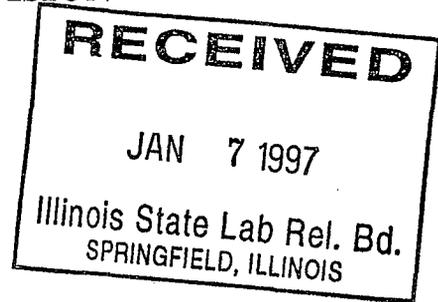


INTEREST ARBITRATION DECISION



CITY OF ALTON

and

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
LOCAL 1255

.....
ISLRB Case No. S-MA-96-91
Unresolved economic issues for 1996-99 agreement
.....

APPEARANCES

CITY R. Theodore Clark, Jr.
Seyfarth, Shaw, Fairweather,
& Geraldson

UNION J. Dale Berry
Cornfield & Feldman

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Decision: December 17, 1996
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AWARD

1. WAGE INCREASE. The Union's offer is chosen.
2. HOURS OF WORK (KELLY DAYS). The Union's offer is chosen.
3. EQUALIZATION OF OVERTIME FOR SCHEDULED ABSENCES (ARTICLE X,
SECTION A.3) The City's offer is chosen.
4. SICK LEAVE. The Union's offer is chosen.
5. VACATIONS The Union's offer is chosen.
6. All tentative agreements reached during negotiations are made
part of this award.

Milton Edelman
.....
Milton Edelman
December 17, 1996

PRELIMINARY MATTERS

City of Alton and Fire Fighters, Local 1255, waive the panel of arbitrators called for by Section 14 of the ILLINOIS PUBLIC LABOR RELATIONS ACT and agree to be bound by the decision of the neutral chairman.

At the direction of the Chairman final offers on six unresolved economic issues were submitted in writing at the start of the hearing. In the course of the hearing one issue, longevity, was settled. Of the five remaining issues, three--general wage increase, hours of work (Kelly days), and overtime equalization--originate with the Union, while the other two--sick leave and vacations--originate with the City.

The parties agree on five comparable cities--Belleville, Collinsville, East St. Louis, Edwardsville, and Granite City. The City would add Wood River to this list, but the Union opposes that addition. They agree to allow the arbitrator to decide.

A number of issues were settled during the negotiations that preceded this arbitration. At the request of the parties these tentative agreements are made part of this decision by reference. They are listed by Article, section, and subject matter.

The tentatively agreed issues made part of this decision and award are:

<u>ARTICLE</u>	<u>SUBJECT</u>
V	Seniority Definition
VII	Grievance Procedure--Choosing an arbitrator
VIII,C	Discipline
IX	Hours of Work
XV	Longevity
XVIII	Sec. 1, Accrual, and Sec. 2, Annual Sell Back
XVIII	Pro rata reduction in sick leave accrual for employees off work due to disciplinary suspension
XIX	Funeral Leave

only 11,490 with a Fire Department of only ten people. Alton has a 64-member department, and the smallest of the five comparable communities, Edwardsville, has nineteen. On these factors it is 66% and 84%² smaller than Alton, whose population is 33,604 with a 64-person department.

Edwardsville has the next largest fire department to Wood River, and Wood River's department is almost half the size of Edwardsville's. Wood River has only 0.87 fire fighters per 1000 population, while the figure for Alton is 2.04.

Looking at all sources of revenue from the state (home rule revenue, income tax, and sales tax) as well as property tax revenues, Wood River deviates from Alton by 65% and from the average of the other comparables by 52%. Even on EAV, the only direct revenue source used by the City, Wood River deviates from Alton by more than 60%.

Wood River is simply too small and too different from the other six--including Alton--to be included as a comparable community.

ANALYSIS AND FINDINGS OF FACT

The ILLINOIS PUBLIC LABOR RELATIONS ACT does not define a comparable community nor does it provide any hint of the criteria to use in evaluating comparability. This means the parties themselves, and the arbitrator, must do so drawing on the experience of other parties and arbitrators in defining this elusive yet all-important term.

