

**INTEREST ARBITRATION
OPINION AND AWARD**

In the Matter of Interest
Arbitration
Between
VILLAGE OF MORTON GROVE
And
FIREFIGHTERS ASSOCIATION
OF MORTON GROVE, LOCAL
2178, IAFF

Hearings Held

September 15, 2011
September 16, 2011
October 27, 2011

Morton Grove Village Hall
6101 Capulina Avenue
Morton Grove, Illinois 60053

Appearances

For the Union:

Stephen B. Horwitz, Esq
Sugarman & Horwitz, LLP
221 N. LaSalle Street, Suite 626
Chicago, Illinois 60601-1241

Arbitrator

Steven Briggs

For the Village:

R. Theodore Clark, Jr., Esq.
Clark Baird Smith, LLP
6133 N. River Road, Suite 1120
Rosemont, Illinois 60018

TABLE OF CONTENTS

BACKGROUND	1
RELEVANT STATUTORY PROVISIONS	2
COMPARABLE EXTERNAL JURISDICTIONS	4
Village Position	4
Union Position	5
Discussion	7
MINIMUM MANNING	10
Union Position	10
Village Position	15
Discussion	22
The Historical Backdrop	23
The Public Interest	25
The Status Quo	26
Additional Considerations	28
GROUP HOSPITALIZATION INSURANCE	29
Village Position	29
Union Position	31
Discussion	33

SALARIES 36

 Village Position 36

 Union Position 39

 Discussion 42

DRUG AND ALCOHOL TESTING 46

 The Status Quo 46

 Village Position 46

 Union Position 48

 Discussion 49

AWARD 51

BACKGROUND

The Village of Morton Grove, Illinois (the Village) operates a Fire Department (the Department) with two fire stations: Station No. 4, at the intersection of Lincoln and Calle, covers the east side of the Village, while Station No. 5, situated at Harlem and Shermer, serves the west side. In total, the Department is staffed with 24 firefighter/paramedics, six lieutenants, and six engineers, all of whom are represented for collective bargaining purposes by The Firefighters Association of Morton Grove, Local 2178, IAFF (the Union; the IAFF). In addition, the Department employs a fire chief, three district fire chiefs, and a fire protection bureau captain.

The present interest dispute arose under §14 of the Illinois Public Labor Relations Act (the Act). There are four issues to be decided: (1) minimum manning; (2) group hospitalization insurance; (3) salaries; and (4) drug and alcohol testing. The parties have stipulated that the first three issues are economic, and that the fourth is non-economic. They have also waived the Act's provision for a tripartite interest arbitration panel, and have granted the undersigned Arbitrator the exclusive authority to decide all four of the pending issues.

The parties' previous collective bargaining agreement became effective on January 1, 2006 and expired on December 31, 2008. In these proceedings they have stipulated to a four-year contract covering the period from January 1, 2009 through December 31, 2012.

Interest arbitration hearings were held on September 15, September 16, and October 27, 2011. The hearings were transcribed. The parties' timely Post-Hearing Briefs were received by the Arbitrator on or about January 19, 2012.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Illinois Public Labor Relations Act (the Act) provides in pertinent part:

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). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, 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 interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- (a) In public employment in comparable communities.
 - (b) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
 - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, 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.

COMPARABLE EXTERNAL JURISDICTIONS

Village Position

The Village asserts that the following municipalities should be adopted as comparable external jurisdictions:

Des Plaines

Lincolnwood

Niles

Park Ridge

Skokie

Wheeling

It argues that due to differences in administrative structure and legal context, fire protection districts should not be included in an interest arbitration comparability pool for a municipality. The Village notes as well that the above jurisdictions are similar to Morton Grove on the standard comparison criteria of median household income, median home value, and per capita EAV. Moreover, the Village points out, the above municipalities are the same ones used by Arbitrator Edwin Benn in a 2009 stipulated award between the Village of Morton Grove and the Fraternal Order of Police (FOP), and by Arbitrator Robert McAllister in a 2010 interest arbitration proceeding between those same parties. The Village notes that the parties in the latter case stipulated to those jurisdictions for comparability purposes, just as they had before Arbitrator Benn a year earlier (VX-31; Tr. 50).

Union Position

The Union believes that the external comparability pool in the present dispute should be comprised of the following entities:

Des Plaines

Niles

North Maine Fire Protection District

Park Ridge

Rolling Meadows

Wheeling

Wilmette

While the parties agree that Des Plaines, Niles, Park Ridge, and Wheeling are comparable to Morton Grove, the Union argues that Lincolnwood should be excluded because its firefighters have no union representation, and their services are contracted from Paramedic Services, Inc. In contrast, the Union notes, police officers in Lincolnwood are Village employees and are represented for collective bargaining purposes by the FOP.

The Union also asserts that Skokie should not be used as an external comparable in these proceedings because firefighters there last received a salary increase effective May 1, 2009, and there has been no agreement for salary increases thereafter. Here, the Union notes, the parties have already agreed on the salary increases for 2009 and 2010, so consideration of the Skokie firefighter increases for those fiscal years would not be helpful. The Union points out as well that Skokie's population (64,784) is 278% larger than that of Morton Grove (23,270). And finally, the Union underscores the large difference in the number of uniformed firefighter personnel in Skokie (113) vs. Morton Grove (41).

Turning to its own proffered jurisdictions, the Union acknowledges that fire protection districts are typically treated in a class by themselves for interest arbitration purposes. It also points out that since the North

Maine Fire Protection District collective bargaining agreement expired on December 31, 2011, it would be of no use in determining appropriate 2012 salary increases for Morton Grove firefighters.¹

The Union underscores the proximity of Wilmette to Morton Grove (about four miles), the similarity of their respective populations (27,087 and 23,270), and staffing levels (46 full-time sworn personnel vs. 41 full-time sworn personnel). Moreover, the Union notes, Morton Grove competes with Wilmette (and Niles) for qualified firefighter applicants. Indeed, the Union points out, the Morton Grove, Niles, and Wilmette Fire and Police Commissions worked together to establish the “Firefighter/Paramedic Application Packet” used in the June 2009 recruitment and selection process. (Tr.-26)

Discussion

Both parties have acknowledged that in interest arbitration generally, arbitrators are very reluctant to disturb external comparability groupings used by the parties themselves and/or by interest arbitrators in the past. As noted, in previous Morton Grove interest arbitration proceedings Arbitrators Edwin Benn and Robert McAllister adopted the same comparability pool that the Village proposes here. It is important to recognize, though, that both of those cases involved the Village’s Police

¹ Union Post-Hearing Brief, p. 40.

² I recognize that Skokie firefighters’ salary increases after May 1, 2009 have not yet been determined. Nevertheless, that fact does not alter its comparability to Morton

Department, not its Fire Department. And as the Union emphasizes, one municipality in that comparability pool (Lincolnwood) does not employ firefighters; rather, it pays an outside contractor for firefighter/paramedic services. That characteristic makes it unrealistic to compare the employment package of Morton Grove firefighters with that received by those performing firefighter/paramedic work in Lincolnwood.

