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ILLINOIS STATE LABOR RELATIONS BOARD  
INTEREST ARBITRATION

FEB 6 1998

In the Matter of the Arbitration	)	Before
	)	
between	)	HARVEY A. NATHAN,
	)	Sole Arbitrator
CITY OF ST. CHARLES, ILLINOIS	)	
	)	
and	)	ISLRB No. S-MA-97-248
	)	
METROPOLITAN ALLIANCE OF	)	
POLICE, CHAPTER 27	)	

Hearing Held: October 15, 1997

Briefs Exchanged: December 13, 1997

For the Employer: Susan M. Love,  
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Attorneys

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O P I N I O N A N D A W A R D

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## I. INTRODUCTION

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Board"). The parties are the City of St. Charles, hereinafter the "City," or "Employer," and the Metropolitan Alliance of Police, St. Charles Chapter 27, hereinafter the "Union" or "Police."

The City of St. Charles is located in Kane County, on the Fox River, and is 45 miles directly west of Chicago. It is a growing community of residences with some light commercial and industrial enterprises.<sup>1</sup> St. Charles is proud of its economic development. While its population grew 10.7% between 1992 and 1996, its equalized assessed valuation ("EAV") increased almost 25% during the same period. During the same time, its per capita income increased from \$24,301 to \$33,189, an increase of more than 36%. Its revenue from sales taxes and its EAV per resident is higher than neighboring communities of greater size. It has a moderate tax levy, although real estate taxes make up a very small portion of its general fund revenues. The City's general fund balance is equal to about the expenditures for about three months and is substantially higher than it has been in several years. The City has no long

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<sup>1</sup> The City grew from 17,492 in 1980 to 22,620 in 1990. Although the City uses 26,286 as the current population for comparability purposes, its exhibits indicate an estimated 1997/98 population of 26,988.

term debt. Unemployment is negligible.

The authorized strength of the police department is one Chief, two Deputy Chiefs, one Lieutenant, eight Sergeants and 39 Patrol Officers. In the last several years there has been a slight annual increase in calls for police services. This has remained below the percentage of growth for the population as a whole. The patrol officers have been represented by a collective bargaining agent for several years. The Union is the current successor of a number of employee organizations that have represented these employees. It has represented the officers for about eight years. This will be its third labor agreement with the City. This is the parties' second impasse arbitration. The prior agreement, resolved in an arbitration award dated March 25, 1995, was signed on April 12, 1995 and expired on April 30, 1997. Wage increases provided in that contract became effective on May 1, 1994.

The parties entered into collective bargaining for the present agreement in March, 1997. They had two sessions after which the Union requested the services of a mediator. During negotiations the parties were able to resolve three issues in dispute, namely, Section 6.2 Grievance Procedure, Section 8.2 Hours of Work, and Section 18.2 Bill of Rights. There was one mediation session and thereafter the Union requested the appointment of an arbitrator. The arbitrator was notified on July 9, 1997, of his appointment. The parties

selected October 15th as the date for the hearing from among the dates offered by the arbitrator. There is no evidence that either side delayed negotiations or these proceedings. Final offers were exchanged on October 10, 1997. Just prior to the exchange of final offers, or as a result of them, several of the outstanding issues were resolved, including Section 6.6, Grievance Procedure, Section 8.4, Overtime, Section 9.1, Vacations, Section 16.3 Master Police Officer, Section 17.1, Uniform Allowance, Section 18.4, Union Representation, Section 19.2, Rules, Section 20.1 Drugs, and Section 24.1 Term of Agreement. All of these tentative agreements, and those about which there was no dispute, are adopted by the arbitrator and incorporated by reference as part of this Award.

Other than the inclusion of the tentatively agreed upon proposals to be part of this Award, the parties' only stipulations were that the arbitrator shall serve solely, without the assistance of a panel, that the case is properly before him and that he has the final and binding authority to issue an award on the remaining issues.

## II. STATUTORY REQUIREMENTS

Section 14(h) of the Act provides that the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

"(1) The lawful authority of the employer.

"(2) Stipulations of the parties.

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

"(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

"(A) In public employment in comparable communities.

"(B) In private employment in comparable communities.

