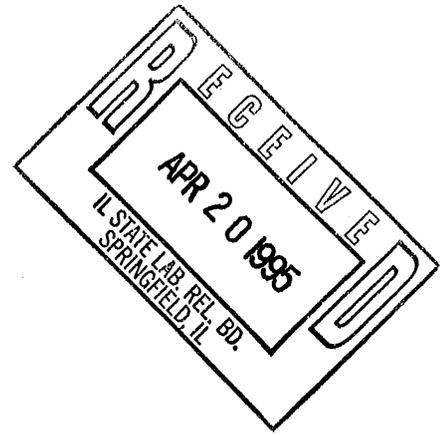


INTEREST ARBITRATION



CITY OF EAST ST. LOUIS

and

LOCAL UNION NO. 23  
INTERNATIONAL ASSOCIATION OF  
FIRE FIGHTERS

.....  
ISLRRB Case No. S-MA-95-13  
.....

Decision: March 23, 1995  
.....

Appearances

City	Ivan L. Schraeder, Special Counsel
Union	Michael A. Lass, President, Municipal Labor Associates Support Services, Inc.

Arbitration Panel

Employer Member	Jerry Humphrey, Jr., Deputy Chief
Union Member	Ron McDonald <sup>1</sup> , Vice President, Southern District, IAFF
Neutral Member and Chairman	Milton Edelman

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**BACKGROUND**

This decision and award mentions every article of the parties' collective bargaining agreement, dated 1980, the last year the agreement was rewritten. Wages and a few other items have been modified since 1980 but much of the language goes back to that year. All articles are included in our decision even though some are not in dispute. In this way the parties will have a complete agreement covering the issues upon which tentative agreement was reached as well as those decided by this panel.

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<sup>1</sup>Mr. Charles Cadell, Jr., served as Union member of the arbitration panel during the hearing. Because of his serious illness he was replaced by Mr. McDonald.

Under Section 14(g) of the Act the panel's findings as to which issues are in dispute and which are economic issues are conclusive. For economic issues the panel is required to choose that final offer which "more nearly complies with the applicable factors prescribed in subsection (h)." The eight factors listed in Section 14(h), which are to be used for both economic and non-economic issues, give the panel considerable latitude. The Act does not say which factors are most important and which least important. The panel makes that determination, so for each issue the panel may apply the factors it believes to be controlling, while giving consideration to the others.

Prior to this hearing Local 23, IAFF, filed a petition with the Illinois State Labor Relations Board asking the Board to determine whether three of the disputed clauses constitute mandatory subjects of bargaining. Through this petition as well as through its statements at the hearing the Union raises a "good faith" objection within the meaning of ISLRRB Rule 1230.90(k) to the presence of these three issues before the arbitraiton panel.

The panel may not consider an issue over which one party raises a good faith objection. But the Rule contains an exception. If the Board or the General Counsel declares the issue to be one over which the parties are required to bargain, the panel may render an award on that issue.

The three clauses are **Section 1.1, Mutual Recognition, Section 22.4, Waiver**--a new section proposed by the City--and **Section 24.1, Duration And Notice**. In a **DECLARATORY RULING** issued January 25, 1995, the General Counsel found the first to be a permissive subject and the others to be mandatory subjects. Consequently the panel renders no award on **Section 1.1**, in effect, carrying forward the language in the current agreement, which reads as follows:

**1.1 Mutual Recognition:** The CITY recognizes the UNION as the exclusive bargaining agent for all members of Local No. 23 of the I.A.F.F. (who are firefighters in the CITY'S Fire Department) but excluding the Fire Chief and any Assistant Fire Chiefs. The Union recognizes the Board of Alderman, or

its designated representative, as the sole and exclusive representatives of the CITY for the purposes of collective bargaining. The parties agree that they will bargain in good faith on matters of wages, hours, and conditions of employment.

Both parties propose removing the phrase "Board of Alderman"--which no longer exists--and substituting "City Council." Since there is no disagreement over this wording, the panel expects the change to be made by mutual consent. With no award from the panel, the door is now open for further negotiations between the parties on **Section 1.1.**

The PREAMBLE conveys no substantive meaning so requires no change, except for the date of the agreement, now given as " 30th day of January, 1980". That date must be changed to comply with the **DURATION** clause.

#### **ECONOMIC ISSUES**

Two of the most significant economic issues, WAGES and DURATION, are analyzed first, then the other economic issues in the order in which they appear in the agreement. Non-economic issues are analyzed last.

#### **ARTICLE 10 WAGES**

##### ***FINAL OFFERS***

##### CITY

The base salaries of the employees covered by the terms of this Agreement are as follows as of January 1, 1995:

1.	PROBATIONARY FIREFIGHTER	\$20,000
2.	FIREFIGHTER	\$26,900
3.	LIEUTENANT	\$29,400
4.	CAPTAIN	\$32,400

Effective January 1, 1996, the base pay of Firefighter, Lieutenant, and Captain shall be raised by 3.5%.

(Both parties propose to carry forward the longevity pay

language of the current agreement, and to eliminate the present "me too" clause, which allows the salary increase for this bargaining unit to equal whatever greater percentage increase might be granted to any other Fire Department employees.)

UNION

The base salaries of the employees covered by the terms of this agreement are as follows for the term of this agreement:

A.1 Effective January 1, 1994

1. Probationary Firefighter	\$20,000
2. Firefighter	\$24,500
3. Lieutenant	\$27,000
4. Captain	\$30,000

Upon ratification and execution of this Agreement the members of the bargaining unit, currently in/on active payroll status, shall receive in lieu of a 1994 salary increase and retroactive pay, a lump sum payment equal to eight and one-half percent (8.5%) of the employee's current annual salary as referenced above, with applicable longevity.

Additionally, each employee shall receive a "signing bonus" of One Thousand and Five Hundred Dollars (\$1500) in a separate payment.

