

INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

In the Matter of the Arbitration)	
)	
Between)	CASE NO. S-MA-91-066
)	
CITY OF EAST ST. LOUIS, ILLINOIS)	
)	
And)	ALBERT A. EPSTEIN
)	Arbitrator
)	Chairman, Board of Arbitration
ILLINOIS FRATERNAL ORDER OF POLICE))	
LABOR COUNCIL, LODGE NO. 126)	

LABOR AGREEMENT COVERING PATROL OFFICERS, PATROL
SERGEANTS AND ALL PROBATIONARY EMPLOYEES IN THOSE RANKS

THE PROCEEDINGS

The above parties, unable to resolve a dispute concerning the terms of their Labor Agreement for the years 1990 and 1991, submitted the matter to a Board of Arbitration under the terms of the Illinois State Labor Relations Act. The City and Union members of the Board were waived and the undersigned designated as Chairman was, by stipulation of the parties, agreed upon as the sole arbitrator.

Hearings were held at the East St. Louis City Hall, East St. Louis, Illinois, on November 22, 1991, and on April 7, 1992. Both parties were present and fully heard, testimony and evidence were received and both parties ultimately filed post-hearing briefs. By agreement of the parties, time limitations set forth in the

Illinois State Labor Relations Act Rules and Regulations were waived insofar as the proceedings and briefs and the time for issuing the arbitrator's award were concerned.

APPEARANCES

FOR THE CITY:

Mr. Robert L. Merriwether, Jr.	City Attorney
Mr. Edward L. Welch	City Attorney

FOR THE UNION:

Mr. Wayne M. Klocke	Counsel
Ms. Becky S. Dragoo	Legal Assistant

The Employer is the City of East St. Louis, Illinois, hereinafter referred to as the "City" or the "Employer" which is located in St. Clair County, Illinois, in the St. Louis Standard Metropolitan Statistical Area. The Bargaining Unit was represented by the Fraternal Order of Police Labor Council, hereinafter referred to as "the Union" consists of all patrol officers, patrol sergeants and all probationary employees in those ranks. Officers above the rank of sergeant are excluded from the Unit. The most recently executed Labor Agreement between the parties was signed on February 9, 1989. The parties began negotiations with respect to a wage reopener on January 30, 1990, and appeared to come to a tentative agreement on the wage

issue for the 1990 contract year. The Union has proposed pay increases ranging from 13% for officers having completed their first year to the five year officer and up to 18% for sergeants. Apparently the Union's proposal was communicated to the mayor on January 30, 1990, but the City Council failed to approve the tentative agreement. Thereafter, the Union sought to begin negotiations for a labor agreement and received a verbal offer from the City's negotiator with an 8% pay increase for the calendar year 1991 and 10% increase for the calendar year 1992, although the offer was oral and was not reduced to writing.

Thereafter, the unresolved wage issues and the issue of retroactivity on both the reopener and a successor contract were referred to interest arbitration and became the subject matter of the instant case.

At the start of the hearing the parties stipulated and agreed as follows:

- (1) That these proceedings are governed by Section 14 of the Illinois Public Labor Relations Act ("The Act"), §1614, Ch. 48, Ill.Rev.Stat.;
- (2) That the Arbitrator has jurisdiction over the subject matter and the parties;
- (3) That the parties waive the right to a three member tripartite panel of arbitrators as provided in §14 of the Act and agree to proceed with a single, neutral arbitrator;
- (4) That the parties waive any and all time limits that are contained in the Illinois Public Labor Relations Act, §1614, Ch. 48, Ill.Rev.Stat., and that the proceedings were conducted in a timely fashion;
- (5) That the unresolved bargaining subjects which the parties are submitting to the Arbitrator for decision are as follows:

* Wages for members of the bargaining unit for the year 1990;

* Retroactivity for members of the bargaining unit for any wage increases awarded by the Arbitrator for the year 1990;

* Wages for members of the bargaining unit for the year 1991 ²;

* Retroactivity for members of the bargaining unit for any wage increases awarded by the Arbitrator for the year 1991 ³;

* Duration of the Agreement between the parties ⁴;

(7) That the Arbitrator has the express authority and jurisdiction to issue an award providing for increases in wages and other forms of compensation retroactively to January 1, 1990, pursuant to §14 of the Act and the Rules and Regulations of the Illinois State Labor Relations Board.

