



- b. compensation for court time.
  - c. uniform allowances.
  - d. manpower per shift.
  - e. Distribution of overtime.
- 3.. The single non-economic issue is drug testing.
4. A tentative agreement on all items not in dispute, introduced as Joint Exhibit 2, shall be incorporated by reference into the Arbitrator's award.
5. The parties agree that the following jurisdictions have been found to be appropriate external comparisons to the City of East St. Louis in previous interest arbitration proceedings involving the City of East St. Louis:

Alton

Belleville

Collinsville

Edwardsville

Fairview Heights

Granite City

5. The arbitrator shall issue his award no later than sixty days after submission of post-hearing briefs or any agreed upon extension requested by the Arbitrator.  
[By agreement between the parties, post-hearing briefs were mailed May 29, 2001.  
No extension has been requested.]

## **WAGES**

### **FOP's Final Offer**

Increase each step of the existing salary schedule for both Patrol Officers and

Sergeants by the following percentages:

- Effective January 1, 1999 - 3.0 %
- Effective January 1, 2000 - 3.0 %
- Effective January 1, 2001 - 4.0 %
- Effective January 1, 2002 - 7.0 %

These salary increases are to be made fully retroactive on all hours paid to the effective dates referenced herein. Retroactive amounts shall be paid within sixty (60) days of the issuance of the Arbitrator's award by separate check. Employees who have left the employ of the City after January 1, 1999, but prior to the issuance of the Arbitrator's award shall receive a prorated share of any retroactive amounts due under the award.

**City's Final Offer**

- Year 1 (effective January 1, 1999) - 3.0 %
- Year 2 (effective January 1, 2000) - 3.0 %
- Year 3 (effective January 1, 2001) - 3.5 %
- Year 4 (effective January 1, 2002) - 3.5 %

**City's Arguments**

For several reasons East St. Louis claims it is not comparable to any other city in Illinois.

First, it is the only city in Illinois named by the Illinois General Assembly as a financially distressed city under the terms of the Financially Distressed City Act, and thus placed under the jurisdiction of the Financial Advisory Authority (FAA)

established by that Act. This Authority was created in the early 1990's, but even today, in the words of the City's brief, "maintains significant control over the fiscal affairs of the City," and over no other Illinois city. So, the City argues, it cannot be compared with any other Illinois city.

The City says it agreed to the list of comparable cities, to which the parties stipulated, because those cities were used in an arbitration involving the City of Belleville, in which the arbitrator found that wage increases of 3.5% to 4.0% were the going rate in the metro-East area, where E. St. Louis is located, for the years included in the present case. These percentages are in line with the City's position here, and other arbitrators have adopted these same comparable communities in arbitrations involving the City's police and fire unions.

But the City continues to argue for its singular position among Illinois cities, not only because it is scrutinized by the FAA but also because recent census data sets the City apart from others. East St. Louis lost 25% of its population since the previous census while all other cities gained population or remained the same. East St. Louis will lose about \$127 per resident in state tax revenue, or a total of approximately \$1.07 million annually, much more than any other community. This money goes into general operations from which police wages and benefits are paid. In preparing its FY 2001 budget East St. Louis estimated a wage increase of 3.5% for police. The City expected a population loss of 4500 but actually lost 9400 residents resulting in a much greater decline in tax income than expected.

It is the City's estimate that it will continue to lose population and income over the next ten years yet it can expect wages to rise as both the City and the FOP contemplate increases. Health insurance too will rise in cost, an increase the City is contractually obliged to pay.

So the City's resources are declining well beyond that of any possibly comparable community even as its expenditures increase, emphasizing its distinctive position.

### FOP Arguments

Of the eight factors set forth in Section 14(h) of the Illinois Public Labor Relation Act as guides to arbitral action, three have been found by interest arbitrators to be of primary importance, says the FOP. They are comparable wages, the effect of inflation on purchasing power, and the employer's ability to pay. The FOP then argues that interest arbitrators have relied heavily on comparable wages, more heavily, perhaps, than on any other single factor. In support of its position the FOP quotes from decisions involving various jurisdictions in Illinois as well as from published studies dealing with the criteria normally used in interest arbitration. Among the decisions cited are four affecting East St. Louis and its police and fire unions, all of which used comparable wages as a significant criterion. In each of those cases the City argued, as it does here, for its unique status among Illinois cities.

