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IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

EMPLOYER
THE CITY OF MARKHAM
MARKHAM, ILLINOIS

AND

UNION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO; LOCAL 726

I.S.L.R.B. Case No. S-MA-90-147

FINDINGS AND AWARD

PURSUANT TO

ILLINOIS PUBLIC LAW RELATIONS ACT
as amended Effective August 30, 1989;
Section 14 (Ill.Rev.Stat. 1985, Ch. 48, par. 1601 et seq.)

RENDERED BY:

GEORGE EDWARD LARNEY
Chairman, Interest Arbitration Panel
29 South LaSalle Street
Suite 800
Chicago, Illinois 60603
(312) 444-9565

Dated: Friday
April 12, 1991

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IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

EMPLOYER
THE CITY OF MARKHAM
MARKHAM, ILLINOIS

AND

UNION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO; LOCAL 726

I.S.L.R.B. Case No. S-MA-90-147

IMPASSE ISSUE

THIRD YEAR WAGES
APPLICABLE TO
PATROL OFFICERS
AND SERGEANTS

FINDINGS AND AWARD

I. PRELIMINARY INFORMATION

INTEREST ARBITRATION PANEL MEMBERS

EMPLOYER DELEGATE

WILLIAM P. RELFORD
Superintendent of Public Works
CITY OF MARKHAM
16313 Kedzie Parkway
Markham, Illinois 60426
(708) 331-4905 EXT. 17

UNION DELEGATE

WILLIAM P. BARRON
Detective of Police
MARKHAM POLICE DEPARTMENT
16313 Kedzie Parkway
Markham, Illinois 60426
(708) 331-2171

NEUTRAL CHAIRMAN

GEORGE EDWARD LARNEY
Labor Arbitrator-Mediator
29 South LaSalle Street
Suite 800
Chicago, Illinois 60603
(312) 444-9565

CASE PRESENTATION - APPEARANCES

EMPLOYER

WILLIAM E. ELSTON, JR.
Attorney at Law
Fourth Floor
1525 East 53rd Street
Chicago, Illinois 60615
(312) 752-4442

UNION

LISA B. MOSS
Attorney at Law
CARMELL CHARONE WIDMER
MATHEWS & MOSS
225 West Washington Street
Suite 1000
Chicago, Illinois 60606
(312) 236-8033

AUTHORITY TO ARBITRATE

Illinois Public Labor Relations Act (IPLRA)
Effective January 2, 1989 as Amended Effective August 30, 1989;
Section 14 (Ill. Rev. Stat. 1985, Ch. 48, par. 1601 et seq.)

Title 80: Public Officials and Employees
Subtitle C: Labor Relations
Chapter IV: Illinois State Labor Relations Board/Illinois Local Labor Relations Board
Part 1230 Impasse Resolution
Subpart B: Impasse Procedures for Protective Services Units
Sections 1230.30 through 1230.110

COURT REPORTER

LESLIE WALLACE, C.S.R.
BARBARA A. FINN, C.S.R.

LESLIE WALLACE REPORTERS
1550 North Lake Shore Drive
Apartment 15F
Chicago, Illinois 60610
(312) 751-0463

LOCATION OF HEARINGS

Law Offices, Carmell Charone Widmer Mathews & Moss
225 West Washington Street
Suite 1000
Chicago, Illinois 60606
(312) 236-8033

WITNESSES (in order of respective appearance)

FOR THE EMPLOYER	FOR THE UNION
DOROTHY A. BROWN Certified Public Accountant ODELL HICKS & COMPANY CERTIFIED PUBLIC ACCOUNTANTS	ALLAN DREBIN */ Professor of Accounting and Information Systems J.L. KELLOGG GRADUATE SCHOOL OF MANAGEMENT NORTHWESTERN UNIVERSITY
ALFRED J. CANDRILLI Principal/Consultant WILLIAM M. MERCER, INC. HUMAN RESOURCES CONSULTING	
OTTO M. BRADFORD City Treasurer CITY OF MARKHAM & Principal, Kellar Junior High School POSEN ROBBINS SCHOOL DISTRICT 143 1/2	

OTHERS IN ATTENDANCE AT HEARING

FOR THE EMPLOYER	FOR THE UNION
ODELL HICKS, JR. Certified Public Accountant ODELL HICKS & COMPANY	NONE
ELLA WARD Head Bookkeeper CITY OF MARKHAM	

CHRONOLOGY OR RELEVANT EVENTS

Negotiations Invoked Concerning Wages Only, Pursuant to Third Year Wage Reopener Provided by Article XV of the 1988-91 Collective Bargaining Agreement (Panel Ex. 5)	June 01, 1990 **/

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*/ Testified in both the Union's case-in-chief and in rebuttal.

**/ The record evidence failed to disclose the specific date these negotiations commenced but the parties had agreed as part of Article XV to meet no later than June 1, 1990 for the purpose of resolving wages to become effective August 1, 1990.

CHRONOLOGY OF RELEVANT EVENTS (continued)

Effective Date for Implementation of Wages to be paid For the Third Year of the Three (3) Year 1988-91 Collective Bargaining Agreement	August 01, 1990
Responding to a Request for Interest Arbitration, the Illinois State Labor Relations Board (ISLRB) by Letter, Forwarded to the Parties a List of Seven (7) Interest Arbitrators Selected from Among Impartial Neutrals Admitted to the Illinois Public Employees Mediation/Arbitration Roster Advising the Parties of Their Statutory Obligation to Select One (1) Impartial Arbitrator From Among the Seven (7) On the List Within Seven (7) days to Chair the Interest Arbitration Panel. The Board Advised That If the Parties Did Not Make Notification of Their Selection Within Seven (7) Days, It Would Appoint An Interest Arbitrator; Letter Dated	October 19, 1990 +/
Written Advisory From Union Counsel, Lisa B. Moss, to Counsel for the City of Markham, William E. Elston, Jr., that the Union Was Prepared to Select an Arbitrator From the List of Seven (7) Arbitrators Provided by the Illinois State Labor Relations Board and that if She Did Not Hear From Him by Noon, Thursday, November 1, 1990, She Would Notify the Illinois State Labor Relations Board Accordingly; Letter Dated	October 31, 1990

+/ As the parties were unable to resolve the matter of a change or no change in wages effective August 1, 1990 through negotiations, an impasse was declared pursuant to applicable provisions of the Illinois Public Labor Relations Act and the Rules and Regulations of the Illinois State Labor Relations Board.

CHRONOLOGY OF RELEVANT EVENTS (continued)

By Letter Dated November 5, 1990, the Illinois State Labor Relations Board Notified this Impartial Neutral Member of the Illinois Public Employees Mediation/Arbitration Roster of Its Appointment of Him as Interest Arbitrator and Chairman of Any Interest Arbitration Panel to be Selected by the Parties; Letter Received by the Arbitrator ++/	November 07, 1990
Pursuant to Applicable Provisions of the Illinois Public Labor Relations Act, Upon Receipt of His Appointment by the Board, this Arbitrator Made Immediate Notification to the Parties Both by Telephone and by Letter of His Appointment as Interest Arbitrator and Chairman of the Interest Arbitration Panel and in Accordance With Statutory Time Limitations Scheduled a Hearing to commence November 20, 1990; Letter Dated	November 07, 1990
Letter Dated November 12, 1990 From City Counsel Elston to Brian E. Reynolds, Executive Director, Illinois State Labor Relations Board, Objecting to the Board's Appointment of This Arbitrator Due to the Fact of His	November 14, 1990

(continued on next page)

++/ As advised by the Illinois State Labor Relations Board in its letter of October 19, 1990, to the parties, a failure on their part to select an interest arbitrator from the proffered list of seven (7) impartial neutrals taken from the Illinois Public Employees Mediation/Arbitration Roster would occasion the Board making the selection. As the City of Markham opted not to participate along with the Union in mutually selecting one of the interest arbitrators from the list supplied by the Board of which this Arbitrator was one among the seven, the Board exercised its authority pursuant to applicable provisions of the Illinois Public Labor Relations Act and made a direct appointment.

CHRONOLOGY OF RELEVANT EVENTS (continued)

Having Served as Interest Arbitrator and Chairman of the Interest Arbitration Panel That Resulted in the Parties' 1988-91 Initial Collective Bargaining Agreement (Panel Ex. 5) Which Counsel Elston Characterized As a Very Substantial and Controversial Arbitration Process. Counsel Elston Stated He Would Have Assumed the Board Had Been Aware of This Arbitrator's Prior Involvement and That Said State of Affairs Would Have Served to Eliminate Him From Consideration As the Arbitrator Selected For These Instant Proceedings. Elston Further Submitted That More Fittingly, He Would Have Expected This Arbitrator to Recuse Himself When Advised by the Illinois State Labor Relations Board of the Parties Involved in These Subject Proceedings. Elston Requested the Board Reconsider This Arbitrator's Appointment and Select One of the Other Arbitrators from the List It Forwarded to the Parties on Date of October 19, 1990. Elston Further Requested His Letter of Protest Be Made Part of the Record; Copy of This Letter Received by the Arbitrator *+/

First Interest Arbitration Hearing Held November 20, 1990

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*+/ In honoring the City's request to make its letter of November 12, 1990 part of the record, the Chairman of the Interest Arbitration Panel entered the letter into the record evidence as Panel Exhibit 1. In a letter dated November 20, 1990, following the hearing held on the same date, the Arbitrator advised the parties of subsequent hearing dates noting that these subsequent hearings would proceed as scheduled contingent on further action, if any, by the City in pursuing a replacement of this Arbitrator as Panel Chairman. In relevant part the Arbitrator stated the following observations for the record:

(continued on next page)

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*+/ continued from previous page

* * * *

*** For the record, while the Panel Chairman understands the reasons why the City seeks to replace him, as set forth in Mr. Elston's letter of November 12, 1990 to Mr. Brian E. Reynolds, Executive Director of the Illinois State Labor Relations Board, (Panel Ex. 1), he is not persuaded, based on those reasons, that he should recuse himself from the case as it is clear from the procedures set forth by the Illinois State Labor Relations Board (ISLRB) that where the parties fail to notify the Board of their selection of a Panel Chairman within seven (7) days after the Board submits an arbitration [list] of interest arbitrators, the Board will appoint an arbitrator (Panel Ex. 2). As conceded by Mr. Elston in his letter of November 12, 1990 (Panel Ex. 1), he, as the City's employed advocate, did not participate in the selection process, though he was fully aware that under such circumstances, the Board would select the arbitrator. While Mr. Elston may have been confident the Board would not select this interest arbitrator as Panel Chairman because of his previous involvement as Panel Chairman in the interest arbitration between these same two parties for their initial collective bargaining agreement, the same agreement that is still effective and the one under which the subject issue of a wage reopener occurs, there is no such obligation under the governing statute that compels the Board to consider this a factor in the exercise of its appointive power. It occurs to the Panel Chairman that the most effective way to have precluded his appointment in the instant case would have been for the City to have exercised its veto power in selecting an interest arbitrator from the arbitration panel submitted to the parties by the Board. The Panel Chairman notes that, based on his understanding of what occurred that brought about his direct appointment, his name was among the names of other interest arbitrators that appeared on the arbitration panel proffered by the Board.

The Panel Chairman has indicated assurances to Mr. Elston that, notwithstanding the City's preference to continue these proceedings with another interest arbitrator as Panel Chairman, he could and would, competently and objectively perform the duties of his appointed position should his appointment not be withdrawn.

CHRONOLOGY OF RELEVANT EVENTS (continued)

Parties' Submission of Their Respective Final Offers Pertaining to the Impasse Issue of Wages for the Third Year Transmitted to the Arbitrator and Interchanged by the Arbitrator	November 30, 1990
Second Interest Arbitration Hearing Held	December 05, 1990
Third Interest Arbitration Hearing Held	December 06, 1990
Post-Hearing Briefs Received by the Arbitrator:	
UNION	February 07, 1991
EMPLOYER	February 20, 1991 +*/
By Letter to the Parties Dated February 21, 1991, the Arbitrator Interchanged the Post-Hearing Briefs and Declared the Case Record in These Interest Arbitration Proceedings to be Officially Closed As Of	February 20, 1991

+*/ Arbitrator granted City's written request of February 6, 1991, for an extension in filing its post-hearing brief over the strenuous objection of the Union in its letter dated February 8, 1991.

II. ISSUE AT IMPASSE

The parties concur there is one (1) issue at impasse which arose as a result of a failure to successfully conclude negotiations on wages in the third year of the parties' 1988-91 initial Collective Bargaining Agreement (Panel Ex. 5) as provided for in pertinent part by Article XV which reads as follows:

ARTICLE XV

WAGES

* * * *

WAGE REOPENER - Effective August 1, 1990

The parties agree to meet no later than June 1, 1990 for the purpose of resolving wages to become effective August 1, 1990.

For the sole purpose of negotiating a wage reopener, the remedies for the resolution of any bargaining impasse shall be in accordance with the Illinois Public Labor Relations Act, as amended (Ch. 48, Section 1614, as it existed on January 1, 1986), with the following exception:

If interest arbitration is invoked for purposes of resolving any wage reopener dispute, the parties agree that the arbitration award will be effective during the 1990 fiscal year even though the arbitration process was not initiated prior to the beginning of that fiscal year. In this regard, the parties by agreement are rendering inapplicable the limitation contained in Section 14(j) of said Act regarding any wage increase that may be awarded by the arbitration panel. The arbitration panel shall be advised of this modification to the scope of their authority at the commencement of any interest arbitration hearing, and shall have authority to award a wage increase retroactive to August 1, 1990.

The parties further concur that pursuant to the applicable provisions of Section 14(g) of the Illinois Public Labor Relations Act, that the subject issue at impasse, to wit, wages for the third year of the three (3) year initial Agreement (Panel Ex. 5), is economic in nature.

III. FINAL OFFERS

Pursuant to agreement by the parties at the hearing of November 20, 1990, final offers were simultaneously tendered to the Chairman of the Interest Arbitration Panel on date of November 30, 1990 and the Chairman, in turn, transmitted the final offers to the opposing party. As tendered, the final offers are as follows:

UNION

A seven percent (7%) increase in salary for each patrol officer step.

A seven percent (7%) increase for the sergeant classification.

(Panel Ex. 7)

EMPLOYER

No increase (zero percent) in wages for the balance of the Collective Bargaining Agreement (Panel Ex. 5), specifically the third year effective August 1, 1990 through July 31, 1991.

(Panel Ex. 6)

IV. INTEREST ARBITRATION PANEL'S STATUTORY CHARGE AND CRITERIA TO BE CONSIDERED

While the Union contends it falls to the Interest Arbitration Panel, but most particularly the Neutral Chairman of the Panel, to determine what is fair and equitable with respect to the parties' respective final best offers pertaining to economic issues, citing in support of this contention the interest arbitration case of Fulton County Board and Fulton County Sheriff, ISLRB Case No. S-MA-87-35 (Arbitrator, Raymond McAlpin, 1987), the Neutral Chairman finds this position to be inaccurate. On this point, regarding the charge of the Interest Arbitration Panel, the Illinois Public Labor Relations Act (IPLRA) is quite clear and unambiguous stating, in pertinent part, the following as set forth in Section 14, subsection (g) to wit:

> 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).

This language is completely devoid of any reference to the concepts of, or use of the words, "fair" and "equitable." The Interest Arbitration Panel thus must look solely to the statute for its charge in determining which one of the two final best offers to accept and that selection is dependent on an evaluation of which offer "more nearly complies with the applicable factors prescribed in subsection 14(h)."

The factors prescribed in subsection 14(h) are enumerated as follows:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

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

A. In public employment in comparable communities.

B. In private employment in comparable communities.

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

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

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

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

In making its determination as to which parties' final best offer will prevail, the Interest Arbitration Panel will confine its considerations to these eight (8) factors only and to the respective arguments advanced by the parties addressing these eight (8) factors.

The Employer asserts in argument contained in its brief that, in interest arbitration proceedings of the type here, Unions carry a burden of proof in support of the economic claims advanced, here in the case at bar specifically and solely wages, inferring that if the Unions fail in this burden the interest arbitrators are compelled to reject their claims. In support of this assertion, the Employer cited the unreported case of City of DeKalb and Professional Firefighters Assn., Local 1236, ISLRB No. S-MA-87-26 (Arbitrator, Elliott H. Goldstein) and a law review article, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees" (60 Chicago Kent Law Review 839; Laner & Manning). If the proposition for which this case and article are respectively cited is accurately stated, the Chairman of this Interest Arbitration Panel respectfully takes great exception and strenuously disagrees with the proposition. The process of voluntary negotiations that take place between labor and management for the purpose of obtaining a labor contract is a collective one, imposing no burden on either party to prove or disprove the merits of what is being bargained for. It is widely understood and accepted among advocates in the field of labor relations that what drives collective bargaining is the prevailing economic environment within which the bargaining occurs and the countervailing bargaining power each party is able to exercise in an effort to obtain their respective goals. In this regard, the process of collective bargaining is not a rational process in that the attainment of certain benefits deemed by the requesting party to be justified on their merits

both from a moral and social standpoint, such as, for example, health insurance, might never be attained not because said benefits are not desirable or beneficial but because, notwithstanding their justification, the bargaining power required to attain them may simply be insufficient even given an economic environment that would be capable of accommodating the benefit. The opposite scenario also holds, that is, where benefits are attained because the requesting party which is usually the Union, has exercised its superior bargaining power to extract the benefit(s) sought irrespective of the economic ability to provide the benefit(s).