"(5) The average consumer prices for goods and services, commonly known as the cost of living,

"(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment and all other benefits received.

"(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

"(8) Such other factors not confined to the foregoing, which

are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding arbitration, or otherwise between the parties, in the public service or private employment."

#### IV. COMPARABILITY

The parties have proposed similar, but not identical, comparability groups consisting of municipalities in the immediate area. As will be discussed below, the parties selected these comparable communities based upon a variety of well-accepted criteria for gauging similarity for collective bargaining purposes. As the parties recognize, no two communities have precisely the same characteristics. Every employing entity is unique and each has its own strengths and weaknesses. Arbitration awards are not the result of some automatic application of relativity scales. Rather, the parties and the arbitrator can better measure the appropriateness of one offer over another by comparing it against the collective wisdom of parties in demographically and geographically similar communities. Provided that the comparability group is large enough to be statistically meaningful, the marketplace of contract terms is a powerful tool for demonstrating appropriateness.<sup>2</sup>

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<sup>2</sup> A statistically valid group is one large enough that aberrations among individual communities will not skew the

The parties also appear to acknowledge that they have not established an historic comparability group. As the Employer points out, the use of the same group from contract to contract lends stability to the process. If the parties can rely on the same group it will lead to more predictable results and discourage resort to arbitration. Arbitrators generally accept that, absent compelling reasons, historic comparability groups should not be disturbed.

According to the City, it approached comparability by looking at an expanded group of 54 communities and from these selecting those within easily recognizable parameters such as distance from St. Charles, EAV, and corporate operating budget. The final list, established after considerable analysis by the City Manager, was based upon geography (15 miles from St. Charles), population, EAV, total operating expense, and police staffing. The City acknowledges that not every community is close to St. Charles in every factor, but each is similar in several of the factors.

The Union's list is based upon similar criteria: population, distance from St. Charles, total sworn officers, size of bargaining unit, sales tax revenue, and EAV.

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averages. In any event, the averages are merely a reflection of the marketplace and should not be slavishly followed without regard to the individual needs of the parties at issue.

The City's list includes:

Addison  
Batavia  
Bensenville  
Bloomingtondale  
Downers Grove  
Elmhurst  
Geneva  
Glen Ellyn  
  
Lisle  
Lombard  
Naperville  
Schaumburg  
West Chicago  
Wheaton

The Union's list includes:

Addison  
  
Downer's Grove  
  
Glen Ellyn  
Hoffman Estates  
Lisle  
Lombard  
Naperville  
Schaumburg  
West Chicago  
Wheaton  
Villa Park

Certainly, as to those communities the parties themselves agree to, the arbitrator should not disturb that portion of the list. While I am skeptical as to the comparability of Naperville and Schaumburg, both of which are several times larger than St. Charles, have more elaborate public safety operations, are located at the outer limits of the radius used by the City, and, in the case of Schaumburg, has a very different tax base, if these are communities the parties agree to, that is more important than my assessment.

The Union does not include Batavia, Bensenville, Bloomingtondale, Elmhurst and Geneva. Geneva's police force is unrepresented and therefore cannot share terms and conditions of employment similar to those of organized units. As long as there are sufficient organized bargaining units within a valid

comparability group, there is no basis to include communities which can set their terms and conditions of employment arbitrarily. Batavia and Bloomingdale are somewhat smaller than St. Charles, but their distance from St. Charles and EAV per capita are similar enough to be included in the group. Bensenville is a more difficult choice because it is only two-thirds the size of St. Charles and is located at the outer limit of the radius. However, its EAV per capita and the size of its force are very similar to that of St. Charles. I find Bensenville appropriate for the group. Elmhurst is much larger than St. Charles and is different in many other respects. While including it in the group is a stretch, there is no way to rationalize its exclusion when the parties have agreed to Downer's Grove which is very similar to Elmhurst. As the parties agree on Downer's Grove, so they must consider Elmhurst.