Employees who were on the active payroll after January 1, 1994, but have retired prior to the ratification and execution of this Agreement shall have their pension benefits adjusted to reflect a 1994 salary increase equal to eight and one-half percent (8.5%).

A.2 Effective January 1, 1995

1. Probationary Firefighter	\$23,351.00
2. Firefighter	\$27,379.98
3. Lieutenant	\$30,174.88
4. Captain	\$33,526.50

A.3 Longevity Pay

(Identical with CITY proposal and with current agreement.)

Analysis and Findings of Fact

Although they entered into negotiations during 1994 the parties never reached agreement, so salaries in the current

contract continued during 1994. The City's fiscal year is identical with a calendar year. Under Section 14(j) of the Act "increases in the rates of compensation" awarded by this panel cannot be retroactive to the beginning of 1994, the City's prior fiscal year. Since arbitration proceedings were initiated before the beginning of the 1995 fiscal year, increases in compensation may become effective at the beginning of 1995.

East St. Louis is the only city in Illinois classified by the General Assembly as a financially distressed city under the Illinois Financially Distressed City Law, 65 ILCS 5/8-12-1 et seq. Based on this fact the City contends that only internal comparisons, no external comparisons, are valid because there are no other financially distressed cities with which East St. Louis can be compared. Further, the City argues, the East St. Louis Financial Advisory Authority (FAA) must give prior approval for expenditures by a financially distressed city, and a prior appropriation by the City is necessary for any expenditure ordered by this panel.

The Union, on the other hand, presents the panel with a list of ten Illinois cities, which, it says, are comparable to East St. Louis. Five of these--Alton, Belleville, Collinsville, Edwardsville, and Granite City--are what the Union calls "labor market" jurisdictions. (The other five are Galesburg, Pekin, Quincy, Rock Island, and Urbana.) Leaving out Collinsville and Edwardsville, all fall within 25% of the population of East St. Louis, either above or below. Except for Rock Island, all are within a 200-mile radius of East St. Louis.

First we analyze the City's arguments regarding the authority of the FAA. The Financially Distressed City Law places restrictions on the FAA, particularly on the conditions under which it can approve salaries and benefits for the first year of a collective bargaining agreement and for subsequent years of a multi-year agreement.

But these are restrictions on the FAA. This panel gets its authority from the Illinois Public Labor Relations Act. For each

economic issue we must adopt the final offer of one of the parties, applying the eight factors listed in Section 14(h). Section 15 of the Act says,

In case of any conflict between the provisions of this Act and any other law, executive order or administrative regulation relating to wages, hours and conditions of employment and employment relations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control.

The panel cannot ignore its mandate under the Act, nor can it guess what the FAA might do.

The City further argues that the Union's final salary offer was not included in the City's budget nor approved by the FAA. But the City's budget--or any budget, for that matter--is nothing more than an expectation. It consists of amounts the City plans to spend along with expected revenues. Evidence that budgets can be changed is found in the budget amendments submitted as exhibits by the City. The ordinances adopting those amendments admit that budgets need to be amended "from time to time."

One of the important factors to be considered in any interest arbitration is the fourth factor of Section 14(h) of the Act, comparing wages and other benefits with those of other employees performing similar services. This is a prime consideration in any interest arbitration, public or private, so it fits under the eighth factor as well.

The Act does not tell us how to choose a comparison group, but from an economic standpoint one of the important considerations is the labor market area. Five of the Union's ten cities meet this criterion; they lie within the same labor market as East St. Louis. Another commonly used consideration is population. Cities of equal or nearly equal population are normally compared. Eight of the ten cities meet this test. In all, these ten cities form a good, although not perfect, comparison group. (No perfect comparison group may exist!)

If the City's position on external comparisons were to be adopted--comparison with other financially distressed cities only--

it would be tantamount to giving sole consideration to the second factor--and only a portion of the factor at that--the financial ability of the City. In fact, East St. Louis does not plead poverty, it does not say it lacks the financial ability to meet the Union's proposed wages and benefits.

In recent years East St. Louis--and other cities--has received substantial income from a gambling boat within its taxing jurisdiction. About forty-five percent of the revenues flowing into the City's general fund now come from that source. With this new bonanza one wonders whether East St. Louis should still be called a financially distressed city.

At the time of this hearing in December 1994, only seven of the ten cities in the Union's comparison group had completed firefighter collective bargaining agreements for the first six months of 1994. East St. Louis ranked behind all seven in starting salary and in maximum base salary. East St. Louis ranked fourth among these cities in the hourly rate for Firefighters, largely because of the City's average work week of forty-two hours. Most of the other cities had longer average work weeks. For the same six month period--first six months of 1994--East St. Louis ranked behind the other seven in salary after five, ten, fifteen twenty, twenty-five, and thirty years.

Only three cities in the comparison group had completed collective bargaining agreements for the first six months of 1995. Even if the Union's wage offer were accepted, East St. Louis would still rank behind two of the three in starting salaries for Firefighters and behind all three in the maximum base salary. It would also be behind all three in salaries after five, ten, fifteen, twenty, twenty-five, and thirty years.

Looking backward, during the first six months of 1993 East St. Louis ranked behind all ten cities in both starting salaries and maximum base salaries. It also ranked last in salaries after five, ten, fifteen, twenty, twenty-five, and thirty years. The same rankings also applied for the first six months of 1992--last in all the categories mentioned above.

Effective January 1, 1994, Police Officers in the FOP bargaining unit of East St. Louis received a salary increase of 8.5%, plus a signing bonus of \$1500. Firefighters received nothing that year.

Interest arbitrators frequently look at salary increases given to other bargaining units of the same employer in order to maintain a rough equality between similarly situated employees. It is normal to compare increases granted to police and firefighters. The Union justifies its 8.5% lump sum in lieu of a 1994 increase, and its signing bonus proposal this way.

