

**City of Aurora and Association of Professional Police Officers, Edward Suntrup,
S-MA-96-246, 10/30/96**

In the Matter of Arbitration

City of Aurora, Illinois)
)
 vs) **Interest Arbitration**
) **Illinois State Labor Relations Board**
) **Case No. S-MA-96-246**
Association of Professional Police Officers)

Before

Edward L. Suntrup, Arbitrator

Appearances

City of Aurora, Illinois

Michael B. Weinstein - Corporation Counsel
George W. Henley - Director of Personnel
Scott F. McCleary - City of Aurora Panel Representative
Dan Barreiro - Asst. Director of Personnel
Larry Langston - Police Commander
Mike Curran - Police Sergeant

Aurora Professional Police Officers

Anthony B. Salerno - Attorney for the Union
Wayne Biles - President of the Union
Robert Mangers - Union Representative at Large
David Jacobs - Treasurer of the Union
Danny Hornback - Union Member at Large

Background

On July 10, 1996 the arbitrator was advised by the Illinois State Labor Relations Board that he had been chosen by the parties to this arbitration under Section 14 of the Illinois Public

Relations Act and Section 1230.80(b)(4) seq. of PERB's Impasse Resolution Rules.¹ Thereupon by agreement between the parties and the arbitrator a hearing was scheduled for July 29, 1996. The arbitrator requested that the parties provide information to him in order that he might be able to better prepare for the hearing and both sides were kind enough to do so. The arbitrator was provided with a copy of the most recently expired labor contract between the parties, documents outlining their last final offers resulting from an earlier mediation, and a tentative list of issues at impasse. The arbitrator had the occasion to study these documents prior to the hearing itself.

Hereafter for the sake of brevity the arbitrator shall refer to the Association of Professional Police Officers as "APPO". The City of Aurora shall be referred to as the "City".

The hearing started at approximately 2:00 PM on July 29, 1996 and adjourned at approximately 12:30 AM on the morning of July 30, 1996. The hearing locale was the Comfort Suites' Board Room, 111 North Broadway, Aurora, Illinois.

A written record of the proceedings was made. After a review of the record on the day following the hearing the arbitrator advised the parties by facsimile transmission and subsequent written correspondence that "...because of the number and complexity of the issues at bar..." he was requesting that the parties submit to him under title of Post-Hearing Brief a "...succinct statement..." of their last final offers on each of the issues at impasse this round of negotiations. The arbitrator's request was that the parties provide such Briefs to him expeditiously enough so that they might be in his hand at approximately the same time that the arbitrator expected receipt of the written record of hearing from the court reporter. Under date of August 13, 1996 the

¹See State of Illinois Public Labor Relations Act (November, 1995) amended in pertinent part & State of Illinois Rules and Regulations, Illinois State Labor Relations Board and Illinois Local Labor Relations Board (May 10, 1996).

arbitrator was in receipt of the APPO's "Last Final Offers". The city of Aurora, in turn, provided the arbitrator with their "Final Offer" under date of August 28, 1996. The full transcript of hearing was completed and notarized under date of August 12, 1996 and the arbitrator was in receipt thereof shortly thereafter.

The arbitrator would like to thank the parties for their courtesies in providing information at the hearing, and thereafter upon request. The arbitrator notes here also that the City of Aurora provided additional information for consideration, to the arbitrator, after the oral hearing itself on July 29-30, 1996. This information was provided under date of August 8, 1996. Upon receipt thereof the arbitrator permitted counsel for the APPO to respond to this information and he did so under date of August 30, 1996.

Thereafter, with full record in hand, the arbitrator informed the parties that the hearing on these matters was formally closed. On September 30, 1996 and on October 10, 1996 the arbitrator requested that time lines for the issuance of the Award in these matters, because of the complexity involved therein, be extended by the parties. The arbitrator would like to acknowledge and thank the parties for their cooperativeness about these matters. At all times the Illinois State Labor Relations Board was advised about the time-lines involved in the processing of this interest arbitration case. To facilitate and expedite matters, the arbitrator generally corresponded both with the ISLB and the parties to this case by facsimile transmission.

The extensive record on this case before the arbitrator includes the following information. Four (4) joint exhibits presented by the parties; thirty-four (34) exhibits presented by the City; and nine (9) exhibits presented by the APPO. Additionally, there is the record kept by the court reporter and the extensive notes taken at the oral hearing by the arbitrator himself. The arbitrator

was also in receipt of materials from the parties prior to the oral hearing, as well as added materials, referenced in the foregoing, after the oral hearing was finished. These materials will all be referred to variously as the arbitrator proceeds with his analysis and rulings on the issues at impasse. Obviously, part of the record also includes an extensive correspondence between the arbitrator and the parties as the record on this case developed.

The List of Issues at Impasse

Coming to a firm conclusion on the list of issues at impasse this round of negotiations between the City and the APPO was somewhat of a challenge for the arbitrator. When the arbitrator made request for the list from the parties, prior to and at the beginning of the interest arbitration proceedings, it became clear that the separate lists presented by the parties did not exactly coincide. The arbitrator, therefore, ruled in an informal bench decision that the parties mutually agree on one single list of issues before him. They more or less did this albeit some issues were settled on the spot during the oral hearing. After discussing these matters in closed session, just prior to the formal beginning of the arbitration proceedings, the parties came up with a single list of issues. The arbitrator attempted to impose some order on this list by requesting, for example, that wage adjustment be a primary issue discussed before him first, as well as, for example, the parties' position on such issues as length of contract. The ordering of the issues at impasse, and the arbitrator's rulings thereon in this Award, generally follows the order in which they were heard in hearing. The list of issues at impasse upon which the arbitrator will make rulings are the following: length of contract; wage adjustment; time on job and step increases; shift differential; longevity pay; hours of work; sickness and non-work related injuries; limited duty; secure phone issue; insurance; health and fitness; bill of rights; extra duty; personal safety

equipment and savings provisions.

Standards Guiding Interest Arbitration Under Illinois Law

Some labor economists are of the mind that everything found in a union contract can ultimately be reduced to an economic issue on assumption that every aspect of a negotiated arrangement between an employer and employees can be subsumed under some sort of cost. While there might be some theoretical validity to such econometric approaches to union-management relations anyone who has ever practically sat down at a bargaining table and/or who has been practically involved in the administration of union contracts is aware that there is also another approach that can be taken in negotiating and administering contracts. This is that all labor contracts contain issues which can more generally be classified as economic, and others which can more generally be classified as language issues. The former address up-front, generally easily understood financial costs to the employer, and the latter addresses certain conditions of employment. A reading of the Illinois statute governing this forum suggests that the standards contained therein address the financial issues as alluded to above, but allows the arbitrator some latitude in language issues when making rulings in an interest arbitration.² Further, the statute specifically addresses arbitration decisions as they relate to Illinois peace officers.

² Legally mandated use of arbitral criteria in interest arbitration cases is not at all idiosyncratic to Illinois and many state statutes, where public sector labor laws exist (which as of this writing is the majority of states), put particular emphasis on the "ability" to pay criteria, among others. See J.J. Loewenberg, "Bargaining Intensity and Interest Arbitration", in Proceedings of the Industrial Relations Research Association 44 (1992): 385-912; C. A. Olson, "Dispute Resolution in the Public Sector", in Public Sector Bargaining, 2nd Ed. (B. Aaron et al., Eds.) Bureau of National Affairs, Inc., 1988:160-88: 385-91; P. F. Gerhart and J. F. Drotning, "The Effectiveness of Public-Sector Impasse Procedures", in Advances in Industrial and Labor Relations, Vol. 2, (D. D. Lipsky et al., Eds.), JAI Press, 1985: 143-95; J. Fossum, Labor Relations, Irwin, Inc., 1995: 483-507 inter alia.

The Illinois statute³ states the following, in pertinent part, with respect to arbitral standards in an interest arbitration:

Section 14 (g)

At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute...The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last final offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14 (h)

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

³All cited references are to the State of Illinois Public Labor Relations Act (November, 1995) amended in pertinent part. See Footnote 1.

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, common 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, arbitrating or otherwise between the parties, in the public service or in private employment.

Some pertinent provisions in the statute which apply to peace officers are the following. These are cited here only for the record.

Section 14 (h)

In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: I) residency requirements; ii) the type of equipment, other than uniforms, issued or used; iii) manning; iv) the total number of employees employed by the department; v) mutual aid and assistance agreements to other units of government; and vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment and manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

Arbitrators' Awards in Illinois in Interest Arbitration Cases

Some states have final offer, total package provisions in their statutes which serve as mandate for arbitrators issuing interest decisions. Illinois is not one of those states.⁴

The legislature of Illinois could have imposed final offer, total package requirements on arbitrators. For their own reasons, they obviously chose not to do so.