The City rejects Hoffman Estates and Villa Park, both on the Union's list. Hoffman Estates is similar in size to Downer's Grove, but its EAV and operating expense are disproportionately smaller. While it is relatively near to St. Charles it is markedly different in sales tax revenue and in the size of its police department. Hoffman Estates belongs in a group containing communities of the size of Schaumburg and Naperville, and other larger Chicago metropolitan communities. In the absence of agreement for this community, I will not include it in the group. Villa Park, while nearly the same size as St. Charles has considerably less financial resources. On the other hand, its police force is very

similar to that of St. Charles. Indeed, Villa Park is rather similar to Bensenville. Having included Bensenville in the group, so, too, Villa Park will be included.

Based upon the criteria used by the parties, as well as the generally accepted principles used by neutrals in impasse cases, I find that the comparability group for St. Charles is the following:

Addison  
Batavia  
Bensenville  
Bloomington  
Downers Grove  
Elmhurst  
Glen Ellyn  
Lisle  
Lombard  
Naperville  
Schaumburg  
West Chicago  
Wheaton  
Villa Park

### III. DISCUSSION OF THE ISSUES

#### A. Section 7.2 Applications: Rules (Training)

The City has a training program for its officers. Numerous regular duties of police officers require special training, refresher courses, recertification, and the like. Examples include evidence analysis, breathalyzer, drug enforcement, interrogation, etc. Generally speaking, officers are expected to have about 40 hours of special training a year. In most instances the courses are selected by the officers, but in some cases, they are assigned, as supervisors deem

appropriate. Most of the training is under the auspices of the Northeast Multi Regional Training Institute, and courses are held at various locations in the greater Chicago area. Because St. Charles is, in a sense, at the edge of the geographic area, some of the training requires that officers travel distances up to 50 miles or more. On the other hand, many of the courses are given at different locations and an officer can select the training at the most convenient location. Occasionally, however, officers are assigned to the training and, according to the Union's witness, these assignments do not always consider driving distances. The result is that on these occasions officers have to travel for up to an hour each way. They are not compensated for this time. Because locations rotate, the Union suggests that these inconveniences are unnecessary. It seeks a way to encourage the Employer to assign training at closer locations. Accordingly, it proposes the following language to be added to the training provisions of the Agreement:

No covered officer shall be required to attend any training session which requires travel of more than thirty (30) miles, unless said officer is compensated for his/her travel time to and from the training session.<sup>3</sup>

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<sup>3</sup> The Union has explained that the 30 miles is measured from the Department's headquarters and not from the officer's home, although an officer may travel directly from his home to the training.

The Union's proposal is not intended to be a way for officers to earn more money. Rather, it seeks a disincentive for the City to assign officers to distant locations when this, with a little planning, can be avoided. The Union's witness explained at the hearing that training is usually during the day, which in itself is an inconvenience for the many officers who work at night. Training therefore requires schedule adjustments and disrupts an officer's private life. That being so, it is only reasonable, the Union argues, that ways be found to minimize the inconvenience. One method would be to avoid training which requires an officer to travel more than 30 miles.

The City opposes this proposal for several reasons. First, it points out that because the 30 miles is measured from headquarters there can be occasions when the actual drive from an officer's home is less than 30 miles but the distance from headquarters is more than 30 miles. It argues that this proposal is unnecessary because officers usually have a say in where they will go for training. The City also argues that training is during paid time and if an officer's normal schedule is at nights his schedule is adjusted to accommodate the training. To the extent that the training exceeds a normal workweek, the City argues, employees are entitled to FLSA overtime.

Each side acknowledges that the party seeking a change in a previously negotiated procedure or benefit, or the party that seeks to implement new ones, has the burden of proof. With this present proposal, the Union has not

presented sufficient data demonstrating that long drives for training occur with such frequency that a restriction on management's right to assign training is justified. The arbitrator has no sense of how frequently these inconveniences arise. Nor do I have any evidence to persuade me that granting this benefit will actually achieve the Union's goal. It may be more important for the City to have the flexibility in scheduling training than to be concerned with additional payments to the officers involved. Inasmuch as the Union disclaims any real interest in increasing earning for officers as a result of training assignments, there is no basis to award this proposal. Finally, for the most part, the comparable cities do not have this feature in their labor agreements.

#### B. Section 8.8 On Call Time

Detectives, or Investigators, are required to be on call and available to be on active duty within specific time periods. Currently, they receive eight hours of compensatory time for each two week period on call. The Union proposes breaking this down to one day segments. It proposes that for each day an officer is on call he shall receive .6 hours compensatory time. Officers' regular days are 8.2 hours in length. The Union's proposal would not increase the rate.

