RECEIVED
OCT 20 1993
IL STATE LAB. REL. BD.
SPRINGFIELD, IL

In the Matter of Arbitration between THE CITY OF METROPOLIS, ILLINOIS, and METROPOLIS PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 3367, IAFF	Interest Arbitration Before Gladys W. Gruenberg Arbitrator FMCS No. 93-02960 ISLRB No. S-MA-92-172 Hearing Date: July 7, 1993 Briefs Filed: August 27, 1993 Award Date: October 18, 1993

ARBITRATION OPINION AND AWARD

TABLE OF CONTENTS

	Page No.
Issues	2
Applicable Documents	3
Preliminary Analysis	6
Issue No. 1 -- Hours of Work and Overtime	8
Award	11
Issue No. 2 -- Vacations	11
Award	12
Issue No. 3 -- Sick Leave	12
Award	13
Issue No. 4 -- Funeral Leave	14
Award	15
Issue No. 5 -- Insurance	15
Award	17
Issue No. 6 -- Termination Effect	17
Award	18
Issue No. 7 -- Wages	18
Award	20
Appendix	21

In the Matter of Arbitration between THE CITY OF METROPOLIS, ILLINOIS, and METROPOLIS PROFESSIONAL FIREFIGHTERS ASSOCIATION, LOCAL 3367, IAFF	Interest Arbitration Before Gladys W. Gruenberg Arbitrator FMCS No. 93-02960 ISLRB No. S-MA-92-172 Hearing Date: July 7, 1993 Briefs Filed: August 27, 1993 Award Date: October 20, 1993

ARBITRATION OPINION AND AWARD

The above-named matter of arbitration was heard on July 7, 1993, at Metropolis, Illinois, before Gladys W. Gruenberg, Arbitrator appointed by the Federal Mediation and Conciliation Service, pursuant to agreement between the City of Metropolis, Illinois (City) and the Metropolis Professional Fire Fighters Association, Local 3367, International Association of Fire Fighters (Union). This matter is governed by the provisions of the Illinois Public Labor Relations Act (IPLRA), Section 14 (Security Employee, Peace Officer and Fire Fighter Disputes), and the Rules and Regulations of the Illinois State Labor Relations Board (ISLRB), Part 1230, Subpart B (Impasse Procedures for Protective Services Units).

Appearances:

For the City: Anthony B. Byergo and Ronald J. Kramer, Attorneys, Seyfarth, Shaw, Fairweather and Geraldson
Joseph Neely, City Attorney
Mike Childers, Fire Chief
Beth Clanahan, Assistant to the Mayor

For the Union: Cel Kelly, Staff Representative, IAFF
Ronald S. McDonald, Southern District Vice President, Associated Fire Fighters of Illinois, IAFF
Rodney Brugger, President, IAFF Local 3367
Lynn E. Thompson, Secry.-Treas., IAFF Local 3367

This matter comes to arbitration by reason of the Union's Demand for Compulsory Interest Arbitration (Form 117), filed with the ISLRB on October 19, 1992, stating that negotiations for a first contract had reached an impasse. In accordance with Section 14(p) of the IPLRA and Section 1230.80(a) of the ISLRB Rules and Regulations, the parties agreed to waive a three-member arbitration panel and to submit this matter to a single arbitrator. The parties agree that this matter is properly before the Arbitrator.

All evidence was produced at the hearing, and witnesses were sworn and were permitted to testify fully. A transcript was taken, and briefs

were exchanged through the Arbitrator on August 27, 1993. The parties agreed to waive time limits for submission of the arbitration award.

Background Information

The City of Metropolis has a population of about 6,700 and is located in southern Illinois on the Ohio River across from Paducah, Kentucky. On May 10, 1991, the ISLRB certified the City's full-time firefighters as a bargaining unit. At the time of certification, there were 4 employees in the unit with the rank or position of Fire Fighter/Driver (firefighter). At the time of the hearing, the City had increased the fire department force to 7 full-time firefighters. In addition, the City employs 12 to 15 part-time volunteer firefighters, who are not included in the bargaining unit.

Negotiations between the City and the Union began in late 1991. The parties met on November 13 and 14 and December 11, 1991, and on February 11 and August 11, 1992. By letter dated August 20, 1992, the parties requested the FMCS to assist them with "an impasse." They met with an FMCS mediator on October 14, 1992, and when no agreement could be reached, the Union filed for interest arbitration on October 19, 1992. The parties requested both ISLRB and FMCS arbitration panels, and by letter dated December 19, 1992, the FMCS notified the Arbitrator of the appointment. The parties agreed that the arbitration hearing should be held on July 7, 1993, and submitted their final offers on all issues at the hearing.

THE ISSUES

On April 26, 1993, the City filed Motions To Compel Exchange of Final Offers And To Bifurcate Hearing, requesting that the Arbitrator order the parties to simultaneously exchange final offers through the Arbitrator, and that the hearing be bifurcated to resolve issues of hours of work and wages and that the remaining issues be remanded to the parties for resolution at a later date. By letter dated May 21, 1993, the Union filed its objections to the City's motions, and on June 11, 1993, the Arbitrator denied the City's motions and ruled that all the issues were "economic" in accordance with Section 14(g) of the IPLRA and should be resolved at one hearing. Under Section 14(g) the Arbitrator is restricted to a choice between the parties' last offers on each economic issue.

The parties agree that the outstanding issues are as follows:

1. Hours of work and overtime
2. Vacations
3. Sick leave
4. Funeral leave
5. Insurance
6. Termination effect
7. Wages

Applicable Documents

Illinois Public Labor Relations Act
Section 14.

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute and direct each of the parties to submit...its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. * * * As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

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

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

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

(j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation 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.

