



THE ISSUES

1. What shall the drug and alcohol provisions of the Contract be for police officers?
  
2. What shall the physical fitness provisions of the Contract be for police officers?

APPEARANCES

FOR THE ASSOCIATION

Anthony F. Salerno, Esq.	Attorney
Michael Tierney	Police Officer

FOR THE CITY

Michael D. Weinstein, Esq.	City Attorney
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ILLINOIS PUBLIC LABOR RELATIONS ACT

Section 14. Security Employee, Peace Officer and Fire Fighter Disputes.

- (a) In the case of collective bargaining agreements involving units of security employees of a public employer, Peace Officer Units, or units of fire fighters or paramedics, and in the case of disputes under Section 18, unless the parties mutually agree to some other time limit, mediation shall commence 30 days prior to the expiration date of such agreement or at such later time as the mediation services chosen under subsection (b) of Section 12 can be provided to the parties. In the case of negotiations for an initial collective bargaining agreement, mediation shall commence upon 15 days notice from either party or at such later time as the mediation services chosen pursuant to subsection (b) of Section 12 can be provided to the parties. In mediation under this Section, if either party requests the use of mediation services from the Federal Mediation and Conciliation Service, the other party shall either join in such request or bear the additional cost of mediation services from another source. The mediator shall have a duty to keep the Board informed on the progress of the mediation. If any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties, either the exclusive representative or employer may request of the other, in writing, arbitration, and shall submit a copy of the request to the Board.
- (b) Within 10 days after such a request for arbitration has been made, the employer shall choose a delegate and the employees' exclusive representative shall choose a delegate to a panel of arbitration as provided in this Section. The employer and employees shall forthwith advise the other and the Board of their selections.
- (c) Within 7 days of the request of either party, the Board shall select from the Public Employees Labor Mediation Roster 7 persons who are on the labor arbitration panels of either the American Arbitration Association or the Federal Mediation and Conciliation Service, or who are members of the National Academy of Arbitrators, as nominees for impartial arbitrator of the arbitration panel. The parties may select an individual on the list provided by the Board or any other individual mutually agreed upon by the parties. Within 7 days following the receipt of the list, the parties shall notify the Board of the person they have selected. Unless the parties agree on an alternate selection procedure, they shall alternatively strike one name from the list provided by the Board until only one name remains. A coin toss shall determine which party shall strike the first name. If the parties fail to notify the Board in a timely manner of their selection for neutral chairman, the Board shall appoint a neutral chairman from the Illinois Public Employees Mediation/ Arbitration Roster.

- (d) The chairman shall call a hearing to begin within 15 days and give reasonable notice of the time and place of the hearing. The hearing shall be held at the offices of the Board or at such other location as the Board deems appropriate. The chairman shall preside over the hearing and shall take testimony. Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in the evidence. The proceeding shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them, but the transcripts shall not be necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee for the chairman, established in advance by the Board, shall be borne equally by each of the parties to the dispute. The delegates, if public officers or employees, shall continue on the payroll of the public employer without loss of pay. The hearing conducted by the arbitration panel may be adjourned from time to time, but unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Majority actions and rulings shall constitute the actions and rulings of the arbitration panel. Arbitration proceedings under this Section shall not be interrupted or terminated by reason of any unfair labor practice charge filed by either party at any time.
- (e) The arbitration panel may administer oaths, require the attendance of witnesses, and the production of such books, paper, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.
- (f) At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks. If the dispute is remanded for further collective bargaining the time provisions of this Act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the Board of the remand.
- (g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as

to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last offer of settlement in 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).

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

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and condition 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.

APPLICABLE SECTIONS OF THE LAW

ILLINOIS STATE LABOR RELATIONS BOARD  
RULES AND REGULATIONS

Section 1230.80 Composition of Arbitration Panel

- a) Unless otherwise agreed to in writing by the parties, the arbitration panel shall consist of three members: the employer's delegate, the exclusive representative's delegate and the neutral chairman.
- b) Selection of the neutral chairman shall proceed as follows:
  - 1) Within seven days of receipt of a timely filed Demand for Compulsory Interest Arbitration, the Board shall send the parties a list of seven interest arbitrators selected from the Illinois Public Employees Mediation/ Arbitration Roster, unless the parties have notified the Board of an agreement to use an alternate source of interest arbitrators. The parties may agree to use an alternate source of interest arbitrators at any time prior to appointment of an arbitrator by the Board.
  - 2) THE PARTIES MAY SELECT AN INDIVIDUAL ON THE LIST PROVIDED BY THE BOARD OR ANY OTHER INDIVIDUAL MUTUALLY AGREED UPON BY THE PARTIES. WITHIN SEVEN DAYS FOLLOWING THE RECEIPT OF THE LIST, THE PARTIES SHALL NOTIFY THE BOARD OF THE PERSON THEY HAVE SELECTED. UNLESS THE PARTIES AGREE ON AN ALTERNATE SELECTION PROCEDURE, THEY SHALL ALTERNATIVELY STRIKE ONE NAME FROM THE LIST PROVIDED BY THE BOARD UNTIL ONLY ONE NAME REMAINS. A COIN TOSS SHALL DETERMINE WHICH PARTY SHALL STRIKE THE FIRST NAME. (Section 14(c) of the Act.)
  - 3) IF THE PARTIES FAIL TO NOTIFY THE BOARD OF THEIR SELECTION FOR NEUTRAL CHAIRMAN, THE BOARD SHALL APPOINT, AT RANDOM, A NEUTRAL CHAIRMAN FROM THE ILLINOIS PUBLIC EMPLOYEES MEDIATION/ARBITRATION ROSTER. (Section 14(c) of the Act.)
  - 4) If the neutral chairman is unable or unwilling to commence the hearing within 15 days following his appointment or within such additional time period to which the parties may agree pursuant to Section 1230.90(a) of this Part, or if the neutral chairman is otherwise unable or unwilling to serve, the parties shall notify the Board within five days. The Board shall provide the parties with a second list of seven interest arbitrators from the Illinois Public Employees Mediation/Arbitration Roster. Within seven days after the Board provides the list, the parties shall select an individual from the list or any other individual to serve as neutral chairman. If the

parties fail to notify the Board of their selection, the Board shall appoint a neutral chairman. Except in exceptional circumstances, the Board shall not supply the parties with more than two lists of interest arbitrators.