The Union's witness testified that the problem is not with regular on call assignments, but with those occasions when they are called on to substitute for another officer who is supposed to be on call but is unable to fulfill that

responsibility for reasons such as absence. In that event, the scheduled on call officer accrues the on call credit while the substituting officer does not receive any additional compensation. Instead, the officers trade time among themselves so that an officer who misses an on call day will pay back the officer who covered for him at a later date. The problem with this system, according to the Union, is that occasionally the trades are not always possible and an officer may be on call without any compensation and no pay back.

The City's response is that being on call is no great inconvenience. It also argues that trades are a matter of choice among the officers.<sup>4</sup> Therefore, this is a private matter among the officers. The City also argues that the Union's proposal is not supported by the comparables.

The arrangement of standby pay in two week segments appears to be new to the parties under the prior agreement. It may have been a good system in the planning, but as the Union points out, on call responsibilities cannot always be sliced into discrete two week packages. Yet, the need for flexibility with on call assignments is more of a benefit for the City than it is for the officers. It is primarily in the City's interest to have a system that works. Contrary to the City, I find that on call responsibilities are intrusive and burdensome. They require officers to be available for active duty, sometime under dangerous circumstances, at any time, night or day. Simple pleasures

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<sup>4</sup> Apparently, but the record is not altogether clear, the City allows the trades but does not require them.

such as driving into Chicago for an evening, going fishing, or going to see one's in-laws downstate, are a practical impossibility. On call responsibilities are, of course, necessary. And the City has recognized its obligation to pay for the inconvenience. The Union is not seeking a new benefit. Rather, it wants to fine tune a benefit recently added to the contract but which has not worked out as it was intended.

The City is incorrect when it argues that trades are a private matter between officers. Any scheduling of work-related duties among employees is very much a concern of the City. It has a responsibility to make sure that these trades work in order to ensure that there is adequate police coverage for the community at all times.

The City argues that the proposal is not supported by the comparables. However, this is because most of these communities do not have on call pay at all. Where they do, it is divided into much smaller units than two weeks. Finally, the City points out that the Union neglected to propose a change in the implementation date of the proposal so that, read literally, the new language would have the benefit retroactive to May 1, 1994, the starting date of the prior agreement. Thus, the City argues, the arbitrator has no authority to accept a proposal which would alter an agreement no longer in effect.

While the City is correct in its legal analysis on retroactivity, the arbitrator has the authority to correct obvious typographical or clerical areas. Given the

complexity of interest arbitration, there are times when the computation numbers are inaccurate or typed incorrectly. In this case, it is clear that the Union had no intention of making this proposal effective in 1994. That was simply a date which appeared in the old language which needed to be changed administratively. The arbitrator is not amending the Union's proposal, he is simply conforming the form of the proposal to the facts of the case, not unlike conforming the pleadings to the facts in a civil court case. Accordingly, I read the Union's proposal as seeking an effective date of May 1, 1997.

The arbitrator wishes to emphasize that in accepting the Union's proposal, I am not abandoning the important principle of adding new benefits to an agreement without strong evidence of necessity. Rather, this proposal is more of a housekeeping change accepted in the absence of any evidence that it will cost the City more money than it has already agreed to pay, and to ensure that the public's interests in police protection is provided.

C. Section 16.1.2 (Compensation for Physical Fitness Examination Time)

Employees are required to adhere to the Department's rules for health and physical fitness. Periodically they are required to take examinations to verify their fitness for duty. For employees on the day shift, this is done during work hours. For those employees working after regular business hours, they must schedule a daytime appointment, for which they get hour-for-hour comp time. The Union is proposing, for employees who must change their schedules

and report for exams during hours they are not regularly scheduled to work, that they receive overtime pay at the rate of time and a half for "all time spent in the exam."<sup>5</sup> There is no evidence that employees have difficulty getting the comp time they have earned.

The City objects to this proposal as unnecessary because this would be a change in a benefit without any evidence that a change is needed. It also objects on the basis of comparability. The City proposes adding the following sentence to the current language:

Employees shall be compensated for time for physical exams as required by law.

