

**INTEREST ARBITRATION
OPINION AND AWARD**

In the matter of Interest
Arbitration

Between

CITY OF EAST SAINT LOUIS

And

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL

(Case No. S-MA-06-066)

Hearing Held

April 9, 2008

East Saint Louis City Hall
301 River Park Drive
East Saint Louis, IL 62201

Appearances

For the Union:

Richard V. Stewart, Jr., Esq.
Illinois FOP Labor Council
5600 South Wolf Road
Western Springs, IL 60558

Arbitrator

Steven Briggs

For the City:

John L. Gilbert, Esq.
Hinshaw & Culbertson, LLP
156 North Main Street, Suite 206
Edwardsville, IL 62025

BACKGROUND

The City of East Saint Louis, Illinois (the City) is a home rule unit of government located just across the Mississippi River from St. Louis, Missouri. Its population is slightly over 31,500.¹ As of 2006, the City employed 60 sworn police officers. Those in the rank of sergeant or below are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union; the FOP). Firefighters in the City are represented by the East Saint Louis Fire Fighters, Local 23, IAFF, AFL-CIO (the IAFF).²

The City and the Union have been in a formal collective bargaining relationship for the police unit since approximately 1980. They have resorted to interest arbitration three times in the past, most recently for their previous two contracts.³ The parties are currently signatory to a January 1, 2003 to December 31, 2005 Agreement. To their credit, in negotiations for its successor they tentatively settled numerous issues voluntarily. Ultimately, though, four issues remain unresolved. The Union appealed them to compulsory interest arbitration, and through the Illinois Labor Relations Board the parties selected Steven Briggs to serve as their Arbitrator.

¹ Source: 2000 U.S. Census.

² The Firefighters and the City have been to interest arbitration four times: *City of East Saint Louis and East Saint Louis Fire Fighters, Local 23, IAFF, AFL-CIO*, S-MA-87-25 (Traynor, 1987); S-MA-89-66 (Harrison, 1989); S-MA-95-13 (Edelman, 1995); S-MA-00-074 (Yaffe, 2000).

³ *City of East Saint Louis and Illinois Fraternal Order of Police Labor Council, FOP Lodge #126*, S-MA-91-66 (Epstein, 1993); S-MA-99-65 (Edelman, 2001); S-MA-03-062 (McAlpin, 2004).

The parties exchanged final offers at the outset of the April 9, 2008 interest arbitration hearing. They entered into several stipulations as well, including one confirming their mutual waiver of the tri-partite arbitration panel provision of the Illinois Public Labor Relations Act. The parties also stipulated that their tentative agreements on all of the other issues shall be incorporated by means of the following Award into the January 1, 2006 – December 31, 2008 successor Agreement. The interest arbitration hearing was transcribed. The Union submitted approximately ninety-six (96) exhibits at the hearing; the City submitted three (3). The parties' timely post-hearing briefs were ultimately exchanged through the Arbitrator on July 27, 2008.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Illinois Public Labor Relations Act (the Act) provides in pertinent part:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (a) In public employment in comparable communities.
 - (b) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

THE ISSUES

The parties have advanced the following economic issues to interest arbitration:

- (1) What wage increases will the employees receive, if any, on 1/1/06, 1/1/07 and 1/1/08?
- (2) What shall the language relating to hours of work be?
- (3) What shall the language relating to holiday pay be?
- (4) What shall the language relating to probationary period be?

THE EXTERNAL COMPARABLES

Union Position

The Union has characterized the following municipalities as being comparable to East Saint Louis:

Alton
Belleville
Collinsville
Edwardsville
Fairview Heights
Granite City

It notes that in a previous interest arbitration proceeding the City argued that no external jurisdictions were comparable to East Saint Louis, largely because it was the only city in Illinois that had been legally declared a "Financially Distressed City." In that case, Arbitrator

Edelman rejected the City's argument, relying in part on the fact that municipalities near East Saint Louis are its competitors for qualified police officers.⁴ And, the Union emphasizes, the comparables it suggests here are the same as those adopted by Arbitrator Edelman.

The Union further points out that all of its proposed comparables are within 20 miles of East Saint Louis, and acknowledges that it is last among the group in terms of median home value, per capita income, median family income, and equalized assessed valuation. However, the Union argues, East Saint Louis has had more than twice the number of serious crimes than any of its proposed comparable jurisdictions.

City Position

The City asserts that due to its uniqueness, it is truly not comparable to any other municipality. In support of that assertion it notes that East Saint Louis is the only city in Illinois to have been designated a "Financially Distressed City" under the State's Financially Distressed City Law.⁵

As to the Union's proposed external comparables, the City underscores the fact that the median family income in East Saint Louis is generally only one-third to one-half of theirs. And in terms of assessed valuation, the City notes that it has but half of that in the closest

⁴ *City of East Saint Louis and Illinois Fraternal Order of Police Labor Council, FOP Lodge #126, S-MA-99-65* (Edelman, 2001).

⁵ 65 ILCS 5/8-12.

jurisdiction and only about a third of the average across the proposed comparability pool. Since assessed valuation is the base upon which the City generates tax revenues, its financial condition stands in stark contrast to the more wealthy municipalities the Union has selected for comparability purposes.

Discussion

Despite its undeniable uniqueness, the City of East Saint Louis does not exist in a vacuum. Rather, it is situated among other municipalities in which people live, work and transact business. Individuals travel across city, town and village boundaries daily, especially within a reasonable radius of their homes. The extent to which they do so with regard to their employment defines the local labor market.