- c) Within 10 days following the filing of the demand for compulsory interest arbitration, each party shall notify the Board of the name, address and telephone number of its delegate to the interest arbitration panel. Delegates who are public officers or public employees shall continue on the payroll of the public employer during the arbitration proceeding without loss of pay.
- d) Upon receipt of the names of the delegates and upon selection of a neutral chairman, the Board shall notify the neutral chairman in writing of his appointment. The date of receipt of such notice shall be the date of the neutral chairman's appointment.

(Source: Amended at 14 Ill. Reg. 19903, effective November 30, 1990)

#### Section 1230.90 Conduct of the Interest Arbitration Hearing

- a) The neutral chairman of the arbitration panel shall provide the parties with reasonable notice of a hearing to commence within 15 days following his appointment. The parties may agree in writing to extend the time for commencement of the hearing for a period of time not to exceed 90 days. The hearing shall conclude within 30 days following its commencement, unless the parties agree to extend this period.
- b) The arbitration panel shall be responsible for choosing the location of the hearing and securing the premises. The Board hereby deems it appropriate for hearings to take place at the location selected by the panel. Requests to use the hearing rooms at the Board's offices must be made to the Board at least 10 days in advance, and will only be granted if space is available.
- c) The neutral chairman SHALL PRESIDE OVER THE HEARING AND SHALL TAKE TESTIMONY. (Section 14(d) of the Act). The neutral chairman shall control the hearing to ensure that it is concluded expeditiously within 30 days after its commencement or within such longer period to which the parties may agree.
- d) The neutral chairman shall have the authority to issue subpoenas in accordance with this Section. Subpoenas shall be secured by the neutral chairman from the Board's office. IF ANY PERSON REFUSES TO OBEY A SUBPOENA, OR REFUSES TO BE SWORN OR TO TESTIFY, OR IF ANY WITNESS, PARTY OR REPRESENTATIVE IS

GUILTY OF CONTEMPT WHILE IN ATTENDANCE AT THE HEARING, (Section 14(e) of the Act) the neutral chairman may advise the Board's General Counsel. The General Counsel shall request the assistance of the Attorney General to INVOKE THE AID OF THE CIRCUIT COURT WITHIN THE JURISDICTION IN WHICH THE HEARING IS BEING HELD. (Section 14(e) of the Act).

- e) The arbitration proceeding shall be informal. TECHNICAL RULES OF EVIDENCE SHALL NOT APPLY AND THE COMPETENCE OF EVIDENCE SHALL NOT THEREBY BE DEEMED IMPAIRED. (Section 14(d) of the Act).
- f) THE ARBITRATION PANEL MAY ADMINISTER OATHS, REQUIRE THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, CONTRACTS, AGREEMENTS, AND DOCUMENTS AS MAY BE DEEMED BY IT TO BE MATERIAL TO A JUST DETERMINATION OF THE ISSUES IN DISPUTE. (Ill. Rev. Stat. 1989, ch. 48, par. 1614(e)).
- g) The hearing proceedings shall be transcribed. The arbitration panel shall arrange for the recording and transcription of the proceedings. The costs of recording and transcribing the hearing shall be shared equally by the parties. Any party that desires a copy of the transcript shall be responsible for the cost of its copy.
- h) The neutral chairman, IF HE IS OF THE OPINION THAT IT WOULD BE USEFUL OR BENEFICIAL TO DO SO, MAY REMAND THE DISPUTE TO THE PARTIES FOR FURTHER COLLECTIVE BARGAINING FOR A PERIOD NOT TO EXCEED TWO WEEKS. (Section 14(f) of the Act). The chairman shall notify the Board in writing of any such remand. If the dispute is remanded to the parties, the running of the time period for conclusion of the hearing shall be stayed.
- i) MAJORITY ACTIONS AND RULINGS SHALL CONSTITUTE THE ACTIONS AND RULINGS OF THE ARBITRATION PANEL. (Section 14(d) of the Act).
- o) The arbitration panel shall:
  - 1) determine which issues are in dispute and which of those issues are economic issues and serve a copy of that determination on the parties; and
  - 2) require the parties to submit their final offers of settlement on each economic issue in dispute;
  - 3) The panel need not determine whether, with regard to protective service employees, equipment or manning issues involved serious safety risks beyond that which is inherent in the normal performance of the employees' duties at this stage of the proceeding.

- 4) The panel may allow the parties reasonable additional time, as determined by the number and the complexity of the issues, for presenting written or oral arguments in support of their positions. The hearing shall be considered concluded when final offers are submitted or when written or oral arguments are presented, whichever is later.

#### Section 1230.100 The Arbitration Award

- a) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING OR SUCH FURTHER ADDITIONAL PERIODS TO WHICH THE PARTIES MAY AGREE (Section 14(g) of the Act), the panel shall issue, serve on the parties, and file with the Board its award and findings of fact. The award shall be considered issued on the date it is served on the parties. The panel shall file a certificate of service with the Board.
- b) The award shall contain findings of fact and a written opinion concerning each issue in dispute. THE DETERMINATION OF THE ARBITRATION PANEL AS TO THE ISSUES IN DISPUTE AND AS TO WHICH OF THESE ISSUES ARE ECONOMIC SHALL BE CONCLUSIVE. (Section 14(g) of the Act). With respect to each economic issue in dispute, the panel shall adopt the final offer of one of the parties, based on the following factors:
  - 1) THE LAWFUL AUTHORITY OF THE EMPLOYER (Section 14(h)(1) of the Act);
  - 2) STIPULATIONS OF THE PARTIES (Section 14(h)(2) of the Act);
  - 3) THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THESE COSTS. (Section 14(h)(3) of the Act).
  - 4) COMPARISON OF THE WAGES AND CONDITIONS OF EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDING WITH THE WAGES, HOURS AND CONDITION OF EMPLOYMENT OF OTHER EMPLOYEES PERFORMING SIMILAR SERVICE AND WITH OTHER EMPLOYEES GENERALLY:
    - A) IN PUBLIC EMPLOYMENT IN COMPARABLE COMMUNITIES.
    - B) IN PRIVATE EMPLOYMENT IN COMPARABLE COMMUNITIES. (Section 14(h)(4) of the Act).
  - 5) THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES, COMMONLY KNOWN AS THE COST OF LIVING. (Section 14(h)(5) of the Act).

