INTEREST ARBITRATION

In the Matter of Arbitration Between:

The City of Edwardsville, Illinois

and

Firefighter's Union Local #1700

ISLRB No. S-MA-92-79

Appearances:

For the Employer:

Mayor Dennis DeToye
Dean Sweet, Attorney at Law
Judy Nelson, Consultant
Fire Chief Steve Deist

For the Union:

Michael Lass, Labor Consultant
Terry Becker, President, Local 1700
R. Michael Hogan, Sec'y-Treas., Local #1700

Arbitrator:

Anne L. Draznin, Esq.

Following collective bargaining and failure to reach a contract, this matter was brought to interest arbitration pursuant to the provisions of the Illinois Public Labor Relations Act, Sec. 14, et. seq. (1984 as amended). Initial arrangements were handled via conference call with all parties present on the telephone. The parties waived the three member arbitration panel and submitted the dispute to the neutral arbitrator for resolution. Proceedings were conducted by conference call and at

the City Hall of the City of Edwardsville on February 27 and March 19, 1992. Both sides had opportunity to provide the arbitrator with information for consideration as to the areas of disagreement. Following the first day, the arbitrator provided the parties with a statement of the issues left to be resolved.

Based upon the materials provided and the stipulations of the parties, it is hereby ordered that the collective bargaining agreement between the City of Edwardsville and the Edwardsville Firefighter's Local #1700, in addition to those provisions agreed upon prior to the submission of the remainder to interest arbitration, shall include the following:

I. **ARTICLE THIRTEEN, GRIEVANCE PROCEDURE** shall include the following language in the fourth paragraph:

> **Step 3:** Should the aggrieved party and/or union feel that the grievance was not satisfactorily settled in Step #2, the grievance shall be submitted, within five (5) calendar days of Step #2, to the Mayor or his/her representative(s), who shall meet with the union's representative(s) in an attempt to resolve the grievance, within fourteen (14) calendar days of the grievance being submitted to this step, and shall also provide a written response within the same fourteen (14) calendar days.

II. **ARTICLE TWENTY TWO** shall read as follows:

PHYSICAL EXAMINATION AND DRUG TESTING

Sec. 1 **Objectives**

The City and the Union agree to establish a program of annual physical examinations to insure the health and well-being of Fire Service Employees.

The parties agree that it is of the highest importance and concern that Fire Service employees be able to exercise sound judgment and properly perform their duties for the protection and safety of themselves, their fellow employees, and the public; yet, each party desires to take reasonable steps to insure that the rights of both employees and citizens are properly recognized and protected.

It is not the intention of the City or Union to violate any established rights of its employees.

The parties desire to encourage rehabilitation of employees who are accurately identified as alcohol or drug abusers so that, in the appropriate cases, such employees may continue or resume employment.

Sec. 2. **Annual Physical Examinations**

The City and the Union agree that a program of annual physical examinations shall be established.

The procedures for these examinations shall be:

A. The annual physical examination shall be conducted by a licensed physician selected by the City.

B. Physical examinations shall be conducted at the City's expense and, to the extent possible, using on-duty hours for the process.

C. The annual physical examination shall include the following procedures and tests:

1. Basic physical examination by the physican which may include a non-drug/alcohol urinalysis test.

2. Basic EKG.

3. Two view chest x-ray (posterior - anterior, lateral) in even numbered years.

4. Basic blood chemistry screening (complete chemistry including all electrolytes and liver function studies).

D. When a medical problem is indicated as a result of the physical examination and the Employee is determined by the physician to be unfit for duty, then either the Employee or the Employer may request a second examination by their own physician at their own expense. The City shall not take any adverse action against the employee because of the finding that he/she is unfit for duty until after receipt of the second medical opinion. If there is a disagreement between the two physicians as to whether the employee is or is not fit for duty, the matter will be considered grievable and, if grieved, shall skip the initial three steps and proceed directly to the arbitration provisions of the grievance process as set forth in Article Thirteen. For purposes of this provision, the receipt by the Employee of notice of adverse action by the City, following its receipt of the second physician's opinion, shall be substituted for receipt of the Step #3 response referenced in the Arbitration paragraph of Article Thirteen.