While the imposition of involuntary interest arbitration on uniform services in the State of Illinois serves to suspend the sovereign power of the parties to strike a mutually acceptable bargain, it still does not carry with it a burden of proof requirement on either party in the formulation of their final best offers. What the suspension of their sovereign power appears to accomplish is the injection of rationality and reasonableness in the formulation of their final best offers since, under the applicable provisions of the Illinois Public Labor Relations Act, each party, not just the Union, is mandated to demonstrate before an Interest Arbitration Panel that its final best offer more nearly complies with the eight (8) applicable factors prescribed in Section 14, Subsection (h) of the statute. It is instructive to note that nowhere in the provisions of the Illinois Public Labor Relations Act is there any requirement for either party to bear a burden of proof. What is implicitly required is that both parties be able to support their respective final best offer(s) by objective evidence in accordance with the applicable prescribed factors set forth in subsection (h) and to persuade the Interest Arbitration Panel that their offer is the one that should prevail. Thus, an employer should not adopt a passive posture in an interest arbitration expecting to prevail because the Union has failed to meet a non-existent burden of proof. At the outset, the Panel therefore rejects the assertion advanced by the Employer in the Conclusion section of its post-hearing brief, that the Union has not carried its burden in these proceedings.

The Chairman of the Interest Arbitration Panel also disagrees with the implied position advanced by the Employer that the Panel should not overrule the considered judgment of the elected City Council and substitute its judgment for that of the Council as to how to handle the financial affairs of the City. If, in these proceedings, the City is unable to demonstrate through objective evidence that its final best offer more nearly complies with the applicable factors prescribed in Section 14, subsection (h) of the statute, then, under the statute, the Panel has no other choice but to impose its judgment on the elected City Council. There should be a realization by both sides that once they proceed to interest arbitration, they have ceded their sovereign power to strike a mutually acceptable bargain, placing that power in the hands of a duly constituted Interest Arbitration Panel

pursuant to the provisions of the Illinois Public Labor Relations Act. While the Chairman of this Interest Arbitration Panel holds the personal belief that mandatory interest arbitration is inconsistent with the principles of a free democratic society, he nevertheless understands the tradeoffs that brought about the enactment of the Act which was to bar strikes by police officers as a safeguard to the health, safety, and welfare of the general public. While it is preferable for the parties to resolve their own differences even with the assistance of a mediator, the fact remains that when they are unable to do so, the Illinois Public Labor Relations Act requires that disputes such as the instant one be resolved not through the exercise of raw power by the parties such as strikes or lockouts nor by a test of their political and economic will, but rather by way of arbitration. This Panel shall serve to fulfill this charge.

V. DISCUSSION, FINDINGS AND RULINGS PERTAINING TO EACH OF THE EIGHT (8) FACTORS 1/

A. THE LAWFUL AUTHORITY OF THE EMPLOYER

1. Discussion

As noted in the City's post-hearing brief, its lawful authority is derived from the articles comprising the Constitution of the State of Illinois coupled with relevant provisions contained in applicable statutes. Since the population of the City is less than 25,000, it is not a Home Rule Unit nor have the residents of the City adopted Home Rule by referendum. The City is governed by elected officials consisting of a Mayor, Clerk, Treasurer, and five (5) Alderpersons who sit as a City Council. City policy is determined by the Council through passage of ordinances, resolutions, and motions and this policy, in turn, is administered by the Mayor and the executive branch of City government. The City acknowledges it has the lawful authority to effectuate changes in wages for bargaining unit members of the Police Department subject to the obligations placed on it by the laws, statutes and Constitution of the State of Illinois. The City further acknowledges this same authority is subject to the obligations set forth in Article XV of the Agreement (Panel Ex. 5).

The Union, in its post-hearing brief, notes the City has not contested its lawful authority with respect to participating in the collective bargaining process which encompassed this interest arbitration, for the purpose of determining wages in the third year applicable to bargaining unit employees of the Police Department. The Union asserts, however, that pursuant to Article XV of the Agreement (Panel Ex. 5), the parties have ceded to this Interest Arbitration Panel the authority to award a wage increase (if any) retroactive to August 1, 1990 (see discussion under point B. below).

2. Findings

The Panel finds the City, as the Employer in these proceedings, to have the lawful authority to effectuate a wage increase if such wage increase is ordered by the Panel to be paid to the bargaining unit employees of the Police Department.

1/ Given that the relative importance of these factors vary on a case-by-case basis, they will not be addressed in the order in which they are enumerated one (1) through eight (8) in subsection (h).

B. STIPULATIONS OF THE PARTIES

1. Discussion

The parties at hearing stipulated that the subject wage reopener but more particularly, the remedies for the resolution of any bargaining impasse with respect to third year wages, would be governed by the provisions contained in the Illinois Public Labor Relations Act as amended (Ch. 48, Section 1614, as it existed on January 1, 1986) with the exception that subsection (j) of Section 14 was, by the applicable provisions contained in Article XV of the Agreement (Panel Ex. 5), rendered inapplicable.

Section 14, subsection (j) reads as follows:

> (j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting arbitration as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, any other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

In Article XV of the Agreement (Panel Ex. 5), the parties specifically agreed to render Section 14, subsection (j) of the IPLRA inapplicable and to grant the necessary authority to the Interest Arbitration Panel to award a wage increase, if any, retroactive to August 1, 1990 notwithstanding that the arbitration process was not initiated prior to the beginning of the applicable fiscal year.

2. Findings

The Panel acknowledges its authority to award a wage increase if ordered to be retroactive to August 1, 1990.

C. COMPARISON OF THE WAGES, HOURS AND CONDITIONS OF EMPLOYMENT OF THE EMPLOYEES INVOLVED IN THE ARBITRATION PROCEEDING WITH THE WAGES, HOURS AND CONDITIONS OF OTHER EMPLOYEES GENERALLY IN: (1) PUBLIC EMPLOYMENT IN COMPARABLE COMMUNITIES; AND (2) PRIVATE EMPLOYMENT IN COMPARABLE COMMUNITIES

1. Discussion

Of all the enumerated factors under subsection (h) bearing a direct relationship to economic issues at impasse, the Panel deems this factor to be the most important since the types of comparisons being made serve as a guiding anchor in evaluating the costs and worth of the service being provided, here police and security services to the City of Markham, as measured by both the free market mechanism in the private sector and by quasi-governmental regulation in the public sector. The key to making such comparisons meaningful is finding and identifying other communities and municipalities that share highly similar characteristics and demographic factors to the degree that it can be justly claimed that these other communities and municipalities are comparable to the employer in question, here the City of Markham. In the typical interest arbitration under the IPLRA involving economic issues at impasse, both parties will proffer a number of communities and municipalities they respectively deem to be comparable and more often than not the lists will not, to any great degree, be congruent; that is, the Union will identify communities and municipalities that it believes will best support its final best offer(s) and the employer will identify communities and municipalities that it believes will best support its final best offer(s). Under these circumstances, it falls to the Interest Arbitration Panel to reconcile both parties' lists and develop an integrated list of communities and municipalities that are, by objective and not subjective measures, comparable, as envisaged by the statute. The most commonly used objective measure of comparability is population size followed by geographical proximity. There are, however, other objective measures that exist such as the racial mix of the population, the industry mix of the community or municipality, the surrounding labor market influences and,

specific to police service, the level and mix of criminal activity, just to name a few. 2/

In the instant case, however, it is unnecessary for the Panel to engage in formulating a reconciled list of comparable communities and municipalities as the Union was the only party in these proceedings to proffer a list identifying communities and municipalities it deemed to be comparable. Thus, in the absence of such a list proffered by the City, the Panel accepts and adopts on grounds of default, and without challenge, as comparable, those communities and municipalities identified and proffered by the Union which are as follows:

2/ Until recently, Interest Arbitration Panels limited their consideration of objective measures in identifying comparable communities to population size and geographical proximity. However, in the interest arbitration involving the City of Bloomington and Police Benevolent and Protective Association, Inc.; Unit 21 (ISLRB Case No. S-MA-89-120, October 31, 1990), the Interest Arbitration Panel found merit in the Union's approach of applying a methodology known by its developer, Professor Richard D. Bingham as the "Agglomerative Hierarchical Cluster Analysis" (AHCA) which is a construct that systematically and empirically identifies comparable communities using 32 variables in addition to the one variable of population size. In this case, the Panel reasoned that the more alike two or more communities were found to be on the basis of as many relevant variables in addition to population size, the more comparable they would be.

Municipalities in Northeastern Illinois
Population more than 12,000 and less than 18,000
Assessed Value less than $100 million

CITY	POPULATION */	ASSESEDVAL **/	SALESTAX ***/	PATROL ±/	SERGEANTS ±
Markham	15,170	43,824	603	21	4
Chicago Ridge	13,970	99,866	863	18	5
Country Club Hills	16,430	57,000	241	11	4
Hazel Crest	13,580	57,674	392	18	4
Hickory Hills	14,080	81,136	621	13	2
LaGrange Park	12,410	86,149	350	16	4
Lake Zurich	13,340	85,381	534	18	5
McHenry	14,030	96,225	969	20	5
Midlothian	14,470	59,307	828	14	4
Riverdale	12,210	85,759	288	19	5
Round Lake Beach	15,010	54,488	737	14	5
Vernon Hills	12,470	98,091	1,417	18	5
Western Springs	12,250	91,559	430	11	4
Woodstock	13,060	97,944	922	15	7

(Un. Ex. 7)

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*/ Taken from estimates published in December of 1989 from the Northeastern Illinois Planning Commission and represents the estimated population as of the date of July 1, 1988. Figures are actual.

**/ Taken from data published by the Northeastern Illinois Planning Commission and represents equalized assessed valuation as of 1982. Figures are in thousands.

***/ Taken from data published by the Northeastern Illinois Planning Commission and represents sales tax from the year 1983. Figures are in thousands.

±/ Except for the City of Markham, the data was obtained by the expert witness retained by the Union, Allan Drebin, Professor of Accounting and Information Systems, J. L. Kellogg Graduate School of Management, Northwestern University, by telephone survey.

A review of the data from the Table above (Un. Ex. 7) reveals the following with respect to relative rankings, to wit: (1) of the 14 communities listed, including the City of Markham, Markham ranks as having the second highest population; (2) the lowest among the 14 communities with respect to assessed valuation; (3) the eighth highest revenue from sales tax; (4) the largest employer of patrol officers; and (5) one among six communities on the list employing the least number of sergeants, specifically a total of four.

Through its expert witness, Allan Drebin, the Union submits that with respect to all items of compensation except wages, Markham, as compared with the other thirteen (13) identified communities, is relatively comparable. 3/ As to wages, the Union notes that if its offer were accepted the minimum salary for patrol officers would rank the City number 7 out of the fourteen (14) communities whereas if the City's offer were accepted, the ranking would fall to 11 out of 14. 4/ The Union further notes that with respect to maximum salaries for patrol officers, acceptance of either final best offer would result in Markham ranking last among the fourteen (14) comparable communities (see Un. Exs. 9, 11, and 12, attached herein as Appendix B1, B2, and B3 respectively). As to wages for Sergeants, the Union notes that if its offer were accepted, the minimum salary would rank the City number 8 out of thirteen (13) communities whereas if the City's offer were accepted, the ranking would

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3/ These other items of compensation include longevity pay, clothing allowance, overtime rate, court pay, vacation, holidays, sick days, and personal days. (See Un. Ex. 8 attached herein as Appendix A).

4/ Drebin compiled the data for items of compensation and for wages using as source documents either the collective bargaining agreements if available or, in the alternative, the Cook County Bureau of Administration, Position Classification Agency, 35th Semi-Annual Regional Governmental Salary and Fringe Benefit Survey, January, 1990.

fall to 10 out of 13. 5/ Like patrol officers, the Union notes that with respect to maximum salaries for sergeants, acceptance of either final best offer would result in Markham ranking last among the thirteen (13) comparable communities. (See Un. Exs. 10, 13, and 14 attached herein as Appendix C1, C2, and C3 respectively). The Union notes further that with respect to the salary rankings for both patrol officers and sergeants the rankings could be lower than shown by the applicable exhibits since it is possible that police officers in some of the other communities might have received pay increases subsequent to the time period when Drebin prepared the exhibits. The Union submits that since the City failed to offer any evidence of its own of comparable communities, the evidence it (Union) presented stands uncontroverted with respect to substantiating its final best offer of a seven percent (7%) increase in wages.

The Employer notes with interest that the communities selected by the Union as comparable, all have assessed valuation of property and sales tax income substantially in excess of its (Markham) own. The Employer argues the Union did not see fit to address the question of hours and conditions of employment in terms of its members nor of the so-called comparable communities. The Employer further argues that, other than the titles set forth on the exhibits there is no indication that the employees in the allegedly comparable communities perform similar services. Noting that the Markham police are restricted to performing police work only, the Employer raises the following query, do the employees in the comparable communities have additional duties, fewer duties or does their employment situation call for cross utilization as firemen or engaging in other tasks? On the matter of comparability, the Employer sayeth nothing more.

2. Findings

Without independent evidence proffered by the Employer in any way contravening the evidence proffered by the Union, the Panel is compelled to accept the representations made by the Union as to the City's relative rankings with respect to minimum and maximum salaries of patrol officers and sergeants in the other comparable communities without

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5/ For purposes of this salary comparison, the community of Lake Zurich was omitted. Drebin explained in his testimony that sergeants in Lake Zurich are not members of the bargaining unit and neither is Lake Zurich part of Cook County.

consideration given to the queries raised by the Employer questioning whether other factors not brought forth by the Union such as, number of hours worked, and the actual duties performed, to name just two, would demonstrate the communities selected by the Union are not, in fact, comparable. While a comparison of minimum salaries for both patrol officers and sergeants between Markham and the other comparable communities does not necessarily establish justification in support of the Union's final best offer, a comparison of maximum salaries for both job classifications does establish such justification. Not only would Markham rank last in the category of maximum salaries for both patrol officers and sergeants regardless of which final best offer was selected, but if the City's offer were to be accepted, a significant wage gap would result between Markham and the second to the last ranked comparable community. In the case of maximum salaries for patrol officers, the difference in salary between the City offer which would keep the salary at $27,130 and the salary of $31,557 for the police in the second to the last ranked community of Chicago Ridge would result in a gap of $4,427 dollars representing a percentage difference of approximately 16 1/3 percent. If the Union's final best offer were to be accepted, this gap would be reduced to $2,528 and the percentage difference would narrow to approximately, 8 3/4 percent or almost by half. A similar but less dramatic analysis holds for the maximum salaries for sergeants in a comparison between Markham and the second to the last ranked comparable community of Round Lake Beach. If the City offers were to be accepted by the Panel, the wage gap would amount to $3,205 or a percentage difference of nearly 10.8 percent. If the Union's final best offer were to be accepted, the dollar difference would narrow to $1,127 resulting in a percentage difference of nearly 4.0 percent.

While common sense dictates that any listing of comparable communities will result in one of those communities ranking last and, while a priori there should be no particular stigma attached to the community that ranks last, nevertheless, any professional in the field of labor-management relations possessing a working knowledge of wage theory would quickly acknowledge from the foregoing analysis that, given the existing gap in maximum salaries and, in all likelihood, an ever widening gap in maximum salaries in the future, there is little hope for the City of Markham to maintain a stable workforce of police officers. Predictably, what will occur and what obviously has been occurring for at least the last four (4) years, is a large and continuing labor force turnover in the City's Police Department. Most notably, this trend is easily discernible by looking at the statistics on seniority for patrol officers (Un. Ex. 2). Of

the current force of 21 patrol officers, 19 or 90 percent have four (4) years of seniority or less. Nine (9) officers or approximately 43 percent of this force have one (1) or less than one (1) year of service in the Department. A calculation of the mean average of the seniority of these 21 patrol officers reveals that they have an average length of service of nearly 3.25 years but that even this number which is very low to begin with, is significantly skewed by the two (2) remaining patrol officers with the greatest length of service, each with fourteen (14) years of seniority. If one were to remove these two (2) officers from the calculation of the mean average, the average length of service for the remaining nineteen (19) officers computes to 2.1 years of service. Admittedly, the same statistical analysis applied to the four (4) officers in the Police Department holding the rank of sergeant reveals an opposite composite picture. The average length of service for these four (4) officers is exactly eighteen (18) years with three (3) of the four having a seniority of eighteen (18) years or more (Un. Ex. 3). However, out of the total bargaining unit of twenty-five (25) officers only six (6) or slightly less than 25 percent are long-term employees having twelve (12) or more years of seniority (Un. Exs. 2 and 3). The remaining 75 percent of the force have less than five (5) years of seniority.

There was testimony by City witness, Otto M. Bradford, the elected City Treasurer, who related that the current budget provides for the hiring of three (3) additional patrol officers above the present compliment of 21. If the City were to hire these additional officers, the overall experience level of the police force would be reduced even more. Moreover, hiring of additional patrol officers at the entry salary level requires that the City expend additional money for the recruitment process and for training of the officers once hired. In effect, outlays of such expenditures may not be fiscally sound as these same funds could be used to increase current salaries thereby reducing the substantial turnover in officers and, in turn, reducing the need to continually replace officers.

The Panel finds that the Union's final best offer more nearly complies with this factor then does the final best offer advanced by the Employer.

