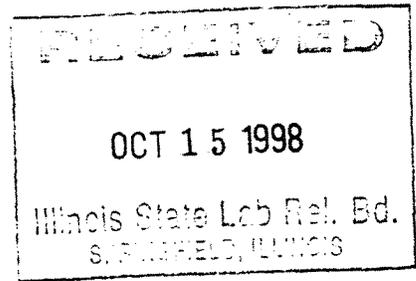


ILRB
#180

BEFORE
ELLIOTT GOLDSTEIN
ARBITRATOR



IN THE MATTER OF THE ARBITRATION

BETWEEN

THE CITY OF BURBANK

AND

THE ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL

ISLRB Case No.:
S-MA-97-56
ARB. Case No.:
98/001

ECON. ISSUES:

1. WAGES
2. VACATION

NON-ECON. ISSUES:

1. GRIEVANCE
DEFINITION
RESIDENCY
DRUG TESTING

CONTESTED ISSUE:

LIGHT DUTY/ADA

OPINION AND AWARD

APPEARANCES

FOR THE CITY:	VICTOR CAINKAR SUSAN M. LOVE
FOR THE UNION:	ROBERT COSTELLO
PLACE OF HEARING:	BURBANK, IL
DATE OF HEARING:	JUNE 29, 1998

I. INTRODUCTION

This proceeding arises pursuant to Section 14 of the Illinois Public Labor Relations Act ("IPLRA" or the "Act")¹ to resolve two economic issues, three non-economic issues and one contested issue between the parties. The undersigned arbitrator was duly appointed to serve as arbitrator to hear and decide the issues presented to him.

A hearing was held on June 29, 1998 at the Burbank Village Hall, located at 6530 West 79th Street, in Burbank, Illinois, commencing at 10:00 am. At the hearing, the parties were afforded full opportunity to present evidence and argument as desired, including an examination and cross-examination of witnesses. No formal transcript of the hearing was made. A tape recording of the hearing was made. Both parties filed post-hearing briefs, the second of which (the City's) was received on August 24, 1998 whereupon the hearing was declared closed. Both parties stipulated at the hearing to the Arbitrator's jurisdiction and authority to hear this case and issue a final and binding decision in this matter.

II. THE ISSUES

As I have indicated above, the parties have agreed that there are a total of six issues in this interest arbitration. 2 are economic, 3 are non-economic and 1 is contested.

¹ 5 ILCS 315/14

Economic Issues

Wages

January 1, 1997

January 1, 1998

January 1, 1999

The parties have also requested that I review both parties' proposal for salary schedules, both of which are revised from the prior contract.

Vacation

Non-Economic Issues

Grievance Procedure²

Residency³

Drug and alcohol testing

Contested Issue

The parties could not agree on whether the sixth issue was economic or non-economic and left that issue for me to decide. That issue is:

Light Duty/ ADA

² The Union objected to the Employer's final offer on the asserted ground that it did concern a mandatory subject of bargaining. At the hearing, the parties agreed to reserve the issue pending resolution of the issue by the Illinois State Labor Relations Board (Un. Br. at 5)

³ The Employer objected to the Union's final offer on the issue of residency on the asserted ground that it did concern a mandatory subject of bargaining. The parties agreed to reserve the issue pending resolution of the issue by the Illinois State Labor Relations Board or other competent body (UN. Br. at 9).

III. THE PARTIES' FINAL OFFERS

The final offers from both parties were as follows:

ISSUE	CITY POSITION	UNION POSITION
Wages	1/1/97 3.0% Increase	1/1/97 3.0% Increase
	1/1/98 3.5% Increase	1/1/98 4.5% Increase
	1/1/99 3.25% Increase	1/1/99 5.0% Increase
	<p>The City proposed a change in the step schedule. Previously, the Contract provided for a starting wage and an increase for the first five years. Then there was no increase until after 10 years. The City's proposal suggests progression over the first five years, an increase in the sixth year and then reaching the maximum in the ninth year.</p>	<p>The Union also proposed a change in the step schedule. Previously, the Contract provided for a starting wage and an annual increase for the first five years. Then there was no increase until after 10 years. The Union's proposal suggests a starting wage and an increase in each of the first five years and then reaching the maximum in the seventh year.</p>

³ The Employer objected to the Union's final offer on the issue of residency on the asserted ground that it did concern a mandatory subject of bargaining. The parties agreed to reserve the issue pending resolution of the issue by the Illinois State Labor Relations Board or other competent body (UN. Br. at 9).

Vacation	<p>No change to existing Contract – Section 11.1 remains as follows:</p> <p>1, but less than 5 years: 10 Days</p> <p>5, but less than 15 years: 15 Days</p> <p>15 or more years: 20 Days</p>	<p>New Vacation Allowances included in Section 11.1</p> <p>1, but less than 5 years: 10 Days</p> <p>5, but less than 10 years: 15 Days</p> <p>10 or more years: 20 Days⁴</p>
Light Duty/ADA	<p>Section 13.9: Revised Provision</p> <p>Due to the Americans with Disabilities Act and the regulations promulgate thereunder, the City may be required to make a reasonable accommodation to the disability of an applicant employee that may be inconsistent with the provisions of this agreement. In such an event, the City shall have the right to make such an accommodation notwithstanding the requirements of this Agreement. The City shall notify the Council thereafter as soon as practicable of such situation on a confidential basis. The City agrees to discuss, but not negotiate with the Council, the impact of its action. Except as required by the ADA, the City is under no obligation to provide light duty. Light duty may include duties not ordinarily performed by the officer, but such duties shall be related to law enforcement.</p>	<p>No Change to current Section 13.9.</p>
Grievance Procedure	<p>No change to current grievance procedure</p>	<p>The Union wants the officer to have a choice between appearing before the Disciplinary</p>

⁴ The Union's proposes that its offer will be effective on or after January 1, 1998.

		Commission and the Grievance Procedure. I shall <i>not</i> rule on this issue as the parties have requested. This matter is being resolved in court, pursuant to the parties' request.
Residency	The City wishes to add a residency requirement in the Contract.	The Union requests that there be no Change to the Residency Article. I shall <i>not</i> rule on this issue as the parties have requested.
Drug and Alcohol Testing	<p>Revised Article 22</p> <p>All employees shall be subject to the Drug and Alcohol Abuse Policy and testing procedures as discussed in Attachment A. This policy will include, in addition to the currently required reasonable suspicion testing, the following testing:</p> <ol style="list-style-type: none"> 1. random drug testing 2. post-incident testing 3. return to work/transfer testing. <p>In addition, the City's proposal removes certain procedural protections which includes the deletion of the requirement that employees be given a written statement of the basis for any order to submit to reasonable suspicion testing and a replacement of the current NIDA (SAMSA) procedures with other procedures.</p>	No change to current Contract Article 22.

IV. RELEVANT STATUTORY SECTIONS

5 ILCS 315/14(g)

On 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 ... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14 (h)

Pursuant to state statute, I must adopt the last offers on economic issues, which more nearly complies with the following factors, as applicable:

- 1) The lawful authority of the City;
- 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 involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services 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 employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;
- 7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
- 8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

V. DISCUSSION

A. Background

The parties to this dispute are the City of Burbank (the "City" or the "Employer") and the Illinois Fraternal Order of Police Labor Council (the "FOP" or the "Union"). The parties' prior Collective Bargaining Agreement (the "Contract") expired on December 31, 1996 (Un. Bk.- Tab 2).

On September 9, 1996, the Union submitted its Formal Notice of Demand to Bargain for a successor agreement to the City and negotiations began in November 1996. On March 4, 1997, the City and the FOP submitted a joint request to the Federal Mediation and Conciliation Service ("FMCS") requesting mediation as an impasse had been reached. Mediation was unsuccessful and on December 1, 1997,

the request for arbitration panel was submitted to the Illinois State Labor Relations Board ("ISLRB" or the "Board"). On January 13, 1998, the Board confirmed the appointment of Elliott H. Goldstein as interest arbitrator and Chairman of the interest arbitration panel. The parties agreed that they would defer to a single arbitrator and waive the three-panel provisions, which appears in the Illinois Public Employee Relations Act (the "Act").⁵ A hearing was held in the above captioned matter before Arbitrator Goldstein on June 29, 1998. The parties were able to reach agreement for a successor Contract on many issues (City Bk. Tab 3),⁶ but 6 issues proceeded to interest arbitration before me. The parties have agreed that I need only resolve 4 of the 6 issues.⁷

B. The Basic Conservative Nature Of Interest Arbitration

Underlying this award, like any interest arbitration award, are some fundamental concepts. At its core, interest arbitration is a conservative mechanism of dispute resolution. Interest arbitration is intended to resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship. The traditional way of conceptualizing interest arbitration is that parties should not be able to

⁵ 5 ILCS 315 *et. seq.*

⁶ Further, the parties have requested that I incorporate the changes already agreed to into this interest arbitration award. I have done so by incorporating such changes as Exhibit B to this award.

