exception, has some kind of step structure as part of its salary scale.

In addition, the acceptance of the City's proposal would result in some firefighters getting a lower wage under the new contract than the expired agreement. For example, Firefighter Michael Giuseffi was hired on October 1, 2002, at a salary of $27,368.72. He went to Step 2 at $28,971.28 on October 4, 2003, pursuant to the old contract. On the same basis, on October 5, 2004, he was placed at Step 3 at a salary of $30,582.09. Under the old contract he would be entitled to move to step 4 at $32,191.17 as of October 5, 2005. Each step increase was more than 5%.

Since Mr. Giuseffi's step increases each year exceeded the City's 3% final offer for each year of the new contract, Mr. Giuseffi, under the City's proposal, would get no retroactive pay for the years in which he received a step increase. Nor presumably would he be required to return any money received as salary in excess of 3%. However, if the City's final offer to eliminate steps was adopted, Mr. Giuseffi would lose his 5% plus step 4 increase effective in October, 2005. The same would be

true of Firefighter Michael Dizonno, who was hired on the same day as Michael Giuseffi. The City's offer makes no provision for dealing with employees who have not yet reached top rate and are still progressing on the steps.

Nor has the City provided any explanation for this significant change it wishes to make in the wage structure. It is clear that eliminating the steps would save the City money, but that is hardly a justification where the City's wage structure is low to begin with compared with the comparable jurisdictions. In this connection it is to be noted that the City retained the steps in the most recent police contract for the period May 1, 2001, to April 30, 2005, even though police officers receive higher pay than firefighters.

The internal comparables criterion works both ways. On the one hand it favors the City's proposal because the Union's final offer provides for significantly higher increases than the 3%, 3.25%, 3?%, and 3.75% increases provided respectively in the police contract and the 3%, 3.25%, 3?%, and 3?% increases in the AFSCME bargaining unit contract.[3] On the other hand this criterion also favors the Union's final offer because the City's offer would give a smaller wage increase to the firefighters than either of the other two units received. What determines my decision in this case is the aspect of the City's proposal that would do away with the step structure. It is a proposal that finds no counterpart in the contract of any of the comparable jurisdictions; that would significantly alter the salary structure; and for which the City has provided no justification.[4] It is that aspect of the City's proposal that confirms for me that I should reject it and adopt the Union's proposal instead.[5]

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[3]The most recent City-AFSCME contract is effective from May 1, 2000, through April 30, 2004.

[4]See Elkouri and Elkouri, How Arbitration Works (Sixth Ed., Ruben Ed-in-Chief, 2003) 1420, which states, "Arbitrators generally agree that demands for unusual types of contract provisions preferably should be negotiated."

[5]I am not stating that I definitely would have selected the City's offer absent the proposal to do away with the steps. Without the pivotal issue of the steps, I would then have had to decide whether to go with the City's low offer as compared with both the internal and external comparables or the Union's high offer as compared with the external comparables and the AFSCME unit. The police unit settlement was actually much higher than 3.25%, 3.5%, and 3.75% for its last three years because of the

additional $1,000 added to the base salary for each of those years.

In deciding to reject the City's offer I am not unmindful of the cost of living criterion. The Union's final offer exceeds the increase in the Consumer Price Index for the period involved by a large amount. For example between May, 2001, and May, 2004, the CPI Index, All Urban Consumers increased by 4.95%.[6] The Union's final offer calls for a 15% increase for this same period of time. Nevertheless most arbitrators agree that external comparability is a more frequently used standard than cost of living in making salary interest arbitration determinations. See Elkouri and Elkouri, supra, 1403-1404.[7] Presumably the other jurisdictions in making their own salary determinations also considered cost of living together with other relevant factors.

I have also taken into consideration the statutory criterion, "[t]he interests and welfare of the public and the financial ability of the unit of government to meet those costs." It is certainly in the City's interest to retain valued, experienced firefighting employees and to attract competent people of quality should additions have to be made to the department. Maintaining competitive wages is an important element, among others, in achieving this goal. It is true that the City must also operate within its financial means. There is no evidence, however, that the City would be unable to pay for the wage package contained in the Union's proposal for the years May, 2001, through April, 2005, which I shall adopt in this proceeding. In this connection I note that for each of the last three years of the police contract, in addition to the 3.25%, 3?%, and 3.75% respective increases, the City awarded an additional $1,000 to the base wages of all classifications of police officers. It is difficult to see why the City would be able to pay those salaries, which, for top-rated patrol officers, amount respectively to 5.57%, 5.69%, and 5.83% annual increases, but not be able to afford the more modest 5% annual increases to sworn fire department employees.

For all of the foregoing reasons I adopt the Union's final offer on Wages for the contract years beginning May 1, 2001, through May 1, 2004, but not for any subsequent year. In making this finding I have considered all of the relevant

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[6]The increase in the CPI Index for the Chicago-Gary-Kenosha area for the same period was even less, 4.71%.

[7]My reading of Illinois interest arbitration decisions confirms the accuracy of the surveys referenced in the Elkouri and Elkouri text.

statutory criteria whether or not specifically referred to in the preceding discussion.

Duration and Renegotiations

Union Final Offer

The Union final offer for Section 23.1, Duration and Notice, provides as follows:

> This agreement and each of its provisions shall be effective as of May 1, 2001 and shall continue in full force and effect until April 30, 2008 and thereafter unless either party shall notify the other in writing 150 days (or January 1st) prior to the anniversary date of this contract, that it desires to modify and/or amend this agreement.

City Final Offer

The City final offer on Section 23.1 states as follows:

> This Agreement shall be applicable retroactive to May 1, 2001 and shall be prospective until the date of the 2005 Interest Arbitration Award. All other provisions of the parties collective bargaining agreement effective May 1, 1998, except as modified by the Interest Arbitration Award, shall remain in full force and effect.

Union Position on Duration and Renegotiations

In proposing a seven-year contract, the Union argues that four years of the contract already have passed and that its proposal will provide the parties with labor stability for the remainder of the term. The City's proposal, the Union argues, cannot possibly contribute to stabilizing "the obvious contentious relationship between the parties" that now exists.

The Union points out that the City's proposal would cause the contract to expire in the middle of a fiscal year and argues that this "would result in the bargaining unit employees foregoing any raises effective May 1, 2005 as no such proposal was submitted by the City, thereby forcing a wage freeze for the first time in the Local 3209 bargaining unit's history." Such a result, the Union contends, is absurd and finds no support in

either the internal or external comparables. Another serious problem with the City's offer, the Union asserts, is that it has deleted the reopener clause.

City Position on Duration and Renegotiation

The City contends that it "has proposed a term of four years, give or take, from the expiration of the prior agreement in 2001 to the date of the Award in this matter." That period of time, the City argues, is consistent with the other Markham agreements, which are each four years in duration, and more closely mirrors the term of the prior agreement than the Union's proposed seven year term.

The City disputes that a longer contract will do anything to promote labor harmony or stability and asserts that, instead, "simply extending this agreement will only engender more bitterness between the parties because the agreement has been set by an 'outsider.'" The City stresses that such a long contract as the Union proposes departs from the negotiation history between the City and its unions. Further, the City contends, "forcing the Employer into a long term agreement, in light of its admittedly precarious financial position, only forces the parties more radically apart come 2008."

The most prudent course to follow in the City's view "is to put an Award in place with an appropriate comparable pool, resolve some of the major pending impediments, i.e. wages and insurance, and allow the parties to dictate their own respective futures." This should be accomplished, according to the City, by giving the parties the opportunity to review their economic situations and then renegotiate a new agreement. The City emphasizes that most of the collective bargaining agreements of the comparable jurisdictions are for terms of three or four years and that the longest other contract is five years in duration.

Arbitrator's Findings and Conclusions as to Duration and Renegotiations

One problem I have with the Union's proposal on duration is that it continues the 5% wage increases for the last three years of the contract. Three of the five comparables have significantly lower wage increases than five percent in their agreements for the 2005 contract year. Hazel Crest provides for a 3% increase; Midlothian for 3.25%; and Riverdale for two 2% increases respectively on May 1 and November 1, 2005, amounting to an effective dollar increase of approximately 3% for the year. The Harvey contract provides for two 3% increases in May and

November, 2005, or a dollar increase of approximately 4?%. The Country Club Hills contract provides for a 4.94% pay increase effective May 1, 2005. The average for the five comparable jurisdictions comes to 3.74%. After (for the reasons explained) awarding 5% increases for each of four contract years 2001 through 2004, an amount well above the average for the comparable jurisdictions for these years, I am not willing to grant a fifth year of wage increases not supported by the external comparables. It is time with the fifth year and beyond for the parties to negotiate their own wage increases and other contract terms.

