Interest Arbitration

City of O'Fallon,

Employer

and

Illinois Fraternal Order of Police Labor Council, O'Fallon Lodge No. 198,

Union

ISLRB No. S-MA-95-119
S-MA-95-120
Arbitrator's File 96-113

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Opinion and Award

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Interest Arbitration

City of O'Fallon, Employer and Illinois Fraternal Order of Police Labor Council, O'Fallon Lodge No. 198, Union	ISLRB No. S-MA-95-119 S-MA-95-120 Arbitrator's File 96-113 Herbert M. Berman, Arbitrator Robert E. Becker Stephen R. Wigginton, Attorneys for Employer Gary L. Bailey, Attorney for Union June 9, 1997

Opinion and Award

I. Statement of the Case

The Union represents the City of O'Fallon's "sworn patrol officers, detectives and sergeants" under the parties' "commissioned officers" contract (Union Exhibit 9)[1] and "all non-sworn personnel in the police department" under the parties' "civilian employees" contract (UX 10). Both agreements expired on April 30, 1995. The parties did not reach agreement on either contract, and they have asked me to resolve their differences in accordance with the Illinois Public Labor Relations Act (the "Act"), 5 ILCS 314/1, et seq. The parties waived the tri-partite panel provided for by Section 14(c) of the Act.

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[1] In the remainder of this Opinion, I shall cite Union exhibits as "UX____" and Employer exhibits as "EX____." I shall cite the hearing transcript as "Tr.____."

A hearing was held in O'Fallon on September 17, 1996. Both parties have filed post-hearing briefs.

II. The Issues

The parties stipulated that the following issues are unresolved and subject to resolution in this proceeding:

A. Issues Common to Police and Civilian Units

1. Insurance (Non-Retroactive)
2. Holiday Eligibility Pay (Retroactive to 5/1/95)

B. Issues Relating to Police Unit

1. Sergeant Pay (Retroactive to 5/1/95)
2. Senior Patrol Officer Classification Pay (Non-Retroactive)
3. Physical Testing (Non-Economic)

C. Issues Relating to Civilian Unit

1. Wages (Retroactive to 5/1/95)
2. Shift Differential (Non-Retroactive)

III. The Final Offers

A. Issues Common to Police and Civilian Units

1. Insurance (Non-Retroactive)

(a) Union's Final Offer

The Union proposes to amend Article 23 (Insurance), Section 1 (Hospitalization), which is the same in both agreements (additions to 1992-95 contracts (UXs 9 & 10) are in **bold print**).

Article 23 (Insurance), Section 1 (Hospitalization)

The Employer agrees to pay the full amount of employee costs for hospitalization and major medical insurance. The Employer further agrees to pay the full amount required towards the

employee's family hospitalization and major medical insurance for all employees hired prior to May 1, 1988. All employees hired after May 1, 1988 shall pay 50% of the employee's family hospitalization and major medical insurance, **but such payments shall not exceed $100 per month.**

Any employee hired prior to May 1, 1988 will be permitted to discontinue insurance coverage with employer and employee would receive $50.00 per month for dependent coverage or $75.00 per month for complete coverage. Employee shall receive this for a period not to exceed 12 consecutive months. If an employee discontinues coverage for any period of time and elects to be reinstated, employee shall be reinstated (upon acceptance by the Insurance Company) at the same benefit/premium levels as all other employees hired prior to May 1, 1988.

(b) Employer's Final Offer

The Employer proposes no change in Article 23, Section 1 of either Agreement.

2. Holiday Eligibility Pay (Retroactive to 5/1/95)

(a) Current Contract Clause

Currently, Article 20 (Holidays) Section 4, reads as follows in both contracts:

An employee that is absent from scheduled work, due to illness, the day before or the day after a holiday will not be eligible for the holiday pay set forth in Section 3 above.

(b) Union Proposal

An employee that is absent from a regularly scheduled workday the immediate calendar day before or immediate calendar day after a holiday will not be paid holiday pay unless that employee can provide verification of illness or injury.

(c) Employer Proposal

An employee who is absent from a regularly scheduled workday the immediate calendar day before or immediate calendar day after a holiday will not be paid holiday pay.

B. Police Unit Issues

1. Sergeant Pay (Retroactive to 5/1/95)

(a) Current Wage Scale

Article 19, Wage Rates, in the 1992-95 Police Officer contract provides as follows:

Section 1.

The pay schedule for all employees covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:

Probationary Patrolman - period of 1 year	$11.70/hour
Patrolman - after completing probationary period	$12.63/hour

May 1, 1993:

Probationary Patrolman - period of 1 year	$12.25/hour
Patrolman - after completing probationary period	$13.18/hour

May 1, 1994:

Probationary Patrolman - period of 1 year	$12.75/hour
Patrolman - after completing probationary period	$13.68/hour

Section 2. Longevity

In addition, employees covered by this Agreement shall receive the following longevity increase upon their anniversary date:

Patrolmen - After 2 years through 10 years	$.23/hour
Patrolmen - 11 years through 13 years	$.19/hour
Sergeants - After 2 years through 10 years	$.23/hour
Sergeants - 11 years through 16 years	$.19/hour

Section 3.

In addition to the above base pay:

(a) All officers of rank of sergeant shall receive $100 per month in addition to the base pay.

(b) Union Proposal

The Union proposes to substitute the following for Section 3(a) of Article 19:

> (a) All officers in the rank of Sergeant shall receive $1.00 per hour in addition to base pay.

(c) Employer Proposal

> In addition to...base pay, all officers of the rank of sergeant and above shall receive: Year 1-$.65 per hour; Year 2-$.75 per hour; Year 3-$.90 per hour.