⁷ As stated above, at the hearing on June 29, 1998, the parties have requested that I need not resolve the issues of the grievance procedure and residency.

obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise, the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort:

If the process [interest arbitration] is to work, it must yield substantially different results than could be obtained by the parties through bargaining'. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, *the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor it is his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history.* The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. (Emphasis added) *Will County Board and Sheriff of Will County* (Nathan, 1988) quoting *Arizona Public Service* 63 LA 1189, 1196 (Platt 1974); accord; *City of Aurora* S-MA-95-44 at pp.18-19 (Kohn, 1995).

Under this theory, there should not be any substantial "breakthroughs" in the interest arbitration process. If the arbitrator awards either party a wage package which is *significantly* superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest

arbitration route and this defeats the purpose *Village of Bartlett FMCS* Case No. 90-0389 (Kossoff, 1990).

Pursuant to the Act, on economic issues, the arbitrator must accept *either* management's or the Union's last best offer on economic issues. The reason for this last-best-offer scheme in Illinois is well known. If the parties know that the Arbitrator cannot split the difference on wages (or any other economic issue), each party will be forced to come as close as possible to the other party, for fear of losing the issue in dispute. This means that the parties must come to the interest arbitration with realistic proposals in arbitration or run the almost certain risk of losing. Because the parties are forced to get realistic, they necessarily come close together on final offers, which leads to the following result: most wage negotiations are settled across the table, rather than in interest arbitration, because as the parties get closer and closer together (to protect themselves in interest arbitration) the parties see the wisdom of settling instead of arbitrating. In other words, as I stated in *Kendall County*, Cases No.: S-MA-92-216, S-MA-92-161, "Interest arbitration is not supposed to revolutionize the parties' collective bargaining relationship; the most dramatic changes are best accomplished through face-to-face negotiation".

However, it is also important to note that while it is difficult to obtain a change in interest arbitration, it is not impossible. Otherwise, there would be no point to interest arbitration at all. In *Will County*,

Arbitrator Harvey Nathan set forth an excellent test for the meeting the burden on a party attempting to obtain a new or expanded benefit in interest arbitration. In order to obtain a change in interest arbitration, the party seeking the change, must at a minimum, prove:

1. That the old system or procedure has not worked as anticipated when originally agreed to;
2. That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
3. That the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems.

[I]t is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. *Will County Board and Sheriff of Will County and AFSCME, Local 2961 S-MA-88-9* (Nathan, 1988) pp. 52-53.

C. The Comparables

The arbitrator recognizes that, as in any interest arbitration case, external comparability plays a very crucial role. In fact, many commentators have indicated that comparability is probably the most critical factor in the usual interest arbitration case. Accurate

comparables are the traditional yardstick of looking at what other employees performing the same or similar work are obtaining in wages and benefits and in turn is of crucial significance in determining the reasonableness of each parties' respective final offers. Thus, the issue of external comparables rises to possibly the highest level of importance in interest arbitration.

In this case, the parties have agreed on all the following comparables:

- Alsip
- Blue Island
- Bridgeview
- Evergreen Park
- Hickory Hills
- Palos Hills
- Summit
- Worth

The relevant data for these agreed upon comparables is as follows:⁸

City	Popula- tion 1990 Census	Distance from Burbank- miles	1996 EAV \$	1997 Sales Tax \$	Household Income \$ 1990 Census
Alsip	18,227	3.00	454,323,687	2,907,435	38,087
Blue Island	21,203	3.35	153,000,059	1,595,409	31,736
Bridge-	14,402	0.00	329,512,440	4,517,125	36,433

⁸ The data for this chart was gathered from City Ex. 11.

view					
Ever Green Park	20,874	1.20	255,219,740	3,141,110	42,984
Hickory Hills	13,021	.75	177,491,457	1,122,537	46,637
Palos Hills	17,803	2.00	228,371,626	530,525	47,307
Summit	9,971	1.84	93,607,549	661,921	30,314
Worth	11,208	2.20	112,821,535	580,542	38,898

This data contrasts with the information for City of Burbank :⁹

City	Popul- ation 1990 Census	Distance from Burbank	1996 EAV \$	1997 Sales Tax \$	House- hold Income \$ 1990 Census
Burbank	27, 600	-----	261,181,282	2,438,390	40,060

Obviously, because there is an agreement on the above-mentioned comparables, what is at issue here are the comparables on which the parties disagree. They are:

City's Proposed Comparable	Union's Proposed Comparable
Justice	Bedford Park
	Oak Lawn
	Palos Heights

The relevant data for the City proposed comparable is:

⁹ The issue of the selection of the appropriate comparables is dealt with below in the section on wages.

City	Popula- tion 1990 Census	Distance from Burbank	1996 EAV \$	1997 Sales Tax \$	House- hold Income \$ 1990 Census
Justice	11, 137	.65 miles	99,229,296	229,671	38,087

Finally, this contrasts with the information from the Union's proposed

Comparables:

City	Popula- tion 1990 Census	Distance from Burbank	1996 EAV \$	1997 Sales Tax \$	House- hold Income \$ 1990 Census
Bedford Park	566	0 (Contiguous)	384,158,475	2,848,211	44,821
Oak Lawn	56,162	0 (Contiguous)	764, 694, 841	8,968,928	43, 757
Palos Heights	11, 478	3.69 miles	212,326, 667	1, 140, 398	79,703

I will deal with the issue of the selection of comparables below in the sections dealing with wages.

D. The Economic Issues

As indicated above, there are 2 economic issues, 1 non-economic issues and 1 contested issue that I must deal with:

ISSUE	ECONOMIC	NON- ECONOMIC	CONTESTED
WAGES	X		
VACATIONS	X		
RESIDENCY		X	
GRIEVANCE PROCEDURE		X¹⁰	
DRUG TESTING		X	
LIGHT DUTY /ADA			X

1. Wages

As stated above, the final offers on wages by both parties do not differ dramatically. With regard to the across-the-board increases effective on January 1, 1997, both parties are in complete agreement to a 3% across the board wage increase.

a. the offers

The parties' wage offers are as follows:

PAY INCREASE EFFECTIVE JANUARY 1, 1998¹¹

YEAR	UNION'S PROPOSED WAGE - 4.5% INCREASE	CITY'S PROPOSED WAGE - 3.5% INCREASE
START	\$28,200.37	* * * *
1	\$35,937.17	\$27,931.00

¹⁰ As indicated above, at the hearing, the parties requested that I not deal with the issues of the grievance procedure and residency. Thus, those issues have been bolded out in the chart.

¹¹ This chart and the 1999 wage chart reflect the parties wage proposals as well as the proposals for modifications of the steps in the salary schedule.

2	\$38,505.34	\$35,593.00
3	\$40,815.19	\$38,137.00
4	\$42,356.53	\$40,425.00
5	\$43,639.53	\$41,951.00
6-8	*****	\$43,222.00
7	\$45,402.60	*****
9	*****	\$43,222.00
10	*****	\$44,968.00
11	*****	\$44,968.00

PAY INCREASE EFFECTIVE JANUARY 1, 1999

YEAR	UNION'S PROPOSED WAGE - 5.0% INCREASE	CITY'S PROPOSED WAGE - 3.25% INCREASE
START	\$29,610.39	*****
1	\$37,734.03	\$28,838.00
2	\$40,430.61	\$36,750.00
3	\$42,855.95	\$39,376.00
4	\$44,474.35	\$41,738.00
5	\$45,821.51	\$43,315.00
6-8	*****	\$44,627.00
7	\$47,672.73	*****
9	*****	\$46,430.00
10	*****	\$46,430.00
11	*****	\$46,430.00

After much consideration, I have decided to accept the City's offer of 9.75% over three years. In this case, the crux of the parties'

dispute in this matter involves the applicability and use of the comparison of the wage scales (“comparability data”) required as a statutory factor under the Act as quoted above. As I have noted in other cases (*City of Dekalb*, ISLRB No. S-MA-86-26, (Goldstein, 1988) ; *Village of Skokie*, ISLRB No. S-MA-89-123, (Goldstein, 1990)), the parties’ choice of comparables is critical to a proper assessment of the record in any interest arbitration case and a neutral examination of the basis for the selection by each and their use of comparability data is absolutely mandatory.