ISLRB Rules and Regulations (Subpart B)

Section 1230.90 (Conduct of the...Hearing)

(o) The arbitration panel shall:

(1) determine which issues are in dispute and which of those issues are economic issues and serve a copy of that determination on the parties; and

(2) require the parties to submit their final offers of settlement on each economic issue in dispute;...

(p) The neutral chairman's fee, the costs of recording and transcribing the hearing, the rent if any for the hearing room, and all other costs of the proceeding, except for supplemental proceedings necessitated by an employer's rejection of an arbitration award, shall be shared equally by the parties.

Section 1230.100 (The Arbitration Award)

(a) Within 30 days after the conclusion of the hearing or such further additional periods to which the parties may agree..., the panel shall issue, serve on the parties, and file with the Board its award and findings of fact. The award shall be considered issued on the date it is served on the parties. The panel shall file a certificate of service with the Board.

(b) The award shall contain findings of fact and a written opinion concerning each issue in dispute. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. [Hereafter the ISLRB Rules and Regulations repeat the requirements of IPLRA Section 14(h) above.]

(e) The commencement of a new municipal fiscal year after the initiation of arbitration procedures...shall not render the proceeding moot. Awards of wage increases may be effective only at the start of the fiscal year beginning after the date of the award; however, if a new fiscal year began after the

initiation of arbitration proceedings, an award of wage increases may be retroactive to the beginning of that fiscal year.

Section 1230.110 (Employer Review of the Award)

(a) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or equivalent appropriate means.

(c) The governing body may reject any terms of the award... The governing body shall provide written reasons for its rejection and shall serve those reasons on the parties and the neutral chairman no later than 20 days after the rejection vote... The reasons for rejection shall be considered issued on the date that they are served on the neutral chairman.

(e) The neutral chairman shall...convene a supplemental interest arbitration hearing within 30 days after issuance of the reasons for rejection.

Arbitration and Court Decisions Cited by the City

Village of Skokie and IAFF, ISLRB No. S-MA-89-123 (Goldstein 1990)
City of Peoria and IAFF, ISLRB No. S-MA-92-067 (Feuille (1992)
City of Aurora and IAFF, FMCS No. 91-00965 (Dilts 1991)
City of Chicago and Chicago Firefighters Union, AAA No. 5139005884R (Lieberman 1986)
Village of Arlington Heights and IAFF, ISLRB No. S-MA-88-89 (Briggs 1991)
City of Gresham and IAFF Local 1062 (Clark 1984)
City of Chicago and Fraternal Order of Police, Lodge 7 (Roumell 1993)
Village of Bartlett and County, Municipal Employees', Supervisors' and Foreman's Union Local 1001 (Laborers Union), FMCS No. 90-03589 (Kossoff 1990)
City of Aurora and Association of Professional Police Officers, ISLRB No. S-MA-92-194 (Berman 1993)
City of Urbana and IAFF Local 1147, ISLRB No. S-MA-90-214 (Doering 1991)
Kentucky Municipal League v. Department of labor, 22 W&H Cases 605 (Ky.Ct.App. 1975)
Machinists v. Waukesha Div., 143 LRRM 2456 (E.D.Wis. 1993)
City of Markham and Teamsters, ISLRB No. S-MA-90-147 (Larney 1991)
City of Bartow, 86 LA 189 (Frost 1985)
McHenry County and McHenry Sheriff's Department and FOP, FMCS No. 90-06579 (Hines 1990)
City of Rock Island and IAFF (Nathan 1991)
United States Postal Service, DLR No. 249, D-1 (Kerr 1984)
Rock County, WERC Dec. No. 22594-1 (Fleischli 1986)
City of Springfield and PBPA, ISLRB No. S-MA-89-74 (Benn 1990)

Comparable Agreements Submitted by the City

City of Herrin and IAFF Local 3251, effective 1990-1994
City of Benton and Laborers Local 529, effective 1992-1993
City of Paducah and IAFF Local 168, effective 1991-1993

City of Metropolis and Illinois Fraternal Order of Police Labor Council, effective 1992-1995

Comparable Agreements Submitted by the Union

City of Anna and IAFF Local 3077, effective 1990-1993
City of East Alton and IAFF Local 2333, effective 1991-1993
City of Litchfield and IAFF Local 3252, effective 1992-1993
City of Harrisburg and IAFF Local 2254, effective 1993-1994
City of Murphysboro and IAFF Local 3042, effective 1992-1993
City of Robinson and IAFF Local 3458, effective 1992-1995
City of West Frankfort and IAFF Local 2402, effective 1990-1992
City of Marion and IAFF Local 2977, effective 1992-1994
City of Metropolis and Operating Engineers Local 318, effective 1990-1993

Preliminary Analysis

The criteria listed in IPLRA Section 14, noted above, are used as the bases for the Arbitrator's findings "as applicable." Items (1) and (2) are not applicable. As to (3), the City has stated that its financial ability is not an issue, except as normal prudence applies, and has submitted no specific data relating to ability to pay. As to (4), for external comparison, the parties have agreed that three communities in the southern Illinois job market are comparable with Metropolis, namely, Harrisburg, Murphysboro, and West Frankfort. For internal comparison, they have presented the police officers (City Exhibit No. 23)(CX) and operating engineers (Union Exhibit No. 13)(UX) contracts with the City of Metropolis to support their positions. As to (5), the Union submitted cost of living (COL) data (UX No. 10) for justification of position, and the City's wage proposal parallels COL increases for 1991 and 1992. As applicable, (6), (7), and (8) are considered as they arise in discussing the issues.