2. Senior Patrol Officer Classification Pay (Non-Retroactive)

The 1992-95 Police Officers Agreement does not contain the classification "Senior Patrol Officer." The Union proposes to add the following to Article 19 as Section 3(b):

> All officers covered by this agreement, when designated in charge of a patrol shift, shall receive the sergeant rate listed above for the hours spent in charge of the shift.

The Employer is opposed to the new subsection (b) of Article 19, Section 3.

3. Physical Testing (Non-Economic)

The 1992-95 Police Officer Agreement contains no provision respecting "physical testing."

The Union proposes to add the following to Article 24 (General Provisions) as Section 4:

> If the Employer should decide to implement any type of physical fitness or wellness program, the employees covered by this agreement shall participate as directed by the Director of Public Safety; however, no employee shall be disciplined for failure to meet a goal or standard unless they fail to make a good faith effort to participate.

The Employer opposes this offer and proposes that the Agreement not be amended to reflect any limitation on physical testing.

C. Civilian Unit Issues

1. Wages (Retroactive to 5/1/95)

(a) Current Wage Scale

Article 19 of the 1992-95 Civilian Employees Agreement contains the following wage schedule:

Article 19
Wage Rates

Section 1. Telecommunicators

The pay schedule for all telecommunicators covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:

Probationary - period of 1 year	$ 8.64/hour
After completing probationary period	$ 9.60/hour

May 1, 1993:

Probationary - period of 1 year	$ 9.19/hour
After completing probationary period	$10.15/hour

May 1, 1994:

Probationary - period of 1 year	$ 9.69/hour
After completing probationary period	$10.65/hour

(A) Longevity

In addition, telecommunicators covered by this Agreement shall receive the following longevity increase upon their anniversary date:

After 2 years through 10 years	$ .24/hour
11 years through 13 years	$ .19/hour

(B) Incentive Pay

In addition to the regular base pay as covered in this section, any telecommunicator holding the title of Supervisor shall receive an additional $600 per year ($.29 per hour).

Section 2. Administrative Assistant

Administrative Assistant shall be reimbursed in accordance with the following schedule. As of May 1, 1992:

Starting salary	$10.07
May 1, 1993:	
Starting salary	$10.62
May 1, 1994:	
Starting salary	$11.12

Section 3. Secretary II

The pay schedule for all Secretary II employees covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:

Start - end of current fiscal year	$ 8.05/hour
Beginning of first fiscal year after start	$ 8.60/hour

May 1, 1993:

Start - end of current fiscal year	$ 8.60/hour
Beginning of first fiscal year after start	$ 9.15/hour

May 1, 1994:

Start - end of current fiscal year	$ 9.10/hour
Beginning of first fiscal year after start	$ 9.65/hour

Secretary II shall be entitled to receive Dispatcher's pay for any complete shift during which the individual was scheduled to work as a Dispatcher. Secretary II shall also receive Dispatcher's pay for any time in excess of four hours spent covering dispatcher injury or illness.

(A) Longevity

In addition, all Administrative Assistants and Secretary II employees covered by this Agreement shall receive the following longevity increase at the beginning of each fiscal year:

Second fiscal year through tenth fiscal year	$ .24/hour
Eleventh fiscal year through thirteenth	$ .19/hour

Section 4. Educational Reimbursement/Pay

(a) All employees attending a recognized college or university shall be reimbursed in the following manner:

1. Undergraduate course work - Shall be reimbursed at the same rate as the relevant current rate per course hour as SIU-Edwardsville or 75% of the rate at another accredited institution up to a Bachelor's degree providing employee is pursuing a degree in Criminal Justice or in a degree program approved by the Director of Public Safety.

2. Graduate course work - Shall be reimbursed at the same rate as set forth above upon approval by the Director and Health and Safety Committee/or Council prior to beginning of each class.

3. Employees shall be reimbursed a maximum of $50.00 per semester for book expenses.

4. In addition to regular base pay, any full time civilian employee holding a Bachelor of Arts degree from a recognized college or university in a degree program approved by the Director of Public Safety, shall receive an additional $750.00 per year, payment of $62.50 to be made in last pay check of each month.

Section 5. Secretary I

Section 6.

If justification and necessity dictates, persons hired which possess experience and/or skills above the minimum may be hired with lateral entry. This lateral entry may exceed the entry level pay but must be less than the first year step.

Section 7.

The initial pay of each employee commencing May 1, 1992 is attached hereto.

Section 8.

Employees assigned to travel in personal vehicle on behalf of the City shall be reimbursed for mileage at 24 cents per mile outside the following set of boundaries: Southern boundary of Belleville west of Freeburg. Eastern boundary Highway 4 to I-70. Northern boundary Westbound I-70 to 270 and west to the Mississippi. Western boundary is the western city limits of the City of St. Louis.

(b) Union Proposal

The Union proposes to increase base wages for civilian employees as follows:

Year 1-60¢ per hour
Year 2-60¢ per hour
Year 3-65¢ per hour

(c) Employer Proposal

Year 1-4.4% increase
Year 2-4.2% increase
Year 3-4.4% increase

The Employer translates these percentage increases to actual cents-per-hour increases as follows:

Non-Probationary Clerks

Year 1-42¢	Year 2-42¢	Year 3-46¢

Dispatchers-Telecommunicators

Year 1-47¢	Year 2-47¢	Year 3-51¢

2. Shift Differential (Non-Retroactive)

(a) Union Proposal

The Union proposes that "civilian employees shall be paid a shift differential of an additional $.15 per hour for working the afternoon shift and an additional $.25 per hour for working the midnight shift."