FOP then compares East St. Louis police wages with those in the six stipulated jurisdictions, showing that for Patrol Officers and Sergeants this City's wages lag significantly behind the averages of the other communities at every step of the wage scale, that is, regardless of the number of years of service. Even if FOP proposals are adopted, the Union argues, police wages will still lag compared to the six stipulated cities.

Relying on figures generated by the Illinois State Police, the FOP points out that East St. Louis police handle more crimes and more violent crimes than any surrounding jurisdiction, yet do it at lower salaries. Police workload in this City has

increased, says the FOP, as the number of bargaining unit members has declined in recent years spurred by incentives for early retirement granted by the City, and due as well to attrition and turnover. Whereas in 1997 the City employed 96 full-time police officers including the Chief of Police, its 1998-99 budget funded only 68 patrol officers, sergeants, and detectives. A good part of that drop was prompted by early retirement incentives. In 1999 the number dropped to 56 and in 2000 to 55. At the time of this hearing (March 2001) there were 60 members in the bargaining unit.

### **Analysis**

Reliance by East St. Louis on its unique position among Illinois cities has been rejected as a controlling factor in previous interest arbitrations involving this City and both its police and fire unions, and rightly so. Interest arbitrators in Illinois are directed by Section 14(h) of the Act to consider eight criteria and to use those believed by the arbitrator to be most applicable to the case at hand. Comparisons with other communities is one of the mandated criteria. The Act does not specify the weight to be given to any of the criteria, so deciding which factors are most important becomes the responsibility of the arbitrator.

Comparisons with wages in surrounding communities of approximately equal size and in the same labor market is nothing more than the application of a criterion at work in any labor market, whether arbitration is being used or not. Workers move within a labor market attracted, among other things, by wages and benefits paid by employers in all communities in that market. If wages and benefits are higher in some communities workers will be attracted to those communities and to those higher paying jobs, depending on what factors keep them tied to their present positions, such as home ownership, schools for their children, and other factors. But

the more wages are out of line between employers and between communities in the same labor market the more workers are pulled toward the higher paying jobs. So comparing wages between communities in the same labor market is an essential element in setting wages. The Act recognizes the importance of this factor.

Even though East St. Louis is called a financially distressed city, workers are still attracted by higher wages and benefits in nearby communities in the same labor market. Wage comparisons cannot be ignored, as the City would have us do. They are too important in the actual setting of wages. The criteria in Section 14(h) seek to mimic the operation of an actual labor market, so wage comparisons must be made.

The application of this factor favors the Union's final offer. For the first two years of this period, 1999 and 2000, the parties make the same offer. The FOP's higher offer for 2001 and 2002 would still leave East St. Louis police well behind the comparable communities; so, even though the 7% offered by the FOP for 2002 is higher than for the other years it still does not eliminate the wage differences between this City and comparable communities.

East St. Louis does not claim it is unable to pay the wages offered by the FOP, saying only that the City offers a "fair economic package to the FOP which was consistent with its financial ability to pay..." Examination of the City's financial status shows a General Fund with strong surpluses over the past four years, bolstered partly by a healthy influx into the City's coffers from riverboat gambling. In its 2001 budget the City estimates total revenue of \$21.3 million for its General Fund, out of which police are paid, of which \$10 million will come from riverboat gambling. In the year 2000 riverboat gambling contributed just under \$10 million to the General Fund out of total revenue of \$20.5 million. Although once near

bankruptcy East St. Louis appears to have recovered in recent years due largely to gambling revenues, so there is no need for police officers to help finance the City's operation by receiving wages lower than they should.

The FOP says East St. Louis police lost buying power from January 1998 through January 1999, while the City claims its offer for this entire period is above the anticipated increases in the Consumers Price Index. In fact, this criterion is not decisive in choosing one offer over the other. Nor are the other criteria spelled out in Section 14(h). Wage comparisons and ability to pay are the controlling criteria.