The Union's final offer on wages is here set forth the issues

Issue 1:
1990 Wages

5% Increase effective January 1, 1990, on the wages as set forth in Appendix A on page 62 of the current collective bargaining agreement. If the Union's offer is accepted, the adjusted base wage amounts will be as follows:

Probationary Patrolman:	\$ 22,260.00
Patrol Officer (1-5 years):	\$ 24,360.00
Patrol Officer (5-10 years):	\$ 25,410.00
Patrol Officer (10 yrs .and above):	\$ 26,460.00
Sergeant (regardless of years):	\$ 27,510.00

Issue 2:
1991 Wages

5% Increase effective January 1, 1991, on the base wages in effect on 12/31/90. If the Union's offer is accepted under Issue 1 above, the adjusted base wage amounts will be as follows:

Probationary Patrolman:	\$ 23,373.00
Patrol Officer (1-5 years):	\$ 25,578.00

Patrol Officer (5-10 years): \$ 26,680.50

Patrol Officer (10 and above): \$ 27,783.00

Sergeant (regardless of years): \$ 28,885.50

Issue 3:

Retroactivity - 1990

That the pay rates effective January 1, 1990, be paid retroactively to January 1, 1990, within sixty (60) days of the issuance of the Arbitrator's award.

Issue 4:

Retroactivity - 1991

That the pay rates effective January 1, 1991, be paid retroactively to January 1, 1991, within sixty (60) days of the issuance of the Arbitrator's award.

Issue 5:

Duration

That the contract between the parties be from the period of January 1, 1990 through December 31, 1990 (on the reopener), and from January 1, 1991, through December 31, 1991.

The City's final offer was to freeze all wages set forth in the last contract entered into between the parties.

The Union sets forth that the following statutory factors apply in the instant case. It indicates that Section 14 (h) of the Act provides:

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

- (1) The lawful authority of the Employer;
- (2) Stipulations of the parties;

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

(4) *Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration 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; and*

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

With reference to "the cost of living" factor set forth in the statutory requirements, the Union points out that Section 14(h)(5) mandates that the parties and the arbitrator take into account the impact of inflation on the employees' salaries and purchasing power. The Union notes that in order to assess the impact of the cost of living on the purchasing power of these employees, it is necessary to make valid

comparisons based upon appropriate comparable salaries. Since the Union takes the view that the arbitration award in this matter should cover two years, January 1, 1990, through December 31, 1991, it contends that it is appropriate and essential that the inflation analysis review the cost of living for the first year through December 31, 1990, and also take into consideration the impact of inflation upon the East St. Louis police officers for the year 1991. At the time of the hearing the latest base figures were only available through October of 1991.

The Union introduced exhibits indicating that for the period from January 1, 1987, to October, 1991, and using the October, 1991, U.S. CPI-W, the employees experienced a loss of buying power of 18.76%, and under the data contained in U.S. CPI-U, these employees experienced a loss of buying power of 19.07%, and using the St. Louis SMSA CPI-U, the loss of buying power was 17.60%. The Union notes that the Bargaining Unit has received no overall pay increase since 1986, and that the wages specified by the 1987 contract did not represent an increase of total compensation by comparison with the pre-existing wages because the base wage increase contained therein was achieved without its spending any new funds and was accomplished by eliminating certain employee benefits.

The Union notes that the employees' purchasing power was eroded due to inflation in 1990 and 1991 and, therefore, it is possible to calculate what increases are needed merely to restore

the status quo ante as of January 1, 1986. The Union submits, also, that if the wage proposal of the City is adopted the Bargaining Unit employees will fall further behind in their purchasing power and not only will they trail their comparable counterparts but they will trail themselves in terms of their prior purchasing power. Furthermore, even if they adopted the Union's wage proposals, it would restore only about one-half of these employees' lost purchasing power. It notes that the City presented no evidence on the affect of the cost of living upon the members of the Bargaining Unit.

With reference to "comparability based on geography," the Union points out that the Act mandates an inquiry into external and internal comparability and it submits that the Union presented to the arbitrator comparables of the communities surrounding East St. Louis. Although the Union sets forth that it is well aware of the difference between a county and a municipal government, insofar as comparability of communities is concerned, it points out that on any given day and any given shift the St. Clair County officers appear at the same crime scenes as East St. Louis police officers, they do the same work, back each other up in the face of the same risks and in every way function in the same manner as their municipal counterparts. It notes that the only differences are there uniform color and their pay.

The Union points out that East St. Louis police officers' salaries rank dead last through an employee's entire career: at starting pay, after one year of service, after five years,

after ten, after fifteen, and after twenty years. It points out that if the pay increases sought by the Union are awarded, the movement up in ranking on the list of the comparables would be minimal. Including St. Clair County, the Union's offer puts East St. Louis police officers salaries fifth out of sixth at start pay, fourth out of six after one year of service, fifth out of six after five years, fifth out of six at ten years, fifth out of six at fifteen years, and fifth out of six at twenty years. If St. Clair County, which is the county where East St. Louis is located, is not included the movement up the list would be even less.