At the beginning of the hearing, the parties exchanged their final offers, and a recess was called to permit study of the proposals. The format of the final offers was considerably different. The City submitted complete contract clauses, segregated as articles and sections and paragraphs, on each issue. The Union, on the other hand, submitted an outline of proposals in narrative form. The City's final offer on the outstanding issues was almost the same as the original proposal submitted to the Union on November 25, 1991 (CX No. 10). In order to arrive at a basis for comparing the two final offers, the Arbitrator questioned Union representatives, and it became evident that the Union's specific final offer on each issue was contained in its original proposal submitted to the City on November 14, 1991 (UX No. 9). Therefore the Arbitrator accepted UX No. 9 as part of the Union's final offer, and overruled the City's objection that the Union was changing its final offer.

Comparison of the final offers indicates that, contrary to the usual situation in negotiations, especially for a first contract, the Union is seeking to maintain the status quo on every issue except wages, whereas the City is proposing changes in benefits and practices which the City itself had voluntarily instituted before the Union was certified. As a result, the Arbitrator's selection of the Union's last offer on all

issues except wages maintains the status quo and requires little new action by the City governing body to effectuate ratification of the Arbitrator's award because the benefits and practices are currently in effect and presumably have already been enacted by appropriate City ordinance.

At the hearing the Arbitrator questioned the parties' representatives to discover which contract articles and sections had been or could now be mutually agreed to and marked as "TA" (tentative agreement), thereby eliminating those items from the Arbitrator's consideration. Using CX No. 10 as a guide, listed below are the contract clauses which the parties designated as TA either before or during the hearing, with the appropriate date of agreement, and with those at impasse indicated by an asterisk (*):

Contract Clause	TA Date
Article I - Recognition	2/11/92
Article II - Union Security and Rights	2/11/92
Article III - Labor-Management Meetings	2/11/92
Article IV - Management Rights	8/11/92
Article V - Hours of Work and Overtime	
*Section 5.1. Application of Article	
*Section 5.2. Duty Day	
*Section 5.3. Normal Work Period	
*Section 5.4. Changes in Normal Work Day or Normal Work Week	
*Section 5.5. Overtime Pay	
Section 5.6. Call-Back Pay	7/7/93
*Section 5.7. Hire-Back and Holdover Pay	
Section 5.8. Assignment of Overtime	2/11/92
*Section 5.9. Compensatory Time	
Section 5.10 - Duty Trades	2/11/92
Article VI - Seniority, Layoff and Recall	8/11/92
Article VII - Fire and Police Commission	8/11/92
Article VIII - Grievance Procedure	8/11/92
Article IX - No Strike - No Lockout	8/11/92
Article X - Holidays	8/11/92
Article XI - Vacations	
*Section 11.1. Eligibility and Allowance	
Section 11.2. Vacation Pay	8/11/92
Section 11.3. Scheduling and Accrual	8/11/92
Article XII - Sick Leave	
*Section 12.1. Purpose and Allowance	
*Section 12.2. Days Earned in Accumulation	
Section 12.3. Notification	7/7/93
*Section 12.4. Medical Examination	
*Section 12.5. Sick Leave Utilization	
Article XIII - Additional Leaves of Absence	
Section 13.1. Unpaid Discretionary Leaves	2/11/92
Section 13.2. Application for Leave	2/11/92
Section 13.3. Military Leave	2/11/92

Contract Clause (cont'd)	TA Date
*Section 13.4. Funeral Leave	
Section 13.5. Leave for Illness, Injury or Pregnancy	8/11/92
Section 13.6. Benefits While on Leave	8/17/92
Section 13.7. Non-Employment Elsewhere	8/11/92
*Article XIV - Wages	
*Article XV - Uniform Allowance	
Article XVI - Insurance	
*Section 16.1. Coverage	
*Section 16.2. Cost	
*Section 16.3. Cost Containment	
Section 16.4. Life Insurance	7/7/93
*Section 16.5. Terms of Insurance Policies	
*Section 16.6. Reopener	
Article XVII - General Provisions	
Section 17.1. Gender	2/11/92
Section 17.2. Ratification and Amendment	8/11/92
Section 17.3. Fitness Examinations	2/11/92
Section 17.4. Physical Fitnese Requirements	8/11/92
*Section 17.5. Drug and Alcohol Testing	
Section 17.6. Outside Employment	8/11/92
Section 17.7. No Smoking	8/11/92
*Section 17.8. Termination Effect	
Section 17.9. Inoculations-Communicaable Diseases	2/11/92
Section 17.10. Lost or Damaged Personal Property	2/11/92
Article XVIII - Savings Clause	2/11/92
*Article XIX - Entire Agreement	
Article XX - Termination	8/11/92
*Appendix A - Wage Schedule	8/11/92

Unless mutually agreed otherwise, the parties will incorporate into their final agreement all the above items which have been tentatively agreed to, in addition to the award of the Arbitrator on the asterisked items, which are set forth in contract form in the Appendix to this opinion. Three items -- Article XV (Uniform Allowance), Article XVII (Section 17.5. Drug and Alcohol Testing), and Article XIX (Enntire Agreement) -- were not included in the arbitration submission; therefore they are not considered by the Arbitrator.

Rather than reproduce the exact wording of the parties' final offers here, the Arbitrator has paraphrased the presentations.

ISSUE NO. 1. HOURS OF WORK AND OVERTIME

Union Final Offer and Position

The current 42-hour workweek comprised of 12-hour shifts, from 6:00 a.m. to 6:00 p.m. and from 6:00 p.m. to 6:00 a.m., that is, 2184 work hours per year shall be maintained. All hours on duty in addition to

regular hours shall be considered overtime and be paid at the time and one-half rate.

Changing from 12-hour to 24-hour shifts and from 42 hours to 53 hours per week would penalize employees for unionization. Presently firefighters work a 12-hour shift, working 12 shifts in 28 days, which amounts to 168 hours every 28 days for a total of 2184 hours per year, or an average of 42 hours a week. Under the final implementation of the City's plan, employees would be required to work 53 hours per week or 552 additional hours per year without additional compensation, thereby reducing their hourly rate from $9.5062 to $8.1497. No other comparable jurisdiction has phased in this type of schedule in this manner.