To attract qualified police officer candidates and retain those it hires, the City of East Saint Louis must competes with other municipalities in its local labor market. The City's argument that there are just no communities comparable to East Saint Louis ignores that essential economic concept. That is not to say that it must pay the same wages and benefits as those characteristic of the enveloping labor market; rather, it simply acknowledges the fact that the supply of labor is relatively mobile. If the compensation differential is large enough, employees will be motivated to leave one job for a similar one in the same

labor market. Of course, there are other factors in the job change decision (e.g., work load, work schedule, quality of supervision, etc.), but labor economists generally agree that the compensation package is among the most influential.

The degree to which a municipality competes economically for labor is a policy decision. In a non-unionized environment that decision is made unilaterally by management. In a collective bargaining context it is made bilaterally, through negotiations between management and a union. And in an Illinois municipal setting, when those negotiations reach an impasse, an interest arbitrator may be called upon to decide between the parties' final offers. In all three situations the decision-makers are essentially establishing the level at which a particular unit of local government will compete with comparable ones for qualified human resources in the local labor market.

Here, to decide which of the parties' final offers is the more appropriate on each of the four issues in dispute, the Arbitrator must understand how the City's municipal competitors have dealt with those issues. From such comparison, along with full consideration of the remaining statutory factors (the public interest, the employer's ability to pay, etc.), informed decisions can be made on the issues. Adopting the City's position (i.e., that there are no external comparables) would prevent the Arbitrator from engaging in such analysis. Indeed, it would essentially circumvent the statutory factor of external comparability.

Turning now to the comparability grouping proposed by the Union, the Arbitrator notes that it is identical to that adopted by Arbitrator Edelman for these same parties in 2001.⁶ In that proceeding, the City also claimed there simply were no municipalities comparable to East Saint Louis. Arbitrator Edelman rejected that claim. He noted as well that (apparently in the negotiation process) the City had reluctantly agreed to a list of six comparable jurisdictions. They happen to be the same as those proposed by the Union in the present case.

The jurisdictions included in the Union's suggested comparability pool are all less than 20 miles from East Saint Louis. Additionally, they are all within the same Metropolitan Statistical Area (Metro-East). Table 1 has been constructed to facilitate additional comparison between East Saint Louis and the Union's proposed comparability pool:

TABLE 1
EXTERNAL COMPARABILITY FACTORS

Jurisdiction	Population	Housing Units	Median Home Value	Per Capita Income (\$)	Median Fam. Income (\$)
Alton	30,496	13,888	56,500	16,817	37,910
Belleville	41,410	19,294	70,500	18,990	46,426
Collinsville	24,707	11,101	83,500	22,048	54,956
Edwardsville	21,491	8,453	99,200	26,510	65,555
Fairview Hts.	15,034	6,376	84,800	22,614	56,161
Granite City	31,301	14,130	57,200	17,691	42,130
Average	27,407	12,207	75,283	20,778	50,523
East St. Louis	31,542	12,902	41,800	11,169	24,567

Sources: 2000 U.S. Census; UX-21.

⁶ *Op. Cit.*, Note 4.

It is abundantly clear from Table 1 that while East Saint Louis is similar to the other jurisdictions in terms of population and number of housing units, it is quite different from them when the focal analysis is economic. That conclusion is underscored by the fact that the equalized assessed valuation (EAV; i.e., the tax base) of East Saint Louis is less than half the average across the Union's proposed external comparables (\$137,090,000 v. \$313,090,570).⁷ Still, since all seven municipalities are so close to each other geographically and are roughly similar in size (i.e., population and housing units), it is logical to conclude that they vie against each other for human resources in the same local labor market. The real question here is not whether East Saint Louis competes with the foregoing jurisdictions for qualified police officers and police officer candidates, it is to what degree, given its economic circumstances, can it realistically compete with them.

Based upon the foregoing analysis, the Arbitrator accepts the Union's proposed comparability grouping as the external comparables pool for the purposes of this case. It has been used by the parties themselves as a reference group, and was adopted by a previous interest arbitrator as well. Also, in the interest of encouraging some degree of stability in the parties' bargaining relationship, it makes sense to continue using Alton, Belleville, Collinsville, Edwardsville, Fairview

⁷ Source: UX-22.

Heights and Granite City as comparable municipalities when shaping the employment package for East Saint Louis police officers.

WAGES

City Position

The City's final offer on this issue consists of the following increases:

A 3.5% increase effective January 1, 2006

A 4.0% increase effective January 1, 2007

A 4.0% increase effective January 1, 2008

Citing its most recently available Audit (2005), the City noted that (1) its government activities net assets decreased \$9.8 million for the year ended December 31, 2005; (2) City assets decreased \$8.7 million; (3) the General Fund experienced a nearly \$4.6 million deficiency, which was addressed through the sale of bonds; and (4) revenue to the General Fund decreased by 1.5% in fiscal 2005. The City also underscores its high 2005 unemployment rate of 10%, its declining population, and the resultant reduction in the property tax base. Overall, the City argues, these figures support the conclusion that it cannot even afford its own wage offer, let alone the higher one proposed by the FOP in these proceedings.

The City believes as well that its future income stream from one of its major historical sources of revenue --- the Casino Queen river boat

gaming enterprise --- is threatened by a new casino that has recently been opened just across the Mississippi River from East Saint Louis. It also points to the fact that actual General Fund revenues through April 7, 2008 --- one day before the arbitration hearing --- were \$114,000 behind budget. While that figure represents only three months of the 2008 fiscal year, the City argues, it confirms the circumstance attested to by City Manager Robert Betts --- there is a general trend in East Saint Louis for the City's expenses to outstrip its revenues.