The Union would have the arbitrator award wages for as long as seven years. None of the comparable jurisdictions sets wage terms for as long as seven years. In fact only Country Club Hills has a salary schedule setting wages for as long as five years. Midlothian provides for wage reopeners for the fifth and sixth years of the contract; and Riverdale, for a reopener for the fourth year of the contract. There is no precedent among the external comparables for setting wages beyond five years; and the precedent is slim, involving only one jurisdiction, for as long as five years.

On the other hand, the Union is correct that there is no precedent between the parties for terminating a contract in the middle of a fiscal year. I think that the most reasonable solution is to continue the contract until the end of the current fiscal year, which began May 1, 2005, and include a reopener in the contract as to all terms for that year. I believe that I have the authority to do this because the parties are in agreement[8] that Duration and Renegotiations is a noneconomic issue. I am therefore permitted to modify the parties' own proposals on the subject, as distinguished from an economic issue, where I must choose one proposal or the other.[9]

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[8]The Union expressed reservations about treating Duration as noneconomic in the special facts of this case, although conceding that it is generally considered a noneconmic issue. Nevertheless the Union stated that it would defer to the chairman of the arbitration panel?s decision in the matter, who stated that he viewed the issue as noneconomic.

[9]Since the parties have made Duration one of the issues in this arbitration, I believe that I have the authority to accept only that portion of a party's wage offer as is consistent with the terms of the Duration clause as fashioned by me. Therefore, for example, were I to terminate the contract as of April 30, 2005, any portion of the Union's final offer on Wages would become moot after that date. That would not, however, prevent me from adopting the

portion of the Union's offer that pertained to the time period before May 1, 2005. Similarly, as part of my authority to determine Duration, I believe that instead of terminating the Agreement as of April 30, 2005, I can provide for a reopener for the year beginning May 1, 2005, so that the parties are not left without a contract in effect.

The current Riverdale contract contains a reopener clause in the Duration article. See Riverdale contract at page 38. I conclude that Section 23.1 of the new Agreement should also include a reopener provision and that the section should read as follows:

Section 23.1 Duration and Notice

This agreement and each of its provisions shall be effective as of May 1, 2001, and shall continue in full force and effect until April 30, 2006, and thereafter unless either party shall notify the other in writing 150 days (or January 1st) prior to the anniversary date of this contract, that it desires to modify and/or amend this Agreement.

Reopener

Notwithstanding the preceding paragraph, within 30 days of receiving the arbitrator's award in ILRB Case No. S-MA-05-078 either party may notify the other in writing of its desire to reopen this Agreement as to any of its terms retroactive to May 1, 2005. Upon such notice being given, the duly authorized representatives of the parties shall commence the reopener negotiations in accordance with the provisions of Sections 23.2, 23.3, and 23.4 of this Article XXIII, except that the dates February 1st and March 15th mentioned in Section 23.2 shall not apply to such negotiations.

LONGEVITY PAY

Union Final Offer

The Union proposes to retain the current contract language for Article V, Section 5.7, Longevity Pay. The current contract language states as follows:

Section 5.7 Longevity Pay

The employer agrees to pay longevity, which shall be added to the employee's base salary. Each employee eligible shall receive the following:

5+ years 2% step increase

10+ years 5% step increase

15+ years 9% step increase

20+ years 14% step increase

City Final Offer

The City's final offer on Section 5.7, Longevity Pay, states as follows:

Section 5.7 Longevity Pay

Number of Years of Continuous Employment with the Markham Fire Department	% Increase
5 years	A one time 2% addition to the salary paid at the time of attaining 5 years
10 years	A one time 2% addition to the salary paid at the time of attaining 10 years
15 years	A one time 2% addition to the salary paid at the time of attaining 15 years
20 years	A one time 2% addition to the salary paid at the time of attaining 20 years

Union's Position on Longevity Pay

The Union argues that because the City is seeking to change the status quo with regard to longevity pay, it has the burden of producing compelling evidence to justify the change it seeks. The City, according to the Union, has provided no basis for reducing the amount of longevity pay, which historically has increased with each successor contract. The Union asserts that the City has failed to provide a consistent explanation of what the language it is proposing on longevity means. Further, the Union contends, neither the internal or the external comparables supports the City's position, and both support the Union's.

City's Position on Longevity Pay

The City asserts that it has proposed to change the longevity provision "to more easily calculate the longevity step and avoid annual, compounding longevity increases." The City interprets Union Exhibit 29, a document prepared by the City showing the current salary and longevity and other additional compensation being paid to bargaining unit employees, as demonstrating that "Union members receive longevity bumps of 2% each year from years 5 through 9, 5% each year from years 10 through 15, 9% from 15 to 19, and 14% from 20 years on. . . ." It asserts that "the compounding is staggering" and that brakes must be put on it. The City contends that both the internal and the external comparables support its position because they provide significantly lower amounts that take much longer to attain.

Arbitrator's Findings and Conclusions on Longevity Pay

The City's proposal makes a major change in the longevity pay clause. Not only does it significantly reduce the amount of the longevity payment, but it makes the payment into a kind of one-time bonus instead of making it part of the employee's base salary. That is my interpretation of the language "one time 2% addition to the salary paid. . . ." This interpretation is supported by the elimination of the present language which states that longevity pay "shall be added to the employee's base salary."

Purely on the basis of a comparison with the external jurisdictions, one is led to conclude that the amount of the longevity payments in Markham is high. The present payments are significantly higher than those at any of the other comparable communities. For example, Country Club Hills pays 2% after 5 years, the same as Markham, but only 3.75% after 10 years as compared with 5% at Markham; 5.5% after 15 years as compared with 9% at Markham; and 7.25% after 20 years compared to 14% at Markham. Harvey pays 2%, 4%, 6%, and 8% at the same intervals--also substantially below the levels at Markham after the first payment. Hazel Crest and Midlothian both pay fixed dollar amounts, instead of percentages, and these amounts are much less than what the percentages come to at Markham. Riverdale pays longevity only after 20 years of service and then for only two pay periods each year.

The City, however, proposes to reduce longevity

payments to an amount below that paid at any of the comparable jurisdictions except Riverdale. For example, under the Union's final offer the base salary of a Lieutenant during the 2004-2005 contract year would be $44,215.28. Two percent of that amount comes to $884.30. That would be less not only than the percentages paid at the 10, 15, and 20 year levels at Country Club Hills and Harvey but less than the dollar amounts paid at the 10, 15, and 20 year intervals at Midlothian and Hazel Crest.[10] On the basis of dollar amounts alone I find that the external comparables do not support the drastic changes proposed by the City to the longevity clause.

Moreover, as I read the longevity provisions in the Country Club Hills, Harvey, Hazel Crest, and Midlothian contracts, longevity pay becomes part of the employee's base salary in those jurisdictions. It is not treated as a one-time payment in the nature of a bonus. If I am correct in my interpretation of the City's proposal that it treats longevity pay as a one-time payment that does not become part of the employee's base salary, then the disparity between the City's final offer on this issue and what is found in the contracts of the other jurisdictions is even more pronounced.

Turning to the internal comparables, one sees plainly that the AFSCME contract provides a lower longevity benefit than what is currently found in the firefighters contract. The AFSCME contract awards longevity additions to the employee's current salary of 2%, 6%, 7%, and 8% respectively in the employee's fifth, tenth, fifteenth, and twentieth years of service. The AFSCME contract would support a lower longevity schedule than is paid to the firefighters but it would militate against adoption of the City's final offer in this case of 2% payments at each interval. The AFSCME contract also provides that "the City shall add the percentages . . . to the employee's current salary." It does not provide for a one-time payment. The police contract even more clearly fails to lend support to the City's offer by referring to longevity pay as a "step increase." The amount of longevity pay is also substantially higher under the police contract than what the City is proposing in its final offer.

Finally, it should be noted that up until now at

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[10]Hazel Crest does not provide longevity pay after five years of service unlike Country Club Hills, Harvey, and Midlothian, which do grant it after five years.

Markham longevity pay seems to have served the function of keeping the pay of long-term employees at least within reach of salaries paid in the comparable jurisdictions, although still well below them. I do not think that a reasonable case can be made out for reduction of the longevity payments so long as the salaries of long-service employees are significantly below the salaries of their counterparts in comparable communities.

I shall adopt the Union's final offer on longevity pay.