- 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. (Section 14(h)(6) of the Act).
  - 7) CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS. (Section 14(h)(7) of the Act).
  - 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. (Section 14(h)(8) of the Act).
- c) With respect to each noneconomic issue in dispute, the panel shall base its award on the applicable factors set forth in subsection (b).

## POSITIONS OF THE PARTIES

The APPO indicated at the outset that "there is no current existing drug or alcohol abuse problem within the Department." (TR. Pg. 11) But that, "both sides recognize that it is important to the safety of the officers and the welfare of the community to establish some sort of an alcohol and drug abuse program." (TR. Pg. 11)

The APPO argued strongly that since there is no existing problem and that while it agrees a program should be put in place, that the program should protect the rights of the officers.

The Union argues that it violates the Fourth Amendment to the Constitution to apply the City's proposed drug-testing program to all Department employees, irrespective of job function. Employees that do not serve in safety-related or otherwise sensitive job functions should not be included.

The Union points out that the United States Supreme Court in Skinner vs. Railway Labor Executives' Association, 489 U.S. 602, 618 (1989) establishes that governmental employees are protected against unreasonable searches and seizures. In Skinner, the Court explained that "employees subject to the tests discharged duties fraught with such risks of injury to others that even a momentary lapse of attention can have disastrous consequences." In National Treasury Employees vs. Von Raab, 489 U.S. 656, 670 (1989), the Court stated that, "the public interest . . . demands effective measures to prevent the promotion of

drug users to positions that require the incumbent to carry a firearm." Based on these two cases the Union recognizes that an alcohol and drug abuse program is appropriate, but argues that it is not appropriate to include all employees which would mean the testing of employees serving in administrative, clerical, and secretarial functions. These individuals have greater expectations of privacy than do officers carrying firearms.

In the Von Raab case, the Court addressed the testing of such employees as accountants, baggage clerks and animal caretakers and refused to hold on the record before it that they should be subject to a relaxed standard of Fourth Amendment analysis. The case was remanded to a lower court.

The City argued that its drug and alcohol testing proposal is much more coherent and logical than that of the Association. It points out that it was written by Ms. Alayne Weingartz who has attended many seminars and studied in-depth on these matters. That "reasonable suspicion" is a more appropriate standard; that the City's proposal provides for confidentiality; that the City's proposal contains appropriate definitions and provides for voluntary requests for assistance.

As the City points out, "there really is no disagreement by either side as to the need to adopt a policy." Both sides indicate that a drug policy is necessary both to protect the citizens of Aurora and for the benefit of the police officers themselves that do not want to work with other police officers that are under the influence of drugs or alcohol.

One of the primary differences between the positions of the City and the Association are whether the standard should be "reasonable suspicion" or "probable cause." The City also points out that it probably could have used random testing under current court decisions on public safety employees, but it did not do so. It is the City's position that the "reasonable suspicion" standard, in conjunction with supervisory confirmation, confidentiality, and the use of GC/MS testing represents a high level of protecting the employee's privacy interests.

The other major area where the City and the Association are miles apart, is with regard to what standard should be used to determine intoxication. The law in Illinois for motor vehicle operators is .10 and the Union wants that to be the standard here. The City has suggested the stricter standard of .04. Primarily this is because police officers may drive above the posted speed limit, may not stop at traffic signals do carry weapons and make life or death decisions, and the slightest lack of good judgment could be disastrous.

## DISCUSSION

The Illinois Public Labor Relations Act gives the arbitrator some general guidance as to "factors" which he is to consider in reaching a decision. Of those eight factors, there are only two that are critically important in this case. "The interests and welfare of the public" were carefully considered. And, "such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of . . . conditions of employment . . . in the public service" were also carefully considered.

Since wages were not involved, and neither party made any argument regarding the cost of drug and alcohol testing or physical fitness conditioning, several of the other key factors were not relevant.

Finally, noticably, neither of the parties presented any evidence regarding similar policies or conditions of employment in "comparable communities."

Police officers should be held to a higher standard than the rest of us, even if simply because they carry firearms, but also because they make life and death decisions, are authorized to drive at higher rates of speed and go through red lights, etc.

Rights and liberties often require a difficult balancing act when weighed against restrictions and responsibilities. It seems to me, on balance, that when a police officer takes his oath of office and

especially when he is, or might, be carrying a firearm or driving at a high rate of speed, that he must also give up some of his Fourth Amendment rights. He must be held to a higher standard and be willing to accept drug and alcohol testing based on a lower threshold than the rest of us. While it is somewhat imperfect to hold police officers to a different standard than other citizens, it is necessary and is not an unreasonable burden in my opinion.

The Neutral Arbitrator encouraged the Parties before, during and after the hearing to attempt to arrive at their own language and settlement on both of these issues. He delayed scheduling the hearing so that the Parties would be encouraged to work on settling the issues, then mediated for a few hours at the beginning of the hearing, at the request of both Parties, and was successful in arriving at an agreement on rough language for the physical fitness program. He encouraged the Parties to perfect and sign that language before this final Award was written, although they were not successful in doing that. He also encouraged the Parties to try to settle all, or as many as possible, of the drug testing policy issues between the hearing and the writing of briefs. The Parties were apparently not successful in doing that either.