The City acknowledges its recent hiring of ten new police officers and its purchase of five new police vehicles. But, the City adds, instead of criticizing those actions and using them as support for its own salary offer, the Union should applaud the City for putting more officers on the street --- a measure the Union has ardently encouraged in recent years.

The City estimates that adoption of the Union's final salary offer would cost \$567,000 (not compounded) over the three years of the collective bargaining agreement. For the first year alone (2006) the cost would be \$189,000, nearly swallowing up the meager amount (\$245,000) left in the General Fund for that year. And, the City avers, with no General Fund figures available for 2007 or 2008, being saddled with the Union's final offer on this issue would likely create a deficit. In contrast, the estimated cost of its own offer, without compounding, would be \$147,000 for the first year and \$168,000 for each of the remaining two

years. Thus, the City believes, its final offer on the wage issue should be selected by the Arbitrator.

Union Position

The Union proposes the following wage increases in its final offer:

A 4.5% increase effective January 1, 2006

A 4.5% increase effective January 1, 2007

A 4.5% increase effective January 1, 2008

The Union notes that all of the raises East Saint Louis police officers and sergeants have received since January 1, 1999 have been awarded to them through interest arbitration. It points out that in every salary schedule category, bargaining unit members' salaries in 2005 were significantly below the average across comparable jurisdictions. And since they have not had a salary increase since then, the Union adds, the gap between them and their counterparts in other municipalities is much wider.

The Union argues as well that, for the first two years of the new contract, adoption of the City's wage offer would cause East Saint Louis police officers and sergeants to fall even farther behind those similarly situated across comparable jurisdictions. They would lose from one-half percent to one and one-half percent in their bid for some semblance of parity. Under its own offer, the Union emphasizes, they would experience only a modest one percent gain against the comparables'

average during that same period. Thus, the Union argues, its final wage offer should be adopted.

Discussion

Historically, interest arbitrators have had a substantial say in deciding the level at which the City of East Saint Louis should compete on a salary basis with comparable jurisdictions for the recruitment, selection and retention of qualified police officers. In 1993 Arbitrator Albert A. Epstein adopted the Union's final wage offer of 5% effective January 1, 1990, and 5% effective January 1, 1991. In 2001, Arbitrator Milton Edelman chose the Union's final offer on wages, implementing raises of 3% effective January 1, 1999, 3% effective January 1, 2000, 4% effective January 1, 2001, and 7% effective January 1, 2002. In 2004, Arbitrator Raymond E. McAlpin selected the Union's final salary offer, adopting a 3% increase effective January 1, 2003, a 4% increase effective January 1, 2004, and a 5% increase effective January 1, 2005. Apparently, the parties themselves successfully negotiated the police salary increases between 1992 and 1999. Overall, then, the 2005 salary relationships between East Saint Louis police officers and their counterparts in comparable jurisdictions reflect a balance between what the parties themselves established at the bargaining table and what interest arbitrators decided. Those relationships are reflected in Table 2 on the following page:

TABLE 2
2005 SALARY RELATIONSHIPS - PATROL

Jurisdiction	Eff. Date	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs	Top
Alton	4/05	41,730	43,798	45,550	46,645	47,740	48,835	49,930
Belleville	5/05	41,487	45,312	48,825	51,060	53,616	56,488	57,533
Collinsville	1/05	43,472	49,587	50,586	52,562	53,539	55,037	55,037
Edwardsville	5/05	43,160	47,965	49,404	50,879	51,857	52,836	52,836
Fairview Hts	5/05	43,528	46,663	48,965	52,696	53,628	54,561	54,561
Granite City	5/05	41,754	48,304	48,769	49,698	50,162	51,091	51,091
Average	---	42,522	46,933	48,683	50,590	51,757	53,141	53,498
East S L	1/05	34,901	42,684	44,525	47,523	48,682	49,841	51,000
\$ From Avg.	---	(7,621)	(4,249)	(4,158)	(3,067)	(3,075)	(3,300)	(2,498)
% From Avg.	---	-22%	-10%	-9%	-6%	-6%	-7%	-5%
Ranking	---	7/7	7/7	7/7	6/7	6/7	6/7	6/7

Source: UX-59; Collective Bargaining Agreements.

As is evident from Table 2, by 2005 East Saint Louis police officers' salaries were at or near the very bottom of the comparability pool on every seniority level. As noted, that ranking is a historical blend of what the parties negotiated themselves and the directives they received from interest arbitration awards. And since the Union prevailed on the wage issue in all of those arbitration proceedings, it appears that interest arbitrators in East Saint Louis have consistently concluded its police officers were underpaid. Moreover, they have been willing to grant substantial annual salary increases (e.g., as much as 7%) to narrow the gap between East Saint Louis police officers and their counterparts in the external comparability pool.

Table 3 has been constructed to compare the respective impact of the parties' final offers for the first year of the successor contract (2006)

on the current ranking of East Saint Louis patrol officers within the external comparability pool.