City Final Offer and Position

There shall be no designated workweek. The normal work period for employees shall be 28 days. The normal duty day shall be 24 hours followed by 48 hours off, with shifts starting and ending at 6:00 a.m. There shall be a phase-in period for this schedule as follows: From the date of ratification of the agreement to June 30, 1994, employees shall work eight 24-hour days each work cycle (192 hours). After June 30, 1994, employees shall work nine 24-hour days for three cycles and eight 24-hour days for the fourth cycle (210 hours). Hours worked in excess of the designated cycle or in excess of 24 consecutive hours shall be paid at the time and one-half rate.

The City's proposal for a 24/48 schedule is necessary to modernize the fire department and improve the City's ability to respond to fire emergencies without increasing manpower. Even the Union has admitted that this schedule is prevalent among comparable jurisdictions. The City has hired more employees, but many scheduled shifts are manned by only one firefighter. The City needs to correct this deficiency.

To permit a smooth transition to the new schedule, the firefighters will work 48 hours per week until June 30, 1994, and thereafter 52.62 hours per week, that is, 9 shifts (216 hours) for three 28-day cycles and 8 shifts (192 hours) every fourth 28-day cycle. Any work after 212 hours will be paid for at the time and one-half rate under FLSA regulations. Employees will receive an average of 7.33 "Kelly" or work-reduction days per year when necessary to reduce the number of shifts worked in each cycle to 9 for three cycles and 8 every fourth cycle.

While required to be at the station more hours, firefighters will spend many of those extra hours relaxing and will actually have to report to work 33 percent fewer days. The City's proposal should be adopted.

Discussion and Findings

The City's proposal to change the firefighters' work schedule has been the main item leading to the impasse in negotiations. While it is true that modernization of the fire department is in the City's best interests, it is also true that the proposed change would require employees to work considerably more hours for the same pay. The Arbitrator cannot satisfactorily adjust for this inequity because of the IPLRA restriction

on awards on economic issues only to choice of one of the final offers.

The City's proposal would reduce the employees' hourly rate by 14 percent in the fiscal year effective July 1, 1993 (hours would increase from 2184 to 2496 per year) and by an additional 10 percent, effective July 1, 1994 (hours would increase further to 2736 per year) without additional compensation. The City's statement that employees can "relax" during a 24-hour work period is disingenuous. Employees are paid not only for what they do on the job but for being there, especially when their presence is coupled with potential danger.

If the parties had been able to work out some quid pro quo for a change in the work schedule, there might be some justification for it. But, under the circumstances, the Arbitrator must adopt the Union's final offer of no change in the current work schedule.

The City's proposal to determine the hourly rate for purposes of overtime (at time and one-half) by increasing the divisor from 2184 hours per year to 2496 the first year and to 2736 subsequently, reduces the current hourly rate from $9.5062 (based on $20,761.50 per year) to $8.3179 the first year and to $7.5883 subsequently. Even if the City's proposed wage increase is accepted, raising the annual wage to $21,569.60 still reduces the hourly wage to $8.6417 the first year, and with a raise to $22,297.60 subsequently, the hourly rate is further reduced to $8.1497. Thus, the City's proposed wage increases of 4 percent for fiscal 1993 and 3 percent for fiscal 1994, are negated and more by the proposed change in hours. In effect, employees would receive 14 percent less per hour than their current rate even after the wage increases proposed by the City.

Under the current work schedule the employees' hourly rate is $9.5062, arrived at by dividing the yearly wage by 2184 hours. Whatever increase in yearly wages employees receive, that divisor of 2184 should continue to determine the hourly rate for purposes of overtime. Overtime at the time and one-half rate is to be continued on the current basis, that is, after 12 hours work per day and after 168 hours every 28 days.

In view of the above discussion, the Arbitrator makes the following findings:

1. The issue of hours of work and overtime is an economic issue as defined in IPLRA; therefore, the Arbitrator is required to select between the final offers of the parties.

2. The City has not submitted evidence on any comparable situation whereby a city of comparable size has attempted to make a change similar to the one proposed by the City. While the fire departments of some comparable cities do have a schedule similar to that proposed by the City, there is no evidence as to the circumstances under which those schedules were adopted or whether employees suffered wage reductions in the process or were provided with compensating benefits.

3. In accordance with Section 14(h)(8) of IPLRA, an important factor which is "normally or traditionally taken into consideration in the

determination of wages, hours and conditions of employment through voluntary collective bargaining," is that the employees should be no worse off after a first contract is signed than they were before they chose collective bargaining, unless the City claims inability to pay. The City admittedly is making no such claim in this case. The City's proposal to increase work hours without commensurate compensation is patently contrary to "normal" standards in both public and private employment.

4. The City's proposal to reduce the hourly rate which applies to overtime from $9.5062 to $8.1497, a 14 percent reduction even in the face of a 7 percent wage increase which the City proposes, is contrary to accepted standards. No evidence was produced showing that any such reduction had taken place among cities of comparable jurisdiction.

5. Firefighters, like many other employees, are paid for their time which they devote exclusively to their employer. The claim of the City that they can "relax" during a 24-hour schedule, justifying the proposed wage reduction, is contrary to accepted standards among both private and public employers.

Award

The Union's final offer is awarded. There shall be no change in the work schedule or in the method of determining overtime pay.

ISSUE NO. 2. VACATIONS

Union Final Offer and Position

The current vacation schedule shall be maintained as follows:

After 1 yesr - 1 week
After 2 years - 2 weeks
After 10 years - 3 weeks
After 15 years - 4 weeks

The City's final offer is the same as the Union's, only stated in hours and shifts. However, clauses requiring employees to work a certain number of hours per month to earn vacation and refusing to count leaves of absence as hours worked are contrary to present practice, are contrary to Illinois law, and are not typical of practice in the City or other jurisdictions. The City's Operating Engineers contract does not contain such clauses.

