In the Matter of Interest Arbitration Between City of Bloomington, Employer and Police Benevolent & Protective Association Unit #21 Union	ARBITRATION AWARD ILRB Case No: S-MA-04-244 Paul Lansing Arbitrator

APPEARANCES

For The City

James Zuehl	Chief Spokesperson
Todd Greenburg	City Attorney

For The Union

Sean Smoot	Chief Spokesperson
Shane Voyles	Staff Attorney

Hearings in the above matter were held on November 2 and 3 and December 7 and 9, 2005 at Bloomington, Illinois, before the undersigned Arbitrator. During the hearings, both the City and the Union were given full opportunity to provide evidence and argument. The parties filed their post-hearing final positions by January 6, 2006. The parties filed their post-hearing briefs by the agreed upon date of February 24, 2006.

I. BACKGROUND

This interest arbitration is between the City of Bloomington, Illinois (hereinafter "the City") and the Policemen's Benevolent & Protective Association, Unit #21 (hereinafter "the Union") pursuant to Chapter 5, Section 315/14 of the Illinois Public Labor Relations Act (hereinafter "the IPLRA"). The Union represents the City's patrol officers for collective bargaining purposes. For more than three decades, the City has had a formal collective bargaining relationship with the Union.

The parties began negotiating their contract in April, 2004. Between April 2004 and January 2005, the parties engaged in collective bargaining. I was notified about my selection as Arbitrator and was informed by the parties that there were about 45 unresolved impasse items remaining. It was agreed that I would work with the parties as a mediator in order to reduce the number of impasse items between the parties. We held two mediation sessions in April 2005 and two more in May 2005. Although we were able to reduce the remaining impasse items to about 15 items, it was agreed that arbitration was then necessary.

At the suggestion of the parties, a separate arbitration hearing on the selection of external comparables was held on October 14, 2005. This Arbitrator issued a decision in which he determined that the relevant external comparables to Bloomington were to be: Champaign, Decatur, Normal, Urbana, Pekin, DeKalb, Peoria and Springfield. This decision was rendered on October 21, 2005 and is incorporated into this Award.

This arbitration was conducted on four hearing dates: November 2, 3 and December 7 and 9, 2005. According to the City's Post-Hearing Final Offer Position of January 6, 2006, there are

12 impasse items to be decided by the Arbitrator. However, the Union's Post-Hearing Brief of February 24, 2006 indicates that some of these impasse items have tentative agreements and are removed from my consideration (page 5). For example, Section 1.1 Recognition and Section 6.9 Temporary or Emergency Situations are tentatively agreed upon according to the Union Post-Hearing Brief.

The fact that there are so many impasse items to be determined at arbitration is an indication of the lack of trust that exists between the City and Union. Because each party views the other with suspicion and mistrust, each side seeks to legislate their position through arbitration rather than through good faith collective bargaining. Regardless of the outcome of this Arbitration Award, the parties would be well-served to find some common ground to collectively bargain the issues that keep them apart.

II. DISPUTED ISSUES TO BE ADDRESSED

The following issues are in dispute and will be addressed here:

1 – Section 1.1	Recognition
2 – Section 5.20	Physical Fitness Standards and Testing
3 – Section 6.3(a)	Shift Assignment-Reserve Slots
4 – Section 6.3(c)	Shift Assignment-Shift Times
5 – Section 6.12	Field Training Officer Pay
6 – Section 7	Wages
7 – Section 10.3(c)	Sick Leave Buy Back
8 – Section 10.3(f)	Sick Leave Abuse

9 – Section 10.9 Disciplinary Leave

10 – Section 10.11 Convention Leave

11 – Section 10.12 Temporary Disability or Pregnancy

12 – Section 12.9 Duty Related Injuries

III. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

> (h) Where there is no agreement between the parties, … the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit or government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other employees generally:
>
> (A) In public employment in comparable communities.
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, 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 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.

IV. RESOLUTION OF THE ISSUES IN DISPUTE

1 – Section 1.1 – Recognition. During collective bargaining, the Union sought to make some changes to this provision. However, at this time, the matter is before the Illinois Labor Relations Board. The parties have agreed that this Arbitrator will retain jurisdiction over this issue pending the resolution of the proceedings before the Illinois Labor Relations Board. Therefore I need not make any award regarding this mater at this time.