HEALTH INSURANCE

Union Final Offer

The Union final offer on Article XII, Safety Health and Welfare, Section 12.1, Hospitalization and Medical Care, is as follows:

> Section 12.1 Hospitalization and Medical Coverage
>
> The City shall continue to make available to employees covered by this Agreement and their dependents substantially similar group health and hospitalization insurance coverage and benefits as existed as of July 1, 2004.
>
> The employer agrees to contribute 100% of the premium cost of the Hospitalization and Medical coverage program for the employee and the employee's dependents. The medical coverage shall also include: Prescription Drug Plan, as provided for as of July 1, 2004.
>
> Effective May 1, 2006, employees will be required to pay for health insurance coverage as follows:
>
> Employee single coverage - $25.00 per pay period
>
> Employee dependent coverage - $37.00 per pay period
>
> The Union shall be consulted before changing insurance carriers or instituting new programs.

City Final Offer

The City final offer on health insurance reads as follows:

ARTICLE XII, HEALTH INSURANCE

The City proposal is that the Fire Department Union membership be treated the same way as the City employees who belong to the two other Unions who represent City employees; i.e. the Teamsters who represent the Police Department and AFSCME who represents all other City employees exclusive of the Fire Department and the Police Department.

Specifically, the City proposes that there would be 4 Tiers; i.e.

A) A Single employee would pay 20% of the annual premium

B) A Single employee with spouse would pay 20% of the annual premium

C) An employee with child/children would pay 20% of the annual premium

D) An employee who desires Family coverage (i.e. wife/child or children) would pay 15% of the annual premium.

Payment of the applicable premium would be paid by dividing equally the annual cost of the applicable premium among the employees' 26 pay periods per year.

Presuming that the CBA is retroactive to when the last CBA expired (i.e. 2001), the City proposes that the Union membership of the Fire Department pay the percentages found on Page 1 of this writing. As to those times that the percentages were not in effect but that the City employees covered by the Teamsters and/or AFSCME membership were paying a fee for health insurance coverage, the City proposes that the same be applicable to the Union membership of the Fire Department.

Union Position on Health Insurance

The Union notes that the City employs approximately 80 full-time employees of whom 15 are in the Local 3209 bargaining unit. The Union interprets the Company's argument on health

insurance as based solely on internal comparables and contends that "[h]istorically, the employees covered by the three Markham bargaining units have never paid the same contribution towards health care." Local 3209, the Union asserts, has never contributed toward health care premiums while the Teamsters and AFSCME, with the exception of the present collective bargaining agreements, have each paid a different contribution.

The Union contends that it is unwilling to agree to an open-ended percentage contribution toward insurance instead of a fixed dollar amount because the City's method of purchasing insurance lacks professionalism. The Union also argues that the City's records regarding insurance payments are not in good order so that the record does not reflect the actual dollar amounts being paid by the Teamster and AFSCME units toward insurance. The Union contends that "the City has already reaped over the years more than it should have received from Local 3209 bargaining unit members" by unilaterally implementing a copayment requirement for prescription drugs even though the collective bargaining agreement provides for Employer payment of 100% of the medical coverage, including a prescription drug plan.

The Union argues that its proposal implements a contribution towards health insurance contribution in the same way that it was phased in for the Teamster and AFSCME units, namely, a fixed dollar per pay period. The Union contends that the City proposal should also be rejected because it lacks any quid pro quo for the firefighters unit in contrast to the additional benefits given to the Teamsters and AFSCME units in exchange for their agreement to percentage contributions toward health insurance. The external comparables, the Union argues, also support its proposal on health insurance. The City, the Union maintains, is attempting to gain too much at one fell swoop instead of proceeding incrementally as the Union proposal does.

City Position on Health Insurance

The City contends that both the internal and external comparables support its final offer on insurance. It asserts that it has gotten contributions from the other two unions "and needs the same contribution from this Union." The City urges that it must have relief from the red ink caused by the continuous escalation of insurance costs.

With respect to the fact that both the police unit and the AFSCME unit received additions to wages ostensibly to offset the higher insurance contributions requested of them in their latest contracts, the City asserted at the hearing that, unlike

the other two bargaining units, the firefighters unit did not make any contribution toward health insurance premiums for three years from 1998 to 2001 while the other bargaining units were contributing. In the City's view the savings to the firefighters was equivalent to any additional benefit given to the other bargaining units in their latest contracts.

Arbitrator's Findings and Conclusions on Health Insurance

It is generally accepted that the criterion most often relied on in determining health insurance disputes is internal comparability. See, for example, Elkouri and Elkouri, How Arbitration Works (6th Ed., Ruben Ed.-in-Chief, 2003) 1413. Both the Teamster and the AFSCME units have contributed toward health insurance premium costs since 1998. The AFSCME unit began contributing a few months earlier than the Teamsters, in January, 1998, while the Teamsters began contributing in May. From May, 1998, until the end of March, 2003, the employees in both units contributed a stated dollar amount toward the premium rather than a percentage of the premium. The Teamster unit contributed $5 per pay period more than the AFSCME employees for single coverage and $7 more for family coverage. In April, 2003, the AFSCME unit began making percentage contributions, and the Teamster unit, a month later. The percentage amounts are the same for both units.

The fact that until now the firefighters unit has not been asked to contribute to health insurance premiums does not mean that these employees should continue to be exempt. The trend among both public and private employers is to require employee contribution toward premium costs as these costs have escalated precipitously over the past several years. Both the percentage of employees who contribute and the size of the contribution have continued to go up with the steady increase in premium charges levied by health insurance companies.

The strongest argument the Union had for not being required to contribute beginning with the first year of the new contract is the additional consideration granted to both the Teamster and the AFSCME units for their agreement to a percentage insurance premium contribution. The City offered nothing as an inducement to this unit in contrast with the $1,000 addition to base pay each of the last three years of the Teamster contract and a one-time $750 payment to the AFSCME unit.

That argument is no longer available to the Union, however, with the award to it of a four year contract with a five percent increase each year--an amount significantly above the average of the increases obtained by the firefighter units in the

comparable communities for the same years. This is one more year than the three years for which an extra $1,000 was added to the base salary of police officers and substantially more than the one-time $750 bonus payment to the AFSCME unit employees. The Union also achieved increases above 5% for Engineers and Lieutenants in the 2001-2002 contract year by adding to its final offer the requirement that the Engineer salary be 6% over top firefighter pay and the Lieutenant salary, 13% effective May 1, 2001. This resulted in an increase of 5.3% in the base pay of Engineers and 6.79%, of Lieutenants for that year. Those were new and valuable benefits for these classifications that did not have a counterpart in the contract language of the majority of the comparable jurisdictions.[11]

The Union has offered no contribution toward health insurance premiums until 2006. This is not supportable in light of the fact that the other bargaining units in Markham are contributing to premium payments in the same amount as requested of the firefighters and of the wage increases awarded to the firefighters unit starting in 2001 as discussed in the preceding paragraph.

Nor does the health insurance picture at the comparable jurisdictions help the Union's position. Country Club Hills and Midlothian firefighters pay 20% of the premium cost for both individual and dependent coverage. Hazel Crest firefighters pay 10% of the premiums for both coverages. Harvey firefighters have

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[11]There may also be some merit to the City's contention that the fact that firefighters did not make any contribution toward health insurance premiums from 1998 to 2001, while the other units were doing so, blunts the force of the Union's argument that the firefighters did not receive the same inducements as the other bargaining units for agreeing to a percentage contribution to premium payments. One would have to know, however, if the low wages of the firefighters were a factor in their not being required to make contributions to health insurance premiums for those years in order to be able to judge the validity of the City's argument.

been paying 21.5% of the premium cost for dependent coverage since May 1, 1996. Riverdale bargaining unit employees have contributed to health insurance premiums since at least May, 2001; Midlothian, since at least April, 1997; Hazel Crest, since January, 2003; Country Club Hills, since the first contract in 2004; and Harvey, since at least 1996. There is simply no support for the Union's position regarding percentage contribution or the commencement date of coverage among either the internal comparables or the external ones.

The Union's complaint that the firefighters unit has been treated unfairly by being required to make copayments for prescription drugs is not supported by the contract language. Section 12.1 of the most recent Agreement commits the Employer to pay 100% of premium cost of a prescription drug plan, but it says nothing about copayments. Nor am I persuaded by the evidence that the City is not acting diligently to keep premium costs down. The fact is that just about everybody's health insurance premium costs are going up at an inordinate rate. I also do not agree that the amount of contribution requested of the employees is excessive even as a first-time contribution in view of escalating insurance costs, as described in City Exhibits 8 and 9, and which are a matter of common knowledge. I shall adopt the City's proposal on health insurance.