With reference to "demographic comparability," the Union points out that demographic comparability must take into consideration a variety of factors, not just geographic nexus. The Union notes that the statutory direction to examine comparable communities requires the parties and the arbitrators to examine jurisdictions with characteristics in common, note similarities and dissimilarities, and draw general conclusions concerning appropriate wages, hours, terms and conditions based on that examination.

The Union chose its comparables based upon population, median home value for 1990, per capita income for 1987, (which is the most recent data issued by the Bureau of Labor Statistics, Crime Index for 1989 and Crimes per officer.) Based upon these criteria, Maywood, North Chicago, Danville and Harvey, Illinois, were presented as comparables at the hearing. The Union notes that a close examination of the "high crime" areas reveals that

East St. Louis ranks first in overall crimes for 1989, and while East St. Louis had almost 100 crimes per officer, Harvey was the next highest with only 70 crimes per officer.

The Union also notes that as with the comparable cities that are geographically in close proximity to East St. Louis, a comparison of the wage rates in these comparable cities leaves East St. Louis far behind and it notes that East St. Louis's patrol officers salaries ranks four out of five in the starting salary and after one year, and five out of five after five years, ten years, fifteen years and twenty years.

The Union notes that, as with the geographic comparables, even if the Union's offer is adopted by the arbitrator, not much movement is experienced because the only movement would be at the fifth year step where East St. Louis would advance to fourth place, rather than to fifth, and it also points out that sergeants' salaries would experience no movement in terms of ranking on the list because they would still rank last in wages among the comparables.

The Union notes further that the City presented no evidence regarding comparables to the arbitrator and it maintains that City officials are assuming that the arbitrator will freeze these salaries for the sixth year in a row, and, therefore, they simply did not bother to make inquiries. The Union stresses that the comparables speak for themselves and that the East St. Louis police officers are grossly underpaid because they work in the undisputed highest crime area in the State of Illinois. The Union notes that the comparables support more than the modest pay increases

the Union is seeking and they certainly preclude any further freeze in the wages.

Inssofar as the factor of "such other factors which are normally taken into consideration: productivity and workload" is concerned, the Union notes that while productivity is not specifically mentioned under Section 14(h) of the Act, it is another factor which is normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The Union points out that the same productivity factors which justified adoption of policemen's wages in cities such as DeKalb, would justify adoption of the Union's proposal in the instant case. The Union notes on this point that the nature of the crimes committed in East St. Louis makes the work of police officers extremely dangerous, and the Union points out that special programs were put into effect by allocation from state funds because of special risks that law enforcement officers in the City of East St. Louis undergo.

The Union stresses, also, that regular exposure to high levels of violent crime requires increased effort and skill and necessarily entails increased stress upon the officers.

With reference to the factor of "interest and welfare of the public and the employer's ability to pay," the Union puts the question as to whether the City of East St. Louis has the ability to pay the final offer of the Union and whether it is in the best interest and welfare of the public of the City of East St. Louis

to do so. The Union believes that the arbitrator must examine all the elements of the economic factors pertaining to the financial ability of the City where prior public safety interest arbitrations have held that the consideration of financial ability should not be limited just to the financial ability of the City, but should also include the need of the public to have immediate services of the police. It stresses that the mere fact that the legislature saw fit to prevent police and firefighters unions from striking and requiring them to submit to interest arbitration, is a strong indication that the services of these units are of the greatest interest and welfare of the public.

The Union stresses that at no time did the City provide proof of an objective verifiable inability to pay wage increases. The Union submits that rather than proving that it is unable to pay the modest increases which the Union seeks, it was the City's intent to in effect ask the arbitrator to take notice of its recent economic difficulties and accept that as evidence of its "inability to pay."

The Union notes that the City failed to show that its revenues do not permit it to fund the increase sought by the Union and it submits that such an ability to pay simply does not exist, and the monies necessary to fund the increase sought by the Union were at one time included in the budget. It contends that employers who have pleaded inability to pay have been held to have the burden of producing sufficient evidence to support such a plea and that

the alleged inability must be more than speculative, and failure to produce sufficient evidence will result in a rejection of the plea.

The Union also points out that in granting a wage increase to police officers to bring them generally in line with police in other communities, arbitration boards have recognized the financial problems of the City resulting from temporarily reduced property valuations during an urban redevelopment program, but arbitration boards have stated that a police officer should be treated as a skilled employee whose wages reflect the caliber of the work expected from such employees and that arbitration boards cannot accept the conclusion that the police department must continue to suffer until the redevelopment program is completed.

The Union cites an arbitration award involving the City of Quincy, Illinois, where it was stated that the price of labor must be viewed like any other commodity which needs to be purchased, "if a new truck is needed the City does not plead poverty and ask to buy the truck for 25% of its established price. It can shop various dealers and makes of trucks to get the best possible buy, but in the end the City either pays the asked price or gets along without a new truck."