As indicated above, thus far, the parties have agreed that the following cities are comparables to Burbank:

- Alsip
- Blue Island
- Bridgeview
- Evergreen Park
- Hickory Hills
- Palos Hills
- Summit
- Worth

Thus, now I will review the areas where the parties differ. The relevant data for the City proposed comparable is:

City	Popula-	Distance	1996 EAV \$	1997 Sales	House
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	tion 1990 Census	from Burbank		Tax \$	hold Income \$ 1990 Census
Justice	11, 137	.6 5 miles	99,229,296	229,671	38,087

This data contrasts with the information for City of Burbank:

City	Popula- tion 1990 Census	Distance from Burbank	1996 EAV \$	1997 Sales Tax \$	Household Income \$ 1990 Census
Burbank	27, 600	-----	261,181,282	2,438,390	40,060

Finally, this contrasts with the information from the Union's proposed Comparables:

City	Popula- tion	Distance from Burbank	1996 EAV \$	1997 Sales Tax \$	House Hold Income \$
Bedford Park	566	0 (Contiguous)	384,158,475	2,848,211	44,821
Oak Lawn	56,162	0 (Contiguous)	764, 694, 841	8,968,928	43, 757
Palos Heights	11, 478	3.69 miles	212,326, 667	1, 140, 398	79,703

After reviewing the comparables, I accept the City's comparables for purposes of this interest arbitration. There are a number of reasons for this decision. Simply put, the City's comparables had more in common with the already agreed upon set of comparables. Conversely,

while some of the Union's comparables were similar, they did not measure up as completely as do the City's comparables.

There are a number of factors that interest arbitrators review in determining which comparables to accept. Generally speaking, population, size of the bargaining unit, geographic proximity, property values or EAV are important *Bloomington Fire Protection District and IAFF S-MA-92-331* at p. 11-12 (Nathan, 1994).

Geographical proximity is a well-established measure of comparability in interest arbitration, as are population, assessed value and sales tax. *Village of Arlington Heights and IAFF, S-MA-88-89* at p. 18 (Briggs, 1991)

As indicated above, I have accepted the City's comparables and selected Justice as a comparable, but have rejected the Union's proposed comparables of Bedford Park, Oak Lawn and Palos Heights. As the City points out, although Justice may not in and of itself compare favorably to Burbank, it is almost identical to the Worth and Summit (which have been accepted by the Union) and is considered comparable. The Union's proposed comparables do not share common characteristics with Burbank. Bedford Park has a population of only 566 as compared with Burbank's population of 27,600. Further, the EAV of Bedford Park is substantially greater than Burbank (\$384,158,475 vs. \$261,181,282).

The other Union proposed comparable, Oak Lawn is not comparable to Burbank, I find. Its population of 56,182 is approximately double that of Burbank. Further, its EAV (\$764,694,841) is almost three times that of Burbank (\$261,181,282). Finally, the amount of sales tax revenue in Oak Lawn is \$8,968,928, more than three and one-half times that of Burbank. Finally, Oak

Lawn's Police Department is more than double that of Burbank. It appears that the only reason that the Union selected Bedford Park and Oak Lawn, as comparables is their proximity to Burbank. Both communities border Burbank. While proximity is certainly a factor, it does not override common sense. I hold that Burbank and Oak Lawn are not comparable communities.

The most problematic of the proposed Union comparables is Palos Heights. I find that some of the factors point favorably in the selection of Palos Heights as a comparable community. However, I agree with the City that Palos Heights appears to be a substantially wealthier community than Burbank. According to the 1990 census, Palos Heights has an average household income which is double that of Burbank. Further, the per capita EAV of Palos Heights is again almost double that of Burbank. Thus, I hold that while the City's proposed comparable of Justice is acceptable, the Union's proposed comparables of Bedford Park, Oak Lawn and Palos Heights are not acceptable.

Based on this evidence, I select the City's comparables. Based on the City's comparables, I now must select which wage package I should accept.

b. the comparables

Based on external comparability, the City's package is more reasonable. Below I have listed the comparables with the 1998 and 1999 wage rates as well as the City and Union offers (UX 8):

January 1, 1998 WAGES¹²

JURIS- DICTION	STARTING WAGE	7 YEARS	10 YEARS	MAX RATE
ALSIP	30,737.91	43,728.09	44,555.49	44,555.49
SUMMIT	28,254.00	42,258.00	42,258.00	44,345.00
HICKORY HILLS	29,201.00	46,420.00	46,420.00	46,420.00
EVER- GREEN PARK	31,785.00	47,806.00	47,806.00	48,998.00
PALOS HILLS	----	----	----	----
WORTH	28,152.31	43,682.17	43,682.17	44,250.00
BRIDGE- VIEW	29,418.81	39,686.47	39,686.47	39,686.47
BLUE ISLAND	27,500.00	41,550.00	41,550.00	41,550.00
JUSTICE	26,500.00	38,000.00	38,000.00	48,000.00
AVERAGE	28,943.62	42,891.34	42,994.76	44,725.67
UNION OFFER	28,200.37 (743.25)	45,402.60 +2511.26	45,402.60 +2407.84	45,402.60 +676.93

¹² All of the data of the comparative wage rates and steps in the wage schedule were compiled from the collective bargaining agreements which the parties provided to me in their exhibits.

MANAGEMENT OFFER	27,931.00 (1012.62)	43,222.00 +330.66	44,968.00 +1973.24	44,968.00 +242.33
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January 1, 1999 WAGES

JURIS- DICTION	STARTING WAGE	7 YEARS	10 YEARS	MAX RATE
ALSIP	31,958.25	45,465.63	46,334.40	46,334.40
SUMMIT	----	----	----	----
HICKORY HILLS	----	----	---	---
EVER- GREEN PARK	-----	-----	----	----
PALOS HILLS	----	----	----	----
WORTH	28,996.88	44,992.64	44,992.64	45,577.55
BRIDGE- VIEW	30,448.47	41,075.50	41,075.50	41,075.50
BLUE ISLAND	28,000.00	44,000.00	44,000.00	44,000.00
JUSTICE	27,540.00	41,120.00	41,120.00	50,000.00
AVERAGE	29,388.72	43,330.75	43,504.50	45,397.49
UNION OFFER	29,610.39 +221.67	47,672.73 +4341.98	47,672.73 +4168.23	47,672.73 +2275.24
MANAGEMENT OFFER	28,838.00 (550.72)	44,627.00 +1296.25	46,430.00 +2925.50	46,430.00 1032.51

NUMBER OF STEPS AND YEARS TO REACH MAXIMUM SALARY

JURISDICTION	NUMBER OF STEPS	YEARS TO REACH MAXIMUM
ALSIP	9	8
SUMMIT	9	18
HICKORY HILLS	6	6
EVERGREEN PARK	9	21
PALOS HILLS	----	----
WORTH	9	20
BRIDGEVIEW	6	6
BLUE ISLAND	7	7
JUSTICE	8	7
AVERAGE	7.875	11.625
UNION OFFER	7 (.875)	7 (4.625)
MANAGEMENT OFER	7 (.875)	9 (2.625)

Overall, the City's wage offer is significantly more in compliance with the average of the comparables. The Union's 1998 wage offer was \$4852.78 more than the average comparable while Management's 1998 wage offer was \$1533.61 more than the average comparable. For 1999, the Union's offer was \$11,007.12 while Management's wage offer was \$4703.54 more than the average comparable. Further, the Union and Management offers both were for 7 steps for progression to maximum wage, which is consistent with the average of the comparables. However, the City's offer was to reach the maximum in 9 years, which is only 2.65 years less than the average, while the Union proposed 7 years, which is the much greater benefit at 4.625 years less than the average.

More important, under the City's proposed wage level, the Burbank police do not lose any ground in their relative ranking and wage level vis-à-vis the comparables. A review of the wage data shows that the Department retains its relative position if the City wage proposal is accepted.

WAGE RANKINGS 1996-1999¹³

Jurisdiction	1996 Rankings	1997 Rankings	1998 Rankings	1999 Rankings
Alsip	2	2	2	1
Summit	7	7	5	
Hickory Hills	4	4	4	
Evergreen Park	1	1	1	----
Palos Hills	3	3	----	----
Worth	5	5	7	4
Bridgeview			3	2
Blue Island	6	6	9	6
Justice		9	10	7
Union Offer	8	8	6	3
City Offer	8	8	8	5

¹³ This data is taken from the contracts provided by the parties as well as the evidence contained in Union Book – Tab 8. This is based upon the starting wage as of January 1 of each year. Note that there is no proposal for 1996 as this was contained in the previous contract. In addition, in 1997, the parties have agreed to a 3% increase. There is no dispute as to 1996 and 1997 wages.

of Skokie and IAFF, S-MA-89-123 (Goldstein, 1990), Village of Lombard and Local 89, P.B. P.A. S-MA-89-153 (Fletcher, 1990).

Generally, there are two arbitral approaches to reviewing the CPI. One is to look prospectively and one is to look retroactively. The prospective approach is built on various future projections of the CPI made by various agencies while the retrospective approach is based upon objective, already established data. One approach to applying the cost-of-living criterion is to judge the parties' final offers on the basis of the increase in the CPI during the last year of the parties' most recent collective bargaining agreement.