City Final Offer and Position

Employees regularly scheduled and assigned to 12-hour duty days and at least 168 hours per 28-day work period shall earn vacation allowances based on the following schedule:

1 year - 3.5 shifts (42 hours)
2 years - 7 shifts (84 hours)
10 years - 10.5 shifts (126 hours)
15 years - 14 shifts (168 hours)

Employees shall be required to work at least 126 hours during any month

in order to earn credit for vacation.

The City designed its final proposal regarding vacations to provide firefighters with benefits similar to what City employees currently receive. However, "present practice" leaves too many loose ends that could lead to further disputes. Therefore, the City proposes adoption of language from the FOP contract, requiring that employees work a certain number of hours per month to receive benefits.

Discussion and Findings

The current vacation schedule is agreed to by the parties. The one remaining issue is whether employees should be required to work 126 hours per month to earn vacation credit, which represents about two-thirds of the scheduled worktime. None of the three contracts the parties agree are comparable has a provision similar to that proposed by the City. While it is included in the FOP agreement, it is not part of the Operating Engineers agreement with the City.

In view of the fact that there was no such requirement before the Union was certified, this is another example of a reduction in benefits which the City is proposing which is contrary to "normal" collective bargaining standards, absent a claim of inability to pay. Therefore, the Arbitrator retains the status quo in this matter.

In view of the above discussion, the Arbitrator makes the following findings:

1. Employees currently receive vacation based on a work schedule which the Arbitrator has retained. In that event the parties agree that there shall be no change in the vacation schedule.

2. The City proposal to require a two-thirds attendance record to justify vacation credit reduces current benefits and is contrary to normal collective bargaining standards, absent a showing of inability to pay.

3. No evidence was produced to show that agreements of comparable jurisdictions require an attendance record for vacation credit.

Award

The Union's final offer is awarded. The current vacation schedule and practice shall be maintained.

ISSUE NO. 3. SICK LEAVE

Union Final Offer and Position

The current sick leave practice shall be maintained. After completion of one year of continuous service, employees shall be entitled to 12 sick days per year, which may be accumulated to a maximum of 24 days. Employees are to be compensated at the rate of one-third day's pay for each sick day accumulated over 24. Upon termination of employment, except discharge, employees are to be compensated at the rate of one-third day's pay for all

outstanding sick days.

The Union's final offer is current practice. The City's proposal restricts the activities of employees on sick leave, requires employees to work a specified number of hours to accumulate sick leave, and forces employees to wait longer to build to the meximum, contrary to current practice.

City Final Offer and Position

Employees shall receive 8 hours of sick leave for each month of service, provided the employee works more than 126 hours. No paid or unpaid absence, except vacations, shall be counted as hours worked for sick leave credit.

As with its vacation offer, the City developed its sick leave accumulation and utilization offers based upon the FOP contract. Firefighters should receive the same benefits as other City employees, considering differences in their work schedules.

Discussion and Findings

Here again, a reduction in benefits without appropriate quid pro quo for employees cannot be justified. The City has presumably adjusted its final offer on sick leave to accommodate its proposed change in work hours. Since the Arbitrator has not accepted the City's proposal on work hours, the sick leave proposal is not applicable.

The current sick leave benefits are to be maintained. There is no evidence that employees are taking advantage of the current system. Therefore there is no justification for attendance or stay-at-home requirements for sick leave eligibility, and such requirements are not current practice. The internal comparison is mixed, and none of the contracts in comparable jurisdictions contain such restrictions.

In view of the above discussion, the Arbitrator makes the following findings:

1. Applying the comparison factor in IPLRA Section 14(h), no evidence was presented to show that contracts of comparable jurisdictions require the restrictions which the City has proposed. Such restrictions would reduce the benefits currently in effect without justification.

2. While there is some disagreement as to what sick leave benefits employees currently receive. it is clear that the Union seeks to maintain the current benefits and practice.

3. There is no evidence that the restrictions proposed by the City are required by any abuses of the system.

Award

The Union's final offer is awarded. The current sick leave benefits and practices shall be maintained.

ISSUE NO. 4. FUNERAL LEAVE

Union Final Offer and Position

The following schedule for funeral pay shall apply:

3 days -- father/mother, spouse, son/daughter, brother/sister
2 days -- grandparents
1 day -- father-in-law/mother-in-law, brother-in-law/sister-in-law
$\frac{1}{2}$ day -- fellow-employee in the bargaining unit
$\frac{1}{2}$ day -- acting as pall-bearer

Employees must attend the funeral to be compensated.

The City's proposal would in effect give employees only one day funeral leave. The Union's proposal should be adopted.

City Final Offer and Position

Employees shall be entitled to 2 days (two 12-hour shifts) paid funeral leave to attend the funeral of the following: legal spouse, parent, child, brother, sister, parent-in-law, daughter-in-law, son-in-law, grandparent, or grandchild.

The City's offer on funeral leave tracks the FOP contract, except that the FOP contract has three days leave, whereas the Union's proposal is similar to the Operating Engineers contract. The City's proposal is more reasonable and should be adopted.

Discussion and Findings

The parties' discussion on funeral leave, both at the hearing and in briefs, is not very helpful. The Union changed its original request of 3 days for all funeral leave to the complicated schedule in its final offer. The City based its final offer for funeral leave on the assumption that the work hours would be changed to a 24/48 schedule. In addition, witnesses at the hearing were unsure about current practice.

The Arbitrator concludes that the current practice is based largely on what supervisors will permit. Examination of the contracts in comparable jurisdictions is somewhat inconclusive in that, where funeral leave is mentioned at all, 4 contracts allow 3 days, and 3 contracts allow 2 days. In view of the fact that the FOP and the Operating Engineers contracts provide for 3 days, the Arbitrator concludes that the Union's final offer is more in line with the comparable criteria.