The Arbitrator believes strongly that parties are always best off writing their own contracts whenever possible. The arbitrator, no matter how hard he might research and study the matter, cannot possibly know as much about all of the circumstances in the Aurora Police Department as the Parties do and, therefore, his language almost certainly will be less perfect than language they would have written

themselves. However, it is his job to write final language where the parties were unable to do so. Final offer arbitration, does not apply to these non-economic issues. Final offer arbitration usually has the effect of pushing both parties towards their most reasonable position, least the arbitrator select the other party's position.

It is unusual, in fact extremely uncommon in my twenty years experience, for an arbitrator to be asked to write an entire detailed eight-page policy with fifteen or more separate sections. Almost always, the parties are successful in negotiating and writing language on all but a few "sticking points." For whatever reason, and the arbitrator does not know the reason, the parties here did not agree on any of the alcohol and drug abuse policy clauses. Based on the record before him, the arbitrator did the very best he could to write what he feels to be a proper drug and alcohol abuse policy under the guidelines of the law. HOWEVER, THAT IS A TASK MUCH BETTER DONE BY THE PARTIES THAN BY ANY ARBITRATOR. While the arbitrator certainly has no intent to be punitive or anything other than fair in writing this Policy, if either or both of the Parties are unhappy with certain aspects of it, perhaps that will encourage them to write more of their own contract language on this or other issues next time. If, by chance, they are satisfied with the arbitrator's writing, they should still realize that they both took a serious risk in having a Neutral write eight pages of difficult language. They are strongly encouraged in similar cases in the future, to write all of the language they possibly can, leaving to an arbitrator only a few clear and difficult issues.

The Union has argued that language should be included in the Contract protecting both employee's due process rights and their Fourth Amendment rights to unreasonable searches and seizures. Also, that employees that successfully challenge a test in arbitration shall be entitled to damages. The Arbitrator has not included either of these, because he believes they already exist and are not necessary in the Contract. That is, obviously all citizens, including police officers, are entitled to protection under the United States Constitution and police officers would also be entitled to sue for damages in a court of law since there is no prohibition in the Contract to doing so.

INTEREST ARBITRATION AWARD

1. The Drug and Alcohol Abuse Article in the Contract shall be as in Attachment 1 hereto.
2. The Physical Fitness Program shall be as in Attachment 2 hereto.

  
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Jeffrey A. Winton  
Neutral Arbitrator

Chicago, IL  
September 16, 1991

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Concurring Arbitrator

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Concurring Arbitrator

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Dissenting Arbitrator

## ATTACHMENT 1

### DRUG AND ALCOHOL TESTING

#### 1. Policy Statement

The Union and the Employer agree that the use of illegal drugs, and the abuse of legal drugs and alcohol, by members of the Police Department present unacceptable risks to the safety and well-being of other employees and the public. In addition, such conduct violates the reasonable expectations of the public that the employees who serve and protect them obey the law and be fit and free from the adverse side effects of drug and alcohol abuse.

The Union and the City agree that it is in their best interest to establish a testing program that will allow the Employer to eliminate any such abuse by City employees.

#### 2. Definitions

A. "Drug(s)" shall mean any controlled substance listed in Chapter 56 1/2 of the Illinois Revised Statutes, known as the Controlled Substances Act, for which the person tested does not submit a valid predated prescription (see No. 14 re: prescription drugs). Thus, the term "drug(s)" includes both abused prescription medications and illegal drugs. In addition, it includes "designer drugs" which may not be listed in the Controlled Substances Act but which have adverse effects on perception, judgement, memory or coordination. Drugs covered by this policy, include, but are not necessarily limited to the following:

Opium	Methaqualone	Psilocybin-Psilocyn
Morphine	Tranquilizers	MDA
Codeine	Cocaine	PCP
Heroin	Amphetamines	Chloral Hydrate
Meperidine	Phenmetrazine	Methylphenidate
Marijuana	LSD	Hash
Barbiturates	Mescaline	Hash Oil
Glutethimide	Crack	Steroids

B. "Impairment" due to drugs and/or alcohol shall mean a condition in which the employee is unable to properly perform his/her duties due to the effects of a drug and/or alcohol in his/her body. Where impairment exists, incapacity for duty shall be presumed.

C. "Positive Test Results" shall mean a positive result on both a confirming test and initial screening test. If the initial test is positive, but the confirming test is negative, the test results will be deemed negative and no action will be taken. A positive confirming test result is one where the specimen tested contained alcohol, drug or drug metabolite concentrations at or above the concentration level specified herein.

D. The term "drug abuse" includes the use of any controlled substance which has not been legally prescribed and/or dispensed, or the use of a legally prescribed drug for which a valid, predated prescription has not been submitted along with a listing of known side effects, if required under Section 14.

E. The term "alcohol abuse" means the use of alcohol on or prior to duty, such that at any time during working hours, the level of alcohol indicated in Section 13 can be detected via blood/urine sample testing and thus the employee will be presumed to be impaired due to the use of alcohol.

### 3. Prohibitions

Police Officers shall be prohibited from:

1.) Consuming or possessing illegal drugs at any time during or prior to the work day, on any of the Employer's premises or job sites, including all of the Employer's buildings, properties, vehicles and the employee's personal vehicle while engaged in the business of the Employer.

2.) Possessing, using, selling, purchasing or delivering any illegal drug during the work day.

3.) Consuming or possessing alcohol at any time during the workday, on any of the employer's job sites, including all of the Employer's buildings, properties, vehicles and the employee's personal vehicle while engaged in the business of the Employer and/or at any time prior to the work day such that at any time during working hours, the level of alcohol indicated in Section 13 can be detected as provided in Section 2(E).

Violation of these prohibitions will result in disciplinary action up to and including discharge.