If this panel had the authority of a normal interest arbitrator, that is, if this were not final offer arbitration, these two proposals might be modified. But we cannot do that. We must accept one final offer or the other. External comparisons strongly support the Union's offer. The financially distressed city argument used by East St. Louis does not offset the Union's position.

AWARD The Union's final wage offer is chosen. The "me too" clause will be eliminated and longevity language will continue as in the present agreement and as offered by both parties.

#### ARTICLE 14 DURATION

#### *FINAL OFFERS*

##### CITY

The City proposes an eighteen-month agreement, running from January 1, 1995, to July 1, 1996, continuing "in full force and effect from year to year thereafter unless either party notifies the other in writing not later than sixty (60) days prior to the anniversary date of this Agreement that it desires to modify and/or amend this Agreement.

Negotiations are to begin no later than fifteen days after notice.

## UNION

The Union proposes an effective date of January 1, 1994, continuing "until December 31, 1995, except as hereinafter provided. This agreement shall continue in effect and full force from year to year thereafter unless UNION shall notify the CITY in writing no later than 120 days (not later than September 2nd) prior to the expiration date or the anniversary date of the expiration date of this contract, that it desires to modify and/or amend this Agreement. In the event that such notice is given, negotiations shall begin no later than thirty (30) calendar days after the notice. The Agreement shall remain in full force and effect during the period of negotiations and until a successor Agreement is entered into by the parties."

## **ANALYSIS AND FINDINGS OF FACT**

Although closely tied together wage changes and the effective dates of the agreement are separate issues. Having chosen the Union's wage offer it might follow that the Union's duration offer should also be accepted. But several provisions of the Union's offer give the panel pause.

First, the panel is not at all clear what might follow from an effective date of January 1, 1994. What about the retroactive nature of benefits which this decision changes, such as overtime, clothing allowance, sick leave accumulation, personal days, and holidays? Although not salaries, they are forms of compensation, which the Act says cannot be retroactive to January 1, 1994. Second, as the City correctly notes with the Union's offer the parties would be back at the bargaining table by late summer, just months after this decision is handed down. They deserve a longer period to digest and react to a new agreement.

But the Union's wage offer does not include any wage change for the first six months of 1996, so adopting the City's eighteen-month period would mean that 1995 salaries and benefits would continue at least until July 1, 1996. However, the panel believes this to be less serious than other problems raised by the Union's proposal. Negotiations would take place late in 1995.

Another weakness of the Union's proposal is its provision that only the Union can reopen the agreement. Under the City's proposal either side can reopen, a fairer provision.

AWARD The City's DURATION offer is chosen.

## **Section 1.2 MANAGEMENT RIGHTS**

### Final Offers

Both parties propose significant changes here. The Union would write into the agreement the exact wording of Section 4 of the **Illinois Public Labor Relations Act**, and, in addition, state that the City has those management powers granted by state law.

The City proposes a more elaborate section reserving to the City all managerial powers "including but not limited to" six, which are enumerated in the City's proposal. They include: 1) maintaining executive control of the "properties and facilities and staff" of the fire department;" 2) hiring, dismissing, promoting and determining qualifications of employees; 3) directing, supervising, promoting, disciplining, and assigning employees; 4) relieving employees from duty for lack of work or other reasons; 5) determining the services to be rendered, deciding budgetary matters, and utilizing technology; and 6) determining job classifications and personnel for the conduct of the Employer's operations.

In addition, the City would specify that the "office of the Chief" is to exercise the City's "powers, rights, authorities, duties, and responsibilities," would say that the City exercises all policy-making rights, "not expressly limited by a specific provision of this agreement," and would eliminate all past practices, unwritten customs, and informal agreements.

### Analysis and Findings of Fact

These proposals bear directly and indirectly on employee benefits as well as on employer costs, making the entire section an economic issue. Although some proposals might be called non-economic if considered alone, they are all tied together, so the entire section is an economic issue.

Several considerations lead to a choice of the Union's offer. By proposing to eliminate all past practices the City ties this section to its Section 22, to be commented on later. Such a drastic change could significantly affect many items not even known to this panel because we are not aware of what past practices and informal agreements might be affected. We would be taking a shot in the dark were we to adopt the City's position. Far better to have the parties themselves through direct negotiation decide what past practices, unwritten customs, and informal agreements exist and what should be done about them.

Further, the Union's offer to stick with the provisions of the Act gives the parties all the protections of state law, yet does not travel into uncharted territory, as the City would have us do.

Award                    The Union's offer for **Section 1.2** is chosen.

### **Section 1.3**

#### Final Offers.

The City proposes this new section, for which the Union has no parallel offer. It would give the City authority to create new classifications "appropriate to the bargaining unit," which would not be designed solely to erode the status of the Union. The Union could within ten business days request negotiations over pay rates for these classifications.

#### Analysis and Findings of Fact

It is not clear why the City wants a separate section giving it a managerial right it may already possess, although the panel does not venture an opinion on whether and to what extent the City now has the right to create new classifications. Meeting at the bargaining table and negotiating over this section would be the way to go. The parties could then air their views on why such a section is needed, and decide whether they want it. As with past practices, it is uncharted waters for this panel.

Award                    The Union's offer--no **Section 1.3**--is chosen.

## Article 2. DUES AND FAIR SHARE

This section is not in dispute. The City views this and Appendix B, **Procedure for Processing Fair Share Objections**, as an internal Union matter. Both parties offer the same wording.

Award **Article 2**, as it appears in both proposals, and **Appendix B**, as it appears in the Union's proposal, are chosen.

## Article 3. WORK DAY-WORK WEEK

### Final Offers

The City proposes two sections. **Section 3.1** would define a twenty-four hour tour of duty as a work day, followed by seventy-two hours off duty. **Section 3.2** would specify an eight-hour tour as a work day and five days as a work week, for eight-hour workers.