TABLE 3
2006 SALARY RELATIONSHIPS - PATROL

Jurisdiction	Eff. Date	Start	1 Yr	5 Yrs	10 Yrs	15 Yrs	20 Yrs	Top
Alton	4/06	43,190	45,331	47,144	48,278	49,411	50,544	51,667
Belleville	5/06	42,731	46,672	50,290	52,592	55,224	58,183	59,259
Collinsville	1/06	45,656	52,062	53,102	55,182	56,222	57,803	57,803
Edwardsville	5/06	44,470	49,400	50,882	52,414	53,422	54,430	54,430
Fairview Hts	5/06	44,844	48,032	50,434	54,276	55,237	56,198	56,198
Granite City	5/06	41,754	50,227	50,710	51,676	52,159	52,125	52,125
Average	---	43,744	48,621	50,427	52,403	53,613	54,881	55,249
East S L	1/05	34,901	42,684	44,525	47,523	48,682	49,841	51,000
City Final Offer (3.5%)	1/06	36,123	44,178	46,083	49,186	50,386	51,585	52,785
Union Final Offer (4.5%)	1/06	36,471	44,605	46,529	49,661	50,873	52,084	53,295
\$ From Avg.	2005	(7,621)	(4,249)	(4,158)	(3,067)	(3,075)	(3,300)	(2,498)
City Final Offer (3.5%)	2006	(7,651)	(4,443)	(4,344)	(3,217)	(3,227)	(3,296)	(2,464)
Union Final Offer (4.5%)	2006	(7,273)	(4,016)	(3,898)	(2,742)	(2,740)	(2,797)	(1,954)
% From Avg.	2005	-22%	-10%	-9%	-6%	-6%	-7%	-5%
City Final Offer (3.5%)	2006	-22%	-10%	-9.4%	-6.5%	-6.4%	-6.4%	-4.7%
Union Final Offer (4.5%)	2006	-20%	-9%	-8.4%	-5.5%	-5.4%	-5.4%	-3.7%
Ranking	2005	7/7	7/7	7/7	6/7	6/7	6/7	6/7
City Final Offer (3.5%)	2006	7/7	7/7	7/7	6/7	6/7	6/7	5/7
Union Final Offer (4.5%)	2006	7/7	7/7	7/7	6/7	6/7	6/7	5/7

Source: UX-60; Collective Bargaining Agreements.

Several conclusions logically emerge from analysis of the data displayed in the Table. First, under either of the parties' final offers the rankings of East Saint Louis patrol officers in each of the seniority

columns remain exactly the same for 2006 as they were in 2005. In absolute salary dollars, however, under the City's final offer they lose ground (as compared to average salaries across the comparables) in five of the seven seniority cells (i.e., the Start, After 1 Year, After 5 Years, After 10 Years, and After 15 Years levels). Like the veteran arbitrators whose East Saint Louis salary awards were previously noted, I am not enamored with a final offer that puts these officers even farther behind their counterparts in the comparable jurisdictions. And from the recruitment perspective, the starting salary for patrol officers is particularly problematical. In 2005 it was \$7,621 (22%) below the average entry-level salary in comparable jurisdictions. Under the City's final offer here the dollar gap would increase slightly, to \$7,651; under the Union's final offer it would be reduced somewhat --- to \$7,273. Obviously, the Union's final offer moves the East Saint Louis starting salary in the appropriate direction.

The difference between the parties' final offers for the first year of the successor agreement is but 1% (3.5% v. 4.5%). As shown in Table 3, that differential did not create significantly different salaries under the respective offers. Both kept East Saint Louis patrol officers at exactly the same rankings for 2006 as they were in 2005. The Union's offer nudges them closer to the average in each seniority cell, while the City's edges them farther from it in most of those cells. For years two and three of the new contract, the parties' final wage offers are a mere one-half of one

percent apart (4.0% for the City vs. 4.5% for the Union). Accordingly, the difference between their respective impacts for those years is even less significant than it was for 2006.

More specifically Arbitrator notes that without a salary increase, between 2006 and 2007 the gap between East Saint Louis patrol officers' wages and the average across the comparables ranges from 4% (after 1 year, after 5 years, after 15 years) to 5% (start, after 10 years, after 20 years, top pay). The average gap across all 7 seniority cells is 4.57%.⁸ Thus, even the Union's 4.5% wage offer for 2007 does not fully protect the salary position East Saint Louis patrol officers had in the 2005 comparability pool.⁹

The situation for sergeants is similar. Using 2005 as the base salary year once again, they were 9% behind the average of their external counterparts at the start level, 10% behind it after 1 year, 13% behind it after 5 years, 14% behind it after 10 years, 14% behind it after 15 years, 14% behind it after 20 years, and 12% behind it after 25 years.¹⁰ For 2006, the City's 3.5% offer would put them farther behind the relevant average at every seniority level except "after 1 year." For 2007, it appears the sergeants would lose more ground under the City's offer at the "after 15 years" and "after 20 years" levels. And for 2008 under the City's 4% final offer, it is reasonable to conclude they would move even farther from

⁸ Source: comparison between UX-61 and UX-60.

⁹ Conclusions reached for 2007 and 2008 are somewhat tentative, because not all of the comparable jurisdictions had settled the wage issue.

¹⁰ Percentage figures extracted from UX-63.

the comparables' average at four seniority levels (after 5 years, after 10 years, after 20 years, and at top pay).¹¹

Overall, the Arbitrator has concluded from the record that the City's final offer would cause East Saint Louis patrol officers' and sergeants' salaries to fall even farther behind their counterparts' average salary across the comparables in 2006, 2007 and 2008 than they were in 2005. The record also reveals that the Union's final offer, while advancing some officers and sergeants closer to the comparables' average at selected seniority levels, still either would not change their 2005 comparability pool rankings at all, or would change them only to the same extent the City's final offer would change them.

The only cost-of-living data in the record were submitted by the Union. Those data are limited, showing only that for 2006 the U.S. City Average increase in the CPI-U was 2.5%. For 2007 the comparable figure was 4.1%. The Arbitrator therefore concludes that the City's final wage offer of 3.5% and 4.0% for those years is preferable to the Union's 4.5% and 4.5% offers. Since CPI-U data are not yet available for all of 2008, the Arbitrator is unable to evaluate the parties' offers for that year on the cost-of-living factor.