### 4. The Administration of Tests

#### A. Informing Employees Regarding Drug and Alcohol Testing

All employees will be fully informed, in writing, of the Employer's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of drugs/alcohol on job performance. In addition, the Employer will inform the employees of how the test is conducted, when the test will be conducted, what the test can determine, and the consequences of testing positive for drug/alcohol use. All newly hired employees will be provided with this information on their initial date of hire. No employee shall be tested unless this information has been provided to him/her.

## B. Pre-Employment Screening

All new Police applicants will be required to submit blood and urine specimens to be screened for the presence of drugs and/or alcohol prior to employment. No applicant with a confirmed positive result shall be eligible for hire. Any applicant refusing to submit to such required testing shall not be considered for employment.

## C. When a Test May be Compelled

There shall be no random drug testing of employees. Where there is reasonable suspicion to suspect that an employee is involved in drug or alcohol abuse, that employee may be required to report for drug testing. A supervisor must have confirmation of reasonable suspicion from either the Chief or his designee. The Union shall be notified and the Employer shall arrange for a drug/alcohol test. The Employer shall inform the employee being ordered to submit to the test of his/her right to consult with a Union Representative before submitting to the test. Refusal of an Employee to comply with the order for a drug/alcohol screening will be considered as a refusal of a direct order and will be cause for discipline up to and including discharge. The Union shall designate a list of alternative Union officers or members to be notified.

## D. Reasonable Suspicion Standard

Reasonable suspicion exists if specified objective facts and circumstances warrant rational inferences that a person is abusing, in possession of, and/or is impaired due to alcohol and/or drug abuse. Reasonable suspicion will be based upon the following:

1. Observable phenomenon, such as direct observation of use, possession, and/or symptoms resulting from drug or alcohol abuse. Examples include, but are not limited to slurred speech, dilated pupils, loss of balance and lethargy; and/or
2. Information provided by an identifiable, reliable and credible source which can be independently corroborated.

E. It is understood that a drug/alcohol test shall be required under the following conditions:

- 1.) When an employee has been arrested or indicted for conduct involving illegal drug related activity, or alcohol abuse, or misuse of prescription drugs while on-duty.
- 2.) When an employee is involved in an on-the-job injury causing reasonable suspicion of drug/alcohol abuse.
- 3.) When an employee is involved in an on-duty accident where there is reasonable suspicion of drug/alcohol use.
- 4.) If an off-duty arrest, indictment, or accident occurs, the laws of the State of Illinois and United States of America shall apply.

## F. Order to Submit to Testing

When an employee is ordered to submit to testing, the Employer shall as soon as reasonably possible, but no later than 12 hours, document in writing the reason(s) as to why the testing was ordered, and provide the employee with a copy thereof. The employee shall be permitted to consult with a representative of the Union at the time the order is given. No questioning of the employee shall be conducted that is not consistent with the "Police Disciplinary Act". A refusal to submit to such testing may subject the employee to discipline, up to and including discharge. Any employee who takes the test shall not be construed to have waived any objection or rights that he/she may have. When testing is ordered, the employee will be immediately removed from duty and placed on paid leave pending the receipt of results.

## 5. Conduct of Tests

In conducting the testing herein specified, the Employer shall:

- A) Use only a clinical laboratory or hospital facility that is licensed pursuant to the Illinois Clinical Laboratory Act, and has been accredited by the National Institute of Drug Abuse (NIDA);
- B) Use only a laboratory or facility which uses tamper proof containers, has a chain-of-custody procedure, maintains confidentiality, and preserves specimens for a minimum of twelve (12) months. The laboratory or facility must be willing to demonstrate their sample handling procedures to the Union at least twice yearly, upon reasonable notice. The laboratory or facility shall participate in a program of "blind" proficiency testing where they analyze unknown samples sent by an independent party. The laboratory or facility shall make such results available to the Union at least twice yearly, upon reasonable notice. At the time a urine specimen is given, the employee shall be given a copy of the specimen collection procedures; the specimen must be immediately sealed, labeled and initialed by the employee to ensure that the specimen tested by the laboratory is that of the employee.
- C) Collect a sufficient sample of the same bodily fluid or material from a police officer to allow for initial screening, a confirmatory test and a sufficient amount to be reserved for later testing if requested by the employee.
- D) Collect samples in such manner as to preserve the individual employee's right to privacy, ensure a high degree of security to the sample and its freedom from adulteration. Employees shall not be witnessed by anyone while submitting a sample, except in circumstances where there is reasonable suspicion that the employee has or may attempt to compromise the accuracy of the testing procedure.

- E) Confirm any employee who tests positive in the initial screening for drugs by testing the second portion of the same sample via gas chromatography, plus mass spectrometry (or "GC/MS") or the equivalent or better scientifically accurate and accepted method that will provide quantitative data about the detected drug or drug metabolites;
- F) Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility of the employee's own choosing, at the employee's own expense;
- G) Provide each employee tested with a copy of all information and reports received by the Employer in connection with the testing and the results;
- H) Ensure that no employee is subject to any adverse employment action except emergency temporary re-assignment or leave with pay during the pendency of any testing procedure. Any such emergency re-assignment or leave shall be immediately discontinued in the event of a negative test result, and all records of the testing procedure will be expunged from the employee's personnel files;
- I) Require that the Laboratory or hospital facility report to the Employer when a blood or urine sample is positive only if both the initial and confirmatory test are positive. The parties agree that should any information concerning such testing or the results thereof be obtained inconsistent with the understanding expressed herein, the Employer and the Union shall not use such information in any manner or forum adverse to the employee's interest.

The testing, results, and circumstances requiring the testing, are confidential and will be held in the highest degree of confidence.