(b) Employer Proposal

The Employer is opposed to shift differential.

IV. Applicable Statutory Standards

Section 14(g) of the Act provides that "[a]s 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)." Section 14(h) of the Act sets out the factors used to evaluate economic proposals:

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.

The critical factors in economic interest arbitration are contained in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."[2] The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of major significance.

V. Comparability

The Union contended that Cahokia, Collinsville, Edwardsville and Fairview Heights are comparable to O'Fallon. In the "Area Economic Survey" offered in support of its economic proposals (EX 2), the Employer compared O'Fallon to the four municipalities suggested by the Union and to Troy, Highland, Swansea, Granite City and Belleville. At the hearing, however, the Employer questioned the comparability of Collinsville, Edwardsville and Fairview Heights (Tr. 43-4).

> [W]e believe that the arbitrator should be aware of the circumstances that are unique to Fairview Heights. As you know, in driving here today, Fairview Heights is a large commercial community. They have a population of approximately 14,350 people. Those are the residents that live there. That population explodes to over 150,000 individuals during store operations. So that is a unique community

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[2]Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," Tim Bornstein & Ann Gosline, eds. *Labor and Employment Arbitration* (New York: Matthew Bender, 1991), Vol. III, ch. 63, §63.03[2], at 7.

> that is different from all surrounding communities including O'Fallon. O'Fallon doesn't enjoy that type of retail activity. Also what's unique about O'Fallon is that it's a relatively safe community. That is, our officers are not nearly as active as officers in surrounding communities. And I think if you look at Tab 3, Page 1 of the comparables submitted by the Union today and you look at the total crimes committed per population, you will see that there were 506 crimes committed in O'Fallon. That's less than one-half of the crimes committed in Cahokia, which had 1244. That's nearly one-third of the crimes committed in Collinsville which was 1476, and it's also less than Edwardsville which was 598. So I think you should take that into consideration when reviewing the comparables that the Union has set forth in support of their arguments. Basically, O'Fallon is to some extent the bedroom community for Fairview Heights because we've seen a large shift in the population from the Fairview Heights community to O'Fallon as retail establishments continue to grow in that area.

The Union offered the following comparisons of Fairview Heights, Cahokia, Edwardsville and Collinsville, all of which are about 15 miles from O'Fallon and, like O'Fallon, within the St. Louis metropolitan area (UX 3):

Table 1: The Union's Comparisons

Jurisdiction	Pop	Square Miles	Per Capita Income	Median Household Income	Total Crimes	# Police Officers	# Police Civilians	Median Home Value
Cahokia	17,550	9.6	$10,346	$26,147	1,244	31	11	$34,000
Collinsville	22,446	11.2	14,328	30,659	1,476	35	10	59,400
Edwardsville	14,579	8.7	15,338	32,733	598	24	9	65,100
Fairview Hts.	14,351	10.1	15,464	34,898	1,720	37	11	66,000
O'Fallon	16,073	6.1	16,538	36,041	506	29	11	77,300
Average	17,000	9.14	14,403	32,096	1,109	31	10	60,360
Difference	-5.45%	-33.26%	+14.82%	+12.29%	-54.37%	-7.05%	+5.77%	+28.06%

These communities are comparable to O'Fallon. With the possible exception of Cahokia, whose primary economic indicators—income and median home value—are substantially lower than O'Fallon's, all the suggested communities fall within a fairly narrow range. The median household income in

Collinsville, the poorest community except Cahokia, was 85% of O'Fallon's; the median home value was 77% of O'Fallon's. This is an acceptable range. In addition, while the Employer questioned the comparability of these communities at the hearing, the comparisons the Employer offered through its exhibits included these communities.[3] I must either consider these cities for reasons suggested by Employer Exhibit 2 or disregard them for reasons suggested by the Employer at the hearing.

I shall not disregard Collinsville, Edwardsville and Fairview Heights for the reasons suggested at the hearing—reasons that were, at least in part, impressionistic and unsupported by hard data. Along with Cahokia, I consider Collinsville, Edwardsville and Fairview Heights comparable to O'Fallon.

Because no information other than population, total budget and number of sworn officers was offered to support their inclusion (see EX 2), I shall not include Troy, Highland, Swansea, Granite City and Belleville.[4] It might

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[3] I do not question the Employer's assertion that Fairview Heights is a large regional shopping area whose population swells during business hours. Generally, since thieves go where the money is, there is undoubtedly more theft, robbery and burglary and more need for police protection and investigation in Fairview Heights than in O'Fallon. Since, however, both parties offer comparisons that include Fairview Heights I have little choice but to consider it a comparable city.

[4] I have suggested that population, the number of police officers, the number of index crimes, equalized assessment valuation, median home value, per capita income, median household income, total revenue, revenue per police officer and total payroll are significant factors used to determine comparability. See *City of Loves Park,* S-MA-95-113

also be noted that O'Fallon has a population of 18,500, Troy 7,100, Highland 7,500, Swansea 8,201, Granite City 34,000 and Belleville 42,500 (EX 2). None of these communities has a population within the broad range of ±50% of O'Fallon, the most liberal population margin I have generally recognized as comparable to the community under consideration.[5]

VI. Resolution of Issues

A. Issues Common to Police and Civilian Units

1. Insurance (Non-Retroactive)

Under Article 23, Section 1 of the 1992-95 contracts covering both bargaining units the Employer is required to pay the full cost of premiums for family hospitalization and major medical insurance for employees hired before May 1,

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(Berman 1996), at 14. In the same decision at n. 8, p. 14, I cited Anderson and Krause for the following list of "common factors used to establish comparability...":

> (1) nearby communities; (2) similar population size; (3) past practice; (4) parity relationships, (e.g., police and firefighters); (5) extent of fire or crime problem; (6) extent of recruitment and retention problem; (7) comparable ability to pay, state equalized value, taxes levied; (8) distinct characteristics of the locality; (9) comparable duties of the referenced group of employees; and (10) the peculiarities of the particular trade or profession, specifically the hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills. (Anderson & Krause, *supra* n.2, §63.03[2].)