The Union takes the position that this same argument must be controlling in the instant case. The City may choose to cut corners on certain expenditures but in the end it cannot buy necessary commodities below the market price. The Union claims that the legislature recognized the value of public safety employees when

it passed the police amendments in 1985 prohibiting these essential service employees from striking, and it notes that this is a fact that has been recognized as well by countless arbitrators in police and fire arbitrations. The Union cites the City of Rock Island arbitration where the arbitrator held that the public also has a countervailing interest in employing and keeping competent, dedicated police officers and that "the vital role that police officers serve in protecting the welfare of the public was recognized by the legislature when it enacted the Act and specifically prohibited police officers from engaging in strike activities."

It also cites the award of Arbitrator Traynor in the East St. Louis Firefighters case involving the same statutory factors which are applicable to police, wherein the arbitrator stated, "The panel of arbitrators realizes that the City of East St. Louis is nearly bankrupt and that unless it curtails its expenses, generates 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 firefighters, who, by law, are denied the economic weapon of striking, to suffer a cutback in wages due to the loss of the purchasing power of the dollar. It, therefore, has the obligation of funding increases in wages."

The Union stresses that nothing in the evidence presented in the instant case indicated that the City of East St. Louis cannot pay the wages sought by the Union. In fact, it notes that evidence

presented by the Union tends to prove that the City's ability to pay is now much improved over the situation that existed when Arbitrator Traynor rejected the City's pleading inability to pay in the East St. Louis firefighters case. The Union notes that the City now is paying its debts and has been receiving part of more than one million dollars (\$1,000,000.00) in motor fuel tax revenues that had been withheld by the state. Furthermore, the City is also receiving current payments on a timely basis and although the Union acknowledges that these monies cannot be used directly for police salaries, it is no longer necessary to divert monies from the general fund that could otherwise be used for police salaries.

The Union notes further that in the past, street repairs and accompanying payroll costs were funded from the general fund in the absence of the motor fuel tax funds, and when these funds were unavailable the City had to pay 27 street departmental employees the salaries of between \$15,000.00 and \$20,000.00 each per year from its general fund. In the aggregate, these salaries amount to more than \$450,000.00 annually, but now with the availability of these funds that burden is removed, at least in substantial part, from the general fund. Moreover, the Union notes that the City has received more than \$500,000.00 annually in grant funds that directly benefit and fund its police operations.

Therefore, there would be no present cost whatsoever to the City for even a total ten percent (10%) pay increase effective in January 1, 1991, for these 12 officers would raise only the question as to whether the grant would pay monies owed to these officers for 1990, retroactively, if awarded.

The Union cites the Director of the Metropolitan Enforcement Group for Southwestern Illinois as testifying that he had no idea as to whether the grant could be adjusted to pay for such retroactive amounts, but even if the Union's offer is adopted and the grant could not cover the 1990 retroactive pay for these officers, there would be a small additional expenditure for the City, amounting to only about \$1,000.00 per officer. The Union also notes that the original grant budget allocated a reasonable amount of \$23,000.00 for a salary for each new officer, but that amount has not been expended because throughout the pendency of the instant proceeding new officers have earned only about \$21,000.00 per year under the Labor Agreement.

The Union contends that it is well settled in governmental accounting that planning is the essential ingredient to the budget process, and it cites a treatise on the subject of governmental and non-profit accounting theory and practice, which sets forth that the budgetary process requires planning as a special concern since the type, quantity and quality of governmental goods and services provided are not normally evaluated and adjusted through the open market mechanism, and, second, that these goods and

services, such as education, police and fire protection, and sanitation, are often considered among the most critical to the public interest and well being. The reference also sets forth that the scope and diversity of modern government activities have become so great that comprehensive, thoughtful and systematic planning is a pre-requisite to orderly decision making in this complex environment.

The Union points out, further, that sound governmental fiscal management requires continual planning for several periods into the future. The Union recognizes that the arbitrator in this case cannot impose a planned budget or capitol improvement budget upon the City, and that he cannot order the City to implement a different system of budgeting, but it notes that the City is free to proceed with or without a capitol projects budget and to amend its budgets.