E. Employees shall be notified at least seven (7) days in advance of their physical examination date.

F. All medical information shall remain confidential between the employee and physican(s) with the Employer to receive a statement from the physican(s) as to the ability or inability of the employee to perform his/her job duties. In the event of a grievance, hearing, or litigation between the Employee and Employer regarding the Employee's fitness for work, then the employer shall be entitled to relevant medical information. Nothing in this agreement is to be construed as a limitation on the Employer's rights to require medical examinations at the Employer's expense if Employees are returning from medical leave of absence or worker's compensation leave of absence. The scope of such medical examinations following medical leave of absence

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or worker's compensation leave of absence shall not exceed that which is set forth in subsection (c)3 (above) of this section.

Sec. 3. **Eye Examination**

The City shall pay for eye examinations as required or needed. The City shall pay for any new eye wear as may be required by prescription changes or non-negligent damage in the line of duty to the extent of $100.00 per pair.

Sec. 4. **Drugs and Alcohol Abuse**

A. General Policy

The use of illegal drugs and the abuse of legal drugs and alcohol by the members of the Fire Department presents unacceptable risks to the safety and well being of other employees and the public, invites accidents and injuries, and reduces productivity. In addition, such conduct violates the reasonable expectations of the public that the employees who serve and protect them obey the law and be fit and free from the adverse effects of drugs and alcohol abuse.

In the interest of having employees who are fully fit and capable of performing their jobs, and for the safety and well-being of employees and residents, the City and the Union agree to establish a program that will allow the City to take the necessary steps, including drug and/or alcohol testing, to implement the general policy regarding drugs and alcohol.

The City has the responsibility to provide a safe work environment as well as a paramount interest in protecting the public by ensuring its employees are fully capable and fit to perform their jobs at all times. For these reasons, the abuse of prescribed or over-the-counter drugs, the abuse of alcohol or the use, possession, sale or transfer of illegal drugs, cannabis or non-prescribed controlled substances by employees is strictly prohibited on duty. Violation of these policies may result in disciplinary action up to and including discharge.

B. Definitions

1. DRUGS. The term "drug" shall mean any controlled substance listed in Chapter 56 1/2 of the Illinois Revised Statutes, known as the Controlled Substances Act, for which the person tested does not submit a valid, pre-dated prescription. The term "drug" includes both abused prescription and over-the-counter medication, alcohol and illegal drugs of abuse. In addition, it includes "designer drugs" which may not be listed in the Controlled Substances Act, but which adversely affect perception, judgment, memory or coordination.

   A listing of drugs covered by this policy includes, but is not limited to:

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

2. IMPAIRMENT. Impairment due to drugs shall mean a condition in which the employee is unable to properly perform his/her duties due to the effects of a drug in his/her body. Where impairment exists (or is presumed) incapacity for duty shall be presumed.

   "Impairment" due to alcohol shall be presumed when a blood alcohol content of .05 or more is measured.

3. POSITIVE TEST RESULTS. "Positive test results" shall mean a positive result on both a confirming test and an initial screening test. If the initial test is positive, but the confirming test is negative, the test results will be deemed negative and no action will be taken. A positive confirming test result is one where the confirmed specimen tested contained alcohol, drug or drug metabolite concentrations at or above the concentration specified in the Department of Health and Human Services standards as referenced elsewhere in this Article.

4. DRUG ABUSE. The term "drug abuse" includes the use of any controlled substance which has not been legally prescribed and/or dispensed, or the abuse of a legally prescribed or over-the-counter drug, or the abuse of alcohol, which results in impairment.

C. Prohibitions

Employees shall be prohibited from:

1. Consuming or possessing alcohol or illegal drugs at any time while on duty and/or while on any of the Employer's premises or job sites, including all of the Employer's buildings, properties, vehicles and the Employee's personal vehicle while engaged in the business of the Employer;

2. Using, selling, purchasing or delivering any illegal drug while on duty or when off duty;

3. Being impaired due to drugs while on duty;

4. Failing to report to their supervisor any known adverse side effects of any medication, including over-the counter medication or prescription drug(s) which they are taking.