PERSONAL DAYS

The parties reached agreement at the hearing that a new benefit of one personal day would be given to the employees in the bargaining unit. The only open question was whether personal days could be accumulated. In their final offers both parties proposed that the personal day may be accumulated. The Union proposed the following language which the City has not objected to in its brief:

> Section 7.2 Holidays and Personal Days
>
> (a) Holidays * * *
>
> * * *
>
> (b) Personal Days Each employee shall have one (1) personal day each year. Personal leave may be taken at anytime during the year upon authorization of the Chief after request by the employee of [sic with?] not less than 72 hours' [written] notice prior to the requested personal day, except [that] in the case of an emergency,

the Chief may waive the requirement for written notice. If more than one person is requesting the same day, the request shall be granted to the person who submits the request at the earliest date. If the requests are submitted at the same time, seniority shall determine who will be eligible. Personal days may be accumulated.

The proposed language of the Union on Personal Days will be adopted.

SICK LEAVE

Union Final Offer

The Union's final offer on Section 7.3, Sick Leave, is to retain the current contract language. The issue in dispute pertains to the rate at which sick leave will be accumulated. The language in point in Section 7.3 states as follows:

Section 7.3 Sick Leave

* * *

* * * Employees who are assigned to 24-hour shifts shall earn six (6) duty days of sick leave each year and employees assigned to 8-hour shifts shall earn eight (8) duty days of sick leave each year. * * *

City Final Offer

The City's final offer on Section 7.3 is as follows:

AS TO SICK TIME

The City proposes that the retroactive to 5/1/01 sick time accrual for **New** employees of the Fire Department commencing employment with the City on or after **5/1/03** covered by Union membership be as follows:

A) Those who work a 24-hour tour would accumulate 4 duty days of sick leave for each year of the CBA (i.e. May 1 to April 30).

B) Those who work an 8-hour duty tour would earn 6 duty days of sick leave for each year of the CBA

(i.e. May 1 to April 30).

Union Position on Sick Leave

The Union contends that the City has the burden of proof because it seeks to modify the status quo. It notes that the City's explanation for the proposal is that it seeks to save the City some money. The Union asserts that the record is devoid of evidence regarding how, when, or how much money the City will save. The Union questions how the City can save money in view of the Chief's testimony that there is no present intention of hiring new personnel.

The Union contends that the internal comparables favor its proposal. Although the police contract provides a two-tier approach to sick leave, the Union asserts, after six years of employment the employees in the lower tier begin earning sick leave at the same rate as those in the higher tier. Similarly, the Union states, in the AFSCME unit, which has two tiers, the lower tier begins to earn sick leave at the same rate as the higher tier after seven years of employment. Under the City's offer, the Union notes, the lower tier never earns sick leave at the same rate as the higher one regardless of years of service.

Similarly, the Union argues, the external comparables fully support its position since none of them has a two-tier sick leave benefit, and only Riverdale provides for less than 6 days of sick leave per year for 24 hour employees.

City Position on Sick Leave

The City views vacation time and sick leave as similar benefits that it wishes to curtail in order to save overtime costs incurred from filling in for employees absent from work because of vacation or sick time utilization. It needs this relief, the City asserts, because of its poor financial condition. After reviewing the vacation and sick leave provisions in the contracts of the police and AFSCME units at Markham and of the comparable jurisdictions, the City concludes that "comparing and contrasting both internal and external comparables, a review under either pool demonstrates not only support for less leave time, but also for the proposition of a two-tiered system."

Arbitrator's Findings and Conclusions on Sick Leave

None of the comparable jurisdictions has a two-tier

system for sick leave accumulation. Riverdale, with 4 sick days per year accumulation, and Country Club Hills with 5, provide a precedent for accumulation of less than 6 days--the number of sick leave days accumulated per year under the most recent firefighters contract. The police and the AFSCME units at Markham have two-tier sick leave programs. Together with the Riverdale and County Club Hills examples they provide a reasonable basis for relief to the City However, the Union is correct in its observation that both the police and the AFSCME units allow the second tour group to begin earning sick leave at the same rate as the first tier after a certain number of years. The City has not explained why it is not willing to treat the firefighters unit the same way. On the present record I do not think that the City has made out a case for changing the status quo. However, since I have provided for a reopener effective as of the date of this opinion, the parties will be able to address this question again in the very near future. I shall adopt the Union's proposal on sick leave.

VACATION

Union Final Offer

The Union proposes in its final offer to continue the existing language on Section 7.1, Vacation.

City Final Offer

The City's final offer on Section 7.1, Vacation, is as follows:

Section 7.1 Vacation

Employer proposes the addition of the following language:

Vacation shall be earned annually based on the following schedule for employees hired after May 1, 2003:

(A) Twenty-four hour Shift Personnel**(New People)**

0-4 years	4 duty days
5-9 years	6 duty days
10-14 years	8 duty days

15+ years	10 duty days

(B) Forty hour Per Week Personnel **(New People)**

0-4 years	2 weeks
5-9 years	3 weeks (increase of 1 week upon attaining 5 years)
10-14 years	4 weeks (increase of 1 week upon attaining 10 years)
15+ years	5 weeks (increase of 1 week upon attaining 15 years)

Union Position on Vacation

The Union contends that the internal comparables do not support the City's proposal because neither the police or the AFSCME unit has a two-tier vacation policy. Nor do the external comparables support it, the Union argues, because none of them has a two tier policy, and the offer is less than the amount of vacation provided at all of the other comparable jurisdictions but Midlothian.

City Position on Vacation

The City's position on vacation is the same as its position on sick leave.

Arbitrator's Findings and Conclusions as to Vacation

It is undisputed in the record that the City had an operating deficit in excess of $162,000 in the fiscal year immediately prior to the commencement of this arbitration hearing and a total operating deficit, which it is carrying, of more that $2,432,000. The City's request for relief where it can reasonably be provided is not a spurious one.

The new vacation schedule which the City is proposing for newly hired firefighters is more generous for 40-hour personnel than the single-tiered schedule currently in place for the Markham police and AFSCME units. Both of those units made concessions on sick leave for new employees--something I have not

imposed on the firefighters unit. The proposal is more generous than the vacation allowance schedule currently in effect for Midlothian employees--the one jurisdiction that both sides are in agreement is comparable to Markham. The Union has negotiated a personal day, a new benefit for this bargaining unit. The Union has been awarded a generous wage settlement, which included a fixed higher spread between the top firefighter salary and the respective salaries for Engineers and Lieutenants. It therefore cannot fairly be said that the other Markham units got greater benefits in return for agreeing to two tiers on sick leave than the firefighters unit has received. Nor have the other Markham units received more favorable health insurance terms. I shall adopt the City's proposal on vacation.

VACANCIES and PROMOTIONS

Section 9.6 of the expired contract is titled "Vacancies and Promotions" and consists of a single paragraph, which states as follows:

> Promotions which are required to fill vacancies shall be made from an established list resulting from written examinations given to the classification immediately below the vacancy. Employees who have achieved equal exam scores shall be listed in priority for promotion according to their seniority. All promotions shall be made from the next lower rank or position.

After that contract was executed the Illinois Legislature passed the Fire Department Promotion Act, 50 ILCS 742/, effective August 4, 2003. Prior to the present arbitration the Union submitted to the City a proposal dated January 24, 2005, on all of the items open between the parties. Regarding Section 9.6, the Union proposed to substitute a seven-paragraph promotional procedure numbered Section 9.6.1 through 9.6.7. By letter dated January 28, 2005, to Union counsel, the then City counsel agreed to sections 9.6.1, 9.6.2, 9.6.6, and 9.6.7. By letter dated June 1, 2005, current City counsel in this proceeding informed Union counsel confirming that "an agreement was struck regarding a number of promotional testing issues" and that "it appears that the only promotional testing issues remaining are 9.6.3, eligibility; 9.6.4, rating; and 9.6.5, test components.?

Union Final Offer

The Union final offer on the three outstanding sections

of Section 9.6, Vacancies and Promotions, is as follows:

ARTICLE IX--SENIORITY RIGHTS

* * *

9.6.3. Eligibility.

For promotion to the rank of Engineer, the candidate must be employed full-time by the Markham Fire Department as a Firefighter for a minimum of three (3) years, and be certified by the State of Illinois as a Fire Apparatus Engineer. For promotion to the rank of Lieutenant, the candidate must be employed full-time by the Markham Fire Department as an Engineer for a minimum of three (3) years and be certified by the State of Illinois as a Fire Officer I.

9.6.4. Rating Factors and Weights.

All examinations shall be impartial and shall relate to those matters that will test the candidate's ability to discharge the duties of the position to be filled. The placement of employees on promotional lists shall be based on the points achieved by each employee on the promotional examinations consisting of the following four (4) components weighted as specified:

	% Weight
1. Written Examination	70
2. Seniority	10
3. Oral Interview	10
4. Ascertained Merit	10

Veteran's Preference Points in accordance with law.