2 – Section 5.20 – Physical Fitness Standards and Testing. In this item, it is the City who is the party seeking change to the present contract. The City proposes adding the following paragraphs:

> The City has the right to establish fitness standards and testing procedures to monitor an employee's physical fitness to perform the duties of a police officer of the City of Bloomington. The standards may be changed to the City from time to time to reflect changing duties of the positions. The content of the testing procedure shall be supplied by the City to a committee designated by the Union in order for the Union to make suggestions, but final procedures shall be decided by the City. The content of the testing procedure shall be posted on a departmental bulletin board as soon as it is finalized by the City, but such content shall be posted not less than six months prior to any fitness test. It is the responsibility of the individual employee to be prepared for such testing. Testing shall be considered to be time spent working for the City of Bloomington, but not preparation for testing. Testing shall be conducted at least annually, with at least six months notice to be given by the City of the date or dates of such testing.

> Physical fitness testing shall be mandatory for all employees hired after the effective date of this agreement. Preparation of the City's physical fitness testing shall initially be voluntary for current employees, except that once an employee elects to participate in the fitness program, the employee shall remain bound by provisions of the program for the entirety of his tenure with the City.
>
> Employees participating in a test will be required to obtain approval of a licensed and practicing physician. The City will be responsible for any co-pay expense required to obtain a letter from the employee's physician.
>
> The physician's letter shall be required prior to each test and it shall simply state the employee is either fit or unfit to participate in specific tests to be performed.
>
> The City will provide a cash incentive of $250 for passing the test, plus any overtime actually worked to take test if not done on duty time.
>
> An employee who does not successfully complete a physical fitness test shall be permitted to take the test one additional time within the next six months without penalty. If an employee fails the second physical fitness test, he or she will be given a one day suspension without pay. Continued failure to pass the test shall result in continued one-day suspensions, but no employee will be required to take the test more than twice in one year. Termination from employment for failure to successfully pass the physical fitness test will not be an available sanction.

The Union position in this matter is to maintain the status quo and not add any new language to the collection bargaining agreement.

The City currently conducts physical fitness testing of entry-level police candidates. The Peace Officer Wellness Evaluation Test requires that entry-level candidates undergo physical fitness testing in order to determine whether they are capable of performing certain physical tasks that they might perform as police officers. The City has attempted several times in the past to add a physical fitness requirement to the collective bargaining agreement but has not been successful.

The City notes that its need for a physical fitness test for current police officers is in part

due to potential liability under the Americans With Disabilities Act, which threatens their continued testing of new applicants. In addition, the City has a Physical Fitness Test with the City Firefighters which has been in effect since 1994.

Finally, the City claims that about half the comparable external communities have physical fitness provisions in their contracts and that their proposal will reward those who pass the Physical Fitness Test.

The Union vigorously objects to this new provision. Among its objections are that the City is not offering any type of quid pro quo for imposing fitness standards and that the Illinois Law Enforcement Training and Standards Board requires the Peace Officer Wellness Evaluation Test for entry to a certified police academy. Therefore, there is no Americans With Disabilities Act concern to be addressed. In addition, the Union objects to the fact that the City's proposal does not identify the content of the test procedure, nor does the proposal allow the Union to participate in making any decisions under it.

As the City is the moving party here, seeking to introduce a new provision to the collective bargaining agreement, it carries the burden of demonstrating the need for the provision and why the Arbitrator should include it. This is a standard that the City often cites in regard to Union proposed new provisions to the collective bargaining agreement. (City Post-Hearing Brief, page 3)

In my view, the City's proposal is a significant change to the collective bargaining agreement. While I understand the rationale used by the City in support of this provision, this is the sort of provision that is better negotiated between the parties than imposed by an Arbitrator.

As the history of this bargaining unit has demonstrated, this is not the first time that this matter has come up during negotiations. If the City feels strongly about this provision, then it must demonstrate why it needs to be addressed now. I do not think the City has carried its burden here.