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

D. Administration of Tests

1. All current employes will be given a copy of the Drug and Alcohol Testing policy upon execution of this agreement. All newly hired employees will be provided with a copy at the start of their employment.

2. Nothing in this Article shall limit or prohibit the City from requiring applicants for bargaining unit positions to submit blood and/or urine specimens to be screened for the presence of drugs and/or alcohol prior to employment.

E. When a Test May Be Compelled

1. There shall be no random, across-the-board, or routine drug testing of employees, except as part of treatment and/or after care.

2. Where there is reasonable suspicion to believe that an employee is impaired due to being under the influence of drugs or alcohol while on duty, that employee may be required to report for drug/alcohol testing by the Mayor, the Fire Chief or one of the Fire Captains or other non-bargaining unit administrative personnel. At the time the employee is ordered to submit to testing the City shall contact the Union Representative so that s/he may be present. If the designated Union representative is unable to be reached for two hours after reasonable attempts to contact the representative have been made, then the appropriate non-bargaining unit member may order the Employee to be tested without Union representation. The Union shall provide the City with a list of the Union representatives to be contacted for this purpose and shall maintain it on an ongoing basis. In the event a bargaining unit member (company level officer) is the individual ordering the test, a Union representative must be present.

3. Refusal of an Employee to comply with the order for a drug/alcohol screening will be considered a refusal of a direct order and will be cause for disciplinary action up to and including discharge.

4. It is understood that drug and alcohol tests may be required under the following conditions:

   a. When an Employee has been arrested or indicted for conduct involving illegal drug related activity on or off duty;

   b. When an Employee is involved in an on-the-job injury causing reasonable suspicion of illegal drug use or alcohol abuse;

   c. When an Employee is involved in an on-the-job accident where there is reasonable suspicion of illegal drug use or alcohol abuse; or

   d. Where an Employee has experienced excessive absenteeism or tardiness under circumstances giving rise to reasonable suspicion of off-duty drug or alcohol abuse.

The above examples do not provide an exclusive list of circumstances which may give rise to testing. Other circumstances may give rise to testing provided they conform to the reasonable suspicion standard.

F. Reasonable Suspicion is the standard to determine when a drug or alcohol test may be ordered and the Employee may be required to report for testing.

Reasonable suspicion exists if the facts and circumstances warrant rational inference(s) that a person is using and/or is physically or mentally impaired due to being under the influence of drugs or alcohol. Reasonable suspicion will be based upon the following:

1. Observable phenomena, such as direct observation of use and/or the physical symptoms of impairment by alcohol or controlled substances; or

2. Information provided by an identifiable third party which is independently corroborated by an investigation by the Fire Chief or his designee to determine the reliability or validity of the allegation.

G. Order to Submit to Testing

At the time an Employee is ordered to submit to testing authorized by the agreement, the City shall provide the Employee with the reasons for the order. A written notice setting forth all of the objective facts and reasonable inferences drawn from the facts which formed the basis of the order to test will be provided in a reasonable time period following the order. The Employee shall be permitted to consult with a representative of the Union at the time the order is given, provided that such a representative is available. No questioning of the Employee shall be conducted that is not consistent with the "Fireman's Disciplinary Act." A refusal to submit to such testing may subject the Employee to discipline, but the Employee's taking of the test shall not be construed as a waiver of any objection or rights he/she may have. When testing is ordered, the Employee will be removed from duty and placed on leave with pay pending the receipt of the results.

The City shall pay 100% of the EAP, but if further treatment is necessary, coverage or lack of coverage will be determined by the Employee's individual health plan. If it becomes necessary for the City to eliminate the EAP, the drug testing policy of this contract is terminated.

H. Conduct of Tests

The City may use breathalyzer tests for alcohol testing. In conducting the testing authorized by this agreement (other than by use of a breathalyzer, with respect to which only item 7 below shall apply) the City shall:

1. Use only a clinical laboratory or hospital facility that is appropriately licensed and that has been or is capable of being accredited by the National Institute of Drug Abuse (NIDA).