In the Union's proposal the present twenty-four hour tour and the forty-two hour work week are continued. A four platoon system is called for. **Section 3.2** of the current agreement, which establishes an eight-hour day for three named job classifications, would be eliminated entirely.

### Analysis and Findings of Fact

It is the City's position that the forty-two hour work week called for in the present agreement is not current practice, that the City's proposed **Section 3.1**, correctly defines the work day. It says employees actually work a twenty-four hour tour of duty, followed by seventy-two hours off duty.

The Union does not really challenge the factual basis of this statement. It wants to retain the forty-two hour work week primarily, the panel believes, to increase the number of hours of overtime, as compared to the City's proposal.

The panel sees no reason to adopt a description of the work day and work week that differs so greatly from the parties actual practice. The Union's proposal for **Article 3**, combined with its proposal for **Article 4**, would lead to artificially high amounts of overtime. This appears to be the prime motive behind the Union's offer on both these articles. The panel prefers to recognize the situation as it stands and adopt the language that best describes

what really takes place.

The Union's offer deletes the present **Section 3.2** completely, while the City's offer rewords **Section 3.2** so that it defines an eight-hour work day and forty-hour work week "for employees who are scheduled as eight-hour per day workers." There evidently are no eight-hour per day classifications now, but there is really no reason why this provision cannot appear in the agreement. The City's proposed **Section 1.3** is not chosen, so the parties must find some other way to create eight-hour per day classifications.

Award The City's offer of **Article 3** is chosen.

#### **Article 4. RATES OF PAY-OVERTIME**

##### Final Offers

The Union would retain the current language of this article, except for **Section 4.4**, which it would eliminate entirely. With the current language the hourly rate is determined by "dividing each fire fighter's annual salary (including percentage increases and longevity pay increases) by the figure 2080." Overtime is 150% of the resulting hourly rate, and double time is 200% of that rate. Hours in excess of "the annual weekly average of forty-two (42) hours per week" are paid at time and one-half, and hours in excess of fifty per week are paid at double time.

In the City's proposal an hourly rate would be determined by dividing an employee's annual salary by "the number of hours scheduled to work per year" rather than by the figure "2080." Time and one-half and double time would be calculated at 150% and 200% of the hourly rate just as in the Union's offer, but overtime would be paid "for all hours worked in excess of an employee's regularly scheduled hours." The forty-two hour work week is not mentioned, nor is there any provision for double time pay over fifty hours per week, as in the Union's offer and in the current agreement.

Both parties say overtime calls would carry a minimum of eight hours pay, although the City would pay "at the applicable rate," while the Union would pay "at time and one-half or the double time rate, whichever shall apply." Where the Union completely

eliminates the present **Section 4.4** the City modifies it to provide for eight-hour days and time and one-half over forty hours per week for employees "regularly scheduled to work eight hour days."

#### Analysis and Findings of Fact

**Article 4** must be considered in conjunction with **Article 3**. The two cannot be separated. As with **Article 3** the City's offer for **Article 4** recognizes the reality of scheduling and of overtime pay far better than the Union's offer. According to the City, the Union's proposal would require periodic weekly payments of at least six hours of overtime at time and one-half, and sometimes twenty-two hours of overtime at double time. The Union does not counter these figures.

By using the number "2080" the Union's proposal assumes an average work week of forty hours. This is an artificial number for Firefighters, who do not follow an eight-hour day and forty-hour week. By using the actual number of hours scheduled for each employee the City's makes a much more realistic offer, one that is in line with the parties' actual scheduling practice.

For reasons already mentioned, there is no reason for not including **Section 4.4**, dealing with eight-hour employees.

Award            The City's offer for **Article 4** is chosen.

#### **Article 5.**

#### Final Offers

The Union retains the current title of this article, **PERSONNEL-MANNING**, while the City calls it **SAFETY**, a new title.

This entire article is a single economic issue. It touches on scheduling and the length of a duty tour, but also deals with the minimum number of Captains and Lieutenants, clearly matters of benefit to employees and cost to the City.

To be consistent with the panel's choice of final offers for **Article 3** and **Article 4**, the panel must favor the City's offer for **Article 5**. In this article, as in the previous two, the Union again calls for a forty-two hour work week, which the panel has already rejected. Further, the Union's proposed **Section 5.6** calls

for a minimum of twenty-two Captains and twenty-two Lieutenants, while the City declares the right of the Employer to determine the number of employees in these ranks, "based on the needs determined by the CITY, but shall not be less than the number authorized as of June 1, 1994, for the period up to June 1, 1996."

The City's proposal recognizes to a greater extent than the Union's the authority of the Employer to exercise its managerial prerogatives. The present agreement does not specify the number of employees in any rank, so this is not an issue upon which the parties bargained prior to the Act. Rather, the City's language sticks more closely to the current language on minimum positions, changing only the date(s) on which the minima are determined.

Both parties would eliminate the current **Section 5.5**, which calls for a Fire Prevention Bureau. None now exists. The City's offer mentions eight-hour employees, but this has no application as long as the Department has no one in this category.

Award            The City's offer for **Article V** is chosen.

#### **Article 8. LEAVES OF ABSENCE**

The panel regards each section of this article as a separate economic issue because each deals with a different type of leave. They cannot be lumped together as a single issue.

#### Final Offers, Analysis, and Findings of Fact

Both parties accept the wording of the following sections from the current agreement:

##### **Section 8.1 Special Leaves of Absence**

**Section 8.4 Judicial Duties** (Under the Union's proposal this section is renumbered as 8.5, but the wording is unchanged.)

The Union's proposal for **Section 8.2, CONVENTIONS**, is favored because the City would change the last sentence to provide that the City incurs no overtime liability as a result of Union delegates attending conventions. The Union retains the language of the current agreeent.