### **AWARD**

The FOP's wage offer is chosen, including details on how and when these increases are to be paid.

## **COMPENSATION FOR COURT APPEARANCE**

### **FOP's Final Offer**

The FOP proposes no change in the current language of the agreement on this issue.

Presently the agreement allows a sworn officer "one (1) day off from his regular duties with pay" for any court appearance "at a time other than his regularly assigned duty hours..."

### **City's Final Offer**

The City proposes that any sworn police officer required to appear in court "at a time other than his regularly assigned duty hours...shall be paid a minimum of

four (4) hours and shall be paid at the rate of one and one-half times his regular hourly rate for those minimum four (4) hours.”

### **City Arguments**

“This issue,” the City argues in its brief, “is really a draw between the parties. It does not have a short term impact on the City, even though long term accumulations of compensatory time has an impact, it is one that can be planned for.” The City in its brief then offers to accept the FOP’s final offer on this issue IF the arbitrator accepts the City’s offer on wages and overtime allocation.

### **FOP Arguments**

According to the FOP, at the heart of the City’s problem on this issue, as well as on the overtime issue, is the fact that the department is “grossly understaffed.” The City is attempting to do with 60 officers what it accomplished with 96 a few years ago. Reducing long-standing benefits, such as compensatory court time, which has been in the agreement unchanged since at least 1980, will not solve the staffing problem. Competitive pay will do that and will also remedy the City’s inability to fill overtime slots. Although the FOP acknowledges that “nearly every comparable jurisdiction compensates police officers by paying overtime,” it says established benefits should not be eroded until East St. Louis wages are in line with those in other jurisdictions.

### **Analysis**

Since the City’s offer on wages is not accepted the trade suggested in the City’s brief cannot be accepted either.

Although neither party gives reasons for the City’s reduction in the size of its police force, one can make some educated guesses. With a declining population it is logical to expect a lesser need for police officers even though we cannot say with

certainty whether the present force of 60 officers is exactly right, too small, or too large, although all evidence points to the need for a larger force. Reduction in the police force brought lower costs for wages, benefits, and related items, such as uniforms and equipment, and the City is certainly interested in reducing costs. As part of the manpower per shift issue (we are not told whether there is any woman power on this force) the City says it will hire five new officers by June 1, 2001, or make "substantial" progress toward that goal, so the City recognizes the need for a larger force.

My main point here is that the reduction in the size of the force may not be quite as serious as the FOP pictures it, although the City, by agreeing to hire five new officers, recognizes the need for a larger force.

Wage increases ordered by this award when put into effect may help the City's police recruiting problem; at least it goes as far as the FOP would have us go. But retaining the present wording on compensation for court time is not part of the incentive to attract more officers. FOP admits, and its evidence shows, that in the comparable communities paying overtime is the usual method of compensating officers for off-duty court appearances. According to the City this issue will have little short term impact and is a draw between the parties. There is no reason why the established pattern should not be adopted in East St. Louis.

### **Award**

The City's final offer is chosen.

## **UNIFORM ALLOWANCES**

Under the current agreement police officers receive \$250 annually to be used

toward the purchase of uniforms and equipment.

**City's Final Offer**

Effective upon execution of this agreement each officer shall receive an additional \$250 cash clothing allowance for fiscal year 2000.

**FOP's Final Offer**

Increase the annual allowance to \$500.

**City's Arguments**

Loss of revenue over the coming years based on population losses justifies the City's position. In changes not part of this arbitration, the parties have already agreed for the City to pick up costs of new equipment and equipment formerly paid for by unit members.

**FOP's Arguments**

External comparables show an average annual uniform and equipment allowance of \$605 with none below \$600. The City's offer is inadequate.

**Analysis**

This item is part of the total compensation package paid to members of the bargaining unit. The FOP's offer is justified by the amounts paid in comparable jurisdictions as much on this issue as on wages. These officers are far behind their contemporaries in comparable cities just as they are on wages.

**Award**

The FOP's offer is chosen.

