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INTEREST ARBITRATION
OPINION AND AWARD

In the Matter of Interest
Arbitration

Between

The Village of Wilmette

And

Local 73, Service Employees
International Union (SEIU),
AFL-CIO, CLC

(ISLRB Case No. S-MA-00-088)

Hearings Held

April 3, 2002
May 7, 2002
June 4, 2002
August 1, 2002
October 2 & 14, 2002
November 1, 2002
December 9, 2002
January 27, 2003
March 6 & 7, 2003
May 8, 2003
June 25, 2003
July 24, 2003
August 14, 2003
November 19, 2003

Arbitrator

Steven Briggs

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BACKGROUND

The Village of Wilmette (the Village; the Employer) is a home rule municipality of 27,651 residents in Lake County, Illinois. Its Fire Department consists of 44 sworn personnel, 32 of whom are Firefighters represented for collective bargaining purposes by Local 73 of the Service Employees International Union, AFL-CIO, CLC (the Union). Wilmette Firefighters are required to be licensed Paramedics as well.

There are two additional groups of unionized employees in the Village. Its police officers below the rank of sergeant are represented by the Law Enforcement Division of Teamsters Local Union #714. Their 2004-2006 Agreement was recently ratified; it is the fifth in a series, all of which were negotiated without resort to interest arbitration. Employees in the Wilmette Public Works Department are, like the firefighters, represented for collective bargaining purposes by SEIU Local 73. The first Public Works Agreement covered fiscal years 2001-2003, and the parties are currently negotiating its successor.¹

At issue in these proceedings is Wilmette's very first firefighter collective bargaining agreement. The parties initiated negotiations in February, 2000, with Attorney R. Theodore Clark, Jr. serving as the Village's chief spokesperson and Timothy McDonald acting in that capacity for the Union. Mr. McDonald was subsequently replaced by

¹ The fiscal year in Wilmette runs from January 1 through December 31.

Attorney Rick Reimer.² The parties' bargaining table talks did not produce agreement on all of the issues, and an impasse was declared.

Pursuant to Section 14 of the Illinois Public Sector Labor Relations Act (the Act) as amended, 5 ILCS 315/14 (1996), the Union ultimately invoked interest arbitration. On November 28, 2001 the parties mutually appointed Steven Briggs to serve as the sole interest arbitrator. Sixteen interest arbitration hearings were conducted over the course of the next two years, with the first taking place on April 3, 2002 and the last occurring on November 19, 2003. The hearings were recorded by a stenographic reporter, resulting in a 2508-page transcript. The parties exchanged final offers during the April 3, 2002 hearing. Their post hearing briefs were exchanged through the Arbitrator on March 4, 2004. Subsequent to that date each party supplemented the record with various submissions, none of which were objected to by opposing Counsel.

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).

² The Union subsequently appointed Attorney Joel A. D'Alba to be its representative during these interest arbitration proceedings.

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.

THE ISSUES

The parties initially submitted the following 29 economic and 21 non-economic issues to interest arbitration. They voluntarily resolved several of the issues during these proceedings, as noted parenthetically in the following list:

Economic Issues

- (1) Duration of Agreement³
- (2) Salary⁴
 - A. Salary Schedule Increases
 - B. Longevity (Resolved)
 - C. Special Qualification Stipend
 - D. Wage Equity Adjustment
- (3) Applicability of Other Changes
- (4) Retroactivity (Resolved)
- (5) Educational Incentive
- (6) Preceptor Pay
- (7) Call-Back Pay

³ The Village asserts that this issue has been resolved; the Union disagrees.

⁴ The Union argues that each of the four salary elements should be considered as a separate issue in these proceedings.

- (8) Hourly Rate (Resolved)
- (9) Overtime Pay/Compensation (Resolved)
- (10) Compensatory Time (Resolved)
- (11) Health Insurance⁵
 - A. Health insurance except for co-payment levels, deductible levels, and employee/employer contributions to premiums
 - B. Health insurance co-payment levels, deductible levels, employee/employer payments to premium
- (12) Holidays⁶
 - A. Holiday Time Off
 - B. Working a Holiday
- (13) Vacation Eligibility
- (14) Vacation Scheduling
- (15) Accrued Sick Leave
- (16) Use of FMLA
- (17) Funeral Leave
- (18) Emergency Leave
- (19) Tuition Reimbursement
- (20) Acting Pay
- (21) Supplemental Retirement Program
- (22) Uniforms (Resolved)
- (23) Maintenance of Benefits

⁵ The Village argues that both of the health insurance elements should be considered together as one single issue.

⁶ The Village asserts that both of the holiday elements should be considered together as one single issue.

- (24) Legal Representation (Resolved)
- (25) Layoff Benefit
- (26) Effects of Layoff
- (27) Termination of Seniority
- (28) Changes in Normal Work Period and Work Day
- (29) Light Duty

Non-Economic Issues

- (1) Hours of Work (Resolved)
- (2) Normal Work Cycle
- (3) Duty Trades (Resolved)
- (4) Other Time Off
- (5) Village Emergency (Resolved)
- (6) Request for Sick Leave (Resolved)
- (7) Sick Leave – Miscellaneous
- (8) No Solicitation of Local Businesses
- (9) Fitness Examinations (Resolved)
- (10) Physical Fitness Program (Resolved)
- (11) Drug and Alcohol Testing
- (12) Maintenance of EMT-P Status
- (13) Paramedic Decertification
- (14) Precedence of Agreement (Resolved)
- (15) Personnel Files (Resolved)

- (16) Retraining Upon Recall (Resolved)
- (17) Safety and Unsafe Conditions (Resolved)
- (18) Committees⁷
- (19) Promotional Criteria (Resolved)
- (20) Shift Assignments (Resolved)
- (21) Negotiations on Duty (Resolved)

THE EXTERNAL COMPARABLES

The parties have agreed to an external comparables pool composed of the following eight communities:

- * Evanston
- * Glenview
- * Highland Park
- * Lake Forest
- * Northbrook
- * Park Ridge
- * Skokie
- * Winnetka

Firefighters in six of the foregoing jurisdictions (Evanston, Highland Park, Northbrook, Park Ridge, Skokie and Winnetka) are represented by unions and involved in collective bargaining relationships

⁷ The parties disagree as to whether this issue is economic or non-economic.

with their respective employers. Those in Glenview and Lake Forest are not.

DURATION (ECONOMIC)

As noted earlier, the parties disagree as to whether this issue has been resolved. That disagreement stems from a revised final offer tendered by the Village under an arrangement made by the parties for such submissions. In their "Stipulation of Issues in Dispute" the parties included the following provision:

Both parties have mutually agreed that if the other party submits a final offer on salary schedule increases for more years than the other party (sic), the party that submitted a final offer on salary schedule increases with fewer years retains the right to add an additional year or years to its final offer to match the same number of years.

The Village's initial final offer called for a four-year contract (January 1, 2000 through December 31, 2003). The Union's final offer proposed a five-year agreement (January 1, 2000 through December 31, 2004). Pursuant to the above-quoted procedure, on May 6, 2002 the Village revised its final offer to include a wage increase effective January 1, 2004. During the December 9, 2002 interest arbitration hearing Village Advocate Clark confirmed that the Village agreed with the Union's final offer on duration (i.e., a five-year January 1, 2000 through December 31, 2004 contract), and indicated that its May 6, 2002 revised

final offer had been submitted to provide salary increase figures for the fifth year.

The Union argues that the Village's revised final offer was inconsistent with the parties' provision for the submission of such offers, in that it included matters outside the scope of "salary schedule issues." Thus, the Union urges, the Village's supplemental proposal for a five-year contract expiring on December 31, 2004 should not be considered.

Resolution of the parties' dispute about the duration issue rests on whether their disagreement over matters related to salary is considered a single issue or several separate ones. That question will be addressed in the discussion to follow under the "SALARY" heading. Suffice it to say for now that the Arbitrator strongly favors a five-year agreement with a December 31, 2004 expiration date. These parties have struggled for many years to hammer out a written labor agreement for firefighter/paramedics, and adoption of a four-year agreement expiring on December 31, 2003 would put them right back at the bargaining table upon the issuance of this Award. That outcome would be a disservice to them both.

SALARY (ECONOMIC)

There are three unresolved questions related to salaries under what will be the parties' January 1, 2000 – December 31, 2004

Agreement: (1) the salary schedule increase; (2) a special qualification stipend; and (3) a wage equity adjustment.⁸

Village Position

Here is the Village's revised final offer with regard to the salary schedule increase:

Section 10.1. Salaries. Employees shall continue, as applicable, in the following pay grades in accordance with the Village of Wilmette Pay and Classification Plan:

<u>Classification</u>	<u>Pay Grade</u>
Firefighter	22
Firefighter/Paramedic	23 ½
Emergency Vehicle Coordinator	26 ½

Annual salary adjustments shall be as follows:

Effective January 1, 2000:	3.0%
Effective January 1, 2001:	3.5%
Effective January 1, 2002:	3.75%
Effective January 1, 2003:	3.75%
Effective January 1, 2004:	4.0%

The salary schedule incorporating the foregoing salary increases is attached as Appendix _.

The Village's final offer on the two remaining unresolved elements of the salary package is quoted below:

Special Qualification Stipend

Firefighter III Certification Stipend. Upon certification both as a Firefighter III and at the Hazardous Material Operation level, an employee shall receive an annual stipend

⁸ As noted, the parties' dispute over longevity pay has been resolved.

of \$1,000 (pro rata if possessed for less than a year) that will be added to the employee's base salary and paid as part of the employee's regular paycheck. Effective January 1, 2004, the annual stipend shall be increased to \$1,150 (pro rata if possessed for less than a year). To be eligible to continue to receive this \$1,000 annual stipend (\$1,150 effective January 1, 2004), the employee must complete and pass at least 240 hours of training approved by the Fire Chief or designee per calendar year, commencing with the first calendar year after initially becoming eligible to receive said stipend. An employee who is unable to complete the required hours of training because of an on-the-job injury shall nevertheless remain eligible to receive said stipend.

Wage Equity Adjustment.

(The Village's position on this element of the salary package is that there is no justification for any wage equity adjustment.)

The Village asserts that all three unresolved salary elements should be considered together as one issue. It also points out that its proposed salary schedule increases exactly parallel those negotiated for Wilmette police officers. Moreover, the Village notes, since at least the 1989-1990 fiscal year the pay grade and top step salary for Wilmette firefighter/paramedics and police officers have been exactly the same, and they would remain identical under its final offer.

The Village argues as well that the external comparability data support adoption of its final offer on the salary issue. It asserts that based upon a January 1, 2002 snapshot, its final offer would provide all Wilmette firefighter/paramedics having 5.5 years of service with an annual salary of \$61,122, which is \$2,010 (3.4%) higher than the average. And even using a calendar year calculation method, the Village

avers, Wilmette firefighter/paramedics at that level of service would still be \$485 higher than the average across the eight comparables for 2002. The Village also claims that its proposed 3.75% and 4.0% increases for 2003 and 2004 compare favorably with those negotiated across comparable jurisdictions.

Consideration of overall compensation in the external comparability pool also favors adoption of its final offer, the Village asserts. It notes that under its offer top step Wilmette firefighters with 15 years' service would receive total compensation of \$64,467 for calendar 2002, and that the average (excluding Wilmette) across the comparables was \$61,839.⁹

The Village notes as well that its final salary offer is preferable to the Union's when considering cost-of-living data. It also argues that its ability to attract qualified applicants and a virtually non-existent voluntary turnover rate support adoption of its salary offer. And, though the Village has not advanced an inability-to-pay position in these proceedings, it underscores recent measures taken in Wilmette to deal with an imbalance between its revenues and expenses (e.g., budget cuts across all departments, the adoption of a \$300 per use ambulance fee, the initiation of a refuse collection charge, and a 5.85% property tax levy

⁹ Included in the Village's calculation were top step firefighter/paramedic salary, longevity (if any) at 15 years, annual holiday pay (if any), and stipend/flexible benefit pay (minus what employee pays annually toward cost of single health insurance coverage).

increase). In addition, the Village points out, the sluggish economy in recent years has had an adverse impact on its revenues.

Finally, the Village asserts that the one-half pay grade adjustment its fire lieutenants received in 2000, from grade 26 to 26 ½ , did not alter the equity relationship between them and Wilmette firefighters. That adjustment was directly related to the removal of fire lieutenants from the Village's merit bonus plan. They relinquished merit adjustments of up to 5% in return for a guaranteed, pensionable salary adjustment worth less than half that (i.e., 2.35%). Moreover, the Village notes, the adjustment maintained the salary parity relationship between Wilmette fire lieutenants and police sergeants.

Union Position

The Union has advanced the following final offer with regard to a salary structure increase:

Section 10.1 Salaries. Employees shall continue in the following pay grades in accordance with the Village of Wilmette pay and classification plan.

1. Grade 26 ½ (Emergency Vehicle Coordinator)
2. Grade 23 ½ (Firefighter/Paramedic)
3. Grade 22 (Firefighter)

Annual pay raise will be calculated as follows:

January 1, 2000: Minimum of a 4% raise to the Pay and Classification Plan or as provided in Article X, Section 5.

January 1, 2001: Minimum of a 4% raise to the Pay and Classification Plan or as provided in Article X, Section 5.

January 1, 2002: Minimum of a 4% raise to the Pay and Classification Plan or as provided in Article X, Section 5.

January 1, 2003: Minimum of a 4% raise to the Pay and Classification Plan or as provided in Article X, Section 5.

January 1, 2004: Minimum of a 4.5 % raise to the Pay and Classification Plan or as provided in Article X, Section 5.