The Union also correctly notes that Skokie's population is nearly three times the size of Morton Grove's, and that its firefighter workforce is more than double that in Morton Grove. Still, I am very much influenced by the fact that in two previous police interest arbitration proceedings Skokie has been considered by the arbitrators and the parties alike (i.e., the Village and the FOP) to be comparable to Morton Grove. That solid history, plus the close alignment of the two municipalities in terms of median household income, median home value, per capita EAV, and geographical proximity, have convinced the undersigned Arbitrator that Skokie is a valuable and appropriate external comparable here.²

Focusing now on the Union's proposal for the addition of North Maine Fire Protection District (FPD) as an external comparable, there is substantial arbitral authority to suggest that doing so would not be

² I recognize that Skokie firefighters' salary increases after May 1, 2009 have not yet been determined. Nevertheless, that fact does not alter its comparability to Morton Grove with regard to other important elements of the overall firefighter employment context and in particular, its compensation/benefit package.

appropriate. Consider, for example, Arbitrator Benn's conclusion that fire protection districts should be compared with fire protection districts, "rather than any other form of municipality or administrative entity, because of their unique structure and statutory rights and obligations."³ Furthermore, there is no evidence in the record to suggest that the parties have ever used North Main FPD as an external comparable at the bargaining table.

With regard to Wilmette, even a cursory comparison of its conventional economic benchmarks (median household income, median home value, per capita income, 2010 per capita EAV) with those same indicators across the additional municipalities agreed to by both parties leads to the solid conclusion that Wilmette is simply not comparable to them economically.

And finally, nothing in the record suggests that the parties have ever used Rolling Meadows or Wilmette as comparables before, or that either of them has even cited one or both of those municipalities at the bargaining table. Thus, to add Rolling Meadows and Wilmette to the comparability pool at this eleventh hour in the bargaining process seems unjustified.

Based upon the foregoing discussion the Arbitrator has adopted the following group of municipalities as the official external comparables for these IAFF interest arbitration proceedings:

³ *North Maine Fire Protection District and IAFF Local 2224* (Benn, 2009); see also *Northlake Fire Protection District and IAFF Local 3863* (Kohn, 2003).

Des Plaines

Niles

Park Ridge

Skokie

Wheeling

MINIMUM MANNING

Union Position

The Union embraces the status quo on this issue, which is contained in Article X (Minimum Manning) of the parties' 2006-2008 collective bargaining agreement. That provision is quoted in its entirety here:

ARTICLE X – MINIMUM MANNING

10.1 On duty daily minimum manning levels shall continue to be:

- (a) Ten (10) line unit employees per shift; i.e., five (5) in each fire house, of which one in each house shall be the company officer, provided however, that due to the scheduling of vacations and the occasional need for the utilization of other leave benefits, one company officer per shift may be an acting lieutenant to be compensated as provided for in Section 15.4, "Work Out of Classification" of the Collective Bargaining Agreement.
- (b) Three (3) unit employees per engine and two (2) unit employees per ambulance.

10.2 Because of safety considerations, both to employees and to the public, in addition to the minimum manning requirements of Section 10.1, present operational procedures shall continue to apply

regarding manning complements of apparatus depending upon the type of alarm, location and incident and circumstances involved.

- 10.3 Notwithstanding the foregoing, in situations where extremely low temperatures and/or other related climate conditions (e.g., high wind, blowing and drifting snow, freezing rain) render normal minimum manning unsafe, such minimum manning shall be increased to no less than twelve (12) line unit employees, with the additional employees to reinforce existing manpower and/or to man additional apparatus.

The Union highlights the fact that over 20% of Morton Grove's population is 65 years of age or older, and that there are currently a number of senior residential facilities under construction in the Village. A few of them, the Union adds, will cater to senior citizens with special health care needs. Thomas Friel, the current Morton Grove Fire Chief, confirmed these facts, and noted that rescuing the older segment of the population from structural fires is more "manpower intensive" than performing that task for the general population. James Patrick Reardon, Chief Executive Officer for the Mutual Aid Box Alarm System of Illinois (MABAS)⁴ testified that the make up of "first responding" apparatus to a fire ground is critical, because it will drive what tactics and decisions can then be employed (Tr. 200-202). The Union also underscores the well-known fact that time is of the essence in a fire emergency, because "fire

⁴ MABAS is made up of 1,100 fire agencies grouped into 68 operating divisions across Illinois. Morton Grove is one of 18 fire departments that comprise MABAS Division III in Chicago's North suburbs (UX-27; Tr. 57). In Morton Grove, a call for mutual aid occurs when a structural fire escalates to the box alarm level (Tr. 64, 65). For all lower level responses (a "still alarm" to a Code 4), the Morton Grove Fire Department receives automatic assistance from the Niles Fire Department.

growth can expand at a rate of many times its volume per minute,” making “time ... the critical factor for the rescue of occupants and the application of extinguishing agents to minimize loss.” (UX-67A). In harmony with that point, Chief Reardon testified that the first responding unit makes manpower allocation decisions to satisfy the sequence of rescue/firefighting tasks unique to each fireground (Tr. 200-202).

The Union also relies on a 2010 National Institute of Standards and Technology (NIST) study entitled “Report on Residential Fireground Field Experiments,” arguing that larger crew sizes are associated with faster completion of rescue and firefighting tasks. More specifically, the Union avers, the study shows that in low-hazard structural fires the most significant impact on the success of firefighting operations is attained with four-person crews, as opposed to three-person and two-person crews.

Chief Reardon also opined that given the standard time to flashover (i.e., ignition of all inanimate and animate objects within a room), the arrival of an adequately staffed first responding unit within four minutes of a fire’s ignition is critical to timely extinguishing fires and rescuing victims prior to the phenomenon of flashing (Tr. 182).

The Union asserts that adoption of the Village’s final offer on the minimum manning issue would result in a 20% manpower cut each and every day (i.e., from a minimum of ten per shift to eight per shift), and would allow the Village to implement a 50% fire station closure. It also

underscores Chief Reardon's opinion that with two fire stations, there is a "big difference between eight to ten on how you determine to deploy them based upon the risks and the level of service that the policymakers in the community expect." (Tr. 199-200)

A December, 2006 "Regional Fire Protection Feasibility Study" jointly funded by the Villages of Morton Grove and Niles explored the notion of merging the Morton Grove Fire Department (MTFD) with the Niles Fire Department (NFD). The newly amalgamated "department" would hypothetically have consisted of three stations: two in Niles and one in Morton Grove. (VX-43) But since that consolidation would have eliminated an engine company and reduced the total complement of firefighters, Local 2178 President Sean Brink informed Morton Grove Chief Friel that neither his Local nor the Niles firefighters Union (Teamsters Local 726) had any interest in the consolidation proposal. According to Chief Friel, the Morton Grove Village Board has not adopted that proposal (Tr. 212-213). Moreover, the Union points out, there is no evidence in the record to indicate that the Morton Grove Village Board was even interested in the proposed MGFN/NFD consolidation. In any event, the Union avers, reduction of the number of Morton Grove firefighters, as the Village's final offer would allow, would obviously not be in the public interest.

The Union adds that the current language of Article X (Minimum Manning) was negotiated about a quarter century ago --- in the parties'

initial contract, and it has remained essentially the same since that time. Against that backdrop the Village proposed in the parties' most recent negotiations and in the talks leading to the 2006-2008 contract to delete that Article in its entirety. During the latter, the Village dropped the proposal, suggesting that it had higher priorities.

The Union also believes that the Village's final offer on minimum manning constitutes a step backwards, ignoring the four firefighter crew vs. three firefighter crew advantages spelled out in the *Report On Residential Fireground Field Experiments* (UX-13, 14). That Report found that a four-person crew completed all fireground tasks 25% faster (i.e., 5.1 minutes quicker) than a three-person crew.