The City does not suggest that this additional language will change the status quo.

The Union's proposal appears to be of a type to be classified as a "nice thing to have." There is no evidence that the negotiated benefit of comp time for exams has not worked. There is no evidence of a need for a change. Simply because pay at time and a half is more attractive to officers than comp time is not sufficient to justify a change by an arbitrator. Such matters are grist for the negotiating table. I accept the City's proposal because it is my understanding that employees who take physical exams at times other than

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<sup>5</sup> It is unclear what the measurement is for "all time spent in the exam." Does it include time traveling to the exam site? Does it include time waiting to be called into the examination room, etc.?

during their regular shifts will continue to receive comp time or such overtime as required by law. Employees who take the exams during their regular working hours would not be eligible for anything additional, as provided in the last sentence of the old language. This sentence reads, " Police officers agree that should duty time be allowed for those exams, said time utilized shall not be considered as overtime pursuant to any section of this agreement."

#### D. Section 16.2 Acting Shift Supervisor

There are occasions when an officer is asked to serve as an acting supervisor. This is usually due to the absence of a sergeant. When acting as a supervisor, officers have responsibility for the operation of their command and have to be available to advise and assist the officers reporting to them. There is a certain amount of extra paperwork involved with this assignment, but the concern of the Union is mostly about the responsibility which goes with the job. The old agreement provides employees temporarily upgraded receive an increase of \$2.75 an hour for the time served. The Union seeks to have this increased to \$3.50 an hour retroactive to May 1, 1997.

The Union's witness testified that employees do not want to be placed in the role of acting supervisor at all. That was their position in the last negotiations, but they learned that Management needed the flexibility of having employees upgraded in order to maintain proper operation of the department. Employees still do not like the position and believe that its responsibilities are

worth at least the \$3.50 an hour they are proposing.

The City argues that the rate of \$2.75 an hour was negotiated and that nothing has changed in the three years since the last agreement to justify an increase to \$3.50 an hour. The City points out that these temporary assignments are made on the basis of seniority. Senior officers earn more than starting sergeants. A senior patrol officer serving as an acting supervisor could well be paid more than the regular supervisor he is replacing. The City also maintains that the comparables do not support the Union's position.

The Union makes a strong case regarding the responsibilities of a sergeant. But I agree with the City that the stipend paid to an officer for this extra responsibility must bear some relationship to the rate paid to persons who regularly occupy this job. The Union has not supplied any hard numbers justifying any increase, let alone an increase of 27%. Once again, proposals such as this really belong at the bargaining table. Absent a compelling need for a change, if the Union is unable to secure the increase during negotiations it should not expect the arbitrator to do what it was unable to do. Obviously, however, where a real need is shown and the particulars of the proposal are related to the realities of the work, arbitrators will not reward recalcitrance by simply turning a blind eye. But, the burden is on the party seeking the change. To carry that burden the Union must show more than that an increase would be a nice thing to have. There must be some explanation as to why \$3.50

better reflects the duties and responsibilities than \$2.75.

E. Section 16.4 Field Training Officer Differential

Some police officers are trained to be Field Training Officers. In that capacity they spend a month with a new employee guiding his progress, showing him how things are done in the field and grading the employee's progress on a daily basis. There is no question that there is additional work and responsibilities when serving as an "FTO." The old agreement provided that officers who were trained as FTOs as of May 1, 1991, would be paid an additional \$1.00 an hour for their work in that capacity. Employees certified after May 1, 1991, would not receive the stipend until after they had trained four new officers. The Union seeks to change the rate from \$1.00 to \$2.00 an hour, and to eliminate the two tier structure and make the stipend available to all FTOs.

The parties do not disagree that the work of an FTO is significant and important. While the City does not believe that the work takes as much time as does the Union, it points out the employees are paid overtime for hours worked in excess of 8.2 a day. The thrust of the Union's argument appears to be that there is no good reason to distinguish FTOs with four recruits under their belts from those who are doing it for the first time. If the employee were not qualified to be an FTO, the City would not assign him to do it. The Union also argues that the distinction between employees who have trained four

recruits and those who have not is an arbitrary number. Nothing in the record establishes that it takes four, and not some lesser number to become worthy of the additional stipend.