This arbitrator does not believe that he ought impose procedural solutions on bargaining impasses in Illinois, on basis of some favorite industrial relations' theory, which go beyond solutions which the state's legislature opted for in statute. The arbitrator is cognizant, however, of the fact that the statute does mandate, as cited in the foregoing, that on 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)..." of Section 14. But the statute says nothing about any requirement for the arbitrator to opt for the 'last offer(s) of settlement' as a total package of issues at impasse.⁵

⁴Total package final offer arbitration (also called in some arenas, "Russian roulette" total package) is the procedure whereby an arbitrator is obliged to take the final offer of one party over the final offer of the other party on all issues at impasse creating, in effect, a total winner and/or a total loser.

⁵There have been interest arbitration decisions rendered in the state of Illinois under its public sector Labor Relations Act, including one in this jurisdiction (See City Ex. 2), wherein industrial relations' theories, somewhat debatable in and of themselves, have served as basis of interest arbitral procedures in lieu of the statute's fairly clear language about these matters. There is no implication here that such decisions are illegal: reasonable minds could conclude, however, that they run askew of the intent if not the clearly binding language of the statute. Illinois simply does not have a final offer, total package statute.

Issues at Impasse and Rulings

Length of Contract

The City's position on this issue is that the current two year contract be replaced by a three year contract.⁶ Its specific position, in pertinent part, is: "This Agreement shall be effective as of the 16th day of March, 1996 and shall remain in full force and effect until (3) years from the date of the arbitrator's decision which is _____".⁷ This is basically the same position taken by the city during the arbitration hearing. Rationale by the city is that there are other three year contracts with other collective bargaining units in the city; that the police also had some three year contracts in the past; and that some precedent exists, therefore, for a three year contract and that the comparability criterion from Section 14 should be applied. The position of the APPO in hearing on this issue is that "...there is no justifiable reason why the contract should be extended from two to three years. It has always been a two year contract and (the APPO) think(s) it should stay that way. There isn't any rationale that...can...justify...extending it for three years. So we would urge that our two-year proposal be accepted in that regard."⁸ The APPO does appear to disagree, when discussion of this topic comes up in hearing, that there has been a time or two when police officers in Aurora did have three year contracts. It is not totally clear from information of record, but this might have been when the police were represented by a different

⁶See Joint Exhibit 2: Article XXVII. The prior agreement was effective on the first day of January, 1994 and remained in full force and effect until two years from date of ratification which was March 15, 1996. The prior agreement was also subject to an arbitration decision.

⁷See City Final Offer @ p. 8 also under (2.) City Final Offer although the language under the latter is somewhat elliptical.

⁸See Trans. @ p. 66.

labor organization.⁹

However, since the prior contract expired on March 15, 1996 there will have been a considerable hiatus from that date until the APPO knows that an arbitration decision will be issued on a new contract. The APPO, therefore, amends its position on this issue in its last final offer in writing to the arbitrator. The APPO states that its final position is that: "APPO would agree to a three (3) year contract (3-16-96 until 3-16-99)".¹⁰

There are evidently still some differences on this issue between the parties even though the APPO amended its position from the time of the arbitration hearing until the time it submitted its written final offer to the arbitrator. The crux of the problem is that under the negotiation ground rules of the parties, compensation is retroactive to the expiration date of the contract but the new contract begins only when a new contract is ratified. Since the ground rules represent a stipulation of the parties, in accordance with Section 14, the arbitrator will follow them with respect to this point.

Ruling

Accordingly the arbitrator rules that the contract between the APPO and the City shall be for three (3) years for compensation purposes. All wage increases under the contract shall be retroactive to March 16, 1996. The beginning date of the new contract shall be in accordance with the parties' ground rules. Expiration date of the new contract shall be March 15, 1999.

⁹Nor is it terribly important, for our purposes, here. The police in Aurora apparently were represented at one point in the past by AFSCME prior to certification of APPO (See Trans. @ p. 65).

¹⁰See APPO Final Offer @ p. 8. There appears to be a typo here. The arbitrator believes that the APPO means to say: 3-15-99, and the arbitrator has fashioned all discussions on this matter accordingly.

Wage Schedule

The City's position on wages represents an amendment to Article XVII & Appendix A of the current agreement which expired on March 15, 1996. The City's proposals are as follows:

<u>Date</u>	<u>Proposed Increase</u>
3-16-96	3.0% across-the-board
3-16-97	3.5% across-the-board
3-16-98	3.0% across-the-board ¹¹

In presenting its rationale the City states that ability to pay is not an issue this round of negotiations. In presenting its arguments on comparability, as rationale for its proposals on wage adjustment, the City presents to the arbitrator information on jurisdictions which can be compared to Aurora by population;¹² by median family income;¹³ by sales tax receipts;¹⁴ by mean home value;¹⁵ and by number of police officers.¹⁶ The city also argues, in presenting its proposals on wage adjustment for police officers this round of negotiations, that what it is presenting is comparable to wage increases in effect in some of the City's contracts with collective bargaining units of other employees including those represented by the IAFF, IBEW, two AFSCME Locals

¹¹The third year has some provisos which are the following: "The Third year will include a wage re-opener based on (the) CPI. If the CPI-U for Chicago/Gary increased by more than 8.0% for the period of March 16, 1996 to March 16, 1998, then wage will be subject to a re-opener". See Final Offer, City @ p. 1 (2.).

¹²See City Exhibit 3: "Comparable Jurisdictions in Illinois" (by population) (11 cites).

¹³See City Exhibit 4: "Median Family Income" (11 cities).

¹⁴See City Exhibit 5: "1994 Sales Tax Receipts" (excluding food & drug taxes).

¹⁵See City Exhibit 6: "1990 Average Home Price" (10 cities).

¹⁶See City Exhibit 7: "Number of Police Officers" (11 cities).

and so on.¹⁷ The City also presents 1996 average wage increases for ten cities, including Aurora.¹⁸

The City then presents comparisons between its proposals for the Aurora APPO and private sector wage gains from 1990 through 1995.¹⁹ The City then presents data on average annual CPI increases for the years: 1990-1995 for Chicago. This is compared with average increases given to APPO from 1992-1995.²⁰ Inflation forecasts for 1996 are then presented by citing a variety of different economic groups and individual economists.²¹ The City then looks at an issue which represents somewhat of a controversial point between the parties as this relates to wage adjustment under a new contract. According to the City, the APPO has already received a \$1,000 increase since the prior contract expired. How so? Because "...under the previous contract, the money that (the APPO) had received for protective equipment was rolled into their base pay effective with the expiration of the prior contract".²² The City then offers some dollar comparisons between its proposal and that of the APPO for 1996, as well as 1996 police officer base wage comparisons between Aurora and nine other cities.²³ Comparable data and

¹⁷See City Exhibit 8: "City of Aurora. Salary Adjustment History 1992-1997". This exhibit includes average wage increases for both collective bargaining unit members represented by various unions, as well as average increases for managerial and exempt employees.

¹⁸See City Exhibit 9: "Comparable Jurisdictions: 1996 Wage Increases".

¹⁹See City Exhibit 10: "Private Sector Negotiated Wage Increases: 1990-1995. Median First Year Wage Increase" (BNA).

²⁰See City Exhibit 11: "Chicago Consumer Price Index: 1990-1995". Plus arbitrator's hearing notes attached thereto. See Trans. @ p. 40 seq.

²¹See City Exhibit 12.

²²See Trans. @ 42-43.

²³See City Exhibits 14 & 15. The former dollar amounts were corrected in hearing and the latter represents comparisons between Aurora and other municipalities.

comparisons are then presented by the City for 1997 and 1998.²⁴ Total costs for the City for its proposal, as it stands, assuming that there would be no re-opener for the third year of the contract,²⁵ and without factoring in the 193²⁶ thousand dollars which were paid to the police officers at the end of the prior contract, would be approximately \$808,654 in new monies for the three year period to fund its proposal.²⁷

The APPO's position on wages also represents an amendment to Article XVII & Appendix A of the current agreement which expired on March 15, 1996. The APPO's proposals are as follows:

<u>Date</u>	<u>Proposed Increase</u>
3-16-96	4% across-the-board
3-16-97	4% across-the-board
3-16-98	4% across-the-board ²⁸

In presenting its rationale the APPO offers comparable data to the arbitrator on population, median house income, median cost of homes, number of sworn personnel, top police salaries,

²⁴See City Exhibits 16 through 19. Dollar amounts on these exhibits were corrected during the oral hearing, when applicable.

²⁵Which would hypothetically, at least, raise the cost to the City otherwise there would be no logical reason for a re-opener.

²⁶See City Exhibit 7. As of July, 1996 Aurora had 193 sworn patrolmen each of which, apparently, received the \$1,000 at the end of the prior contract.

²⁷See City Exhibit 20 & City Exhibit 7: \$1,001,654 (City's calculation) minus \$193,000.