**Section 8.3** of the current agreement is called Personal Leave, but both parties propose a change in title, the City calling

it Exchange Leave, and the Union calling it Duty Exchange Leave. The only substantive difference between them is in the role of the Chief. Under the Union's proposal the Chief under emergency conditions may waive the three-day advance notice necessary to obtain such a leave, a provision not found in the City's offer. This waiver authority may be necessary under emergency conditions. It should be mentioned, so the Union's offer is favored.

The Union proposes a new **Section 8.4** granting all employees "two (2) personal days per year," a benefit not found in the current agreement.

The Union supports its position by showing six comparable cities that grant personal days, although not all grant two personal days. Other East St. Louis bargaining units also enjoy this benefit. The FOP agreement provides four personal days, while the agreement with SEIU, Local 50, covering Police Dispatchers, calls for two personal days, as does the SEIU unit covering code enforcement employees.

Given these convincing external and internal comparisons, the panel favors the Union's offer of two personal days per year.

The City proposes a new **Section 8.5**, which says that no holiday leave or holiday pay is called for "because that pay is provided in the base pay of the employees' base pay (sic) and schedules and therefore requires no pay or recognition."

For reasons discussed in more detail when analyzing **Article 13**, this offer is not chosen.

Award The panel makes the following choices for **Article 8**:

- Section 8.1** Current agreement (undisputed)
- Section 8.2** Union Offer
- Section 8.3** Union offer
- Section 8.4** Union offer
- Section 8.5** Section 8.4 of current agreement (identical with 8.4 of City's offer and 8.5 of Union's offer)

**Article 9. BEREAVEMENT LEAVE WITH PAY**

This article is not in dispute. Both parties propose identical wording.

Award Article 9 is adopted as proposed by both parties.

**Article 11. INSURANCE**

Final Offers, Analysis and Findings of Fact

No major disagreement exists here. Both parties propose a 100% payment of premiums by the City for group life, health, and hospitalization for all employees covered by this agreement. The City has actually been paying this amount, even though the current agreement calls for an 80% payment.

The two offers differ only in the last sentence. The Union carries forward the wording of the current agreement, which calls for a schedule of benefits "at least equal to the highest coverage of any other employee of the CITY," while the City offers the same benefits provided to other employees, a proposal that recognizes the fact that all City employees are covered by the same plan. The panel favors this recognition of reality.

Award The City's offer for Article 11 is chosen.

**Article 12. IDENTIFICATION OF RANKS AND TITLES**

Final Offers

The Union would list all titles in the Department, even those not in the bargaining unit. They are included, the Union says, for promotional and organizational purposes. Only the four titles within the bargaining unit are found in the City's proposal.

Analysis and Findings of Fact

Collective bargaining agreements do not ordinarily list titles outside the bargaining unit, and the Union's reasons for doing so are not strong. If employees are to be promoted outside the unit, City officials--and Union officials too--know what ranks are open to them. This agreement cannot control the ranks and titles outside the unit.

Award The City's offer for Article 12 is chosen.

## Article 13. HOLIDAY PAY<sup>2</sup>

### Final Offers

Ten paid holidays are proposed by the Union. Employees are to receive six hours of pay for each of these holidays as part of the employee's annual salary, "pro-rated and paid as part of the bi-monthly payroll."

The City offers no paid holidays, contending that at some unspecified time in the past Fire Fighters gave up paid holidays in exchange for having their holiday pay rolled into their base pay.

### Analysis and Findings of Fact

Nothing in the record shows when holidays were eliminated, how much money was involved, how many paid holidays existed, nor any other details of this action. It may indeed have taken place, but better guides for deciding whether holiday pay is warranted are the internal and external comparisons made by the Union in supporting its claim.

Union Exhibit 11, a comparison with ten other Illinois cities on this issue, shows East St. Louis to be the only jurisdiction without a holiday pay benefit. Some of the comparison cities grant nine days and some ten. Payment of six hours per day--the Union's proposal--is modest in comparison with the others.

Other City employees in the bargaining units for which agreements are in evidence receive ten paid holidays. This includes the FOP unit, where police officers are granted eight hours pay--not the six proposed for fire fighters--for ten specified holidays. This bargaining unit deserves equality with other City employees as well as with comparable cities.

Award The Union's offer for **Article 13** if chosen.

## Article 14. UNIFORM ALLOWANCE

### Final Offers

Both parties accept the language of the current agreement for

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<sup>2</sup>A new **Article 13**, called **NO STRIKE**, is proposed by the City, but is not an economic issue so is discussed later.

**Section 14.1, 14.2, and 14.4.** They differ only on **Section 14.3.** Both specify the same clothing to be supplied by the City, but the Union proposes a grant of \$350 "in lieu of clothing," while the City says there should be "a draw up to three hundred and fifty (\$350.00) in lieu of clothing." The current agreement grants \$200 in lieu of clothing, no draw. Both propose to eliminate the current **Section 14.5,** and to eliminate the reference to Assistant Chiefs and Inspectors in **Section 14.3.**

Analysis and Findings of Fact

Two of the ten cities in the Union's comparison group use a quartermaster system. The other eight all use a payout or grant arrangement, with an average of \$340. Three of the eight pay \$350, one pays more than \$350, while four pay less than \$350. Given these figures, the Union's proposal for a payout (grant) of \$350 is not out of line.

Award The Union's offer for **Article 14** is chosen.

**Article 15. VACATION**

In the course of the hearing the City withdrew its proposed **Section 15.4.** With that withdrawal the parties make identical offers on this article.

Award **Article 15** as proposed by both parties is chosen.

**Article 16. MILITARY SERVICE**

No dispute on this article--the parties accept the wording of the current agreement.

Award **Article 16** as proposed by both parties is chosen.

**Article 17. UNION ACTIVITIES**

Final Offers

There is no dispute over **Sections 17.1, 17.2, 17.3, 17.4, and 17.5,** with one minor exception. In **17.3** the City refers to "Section 17.2 time," while the Union calls it "such time." These have the same meaning, but the City's phrasing is more precise.