2. Insure that the laboratory selected conforms to all NIDA standards, including blind testing.

3. Use tamper proof containers, have a chain-of-custody procedure, maintain confidentiality, and preserve specimens for a minimum of twelve (12) months.

4. Collect a sufficient sample of the same bodily fluid or material from an Employee to allow for initial screening, a confirmatory test and a sufficient amount to be set aside reserved for later testing if requested by the Employee.

5. Collect samples in such a manner as to insure a high degree of security for the sample and its freedom from adulteration.

6. Confirm any sample that tests positive in the initial screening of drugs by testing the second portion of the same sample by gas chromatography, plus mass spectrometry or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites.

7. Require that with regard to alcohol testing, for the purpose of determining whether the Employee is under the influence of alcohol, test results that show an alcohol concentration of .05 or more based upon the grams of alcohol per 100 milliliters of blood be considered positive.

8. Provide each Employee tested with a copy of all information and reports received by the City in connection with the testing and the results.

9. Insure that no Employee is subject to any adverse employment action except temporary reassignment with pay or relief from duty with pay during the pending of any testing procedure. Any such reassignment or relief from duty shall be immediately discontinued in the event of a negative test result, and all records of the testing procedure will be expunged from the Employee's personnel files.

10. Require that the laboratory report to the City that a blood or urine sample is positive only if both the initial and confirmatory test are positive for a particular drug. In the event the City obtains information concerning testing or results thereof inconsistently with the provisions of this Article, then such information shall be removed from the Employee's personnel file and may not be used by the City for any reason which could adversely affect an Employee's conditions of employment.

I. Prohibited Levels

A positive test result of any detectable amount of a controlled substance, other than as provided herein, is a prohibited level. A positive test result means a finding of the presence of drugs or their metabolite in the sample tested at or above those levels established by the Department of Health and Human Services at the time the test is made. The following chart of maximum drug levels is included for illustrative purposes only. It is understood that changes in technology and/or the need to detect the presence of other types of drugs may at times necessitate the adoption of new or changed prohibited levels. If there is any difference between the prohibited drug levels set forth here and those standards established by the Department of Health and Human Services (DHHS), the existing DHHS standards shall prevail for all drug levels except alcohol.

	Initial Test Levels	Confirmatory Test Levels
Alcohol	.05% blood alcohol content	.05% blood alcohol content
Marijuana metabolites	100 ng/ml	15 ng/ml
Cocaine metabolites	300 ng/ml	150 ng/ml
Opiate metabolites	300 ng/ml	
Morphine		300 ng/ml
Codeine		300 ng/ml
Phencyclidine	25 ng/ml	25 ng/ml
Amphetamines	1,000 ng/ml	
Amphetamine		500 ng/ml
Methamphetamine		500 ng/ml

The foregoing standards for prohibited levels shall not preclude the Employer from attempting to show that test results below said levels demonstrate that the Employee was impaired, but the Employer shall bear the burden of proof in such cases.

J. Right to Contest

The Union and/or the Employee, with or without the Union, shall have the right to file a grievance concerning any drug or alcohol testing authorized by this Agreement, except as otherwise provided in this Article.

K. Voluntary Requests for Assistance

The City shall take no adverse employment action against an Employee because he/she voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem unless the request follows the order to submit to testing or unless the Employee is found to be using illegal drugs or under the influence of drugs or alcohol. If the Employee is then unfit for duty in his current assignment, the City may authorize sick leave or another assignment if it is available in which the Employee is qualified and/or is able to perform. The City shall make available through its Employee Assistance Program (EAP) a means by which the Employee may obtain referrals and treatment. All such requests shall be confidential. When undergoing treatment

and evaluation, Employees shall be allowed to use accumulated sick leave, vacation time, holidays earned, and/or compensable time accumulated, and/or be placed on unpaid leave pending completion of treatment. For the purpose of this Article, the use of accumulated sick leave shall only be afforded to an Employee once during his tenure.