3 – Section 6.3(a) – Shift Assignment – Reserve Slots. Here, it is the Union that is the moving party seeking change to the present contract. The Union proposes adding the following change which is underlined below:

Section 6.3 Shift Assignment

(a) Annual Scheduling. For a period of thirty (30) days beginning November 15 of each calendar year, the Chief of Police shall post a list of all shift assignments and available consecutive days off during the coming calendar year within the Patrol Division. **The Department shall not be allowed to reserve bid slots, all slots shall be open for bidding.** Such assignments will be chosen by seniority during the said thirty (30) day period by members of the Patrol Division who have completed their probationary period prior to December 1. Probationary officers are freely assignable. The new schedule shall be implemented during the last seven (7) days of December and the first seven (7) days of January. During such two week period (which is a transition period), officers may be assigned different days of from those bid by the officer, but in no event shall an officer work more than five (5) consecutive days without payment of overtime; officers are not guaranteed of receiving two (2) consecutive days off during such transition period.

The City position in this matter is to maintain the status quo and not add any new language to the collective bargaining agreement.

Presently there is a bidding system in place in which patrol officers, by seniority, can seek the one of three shifts that they most desire. New officers, however, are placed on probationary status for a period of 12-18 months and may not bid on shifts. Under this system, the Police

Chief may assign probationary officers to any available, unfilled slot.

In 2004, the Union filed a Grievance claiming that the Department violated the Agreement when it withheld certain shift assignments in the Patrol Division for probationary officers. The Grievance proceeded to arbitration in April 2005. There the Union argued that the probationary officers may only be assigned after all non-probationary officers could bid on all vacancies. The Arbitrator ruled against the Union noting that it was necessary for the City to place probationary officers on certain shifts to gain the necessary experience to become successful officers.

The Union has not given me any compelling reason to overturn the Arbitration Award in this matter. As the Union has already had an opportunity to argue this issue within the past year, I see no reason to change the Arbitration Award already issued here.

4 – Section 6.3(c) – Shift Assignment-Shift Times. Again, it is the Union that is the moving party seeking change to the present contract. The Union proposes adding the following language:

> (c) Hours of Work. Officers assigned to the patrol division shall have the following hours of work:
>
> 7:00 am – 3:00 pm 1st shift
> 3:00 pm – 11:00 pm 2nd shift
> 11:00 pm – 7:00 am 3rd shift
>
> All officers shall be scheduled to work five (5) consecutive workdays followed by two (2) consecutive off-duty days.

The City position in this matter is to maintain the status quo and not add any new language to the collective bargaining agreement.

Under the current contract, the starting and stopping times of each individual shift for patrol officers is not specified. Officers in the patrol division have been generally assigned to one of the following three shifts: 1) seven a.m. to three p.m.; 2) three p.m. to eleven p.m.; and 3) eleven p.m. to seven a.m. The aforementioned shift times are not fixed, but most officers have been assigned to one of these shifts for many years.

The Union proposes to reduce the current, long-standing hours of work for the patrol division to writing in the collective bargaining agreement. The Union rationale is that it seeks to codify a past practice and that the hours of work for officers assigned to the patrol division may not be unilaterally changed by the City.

Herein lies one of the issues involving the lack of trust that exists between the parties. The motivating factor for the Union on this issue is the fear that the Police Chief may change the shift times for patrol officers. The Union members have heard rumors that the Police Chief may want to change shift times but the Union did not bring in any evidence of his doing so. Because of the Union's concern that the City might change shift times, the Union wants the past practice to be codified within the collective bargaining agreement. The Union will have to do better than rumor to demonstrate the need for the inclusion of their proposed language here.

5 – Section 6.12 – Field Training Officer Pay. It is the Union that is the moving party seeking change to the current contract. The Union proposes removing the lined out language from the current provision:

Section 6.12. Field Training Officer. An officer ~~designated and trained as a Field Training~~

~~Officer (FTO)~~ shall receive, in addition to any other pay he may be entitled to under this Agreement, one and a half (1.5) hours additional pay at an overtime rate for each duty day that he is assigned a recruit. Officers shall have the option to select compensatory time in lieu of pay. Prohibitions against pyramiding shall not apply to any part of this section.

The City position is to maintain the status quo in this matter and not delete the language from the collective bargaining agreement.