I would not expect to have information on all of these factors in any given case. However, more is needed to make reasonable comparisons than the Employer has provided.

[5] Because of the dearth of communities within a reasonable proximity of the city under review, it is theoretically possible that a population range greater than ±50% could be considered appropriate. In more populous areas having many towns and villages in close proximity, such as the area under consideration, it is less likely that such a population range will be found appropriate.

1988 and 50% of premium-cost for this coverage for employees hired after May 1, 1988. The Union proposes "to cap the amount" of employee payment at $100 per month (Un. Brief, 11). The Employer opposes any change.

The Union has submitted the following comparability data (UX 6):

Table 2: Insurance Cost Comparisons

Cahokia		
Police	$0.00/mo for single	$0.00/mo for family
Civilians	$0.00/mo for single	$0.00/mo for family
Collinsville		
Police	$0.00/mo for single	$26.01/mo for family*
Civilians	$0.00/mo for single	$12.96/mo for family
*or $19.79/mo for HMO family coverage		
Edwardsville		
Police	$43.22/mo for single	$117.33/mo for family
Civilians	$43.22/mo for single	$117.33/mo for family
Fairview Heights		
Police	$0.00/mo for single	$0.00/mo for family
Civilians	$0.00/mo for single	$0.00/mo for family
O'Fallon (Current)		
Employees Hired Before 5/1/88		
Police	$0.00/mo for single	$0.00/mo for family
Civilians	$0.00/mo for single	$0.00/mo for family
Employees Hired After 5/1/88		
Police	$0.00/mo for single	$143.38/mo for family
Civilians	$0.00/mo for single	$143.38/mo for family

The Union's proposal would save employees hired after May 1, 1988 $43.38 per month or $520.56 per year. On an hourly basis (assuming a 2080-hour year), the savings for each employee (and the cost to the Employer for each employee) would be about 25¢ per hour.

The Employer pointed out that it requires all city employees to pay 50% of their dependent coverage, and that it is "unwilling to allow one department (i.e., the police department) to enjoy better insurance benefits than that which [it] offers to its other employees" (Emp. Brief, 6). The Employer also argues that it should not have to broaden the gap between Police Department employees and other city employees.

External comparability favors the Union's proposal. Of the four comparable communities, only Edwardsville requires employees to pay more than $100 per month for family coverage. Even if insurance-premium costs for family coverage were capped at $100 for employees hired after May 1, 1988, these employees would continue to pay more for this coverage than employees in three of the four comparable cities.

In *Village of Rock Falls & IAFF Local 3291,* S-MA-94-163 (Nathan 1995), at 16-20, arbitrator Harvey Nathan addressed the "internal comparability" factor in some detail.

Arbitrator Nathan wrote, at pages 17-18:

> Internal comparability is the measurement of the terms and conditions of employment of one bargaining unit with others of the same employer. It is significant because of the inherent similarities when the employer is the same. The important question of whether the municipality has a community of interests with the comparison employer is obviated. Moreover, ability to pay and other economic considerations, as well as local community features and practices are self-evident or have been resolved. However, internal comparability can be a two-edged sword. On the one hand the employer seeks uniformity among its different bargaining units. The employer wants uniformity among its employee groups, not competition for a costlier contract. It

> does not want one unit to play off of another. It rightfully wants some structure in its wage and benefit plan for its employees as a whole, and not have pay packages running every which way without regard to skills or level of importance within the overall community. Additionally, the employer may lose credibility if it bargains a contract for wages and benefits at one level only to agree to a more costly package with another group.
>
> Unions, on the other hand, do not want to be bound by the agreements negotiated by other labor organizations representing other types of employees. The unions argue that there can be no good faith negotiations when the employer presents a package justified mostly on the basis of its acceptance by other employee groups. In some cases the employer's so-called "pattern" is self-serving. It settles with the weakest bargaining units first and then argues that the other units must accept the "pattern" it has established. Moreover, there may have been special needs and considerations which led one unit to settle for certain terms which are not as applicable to the unit in question. Internal comparability should not be used as a straightjacket which inhibits the consideration of the separate needs of particular units.

Arbitrators Alan Fisher and George Larney have noted that an arbitrator should take into consideration the fact that there may be differences between separate employee units employed by the same employer:

•Arbitrator Fisher in *County of Rock Island & Illinois FOP*, S-MA-94-6 (1995), at 8:

> "The arbitrator...finds no merit in the County's argument concerning internal wage comparability as the controlling factor for two reasons. First, there was no evidence of job similarities between the other County bargaining units and the subject bargaining unit.

•Arbitrator Larney in *Sangamon County/Sangamon County Sheriff & Ill FOP Lodge 55*, S-MA-94-41/42 (1995), at 42:

> As to the internal comparison argument advanced by the Employer that no other County employees receive this benefit, the Arbitrator notes there is

> diversity among benefits received by employees represented by various unions and labor organizations and given the uniqueness of their utility to the employing entity there is little or no support for a rationale that urges uniformity amongst different classes of employees.... Thus, there is nothing inherently unfair, wrong or otherwise peculiar in maintaining different benefits for different employees recognizing that, in most things, one size does not fit all. What suits the needs of one set of employees does not suit the needs of another employee group.