D. THE INTERESTS AND WELFARE OF THE PUBLIC AND THE FINANCIAL ABILITY OF THE UNIT OF GOVERNMENT TO MEET THOSE COSTS

1. Discussion

Notwithstanding that the majority of evidence adduced at this interest arbitration pertained to the factor of the City's ability to pay an increase in wages for the third year, the bottom line position taken by the Employer was that it could not afford to pay any increase because of a severe budget deficit whereas, the Union contested the City's assertion of an inability to pay, identifying several sources within the current budget under which the City is presently operating from which there were available sums in excess of the cost of the increase being requested, generally agreed by opposing expert witnesses, to amount to approximately $30,000. The Union asserts that even if the City's claims of an inability to pay the cost of the increase had merit, the consideration of the public's interest should impel the City to rearrange its priorities so as to find the money from among the City's present sources of revenue to fund the salary increase. In support of this position, the Union cites the case of City of East St. Louis, Illinois and East St. Louis Fire Fighters, Local No. 23, ISLRB Case No. S-MA-87-25 (Arbitrator Duane Traynor, 1987) wherein, among other findings, Traynor held the following:

> The panel of arbitrators realizes that the City of East St. Louis is nearly bankrupt and that unless it curtails its expenses, generating greater revenues, increases in wages might force it into bankruptcy. The City government, however, is responsible for providing certain essential services such as a fire department. It cannot expect that the fire fighters who, by law, are denied the economic weapon of striking, to suffer a cut back in wages due to the loss of the purchasing power of the dollar. It therefore has the obligation of funding increases in wages.

The Employer argues that the Union presented no financial information on the City, that it only cross-examined City witnesses as to financial affairs and interpretations. The Employer further argues the Union offered no theories of municipal financing nor suggestions as to alternate methods of generating income or of replacing the lost sales tax or

of enhancing real estate tax collections. The Employer asserts the Union has not given the Panel any information other than the demand for a wage increase without justification.

2. Findings

The Panel does not agree with the City's position that the Union has not yielded any information in these proceedings justifying its demand for a seven percent (7%) wage increase. It should be clear to anyone reviewing the public record of these proceedings that the Union has proffered evidence addressing most, if not all, of the factors set forth in the statute under Section 14, subsection (h). The Panel notes for the record that even under the prevailing circumstances of the case at bar, it would be an improper role for the Union to offer up theories of municipal financing, or proffer suggestions as to alternate methods of generating income or of replacing the lost sales tax or of enhancing real estate tax collections as these functions are reserved to the body politic of the City. As stated elsewhere above, each party is responsible in an interest arbitration proceeding for proffering evidence in support of its final best offer(s) and this responsibility does not encompass the obligation of one party telling the other how to conduct its business.

Based on a thorough review of the voluminous and complex evidence submitted with respect to this factor, the Panel concurs in the following findings, as summarized and stated below:

(a) While the City is financially weak, it is not without financial ability to fund an increase of the magnitude required by the Union's final best offer. In support of this holding, we find most persuasive the fact that the City has engaged in a drawing down of its deficit position for fiscal years 1989 and 1990, and that if it is able to do this in these "tough economic times," it is able to rearrange its priorities to fund an increase in wages for its police officers for the third year of the Agreement (Panel Ex. 5).

(b) The Panel is further persuaded by the evidence adduced by the Union that the Employer has sufficient cash assets to fund the Union's proposed wage increase, those cash assets specified to be nearly $476,000 which money is kept in investments so as to earn interest until it is needed for expenses.

(c) The Panel is also persuaded by the evidence adduced by the Union that the City has sufficient monies appropriated in Account 1400 (City Ex. 3 - 1990-91 Annual Appropriation Ordinance) to fund the Union's proposed wage increase as the City budgeted for three (3) patrolman positions beyond its present force of 21, but had not filled these positions in the 1990 fiscal year.

(d) The Panel is further persuaded by the evidence adduced by the Union that the City has sufficient monies appropriated in Account 4800 (City Ex. 3) to fund the Union's proposed wage increase as the City budgeted $81,421 for the sole purpose of providing contingency funds to pay possible salary increases for Union, non-Union and Fire Department personnel. While the City maintains it specifically noted this account did not include any projected salary increases for the Police Department, the Panel deems such an omission inconsistent with the City's known contractual obligation to bargain wages pursuant to the third year reopener under the 1988-91 Agreement (Panel Ex. 5). Nevertheless, even assuming arguendo the City somehow forgot about the third year reopener, there would appear to be at least some monies from this account that could be used to fund the salary increase for patrol officers and sergeants proposed by the Union in its final best offer. Further, assuming arguendo, the remaining funds in this account fall short of meeting the amount of the increase in its entirety or that, in fact, the whole of this amount was used to fund the cost of other wage increases, the fact remains that the City has legal authority to transfer funds from among appropriate accounts and has, in fact, historically done so on the two (2) occasions per fiscal year such transfers can be effected as shown by the evidence of this record.

With respect to the other half of this factor, the Panel holds that police protection is an essential service provided by communities to its citizenry and that the level and quality of these services should be sufficient to meet the safety, health, and welfare expectations of its citizens. On the basis of population only, the Panel notes that the City maintains a police department comparable in size to those of the thirteen (13) other communities it has been compared with. However, as stated elsewhere above, the vast majority of officers on the force are not seasoned in that they have less than five (5) years seniority, thus casting some doubt on the quality of police protection being offered by the City. Furthermore, while the City's

assertion it is inundated with applications for employment many-fold greater than the number of police positions open and available to fill in any given year may be accurate, nevertheless, it appears the police department suffers from a high rate of turnover in officers leading the Panel to suspect that one of the prime factors accounting for this turnover rate is the relatively low salaries paid to patrolmen in the City. So, while a low entry salary may not be an impediment with respect to coaxing the filing of a more than sufficient number of employment applications from the general populace, especially in times of greater than average unemployment, the relatively low salaries do not appear to be adequate with respect to the retention of officers once hired. It is therefore very likely under the given circumstances that the City is expending a considerable sum of money on a continuing basis to recruit and train new officers when, instead, it could be allocating these same dollars to raising the level of salaries to be competitive with those paid by other like communities so as to retain the officers already employed and thus cut the substantial rate of turnover. If this were to occur, the Panel is persuaded that the City would improve the quality of protective services provided to its citizenry.

The Panel finds that the Union's final best offer more nearly complies with this factor, than does the final best offer advanced by the Employer.

E. THE AVERAGE CONSUMER PRICES FOR GOODS AND SERVICES COMMONLY KNOWN AS THE COST OF LIVING.

1. Discussion

The record evidence reveals no basic disagreement between the parties that according to the most applicable of the four (4) Consumer Price Indices, specifically the Chicago Metropolitan Wage Earners Index (Un. Ex. 5), there was a percentage change of 5.59 percent from August of 1989 to August of 1990 in consumer prices. The Union argued that based on this percentage change and the fact consumer prices, according to this Index, have continued to rise since August of 1990, that this factor alone justifies its final best offer of a seven percent (7%) increase in wages. The Employer cites the concept of the "zone of reasonableness" espoused by Arbitrator, George Roumel in the City of Southfield (78 LA 153, 155) asserting that a wage increase exceeding the parameter of the approximately 5.5 percent rise in the applicable Consumer Price Index (CPI) such as the one proposed here by the Union, should be rejected on grounds that it goes beyond the zone of

reasonableness. The Employer further argues that the Panel should consider the other side of the CPI coin which is the increase in cost the City has to pay for all the goods and services it is required to purchase, such as, for example, the commodity of gasoline. The Employer submits that the seven percent (7%) wage increase sought here by the Union is both unreasonable when all factors are considered, especially the fact of the eroding tax base due to a substantial number of unoccupied homes and, unsupported by substantial evidence proffered by the Union.

2. Findings

If the Employer expects the Panel to look at the CPI from both sides of the "coin", it should also be prepared to have the Panel look at the concept of the "zone of reasonableness" from both sides as well. In undertaking such an analysis, the Panel is persuaded that it is the Employer's position of a zero percent increase in wages when matched against a CPI of 5.5 percent that runs afoul of the "zone of reasonableness" concept rather than the Union's position of surpassing this "zone" by an approximate 1.5 percent. The Panel submits it is unreasonable for the Employer to propose no increase in wages in the third year in light of the fact of the 5.5 percent rise in the cost-of-living and, in light of the fact that, as discussed above, the financial health of the City, while not the best, can certainly accommodate paying the sum of money required to fund the Union's final best offer. Furthermore, the Panel finds unreasonable the Employer's stance that its police officers should, in effect, subsidize the increasing costs of operating the City by accepting a zero percent increase in wages for the third year of the Contract when, in the same fiscal year, the City agreed to grant other municipal employees, namely those employees represented by Local 1473 of the American Federation of State, County and Municipal Employees a five percent (5%) increase in wages effective November 16, 1990 (Un. Ex. 15) some three (3) months subsequent to the effective date of any change in wages under the third year wage reopener for police. The Employer's position of a zero percent increase would have been perceived by the Panel as much more credible if the Employer had acted consistently to limit wage increases corresponding to all of its bargaining units. Increases in the cost of goods and services are a certainty of life and it is this certainty that lies at the core of budget-making, a function that rests solely with the elected officials of the City. The Employer knew two (2) years in advance of its obligation to negotiate a possible wage increase for the police, as a result of agreeing to the subject third year wage reopener, yet incredulously, the

City takes the position it somehow forgot this contingency in the formulation of the budget for the fiscal year in question. This is the Employer's fault and not the Union's and therefore it was incumbent upon the City officials to correct the problem rather than attempting to resolve the matter by adopting the stance it simply had no money to fund a wage increase of any percent for the police asserting in support of this position the contention of an inability to pay. The Panel concurs with one aspect of the Employer's argument and that is, the mere fact of a wage reopener does not automatically translate into a prospective increase in wages and, that, under certain circumstances, negotiations under a wage reopener will sometimes result in no change in wages or, stated another way, in a freeze on wages. However, as discussed elsewhere above, the circumstances that were in existence at the time the subject wage reopener became due did not support and, therefore did not justify, a position of a freeze in wages.

The panel finds that the Union's final best offer of a seven percent (7%) increase more nearly complies with this factor than does the final best offer advanced by the Employer.

F. 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 STABILITY OF EMPLOYMENT AND ALL OTHER BENEFITS RECEIVED

I. Discussion

The Union asserts that it considered this factor in the arguments it advanced in connection with overall compensation in the identified comparable communities. The Employer notes that beyond the presentation of the data compiled by the Union in its Exhibit 8, the Union did not address the elements comprising overall compensation other than the wage component. The Employer submits though that a cursory review of this information would reveal that the current benefits of the bargaining unit employees is either equal to or higher than the listed benefits received by employees of the other communities compared. The Employer speculates that a graph of this data would have clearly established a higher ranking for Markham.

2. Findings

The Panel notes that the relevant issues falling within the parameter of this factor have been addressed in discussion of the other preceding factors. The Panel adds here, however, that even assuming arguendo the Employer is correct in its

position that inclusion of all components comprising overall compensation would have resulted in a higher ranking for the City vis-a-vis all other comparable communities identified by the Union, any higher ranking would not have, in any way, altered the findings of this Panel with respect to the other factors. Even so, we question the speculation by the Employer in the first instance that, in fact, a comparison of overall compensation would have moved the City to a higher relative standing since it does not appear that, the elements comprising overall compensation outside of wages as a package was so far superior to the benefit packages offered by the various comparable communities as to offset the large gap in maximum salaries for patrolmen and sergeants as between the City and the closest ranked community to it, Chicago Ridge and Round Lake Beach respectively (Un. Exs. 9, 12, and 10, 14 respectively).

Based on the foregoing, the Panel rejects the Employer's speculation and holds that the Union's final best offer more nearly complies with this factor than does the Employer's final best offer.

G. CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS

NOTE: This factor is deemed by the Panel to have no direct or indirect bearing on the case at bar.

H. 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

1. Discussion

Although neither party advanced any argument with respect to this factor, the Panel, in its review of the case in its entirety, discerns one factor that is relevant to the case at bar and that is, the problem of wage rate compression particularly in the patrolman rank whereby there is barely any difference between the wages paid a fourteen (14) year veteran on the force and a patrolman with only four (4) years of

seniority. Such a slight and insignificant difference we believe must impact negatively on morale. Thus, any percent increase in wages would serve to widen the spread thereby correcting for wage rate compression, whereas no increase in wages would simply exacerbate the problem of wage rate compression.

2. Findings

The Panel therefore holds that the Union's final best offer more nearly complies with the foregoing identified factor than does the final best offer advanced by the Employer.

VI. AWARD

Based on the preceding discussion, determinations, and findings with respect to all factors considered pursuant to Section 14, subsection ((h) of the Illinois Public Labor Relations Act, the Panel rules that, on the basis of all the relevant factors herein addressed, the Union's final best offer more nearly complies with these factors than does the final best offer advanced by the Employer.

Accordingly, the Panel adopts and awards the Union's final best offer on the sole issue of wages and directs the Employer to implement the seven percent (7%) increase in wages immediately upon receipt of this Award retroactive to the mutually agreed upon effective date of August 1, 1990 pursuant to the pertinent language of Article XV of the Agreement (Panel Ex. 5).

GEORGE EDWARD LARNEY
Chairman, Interest Arbitration Panel

CONCURRING

CONCURRING

DISSENTING

WILLIAM P. RELFORD
Employer Delegate

DISSENTING

WILLIAM P. BARRON
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April 12, 1991

APPENDIX A

City of Markham Comparison of Police Compensation with Comparable Jurisdictions

Pay Rates	City	Union	Chgo Ridge	Country Clb	Hzl Crest	Hickory Hl	LaGrnge Pk	Lk Zurich	McHenry	Midlothian	Riverdale	Rnd Lk Bch	Vernon Hls	West Sprgs	Woodstock
Patrol Officers	01-Aug-90	01-Aug-90	01-May-90	01-May-90	01-May-90	***	***	01-May-90	***	***	01-May-90	***	***	***	***
Less than 1 Year	23,060	24,674	24,218	24,985	25,580	22,900	25,068	24,500	22,152	28,350	28,034	19,044	25,752	24,312	23,424
One year to two years	24,416	26,125	27,471	28,618	26,220			26,000			28,034				
Two years to three years	25,774	27,578	29,516	31,855	26,875			27,000			28,034				
three years to four years	27,130	29,029	31,557	34,208	27,547			28,000			28,034				
four years to five years				34,208	28,236			29,000			28,736				
five years to six years				34,208	28,941			30,000			30,178				
six years to seven years				34,208	29,665			31,000			30,178				
maximum	27,130	29,029	31,557	34,208	36,180	33,963	34,104	34,000	34,788	34,050	32,334	32,880	35,580	32,892	32,772
Sergeants - minimum	29,687	31,765	34,327	36,603	29,665	36,575	35,892		29,640	37,750	30,747	30,888	32,328	31,980	26,580
- maximum	29,687	31,765	35,357	39,255	39,978	40,755	38,484		42,120	39,250	34,596	32,892	40,908	38,076	37,236
longevity:															
5-9 years	2%	2%	3%,2%	2%	$500				1%	$500	5%	0	$400	0	0
10-14 years	4%	4%	3%	3.5%	$800	$360		700-1000	2%	$1,000	9%	0	$500	0	0
15-19 years	6%	6%	2%	5.25%	$1,200	$360			3%	$1,500	12.5%	0	$600	0	0
over 20 years	8%	8%	3%,2%	7%	$1,500	$360			4%	$2,000		0	$700	0	0
Clothing Allowance (new)	Furnished	Furnished	400	500				400	Furnished	Furnished	400	Furnished	600	415	300
Clothing Allowance (annual	Furnished	Furnished	450	400	325	220		400	Furnished	Replaced	400	300	300	Replaced	340
Clothing Allow-detectives	150	150		450				400	400		400				
Workhours for Overtime	40/wk	8.5/day	40/wk	8/day;40/wk			40	90/15days	8 or 40		8/day;40/wk				
Overtime rate (percent)	150	150	150	150			150	150	150		150	100	150	150	150
Court time (minimum hrs)	2	2	0	0			4	0-3	3-4		1.5				
Court time (rate)	100	100	150	150				150	100		150				
Vacation (days)															
0-5 years	10	10	12	10	10	10	10	10	10	5-10	10	10	10	10	10
6-10	15	15	18	15	10	15	15	10-15	15	10	10	15	15	10-15	10-15
11-17	20	20	24	20	15	20	20	16-20	20	15-20	15	15-20	15-20	15	15-20
maximum	28	28	29	20	10+1/yr	20	20	20	20	20	20	20	20	20	25
Holidays	11	11	10	11			9		9	10	9	11	8	9	11
Rate for working	150	150	150	150					100						
Sick Days	12	12	12	13			12		12	20	7	12	12	12	12
Convert to personal	0	0		3			6		no		15%				
Buy back at separation	100%	100%	60						100%						
Personal leave days	0	0	3						2	3 bereav		0	4	1	0

u. EXHIBIT

8

APPENDIX B(1)

Minimum Salaries

Rank	City	Salary
1	Midlothian	28,350
2	Riverdale	28,034
3	Vernon Hls	25,752
4	Hzl Crest	25,580
5	LaGrnge Pk	25,068
6	Country Clb	24,985
7	Union	24,674
8	Lk Zurich	24,500
9	West Sprgs	24,312
10	Chgo Ridge	24,218
11	Woodstock	23,424
12	City	23,060
13	Hickory Hls	22,900
14	McHenry	22,152
15	Rnd Lk Bch	19,044