One appropriate, and the most common way to look at CPI data in terms of negotiations and interest arbitration is to use the year(s) since the parties last negotiated over wages. These figures are geared to present a picture of what happened since the last pay raise for which the parties bargaining and agreed. I believe [that these figures] [are] more useful than figures which purport to show increase or projected increases in CPI for the period of time to be covered by the award.
City of Skokie and IAFF S-MA-89-123(Goldstein, 1990)

Once again reaffirming my belief that the retrospective approach is the most appropriate in analyzing CPI data. It is based upon objective data, not projections of future increases, I note. The rate of increase for all Urban Consumers (the "CPI-U")

for the most recent years for which the data is established, the years 1996, 1997 and thus far in 1998 have been:¹⁴

YEAR	CPI-U ANNUAL INCREASE
1996	2.94%
1997	2.33%
1998 (JAN.-APRIL)	1.45%

Thus, the increase in inflation from January 1996 through April 1998 has been a total of 6.72%. The offer from the City for the three year period (albeit not the same three years) is 9.75%, while the Union's offer is 12.5%.¹⁵ Thus, the City's final offer on wages is much closer to the actual increase in the CPI-U than the Union's offer. Acceptance of the City's offer still yields the members of the bargaining unit an increase above the rate of inflation, based on the most recent data regarding the rate of inflation.

d. total compensation

In addition to the above-mentioned factors, the total compensation package also favors the City's offer. The Act requires that in determining any award, I must take into account the "overall compensation presently received by employees" 5 ILCS 315/14(h)(6).

¹⁴ City Exhibit 2

¹⁵ The 9.75% and the 12.5% are based on simple, not compound interest.

Here, a review of the total compensation package offered by Burbank as well as its comparables shows that based on the past history as well as the City's proposal, Burbank compares in the norm on all of the following categories:

- Vacations
- Holidays
- Personal Days
- Vacation
- Insurance
- Uniform Allowance
- Education

The rankings for these some of these categories are as follows:¹⁶

Jurisdiction	Rank in Vacation Days	Rank in Holiday Days	Rank in insurance provided
Alsip	4	7	1
Blue Island	2	1	1
Bridgeview	2	6	2
Burbank	4	3	1
Evergreen	2	4	1

¹⁶ The rankings are based upon the data supplied in City Ex. 7. Further, the rankings signify 1 as the best comparable and the highest number as the least favorable. In addition, where two communities had the same level of benefits, they received the same ranking.

Park			
Hickory Hills	2	6	1
Justice	3	4	2
Palos Hills	4	2	1
Summit	1	4	1
Worth	4	5	1

Thus, if the City's proposal for wages is adopted, the total compensation paid to patrol officers in Burbank will remain comparable to the other communities involved. There is no significant discrepancy between Burbank and its comparables. There is no need to raise wages to the extent suggested by the Union in order to raise the total compensation package to meet any other standards. Thus, when total compensation is reviewed, the balance weighs again in favor of the City's proposal.

e. The interest of the public.

Finally, Section 14(h) of the Act provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in interest arbitration proceedings. 5ILCS 315/14(h)(3). First, in this matter, there is no evidence that the City lacks the ability to pay either offer. Thus, ability to

pay is not an issue. However, having observed that the City has the ability to pay an increase does not then necessarily mean that the City ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure. *City of Gresham and IAFF Local 1062* (Clark, 1984).

As stated above, the City does not make an inability to pay argument. Further, the Union has not made a claim of increased productivity or changed circumstances, which somehow supports increases larger than the City proposal. In order to justify the larger expenditure by the public, there must be some significant additional value to the City of Burbank. However, I do not find that there is such added value. There is no independent justification for a 12.5% increase where a 9.75% increase will fulfill the goals. Like any political body which receives its income from the public, the City is entitled to get the most "bang" for its "taxpayer buck". The City has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends. Thus, on overall balance, the interests of the public favor the City's proposal.

f. Conclusion

Based on all these considerations, I hold that the City's wage offer is the most reasonable and I adopt it as the pay increases for January 1, 1997 (3.0%), January 1, 1998 (3.5%) and January 1, 1999 (3.25%).

2. Vacation

The City's proposal regarding Section 11.1 is that it should remain the same without modification. Conversely, the Union has proposed that the vacation schedule be compressed by 5 years.

YEARS OF SERVICE	CITY PROPOSAL	UNION PROPOSAL
1, but less than 5	10 days	10 days
5, but less than 15	15 days	----
5, but less than 10	----	15 days
10 or more		20 days
15 or more	20 days	

Basically, the Union has proposed a compression of the existing vacation schedule in which employees who previously reached the maximum vacation (20 days) after 15 days will reach that same number in 10 years. This is a major benefit which the Union seeks. It would

provide officers with additional vacation time much earlier than currently called for. Overall, I find little justification to rule in the Union's favor.

First, the Union has offered no *quid pro quo* for this proposal. There is no evidence of any real concession which the Union has offered Management for this benefit. As stated above, this proposal would provide a significant economic benefit to Burbank employees. This would constitute a "major breakthrough" that the Union ordinarily would obtain only through bargaining. There is no independent evidence that supports compressing the vacation schedule by 5 years. There has been no evidence presented that the current schedule is somehow inadequate to serve the needs of the officers. Further, the comparables do not present a case for compression. Burbank is within the norm for vacations as seen from the comparison below.

COMPARABLE JURISDICTIONS' VACATION SCHEDULE

JURISDICTION	NUMBER OF STEPS	YEARS TO REACH MAXIMUM	MAXIMUM NUMBER OF VACATION DAYS
ALSIP	6	20	23
SUMMIT	5	20	25
HICKORY HILLS	3	10	20
EVERGREEN PARK	6	25	25
PALOS HILLS	4	12	20

WORTH	4	14	20
BRIDGEVIEW	6	25	30
BLUE ISLAND	4	15	25
JUSTICE	3	15	25
AVERAGE	4.55	17.33	23.667
UNION OFFER	3(1.55)	10 (7.33)	20 (3.667)
MANAGEMENT OFER	3 (1.55)	15 (2.33)	20 (3.667)

The City's proposal is well within the norm of the comparables and need not be further modified to keep pace. Based on all of this information, I find that the City's proposal is adequate and there is no reason to change the *status quo* with regard to the maximum accrual of vacation days.

3. Drug and Alcohol Testing

As indicated above, the Union has proposed that there be no change in the Contract which does not provide for any Drug and Alcohol Testing beyond testing based on reasonable suspicion. Conversely, Management has proposed an extensive Drug and Alcohol Testing provision. In addition to reasonable suspicion, the proposal calls for the following additional testing:

1. Random Testing

2. Post incident testing
3. Return to work/transfer testing¹⁷

In addition, the City's proposal removes certain procedural safeguards which are included in the current Contract. Those safeguards include the requirement that an officer receive a written statement of the basis for the reasonable suspicion and the right to a Union Representative for a period prior to the test. The City has proposed an extensive Drug and Alcohol Testing system. While I agree with the City that the City would probably generally certainly benefit from a more extensive Drug and Alcohol Testing provision. I believe that the Drug and Alcohol Testing system that is presented is a very significant change in the *status quo*. As discussed above, this proposal by the City is a major "breakthrough" which is not ordinarily obtained through interest arbitration. As stated above, any change to the *status quo*, which is attempted to be obtained in an interest arbitration, must be reviewed very seriously before adopting. Here, there is very little, if any, evidence as to why I should adopt this proposal. First, there is no evidence of any *quid pro quo* which was offered by the Union for the City's proposal.

Beyond the concepts of *quid pro quo*, and "no breakthroughs" in interest arbitration, external comparability further supports the City's

position that it is not necessary to have a more extensive Drug and Alcohol Testing provision. Further, a review of the comparables indicates that only one has a more extensive testing program than Burbank currently has.

JURISDICTION	DRUG TESTING POLICY?	REASONABLE SUSPICION ONLY?	MORE EXTENSIVE?
ALSIP	YES	X	
BRIDGEVIEW	NO		
SUMMIT	YES	X	
HICKORY HILLS	NO		
EVERGEREEN PARK	NO		
PALOS HILLS	NO		
WORTH	YES	X	
BLUE ISLAND	YES		X
JUSTICE	NO		

Thus, only one of the nine comparables has an extensive Drug and Alcohol Testing policy which provides for *anything* more than mere reasonable suspicion testing. I understand the City's position that the welfare and interests of the public certainly does support a Drug and Alcohol Testing provision, there simply has not been enough evidence presented to justify such an extensive modification to the Contract. I

¹⁷ Copy of the Text of the City's Proposed Drug Testing Policy attached as Exhibit A.

have not seen any evidence the to justify additional provision, Such evidence would include:

- There is any evidence of drug use by Burbank Police officers;
- The Department is experiencing any drug use by its officers; or
- The Department is experiencing any increased absences by its officers for unexplained reasons which could be explained by Drug Use;

Thus, I find that there is no evidence to justify granting the City's proposal. In fact, the City indicates in its brief that while its proposal would generally be considered to be a "good thing", there is no real evidence to justify its proposal:

The City is only trying to implement reasonable policies, which are commonplace among other police Departments. In fact, the policy proposed by the city is substantially similar to that governing the City of Chicago Police Department and Cook County Sheriff's Department. The City is not reinventing the wheel, it is only asking that its police officers be subject to drug and alcohol testing like millions of other employees in this country. The City is not asking it police employees to undergo any drug testing not required under the Federal Motor Carrier Safety Regulations for truck drivers.