The Union also envisions circumstances where adoption of the Village's final offer on this issue could result in an ambulance being stranded without minimum manning when an engine was in service, or in an engine being stranded without minimum manning while an ambulance was in service. The Union notes in addition that under its final offer the Village could take an engine company or an ambulance company out of service, either temporarily or permanently.

The Union asserts as well that the Village has failed to prove that the existing negotiated minimum manning language has failed to meet its objectives or has created operational hardships for the MGF. It also argues that the Village has not engaged in exhaustive, good-faith bargaining over its desire to reduce the minimum manning level. Rather,

the Union emphasizes, the Village simply proposed the elimination of Article X altogether. The Union maintains it cannot be faulted for rejecting such a drastic and wide-reaching proposal.

Village Position

The Village proposes several changes to the status quo on this issue. Its final offer, which is a revised version of the current Article X, is quoted here:

ARTICLE X – MINIMUM MANNING

10.1. Effective on the date of Arbitrator Briggs' interest arbitration award, on duty daily minimum manning levels shall be established by the Fire Chief and shall not be less than eight (8) line unit employees per shift, of which two shall be company officers, provided however, that due to the scheduling of vacations and the occasional need for the utilization of other leave benefits, one company officer per shift may be an acting lieutenant to be compensated as provided for in Section 15.4, "Work Out of Classification" of the Collective Bargaining Agreement. Minimum manning levels shall be three (3) unit employees per in-service engine and two (2) unit employees per in-service ambulance. Notwithstanding the foregoing, the Village will not take an ambulance out of service if the engine at the station where the ambulance is being taken out of service is not ALS certified.

10.2. Because of safety considerations, both to employees and the public, and to the extent consistent with the minimum manning requirements set forth in Section 10.1, present operational procedure shall continue to apply regarding manning complements of apparatus depending upon the type of alarm, location and incident and circumstances involved.

10.3. Notwithstanding the foregoing, in situations where extremely low temperatures and/or other related climate conditions (e.g., high wind, blowing and drifting

snow, freezing rain) render normal minimum manning unsafe, such minimum manning shall be increased to no less than ten (10) line unit employees, with the additional employees to reinforce existing manpower and/or to man additional apparatus.

10.4. As a quid pro quo for the changes to the minimum manning provisions of this Article X, the Village agrees that it will not layoff any bargaining unit employee who was employed as of October 27, 2011 during the term of the parties' 2009-2012 collective bargaining agreement and for an extended period thereafter until December 31, 2015. This no layoff guarantee shall sunset for all purposes as of December 31, 2015.

The Village asserts that the modest changes it proposes to Article X are fully justified. In lieu of requiring five line employees to staff each of the two fire stations, its offer provides a total of eight line employees on each shift. And the contractual provisions governing company officers has been changed in form only --- i.e., instead of requiring one at each station, it provides for a total of two per shift, with exactly the same language specifying that one per shift may be an "acting" officer.

The Village also notes that the §10.2 language in its offer has been modified only to render it consistent with §10.1. Section 10.2 has been clarified under its offer, the Village asserts, to indicate that minimum apparatus manning requirements apply only to in-service apparatus, retaining the requirements regarding three line employees on an engine and two line employees on an ambulance. That clarification is "essentially non-substantive," the Village avers.

And Section 10.3, the Village adds, has been modified only to be consistent with Section 10.1, reducing the inclement weather required minimum from twelve to ten. The Village asserts that the new §10.4 is included in its final offer to protect current bargaining unit members against layoff.

Unlike its initial proposal at the outset of negotiations, the Village states, its final offer on minimum manning levels does not seek to eliminate Article X in its entirety. Instead, it focuses on giving the Fire Chief limited flexibility to make personnel deployment decisions based upon his assessment of circumstances, without changing minimum apparatus manning requirements.

The Village notes that under its final offer the Chief's "only real option"⁵ would be to take an ambulance out of service, but only if the engine is Advance Life Support (ALS) certified --- meaning it could respond to Emergency Medical Service (EMS) calls and do everything an ambulance could do except provide patient transport service.

The Village advances what it believes are two compelling justifications for adoption of its final offer: (1) it could cease operating an ambulance during off peak demand hours, thereby reducing overtime (Tr. 92-93; VX-43 at 216); and (2) it could realistically contemplate the potential merger of the Morton Grove and Niles Fire Departments. Each of those options was included in the December 2006 Regional Fire

⁵ Village Post-Hearing Brief, p. 28.

Protection Feasibility Study, and each would save the Village considerable expense. And the latter, the Village notes, would allow it to close one of its two fire stations. In Chief Friel's opinion, doing so would not be an available option if the current language of Article X were to be retained (Tr. 90). The Chief also testified that he knew of no similar restriction in Niles (Tr. 91-92). Thus, the Village argues, Morton Grove should have the same flexibility --- especially given the longstanding cooperation between the two departments.

The Village notes that its final offer on minimum manning simply addresses a "level of service" issue that does not adversely impact firefighter safety. Moreover, as Chief Friel pointed out, the new senior living facility and Alzheimer patient residence are being constructed in full compliance with the National Fire Protection Association (NFPA) life safety code, and they will be "fully sprinkled." (Tr. 478) Overall, the Village strongly opines that acceptance of its final offer on this issue will not affect the ability of the MGF to respond to fire alarms within NFPA standards.

The Village relies as well on evidence from the external comparability pool in support of its minimum manning offer. It notes that three municipalities from that group (Des Plaines, Skokie and Wheeling) have no contractual provisions addressing minimum shift or minimum apparatus manning. In Niles, the Village adds, the contract's applicable provision focuses exclusively on apparatus manning and does

not require that a specific number of bargaining unit employees must be on duty at all times (VX-49). And while the Park Ridge contract does indeed specify minimum shift manning of “10 collective bargaining unit members,” that relatively new provision represents a reduction from the previous minimum of twelve unit members.

Turning to what it has characterized as “interest arbitration precedent,” the Village also notes that a majority of public sector labor boards across the United States consider manning issues in the protective services to be permissive subjects of bargaining. It highlights as well several interest arbitration awards (including three in Illinois) wherein arbitrators have considered minimum manning in the fire service to be beyond their jurisdiction.

The Village disagrees with the testimony of Union witness and Chief Negotiator Robert Sugarman, who claimed that with regard to the minimum manning issue in the negotiations leading to the 2006-2008 contract “It wasn’t important. It may have been discussed.” (Tr. 420).⁶ Indeed, the Village notes, when asked about the Village’s initial January 20, 2009 proposals (VX-29; UX-32) --- which included the deletion of Article X, Mr. Sugarman responded: “I am sure he (Village Chief Spokesperson Ted Clark) went through these proposals and explained

⁶ The Village claimed in its Post-Hearing Brief (at p. 46): “Union witness Sugarman said that in the negotiations that preceded interest arbitration minimum manning wasn’t important.” (underlined emphasis added by Arbitrator). That comment suggests that Mr. Sugarman’s quoted testimony related to the failed negotiations that caused these interest arbitration proceeding to take place. It did not. Rather, it was focused on the negotiations which resulted in the parties’ 2006-2008 Agreement.

them.”⁷ Moreover, Sugarman also testified that in response to a Federal mediator’s inquiry as to what issues were important to the Village, Mr. Clark identified just three issues: wages, health insurance contributions, and minimum manning. And the Village notes that Chief Negotiator Clark included the following statements in his description of the 2009 pre-arbitral bargaining sessions:

There were extensive discussions with respect to the minimum manning, the vast majority of which were off the record, Mr. Arbitrator. They were either sidebars between myself and Mr. Sugarman and/or sidebars between he, I and the federal mediator. The long and the short of it was the Union did not present any proposals to alter minimum manning. (Tr. 38)

The Village also believes the Union’s reliance on NFPA standards in support of its position on this issue is misplaced. According to Chief Friel’s unchallenged testimony, the Village has not officially adopted NFPA 1710, and it is only advisory in nature (Tr. 475-476).⁸ He also testified, however, that the Village is fully compliant with NFPA standards in terms of Code 4 alarms (i.e., confirmed fires). (Tr. 482; VX-53F)

Even Union witness James Reardon, former Northbrook Fire Chief and current President of MABAS Illinois, testified that “three was commonly the staffing level that you would see on (MABAS) Division III

⁷ Parenthetical explanation added by Arbitrator.