The City has also claimed it has an inability to pay the wage increases reflected in the Union's final offer. It has unsuccessfully raised

¹¹ Figures for 2006, 2007 and 2008 were calculated from data in UX-64, UX-65 and UX-66.

that argument before interest arbitrators in the past. Most recently, Arbitrator Raymond E. McAlpin stated:

. . . The City further argued that its financial condition would preclude the Union's request for wage increases, and it certainly made some effective arguments in this area. However, the difference between the Union proposal and the Employer proposal is relatively small, and the difference between the wages paid in East St. Louis and other comparable communities is large. Given the work load and health insurance differences, it is clear to this Arbitrator that the Union's proposal more closely meets the requirements of the statutory criteria, and the Arbitrator will find that the Union's position with respect to wages is the most appropriate.¹²

Here, the overall difference between the Union's final offer (13½%) and the City's (11½%) is also small --- a mere 2% spread over three years. Under either offer the difference between what East Saint Louis patrol officers and sergeants will earn as compared to the average across the external reference pool is large. Interestingly, the City has also argued here that it cannot afford even its own offer. Obviously, though, responsible City administrators would not extend a final wage offer they know the City could not afford to pay. Obviously, were the City to prevail on this issue, it would find a way to pay its patrol officers and sergeants the increases reflected in its offer.¹³ And given the fact that the parties' wage offers are only 2% apart (without compounding) over the three-year term of the successor contract, the City should also be able to fund the

¹² *Op Cit.*, Note 3, McAlpin Award at p. 28.

¹³ The City claimed on p. 2 of its post hearing "Position Statement" on its financial condition that it "... cannot even afford the offer it has made to the FOP, let alone anything in excess of that offer or that which the Union has demanded."

salary increases reflected in the Union's offer. Indeed, in past interest arbitration proceedings it has claimed an inability to pay, has lost on the wage issue, and has still been able to meet the Union's successful wage demands.

The Arbitrator notes as well that the City's financial situation is exquisitely complex. It has numerous hundreds of revenue and expense streams to manage. Given the previously discussed salary gap between the City's police bargaining unit and their counterparts in other jurisdictions, it does not seem appropriate to widen that gap, essentially placing the City's financial woes on the backs of its patrol officers and sergeants.¹⁴

But what about the workloads of East Saint Louis patrol officers and sergeants as compared to those of their counterparts in the external comparability pool? According to the publication *2006 Crime in Illinois*, full-time sworn officers in East Saint Louis fought a staggeringly higher level of crime than that encountered by police officers in comparable jurisdictions. Table 4 on the following page is illustrative:

¹⁴ Given the paucity of internal comparability data in the record, the Arbitrator was unable to reach meaningful conclusions about the extent to which the City competes in the local labor market with regard to the salaries of its firefighters' and other employee groups. Nor was I able to compare the parties' final wage offers here with the wage increases and benefits the City may have provided to those internal groups.

TABLE 4
WORKLOAD COMPARISON - 2006

Jurisdiction	Population	No. of FT Officers	FT Officers/ 1000 pop.	Total UCR Crimes	UCR Crimes Per Officer
Alton	30,496	65	2.13	1,960	30.15
Belleville	41,410	81	1.96	2,234	27.58
Collinsville	24,707	39	1.58	692	17.74
Edwardsville	21,491	37	1.72	387	10.46
Fairview Hts.	15,034	40	2.66	697	17.43
Granite City	31,301	55	1.76	1,539	27.98
East St. Louis	31,542	60	1.90	4,487	74.78

Sources: UX-22, UX-48, UX-58.

It is obvious from Table 4 that East Saint Louis patrol officers and sergeants work in an extremely high crime environment. On a per officer basis, they dealt with more than twice the crime in 2006 than did officers in any of the comparable jurisdictions. The interest arbitrators previously called upon to decide police salaries in East Saint Louis have found this same circumstance, and as noted, all of them have ruled in favor of the Union.

Given the undeniably high crime rate in East Saint Louis, its citizens have an inordinately strong need for police protection. Stemming from its obvious dedication to serving the public interest, the City is taking reasonable steps to meet that need. As noted, for example, it has recently secured the funds to hire ten new officers and purchase five squad cars.¹⁵ But paying its patrol officers and sergeants a

¹⁵ The Arbitrator lauds the creative and energetic efforts that City Manager Robert Betts and his staff have expended toward partnering with other governmental entities and obtaining external funding for equipment and projects designed to protect the public interest.

competitive wage, especially in consideration of their high workload, is also in the public interest.

Overall, the Arbitrator has decided that the Union's final offer on the wage issue more closely conforms to the statutory criteria than does the City's. It will be adopted.

HOURS OF WORK

The Status Quo

The contractual origin of the parties' dispute on this issue is Article 13, §2.(d)(4), the Agreement section regarding revisions to work schedules, the basic work day and work week. That provision is quoted in its entirety here:

ARTICLE 13 – HOURS OF WORK

Section 2. Definitions, Methods and Procedures Relating to Work and Assignment of Sworn Officers.

(d) Shift Schedules: The following shift schedules shall be used as required by the Employer in preparing the work schedule:

(1) Secondary/Shifts:

12:00 midnight to 8:00 a.m.
8:00 a.m. to 4:00 p.m.
4:00 p.m. to 12:00 midnight

(2) Basic Shifts:

11:00 p.m. to 7:00 a.m.
7:00 a.m. to 3:00 p.m.
3:00 p.m. to 11:00 p.m.