* * * *

In today's society, there must be a zero-tolerance policy toward drug and alcohol abuse, especially when the employees involved are charged with enforcing state laws on the illegal use and possession of drugs and alcohol. Police employees can risk their lives and the lives of their fellow officers, or the public, through the use of deadly force. It is of vital interest to the City that a complete drug and alcohol testing procedure be implemented in order to protect the public health, safety and welfare.

The basic drug testing policy for police officers is different from other private or public sector employees. Once a potential positive drug result has occurred speed is necessary because police carry weapons, have the right to arrest, and may use lethal force. *The City is simply trying to implement a policy which mirrors that of the City of Chicago and the Cook County Sheriff's Department* so that there can be no doubt as to the performance of its police officers. (emphasis added) City Brief at 18-19.

While the above mentioned statements are to some extent true, that is not a justification in interest arbitration to award such a major concession without evidence justifying it, a *quid pro quo* or other evidence of such need. As stated above, the City has the burden to prove that this proposal is justified. It has not met its burden. The City of Chicago Police Department and Cook County Sheriff's Department are *not* comparable communities in this case. Thus, in light of all of the above-mentioned evidence, I have no choice but to rule in favor of the Union's proposal. I hold that there shall be change in the current Contract regarding Drug and Alcohol Testing.

4. Light Duty/ADA

I next address the issue of the City's proposal on Light Duty/ADA.

a. the proposals

The City has proposed a major change in the language while the Union seeks to maintain the *status quo*. These proposals are duplicated below:

Revised Section 13.9: City Proposal	Current Section 13.9 - Union Proposal
<p>Due to the Americans with Disabilities Act and the regulations promulgated thereunder, the City may be required to make a reasonable accommodation to the disability of an applicant employee that may be inconsistent with the provisions of this agreement. In such an event, the City shall have the right to make such an accommodation notwithstanding the requirements of this Agreement. The City shall notify the Council thereafter as soon as practicable of such situation on a confidential basis. The City agrees to discuss, but not negotiate with the Council, the impact of its action. Except as required by the ADA, the City is under no obligation to provide light duty. Light duty may include duties not ordinarily performed by the officer, but such duties shall be related to law enforcement.</p>	<p>The City shall provide light-duty employment for any employee injured on duty that can perform some work but is not capable of performing all of the duties of his job. The light-duty employment may not necessarily include duties ordinarily performed by the employee as a police officer, but shall be related to law enforcement. The City is under no obligation to provide light-duty for any other type of disability or leave, but may make an effort to provide light-duty assignments in such cases with the approval of the Chief of Police.</p>

b. economic or non-economic issue

The first issue I must address is what type of issue this is; economic or non-economic. The parties could not agree so I must make that determination. Under the Act, if it is an economic issue, I must accept either the City's final offer or the Union's final offer. However, if it is a non-economic issue, I can accept either parties proposal or I am free to fashion a different remedy. A review of the proposals indicates that this is really not an economic issue, though it, like all contract provisions, has some economic ramifications. However, I find that the overall tenor of the proposal is non-economic in nature and thus, I hold that it is non-economic and I may accept either proposal in *toto*, accept neither proposal, or fashion my own remedy.

c. the decision

The Union correctly argues that because the City seeks a change in the *status quo* with respect to Light duty/ADA, the burden rests with the City to justify the change it seeks. However, while I have indicated above that change in an interest arbitration context is not lightly granted, it certainly is not impossible, as explained earlier. In the case of interest arbitration, when a party proposes a change, especially a major one, it bears the burden of providing evidence and arguments that support its contention, I further note. Once it meets that burden, the burden then shifts to the opposing party to prove that the reasons presented by the proponent are not valid. If the opposing party cannot justify its position, then the proponent may "win".

... There are no perfect collective bargaining agreements but the ones that the parties themselves carve out are going to be a lot closer to what is best for them than those imposed by an outsider.

Obviously, there are exceptions. Were it otherwise, particularly under IPELRA where strikes by peace officers are prohibited, all of the bargaining power would be with the party that says no. Certainly, there are occasions when changes are justified and the party resisting change become obstinate or recalcitrant for no good equitable or operational reasons. In these situations interest arbitration is designed to remedy the impasse by providing a forum for the advocates of change. But it is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. *Will County Board and Sheriff of Will County and AFSCME Local 2961 (S-MA-88-9, Nathan 1988)* at p. 53.

Here, the City has proposed a substantial change to what I view as a current significant employee benefit. That benefit is that the City is required, by Contract, to provide light duty employment for *any* employee injured on duty who can perform some work but is not capable of performing all of the duties of his job. The Union wants to retain this benefit. Conversely, the current language does not require that light duty will be awarded to any other type of disability. This is the concern which the City raises. It claims that this portion of the provision is in violation of the ADA as it cannot deny one group light duty if it is granted to another group. While I will not make a legal ruling on what the ADA does or does not provided, it is apparent that the crux of the City's argument in this matter is that because the ADA requires that light duty must be applied uniformly to all employees, not merely those who were injured on duty, that it wishes to take away the benefit of light duty for on-the-job injured employees, using the ADA as its justification.

However, I also note that another aspect of the City's proposal deals with the rights of employees who apply for some reasonable accommodation under the ADA. That is how I read the first portion of the City's proposal. I understand that there is a potential for harm to the seniority rights of those already employed and senior to such employee at the time of such a requested accommodation. It sometimes happens under "ADA law" that protections provided by traditional labor contracts, such as seniority rights, that may determine or play a role in determining an employee's eligibility for particular jobs assignments, schedules, transfers or promotions are subordinate to ADA provisions requiring reasonable accommodation.

There is still a question whether such employee rights under the contract are "trumped" by the requirements of reasonable accommodation to applicants under that Act, I note. This is so despite the provisions of the federal regulations implementing the ADA statute. See, e.g. City of Dearborn Hts., Mich., 101 LA 809, 811 (Kramer, 1993) (ADA promotes individualized and disparate treatment of disabled individuals "arguably in abrogation of the terms of the collective agreement.") Absent a provision such as that first portion of the City's ADA proposal, from the Employer's perspective, implementing a reasonable accommodation may violate the collective agreement, but not implementing the reasonable accommodation may result in an ADA action, with its attendant compensatory and punitive damages. Hence, the demand to include in the contract the primacy of the ADA's requirements, as I understand the City's arguments.

Thus, in order to resolve the problem of the "ADA" proposal, I am in the position of being able to use "conventional" interest arbitration for the establishing of

a non-economic term of the contract. I am not obligated to choose "either-or" as to the last and best offer of the parties. I will not leave the current provision as it is because I am concerned that it will force the City to violate the law. That is not fair and should not be the result in an interest arbitration, I find. Conversely, I will not remove a benefit which the Union has come to enjoy and for which there is no valid reason to remove. Thus, I will fashion a new Section 13.9 which continues the benefit, but does not place the City in a position to be in violation of the law, as per City of Dearborn Hts., supra.

For a discussion of the issue of whether the ADA is in practical effect incorporated in the subject labor contract, see, e.g., Centerville Clinics, 85 LA 1059 (Talarico, 1995) (Arbitrator ruled that all of Title VII, including a "reasonable accommodation/undue hardship" formula for religious discrimination, together with interpretive case authorities, was incorporated as an inherent part of the just cause provision. See also Arkansas Power & Light Co., 89 LA 1028 (Woolf, 1987); General Mills, 99 LA 143 (Stallworth, 1992); American Sterilizer Co., 104 LA 921 (Dissen, 1995) and Alcoa Building Products, 104 LA 365 (Cerone, 1995).

Having determined that the City has established a need for the clarification provided in the first part of its proposal as regards potential conflicts between ADA and the labor contract as to the ability to grant applicants for police jobs "reasonable" accommodation, I grant that portion of its offer, as will be set out below.

However, as to the elimination of providing "light duty" under the labor contract, I note that other factors, including the rights of employees under workers' compensation laws, may have a bearing as direct as the ADA here. Furthermore, to

take away the contractual right to such light duty eliminates a specific contract benefit clearly not precluded by law.

However, I am also cognizant and sympathetic with the City's concern here. It does not want to be placed in a position of having to automatically provide light (limited) duty for all its employees, including those with non-occupational illness or injuries. The City's basic argument is that it does not want to be violating the law. In that respect, I understand its concerns. For the following reasons the City appears to have a more compelling argument for its proposal. First, there is no actual withdrawal of the benefit of light duty, as mandated by workers' compensation laws, I note. All that is removed is the mandatory requirement, under the contract, for light duty for employees who have suffered on-the-job injuries or illness.

Second, the contract expressly would, under Management's proposal, permit, not bar, the consideration of light duty in each individual case. By standing pat, as I understand what the Union suggests, the bargaining unit employees would likely get, under the reasonably anticipated ADA regulations' application, the "extra" benefit of all injured or ill employees, including those whose illness/injury was not work-related, to being placed on light duty. Hence, the Employer has established "detriment to it and advantage to the Union" if the current provision remains the same.