⁸ The official title of NFPA 1710 (2010 Edition) is “Standard for the Organization and Deployment of Fire Suppression Operations, Emergency Medical Operations, and Special Operations to the Public by Career Fire Departments.” (VX-53)

engines (and) ladder trucks.” (Tr. 192-193). Former Chief Reardon also clarified the fact that crew manning on a fire ground does not necessitate that they all travel from the same fire station together:

... you could have a fire truck respond with two from a station and they are met at the scene with two fire inspectors who are also firefighters and they assemble into a four person company. So it drives with the staffing, it says that they don't have to be sitting in the station together, when they arrive on the scene they should be assembled in companies of four. (Tr. 191-192)

The Village distinguishes this Arbitrator's decision in *City of Rockford and IAFF Local 413*, Case S-MA-97-199 (Briggs, 1998) by advancing the following observations: (1) The City's final offer in *Rockford* would have totally eliminated the previously negotiated daily shift minimum; here, the Village's offer simply reduces the daily minimum manning requirement from ten to eight. (2) Firefighter safety was a key consideration in *Rockford*; in the present case the Union has focused almost entirely on the alleged impact the Village's final offer would have on the level of services provided to Morton Grove residents. (3) In *Rockford*, the Arbitrator opined that “the loss of staffing flexibility which would result from the adoption the Union's final offer seems to exist in concept only, not in reality.” Here, there is a real loss of staffing flexibility associated with adoption of the Union's final offer, because it would prevent the Village from taking an ambulance out of service during non-peak demand hours, and it would not allow the Village to close a fire

station, either as a stand-alone decision or as part of a possible consolidation with Niles. (4) In *Rockford*, minimum manning was not the focal issue; it was only one of ten unresolved issues. Here, minimum manning is much more important, as evidenced by the parties' in-depth presentations. (5) The economic imperatives in the present case (e.g., reduction of overtime expenses) are more significant in this 2012 interest arbitration proceeding than they were in the 1997-1998 *Rockford* matter. (6) The City of Rockford did not offer a *quid pro quo* for selection of its final offer on minimum manning; here, the Village has not only retained a shift minimum requirement, but as a *quid pro quo* to the Union, it has also guaranteed that no bargaining unit employee will be laid off for the extended period through December 31, 2015.

Discussion

The minimum manning issue is of paramount significance to several groups, and my decision on this issue alone is important to each of them for a variety of reasons. First, the Morton Grove Fire Department seeks greater administrative flexibility regarding the ways in which it responds to fire alarms --- both in terms of the apparatus it sends and the number of firefighters dispatched to operate that equipment. Second, the Village itself has a fiduciary responsibility to minimize the costs of operating its Fire Department. The Village's offer on this issue is designed, in part at least, to remove what it believes are the present

contractual obstacles to exploring ways to reduce overtime expenses. Third, Morton Grove Firefighters themselves have legitimate safety concerns connected to the number and origin of sworn personnel composing the first response team sent to a fireground.⁹ Indeed, the response time itself is a significant factor that could affect their safety on the job. Fourth, the Union and the bargaining unit have legitimate concerns about what effect adoption of the Village's proposal might have on their long term job security. And finally, the citizens of Morton Grove themselves have a very direct interest in the minimum manning question as it relates to all of the above-noted outcomes, not to mention its obvious potential effect on their physical assets (structures, belongings, etc.) and their personal safety.

The Historical Backdrop. The present language of Article X has been in existence for decades. It was negotiated by the parties themselves, and its terms were renewed without significant modification during the contract negotiations leading to each and every successor collective bargaining agreement. It appears from the record that during negotiations leading to the January 1, 2004 – December 31, 2005 and January 1, 2006 – December 31, 2008 Agreements the Village proposed elimination of Article X altogether, but that does not necessarily lead to

⁹ The Village argued in its Post-Hearing Brief that “While the Union had the opportunity to challenge the Village’s effort to modify the minimum manning article based on firefighter safety, it choose (sic) to focus on the alleged impact on the residents of Morton Grove ...” (Village Post-Hearing Brief, p. 34). But the language of §10.2 itself reveals that both parties acknowledge the relationship between minimum manning and employee safety considerations. I therefore do not fault the Union for not placing more emphasis on employee safety in these proceedings.

the conclusion that the parties engaged in an exhaustive, good-faith exchange of ideas on the minimum manning issue. More specifically, the parties agree that in the most recent round of on-the-record negotiations the Village proposed the elimination of Article X in its entirety, and it never wavered from that position. They agree as well that the Union's on-the-record response was to retain the status quo. There is little if any evidence before me that during the failed negotiations leading to the placement of the minimum manning issue before me, the parties sufficiently explored alternatives to those seemingly intractable positions.

Village Chief Negotiator Ted Clark and Union Chief Negotiator Robert Sugarman are among the most experienced, creative, and respected labor negotiators in the State of Illinois. They both acknowledge that between formal bargaining sessions they had numerous off-the-record discussions about the minimum manning issue. But while doing so can often lead to settlement of especially difficult issues, there is also a down side to such "off-the-record" discussions. They are private, and neither party has the authority to reveal their content. Thus, though I understand that Messrs. Clark and Sugarman engaged in such discussions about minimum manning, the confidential nature of those talks renders them of no use in determining whether the parties sufficiently explored alternate settlement options. The only evidence in the record before me about the content of the parties' pre-arbitral minimum manning negotiations is that the Village proposed the

removal of Article X in its entirety and the Union demanded that it remain in the Agreement as written. The paucity of that evidence prevents me from concluding that the parties fully explored the minimum manning issue through the give and take of the collective bargaining process.

The Public Interest. The manning of crews, equipment and shifts in the fire service is directly linked to the public interest. Like every other economic issue, of course, it can place either upward or downward pressure on the property tax rate, for example. But of far greater significance here is the potential impact the Village's final offer might have on public safety. The Village claims the changes it proposes to Article X would have no impact on the MGF's ability to respond to fire alarms and calls for emergency medical services. The sincerity of that claim is beyond question, and it was clear from the testimony of Chief Friel that he and other Fire Department Command Staff had thought long and hard about the ways in which they could reduce current minimum manning levels, take an ambulance out of service during off-peak hours, and even close one of Morton Grove's two fire stations with no harmful effect on public safety. In contrast, the Union opined with equal sincerity and credibility that changing the status quo as proposed by the Village might adversely affect initial response times and the first responder crew's ability to minimize personal injury and structural damage caused by burning buildings. Both parties have

raised persuasive arguments about the public interest, but I find the Union's position to be slightly more persuasive --- especially since the outcome of these proceedings on the minimum manning issue has such a strong connection to public safety.