Maximum Salaries

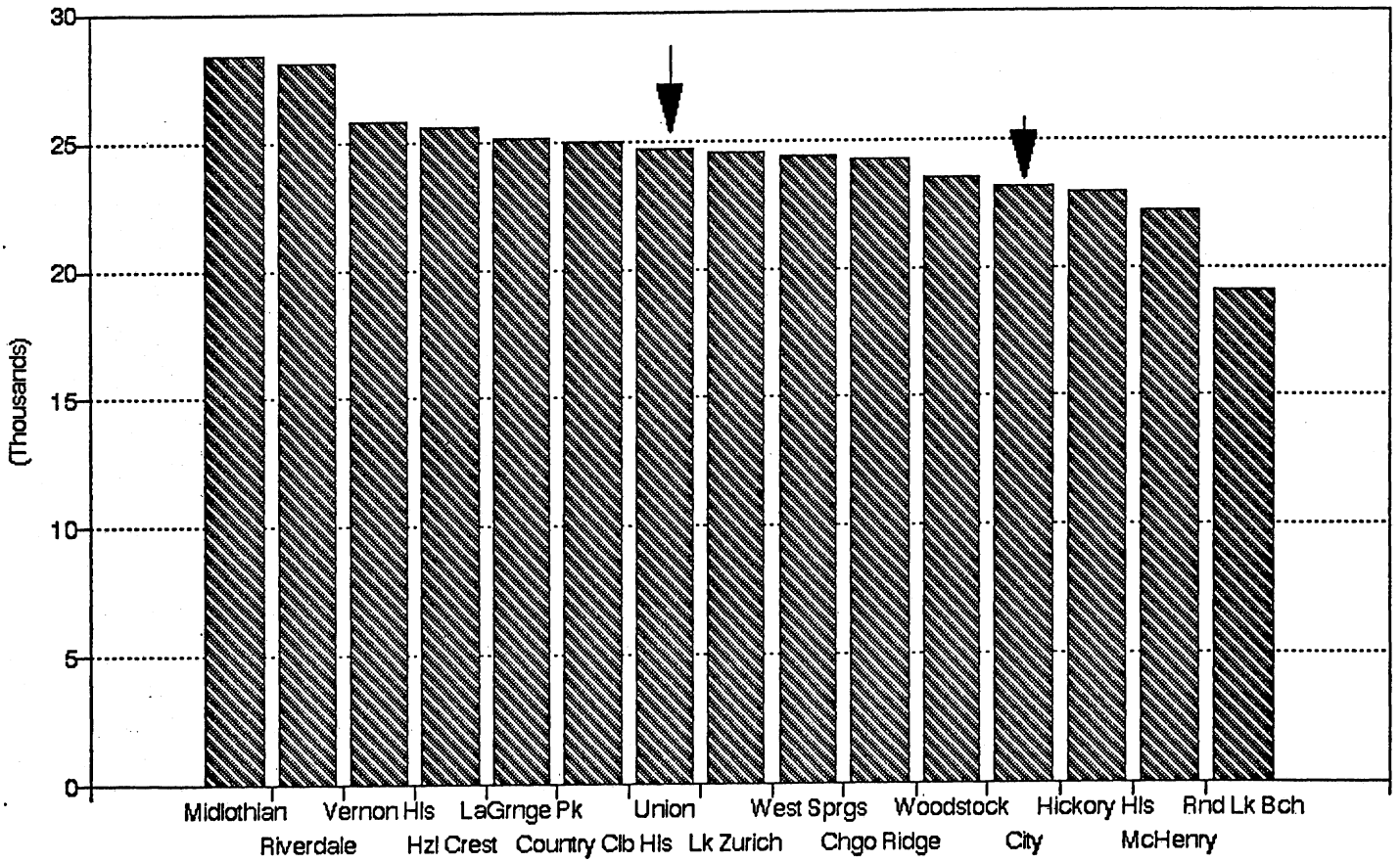
Rank	City	Salary
1	Hzl Crest	36,180
2	Vernon Hls	35,580
3	McHenry	34,788
4	Country Clb	34,208
5	LaGrnge Pk	34,104
6	Midlothian	34,050
7	Lk Zurich	34,000
8	Hickory Hls	33,963
9	West Sprgs	32,892
10	Rnd Lk Bch	32,880
11	Woodstock	32,772
12	Riverdale	32,334
13	Chgo Ridge	31,557
14	Union	29,029
15	City	27,130

U. EXHIBIT
9

APPENDIX B(2)

Minimum Salary: Patrol

August 1, 1990



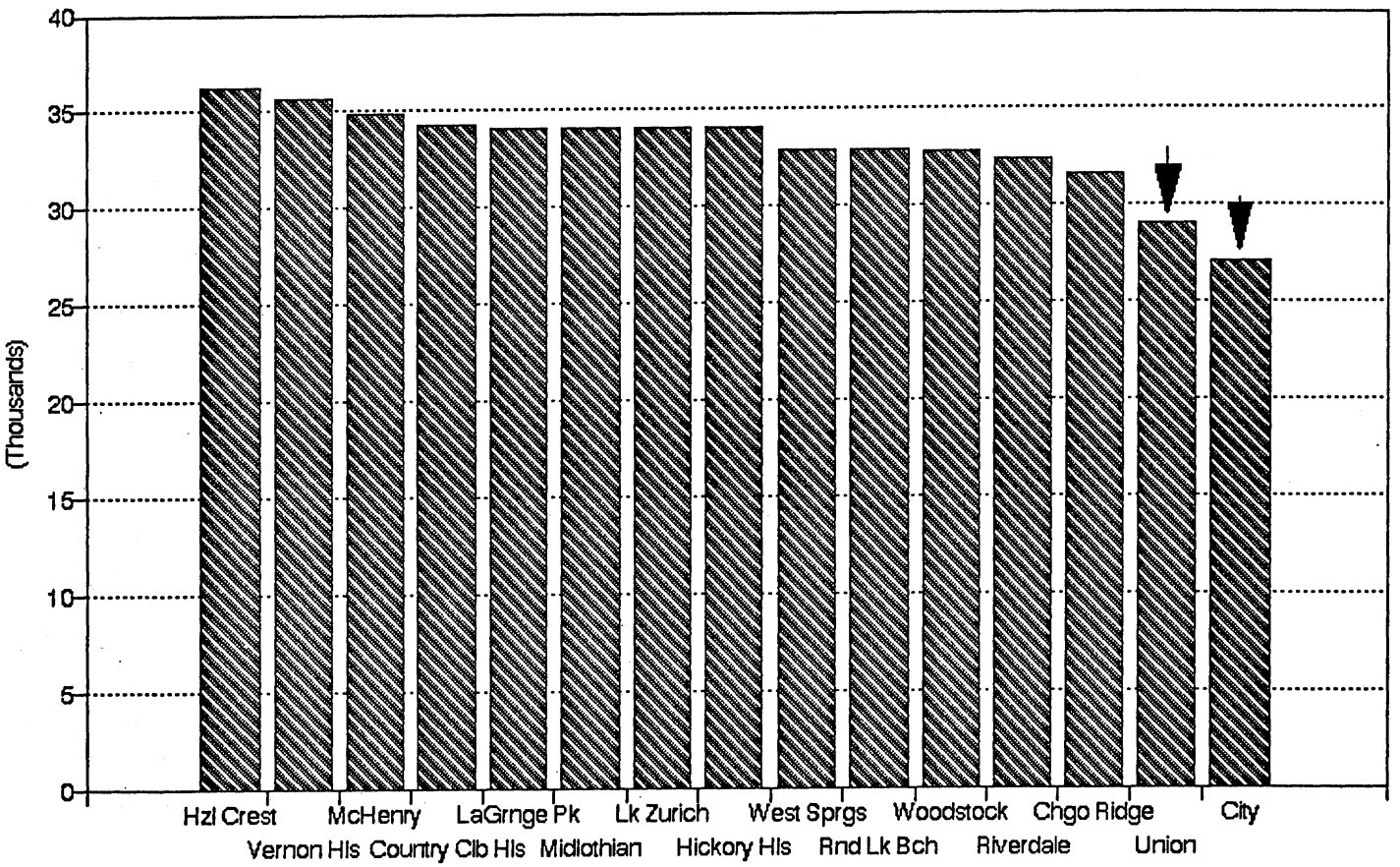
U. EXHIBIT

11

APPENDIX B(3)

Maximum Salary: Patrol

August 1, 1990



U. EXHIBIT 12

APPENDIX C(1)

Minimum Salaries-Sergeants

Rank	City	Salary
1	Midlothian	37,750
2	Country Clb	36,603
3	Hickory Hls	36,575
4	LaGrnge Pk	35,892
5	Chgo Ridge	34,327
6	Vernon Hls	32,328
7	West Sprgs	31,980
8	Union	31,765
9	Rnd Lk Bch	30,888
10	Riverdale	30,747
11	City	29,687
12	Hzl Crest	29,665
13	McHenry	29,640
14	Woodstock	26,580

Maximum Salaries-Sergeants

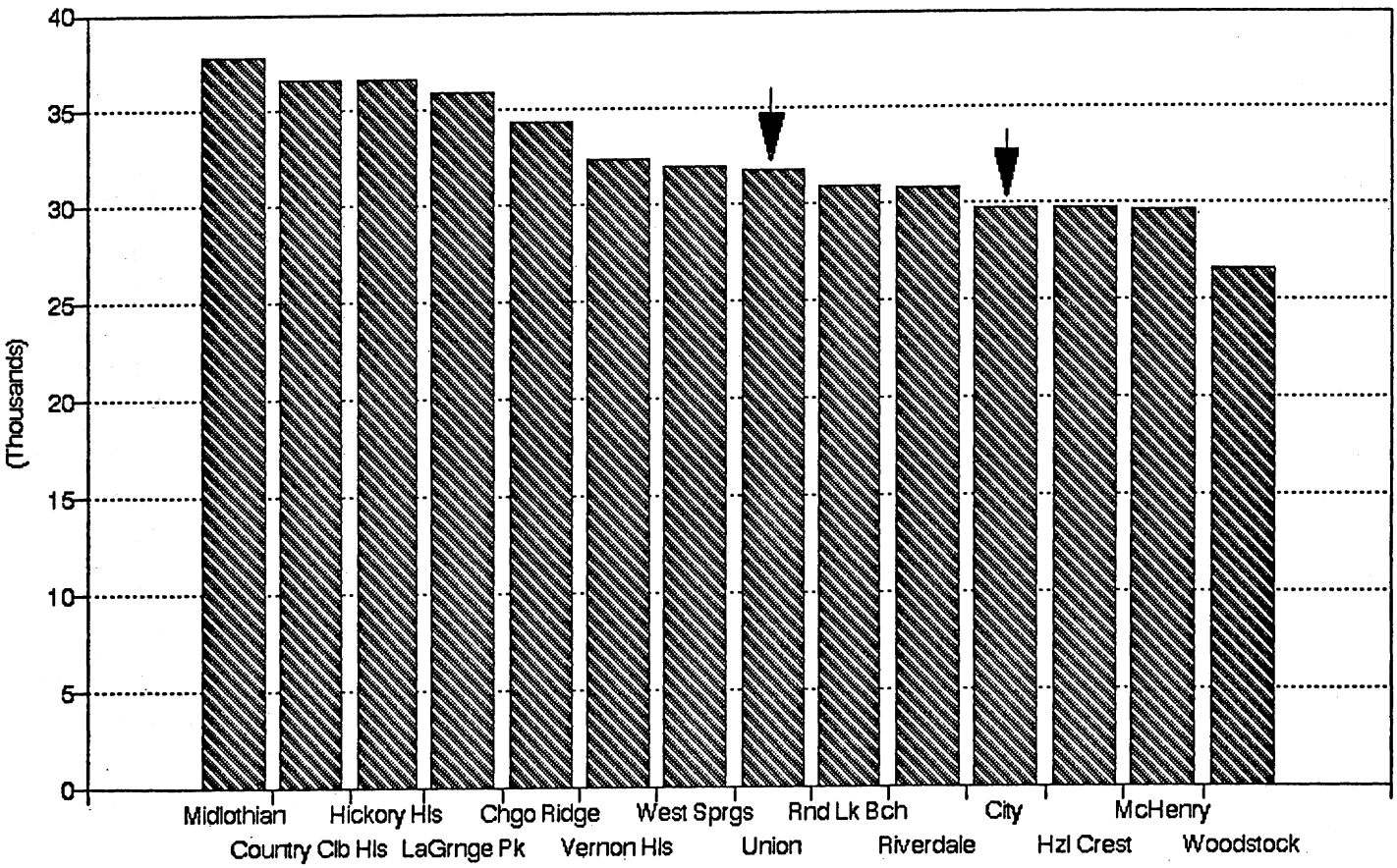
Rank	City	Salary
1	McHenry	42,120
2	Vernon Hls	40,908
3	Hickory Hls	40,755
4	Hzl Crest	39,978
5	Country Clb	39,255
6	Midlothian	39,250
7	LaGrnge Pk	38,484
8	West Sprgs	38,076
9	Woodstock	37,236
10	Chgo Ridge	35,357
11	Riverdale	34,596
12	Rnd Lk Bch	32,892
13	Union	31,765
14	City	29,687

u. EXHIBIT 10

APPENDIX C(2)

Minimum Salary: Sergeants

August 1, 1990



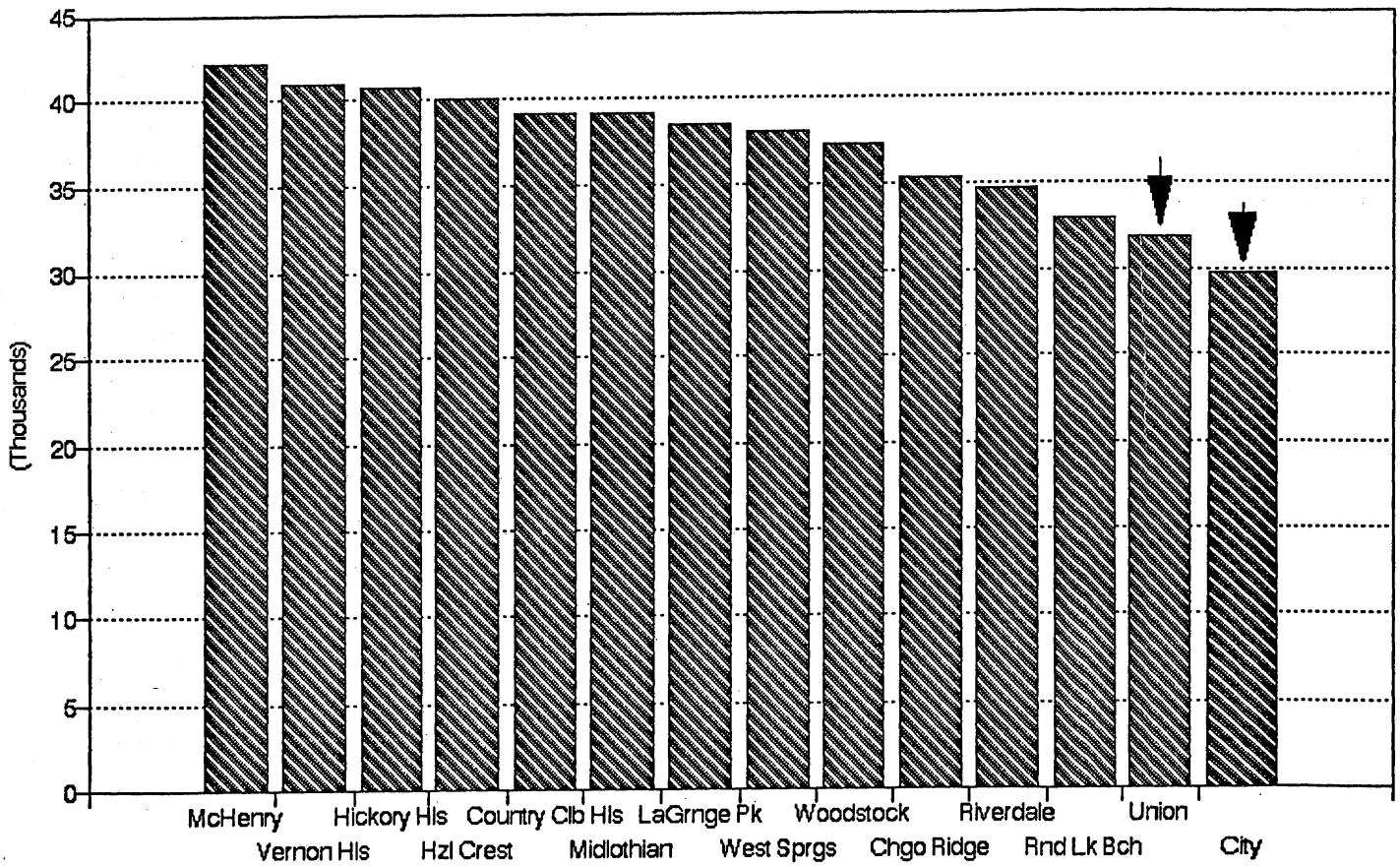
EXHIBIT

13

APPENDIX C(3)

Maximum Salary: Sergeants

August 1, 1990



U. EXHIBIT 14

RECEIVED
AUG 12 1991
IL STATE LAB. REL. BD.
SPRINGFIELD, IL

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

EMPLOYER
THE CITY OF MARKHAM
MARKHAM, ILLINOIS

AND

UNION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO; LOCAL 726

I.S.L.R.B. Case No. S-MA-90-147

SUPPLEMENTAL PROCEEDINGS

FINDINGS AND AWARD

PURSUANT TO

ILLINOIS PUBLIC LABOR RELATIONS ACT
as Amended Effective August 30, 1989;
Section 14 (Ill.Rev.Stat. 1985, Ch. 48, par. 1601 et seq.)