**MANPOWER PER SHIFT**

Presently this article establishes “a manning level of eight (8) persons minimum per shift: one (1) per district for six (6) districts plus shift commander plus desk sergeant.” The “intent and understanding” of this section is to “insure that a sufficient number of officers are on patrol, at any given time to insure the safety of the officers on duty and the safety and protection of the lives and property of the citizens of the City of East St. Louis, Illinois.”

### **City’s Final Offer**

“The Chief shall establish a manning level to consist of nine (9) bargaining unit officers minimum per shift: seven (7) patrol officers plus Desk Sergeant plus Patrol Sergeant. The employer shall be required to fill a vacancy in the event the bargaining unit officer level falls below eight (8) officers.

In order to reach this minimum level and allow the shifts to operate without the normal routine need for overtime filling of such vacancies the employer agrees to hire five (5) additional officers. In the event substantial progress is not made in the hiring of the additional officers by June 1, 2001, the previous provision of one (1) patrol officer per district for six (6) districts shall remain in effect.”

### **FOP’s Final Offer**

“The Chief shall establish a manning level to consist of nine (9) bargaining unit officers minimum per shift: six (6) patrol officers, acting in the patrol function, plus a Desk Sergeant, plus patrol Sergeant, plus Shift Commander.”

### **Analysis**

The actual difference between the parties on this issue is not so much in the wording of their proposals as in the interpretation they give to the words “patrol function,” as the FOP puts it, and simply “patrol,” in the City’s proposal. The FOP wants it understood that patrol officers must be on the street where they can support

and back up other patrol officers, while the City would include among patrol duties such community functions as speaking to schools and senior citizen groups. Time spent on such duties, says the FOP, reduces police presence on the street thus endangering both police officers and the public.

They also differ in the number of supervisors they want among the nine officers on each shift. The City proposes seven patrol officers, plus Patrol Sergeant plus Desk Sergeant, while the FOP would have six patrol officers plus three others, Desk Sergeant, Patrol Sergeant, and Shift Commander.

It is difficult to know how these two different proposals might play out in practice. With seven patrol officers per shift and not many calls for community service functions, the City's proposal might actually place more patrol officers on the street, especially at night when there will be few if any calls for community service functions. If the FOP's proposal and interpretation of "patrol function" are adopted the City would have to call officers in on overtime to perform these service functions, refuse them altogether, or assign others, perhaps supervisory personnel, to these functions. The parties do not address these questions.

The FOP stresses the need for supervisors on each shift, particularly a Patrol Sergeant, who can make critical decisions, but the City's proposal also places a Patrol Sergeant on each shift. The FOP adds a Shift Commander but does not explain the need for such an officer, presumably also to make critical decisions.

As commented earlier, the City recognizes the need for additional officers on the force, promising to make a "substantial effort" to hire five more. But according to the City's interpretation, if, from a list of ten eligible persons, it is able to hire only two, or three, or even one, the City has made a "substantial effort."

## **Award**

The City's final offer is chosen.

## **DISTRIBUTION OF OVERTIME**

### **FOP's Final Offer**

Make no changes in the current agreement.

### **City's Final Offer** (paraphrased)

- (a) No officer will be required to work more than 16 consecutive hours in any 24 and no more than 20 hours of overtime in any scheduled work week.
- (b) (1) Employees who volunteer for posted and identified overtime will be called in seniority order on a rotating basis. Any employee not available for voluntary scheduled overtime is prohibited from signing up for one month.
- (2) If there are insufficient volunteers for voluntary overtime, employees will be scheduled as follows:
  - (i) employees will be called in reverse seniority order on rotating basis.
  - (ii) Any employee who fails to show up for mandatory overtime is subject to discipline.
- (c) **Unscheduled Overtime**
  - (1) Employees desiring unscheduled overtime shall sign posted list which shows identified periods. Employees will be held over or called early on seniority basis on rotating basis. Any volunteer who fails to take unscheduled overtime cannot take unscheduled overtime for one month.

- (2) If there are insufficient volunteers Employer shall schedule employees as follows:
- (i) Employees will be held over or called in early in reverse seniority order.
  - (ii) Any employee who fails to show up for mandatory unscheduled overtime is subject to discipline.

