

ILLINOIS LABOR RELATIONS BOARD
BEFORE
BRIAN E. REYNOLDS
ARBITRATOR

**In the matter of the Interest Arbitration
between**

CITY OF EAST ST. LOUIS,

Employer

and

**ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL,**

Union

ILRB Case No. S-MA-09-085

Hearing: May 20, 2010

Award: September 4, 2010

OPINION AND AWARD

APPEARANCES:

For the Union:

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For the Employer:

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PROCEEDINGS

This is an interest arbitration under Section 14 of the Illinois Public Relations Act (Act) to determine the disputed terms of the successor to the collective bargaining agreement (Agreement) between the City of East St. Louis (City or Employer) and the Illinois Fraternal Order of Police Labor Council (FOP or Union) for the following bargaining unit of the Employer's employees(Unit):

Included: All sworn police officers with the rank of sergeant and below

Excluded: All sworn police officers with the rank of Lieutenant and above, confidential, supervisory personnel and all others prohibited by the Act.¹

The City is an Illinois municipality located St. Clair County, in what is called the Metro-East area across the Mississippi River from St. Louis, Missouri.

The parties' current Agreement has an expiration date of December 31, 2008. The parties were unable to reach consensus on a successor Agreement and resolution of the matter was submitted to the interest arbitration procedures of the Act.

The parties selected the undersigned to serve as the neutral arbitrator for the interest arbitration. A hearing was held on May 20, 2010 at City Hall at which time the parties were afforded an opportunity to present testimony, exhibits, and other evidence relevant to the dispute. During the hearing, the parties submitted stipulations on the disputed issue. The parties timely submitted post-hearing briefs on July 12, 2010. All issues except the one contained in the following award have been agreed to and/or withdrawn.

ISSUE

The parties stipulated to the following issue:

What wage increases will the employees receive, if any, on 1/1/09, 1/1/10, and 1/1/11?

¹ See Article 2: Recognition of the Agreement

FINAL OFFERS

The FOP proposed the following as a final wage offer:

- A 2.5% increase effective January 1, 2009.
- A 2.5% increase effective January 1, 2010.
- A 3.0% increase effective January 1, 2011.

The City proposed the following as a final wage offer:

- A 0.0% increase effective January 1, 2009.
- A 0.0% increase effective January 1, 2010.
- A 0.0% increase effective January 1, 2011.

STATUTORY FACTORS

Section 14 (h) of the Act sets forth the following factors upon which the Arbitrator is to base his findings, opinions and order:

Where there is no agreement between the parties, or where there is an agreement, but the parties have begun negotiations for a new agreement or amendment of the existing agreement, and wage rates other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion 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 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, 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 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 private employment.

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

...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 on the applicable factors presented in subsection 9(h)

In this case, the sole issue of wages is economic and, thus, I am restricted to adopting a final offer from one of the parties.

POSITION OF THE PARTIES

Union Position

The FOP maintains that its proposal is more appropriate under the three most important of the statutory factors: comparability, ability to pay, and cost of living, with comparability being the most important factor.

The City's comparable municipalities are well settled under previous interest arbitrations. Though, as in this case, the City argued that it was not comparable to any other cities, Arbitrators Edelman, McAlpin and Briggs rejected this argument and all found that the comparable municipalities are the ones submitted by the Union in this case.

Based on these comparables, it is clear that the City's Officers and Sergeants make considerably less than those in the comparables. Depending on years of service, City officers' 2008 pay ranges from 4% to 19% less than the comparable average. Under the City's proposal, the officers would fall 8% further behind in 2009 and 2010. Under the FOP proposal, the officers would still fall behind the comparables, but only 2% to 3%.

The reason the FOP proposed a final offer that falls behind the comparables is because of the cost-of-living. Under the City's offer, the Unit employees would cause a 3.22% loss to the cost of living over the first 2 years of the Agreement. The Union's proposal provides the employees a 5% increase, which is clearly more appropriate than the City's offer. Under the Federal projections, inflation will be 1% in 2010 and 1.7% in 2011, which combined with the 2.56% cost of living increase in 2009, result in a 5.26%

increase in the cost of living. Thus, under the cost of living statutory factor, the FOP's 8% final offer is more appropriate than the City's 0% offer.