In view of the above discussion, the Arbitrator makes the following findings:

1. The subject of funeral leave is considered in one section (Section 13.4) of Article XIII (Additional Leaves of Absence). The other sections of this article were TA'd on February 11 and August 11 and 17, 1992.

2. The impasse on hours of work lies behind the difficulty the parties had in reaching agreement on funeral leave since the City's proposal is tied in with the 24/48 schedule, which the Arbitrator has rejected.

3. The City's FOP and Operating Engineers contracts provide for 3 days of paid funeral leave.

4. Four out of 7 contracts in comparable jurisdictions provide for 3 days of paid funeral leave, while the remaining 3 contracts provide for 2 days.

5. The City's current practice with regard to funeral leave is uncertain.

Award

The Union's final offer is awarded.

ISSUE NO. 5. INSURANCE

Union Final Offer and Position

The current benefits and practice on insurance shall be continued. The Employer shall pay the full and total premium thereon for the employees and their dependents without any insurance coverage at its present level, which is not to be reduced. Retirees with 20 years of continuous service are also covered.

This is an issue raised by the City. The Union merely wants to maintain the status quo. The City's proposal would permit the City to make changes in benefits without bargaining with the Union and would prevent employees from grieving about changes in benefits. The City would remove benefits from retirees, would raise the deductible from $100 to $500, and would permit reopening if costs increased by more than 25 percent. The FOP contract has none of these limitations. The City's final offer should be rejected.

City Final Offer and Position

The City shall have the right to change or offer alternative insurance carriers, HMOs, or benefit levels or to self-insure as it deems appropriate, so long as the coverage and benefits are substantially similar to those they are replacing. Retiree benefits are not applicable to employees hired after July 1, 1993, and shall continue only so long as they are provided in the City group plan. The City will continue to pay 100 percent of the cost of insurance, but may increase the deductible from $100 to $500 per person per year.

The City's proposal on insurance tracks the FOP contract and what nonunion employees currently receive. Firefighters should be covered by the same provisions. Once again, the parties' offers differ primarily in amount of detail rather than intent. Both sides agree that firefighters, dependents and retirees should continue to receive full insurance benefits paid for by the City in accordance with present

practice. The City's proposal merely provides greater detail and is much clearer. Currently, the City can always unilaterally increase the deductibles of its nonunion employees and the FOP, so why shouldn't that right be extended to the firefighters' contract? In addition, the City's proposal compares favorably with comparable jurisdictions and is better than most. The City's proposal is clearly justified, since the Union has offered no basis for its objections.

Discussion and Findings

The main difference between Union and City attitudes toward the insurance issue is that the City wants to retain unilateral control over the insurance plan, whereas the Union desires to make it part of the bilateral decisionmaking implied in signing a collective bargaining agreement. In the Arbitrator's judgment, the City's argument that Union benefits should remain under the City's unilateral control the same as those of nonunion employees is without merit. The contract as proposed has a two-year term, and normal collective bargaining practice is to maintain the provisions of the agreement for its term except if changed by mutual agreement. The City is a bit ingenuous to suggest that its only purpose is to make the language "clearer" and spell out the present program in greater "detail."

The whole purpose of a contract is jeopardized if the City can change its terms or reopen its provisions at will. If, at the end of the contract term, the City finds that it can no longer afford the insurance program, it can then raise ability to pay as a problem and expect the Union (or an arbitrator, if the matter comes to impasse) to consider that exigency. However, in the current circumstances the City makes no claim of inability to pay.

The same reasoning applies to the retiree provisions and to the request for a complicated section on employee grievances under the insurance plan. The insurance plan itself provides for handling employee claims, and there is no need to spell out those provisions in a collective bargaining agreement.

In view of the above discussion, the Arbitrator makes the following findings:

1. The parties agree that basically the present insurance plan should be maintained.

2. The provisions proposed by the City permitting unilateral change with regard to retiree benefits and cost containment are not a normal practice in a collective bargaining agreement with only a two-year term. There is no evidence that the City is currently suffering financial problems because of the insurance program. When that eventuality arises, the City can seek bilateral determination with the Union. When the contract expires, the issues can then be determined in the light of the ability to pay criterion with the proper factual data submitted in evidence.

3. The City has offered no evidence that its proposals, which differ

from current practice, are necessary for continued viability of its insurance program.

4. The elements of any insurance program are so diverse and so complicated that it is impossible to make comparisons with other jurisdictions without expert testimony and submission of the details of the plans. The City's contention that its plan is currently better than those of comparable jurisdictions cannot be evaluated in the absence of comparable data.

5. Requiring the maintenance of the current insurance program does not impose an undue burden on the City for the two-year term of the agreement.

Award

The Union's final offer is awarded. The insurance program currently in effect shall be maintained.

ISSUE NO. 6. TERMINATION EFFECT

Union Final Offer and Position

The Union's final offer on this Section 17.8 is that it should be omitted. Article XX, providing for Termination, has already been TA'd, and there is no reason to add this section, which would give the City the right to change or terminate any of the contract's provisions before a new agreement is reached. The Union cannot be forced to waive rights contained in the IPLRA, which provides for maintenance of the status quo during negotiations.

City Final Offer and Position

The City shall have the right to modify or terminate any benefits and obligations under the agreement upon its termination, unless extended by written agreement.

This provision is contained in the FOP agreement. It does not permit the City to do what the law does not already permit. The Union's objections are unfounded. Since this provision merely restates fact, the Arbitrator should adopt it.