The Union is proposing that when any officer, whether a Field Training Officer (FTO) or not, is assigned a trainee for a shift then that officer should receive premium pay. Both sides agree that this situation occurs rarely. Both sides also agree that a non-FTO who is assigned a trainee is not required to complete the paperwork that a FTO would be required to complete-the Daily Observation Report.

For an event that both sides agree happens very rarely, there was a considerable amount of discussion regarding this item. It seems that the true concern of the Union is the safety risk associated with going on patrol with a probationary officer. The Union cited an incident in Peoria where a FTO was killed in a traffic accident in which her trainee was driving the vehicle. A similar occurrence happened in Decatur about ten years ago, although that FTO survived.

The City position is that there is no requirement that a non-FTO stand in the place of an FTO. The Union disagrees here. The City position is that non-FTO's lack the training to instruct probationary officers, and that there is no requirement that non-FTO's permit probationary officers to engage in particular kinds of activities such as driving. Further, FTO's are not paid more because probationary officers create risk but because FTO's have received specialized training and apply those skills to fulfill additional responsibilities.

This matter would be easier to determine if there were not disagreement about whether a non-FTO could refuse an assignment with a probationary officer. The Union states that non-FTO's must accept these assignments (Page 27, Union Post-Hearing Brief). The City states that non-FTO's could refuse to ride with a probationary officer (Page 69, City Post-Hearing Brief). If the non-FTO takes on the assignment voluntarily, then he should not be paid the premium. But if he takes it on involuntarily, then he should be paid the premium for the safety component for the work.

However, as an economic issue, I can only choose between the offers as presented. There is little in the way of comparability, either internal or external, to assist me in making a decision here. Given how rare the situation occurs and the choices presented to me, I will grant the Union's proposal. If the City does not want to pay the premium, it can keep the probationary officer at a desk position.

6 – Section 7 – Wages. The Union proposal for wages is as follows:

(a) Effective May 1, 200**4**, the rates of pay for officers ~~will be increased by 3.00% over the rates of pay in effect April 30, 2001, except as otherwise~~ **will be as** provided in Appendix "A". ***The Union proposes a 3.5% general wage increase.***

(b) The rates of pay for the second (2nd) year of this Agreement ~~may be negotiated by the parties, such negotiations to commence no later than sixty (60) days prior to the beginning of the fiscal year. The second (2nd) year of this agreement will have a base rate increase of 2½ % prior to said negotiations~~. **Will be as provided in Appendix "B".** ***The Union proposes a 3.5% general wage increase.***

(c) **The rates of pay for the third (3rd) year of this Agreement will be as provided in Appendix "C".** ***The Union proposes a 3.5% general wage increase.***

The City proposal for wages is as follows:

2004 – 3% general wage increase
2005 – 3% general wage increase

2006 – 3% general wage increase

Surprisingly, there was very little discussion about wages during the hearing. In fact, until the very last day when the Union raised the issue regarding other economic benefits granted in the past (holiday pay) for their wage agreements with the City. This was the least discussed item.

The Union maintains that the command unit received a 3% wage increase in 2004, a 5.35% general wage increase in 2005 and a 3% wage increase in 2006, bringing the average yearly increase to 3.78%. However, even the Union agrees that other bargaining units performing services for the City, including firefighters, had agreed to a 3.0% wage increase for years 2004-06.

Among comparable communities, the Union notes DeKalb wages increased 5% in 2004 and 4% in 2005, Normal 3.5% in 2004 and over 4% from 2005-07, Pekin 3.5% in 2004-06 and Peoria 3.5% in 2004. Champaign, Decatur and Peoria in 2005 received 3.0% increases, Urbana 2.75% in 2004-05 and Springfield 2.0% in 2004.

The City relies on past bargaining history and internal comparables. Its proposed wage increases are in line with past increases negotiated by the parties, 3%, and are identical to the increases negotiated by the City's other bargaining units.

As the external comparables cited by the Union do not offer any compelling reason for a 3.5% wage increase, and since the historical wage increases have been consistent at the 3% increase level, I favor the position of the City on the wage issue. It lends consistency and predictability for the parties in this matter. All things considered, it is the more reasonably of the

proposals.