Due to the Americans With Disabilities Act and the regulations promulgated thereunder, the City may be required to make a reasonable accommodation to the disability of an applicant employee that may be inconsistent with the provisions of the current Agreement, I note. In such an event, the City would have the requirement to

make an accommodation, notwithstanding the requirements of this Agreement. It is significant to me that the shortcomings of the provision covering the ADA do not appear to be irremediable, and the intent to maintain the status quo, but also live within the law, expressed by the City's proposal, finally causes me to rule in its favor.

AWARD¹⁸

In summary, I hold the following regarding each of the contested issues in this matter:

Wages

I hold that the City's proposal is accepted. The wage increases for the bargaining unit shall be as follows:

3% across the board increase retroactive to January 1, 1997

3.5% across the board increase retroactive to January 1, 1998

3.25% across the board increase effective January 1, 1999

The City's schedule for wages is accepted

Vacation Benefits

I hold that the City's proposal is accepted. There shall be no change to Section 9.3 (Vacation Accrual and Usage).

¹⁸ I have made a number of findings that various provisions should remain unchanged. Obviously, in some of the provisions, there are entries for the time period covering the Contract. These provisions may be changed to reflect the dates of the new Contract.

Drug and Alcohol Testing

I hold that the Union's proposal is accepted. There shall be no change to Section 22 of the Contract.

4. Light Duty/ADA

Thus, I hold that the City's proposal for a revised Section 13.9 of the parties' contract shall read in the manner set forth in the City's proposal, found at page 40, left hand column, of this Opinion and Award.

5. Grievance Procedure

Pursuant to the parties' instructions, I will not rule on this issue.

6. Residency

Pursuant to the parties' instructions, I will not rule on this issue.


Elliott H. Goldstein, Arbitrator

October 2, 1998

BURBANK POLICE DEPARTMENT

DRUG & ALCOHOL ABUSE POLICY AND TESTING PROCEDURES

INTRODUCTION

The objective of the City of Burbank Police Department is to prevent crime and to protect and preserve the life, limb and property of the residents and visitors to the City of Burbank. This objective can be compromised when police officers engage in the use of illegal drugs and abuse alcohol. Drug and alcohol abuse by police officers jeopardizes the public's health and safety. Indeed drug and alcohol abuse can cause irreparable harm to or endanger the lives of both the public and other officers.

In the interests of protecting the general public and maintaining the well-being of our officers this Drug & Alcohol Policy is established. The department in pursuit of a drug and alcohol free workplace therefore is instituting drug and alcohol testing as an integral part of its operating procedures. Accordingly full compliance with this policy is a condition of continued employment with the department.

Any disciplinary action taken as a result of this policy will be in accordance with the provisions of this policy, the department's rules and regulations, and the rules and regulations of the Fire and Police Commission.

This policy was developed by mutual agreement between the Fraternal Order of Police Lodge #184 and the administration of the Burbank Police Department.

I - DRUG/ALCOHOL TESTING CATEGORIES

The department will conduct drug testing in four different categories: (1) reasonable suspicion testing; (2) post-incident testing; (3) random testing; and (4) return to work and/or transfer testing.

A. REASONABLE SUSPICION TESTING:

An on-duty officer will be required to submit to a drug and/or alcohol test if reasonable suspicion exists that the officer may be under the influence of drugs and/or alcohol. "On Duty" means the time when an officer begins work until the time when the officer is relieved from all responsibility for performing work.

Reasonable suspicion testing may be based upon:

1. Observable phenomena such as direct observation of on-duty drug or alcohol use or possession and/or physical or behavioral symptoms of being under the influence of drugs and/or alcohol while on duty;
2. Information regarding officer drug use which is either provided by reliable and credible sources, or independently corroborated by reliable and credible sources;
3. The officer's arrest or conviction for a recent drug/alcohol related offense; or the identification to the Chief of Police or his designee, by a law enforcement agency, that the officer is the focus of a current criminal investigation into illegal drug possession, use, or trafficking; or
4. Newly discovered evidence that the officer has tampered with a previous drug or alcohol test.

With respect to reasonable suspicion based on observable phenomena, the reasonable suspicion determination will be made by department supervisory personnel who have been trained to detect symptoms of drug and alcohol use. Supervisor training will be conducted prior to the implementation of this facet of the drug/alcohol testing program.

The procedure for establishing reasonable suspicion based on observable phenomena will be as follows. The supervisor who observes the officer will complete a written report detailing the basis for the supervisor's belief that the officer may be using and/or under the influence of drugs or alcohol. The report should include the dates and times of observations, reliable/credible sources of information and any additional relevant information. The supervisor must submit the report to the Chief of Police prior to the end of his tour of duty. The Chief will determine whether reasonable suspicion exists. If the Chief determines that reasonable suspicion does exist, the officer will be tested within 2 hours after the determination is made. If the officer does not make him/herself available for testing during that period, the officer will be deemed to have refused to test and will be subject to disciplinary action as set forth in Section VII.

B. POST-INCIDENT TESTING:

An officer will be required to take a post-incident test if an officer is involved in an on-duty incident and the officer's conduct was a significant factor in the incident which resulted in:

1. a death or a serious personal injury;
2. a vehicular crash with over \$500.00 in property damage;
3. any injury to an on-duty officer requiring the completion of the First Report of Injury Form, (workers compensation).

The officer is responsible for reporting such an incident to his/her supervisor and making arrangements with his/her supervisor for the submission of a urine specimen within two hours after the incident. An officer who is seriously injured and cannot provide a specimen at the time of the incident must, as soon as possible thereafter, provide the necessary authorization for obtaining medical reports or other documents that would indicate whether or not there were illegal drugs or alcohol in his/her system.

The failure or refusal of an officer to report an incident or submit to a post-incident drug/alcohol test will be treated as a refusal to test and will subject the officer to disciplinary action as forth in Section VII.

C. RANDOM TESTING:

Burbank police officers will be subject to random testing. Random testing will be conducted such that the number of random drug and/or alcohol tests per year will be a minimum of forty percent (40%) of the department officers. The actual selection of department officers will be handled by a testing agency selected by the city. A computer program will generate random lists of department officers to be tested. After the computer generates the list, the testing agency will provide a copy of the list to the Chief of Police. Officers on the list will be notified and tested on the date notified. Tests will normally be conducted when an officer is on duty, however due to varying shifts an officer may be required to submit to a test immediately prior to or after his/her scheduled work shift.

On the day of the test(s) the Chief of Police or his designee will notify the supervisor of each officer who is to be tested that day. After the officer reports for duty the supervisor will inform the officer that he/she is to be tested. The supervisor will arrange for the officer's transportation to and from the testing location where the specimen collection will be performed. The supervisor will accompany the officer to the facility where the specimen collection will be performed.

D. RETURN TO WORK/TRANSFER TESTING:

An officer who returns to work after an absence of 30 days or more (excluding vacations) will be required to submit to a drug and/or alcohol test before being allowed to resume working. In addition, an officer who is transferred into or out of a special unit will be required to submit to a drug and/or alcohol test prior to joining or leaving the unit. Refusal to submit to the test(s) will be treated as a refusal to test and will subject the officer to disciplinary action.

II - TESTING PROCEDURES - DRUGS

A. Tested Substances:

The department will test officers for the following substances:

1. Amphetamines
2. Cocaine
3. Cannabinoids
4. Opiates
5. Phencyclidine
6. Barbiturates
7. Methadone
8. Methaqualone
9. Propoxythene
10. Benzodiazepines

B. Specimen Collection Procedures:

Specimen collection will be performed by the trained personnel of the designated testing agency. If an officer is to be tested the following procedures will be adhered to:

1. Officers will proceed to the testing agency with an authorization form signed by the Chief of Police or his designee and will be accompanied by a supervisor.
2. The officer will sign a consent for drug and/or alcohol testing. If the officer refuses to sign the form he/she will be subject to disciplinary action.
3. The officer will provide his/her use of medications/drugs over the past two weeks to the testing agency staff for documentation. Officers must present actual prescription or note from treating physician, dentist, etc. to verify legitimacy of medication usage.

4. The staff at the testing agency will complete a drug testing custody and control form which will be used to document the specimen collection and will be sent with the specimen to the laboratory.
5. The officer will be instructed to change into a patient gown and will secure his weapon with the supervisor at the testing center.
6. The specimen will be collected by a trained healthcare professional using the following procedure:
 - a. a staff person will accompany the officer to the restroom and instruct the officer as to the requirements for specimen collection, i.e. 60 cc of urine to be obtained; department designated lab kit will be used.
 - b. NIDA guidelines will be utilized in specimen collection.
 1. staff will witness officer washing hands,
 2. officer will not be allowed to bring personal belongings into restroom, locked cabinet may be utilized to store belongings,
 3. toilet water will be dyed,
 4. no access to H2O will be available,
 5. no soap or chemical substances will be accessible.
 - c. a registered nurse or other designated testing agency staff member will wait in immediate area until patient produces a specimen.
 - d. the collector will inspect the specimen for volume, temperature, color, pH concentration factor and any signs of contamination.
 - e. specimen will be sealed immediately with tape and initialed by the officer and the collector.
7. The officer will be required to execute a release of information authorizing the testing agency to disclose the test results to the Chief of Police.