²⁸See APPO Final Offer @ p. 9. Also Trans. @ 20. There is a typo in the APPO's written final offer. The dates for the start of the wage adjustments should be listed as the 16th and not the 15th of the month of February in the years in question. The prior contract expired on March 15, 1996. Changes here have been made accordingly.

number of service calls and average income between Aurora and five other communities.²⁹ The APPO also notes that Aurora increased its amount of gaming income from 1994 to 1995 by 7.57%, or by some \$707,301 in that time period alone.³⁰ In presenting other information, the APPO offers a number of newspaper articles from the Beacon-News which state variously that the Aurora Chamber of Commerce recommended that the mayor's salary be increased in 1997 through 2,000 by percentages higher than those requested here by the APPO for police officers,³¹ and that the City's aldermen would receive also compensation increases higher than that proposed here by the APPO for police officers during the years here under consideration.³² Further, according to the APPO, the mayor himself has publicly stated that "...investments in police and

²⁹See APPO Exhibits 1 & 6. The lesser number of exhibits presented by APPO at the hearing, as compared to the City, has no bearing on quantity of supporting, comparable information put in the record by the APPO: a number of the APPO exhibits represent compilations of data whereas the exhibits by the City in many instances represent individual raw data.

³⁰See APPO Exhibit 2. \$10,045,919 (1995) minus \$9,338,618 (1994) = \$707,301. Aurora's total distribution of gaming taxes (local governmental income) for the three years: 1993-1995 was \$23,586,145 according to information on this exhibit which was not contested by the City. The arbitrator presents this information only for the record: ability to pay was not an argument raised by the City, in either case, in this arbitration as was noted in the foregoing.

³¹See APPO Exhibit 3. This information is found in an unidentified and undated article, apparently from the Beacon-News, but which has never been contested where the recommendation by the Chamber of Commerce for the mayor is a salary increase which goes from \$75,000 (1996) to \$85,800 (1998) or a 7% annual increase for the two years: 1997 and 1998 with a front end load of 10% the first of these two years. There is no information of record before the arbitrator to show that the mayor will actually receive such a raise.

³²See APPO Exhibit 3. The Beacon-News (Thursday, April 25, 1996): "On December 20, 1994 the council enacted a revision of its salary plan, recommended by the city staff, under which alderman will receive \$10,000 starting May 1, 1997, \$10,500 starting 1998, \$11,000 starting 1999, \$11,500 starting 2,000 and \$12,000 starting 2001." This revision was lower than that recommended by the Chamber of Commerce. Percentage-wise this represents increases of 8.4% (1997); 5% (1998) and 4.76% (1999).

fire personnel and equipment 'are expensive' but vital to the community...(which are the)...things (Aurora is) going to have to do to maintain the quality of life in (the) community".³³ Implication here is that Aurora can do this by accepting the APPO's wage proposals for 1996-98.

Discussion

In making findings and rulings on the parties' proposals on the wage schedule, as the most obvious economic issue before the arbitrator, comparability conclusions must be arrived at with respect to factors fairly clearly laid out by the law. These include comparisons based on macro measures such as the CPI and private sector earnings, and other exogenous points of comparison for police such as wages in comparable public domains. Comparability considerations also include analyses of proposed compensation level increases of the employees represented by the APPO with others in the employ of the City. Issues of public policy under title of the interests of the public is also a consideration which needs to be scrutinized.

The parties to this arbitration are experienced not only as labor negotiators, but they are also experienced, as far as this arbitrator can gather, in participating in interest arbitrations. They know full well that comparability is, first of all, an art form as much as a science. There are no exact, but only reasonable, conclusions which arbitrators (as well as negotiators) can arrive at when using such standards. Secondly, depending on who one believes, both union and management representatives in the public sector appear convinced that application of comparability standards, to matters such as compensation, generally works to the favor of the other side! Certainly such argument has been raised in Illinois.³⁴

³³See APPO Exhibit 4. Quote from Chicago Tribune, April 19, 1996.

³⁴For Illinois, for example, See R. W. Laner & J. W. Manning, "Interest Arbitration: A

Ability to pay is often an issue in interest arbitration cases as suggested by both this arbitrator's experience as well as a fairly large body of literature on this subject in industrial relations' research,³⁵ and the Illinois statute is specific about the importance of looking at this criterion when it is an issue. It is not, however, an issue in this case.

Under the rubric of public policy, the City's administration is clearly in favor of providing a safe environment for its citizens, and has publicly acknowledged that this is to be done by means of public support for its public safety services. Evidence to this effect has been raised by the APPO and this has not been denied by the City. The arbitrator can only interpret this to mean that the intent is there on the part of the City, at its highest elected levels, to provide an employment package to this branch of public safety which is reasonable, equitable and which encourages the City's public safety employees to carry out initiatives at levels of quality which the mayor has publicly stated are important in order to "...maintain the quality of life..." in the City.³⁶ There are no free lunches. Employers cannot have good employees, in whatever capacity, without paying

New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees", Chicago Kent Law Review, 1984 @ pp. 839, 858.

³⁵See, for example, G. G. Dell'Omo, "Wage Disputes in Interest Arbitration: Arbitrators Weigh the Criteria", Arbitration Journal 44, 1989 @ pp. 4-13.

³⁶The record supports that there is some concern on the part of the police, which according to the record is certainly supported by the City, about problems in the City which need to be addressed and which can only factually be addressed by the police. According to testimony at the hearing Aurora had 25 homicides in 1995 and as of the day before the hearing it already had its 17th in 1996. On a comparable date in 1995 there had only been 12 murders. The president of APPO testified at hearing that the level of stress is very high among police officers, "...most of the calls are very serious calls and very dangerous...(dealing)...with the large gang population (which includes) Latin Kings, Dueces, Black Gangster Disciples, Home Boys..." According to this witness, the police in Aurora habitually deal with some "...very violent people...". See Trans. @ 19 seq.

them competitively.

Now to the exogenous, and internal, comparability standards as addressed by the statute.

Externally, the U.S. has been blessed with very moderate inflation since 1991. Given the current strength of the economy, economists also forecast that this trend will continue through the current year. On basis of the current state of the economy, however, reasonable minds would also conclude that such trend may well continue for most of the period, at least, involved in the three year period of wage adjustment at stake in this round of negotiations between APPO and the City. The future is a more importance consideration here, of course, than the past. If we can assume, which it is not unreasonable to do, that the CPI for 1996 through March 15, 1999 will hover around 3.0% (predictions for 1996 itself average 2.8%), then we are in the position to conclude as follows: wage adjustment offers by the City for the two years, 1996 & 1997 @ 3.25%, or for the three years, 1996 through 1998 @ 3.1%, more or less equal the projected CPI. What does this mean? It means that in terms of earnings the employees represented by the APPO will be at the end of the labor contract about where they are now if we measure the proposed wage increase by the City against the CPI. Certainly, however, there is some contrast here, as a general matter, between such status quo with respect to earnings' proposals by the City and the current mayor's pronouncements of investments in police personnel which he says are vital to the community³⁷.

³⁷The CPI is often understood simply as a measure of the increase in the cost of (certain) goods weighted for statistical purposes by the BLS, without adding the additional observation that there is a direct relationship between the CPI and the value of money earned. While the comparisons are not totally in sync (because of individuals' buying patterns in any given year, etc.) it is true as a practical matter that if any given earner's wages or salary is increased by, for example, 3% in a 12 month period, and the CPI at the end of that period stands at 3%, then the two pretty much neutralize each other out. The relationship of this to issues such as quality of life, standard of living, and so on, is theoretical although the average worker might indeed wish to argue that point on practical grounds.

The arbitrator takes note of this contrast. On the other hand, the 4% increase per year for each of the years of the contract proposed by the APPO does represent some, albeit modest, gains by the collective bargaining unit members when such gains are measured against the projected CPI.

But economic measures dealing with the rate of inflation are very broad measures. The statute requires that comparability standards also become more focused. How does the City compare with other "comparable" cities with respect to earnings and how does this relate to the wage proposals by the parties?

Question? What is a city which is comparable to Aurora? The APPO suggests that such should include the following cities in Illinois:

Joliet
Evanston
Naperville
Elgin
St. Charles.³⁸

The City suggests that such should include the following cities in Illinois:

Joliet
Evanston
Naperville
Elgin
Waukegan
Springfield
Peoria
Rockford
Decatur.³⁹

The APPO provides considerable data which is compiled on each of the cities that it presents as basis for comparison with Aurora (population, median household income, number of sworn

³⁸See APPO Exhibits 1 & 7.

³⁹See City Exhibit 9.

personnel, etc.). Clearly, St. Charles, Illinois is a much smaller city than the others and reasonably ought not be included in the comparison. But the arbitrator need not dwell on the comparability issue here with respect to city comparisons for the simple reason that the parties themselves have solved this problem. Both sides agree on the comparability of five core cities,⁴⁰ including Aurora, which can serve as basis for comparison. These are Aurora, Evanston, Naperville, Elgin and Joliet, Illinois. The statute does not say how large any sample should be.