## 6. Drug Testing Standards

### A. Initial Screening Test Standards

The following initial immunoassay test cutoff levels shall be used when screening specimens to determine whether they are positive for the following ten (10) drugs/classes of drugs:

	Initial Test Level
Amphetamines.....	1000 ng/ml
Barbiturates.....	300 ng/ml
Benzodiazepines.....	300 ng/ml
Cocaine metabolites.....	300 ng/ml
Marijuana metabolites.....	50 ng/ml
Methadone.....	300 ng/ml
Methaqualone.....	300 ng/ml
Opiate metabolites.....	300 ng/ml
Phencyclidine.....	25 ng/ml
Propoxyphene.....	300 ng/ml

B. Confirmatory Test Standards

All specimens identified as positive on the initial screening test shall be confirmed using GC/MS techniques at the cutoff levels listed below. All confirmations shall be by quantitative analysis.

	Confirmatory Test Level
Amphetamines	
Amphetamine.....	500 ng/ml
Methamphetamine.....	500 ng/ml
* Delta-9-tetrahydrocannabinol-9-carboxylic acid	
** Benzoyllecgonine	
Barbiturates.....	200 ng/ml
Benzodiazepines.....	200 ng/ml
Cocaine metabolites**.....	150 ng/ml
Marijuana metabolites*.....	15 ng/ml
Methadone.....	200 ng/ml
Methaqualone.....	200 ng/ml
Opiates:	
Morphine.....	300 ng/ml
Codeine.....	300 ng/ml
Phencyclidine.....	25 ng/ml
Propoxyphene.....	200 ng/ml

7. Any employee or the Union covered by this Contract may file a grievance regarding this Section of the Contract, consistent with the grievance procedure in this Contract.

8. Voluntary Request for Assistance

The Employer shall take no adverse employment action against an employee who voluntarily seeks treatment (prior to an order by the Employer to submit to testing), through the Employer's EAP Program, or through one of the City's health care providers and/or referrals, for an alcohol or drug related problem, other than that the Employer may place the employee on leave during treatment. The Employer shall make available through its Employee Assistance Program a means by which the employee may obtain referrals and treatment. All such requests shall be confidential. When undergoing treatment, employees shall be allowed to use: 1) accumulated sick leave; and/or 2) paid leave or comp time; and/or 3) be placed on unpaid leave.

9. Discipline

All discipline in situations involving a positive test shall be administered as specified herein:

A. First Positive

In the first instance that an employee tests positive for drugs or alcohol, the employee may be subject to a suspension not to exceed thirty (30) calendar days. The foregoing limit on suspension is conditioned upon the employee agreeing to:

- 1) Undergo appropriate treatment as determined by the physician(s) involved;
- 2) Discontinue use of drugs or abuse of alcohol;
- 3) Complete the course of treatment prescribed, possibly including an "after-care" group, for a period up to twelve months;
- 4) Submit to random testing during working hours for a period of up to twelve months.

Employees who do not agree to the foregoing, shall be subject to discipline, up to and including discharge. The Employer may use the positive test as evidence in any disciplinary proceeding.

#### B. Second or Subsequent Positive

Employees who test positive for the presence of drugs or alcohol a second or subsequent time during the course of their employment with the Employer shall be subject to discipline up to and including discharge.

#### 10. Insurance Coverage

The Employer shall provide health insurance, which shall cover all or a portion of the cost of the EAP program. The insurance should provide for either out-patient or in-patient treatment.

#### 11. Duty Assignment

If the nature of the EAP or treatment program allows the employee to continue to work during treatment, the Employer may maintain the individual's previous employment status. If an employee participates in an in-patient program which precludes current employment, the employee shall be granted a leave to do so. At the end of such leave, the employee shall be returned to his former position with no loss of seniority and accumulated benefits. An employee may use accumulated sickness benefits during the period of his/her treatment leave.

Employees who voluntarily report to the Police Department that they are taking prescribed or over-the-counter medication that has adverse side effects which interfere with the employee's ability to perform his/her normal duties, may be temporarily reassigned with full pay to other duties.

#### 12. Confidentiality of Test Results

The results of drug and alcohol tests will be disclosed to the person tested, the Police Chief, the Personnel Director, and such other officials as may be mutually agreed to by the parties. If the employee is represented by a Union and consents in writing, test results will be disclosed to the employee's Union President. The Union President or the employee may give the test results to the employee's attorney (if any). Test results will not be disclosed externally except on a "need-to-know" basis where required for disciplinary purposes.

13. Alcohol Test Standards

Impairment due to alcohol use/abuse shall be presumed upon a blood alcohol content of .04 or more determined in accordance with the testing procedures outlined herein.

14. Prescription Drugs and Over-the-Counter Medication

With regard to prescription Drugs (which have been prescribed by a licensed medical doctor) and over-the counter medication, it shall not be required that a copy of the prescription be presented to the Police Department where there are not known possible side effects that could reasonably impair a police officer while on duty. Where side effects usually will be caused by the medicine and/or they contain any of the ingredients listed in 2(A), the police officer is required to present it to the Police Department at the beginning of his shift. Where a prescription drug may cause impairment, and does not contain any of the ingredients listed in 2(A), it shall be up to the police officer whether to submit a copy of the prescription, but if he does not it is at his peril should it later be determined that there was impairment due to the prescription medication. (This gray area would apply to medicine such as allergy pills which make some people sleepy and have no side effects on others.) Medicine bottle labeling should be a helpful guide on side effects.

15. Since a blood alcohol level of .04 is a stringent requirement, and since alcohol content in the body varies greatly between different people depending on size, weight and other factors, the Police Department shall provide breathalyzers for police officers to use (with the results being made known only to them) so that they can reasonably establish how much alcohol they can consume and (how many hours before work) and still be below .04 when they report for duty. It is acknowledged by both parties that a breathalyzer test is less accurate than blood testing and that the City is simply providing the equipment, not assuring that it can be relied on as a definitive guideline for any particular police officer. This shall be done during non-duty and non-paid time and it is optional for each police officer to avail himself of this or not.

## ATTACHMENT 2

### PHYSICAL FITNESS PROGRAM

The Parties agreed to adopt, as minimum physical fitness standards, the five physical fitness standards established by the Illinois Local Governmental Law Enforcement Officers' Training Board and used at all Illinois Certified Basic Police Academies. Such standards shall apply to all officers hired by the City of Aurora on or after January 1, 1991. The tests and standards set forth in Appendix D to this labor agreement shall constitute the applicable tests and standards for said individuals.