(3) Supplemental Shifts:

10:00 a.m. to 6:00 p.m.
12:00 p.m. to 8:00 p.m.
6:00 p.m. to 2:00 a.m.
8:00 p.m. to 4:00 a.m.

(4) Revisions

- (a) The Employer has the right during the term of the Agreement to revise and institute basic work schedules, basic work day and work week as provided in this Article.
- (b) The Employer shall notify the Union in writing of its intention to revise and institute any changes as to basic work schedules, basic work day or basic work week at least thirty (30) days in advance of the intended effective date. The Employer acknowledges that it has an obligation to bargain over the impact of any such changes, and agrees to do so as set forth herein.
- (c) The parties agree to meet and negotiate impact issues during the fifteen (15) days following receipt of notice to the Union. If the issues are not resolved, the parties agree to commence arbitration within three days of reaching impasse, utilizing the services of an agreed arbitrator.

A decision shall be made by the arbitrator prior to the intended date of implementation by the Employer, with a supporting opinion to follow to the parties within fifteen (15) days of the intended date of implementation.

All agreements reached pursuant to this section or decisions issued by the arbitrator shall be made a part of this Agreement, whether such agreements or decisions change, add to or remove from

the provisions found in this Agreement. Any economic provisions shall be incorporated under the appropriate Articles of this Agreement.

Time frames are established because of special needs of department and union, and may be extended by mutual agreement.

Pending any such change, the Department's table of organization and the staffing levels shall be as established as the current minimum staffing levels set forth in Article 19: Safety Issues.

The City's notice of intent to change work schedules, workdays, or weeks, shall be in writing to the Union, by certified mail, return receipt requested, to the Union's office in Springfield, Illinois. Such notice shall include a description of the changes desired to be made, including any desired changes in the collective bargaining agreement.

The purpose of such negotiations shall be to make those revisions and amendments to the parties' labor agreement so as to provide for

- (a) efficient and effective operation of the department;
- (b) for necessary staffing levels in order to protect the safety of the officers and citizens of East St. Louis;
- (c) the conversion of benefit accrual and calculations of hourly rates of pay to correspond to any new work shifts to which the parties may agree; and

- (d) to avoid any loss of benefits or privileges of employment enjoyed by bargaining unit members.

Prior to reaching an agreement or an arbitrator's decision, should an impasse be arbitrated, the Employer shall not implement any changes.

Union Position

The Union seeks to change the status quo on this issue by amending Article 13, §2.(d)(4)(b) and (c) as follows:

- (b) The Employer shall notify the Union in writing of its intention to revise and institute any changes as to basic work schedules, basic work day or basis (sic)¹⁶ work week at least thirty (30) days in advance of the intended effective date. ~~The Employer acknowledges that it has an obligation to bargain over the impact of any such changes, and agrees to do so as set forth herein.~~ **In the event the Union does not agree to the change, then the Employer agrees to bargain over the proposed change.**¹⁷
- (c) The parties agree to meet and ~~negotiate impact issues~~ **bargain in** (sic)¹⁸ **the proposed schedule change** during the fifteen (15) days following receipt of notice to the Union. If the issues are not resolved, the parties agree to commence arbitration within three **(3)** days of reaching impasse, utilizing the services of an agreed arbitrator.

¹⁶ The Arbitrator assumes the Union meant to say "basic" here.

¹⁷ The Union's final offer would delete the stricken-through language and add the bold, underlined language.

¹⁸ The Arbitrator assumes the Union meant to say "on" here.

In addition, the Union's final offer on the Hours of Work issue would add the following item to the current list of four objectives for the negotiations prescribed under Article 13, §2.(d)(4)(c):

(e) to determine whether the change is reasonable and necessary.

The Union notes that in its most recent police interest arbitration with the City, it also sought a change from impact to decisional bargaining on this issue.¹⁹ In that matter, Arbitrator McAlpin felt he did not have the authority to endorse such a change, and he urged the City to “review other ways to control overtime costs besides returning (from a 12-hour shift) to the 8-hour schedule.”²⁰ The Union notes here that once the McAlpin Award had been received, the City promptly switched to 8-hour shifts, and that it had switched shifts twice before. The Union points to current high overtime costs as evidence that the City's flip-flopping back and forth between 8-hour and 12-hour shifts hasn't worked. Moreover, the Union believes that through the bargaining process it can help the City adopt an appropriate work schedule that will improve police presence on the streets and reduce overtime costs.

¹⁹ *Op Cit.*, Note 3 (McAlpin, 2004).

²⁰ Parenthetical explanation added by the undersigned Arbitrator.

City Position

The City proposes no change to the *status quo* on this issue. It acknowledges that the police work schedule has been changed a few times since the last collective bargaining agreement went into effect, and that the purpose of such changes was to control overtime costs. The City acknowledges as well that its police overtime costs are still high. Finally, the City asserts, the parties have already negotiated mechanisms for dealing with the 8-hour and 12-hour schedules (see Appendices C & D of the current Agreement), and there is no evidence that the City has abused its Article 12 authority to change shift schedules.

Discussion

The Union has the burden of proof on this issue. It must convince the Arbitrator there is a compelling need to depart from the parties' own negotiated language concerning work schedule changes. As discussed in the following paragraphs, that burden has not been met.