The Union believes that pay equity with the external comparables should be given greater weight than parity with Wilmette police officers. It notes as well that internal parity between police and firefighters is “not a law of collective bargaining,”¹⁰ and that those two groups in Wilmette have no agreement with the Village for the establishment of exactly parallel wage increases. Indeed, the Union points out, Wilmette police removed the “me too” clause from their 1994-1996 and 1998-2000 collective bargaining agreements, thereby placing less emphasis on internal wage comparisons. And though Village Exhibit 32 purports to show that Wilmette firefighter/paramedics have been paid at the same pay grade and salary level as its police officers between 1989 and 1999, it does not depict the \$1,000 Firefighter III incentive pay currently received by all but three members of the firefighter bargaining unit. Thus, the Union argues, there is no pure parity between the two groups.

With regard to the relationship between Wilmette firefighter/paramedic and lieutenant pay, the Union believes the Village's 2000 unilateral movement of the latter to a higher pay grade (26 to 26 ½) supports adoption of the Union's salary offer. In addition, the Union avers, the lieutenants' pay grade enhancement is the equivalent of a permanent 2.35% increase. The Union believes that fact alone is sufficient to justify its proposed 2% equity adjustment.

The Union asserts as well that between 1991 and 1999 the Village has pushed its firefighters into a downward wage spiral compared to their counterparts across comparable towns (UX-57).¹¹ Doing so was a breach of the promise made during the pre-union election campaign to Wilmette firefighters by Village Manager Heidi Voorhees, who according to Wilmette firefighter/paramedic Scott Ewen, pledged to keep them "in the top twenty five percent of the salaries that they compared us to." (Tr. 92) The Union feels that Voorhees' promise should be kept, and that the Village has an obligation to keep its firefighter/paramedics in the top wage quartile of comparable jurisdictions.

The Union also argues that the wage increases proposed by the Village are below the comparables average for 2000, 2001, 2002, and 2003, and that in total compensation dollars they do not increase the relative rank of Wilmette firefighter/paramedics. It notes as well that the

¹⁰ Union Post Hearing Brief, p. 32.

¹¹ Union exhibits will be identified herein as UX-1, UX-2, etc. Village exhibits will be referenced as VX-1, VX-2, etc.

Village's method of comparing pensionable salaries (i.e., splitting fiscal years) is not consistent with the way in which pensions are calculated by state law (i.e., based upon the annual salary received by employees on their day of retirement). Thus, to compare the pension of a Wilmette firefighter/paramedic with that of one in Evanston, both of whom retire in 2002 after the start of their respective towns' fiscal years, one would have to calculate their salaries at the time of retirement, not average their monthly salary across the current and prior fiscal years.

The Union summarizes the merits of its offers for salary increases, upward adjustments to the Firefighter III stipend, and the 2% equity adjustment, by noting that for 2004 they would bring Wilmette firefighters to a No. 2 rank across comparable jurisdictions. For 2003 at the 10-year service level they would rank number 2 as well, just \$14 ahead of Glenview. That is the top quartile, the Union argues, precisely where Village officials said their salaries should rank.

Discussion

Scope of the Issue. The Arbitrator's initial task with regard to the salary question is to determine whether, as the Village argues, its elements should be considered together as one issue, or whether, per the Union's position, they should be decided separately. I am inclined to favor the former, largely because the Union's more compartmentalized approach unduly fractionalizes the interest arbitration process.

Interest arbitrators in Illinois are compelled by statute to select in its entirety the final offer of one party or the other on each economic issue in dispute. It is an “all or nothing” approach which (1) underscores the risk of proceeding to interest arbitration and (2) in doing so, provides incentive (i.e., the avoidance of risk) for the parties to resolve their own interest disputes voluntarily. Fragmenting an economic issue spreads the parties’ risk across its elements, thereby minimizing the potential for losing the issue in its entirety. It also may dangle before certain interest arbitrators the temptation to construct compromise awards. Accordingly, the undersigned Arbitrator and numerous others have discouraged the “slicing and dicing” of issues for strategic purposes in interest arbitration.¹² Consistent with the reasoning set forth in those awards, I shall consider salary schedule increases, the Firefighter III stipend and the Union’s proposed equity adjustment as one salary issue in these proceedings. Moreover, I conclude that the Village’s May 6, 2002 revised final offer was properly submitted under the parties’ Stipulation of Issues in Dispute. The duration issue is therefore resolved, as both parties have legitimately proposed a January 1, 2000 – December 31, 2004 collective bargaining agreement.

Finally, a related procedural matter deserves specific attention here. The Arbitrator learned during a March 28, 2002 telephone

¹² See Village of Schaumburg and Schaumburg Professional Firefighters Association (Briggs, 1998); City of Elgin and PBPA (Goldstein, 2002); City of Moline and IAFF, Local 581 (Nathan, 2003); and Village of Niles and Teamsters Local 726 [firefighter unit] (Hill, 2003).

conference with Advocates Clark and D'Alba that the parties disagreed as to whether benefits such as firefighter pay, health insurance and holidays should be divided into their respective components for interest arbitration purposes. At that time I directed both advocates to divide their final offers on those subjects into the components endorsed by the Union. I also indicated that I would subsequently decide as part of this Opinion and Award whether those components would be decided as separate issues. Neither party objected to that procedure, either during the March 28, 2002 conference call, or over the ensuing two years it took to conduct the sixteen interest arbitration hearings and complete the record.

For the very first time, the Union claimed in its post hearing brief that the above-described procedure is unfair. It stated in pertinent part:

To identify the economic issues for purposes of single final offers or combined final offers during the briefing stage and before the arbitration decision is simply not provided as an option in this statute (i.e., the Illinois Public Labor Relations Act) and creates an uncertainty as to the status of the final offers. The interest arbitrator should only decide on a combination of issues before the final offers are submitted and after giving the parties notice of such decision. To do otherwise amounts to the application of a new rule on a retrospective basis and is generally not fair.¹³

First, neither party was prejudiced by the uncertainty the Union now laments. Both identified and dealt with the issue components separately in their case presentations, in their final offers, and in their

¹³ Union post hearing brief, at 13.

post hearing briefs. Second, it was only after receiving and evaluating the information contained in those submissions --- that is, after studying the gargantuan record in this case --- that the Arbitrator had the benefit of sufficient evidence to make an informed decision as to how (or whether) the issues should be divided. Third, scheduling and administering separate, preliminary proceedings to make those decisions would only have delayed this process even longer. Fourth, neither party asked to bifurcate the hearing process for that purpose. Fifth, it is somewhat common in both grievance and interest arbitration for decision-makers to reserve judgment on this type of procedural issue until writing their awards on the merits.¹⁴ Sixth, the Arbitrator is very much aware that in several Illinois interest arbitration proceedings individual components of larger issues have been decided separately. When both parties agree to do so, arbitrators (including the undersigned) simply hear and rule upon each of the issues presented. But the existence of such cases does not support a claim that calendar-based salary increases should be decided separate and apart from a wage equity adjustment. And finally, contrary to the Union's assertions, Section 14(g) of the Act does not require interest arbitrators to resolve this "number of issues" question prior to the submission of final offers.

¹⁴ *Op. Cit.*, Footnote 12.

The External Comparables. Turning now to the salary schedule increases, Table 1 has been constructed to juxtapose those established in comparable jurisdictions with the parties' final offers in Wilmette:

Table 1
Percentage Increases Across
The Comparable Jurisdictions

Jurisdiction	2000	2001	2002	2003	2004	Average
Evanston	4.30	5.00	5.00	3.75	3.75	4.36
Glenview	4.00	3.80	4.00	3.50	4.00	3.86
Highland Park	3.50	3.49	6.39	3.50	n/a	4.22
Lake Forest	3.37	3.52	4.00	3.25	3.0	3.43
Northbrook	3.50	3.75	4.00	3.75	3.75	3.75
Park Ridge	3.50	3.98	3.75	3.50 + 1.5	3.75	4.00
Skokie	3.50 + 1.0	3.75	3.75	3.50 + .75	3.75	4.00
Winnetka	3.60	3.50	4.00	3.75	3.75	3.72
Average Without Wilmette	3.78	3.85	4.36	3.84	3.68	3.90
Wilmette – Village FO	3.00	3.50	3.75	3.75	4.00	3.60
Wilmette – Union FO	4.00	4.00	4.00 + 2.00	4.00	4.50	4.50

In general, Table 1 suggests that the Village's final offer is preferable. While its offer generates an average salary increase of 3.6% over the five years of the contract, it is important to recognize that with Wilmette's January 1 through December 31 fiscal year, its firefighter/paramedics receive the negotiated increases shown in the Table for the entire year. That is not true in all jurisdictions --- Park

Ridge and Skokie, for example, --- where the dual increases shown in the Table are not effective until May 1 and November 1. Since Table 1 does not reflect the annualized dollar impact of the parties' final offers, it underestimates their relative financial worth among the comparables. Even still, the Table reveals that on a strict percentage basis, with no annualized correction, the Village's final offer is closer to the five-year average across the comparables (.30% below it) than is the Union's (.60% above it).

Both parties skillfully constructed tables and charts showing their own final salary offers in favorable light. The Arbitrator has reviewed them all, and has concluded that the Village's final offer sufficiently maintains the financial status quo of Wilmette firefighter/paramedics vis-à-vis their similarly situated counterparts across the external jurisdictions. In making such a comparison one must take into account several compensation elements, including longevity pay and stipends received by all firefighter/paramedics. Moreover, it is important to recognize that the results of comparative analysis will vary, depending upon the time frame selected and the employees' level of service. Table 2 on the following page was developed with those considerations in mind. It reflects total pensionable salary across the external comparables as of January 1, 2002.

Table 2
 Compensation Elements Across
 Comparable Jurisdictions For
 Calendar 2002 at 5.5 Years' Service

Jurisdiction ¹⁵	Top Step Salary ¹⁶	Longevity Pay	Additional Salary ¹⁷	Total Pensionable Salary as of January 1, 2002
Evanston	\$56,808	0	0	\$56,808
Glenview	\$62,226	0	0	\$62,226
Highland Park	\$58,739	0	0	\$58,739
Lake Forest	\$59,044	\$100	0	\$59,144
Northbrook	\$59,854	\$180	0	\$60,041
Park Ridge	\$58,069	0	0	\$58,069
Skokie	\$58,287	0	0	\$58,287
Winnetka	\$57,797	0	\$1787	\$59,584
Average Without Wilmette	\$58,853	\$35	\$223+	\$59,112
Wilmette – Village Offer	\$58,089	\$2,033	\$1,000	\$61,122
Wilmette – Union Offer	\$60,257	\$2,109	\$1,125	\$63,491

Looking just at the top step column in Table 2, the Village's final salary offer for firefighter/paramedics with 5.5 years service appears

¹⁵ Fiscal years differ across jurisdictions. Glenview and Wilmette begin on January 1; Evanston begins on March 1; Winnetka begins on April 1; and the remainder begin on May 1.

¹⁶ Includes paramedic stipend if separate from salary.

somewhat low. However, when longevity pay, Firefighter III certification pay (Wilmette) and holiday pay (Winnetka) are added, under the Village's final offer Wilmette firefighter/paramedics at the 5.5 year service level pull ahead of those similarly situated in all of the comparable jurisdictions except Glenview. Under the Union's final offer they advance as well, to the number one salary position over all the comparables --- \$1265 above Glenview, which would be in the No. 2 position. Nothing in the record suggests that the parties themselves would have agreed to such a quantum salary leap for Wilmette firefighter/paramedics. Since interest arbitration awards are supposed to approximate negotiated outcomes in the collective bargaining arena, the Arbitrator is not inclined to select a final offer that seems to fall outside the scope of what the Village and the Union might reasonably have negotiated on their own.

As noted, Table 2 compares total pensionable salary as of a fixed date (January 1, 2002). Because fiscal years vary across comparable jurisdictions, the Table does not reflect the total salaries actually received by firefighter/paramedics in the comparability pool during 2002. In fact, its focus on January 1st somewhat underestimates Wilmette firefighter/paramedic actual salary under both parties' offers because the increases there are effective as of that date; those in most other jurisdictions go into effect later in the year. Calculating total salaries received by firefighter/paramedics in the various comparable

¹⁷ Included here only if received by all or substantially all top step firefighter/paramedics.

jurisdictions over the entire course of calendar 2002 eliminates that methodological issue. Doing so produced results somewhat similar to those displayed in Table 2. The calendar year calculation method revealed that under both parties' final offers Wilmette firefighter/paramedics at 5.5 years of service would receive higher salaries than the average received by their counterparts in other jurisdictions. In descending order, those salaries are Wilmette (Union Offer), \$63,491; Glenview, \$62,226; Northbrook, \$61,630; Winnetka, \$61,398; Wilmette (Village Offer), \$61,122; Lake Forest, \$60,717; Skokie, \$60,188; Highland Park, \$60,110; Park Ridge, \$59,521; and Evanston, \$59,308. The average across all those municipalities except Wilmette is \$60,637. Under the Village's final offer, Wilmette firefighter/paramedics would be paid \$485 above that figure. Under the Union's final offer they would not only be paid \$2854 above it, but they would also receive more money for the year than firefighter/paramedics in any of the comparable jurisdictions and \$1265 more for the year than those similarly situated in Glenview, the second place municipality in the calendar year calculation. The record before me does not provide compelling reason to catapult Wilmette firefighter/paramedics to that lead position.

Using the 2002 calendar year total pensionable salary method for firefighter/paramedics with ten years of service, with fifteen years of service, and with twenty years of service yields results similar to those

discussed above. Table 3 on the next page has been constructed to illustrate them.