In *Village of Arlington Heights & IAFF Local 3105,* S-MA-88-89 (1991), at 13, arbitrator Steven Briggs came to a somewhat different conclusion:

> In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a particular public sector jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called "me too" clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want.
>
> Bearing all of this in mind and emphasizing again the "educated guess" nature of interest arbitration, I am very reluctant to grant to the Union in this case an arbitrated outcome which would take Arlington Heights Firefighters beyond what the FOP gained through voluntary collective bargaining. The 1990-1993 Agreement reached by the Village and the FOP was hammered out by professional negotiators in consultation with their respective bargaining teams. Both parties to those negotiations were obviously "well acquainted with the equities involved" [footnote omitted]. Thus, it is appropriate to use the 1990-1993 FOP Agreement, and its

> predecessor where applicable, as a guideline in this case.[6]

On balance, the external comparables prevail over the internal comparables. Arbitrator Briggs' reasoning would seem to apply to competing units of unionized fire and police employees. Here, the evidence did not establish that the dependent-care insurance costs for employees other than fire-fighters were established through collective bargaining. Thus, arbitrator Briggs' concern that one public safety unit would secure higher benefits through interest arbitration than another would secure through collective bargaining is moot.

In addition, as the Union has pointed out, the current system penalizes police officers at the lower end of the wage scale, presumably those least able to afford higher insurance premiums.

I adopt the Union's proposal on insurance. Article 23 (Insurance), Section 1, Hospitalization, in both the police and civilian contracts shall be amended to read as follows:

> The Employer agrees to pay the full amount of employee costs for hospitalization and major medical insurance. The Employer further agrees to pay the full amount required towards the employee's family hospitalization and major medical insurance for all employees hired prior to May 1, 1988. All employees hired after May 1, 1988 shall pay 50% of the employee's family hospitalization and major medical insurance, but such payments shall not exceed $100 per month.

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[6] Accord: *City of Elgin & Metropolitan Alliance of Police Unit 54*, S-MA-94-94 (Briggs 1995), at 9.

> Any employee hired prior to May 1, 1988 will be permitted to discontinue insurance coverage with employer and employee would receive $50.00 per month for dependent coverage or $75.00 per month for complete coverage. Employee shall receive this for a period not to exceed 12 consecutive months. If an employee discontinues coverage for any period of time and elects to be reinstated, employee shall be reinstated (upon acceptance by the Insurance Company) at the same benefit/premium levels as all other employees hired prior to May 1, 1988.

2. Holiday Eligibility Pay (Retroactive to 5/1/95)

Currently, both the police and civilian agreements deny holiday pay to an employee absent from scheduled work because of illness the day before or after a holiday. The Union would deny holiday pay only if the absent employee does not "provide verification of illness or injury." The Employer would deny holiday pay to an employee absent for any reason on the regular work day before or after a holiday.

(a) Summary of Arguments

(i) The Employer

The Employer argues that an employee's "'illness' or 'injury' is irrelevant to the subject of holiday pay" because the "original intent of this benefit was to provide a wage benefit to those individuals who work the day before or...day after a holiday. It is not intended to increase the amount of sick leave offered to the union employees" (Emp. Brief, 4). The Employer also argues that its proposal "is consistent with" Cahokia, Collinsville and Highland (Emp. Brief, 5).

(ii) The Union

The Union argues that "it is appropriate to be concerned over 'cheaters,' who try to take a day off and still get the

premium pay," but that the Employer's offer would also penalize "those who are legitimately ill or injured" (Un. Brief, 19).

(b) Discussion and Findings

As shown in Table 3 below the comparability data is inconclusive, and I shall not rely on it.

Table 3: Holiday Pay Requirements

Cahokia:	Employee must work scheduled workday before and after holiday unless excused by Chief of Police.
Collinsville:	Employee must work scheduled workday before and after holiday.
Edwardsville:	No requirements.
Fairview Heights:	Employee must work scheduled workday before and after holiday unless absent because of sick leave, leave of absence, vacation, compensable on-the-job illness or injury or approved time off.

Obviously, employees should not be permitted to extend a paid holiday by feigning illness. For that reason, in most work settings with which I am familiar an employee who is not ill is ineligible for holiday pay unless he has worked the day before and after a holiday. In addition, since holiday pay is generally intended to reward active employees, I would agree that employees on sick-leave should not be paid for a holiday that falls during their leave. But the Employer did not establish that employees on sick leave, as opposed to employees off work a day or two because of unanticipated illness, were getting windfall, holiday-pay benefits. Were that a problem, precise contract language on point would be

appropriate. But penalizing an active employee for a legitimate illness is an inflated and overreaching remedy. An employee who feigns illness may be disciplined; an employee who does not feign illness should not be penalized.

I adopt the Union's proposal. Article 20 (Holidays), Section 4 in both the Police and Civilian contracts shall be amended to read as follows:

> An employee that is absent from a regularly scheduled workday the immediate calendar day before or immediate calendar day after a holiday will not be paid holiday pay unless that employee can provide verification of illness or injury.

B. Police Unit Issues

1. Sergeant Pay (Retroactive to 5/1/95)

(a) Current Language of the Contract

Article 19 of the current Police Unit agreement provides in relevant part:

Section 1.