RENDERED BY:

GEORGE EDWARD LARNEY
Chairman, Interest Arbitration Panel
29 South LaSalle Street
Suite 800
Chicago, Illinois 60603
(312) 444-9565

Dated: Wednesday
August 7, 1991

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IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

EMPLOYER
THE CITY OF MARKHAM
MARKHAM, ILLINOIS

AND

UNION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO; LOCAL 726

I.S.L.R.B. Case No. S-MA-90-147

SUPPLEMENTAL PROCEEDINGS

DETERMINATION AS TO WHETHER TO AFFIRM OR REJECT THE INTEREST ARBITRATION PANEL'S DECISION TO ACCEPT THE UNION'S FINAL OFFER OF A SEVEN PERCENT (7%) INCREASE IN WAGES EFFECTIVE AUGUST 1, 1990

SUPPLEMENTAL DECISION

I. PRELIMINARY INFORMATION

INTEREST ARBITRATION PANEL MEMBERS

EMPLOYER DELEGATE

WILLIAM P. RELFORD */
Superintendent of Public Works
CITY OF MARKHAM
16313 Kedzie Parkway
Markham, Illinois 60426
(708) 331-4905 EXT. 17

UNION DELEGATE

WILLIAM P. BARRON
Detective of Police
MARKHAM POLICE DEPARTMENT
16313 Kedzie Parkway
Markham, Illinois 60426
(708) 331-2171

NEUTRAL CHAIRMAN

GEORGE EDWARD LARNEY
Labor ARbitrator-Mediator
29 South LaSalle street
Suite 800
Chicago, Illinois 60603
(312) 444-9565

*/ Employer Delegate, William P. Relford, failed to appear at hearing, notwithstanding proper notification that these supplemental proceedings would be convened.

CASE PRESENTATION - APPEARANCES

EMPLOYER

WILLIAM E. ELSTON, JR.
Attorney at Law
Fourth Floor
1525 East 53rd Street
Chicago, Illinois 60615
(312) 752-4442

UNION

LISA B. MOSS
Attorney at Law
CARMELL CHARONE WIDMER
MATHEWS & MOSS
225 West Washington Street
Suite 1000
Chicago, Illinois 60606
(312) 236-8033

AUTHORITY TO ARBITRATE

Illinois Public Labor Relations Act (IPLRA)
Effective January 2, 1989 as Amended Effective August 30, 1989;
Section 14 (Ill.Rev.Stat. 1985, Ch. 48, par. 1601 et seq.)

Title 80: Public Officials and Employees
Subtitle C: Labor Relations
Chapter IV: Illinois State Labor Relations Board/Illinois Local Labor Relations Board
Part 1230 Impasse Resolution
Subpart B: Impasse Procedures for Protective Services Units
Sections 1230.30 through 1230.110

PROVISIONS APPLICABLE SPECIFICALLY TO SUPPLEMENTAL HEARINGS

Sections 14(n) and (o), IPLRA
Section 1230.110 Employer Review of the Award, Rules and Regulations, Title 80: Subtitle C: Chapter VI: Part 1230: Subpart B

COURT REPORTER

LESLIE WALLACE, C.S.R.

LESLIE WALLACE REPORTERS
1550 North Lake Shore Drive
Apartment 15F
Chicago, Illinois 60610
(312) 751-0463

LOCATION OF HEARING

Offices of the Illinois State Local Labor Relations Board
111 North Canal Street
Suite 940
Chicago, Illinois
(312) 793-6400

WITNESSES (in order of respective appearance)

FOR THE EMPLOYER	FOR THE UNION
NONE	JACK L. GENIUS +/ Alderman Ward 3 City of Markham

OTHERS IN ATTENDANCE AT HEARING

FOR THE EMPLOYER	FOR THE UNION **/
NONE	GERALDINE DUDECK +/ Alderlady, Markham City Council ANNA SMITH +/ Alderlady, Markham City Council DAVID WEBB +/ Alderman, Markham City Council

CHRONOLOGY OF RELEVANT EVENTS

Interest Arbitration Award Rendered by the Interest Arbitration Panel on the Sole Issue of Wages Applicable to Patrol Officers and Sergeants Under a Reopener in the Third Year of the Parties' Initial 1988-91 Collective Bargaining Agreement; Date of Award	April 12, 1991

+/ Appeared pursuant to Subpoena dated May 14, 1991 requested by the Union and signed by the Chairman of the Interest Arbitration Panel (Panel Grp. Ex. 4).

**/ Others subpoenaed, but who failed to appear were Alderman Eugene James and Mayor Evans Miller. According to Ms. Lisa Moss, Counsel for the Union, Alderman James contacted her by telephone on May 16, 1991 and advised he had a job he was going to report to on May 17, 1991 and therefore had no intention of complying with the Subpoena by appearing at the hearing. Moss related she indicated to James he could not be released from and, was subject to the subpeona, but notwithstanding her advisory, James indicated to her, he had no intention of being present at this Supplemental Hearing. It is noted by the Arbitrator that Mayor Miller never made notification of his intention to flout the Subpoena as did James and, that, in addition, he never did appear at this Supplemental Hearing.

CHRONOLOGY OF RELEVANT EVENTS (Continued)

Receipt of Award by Attorney, William E. Elston, Jr., Counsel for the Employer, the City of Markham	April 18, 1991
Memorandum from Elston to Evans R. Miller, Mayor of the City of Markham and to All Council Members Apprising the Interest Arbitration Panel Had Awarded the Bargaining Unit Police Officers a Seven Percent (7%) Wage Increase Effective August 1, 1990 and Stating that in His Opinion the Decision Was in Error; Elston Further Apprised that Under the Provisions of the Illinois Public Labor Relations Act (IPLRA), Markham had Twenty (20) Days Within Which to Either Accept or Reject the Decision and, if Rejected, the Decision Would be Remanded to the Interest Arbitration Panel for Further Deliberations; Elston Notified All to Whom the Memorandum Was Addressed, Especially the Newly Elected Alderman of His Intention to Present to the Markham City Council at the May 1, 1991 Scheduled Meeting, a Proposed Resolution Rejecting the Findings and Award of the Interest Arbitration Panel and Setting Forth Reasons for Rejection as Required by Law. Elston Noted that as the Panel's Findings and Award Was an Extensive Document, Those Desiring to Inspect it Should Contact the Mayor's Office; Elston Advised that if it Were Possible, He Would Ask the City Clerk, Valerie Hamiter to Attempt to Reproduce the Document Upon Request; Memorandum Dated (See Appendix A for a Copy of the Complete Memorandum)	April 29, 1991 ++/
Markham City Council Passed Resolution No. 91-R-007 Rejecting the Findings and Award of the Interest Arbitration Panel Rendered in Case No. S-MA-90-147; Resolution Voted at the Regular Council Meeting Held (See Appendix B for a Copy of the City Clerk's Certification of the Passage of Resolution 91-R-007 and a Copy of the Complete Resolution)	May 01, 1991

++/ Elston indicated in this Memorandum that due to the press of other municipal business, he would be unable to forward the recommendations within the required 48-hour period in advance of the May 1st Council meeting and, therefore, suggested the Council waive this advance notice requirement so that the Resolution could be passed, thereby preserving the City's rights to appeal the Panel's decision.

CHRONOLOGY OF RELEVANT EVENTS (Continued)

By Letter to the Panel Chairman with Copy to Union Counsel, Lisa B. Moss Dated May 3, 1991, Counsel for the City, William E. Elston, Jr. Notified of the City Council's Action of Passing Resolution 91-R-007 and Providing Copy of Said Resolution Stating He would Await Advice from the Panel Chairman; Letter Received by the Panel Chairman (Panel Ex. 1)	May 07, 1991
By Letter Dated May 13, 1991, to the Panel Chairman, Union Counsel Moss Acknowledged Receipt of Elston's Letter of May 3rd and Copy of Resolution 91-R-007 Noting that, in Accordance with Section 1230.110(e) of the Illinois State Labor Relations Board's Rules and Regulations (November, 1990) a Supplemental Interest Arbitration Hearing Was Required to Be Held Within Thirty (30) Days Following the Issuance of the Reasons for Rejection of the Panel's Findings and Award; Moss Further Noted that in Accordance with Section 1230.110(g) of the Boards' Rules and Regulations, All Reasonable Costs of the Supplemental Proceedings Including the Union Attorney's Fees, Are Required to Be Paid by the City of Markham. Given the City's Position that the Panel Failed to Give Valid Consideration to the Economic and Financial Condition of the City and Its Ability to Pay the Wages Contained in the Panel's Findings and Award, Moss Requested that Five Thousand Dollars ($5,000) Be Escrowed for Purposes of Covering the Union Attorney's Fees and Costs and One-Half of the Panel Chairman's Fees and Expenses (Panel Ex. 2); Letter Received by the Panel Chairman Via Messenger	May 13, 1991
By Letter Dated May 14, 1991 and Delivered by Messenger to the Panel Chairman, Moss Requested the Panel Chairman Sign Five (5) Subpoenae Ad Testificandum Commanding the Appearance at the Supplemental Hearing of the Five (5) Council Members: Geraldine Dudeck; Jack Genius; Eugene James; Anna Smith; and David Webb (Panel Grp. Ex. 4); Letter and Subpoenae Received by the Panel Chairman, Signed and Returned to Moss	May 14, 1991
Certified Letter from the Panel Chairman to Moss and Elston Apprising, Among Other Things, He Had Signed and Returned the Subpoenae to Moss for Service, Identifying Those to Be	May 14, 1991

(continued on next page)

CHRONOLOGY OF RELEVANT EVENTS (Continued)

Served by Name and Ordering the Convening of the Supplemental Hearing on May 17, 1991; Additionally, the Panel Chairman Granted Moss' Request to Escrow Funds in the Amount of Five Thousand Dollars ($5,000) and Ordered the City to Escrow an Additional Sum of Five Thousand Dollars ($5,000) to Insure Payment for His Services as Panel Chairman that Had Been Billed in Connection with the Interest Arbitration Award Rendered April 12, 1991 and for Services to be Performed in These Supplemental Proceedings. Finally, the Panel Chairman Stated that Unless Cause Could be Shown Why the Supplemental Hearing Should Not Convene, He Ordered All Parties to Appear at the Time and Place Specified, Warning that if Only One Party Should Appear, He Would Conduct an Ex Parte Hearing; Letter Dated	
Regular City Council Meeting Convened Wherein Alderman Jack Genius in Public Session Made a Motion to Reconsider Resolution 91-R-007 Which Was Seconded by Alderlady Geraldine Dudeck and Upon a Vote of the Council Members Passed Unanimously. Alderman Genius Next Made a Motion Seconded by Dudeck to Reject Resolution 91-R-007 Thereby Accepting the April 12, 1991 Interest Arbitration Award Which Passed on a Three (3) to Two (2) Vote by the Council Members; Council Meeting Held	May 15, 1991
Subpoena Ad Testificandum for the Appearance of Mayor Evans Miller Requested by Union Counsel Moss and Signed by the Panel Chairman; Subpoena Dated and Served	May 16, 1991
Supplemental Hearing Held	May 17, 1991
Transcript of 99 Pages Received by the Panel Chairman:	May 31, 1991
UNION	June 15, 1991
EMPLOYER	June 19, 1991
Letter Dated June 19, 1991 from the Panel Chairman Apprising Parties of His Receipt of the Post-Hearing Briefs, Interchanging the Briefs and Declaring the Case Record Officially Closed as of the Date the Last Brief Was Received; Case Record Closed	June 19, 1991

II. ISSUE

Although not discussed by the Parties at this Supplemental Hearing, the Panel Chairman frames the issue for resolution by the Interest Arbitration Panel to be as follows:

> Whether or not to affirm the Panel's Findings and Award rendered April 12, 1991 given the Markham City Council's action of May 1, 1991 to reject the Award by way of its adoption of Resolution 91-R-007 and its subsequent reconsideration and rejection of Resolution 91-R-007 on May 15, 1991 thereby accepting the Award?

III. BACKGROUND

Subsequent to Interest Arbitration hearings held on dates of November 20, 1990, December 5 and 6, 1990, this Interest Arbitration Panel comprised of Neutral Chairman, George E. Larney, Employer Delegate, William C. Relford, and Union Delegate William C. Barron, issued a Findings and Award dated April 12, 1991 wherein, by majority vote, the Panel, in consideration of the sole issue before it, specifically, final determination of a third year wage reopener, ruled to accept the Union's final offer of a seven percent (7%) increase in salary for each Patrol Officer step and for the Sergeant classification over the Employer's final offer of a zero percent (-0-%) increase, that is, no increase in wages for the remaining third year of the three (3) year initial, 1988-91 Collective Bargaining Agreement. According to the record evidence, Counsel for the City of Markham, William E. Elston, received copies of the Panel's Findings and Award on date of April 18, 1991. Subsequently eleven (11) days later, Elston drafted a written memorandum dated April 29, 1991, directed to the Mayor of Markham, Evans R. Miller and Council members, wherein he apprised of the Panel's decision to award Police Department employees a seven percent (7%) increase effective August 1, 1990, and that he felt the decision was in error. 1/ In this same memorandum, Elston informed the recipients of the document that under the provisions of the Illinois Public Labor Relations Act (IPLRA) the City had twenty (20) days within which to either accept or reject the Findings and Award and that, as a result, he intended to propose a resolution at the City's next City Council meeting to reject the Findings and Award and setting forth reasons for the rejection as required by the statute. Elston stated further in the memorandum that given the press of other municipal business he was unable to submit the proposed resolution within the required forty-eight (48) hour notice requirement in advance of the May 1, 1991

1/ Nowhere in this memorandum (See Appendix A of this Supplemental Decision), did Elston apprise the Mayor or the City Council members, some of whom were newly elected and about to assume the official duties of their aldermanic offices on May 1, 1991, that the award of a seven percent (7%) increase was not a discretionary decision by the Panel, but rather resulted from the Panel having to choose among the two (2) final offers proffered by the Parties with the Union's final offer being seven percent (7%) as opposed to the City's final offer of absolutely no salary increase.

Council meeting and therefore suggested the Council waive this advance notice requirement period so that the proposed resolution could be passed thereby preserving the City's rights to appeal the Panel's decision. Elston concluded the memorandum by characterizing the Panel's Findings and Award as an extensive document suggesting that should anyone desire to inspect the decision he/she should contact the Office of the Mayor. Elston apprised he would ask the City Clerk, Valerie Hamiter, to attempt to reproduce the document upon their request (see Appendix A). 2/ The record evidence reflects that at the May 1, 1991 regularly scheduled City Council meeting, Elston presented a resolution to reject the Findings and Award rendered by the Interest Arbitration Panel, identified by the City and hereinafter known as Resolution 91-R-007, which resolution was moved to be voted on by Alderman Eugene James and seconded by Alderlady Geraldine Dudeck, and which passed by a vote of four (4) in favor and none (0) against. 3/ By letter dated May 3, 1991 and received by the Panel Chairman on May 7, 1991, Elston apprised of the City Council's action at its meeting of May 1st, and enclosing a certified copy of the Resolution (Panel Ex. 1). 4/

2/ A copy of this memorandum was not available at the Supplemental Hearing and therefore was not officially made part of the formal record. However, as there was testimony rendered concerning this memorandum, the Panel Chairman requested of Elston that he submit the memorandum subsequent to the close of hearing. Elston complied with the Panel Chairman's request submitting a copy of the memorandum at the same time he filed the post-hearing brief on behalf of the City, to-wit: June 19, 1991. The Panel Chairman has incorporated this memorandum in full as part of the evidentiary record before the Panel and has appended a copy hereto in this Decision as Appendix A.

3/ It is noted by the Panel Chairman that the vote of 4 to -0- as subsequently attested to and certified by the City Clerk had to be incorrectly recorded as the results further indicate none of the five (5) elected Council members were absent from the meeting and no one voted to abstain (See Appendix B of this Decision for the full Resolution and the Certification). Irrespective of whether four (4) Alder-persons actually voted in favor of the Resolution which does not place passage of the Resolution in any doubt as the statute requires a three-fifths (3/5) vote to reject the Panel's Award [IPLRA, Section 14 (n)], nevertheless, the fifth vote was not officially accounted for.

4/ As a copy of this letter was sent to Union Counsel Moss, the letter also served the purpose of notifying the Union of the City Council's rejection of the Panel's Findings and Award.

In response to Elston's notification of the City Council's rejection of the Panel's Findings and Award, Union Counsel Moss by letter to the Panel Chairman dated May 13 1991 (Panel Ex. 2), informed the Chairman the Union's position was that the Panel's Findings and Award was in accordance with Section 14 of the IPLRA and therefore, in accordance with Section 1230.110 (e) of the Illinois State Labor Relations Board's Rules and Regulations, a Supplemental Interest Arbitration hearing was required to be held within thirty (30) days after the issuance of the reasons for rejection. Given the respective positions of the Parties and the requirements set forth under Section 14 (n) of the IPLRA, the Panel Chairman ordered a Supplemental Hearing be convened on Friday, May 17, 1991, at 1:00 P.M. at the Offices of the Illinois Local Labor Relations Board located at 111 North Canal Street, Suite 940, in Chicago, Illinois. The Parties were notified of the Panel Chairman's order by letter dated May 14, 1991, and sent by United States Certified Mail Return Receipt Requested. (Panel Ex. 3). The Return Receipts indicate Elston received his letter on date of May 15, 1991, and that Moss received her letter on May 17, 1991, the date of the hearing. 5/ Additionally, on May 14, 1991, the Union forwarded to the Panel Chairman five (5) Subpoenae Ad Testificandum for the appearance of each City Council member which the Panel Chairman signed and returned to Counsel Moss' law offices for service. 6/ A sixth Subpoena Ad Testificandum for the appearance of Markham's Mayor, Evans Miller was signed by

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5/ In addition to this formal notification by Certified Letter, the Board Chairman had notified the Parties of the date the Supplemental Hearing would be held by telephone calls.