Discussion and Findings

If, as the City contends, this provision "merely restates fact," it is unnecessary. In the Arbitrator's judgment, putting language into an agreement should be carefully considered under the rubric "if it's there, it must mean something." To suggest that a clause does not really state anything new or merely repeats something that is already there invites the conclusion that the contract would be better without it since there would be one less clause requiring interpretation, especially in the light of the final Termination clause in Article XX. For that reason the Arbitrator omits Section 17.8.

In view of the above discussion, the Arbitrator makes the following findings:

1. Section 17.8 (termination effect) is a noneconomic proposal; hence under IPLRA the Arbitrator may award any variation of the language proposed by either party, or no language at all.

2. The parties basically agree that the language of Section 17.8 is unnecessary in view of Article XX (Termination), which has already been agreed to. The City prefers that its rights upon termination be spelled out in detail, and in its brief offers moderating language to assuage the Union's fears that the contract benefits will be changed and/or terminated as soon as the contract expires.

3. Since Section 17.8 adds nothing new to the agreement and has the potential for raising unnecessary issues and disputes between the parties upon expiration of of the agreement, it serves no useful purpose and should be omitted.

Award

Section 17.8 is rejected.

ISSUE NO. 7. WAGES

Union Final Offer and Position

The current hourly rate is $9.5062. The wage rate shall be increased as follows:

$.37 increase for 7/1/91 = 3.89% increase to $9.8762 per hour.
$.35 increase for 7/1/92 = 3.54% increase to $10.2262 per hour.
$.35 increase for 7/1/93 = 3.42% increase to $10.5762 per hour.

The hourly base wage schedule for firefighters shall be as follows:

	7/1/91	7/1/92	7/1/93
Starting rate	$7.4997	$7.8297	$8.1797
After 6 months	8.0802	8.4502	9.1502
After 1 year	9.8762	10.2262	10.5762

Unlike the firefighters in comparable cities who receive step increases based on longevity, the above table is the maximum that City firefighters will be compensated regardless of service. Also, a wage increase should be based on the increase in the cost of living, which was 4.1% in 1991 and 2.9% in 1992.

Because of the delay in negotiations and the time required to arrange the arbitration hearing, employees lost out on a year's wage increase retroactivity under IPLRA. Wage increases may be made effective only back to the beginning of the fiscal year preceding the arbitration award, which in this case is July 1, 1993. Since the Union's requests for 1991 and 1992 cannot be honored, only the increases for 7/1/93 listed above may be considered by the Arbitrator. The Union is not asking for any increase for fiscal 1994. That is an additional reason for choosing the Union's last offer.

The Union and the City agree that there has been a historical relationship between the wages of the police and the firefighters. The police received a wage increase of 35 cents per hour on 7/1/93 and will receive a 35 cent increase on 7/1/94, plus a one-time signing bonus of $800, bringing the hourly rate for patrolmen in fiscal 1994 to $10.57, the same wage rate the Union is proposing for firefighters.

City Final Offer and Position

The yearly base wage schedule for firefighters shall be as follows:

	7/1/93	7/1/94
Starting Rate	$16,525.68	$17,253.68
After 6 months	19.177.60	19,905.60
After 1 year	21,569.60	22,297.60

The City's wage proposal is designed primarily to retain the historical wage differential between the firefighters and police officers. Firefighter salaries will increase 3.89% in fiscal 1993 and 3.38% in fiscal 1994. This will continue to keep firefighters about $6.00 per week above patrolmen. The Union's proposal would destroy this parity. Among comparable jurisdictions the City's proposal maintains its existing rank, especially when all fringe benefits are considered. The CPI data also support the City's final offer, since the combined two-year wage increase is 7.27% compared with a projected 8.49% CPI increase.

There can be no wage increase for fiscal 1991 or fiscal 1992 under IPLRA since the parties did not request mediation until September 11, 1992, well after the start of the City's fiscal year on July 1. Therefore the City's final offer should be accepted.

Discussion and Findings

Since the Union's final offer on wage increases contains proposals for 1991 and 1992, it must be rejected by the Arbitrator under IPLRA provisions, which forbid retroactivity before the beginning of the City's fiscal year immediately preceding the arbitration award. Therefore any increase can be made retroactive only to July 1, 1993.

The City's final offer meets the IPLRA criteria for determination of the merits of a wage increase; therefore the Union's proposal must be rejected. In making this determination, the Arbitrator is not deciding whether employees are hourly paid or yearly paid. In the Arbitrator's judgment, firefighters are hourly paid for certain purposes and yearly paid for other purposes. As long the overtime, sick leave, and vacation rates, for example, are determined based on the number of hours involved, there appears to be no need for semantics about language.

In view of the above discussion, the Arbitrator makes the following findings:

1. IPLRA prevents an arbitration award from making wage increases retroactive before the fiscal year immediately preceding the award. In this case that date is July 1, 1993.

2. The Union's final offer includes wage increases for fiscal 1991 and fiscal 1992 as well as fiscal 1993, and therefore must be rejected.

3. The City's final offer meets the criteria set forth in Section 14(h) of the IPLRA and is therefore acceptable.

Award

The City's final offer is awarded.

CONCLUDING AWARD

The entire award of the Arbitrator on all issues at impasse is set forth in the Appendix. Together with the contract Articles and Sections which were tentatively agreed to by the parties before and during the arbitration hearing (listed above, pages 7-8), the total collective bargaining agreement is to be assembled, signed, and submitted to the City governing body for proper consideration as an ordinance. The effective date of the Agreement is July 1, 1993 to June 30, 1994, unless the parties mutually agree otherwise.

To resolve any disagreement between the parties as to implementation of the award, the Arbitrator retains jurisdiction of this matter for 60 days (that is, until December 20, 1993) or until notified of the ratification of the award by the City's governing body, whichever comes first.