The pay schedule for all employees covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:

Probationary Patrolman - period of 1 year	$11.70/hour
Patrolman - after completing probationary period	$12.63 hour

May 1, 1993:

Probationary Patrolman - period of 1 year	$12.25/hour
Patrolman - after completing probationary period	$13.18/hour

May 1, 1994:

Probationary Patrolman - period of 1 year	$12.75/hour
Patrolman - after completing probationary period	$13.68/hour

Section 2. Longevity

In addition, employees covered by this Agreement shall receive the following longevity increase upon their anniversary date:

Patrolmen - After 2 years through 10 years	$.23/hour
Patrolmen - 11 years through 13 years	$.19/hour
Sergeants - After 2 years through 10 years	$.23/hour
Sergeants - 11 years through 16 years	$.19/hour

Section 3.

In addition to the above base pay:

(a) All officers of rank of sergeant shall receive $100.00 per month in addition to the base pay.

* * *

(b) The Proposals

(i) The Union

"All officers in the rank of Sergeant shall receive $1.00 per hour in addition to base pay" (Un. Brief, 4).

(ii) The Employer

"In addition to...base pay, all officers of the rank of Sergeant and above shall receive:

"Year 1 65¢ per hour

"Year 2 75¢ per hour

"Year 3 90¢ per hour" (Emp. Brief, 7).

(c) Discussion and Findings

The Union has compared Sergeants' wages to the mean wages of Sergeants in the comparable communities of Cahokia, Edwardsville, Collinsville and Fairview Heights (Un. Brief, 21):

Table 4: 1995 Sergeant Salary Comparisons: Union Data

	Start	2 Years	5 Years	10 Years	20 Years
Union Offer	31,283	33,812	35,316	37,823	39,066
Emp Offer	30,084	32,395	33,899	36,406	37,649
$ Difference*	1,199	1,417	1,417	1,417	1,417
Mean of the comparables	37,525	38,574	39,469	40,457	41,807
% Difference**	19.61%	14.08%	11.76%	6.96%	7.02%
$ Difference***	6,242	4,762	4,153	2,634	2,741

* Dollar difference between Union Offer and Employer Offer
** Percentage difference between Union Offer and Average
*** Dollar difference between Union Offer and Average

The Employer has also compared the wages of O'Fallon sergeants to sergeants in comparable jurisdictions (EX 2, p. 4):

Table 5: Sergeant Base Pay Comparisons: Employer Data

Jurisdiction	Hourly Wage	Annual Salary
Cahokia	15.12	31,444
Collinsville	17.74	36,899
Edwardsville	17.12	35,610
Fairview Heights	20.63	42,912
Average	17.65	36,716
O'Fallon	14.26	29,661
Difference	-3.39	-7,055

The Employer argues that its proposal is "fair and reasonable" because it "places the O'Fallon sergeants in the median range among the nine area police departments surveyed" (Emp. Brief, 7), thereby suggesting that "median range" is an

appropriate placement. In actuality, according to Employer Exhibit 2, the wages of O'Fallon Sergeants are not even close to the median of the nine police departments surveyed by the Employer. The hourly wage of $14.26 and annual salary of $29,661 ranks last among these communities. If the Employer is suggesting that some form of arithmetic average, whether median or mean, is an appropriate basis for comparison, O'Fallon's sergeants do not measure up; they are substantially behind the median and the mean of the comparable communities.

As comparability is a critical factor and no evidence on any countervailing factor was presented, I adopt the Union's proposal.

2. Senior Patrol Officer Classification Pay (Non-Retroactive)

(a) The Proposals

(i) The Union

The Union proposes to add the following as subsection (b) to Article 19 (Wage Rates), Section 3:

> (b) All officers covered by this agreement, when designated in charge of a patrol shift, shall receive the sergeant rate listed above for the hours spent in charge of the shift.

(ii) The Employer

The Employer is opposed to the new subsection (b) of Article 19, Section 3.

(b) Summary of Arguments

(i) The Union

The Union argues that Patrol Officers who temporarily assume the responsibilities of a sergeant in charge of a shift should be paid Sergeant's wages, that the "duties and responsibilities of monitoring radio dispatch calls, re-routing calls, if necessary, determining assignments, ensuring the safety of officers, maintaining adequate manpower, assisting on calls, evaluating the need for overtime, and scrutinizing the accuracy of reports" are "important duties and it is vital that a responsible and experienced officer perform them with vigor and vitality" (Un. Brief, 22-4). The Union is critical of the Employer's argument that "acting up" pay is unnecessary because "an officer temporarily...in charge of a shift will not usually be involved in budgeting, disciplining or evaluating personnel" (Un. Brief, 24). The Union argues that these duties "are ancillary to the main responsibilities of an officer in charge of a shift," that it is "'on the street' duties that are important..." (Un. Brief, 24).

(ii) The Employer

The Employer argues that "the 'senior patrol officer' does not perform the same duties as a sergeant. A sergeant is responsible for duties far beyond simply being in charge of a shift," such as "performing personnel evaluations, budgeting, planning, disciplinary actions and other related duties" (Emp. Brief, 7).

(c) Discussion and Findings

Neither party offered comparative data on additional pay for Patrol Officers "acting up" as Sergeants. Nor did the evidence establish what percentage of time, if any, an acting-up Sergeant might normally spend "performing personnel evaluations, budgeting, planning" or disciplining. It would be unusual for a temporary supervisor to assume these managerial responsibilities. Nevertheless, an officer in charge of a shift, permanently or temporarily, has responsibilities not routinely performed by rank-and-file police officers. An acting Sergeant is in charge of the shift. He or she has a duty to make assignments and ensure that they are carried out.

Section 14(h) of the Act permits an arbitrator to consider "such other factors...which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment." It is not unusual in industry generally for non-supervisory employees to receive additional pay for "acting up" temporarily in supervisory jobs. An "acting up" premium tends to discourage an Employer from taking advantage of both supervisory and non-supervisory employees by routinely assigning supervisory work to non-supervisory employees at sub-par wages.