Comparability is universally used in interest arbitration. It is probably the most widely used of the eight factors in Section 14(h) of the ACT. Long before the ILLINOIS STATE LABOR RELATIONS ACT even existed, parties to collective bargaining and interest arbitrators used comparable communities as one of the important factors in deciding interest arbitration questions. Undoubtedly,

²Percentages throughout this section are the Union's calculations.

the Illinois General Assembly adopted this widely used criterion because of its historical importance in collective bargaining.

These parties go a long way toward defining comparability by agreeing to limit comparable communities to those in Madison and St. Clair counties. Within these counties they seek out communities that are close to Alton in, among other criteria, population, size of fire department, sources of revenue, property values, and whether a collective bargaining agreement exists. But these measures by themselves do not define comparability. If they did one might expect the parties to look over the whole state, or even the nation, for communities similar to Alton on these criteria. That is not done because another overriding criterion comes first--labor market comparability.

By limiting themselves to Madison and St. Clair counties the parties recognize that labor markets have boundaries.³ They are areas within which people seek jobs, and employers seek potential employees. One would not normally expect potential fire fighters to seek employment nationwide, or even statewide. Rather, they will seek employment fairly close to their homes, in communities where wages and other benefits are roughly the same (comparable). These benefits, in turn, are influenced by population, size of department, revenue sources, and the other criteria used here, including general economic activity. The ease--or difficulty--with which those seeking employment can travel between employers--in this case, cities--in looking for jobs and in reporting for work is an important factor in defining the size of a labor market.

Wood River lies within the same labor market as Alton. Its geographical proximity is the first reason. After that, the fact that Wood River fire fighters operate under a collective bargaining agreement, and the relative closeness of most of the other criteria cited by the City argue for its inclusion as a comparable

³Labor market boundaries may differ for different occupations and professions. Some are local, some national, and some even international.

community.

GENERAL WAGE INCREASE

FINAL OFFERS

UNION

Increase all steps of existing schedule by 3.5% effective April 21, 1996, 3.5% effective April 1, 1997, and 3.5% effective April 1, 1998

CITY

Increase base salaries paid to employees by Three and One-Half Percent (3.5%) effective April 1, 1996, Three Percent (3%) effective April 1, 1997, and Three Percent (3%) effective April 1, 1998.

ANALYSIS AND FINDING OF FACT

Both parties recognize the long-standing pattern relationship between wage increases for fire fighters and police. Statements from both advocates and from one of the City's principal witnesses, Mr. Ken Carroll, the City's representative in negotiations with the police, recognize this relationship.

Negotiations between the City and the police were concluded between the first date of this hearing and the date the hearing reconvened. Police were granted wage increases exactly equal to those proposed by this Union for fire fighters, 3.5% effective April 1, 1996, 3.5% effective April 1, 1997, and 3.5% effective April 1, 1998.

In its brief the City continues to recognize the importance of the pattern bargaining connection between these two public safety groups, and is willing to accept it as the determining factor. This settles the matter. The fire fighter-police wage relationship is of paramount importance. The Union's final offer on salaries is chosen.

HOURS OF WORK (KELLY DAYS)

FINAL OFFERS

UNION

Reduce the average work week by modifying the existing language providing for a Kelly Day every 24th work shift to provide for the scheduling of a Kelly Day every 20th shift effective April 1, 1997, and every 18th shift effective April 1, 1998. Also, effective April 1, 1998, establish individualized work periods of 27 days to eliminate FLSA liability, as described in Appendix B.

CITY

Revise Section A of Article IX to read as follows:

The average work week for employees assigned to twenty-four (24) hour shifts shall be an annual weekly average of (53.66) hours by scheduling employees off on a "Kelly Day" every 24th work shift. The annual hours of work used to compute an employees' regular hourly rate of pay shall be 2,790.

Effective April 1, 1998, the average work week for employees assigned to twenty-four (24) hour shifts shall be reduced to an annual weekly average of (53.19) hours by scheduling employees off on a "Kelly Day" every 20th work shift. Effective April 1, 1998, the annual hours of work used to compute an employee's regular hourly rate shall be 2,766.

The average work week shall be based on a twenty-eight (28) day period.

Kelly days may be traded on the same basis as duty day trades.

....