Table 3
 Firefighter/Paramedic Compensation¹⁸
 Received Across Comparable Jurisdictions
 For Calendar 2002 at 10, 15 & 20 Years' Service

Jurisdiction	10 Years	15 Years	20 Years	Rank at 10, 15, 20
Evanston	\$59,869	\$60,990	\$61,630	9, 8, 6
Glenview	\$63,004	\$63,357	\$63,653	2, 2, 2
Highland Park	\$61,613	\$61,913	\$62,514	5, 5, 5
Lake Forest	\$60,867	\$61,067	\$61,317	7, 7, 8
Northbrook	\$62,110	\$62,450	\$62,650	4, 4, 4
Park Ridge	\$60,571	\$60,771	\$60,971	8, 9, 9
Skokie	\$60,888	\$61,188	\$61,488	6, 6, 7
Winnetka	\$63,169	\$63,169	\$63,169	1, 3, 3
Average w/o Wilmette	\$61,511	\$61,863	\$62,174	
Wilmette – Village Offer	\$62,385	\$63,674	\$64,990	3, 1, 1

It is abundantly clear from Table 3 that the Village's final offer provides a competitive salary package to top step Wilmette firefighter/paramedics for calendar year 2002. At ten years of service they would be paid well above the comparability pool average under the Village's final offer, and ranked third among the nine-member comparability pool. Those with fifteen years of service would receive the highest salary in the pool, as would top step Wilmette

firefighter/paramedics with 20 years of service. Given those circumstances, there seems to be no compelling need to boost their salaries even higher through selection of the Union's final offer.

But what about the remaining years of the contract? Recall from Table 1 that the Village's proposed percentage increase for 2000 (3%) was low as compared to the average (3.78%). It was slightly below the average in 2001 as well (3.50% vs. 3.85%). Again, however, the percentage increases in Wilmette become effective on January 1 of the relevant year, as do those in Glenview. Salary increases in Evanston take effect on March 1, while those in Winnetka begin on April 1. Percentage increases for the remainder of the external comparables (Highland Park, Lake Forest, Northbrook, Park Ridge, and Skokie) do not begin until May 1. As discussed earlier, since Wilmette firefighter/paramedics begin receiving their salary schedule increases earlier than do most of their counterparts in other jurisdictions, the percentage increases themselves underestimate the actual salary they will receive under either party's final offer.

The above conclusion also holds true for calendar year 2003 and 2004 under either offer. That is, the percentage salary increases in Wilmette kick in earlier in the calendar year than do those in comparable jurisdictions, thereby generating a more robust financial package for

¹⁸ Includes paramedic stipend, longevity pay, and any additional salary received by all top step firefighter/paramedics.

Wilmette firefighter/paramedics than that reflected by simple percentage increase figures.

Overall Compensation. Isolating salary elements alone can also inappropriately skew conclusions drawn about the relative reasonableness of final salary offers in interest arbitration. Thus, arbitrators also consider such additional forms of compensation as holiday pay, flexible benefit pay, and the cost to employees of health insurance. Doing so in the present case lends additional support to adoption of the Village's final salary offer.

Firefighter/paramedics in only four of the nine-member comparability pool (including Wilmette) receive holiday pay in addition to their annual salary. Wilmette provides such pay (\$193 annually), though it is not nearly as high as that received by firefighter/paramedics in Lake Forest (\$440) or Park Ridge (\$543). Employer medical insurance contributions are an even more significant element of overall compensation. Single coverage in Wilmette costs firefighter/paramedics nothing. Their counterparts in Evanston, Northbrook, Park Ridge, Skokie and Winnetka contribute financially toward such coverage. And as already noted, Wilmette firefighter/paramedics receive longevity pay and a Firefighter III stipend at levels not provided by the overwhelming majority of comparable communities.

Internal Comparability. Compensation parity between firefighter and police units has been a widely discussed issue since the earliest

police and fire departments were formed. Generally speaking, municipalities attempt to achieve it in order to avoid the pitfall of back-and-forth “catch up” bargaining at every round of negotiations. It appears from the record that the Village of Wilmette has historically kept its firefighters and police officers on parallel salary tracks. Table 4 on the following page is illustrative.

As reflected in the Table, adoption of the Village’s final offer on the salary issue would maintain the historical salary parity between Wilmette’s firefighter/paramedics and its police officers. The Union’s final offer would disturb that longstanding relationship, and would surely cause the union representing Wilmette police officers to redress the balance at the next opportunity. Thus, on the internal comparability criterion the Village’s final salary offer appears to be the more reasonable.

In reaching the foregoing conclusion the Arbitrator considered the fact that salary parity between police and firefighters in Wilmette is not exclusively the result of free collective bargaining. That is, Wilmette firefighters have not yet entered into a negotiated contract with the Village. Thus, the aforementioned parity arose from two sources: (1) what Teamsters Local 714 negotiated on behalf of Wilmette police, and (2) what the Village granted unilaterally to its firefighters. The result of amending the longstanding salary parity between those groups is predictably the same, however, regardless of its origin. The union whose

members lag behind will pressure the Village for “catch up” salaries. Maintaining the historical salary relationship between police officers and firefighters in Wilmette would not be likely to generate such an outcome. Moreover, it would maintain a status quo the Arbitrator finds no compelling reason to alter.

Table 4
Village of Wilmette
Firefighter/Paramedic vs. Police Officer
Pay Grades and Salary

Fiscal Year	Firefighter/PM Pay Grade	Firefighter/PM Salary	Police Officer Pay Grade	Police Officer Salary
1989-1990	22 ½	\$35,878	22 ½	\$35,878
1990-1991	22 ½	\$37,672	22 ½	\$37,672
1991-1992	22 ½	\$39,557	22 ½	\$39,557
1992-1993	22 ½	\$40,942	22 ½	\$40,942
1993-1994	22 ½	\$42,374	22 ½	\$42,374
1994-1995	23	\$44,346	23	\$44,346
1995	23	\$45,674	23	\$45,674
1996	23 ½	\$48,153	23 ½	\$48,153
1997	23 ½	\$49,500	23 ½	\$49,500
1998	23 ½	\$50,988	23 ½	\$50,988
1999	23 ½	\$52,518	23 ½	\$52,518
2000 – Village FO	23 ½	\$54,094	23 ½	\$54,094
2000 – Union FO		\$54,619		
2001 – Village FO	23 ½	\$55,986	23 ½	\$55,986
2001 – Union FO		\$56,803		
2002 – Village FO	23 ½	\$58,089	23 ½	\$58,089
2002 – Union FO		\$60,257		
2003 – Village FO	23 ½	\$60,263	23 ½	\$60,263
2003 – Union FO		\$62,667		
2004 – Village FO	23 ½	\$62,674	23 ½	\$62,674
2004 – Union FO		\$65,487		

The Arbitrator understands that the Wilmette police agreement no longer has a “me too” clause requiring the Village to grant its police officers any increases it offers to other non-supervisory, non-managerial

or non-confidential employee groups. But anyone familiar with the political nature of the municipal bargaining process understands that the absence of such language would not preclude a police union from a full-court, intense press to restore salary parity with their counterparts in the fire department.

The Cost of Living. By any conventional measure, both parties' final offers on the salary issue keep Wilmette firefighters well ahead of increases in the cost of living. And, since the first four and one-half years of the 2000 – 2004 Agreement have already expired, there is little risk that a future spike in living costs will render the final salary offer of one party or the other less reasonable than it currently appears.

For the period between December, 1999 and December, 2003, a time frame which very closely approximates Wilmette fiscal years 2000, 2001, 2002 and 2003, two conventional measures of the cost of living (CPI-U and CPI-W) increased by 9.5% and 9.0% respectively. The Village salary offer includes increases totaling 14% for that same period; the Union's offer provides 18% in total wage boosts. Thus, the Village's final offer appears to be the more reasonable when evaluated on the cost-of-living criterion.

Other Factors. The Union strenuously argued that during its pre-representation election campaign then Village Manager Heidi Voorhees promised to keep Wilmette firefighters in the top salary quartile of the comparability pool. That alleged promise was contained in an October 7,

1999 letter apparently sent to all Wilmette firefighter/paramedics. The letter is quoted in pertinent part on the following page:

We have compared your salary schedule to the salary schedule of Firefighters in nine other northern suburban departments. Yours stack up very well against theirs. It is true that you are not at the top. However, you are close to the top in several steps and never lower than the middle. Significantly, in the latter years of your career, you will be among the best paid of north suburban Firefighters compared to many of your counterparts and this translates into a higher pension upon retirement. . . .

Obviously, the above statement was made to convince Wilmette firefighter/paramedics to vote against union representation. Be that as it may, it appears that adoption of the Village's final offer on salary would advance the firefighter bargaining unit to the salary level described in Voorhees' letter --- and in some circumstances even farther. Recall from Table 3, for example, that at fifteen and twenty years of service top step Wilmette firefighter/paramedics would enjoy a number one salary ranking among the external comparability group.

The competitiveness of its salary package can also be measured by an employer's ability to attract and retain qualified applicants. In the present case there is no evidence that the Village has experienced any significant recruiting or retention problems. It has experienced a modest turnover rate (e.g., seven firefighter/paramedics resigned in the decade between 1992 and 2002), but that rate is not high enough to suggest that salary and benefit levels in Wilmette have not been competitive with those available in the local labor market. The testimony of Union witness

Amidei about a twelve-month vacancy on B shift is not sufficient to prove the existence of an inadequate applicant flow. It could just as easily be the result of a temporary command staff administrative decision not to hire and train new recruits. Overall, recruiting and retention data in the Wilmette Fire Department do not lend material support to adoption of the Union's salary offer.

The Union argues as well that the one-half pay grade adjustment granted to Wilmette fire lieutenants in 2000 created an inequity between them and firefighter/paramedics. In fiscal years 1993-1994 and 1994-1995 there was a 3 ½ step pay grade differential between firefighter/paramedics and lieutenant/paramedics (22 ½ vs. 26). When in 1995 the Village converted its fiscal year to coincide with the calendar year, it increased the firefighter/paramedic classification by ½ step to pay grade 23, but left the lieutenant/paramedic pay grade unchanged. It did so again in 1997, thereby creating a 2 ½ step pay grade differential between the two classifications (23 ½ vs. 26). Then in 2000 the Village bumped lieutenant/paramedics by ½ step to pay grade 26 ½, broadening the differential to 3 pay grades. The Union asserts that the 2% equity adjustment in its final offer was intended in part to reestablish an appropriate pay relationship between the two classifications. The Arbitrator is not persuaded by that argument, for two reasons. First, over the long term (since 1993) the pay differential between the groups has actually narrowed from 3 ½ grades to 3 grades. Second, though

lieutenant/paramedics received a ½ step classification upgrade in 2000, at the same time they were removed from coverage of the Village's merit pay plan. That plan can earn participants up to a 5% merit raise; in contrast, the ½ step classification upgrade is estimated to be worth approximately 2.35%. The Arbitrator is therefore not convinced that movement of the lieutenant/paramedic classification to pay grade 26 ½ disturbed a historical pay equity pattern between them and firefighter/paramedics.

All in all, the final offer of the Village on the salary issue appears to be the more reasonable. Put another way, the Arbitrator finds no compelling reason to adopt the Union's proposed salary package, which would cause the Village to spend an amount greater than that necessary to attract and retain a qualified complement of firefighter/paramedics. Clearly, that unjustified level of spending would not be in the public interest, no matter what the financial strength of the Village.

APPLICABILITY OF OTHER CHANGES (ECONOMIC)

Union Position

The Union's final offer on this issue is to include the following so-called "me too" clause in the parties' 2000-2004 Agreement:

Section 10.5. Applicability of Other Changes. The Village agrees that if a higher overall cost of living adjustment to the Pay and Classification Plan or other benefit(s), than which is set forth herein, during the term of the contract for any non-supervisory, non-managerial, or non-confidential Village employee, the Village will meet and discuss in good faith

with the Union the applicability of such adjustments and benefits to the members of the bargaining unit. Any disputes over these issues may be resolved pursuant to the alternative Impasse Resolution Procedure of this contract, Appendix A.¹⁹

The Union believes the above provision will protect the interests of Wilmette firefighters should the Village decide to provide Pay and Classification Plan enhancements or improved benefits to other employee groups. It asserts that the proposal is far less restrictive than the “me too” clause that was previously part of the Wilmette Police Agreement. Moreover, the Union argues, since Wilmette police officers had a “me too” benefit in their early collective bargaining agreements, its firefighters should have similar protection, albeit at a more modest level.

Village Position

The Village maintains that there is no support for what it calls the Union’s “unprecedented” offer on this issue. It notes that neither of its other two contracts with employee groups (police; public works) contains such a clause. Moreover, the Village points out, the “me too” clause that formerly appeared in Wilmette Police collective bargaining agreements was very specific; it did not refer to unidentified “other benefits.” The Village notes as well that none of the external comparables have contracts containing a “me too clause” in any respect similar to what the

¹⁹ Quoted verbatim from the Union’s Final Offer (JX-6), p. 24.

Union has proposed here. It also believes that the ambiguity in the Union's offer on this issue will generate numerous grievances.

Discussion

The Arbitrator, too, is troubled by certain aspects of the Union's proposed "me too" clause. First and foremost, it would ultimately allow firefighter/paramedics to invoke interest arbitration proceedings during the term of the 2000-2004 Agreement if the Village enhanced any "other benefit(s)" for even one non-supervisory, non-managerial, or non-confidential "employee" and did not extend the "other benefit(s)" to the fire service bargaining unit. The parties have spent an enormous amount of time in interest arbitration as it is, and endorsing a mechanism to pull them back into it so soon would be a disservice to them both. The rigors of negotiation and interest arbitration take their toll in the best of circumstances. The parties here have been immersed in one or both of those processes for about five years --- an extremely long baptism into the collective bargaining relationship --- and the Award to follow should not do anything to plunge them back into those murky waters so soon.