9.6.5. Test Components

1. Written Exam. The written exam shall be given in accordance with the Promotional Act. The examination shall be based only on the contents of the written materials that the City has identified and made readily available to potential examinees at least 90

days before the examination is administered. The written examination shall be administered after the determination and posting of the seniority list, ascertained merit points and oral interview points. The test shall be administered by an independent testing agency contracted and paid for by the Fire and Police Commission.

2. Seniority Points. A seniority list shall be posted before the written examination is given and before the preliminary promotion list is compiled. Ten points shall be awarded for reach year of service with the City up to a maximum of 100 points.

3. Oral Interview. The oral interview shall be conducted by the Fire and Police Commission. Questions in the interview shall be limited to job-related issues. A member of the Local 3209, IAFF who is not taking the promotional examination will be present during all oral interviews.

4. Ascertained Merit. Points for ascertained merit shall be awarded in the following manner:

Associates Degree	5 points
Bachelor's Degree	10 points
Master's Degree	15 points
Paramedic	5 points
Fire Fighter III	5 points
Fire Officer I	5 points
Fire Officer II	10 points
Fire Prevention Officer I	5 points
Fire Prevention Officer II	10 points
Fire Prevention Officer III	10 points
Haz Mat Operations	10 points
Roadway Extrication Specialist	10 points

Veteran's Points. Veteran's points shall be calculated in accordance with

the Promotional Act.

City Final Offer

The City Final Offer on the three outstanding sections of Section 9.6, Vacancies and Promotions, is as follows:

Section 9.6.3 Eligibility

All Firefighters shall be eligible to take the Board of Fire and Police Commissioners test for Engineer so long as the Firefighter has been a full-time Firefighter of the City of Markham Fire Department for a minimum of three (3) years inclusive of the one (1) year probationary period for the position of Firefighter. If a Firefighter is promoted to the rank of Engineer, the individual must possess or attain from the Office of the State Fire Marshal certification as a Fire Apparatus Engineer within one (1) year of being promoted. Failure to do so shall necessitate the individual reverting to the rank held prior to the promotion.

All Engineers shall be eligible to take the Board of Fire and Police Commissioners test for Lieutenant so long as the individual has held the rank of Engineer for a minimum of three (3) years inclusive of any period of probation. If an individual is promoted to the rank of Lieutenant, the individual must possess or attain certification as a Fire Officer I, Arson Investigator and Instructor II from the Office of the State Fire Marshal within one (1) year of being promoted. Failure to do so shall necessitate the promoted individual reverting to the rank held prior to the promotion as Lieutenant.

All promoted individuals shall serve a probationary period of one (1) year from the date of promotion to a new rank. The Fire Chief shall be the sole person to determine if the probationary period is successfully completed. During the probationary period, the Fire Chief, in his sole discretion, shall determine if the individual should or should not revert to the rank, salary and fringe benefits held by the individual prior to promotion. Such determination shall be subject solely to grievance and/or arbitration procedures of this Agreement. Should one revert, that

person shall return to the rank, salary and fringe benefits held prior to promotion and shall receive longevity credit for the time served in the promoted probationary rank.

Section 9.6.4 Rating Factors and Weights

All examinations shall be impartial and shall relate to those matters that will test the candidate's ability to discharge the duties of the position to be filled. The placement of employees on promotional lists shall be based on the points achieved by each employee on the promotional examinations consisting of the following four (4) components weighted as specified:

	% Weight
1. Written Examination	60
2. Seniority	10
3. Oral Interview	20
4. Ascertained Merit	10

Veteran's Preference Points in accordance with law.

Section 9.6.5 Test Components

1. Written Exam. The written exam shall be given in accordance with the Promotional Act. The examination shall be based only on the contents of the written materials that the City has identified and made readily available to potential examinees at least 90 days before the examination is administered. The written examination shall be administered after the determination and posting of the seniority list, ascertained merit points and Chief's points. The test shall be administered by an independent testing agency contracted and paid for by the Fire and Police Commission.

2. Seniority Points. A seniority list shall be posted before the written examination is given and before the preliminary promotion list is compiled. One (1) point shall be awarded for each year of service with the City of Markham up to a maximum of ten (10)

points.

3. Oral Interview. Questions in the interview shall be limited to job-related issues. A member of the Local 3209, IAFF who is not taking the promotional examination, will be present during all oral interviews. The Board of Fire and Police Commissioners and the Fire Chief of the City of Markham or his designee shall ask the questions during the oral interview. The grading of those taking the oral interview shall be conducted solely by the City of Markham Board of Fire and Police Commissioners.

If the Fire Chief is eligible to be promoted, e.g. is testing for the rank of Lieutenant, the Fire Chief may not participate in the oral interview process.

4. Ascertained Merit. Points for ascertained merit shall be awarded in the following manner:

[list of degrees, certifications, points therefor, and veteran's points identical to Union's list as stated above under Union's Final Offer]

Union's Position on Vacancies and Promotions

The Union notes that the parties are in agreement that Section 9.6 is to become effective on the date of the interest arbitration award. According to testimony given at the hearing, the Union points out, to qualify to take the Lieutenant's examination an employee had to be a commissioned Engineer. Similarly, according to the testimony, to qualify to take the Engineer's examination, an employee had to be a commissioned Firefighter. To be placed on the eligibility list for either position, the Union notes, one had to score at least 70% in the test.

The Union calls attention to the fact that both parties seek to modify the status quo by adding a minimum of three years service in the rank below to qualify to take the examination and to delete the minimum passing score. The Union states that, with respect to the Engineer's examination, it has no objection to the three years' service including the Firefighter's first or probationary year of service. The Union contends, however, that a Firefighter should be required to have Fire Apparatus Engineer ("FAE") certification before taking the examination instead of within one year of promotion as proposed by the City.

In support of its proposal the Union argues that it "rewards familiarity with the engineer position" by "tie[ing] promotion to immediate qualification and experience in a way the City's does not." Becoming an FAE is important for the rank of Engineer, the Union asserts, since an individual's pumper operations and apparatus driving skills may be key parts of the Engineer's responsibilities. In addition, the Union argues, "a newly promoted engineer hardly needs the extra pressure of having to go to school and complete the certification when he or she is first starting the job."

The Union notes that the Promotion Act, in Section 15(b), provides that any eligibility requirements to participate in the promotional process shall be published at least one year prior to the date of the beginning of the promotional process and that all employees must be given an equal opportunity to meet the requirements. Since, by law, all firefighters will have one year to obtain the qualification before taking the examination, the Union argues, there is no basis for delaying qualification for another year. Moreover, the Union asserts, the City's proposal could result in a firefighter being promoted only to be demoted a year later with the City having expended training time on someone who does not remain in the position. Its proposal is more rational, the Union insists.

With regard to qualification for the Lieutenant examination, the Union points out, both parties propose that to be eligible to take the exam an Engineer must have been employed by Markham for three years. However, the Union notes, its proposal requires, as a prerequisite for taking the exam, that an Engineer must first receive Fire Officer I certification. Unlike the City's last offer, the Union offer does not permit the Engineer to obtain Fire Officer I certification within a year after promotion and does not require Arson Investigator or Fire Service Instructor II certification at any time.

The Union argues that the City has presented no evidentiary basis for its proposed substantial change in the status quo. In effect, the Union contends, the City is requiring four certifications within a year, not three, since a prerequisite of Fire Service Instructor II certification is certification as Fire Service Instructor I. The certifications demanded by the City, the Union maintains, are not a fair burden to place on a newly promoted employee and places his very promotion in jeopardy should he, for reasons beyond his control, fail to complete the courses for all four certifications within only one year after promotion. In fact, the Union contends, it is unreasonable to expect a newly appointed Lieutenant to complete all of the course work for Fire Service Instructor I and

Fire Service Instructor II, a minimum of 80 hours, in one year and assumes that both courses will be available and offered at times when the employee may take both within that span of time.

The Union notes that 41 Ill. Adm. Code ?140.130 (2005) states that the "Illinois program does not recognize rank as the equivalent to the various levels of Fire Service Instructor" and argues that the prerequisites to hold the certification bear no correlation to rank. The Union further argues that the fact that neither Fire Service Instructor I nor Fire Service Instructor II is even listed as a certification for which ascertained merit points are given (although the Ascertained Merit points list is an agreed list) is inconsistent with the requirement of certification as Fire Service Instructor II in order to retain the Lieutenant rank.