POSITIONS OF THE PARTIES

UNION

Alton fire fighters work 2800 hours annually, or 53.7 hours per week, compared to an average of 2418 annually for five comparable cities (The Union does not include Wood River in its calculations.), or 46.5 per week. In only one of the comparable cities--Edwardsville--do fire fighters work more hours annually

than in Alton, 2912. The Union calls this difference a "huge disparity." Its proposal represents a "modest increase," the Union argues, increasing Kelly Days from 5 to 6.75 over three years. It does not even bring the work week down to the FLSA national average of 53 hours.

Alton's high average work week is not mitigated, the Union contends, by other time-off benefits, such as vacations and holidays. Actual annual hours for Alton fire fighters stands at 2532, taking vacations holidays and "personal convenience hours" into consideration, compared to 2151 for the Union's five comparable cities. Alton ranks sixth out of six.

Its Kelly Day proposal, the Union says, contains a "substantial *quid pro quo*" by eliminating the city's FLSA overtime liability.

CITY

This issue cannot be viewed in isolation from other economic issues, those found in the tentative agreements reached through negotiations, and the salary issue that is part of this arbitration. One must also consider the voluntary agreement which established Kelly Days in the first place. The City agreed to Kelly Days in exchange for "eliminating an expensive manning provision." Before that Alton had no Kelly Days even though some comparable jurisdictions did.

The sheer magnitude of the Union's proposal makes it unreasonable, an increase of 33-1/3%, while the City's proposal results in an increase of about 20%. Among the tentatively agreed items reached as part of these negotiations are several cost items that will benefit the fire fighters. An increase in the clothing allowance, a doubling of the EMT stipend, an increase in the premium pay for work on an unscheduled holiday, and elimination of the probationary rate. These, together with the Union's salary proposal--upon which the City essentially concedes in light of the police agreement--provide a generous financial package.

Accepting the Union's offer, says the City, would mean either adding one fire fighter or incurring "significant additional overtime cost," a fact acknowledged by the Union. The City's final offer would achieve some FLSA overtime savings so the Union is not alone in this regard.

Neither other City employees, including the police, nor fire fighters in comparable jurisdictions have been granted improvements in paid time off or reduction in hours of work without loss of pay. Finally, the City voluntarily granted an additional holiday, Martin Luther King's birthday, in 1995, without any *quid pro quo*.

ANALYSIS AND FINDINGS OF FACT

Comparability wins out on this issue. Exhibits from both parties show annual hours of work in Alton to be higher than all comparable communities, except Edwardsville, and, in the City's exhibit, Wood River. In Wood River annual hours are exactly equal to Edwardsville, 2912, compared to Alton's 2790. There is no getting around this comparability test.

All economic benefits should be considered, the City argues, citing several benefit items granted to the Union in the tentative agreement. Such a judgment call is most readily and properly accomplished by the parties themselves in the process of negotiation, weighing one issue against another. They know best how to compare the importance of each benefit.

The ACT requires the arbitrator to choose one final offer or the other "as to each economic issue," and adopt the last offer "which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Overall compensation is one of the factors to be considered, Section 14(h)(6). The Union's calculations on overall compensations show Alton to rank fifth out of six (Wood River is not included). Although this calculation is based partially on estimates, it does show Alton to be low compared to other communities. Alton is certainly not among the leaders.

It might be argued--although neither party makes this point--that it is impossible to make a decision on one economic factor without being influenced in some way by decisions on the other economic factors. But the ACT requires a decision issue by issue and comparison with hours of work and overall compensation in the comparable jurisdictions favors the Union. So much is clear. How the other economic benefits cited by the City should be used and how much weight should be given to each is less clear.

Reducing the City's FLSA overtime liability is important and partially offsets the cost of hiring one fire fighter or paying additional overtime, costs that could result from choosing the Union's offer.

EQUALIZATION OF OVERTIME

FINAL OFFERS

UNION

Modify existing language of Article X, Section A.3, to allow for equalizing overtime among all ranks included in the bargaining unit as described in Appendix C.⁴

CITY

Retain Section A.3 of Article X without change.