Four of these cities have labor contracts for 1996 for their police officers according to data provided by the City.⁴¹ The 1996 wage increases areas follows:

<u>Name of City</u>	<u>1996 Wage Increase</u>
Evanston	4.00%
Naperville	4.00%
Elgin	3.00%
Joliet	5.00%
Mean of the Four Cities	4.00% ⁴²
Aurora	Not yet determined

Thus on basis of comparable cities, and on basis of wage increases already in place for just the first of the three years here in question, the proposal of the APPO is more comparable. When one

⁴⁰See Trans. @ p. 238 wherein counsel for the City says: "...What are the comparable cities? And, again, I would refer you to the list of comparables that the City has set forth, of which the City and the Union agree on Elgin, Evanston, Naperville and Joliet". Counsel then goes on to suggest widening the sample without providing any reasons, statistical or otherwise, on why this would lead to more reasonable, comparability conclusions.

⁴¹See City Exhibit 9.

⁴²One of the contracts for these cities expires in 1998, one in 1997 and two in December of 1996. Aurora's is the only one expiring in March of 1996. See City Exhibit 21. (That exhibit mistakenly shows that Aurora's contract expired on March 22, 1996. The latter was the date it was passed (ratified) by the City Council). See Joint Exhibit 2.

attempts to switch gears and go from percentages to actual dollars the data presented to the arbitrator does not provide sufficient clarity on which to draw firm conclusions. For example, the City presents: "Police Officer 1996 Base Wages" in an exhibit in hearing⁴³ which compares such "base" (the City means to say here: "mean") for the five cities, including Aurora, noted in the immediate foregoing. But such data is only even (partially) comprehensible for comparison purposes, and any conclusions which could be drawn here, even if they are formatted in scattergram which showing which officers were at what levels terms of steps.⁴⁴ Such still does not totally do the trick because the different cities have different numbers of steps for their officers, and so on. For example, Naperville's mean wages in 1996 are higher than Aurora's: but that might only mean that its police force has more seniority than Aurora's and/or that it has more steps to raise the base pay of older officers. This does not have to mean that on comparable grounds that Naperville's police earn more than Aurora's. The more reasonable basis for comparison, therefore, is not mean earnings but rather percent increases on basis of current reality of the different personnel profiles of the police work forces in the different cities.

For comparability purposes the arbitrator will now examine the percent increases which the City now has in place for 1996 and 1997 (when such exists) for some of its other collective bargaining units. Concurrently, the arbitrator will look at compensation increases, to the extent that this is part of the record, for others working for the City.⁴⁵

⁴³See City Exhibit 15.

⁴⁴Such information is presented in incomplete form in City Exhibit 34. In studying that data it is not clear, for example, exactly where the officers listed as "9 and under" fall with respect to the steps and/or earnings for that matter.

⁴⁵The data presented is a compilation of information taken from City Exhibit 8 and APPO

City of Aurora Salary Adjustment History: 1996 to (as known).

<u>Working for the City</u>	<u>Percentage Increase⁴⁶</u>				
	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
ASA ⁴⁷	3.5%	3.5%	NA	NA	NA
IBEW ⁴⁸	2.5%	2.5%	NA	NA	NA
AFSCME 3298	3.5%	3.5%	NA	NA	NA
AFSCME 1514	3.5%	NA	NA	NA	NA
IAFF Local 99	3.5%	3.5%	NA	NA	NA
Exempt	3.5%	NA	NA	NA	NA
Executive	3.5%	NA	NA	NA	NA
<u>Elected⁴⁹</u>					
Aldermen		8.4%	5%	4.76%	4.54%

Lastly, while the arbitrator would be willing to look at private sector earnings for comparability purposes, the information of record does not provide any good basis for comparison. There are only past historical data provided by the City which are not very useful for comparability conclusions about the future not to mention the general hazards encountered in

 Exhibit 3.

⁴⁶Comparisons of actual earnings by different categories of employees does not permit reasonable comparable conclusions since classifications in the public sector, as in the private, pay differently depending on skill, job description, etc.

⁴⁷Received a 1% signing bonus five months before the start of 1996.

⁴⁸IBEW 94 received a 1% bonus for 1996 and 1997 thus raising increase to 3.5% for both years.

⁴⁹Information on actual earnings of the mayor is not part of the record. Only the recommendations by the Chamber of Commerce for 1996 through 2,000 was presented in hearing. The arbitrator does not view this as comparable earnings data.

comparing private and public sector work.⁵⁰

Ruling

On basis of all information of record the arbitrator concludes that the final offer by the APPO is more in sync with comparability data of record. Outside comparisons with police in four other cities show 1996 increases of 4% on average, and internal earnings with others working for the City show an average compensation increase of 3.5%. This is a half percent below the offer by the City in the first and third years of the proposed contract.. Given the initiatives publicly taken by the City with respect to the police, the arbitrator cannot conclude that a wage increase for them in the first and third years of the contract, which is below the average increase received by others in the City during 1996, and just barely above projected inflation, would be consistent with that initiative. The arbitrator is constrained to rule accordingly. It is true that the City's proposal calls for a re-opener on negotiations for the third year of the contract if certain CPI levels are reached: but what would happen in those negotiations, even if such were to happen, is at this point speculative. Lastly, by opting for the APPO's position on this issue the arbitrator also notes that this is consistent, philosophically, with increases granted to city aldermen up to the year 2,000 and beyond of aldermen.

The City appears to interpret the \$1,000 paid to the officers represented by the APPO at the end of the prior contract, which was a special payment, as part of the forthcoming contractual pay package. The arbitrator would respectfully disagree with that assessment. That payment was part of the prior contract, and is unrelated to this round of negotiations.

Accordingly, on basis of the record before it, the arbitrator rules that the police of

⁵⁰See City Exhibit 10.

Aurora, Illinois, represented by the APPO, shall receive a wage increase of 4% per year, for a period of thirty-six months, retroactive to March 16, 1996 for the first year of the contract. The 4% increase for the second and third years of the contract shall be effective on March 16, 1997, and March 16, 1998, respectively.

Time on the Job and Step Increases

The City proposes a change in Article XVIII (B.) whereby the time-frame for receiving step increases are changed for patrolmen. The City's proposal is the introduction of:

"...language to modify the time progression between pay steps. In addition, Step 1 will be increased from 75% of step 2 to 80% of step 2. Another change is the addition of the ability of an officer to advance to step 2 upon completion of Field Training Program or upon completion of 1 year of service."⁵¹

The proposal would imply that "...any current officer (working for Aurora) would be at the top base after five years, whereas the new officer would take six years to get to the top of that scale".⁵²

The City's rationale for this proposal is that a number of other unions do have more steps than APPO to get to the top of their base. Further, the proposal by the City would reduce cost of new hires by taking them longer to get to the top of their highest earnings' capacity and, according to the City, this would potentially enhance the recruitment of individuals, with experience, by the department. The proposal is for the new steps is meant to apply only to newly hired officers. Comparable data here from the four other cities used earlier in comparisons here show the

⁵¹See City's Final Offer @ 3. An additional version of their proposal is found on p. 5 of same.

⁵²See Trans. @ p. 76.

following: Evanston (7 steps; 11 years to top step); Naperville (8 steps; 6 years, 11 months to top step); Elgin (6 steps; 4 years to top step); and Joliet (4 steps; 3 years to top step).⁵³

Response by the APPO is that it is against this proposal which, according to testimony at the hearing, would "...create hostility between police officers...".

A review of the comparability data shows that Aurora is, at present, about mathematically in the middle of the other four cities used for comparison basis here.. Nor does the arbitrator believe that the City's rationale for suggesting the change in the steps is sufficient to warrant conclusions that such should be made this round of negotiations. As an internal matter, implementation of the City's proposal here would imply a variant of a two-tier wage structure. Testimony at the hearing about how such would (or could) create hostility within the ranks is supported by experience, research shows, in other sectors with respect to two-tier structures. Such result would be inconsistent also with the initiatives related to public safety in Aurora which has been cited earlier.

Ruling

The City's proposals on compensation step changes are rejected by the arbitrator. Ruling is that there shall be no changes in the contract at Appendix A (B.)

Shift Differential

The City proposes that there be a change in Article XVII (E.) To read as follows:

"Any officer whose regularly scheduled shift is other than the first (1st) shift shall receive, effective the payroll paid after January 1, 1998 a \$910 annual shift differential, to be paid each payroll period in the amount of \$35."⁵⁴

⁵³See City Exhibit 23.

⁵⁴See City Final Offer, Appendix A (C.). To coincide with the labor contract this should be

The proposal by the APPO reads the same as the above except that the APPO wants the new shift differential of \$910 is to be effective the payroll paid after January 1, 1997.⁵⁵

The parties do not disagree, therefore, on the substance of changes related to Article XVII(E.). They only disagree on when the change should take place. This issue is clearly an economic issue. Both parties' comparability reasons for their positions on this issue are somewhat obscure.