Besides, there appears to be no need for what the Union seeks. In these proceedings the Village has been a champion of internal parity. Against that backdrop, it would be difficult indeed for the Village to justify disturbing that balance in the future by granting major pay

and/or benefit enhancements to one non-managerial, non-supervisory or non-confidential employee group while withholding them from others.

Finally, there is no support among the internal or external comparables for adoption of the Union's "me too" proposal. Wilmette police voluntarily removed somewhat similar language from their contract with the Village. And none of the comparable communities surrounding Wilmette has agreed to a clause even remotely like the one advanced by the Union here.²⁰ Accordingly, and for all of the foregoing reasons, the Arbitrator favors adoption of the Village's position on this issue.

EDUCATIONAL INCENTIVE (ECONOMIC)

Union Position

The Union proposes the inclusion of the following clause into the parties' 2000-2005 Agreement:

Section 10.2 Educational Incentive. All employees who hold an A.A. degree in Fire Science will receive a quarter step pay increase, and any employee who holds a B.A. degree will receive an additional half step raise. Increases (sic) for required knowledge, including but not limited to; (sic) PALS, AQCLS, etc., will receive a quarter step pay increase. The maximum Educational Incentive shall not exceed one half step pay increase.

The Union believes it is appropriate to recognize employees' educational achievements, and to provide incentives for Wilmette

firefighter/paramedics to be among the best educated fire science professionals. Its proposal on this issue was modeled after a similar clause in the Evanston firefighter contract, the Union notes. The Union points to the large percentage of Evanston firefighters who have earned the B.A. degree as evidence that such a clause works.

Village Position

The Village believes that the Union's educational incentive proposal should not be included in the parties' first collective bargaining agreement. It underscores the fact that all non-probationary firefighters in Wilmette are ACLS certified, and that they achieved that status through training delivered during work time and financed by the Village. The Village also points to its "generous tuition reimbursement policy" and claims that an additional educational incentive would constitute a pyramiding of one benefit on top of another. It notes as well that the half-step pay increase such a clause could generate (i.e., from pay grade 23 ½ to pay grade 24) would amount to a pay boost of approximately 2.3%. And with regard to the internal and external comparability factors, the Village asserts, there is simply no support for adoption of the Union's educational incentive proposal.

Discussion

²⁰ The "me too" clause in the Skokie firefighter contract merely ties salary increases for 2005-2006 to the

Since the Village pays for the Advanced Cardiac Life Support (ACLS) training its firefighters receive, and since they receive that instruction while on duty, there is no need to provide an incentive for them to complete it. That conclusion holds true for any “required knowledge” necessary to perform acceptably as a firefighter. If the Village finances the development of such knowledge and arranges the appropriate training on duty time, firefighters must acquire it as part of their employment obligation. An extra incentive for them to do so is simply not necessary.

The other element of the Union’s educational incentive proposal seems more firmly based in logic. Financial rewards associated with educational achievement have been quite successful across a broad range of industries. Here, however, no matter which of the parties’ final offers is selected on the tuition reimbursement issue, Wilmette firefighters will still have financial incentive for continued education. Nothing in the record suggests the need for the additional financial reward proposed by the Union here.

The Arbitrator notes as well that no other Wilmette employee group receives educational incentive pay such as that sought by the Union in these proceedings. And only one of the externally comparable jurisdictions (Evanston) provides extra pay upon completion of certain educational achievement levels. On balance then, there is insufficient

percentage increases “granted to the Village’s unrepresented employees generally.”

justification in the record for adoption of the Union's proposal on this issue.

PRECEPTOR PAY (ECONOMIC)

Village Position

The Village purports to maintain the existing preceptor pay benefit through inclusion of the following provision in the 2000-2005 Agreement:

Preceptor Pay. For each full shift that a paramedic serves and functions as a preceptor, firefighter/paramedic (sic) shall be paid one and one-half (1 ½) hours of pay at the employee's regular straight time hourly rate of pay.

The Village believes it is appropriate to reward firefighter/paramedics who provide on-the-job paramedic training and oversight.²¹ It asserts that the current policy will accomplish that objective, as it has for the last six years or so. The Village notes as well that only one of the external comparables (Evanston) furnishes extra pay to its paramedic preceptors. In addition, the Village argues, the Union's proposal on this issue would double the preceptor compensation currently paid, and it would dictate preceptor qualifications. The Village believes that the latter provision conflicts with management rights language the parties have already tentatively agreed upon --- that the

²¹ Such training is a supplement to the formal instruction provided by St. Francis Hospital in Evanston.

Village retains the right “to determine the qualifications for employment and job positions ... ”

Union Position

The Union submitted the following final offer on the paramedic preceptor issue:

Section 10.8 Preceptor Pay. Any time a member must perform the duties of Paramedic Preceptor, the member shall be compensated for two (2) hours of pay at time and one-half (1 ½) of his regular rate of pay. In order to perform as a Preceptor, the member must have a minimum of three (3) years as a Wilmette Fire Department Paramedic.

Union witness John Okonek was designated by the St. Francis Emergency Medical Services system to work as a Paramedic Preceptor. He has served in that role on numerous occasions. The Union cites his testimony in support of its assertion that the requirements for preceptor designation are rigorous. They include completing of a preceptor workshop and obtaining certification, being approved by unanimous vote of the Preceptor Approval Committee, meeting continuing education requirements, completing daily reports on all student paramedics under their supervision, and maintaining the standards of the St. Francis Hospital Paramedic Program. The Union also points to the fact that not

all Wilmette paramedics are certified preceptors, arguing that those who are deserve compensation for that achievement.

The Union asserts in addition that the “full shift” requirement in the Village proposal departs radically from the Department’s current policy, pointing to additional testimony from Okonek in support of that assertion. It also notes that the Field Training Officer (FTO) pay provision in the Wilmette Police Agreement does not make reference to a “full shift.” The Union cites the Evanston fire contract as well, pointing out the absence of a full shift requirement like the one proposed by the Village here.

Discussion

Firefighter/paramedic John Okonek was a very credible witness. He appeared to be very careful about keeping his testimony fact-based. Several times when he was asked by Union Counsel about certain aspects of his Paramedic Preceptor experience, Okonek refrained from giving a self-serving response because, as he forthrightly indicated, he could not remember specific details. But Okonek was able to provide details in support of the Union’s assertion that working as a preceptor for a “full shift” has not been a requirement for Paramedic Preceptor pay in the Wilmette Fire Department. Consider the following exchange:

Q Mr. Okonek, have there been occasions when you received the paramedic pay, preceptor pay serving as a preceptor, for less than a shift?

A Less than a 24-hour period? Yes. I've never been denied it.

Q Are there times when you serve as preceptor for less than 24 hours?

A Yes.

Q Under what circumstances do you do that?

A There are times when the student's at school from 8:00 until noon, sometimes from 8:00 until 4:00, and during those (times) I wouldn't be serving as preceptor. When the student came back I would be their preceptor, I would put in for my hour's worth of overtime and I would get it. I was never denied it.

...

Q And the student you are referring to, are you referring to a firefighter who's undergoing paramedic training?

A Yes.

Q When that person is not in the firehouse between the hours of 8:00 to 4:00, or 8:00 to noon, what duties do you have?

A (Whatever) I was assigned to. Most likely it would be my ambulance, my regular ambulance duties.

Q Are you designated preceptor during those (hours) when the student is not there?

A There is nobody to precept, so I would say no. (Tr. 181-182)

Mr. Okonek's testimony on that point was essentially un rebutted. It has convinced the Arbitrator that the "full shift" requirement in the Village's final offer on this issue is not reflective of the current practice. Moreover, given the instruction pattern Okonek described for paramedic

trainees, it appears that they would be out of the fire station taking classes at St. Francis Hospital on numerous occasions. Under the Village proposal, preceptors would apparently be denied preceptor pay for those shifts, even though they may have spent instructional/supervisory time with the paramedic trainees in question. And under such circumstances the preceptors would conceivably not receive any compensation for those extra duties and for completing related paperwork --- which according to Okonek can take up to an hour. Thus, the “full shift” requirement contained in the Village’s final offer seems unduly restrictive.

Moreover, there is no clear internal support for the Village’s “full shift” requirement. The FTO provision in the Police Agreement does not contain that phrase,²² nor does its Officer-in-Charge clause.²³ And since the Village of its own volition has been providing Paramedic Preceptor pay, the Arbitrator need not look to the external comparables for support of that general concept.

Both parties’ final offers deviate from the Village’s current paramedic preceptor pay practice. The Union’s increases the pay from one hour at time and one-half to two hours at time and one-half. It also contains the requirement that Paramedic Preceptors have at least three

²² The FTO provision indicates that officers shall receive one hour of overtime “for each eight hour shift worked in this capacity.” While that language is certainly subject to interpretation, it is seemingly not so restrictive as is the Village’s Paramedic Preceptor proposal in these proceedings. There is also no evidence in these proceedings about whether Wilmette Police Officers are denied FTO pay when trainees under their supervision are not at work for an entire shift.

years' experience as Wilmette Fire Department Paramedics. The Village's final offer adds a very restrictive and seemingly unrealistic requirement -- that a paramedic preceptor would receive pay for that extra responsibility and activity only when he or she "serves and functions as a preceptor" for a "full shift." Under all of those circumstances, the Arbitrator has concluded that the Union's final offer is the more reasonable.

CALL BACK PAY (ECONOMIC)

Village Position

The Village has advanced the following final offer on this issue:

Call-Back Pay. A call-back is defined as an official assignment of work which does not continuously precede or follow an employee's scheduled working hours and involves the employee returning to work after the employee has worked a shift. A call-back shall be compensated at one and one-half (1 ½) times an employee's regular straight-time hourly rate of pay for all hours worked on call-back, with a two (2) hour minimum. This Section shall not be applicable to pre-scheduled overtime. In order to receive the minimum guarantee of two (2) hours, the employee must report within sixty (60) minutes from the time of the recall.

The Village believes its final offer simply memorializes the existing call back pay practice and policy. It asserts that there is no justification for the increase proposed by the Union --- from the existing two hour minimum at time and one-half to a three hour minimum at that rate.

²³ Under that provision officers must work as an Officer-in-Charge for "four (4) or more hours" to qualify for the stipend.

The Village argues as well that both the external and internal comparability data provide overwhelming support for acceptance of its final offer.

The Village notes also that because the alarm that triggers a call back may be over by the time employees arrive or shortly thereafter, there are many occasions where they remain on duty for a relatively short period of time.

Union Position

The Union's final offer on this issue is quoted below:

Section 9.5 Emergency Call Back. Emergency Call Back time shall be defined as that time in which an off-duty firefighter is called back to duty by the department. In the event of an emergency call back, the member shall receive a minimum of three (3) hours overtime compensation at time and one half (1 ½). All hours worked over three hours shall be paid to the next fifteen (15) minutes at time and one half (1 ½).

The Union agrees that adoption of the Village's final offer would retain the status quo. It notes, though, that the average minimum call back pay across the external comparables is 2.25 hours. The Union therefore argues that its final offer is the more reasonable because, unlike the Village's, it does not contain a below average hourly minimum.

The Union also asserts that the Village proposal is flawed because of its requirement that recalled firefighters report to the fire house within one hour of receiving the call. That requirement, the Union avers, is contrary to the practice in comparable fire departments, and it is

unrealistic given where some Wilmette firefighters live (e.g., North Aurora, McHenry, West Chicago, Antioch, Fox River Grove and Lake Zurich).

Discussion

Deputy Chief Jim Dominik surveyed various command staff from the external comparables in November, 2002. The results of that survey and the Arbitrator’s own review of relevant collective bargaining agreements are set forth in Table 5 below:

Table 5
Emergency Call Back Policies and
Practices Across Comparable Jurisdictions

Jurisdiction	Minimum Pay	Reporting Time Requirement	Start of Call Back Pay	Frequency of Call Backs
Evanston	4 hours	Not specified	Time of Arrival	Infrequent
Glenview	2 hours	40 minutes	Time of call if arrive in 20 mins.	Infrequent
Highland Park	2 hours	1 hour	Time of call	Infrequent
Lake Forest	2 hours	Not specified	Time of call	Frequent
Northbrook	none	Local 15 minutes; all others 1 hour	Time of Arrival	Frequent
Park Ridge	2 hours	Not specified	Time of call	Infrequent
Skokie	2 hours	Not specified	Time of arrival	Infrequent
Winnetka	3 hours (2 hours for standby)	1 hour	Time of call	Frequent
Average w/o Wilmette	2.125 hours	---	---	---
Wilmette – Village Offer	2 hours	1 hour	Time of call	---
Wilmette – Union Offer	3 hours	Not specified	Not specified	---

As reflected in Table 5, both parties' final offers provide a reasonable amount of minimum pay for emergency call backs. Six of the eight jurisdictions pay a two-hour minimum or less. The highest is Evanston at four hours, but according to Division Chief Berkowsky (as told to Deputy Chief Dominik), as of November 2002 there had been only five call backs in the previous three years. Thus, the Village's final offer on the minimum pay element of the emergency call back issue is the more consistent with what is most frequently provided in the local labor market.