POSITIONS OF THE PARTIES

UNION

Adoption of this proposal would increase the overtime opportunities for Firefighters, the Union points out. If an Assistant Chief is absent under the conditions of Article X, Section A.3,--a scheduled absence--a qualified Captain would be

⁴Article X, Section A.3, provides for overtime equalization among the ranks of Firefighter, Engineer and Captain. The Union's proposal would add Assistant Chiefs to this list.

moved to Assistant Chief, an Engineer moved into the Captain's slot, a Firefighter moved to Engineer, and a Firefighter called in from the overtime list.

Since this "move up" procedure went into effect Firefighters have worked fewer overtime hours than other ranks, an average of 58 hours per employee. Assistant Chiefs have worked the greatest number of overtime hours per employee, 279. Under the present arrangement qualified Captains are not moved into the Assistant Chief position for overtime purposes.

This proposed arrangement would put only qualified Captains into the Assistant Chief position. In the past qualified Captains have worked as Assistant Chiefs when necessary--some thirteen times over the past three years--and have performed well. Calling in a Firefighter on overtime rather than an Assistant Chief would save the City some \$43.36 per day based on existing rates.

CITY

In 1993, when the present overtime equalization provision was adopted, the Fire Chief objected to including Assistant Chiefs in the overtime equalization procedure, and it was not done.⁵ The reason for his objection is still valid. The Assistant Chief is the Shift Commander and has supervisory responsibility over all eighteen employees on duty. Assistant Chiefs "respond to all alarms and assume command on the scene of any emergency, as well as being responsible for all administrative functions that day...." The Chief does not respond to emergencies, so the Assistant Chief is in charge. In effect, the Assistant Chief performs the duties of the Chief, and when the Chief is away or not on duty, the Assistant Chief is Acting Chief.

This proposal involves an important management issue, the City contends, even though it is "arguably a mandatory subject for bargaining." If the ACT had not grandfathered the inclusion of supervisors in bargaining units, Assistant Chiefs would be

⁵Before 1993 overtime was equalized within each rank.

excluded. In none of the six comparable jurisdictions is the rank directly below Fire Chief included in the bargaining unit. Neither do agreements in the comparable jurisdictions provide for overtime equalization among ranks.

ANALYSIS AND FINDINGS OF FACT

On this issue the City's position regarding the management responsibilities of Assistant Chiefs is convincing. Even though under the Union's offer only qualified⁶ Captains would serve as Assistant Chiefs, it is estimated that this would occur some sixty times a year. Not all Captains are qualified so only a limited number of Captains would share the Assistant Chief duties in the absence of the regularly scheduled Assistant Chief. But each time a Captain serves as Assistant Chief a series of move-ups takes place. Certainly such a large number of move-ups would make it more difficult for the Fire Chief to exercise managerial control over the Department.

Beyond the managerial problem, comparable data from other jurisdictions do not, as the City points out, support the Union's position. Three of the six comparable jurisdictions have no overtime equalization provision. In the other three the overtime provisions do not at all resemble Alton's, and certainly do not mention the rank just below the Fire Chief.

Based on these considerations, the City's offer is chosen

SICK LEAVE

FINAL OFFERS

CITY

Revise Article XVIII, Section 2.B, to read as follows:

Effective upon issuance of Arbitrator Edelman's award,

⁶Captains become qualified to serve as Assistant Chief by passing an examination and meeting other requirements.

employees shall have their sell back calculated by dividing their annual salary as defined in Article XIV by 2,790 (2,766 effective April 1, 1998).

UNION

Maintain existing benefit.

POSITIONS OF THE PARTIES

CITY

In 1993 the parties, at the City's request, adopted the figures of 2080 as the divisor in calculating the annual sell back of sick leave to replace a more complicated formula adopted in 1983. This is an artificially low figure so it results in an inflated hourly rate for sick leave sell back. The City wants to replace it with the employee's regular hourly rate.

The complicated 1983 formula was meant to approximately equalize sick leave sell back between police and fire fighters. But this rationale breaks down because police accumulate sick leave at the rate of eight hours per month while fire fighters accumulate ten hours per month, so fire fighters receive a higher benefit per month.

Five of the six comparable jurisdictions have no provision for sick leave sell back. In the sixth, Collinsville, employees are paid annually for one-half of any unused sick leave in excess of 480 hours "at the employee's regular rate of pay," exactly the rate the City proposes.