Ruling

Absent rationale or evidence for ruling that the Article XVII(E) be changed in the contract earlier than later, but in view of the agreement between the parties on the substance of this issue, the panel rules that, effective the payroll paid after January 1, 1998 the annual shift differential be raised to \$910 from the current \$780. Ruling also is that the former be paid, after that date, in each pay period in the amount of \$35.

Longevity Pay

The APPO has a longevity pay proposal which reads as follows:

"Longevity payments for 1996 are to be prorated from 3/15/96 to 12/31/96. Thereafter, longevity payments will be paid annually on the 26th payroll period of each year. All longevity payments will be pension eligible, added to the base salary of each officer to compute overtime, and be subject to withholding."

Substantively, longevity pay shall be calculated as follows, according to this proposal:

<u>"Years of Service</u>	<u>Longevity Payment</u>
10 years and over	0.5%
15 years and over	1.0%

Appendix A (E.). There is a typo here in the City Final Offer on this issue.

⁵⁵See APPO Final Offer @ p. 10.

20 years and over

1.5% "⁵⁶

This proposal is rejected by the City because, among other reasons, "...there are no other units within the city of Aurora that have longevity..." pay.⁵⁷

Ruling

On basis of information of record the arbitrator rules that there shall be no additional language in the contract under Article XVII which deals with longevity pay. The proposal by the APPO is rejected by the arbitrator.

Hours of Work

There are a number of issues at stake here under Article V of the labor contract on which the parties at impasse.

Some of the differences between the parties were resolved, however, at the hearing. The parties settled their differences at the hearing, for example, on Article V (h.) dealing with adjustable work schedules. That issue is no longer before this forum.⁵⁸

The parties remained at impasse, however, on the issues related to Article V (d.) which deal with overtime and compensation time.

It is useful here to cite language of the prior labor contract with respect to Article V(d.) on overtime. That language says, in pertinent part:

"All overtime work must be authorized by the Chief of Police or his designee. The

⁵⁶See APPO Final Offer, Appendix A. In this proposal the date :3/15/96, should read: 3/16/96.

⁵⁷See Trans. @ p. 232 inter alia. See also City Final Offer @ 19.

⁵⁸See Trans. @ pp. 102-107. Also see City Final Offer document @ p. 3 and APPO Final Offer document @ 2 vis. "...Adjustable Work Schedules at issue....zip...".

overtime rate shall be one and one-half (1-1/2) times the employee's hourly rate of pay. The regular straight time hourly rate of pay shall be computed by dividing the employee's annual salary by 2167 hours, which includes 87 straight time hours per year reporting time."⁵⁹

There is also a Letter of Understanding on this issue which is found at the end of the prior contract which states the following:

"LETTER OF UNDERSTANDING:
(03/28/94)

"The parties mutually acknowledge that APPO had made demands to compute overtime by dividing the annual salary by 2080 hours, and to pay overtime for Reporting Time.

Further, the parties mutually state that these demands were withdrawn upon the acknowledgment by the City that litigation is now pending on both issues."⁶⁰

The APPO's position on overtime is a "...computation of overtime by dividing (the) employee's annual salary by 2,080 hours..." rather than 2,167 hours.⁶¹ The City rejects this proposal on economic grounds. According to the City, it paid \$1.8 million in 1995 for overtime to Aurora's police force and if the proposal by the APPO were accepted, "...it would increase the overtime pay per hour for a police officer working overtime approximately \$1 an hour...".⁶² The City also points out that the computation of overtime at 2,167 rather than 2,080 hours has a historical basis. This goes back to a bargain made between the APPO and the City relative to payment of pension, and not overtime, on the 87 hours difference. The APPO's response is: that was then; and this is

⁵⁹See Joint Exhibit 2 @ p. 4.

⁶⁰See Joint Exhibit 2 @ p. 49.

⁶¹See APPO Final Offer @ p. 1.

⁶²See Trans. @ p. 89.

now. The APPO also claims that the current system for calculating overtime per the current contract could be in violation of the Fair Labor Standards Act.

The arbitrator notes that there appears to be an attempt to obtain by means of arbitration here what may or may not be granted by the courts. Obviously, the legal status of the current language of the parties' contract will be resolved by the court one way or the other if it ever comes to that. This arbitrator will not presume to coopt the authority of the court on this matter. Nor will he get embroiled in this litigation as an outside party. The function of this forum is to provide solutions; not create more problems.

Ruling

The proposal by the APPO to amend Article V(d) of the prior contract by changing the computation for determining overtime pay for police officers is rejected by the arbitrator.

Nextly, the arbitrator must deal with the parties' differences on the issue of compensatory time. Current language on this issue in Article V (d.) of the contract states:

~~✓~~The Employer will grant any other request, providing such time request does not exceed the limitations of no more than four (4) patrolmen off at one time as set forth in Article VIII, Section D, and all requests for compensatory time off of over eight (8) hours in duration requires at least an eighteen (18) hour notification to any supervisor within his/her assigned division prior to start of employee's shift.

~~✓~~Compensatory time may be taken in cash at the option of the Employee. Any application to take compensatory time as cash must be in writing and must be made by November 30th each year. Any compensatory time not taken in cash shall carry over to the next calendar year.⁶³

A review of the parties' final offers shows, first of all, that there is some agreement on proposed changes to paragraph one above. The City wants to change the eighteen (18) hour notification in

⁶³See Joint Exhibit 2 @ p. 4.

paragraph one above to be to any supervisor. As the City proposes: "...within his/her assigned **shift** (instead of division) prior to start of employee's shift..."⁶⁴ in order to bring the request closer to the supervisor in charge.⁶⁵ The APPO agrees with this and this part of the proposed change of this language is not a problem here.⁶⁶ But the APPO does not want the language of paragraph one above which reads: "...over eight (8) hours..." to read: "...eight (8) hours **or more**..." as the City proposes.⁶⁷ Further, the APPO itself proposes a change in the language of the last paragraph cited above under Article V(d) so that the request for cash for comp time which must be made "...by November 30th..." of each year would be eliminated. Language suggested by the APPO, in this respect, is the following:

"Payment for authorized overtime hours shall be paid by cash or compensatory time at the employee's option".⁶⁸

A review of the record shows, however, that neither side offers rationale which the arbitrator finds sufficiently convincing to warrant change of the status quo on these issues.

Lastly, the City offers a proposal to limit the accrual of compensatory time to 480 hours on grounds that such is required by the Fair Labor Standards Act.⁶⁹ In rejecting this proposal

⁶⁴See City Final Offer @ p. 9.

⁶⁵See Trans. @ 96 seq. A sergeant testified that making this change "...is simply just a way to give us the control of the shift so we know how many people are working and how many details we have to cover" @ 97.

⁶⁶See APPO Final Offer @ p. 2.

⁶⁷See City Final Offer @ p. 9.

⁶⁸See APPO Final Offer @ p. 2.

⁶⁹See City Final Offer @ p. 9. Also see Trans. @ p. 95 seq.

counsel for the APPO simply disagrees with the City "...on (a) matter that we think that they should recognize as a matter of law and don't..."⁷⁰ Once again, the arbitrator is not going to get embroiled in (an) interpretation of law. If one party thinks that current language of the contract is in contravention of law, and the other side does not, then there are ways in which such issues can be resolved. And interest arbitration forums do not represent one of those ways.

Ruling

There is insufficient reason on basis of parties' rationale, or any comparability arguments put forth by the parties, to warrant conclusion that any other language found in Article V(d) be changed.

Sickness and Non-Work Related Injury

Article IX (a.) of the prior contract states the following, in pertinent part:

"Each employee shall receive up to a maximum of one hundred eighty (180) calendar days of sick leave at his regular pay rate per separate illness. Provided, however, that no employee shall be eligible to receive said paid leave if the injury was contracted or incurred while engage in occupation or employment other than with the Aurora Police Department. When any employee exhausts his sick leave, such leave may be extended at the approval of the Chief of Police upon application in writing by such employee. Approval of such extension shall not be unreasonably withheld. Further, notification of such approval and any extension shall be delivered by the Chief of Police to the Personnel Department.

When an employee is off duty to illness, is attending or treating physician shall determine his ability to return to duty. Provided, however, any employee who is off work for three (3) days or more must provide a written doctor's release in order to return to duty. Further, the Chief of the Department shall have the right at any time, through application to the Personnel Director, to have an independent physician examine the employee to determine his fitness for duty. The Personnel Director shall select the physician and shall receive the results of such examination in his office. This doctor's report shall be maintained in the Personnel Department only. No reproductions are to be made nor maintained in the Police Department;

⁷⁰See Trans. @ p. 99 seq.

however, the Police Chief or his designee shall have access to review the report with the Personnel Director or his designee.