Once each year, all officers covered under this Section shall be tested in accordance with the tests and standards set forth in Appendix D. An officer who fails to meet the standards set forth herein shall be subject to progressive discipline; provided however, that such discipline will apply to failures to meet these standards only after a re-test taken after the first failure. Such re-test will be retaken within sixty days of the initial test, or sooner if the officer so elects. The first failure after the re-test will result in a verbal warning; the second failure in a written warning; the third failure in a suspension of one day. Subsequent suspensions may be up to three days in length. An officer who fails one or more of the tests will consult with a trained physical fitness person, either on the police force or at the YMCA, as to how to improve their fitness.

If an officer fails one, or more, of the tests by less than ten percent (10%), he or she may elect to retake such failed test(s) on the same day. If an officer fails one, or more, of the tests by more than ten percent (10%) he or she must retake the test(s) on a future date. The officer need only retake the test(s) which was failed. All such testing will be done during an individual's duty time.

If an injury results from physical fitness conditioning, and provided that reasonable good judgment is used during workouts, while preparing for taking a test, such injury shall be considered on-the-job injury if the test conditioning is being done at a recognized health club or YMCA; however, this shall not apply if the conditioning is in the nature of competitive sports such as football, baseball or basketball.

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## WHAT IS PHYSICAL FITNESS?

Physical fitness is a health status pertaining to the individual officer having the physiological readiness to perform maximum physical effort when required.

Physical fitness consists of four areas:

- **Aerobic capacity** or cardiovascular endurance pertaining to the heart and vascular system's capacity to transport oxygen. It is also a key area for heart disease in that low aerobic capacity is a risk factor.
- **Strength** pertains to the ability of muscles to generate force. Upper body strength and abdominal strength are important areas in the low strength levels have a bearing on upper torso and lower back disorders.
- **Flexibility** pertains to the range of motion of the joints and muscles. Lack of lower back flexibility is a major risk area for lower back disorders.
- **Body weight and body composition** pertains to body mass and the ratio of fat to lean tissue. Excessive fat is a handicap for physical movement and is a serious health risk for many diseases.

## WHY IS FITNESS IMPORTANT AS A JOB RELATED ELEMENT FOR LAW ENFORCEMENT OFFICERS?

- It has been well documented that law enforcement personnel (as an occupational class) have serious health risk problems in terms of cardiovascular disease, lower back disorders and obesity. Law enforcement agencies have the responsibility of minimizing known risk. Physical fitness is a health domain which can minimize the "known" health risk for law enforcement officers.

- Physical fitness has been demonstrated to be a bona fide occupational qualification (BFOQ). Job analysis that account for physical fitness have demonstrated that the fitness areas are underlying factors determining the physiological readiness to perform a variety of critical physical tasks. These four fitness areas have also been shown to be predictive of job performance ratings, sick time and number of commendations of police officers. Data also show that fitness level is predictive of trainability and academy performance.
- Physical fitness can be an important area for minimizing liability. The unfit officer is less able to respond fully to strenuous physical activity. Consequently, the risk of not performing physical duties is increased.

## HOW WILL PHYSICAL FITNESS BE MEASURED?

The Physical Fitness Test Battery consists of 5 basic tests. A sixth test (body fat measurement) is only necessary if the Threshold Weight test is not passed. Each test is a scientific valid test. The tests will be given in sequence with a rest period between each test.

### 1. THRESHOLD WEIGHT

This is the weight that has been determined as the weight necessary to 1) perform police tasks without undo effort and 2) to minimize health problems due to overtatness. The score is pounds per height in inches.

#### % FAT

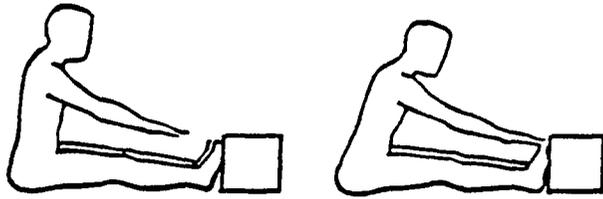
For those individuals not meeting the threshold weight a % fat test will be given. This is the percentage of body fat that has been determined as the level of overtatness that poses a health risk. It is measured with a skinfold caliper at selected skinfold sites. The score is in a fat percentage.



### 2. SIT AND REACH TEST

This is a measure of the flexibility of the lower back and upper leg area. It is an important area for performing police tasks involving range of motion and is important in minimizing lower back problems. The test involves stretching out to touch the toes or beyond with extended arms

from the sitting position. The score is in the inches reached on a yard stick with 15 inches being at the toes.



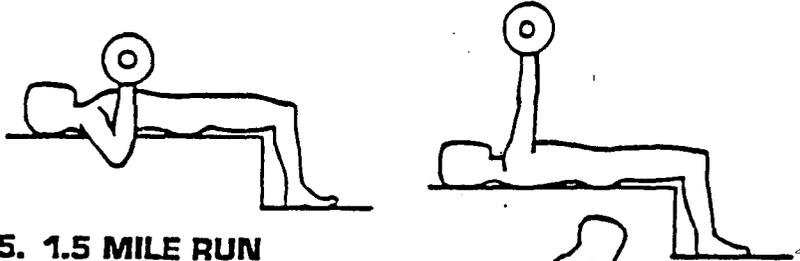
### 3. 1 MINUTE SIT UP TEST

This is a measure of the muscular endurance of the abdominal muscles. It is an important area for performing police tasks that may involve the use of force and is an important area for maintaining good posture and minimizing lower back problems. The score is in the number of bent leg situps performed in 1 minute.



### 4. 1 REPETITION MAXIMUM BENCH PRESS

This is a maximum weight pushed from the bench press position and measures the amount of force the upper body can generate. It is an important area for performing police tasks requiring upper body strength. The score is a ratio of weight pushed divided by body weight.