I adopt the Union's proposal.

3. Physical Testing (Non-Economic)

(a) The Proposals

(i) The Union

The Union proposes to add the following as Section 4 to Article 24 (General Provisions) of the 1992-95 Agreement:

> If the Employer should decide to implement any type of physical fitness or wellness program, the employees covered by this agreement shall participate as directed by the Director of Public Safety; however, no employee shall be disciplined for failure to meet a goal or standard unless they fail to make a good faith effort to participate.

(ii) The Employer

Arguing that requiring employees to go though a "physical wellness test" is a right of management, the Employer contests the Union's proposal.

(b) Discussion and Findings

The Union does not seek to "delve into discretionary issues regarding physical testing" (Un. Brief, 26) but argues that it has a right to bargain about disciplinary standards. I agree. But I do not agree that discipline should be limited only to employees who do not make a "good faith effort" to participate in a fitness test.

A physically unfit police officer could jeopardize his safety and the safety of the public. If the Employer is unable to enforce fitness standards, any "physical fitness or wellness program" program, however well designed, might have little practical impact. I am unwilling to preclude the Employer from enforcing fitness standards through discipline.

As employee discipline is clearly a mandatory subject of bargaining, I have fashioned the following provision to be incorporated into the Agreement as Section 4 of Article 24:

> If the Employer should implement any type of physical fitness or wellness program, employees covered by this agreement shall participate as directed by the Director of Public Safety. Any employee disciplined or suspended for failing to meet a goal or standard contained in the wellness program shall have the right to file a grievance under this Agreement alleging that he or she was disciplined or suspended without just cause.

C. Civilian Unit Issues

1. Wages (Retroactive to 5/1/95)

(a) Current Contract Provisions

Article 19 (Wage Rates) of the civilian employee agreement (UX 10) provides in relevant part as follows:

Wage Rates

Section 1. Telecommunicators

The pay schedule for all telecommunicators covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:	
Probationary - period of 1 year	$8.64/hour
After completing probationary period	$9.60/hour
May 1, 1993:	
Probationary - period of 1 year	$ 9.19/hour
After completing probationary period	$10.15/hour
May 1, 1994:	
Probationary - period of 1 year	$ 9.69/hour
After completing probationary period	$10.65/hour

(A) Longevity

In addition, telecommunicators covered by this Agreement shall receive the following longevity increase upon their anniversary date:

After 2 years through 10 years	$.24/hour
11 years through 13 years	$.19/hour

(B) Incentive Pay

In addition to the regular base pay as covered in this section, any telecommunicator holding the title of Supervisor shall receive an additional $600 per year ($.29 per hour).

Section 2. Administrative Assistant

Administrative Assistant shall be reimbursed in accordance with the following schedule. As of May 1, 1992:

Starting salary	$10.07
May 1, 1993:	
Starting salary	$10.62
May 1, 1994:	
Starting salary	$11.12

Section 3. Secretary II

The pay schedule for all Secretary II employees covered by this Agreement shall be based on the following rates of pay:

May 1, 1992:	
Start - end of current fiscal year	$8.05/hour
Beginning of first fiscal year after start	$8.60/hour
May 1, 1993:	
Start - end of current fiscal year	$8.60/hour
Beginning of first fiscal year after start	$9.15/hour
May 1, 1994:	
Start - end of current fiscal year	$9.10/hour
Beginning of first fiscal year after start	$9.65/hour

Secretary II shall be entitled to receive Dispatcher's pay for any complete shift during which the individual was scheduled to work as a Dispatcher. Secretary II shall also receive Dispatcher's pay for any time in excess of four hours covering dispatcher illness or injury.

(A) Longevity

In addition, all Administrative Assistants and Secretary II employees covered by this Agreement shall receive the following longevity increase at the beginning of each fiscal year:

Second fiscal year through tenth fiscal year	$.24/hour
Eleventh fiscal year through thirteenth	$.19/hour

(b) The Proposals

(i) The Union

Telecommunicator Wages:

5/1/95	Probationary Rate	$10.29/hr
5/1/95	Post-Probationary Rate	$11.25/hr
5/1/96	Probationary Rate	$10.89/hr
5/1/96	Post-Probationary Rate	$11.85/hr
5/1/97	Probationary Rate	$11.54/hr
5/1/97	Post-Probationary Rate	$12.50/hr

Secretary Wages:

5/1/95	Probationary Rate	$ 9.70/hr
5/1/95	Post-Probationary Rate	$10.25/hr
5/1/96	Probationary Rate	$10.30/hr
5/1/96	Post-Probationary Rate	$10.85/hr
5/1/97	Probationary Rate	$10.95/hr
5/1/97	Post-Probationary Rate	$11.50/hr

This proposal can also be expressed in cents-per-hour terms:

Year 1	60¢
Year 2	60¢
Year 3	65¢

(ii) The Employer

The Employer proposes to increase Telecommunicator and Secretary wages as follows:

Year 1	4.4% + longevity
Year 2	4.2% + longevity
Year 3	4.4% + longevity

(c) Discussion and Findings

Comparability information provided by the Union is set forth in Table 6 (UX 8):