The City's support for its final offer rests solely on its inability to pay claim. While the City manager, Deletra Hudson, testified that the City's General Fund ended 2009 with a \$2 million deficit, on cross-examination she admitted this was a deficit of revenues over expenditures and not a fund balance deficit. She was forced to admit that on December 31, 2009, the City had \$5,373,935 in the General Fund, \$2,931,954 of which is unreserved. On December 31, 2004, the General Fund was over \$6 million in the red, so the City is in relatively better financial shape.

The fact that expenditures exceeded revenues in 2009 is not significant. This happened in 2004, 2005 and 2008, yet Unit employees received raises of between 4% and 5 % in those years.

The City is attempting to present a post-hearing exhibit, which the FOP has objected to, labeled City Exhibit 2. The exhibit should not be admitted because it does not show a change in circumstances from the hearing nor give information not available at the hearing.

City Exhibit 2 is a memorandum dated June 10, 2010, from the City Finance Director, Johnny Campbell, to Deletra Hudson. In this memo, Mr. Campbell claims that the actual unreserved portion of the \$5,373,935 ending fund balance is \$192,982 not \$2,931,954. This is because of the addition of \$2,738,971 reserved for Police and Fire Pensions. Yet this adjustment was not in the draft audit presented at hearing, nor in the audits for 2004 through 2008.

This memo was created to refute the City's own figures in their own audit, something which should have been done at the hearing. For this reason, the arbitrator should not allow it in the record now, If the arbitrator does allow it, he should give the one line in this memo very little merit considering the evidence already in the record which does not reference a reserve in the General Fund for pension benefits.

In view of the above statutory factors, the arbitrator should adopt the FOP's wage offer as the best to serve the "interest and welfare of the public" as provided in Section 14(h)(3).

Employer Position

The City submits that, based on its dire financial straits, it does not have the ability to pay salary increases. This is the most important factor in this interest arbitration.

Even the FOP's evidence on comparables show how dire the City's financial condition is. The City is far below the median home value, household income and assessed valuation for the comparables. The average median home value of the comparable is \$75,282 and the City's is \$41,800. The City's average median household income is \$21,324, compared to \$40,869 for the comparables. The City's assessed valuation is \$169,698,764, compared to \$427,141,392 for the comparables. The City's median family income is less than half of the comparables' average. Additionally, although the FOP presented evidence that the City's officers' handle a larger number of UCR index crimes than the comparables, this statistic is not linked with any other factor that would have a bearing on the wage level. Also, the FOP's evidence on the 2008

budgets of the alleged comparables show that 4 did not have deficits, Collinsville had a small deficit of \$92,000 and, while Alton had a deficit, it was left with an ending General Fund balance of over \$13,000,000. None of these compare with the City's deficit of \$1,300,000. Clearly, the City is not comparable to any of these communities.

The FOP evidence also shows that the city's liquidity ratios were below 1.00 for 2008 and 2009. The City's balance sheet of December 31, 2009 shows a deficit of over \$2,400,000. Also, while the 2010 budget was balanced, City Manager Hudson testified that the arbitration reversal of furloughs for Unit members will again cause a deficit.

While Tab 35 of FOP Book 1 shows a fund balance of \$5,373,935, Hudson testified that these funds were committed. City Exhibit 2, a memo from City Finance Director Johnny Campbell to Hudson, explains that these funds are reserved to pay such matters as the police and fire pension funds, leaving an unreserved fund balance of less than \$200,000. This letter is an adjustment to the 2009 financial statement already in evidence and was not available at the date of the hearing. Thus, the arbitrator should receive it into evidence.

Ms. Hudson testified that the budget deficit for 2010 was close to \$6,000,000, rolling in the more than \$2 million deficit from FY 2009. The City instituted furlough days, layoffs and reduced operations costs. Arbitrator Clauss's decision rescinding the Unit members' furlough days have set back the City's attempts to deal with the deficit. The City has had to request a loan from the Financial Advisory Authority, which has not yet been approved. If not approved, the City's finances may be taken over by the FAA or the City might have to file for bankruptcy.

The arbitrator should also look at the Unit members' overall compensation package which is generous. The officers receive holiday pay, personal leave, generous vacation benefits, health insurance and pension benefits, shift overlap and recall at premium pay, off duty compensation and many other contractual benefits that will continue.