L. Disciplinary Action for Confirmed Positive Test Results

1. First Positive. The first confirmed positive test result will be cause for disciplinary action up to and including a five calendar day disciplinary suspension. The Employee must agree to the following conditions:

   a) the Employee will be mandatorily referred to the Employee Assistance Program for evaluation, diagnosis and development of a rehabilitation treatment plan consistent with generally accepted standards; and

   b) the Employee will be required to cooperate in the rehabilitation plan, undergo unannounced periodic drug and alcohol screening for a period of up to (twelve) 12 months, successfully complete the prescribed rehabilitation, remain free of drug and alcohol use, and sign an agreement consenting to said conditions.

   Failure to comply with these conditions on continued employment shall be cause for discharge. Any Employee who does not test positive after the first instance for a period of five (5) years or more shall be considered at the first positive level for any subsequent positive test.

2. Second Positive - During Rehabilitative Treatment. If an Employee has a first confirmed positive test and enters a rehabilitation program, and thereafter while that Employee is in rehabilitation that Employee has a subsequent confirmed positive test as a result of an unannounced periodic drug and/or alcohol screening, the Employee shall receive a 30 calendar day disciplinary suspension and shall be required to continue in rehabilitation and comply with the other conditions of rehabilitation set forth in the preceding paragraph. This 30 calendar day disciplinary suspension shall be final and binding on the Union and the Employee and shall not be subject to the grievance procedure set forth in Article Thirteen. Any confirmed positive test thereafter, either periodic unannounced or reasonable suspicion, shall result in the Employee's discharge which

shall be final and binding on the Union and the Employee and the penalty shall not be subject to the grievance procedure set forth in Article Thirteen.

3. Second Positive - Reasonable Suspicion. An Employee who has a first confirmed positive test under Paragraph L1. above and who subsequently has a confirmed positive test under the reasonable suspicion standard shall be discharged, which discharge shall be final and binding on the Union and the Employee and the penalty shall not be subject to the grievance procedure in Article Thirteen.

4. Employment Status. There may be no requirement on the part of the Employer to keep an Employee on active employment status who is receiving rehabilitative treatment under this Section if it is appropriately determined (ie. determination by an independent physical and/or appropriately certified medical and/or psychological professional) that the Employee's current use of alcohol or drugs prevents such individual from performing his/her duties or whose continuance on active status would constitute a direct threat to the property and safety of others. Such Employee shall be afforded the opportunity to use accumulated paid leave or take an unpaid leave pending treatment. The Employer shall be reasonable in its application of this provision and this application shall be consistent with the recommendations of the appropriate above noted medical professional.

5. Discipline. This Section shall in no way limit discipline for other offenses arising out of, related to or aggravated by drug use or abuse, including but not limited to discipline or discharge because the Employee's condition is such that he/she is unable to properly perform his/her duties due to the effects of drugs, or because the Employee posed or caused any threat to the health and safety of him/herself or others, or because the Employee caused damage to property; nor shall it limit the discipline to be imposed for selling, purchasing or delivering any illegal drug during working hours or while off duty or for using any illegal drug while on duty. In cases of misconduct arising out of, related to or aggravated by drug use or abuse, the discipline imposed shall be based on the extent, severity, and/or consequences of the misconduct (including whether such misconduct is a violation of public law) or inability to perform (including the risk of damage to life, limb or property).

M. Confidentiality of Test Results

The results of drug and alcohol tests will be disclosed to the person tested, the Fire Chief, the Mayor, the Secretary-Treasurer of the Union and such other officials as may be mutually agreed to by the individual Employee, and the parties. Such designations will be made on a need-to-know basis. Test results will not be disclosed externally except where the person tested consents. Any Employee whose drug/alcohol screen is confirmed positive shall have an opportunity at the appropriate stage of the disciplinary process to refute said results.

Signed this 23rd day of March, 1992
at Springfield, Illinois.

Anne L. Draznin, Arbitrator

Anne L. Draznin, Esq.
59 East Van Buren Street
Suite 2501
Chicago, IL 60605