The Status Quo. Union Chief Negotiator Robert Sugarman testified that he had been involved in Morton Grove Firefighter negotiation since the 1980s, and that he was present for the talks leading to their very first collective bargaining agreement with the Village. Article X (Minimum Manning) of that 1987-1989 Agreement (UX-2A) contains essentially the same language as that which appears in Article X of the current Agreement. Thus, for about 25 years the minimum manning language originally negotiated by the parties themselves has worked well enough that they have not made any substantial change to it. Put another way, that language has apparently not posed any safety threat to the public or to Morton Grove Firefighters themselves. As a purely practical matter, then, a reasonable person might advise: "If it ain't broke, don't fix it."

But the Village argues that Article X is broken, because its application has generated an inordinate amount of overtime expense. Prior to the negotiations leading to its 2006-2008 Agreement with the Firefighters, however, the Village had never proposed deletion of Article X or any significant change to it (Tr. 420). It is reasonable to assume from that fact that overtime expenses associated with the minimum manning

provision were not problematical for at least two decades. Not surprisingly though, like most other municipalities across the country the Village of Morton Grove began to experience budget deficits in 2007 or so. For fiscal year 2008 and 2009 its General Fund expenses exceeded revenues. But that was not the case for 2010 or 2011 (VX-86). Those statistics suggest that the Village took fiscally responsible measures in those years to counteract the turbulent economic conditions which followed the implosion of Lehman Brothers and other large financial and investment institutions. Indeed, according to the testimony of Finance Director Ryan J. Horne, it did not fill vacancies caused by attrition, it implemented layoffs, and it delayed completion of selected public works projects. The Village implemented a hiring freeze as well (Tr. 269-271). Moreover, the it initiated user fees for such services as the removal of residential solid waste and recycling, and it increased vehicle sticker fees (VX-88). The Village argues here that those measures have been insufficient to put Morton Grove back on its feet financially, and that the adoption of its minimum manning final offer will provide the necessary flexibility for the implementation of additional cost-saving measures in the Fire Department.

But again, it seems clear from the record that the current language of Article X has met its stated objectives: “safety considerations ... to employees and the public.” (§10.2) At least, the record contains no evidence that it has failed to do so. Thus, maintaining the status quo on

this issue poses no incremental threat to public or firefighter safety. But adoption of the Village's final offer, with its proposed changes to a contract provision that has worked for a quarter century, and without confirmed evidence that the parties have exhausted bargaining table opportunities to hammer out mutually acceptable changes to its terms, does not seem appropriate.

Additional Considerations. As noted by the Village, three of the five comparables (Des Plaines, Skokie, and Wheeling) have no minimum manning provision in their firefighter contracts. But that bald statistic does not constitute compelling reason to change the longstanding negotiated status quo in Morton Grove on this issue.

I also recognize that the Village included what it believes was an appropriate *quid pro quo* in its minimum manning proposal --- a prohibition against firefighter layoffs until December 31, 2005. If, indeed, that measure constitutes a fair trade-off for acceptance of its proposal, the Village will soon have opportunity to present it to the Union across the bargaining table.¹⁰ In these proceedings, the no-layoff guarantee is not really a *quid pro quo* in the conventional sense, because the parties have had no opportunity to discuss its merits in that regard. Rather, the acceptability of that element of the Village's offer as a fair trade off sits at the feet of the Arbitrator --- who has not seen any evidence that the parties have ever bargained over it.

¹⁰ The parties' January 1, 2009 - December 31, 2012 Agreement will expire in approximately eight months.

On balance, I am not convinced from the evidence in the record that there is compelling need for a change to the status quo on this issue. I also reiterate that the Agreement under consideration here will expire at the end of the current calendar year. Presumably, at some prior point the parties will engage in give-and-take discussions at the bargaining table about what modifications, if any, should be made to the current Article X.

GROUP HOSPITALIZATION INSURANCE

Village Position

The relevant paragraph of the current §12.3 contains the following language:

Employees shall be responsible for payment of ten percent (10%) of the premium cost for the coverage selected, provided that the Village's unrepresented employees are paying at least the same percent of the premium cost for the coverage selected. In addition, employees shall be responsible for payment of any applicable deductible cost or non-covered expenses. Said employee premium payments shall be deducted from the participating employee's paycheck. The Village shall be responsible for payment of ninety percent (90%) of the premium cost.

The Village proposes a two percent (2%) increase in the percentage amount that employees pay toward the cost of the group hospitalization premium. Adoption of its final offer on this issue would amend the foregoing paragraph as follows:

Effective January 1, 2012, employees shall be responsible for payment of twelve percent (12%) of the premium cost for the coverage selected, provided that the Village's unrepresented employees are paying at least the same percent of the premium cost for the coverage selected. In addition, employees shall be responsible for payment of any applicable deductible cost or non-covered expenses. Said employee premium payments shall be deducted from the participating employee's paycheck. The Village shall be responsible for payment of eighty-eight percent (88%) of the premium cost.

The Village notes that health insurance costs have been the subject of many interest arbitration proceedings in Illinois and elsewhere over the past few years. It acknowledges that for 2010,¹¹ employee contributions across the comparables were less than the 12% sought by its proposal here, but notes that adoption of its final offer would still keep its firefighters' health insurance contributions below four of the five comparable jurisdictions, when actual dollar contributions are considered.

The Village also highlights a 2011 Bureau of Labor Statistics News Release which stated that full-time employees of state and local governments paid 88 percent of the medical care premiums for single coverage and 71% of them for family coverage (VX-62, p. 2). Thus, the Village argues, it's willingness to pay 88 percent of both types of premiums is reasonable.

The Village also points to the fact that it continues to pay 40% to 50% of the health insurance premium costs for all retired bargaining unit

¹¹That was the last year for which insurance data are available for all of the comparables.

employees hired before January 1, 2007. And for unit employees hired after that date, the Village notes, it makes a \$400 annual contribution to a post-employment health benefit plan. The Village argues that none of the external comparables provide such a benefit.

Moreover, the Village avers, its proposed modest increase in firefighter contributions to health insurance premiums would not go into effect until the last year of the four-year contract. It could have proposed the same increase to be effective earlier than that, and the Arbitrator would have had the authority to award it retroactively.

Finally, the Village notes that while health insurance costs have escalated over the past few years and employees elsewhere have been required to pay higher premium percentage contributions as a result, Morton Grove firefighters have paid the same percentage contribution (10%) for the last five years. Thus, the Village argues, it's proposal on this issue is eminently reasonable and it should be accepted.

Union Position

The Union's final offer on this issue is to retain the status quo. In support of that position, it points to Arbitrator McAllister's recent refusal in a Morton Grove Interest Arbitration proceeding to grant the Village a "breakthrough" by adopting its proposed employee health insurance premium contribution from 10% to 15% (UX-10, p. 20).

Here, the Union notes, the Village would have the Arbitrator impose a 20% increase in employee health insurance premium contributions – an increase the Village failed to achieve in negotiations. Moreover, since the Village seeks a change to the status quo, it must show at a minimum that the existing system or procedure has created an operational hardship. The Union asserts that the Village has not met that burden.

In addition, the Union argues, external comparability data favor adoption of its final offer on this issue. The Union also notes that for the 2006-2008 Agreement the parties agreed to a series of changes in deductibles, co-insurance, out of pocket maxima, and prescription drug charges, all of which went into effect in 2008. It argues that those changes favored the Village financially. Inflating employee contribution levels by 20% for the very next Agreement imposes an even more taxing burden on Morton Grove Firefighters.