Additionally, the arbitrator should consider that the firefighters' unit helped the City's financial situation by agreeing to a zero percent increase for its 3 year agreement for 2009,2010 and 2011.

DISCUSSION AND ANALYSIS

External Comparables

The FOP has proposed the following Illinois municipalities as comparables: Alton, Belleville, Collinsville, Edwardsville, Fairview Heights and Granite City. All are located in near the City in the Metro-East area. The City opposes these comparables, citing statistics where East St. Louis lags far behind these 6 communities.

However, the City has made these same arguments, and lost, in interest arbitrations since 2001. As the FOP pointed out in its brief, Arbitrator Milton Edelman, in this decision on July 12, 2001, stated:

Reliance by East St. Louis on its unique position among Illinois cities has been rejected as a controlling factor in previous interest arbitrations involving this City and both its police and fire unions, and rightly so.

* * *

Comparisons with wages in surrounding communities of approximately equal size and in the same labor market is nothing more

than the application of a criterion at work in any labor market, whether arbitration is being used or not.²

Arbitrator Edelman ultimately rejected the City's argument, stating:

Even though East St. Louis is called a financially distressed city, workers are still attracted by higher wages and benefits in nearby communities in the same labor market. Wages comparisons cannot be ignored, as the City would have us do. They are too important in the actual setting of wages. The criteria in Section 14(h) seek to mimic the operation of an actual labor market, so wage comparisons must be made.³

In the next interest arbitration between the parties, the City again contested the comparables. Arbitrator Raymond McAlpin issued his award on September 10, 2004,⁴ awarding the Union's final offer on wages, and stating that:

the difference between the Union proposal and the Employer proposal is relatively small, and the difference between the wages paid in other comparable communities is large.

The City again contested the comparables before Arbitrator Steven Briggs, who issued his award on November 12, 2008. In his award, Arbitrator Briggs stated that:

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

² *City of East St. Louis and Illinois Fraternal Order of Police Labor Council*, (S-MA-99-65, Edelman) 2001, at p. 6

³ at p. 17.

⁴ *City of East St. Louis and Illinois Fraternal Order of Police Labor Council*, (S-MA-03-062, McAlpin) 2004.

labor market. The City's argument that there are just no communities comparable to East Saint Louis ignores that essential economic concept.⁵

Thus, the comparables for the City are well settled, and I will not revisit the issue here, especially since the City has proposed no other comparables. Therefore, I will continue the long standing practice of utilizing Alton, Belleville, Collinsville, Edwardsville, Fairview Heights and Granite City as the comparable municipalities.

According to the evidence, The Unit employees would lose 8% to the comparables under the City proposal and slightly more than 2% under the Union's proposal. Thus, to maintain relativity with the comparables, the Union's proposal would be more appropriate.

Cost-of-Living

In his decision in *County of Rock Island*, S-MA-09-072, April 7, 2010, Arbitrator Ed Benn summarized the approach he has utilized in several recent interest arbitration awards:

Instead of placing great weight on external comparability as in the past, to set wage and benefit levels during these uncertain times, I have focused more on the cost-of-living and inflation. *North Main, supra* at 13 ("[i]nstead of relying upon comparables, in *ISP* and *Boone County*, I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act - specifically, the cost of living [Section 14(h)(5)] as shown by the Consumer Price Index ('CPI')".⁶

⁵ *City of East St. Louis and Illinois Fraternal Order of Police Labor Council* (S-MA-06-066, Briggs) 2008.

⁶ at p.10

I agree that the cost of living is of more vital importance than keeping up with internal comparables, especially in this case, where the City is clearly a less prosperous community than its comparables.⁷

Here, the Union presented evidence that the cost-of-living over the Agreement's 3 year duration should increase at approximately 5.26%. Thus according to the evidence, the Union's proposed 8% total increase is closer to the cost-of-living than the City's 0% proposal.

Internal Comparables

The City presented evidence and arguments concerning the wages of other City employees. In dealing with its current budget deficit⁸ the City instituted a two day furlough period for all employees and layoffs in the Fire Department, Finance Department, and record room of the Police Department. The bargaining unit of firefighters reached agreement with the city for 0% wage increases for FY 2009, 2010, 2011.