With regard to Arson Investigator, the Union contends that there is no justification for requiring an employee to be certified as an Arson Investigator as a condition of promotion to Lieutenant. The Union notes that 41 Ill. Adm. Code ?140.210 does not state a minimum number of course hours as a prerequisite for certification, but the Union infers from the fact that the regulation provides a maximum of 260 hours of reimbursement funding for fire protection personnel who take this course, that the hours must be in excess of 200. The Union argues that requiring course work for Fire Instructor I and II and Arson Investigator in one year could be "overwhelming" taking into consideration the stress that comes with promotion to a position as demanding as Lieutenant. There is also a problem of course availability, the Union maintains.

Finally the Union objects to a probationary period upon promotion to Engineer or Lieutenant. Historically there has not been a probationary period for an individual promoted to a higher rank, the Union asserts. Further, the Union contends, neither the external comparables or the internal comparables support a probationary period. In addition, the Union argues, according to the evidence, no one has ever been promoted in the Markham fire department who was incapable of performing his or her job. If employees do not perform their job, the Union asserts, there is a disciplinary mechanism available to correct the situation.

On Section 9.6.4, Rating Factors and Weights, the Union notes, the differences between the parties are the weights to be assigned to the written and oral interview components of the exam. The Union proposes 70% and 10% respectively for the written and oral parts, while the City seeks 60% and 20%. The history of how the Police and Fire Commission has handled tests

in the past, the Union asserts, dictates its desire to have the test as objective as possible. The fact that the Commission ruled that none of the four people who took the Lieutenant's test in 2001 passed and that nobody passed the Engineer exam the same year apparently has made the Union question the fairness with which tests have been administered in the past. In this connection the Union notes that when those who took the Lieutenant's examination asked for their test scores, they were unable to obtain them because they were told that the tests were destroyed. The Union cites the evidence in the record that three Firefighters who were told that they failed the Engineer examination given in the early 1990's then filed racial discrimination suits in federal court after being given right to sue letters by the EEOC. In settlement of the suits, two of the Firefighters were promoted immediately to Engineer and the third, given the right to promotion to the next Engineer opening. The Union cites unchallenged testimony that the very same Commissioners who served during the promotional examinations in the 1990s and in 2001 are serving today. The Union asserts that its "past experience dictates that a more objective test be adopted" and that "Local 3209's proposal gives the bargaining unit employees this assurance."

With respect to Section 9.6.5, Test Components, the Union contends that the reference to "Chief's points" in Section 9.6.5 is improper because neither side proposed Chief's points. "The reference," the Union asserts, "should be to oral interview points or the proposal does not make sense."

Regarding the second paragraph of Section 9.6.5, the Union contends that the City proposal to award one point for each year of service with the City up to a maximum of ten points, is a permissive subject of bargaining over which the arbitration panel lacks jurisdiction. This is so, the Union argues, because the Promotion Act states that "each component of the promotional test shall be scored on a scale of 100 points" and Local 3209 has refused to waive the 100 point requirement. Therefore, in the Union's view, the City's proposal must be rejected.

Pertaining to the portion of Section 9.6.5 concerning the oral interview, the Union states that it is willing to accept the City's proposed language since the City has added the condition that the Chief cannot participate in the oral interview if he is a candidate for the position.

City's Position on Vacancies and Promotions

The City notes that the Fire Department Promotion Act

did not become law until August, 2003, and deals only with fire personnel. Therefore, the City observes, the internal comparables of the police unit and the clerks unit are not relevant to this issue. With regard to comparable jurisdictions, the City asserts that only those jurisdictions with contracts that reopen after the effective date of the Act would be pertinent.

The City characterizes promotions as a "breakthrough" item and quotes from a decision by Arbitrator Goldstein who stated that there "should not be any substantial 'breakthroughs' in the interest arbitration process" at the risk of subverting the collective bargaining process. "[P]arties," Arbitrator Goldstein continued, "should not be able to obtain in interest arbitration any result which they could not get in a traditional bargaining situation. Otherwise," Arbitrator Goldstein proceeded, "the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort. . . ." The City contends that allowing the Union to set forth minimum requirements for command staff would amount to granting the Union a breakthrough item.

Citing a declaratory ruling by the General Counsel of the Illinois Labor Relations Board, the City asserts that the Promotion Act "is the bare minimum required." Its proposal, the City states, "comports with the minimum" and "to take away from the Employer what the legislature left it to negotiate is clearly a breakthrough item. Barring a substantial showing from the Union, which . . . is not present herein," the City continues, "the Employer's proposal should prevail."

Of the external comparables, the City asserts, the only contract addressing the issue is that of Country Club Hills. Because of the importance of this issue to the City, especially as it relates to the training and preparedness of fire officers, the City argues, one comparable community should not be controlling. "In light of the fact that this issue was only recently passed by the legislature," the City contends, "to allow the Union to take the matter hostage and demand it be resolved in their favor during interest arbitration is to take the natural 'give and take' of negotiation out of the equation." The City asserts that the parties "were able to substantially agree on the language regarding the promotion act" and argues that the sections at issue should be weighed in favor of management since this "is more in the nature of a management right."

<u>Arbitrator's Findings and Conclusions on Vacancies and Promotions</u>

Section 9.6.3 Eligibility

Engineer

The Union accepts the City's clarification that the minimum requirement of three years' full-time employment as a Firefighter with the Markham fire department in order to be eligible to participate in the promotional process for engineer would include the one year probationary period. They differ as to whether a Firefighter must first obtain certification as Fire Apparatus Engineer in order to participate or may obtain such certification within one year of being promoted.

The primary responsibility for providing a safe environment for its citizens and sufficiently high fire protection standards to maintain reasonable fire insurance rates for City businesses, I think, rests with the governing officials of the City. If they are satisfied that safety will not be compromised or fire insurance rates increased by permitting FAE certification within one year of promotion, I do not think that the arbitration panel should interfere with this government decision. No evidence was provided that delaying FAE certification for Firefighters promoted to Engineer will harm Markham's citizenry or businesses.

I note, moreover, that permitting FAE certification after promotion is consistent with the practice, as described by Union witness Scott B. Adams, whereby no certifications are required of Markham Firefighters in order to be hired, but they must obtain seven certifications within their probationary period in order to keep their jobs (Tr. 777). This is not a situation where there are competing interests of management and employees. Permitting FAE certification after promotion will in no way harm the job interests of the bargaining unit except perhaps to provide greater competition in the promotional process. Employees who have not yet received FAE certification will nevertheless be permitted to compete for promotion to Engineer. This is not a sufficient basis for not accepting management's proposal. In fact, fostering competition is generally considered a good thing.

The Union asserts that there are three other communities that have negotiated promotional provisions after passage of the Promotion Act and that none of them provides any qualifications other than years of service to take the Engineer exam. The Union argues that these communities provide little guidance for the resolution of this issue. However, the fact that these other communities do not require prior FAE

certification supports the City's rather than the Union's position on whether FAE certification should be a prerequisite to taking the exam. I shall adopt the City's position on the issue of whether prior FAE certification should be required.

Lieutenant

On the other hand, the City has failed to make out a case for requiring Arson Investigator and Instructor II certification in addition to Fire Officer I certification for promotion to Lieutenant. For the same reasons as with regard to Engineer, I shall adopt the City position regarding whether prior certification should be a prerequisite for being permitted to participate in the promotion process for Lieutenant. However, the City failed to present any evidence whatsoever in support of its proposal to require certification as an Instructor II or an Arson Investigator as a condition of being permitted to hold the Lieutenant rank.

According to the record there has never been a requirement at Markham that a Lieutenant hold Instructor II or Arson Investigator certification to remain in that position. The City argues that the Promotion Act is a new statutory creature and that "to award the Union's proposal, with its significantly different weights for promotional testing and lessened requirements for firefighters to be able to sit for the examination would be akin to a breakthrough item." It is true that the Act is new. But the Act does not purport in any way to change the duties or responsibilities of Lieutenant or Engineer.

The burden therefore falls on the party that seeks to significantly increase or decrease the requirements for holding either position. The City has failed to show that the current requirements for Lieutenant are inadequate so as to require so significant an augmentation of the job description as to add Fire Service Instructor II and Arson Investigator certification as a condition for being promoted to the position. Not only was there no evidence of any problem with the present arrangement in Markham to require so substantial a change in the status quo but there was no showing that any of the comparable jurisdictions has such a requirement. For these reasons I find that the City has not made out a case for adding the requirements of Fire Instructor II and Arson Investigator certification within one year of promotion in order to remain in the position after promotion.