The Union requests that the arbitrator should not make the Bargaining Unit members suffer the consequences of poor planning and bad management under the prior administration and force them to continue to have their wages frozen. The Union also asks that the arbitrator not allow the City to budget away the "turnover saving" that resulted from the deaths of three officers and the resignation of two others. It points out that, assuming total average payroll costs of \$32,000.00 each for these older officers and assuming that they are not replaced during this fiscal year, the City will save \$160,000.00 in payroll costs for these five officers. The Union notes that pension payments to downstate

municipal police officers under the statute depend upon an officer's salary "for one year immediately prior to retirement." It notes, further, that survivors' benefits depend upon the "pension to which the officer is then entitled," which again would depend upon his salary for the year preceding his death. The Union notes that if the award in this case is retroactive, the recently retired officers and dependents of the recently deceased officers would likely receive a modest but permanent and justly deserved increase in their pension benefits, but if the award is not retroactive, at least for 1991, these officers and their survivors would receive no increase in their pension amounts.

The Union notes further that the need for the wage increase proposed by it with full retroactivity is especially compelling because it has been so long since wages have been increased, and this has eroded the base upon which pension benefit amounts are calculated. Just as purchasing power of these employees' wages has been severely eroded, their pension base has not kept pace with inflation, and as a result recent retirees and the survivors of recently deceased officers find their pension amounts unfairly diminished.

The Union stresses that the retirement fund is separately established by state statute and there is no direct cost to the City for any increased pension benefit amounts that might arise from an award of full retroactivity. It notes further that a review of the Union's and City's exhibits reveals that despite

the fact that long term planning is not employed in East St. Louis, the City apparently hopes to persuade this arbitrator to accept its argument that the City's major revenue sources are expected to decline with the exception of interest income, miscellaneous income and a slight increase in property taxes. In any event, the Union points out that there is no real evidence submitted by the City in support of this assertion.

Insofar as the factor of "duration" is involved, the Union is proposing wage offers which would cover the fiscal years 1990 and 1991, and the Union claims that it is clear from the record and from the Act that the arbitrator has the authority to issue an award for the 1991 fiscal year. The Union cites the provisions of Chapter 48 of the Illinois Revised Statutes providing that the commencement of a new municipal fiscal year after the initiation of arbitration proceedings under the Act, but before the arbitration decision or its enforcement shall not be deemed to render a dispute moot or to otherwise impair the jurisdiction of the arbitration panel or its decision. If a new fiscal year has commenced, either since the initiation of arbitration proceedings under the Act or since any mutual extension of the statutorily required period of mediation under this Act by the parties of the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable.

The Union cites the fact that its representative at the hearing set forth that the issue as to when the arbitration procedures were initiated, is governed by the opening sentence

of Paragraph 14-J, which states "Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation" and the Union claims that it is prepared to show that it did just that for both years.

The Union sets forth that the parties are currently in negotiations for the 1992 contract and that the Union requests the arbitrator to issue an award for the two prior years because to now send the parties back to the table for 1991, after any determination on the 1990 reopening, would be an exercise in futility.

The Union notes further that although there is no doubt that a negotiated settlement would be far better than one awarded to the parties, in the instant case it would only prolong the process and throw the group of employees involved herein farther behind in terms of cost of living and comparability. The Union stresses that the arbitrator has had the benefit of examining the cost of living data presented and it maintains that there is no doubt that there has been a significant loss in the cost of living for this group of employees, and it notes that the Union's offer is more than fair considering the fact that there have been no pay raises for the employees involved herein for five (5) years. The Union points out further that all other aspects of the City's government have gone on and no doubt the City has given pay increases to other City employees and contractual employees during this time, and that it has entered into other collective bargaining agreements

and, therefore, it would be useless to ask the arbitrator to send the parties back to the table to negotiate 1991 pay increases.

In conclusion, the Union sets forth that its offer on wages is supported by the cost of living, by an analysis of the current rates of pay among the appropriate comparable communities, and by the productivity of the Bargaining Unit. The Union sets forth that the City has the ability to pay the modest increases sought by the Union and yet it seeks to freeze the Bargaining Unit wages. According to the Union, the position of the City is not only unreasonable but it would cause an injustice to the employees of the East St. Louis Police Department. The Union charges that it is within the power and authority of the arbitrator to see that these employees receive a fair and timely adjustment of their base wages and it argues that, despite the fact that there may have been problems with working conditions and deficiencies in certain fringe benefits, the Union has not come to these negotiations with a laundry list of fringe benefits and working condition demands, but seeks only a fair adjustment of base wages.

The Union notes further that in 1992 police officers face stresses and dangers that were unknown in the past, even to their counterparts of a decade ago, for whom the dangers of today were at best on the horizon. The Union refers to a quote from the U.S. News and World Report setting forth a description of a "cop" currently as a "stop and go nightmare. It has never been easy, but all the debilitating leit-motifs of police work in the past

generation - the danger, the frustration, the family disruptions, ...have made matters worse by the drug war in the nation's streets. There are more violent criminals, armed with more potent weaponry, showing more contempt for the men and women in blue than at any time in American history."