### **City's Argument**

According to the City, costs will not increase regardless of which offer is chosen. But, the City further argues in its brief:

“the well being of the officers is better protected by the City because the City’s proposal spreads out the expected and predictable overtime among all officers and limits mandatory overtime. It caps the continuous service hours and allows officers to be taken off of the overtime rolls when the officer reaches the maximum amount of time deemed critical to their production and safety.”

### **FOP'S Argument**

This issue, more than any other points to the problem facing the City—too few officers. By disciplining officers who sign up for voluntary overtime and then do not show up the City is creating a disincentive for employees to volunteer for overtime. Even worse is the proposed discipline for failing to heed a call for mandatory overtime, that is, being held over or being called in early. It is an excessive penalty, especially where, for example, an employee may never get an answering machine message to come in early.

East St. Louis police officers have been working extraordinary amounts of overtime. Discipline is no substitute for failing to fill vacancies.

### Analysis

The City correctly notes that its proposal caps the number of overtime hours and the number of consecutive hours an employee can work. But, as the FOP argues, this will not solve the City's basic problem, too few police officers. As commented earlier, with a declining population the City may not need the 96 it once had, but the City has already recognized the need for a larger force and has agreed to hire additional officers (see section on Manpower Per Shift). A good part of its problem in getting employees to work overtime may well be solved with increased compensation provided by this decision, and with a larger force. Discipline is not likely to bring the desired result.

### Award

The FOP's offer is chosen.

## **DRUG TESTING**

On this non-economic issue I am not constrained by the Act to accept the final offer of one of the parties, yet I must, in effect, do so since only one change in the present drug testing provision is sought. The City wants to substitute random testing for the present provision allowing twice-yearly unit-wide testing. It does not propose to eliminate "reasonable suspicion" testing.

The FOP would leave the agreement unchanged, allowing unit-wide testing twice each year, allowing reasonable suspicion testing, and continuing the ban on random testing. So the choice is whether to accept the City's proposed change or leave the agreement as it is.

### Arguments

It is the City's contention that more incentive is needed to stop the use of illegal drugs and alcohol among police officers, and that random testing will provide that incentive. It will, the City says, provide continuing detection of violations of City drug policy.

The FOP says the City cites no evidence that this employer has confronted "the whole range of drug related problems encountered by other employers." Its proposal is motivated, the FOP believes, by a desire to eliminate costly unit-wide testing. Random testing is intrusive, the FOP claims, and compels the testee to prove innocence. A person chosen to be tested will be suspected of wrongdoing by other employees even though that employee is picked truly at random by statistical methods. Random testing is not based on just cause.

### **Analysis**

Random testing conflicts with the notion of just cause, the normal basis for discipline. Under just cause standards an employee is subject to discipline only if it is proven that some rule has been broken or some well established and jointly recognized behavior has been violated. Random testing assumes the employee being tested is likely to be guilty of drug use. No evidence is induced to support the need for a drug test. In other words, there is no reason to suspect the employee of drug use.

East St. Louis presents no evidence to show that illegal drugs and alcohol are so widely used by police officers that drastic measures are needed to identify the culprits. Random testing is a drastic measure that abridges an employee's right to privacy and does so without cause, that is without any basis for believing the employee being tested has been using drugs or alcohol, or is impaired in any way. A

few may be caught through random testing, but many more will have their rights violated in the hopes of catching those few. This approach is contrary to our normal view of a democratic society.

**Award**

The drug testing provisions of the agreement should remain unchanged.

**REVIEW AND SUMMARY OF AWARD**

1. WAGES. The Union's final offer is chosen, including details on how and when these increases are to be paid.
2. COURT TIME. The City's final offer is chosen.
3. UNIFORM ALLOWANCES. The Union's final offer is chosen
4. MANPOWER PER SHIFT. The City's final offer is chosen
5. OVERTIME DISTRIBUTION The Union's final offer is chosen.
6. DRUG TESTING. No change in the current agreement--no random testing.
7. TENTATIVE AGREEMENT. All items in the tentative agreement not in dispute are incorporated by reference in this award.



Milton Edelman

July 12, 2001