The City offers **Section 17.6,** for which the Union has no

parallel. It provides that "No UNION activity or employee grievance processing shall cause the CITY to incur any overtime liability."

The record contains no evidence of problems under the current language of **Article 17**, which says nothing about the City's overtime liability for Union activity and grievance processing. It appears to be a case of, "if it ain't broke don't fix it." No convincing reason for adding **Section 17.6** is given.

Award The City's offer on **Section 17.3** is chosen. The offers of both parties on **Sections 17.1, 17.2, 17.4, and 17.5** are chosen. The City's proposed **Section 17.6** is rejected.

#### **Article 18. SICK LEAVE**

##### Final Offers

**Section 18.1** contains the major difference between the parties. Effective January 1, 1995, the City would reduce sick leave accumulation from the present two days per month to one day. Doing so, the City points out, would bring this bargaining unit to the same level as other City employees.

In **Section 18.2** the parties differ on only one word. The City says "Proof of employee's family illness shall be required by the Chief," while the Union uses the word "may" rather than "shall."

There is no disagreement over **Sections 18.3 and 18.4**. Although these two sections are not really economic issues the entire sick leave article is here treated as a single issue because it operates as a whole.

The City adds **Section 18.5**, for which there is no parallel in the Union's proposal nor in the current agreement. It would allow an employee "separated permanently from the East St. Louis Fire Department...to cash in unused sick leave earned after the signing of this Agreement at twenty-five percent (25%) of its total value." No reasons or support for this section are given.

##### Analysis and Findings of Fact

Since employees in other City bargaining units accumulate only one day per month, Firefighters should not exceed that benefit.

For the FOP unit this number dropped from two days to one effective January 1, 1995, just as proposed by the City for Firefighters. No reason is given for keeping Local 23 at a higher level, except that it continues a present benefit.

Award The City's offer for **Section 18.1** is chosen. The offers of both parties, which are identical, are chosen for **Section 18.2, 18.3, and 18.4**. The City's proposed **Section 18.5** is rejected.

#### **Article 19. LOSS OR DAMAGE**

Identical offers are made by both parties.

Award **Article 19** as proposed by both parties is chosen.

#### **Article 21 EDUCATIONAL INCENTIVE**

##### Final Offers, Analysis and Findings of Fact

**Sections 21.1 and 21.2** are identical in both proposals, except that the Union uses the word "Fire Fighters" while the City calls them "employees." Here the Union is more precise, so its wording is favored. **Section 21.3** is the same in both offers.

A new **Section 21.4**, not in the current agreement, is proposed by the City, a grandfather clause. It would qualify all previously earned college credits "formerly approved by the CITY" for the purposes of this educational incentive "regardless of whether they would qualify under the provisions of the sections above." All officers "who formerly received educational incentive pay" would also qualify.

Although no supporting arguments are advanced for this new **Section 21.4**, there is no reason for the panel to reject it.

Award The Union's language for **Sections 21.1 and 21.2** is chosen. **Section 21.3** as offered by both parties is chosen, and the City's proposed **Section 21.4** is adopted.

#### **Article 22 MISCELLANEOUS PROVISIONS**

##### Final Offers

This new article, consisting of five sections, is proposed by

the City, with no parallel offer from the Union. Each section is treated by this panel as a separate issue.

**Section 22.1** calls for a written memorandum of understanding for any practice that arises after this agreement becomes effective and which the parties agree to preserve. **Section 22.2** says, "this Agreement covers all of the benefits and rights of employees who are covered by this Agreement." **Section 22.3** says this agreement is no guarantee of minimum hours to be worked, staffing levels or services to be provided, or classifications to be used by the City.

#### Analysis and Findings of Fact

The first three sections are economic issues, although **Section 22.1** is on the border, only indirectly and perhaps in the future involving benefits for employees and costs to the City.

All three introduce new subjects not covered in the current agreement. They take the parties into new territory. If these issue were discussed in the past they certainly have not appeared in a written agreement.

In support of **22.1**, the City notes that in the fifteen years since this agreement was last rewritten many practices have arisen which are not reflected in the agreement. The City wants to prevent this from happening in the future. **Section 22.1** is nothing more than a recognition of reality, the City contends, since this agreement does in fact contain all the benefits and rights of employees.

If adopted these sections would bring significant changes to the agreement. Unless very strong and compelling reasons exist for this panel to make these changes, modifications of this magnitude should be agreed upon by the parties themselves. They should not be granted through arbitration. This panel must act conservatively in adopting important new language, such as this. The City's arguments, although forceful, do not adequately justify this major alteration of the agreement. The panel cannot agree to include these sections.

Award The City's proposed **Section 22.1, 22.2, and 22.3** are rejected.

## NON-ECONOMIC ISSUES

For these issues the Act does not require the panel to choose the final offer of one side, although it may do so if it wishes. If the panel finds neither offer acceptable, it may prescribe its own wording or it may take parts of one side's offer, and parts of the offer of the other side.

### Article 6. ASSIGNMENT

#### Analysis and Findings of Fact

With one minor exception--the elimination of one word--the Union proposes to carry forward the wording of the current agreement for this article. The City proposes substantive changes--although not in every section--some of which the panel adopts. Throughout this article--as with other articles--the City uses the word "employees" while the Union uses "Fire Fighters." The panel favors the more specific term, "Fire Fighters."

**Section 6.1.** The City would alter the bid process here to require that when Fire Fighters bid for a vacancy, "qualifications being sufficient, seniority shall prevail." The Union continues the present wording, "seniority prevailing." The City would also add a new sentence requiring postings to state the qualifications and abilities needed for a bid, and allowing those who have not had the opportunity to obtain the necessary training to bid.

These changes suggested by the City can only strengthen the bid process and make clear just who may bid. They open up the bid process to employees who have been denied the opportunity for training. The City's proposals make sense.