UNION

Before any reduction in existing benefits is ordered the City must demonstrate some "economic or operational justification" for removing or reducing existing benefits. The City has not done so. Alton's financial condition is excellent. The City does not plead inability to pay, neither does it show any operational reason for not paying this benefit.

Adoption of the City's proposal would reduce the value of accrued sick leave sold back by 25.71%, an annual loss equivalent

to more than 1% of base salary. This benefit has three times been the subject of negotiations, resulting in satisfactory resolutions each time, either with improvements or slight modifications. In the last change, 1993, the change in sick leave buy back was part of a package in which the City sought a major concession on shift manning, to which the Union agreed. As a result the number of fire fighters on duty was reduced and overtime opportunities declined. The increase in the hourly rate for sick leave sell back was a partial offset to these losses in annual compensation. The present City proposal would alter these negotiated agreements.

Overall annual compensation for Alton fire fighters is already less than the average of the Union's five comparable communities. Adopting the City's proposal would worsen the disparity. Finally, the city offers no *quid pro quo* for granting an economic take back of this magnitude.

ANALYSIS AND FINDINGS OF FACT

On this issue caution is the watchword for the arbitrator. It is preferable for an important benefit to be reduced by the parties through negotiation rather than through arbitration. Only if there is ample and convincing justification should the arbitrator undertake this task. The parties know best how to weigh one benefit against another, which to reduce and which to increase.

The City's justification is not sufficient nor is it convincing. Much more convincing is, first, the collective bargaining history of this benefit and, second, the role it plays in overall compensation, two connected reasons for not reducing this benefit. As far back as 1983 the City and the Union agreed on a formula for calculating sick leave sell back so as to equalize--or attempt to equalize--the benefit for police and fire fighters. In 1990 the parties again negotiated over this benefit. For employees hired after April 1, 1990, they put a 30-shift cap on the amount of sick leave that could be accumulated and sold back to the City for cash. This change was initiated by the City, which was

then having financial difficulties.

In 1993 another change was negotiated--again at the City's request--when the present figure of 2080 was adopted in place of the more complicated formula approved in 1983. Even in 1993 the City knew that fire fighters do not work an eight-hour day and a forty-hour week, nor a 2080-hour year. It was an artificial figure in 1993 just as it is now. Further, and of greater significance, shift manning was changed in 1993, allowing the City to reduce the number of fire fighters on each shift and to substitute a two-person rescue squad for a three-person pumper company, resulting in a reduction in overtime opportunities. The Union rightly places great emphasis on this change, viewing the sick leave sell back arrangement as an exchange for the drop in overtime earnings.

Certainly the most important lesson of this collective bargaining history is the fact that changes in this benefit have resulted from negotiation, with the parties deciding which items should be exchanged for others. The parties have tied certain items together. Without more ample justification their work should not be disturbed through arbitration.

Another important argument is the significance of this benefit as an element of overall compensation. Members of this bargaining unit normally sell back their accumulated sick leave each year, so sick leave sell back has become a significant portion of their annual earnings, as well as an incentive not to use sick leave unnecessarily. Adoption of the City's proposal, the Union estimates, would reduce overall compensation by about 1%.

For all these reasons the Union's final offer is chosen.

VACATIONS

FINAL OFFERS

CITY (Summarized)

Establish a vacation system in which employees hired on or

after April 1, 1996, earn lower vacation allotments than employees hired before April 1, 1996, and accumulate vacation credits at a lower rate.

A new paragraph would be added to Article XVII, Section A, providing that

vacation allotments would be ninety-six hours (four duty shifts) after one year of service, one hundred sixty-eight (168) hours (seven duty shifts) after two or more years of service, two hundred sixteen (216) hours (nine duty shifts) after ten or more years of service, and two hundred sixty-four hours (eleven duty shifts) after twenty or more years of service.

A new paragraph would be added to Article XVII, Section B.2, providing that

employees hired on or after April 1, 1996, would earn vacation credits at the rate of one and one-sixth ($1\frac{1}{6}$) calendar days for each month of service after one year; one and eleven-twelfths ($1\frac{11}{12}$) calendar days for each month of service after two years; two and five-twelfths ($2\frac{5}{12}$) calendar days for each month of service after ten years; two and eleven-twelfths ($2\frac{11}{12}$) calendar days for each month of service after twenty years.