6/ The five (5) Council members served were: Geraldine Dudeck, Jack Genius, Eugene James, Anna Smith and David Webb (Panel Grp. Ex. 4). All complied with the Subpoenae except Alderman James, who, according to Union Counsel Moss, contacted her by telephone on May 16, 1991, and advised her he had a job he intended to report to on May 17th, and therefore, he had no intention of being present at the Supplemental Hearing. Moss further related she indicated to Alderman James he was subject to Subpoena which he could not be released from. Notwithstanding this advisory, Moss related James reiterated his intent not to be present at these supplemental proceedings (Tr. p. 8).

the Panel Chairman, returned to the Union for service on date of May 16, 1991 (Panel Grp. Ex. 4). 7/

According to the record evidence, the City Council held a regularly scheduled meeting on May 15, 1991 at which, in public session, Alderman Genius, a newly elected City Council Member representing the City's Third Ward, introduced a Motion to reconsider passage of Resolution 91-R-007, which was seconded by Alderlady Dudeck. This Motion passed unanimously by a vote of five (5) in favor and zero (0) against. Alderman Genius then followed with another Motion to reject Resolution 91-R-007, which was seconded by Alderlady Dudeck and which passed by the required three-fifths (3/5) vote. 8/ By rejecting Resolution 91-R-007, the City Council reversed its vote of May 1st to reject the Panel's Findings and Award. Thus, by rejecting Resolution 91-R-007, the City Council accepted the Panel's Findings and Award rendered April 12, 1991. Notwithstanding the results of this vote to accept the Panel's Findings and Award, the Supplemental Hearing proceeded as scheduled on the afternoon of

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7/ Like Alderman James, Mayor Miller deliberately flouted the authority of the Subpoena issued him and decided not to be present at the Supplemental Hearing as so commanded. Unlike Alderman James, Mayor Miller did not elect to advise of his intention in advance of the proceedings to disregard the Subpoena served on him. The Panel Chairman notes this is not the first time the Mayor has deliberately acted in defiance of authority governing hearings of this kind. This Panel Chairman recalls from first-hand knowledge that the Mayor failed to make himself available at proceedings held in connection with the original interest arbitration of the Parties initial 1988-91 Collective Bargaining Agreement. In those proceedings, Mayor Miller was the designated Employer Delegate to the Interest Arbitration Panel, yet the Mayor never presented himself at the hearings and never participated in his designated role as Panel Delegate. Additional evidence of the Mayor's apparent disdain, as well as contempt for lawful labor proceedings was furnished by the Union in its post-hearing brief submitted in this instant case. The Union submitted relevant portions of a transcript taken at an Unfair Labor Practice proceeding before the Illinois State Labor Relations Board which shows that while in the course of testifying on direct examination, Miller simply got up and left the proceedings because of his view the Hearing officer was biased against him. Following a brief recess whereupon the Mayor departed from the hearing, Elston exclaimed to the Hearing Office that he had been taken by surprise "by the things that have transpired."

8/ Those voting to reject Resolution 91-R-007 were Alderman Genius, Alderman Webb, and Alderlady Dudeck.

May 17, 1991 on rumors that Mayor Miller had vetoed the Council's action to reject Resolution 91-R-007. When at hearing Counsel for the City, Elston, was asked by the Panel Chairman as to whether he, on behalf of the City, was going to impart a brief history as to how these supplemental proceedings happened to be convened, Elston indicated he was not in a position to provide such a requested history, 9/

Alderman Genius, a former Police Officer for the City of Markham between 1978 and 1987 and presently a part-time practicing attorney and a security guard at the Cook County Forest Preserve, testified that he received a copy of Elston's April 29, 1991 confidential memorandum (See Appendix A) in advance of the May 1st Council meeting, but at the time, he was not as yet a sworn Council Member. 10/ Genius related that while he read the Memorandum and was aware he could contact the Mayor's office to inspect the Panel's Findings and Award, he did not, in fact, inspect said Findings and Award prior to the May 1st Council Meeting. Genius testified that at the beginning of the May 1st

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9/ The Panel Chairman's reason for requesting such a brief history was to verify whether, in fact, Mayor Miller had vetoed the Council's action to reject Resolution 91-R-007. Even though Elston was unable to impart information that would enlighten the Interest Arbitration Panel on this point, the Panel Chairman subsequently learned through a tape recording of the May 15, 1991 Council Meeting provided to him in response to a directive that said tape be given to him for Panel review, that the Mayor cannot act to veto a Council action before the next Council Meeting after the action has been taken. In the May 15th Council meeting, the Mayor, in vetoing Ordinance 91-0-1404, which had been passed by the City Council at the regularly scheduled May 1st meeting, informed the Council that according to the law, citing Chapter 24, Section 31811, the Mayor is empowered to veto an ordinance at the meeting following the meeting in which the ordinance was passed. Therefore, Miller could not have acted to veto rejection of Resolution 91-R-007 by the time this Supplemental Hearing was convened. However, a presumption exists, based on the City's filing of a post-hearing brief in these proceedings a month after the hearing, that the Mayor did subsequently veto the Council's act to reject Resolution 91-R-007.

The Panel Chairman notes for the record that he received the audio cassette tapes of the May 15th Council Meeting on date of June 19, 1991.

10/ Genius was sworn in as a Council member at the May 1, 1991 Council Meeting.

Council Meeting, he was handed a copy of Resolution 91-R-007 by Elston, but that no copies of the Panel's Findings and Award were made available. Genius further testified that even though the Resolution 91-R-007 had been distributed at the beginning of the meeting, it was not until the last five (5) minutes of the meeting that the Council undertook consideration of Resolution 91-R-007. 11/ According to Genius, Elston apprised the Council Members the Panel had awarded the Police a seven percent (7%) increase, but that there was no discussion regarding the Panel's rationale for making such an Award. Genius also noted that whereas Elston recommended to the City Council that it reject the Panel's Findings and Award so as to appeal the Award, there was no discussion devoted to any of the paragraphs contained in Resolution 91-R-007. According to Genius, a motion was made by Alderman Eugene James to reject the Award by accepting Resolution 91-R-007, and that he (Genius) voted in favor of the Resolution, as did the other Council Members without having knowledge as to the Panel's rationale. Genius, in his testimony, indicated that while having some familiarity with the Illinois Public Labor Relations Act, he could not recall whether he was aware at the time of the vote in favor of accepting the Resolution that the full cost of appealing the Award in supplemental proceedings was to be borne by the City, but that if he had not been told by Elston at the Council Meeting, he subsequently learned of this obligation soon thereafter.

Genius testified that the following day, May 2, 1991, he went to the Mayor's Office and demanded to be given a copy of the Panel's Findings and Award, and that he made this demand of Esther Simmons, the Mayor's Secretary. Simmons responded by calling the Mayor, and it was only after getting the Mayor's okay that, according to Genius, she made and gave him his own personal copy of the Findings and Award. Genius related that after securing the copy, he reviewed the Panel's Findings and Award, reading seven (7) to eight (8) pages a night, and upon completion, he concluded he had been misled by the Mayor and others regarding the Panel's Award, mostly by way of omission. Genius testified he formed the opinion that the City's final offer of a zero percent (-0-%) increase was unreasonable and felt that in comparison to the Union's seven percent (7%) final offer, the City's position should have been something. Genius further related that, in discovering the Panel had to choose one final position over the other, if he had been the Panel Chairman, he would have made the same decision. Genius testified that, based on his review of the Panel's Award and his strong views regarding underpaid police officers which he finds to be very upsetting, he changed his position regarding his vote to reject the Panel's Findings and Award.

11/ According to Genius' characterization of this meeting, it was an intense meeting devoted mainly to other issues.

Genius testified that at the next City Council Meeting held May 15, 1991, Elston, in the midst of giving the City Attorney's report, asked for Executive Session and once in Executive Session, he advised the Council Members they had a decision to make regarding whether they wanted to proceed with the appeal or overturn the decision to reject the Panel's Award. 12/ Genius testified that, in this Executive Session, he apprised the others he had read the Panel's Findings and Award and stated his belief the City was in error in not voting to accept the Award. Genius related he further imparted to the others his personal belief that in not having had the information before them prior to voting at the May 1st meeting, they had been misled by their predecessor Council Members, but particularly the Mayor and, as a result, he intended to raise the matter of reconsideration, whether anyone else voted on it or not. According to Genius, Alderlady Dudeck made the same observations he did. Genius related the Mayor took the position that the Council should not approve the Panel's Award because the Teamsters were trying to make an example out of Markham, and if the Teamsters got the seven percent (7%), then the City was going to have to give the same increase to the firefighters, public works, and secretaries. The Mayor further asserted everybody is going to want all the money, and the City does not have it. According to Genius, an argument ensued between himself and the Mayor regarding the treatment of City employees, wherein he related to the Mayor his past experience as an employee of the City of Markham, stating his belief that if the City treated the Police and other employees a little bit better, the City would not be in this situation. As noted previously, upon exiting the Executive Session, Genius moved to reconsider Resolution 91-R-007 and, after passing unanimously, he moved to reject Resolution 91-R-007 and that this passed by the necessary three-fifths (3/5) vote of 3 to 2. Genius testified that prior to appearing as a witness in this hearing, he received a telephone call on the morning of May 17th from Alderlady Dudeck wherein she apprised she had been in contact with Elston, and that Elston related it was his understanding the Mayor had vetoed the Council's action to reject Resolution 91-R-007.

Genius related that after the Council Members acted to reject Resolution 91-R-007, thereby accepting the Panel's Findings and Award, the Mayor launched into another speech very similar to the one he made in Executive Session. This speech and the interchange that followed was recorded and is memorialized on the

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12/ The evidentiary record was silent regarding Elston's reasons for posing such a choice to the Council Members, especially in view of the fact of the unanimity of the vote to accept Resolution 91-R-007 two (2) weeks before and in light of the fact that the machinery was underway to convene a Supplemental Hearing two (2) days hence.

tape cassettes forwarded by the City to the Panel Chairman. 13/ As reflected by the tapes, the Mayor was discernibly upset by the vote to reject the Resolution 91-R-007 as judged by his tone of voice and vitriolic commentary. The Mayor began by telling the Council Members that others employed by the City, naming specifically Public Works employees and Firefighters, would also have to be given a seven (7%) raise, asking where does it stop. The Mayor recalled the criticism by the citizenry of the Markham Community about City government spending and wasting too much money and noting that the City currently had an indebtedness of six hundred thousand ($600,000) dollars. The Mayor made the observation that eighty-percent (80) of the municipalities in the country were bankrupt, and that the City had to be crazy to give a seven percent (7%) increase on a wage reopener. The Mayor stated he was for Unions but opined the City was paying a big price for making inroads with "the good ole boys." The Mayor accused the Council of giving away the house to the Police and warning that, as a result, layoffs were on the way. The Mayor asserted the Council had to stop being foolish kids and had to take a stand or otherwise the Unions would bankrupt the City. The Mayor contended that Markham did not have the resources of a Calumet or an Orland Park, and, therefore, should not be compared with those communities. Instead, the Mayor contended that communities such as Dixmoor and Harvey were the comparable communities to Markham. 14/

13/ As testimony by Genius revealed that general proceedings of the City Council held in public session are taped, the Panel Chairman at the conclusion of the hearing, requested Elston to provide the Panel with copies of the tapes for both the May 1st and May 15th Council Meetings. The Panel Chairman notes the original tapes in two (2) cassettes of the May 15th meeting were provided to him on date of June 19, 1991, but that the tapes of the May 1st meeting were not provided. No explanation was given by Elston as to why the tapes of the May 1st meeting were not offered as requested. The Panel Chairman does note for the record that in transmitting the request for the tapes, Elston in a memorandum to City Clerk Valerie Hamiter, dated June 17, 1991, makes reference to a request for only the tape of the May 15th meeting. This is contrary to the original request made by the Panel Chairman for the tapes of both meetings as recorded on page 95 of the official transcript of these supplemental proceedings.

14/ This observation by the Mayor is especially noteworthy for its irony, as the City failed to submit the names of any communities in the Interest Arbitration hearing it believed to be comparable communities.

In an acrimonious verbal interchange between the Mayor and Alderman Genius, which followed the Mayor's speech, Genius noted the City had exceeded its legal fees by $51,649 dollars over what had been budgeted and suggested to the Mayor that the $30,000 dollars needed to fund the awarded salary increase for the Police could be obtained by cutting the City's legal fees. 15/ In a heated exchange, Genius commented that the City should draw the line but not by "jamming" the Police. 16/

In other testimony, Genius asserted his concurrence with the Panel's stated views, that low pay plays a major impact on a police officer's decision as to whether or not to remain with the Police Department. Genius recalled that during his tenure of employment with the Markham Police Department approximately fifteen (15) officers or the equivalent of half the force quit the Department, and that essentially their voluntary departure can be attributed to two (2) basic reasons, to-wit: (1) for political reasons; and (2) for economic reasons. According to Genius, the former reason has to do with the way in which Department Management treats officers, which is very poorly.

15/ At another point in the meeting discussing other issues, Genius brought to light that the Mayor's son, Steven Miller, employed by City Counsel Elston was billing the City legal fees in the amount of seven hundred ($700.00) seven hundred dollars a day for services performed as a prosecutor for the City in Traffic Court. Genius noted this was especially improper as Steven Miller had recently been convicted of an unlawful act and was subject to six (6) months probation. The Mayor was particularly incensed at Genius' remarks concerning his son, and a general pandemonium broke out for several minutes on the Council floor. Genius noted that on the bill list for two (2) weeks' legal work, the City was being charged seven thousand, one hundred ($7,100) dollars.

16/ Other portions of the taped Council meeting of May 15th serve to highlight an intense personal antagonism between Mayor Miller and Alderman Genius. Genius came under attack by the Mayor for his making arrests in the City of Markham and calling on the Police for backup assistance. It was the Mayor's position that despite Genius once having been a police officer in Markham, he was no longer an officer, and that his position as a Forest Preserve Security Guard did not give him any authority in Markham. The Mayor cautioned Genius that with respect to his dealings with Police in Markham, they would have to be conducted in his role as just another citizen of the Markham community. At another point in the meeting, the Mayor came under criticism for permitting individuals who were not employees of the City to accompany him while traveling in an official City vehicle.

Under cross-examination and referencing specific individual officers by name who left the Department, Genius was unable to state with certainty other than in one case, that they had left the Markham force for reasons other than wages.

Based on the foregoing background, the issue of reconsideration of the Panel's April 12, 1991 Findings and Award is now before the Panel for a final determination.

IV. CONTENTIONS

EMPLOYER'S POSITION

In its post-hearing brief, incorporated in pertinent part herein as Appendix C, the Employer asserts several arguments in support of its position that the Panel reverse its initial ruling in the Findings and Award rendered April 12, 1991 (See Appendix C and Appendix B for the arguments asserted).

UNION'S POSITION

In its post-hearing brief, incorporated in pertinent part herein as Appendix D, the Union advances several defenses in support of its position, the Panel should not reverse its initial Findings and Award (See Appendix D for the defenses advanced).

V. OPINION

At the outset, the City raises a procedural defect asserting that the Panel is without authority to proceed in conducting this supplemental hearing because the Panel Chairman failed to make notification directly to the Employer's Delegate, William P. Relford of the date, time, and place of hearing. The Panel Chairman notes for the record that while the position of Delegate is mandated by the law, the person serving as Delegate is a designated representative of the respective Parties to the interest arbitration. Thus, any notice by the Panel Chairman to the respective advocates representing the Parties in such interest arbitration proceedings regarding date, time and place of hearing must also serve as notice of this same information to the respective Delegates at the same time. At least with regard to all interest arbitration proceedings this Panel Chairman has conducted with these same Parties, the instant proceeding being the fourth such case, he has never effected a direct communication with the selected Delegates. Rather, the communication regarding date, time and place of hearing has always occurred among the Panel Chairman and the advocates without exception. The advocates in turn have notified their respective Delegates to attend a scheduled hearing in the same manner in which they have notified their respective witnesses. This surely must have been the procedure comprehended by the Employer to exist and to be acceptable since, in the immediate preceding interest arbitration proceeding, three hearings were held and in each instance, the date, time, and place were arranged between the Panel Chairman and the advocates and, in each instance, the advocates arranged to have their respective Delegates in attendance. As conceded by the Employer's Advocate, Mr. Elston at the outset of this May 17, 1991 supplemental hearing, he did, in fact, notify Delegate Relford of the date, time and place of the hearing and did not know the reason for his non-attendance. The Panel Chairman is puzzled as to why Mr. Elston would make such notification to Relford if he believes the responsibility for such notification is strictly within the domain of the Panel Chairman's scope of authority. Since neither Party, but particularly the Employer, has previously contested the manner in which notification has been made by the Panel Chairman regarding date, time and place of hearing, such challenge asserted here with regard to these proceedings is hereby completely rejected as lacking any merit whatsoever.