The Union notes as well that employees' percentage contribution is not static. That is, their dollar contributions rise each and every time insurance premiums increase. And finally, the Union emphasizes, the Village has made no showing of a compelling need to depart from the status quo on this issue.

Discussion

It is clear from the record that monthly PPO health insurance premiums in Morton Grove have been on the rise in the last few years (VX-56).¹² But it is also true that in 2008 its Firefighters began paying higher deductibles, out of pocket maxima, and prescription drug costs. And given the fact that their current premium cost contribution is expressed as a percentage (i.e, 10%), every time the premiums increase, so too do employee dollar contributions. Thus, Firefighter dollar contributions to the cost of their health insurance have been on the rise, as have the Village's dollar contributions.

Internal comparables are time-honored benefit benchmarks for interest arbitrators, usually in response to municipal employer proposals aimed at creating city-wide parity. Though the Village did not rely directly on that argument here, I note that its proposed increase to firefighter insurance premium contributions would not take effect unless unrepresented employees are paying at least the same percentage. It appears from the record that as of FY2011 non-represented employees in Morton Grove were paying 10% of their health insurance premiums (Tr. 41). I am not aware of any increase to that percentage contribution since then.

Besides the Firefighter unit, there are two additional bargaining units in Morton Grove: the FOP-represented police unit, and a small, six-

¹² Since 32 members of the Firefighters unit have chosen PPO coverage and only two selected HMO coverage, this analysis focuses on the former.

person group of automobile mechanics represented by the International Association of Machinists (IAM). Article 10 (Health Insurance) of the 2009-2011 IAM Agreement requires its bargaining unit members to pay ten percent (10%) of the “current health insurance premium costs” for either PPO or HMO coverage. It also contains the following global provision:

... The Village reserves the right to make changes to any provision of the Plans, including, without limitation, the unilateral right to determine and establish new premium costs during the life of this Agreement. (VX-30, p. 12)

As of the close of the hearings in these proceedings, the Village had apparently not exercised any of the rights set forth in the foregoing quote from the 2009-2011 IAM Agreement.

Turning to the larger FOP bargaining unit, the 2009 employee contribution toward health insurance premiums was 10%. Interest Arbitrator Robert McAllister rejected the Village’s proposal to increase that contribution rate to 15% as of December 30, 2010, noting that there was no support among the external comparables for it, and that the Village did not argue it was unable to meet the costs of health insurance coverage. The record contains no evidence to indicate that Morton Grove Police Officers currently contribute more than ten percent (10%) of the cost of their health insurance premiums.

On the basis of the foregoing discussion it appears that the Village wants to break the Village-wide pattern of 10% employee contributions

toward health insurance premiums. To do so, it needs some internal employee group to be the first to pay more. Absent compelling circumstances, I am unwilling to endorse such a breakthrough.

Finally, it is true that Morton Grove Firefighters currently pay the fifth lowest dollar contribution for PPO coverage among the six-employer (including Morton Grove) comparability pool. The respective monthly contributions across that pool are displayed here:

Park Ridge	\$92.00
Wheeling	\$90.39
Des Plaines	\$70.00
Niles	\$62.89
Morton Grove	\$54.02
Skokie	\$46.32

It is important to recognize that the above contributions arose through the interaction of market forces, interest arbitration awards, and bargaining table trade-offs between the parties themselves in their respective municipal arenas. Also of significance is the amount and scope of medical insurance coverage provided to firefighters in the various jurisdictions shown. The employee contributions paid by firefighters in those municipalities is but one of a host of factors that must be considered in juxtaposing health insurance benefits across the external comparability pool. And finally, the fact that Morton Grove Firefighters' dollar amount contributions sit near the bottom of the list is

not justification, in and of itself, to raise them --- especially since increasing their percentage contribution would break the current pattern of parity among the internal comparables.

SALARIES

Village Position

Here is the Village's final offer on the salary issue:

Effective January 1, 2009, increase salaries across-the-board by 3.0%

Effective January 1, 2010, increase salaries across-the-board by 2.5%

Effective January 1, 2011, maintain the calendar year 2010 salary schedule without change, but continue to permit step increases for eligible employees

Effective January 1, 2012, increase salaries across-the-board by 2.5% (VX-105)

The Village points to the historically close relationship between its Firefighter and Police salaries, notes that negotiations for 2011 and 2012 police salaries are not yet complete, underscores the fact that the parties' in the present case have proffered identical salary offers for 2009 and 2010, and reiterates that those offers are also identical to the 2009 and 2010 increases already received by Morton Grove police officers. And, the Village adds, for the years 2006, 2007, and 2008 the IAFF and FOP units received identical percentage increases.

The Village also highlights the 2011 salary freeze it implemented for non-represented employees and notes that it was also applied by virtue of a “me too” contractual provision to the IAM bargaining unit. To maintain salary increase parity with those groups, the Village argues, its final salary offer here should be adopted.

With regard to the external comparables, the Village claims that its Firefighters and Lieutenants are very well paid at the top step, ranking just beneath Des Plaines in the six-jurisdiction list (VX-66). It notes as well that though the 0% increase it proposes for 2011 causes Morton Grove Firefighters’ ranking to drop somewhat, they still fare quite well among the comparables.¹³

In term of percentage increases, the Village argues that for 2009 through 2012 the total 8% bump its salary offer provides to Morton Grove Firefighters stacks up well next to those provided to their counterparts in the comparable jurisdictions. The Village notes as well, though, that the relatively high percentage increases enjoyed by Des Plaines and Wheeling Firefighters during that period were negotiated before the full impact of the “Great Recession” was realized in those jurisdictions.

The Village also opines that its final offer is preferable to the Union’s when considering overall compensation across the comparable jurisdictions. It notes, for example, what when all pensionable

¹³ Paraphrased from Village Post-Hearing Brief, p. 63.

compensation is taken into account, the Morton Grove Firefighters' maximum is the highest among the comparables, and is \$5,266 above the average.

The Village also believes that its final salary offer is preferable to the Union's when considering its financial situation and the interest and welfare of the public. It does not raise an "inability to pay" argument, but the Village places great weight on the negative economic impact it suffered on account of the "Great Recession." Moreover, the Village adds, its success in attracting qualified firefighter applicants and the virtually non-existent voluntary turnover rate in the Fire Department strongly support acceptance of its final salary offer.

The Village also believes it is appropriate to consider cost of living data over a relatively long time span in order to smooth out significant spikes and drops. When that is done, the Village argues, its salary offer is more than sufficient to provide salaries that keep pace with or exceed conventional measures of the cost of living.

The Village notes in addition that although its final salary provides no across-the-board firefighter salary increase for 2011, it still contemplates step increases for those persons eligible. Moreover, the Village notes, "at least seven prominent Illinois interest arbitrators have

issued awards that provide for a 0% wage increase for one year of a multi-year contract.”¹⁴

For all of the foregoing reasons, the Village urges the Arbitrator to adopt its final offer on the salary issue.

Union Position

The Union’s final offer on the salary issue is quoted below:

The Union accepts the Village’s final offer of settlement as the salary increases of 3% for 2009, and of 2.5% for 2010.

For 2011, the Union proposes a salary increase of 2%.