Internally, the evidence is mixed. Wilmette police officers receive a two-hour minimum at time and one-half. Public Works employees receive a three-hour minimum at that rate. It is impossible to evaluate the usefulness of that information for comparability purposes, though, because the record does not reflect the frequency and duration of emergency call backs in those departments. If, for example, Public Works employees are nearly always called back for four hours' work (snow emergencies, for example), the three-hour minimum would not be too meaningful.

But what about the requirement in the Village's offer that firefighters report within one hour? The Union argues that the requirement would make it difficult for many Wilmette firefighters to qualify, because of the distance between their residences and the Village. However, according to the testimony of Union witness Frank Mager, the

one-hour reporting requirement has been standard operating procedure in the Wilmette Fire Department for at least nine years (Tr. 601, 653). Mager also testified that he “knew people who have responded in a period longer than an hour who were denied the call back.” He added, however, that the incident he had in mind was “a few years ago.” The Arbitrator therefore concludes that the one-hour reporting minimum has not been terribly problematical in the past. Moreover, given the general need for a quick response to many fire-related emergency call backs, a minimum reporting time requirement seems reasonable.

Overall, the record has convinced the Arbitrator that the final offer of the Village on the emergency call back issue is the more reasonable.

HEALTH INSURANCE (ECONOMIC)

Village Position

The Village believes that all elements of the parties’ dispute regarding health insurance should be considered one single issue for interest arbitration purposes. Its final health insurance offer is quoted in its entirety here:

Section 11.1. Coverage. The Village of Wilmette’s Health, Flexible Benefit, Life Insurance, and available Dental Insurance coverage and benefits in effect on the effective date of this Agreement shall be continued; provided the Village retains the right to change insurance carriers, third party administrator, or to self-insure as it deems appropriate, so long as the new coverage and new benefits are substantially the same as those that were in effect under the applicable policy prior to such a change. The Village will maintain the existing practice of making the same health

insurance provider and plans available to both managerial and non-managerial employees. Employees may make changes to their coverage during the open enrollment period established by the Village.

Section 11.2. Cost Containment. The Village reserves the right to maintain or institute cost containment measures relative to hospitalization and medical insurance coverage so long as the basic level of benefits and coverage are not reduced except for failure to comply with established cost containment procedures. Such measures may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, managed care, prohibition on weekend admissions except in emergency situations, bounty clause, and mandatory out-patient elective surgery for designated surgical procedures.

Section 11.3. Terms of Insurance Policies to Govern. The extent of coverage and benefits under any insurance policy or benefit plan referenced in this Article (including HMO and self-insured plans) shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said policies or plans or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the Village, nor shall such failure be considered a breach by the Village of any obligation under this Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it (they) may have to the Village or any employee covered by this Agreement, or that employee's dependent or beneficiary. Nothing herein shall be interpreted to waive any right any covered person may otherwise have to seek legal redress from the insurance carrier(s) and/or plan administrator(s) for denial of coverage and/or benefits under said plan.

Section 11.4. Health Insurance Co-payment Levels, Deductible Levels, and Employer/Employee Premium Payments. The Village will continue to pay 100% of the cost of the premiums for hospitalization and medical insurance for employees who opt for single coverage. Employees who opt for family coverage will pay 20% of the difference between the premium for family hospitalization and medical

insurance coverage and single coverage. Changes in co-payments levels, deductible levels, premiums, coverage or other benefit changes made by an insurer through whom the Village provides coverage shall not be deemed to be a breach of this Agreement by the Village.

Effective January 1, 2002, the flexible benefit plan allowance will be increased to \$50 per month.

The Village argues that its final offer on this issue should be adopted because it would maintain health insurance uniformity across its employee groups. It notes that unlike the health insurance provisions in the Wilmette Police and Public Works contracts, its final offer does not include in §11.3 the phrase, “and shall not be subject to the grievance and arbitration procedure set forth in this agreement.” That phrase was deleted from its final offer, the Village adds, because of a legal objection filed by the Union with the ILRB General Counsel.

The Village also notes that not a single concern was raised by the Union or any of its witnesses with respect to the health insurance coverage or benefits currently provided to bargaining unit employees. Moreover, Union expert witness Dr. Jonathan Dopkeen testified that the Village’s chosen health insurance co-op is “a very generous plan,” and “is rich because it’s covering 100% of a lot of things.” (Tr. 443, 446). Thus, the Village argues, there is no justification for the Union’s proposal to add yet another health insurance option for firefighters.

The Village asserts as well that the external comparability data do not support adoption of the Union’s final offer. It notes that Wilmette is

one of only four jurisdictions in that group where employees pay nothing for single coverage. And, the Village adds, with the \$50 per month flexible benefit provided effective January 1, 2002 under its offer, the amount Wilmette firefighters would pay for family coverage is very competitive.

Focusing on the Union's final offer, the Village asserts that it contains several "fatal flaws." Principal among them, it claims, is the Union's proposed "MRA Health Plan" and its demand that the Village pay 100% of its cost for participating members. That element of the Union's final offer, the Village asserts, lacks sufficient information about its specific terms or how it would be administered.

Union Position

The Union's final health insurance offer is quoted in its entirety here:

Section 11.1 Hospitalization & Medical Insurance/ Dental/Flexible Benefits/Life Insurance. The Village's Health, Flexible Benefits, Life Insurance and Dental Insurance coverage and benefits in effect on the effective date of this agreement shall be continued. The Village will maintain the existing practice of making available the same health providers and plans available and will include the Union's proposed MRA Health Plan.

Employees may make changes to their coverage during the open enrollment period established by the Village. The Village will continue paying at the current % of the cost of these benefits of either single or family policy and will pay 100% of the cost of the MRA Health Plan for participating members. The Village will continue to provide Life Insurance

at no cost to the member at one and one-half (1 ½) times the employee's salary.

Section 11.2. Cost Containment. The Village reserves the right to maintain or institute cost containment measures relative to hospitalization and medical insurance coverage so long as the benefits and coverage are not reduced thereby, except for failure to comply with reasonable cost containment procedures and provided no additional cost is passed on to any member. Such measures may include, but are not limited to, mandatory at no cost to the employee second opinions for elective surgery, pre-admission review, prohibition on weekend admissions except in emergency situations, bounty clause, and mandatory outpatient elective surgery for designated surgical procedures.

Section 11.3. Terms of Insurance Policies to Govern. The extent of coverage and benefits under any insurance policy or benefit plan referenced in this article (including HMO, MRA, and self-insured plans) shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said policies or plans or benefits thereunder shall be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obliged shall result in no liability to the Village, nor shall such failure be considered a breach by the Village of any obligation undertaken under this agreement.

However, nothing in this agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it (they) may have to the Village or any employee covered by this Agreement, or that employee's dependent or beneficiary. Nothing herein shall be interpreted to waive any right, which any covered person may otherwise have to seek legal redress from the insurance carrier(s) and/or plan administrator(s) for denial of coverage and/or benefits under this plan.

Section 11.4. Cost of Living Adjustment On Flexible Benefit Plan. The Village will provide the monthly \$45.00 flexible benefit to each member to use at their discretion. Employees opting for the MRA Health Plan will not receive the \$45.00 flexible benefit payment. Each contract year the Village will add a cost of living increase equal to the percentage cost increase of the insurance premium.

The Union asserts that the Village's health insurance offer is not a mandatory subject of bargaining, in that it precludes employees from pursuing health insurance disputes through the contractual grievance and arbitration procedure. It directs that "questions or disputes" concerning the available insurance policies or plans must "be resolved in accordance with the terms and conditions set forth in said policies or plans." None of those policies or plans provide for resolution of disputes about their content through the parties' contractual grievance procedure. Thus, the Union argues, the Village's final offer improperly blocks the ability of employees to arbitrate such disputes --- in violation of the ILRB General Counsel's Declaratory Ruling, Case No. 5-DR-02-009, pp. 44-46.

The Union asserts as well that the North Suburban Employee Benefit Cooperative Plan currently subscribed to and offered by the Village is too small to support stable health insurance rates and is not a high performing plan. It cites in support of those assertions the testimony of expert witness Jonathan Dopkeen, Ph.D.

Moreover, the Union emphasizes, the Village did not even consider the health plan alternative the Union advanced across the bargaining table. It believes that the Medical Reimbursement Account (MRA) advocated by expert witness Joel Babbit and referenced in its final offer is preferable to that available through the North Suburban Employee Benefit Cooperative Plan.

Discussion

Mandatory or Permissive? The nature of the Village's final offer deserves attention at the outset of this analysis, since the Union claims its language would inappropriately preclude employees from using the contractual grievance and arbitration procedure to resolve health insurance disputes. The parties aired that very claim before the Illinois Labor Relations Board in April, 2002 Declaratory Ruling proceedings (Case No. S-DR-02-009). More specifically, the following excerpts from the Village's final offer were at issue:

Section 11.3. Terms of Insurance Policies to Govern. The extent of coverage and benefits under any insurance policy or benefit plan referenced in this Article (including HMO and self-insured plans) shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said policies or plans or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans. . . .

Section 11.4. Health Insurance Co-payment Levels, Deductible Levels, and Employer/Employee Premium Payments. . . . Changes in co-payments levels, deductible levels, premiums, coverage or other benefit changes made by an insurer through whom the Village provides coverage shall not be deemed to be a breach of this Agreement by the Village.

The Union claimed in those proceedings, as it does here, that the above provisions would exclude from the contractual arbitration procedures any and all questions or disputes concerning the insurance policies, plans or benefits. The Village argued to the ILRB that the above

language “does not limit an employee’s ability to file a grievance with respect to the proposed contract language governing health insurance if an employee believes that the Village has violated it” and that “[n]othing in what the Village has proposed would exclude disputes over the proposed language from being submitted to the grievance and arbitration procedure.”²⁴ The Village also asserted in those Declaratory Ruling proceedings that the proposal at issue “would merely give an arbitrator less discretion in dealing with issues relating to health insurance by requiring the arbitrator to resolve questions according to the terms of the insurance plan or policies.”²⁵

General Counsel Zimmerman reached the following conclusion with regard to whether the Village’s final offer would prohibit grievances over the contractual health insurance language:

While the Village’s argument is somewhat unclear, I believe that it contends that the proposed contractual language is not meant to remove health insurance issues from the contractual grievance arbitration provision entirely, as the Union has interpreted the proposed language. Instead, the Employer asserts that the clause is meant to merely define the arbitrator’s discretion by requiring him to look solely to the terms and conditions of the policies themselves in resolving disputes arising under the contract. The ability of the parties to restrict or limit an arbitrator’s authority has previously been recognized. . . .

I find that to the extent the Employer’s proposal seeks merely to limit an arbitrator’s discretion in resolving contractual disputes regarding health insurance policies, plans and benefits, it is mandatorily negotiable. However, if I have misinterpreted the Employer’s argument, the proposal

²⁴ As quoted in ILRB General Counsel Jacalyn J. Zimmerman’s June 12, 2002 Declaratory Ruling, p. 45.

²⁵ *Ibid.*

is permissive to the extent that it would remove contractual disputes regarding health insurance policies, plans and benefits from the contractual grievance arbitration provision tentatively agreed upon by the parties. Such a proposed clause would, as argued by the Union, require SEIU to waive its statutory right to arbitrate disputes concerning contract administration or interpretation, as set forth in Section 8 of the Act, and would thus be a permissive subject of bargaining.²⁶

Essentially, Ms. Zimmerman ruled that the Village's final health insurance offer is ambiguous as to whether employees would be permitted to raise questions about its interpretation and/or application through the contractual grievance and arbitration procedure. If they would, the offer is a mandatory subject of bargaining and the undersigned interest arbitrator has the authority to consider that offer. If they could not, the Village's final health insurance offer is a permissive subject of bargaining and I have no jurisdiction over it.

The intent behind the Village's proposed language about employees' right to challenge the application and/or interpretation of the health insurance language was revealed in the position it took in the ILRB Declaratory Ruling proceedings, as noted by General Counsel Zimmerman. The Village argued in that forum that its proposed health insurance provision did not preclude employees from filing grievances over such matters and processing them to arbitration. Confirming that position, Counsel Clark noted on page 86 of the Village's post hearing brief in these proceedings that "... the Village's final offer does not

²⁶ *Ibid*, pp. 45-46.

deprive an arbitrator of jurisdiction to hear disputes concerning the health insurance article ... ” Therefore, on the basis of representations made on the Village’s behalf in the aforementioned ILRB Declaratory Ruling proceedings, as later confirmed by Village Counsel Clark on p. 86 of the Village’s post hearing brief here, I have concluded that its final offer on the health insurance issue was not intended to preclude employees from using the contractual grievance and arbitration procedure to resolve disputes over the Village’s proposed health insurance language. On that basis then, and consistent with General Counsel Zimmerman’s June 12, 2002 Declaratory Ruling, I consider the Village’s final offer on health insurance to be a mandatory subject of bargaining and I accept jurisdiction over the parties’ health insurance dispute.

One Issue or More? For reasons already set forth elsewhere in this Opinion and Award with regard to salary, the Arbitrator has concluded that matters involving health insurance should be treated as a single economic issue in these proceedings. In addition, contractual health insurance subsections must be integrated in such a way that they do not conflict with one another. Deciding elements of the parties’ health insurance proposals separately could very well result in an overall insurance provision with elements at odds with each other.

Consider, for example, the Union’s proposed MRA Health Plan. Bifurcating consideration of its structure and benefits from those about

its cost makes no sense. In fairness to the parties the MRA Health Plan must be considered as an overall package. Absent agreement by the parties themselves that health insurance --- an issue traditionally bargained as a composite package --- should be carved up into separate issues for an interest arbitration proceeding, the undersigned Arbitrator believes it should be considered and decided as a single issue. I shall do so here.