Additionally, the Panel Chairman made it quite clear in his May 14, 1991 letter to the Parties' advocates, Mr. Elston and Ms. Moss, establishing the date, time and place of the supplemental hearing that, unless cause could be shown as to why the supplemental hearing should not convene, all Parties were ordered to appear at the date, time and place specified. The Panel Chairman stated the caveat that if only one Party should appear, the Chairman would conduct an ex parte hearing, upon which the Panel would issue its findings, based on the evidence

adduced (Panel Ex. 3). Quite frankly, the Panel Chairman was prompted to specifically state this caveat, given the propensity of Markham's Mayor, Evans Miller, to flout the law. This Panel Chairman recalls his initial dealings with Mayor Miller in early 1989 when in the very first two interest arbitration cases, Mayor Miller was the designated Delegate of the City, yet he failed to attend the hearings out of an apparent animosity for the process. It would appear, and very strongly so, that Mayor Miller is disdainful of any process, procedure, or individual whom the Mayor perceives or presumes is encroaching on his realm of authority. The best evidence of this bellicose attitude is reflected by three (3) examples, to-wit: (1) his sudden departure from an Unfair Labor Practice hearing conducted by the Illinois State Labor Relations Board while in the midst of testifying, motivated by his expressed view, which appears to arise from a paranoid perspective, that the Hearing Officer conducting the proceedings was biased against him and was attempting to humiliate him. Even Mr. Elston was taken by surprise at the Mayor's volatility and child-like behavior in storming out of a legal proceeding. It is noted that the Mayor exited the proceedings at a point in time when he was being questioned by Mr. Elston, the City's retained Counsel. It is difficult to imagine how the Mayor would have conducted himself if he had remained long enough to be cross-examined by Union Counsel; (2) his complete disregard for the legal process as evidenced by his failure to comply with the Subpoena Ad Testificandum issued for his appearance at this subject supplemental hearing. Additionally, the Mayor's contemptuous conduct is all the more notable in this instance because of his failure to explain or to proffer reasons, if any, in advance of the supplemental hearing as to why he was unable to appear. Even Alderman James, who also failed to comply with a Subpoena to appear had the wherewithal to contact Union Counsel in advance of the hearing to notify her he was unable to appear because he was electing to report to work instead; and (3) his conduct at the May 15, 1991 City Council meeting when, several times throughout the meeting, he launched into a tirade in disagreement over the Council's action to reject Resolution 91-R-007 and in his verbal interchanges with Alderman Genius regarding a couple of issues wherein at one point he told Genius that he had "something on him" and would make it known at some future date. In any event, no cause was shown by the Employer as to why this supplemental hearing should not convene, and the fact that the City failed to have its Delegate to the Panel present at the hearing is no reason to place the proceeding in question regarding its lawfulness, especially in light of the fact that the supplemental hearing was made necessary as a result of the Mayor's apparent election to veto the act of the City Council to reverse its rejection of the Panel's April 12, 1991 Findings and Award by the required three-fifths (3/5) majority.

With regard to the merits of the appeal itself, it is abundantly clear that the City has based its case here on no new evidence,

nor presented any sufficient grounds for setting aside the Panel's Findings and Award. The City's only argument, when stripped to the basics, is that the City does not like the Award. More precisely, the Mayor does not like the Award, as evidenced by the fact he had to veto an act passed by the City Council in order to reject the Award and appeal it to this supplemental hearing. The Panel holds the view it does not have to defend the rationale it advanced in support of accepting the Union's final offer over that of the City's for essentially two reasons, to-wit: (1) the City's failure to identify comparable communities by which to make the critical comparisons necessary in determining wage/salary issues in an interest arbitration case; and (2) the fact that after reviewing the Award, three-fifths majority of the City Council, following a unanimous vote to reconsider Resolution 91-R-007, voted to reject the Resolution, thereby accepting the Panel's Findings and Award. With respect to the former point, it is interesting to note that among the remarks made in the so-called "speech" by the Mayor after the City Council had acted to accept the Panel's Award, he stated that Markham should not be compared with communities like Calumet and Orland Park, but rather it should be compared with such communities as Dixmoor and Harvey. The Mayor's remarks would appear to support the conclusion that he had not read the Panel's Findings as Calumet and Orland Park were not among the thirteen (13) communities advanced by the Union as being comparable to Markham. Additionally, if the Mayor, by his remarks, was familiar with communities with which Markham should have been compared, then he was remiss in his role as Chief Executive Officer of the City in not apprising Mr. Elston that the City did have a position with respect to comparable communities. Having no evidence before it from the City regarding comparable communities, the Panel's only guidance with respect to this critical component of an interest arbitration case came from the list of the thirteen (13) communities proffered by the Union. Absent any evidence in contravention of the Union's evidence on comparability, the Panel had no other alternative but to rely on the only evidence on this point that was put before it. The Panel finds even more amazing that even in these supplemental proceedings, the City has not alluded to the communities mentioned by the Mayor in his remarks at the May 15th City Council meeting as being communities more comparable to Markham than any of the communities identified by the Union. With respect to the latter point, the City continues to allege that the Panel has not given the factor of its deficit budget position the weight it deserves and that it is this factor rather than comparability comparisons that is the preeminent consideration. However, it appears from the Council's action of rejecting Resolution 91-R-007 after having reviewed the Panel's Findings and Award that a majority of the Council does not share the view advanced by the City in the interest arbitration case that employees of the City should be made to bear the economic brunt of the City's current deficit financial position, and that it was reasonable for the City to proffer a final offer of a zero percent (-0-%) increase.

The Panel is persuaded that the wisdom espoused by the majority of the City Council should not be dismissed because the final result is deemed by the Mayor to be personally odious. Had the Mayor acted out of true concern for the City in vetoing the Council's action to reject Resolution 91-R-007, this Panel would have applauded such a commendable view, but the evidence before it is such that he did not. Rather, it is evident from a review of the audio tape of the May 15, 1991 Council Meeting that the Mayor was angry at having to yield his power over events he became unable to control. The Mayor believed he had been successful in blunting the Panel's Award by keeping Council Members ignorant of the results and causing a vote to occur based solely on the representation that the Panel had acted to impose a seven percent (7%) increase in wages for the Police for the third year of the initial labor contract. Out of context, it was perceived by the Council members that the decision of the Panel was wholly discretionary and simply out of whack with the economic standing of the community as well as the overall trends of the economy as a whole as reflected by the main economic indicator, the Consumer Price Index (CPI). A majority of the Council Members, however, reached a different conclusion when they became enlightened by the facts, which facts they secured from actually reading the Panel's Findings and Award. There is absolutely no question in the Panel's view that the Mayor and Alderman Genius have an acrimonious relationship, but this fact alone cannot account for the change of position the majority of the City Council expressed when it voted to reject Resolution 91-R-007. Rather, the change in position came as a result of the majority reaching the conclusion after reading the Panel's Findings and Award that the City had been unreasonable in advancing a final offer of zero percent (-0-%) increase. Alderman Genius said it best when he stated the view that had the City offered a four or five percent (4% or 5%) increase, he could have accepted this position, but he concluded the Panel had no other choice but to select the Union's final offer of seven percent (7%) in light of the City's position of no increase.

As resistant and impervious as the Mayor is to listening to others' points of view, the fact is that, in this case, the points expressed by the majority, voting in favor to reject Resolution 91-R-007, but particularly those expressed by Alderman Genius, should be carefully considered by the Mayor. When the Mayor asked the Council Members who had voted to reject Resolution 91-R-007 where the money was going to come from to fund the wage increase granted by the Panel, Alderman Genius noted that the City could reduce its legal expenditures which then had exceeded the budgeted amount by $51,649. The Mayor appears to find this an unacceptable approach, and one discovers the reason why from listening to other portions of the Council Meeting where it is revealed that the Mayor's son, Steven, works for Mr. Elston and on occasion, Steven Miller has billed the City for as much as seven hundred dollars ($700.00) in a day for performing legal work for the City. The Mayor's resistance to an increase in Police pay is all the more curious in view of his

statement at the May 15th Council Meeting that the cause for the City running a deficit is that it continues to perform the function of garbage collection. Thus, despite the Mayor's knowledge of the cause of the economic problem, he insists that the line be drawn at granting the Police any increase in pay. The Panel quite frankly finds this view baffling.

Rather than harrangue this Panel's Findings and Award as misguided and unacceptable, the Mayor should reexamine his stewardship of the City of Markham. This Panel is more convinced than it was in the first instance that notwithstanding the current deficit position faced by the City, the City can make adjustments in its spending priorities to find the relatively small sum of money required to fund the wage increase awarded to the Police. The Panel suggests that, if the heart of the deficit problem is garbage collection, then the Mayor should work with the City Council to solve this particular problem. The Panel is persuaded that legal fees have been excessive and should be scrutinized, especially in light of an allegation there may exist a conflict of interest as a result of the Mayor's son performing City business for which services he is being handsomely paid. The Panel can guarantee that if Police Officers were earning as much as seven hundred dollars ($700.00) in a day for services performed, these proceedings would never have occurred.

In sum, the Panel finds absolutely no merit in the City's appeal of the Findings and Award rendered by us on April 12, 1991.

VI. A W A R D

Based on the rationale set forth in the preceding Opinion Section, the Panel rules to reject the City's appeal, thereby affirming its award of the Union's final offer of a seven percent (7%) wage increase effective August 1, 1990. The Panel adds to its ruling that given the fact the third year of the initial Collective Bargaining Agreement has now ended, that the monies owed to each police officer entitled to receive the increase be disbursed in the forthcoming pay period immediately following the receipt date of this Award.

Pursuant to Section 14(0) of the Illinois Public Labor Relations Act, the Panel orders the City to authorize payment immediately of all reasonable costs associated with this supplemental proceeding including both the exclusive representative's reasonable attorney's fees, as established by the Board and all fees and expenses submitted by the Panel Chairman.

The Panel retains jurisdiction over this matter until such time the Award, as stated hereinabove, is fully complied with.

AWARD OF APRIL 12, 1991 AFFIRMED

GEORGE EDWARD LARNEY
Chairman, Interest Arbitration Panel

CONCURRING

CONCURRING

DISSENTING

WILLIAM P. RELFORD
Employer Delegate

DISSENTING

WILLIAM P. BARRON
Union Delegate

Suite 800
29 South LaSalle Street
Chicago, Illinois 60603
(312) 444-9565

August 7, 1991

APPENDIX A

WILLIAM E. ELSTON, JR.
ATTORNEY AT LAW

1525 EAST 53rd STREET
FOURTH FLOOR
CHICAGO, ILLINOIS 60615
(312) 752-4442

FAX (312) 752-7624

April 29, 1991

M E M O R A N D U M

TO: HON. EVANS R. MILLER, MAYOR
COUNCIL MEMBERS

SUBJECT: INTEREST ARBITRATION DECISION, TEAMSTERS, LOCAL 726 (Police Department Employees) ISLRB Case No. S-MA-90-147

+ + + + +

N. B., THIS COMMUNICATION SHOULD BE CONSIDERED A CONFIDENTIAL COMMUNICATION BETWEEN ATTORNEY AND CLIENT.

+ + + + +

On April 18, 1991 a decision in the above entitled matter designated "Findings and Award" was received by the undersigned.

The essence of the decision was that the arbitrator determined that the Police Department employees were entitled to a seven (7%) wage increase, effective August 1, 1990, pursuant to re-opener provisions of the then current collective bargaining agreement.

Naturally I feel that the decision is in error. Under the provisions of the Illinois Public Labor Relations Act, Chapter 48, § 1601 et. seq. the municipality has a period of twenty (20) days within which to accept or reject the findings and award. In order to reject the decision and return it to the tribunal for further deliberations the legislative body must act within that twenty day period.

The purpose of this memorandum is to notify all to whom it is addressed, especially the newly elected aldermen of this fact.

I propose to present to the council, at the next meeting, a proposed ordinance or resolution rejecting the findings and award and setting forth reasons for such rejection as required by law.

Unfortunately, because of the press of other municipal affairs,

I have not been able to complete the recommendations at his point. I do hope to have those recommendations to you in advance of the meeting, though not within in the forty-eight hour period. Once you have received my recommendations and decide upon your course of action I would suggest that the forty-eight hour requirement be waived and the proposed legislation be passed in order to preserve our rights of appeal of the decision of the Interest Arbitration Panel should you choose.

The Findings and Award is an extensive document and should you desire to inspect it I would suggest that you contact the office of the Mayor. If possible I will ask the Clerk to attempt to reproduce the document at your request.

E N D

at

cc: Mrs. Hamiter
Mr. Bradford
Chief Crawford

Memorandum of April 29, 1991

APPENDIX B

TELEPHONE: (708) 331-4905
FAX (708) 331-8667
POLICE DEPT. (708) 331-2171

City of Markham

16313 KEDZIE PARKWAY • MARKHAM, ILLINOIS • 60426

Evans R. Miller
Mayor

Valerie Hamiter
City Clerk

Otto M. Bradford
City Treasurer

CERTIFICATION

I, VALERIE HAMITER, do hereby certify that I and the duly elected and qualified City Clerk of the City of Markham, Cook County, Illinois.

I FURTHER CERTIFY that the attached is a true and correct copy of Resolution No. 91-R-007 passed by the City Council of the City of Markham at their Regular Council meeting on the 1st day of May, 1991.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City this 3rd day of May 1991, at Markham, Illinois.

Valerie Hamiter
Valerie Hamiter, City Clerk

[S E A L]

THE CITY COUNCIL OF THE CITY OF MARKHAM, ILLINOIS

Resolution No. 91-R-007

RESOLUTION REJECTING FINDINGS AND
AWARD OF ARBITRATION PANEL IN
THE MATTER OF CITY OF MARKHAM AND TEAMSTER LOCAL 726
ILLINOIS STATE LABOR RELATIONS BOARD
CASE NO. S-MA-90-147

WHEREAS, the Mayor and City Council of the City of Markham, Illinois have been advised by the City Attorney of the issuance of Findings and Award by the Interest Arbitration Panel in the matter of The City of Markham, Illinois and International Brotherhood of Teamsters, AFL-CIO; Local 726 in Illinois State Labor Relations Board Case No. S-MA-90-147 determining that the Panel adopts and awards the Union's final best offer on the sole issue of wages and directs the Employer to implement the seven (7%) per cent increase in wages effective August 1, 1990. Said Findings and Award being dated April 12, 1991 and served upon the City Attorney on April 18, 1991.

FURTHER, the Mayor and City Council have been advised by the City Attorney, William P. Relford, Sr. a panel member and by the City Treasurer that in their opinion the said Findings and Award is in error; and, that said members of the City Council and the Mayor have reviewed said award; NOW:

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARKHAM, ILLINOIS as follows:

1. That, pursuant to the provisions of Chapter 48, ¶ 1614 (n) Illinois Revised Statutes, the governing body of the City of Markham, Illinois hereby rejects the arbitration panel's Findings and Award on the issue of wages effective August 1, 1990.

2. That said rejection is based on the fact that the Findings and Award appear to be contrary to the manifest weight of the evidence and not supported by substantial evidence; that the panel did not give sufficient consideration to the testimony of the City Treasurer; that the panel did not give valid consideration to the economic and financial condition of the City of Markham and its ability to pay the wages contained in the Findings and Award; and that the panel has undertaken a legislative function which is reserved to the legislative body of the City of Markham.

3. That the Chairman of the Interest Arbitration Panel has demonstrated a bias against the City of Markham and in favor

of the Union; That the panel has made assumptions not supported by evidence or testimony and has placed a reliance upon the testimony of the Union expert not justified by the nature of that testimony.

4. Further, the governing body of the City of Markham additionally adopts the brief of the City of Markham as a further and additional basis for the rejection of the Findings and Award of the Interest Arbitration Panel

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARKHAM, ILLINOIS

ON THE _1st DAY OF MAY, 1991 ON THE MOTION OF ALDERMAN

EUGENE JAMES AND THE SECOND OF ALDERMAN

GERALDINE DUDECK AND THE FOLLOWING ROLL CALL VOTE:

4 AYES, 0, NAYS, 0 ABSTSTENTIONS and 0 ABSENT

APPROVED BY ME THIS ____ DAY OF MAY, 1991

Evans R. Miller

EVANS R. MILLER, Mayor

ATTEST:

Valerie Hamiter

VALERIE HAMITER, Clerk

Resolution No. 91-R-007

APPENDIX C

III.

ARGUMENT

The hearing held by the Panel of Arbitration was a very short and limited proceeding, consisting primarily of argument, the testimony of one witness and the introduction of exhibits, most of which had to do with procedural aspects of these proceedings.

The position of the City of Markham was set forth in the Resolution of Rejection (Panel Ex. 1) and the opening statement of counsel which was designated the argument of the City of Markham (Tr. p 17 - 28).

The employer is particularly concerned as to the evaluation by the panel of the proposed comparability of Markham to the other communities offered by the union as elements of comparison by which to determine both the ability of the City to pay and the relative pay scales of the police forces (Tr. p 19 - 21). The union points out that the City did not present evidence concerning the comparability of communities (Tr. 31). However, the advocate does not point out, as the City did in its initial

brief, that the evidence admitted by the panel on the question of comparability clearly shows that Markham is the lowest municipality of the group suggested in terms of value of property and sales tax income (Union Ex. 6 & 7). The reality of the matter is clear regardless of where the bit evidence arose. Again we urge that the testimony of the City Treasurer, the auditor and the expert in the initial hearing is clear and persuasive as to the desperate financial condition of the city.

As pointed out in the initial brief in this matter, arbitrators and panels have wrestled with concern as to a determination of the ability of the City to pay. This panel does not evaluate the factors mandated for a determination of economic issues as set forth by the Act in a vacuum, it must act with reason and concern. To refer again to the matter of The City of DeKalb and Dekalb Professional Firefighters Association; ISLRB No. S-MA-87-26, though decided contrary to the interest of the City in these proceedings, the arbitrator indicated that he is duty bound to consider each element and then to arrive at his decision based both on the concern for each element and his weighted consideration of those elements when taken as a whole. The arbitrator expressly eliminates the concept of ordering the imposition of new taxes and ...that other funding sources are available and might be utilized. (Lexis opinion p-8)

The city suggest that in its effort to assess the significance of each of the elements of proof the panel has decided, notwithstanding the obvious inability of the union to show the existence of funds sufficient to pay the requested wage increase,that it can adopt the approach of the union expert over the practical and hands-on consideration of the employers financial authority, the Treasurer, and the clear showing of the most recent audit of the continuing deficit. The panel seems to disregard reality again by stating that funds appear

to be available in other accounts. The panel goes on, in its Findings and Award to point our that even by the employers testimony the extent of the deficit is being reduced each year, ergo, you can pay the raise. Such reasoning suggest an "Alice in Wonderland" approach.