According to the Union, the above quote describes the life of an East St. Louis police officer - the evidence proving that they deal with the highest rate of violent crimes and that they are the lowest paid. The Union admits that there is no doubt that the City of East St. Louis has had fiscal problems, but contends that it is the duty and obligation of the City to set in motion the means for correcting its fiscal problems, and to date the only means the City has chosen has been to deny salary increases to employees.

The Union sets forth that in the past a wage increase may have been called for, but the fact is that the Union agreed to a pay freeze during the last round of negotiations and that the employees' salaries have remained at their 1986 level. The Bargaining Unit employees have made their contribution and have already given their share, yet the City now comes back to these same employees and this arbitrator and asks that another freeze be accepted. The Union charges that the City seeks to balance its budget on the employees' backs and it argues intensely that this cannot be. The Union submits that its final offer on wages will only serve to slow the steady fall in purchasing power and comparability and that its demand is reasonable and it, therefore,

asks the arbitrator to grant the Union's demand in this case.

The City submits that the issue before the arbitrator is whether members of the Bargaining Unit should be awarded a wage increase and if so should such wage increase be retroactive for the year beginning January 1, 1990? It points out that at the time of the commencement of the arbitration hearing the parties were operating under a Collective Bargaining Agreement dated December 31, 1989, which by its terms was to remain in effect for a period of two years and, thereafter, to automatically renew from year to year unless either party gave written notice of desire to modify or terminate the Agreement. It notes that the Agreement further provided for a reopener for the purpose of negotiating economic provisions of the Agreement.

The parties stipulated that all procedural time requirements had been met and that the matter was properly before the arbitrator. The City notes that pursuant to the reopener provision of the Agreement, the Union submitted its proposal to the City for an across-the-board Wage increase for members of the Unit, the substance of which was as follows:

(1) For probationary policemen, their salaries would be frozen at the current rate without any wage increase;

(2) For officers, 1-5 years of service, a percentage wage increase of thirteen percent (13%); percentage wage increases for officers with 6 to 10 years of service, and for officers with 10 years of service and over; and

(3) A wage increase of eighteen percent (18%) for the rank of sergeant. (These were amended in the Union's final offer.)

The City notes that it did not approve the Union's proposal nor did it formally propose any counter offer.

The City notes that the Union's proposal is based upon the following factors: that the members of the Bargaining Unit have not received a wage increase since 1986; that the City's police force has a tremendous workload (crime rate in the City); and an insufficient number of police officers to handle the caseloads; and that the City's rate of pay is too low and below that of other cities of comparable size.

The City's proposal is that the position of the Union be rejected and that no wage increases be awarded. The City's position is based upon the following factors: that the City is not in a financial position to offer a wage increase; that the City has been and is operating at a deficit and not a surplus position; that the City is not comparable to other cities of the same size, in that, it stands alone as a financially distressed city, with its budget and financial affairs being under the authority and supervision of a state oversight body (the East St. Louis Financial Advisory Authority); that the City has to resolve the issues of its many outstanding obligations before it can properly address the issue of wage increases in this case; and that monies or revenues have not been available to the City with which to pay such wage increases.

The City opposes the Union's proposal and states its proposal

to be that the members of the Bargaining Unit receive no wage increase.

The City argues that the Union's proposal is made solely for the benefit of its members without any consideration of the revenue available for the City to pay such increases, of the budgetary constraints placed upon the City, or of the impact such wage increases would have upon the City's ability to meet a new obligation in the face of the staggering financial obligations and debt already before the City.

The City submits that it is regrettable that the officers in the instant case have not received a wage increase since 1986, but it notes that the issue is not whether they deserve a raise or even whether they may be entitled to a raise. In fact, the City agrees that not only do these officers deserve raises; but that the higher ranking officers who are not members of the Bargaining Unit, from the lieutenants to the chief, deserve raises as do all other employees of the City.

The City stresses that the issue is actually whether the City has the ability to pay wage increases to its employees and in particular to these police officers. The City notes that these officers have not received any wage increase due solely to the City's lack of revenues, and its fiscal inability to pay such wage increases, and not because of any desire of the City to keep them at a low rate of pay. It points out that for the City of East St. Louis, the managerial decision of how best to use the limited resources, the limited monies, is a particularly acute

problem. It raises the question as to whether the city should give raises and cut the already diminished services that it provides to its residents? Should it give raises at the expense of laying off more city employees and staff? Should it give raises and just face the consequence of not using that money to satisfy some of the staggering debt obligations of the City? Or, should it delay wage increases until it has attained more stability and control of the City government and its finances are capable of providing the basic services that a municipality must provide?