I note that Article XIV, Management Functions, includes among "matters of inherent managerial policy" the right "to

determine the minimum qualifications for all positions." There is no evidence or claim, however, that the City has determined that a minimum qualification to hold the Lieutenant position is certification as Fire Service Instructor II or Arson Investigator. So far as the record shows, the City is proposing certification in these areas only for newly promoted employees as a condition of retaining their promotion and not for the Lieutenant classification generally. This case therefore is not controlled by the provision in Article XIV reserving to management the right to determine minimum qualifications for all positions.[12]

It must be emphasized, however, that not adopting the Employer's proposal to make attainment of Fire Service Instructor II and Arson Investigator certification a condition for retention of a promotion to the Lieutenant rank does not mean that the City is foreclosed from providing training in these skills to promoted Lieutenants. Many jobs require incumbents to improve their skills in the position, and employers provide training for that purpose. If the City, for example, wants its Lieutenants to become expert in arson investigation it can make arrangements for them to receive such training. This is not the time or the place to discuss the exact details of how this should be accomplished

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[12]There is evidence in the record that instructional skills would be very helpful in carrying out the duties and responsibilities of the Lieutenant classification. I therefore considered requiring a Lieutenant to obtain certification as a Fire Service Instructor I within a year of promotion to the Lieutenant classification. In discussing this with the parties, however, I was informed that in order to obtain certification as Fire Officer I it is necessary first to obtain certification as Fire Service Instructor I. Since I have adopted the proposal to require Fire Officer I certification within a year of promotion to Lieutenant, it is not necessary to add language regarding certification as Fire Service Instructor I within the same period of time.

in terms of providing training or paying employees for time spent in participation in such training. The point I which to stress, however, is that the fact that the City's proposal on certification has not been adopted as part of the contractual promotion process does not mean that the City is foreclosed from assuring that its fire officers get necessary job-related training outside the promotion process.

Probation

For three reasons I shall not adopt the City's proposal to require all promoted individuals to serve a one year probationary period. First, it represents a change in the status quo, and the City has not made out a case that the current arrangement has presented problems for the City. No evidence was offered why the present arrangement is not satisfactory. Second, a majority of the comparable jurisdictions do not require that an employee serve a probationary period after promotion. The third reason is that it is incongruous with the comprehensive, multifaceted promotion system permitted by the statute and negotiated by the parties to give one individual (in this case the Fire Chief) the power to annul a promotion that has been achieved by the elaborate promotion procedure.

That procedure is designed to make promotion as objective and fair as possible. Even the subjective aspect of the process has built-in safeguards in an attempt to prevent abuse. According to Section 50 of the Promotion Act, entitled "Subjective evaluation," all subjective elements must be identified prior to their application, be job-related, and applied uniformly to all candidates. Every examinee has the right, by specific provision of the statute, "to documentation of his or her score on the subjective component upon the completion of the subjective examination component or its application." Disputes about Chief's points or other subjective methods employed are subject to resolution in the contractual grievance procedure. Total points awarded for subjective components used in the promotion process must be posted before the written examination is administered and before the promotion list is compiled.

In the present case both parties, through their final offers, have shown that they intend objective rather than subjective elements to be the predominant criteria in selecting the individual to be promoted. Thus both sides have agreed to an examination process that includes four elements, three of which are objective: Written Examination, Seniority, and Ascertained Merit. The fourth and subjective element, Oral Interview, has

been given a subordinate and relatively minor role in both parties' proposals: 20% for the City and 10% for the Union. I find it incompatible with the entire promotion process, with the premium it places on objectivity and transparency, to permit one individual, whose own position has no civil service or contractual protection, to nullify a promotion in his sole discretion by mere fiat.[13]

Making the Chief's action subject to the grievance procedure is not sufficient protection against possible abuse. The very fact that a position is designated as probationary, instead of permanent, suggests a lesser claim to the job and could influence how an arbitrator will approach the case. Nor does the City's proposal provide a standard for judging the Chief's removal action such as, for example, just cause. In this connection it is to be noted that Article XIV, Management Rights, recognizes the right of the Employer to "discipline or discharge employees for just and proper cause." Normally incompetent performance would be considered grounds for discipline. It is not clear, however, that exercising an express contractual discretionary right to return a probationary employee to his or her former position would be considered discipline subject to just cause protection.

It is important to note that making a promotion permanent does not mean that an incompetent incumbent cannot be removed from his or her position. If a person who is promoted does not fulfill the job adequately, the City has at its disposal through the disciplinary process, with its built-in just cause safeguards, the power to remove an incompetent individual from the position he or she holds, subject to the employee's right of review through the grievance-arbitration procedure.

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[13]I do not cast aspersions on or question the integrity of the present Fire Chief or of any City official. However, once a clause is placed in a contract it can remain there for many years, and there is no way to know now who will hold the position of Fire Chief in the future or the Fire Chief's superior in the future. Where reasonably possible, an interest arbitrator should try to avoid any promotion arrangement that is easily subject to abuse.

Section 9.6.4. Rating Factors and Weights

The parties are in agreement that 10% each is the weight that should be assigned to the Seniority and Ascertained Merit components of the promotion process. They differ on the weights to be given to the Written Examination and Oral Interview components. The only comparable jurisdiction that had negotiated a promotion process as of the conclusion of the hearings in this case was Country Club Hills. That municipality allocated 15% for the Oral Interview component.

The only other jurisdiction for which information appears in the record is Worth. Although I did not find Worth to be a comparable jurisdiction, I think that it is appropriate to also consider other jurisdictions on noneconomic issues where there is an insufficient number of comparable jurisdictions to provide a meaningful comparison with the subject jurisdiction, here Markham. Worth also gives 15% weight to the Oral Interview component. To adopt that percentage for Markham will leave 65% for the Written Examination component, a greater percentage than either Country Club Hills or Worth apportions for that part of the process. I shall allocate 65% and 15% respectively for the Written Examination and Oral Interview components. The agreed-upon percentage amounts of 10% each will be adopted for Seniority and Ascertained Merit.

Section 9.6.5. Test Components

1. Written Exam

The parties propose identical language for paragraph 1 of this section except for the third sentence. The third sentence purports to state when the written examination will be administered, namely, after the other components are determined and posted. The other components besides Written Examination are Seniority Points, Oral Interview, and Ascertained Merit. The City's third sentence in the paragraph lists "seniority list" and "ascertained merit points" as the items to be determined and posted before the written examination is administered. Inexplicably, however, the third item listed in the City's third sentence is "Chief's points," although that is not one of the components of the promotion process under either the City's or the Union's last offer. The Union's third sentence, on the other hand, includes the expected reference to "oral interview points."

The Union's language is supported by the fact that its third sentence includes a reference to each of the four components of the testing and evaluation procedures. The City's

language inexplicably leaves out any reference to the oral interview component, although elsewhere in the section the City lists Oral Interview as a component, and brings in out of the blue the words "Chief's points," although neither party proposed Chief's points as a component in the testing and evaluation process. I shall adopt the Union's proposed language for paragraph 1.

2. Seniority Points

The parties' proposals differ both with regard to the number of points to be awarded for each year of service and the maximum number of points that may be apportioned to seniority. The City proposes 1 point for each year of service up to a maximum of 10 points. The Union offer calls for 10 points for each year of service to a maximum of 100 points.

The Union correctly points out that Section 5 of the Act provides, ". . . Each component of the promotional test shall be scored on a scale of 100 points." According to the statute, "The component scores shall then be reduced by the weighting factor assigned to the component on the test and the scores of all components shall be added to produce a total score based on a scale of 100 points."

Section 30 of the Act specifically lists "seniority points" as one of the "Promotion examination components." The Union has no obligation to agree to waive the statutory provision of 100 points for each component. I shall therefore adopt the Union proposal of a maximum of 100 points for the "seniority points" component. Both proposals allocate one-tenth of the maximum number of points for each year of service. I shall therefore accept the Union proposal of 10 points for each year of service. I note that this was also what the parties agreed to in the Worth contract.

The Country Club Hills contract, on the other hand, awards percentage amounts directly for "seniority points" instead of points to be weighted by a percentage figure.[14] At Country Club Hills the parties negotiated a weight of 15% instead of 10% as in Markham for seniority points. Therefore allocating 1% per year of service up to a maximum of 15% for 15 years in Country Club Hills parallels 10 points for each year up to a maximum of 100 points for 10 years or more in Markham.

[14]The percentage amount is then converted to a point number and the points for each component are weighted to give a total of 100 points for all components together.

I shall adopt the Union's proposal regarding seniority points.

3. Oral Interview

The Union has agreed to accept the City's language regarding paragraph 3, Oral Interview. I shall adopt the City's final offer on this paragraph.