The first part of the proposal by the City for change in language on this Article is that "...in addition to (a) physician, a psychologist or therapist also (should) be among those qualified to examine the employee to determine their fitness for duty...".⁷¹ Secondly, the City also wants new language added to this Article "...which would state that (an) employee is not entitled to regular pay for attending an appointment to determine fitness for duty while on sick leave...".⁷² The APPO objects to both of these changes, but for different reasons. With respect to the first proposal, the APPO states that it is not against adding language to the contract which would imply that other than physicians be authorized to evaluate patrolmen in given circumstances, but that this needs to be studied more thoroughly by the parties and perhaps negotiated in the future as a separate Article in the contract. With respect to the second issue, testimony by the APPO is that the issue is not payment for an appointment per se that is a problem here, but payment to cover costs when a patrolman is asked to go some considerable distance, such as to Chicago, in order to have a medical appointment to determine fitness for duty. The APPO thinks that this is burden which police offers represented by the APPO ought not be required to bear unilaterally.⁷³

A review of available information on these two issues by the arbitrator suggests that the prudent route in these matters would be to remand these important, and sensitive, issues back to the parties for the next round of negotiations. In the interim, the parties might want to collectively

⁷¹See Trans. @ p. 109. Also see City Final Offer @ p. 2.

⁷²See City Final Offer @ p. 2.

⁷³See Trans. @ pp. 111 seq.

study all of the options available on these issues.

Ruling

The proposed changes by the City on Article IX (a) outlined in the foregoing are rejected by the arbitrator.

Limited Duty

Language in the prior contract at Article IX (d) on limited duty reads as follows, in pertinent part:

.....

"There may be times when an employee cannot perform all the functions of a Police Officer but may be considered eligible for limited duty, if available; provided, however, such duty meets the approval of the employee's attending physician".

The City proposes that language be added to this provision of contract as follows: "...The employee shall present to his/her supervisor an explanation by his/her doctor, who shall explain such duty limitations in writing...".⁷⁴ The APPO rejects this proposal on grounds that Article IX (d.)(7) has a provision which has never been implemented. This provision is the following:

"The parties hereto shall together create a form or set of forms to be completed by the employee's attending physician or other physicians which will clearly indicate that the subject employee is able and released to perform limited duty service."⁷⁵

Absent implementation of such provision, according to witness by the APPO, a physician would have open season to say about anything in writing. This could potentially lead to disciplinary action against an officer.

⁷⁴City Final Offer @ p. 11

⁷⁵Trans. @ pp. 116 seq.

Ruling

While the arbitrator does not find it unreasonable for the City to request new language on this provision of contract, it notes that the parties had never implemented language which already exists which has an important bearing on the City's proposal. For this reason the arbitrator will reject the City's proposal on Article IX (d).

Secure Phone Issue

The question of installing a secure phone is raised at a number of points by the parties and the arbitrator will treat these items together since they deal with a similar issue. Under Article IX (Sick Leave) and under Article XI (Family Sickness and Death) and again under Article XIV (e) this issue is raised by the APPO. Absent additional information by the arbitrator on this logistical issue related to how police officers communicate with supervision in given circumstances, the arbitrator will advise the parties to further study these issues and deal with them at the next round of negotiations.

Ruling

Proposals by the APPO on the issue of installing secure phones is rejected. The parties are advised to revisit this issue next round of negotiations if they so wish.

Insurance

The APPO has a proposal which deals with Article XIII (b) of the contract. Language in the prior contract on this issue states the following, in pertinent part, under title of : Retired Employee Coverage.

"The Employer agrees that the group insurance coverage provided above in Section A shall be made available at the prevailing annual premium, as adjusted from time to time, to any retired employee who retires on or after October 1,

1973, with at least 20 years active service. Provided, however, if said employee retired between October 1, 1977 and April 1, 1983, with at least 20 years active service, the amount of annual premium payable shall be increased during the time he retains coverage, the amount of such increase shall be paid by the Employer.

"The premium shall be billed biannually to such retired employee and must be paid by him within thirty (30) days of the date of billing unless the employee has authorized bimonthly deduction of such premium from his pension payment. Failure of the retired employee to make his premium payment within thirty (30) days shall result in termination of the retired employee's insurance coverage.

"Coverage shall be available to such retired employee until he reaches age sixty-five (65) or becomes eligible for Medicare. As such time, the retired employee may elect to retain supplemental insurance coverage which the City has made available provided the retiree pays the entire cost of such supplemental coverage and such coverage shall be secondary to Medicare.

"If such a termination occurs or if such retired employee dies, the Employer agrees to make such coverage available to the retiree's spouse, provided said spouse was married to the retired employee at the time of the retirement. Such coverage shall be made available at the prevailing annual premium, as adjusted from time to time, which shall be payable as hereinabove provided. Such coverage shall be made available to such spouse of a retired employee until said spouse re-marries, reaches age sixty-five (65), and is eligible for Medicare.

"Provided, however, for any police officer who retires from the Department during the period July 1, 1994 through December 31, 1994, with twenty (20) years of service and is age fifty (50) or above, the City will pay fifty percent (50%) of the cost of health insurance coverage for the retirees and dependent(s), if applicable, until the retiree reaches the age of sixty-five (65), and is eligible for Medicare.

"It is understood and agreed that any officer participating in the above must have used or submitted all compensation for which he is eligible (compensatory time, holidays, vacation) by December 31, 1994.

"For planning purposes, notice of intent to retire under the above provisions must be made, in writing to the Chief, through the chain of command, no later than April 1, 1994. A notice of intent shall not be considered as an actual retirement letter.

"The above provision is being made on a one-time only, non-precedent setting basis.

"Any employee who retires after January 1, 1995, shall pay the full insurance

premium".

The proposal by the APPO on this section of the contract deals with the "...very narrow issue of the premiums for retirees...".⁷⁶ The proposal is that "...retirees' insurance premiums be paid at 50%..."⁷⁷ but with some further qualifications as was clear in the arbitration hearing. In the hearing the APPO stated that its proposal on this issue was:

"Any police officer who retires from the department after January 1, 1997, with over 20 years of service and is age 50 or above, the City will pay 50 percent of the cost of health insurance coverage for the retirees and dependents, if applicable, until the retiree reaches age 65 and is eligible for Medicare".⁷⁸

In rejecting this proposal the City argues that no comparability data is presented by the APPO to support its proposal here and that it would be very expensive to implement, and that this original arrangement for police related to health care benefits and retirement was not only offered to police but also to firefighters and to management ranks as well. According to the City this was a one shot deal which the union is now trying to expand upon.⁷⁹

Ruling

There can be no doubt that this issue addresses certain sensitivities and viewpoints on which the parties are not fully in accord. The arbitrator must use, however, on this clearly economic issue, standards set forth for him in the Illinois statute. On basis of that he is in no position to grant the APPO this proposal related to Article XII (b) and he must rule accordingly.

⁷⁶See Trans. @ p. 134.

⁷⁷See APPO Final Offer @ p. 5.

⁷⁸See Trans. @ p. 137.

⁷⁹See Trans. @ 137 seq.

This also is one of those issues which the parties may want to re-visit at a future round of negotiations.

The APPO has a second proposal on insurance which deals with optical insurance. That proposal reads, in pertinent part:

"Optical Insurance. The employer shall pay the full cost of a complete vision care plan. In addition, the plan shall provide a \$100 allowance for the cost of eye examination and contact lenses".⁸⁰

Rejection of this proposal by the City is based on arguments that the APPO offers no comparability data on this issue as rationale, and that the City knows of no other "...department that has optical insurance..." in Aurora, Illinois.⁸¹

Ruling

On basis of standards to be used by the arbitrator on economic issues this proposal by the APPO is denied. The parties may wish to revisit this issue at a future round of negotiations.

Health and Fitness

The provisions of the prior contract which are at stake here are found in Article XIV. In pertinent part, we cite here Article XIV (e) which reads as follows under title of: Stress Assessment Program.

"A voluntary and confidential Stress Assessment and Evaluation Program will be implemented during the term of this Agreement in coordination with a health care provider, which will include both an initial screening and comprehensive stress evaluation. A general outline of such program is attached hereto and made a part hereof as Appendix C.

"The cost of the initial assessment and evaluation will be paid by the City. Any

⁸⁰See Trans. @ pp.151-2.

⁸¹See Trans. @ p. 148.

subsequent treatment that may be necessary subsequent to the evaluation is subject to coverage available under the employee's health insurance plan. The Stress Clinic will be provided with the City's Health Insurance coverages to counsel the employee regarding available coverage.

"Periodic educational seminars or workshops will be provided to familiarize officers with the initial signs of stress and the need for a health appraisal. The cost of such workshops or seminars will be paid by the City.

"All information regarding diagnosis and treatment shall be confidential. The results of the diagnosis will not be used against the employee in any action seeking his/her disability, suspension, termination or discharge from the Police Department. In addition, the Employer agrees not to seek the results of same by subpoena. Such information would not be placed in the officer's personnel file either at City Hall or at the Police Department".

Appendix C of the contract then states the following with respect to the stress management.