Note: If the officer cannot provide a sufficient volume of urine, he/she shall remain at the collection site and be provided with fluids to drink. Failure to produce a specimen adequate for testing within 3 hours after reporting to the testing site will be deemed a positive test.

If the officer refuses to cooperate with the collection process, the collector will notify the department supervisor at the site and note the non-cooperation on the officer's urine custody and control form. The officer will then be subject to disciplinary action for refusal to take the test.

C. Privacy:

An officer is ensured of individual privacy when providing a urine specimen for testing except in the following situations:

1. The officer presents a specimen that is outside the accepted temperature range and the officer refuses to have an oral body temperature measurement; or the body temperature measurement varies by more than 1 degree C from the specimen temperature; or the specimen has a pH concentration factor that is outside the normal range; or
2. the collector observes conduct clearly and unequivocally indicating an attempt to adulterate or substitute the specimen; or
3. the officer's last provided specimen was determined to be diluted; or
4. the officer has previously had a verified positive test.

Note: If direct observation is required as a result of one of these specific circumstances, the collector will be the same gender as the officer.

D. Laboratory Operations:

In all testing categories, the initial drug screening using DAU/EMIT methodology will be performed by trained laboratory personnel as determined by testing agency.

If the specimen tests positive, the specimen will be sent to a laboratory certified by the U.S. Department of Health and Human Services for confirmatory testing.

E. Laboratory Analysis Procedures

The basic laboratory analysis procedures are as follows:

1. Use of a chain of custody procedure to track and preserve the integrity of the specimen throughout the laboratory procedure.

2. After acceptance by the laboratory the specimen will remain in secured storage. Aliquots (small amounts) of the specimen will be used for conducting tests.
3. Screening of the specimen using an immunoassay analysis. For each drug metabolite tested, there are federally established cut-off levels. If the amount of the metabolite is below the cut-off level, the specimen will be reported as negative. If not, the specimen will be reported as positive.
4. A specimen that is positive in the initial screening will be sent to a certified laboratory for confirmatory testing by gas chromatography/mass spectrometry methods. If the amount of a metabolite exceeds the established cut-off level, the specimen is confirmed as positive. If the amount of the metabolite is below the cut-off level, the result will be reported as negative.

Both the department and confirmatory laboratories retain all records relating to the specimen for a minimum of one year. The confirmatory laboratory will provide a secure storage of a positive specimen for at least one year.

F. Reporting of Urinalysis Results:

All results will be reported to the department. A licensed physician from the confirmation laboratory, who has knowledge of substance-abuse disorders, will send a certified copy of the lab results to the Chief of Police.

After a review and verification of positive results, the results will be reported to the Chief of Police. An officer whose test result is positive will be provided with an opportunity to discuss the result with the testing agency. An officer may provide the agency with relevant medical records that may explain a positive test result.

If the officer refuses to discuss the test result with the agency, the test will be reported as a positive test to the Chief of Police. If the officer can provide the agency with legitimate medical explanation for the positive result, the test result will be reported as negative to the Chief of Police.

The officer may request, through the Chief of Police, a reanalysis (retest) of his or her specimen. The reanalysis will be of the original specimen, not of another specimen subsequently collected. Any retesting will be at the officer's expense and must be performed at a laboratory

certified by the U.S. Department of Health and Human Services. The testing agency will handle the transfer of the officer's specimen.

Under all circumstances, a confirmed positive test result, verified by the testing agency, will be considered a violation of this policy.

G. Protection of Officer's Records:

Both the department and the confirmatory laboratory will maintain strict confidentiality of the test records in their possession. In the event of a positive drug test, access to those records will be permitted only as the result of a lawsuit, grievance or legal proceeding initiated by or on behalf of the officer. Access under these limited circumstances will be permitted only to the following: (1) the officer; (2) the department; and (3) the decision-maker in the lawsuit, grievance or other proceeding.

III - TESTING PROCEDURES - ALCOHOL

A. Specimen Collection Procedures:

Specimen collection will be performed by the trained personnel of designated testing agency. If an officer is to be tested the following procedures will be adhered to:

1. Officers will proceed to the testing agency with an authorization form signed by the Chief of Police or his designee and will be accompanied by a supervisor.
2. The testing agency will explain the testing procedures to the officer.
3. The Breath Alcohol Testing form will be completed by both the agency representative conducting the test and the officer. If the officer refuses to sign the certification statement on the form it will be regarded as a refusal to take the test and will result in disciplinary action.
4. The officer will follow the procedures as established by the testing agency for conducting breath testing.
5. The testing agency will conduct a breath alcohol screening test that will determine if the officer has a Breath Alcohol Content (BAC).

6. If the officer's BAC is greater than 0.000 but less than 0.039, the officer will be restricted to station duty and may be subject to disciplinary action.
7. If the officer's BAC is 0.040 or more the officer will be relieved of duty and subject to disciplinary action.
8. In all instances where there is an indication of a BAC over 0.00, a second confirmation test will be conducted prior to any action on part of the supervisor at the testing agency.
9. If an officer fails to provide an adequate breath sample for analysis, he/she will have considered to have failed the test.

IV - REFUSAL TO BE TESTED

An officer's refusal to be tested is an act of insubordination under the Police Department Rules and Regulations. The test refusal will be promptly addressed in a disciplinary hearing, and may result in discipline, up to and including discharge.

V - VOLUNTARY REHABILITATION PRIOR TO TESTING

The department wishes to encourage officers with substance abuse problems to enroll voluntarily in a drug and/or alcohol rehabilitation program prior to testing. To be considered voluntary, a request for enrollment in a drug/alcohol rehabilitation program must be given in writing to the Chief of Police prior to the employee being requested to submit to a drug/alcohol test and prior to the employee being randomly chosen for a drug/alcohol test. The officer must then successfully complete the program, and cooperate fully with the treatment center in addressing the officer's substance-abuse problem.

If the officer fails to complete the rehabilitation program and/or is involved in a second or subsequent infraction of this policy, he/she will subject to disciplinary action, up to and including discharge from this department.

Any leave of absence required for a voluntary rehabilitation program will be unpaid. The officer may use his or her available compensatory time, vacation, sick days or personal days during the rehabilitation period, if the officer so desires. Any time off in excess of the accrued compensatory time, vacation, sick or personal days will be treated as unpaid medical leave. Any cost of rehabilitation which is beyond the officer's available insurance coverage must be borne by the officer.

The officer's return to work after voluntary rehabilitation must be authorized by the rehabilitation program's attending physician. Officers who voluntarily enter a drug and/or alcohol rehabilitation program remain subject to all drug testing as set forth herein. This includes the follow-up testing which is performed at the discretion of the department (see Section II.F).

VI - DISCIPLINARY ACTION

As violations of this policy may vary from minor to serious violations, it is not possible to set out the consequences of a violation. Any violation of this policy subjects the employee to disciplinary action which may include discharge. In addition to or lieu of disciplinary action, an employee may be placed on an unpaid medical leave of absence and required to complete a drug/alcohol rehabilitation program before being permitted to return to work. An employee may use available sick days, vacation and other compensatory time to receive pay while on the unpaid medical leave absence.

A drug/alcohol rehabilitation program must be approved by the Chief of Police. The cost of such drug/alcohol rehabilitation program which is not paid for by health insurance is the responsibility of the employee. If completion of the program is successful, the City shall allow the employee to return to work subject to the following conditions: (1) the employee must continue to participate in the drug/alcohol rehabilitation program as required by the program director; (2) the employee must obtain an authorization to return to work from the program director; and (3) the employee must submit to drug/alcohol testing on a quarterly basis for the next 12 months at such times as determined by the City. For any employee who has participated in a drug/alcohol rehabilitation program, a positive drug/alcohol test, a refusal to test, or a failure to comply with the above three conditions shall constitute grounds for termination under any circumstance.

T.A. Copy 3/6/97

SUMMARY OF CITY OF BURBANK AND FOP NEGOTIATIONS

FEBRUARY 25, 1997

The City understands that an tentative agreement has been reached on the following items which are not underlined. If an item is underlined, then there is no tentative agreement.

Section 1.6 Seniority

The City accepts the revised language (12/10/96) based upon the representation that this is not intended by the FOP to change any existing practice.

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Section 1.8 Non-Discrimination

The City proposes the following language:

"The City and the Council agree not to discriminate against any individual on account of affiliation, membership, or activities with the Council. The City and the Council agree not to discriminate against any individual based upon race, color, religion, age, sex or national origin."

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6/29/97

The FOP will propose language acceptable to it.