The fact that the other protective service employees unit, the firefighters, have already agreed to what the City is offering here is relevant. The question is how much weight to give to the internal comparable of keeping abreast with the firefighters unit. Normally, arbitrators give far more weight to external rather than internal comparables.

⁷ I sympathize with the City's contention that, compared to most other situations, it is a relatively less prosperous community than its comparables. Although this fact does not mean the City has no comparables, it is relevant to its relative place near the median or the bottom of these comparables. However, I don't believe the City's lower level of prosperity means that it is any less appropriate to have its officers' receive raises near the cost of living.

⁸ I accept that the City does have a current fiscal year deficit regardless of the what the current General Fund balance is.

However, this has not been the case recently. As stated above, in several cases, Arbitrator Ed Benn has cited the current economic conditions as cause for reducing his reliance on external comparables. While Benn emphasizes external economic factors in his decision in *County of Rock Island* he also stated that: "(w)hile the economy has caused external comparables to be given less weight than in prior years, consideration of internal treatment of other employee bargaining units remains relevant."⁹ Similarly, Arbitrator Elliot Goldstein, in his recent decision involving the City of Belleville and the FOP¹⁰ stated as follows:

In this case, as the City has argued, consideration of other statutory criteria is important in determining which of the two proposals is more reasonable, and internal comparability is particularly relevant. An arbitrator, in evaluating compensation, must consider not only external comparability, but where the parties have been (bargaining history) and what is a reasonable adjustment in compensation in light of internal comparability, not just the external universe, I find.¹¹

The internal comparable evidence consists solely of the firefighter contract and the existence of layoffs and furlough days for other City employees. The record does not indicate if any City employees received wage increases during 2009 or 2010,¹² though there is apparently a wage freeze for 2010. However, the existence of the firefighter agreement is sufficient to find that the City's proposal is more consistent with the internal comparables than the FOP's proposal.

⁹ At pp.12-13.

¹⁰ *City of Belleville and IFOP Labor Council*, (S-MA-08-157, Goldstein) 2010

¹¹ *City of Belleville*, p.38

¹² There is a Teamsters unit which is in their last year of their contract. However, there is no evidence of what their wage increase was in 2009 and 2010.

Ability to Pay

The City's principle contention is that it does not have the ability to pay salary increases because of the dire financial condition of the City. The City's evidence is largely based on the testimony of the City Manager Deletra Hudson.

Hudson testified that the City ended FY 2009 with a \$2 million deficit that they rolled into the FY 2010 budget. The City is subject to the control of the Financial Advisory Authority under the Illinois Distressed City Act. The FAA requires the City to operate under a balanced budget each year.

With the \$2 million dollar budget carryover, the City had originally been looking at a deficit of \$6 million for FY 2010. The City then attempted to reduce expenditures through layoffs, furlough days, hiring and wage freezes, received FAA approval to reduce its working capital from 5% to 4%, and are requesting FAA approval to defer bond payments and for a \$2.5 million dollar loan. Apparently, if the City is unable to operate with a balanced budget, the FAA could take the City's operations. The wage increases requested by the FOP would put the City in a deficit situation, one they would have to address, presumably, by reducing other costs. I do not see the City being able to seek an increase in revenue in this economic climate.

The FOP argues that, if it runs a deficit, the City can tap into money it has on hand, citing a General Fund balance of \$5,373,935 as of December 31, 2009, \$2,931,954 of which is unreserved. It notes that the City has given wage increases of 4% to 5% when the City had deficits in 2004, 2005 and 2008. The FOP claims

sometimes deficits happen, but that should not prevent granting appropriate wage increases.

The level of unreserved amounts in the General Fund is in dispute. The City has offered City Exhibit 2 to explain that some of the previously thought unreserved amounts are reserved for Police and Fire Pension amounts. As the FOP points out, there are problems with the exhibit. It does not bring up any new information not available at the time of the hearing. While the memo is new, the information is not. The information or testimony of Mr. Campbell should have been done on the day of the hearing. However, in spite of these problems, I am accepting the Exhibit into evidence. The question is how much weight to give the information in the document, considering the evidence already in the record.