For 2012 the Union proposes a salary increase of 2%. (UX-71)

The Union notes that its proposed average salary increase is 2.375%, while the average proposed by the Village is 2.0%. The Union calculated the following averages for those external comparables for whom sufficient data are available: Des Plaines – 2.56%, Niles – 2.75%, Park Ridge – 1%, Skokie – 2.16% and Wheeling – 2.44%.¹⁵ The Union argues that these figures give the Union’s final salary offer a “slight edge” over that of the Village.¹⁶ The Union also notes that since the parties

¹⁴ Quoted from the Village’s Post-Hearing Brief at p. 86, which identifies the seven as (1) Byron Yaffe in *City of Rockford and Policemen’s Benevolent Labor Committee* (May, 2010); (2) Stephen Goldberg in *City of Evanston and Teamsters Local 700* (May, 2010); (3) Edwin Benn in *City of Highland Park and IAFF Local 822* (July, 2010); (4) Peter Feuille in *Wabash County/Wabash County Sheriff and Illinois FOP Labor Council* (July, 2010); (5) Elliott Goldstein in *City of Belleville and Illinois FOP Labor Council* (August, 2010); (6) Marvin Hill in *Village of Schaumburg and Schaumburg Fire Command Association* (September, 2011); and (7) John Fletcher in *City of Peru and FOP* (December, 2011).

¹⁵ Union Post-Hearing Brief, Table 5, p. 47.

¹⁶ *Ibid*, p. 47.

agree on salary increases for 2009 and 2010, the more relevant metric is a comparison between their 2011 and 2012 salary proposals and the average increase across comparable jurisdictions for those years. It emphasizes that its own 2% proposal for 2011 is below the comparability pool average for that year in percentage terms. And considering 2011 and 2012 together, the Union avers, adoption of its final offer will not alter the salary ranking of Morton Grove Firefighters among comparable jurisdictions. In contrast, the Union argues, adoption of the Village's salary offer would reduce them in the rankings.

The Union also points to the January, 2011 Morton Grove Police interest arbitration award of Robert McAllister, noting that he rejected the Village's proposed wage freeze for 2010, notwithstanding its 12-month layoff *quid pro quo*, and he adopted the FOP's proposed 2.5% wage increase for that year. Furthermore, the Union emphasizes, the Village has not offered a *quid pro quo* for its 2011 wage freeze proposal here.

With regard to CPI data, the Union opines that consideration of it should focus on the time period beginning when the last negotiated increase went into effect. Since January 1, 2010 is the date when agreed upon increases became effective for Morton Grove Firefighters, the Union notes, CPI data from that date forward should be considered here. Based upon six conventional indexes the CPI for the next twelve months increased by 1.74%. Thus, the Union argues, its proposed 2% increase for 2011 is more appropriate than is the Village's proposed 0% increase.

The Union believes as well that, although the Village has experienced its share of economic woes since 2008, the fact that it voluntarily granted its 97 non-represented employees a 3% wage increase for 2009 suggests that times were not so hard. Moreover, the Union notes, the Village achieved a budget surplus for 2010 (Tr. 290, 293-294), and an enhancement of its bond rating. The Union quotes the Fall 2011 issue of *The Morton Grove Exchange* in that regard:

The Village's recent record of careful fiscal management has not only improved our financial standing but has resulted in an upgrade of the Village's bond rating to AA/stable by Standard & Poor's. This proved painful cuts and sound budget planning are actually paying off for Morton Grove. All this was accomplished while maintaining the Village's core mission of providing the best police, fire and public works services. (UX-45, UX-46)

The Union also underscores the fact that after receiving the January, 2011 McAllister award in the FOP interest arbitration proceedings, the Village voluntarily granted its unrepresented employees the same 2.5% increase for 2010 as that received by its police officers from Arbitrator McAllister. Thus, for 2009 and 2010 the Village spent a total of \$237,831 on salary increases for its unrepresented employees. That voluntary expenditure speaks loudly about its financial condition, the Union argues. And, the Union adds, the cost of its proposed 2% 2011 increase for Firefighters is only \$59,155. Finally, the Union notes

that adoption of its final salary offer would cost the Village just \$45,550 more than would adoption of its own salary offer.¹⁷

Discussion

The last statistic referenced on the preceding page, which was calculated by the Union itself, highlights the relatively small dollar difference between the costs of the parties' respective salary offers. But as the Village notes, the outcome of the salary issue in these proceedings will no doubt have a direct effect on the Village's expenditures for its non-represented employees, its mechanics in the IAM unit, and its police officers. History has proven that the Village is correct in that assertion. Morton Grove Police Officers and Firefighters have been neck and neck in their quest for higher salaries. The IAM unit has negotiated contractual provisions to ensure that they receive salary increases parallel to those received by the Village's non-represented employees. And the Village has apparently committed to providing its non-represented employees with salary percentage increases akin to those negotiated by the FOP and IAFF bargaining units. Though the IAFF argues here that the Village made that informal policy decision voluntarily, thereby reducing the credibility of its financial exigency claims, there are sound organizational reasons why, even in the face of economic woes, an employer might be well-advised to grant its non-represented employees salary increases that

¹⁷ Union Post-Hearing Brief, p. 64.

are comparable to those negotiated for its unionized work force.¹⁸ In short, I do not fault the Village for following that practice, nor do I view it as evidence of financial recklessness.

It is true that the Village has improved its financial condition since the onslaught of what both parties have described as the “Great Recession” of 2008. The most telling example of that success is the relationship between its General Fund expenses and revenues. The former significantly outpaced the latter for 2008 and 2009. For the next two years, however, revenues to that Fund crept ahead of expenses --- though not by much (VX-86). It is clear from the record that those financial improvements did not come easily. The Village employed a variety of prudent and sometimes unpopular cost-cutting and revenue enhancing measures to achieve them. Some of those measures include:

- ✓ FY2009 budget reduction to eliminate a police officer position, a finance department accountant position, the human resources manager position, and a part-time social worker position (VX-87; Tr. 268).
- ✓ Postponement of planned capital expenditures in the FY2009 budget with an eye toward improved economic conditions in the future (VX-87).
- ✓ Elimination of the following positions from the FY2010 budget: Village Planner, Community Service Officer, Part-Time Fire Inspector, six Part-Time Crossing Guards, and a Part-Time Nurse (VX-88; Tr. 271-272).

¹⁸ The organizational legitimacy of doing so has been well-documented in labor economics literature since the 1940s, and the Arbitrator sees no need to summarize those principles here.

- ✓ Elimination of subsidy to residents for solid waste disposal and recycling, resulting in increased cost of approximately \$100 per year per household (VX-88, Tr. 275-276, 285).
- ✓ Reduction of family and senior services expenses from about \$500,000 to \$125,000 annually (VX-88; Tr. 273-274). Elimination of four out of its five senior services positions.
- ✓ In 2010, increased annual vehicle sticker fees from \$30 to \$55 for non-seniors and from \$15 to \$25 for seniors, generating an incremental \$415,000 in revenues (VX-88; Tr. 277).
- ✓ For FY2011, elimination of two public works maintenance positions, one full-time Community Service Officer position, and one part-time Building Inspector position (VX-89; Tr. 280).
- ✓ Termination of a senior bus service in 2011, thereby eliminating Bus Driver positions and reducing expenditures by approximately \$60,000 (Tr. 281-282).
- ✓ Reduction and ultimate elimination of the 50% discount to senior citizen's water bills (VX-89A; Tr. 293-285).
- ✓ Implementation of a FY2011 3.5% property tax increase (Tr. 284).

Finally, in another cost-saving measure implemented for FY2011, the Village chose not to grant its non-represented employees any salary increase whatsoever. That decision activated a provision in the IAM contract which generated the same result (i.e., a 2011 wage freeze) for Morton Grove's mechanics.