Section 2.5 Collective Bargaining Negotiations

The City agrees to permit one employee of the Council negotiating team to attend with pay any collective bargaining sessions during the time that such employee is scheduled to work, subject to the City's right to refuse permission in case of emergency arising on the date of the collective bargaining session.

WJL

Section 6.2 Regular Work Week

The City understands that this matter has been resolved pursuant to the meeting with the Chief of Police and that the Council request is withdrawn.

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Section 6.3.1 Shift Eligibility
Section 6.3.2 Permanent Shift Scheduling

The City proposes the following language:

Section 6.3.1 Shift Scheduling

"The City agrees to maintain the permanent shift bidding system based upon seniority and the six days on, two days off schedule for patrol officers (other than detectives). Separate bids shall be made for different assignments, with patrol officers and evidence technicians having separate shift bidding systems,

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all of which are based upon seniority for each assignment. The current shift schedule procedure for detectives shall remain in effect."

Section 6.3.2 Seniority Shift Bidding

"The shift bidding will occur on an annual basis; but only those officers with at least five years of service (effective for the 1998 calendar year), as of January 1st of each year, will be eligible to participate in the bidding process. For purposes of bidding, the calendar year shall be divided into four quarters: First quarter is January, February and March; Second quarter is April, May and June; Third quarter is July, August and September; and Fourth quarter is October, November and December. Officers will bid for one of three shifts (morning, afternoon and midnight) in each quarter, but may not bid for the same shift for all four quarters. If the City chooses to create another assignment (i.e. power car) such assignment shall not be subject to the shift bidding process. The City agrees not to increase the number of power car assignments for the term of this Agreement. The number of biddable shifts available for patrol officers shall not be reduced to less than four for the morning shift, six for the afternoon shift and four for the midnight shift for the term of this Agreement.

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Temporary re-assignments may be made to assign a field training officer to a shift in order to conduct training, in which event the most junior officer on the shift shall be re-assigned to accommodate the field training officer."

Everything else remains the same except the words "power shift" are deleted in the second paragraph.

Section 6.4 Overtime Pay

The City accepts the FOP withdrawal.

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Section 6.5 Compensatory Time

The City accepts the FOP proposal which will increase the amount of compensatory time that can be banked to 140 hours provided that not more than 88 hours can be used in any one calendar year except in cases of sickness or disability and employee's sick time has been fully used. Any employee with 15 or more years of service will have no limit on the amount of compensatory time which can be banked, and such compensatory time can be applied towards the retirement benefit in Section 16.5.

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Section 6.8 Required Overtime

The FOP accepts the City's language:

"The City shall have the right to require overtime work and

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officers may not refuse overtime assignments; provided that no officer shall be ordered (but may volunteer) to work more than 4 hours of overtime immediately before or after the scheduled shift."

Section 7.1 Definition

The City rejects the FOP proposal.

Section 9.1 Holidays

The City accepts the withdrawal of the FOP request and agrees to no change in the language.

Section 11.1 Eligibility and Allowances

The City rejects the FOP proposal.

Section 12.2.1 Personal Days

The City accepts the FOP withdrawal. *Current contract 2K.*

Section 12.3 Days Earned in Accumulation

The City proposes the following language:

"Effective January 1, 1997, sick leave shall accrue at the rate of 1 day per calendar month, ~~provided that the officer is compensated (including payment of continuing compensation, or worker's compensation) for more than 100 hours during that calendar month.~~ There is no maximum to the amount of sick leave which can be accrued."

Section 12.7 Sick Leave Utilization

The FOP accepts the City's language:

"Sick leave shall be used in no less an increment than 1/2 day. At the termination of employment, unused sick leave (which is not eligible to be used for the retirement benefit in Section 16.5) shall be bought back by the City at the rate of \$75.00 per day (8 hours)."

Section 12.8 Sick Leave Buy Back

The FOP accepts the City's language:

"The employee, once each calendar year, may require the City to buy back any amount of unused and accrued sick leave which the employee has accrued in excess of 60 days at the rate of \$75.00 per day (8 hours)."

Section 13.5 Funeral Leave

The City accepts the FOP proposal that the current three working days apply to the old immediate family members and one working day apply to the grandparents of spouse, brother-in-law, and sister-in-law.

Section 13.9 Light Duty/Americans With Disabilities Act

The City rejects the FOP proposal and proposes the following language:

"Due to the Americans With Disabilities Act and the regulations promulgated thereunder, the City may be required to make a reasonable accommodation to the disability of an applicant or employee that may be in conflict with the provisions of this Agreement. In such event, the City shall have the right to make such accommodation notwithstanding the requirements of this Agreement. The City shall notify the Council thereafter as soon as practicable of such situation on a confidential basis. The City agrees to discuss, but not to negotiate with the Council, the impact of its action. Except as required by the ADA the City is under no obligation to provide light duty. Light duty may include duties not ordinarily performed by the officer, but such duties shall be related to law enforcement."

Section 13.10 Maternity Leave

Maternity leave shall be granted in compliance with the provisions of the Family Medical Leave Act. FOP has accepted this language.

Section 13.12 Family Medical Leave Act

The City accepts the FOP proposal.

Section 14.1 Wages

The City proposes a wage increase of 3.0% for 1997 (except for the second, third and fourth year for which the increase will be 2.0%), 3.0% for 1998 and 3.0% for 1999. The City will also agree to put the top pay scale into effect after 9 years in 1998, which is a reduction of one year and to further reduce the top pay scale after 8 years in 1999.

Section 14.3 Academic Achievement

The City accepts the FOP proposal.

Section 15.1 Uniform Allowance

The City agrees to increase the uniform allowance to \$700 per year.

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Section 15.2 Uniform Changes

The FOP has accepted the City's language.

"Unless mutually agreed between the City and the Council, the City agrees that any major changes to the uniform presently being required by the City will be paid for by the City."

Section 15.3 Replacement of Damaged Clothing

The City accepts the withdrawal of the FOP request and agrees to no change in the language.

Section 16.4 Survivors Insurance Coverage

The City accepts the FOP proposal.

Section 16.5 Retirement Benefit

The FOP accepts the City's language:

"An employee who retires with ^{20 or} more than 20 years of service shall have the option, which must be exercised not later than 30 days after retirement, to convert accrued benefits (sick time, vacation time and compensatory time) into a health insurance benefit. The rate of pay at the time of retirement and the monthly insurance rate paid by the City at the time of retirement shall be used to calculate the health insurance benefit. The employee's health insurance benefit shall be determined by taking 100% of the hours of accrued benefits times the hourly salary rate divided by the monthly health insurance premium in order to determine the number of months of health insurance to be provided by the City at no cost to the employee. The health insurance benefit must be used by the employee within 10 years of retirement."

Section 17.1 Bill of Rights

The City rejects the FOP proposal.

WITDRAWN

Section 17.10 Release of Information

The FOP accepts the City's language:

"The City agrees that personal information of an employee (including but not limited to photographs, home address, social security number and home telephone number) shall not be released to the public or news media. Publicity photographs may be released upon approval a Local Lodge Officer. Photographs of employees without identifying names may be shown to persons filing written complaints in order to determine the identity of an employee. Nothing herein shall restrict the release of information as required under the Freedom of Information Act or to

other authorized law enforcement agencies."

Section 17.15 Residency

The City proposes the following language:

"The current City policy regarding residency, which was in effect on January 1, 1991, will continue in effect during the term of this Agreement unless changed by the City. If the City chooses to change its residency policy, it agrees to provide not less than 60 days notice to the Council and to bargain over the effects of such proposed change. Pursuant to the provisions of 5 ILCS 315/14(i), residency requirements are not subject to interest arbitration."

Americans With Disabilities Act

See Section 13.9, Light Duty/Americans With Disabilities Act.

Productivity Standards

The City will not bargain over this subject as presently proposed as it constitutes an inherent management right and is not a mandatory subject of bargaining.

FOP Office

The City rejects the FOP proposal to install a computer in the Police Station for use by FOP members during non-duty hours.

Article XXII Employee Drug and Alcohol Testing

The City will propose language which will provide for random testing.

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BURBANK LODGE 184

14 Oct 97

To: Chief Kujawa

From: P.O. Formica

Sir:

The negotiating team has agreed to remove the present productivity standards from the bargaining table which was agreed upon between the negotiating team and management. In exchange for the removal of the productivity standards, management has agreed to remove the following items:

1. Allow officers to bid on shifts at the completion of their fifth year (prior to January 1st), versus the present eight years.
2. All officers eligible for shift bidding, will be able to bid on sixteen slots, broken down as follows:

Day Slots - 5
 Afternoons - 6
 Midnights - 5

Negotiating Members

Vincent Formica
 P.O. Vincent Formica

Richard Shore
 P.O. Richard Shore

Regan Ready
 P.O. Regan Ready

Accepted subject to final language to be incorporated into collective bargaining agreement on shift bidding. Productivity standards are not to be included in collective bargaining agreement. Shift bidding change to be effective immediately even though no collective bargaining agreement has been executed.

October 14, 1997

W. M. Kujawa
 Chief W. M. Kujawa