7 – Section 10.3(c) – Sick Leave Buy Back. The Union is the moving party seeking change to the current contract. The Union proposal is to increase the number of sick leave hours that may be accrued for the purpose of a cash payout from the present 960 hours to 1440 hours. Therefore, the Union proposal is:

Section 10.3. Sick Leave.

(c) Effective May 1, 1990:

(1) Officers who retire or leave the employment of the City under honorable circumstances (defined as any separation of service other than termination), with 20 or more years of service, as recognized by the Police Pension Board, as a sworn police officer, shall be paid at their final hourly rate for all accumulated unused sick leave at the rate associated with the total number of hours the officer has accrued according to the following schedule:

Hours	
Less than 400	0%
400-499	50%
500-599	55%
600-699	60%
700-799	65%
800-**1440**	70%

The City position is to maintain the status quo in this matter and not increase the number of hours from the present contract.

Primarily, the Union seeks to change this provision of the contract to reflect what the City agreed to in the last round of negotiations with the command unit. The City responds to this by claiming that the command officers' contract is an aberration among the City's other bargaining units and is the only contract that allows an employee to accrue more than 960 hours for the

purpose of a cash payout.

Looking at external comparables, Champaign offers 1192 hours, Peoria and Normal offer 960 hours, DeKalb offers 720 hours and Pekin does not have a cash option.

While it is understandable that the Union wants the same provision in its contract as the command unit, the internal and external comparables do not demonstrate a need for a change to the collective bargaining agreement. This item was the subject of a number of package proposals that each side considered but did not accept. The City seems willing to negotiate over this item and realizes the disparity between the two units here. The best course of action would be for the parties to negotiate this matter. Toward that end, I will leave the status quo on this item.

8 – Section 10.3(f) – Sick Leave Abuse. The City is the moving party seeking change to the current contract. The City proposes adding the following provisions:

> Abuse of paid leave is prohibited. Without limiting the City's ability to monitor, investigate and discipline leave abuse, the following situations create a rebuttal presumption that an employee has abused sick leave:
>
> 1. a pattern of sick leave usage, such as repeated use of one or two days of sick leave in conjunction with regular days off, holidays, vacations or other days off, or repeated use of sick leave on a particular day of the week when more than 40 hours of sick leave has been us din the past twelve (12) months, or
>
> 2. use of sick leave and being seen engaged in activities that indicate an ability to work.

The Union position is to maintain the status quo in this matter and not add any new provisions to the collective bargaining agreement.

While the City recognizes that the vast majority of its patrol officers do not abuse their sick leave time, they note that there has been an increase in the high end of usage with large numbers of days used by a small number of individuals. Further, the City suggests that patterns in attendance data suggest that some individuals inappropriately use their sick time in conjunction with other leave time so that they can create longer breaks from service. Under the current contract language, the City has no express right to use attendance data as evidence that the employee is abusing sick leave. Instead, the contract only expressly authorizes the City to discipline an employee for abusing sick leave, if that employee is seen out in public by his supervisor. The new proposed provisions would establish an alternative as evidence of sick leave abuse.

The Union objects to the new proposal on the grounds that the City can and has disciplined employees with the existing language, that the rebuttal presumption incorporated in the new policy proposed by the City is a breakthrough item, and that there is no similar provision in the command unit contract. In addition, the Union noted some procedural concerns as to when they received the final offer from the City which incorporated the rebuttal presumption language for the first time.

Regarding this impasse item, I do not think that the City has demonstrated the need for a change to the collective bargaining agreement. The City already has the ability to investigate individuals using sick leave under unusual circumstances. In addition, this is the kind of issue which is better left to the parties to collectively bargain rather than have an Arbitrator decide. Therefore, I do not support the City's proposed new language here.

9 – Section 10.9 – Disciplinary Leave. The Union is the moving party seeking change to the current contract. The Union proposes adding the following provision:

> Section 10.9 Disciplinary Leave. The parties agree that when a disciplinary suspension is assessed, an officer may elect to work those suspension days and forfeit an equivalent amount of vacation, PC, CE, earned time or straight time in lieu of serving the suspension without pay and without impact to his seniority. However, for purposes of progressive discipline, the official record and employment personnel file shall show that the disciplinary suspension was given and served.