There are approximately 96 unrepresented employees in the Village. They comprise the largest internal employee group, followed

next in size by the 37 members of the FOP unit, 36 employees in the IAFF unit, and five mechanics in the IAM unit. Thus, the vast majority of Morton Grove employees (96 + 5 = 101) did not receive a wage increase for 2011. Given the historical percentage wage increase parity across the Village's internal employee groups, the Village's proposal to hold 2011 Firefighter wages at the 2010 level does not seem unreasonable.

Moreover, it is abundantly clear from the record that both the employees and citizens of Morton Grove have been compelled to engage in considerable belt-tightening in order to counteract the financial impact of the post-2008 recession. One could reasonably argue that the IAFF unit, whose members are already among the best paid Firefighters across comparable jurisdictions, should experience a small financial sacrifice as well. To paraphrase one of the Union's arguments again, adoption of the Village's salary offer would garner it a mere \$45,550 cost saving. Against the backdrop of the Village's other cost-saving and revenue-enhancing initiatives, in the interest of maintaining salary increase parity across the Village employee groups, and with an eye toward the public interest in keeping downward pressure on Village expenses, and in view of the Firefighters' overall compensation (especially their substantial pension benefits), adoption of the Village's final salary offer seems to be the more reasonable choice.¹⁹

¹⁹ In reaching this conclusion the Arbitrator acknowledges that conventional cost-of-living measures reflect a modest increase for calendar 2011. Nevertheless, those data

DRUG AND ALCOHOL TESTING

The Status Quo

At issue here is Appendix C, §D.2. of the current collective bargaining agreement. That section is quoted in its entirety here:

D. The Administration of Tests

2. When A Test May Be Compelled.

The Village shall not conduct any across-the-board or random drug testing, except for applicants for employment and as otherwise provided in this Appendix.

Where there is reasonable individualized suspicion that an employee is under the influence of drugs or alcohol and is impaired while on duty. (sic) That employee may be required to report for drug testing. When a supervisor has a reasonable suspicion that an employee is impaired, that supervisor shall confirm that suspicion if practicable. If reasonable suspicion exists, the Association shall be notified and the Village shall arrange for the drug test to be performed at Village expense.

Refusal of an employee to comply with the order for a drug/alcohol screening will be considered as a refusal of a direct order and may subject the employee to discipline up to an (sic) including discharge.

Village Position

The Village's final offer on this issue deletes the first paragraph of §D.2 and adds the following paragraph in its place:

were not sufficiently persuasive to dissuade me from placing more weight on the other statutory factors noted in this Opinion.

In addition to the Village's right to conduct across-the-board or random drug and alcohol testing for applicants for employment and otherwise provided in this Appendix, the Village may conduct random drug and alcohol testing up to three times per calendar year. The pool used to randomly select employees to be tested shall include all sworn members of the Morton Grove Fire Department (i.e., all bargaining unit employees, plus the Fire Chief, District Chiefs, and Fire Prevention Bureau Captain). The total number from the pool who are randomly tested per calendar year shall not exceed six (6). Such tests shall only be conducted on Mondays through Fridays between the hours of 7:00 A.M. and 3:30 P.M. The selection of employees to be randomly tested being provided by the outside contractor that the Village uses to conduct drug and alcohol tests from a list of all sworn members of the Morton Grove Fire Department.

The Village notes that in *National Treasury Employees Union v. Von Raab*, 489 U.S. 655 (1989) the U.S. Supreme Court determined that random drug and alcohol testing for public safety employees is constitutional. That decision has been specifically applied to firefighters, the Village adds, and that specific application has stood up to many subsequent constitutionality challenges in appellate courts.

The Village characterizes its offer on this issue as being modeled after the random drug and alcohol testing provision in the Winnetka/IAFF contract (VX-104). It emphasizes the narrow scope of the provision's application (i.e., not more than three times per year) and points to the fact that it applies to command staff as well.

The Village acknowledges that there are no known alcohol or drug problems in its Fire Department, but adds that it prefers to be proactive in ensuring workplace safety, rather than attempting to deal with a

problem after the fact. And interestingly, the Village notes, Union Chief Negotiator Robert Sugarman testified that when he and Village Advocate Clark negotiated the Winnetka random drug and alcohol testing provisions there was no evidence of related problems there either (Tr. 450)

Even though only one of the Village's proposed external comparables has random drug and alcohol testing for its firefighters, the Village points out that in *City of Kankakee and FOP Labor Council* (March 24, 2000) Arbitrator Michael Leroy adopted the City's final offer on that issue despite the fact that none of its external comparables had a similar provision.

Union Position

The Union's final offer on this issue is to retain the status quo, noting that the Village made no showing that a drug and/or alcohol problem exists in the bargaining unit. Indeed, the Union avers, even in his 25 years with the Morton Grove Fire Department, Chief Friel recalled no instance where a Firefighter had even been suspected of being under the influence, or impaired in any way. He testified that since he has been Chief he has not had to deal with any instance where there was even a suspicion of impairment while on duty.

Appendix C currently allows testing "upon reasonable individualized suspicion that an employee is under the influence of drugs

or alcohol and is impaired while on duty.” The Union believes that language is adequate, noting that neither party has proposed any change to it.

Even though Chief Friel testified that the Village’s random drug and alcohol testing proposal is predicated on “industry-based commonality, standards,” the Union argues, only one of the external comparables (Skokie) has implemented such a testing program. The Union also highlights the fact that in Skokie and Winnetka the parties themselves negotiated their random drug and alcohol testing provisions for firefighters. That is, they were not imposed by an interest arbitrator.

The Union asserts that the status quo in Morton Grove should be retained on this issue, and that the Village’s final offer should be rejected.

Discussion

Interest arbitration was not designed to replace the give-and-take of the collective bargaining process. That is no doubt why the overwhelming majority of neutrals selected to hear and decide these cases require the party attempting to change the status quo to show compelling need to do so.

Here, the Village has not met that burden. It has presented absolutely no evidence that there has ever been a drug or alcohol-related problem associated with an on-duty Morton Grove Firefighter. Indeed,

the Village has not identified a single incident wherein it activated the current “reasonable suspicion” language and tested a Firefighter for impairment.

And if random drug and alcohol testing programs were so essential to proactive protection of workplace safety in the fire service, one would reasonably expect to see such programs institutionalized in collective bargaining agreements across the external comparables. There is only one here (Skokie). That one example does not provide ample external comparability support for adoption of the Village’s offer. I also note that the Village did not cite any internal support (e.g., the IAM or FOP units) for adoption of its final drug/alcohol testing program proposal. And finally, there is no evidence in the record to suggest that the parties have even discussed random drug and alcohol testing at the bargaining table (Tr. 452).

I am convinced from the record that there is simply no need to change the status quo in the Morton Grove Fire Department on this issue.

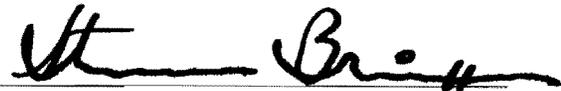
AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has decided as follows:

1. Minimum Manning – the final offer of the Union is adopted.
2. Group Hospitalization – the final offer of the Union is adopted.
3. Salaries – the final offer of the Village is adopted.
4. Drug and Alcohol Testing – the final offer of the Union is adopted.

Consistent with items 1 through 4 above, the parties' final offers shall be incorporated into their January 1, 2009 – December 31, 2012 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 26th day of April, 2012.

A handwritten signature in black ink, appearing to read "Steven Briggs", written over a horizontal line.

Steven Briggs