First and foremost, the parties themselves agreed to the current contract language that the Union seeks to change. They did so in the free collective bargaining process, and since then they have demonstrated that they can successfully negotiate arrangements with regard to work schedules. Appendices C and D of the current Agreement, which contain detailed language about the impact of the 8-hour and 12-hour work schedules, are reflective of that ability. If the

Union wishes to convince the City it can be of assistance in identifying appropriate cost-saving work schedules, it can do very soon, when the parties return to bargaining table and begin discussing the terms of the successor to their 2006-2008 Agreement.

Second, there is no evidence in the record to prove the City has abused its unilateral authority to make work schedule changes. It is true that overtime costs have not diminished as a result of the schedule changes the City has made in the past; however, that does not mean those changes were made in cavalier fashion or for inappropriate reasons. Like any management team, the City and its command staff in the Police Department make educated, informed guesses about how to reduce costs. Like any management team, sometimes they're right; sometimes they're wrong. It seems apparent here that especially given the City's current and projected economic challenges, maintaining its negotiated ability to make certain unilateral decisions designed with cost reduction in mind would certainly be in the public interest.

Third, there is only mixed support across the comparable jurisdictions for adopting the Union's proposal for decisional bargaining with regard to shift schedules. In Alton, the police union simply has the right after proper notice to "discuss" schedule modification. In Belleville, the employer retains the "sole right to establish and change the

scheduled work period or shift.”²¹ The Collinsville police contract confirms that management has the right “to schedule and assign work.” In Edwardsville, the Employer has the right to establish shifts, but they must be maintained for the contract’s duration “unless otherwise mutually agreed.” In Fairview Heights the police union has the right to bargain over changes to the work schedule. And in Granite City, while the Employer establishes the shift schedules, the police contract prevents changes to them during its duration. Overall, while there is some support among the comparables for decisional bargaining on police work schedules, it is not sufficient to persuade the Arbitrator there is a compelling need to adopt the Union’s final offer on this issue.

On balance, I am not convinced by the evidence in the record on this issue that the negotiated *status quo* should be changed. That is not to say that the City can make work schedule changes for any reason, without regard for sound organizational principles. The exercise of unilateral managerial authority is subject to the rule of reasonableness, meaning that employers cannot use such authority in an arbitrary, capricious or discriminatory fashion. Again, there is no evidence in the record to suggest the City has abused its Article 12 authority in the past.

²¹ Interestingly, Article 7 of the Belleville police contract also provides that work schedules cannot be “permanently changed unless mutually agreed upon by the parties.”

HOLIDAY PAY

Union Position

The Union proposes that the *status quo* remain unchanged on this issue. As it stands now, there is no requirement that officers work their scheduled shifts on days before and after holidays in order to receive holiday pay. The Union asserts as well that the City has the burden of showing a compelling need for the change it seeks, and that no such need exists.

City Position

The City's final offer on this issue is to add the following underscored, emboldened language to the current Holiday Pay provision (Article 22, § 2):

Section 2. Holiday Pay

In addition to their regular rate of pay, all officers shall receive eight (8) hours of pay for each of the above listed holidays in recognition thereof.

When an officer is called in from his regular day off or otherwise works overtime on a holiday, he shall be compensated as provided in this Agreement regarding such call in and/or overtime. The foregoing shall not affect the officer's entitlement to Holiday Pay as set forth in Section 2 above.

Regardless of other contract provisions, in order to be eligible for holiday pay the officer must work, if scheduled, the day before the holiday, the day of the holiday, and the day after the holiday unless the officer is on approved time-off. Officers who call in sick on the

above days shall provide a medical excuse from a health care provider to be eligible for holiday pay.

The City believes that the testimony of City Manager Robert Betts supports adoption of the above language, especially with regard to what he characterized as sick leave abuse. Currently, the City argues, officers unjustifiably call in sick the day before and/or after a holiday, then get paid for the holiday. It asserts that its final offer on this issue is designed to discourage such abuse. Moreover, the City points out, provisions similar to what it seeks in these proceedings already exists in three of the external comparables cited by the Union (i.e., Belleville, Collinsville, and Fairview Heights).

Discussion

The City seeks to change the *status quo* on this issue. Accordingly, it has the burden of showing there is compelling need to do so. From the external comparability evidence submitted by the Union, it is evident that requiring officers to work the day before and after paid holidays is not unusual. Neither, however, is it the norm. As the City noted, that requirement exists in three of the six. Like the police contract in East Saint Louis, those in the other three external comparables do not include such a requirement.

A demonstrable link between the *status quo* regarding holiday pay eligibility in East Saint Louis and proven sick leave abuse would lend

support to adoption of the City's final offer on this issue. But there is absolutely no documented evidence in the record to support the City's claim that officers are inappropriately claiming to be sick on the days before and/or after holidays.²² Absent such evidence, the spirited but unsubstantiated opinions of City Manager Betts are not sufficiently persuasive.

Moreover, in cases where the City investigates alleged sick leave abuse and finds conclusive evidence of its existence, it has the authority under Article 31 (Management Rights) to discipline the officers involved. That authority, when coupled with responsible application of it, has proven in other jurisdictions to be an effective deterrent to unjustified absenteeism and/or fraudulent use of sick leave.

In short, the Arbitrator finds no evidence in the record to support the City's claim that a compelling need exists to adopt its final offer on this issue. If the City has such evidence available to it --- e.g., detailed absence/sick leave data showing a pattern of suspected abuse before and after holidays --- it should share it with the Union during the impending negotiations for a successor to the contract at issue here. Perhaps through the give-and-take of the collective bargaining process the parties can resolve whatever sick leave/holiday pay problems that analysis of such data might reveal.