The memo states that the unreserved General Fund amount is actually less than \$200,000 rather than the \$2,900,000 unreserved amount shown of the draft balance sheet submitted at hearing. This is because of the addition of a reserve for Police & Fire Pension line that is contained in the memo. However, as the FOP points out, this line item is not shown as a reduction in the General Fund balance in any of the record documents from previous years.¹³

The FOP's argues that since its offer is more appropriate when looking at the external comparables, the most important factor, and the cost of living, the arbitrator must choose it unless the City clearly demonstrates an inability, not a disinclination, to pay. Presumably, as long as the City has money somewhere, in investments or the

¹³ At the hearing, Hudson testified that some of the General Funds are also reserved to provide workers comp and indemnification. This amount is supposedly reflected in the General Fund level, presumably in the unreserved amount.

General Fund, to pay the raises, it doesn't matter if the wage increases cause a deficit - the City has an ability to pay.

While I don't accept the FOP's argument and will consider ability to pay as a primary rather than secondary factor, I do believe it is incumbent upon the City to show its inability. The FOP has provided evidence that the City has afforded pay raises in years where a budget deficit occurred and that the General Fund has been reduced below zero in previous years. The City has not been taken over by the FAA or incurred bankruptcy during these times. Thus, I am not convinced that the current tight economic circumstances prohibit the City from granting any increases over a 3 year period.

There was no evidence detailing what the cost of the FOP's proposed wage increases would be. All I have as guidance is evidence cited in the Brigg's interest arbitration award in 2008, that the Union's proposal of 4.5% increases in each of 3 years would cost \$567,000, not compounded.¹⁴

Overall Analysis

As Arbitrator Benn has stated, it is difficult to reach decisions in these tough economic times. Essentially, what Benn has been saying is that one can't give too much credence to external comparability when the comparability is to agreements negotiated prior to the economic collapse in 2008. I agree with the essential principle that arbitrators should not force employers to give raises to keep up with increases other employers agreed to in better economic times. It's not that comparables should

¹⁴ During the Briggs interest arbitration, the City stated that its proposal of 3.5% in the first year followed by 2 years of 4% would result in \$147,000 the first year, and \$168,000 in each of the next 2 years. Presumably, this also was not compounded.

be ignored, but that, since often the raises were granted in better economic times, they aren't as significant as before. Benn believes that more reliance should be put on the cost of living factor rather than external comparables.

In his decision in *City of Belleville*, Arbitrator Goldstein stated that he was:

...unwilling to accept the premise that all statutory factors set out in Section 14(a) go by the wayside, because these are bad times. All factors must be considered, because that is my job, I point out. The context of the discussion may have changed because times are hard. 3% to 4% increases each year are no longer common, as I understand it from my review of the published police and fire increase data. The rules of the game and the frame of the analysis have not changed, in my view...

I agree with both Benn and Goldstein. I think even in tough economic times, one must consider the relevant statutory factors. However, I believe Benn is correct that one shouldn't give such primary importance to external comparables as had been done in the past.

In this case, the FOP adapted their offer considering this policy. If it proposed increases to keep up with its relative position with the comparables,¹⁵ the requested increase would have been more than double the cost-of living increases. Instead, it has proposed raises that are higher than the cost of living increases but closer to the cost of living than a 0% increase is.

A factor supporting the City's proposal is the internal comparables. Other employees are having a wage freeze and incurring furlough days. Also, since the firefighters unit agreed to a 3 year wage freeze, is that all the police could reasonably

¹⁵ As provided by the FOP in its Book 1

have hoped to get, if one were to "replicate" the results of bargaining in the interest arbitration award? On the other hand, I don't believe the FOP should be bound by the fact that it chose to pursue interest arbitration, which is its right, while the firefighters chose to agree prior to a contested interest arbitration.

In *City of Belleville*, Goldstein chose the Employer's offer of 3.25%, 0% and 2.5% over the Union's proposal of 3.25%, 3% and 3%.¹⁶ He found a one year wage freeze in 2009 to be appropriate and consistent with the internal comparables.¹⁷ Here, the choice is more difficult: an overall 8% increase, which while almost 3% larger than the cost-of living increase still has the Unit employees falling more than 2% further behind the comparables; or a 3 year wage freeze as agreed to by the firefighter unit, which has the Unit falling about 8% behind the comparables.