The City responds that it takes experience with several recruits to become proficient in this work. However, the City argues, whatever the terms are, they are what the parties negotiated. The City also points out that there is no clear practice among the comparable communities. Some pay for this position. Others do not.

The Union's arguments here are not without their merits. More than with acting supervisors, it appears that FTOs have considerable responsibility at personal risk. Why some officers have to wait until they have been through it four times before earning a modest stipend seems difficult to understand. The City offered no factual defense for the number four. But, the City does make the deciding point when it argues that whatever the numbers, this is what the parties negotiated. I agree. However suspect the number four is, it is what the parties, themselves, agreed to. We are not privy in this hearing to the give and take of the bargaining table where the parties worked out their compromise. We do not know what thoughts, what trades, what accommodations went into the number four. Whatever it means, it has validity because it is what the parties agreed to. For the Union to obtain a change from the arbitrator, it must exhaust all bargaining possibilities, show that changing the number would not

upset some other bargain, and demonstrate that the City's position is simply arbitrary. Here, where the parties had only two bargaining sessions before mediation, I am unconvinced that the only remedy is through arbitration.

**F. Section 10.1.(a) Personal Days**

Police officers now have four personal leave days.<sup>6</sup> The City proposes reducing this benefit. It makes the following proposal:

The City shall provide all police officers with the use of three (3) days off per year to conduct personal business. In addition, the City shall provide all police officers the opportunity to earn an additional personal leave day. An additional personal leave day will be provided if an employee works twelve (12) consecutive months and uses six (6) or fewer sick days during the twenty-six pay periods in the twelve (12) month calendar year.

The City supports its proposal with the argument that the number of personal days now received by the police is greater than what is given to other City employees and is among the highest number within the comparability group. The Union presented testimony that it gained two personal days many years ago when it gave up at least two holidays. The City's witness testified that there were a number of issues on the table in the year that the police got the two additional personal days, and he could not agree that the gain of

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<sup>6</sup> The actual language of the expired agreement was, "All covered police officers shall be entitled to thirty-two and eight-tenths (32.8) hours of personal time off exclusive of holidays. Said personal time off shall be taken upon written request to, and approval from, the Chief of Police or his designee."

personal days was the *quid pro quo* for the loss of the holidays.

While the City may be correct that the union has not proven a *quid pro quo*, it is also true that in the year that the holidays disappeared, the additional personal days were added. More significantly, the parties have lived with the four personal days for about 15 years. The City has not shown why it is now having problems with the four personal days that necessitate a change at this time. The City does not urge an ability to pay argument, nor that the four days of personal leave has harmed the public interest. While comparability is always a strong suit, it cannot in isolation justify a change in a benefit the parties voluntarily agreed to many years ago. The proposal must be denied.

G. Section 12.3 Sick Leave Buyback

The current sick leave buyback language provides:

Upon separation from service, other than involuntary termination, police officers shall be compensated for all unused sick leave up to a maximum accrual of 600 hours. The parties agree that officers' current balance of sick leave will stand through the date of ratification of contract and the accrual methods as contained in this agreement shall control all future accrual.

The City proposes limiting this provision to employees hired prior to October 15, 1997. As to new employees hired after that date, it proposes limiting their accrual to a maximum of 450 hours, and then only on the occasion of their retirement. The City's case in support of this change is rests on internal comparability. The City has been able to negotiate with its other bargaining

units, and has implemented for its unrepresented employees, and for police sergeants, limitations on sick leave pay-out. All of these other employees are under a two tier system similar to what the City is now proposing for this bargaining unit. The City also points out that the current provision is not in line with most of the external comparables.

The Union opposes any change. It argues that the City has failed to present any reasonable justification for reducing a benefit that was negotiated by the parties.