### 5. 1.5 MILE RUN

This is a timed run to measure the heart and vascular systems' capability to transport oxygen. It is an important area for performing police tasks involving stamina and endurance and to minimize the risk of cardiovascular problems. The score is in minutes and seconds.



## WHAT ARE THE STANDARDS?

- The actual performance requirement for each test is based upon norms for a national population sample.
- The applicant must pass every test. \*
- The required performance to pass each test is based upon sex and age (decade). While the absolute performance is different for the 8 categories, the relative level of effort is identical for each age and sex group. All recruits are being required to meet the same percentile rank in terms of their respective age/sex group. The performance requirement is that level of physical performance that approximates the 40th percentile for each age and sex group.

## MINIMAL PHYSICAL FITNESS PERFORMANCE REQUIREMENTS CHART

**THRESHOLD WEIGHT** — Threshold weight is determined by the following formula: (Height in inches + 12.3)<sup>2</sup>. If the individual is over the threshold weight then he/she will be checked by skinfolds for percent body fat.

HT/IN	THRESHOLD WEIGHT	HT/IN	THRESHOLD WEIGHT	HT/IN	THRESHOLD WEIGHT
52	75	63	134	74	217
53	80	64	141	75	226
54	85	65	147	76	235
55	89	66	154	77	245
56	94	67	161	78	255
57	99	68	168	79	265
58	105	69	176	80	275
59	110	70	184	81	285
60	116	71	192	82	297
61	121	72	200	83	307
62	128	73	209	84	318

TEST	MALE AGE				FEMALE AGE			
	20-29	30-39	40-49	50-59	20-29	30-39	40-49	50-59
Percent Body Fat	20.4	23.5	25.5	27.1	27.7	28.9	32.1	35.6
Sit & Reach	16.0	15.0	13.8	12.8	18.8	17.8	16.8	16.3
1 Minute Sit Up	37	34	28	23	31	24	19	13

\*However, no individual will be disciplined for the failure to achieve the Threshold Weight Test and Percentage Body Fat Measurement standard as long as they meet the other four standards set forth herein.

TEST	MALE AGE				FEMALE AGE			
	20-29	30-39	40-49	50-59	20-29	30-39	40-49	50-59
Maximum Bench Press Ratio	.98	.87	.79	.70	.58	.52	.49	.43
1.5 Mile Run	13:46	14:31	15:24	16:21	16:21	16:52	17:53	18:44

## HOW DOES ONE PREPARE FOR THE TEST?

### 1. Preparing for the body weight and body composition measurement.

There are two aspects to preparing for this standard. First, one needs to reduce daily caloric intake through eating by approximately 500 calories a day. Second, one needs to follow the exercise regimens outlined. Between the dietary and exercise efforts a reasonable and safe fat weight loss can occur.

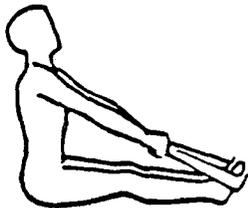
### 2. Preparing for the sit and reach test.

Performing sitting type of stretching exercises daily will increase this area. There are two recommended exercises.

**Sit and reach.** Do 5 repetitions of the exercise. Sit on the ground with legs straight. Slowly extend forward at the waist and extend the fingertips toward the toes (keeping legs straight). Hold for 10 seconds.



**Towel stretch.** Sit on the ground with the legs straight. Wrap a towel around the feet holding each end with each hand. Lean forward and pull gently on the towel extending the torso toward the toes.



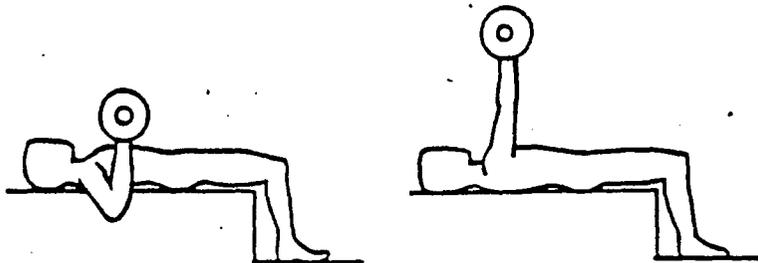
### 3. Preparing for the sit up test.

The progressive routine is to do as many bent leg situps (hands behind the head) as possible in 1 minute. At least 3 times a week do 3 sets (3 groups of the number of repetitions one did in 1 minute).



### 4. Preparing for the 1 repetition maximum bench press.

If one has access to weights, determine the maximum weight one can bench press one time. Take 60% of that poundage. This will be the training weight. One should be able to do 8-10 repetitions of that weight. Do 3 sets of 8-10 repetitions adding 2 1/2 to 5 pounds every week.



If one does not have weight equipment, then the push up exercise can be utilized. Determine how many pushups one can do in one minute. At least 3 times a week do 3 sets of the amount one can do in one minute.



### 5. Preparing for the 1.5 mile run.

Below is a gradual schedule that would enable one to perform a maximum effort for the 1.5 mile run. If one can advance the schedule on a weekly basis, then proceed to the next level. If one can do the distance in less time, then that should be encouraged.



WEEK	ACTIVITY	DISTANCE	TIME	FREQUENCY
1	Walk	1 Mile	20' - 17'	5/week
2	Walk	1.5 Miles	29' - 25'	5/week
3	Walk	2 Miles	35' - 32'	5/week
4	Walk	2 Miles	30' - 28'	5/week
5	Walk/Jog	2 Miles	27'	5/week
6	Walk/Jog	2 Miles	26'	5/week
7	Walk/Jog	2 Miles	25'	5/week
8	Walk/Jog	2 Miles	24'	4/week
9	Jog	2 Miles	23'	4/week
10	Jog	2 Miles	22'	4/week
11	Jog	2 Miles	21'	4/week
12	Jog	2 Miles	20'	4/week