Table 6: Comparable Wages, Civilian Employees: Union

Jurisdiction	Start	After 1 yr	After 2 yrs	After 3 yrs	After 4 yrs	After 5 yrs	After 10 yrs	After 15 yrs	After 20 yrs
Cahokia									
Collinsville	23,005	26,187	27,435	28,121	28,121	28,121	28,532	28,807	29,081
Edwardsville	23,507	23,507	23,507	23,507	23,507	24,212	24,682	25,152	25,152
Fairview Hts	26,894	27,432	27,432	27,970	27,970	28,508	29,584	30,122	30,660
Average	24,469	25,709	26,125	26,533	26,533	26,947	27,600	28,027	28,298
Union Offer	21,403	23,400	23,878	24,357	24,835	25,314	27,706	29,141	29,141
Emp Offer	21,050	23,130	23,608	24,086	24,565	25,043	27,435	28,870	28,870
Difference	-12.53%	-8.98%	-8.60%	-8.20%	-6.40%	-6.06%	0.38%	3.97%	2.98%

The Employer did not provide information on wages at different years of service. It submitted the following information on the municipalities I found comparable to O'Fallon (EX 2):

Table 7: Comparable Wages, Secretaries: Employer

Jurisdiction	Per Hour	Annual Wages
Cahokia	8.88	18,480
Collinsville	NA	NA
Edwardsville	NA	NA
Fairview Hts	12.04	25,044
Average	10.46	21,762

The Union points out that the civilian-employee cents-per-hour increases it proposes are equal to the Police Officer cents-per-hour increases reached in the current negotiations; and that the civilian-employee percentage increases proposed by the Employer are equal to the Police Officer percentage increases reached in the current negotiations. Because civilian employees have a lower base salary, a percentage increase identical to that of Police Officers will

result in smaller raises. Pointing out that "telecommunicators in O'Fallon are behind their counterparts early in their years of service, and catch up...after ten years," the Union suggests that its offer, which is "slightly more than the City's offer, will assist in diminishing this inequity" (Un. Brief, 30). The Employer says that its proposal places the "civilian employee's wage rate in the mid-range of area police departments" (Emp. Pre-Hearing Memorandum, 20).

Recent cost-of-living increases are running under 2.5%. And while O'Fallon's civilian employees appear below the average of the counterparts in their first 10 years of service, in the absence of evidence that these employees have historically been at or near the average of their counterparts in comparable municipalities, it is difficult to justify a raise in excess of the almost-4.5% annual salary increase (plus longevity) proposed by the Employer. It is mathematically impossible for everyone to be "above average." And the evidence did not establish that the appropriate placement for these employees is at or near the average of similar employees in comparable municipalities.

The same percentage increase given to Patrol Officers and civilian employees obviously results in a lower cents-per-hour increase for the lower-paid civilian employees. But it cannot be expected that these employees will earn the same absolute dollar increase as Patrol Officers. The Employer's proposal is appropriate.

I adopt the Employer's proposal on wage increases for civilian employees.

2. Shift Differential (Non-Retroactive)

(a) The Proposals

(i) The Union

Currently, civilians are not paid more for working second and third shifts. The Union proposes to add the following paragraph to Article 19 of the Civilian Unit agreement:

> Civilian employees shall be paid a shift differential of an additional $.15 per hour for working the afternoon shift and an additional $.25 per hour for working the midnight shift.

(ii) The Employer

The Employer is opposed to a shift differential.

(b) Discussion and Findings

The Union notes that, with the possible exception of Cahokia, civilian employees in the comparable communities receive the shift differentials set forth in Table 8.

Table 8: Shift Differentials in Comparable Jurisdictions

Jurisdiction	Afternoon Shift Differential	Night Shift Differential
Collinsville	20¢	25¢
Edwardsville	35¢	50¢
Fairview Heights	15¢	30¢

The Employer argues only that "civilian employees are assigned to a rotating shift schedule, therefore, no employee is permanently assigned to a particular shift" (Emp. Brief, 10).

Comparability supports the Union's proposal. Indeed, shift differentials are common throughout American industry; for it is generally recognized that it is a hardship to have to work second or third shift. Not only do late-shift workers have inconvenient schedules for personal and family activities, it may even be suggested that rotating shifts, as opposed to a permanent late shift, are more likely to cause restless sleep or insomnia. A reward in the form of additional remuneration for having to rotate periodically to second or third shift is not inappropriate.

I adopt the Union's proposal.

VII. Summary of Award

In summary, I have made the following decisions with respect to the issues in dispute:

A. Issues Common to Police and Civilian Units

1. Insurance (Non-Retroactive): I adopt the Union's proposal.

2. Holiday Eligibility Pay (Retroactive to 5/1/95): I adopt the Union's proposal.

B. Issues Relating to Police Unit

1. Sergeant Pay (Retroactive to 5/1/95): I adopt the Union's proposal.

2. Senior Patrol Officer Classification Pay (Non-Retroactive): I adopt the Union's proposal.

3. Physical Testing (Non-Economic): The following provision shall be added as Section 4 to Article 24 of the Agreement:

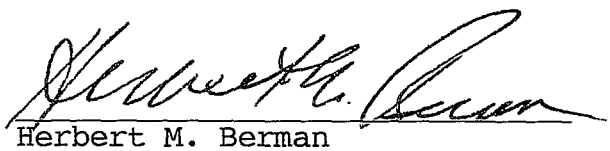
> If the Employer should implement any type of physical fitness or wellness program, employees covered by this agreement shall participate as directed by the Director of Public Safety. Any employee disciplined or suspended for failing to meet a goal or standard contained in the wellness program shall have the right to file a grievance under this Agreement alleging that he was disciplined or suspended without just cause.

C. Issues Relating to Civilian Unit

1. Wages (Retroactive to 5/1/95): I adopt the Employer's proposal.

2. Shift Differential (Non-Retroactive): I adopt the Union's proposal.

All tentative agreements reached by the parties are incorporated herein and made a part hereof by reference.



Herbert M. Berman
Arbitrator

June 9, 1997