"APPENDIX C

THE STRESS ASSESSMENT PROGRAM

The Stress Assessment Program is a service provided to assist individuals in the early identification of stress-related problems which place the individual at risk for using maladaptive and non-productive stress reduction tactics.

The Stress Assessment and Evaluation Program depends on the responses given by the individuals involved. The responses and results of these assessments are strictly confidential. These individuals who benefit most from these procedures approach this assessment as an opportunity to increase personal effectiveness, health and psychological well-being.

Potential benefits of Stress Assessment and Intervention are:

1. Increases ability of individuals to deal productively with stressful situations.
2. Reduced risk of stress related illnesses.
3. Increased personal effectiveness due to ability to set and reach realistic and satisfying goals.
4. Reduced tension and irritability in interpersonal situations due to more effective conflict management skills.

- 5.Reduction of 'professional burnout.'
- 6.Reduction of excessive employee turnover.
- 7.Reduction of sick days or absenteeism.

The Stress Assessment does not differentiate employees with poor work performance from those with good work performance. It can help identify employee problems in early stages and expedite intervention such as EAP.

Initial Screening

The first step in assessing level of stress and type of coping strategies utilized to decrease stress., is the administration of the Recent Life Events Scale, a checklist developed to index the number of changes and /or adjustments the individual has had to make in the recent past. Research shows the stress levels are related to the number and magnitude of life changes.

The second part of the Initial Screening is an individual interview with a Psychologist or Social Worker to discuss the impact these events have had, and how the individual has tried to cope. Both positive coping strategies and maladaptive coping strategies such as substance abuse, "workaholism", emotional abuse, family conflict, or risk taking behaviors are noted. The results of these two procedures are summarized in a confidential Evaluation Summary retained by the Provider.

B. Comprehensive Stress Evaluation

A comprehensive stress evaluation is recommended only for those individuals who are identified in the initial screening, as not coping well with high levels of stress. The Stress Mastery Profile is a comprehensive questionnaire which is computer scored and generates a report comparing the individual to a normal sample on such items as health maintenance behaviors, physical symptoms of stress, negative emotions (anger/irritability, depression/helplessness/ worthlessness) work dissatisfaction, family dissatisfaction, "workaholic syndrome" and an evaluation of variety and diversity of coping strategies.

Specific recommendations are included in the Stress Mastery Profile results. The recommendations are presented in a written report to the individual after a one hour debriefing with a Psychologist or Social Worker regarding these results.

C. The Stress Assessment Program Costs

The current cost for the Initial Screening is \$50.00 per person, and the Comprehensive Stress Evaluation is an additional \$80.00 per person, which cost may change from time to time.

These costs include materials, administration of questionnaires, clinical interviews and debriefing and for those completing the Comprehensive Stress Evaluation, a 20-30 page typewritten report including specific identification of stressors and recommendations for positive stress reduction interventions."

The contract language in Article XIV (f) of this important set of provisions of the parties' labor contract then says the following:

"The primary purpose of voluntary and/or mandatory counseling is to assist all police officers. Such counseling shall not be utilized as a method of discipline or discharge. The results shall remain confidential between the officer and his treating physician. Counseling will be done by an Illinois licensed physician of the officer's choosing. All costs for such counseling, including therapy, treatment and medication shall be borne by the Employer.

1. Mandatory Counseling

It shall be mandatory for all sworn police officers to undergo counseling when involved on duty in the following:

- a. Shooting incidents
- b. Accidents in which death or life threatening injuries occur.
- c. In other instances, the Chief shall deliver to the Union attorney, in writing, the name of any officer whom he determines is in need of stress screening and the reasons therefore.

The Chief shall notify such officer that mandatory screening is required. All information shall remain confidential between the Chief, the Union attorney and the individual officer.

2. Voluntary Counseling

A police officer can voluntarily seek counseling at any time.

Due to the extremely confidential nature of this Article and its contents, every effort and control shall be employed in order to maintain such confidentiality.

The parties agree that this Section shall become effective when counseling becomes mandatory for all sworn personnel in the Police Department".

The City's final offer on Article XIV is a proposal to modify the existing contract language concerning mandatory police counseling. The City wants language to include off-duty as well as on-duty shooting incidents. It further proposes that in addition to "stress screening" the language of contract also include "stress counseling" as an alternative.⁸² The APPO objects to including the language dealing with off-duty shootings because "...it jeopardizes a person's individual rights off duty..."and there is no evidence of such shootings that APPO is "...aware of" in either case.⁸³ In short, the APPO does not want the City to intrude in any way on the life of a police officer while they are off-duty. It also does not want to add the word "...counseling..." to the language of Article XIV (f).⁸⁴

Ruling

It is clear from the discussion of these issues at the hearing that there remain some unresolved details which have not yet been completely clarified between the parties. The arbitrator rules that the parties revisit these issues, if they wish, at the next round of negotiations but that no changes be made to Article XIV (f) at this time.

Bill of Rights

The City has a proposal on the table to change the language of Article XVI of the labor

⁸²See City Final Offer @ p. 13.

⁸³See Trans. @ pp. 160-61.

⁸⁴See APPO Final Offer @ p. 5. "APPO rejects City's mandatory counseling demand for: (1) shootings off duty; (2) accidents with death, etc. off duty; (and) (3) adding 'an(d)/or' counseling".

contract. This Article of the contract, called: "Bill of Rights", reads as follows in pertinent part:

"The provisions of this Article shall not apply to any employee during his probationary period.

Whenever an employee is interrogated by a representative of the Employer regarding circumstances which could reasonably be foreseen to lead to his discharge or suspension for at least three (3) days, or longer then such an employee shall be protected according to the Bill of Rights, which shall include but not be limited to the following:

a)Such an interrogation shall be conducted at a reasonable hour unless it is of such a nature or involves an incident of such seriousness as to require otherwise.

b) Prior to such an interrogation, the employee shall be advised in writing of the following:

1. The nature of the charges against him.

2. That he has the right to be represented by counsel of his own choosing, or a union representative.

3. That any statement made during the interrogation may be used as the basis for charges seeking his suspension or discharge.

c) A complete record us such interrogation, including references to any periods of recess, shall be made by tape recording. A transcript of the recording shall be provided without cost it the interrogation results in the filing of charges, seeking discharge or a suspension of at least three (3) days or longer.

d) Employees shall not be disciplined or otherwise prejudiced for, or by reason of, insisting upon or exercising the rights hereby accorded.

* Memorandum of Agreement No. 2 attached hereto is made a part of this Agreement as if fully set forth herein."

The Memorandum of Agreement referenced in Article XVI reads as follows:

MEMORANDUM OF AGREEMENT NO. 2

(03/28/94)

"**WHEREAS**, The City of Aurora, through its duly authorized representatives and the Association of Professional Police Officers have by negotiation agreed that

P.A. 83-981, enacted into law by the Illinois Legislature effective December 9, 1983 and entitled "Uniform Peace Officers' Discipline Act" is incorporated into the negotiated Labor Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein and therein contained in said Labor Agreement, the undersigned parties duly authorized for and on behalf of the City of Aurora and for and on behalf of the Association of Professional Police Officers, do mutually agree that P.A. 83-981, which is attached hereto, shall become attached to and/or incorporated into the Labor Agreement between said City of Aurora and said Association as if fully set forth therein, and shall be know as "The Aurora Police Officer's Bill of Rights" under Article XIV of said Agreement."

The City proposes that the language of "The Aurora Police Officer's Bill of Rights" be modified to parallel the language of the "Uniform Peace Officers' Discipline Act," P.A. 83-981. The impact of making Article XIV Bill of Rights parallel the Uniform Peace Officers' Discipline Act would be that procedures would not be invoked until discipline exceeds three (3) days. Currently the protective procedures of the Article do not protect police officers until the discipline exceeds two (2) days.⁸⁵ The position of APPO is that the language should stay the same.⁸⁶ The City argues that the reason there is need for a change is because of the inclusion in the contract of the Memorandum of Agreement No. 2 as cited in the foregoing which "...clearly adopts Public Act 83-981..." which it, therefore, triggers.

Ruling

It appears to this arbitrator that this issue is one of pure contract interpretation. Normally such functions are served by grievance arbitrators, not interest arbitrators. The parties may wish to address this issue before a grievance arbitrator at some point in the future.

⁸⁵See City Final Offer @ p. 14. Also see City Exhibit 31 & Trans. @ p. 168 seq.

⁸⁶See APPO Final Offer @ p. 6. "APPO rejects the City's proposal to change language from "at least three (3) days" to "in excess of three (3) days".