The City position is to maintain the status quo in this matter and not add any new provisions to the collective bargaining agreement.

Primarily, the Union seeks to include the same language here as exists in the command unit contract. The Union's stated purpose for including this provision is that there exists no reason why the command unit should enjoy this benefit while the patrol unit should not.

The City could have taken the high road here and demonstrated that no other internal or external comparable unit has this provision in their contract other than the command unit. Instead, the City argued that it wanted to sting the offending officer for their lack of discipline and that the Union's proposal would allow a suspended officer to work instead of serving his suspension and thereby mitigate the impact of his or her punishment.

Although I find the City's argument to be mean spirited and will not foster better relations with the Union, the fact that no one other than the command unit has such a provision prevents me from granting the Union's proposal here. Merely because the command unit has such a provision does not require a need for the patrol officers to have such a provision.

10 – Section 10.11 – Convention Leave. The Union is the moving party seeking change to the current contract. The Union proposes adding the following provision:

> Section 10.11 Convention Leave. Officers designated by the Association as delegates to the annual Policemen's Benevolent and Protective Association Convention, who are scheduled to work the Friday, Saturday or Sunday of the Convention, shall be released from duty with full pay, and carried Special Assignment (SA), so that they may attend the Convention without the loss of any pay or benefits.

The City proposes the following language to the contract;

> Any employee who is designated by the Association to attend the annual Policemen's Benevolent and Protective Association Convention and who is scheduled to work the Friday, Saturday or Sunday of the Convention, shall be released from duty without pay to attend the Convention.

Under the current assignment, there is no language concerning convention leave. This issue demonstrates the Union's desire to reduce the current and past practice to writing in the collective bargaining agreement. The only substantive disagreement between the parties is whether or not delegates to the annual PB & PA convention, scheduled to work the Friday, Saturday, or Sunday on which the convention falls, shall be released from duty on paid or unpaid leave.

The Union position is that because this past practice exists, the City has no lawful authority to discontinue it even if it is not reduced to writing. Whether or not paid convention leave is expressly stated in the parties' agreement, it exists under it as a past practice. This benefit may not be unilaterally cancelled by the City, because it is bound by past practice.

The City position is that although there was a settlement agreement in 2003 in which the

City did allow delegates to attend the convention with pay, the language of the settlement made it clear that it was only available for the term of that agreement and during negotiations for the successor agreement. When that period of time expired, the status quo then reverted back to the original contract language. Further, the City notes that it will make a good faith effort to provide paid convention leave to delegates and is only seeking the discretion to take away the benefit should a change in circumstances warrant it. (City Post-Hearing Brief, page 93).

For me, this is another example of an issue created because of the lack of trust between the parties. The Union is concerned because the City may not pay for this item in the future, so they want it codified in the contract. The City has given no commitment that it will not pay for this item in the future and is in fact promising to make a good faith effort to provide this benefit in the future. Add to all that the fact that the comparables do not support the Union position, I will adopt the City position here.

11 – Section 10.12 – Temporary Disability/Pregnancy. Both parties seek to add language to the collective bargaining agreement here. The Union proposes adding the following:

> Section 10.12 Pregnancy. Officers who become pregnant and who are restricted from fulfilling the physical requirements of police work by their physician, shall be allowed to work in a light duty assignment, upon the request of the officer accompanied by a note from their physician, on a temporary basis not to exceed the length of the pregnancy up to the date of delivery.
>
> The City seeks to add the following;
>
> An officer who is temporarily restricted by a physician from performing essential functions of the position but who is certified as being able to perform light duty will be permitted to work light duty for up to three (3) months, if the Chief of Police determines that such work

> is available and would benefit the Department. This assignment will be extended for an addition three (3) months, if the factors above continue to apply. At any time during light duty, the city may require that the employee be examined by a physician of its choice. If physician's opinions differ, the physicians shall agree on a third physician whose opinion shall be determinative.

The Union maintains that their proposal reflects the past practice involving pregnant patrol officers. This past practice was unilaterally terminated by the City on June 30, 2004, effective January 1, 2005. Only after that announcement did either party present any proposal on the subject. The City states that it changed its policy because of a letter received by Human Resources employee Angie Brown. That letter raised a concern that the pregnancy leave policy might be the subject of a successful reverse sex discrimination case.