Award **Section 6.1** is to read as proposed by the City, except that the word "employees" is to read "Firefighters."

**Section 6.2.** There is little disagreement here. The Union adopts current contract language, while the City adds two phrases, "whenever possible" and "whenever time permits," phrases that apply to the time limits for the posting of educational programs.

The panel sees no need to add this uncertainty to the present

arrangement.

Award **Section 6.2** is to read as it does in the current agreement.

**Section 6.3.** The City completely eliminates this section, and renumbers the next section as 6.3, while the Union adopts current language and keeps the current number.

The panel does not really know why this section should be eliminated. On the surface it appears that elimination would probably give the Chief greater latitude in assigning personnel to Fire Department equipment. But the pros and cons of this proposal were not argued, so the panel believes current language should stand.

Award **Section 6.3** is to read as in the current agreement.

**Section 6.4.** This section is titled Assignment to Fire Prevention Bureau and the parties agree that no Fire Prevention Bureau exists, so the City's proposal to eliminate the first sentence of the current language is logical. What remains deals with limiting those who perform fire-fighting duties to commissioned members of the East St. Louis Fire Department. The City would add the phrase, "except in emergencies as directed by the Chief."

Testimony from the Chief makes a convincing case for the need to call in help from other cities if the East St. Louis Fire Department does not have the equipment necessary to reach a fire. This has been done in the past so the suggested wording recognizes fact and can only help the East St. Louis Fire Department be more effective.

**Section 6.4** is to read as proposed by the City, except that "Firefighters" is to be used rather than "employees," and the title is to be eliminated.

**Sections 6.5, 6.6, and 6.7** are undisputed, so are to be carried over from the current agreement. In **Section 6.6** both parties use the word "filed" but the context clearly requires the word to be "filled."

## Article 7. GRIEVANCE PROCEDURE

### Analysis and Findings of Fact

Both parties propose changes but the City suggests a far more extensive re-writing of this article. They agree that the alteration in City government from an aldermanic form to a City Manager system must be recognized.

**Section 7.1.** Both parties accept the wording of the current agreement for the introductory statement of this Section, although the Union numbers it as a separate section.

Award **Section 7.1** should be numbered as in the Union's proposal and worded as in the current agreement.

**Section 7.2 (City's 7.1) A.** Two major differences between the parties appear in this paragraph. The Union has a "ten business day" time limit, while the City proposes "twenty calendar days." The Union would start time running from "the time the employee knows or should have known of the grievance," while the City uses "the day of occurrence."

Ten business days hurries the process more, requiring greater diligence from the aggrieved employee and from Union officials. Time should not start running until the employee actually knows a possible violation occurred. The panel favors the Union's wording.

Award The Union's wording and numbering become part of the agreement, except that "he" is changed to "the employee" and the final words are changed to "aggrieved employee."

**B.** No dispute here, so this wording is adopted by the panel.

**C.** The parties differ on only one phrase. The Union says "settle the dispute" while the City says "respond to the dispute." The City's wording is more accurate and is adopted.

**Section 7.3 (City's 7.2)** The Union proposes limiting arbitrators to members of the National Academy of Arbitrators and residents of Illinois, while the City makes no limitations.

Among the group of comparable cities five use the National Academy of Arbitrators as a limitation, two of these five use NAA and Illinois, and five have no limitations. In the interest of allowing the parties the greatest latitude to pick arbitrators, a

factor used in many collective bargaining agreements, the panel does not favor any limitation, so favors the City's wording.

In the second paragraph of **Section 7.3**, the City proposes to say the decision of the arbitrator shall be honored "if legally permissible." Far more common in most collective bargaining agreements is the statement that the arbitration decision is "binding," or similar language. The current agreement--and the Union's wording--does just that. There is no need for the additional words, which may open arbitration decisions to unnecessary challenge.

Finally, in the second paragraph of **Section 7.3** the Union proposes that a transcript ordered by either party be made available without charge to the other party and to the arbitrator. It is far more common for each party to pay for its own transcript, so the panel does not favor requiring one party to make copies of a transcript available to the other party without charge.

AWARD The Union's **Section 7.3** is adopted with the following changes:

1. no limitations on membership or residency for arbitrators.
2. a party that orders a transcript need not make a copy available to the other party without charge.

**Section 7.4 (City's 7.3).** No dispute here, so this section becomes part of Article 7.

The City asks for a new provision, which it numbers 7.4, called "Election of Procedures." Employees would be required to choose either the grievance procedure in the agreement or "other procedures outside this Agreement," but not both. A grievant would have to make this choice "before being permitted to advance any matter beyond Step 2 of the grievance procedure."

This is such a radical departure from present language that it should only be adopted if agreed to by both parties. This panel should not bear the responsibility of forcing this provision on one of the parties, especially since its adoption would, at least on its face, cause employees to forego statutory rights they now

possess. In fact, the panel doubts it has the authority to force employees to relinquish rights under the Civil Rights Act and similar statutes. This proposed Section 7.4 is rejected.

**Article 20. NO OTHER AGREEMENT**

**City's Article 13 NO STRIKE**

Analysis and Findings of Fact

There is no dispute over the first paragraph of **Article 20**. Both sides adopt the wording of the current agreement.

The Union, however, wants additional language forbidding lockouts "during the term of this agreement as a result of a dispute with the Union arising out of the terms of this agreement." A separate Union paragraph would forbid strikes, slowdowns, picketing, concerted interference with or interruption of service "supported or participated in by the union or any employee."

The City would add **Article 13**, forbidding strikes, calling for Union liability and discipline of employees in case of a strike, and non-interference with delivery service. When strikers are disciplined, the grievance procedure and arbitration could determine only whether the employee "participated in a prohibited action."