Extra Duty

The City has a proposal on the table which deals with a change in Article XVIII (b) under title of Training, Inspection, Reviews and Special Events. The language of the prior contract reads, in this respect, as follows:

"During the calendar year, the Chief of Police may issue directives to all officers to report for participation in-service training, departmental inspections, reviews and special events. Special events shall be defined as any activity which is not of an emergency nature; but is either ceremonial or instructional. Participation of officers in these activities as directed by the Chief of Police is limited up to a maximum of twenty-four (24) hours of time for the calendar year. In lieu of pay, the officer will be compensated by time off equal to one and one-half (1-1/2) times the number of hours participated. At the employee's request, his shift commander will grant compensatory time off. If the compensatory time is not granted to the employee at the time of his request, then he shall have thirty (30) days after such refusal within which to elect to receive pay at the overtime rate for said compensatory time. Otherwise, the time off will revert to the compensatory time again."

The City's final offer is that in addition to the above special events there should be a forty (40) hour block of in-service training, which shall be considered the duty week for officers assigned to attend, which should be used to provide uniform training to all officers on issues of policies.⁸⁷ This is rejected by the APPO.⁸⁸

Argument by the City is that this block of training is necessary in order to allow the City to "...provide training to officers that currently may not have requested training for several years and they can be kept updated on current policing issues..."⁸⁹ The response of the APPO to this, in testimony at the hearing by the president of the union, is that "...this (proposal by the City) is not

⁸⁷See City Final Offer @ p. 15.

⁸⁸See APPO Final Offer @ p. 6.

⁸⁹See Trans. @ p. 176.

about training. This is about dollars...".⁹⁰

The arbitrator notes, from the language of the preceding contract, that the chief of police may issue directives about a variety of things, including in-service training and instruction. But this cannot be done willy-nilly. There are constraints on the chief with respect to the participation of officers in these activities: 24 hours of time for the calendar year, and in lieu of pay, an officer may opt for time off equal to one and one-half times the number of hours of participation, and so on. Thus there can be no doubt that the proposal by the City whereby it would substitute 40 hours of training for 40 hours of work represents a different view of things than that framed in the language of the prior labor contract.

Ruling

This issue is sensitive enough, without sufficient supporting arguments by the City for changes in Article XVIII (b) of the contract, to warrant conclusion that the arbitrator counsel the parties to take up this issue again at a future round of negotiations. Request for amendment of this Article by the City is rejected by the arbitrator.

Personal Safety Equipment

The City argues that Article XXV should be eliminated from the labor contract since it is, in effect, moot. This Article, in the prior contract, called for a \$500 per year equipment payment to the police officers in 1994 and 1995 and these payments have been made albeit in a rather special manner as outlined by Appendix A of the labor contract.⁹¹ The language of that Article specifically states:

⁹⁰See Trans. @ p. 178.

⁹¹See Trans. @ pp. 182 seq.

"In order to promote safety, the City agrees to pay \$500.00 per year, in two (2) semi-annual payments to all officers covered under this Agreement, in order for officers to purchase equipment such as vests and required weapons. In 1994, the \$500.00 shall be paid on the first payroll paid following execution of the Agreement. In 1995, payments shall be made semi-annually on the first payroll paid in June and December.

(Further clarification of this Article is provided in Appendix A.)"

Appendix A states that "...At the end of this term of agreement, the \$1,000 personal safety equipment (Article XXV) will be added to base pay as follows..." and then it outlines how this payment shall be made.

Ruling

A review of the language of Article XXV, and Appendix A by reference, shows that the City is correct in its assessment of the status of this Article. It is a self-executing Article. On the theory that labor contracts ought not have provisions in them, of any kind, which are non-operable or outdated, out of respect for labor agreements as the embodiment of contract law per se, respected in many circles as living documents, the arbitrator will rule that Article XXV should be eliminated from the contract. Article XXV is, in effect, a dead Article.

Savings Provisions

The APPO has a proposal on the table with respect to Article XXVIII which represents a change in the language of that Article. That Article states the following:

"If any term or provision of this Agreement is, at any time during the life of this Agreement, in conflict with any applicable valid Federal or State law, or any applicable valid City Ordinance, which governs the Police Department, such term or provision shall continue in effect only to the extent permitted by such law, or ordinance, provided that such articles or parts of articles cannot be amended to be applied and valid under Federal and/or State laws. If, at any time thereafter, such term or provision is no longer in conflict with any Federal or State law, such term or provision, as originally embodied in this Agreement, shall be restored in full

force and effect. If any term or provision of this Agreement is in conflict with any City ordinance than those above listed, then the terms of this Agreement shall prevail over the terms of any other such ordinance.

If any term or provision of this Agreement is in conflict with any other local Civil Service ordinance or rule, then the terms of this Agreement shall prevail over such conflicting terms. If any term or provision of this Agreement is or becomes invalid or unenforceable, such invalidity or unenforceability shall not affect or impair any other term or provision of this Agreement.

The proposal of the APPO is that reference to "any applicable valid City Ordinance" be stricken from the contract language of this Article.⁹² The Association argues that the provision makes way for City Ordinances that might "outlaw" provisions of the agreement.⁹³ The response by the City is that this provision was "...just something we bargained for in the past, and the union has shown no problem that has ever arisen under this savings provision." The City further states that: "The Union creates a possibility; but...there has been absolutely no time that there has been any problem, let alone a grievance arise under the present language within the contract".⁹⁴

Ruling

Once again the arbitrator is confronted with an issue which is potentially subject to litigation if the circumstances become right for that to happen and he respectfully declines taking the bait. The APPO suggests the possibility of a conflict between a city ordinance and a provision of the labor contract, and the City, while noting that such has never happened, does not rule out that such could happen. The arbitrator will not get involved as any potential third party to these

⁹²See APPO Final Offer @ p. 8.

⁹³See Trans. @ pp. 192 seq. Counsel for the APPO argues that under the current language of contract the City "...could render null and void perhaps any term of contract that the City would choose to pass an ordinance to outlaw...".

⁹⁴See Trans. @ p. 194.

matters. Obviously the parties ought to work to harmoniously cut off such unnecessary legal activity, at the pass. The arbitrator would recommend that they do this in future rounds of negotiations.

Issues Resolved During the Interest Arbitration Process

As noted in the beginning section of this Award, it was a bit difficult for the arbitrator to sort out exactly what all the issues were in this interest proceedings. That may well have been the result of the somewhat undeveloped point that the parties were at when the interest arbitration process was activated under provisions of the law. Strange to say that since the parties were through mediation, but the fact is that there were many loose ends with respect to issues and the parties' position on the issues. During the process of interest arbitration the parties did exercise mutual good will and did settle some issues which would otherwise have been before this arbitrator. Such included issues raised dealing with work schedule, paid leaves, and extra duty.

The parties are to be recommended on having exercised good faith in that respect. The parties had many issues to deal with this round of negotiations. The arbitrator hopes that he has dealt with all of those which were properly before this forum. There was one or two where it was somewhat difficult to determine exactly what the parties sentiments were: such were the important issues of suspension and discharge, and grievance and arbitration. With respect to these issues the APPO simply stated, in its final offers: "withdrawn".⁹⁵ Likewise the City lists suspension and discharge as issues which were either settled or withdrawn by the other side.⁹⁶ With respect to grievance and

⁹⁵See APPO Final Offers @ p. 7.

⁹⁶See City Final Offers @ p. 3.

arbitration, the City, after the APPO concurrently withdrew its proposals on this issue,⁹⁷ yet states that it is "...willing to add language..." which it outlines in one of the exhibits accompanying its final offers.⁹⁸ It is unclear to the arbitrator what the parties wish on this issue and/or whether it is still an issue at impasse since one side withdrew their proposal altogether and the other side speaks in tentative "willingness" terms and not in the usual terms of demand. The arbitrator treated the issue of grievance and arbitration, therefore, as an issue which was withdrawn from serious negotiations by the parties this round of negotiations.

The parties are to be congratulated on their serious attempts, albeit not successful, this round of negotiations to resolve the panoply of issues outlined in this Award. Obviously, an interest arbitration Award, from this arbitrator's long experience in this business, is but second best. It allows the parties to get through one round of negotiations. The first best is that the parties negotiate their own contract. For various reasons, which sometimes come up, that was not quite possible this time. The arbitrator wishes the parties good luck on their next round of negotiations, after this contract expires on March 15, 1999. The arbitrator would also like to thank the parties for their many professional courtesies shown to him throughout this interest arbitration process.

⁹⁷Which were extremely detailed when presented at the hearing. See APPO Exhibit 9 and discussion of this issue at the arbitration hearing in Trans. @ 195 seq.

⁹⁸See City Final Offer @ pp. 3 & 18. A curiosity of this position is that at one point the City states that this is an Article XXI issue they are addressing (Final Offer @ p. 18) but at another states that it is an Article XXII issue which is at stake (Final Offer @ p. 3 vis. # 18).

Award

Upon the evidence of record, the Findings and Decision(s) in this interest arbitration are those contained in the **Rulings** on each issue at impasse, as outlined in the foregoing.

Edward L. Suntrup, Arbitrator & Panel Chair

Date: October 30, 1996

Scott F. McCleary, Panel Member
City of Aurora, Illinois

Date: _____

Robert Mangers, Panel Member
Aurora Professional Police Officers

Date: _____