In his decision setting the wage levels for the City of Chicago police,¹⁸ Ed Benn also dealt with a situation where other employees were being laid off, furloughed, having wages frozen, and being offered the choice of take-backs or layoffs. In spite of this situation, Benn found that the police deserved a 10% increase over 5 years, rejecting Chicago's request for a wage freeze during 2009 and 2010.¹⁹ Benn found the sacrifices of the other employees to be of limited importance, citing what the City of Chicago called "the unique nature of law enforcement."²⁰

¹⁶ The raises were for the years commencing 5/1/08, 5/1/09 and 5/1/10. The wage increases also included increases to certain steps and extra increases for sergeants

¹⁷ Goldstein states that "(t)he internal comparables since the Spring of 2008 have included a wage freeze uniformly. The internal "comps" where no such freeze was negotiated by the fire and police clerical units were before this "great recession," I note." (at. p.45)

¹⁸ *City of Chicago and Fraternal Order of Police, Chicago Lodge No.7* (Arb. Ref. 09.281, Benn) 2010.

¹⁹ Benn also rejected the Union's proposed 19% increase. Benn apparently had authority to craft an appropriate wage increase, rather than being restricted to the parties' final offers.

²⁰ *City of Chicago*, at pp.15, 16 and 47.

Using both of these decisions as guidance, I find that, in this case, the external and internal comparables in this case basically balance each other out, leaving the cost of living and ability to pay as determinative factors.

While the City claims an inability to pay any increases, I note that the City has argued an inability to pay in almost every previous arbitration, even in better economic times than today. As Arbitrator Briggs stated in awarding the Union's wage proposal for the 3 years prior to the current interest arbitration:

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.²¹

In the first interest arbitration between these parties in 1993,²² the City also proposed a wage freeze to counter the FOP's proposal of 5% in each of two years. In that case, the City stated that it was operating at a deficit, had been unable to pay its employees on a regular basis, that incoming revenues were being attached, and that its financial situation was so bad that the State of Illinois had created the Financially Distressed City Act, which applied only to the City. Arbitrator Albert Epstein found the Union's 5% increase to be appropriate.

²¹ See Briggs award at p. 21

²² *City of East St. Louis and Illinois Fraternal Order of Police Labor Council (S-MA-91-066, Epstein) 1993*

Based on the years of arbitrators rejecting their inability to pay arguments, the City needed to provide sufficient evidence to support their claim in this interest arbitration. I am not convinced by the City's testimony here that it cannot afford *any* wage increases. While it is true that they have not budgeted for them, the City has previously provided wage increases in years where their expenditures exceeded revenues.

The evidence on the level of the General Fund is also not conclusive. Based on the record financial reports for previous years and the current year, along with City Exhibit #2, I am left unsure as to the level of the General Fund. The General Fund has been in the red in previous years without the FAA taking over or bankruptcy occurring, so I am not persuaded by the evidence that such will occur even if expenditures exceed revenues for this year.²³

It is true that, along with almost all Illinois public employers, the City is in a tight fiscal situation in these economic times. I am aware that one year wage freezes, as in Belleville, have been implemented. The City's evidence may be sufficient to support such a freeze or a low overall wage increase, but I hesitate to impose a 3 year wage freeze absent undeniable evidence of severe economic restraints and consequences.

Of course, I may have found such a wage freeze to be appropriate if the FOP offer had been excessive, for instance in an amount to keep up with the external comparables as calculated by the FOP. However, their offer was not. It is lower than that level, but still higher than the cost of living, and higher than what may be

²³ This is even assuming the General Fund is as portrayed in City Exhibit #2, showing an unrestricted fund balance of \$192,000 instead of the \$2,931,000 balance shown on the exhibit at hearing.

appropriate in these economic times and the City's fiscal condition. However, the offer is not so high as to make a 3 year wage freeze more appropriate.

Thus, applying the factors contained in the Act, the internal comparables, external comparables, cost-of living and the City's ability to pay, I find the Union's offer to be more appropriate.

AWARD

I hereby find that on the sole issue in this matter:

Wages: The Union's final offer is adopted

I order that the substance of the above finding is to be incorporated into the parties' new Agreement, along with all tentative agreements previously reached by the parties and agreed to be included in this award.

Issued: September 4, 2010 at Springfield, Illinois



Brian E. Reynolds,
Arbitrator