Even more so, the reliance on the East St. Louis case by the panel suggest that notwithstanding the condition of this city, or any other, that ruling is sufficient precedent to overcome a showing of lack of funds or inability on the part of the employer to pay any last best offer of a union. Such a ruling and reliance will and does announce the death knell of any possibility of this, or any other municipal employer, to resist any union wage demand. In this case a demand that is clearly above even the showing of the current cost of living index increase. Such a ruling is, even more so, an announcement to all municipal employers that even in the worst case, which we feel East St. Louis typifies, resistance to any wage demand is doomed to failure.

The one witness who was called by the union makes no contribution to the enlightenment of the panel other that to say that he thinks that the Findings and Award was well written and that had he had the opportunity to read the decision before hand he would not have voted to reject that decision (Tr. p 54, 56, 76 - 81 & 91). In that testimony the witness indicates his now support of Findings and Award by the panel without benefit of transcript review. The remainder of the testimony of that witness relates to a parlimentary action after the vote by the City Council to reject the Findings and Award. It is clear from both the witnesses testimony and his cross examination admission that he is generally opposed to the position of the Mayor on this and other points and that you might characterize their relationship as one of strong disagreement (Tr. 90). This

attitude on the part of the witness coupled with his prior employment as a Markham Policeman (Tr. p 78) would tend to indicate a bias on the part of the witness and any testimony given should be viewed in that light.

The witness attempts to show that alleged low pay has been the reason for the departure of substantial numbers of Markham policemen. However, on cross examination he is unable to establish low pay as a basis for the departure of any of the named policemen. The essence of that testimony might be that the officers left because of more prestigious employment and other attractions rather than pay considerations (Tr. 85 90).

Finally, the Act requires that the Chairman ...shall call together the panel and convene a supplemental interest arbitration hearing within 30 days... The testimony herein establishes that the Chairman did not notify the employers' representative of the convening of the panel for the supplemental hearing (Tr. p 11).

Again, at risk of redundancy, the City of Markham does hereby adopt and urge in support of its rejection of the Findings and Awards of the Panel of Arbitration all prior arguments, evidence, testimony, objections, the record of proceedings of both the initial hearing and of the supplemental hearing, the brief and such other documents submitted. Further, by participating in these proceedings the City of Markham does not waive its objection as to the authority of the Chairman to issue an order directing the escrowing of funds by the City of Markham regarding the expenses of these supplemental proceedings.

IV.

CONCLUSION

In conclusion the City would urge the panel, without waiving its objection to the holding of the hearing without the entire panel being present, to reconsider the initial Findings and Awards in the light of the rejection by the legislative body and to issue Supplemental Findings and Awards denying the relief requested by the Union, being their final best offer of a seven (7%) per cent wage increase pursuant to the wage re-opener provision of the collective bargaining agreement then in existence, effective August 1, 1991.

RESPECTFULLY SUBMITTED,
CITY OF MARKHAM, ILLINOIS

BY: _____
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Attorney for City of Markham
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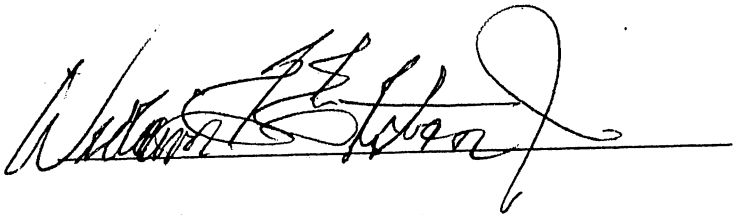
Chicago, Illinois 60615
(312) 752-4442

CERTIFICATE OF SERVICE

WILLIAM E. ELSTON, JR., the attorney, hereby certifies that he served the original and copies of the above and foregoing Brief of the City of Markham upon George E. Larney, Labor Arbitrator, Suite 800, 29 South LaSalle Street, Chicago, Illinois 60603 and copies of the same document upon Lisa B. Moss, Esq., 225 West Washington Street, Suite 1000, Chicago, Illinois 60606, by depositing same in an envelope with first class postage fully prepaid in the U. S. Postal Service mail chute located at 1525 East 53rd Street, Chicago, Illinois 60615, prior to 5:00 p.m.

on June 16, 1991.



APPENDIX D

ARGUMENT

I.
THIS MATTER IS NOT PROPERLY BEFORE THE ARBITRATOR FOR A SUPPLEMENTAL PROCEEDING AS THE MAY 15TH VOTE OF THE CITY COUNCIL ADOPTED THE FINDINGS AND AWARD

Alderman Genius' uncontroverted testimony is that on May 15, 1991 the Council voted unanimously to reconsider the May 1, 1991 Resolution. The Council then voted three to two to reject the Resolution, thereby adopting the Award.

Section 14(n) of the Act provides in relevant part:

> The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, ..., such term or terms shall become a part of the collective bargaining agreement of the parties.

Ill. Rev. Stat., 1989, ch.48 ¶1614(n).

The Council's 3/5 vote to reject the Resolution, thereby adopting the Award, obviously does not meet the requisite 3/5 vote to reject the Award. Thus, the Award became final.

Although the City noted and Alderman Genius testified that

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[5] On May 16, 1991 Alderman James contacted counsel for Local 726 to advise her that he had a job that he intended to report to and had no intention of appearing at the hearing (Tr.8, 16).

he had received a telephone call from Alderwoman Dudeck, the morning of the supplemental proceeding, advising Alderman Genius that she had heard from the City Attorney, William Elston, that the Mayor had vetoed the ordinance (Tr.58-59), no such evidence was ever presented by the City either during the supplemental proceeding in this matter or prior to the submission of the parties' post-hearing briefs. In fact, although counsel for the City was asked by the Chairman whether the City intended to provide a brief history as to why the parties were convened for a supplemental proceeding, the City declined to do so (Tr.16). Thus, there is no record evidence that any veto was exercised by the Mayor, assuming such a veto were appropriate.[6] Moreover, in

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[6] Section 14(n) of the Act requires that the rejection of an interest arbitration award can only occur "by a 3/5 vote of those duly elected and qualified members of the governing body." Ill. Rev. Stat., 1989, ch.48 ¶1614(n). Similarly, Section 3-11-17 of the Municipal Code provides in relevant part:

> The passage of all ordinances for whatever purpose, and of any resolution or motion (1) to create any liability against a city or (2) for the expenditure or appropriation of its money, shall require the concurrence of a majority of all members then holding office on the city council, including the mayor, <u>unless otherwise expressly provided by this Code or any other act governing the passage of any ordinance, resolution, or motion; provided that, where the council consists of an odd number of aldermen, [such as here], the vote of the majority of the aldermen shall be sufficient to pass an ordinance.</u>

Ill. Rev. Stat., 1990, ch.24 ¶3-11-17 (emphasis added). Thus, based on the Municipal Code and the Act, the Mayor had no authority to vote on the ordinance.

The Act also does not provide for the Mayor's right to veto the Council's 3/5 vote. Thus, it is Local 726's position that the Mayor had no authority to veto the Council's 3/5 vote to reject the

order to determine, inter alia, whether the Mayor did veto the City Council's decision to adopt the Award, Local 726 subpoenaed the Mayor to secure his testimony at the supplemental proceeding (Panel Ex. 3). However, the Mayor failed to comply with the subpoena (Tr.8, 15, 97).[7] Thus, the record is devoid of evidence

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(fn.6 cont'd.)

Resolution. However, assuming arguendo, the Mayor did have such authority, the Illinois Municipal Code provides a procedure that must be followed to effectuate such a veto. Section 3-11-18 of the Municipal Code provides in relevant part:

> All resolutions and motions (1) which create any liability against a city, or (2) which provide for the expenditure or appropriation of its money, ..., and all ordinances, passed by the city council shall be deposited with the city clerk. If the mayor approves of them, he shall sign them. Those of which he disapproves he shall return to the city council, with his written objections, at the next regular meeting of the city council occurring not less than 5 days after their passage. The mayor may disapprove of any one or more sums appropriated in any ordinance, resolution, or motion making an appropriation, and, if so, the remainder shall be effective. However the mayor may disapprove entirely of an ordinance, resolution, or motion making an appropriation. If the mayor fails to return any ordinance or any specified resolution or motion with his written objections, within the designated time, it shall become effective despite the absence of his signature.

Ill. Rev. Stat., 1990, ch.24 ¶3-11-18 (emphasis added). The City has failed to present any evidence that the requisite procedures to veto a motion were followed, assuming arguendo, the mayor had such authority.

[7] The Mayor's failure to comply with the subpoena is not surprising as it is difficult to fathom an individual with more contempt for the legal process. This is not the first instance that Mayor Miller has refused to provide testimony in a proceeding involving Local 726. Local 726 requests that the Panel take administrative notice of Exhibit 1, attached hereto, which is the relevant portions of the transcript of an unfair labor practice

to support the City's contention that the Award has been rejected.

II.
ASSUMING ARGUENDO, THIS MATTER WERE PROPERLY BEFORE THE PANEL FOR A SUPPLEMENTAL PROCEEDING, THE CITY HAS FAILED TO MEET ITS BURDEN AND THE AWARD MUST BE AFFIRMED

Since the passage of the Act in 1984, notwithstanding the number of cases proceeding to interest arbitration,[8] Peoria County is the only employer that has ever rejected an interest arbitration award and requested a supplemental proceeding.

In Peoria County and Council 31 Of The American Federation Of State, County And Municipal Employees, ISLRB Case No. ___ (1986), in discussing the burden on an employer in a "supplemental proceeding" under the Act, Arbitrator Sinicropi held:

> [T]he initial award must be entitled to "great weight" and should not be changed in a second proceeding absent "extraordinary hardship" or evidence that a significant error was made by the Arbitrator in his first award.
>
> * * *
>
> If the first award is rejected, reasons must be provided in support of the rejection. Absent a showing of significant hardship or manifest error (or other extraordinary cir-

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(fn.7 cont'd.)

proceeding before the Illinois State Labor Relations Board in Case Nos. S-CA-90-87 and S-CA-90-103. There, Mayor Miller, when called as a witness by the City, left the proceeding, refusing to answer counsel for the City's questions.

[8] Local 726 requests the Panel to take administrative notice that approximately fifty cases have proceeded to interest arbitration under the Act.

> cumstances), to allow a party to assert completely new positions or additional arguments on issues raised in the first proceeding will effectively make the first arbitration comparable to an advisory fact finding. As noted by the Union, the only logical conclusion to be reached is that the Employer must come forward with some solid reasons establishing that a significant or manifest error was made by the arbitration panel in its initial decision. If the Employer cannot do so, the initial decision should be left untouched.

Id. at 9-163.

* * *

> Moreover, due to the fact that the statute allows only the Employer to request a second hearing, it is more logical to conclude that such a right given to only one side must be available only if unusual circumsances (sic) such as a manifest error or an unusual hardship upon the Employer heretofore unkown (sic) has arisen.

Id. at 9-164.

In the instant case, to the extent the City's arguments are comprehensible, the City appears to set forth four grounds for rejecting the Award (Panel Ex. 1; Tr.18). As we will discuss below, the City fails to meet its burden of proof as to each argument and merely reasserts that which it argued before the Panel during the initial proceeding.

A. The City's Contention That The Award Is Not Supported By Substantial Evidence Is Without Merit

The City contends that the Panel selected incorrect comparable communities because the City's tax base and sales tax revenues are lower than the other communities to which Markham was compared (Tr.19-20). However, as the Panel correctly noted in

the Award, the City failed to either introduce any evidence of communities it deemed comparable or challenge those presented by Local 726 (Panel Ex. 5 at 18). Moreover, contrary to the City's contentions, the City, when compared with thirteen other communities, had the eighth highest sales tax revenues (id. at 19). Additionally, the communities to which the City was compared had similar populations, and number of patrol officers and sergeants (id.). The City has simply failed to meet its burden that the Panel's finding as to comparable communities was a manifest error.

The City also contends that the Panel's reliance on the Consumer Price Index ("CPI"), to support its finding that the 7% increase is appropriate, is not supported by the evidence because the CPI can only support a wage increase of 5.59% (Tr.26-27). In light of the City's final offer of a 0% wage increase, the stupidity of this argument is so obvious that it need not be addressed.

B. The City's Contention That The Panel Did Not Give Sufficient Weight To The Testimony Of The City Treasurer And Consideration To The City's Financial Condition Is Without Merit

The City, in support of this argument, merely reasserts that which it contended during the initial proceeding. As Arbitrator Sinicropi held in Peoria County and Council 31 Of The American Federation of State, County And Municipal Employees, the employer's burden is greater in the supplemental proceeding. Thus, by merely realleging what it already asserted in the first proceed-

ing, with respect to this issue, the City again has failed to meet its burden.

Ironically, although the City continues to assert that it is unable to pay any wage increase, the City's decision to proceed to a supplement hearing in this matter is further evidence of its ability to pay the 7% wage increase.

Section 14(o) of the Act provides:

> If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. <u>All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.</u>

Ill. Rev. Stat., 1989, ch.48 ¶1614(o) (emphasis added). Thus, while the City contends that it cannot afford a 7% wage increase, which amounts to $30,000, it has spent thousands of dollars in litigation expenses attempting to convince this Panel that it has no money. Moreover, based on the Act, it now has to pay, in addition to its own, Local 726's attorney's fees and costs for this supplemental proceeding.

As Alderman Genius testified, in portraying his response to the Mayor's speech during one of the City Council meetings when the Council was discussing the Award:

> Again, [the Mayor] was, in my opinion, bad rapping the Police Department and saying that we should not give them any more money, that that would bankrupt the City, and I challenged him by using the bill list we have -- we have a year-end -- ..., a budget book for expenses expended, money paid, and I told him that I think its ridiculous not to give the

> Police Department a $30,000 raise when in our legal payments we have exceeded the budget by 60 or $70,000.
>
> I stated if we are going [to] spend that kind of money we might as well give it to the employees rather than the lawyers.

(Tr.83). Obviously, the City has the money to spend on those items it so chooses.

C. The City's Contention That The Panel Has Substituted Its Judgment For That Of The Legislative Body Is Without Merit

The City contends that the Panel "[exceeded] its discretionary limits by telling the legislative body where to get the money from or what to do" (Tr.22).[9] However, the Panel has no "discretionary limits". This Panel's authority is clearly set forth in Section 14(h) of the Act. Moreover, the City clearly does not comprehend the purpose of interest arbitration under the Act. Obviously, an interest arbitration panel must, by virtue of its assignment, substitute its judgment for that of one of the parties - namely the losing party - when it selects between two final offers.

Here, contrary to the City's contentions (Tr.22), the Panel did not tell the City from what source to obtain the funding to pay the 7% wage increase. Rather, in responding to the City's argument that it is unable to pay the 7% increase, the Panel merely noted that, contrary to the City's contentions, there were certain appropriated sources that contained money to fund the

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[9] It should be noted that the City conceded that by virtue of the Act, the Panel has such authority (Tr.25).

increase (Panel Ex. 5 at 25-26). However, the Panel did not order the City to pay the increase from any specific account.

Finally, the City contends that the Panel incorrectly substituted its judgment for that of the legislative body in determining "that the City is not providing the type of police service that it should provide to the community" (Tr.20). However, Section 14(h)(3) of the Act requires the Panel to consider the interests and welfare of the public as well as the financial ability of the City to meet those costs. As the Panel correctly noted, the community's interest is for the City to provide quality police services (Panel Ex. 5 at 26). As the Panel also correctly noted, as more fully appears from Union Exhibits 2 and 4 in the initial proceeding, a vast majority of officers on the force have less than five years' experience, thereby evidencing the high rate of turnover amongst the officers (Panel Ex. 5 at 26). Thus, the Panel correctly concluded:

> It is therefore very likely under the given circumstances that the City is expending a considerable sum of money on a continuing basis to recruit and train new officers when, instead, it could be allocating these same dollars to raising the level of salaries to be competitive with those paid by other like communities so as to retain the officers already employed and thus cut the substantial rate of turnover. If this were to occur, the Panel is persuaded that the City would improve the quality of protective services provided to its citizenry.

(Id. at 27.)

Although the City contends that this determination is a flagrant substitution of the Panel's judgment for that of the legislative body (Tr.20), Alderman Genius' testimony, during the

supplemental proceeding, further confirms the Panel's finding.

Alderman Genius was employed by the City as a police officer from 1978 to 1987 (Tr.78). As a police officer, he participated in a wage survey which confirmed that the City paid lower wages to its police officers than the surrounding communities (Tr.79, 86). According to Alderman Genius, "low pay has a major impact on whether to remain with the Police Department or not" (Tr.85). Approximately fifteen officers left the force when Alderman Genius was an officer (id.). "The vast majority are still police officers in other cities" (Tr.86).

Once again the City has failed to meet its burden with respect to its contentions.

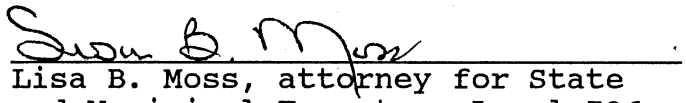
D. The City's Contention That The Chairman Has Demonstrated A Bias Against The City And In Favor Of The Union Is Without Merit

Resolution No. 91-R-007 provides that one of the grounds for rejecting the Award was that the Chairman demonstrated a bias against the City (Panel Ex.1). The City made the same argument during the initial proceeding in this matter, which the Panel rejected (Panel Ex. 5 at 5-7). The City's burden here, to demonstrate the alleged bias, is even greater than in the initial proceeding. The record of the supplemental proceeding is devoid of any evidence or argument in support of this bald assertion. The City's mere allegation, without support, is insufficient to sustain its burden of proof (Panel Ex. 1). Thus, it must be dismissed.

CONCLUSION

For all of the foregoing reasons, and those set forth in the initial proceeding, the Findings and Award should be affirmed.

Respectfully submitted,



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