The Need For Another Plan. The Arbitrator is not convinced from the record that there is a compelling need to provide yet a fourth health insurance plan to a group of approximately 30 firefighters in Wilmette. They already have three from which to choose, and even the Union's own expert witness confirmed that the North Suburban PPO is a very generous plan --- one that provides rich coverage. Moreover, there is no evidence in the record that the existing plans have proven to be problematical.

The Comparables. Without evidence of a compelling need to do so, the Arbitrator is very reluctant to disturb the health insurance uniformity across Wilmette employee groups. The final offer advanced by the Village for the Firefighter unit is essentially the same as the existing negotiated insurance provision that governs the Public Works unit --- a group also represented by SEIU Local 73. The expertise of that professional bargaining agent is beyond question, and the Arbitrator can conclude with the utmost confidence that it would not have endorsed an

unfair, inefficient, or unjustifiably expensive insurance package for Wilmette Public Works employees. The same may be said of the Wilmette Police unit's bargaining agent, the Law Enforcement Division of Teamsters Local 714. The insurance provision that entity embraced for the 2004-2006 Police Agreement is essentially the same as the one the Village proposes here for its firefighters.²⁷ Overall, the Arbitrator finds no reason in the record to provide for Wilmette firefighters an insurance package different from that provided to all other Wilmette employees --- both managerial and non-managerial.

Table 6 on the following page was constructed to evaluate the health insurance provisions in externally comparable communities. As it reveals, there is insufficient support among those jurisdictions for breaking the essentially homogeneous health insurance pattern in Wilmette and adopting of the Union's final offer on the insurance issue. Firefighters in Evanston, Northbrook, Park Ridge, Skokie and Winnetka must contribute toward single health insurance coverage. Wilmette firefighters will not, under either the Village or the Union offer. And in all jurisdictions but Glenview and Highland Park firefighters contribute toward family coverage. They do in Wilmette currently, and would continue to do so under the Village offer. But assuming they apply the

²⁷ The one notable exception is the inclusion in the Police Agreement of a specific statement indicating that disputes about the health insurance plans, policies or benefits "shall not be subject to the grievance and arbitration procedure set forth in this agreement." The absence of that specific exclusion in the Village's final offer here lends further support to the conclusion that its proposed language does not preclude Wilmette firefighters from using the contractual grievance and arbitration procedure to resolve such disputes.

maximum flexible benefit dollars toward health insurance, their monthly premium contributions would be the lowest among the six comparables where health insurance is contributory.

Table 6
Health Insurance Provisions
Across Comparable Communities

Jurisdiction	Flexible Benefit Allowance	Employee Monthly Contribution (Single Coverage)	Employee Monthly Contribution (Family Coverage)
Evanston	None	\$40+	\$40+
Glenview	None	\$0	\$0
Highland Park	None	\$0	\$0
Lake Forest	None	\$0	\$130+
Northbrook	None	\$15	\$50
Park Ridge	None	\$39 for PPO \$25+ for HMO	\$99 for PPO \$69 for HMO
Skokie	None	\$37+ for Village Plan \$28+ for HMO Illinois \$30+ for UniCare	\$106+ for Village Plan \$81 for HMO Illinois \$85+ for UniCare
Winnetka	None	\$18	\$70
Wilmette – Village Offer	\$50/mo. (effective 2/1/02)	\$0	\$48 for N.S. PPO ²⁸ \$38 for Humana HMO \$20 for HMO Illinois
Wilmette – Union Offer	\$50/mo. plus annual “cost of living” boosts	\$0	\$48 for N.S. PPO ²⁹ \$38 for Humana HMO \$20 for HMO Illinois \$0 for MRA

Additional Considerations. The Union’s proposal for a Medical Reimbursement Account health insurance plan is both novel and

²⁸ Assumes use of flexible benefit contribution toward health insurance premiums.

creative. As the Arbitrator understands them, such plans take advantage of the fact that roughly three-fourths of those covered by medical insurance plans spend less than \$500 per year on health care. Such persons would not be affected by a high deductible plan. Under MRA arrangements, employers retain control, ownership and responsibility of the first-dollar portion of their employees' medical expenses by applying for insurance coverage with substantially higher deductibles, thereby reducing the premiums. The savings which result are placed in an account (i.e., a medical reimbursement account), which is then used to cover deductibles and reimburse employees for medical expenses. While such plans are interesting conceptually, applying one to an employee group calls for extensive discussion between its members and their employer. It is clear from the record in these proceedings that the Village, the Union and the bargaining unit it represents have not had the benefit of such discussions.³⁰ Given that circumstance, it would be especially inappropriate to force the Village to offer an MRA option to its firefighters. If the Union still wishes to pursue such a plan, it will have opportunity to discuss it with Village negotiators in a few months, as the expiration date of the parties' 2000-2004 Agreement draws near.

Overall, the Arbitrator concludes from the record that the final offer of the Village on the health insurance issue is the more reasonable.

²⁹ Assumes use of flexible benefit dollars, which may vary under Union's final offer.

³⁰ The Arbitrator attaches no blame to one side or the other for their failure to bargain over the Union's proposed MRA plan. Far more significant is the simple fact that they have not discussed it.

HOLIDAYS (ECONOMIC)

Village Position

The Village believes that “holidays” and “working on a holiday” should be considered as one issue in these proceedings. Its final offer is quoted on the following page:

Section 13.1. Holidays. In lieu of holidays, employees shall earn 7.67 hours (8 hours effective January 1, 2002) of holiday time off per month or a total of 92 hours (96 hours effective January 1, 2002) per calendar year. Employees shall be advanced 92 hours (96 hours effective January 1, 2002) of holiday time as of January 1 of each year, which shall be scheduled in the same manner that vacation leave is scheduled. Because holiday hours may be used before they have been earned, any unearned holidays hours that have been used will be deducted on a pro rata basis from an employee’s final paycheck when an employee terminates employment with the Village.

Work on Thanksgiving and Christmas. Effective January 1, 2002 any employee who works on Thanksgiving Day or Christmas Day shall be compensated at a rate of one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked (both regularly scheduled and overtime hours) on said holidays. For the purposes of this Section, the holiday shall be the twenty-four hour period commencing at 12:01 a.m. on the holiday.

In support of the Village’s argument that the above proposals should be considered one issue, it notes that during these interest arbitration hearings the Union often presented arguments and exhibits equating holiday pay to paid time off. Thus, the Village avers, the Union itself has supplied justification for treating both together as one issue.

The Village notes as well that its offer includes January 1, 2002 improvements in both the amount of paid holiday time (from 92 to 96 per year) and compensation for working Thanksgiving and/or Christmas (an additional 12 hours pay). It asserts that the Union's final offer would nearly double Wilmette firefighters' holiday benefit, with no *quid pro quo* offered in exchange.

With regard to external comparability, the Village believes that the proper criterion for analysis is total time off available to all firefighters. On that basis, the Village stresses, under its offer firefighters with ten years of service would get nineteen 24-hour shifts of paid time off --- thereby tying Wilmette for third in the comparables list and bringing it slightly higher than the average of 18.9 shifts for all jurisdictions excluding itself.

The Village also claims that there is external support for its final offer concerning additional pay for working on Christmas and/or Thanksgiving, noting that in four of the comparable jurisdictions (Evanston, Glenview, Northbrook and Skokie) none is provided.

Union Position

The Union maintains that "Holidays" and "Working on a Holiday" should be considered as two separate economic issues in these proceedings, as one deals with time off and the other focuses on compensation for the hardship of working on a holiday. Moreover, the

Union argues, the Village has presented no evidence which refers to them together as a package. Its proposal on the former is quoted here:

Section 13.1 Holidays. Employees who work a 24hr shift shall be given 140 hours of holiday time. Holiday hours will be picked in the same manner as vacation. Members shall be allowed to carry a maximum of 2 days to be used as floaters.

The Union notes that the above proposal is prospective only. Thus, the Union claims, even though it provides for 44 more holiday hours per year than does the Village proposal, the absence of retroactivity greatly reduces its cost. And when measured against holiday time offered in comparable jurisdictions, the Union asserts, its proposed 5.83 days off (i.e., the equivalent of 140 hours) meets the average of 5.85 days annually across the comparability pool (not counting Evanston, Park Ridge and Wilmette).³¹ It also argues that the Village's final offer of only four additional holiday hours would continue the current less-than-average level (3.83 holidays) and should be rejected.

With regard to work performed on a holiday, the Union advances the following final offer:

Section 9.7 Working a Holiday. Members whose shift requires them to work on a legal holiday (New Years Day, Memorial Day, 4th of July, Labor Day, Thanksgiving, and Christmas) shall be compensated at time and one half (1 ½) of their regular rate of pay for all hours worked. A holiday shall be considered to start at 00:01 hours and end at 24:00 hours. Any member hired back to work a Holiday shall be compensated at two (2) times their regular rate of pay.

³¹ Evanston was excluded from the Union's comparison because it has converted holiday time to wages of approximately 2.75% to 3% of annual salary.

The Union notes that while both parties' offers are somewhat parallel on this issue, the Village offer only covers Thanksgiving day and Christmas day. Its own offer includes New Years Day, Memorial Day, July 4th and Labor Day as well, consistent with the holiday pay provided to Wilmette Police who work any of those days. And, the Union points out, only those firefighters who actually work on the holidays would receive the pay.

The Union also argues that the Village's proposal to pay for work on two holidays is far below what is provided across the external comparables. In support of that argument it cites: (1) Park Ridge, which pays for 7 days at 1 ½ for all hours; (2) Winnetka, where firefighters receive the equivalent of 3.79 days' pay; (3) Northbrook, which provides 8 holidays that can be converted to 192 hours' pay; (4) Lake Forest, where firefighters receive \$110 for each of 7 holidays; (5) Highland Park, which pays for 16 hours of work on each of 4 major holidays; (6) Glenview, where firefighters receive 88 hours of pay at the 40-hour rate --- the equivalent of 3.6 days; and (7) Evanston, which provides 2.75% extra pay, equal to 3.6 days.

The Union believes that even if the "working on a holiday" and "holidays" questions are combined into one issue, its final offer is still more reasonable than that of the Village. In both categories, the Union asserts, the Village's proposals are below average --- a circumstance

inconsistent with Village Manager Voorhees' October 5, 1999 assurance that Wilmette firefighters would not be below average on benefit levels.

Discussion

One Issue Or Two? The Union argued in its comprehensive, 189-page post hearing brief that “[h]olidays and pay for working on a holiday are quite different in their impact and purpose and, therefore, should be separated for purposes of resolution.”³² The Arbitrator has considered that position carefully, but has not found it to be persuasive. The perils of segmenting a general issue (e.g., health insurance) into its component parts and considering each separately in interest arbitration proceedings have already been articulated here. In addition to the reasoning set forth in that discussion, and in view of the fact that interest arbitration is supposed to generate a result the parties themselves might have reached without neutral intervention, it is important to recognize that labor negotiators generally treat “holidays” as a package. And while well-recognized labor relations references do indeed discuss various elements of how employers and unions have addressed holiday-related compensation, they almost always lump those elements into a single “holidays” chapter or under a generic heading of that name.³³ Moreover, public sector labor relations policy makers have determined that issues

³² Union post hearing brief, at p. 131.

brought to interest arbitration should be defined by broad category, not by individual component. The following excerpt from an Iowa Public Employment Relations Board decision provides a case in point:

Because the purpose of this procedure is to enhance the reasonableness of the parties' offers and, hence, reduce the discretion of an arbitrator, it is our opinion that anything which serves to fractionalize a particular subject of negotiations will likely erode the effectiveness of the procedure. Thus, we believe that the parties are required to submit to an arbitrator their final offer on a subject category basis, and that each subject category submitted shall constitute an impasse item.³⁴

In the present case the Arbitrator has concluded that holiday time off and pay for working on a holiday should be decided as a single issue. Both questions essentially relate to the fact that employees generally prefer doing something other than working on a holiday. Thus, they would like to have as many holiday hours off as possible, and they want extra compensation for the time they must spend at work on holidays. At the center of both concerns is the opportunity cost of being at work. Indeed, that factor determines the "value" of a holiday and generates the parties' respective notions as to how many holiday hours employees deserve and how much extra they should be paid for working on holidays.

³³ See, for example, *Basic Patterns in Union Contracts* (Washington, D.C.: Bureau of National Affairs, various editions); Elkouri & Elkouri, *How Arbitration Works* (Washington, D.C.: Bureau of National Affairs, various editions).

³⁴ West Des Moines Education Association, PERB Case No. 805 (1976).

Table 7 on the following page has been constructed to facilitate comparison of the parties' final offers with the holiday packages provided in relevant external jurisdictions.