Section 8 of the Act requires a no-strike provision in any agreement containing final and binding arbitration. But the Act does not say how detailed the no-strike provision should be, nor what actions by strikers should be forbidden, nor how the employer is to discipline strikers.

The City's proposed language goes far beyond the requirements of the Act. Especially questionable is the provision that would limit the grievance procedure and arbitration to determining only whether the employee "in fact participated in prohibited action." This would unduly restrict the right of aggrieved employees to challenge those actions of the employer that might be violations of the agreement.

The Union's suggested language is much closer to the requirements of the Act and strong enough to forbid any Union act-

ions that might encourage strikes or related concerted activity. Lockout language, also part of the Union's proposal, is the other side of the coin to strikes. If one is forbidden, so should the other. Adoption of this language would leave the grievance procedure and arbitration open to employees, yet would guard against strikes and lockouts.

Award The first paragraph of **Article 20** of the current agreement is to be carried over into the new agreement, and the Union's proposed language on strikes and lockouts is also to become part of **Article 20**.

#### **The City's Proposed Sections 22.4 and 22.5**

**Section 22.4**, called **WAIVER**, is a zipper clause, which the General Counsel says is a mandatory subject, so the Panel must make a ruling.

**Section 22.5**, is called **SEVERABILITY**. If any provision of the agreement should be declared invalid by court action this section would allow other provisions to remain in force.

Both these sections are drastic departures from the current agreement. Especially the zipper clause. This panel cannot know what effect this clause might have on the ability of the parties to correct any defects they might find in the agreement. If these clauses are to be adopted it should be through negotiation and mutual agreement. The parties are in a better position than this panel to foresee problems that may arise from them.

Award Neither of these sections is to become part of the agreement.

#### **Article 23 DRUG TESTING**

##### Analysis and Findings of Fact

Each party submits a drug<sup>3</sup> testing proposal but the Union's is far more detailed than the City's. The panel does not believe it should pick and choose among these proposals, taking a part here

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<sup>3</sup>Throughout this decision the word "drug" includes alcohol.

and a part there, and in that way write a drug-testing article. Rather it should analyze both proposals and choose one. Drug testing is not an economic issue so the panel is not required by law to choose one final offer over the other, but the parties have indicated how each wants to approach this important issue. The panel must decide which approach more nearly meets the needs of both parties and is in keeping with statutory standards.

In support of its proposal the City says the Union's plan does not meet the requirements of federal law because it does not call for random testing. (Under the City's plan there is no random testing of individuals but unannounced department-wide testing, including testing of supervisors, may take place twice each year.) Federal law applies, the City maintains, because Firefighters respond to hazardous material spills and railroad accidents.

But the exact federal rules upon which the City relies are not specified--except to say that over 300 pages of rules appeared in the Federal Register on February 15, 1994--and are not part of the record. Even more significant, collective bargaining agreements covering Firefighters in other Illinois cities, which are in evidence, show several that do not allow either random or unannounced department-wide testing. Granite City--whose plan is copied by the Union--does not. Neither do Collinsville nor Pekin. It is not explained why random testing should be necessary in East St. Louis and not in those other Illinois cities. Presumably Firefighters handle hazardous materials in all of them.

For a variety of reasons, the most important of which we list below, the panel chooses the more detailed plan proposed by the Union.

1. Random testing is allowed under the Union's plan only after an employee has tested positive and is under treatment. Treatment is required by the plan. Reasonable suspicion testing for employees who have not tested positive means a test is administered only after an employee takes--or fails to take--some action which indicates possible drug influence. So the test is job-related. Under the City's proposal an

employee who is tested during the unannounced department-wide testing has done nothing to indicate a job-related problem.

2. Denial is one of the hallmarks of a person addicted to drugs. That person may not admit an addiction until faced with a crisis. Under the City's plan discipline, including discharge, is subject to the grievance procedure. A discharged employee may hope until the last minute that an arbitrator will overturn the discharge--and the arbitrator might. Under the Union's plan an employee who after a first positive does not follow a rehabilitation plan, or who experiences a second positive while under treatment or within five years after returning to work is discharged with no appeal through the grievance procedure.

3. The Union's plan is more stringent in listing items that may not be brought to the work place. Drug paraphernalia and over the counter drugs that mentally impair the employee are included.

4. The Union's plan specifies the use of NIDA testing labs only, while the City's plan allows the use of labs "capable of being accredited by...NIDA," and places on the City the burden of deciding whether a lab meets NIDA standards.

5. The Union's plan lists the drugs to be tested, cut-off levels, elaborate chain of custody provisions, and detailed procedures for reviewing test results. These are missing from the City's plan.

6. The Union offers a more precise and detailed rehabilitation plan, which is scanty at best in the City's proposal.

Award The Union's proposed **DRUG AND ALCOHOL TESTING** proposal is adopted as **Article 23.**

#### **APPENDIX C 1995 LABOR MANAGEMENT COMMITTEE**

This joint Employer-Union committee, proposed by the Union, would consider "any contract language disputes left unresolved after the 1994-95 Interest Arbitration...." The Committee would study the unresolved contract language changes and make written

recommendations to the Union and Employer, " who could adopt them by mutual agreement.

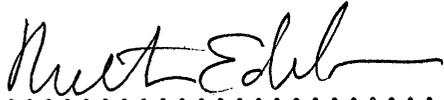
The City makes no parallel offer.

Analysis and Findings of Fact

As effective as such a committee might be in opening lines of communication between the parties, this panel does not believe it should adopt this proposal. If the parties want this committee they should set it up by mutual consent. Its success would then be more certain.

AWARD This Union proposal is rejected.

SIGNATURE PAGE



.....  
Milton Edelman  
Neutral Member and Chairman

As members of the ARBITRATION PANEL in this interest arbitration, we vote as shown below.

.....  
Jerry Humphrey, Jr.  
City Member  
Concur      Dissent

.....  
Ron McDonald  
Union Member  
Concur      Dissent