²² As noted earlier, the City presented but three exhibits: (1) CX-1, its final offer on Holiday Pay; (2) CX-2, its final offer on the Probation Period; and (3) CX-3, a copy of the Financially Distressed City Law (65 ILCS 5).

As a result of the foregoing analysis the Arbitrator has decided to adopt the Union's final offer on this issue. That is not to say the opinions of City Manager Betts are incorrect or ill-advised; rather, it simply reflects the fact that there is no documented evidence in the record to support them.

PROBATIONARY PERIOD

The Status Quo

The current contract language with regard to this issue appears as Article 35. It is quoted in its entirety here:

ARTICLE 35: PROBATION PERIOD

Section 1. Period

The probation period shall remain one year. Probationary officers shall have the right to grieve any claimed violation of this Agreement, except that they shall have no recourse to the grievance procedure under circumstances where they are terminated by the Employer for failing to successfully complete their probationary period.

Section 2. Extending Probation

The probationary period may be extended by the Employer under circumstance where the officer's graduation from the police training academy affords the Employer less than ninety (90) days of post-graduation field training and observation. Such extension shall be for a period of time to afford such ninety (90) days of field training and observation; in no event, however, shall the probation period extend beyond fifteen (15) calendar months from date of hire.

City Position

The City's final offer on this issue would delete both paragraphs of the current Article 35 and replace them with the following new language:

Change probationary period to eighteen (18) months from the date of hire for all employees hired after the date of execution of this agreement. All probationary employees shall advance to the non-probationary step in wage schedule after the completion of 12 months of service. Upon completion of the eighteen (18) month probationary period officers will be granted seniority back to their date of hire. The discipline or discharge of a probationary employee shall not be subject to the review procedures of this agreement.

The City believes it needs more time to evaluate the performance of its probationary officers so that it can increase the likelihood of retaining those who will perform competently on a long-term basis. As was the case with the Holiday Pay issue, the City relies exclusively on the testimony of City Manager Betts in support of that belief. The City notes as well that its final offer does not have a negative financial impact on probationary officers. Just as with the current 12-month probationary period, they would also advance under its final offer to the post-probationary wage level after twelve months.

Union Position

The Union's final offer is to maintain the *status quo* on this issue, leaving the probationary period at twelve months. It notes that aside from the "baseless accusations" in Mr. Betts' testimony, the City

presented absolutely no evidence as to why an extension of the probationary period to eighteen months would be appropriate.

Discussion

The Union is correct in its assertion that the City presented no evidence of a compelling need to change the *status quo* on this issue. In fact, the Union presented rather compelling evidence to retain it. Turning to the external comparability factor, only one of the group (Fairview Heights) has an 18-month probationary period for its newly-hired police officers. All of the remaining five have a 12-month probationary period in place. Given the proximity of those jurisdictions to East Saint Louis, and underscoring once again that all seven of those municipalities compete with each other in the same local labor market, it is reasonable to conclude that they draw from the same applicant pool. If five of them (six, including East Saint Louis) have historically operated with a 12-month probationary period, the Arbitrator finds no reason to conclude that East Saint Louis has suddenly experienced a compelling need for a longer one. After all, those six communities recruit applicants from the same communal barrel --- the local labor market. There is no evidence in the record to suggest that East Saint Louis has somehow picked more than its share of bad apples from it.

Before turning to the testimony of City Manager Betts on this issue, it is important to understand the context in which he is employed.

He is the thirteenth East Saint Louis City Manager in as many years. His two-year length of service in that position has earned him the record for staying in the job longer than any of the others. It was obvious from Mr. Betts' overall testimony that he is a dedicated, enthusiastic and value-laden public servant who faces a litany of challenges in his current position. Consider, for example, his testimony on the probationary period issue:

. . . And one of the reasons for the 12 to 18-month probation is because an officer can fake it through the --- make it through the academy and then fake it for six months as a good officer and that --- after that, all hell breaks loose. We have officers now under investigation, all kinds of issues, legal matters, hundreds of thousands of dollars in legal every year dealing with police matters that we shouldn't have. Arbitration hearings, this, this, this, that, you name it, we've got it. My legal costs alone is (sic) 800 to a million dollars a year dealing with issues that the City should not have to deal with as a result of bad behavior. (Tr. 63)

The Arbitrator is empathic toward the employment-related frustrations reflected in the above quote. However, even if Mr. Betts is right about probationary officers being able to "fake it through" a 12-month probationary period, those same persons could also fake it through an 18-month probationary period. Perhaps the City should look to its own selection procedures to minimize or even eliminate the possibility of hiring persons ill-equipped for police work. Perhaps its training procedures need further evaluation. But there is simply no evidence in the record of a nexus between extending the current

probationary period to eighteen months and reducing the number of unqualified police force applicants the City hires.

Moreover, the City presented absolutely no evidence that any of its police officers had been able to “fake it through” the 12-month probationary period anyway. There is not one documented instance of such behavior in the record. Accordingly, the Arbitrator finds insufficient proof to support adoption of the City’s final offer on this issue.

AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has decided as follows:

1. Wages – the final offer of the Union is adopted.
2. Hours of Work - the final offer of the City is adopted.
3. Holiday Pay – the final offer of the Union is adopted.
4. Probation Period – the final offer of the Union is adopted.

The provisions reflected in the above final offers shall be incorporated into the parties' January 1, 2006 – December 31, 2008 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

Consistent with the parties' written stipulation, the City is directed to issue separate wage retroactivity checks to bargaining unit members within sixty (60) calendar days from the date below, unless an extension is granted by the Arbitrator.

Signed by me at Hanover, Illinois this 12th day of November, 2008.



Steven Briggs