The City presents very cogent evidence regarding the disparity between the Police and all other employees of the City. It notes that all employees, even sergeants and other non-represented employees get 600 hours at separation if they were hired prior to April 30, 1986. If they were hired between May 1, 1986 and April 30, 1994 they get only 450 hours upon separation. If they were hired after May 1, 1994, employees are eligible to be paid up to 450 hours, but only on the occasion of retirement. Although the City did not present evidence of bargaining history, it quite apparent that this is a benefit reduction that the City has sought for some time.<sup>7</sup>

My reluctance in granting the City's proposal is substantially based on my

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<sup>7</sup> The City's evidence on external comparables is not as overwhelming. Here, Addison, Downers Grove, Elmhurst, Lombard, Naperville, and Wheaton have generous sick leave pay-outs comparable to St. Charles. Others use very different formulas, but it is possible to reach the benefit provided in St. Charles.

belief that arbitrators should not be substitutes for the bargaining process. In this case the parties had two bargaining sessions followed by mediation. I am not at all convinced that the City has exhausted its ability to negotiate the change it wants. To do so may take a lot more than two sessions, and may require some give and take. But on the record in this case, to award the City its proposal reducing a longstanding benefit would have a very negative impact on the bargaining process. It most surely would encourage the parties to give collective bargaining short shrift and rush to arbitration. Finally, the City has failed to demonstrate that not making this change would be contrary to the standards established in the Act.

#### H. Wages

The parties have a six step salary schedule, with step 1 being the entry rate.<sup>8</sup> Each step represents a year of service. There are also provisions for merit pay differentials for certain officers. In the arbitration award which produced the 1994 - 1997 agreement, the employees were awarded increases of 6% per step for each of the three years. The expiring schedule appears as follows:

<u>Step</u>	<u>YE 4/30/94</u>	<u>FY 94-95</u>	<u>FY 95-96</u>	<u>FY 96-97</u>
P-1	\$13.41	\$14.21	\$15.07	\$15.97
P-2	17.08	18.02	19.19	20.34

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<sup>8</sup> The parties have a provision permitting the Employer to hire a new employee at steps 1, 2 or 3.

P-3	17.96	19.04	20.18	21.39
P-4	18.84	19.97	21.17	22.44
P-5	19.69	20.87	22.12	23.45
P-6	20.46	21.69	22.99	24.37

The City proposes increases of 2.5% for the 1997-98 fiscal year; a 2.5% increase effective May 1, 1998 and a 3% increase effective May 1, 1999. The City does not offer retroactivity, but the parties have agreed that retroactivity shall be treated as a separate issue.

The Union is seeking a 3% increase for FY 97-98; 3.5% for FY 98-99; and 3.5% for FY 99-00. The Union seeks full retroactivity back to May 1, 1997, with the retroactive payments to be made within 30 days of the execution of the Agreement.

Acknowledging that the base rate paid to St. Charles officers ranks high among the comparable communities, it argues that these salaries were achieved through the statutory process and should not be undone. According to the Union, there is no basis to reduce St. Charles among the comparables. It argues that accepting the City's proposal would do exactly that. According to the Union, it is not seeking to gain any ground among the comparables, but seeks only to hold its place. The thrust of the Union's argument, however, rests on internal comparability. It points out that the St. Charles Fire Fighters received a 3.5% increase on May 1, 1997 and will receive 3% on May 1, 1998 and another .5% on November 1, 1998. The Union maintains that the City has increased the wages of police sergeants at the same rate as patrol officers.

Thus, after the arbitration award in 1995, the City unilaterally gave the sergeants additional 2% increases for FY 95-96 and 96-97. In fiscal 97-98, the sergeants have already received a 4% increase. To award the City's proposal for wages, the Union argues, would upset the traditional relationship the Police have with the Fire Fighters and the police sergeants.

The Union acknowledges that its proposal is higher than the CPI increases, but it complains that the CPI numbers used by the City are too broad-based. However, the Union points out, the bargaining history for this unit, as well as for police in the comparable cities, has always been unrelated to the CPI.