The City stresses the following points in support of its position that members of the Bargaining Unit should receive no increase in their wages: (1) that the City does not have the fiscal ability to pay any wage increase at this time. It notes that the City of East St. Louis is not in a surplus position but rather it is operating with a deficit. In the past years the City has not been able to meet its obligations and is presently experiencing difficulty in meeting its past and present obligations. In the last few years the City has been unable to pay its employees, including its police officers, on a regular basis. The City has been financially unable to satisfy its employees' claims against the City for overtime owed, for failure to maintain insurance coverage on the employees and for claims of the employees that the City pay hospital and medical bills incurred by them during the period when the City could not maintain insurance for its employees. The City notes that, in fact, in the Police Department alone its present liability on these types of claims is about

\$500,000.00. In addition, the City sets forth that it has not had the revenues available to provide for wage increases in the budget, and when one takes into account the lack of revenues coming to the City, along with the fact that those revenues which come to the City or which are due to the City are being attached, then it is apparent that the City does not have sufficient control of the fiscal aspects of its budget or sufficient fiscal certainty as to its revenues and debt obligations to agree to wage increases or to have a reasonable certainty that it can pay wage increases due its employees.

The City points out that its revenues are being intercepted by the Illinois Municipal Retirement Fund at the rate of \$600,000.00 per year and that the City's accounts are constantly being garnished by private creditors to collect on outstanding obligations. Therefore, the City points out that no matter how deserving of a raise the police officers may be, the City cannot pay wage increases when it does not have the monies available to pay them.

(3) The degree of financial instability and financial exigency which exists in the City of East St. Louis is at such a level that the City is declared a financially distressed city under the laws of the State of Illinois. The City notes that its financial condition has been determined to be at such a critical stage that the State of Illinois developed and adopted certain legislation, especially intended to assist the City of East St. Louis. The law so passed is "The Financially Distressed City Act."

In fact, it notes that the City exists as the only city within the State of Illinois declared as a financially distressed city and to come under the purview of the Act.

The City argues that even though the Union has attempted to show how the City of East St. Louis is comparable to other cities and that according to those comparable cities the City should be paying its officers more wages, it is an undisputable fact, that neither the City of East St. Louis nor its financial conditions are comparable to any other city within the state. In fact, the City points out that its financial condition was at such a low state that the State of Illinois itself had to intercede to provide loans and other assistance to the City. Under such financial circumstances, the City questions how it can pay wage increases to the police officers and especially increases of such high percentages (ranging from 13% to 18%).

(3) The City of East St. Louis does not have control of its budget and finances. Because it is a financially distressed city the budget and finances of the City of East St. Louis are not under its independent control, but rather fall under the supervision of the East St. Louis Financial Advisory Authority. The City's budget must be approved by the Authority and, furthermore, all expenditures must be provided for in the City's budget and must receive approval of the Authority. Such items as wages of employees and increases in wages must not only be budgeted but must be submitted to the Authority for approval. It notes that the Authority's purpose and the purpose of the "Act" are to

ensure that the City becomes financially stable. The City stresses that wage increases without a showing of financial ability to pay them would threaten or jeopardize the City's attempt to regain financial stability and is inconsistent and contrary to the intent and purposes of the financially distressed City Act.

The City argues and has presented evidence that it does not have the financial ability to pay such wage increases as proposed by the Union, but the Union, on the other hand, has not demonstrated or even offered any evidence or testimony to the contrary. Basically, the City notes that the whole Union case is premised on the belief that the officers deserve a raise and, therefore, the City should pay such wage increases as the Union has proposed.

(4) The City must attain more financial stability and more control of its finances before it can pay wage increases to its employees. The City contends that it has substantial debt obligations which it must come to terms with before it can take on new obligations, such as wage increases for its employees. It notes that until these debt obligations are resolved, like the existing \$500,000.00 claim of the police officers, the City's financial picture and stability will remain uncertain. It adds that until these debt obligations are resolved the City's finances and revenues will be subject to garnishments, attachments and other means of collection. As long as such remain as real possibilities then the City's revenues, its budgets, and its projections for the use of its revenues, all exist on a cloud of uncertainty and

beyond the grasp of the City to control and determine. Without such certainty existing, without financial stability, the City cannot offer or pay its employees any wage increases.

Based upon the above reasons, the City submits that the arbitrator reject and deny the Union's proposed wage increases and that he accept the City's position that no wage increases be given.

I have reviewed the testimony, evidence and arguments of the parties and the final offers of the parties and I find that after a review of the relevant points submitted I must adopt the last offer of settlement made by the Union because under the terms of Section 14-(g) of the Act the Union's offer more nearly complies with the applicable factors which are prescribed in Section 14-(h).

I base my findings upon the factors mandated in Section 14-(h). Factor (1) refers to the lawful authority of the employer, which I find to exist in the instant case.