Clarifying Language

The parties are in agreement that there is a potential conflict between Section 9.6.2, which permits a promotion list to be continued in effect for up to five years in certain circumstances, and Section 9.6.7, which states, without exception, that "[f]inal eligibility lists shall be effective for a period of three (3) years." (Tr. 705-706). For that reason, the Union agrees that the words "except where otherwise stated in this Agreement" should be added after the word "years" in the first sentence of the Section 9.6.7.

It was also clarified on the record that the word "vacancy" is used in Section 9.6.7 as the term is defined in Section 20(d) of the Fire Department Promotion Act to mean a vacated position that continues to be funded and authorized by the corporate authorities (Tr. 704).

I find that Section 9.6 of Article IX should read as set forth below in the formal Award and Order.

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

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

1. The Union's final offer on Wages is adopted for the parties' collective bargaining agreement effective from May 1, 2001, through April 30, 2006 ("the Agreement"). The City will issue retroactive pay in no more than three installments within ninety (90) days after the Agreement has been signed by both parties.

2. Section 23.1 of the Agreement shall provide:

Section 23.1 Duration and Notice

This agreement and each of its provisions shall be effective as of May 1, 2001, and shall continue in full force and effect until April 30, 2006, and thereafter unless either party shall notify the other in writing 150 days (or January 1st) prior to the anniversary date of this contract, that it desires to modify and/or amend this Agreement.

Reopener

Notwithstanding the preceding paragraph, within 30 days of receiving the arbitrator's opinion and award in ILRB Case No. S-MA-05-078 either party may notify the other in writing of its desire to reopen this Agreement as to any of its terms to be effective retroactive to May 1, 2005. Upon such notice being given, the duly authorized representatives of the parties shall commence the reopener negotiations in accordance with the provisions of Sections 23.2, 23.3, and 23.4 of this Article XXIII, except that the dates February 1st and March 15th mentioned in Section 23.2 shall not apply to such negotiations.

3. The Union's final offer on Longevity Pay is adopted and shall be included in the Agreement.

4. The City's final offer on Health Insurance is adopted and shall be included in the Agreement.

5. The parties have agreed on the substance of the provision regarding the newly negotiated benefit of a personal day. The language proposed by the Union on the subject is not opposed by the City and shall be included in the Agreement as follows:

Section 7.2 Holidays and Personal Days

(a) Holidays * * *

* * *

(b) Personal Days Each employee shall have one (1) personal day each year. Personal leave may be taken at anytime during the year upon authorization of the Chief after request by the

employee of [sic with?] not less than 72 hours' [written] notice prior to the requested personal day, except [that] in the case of an emergency, the Chief may waive the requirement for written notice. If more than one person is requesting the same day, the request shall be granted to the person who submits the request at the earliest date. If the requests are submitted at the same time, seniority shall determine who will be eligible. Personal days may be accumulated.

6. The Union's final offer on Sick Leave is adopted and shall be included in the Agreement.

7. The City's final offer on Vacation is adopted and shall be included in the Agreement.

8. Section 9.6 shall provide as follows and shall be included in the Agreement:

Section 9.6 Vacancies and Promotions

Section 9.6.1 General

Promotions to the rank of Engineer and Lieutenant shall be conducted in accordance with the provisions of the Fire Department Promotion Act, 50 ILCS 742/ (hereinafter "the Promotion Act"). A copy of the Promotion Act is attached hereto as Appendix C to this Agreement. Except where expressly modified by the terms of this Article, the procedures for promotion shall be in accordance with the provisions of the Promotion Act.

Section 9.6.2 Vacancies

The City accepted the Union?s proposal for Section 9.6.2 of the Agreement. That language, as set forth immediately below, is adopted as Section 9.6.2 of the Agreement:

This Article applies to promotions to vacancies in the ranks of Engineer and Lieutenant. A vacancy in such position shall be deemed to occur on the date upon which the position is vacated, and on that same date, a vacancy shall occur in the rank(s) below provided that the position or positions continue to be funded and

authorized by the corporate authorities. If a vacated position is not filled due to a lack of funding or authorization and is subsequently reinstated, the final promotion list shall be continued in effect until all positions vacated have been filled or for a period of up to five (5) years beginning from the date on which the position was vacated. In such event, the candidate or candidates who would have otherwise been promoted when the vacancy originally occurred shall be promoted.

Section 9.6.3 Eligibility

(a) All Firefighters shall be eligible to participate in all components of the promotion examination process for Engineer so long as they have been employed full-time as a Firefighter in the Markham Fire Department for a minimum of three years inclusive of the one-year probationary period. A Firefighter promoted to Engineer must possess or obtain from the State of Illinois, within one year of the effective date of the promotion, certification as a Fire Apparatus Engineer. Failure to hold such certification within the one-year period shall cause the promoted individual to revert to the rank held prior to promotion.

(b) All Engineers shall be eligible to participate in all components of the promotion examination process for Lieutenant so long as they have been employed full-time as an Engineer in the Markham Fire Department for a minimum of three years. An Engineer promoted to Lieutenant must possess or obtain from the State of Illinois, within one year of the effective date of the promotion, certification as a Fire Officer I.

Section 9.6.4 Rating Factors and Weights

All examinations shall be impartial and shall relate to those matters that will test the candidate's ability to discharge the duties of the position to be filled. The placement of employees on promotional lists shall be based on the points achieved by each employee on the promotional examinations consisting of the following four (4) components weighted as specified:

	% Weight
1. Written Examination	65

2. Seniority	10
3. Oral Interview	15
4. Ascertained Merit	10

Veteran's Preference Points in accordance with law.

Section 9.6.5 Test Components

1. Written Exam. The written exam shall be given in accordance with the Promotion Act. The examination shall be based only on the contents of the written materials that the City has identified and made readily available to potential examinees at least 90 days before the examination is administered. The written examination shall be administered after the determination and posting of the seniority list, ascertained merit points, and oral interview points. The test shall be administered by an independent testing agency contracted and paid for by the Fire and Police Commission.

2. Seniority Points. A seniority list shall be posted before the written examination is given and before the preliminary promotion list is compiled. Ten points shall be awarded for reach year of service with the City up to a maximum of 100 points.

3. Oral Interview. Questions in the interview shall be limited to job-related issues. A member of Local 3209, IAFF who is not taking the promotional examination will be present during all oral interviews. The Board of Fire and Police Commissioners and the Fire Chief of the City of Markham or his designee shall ask the questions during the oral interview. The grading of those taking the oral interview shall be conducted solely by the City of Markham Board of Fire and Police Commissioners.

If the Fire Chief is eligible to be promoted, e.g.is testing for the rank of Lieutenant, the Fire Chief may not participate in the oral interview process.

4. Ascertained Merit. Points for ascertained merit shall be awarded in the following manner:

Associates Degree	5 points
Bachelor's Degree	10 points
Master's Degree	15 points
Paramedic	5 points
Fire Fighter III	5 points
Fire Officer I	5 points
Fire Officer II	10 points
Fire Prevention Officer I	5 points
Fire Prevention Officer II	10 points
Fire Prevention Officer III	10 points
Haz Mat Operations	10 points
Roadway Extrication Specialist	10 points

Veteran's Points. Veteran's points shall be calculated in accordance with the Promotion Act.

Section 9.6.6 Right to Review

The Union or any affected employee who believes that an error has been made with respect to eligibility to take an examination, examination result, placement or position on a promotion list, or veteran's preference, shall be entitled to a review of the matter pursuant to the grievance/arbitration procedures contained in this Agreement.

Section 9.6.7 Maintenance of Promotional Lists

Final eligibility lists shall be effective for a period of three (3) years except where otherwise stated in this Agreement. The City shall take all necessary steps to ensure that the Fire Department maintains in effect current eligibility lists so that promotional vacancies are filled not later than 120 days after the occurrence of the vacancy.

9. All provisions of the collective bargaining

agreement between the parties effective May 1, 1998, shall remain in full force and effect except as modified by this Award and Order.

10. At the request of both parties, the Chairman retains jurisdiction for 180 days from the date of this Award and Order to resolve any disputes that may arise between the parties in carrying out the said Award and Order.

Respectfully submitted,

Sinclair Kossoff
Chairman, Arbitration Panel

Ralph Schauer
Member, Arbitration Panel
Appointed by Employer
Concurring in Entire Award and Order
(It is understood that concurrence of Employer-Appointed Panel Member does not necessarily reflect the agreement of the Employer with Chairman?s views or statements on all of the issues concurred in.)

George W. Hopman
Member, Arbitration Panel
Appointed by Union
Concurring as to Paragraphs 3, 5, 6, 8, 9, and 10 of Award and Order
Dissenting as to Paragraphs 1 (except for second sentence), 2, 4, and 7 of Award and Order

Chicago, Illinois
September 20, 2005