The City has offered a considerable amount of evidence regarding the cost of the employment of a police officer, as well as evidence regarding where the City stands among the comparables. The thrust of the City's argument is that St. Charles police are paid more than officers in any of the comparable community. Indeed, the City demonstrates, St. Charles' salary schedule puts the officers above all others at every step, as well as the maximum rate.<sup>9</sup> According to the City, selecting its proposal would have little, if any, effect on

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<sup>9</sup> Actually, Addison's starting rate is higher than that contained on St. Charles' schedule, but the St. Charles schedule permits employees to be hired at above the bottom rate. More significantly, after one year of service Addison officers, as well as those in the other communities, are paid substantially less than St. Charles' officers. While there is some catch-up at the maximum salary level, no officer in the group is paid more than 95% of the maximum earned in St. Charles, and the average is somewhere between 90% and 92%

the standing of its officers among the comparables. To award the employees in this case rate increases above the what the CPI has been for the last three years would be to increase the distance between them and all other officers in the region. The City argues that the wages paid to police are not justified by any of the tests prescribed by the Act.

I have carefully reviewed all of the exhibits and the arguments. I find that the Union's contentions regarding internal comparability are slightly misplaced because the other employees are coming off of three year agreements during which time the Police were awarded three 6% increases. While it is true that these increases appear to be a *quid pro quo* in the prior arbitration award for the change in hours of work, the fact is that the Police got a 19% increase in their base rate over three years under the prior arbitration award. This has placed them measurably above the marketplace standard for police officer salaries and has created a distortion internally. Awarding the Union 2.5%, 2.5% and 3% as opposed to 3%, 3.5% and 3.5%, is not only more aligned with the statutory standards, but seems fundamentally fair.

The arbitrator is not suggesting that the Union's proposal is immodest in a vacuum, or unreasonable *per se*. Rather, this is a situation where there is no economic justification for the higher of the two proposals. While the arbitrator respects the Union's right not to lose ground among the comparables, maintaining one's status at the top of the heap is difficult in a competitive

marketplace. Indeed, being number one is often a level which fluctuates from year to year. In this case, it is pure speculation to assume that in the 1998-99 and 1999-2000 fiscal years the Union will not be at the top. There are simply too many unresolved contracts in the comparability group. Additionally, the supremacy of the current wage scale is so pervasive that if the unit is not number one in some categories, it may well remain so in others.

Additionally, regardless of which measurement is used, the CPI has been very low for a considerable period of time. It is not a matter of whether the "true" cost of living has increased 2% or 3%. It is all a relative measurement, and relatively speaking inflation has been under control for the last three years. This is a consideration when the arbitrator looks at the parties' bargaining history and factors in the effect of three 6% increases during these last three years. In conclusion, there is simply no compelling evidence justifying the larger of the two proposals, and substantial evidence favoring the City's proposal.

#### I. Retroactivity

The Union argues that there is no reason to deny it retroactivity for the wage increases in this case. It argues that it attempted to meet with the City promptly, did nothing to delay negotiations and filed for arbitration in a timely manner so as to begin the process before the commencement of the next fiscal year. The City argues that the Union was slow in submitting proposals, rushed

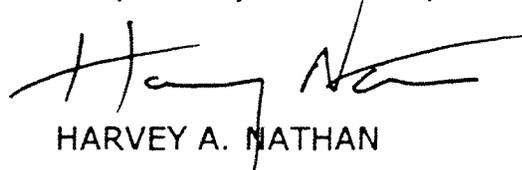
into impasse resolution, and to award retroactivity would penalize the Employer.

Bearing in mind that there are no financial crises facing the City, and that the retroactivity would give the employees only what the City proposed to pay in the first place, I find no justification to deny retroactivity. There should be some slight presumption in favor of retroactivity in order to encourage the bargaining process. Parties should not rush through bargaining because back pay is held hostage. In the meantime the Employer has the benefit of the additional wages it does not have to pay. In this case, the City has been able to enjoy the use of 2.5% of the officers' wages for each pay period for up to 9 months. There is no penalty against the City in granting retroactivity, but there certainly is against the Union in denying it.

**A W A R D**

1. The City's proposal for Training is awarded.
2. The Union's proposal for On Call Time is awarded.
3. The City's proposal for Physical Exams is awarded.
4. The City's proposal for Acting Shift Supervisor is awarded.
5. The City's proposal for Field Training Officer is awarded.
6. The Union's proposal for Personal Days is awarded.
7. The Union's proposal for Sick Leave Buy Back is awarded.
8. The City's proposal for Wages is awarded.
9. The Union's proposal for Retroactivity is awarded.

Respectfully submitted,



HARVEY A. NATHAN

January 31, 1998