UNION

Maintain existing benefit.

POSITIONS OF THE PARTIES

CITY

Internal comparability supports the City's position. Two other bargaining units, represented by PBPA (police) and AFSCME (clerical) have "somewhat smaller" vacation allotments ranging from one week after one year to five weeks after twenty years for employees hired after April 1, 1987, and April 1, 1989. As in those agreements, fire fighters under the current vacation plan would be grandfathered. Since the Union argues for parity with police on wages, it should accept parity on vacations as well.

Alton fire fighters receive exceedingly generous vacations. In the five comparable jurisdictions upon which the parties agree

the average maximum vacation benefit is 235.6 hours, while the maximum in Alton is 320 hours. At the minimum end the average of those five jurisdictions is 93.6 hours compared to Alton's 120 hours. Only East St. Louis has a higher minimum, 168 hours. Even with the City's proposal Alton's minimum vacation allotment would be 96 hours, still higher than the average of the five agreed comparables and the maximum at Alton would be 25 hours higher (264 hours) the average of 235.6 hours for those five.

There is absolutely no evidence supporting the Union's position that the consent decree regarding the hiring of African-Americans, under which the City now operates, would be violated by adopting the City's offer on vacations. In the Police Department, which is covered by the same decree, there has been no suggestion that the lower vacation benefit for employees hired after April 1, 1987, has in any way affected the City's inability to fully comply with the decree.

UNION

As with the sick leave issue, the City fails to meet the threshold conditions required by arbitrators, it fails to show financial hardship or operational difficulties with the current vacation plan. Adoption of the City's proposal would reduce average annual vacation allotment for new employees by 19.77 percent. Reductions for various years of service range from 10% for employees with ten years of service to over 26 percent after twenty years of service.

Two-tier vacation schedules in the PBPA and AFSCME units should not govern here. Vacations for fire fighters have not been kept in lock step with the police, as they have on salaries. Further, since 1987 when the two-tier vacation system was adopted for police, Alton and the Fire Fighters have negotiated twice, in 1990 and 1993. In both years the City tried to establish a two-tier system, but it was not adopted. The best internal comparison is within the Fire Fighter unit, between newly hired fire fighters and those hired before April 1, 1996, and this favors the Union's

position.

Alton fire fighters already work longer hours than their counterparts in the comparable communities. Adoption of the City's offer would only compound this inequity.

A system in which newly hired fire fighters receive lower vacation benefits than presently employed fire fighters would lay the groundwork for future morale problems. Fire fighters live and work closely together for long hours. This two-tier system is bound to have an increasingly disruptive effect as more and more fire fighters are hired and become aware of the disparity in their vacation benefits compared to more senior fire fighters.

Even in the private sector, where two-tier systems have been more widely used, they are losing their appeal. There is considerable evidence, the Union maintains, that increased conflicts between more senior and newly hired employees has lead to a retrenchment in their implementation.

A two-tier vacation system would compound the difficulties Alton already faces in complying with the consent decree under which the City now operates. Alton has already fallen short of the decree's goal. This proposed vacation system would make it more difficult to attract African-American fire fighters, who would see themselves as being treated differently than fire fighters hired before April 1, 1996.

ANALYSIS AND FINDINGS OF FACT

Neither internal nor external comparability can carry the day on this issue. It is certainly true, as the City emphasizes, that Alton fire fighters enjoy generous vacation benefits--although, as the Union point out, the longer hours they work go a long way toward counteracting the generous vacations. It is also true that two-tier vacation benefits are not new for Alton bargaining units, the PBPA and AFSCME units already have them.

But the City's vacation proposal is a new and significant change in a well-established existing benefit in this bargaining

unit. It was proposed by the City in earlier negotiations and not adopted. It is strongly opposed by the Union. It is closely akin to a completely new benefit, which interest arbitrators--certainly this one--are reluctant to grant. Such new and ground-breaking changes should come through voluntary agreement.

Through negotiation the parties can best decide what should be traded for what--which benefits to reduce and which to increase. They know the cost of each in terms of the others. This change should be made at the bargaining table.


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Milton Edelman
December 17, 1996