Table 7
Annual Holiday Benefits
Across Comparable Communities

Jurisdiction	Compensation/Time Off in Lieu of Holiday Time Off	Extra Pay for Working on Holidays (number per year)
Evanston	Base salary 3% higher in lieu of additional holiday compensation, effective 3/1/02	(see column left)
Glenview	88 hours "holiday leave" scheduled after vacation selections have been made	None
Highland Park	120 hours floating holiday leave	Extra 8 hours pay (4)
Lake Forest	None	\$110 (7)
Northbrook	192 hours at straight time hourly rate; alternatively, can take equivalent time off	None
Park Ridge	All "Leave Time" lumped together (e.g., 10-year employee gets 18 working days)	Time and one-half for all hours worked (7)
Skokie	72 hours floating holiday leave, scheduled in conjunction with vacation selection	None
Winnetka	84 hours (3 ½ shift days), scheduled after vacation selections have been made	60 hours "holiday pay" at time and one-half for all employees
Wilmette – Village Offer	96 hours, scheduled in same manner as vacation leave is scheduled	Time and one-half for all hours worked (2)
Wilmette – Union Offer	140 hours, scheduled in same manner as vacation leave is scheduled	Time and one-half for all hours worked; double time if called back (6)

Given the variety of ways in which holiday benefits are defined across the comparability pool, it is somewhat difficult to identify from

Table 7 what might be considered the average holiday benefit package among them. In support of the Union's position, the designation of just two holidays (Christmas and Thanksgiving) in the Village's offer is very low compared to the number designated in Highland Park (4), Lake Forest (7), and Park Ridge (7). On the other hand, the Union's bid for 140 hours holiday time off seems unduly high when viewed against Glenview (88 hours), Highland Park (120 hours), Skokie (72 hours) and Winnetka (84 hours). Firefighters in Northbrook receive a whopping 192 hours, and can take them either in pay or time off. It is important to note, however, that they receive no extra pay for working on holidays.³⁵

Holidays are but one form of paid time off. Thus, to help resolve the foregoing dilemma about the holiday benefit package in Wilmette, Table 8 has been constructed on the next page to display total time off enjoyed by firefighters in the comparability pool. Three explanatory comments about the Table are advisable. First, though Evanston firefighters receive no holiday time off, they enjoy a salary boost as an alternative to that benefit. The Union estimates that increase to be the equivalent of 3.6 days off. Second, recall from Table 7 that Park Ridge firefighters receive several types of leave in an amalgam of leave time. It is virtually impossible to identify how much of it is a surrogate for holiday leave. And third, since vacation time is dependent on years of

³⁵ The importance of considering both those elements of the holiday package together is obvious. Separating them artificially for the purpose of this analysis could preclude a holistic understanding of the parties' dispute over holiday benefits.

service in the various jurisdictions, the ten-year service level was selected in order to display a consistently comparable vacation day number in the Table.

Table 8
Total Paid Time Off at 10 Years Service
Across Comparable Jurisdictions (as of 1/1/02)³⁶

Jurisdiction	Holidays	FLSA Work Reduction Days	Vacation Days at 10 Years	Total
Evanston	0	13.5	7	20.5
Glenview	3.6	7	8	18.6
Highland Park	5	6	7	18
Lake Forest	12	0	7	19
Northbrook	8	5	7	20
Park Ridge	n/a	n/a	n/a	19
Skokie	3	7	9	19
Winnetka	3.5	6	7.5	17
Average w/o Wilmette	---	---	---	18.9
Wilmette – Village Offer	4	7	8	19
Wilmette – Union Offer	5.8	7	8	21.8

³⁶ The latest year for which data were available for all external comparables.

As reflected in Table 8, under either party's final offer Wilmette firefighters with ten years service would be positioned above the external average with regard to total paid time off.³⁷ As it stands currently (i.e., the status quo), they are below the average. Adoption of the Union's final offer would boost them in one fell swoop to the number one ranking among the comparables. Though it is possible the same result could be obtained through free collective bargaining, it is not likely. The more probable negotiated result would be a gradual move in that direction, so that over several rounds of bargaining the number one position might be achieved. It would be inappropriate to skyrocket Wilmette firefighters from about the middle of the heap to its apex in these proceedings, the outcome of which should approximate what reasonable parties might have agreed to at the bargaining table. Acceptance of the Union's offer would provide them with a 52% increase in the amount of holiday paid time off and the equivalent of an additional 24 hours pay for work on a regularly scheduled holiday. The final offer of the Village grants more modest gains to the bargaining unit on each of those benefits. Overall, study of the holiday packages enjoyed by firefighters in comparable jurisdictions and evaluation of the magnitude of the parties' respective proposals has led the Arbitrator to lean toward adoption of the Village's final offer.

³⁷ A similar result was obtained using the 5-year, 15-year, 20-year and 25-year service levels.

Consideration of the internal comparability factor produces a somewhat ambiguous result. Non-represented, full-time employees of the Village currently receive seven designated holidays and four floating holidays off with pay. Those required to work on a designated holiday are compensated at time and one-half for all hours worked.³⁸ At eight hours each, their total holiday time off is 88 hours annually. Represented public works employees currently receive the same amount of holiday time off, though they enjoy pay at the double time rate whenever they work a designated holiday or a day previously scheduled as a floater. Wilmette police officers also receive 88 holiday hours off with pay per year. Whenever they work on New Year's Day, Thanksgiving Day or Christmas Day, they receive time and one-half.

Wilmette firefighters currently receive 92 hours of paid time off in lieu of holidays. The Village's final offer would raise that number to 96. As noted, that is a modest increase. Still, it would provide firefighters with more holiday time off than any other Village employee. On the other hand, firefighters under the Village's final offer would receive pay for holidays worked on only two designated days. Still another consideration is the fact that they work every third day, so the probability of their having to work on a holiday is less than that facing police officers, who work five-day weeks. Combining all of those factors makes it is very difficult to evaluate the respective benefit levels enjoyed

³⁸ New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after

by Wilmette employee groups. Suffice it to say that adoption of the Village's final offer on the holiday issue would not cause firefighters in Wilmette to lose ground as compared to other internal employee groups. In contrast, adoption of the Union's offer, with its 140 hours of paid time off in lieu of holidays, would push them a quantum leap ahead of their contemporaries in other Wilmette departments. The record before me does not justify that result.

VACATION ELIGIBILITY (ECONOMIC)

Village Position

Here is the final offer of the Village on this issue:

Section 12.1 Amount of Vacation. Employees earn vacation days according to the following schedule:

<u>Completed Years of Service</u>	<u>Vacation Days Earned</u>
1 yr. thru 4 yrs.	5 24-hour shifts
5 yrs.	5.5 24-hour shifts
6 yrs.	6 24-hour shifts
7 yrs.	6.5 24-hour shifts
8 yrs.	7 24-hour shifts
9 yrs.	7.5 24-hour shifts
10 yrs.	8 24-hour shifts
11 yrs.	8.5 24-hour shifts
12 yrs.	9 24-hour shifts
13 yrs.	9.5 24-hour shifts
14 yrs.	10 24-hour shifts

Thanksgiving, and Christmas Day.

15 yrs. thru 21 yrs.	10.5 24-hour shifts
22 yrs.	11 24-hour shifts
23 yrs.	11.5 24-hour shifts
24 yrs.	12 24-hour shifts
25 yrs.	12.5 24-hour shifts

Employees may only accumulate up to a maximum of twice the employee's annual leave rate. In the event an employee reaches the maximum amount of earned vacation, the employee shall stop earning vacation until such time as the balance is below the maximum permissible amount. A new employee must work six (6) months of continuous full-time employment in order to be eligible to use earned vacation, unless otherwise approved by the Fire Chief.

An employee who is on vacation leave shall not be eligible to use sick leave until the vacation leave has concluded.

The Village notes that its offer adds to the current schedule an additional 12 hours of vacation at 25 years, which tracks what has already been negotiated for the Public Works and Police units. It highlights as well the historic internal pattern between Wilmette firefighters and those two employee groups (i.e., a ratio of 12 vacation hours for the former to 8 vacation hours for the latter), and emphasizes that its final offer maintains that pattern. In contrast, the Village argues, the Union's final offer would provide an additional 24-hour shift of vacation at all service levels, thereby disturbing that historical relationship.

The Village also points out that while its offer on this issue includes three matters not covered in the Union's,³⁹ those matters are

³⁹ They are (1) accumulation of vacation; (2) minimum service requirement for use of vacation; and (3) use of sick leave during vacation.

included in the Union's final offer on vacation scheduling. Moreover, the Village adds, its proposals on those matters are equal to or more generous than are the Union's.

Turning to the external comparability factor, the Village asserts that its final offer is supported by those data. It notes, for example, that the total vacation days received by Wilmette firefighters at 15, 20, 25 and 30 years of service, respectively, is more than the average total amount of vacation received by their counterparts in comparable external jurisdictions.

Union Position

The Union's final offer on the vacation eligibility issue is quoted in its entirety on the next page:

Section 12.1 Vacation Days. Employees earn vacation days according to the following schedule:

<u>Completed Years of Service</u>	<u>Vacation Days Earned</u>
1 st through 4 th year	6 vacation days
5 th year	6.5 vacation days
6 th year	7 vacation days
7 th year	7.5 vacation days
8 th year	8 vacation days
9 th year	8.5 vacation days
10 th year	9 vacation days
11 th year	9.5 vacation days
12 th year	10 vacation days
13 th year	10.5 vacation days
14 th year	11 vacation days
15 th year	11.5 vacation days
22 nd year	12 vacation days
23 rd year	12.5 vacation days
24 th year	13 vacation days

The Union notes that employees with fewer than 25 years of service would not earn any additional vacation under the Village's final offer. It points out as well that no one in the bargaining unit has 25 years' service. And since the average number of years at retirement in Wilmette is 24, the Union argues, there is little chance that the Village's small change in vacation eligibility will even be enjoyed by its firefighters.

The Union is also confident that its final offer is reasonable when stacked against vacation eligibility across the external comparables. It asserts that total time off in Wilmette is below average and below the "equal to or exceed" standard established by Ms. Voorhees in her October 5, 1999 letter to firefighters. Moreover, the Union notes, at the 5-year and 10-year levels Wilmette firefighters would receive fewer cumulative vacation hours under the Village's offer than do their counterparts in comparable towns.

In addition, the Union cautions, the Village's final offer contains an unexplained and unjustified breakthrough by virtue of its provision to allow vacation carryover from one year to the next. The Union notes that it did not seek such a carryover benefit, and that the Village offered no *quid pro quo* for it.

The Union also believes the Village offer is unclear as to what would happen if employees had accumulated two years of vacation time and, due to staffing demands, were not able to use it. Under the Village's

proposal they would not accrue any additional vacation until they used some of what they had already accumulated. When asked how such a situation might be prevented or remedied, Deputy Chief Dominic stated, “It’s something that I don’t think has been explored yet.” (Tr. 2493)

Discussion

Historically, Wilmette firefighters have received 24 hours of vacation for every 16 vacation hours received by other represented employees. Thus, the final offer of the Village would indeed preserve the existing internal parity pattern among represented employees in Wilmette, as reflected in Table 9 on the following page. The Union’s offer would break that pattern --- an event very likely to generate “catch up” bids from the Police and Public Works units when they next meet Village negotiators at the bargaining table.

Table 9
 Wilmette Vacation Benefits –
 Represented Employee Groups

Years of Service	Union Offer	Village Offer	Police	Public Works
1 – 4	6 24-hour shifts	5 24-hour shifts	10 8-hour shifts	10 8-hour shifts
5	6.5 24-hour shifts	5.5 24-hour shifts	11 8-hour shifts	11 8-hour shifts
6	7 24-hour shifts	6 24-hour shifts	12 8-hour shifts	12 8-hour shifts
7	7.5 24-hour shifts	6.5 24-hour shifts	13 8-hour shifts	13 8-hour shifts
8	8 24-hour shifts	7 24-hour shifts	14 8-hour shifts	14 8-hour shifts
9	8.5 24-hour shifts	7.5 24-hour shifts	15 8-hour shifts	15 8-hour shifts
10	9 24-hour shifts	8 24-hour shifts	16 8-hour shifts	16 8-hour shifts
11	9.5 24-hour shifts	8.5 24-hour shifts	17 8-hour shifts	17 8-hour shifts
12	10 24-hour shifts	9 24-hour shifts	18 8-hour shifts	18 8-hour shifts
13	10.5 24-hour shifts	9.5 24-hour shifts	19 8-hour shifts	19 8-hour shifts
14	11 24-hour shifts	10 24-hour shifts	20 8-hour shifts	20 8-hour shifts
15 – 21	11.5 24-hour shifts	10.5 24-hour shifts	21 8-hour shifts	21 8-hour shifts

22	12 24-hour shifts	11 24-hour shifts	22 8-hour shifts	22 8-hour shifts
23	12.5 24-hour shifts	11.5 24-hour shifts	23 8-hour shifts	23 8-hour shifts
24	13 24-hour shifts	12 24-hour shifts	24 8-hour shifts	24 8-hour shifts
25	---	12.5 24-hour shifts	25 8-hour shifts	25 8-hour shifts

As the Union correctly notes, the Village proposal does indeed contain a new benefit for firefighters, in that it would allow them to accumulate two years' earned vacation time. Currently, they are not allowed to carry over any earned vacation time from one year to the next. But according to the Village Personnel Policy, non-represented employees are allowed the same carry over privilege the Village proposes for firefighters.⁴⁰ Teamsters Local 714 has negotiated that benefit for Wilmette police as well, as has SEIU Local 73 on behalf of its public works employees. Thus, the final offer advanced by the Village would simply grant to its firefighters a benefit already enjoyed by other Wilmette employees. That circumstance is ample justification for the vacation carry over portion of the Village's proposal. Moreover, since the carry over proposal under consideration represents an actual benefit to firefighters, the Village would not be expected in free collective bargaining to offer the Union something additional in order to secure its acceptance. In other words, no *quid pro quo* would be necessary.

The Union also points to the following language in the Village final offer as being potentially problematical:

⁴⁰ Village of Wilmette Personnel Manual, §D (Vacation), p. 16.

In the event an employee reaches the maximum amount of earned vacation, the employee shall stop earning vacation until such time as the balance is below the maximum permissible amount.