Factor (2), which refers to the stipulations of the parties, relates to the stipulation entered into between the parties at the start of the hearing where they agreed as follows:

(1) That these proceedings are governed by Section 14 of the Illinois Public Labor Relations Act ("The Act"), §1614, Ch. 48, Ill.Rev.Stat.;

(2) That the Arbitrator has jurisdiction over the subject matter and the parties;

(3) That the parties waive the right to a three member tripartite panel of arbitrators as provided in §14 of the Act and agree to proceed with a single, neutral arbitrator;

(4) That the parties waive any and all time limits that are contained in the Illinois Public Labor Relations Act, §1614, Ch. 48, Ill. Rev. Stat., and that the proceedings were conducted in a timely fashion;

(5) That the unresolved bargaining subjects which the parties are submitting to the Arbitrator for decision are as follows:

- * Wages for members of the bargaining unit for the year 1990;

- * Retroactivity for members of the bargaining unit for any wage increases awarded by the Arbitrator for the year 1990;

- * Wages for members of the bargaining unit for the year 1991 ²;

- * Retroactivity for members of the bargaining unit for any wage increases awarded by the Arbitrator for the year 1991 ³;

- * Duration of the Agreement between the parties ⁴;

(7) That the Arbitrator has the express authority and jurisdiction to issue an award providing for increases in wages and other forms of compensation retroactively to January 1, 1990, pursuant to §14 of the Act and the Rules and Regulations of the Illinois State Labor Relations Board.

Factor (3) refers to the interest and welfare of the public and the financial ability of the unit of government to meet these costs. I have compared the wages, hours and conditions of employment of the police officers involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees in general. I find that the mandated comparison in the specific areas set forth and a comparison of the wages, hours and conditions of the employees involved in the instant case with other employees in public employment in comparable communities and in private employment in comparable communities, leads to the conclusion that the Union's position is

the appropriate one upon which to base my findings.

Factor (5) refers to the average consumer prices for goods and services commonly known as the cost of living, and in this area I reviewed the data submitted by both parties and I find that the position of the Union is more in keeping with the prescribed applicable factors.

With reference to Factor (6), I have considered the overall compensation presently received by the employees involved herein, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, as well as the continuity and stability of employment and all other benefits received, and I find in this instance that the position of the Union more nearly complies with the applicable relevant factors in this regard.

Factor (7) - I have considered possible changes in the foregoing circumstances during the pendency of the arbitration and I find that none exists.

Factor (8) - This factor relates to other items which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment to a voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

I have reviewed the data and arguments submitted by both parties in connection with such other factors and I find that the position of the Union more nearly complies with the items set forth

in these additional factors.

Based upon the authority and direction vested in me under the terms of Article 14, I adopt the final offer of the Union as the finding of the arbitrator in this proceeding. The award will cover the following items:

1990 Wages

5% Increase effective January 1, 1990, on the wages as set forth in Appendix A on page 62 of the current collective bargaining agreement.

Probationary Patrolman:	\$ 22,260.00
Patrol Officer (1-5 years):	\$ 24,360.00
Patrol Officer (5-10 years):	\$ 25,410.00
Patrol Officer (10 yrs .and above):	\$ 26,460.00
Sergeant (regardless of years):	\$ 27,510.00

Detectives - (The existing \$600.00 per year differential has not been discussed and remains in effect.)

1991 Wages

5% Increase effective January 1, 1991, on the base wages in effect on 12/31//90.

Probationary Patrolman:	\$ 23,373.00
Patrol Officer (1-5 years):	\$ 25,578.00
Patrol Officer (5-10 years):	\$ 26,680.50
Patrol Officer (10 and above):	\$ 27,783.00
Sergeant (regardless of years):	\$ 28,885.50

Detectives - (The existing \$600.00 per year differential has not been discussed and remains in effect.)

Retroactivity - 1990

That the pay rates effective January 1, 1990, be paid retroactively to January 1, 1990, within sixty (60) days of the issuance of the Arbitrator's award.

Retroactivity - 1991

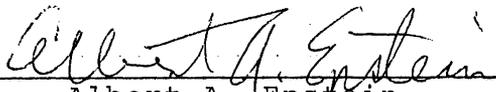
That the pay rates effective January 1, 1991, be paid retroactively to January 1, 1991, within sixty (60) days of the issuance of the Arbitrator's award.

Duration

That the contract between the parties be from the period of January 1, 1990 through December 31, 1990 (on the reopener), and from January 1, 1991, through December 31, 1991.

* * * *

I find that the above award, based upon the Union's final offer, provides a more appropriate and realistic set of terms for the years involved in the instant case than the final offer of the City which provided for a wage freeze.


Albert A. Epstein
Arbitrator

Northbrook, Illinois
September 24, 1993

AAE:lm