Both sides agree that pregnancy has rarely occurred in the past in this unit. Both sides share an interest in addressing the situation of a pregnant police officer. The City, because of its stated concern about a sex discrimination case, seeks to have a gender neutral provision to address the matter.

Actually what both sides have done is to mask their real concerns about this impasse item. What the Union really does not like about the City proposal is the language that states, "if the Chief of Police determines that such work is available and would benefit the Department." What the City really does not like about the Union proposal is that the officer and her physician determine whether the light duty assignment is required during the remainder of the pregnancy. The Union proposal does not address the issue of whether light duty assignments are available and the City is concerned if there are multiple pregnancies at the same time. The rest of the parties' discussion here is mere window dressing parading as legal discourse.

Since it was the City that instituted this impasse item in controversy, they have the burden of demonstrating the need for the provision they propose. Although it is possible that the City might find itself involved in a sex discrimination suit in the future, the one letter from an attorney inquiring about this matter is a thin reed on which to base their proposal. Then, to compound the issue, the City proposal is based upon the determination of the Chief of Police when the City knows that the Union does not trust the present Chief. The Union proposal is the more reasonable and more consistent with the intent of the parties.

12 – Section 12.9 – Duty Related Injuries. Both parties seek to add language to the collective bargaining agreement here. The Union proposes adding the following:

> Section 12.9 Duty Related Injuries. Officers injured in the line of duty shall immediately be provided all benefits under the Public Employee Disability Act (PEDA). Specifically, during the time an officer is received PEDA benefits the officer (1) will not be required to return to work in any capacity unless the officer has been released to full duty by a licensed physician pursuant to the provisions of PEDA; (2) shall not be required to use any accrued leave time, and; (3) the officer shall receive all pay and benefits provided by this Agreement and required by State and Federal law.

The City seeks to add the following:

> Each employee covered by this Agreement who is inured in the line of duty shall receive the benefits provided for in the Public Employee Disability Act, 5 ILCS 345. Any employee covered by this Agreement who disputes amounts paid under this provision may file a grievance, if he executes a waiver of other legal remedies which may be available to the employee under 5 ILCS 345. No arbitrator shall have jurisdiction to decide such a grievance absent execution of a waiver.

The current Agreement does not have a provision governing injury leave. Both parties propose to incorporate the Public Employee Disability Act (PEDA) into the Agreement. Under

PEDA, whenever an eligible employee suffers an injury in the line of duty and is no longer able to perform their duties, their employer must continue to pay the employee on the same basis as they were paid before the injury.

Again, the parties have obfuscated their real intent here. From the perspective of the City, they object to the Union proposal because it potentially opens the door to double-dipping by the employee. The Union objects to the City proposal because it may eliminate the Union in participating in a dispute with the City about the enforcement of rights under PEDA.

In one of the rare moments of plain talk, the Union states that, "All things being equal, there is no pressing need to include this language. However, labor relations between these parties are not in a state of equilibrium. The Union seeks to have this benefit codified in the agreement to provide another avenue to resolve future violations of the Act by the City." (Union Post-Hearing Brief, page 59-60) I agree that there is no pressing need here. While I am not a champion of the language in the City proposal, notably about arbitrator jurisdiction, it is the simpler and more straight-forward of the two proposals. The City proposal will be adopted here.

V. CONCLUSION AND AWARD

On the disputed issues, the following offers are adopted:

1. Recognition – Proceedings pending before the ILRB
2. Physical Fitness Standards and Testing – Union offer
3. Shift Assignment – Reserve Slots – City offer
4. Shift Assignment – Shift Times – City offer
5. Field Training Officer Pay – Union offer
6. Wages – City offer
7. Sick Leave Buy Back – City offer
8. Sick leave Abuse – Union offer
9. Disciplinary Leave – City offer
10. Convention Leave – City offer
11. Temporary Disability/Pregnancy – Union offer
12. Duty Related Injuries – City offer

April 5, 2006
Champaign, Illinois

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Paul Lansing
Arbitrator