Submitted by,

Gladys W. Gruenberg

Dated: October 18, 1993
at St. Louis, Missouri

Gladys W. Gruenberg, Arbitrator

APPENDIX

Articles and Sections to be incorporated into the Collective Bargaining Agreement between the City of Metropolis, Illinois, and Metropolis Professional Firefighters Association, Local 3367, IAFF, effective July 1, 1993 to June 30, 1995:

ARTICLE V - HOURS OF WORK AND OVERTIME

Section 5.1. Normal Work Period and Work Schedule.

The current shifts being worked by the employees, consisting of 14 12-hour shifts in a 28 day period, shall remain the same for the life of this agreement. The day shift shall start at 6:00 a.m. and end at 6:00 p.m., and the night shift shall start at 6:00 p.m. and end at 6:00 a.m.

Section 5.2. Overtime Pay.

Employees working any hours on duty in addition to the regular hours as defined in this Article (that is, more than 12 hours in a shift or more than 168 hours in a 28 day period), shall be considered overtime and paid at the rate of time and one half for all time worked. The employee's hourly rate shall be determined by dividing the annual wage by 2184 hours, in accordance with current practice.

Section 5.3. Call-Back Pay.

Employees called in to work on their off-duty time shall be paid at the rate of time and one half for all hours worked outside their normal shift, with a minimum of two hours pay.

Section 5.4. Retained Conditions.

All other current benefits and practices relating to hours of work and overtime shall be maintained for the life of this agreement.

(Arbitrator's Note: Referring to CX No. 10, Sections 5.1. (Application of Article), Section 5.2. (Duty Day), Section 5.3. (Normal Work Period), Section 5.4. (Changes in Normal Work Day or Normal Work Week), Section 5.5. (Overtime Pay), Section 5.7. (Hire-Back and Holdover Pay), and Section 5.9. (Compensatory Time) shall be deleted. TA'd Section 5.6. (Call Back Pay), Section 5.8. (Assignment of Overtime), and Section 5.10. (Duty Trades) shall be renumbered as Sections 5.5., 5.6., and 5.7., respectively.)

ARTICLE XI. - VACATIONS

Section 11.1. Eligibility and Allowance.

The current vacation schedule shall be maintained as follows:

After 1 year - 1 week
After 2 years - 2 weeks
After 10 years - 3 weeks
After 15 years - 4 weeks

(Arbitrator's Note: TA'd Section 11.2. (Vacation Pay) and Section 11.3. (Scheduling and Accrual) shall remain numbered as in CX No. 10.)

ARTICLE XII - SICK LEAVE

Section 12.1. Days Earned in Accumulation.

The current sick leave practice shall be maintained. After completion of one year of continuous service, employees shall be entitled to 12 sick days per year, which may be accumulated to a maximum of 24 days. Employees are to be compensated at the rate of one-third day's pay for each sick day accumulated over 24. Upon termination of employment, except discharge, employees are to be compensated at the rate of one-third days' pay for all outstanding sick days.

Section 12.2. Retained Conditions.

All other current benefits and practices with regard to sick leave shall be maintained for the life of this agreement.

(Arbitrator's Note: Referring to CX No. 10, Section 12.1. (Purpose and Allowance), Section 12.2. (Days Earned in Accumulation), Section 12.4. (Medical Examination), and Section 12.5. (Sick Leave Utilization) shall be deleted. TA'd Section 12.3. (Notification) shall retain its number when added.)

ARTICLE XIII - ADDITIONAL LEAVES OF ABSENCE

Section 13.4. Funeral Leave.

The following schedule for funeral pay shall apply:

3 days -- father/mother, spouse, son/daughter, brother/sister
2 days -- grandparents
1 day -- father-in-law/mother-in-law, brother-in-law/ sister-in-law
$\frac{1}{2}$ day -- fellow-employee in the bargaining unit
$\frac{1}{2}$ day -- acting as pall-bearer.

Employees must attend the funeral to be compensated.

ARTICLE XIV - WAGES

Employees shall be compensated on the basis of annual wage rates as set forth in Appendix A of this agreement.

APPENDIX A

CITY OF METROPOLIS

FIRE DEPARTMENT FIREFIGHTER/DRIVERS

ANNUAL BASE WAGE SCHEDULE

	Effective 7/01/93	Effective 7/01/94
Starting Rate (Probationary Period)	$16,525.68	$17,253.68
After 6 months (Probationary Period)	$19,177.60	$19,905.60
After 1 year (Completion of Probationary Period)	$21,569.60	$22,297.60

ARTICLE XVI - INSURANCE

Section 16.1. Coverage.

The current benefits and practice on insurance shall be continued. Retirees with 20 years of continuous service shall continue to be covered.

Section 16.2. Cost.

The City shall continue to pay the full and total permium on insurance for the employees and their dependents without any insurance coverage at its present level, which is not to be reduced during the life of this agreement.

(Arbitrator's Note: Referring to CX No. 10, Section 16.3. (Cost Containment), Section 16.5. (Terms of Insurance Policies to Govern), and Section 16.6. (Reopener) shall be deleted. TA'd Section 16.4. (Life Insurance) shall be renumbered 16.3.)

ARTICLE XVII - GENERAL PROVISIONS

(Arbitrator's Note: Referring to CX No. 10, Section 17.8 (Termination Effect) is deleted. TA'd Section 17.9 (Inoculations-Communicable Diseases) and Section 17.10. (Lost or Damaged Personal Property) are renumbered 17.8 and 17.9, respectively.)

Proof of Service

The undersigned states that copies of this award were served on Anthony B. Byergo, Attorney for the City of Metropolis; on Rodney Brugger, President, Local 3367, IAFF; and on Brian Reynolds, Executive Director, Illinois State Labor Relations Board, on this 18th day of October, 1993, by U.S. Mail, First Class, Postage Prepaid.

Gladys W. Gruenberg

Gladys W. Gruenberg, Arbitrator