The Union's chief objection to the above provision is the uncertainty associated with situations where employees may have accumulated the maximum amount of vacation under the Village offer (i.e., "twice their annual leave rate"), yet due to circumstances beyond their control (e.g., shift staffing demands) are not permitted to use any vacation time. Certainly, it would be repugnant to the spirit of the Village's offer to penalize such employees by stopping their vacation accrual clock, and any competent grievance arbitrator would recognize and reverse such an organizational travesty. It is also important to recognize that language nearly identical to that quoted above appears in the Village Personnel Manual, in the Wilmette Police Agreement, and in its Public Works contract as well. There is no evidence in the record before me to suggest that those provisions have proven to be difficult to administer. Accordingly, I conclude with regard to the internal comparability criterion that the final offer of the Village is the more reasonable.

Table 10 on the next page has been constructed to juxtapose the parties' offers against vacation eligibility benefits offered in comparable jurisdictions.

Table 10
Shifts of Vacation
Across Comparable Jurisdictions

Years	Evans	Glenvw	H Prk	Lk Frst	Nrthbrk	Prk Rdg	Skokie	Wintka	Wil VO	Wil UO
1 – 4	5	5	5	5	6	Unclear	7	5	5	6
5	5	5	5	5	6	Unclear	7	5	5.5	6.5
6	7	5	7	5	7	Unclear	9	5	6	7
7	7	8	7	6	7	Unclear	9	5	6.5	7.5
8	7	8	7	6	7	Unclear	9	7.5	7	8
9	7	8	7	7	7	Unclear	9	7.5	7.5	8.5
10	7	8	7	7	7	Unclear	9	7.5	8	9
11	7	8	7	8	8	Unclear	9	7.5	8.5	9.5
12	8	8	7	8	8	Unclear	9	7.5	9	10
13	8	11	10	9	8	Unclear	11	7.5	9.5	10.5
14	8	11	10	9	8	Unclear	11	7.5	10	11
15	9	11	10	10	10	Unclear	11	10	10.5	11.5
16	9	11	10	10	10	Unclear	11	10	10.5	11.5
17	9	11	10	10	10	Unclear	11	10	10.5	11.5
18	9	11	10	10	10	Unclear	11	10	10.5	11.5
19	9	11	10	10	10	Unclear	14	10	10.5	11.5
20	10	11	10	10	10	Unclear	14	10	10.5	11.5
21	10	11	10	11	11	Unclear	14	10.5	10.5	11.5
22	10	12	10	11	11	Unclear	14	11	11	12
23	10	12	10.5	12	11	Unclear	14	11.5	11.5	12.5
24	10	12	11	13	11	Unclear	16	12	12	13

25	11	12	11.5	13	11	Unclear	16	12.5	12	13
26	11	12	12	13	11	Unclear	16	12.5	12	13
27	11	12	12.5	13	11	Unclear	16	12.5	12	13
28	11	12	12.5	13	11	Unclear	16	12.5	12	13
29	11	12	12.5	13	11	Unclear	16	12.5	12	13
30	11	12	12.5	13	11	Unclear	16	12.5	12	13

The numbers reflected in Table 10 for Skokie are artificially high, since they reflect time off “in lieu of two (2) holidays for employees assigned to 24-hour shifts.”⁴¹ Removing them for purposes of this analysis, and using the remaining figures in Table 10, Table 11 has been constructed to display the average shifts of vacation for each level of service across the comparability pool:

Table 11
Average Number of
Vacation Shifts Across
External Comparability Pool
(Excluding Skokie & Wilmette)

Years of Service	Avg. Vacation Shifts	Village Final Offer	Union Final Offer
1-4	5.16	5	6
5	5.16	5.5	6.5
6	6	6	6
7	6.66	5	7.5
8	7.08	7	8
9	7.25	7.5	8.5
10	7.25	8	9
11	7.58	8.5	9.5
12	7.75	9	10
13	8.92	9.5	10.5
14	8.92	10	11
15	10	10.5	11.5
16	10	10.5	11.5
17	10	10.5	11.5

⁴¹ Article VIII, §1, 2002-2006 Skokie Firefighters Agreement.

18	10	10.5	11.5
19	10	10.5	11.5
20	10.17	10.5	11.5
21	10.58	10.5	11.5
22	10.83	11	12
23	11.17	11.5	12.5
24	11.5	12	13
25	11.83	12	13
26	11.92	12	13
27	12	12	13
28	12	12	13
29	12	12	13
30	12	12	13
Total Shifts	269.21	276	306.5

As illustrated in Table 11, both parties' final offers provide Wilmette firefighters with vacation time equal to or greater than the average vacation time enjoyed by their counterparts in comparable jurisdictions. Even more telling is the statistic reflecting total vacation shifts over a 30-year career. The average across the comparables is 269. Under the Village's final offer, a Wilmette firefighter would have received 276 shifts of vacation. The Union's final offer would provide that same firefighter with just over 306 vacation shifts. The Arbitrator concludes from those data, and from the internal comparability evidence as well, that the final offer of the Village on this issue is the more reasonable.

VACATION SCHEDULING (ECONOMIC)

Village Position

The Village submitted the following final offer on this issue:

Section 12.2. Scheduling. After employees have picked their FLSA cycle for the following year, vacation selection by shift

shall begin no later than November 1 and shall be completed by December 1. All vacation days shall be considered to be 24 hours in duration and members of each shift may select vacation time off on any available duty day. In accordance with the practice preceding this Agreement, all 24-hour personnel on the shift regardless of bargaining unit status may select as many days consecutively as desired and pass the list to next member by seniority until all selections are made. A vacation pick will be considered consecutive if an FLSA day is used in conjunction with any pick. Members have the right to keep up to one day and odd hours as floaters to use at times approved by the Duty Chief. A maximum of two (2) 24-hour employees may pick vacation days on any given duty shift.

The Village maintains that its final offer on this issue would simply confirm existing policies. It notes that while the Union's offer also includes the November 1 start date for the vacation selection process, it does not contain a date by which vacation picks are to be completed. Even Union witness Clemens acknowledged that having a December 1 cutoff was important because "if you try to pick a January vacation and it's going to be a third or fourth pick you can't plan your vacation because you don't have the time off yet." (Tr. 675)

The Village notes as well that the Union's final offer does not retain the existing practice of providing only two slots for vacation picks. Rather, it would permit firefighters to make vacation picks in any open slot in the third (i.e., FLSA) column. Under existing policy the Chief has used open FLSA slots, among other things, for training purposes. And according to Deputy Chief Dominik, using FLSA slots for vacation purposes would likely increase overtime substantially. (Tr. 2051) He

attested as well that under the current system 24-hour personnel on each shift are able to pick all of their vacation days and holiday time off. (Tr. 2052) Thus, the Village argues, there is no compelling need to modify the current practice.

The Village points out that existing practice allows employees to keep up to one day and odd hours to use as floaters, with such use to be at times approved by the Duty Chief. It emphasizes the importance of that control mechanism, which is maintained in its final offer. The Union's final offer, the Village argues, could cost the Village "megabucks," because it permits firefighters to keep two days and odd hours as floaters to use at their discretion. Under the current practice the Village can avoid the use of floaters and odd hours if such use results in overtime-laden hirebacks. Under the Union's offer, to avoid the payment of overtime the Duty Chief might have to cancel someone's pre-scheduled training if a firefighter opted to use a floater the same day. But doing so might also cause the Village to forfeit \$2650 in cancellation fees for pre-scheduled paramedic classes.

Finally, the Village emphasizes, the parties have already agreed to a strong management rights clause which confirms the employer's "sole right and authority ... to schedule and assign work and direct the working force ... " The Village cautions the Arbitrator not dilute that authority with a ruling for the Union on this issue.

Union Position

The Union's final offer on the vacation scheduling issue is quoted in its entirety here:

Section 12.2 Scheduling. Vacation selection shall begin no later than November 1st. All vacation days shall be considered to be 24 hours in duration and members shall select these days and hours by seniority. Up to three (3) members may select vacation or holiday hours on any given day except when a member is on one of the 11 scheduled FLSA work reduction days, only two members may select time off on these days. The members will select as many days consecutively as desired and pass the list to next member in seniority until all selections are made. A vacation pick will be considered consecutive if an FLSA day is used in connection with any pick. Members have the right to keep two days and odd hours as floaters to use at their discretion.

Members will not be allowed to carry over vacation from year to year unless the employee has permission from the Fire Chief. A new employee must work six (6) months of continuous full-time employment to use a vacation day, unless otherwise approved by the Fire Chief.

An employee who is on vacation leave shall not be eligible for sick leave until the vacation leave has concluded.

The Union believes that the Village's final offer on this issue reduces the number of employees who may be off per shift per day, and that it reduces the use of floaters. It notes that although no vacation selection may be made in the FLSA column, employees may use floaters and hours (in units greater than four) to select additional time. The FLSA column selections may be made after January 1 of each year. In other words, a floater is actually a vacation day an employee decides to designate for that purpose, rather than use it in the initial vacation selection process. The Union therefore argues that under the current

system all three columns may be reserved for vacation purposes. By limiting the maximum number of employees who can pick vacation days on each shift to two, the Union avers, the Village has proposed a significant change in the vacation selection process. Moreover, it never explained that proposal at the bargaining table.

In support of its argument that three employees have used floaters and vacation on a given day, the Union points to its Exhibits 53(d-g). Thus, the Union asserts, its proposal to that end would not have any adverse impact on the Village. And according to Union witness Clemens, nothing in the Union's proposal would prohibit the Village from blocking out certain days for training by selecting training days in column 1. (Tr. 686-687)

The Union also argues that Deputy Chief Dominik neither detailed the overtime implications of his testimony nor cited specific instances in which employee vacation selections would interfere with training opportunities. Moreover, the Union notes, fire training expenditures have decreased because much of the fire training enhancement efforts of the last few years have been completed. It therefore believes that Dominik's overtime calculation does not accurately reflect the impact of the Union's proposal to select vacations in column 1.

The Union points out as well that under the current selection process employees may "elect to withhold up to two days as floaters (24 hour days) and an additional twenty-four hours which can be split into

hours (minimum four hours).” The Village has proposed to reduce that benefit to the use of “one day and odd hours” as floaters. There is simply no justification in the record for that unreasonable breakthrough, the Union asserts.

Discussion

The Arbitrator is not persuaded by the Union’s claim that the Village offer would drastically change the current practice of vacation scheduling. Specifically, it cautioned the Arbitrator to “... weigh quite heavily the Employer’s very dramatic change in vacation selection from three persons per day to two persons per day.”⁴² According to the uncontroverted testimony of Deputy Chief Dominik, however, under the current practice only two members of the 14-person shift team can select vacation time in advance on a given shift.⁴³ A third member might subsequently be allowed to use a floater on that same shift, but only if it does not generate overtime expense for the Department. Indeed, it is clear from Union Exhibit 53 that the Village has permitted that circumstance quite often. Thus, the Village’s proposed two-person limitation on the number of employees who “may pick vacation days on any given duty shift” merely maintains the present system.

It is the Union’s final offer on this issue that contains drastic change. It would permit three employees from a given shift to select

⁴² Union post hearing brief, p. 130.

vacation for a given day in advance. The Union's offer does limit such instances to days when no member of the shift is on a scheduled FLSA work reduction day. Nevertheless, when a work reduction day had not been scheduled in advance and a third employee was allowed to pick vacation in advance from the FLSA column, the Village would incur overtime costs if a fourth employee were allowed to use that same day as a floater. Under the Union's final offer, employees could "keep two days and odd hours as floaters to use at their discretion." (emphasis added) That element of the Union's proposal constitutes a fatal flaw. It removes an important cost control from the scope of management's authority --- the ability to manage overtime costs.

Other aspects of the parties' final offers on this issue are significant as well, but to a much lesser extent than the element discussed above. Overall, and principally because of the overtime element discussed in the foregoing analysis, the Village's final offer on this issue is preferable.

ACCRUED SICK LEAVE (ECONOMIC)

Village Position

Here is the final offer of the Village:

Section 14.1 Accrued Sick Leave. All full-time employees shall be eligible to accrue paid sick leave as provided herein. The sick leave benefit shall be accrued at the rate of twelve (12) hours for each full month of service as an employee

⁴³ The team is composed of 11 bargaining unit members, two lieutenants, and a duty chief.

covered by this Agreement. An employee may use sick leave for absence from work due to the employee's own illness, injury or disability. An employee may only use those sick leave days that the employee has earned. All outside employment activity that is inconsistent with the purpose of the sick leave must be discontinued while on approved sick leave.

The Village believes that one essential difference between the parties' offers on this issue has already been resolved by virtue of the following excerpt from their TA on Non-Economic Issue 6 (Request for Sick Leave):

An employee may use up to (36) hours of sick leave annually for the illness of an immediate family member.

The above provision is in conflict with the Union's final offer on sick leave accrual, the Village notes, since it provides that sick leave may be used for illness in an employee's immediate family without limitation. Accordingly, the Village argues, the Union's final offer should be rejected.

Similarly, the Village points out, the Union's offer conflicts with the parties' TA on the threshold absence level triggering the need for a doctor's verification of illness. The former requires such verification for "members who use more than three consecutive days of sick leave (emphasis added);" the latter requires it when the employee "... is absent for three (3) consecutive shift days..." Its own offer, the Village emphasizes, is in harmony with the parties' tentative agreement.

The Village also asserts that the Union's final offer contains two elements not found in either the internal or the external comparables: (1)

the provision that employees “will be allowed to work for other members or donate up to 2 sick days to members who have exhausted all their sick leave; and (2) the guarantee that “... employees who become ill while on duty will be covered by the Public Employees Disability Act (PEDA).”

Finally, the Village notes, Union witness Clemens admitted that he worded the Union’s final offer on this issue “improperly,” because it would cause the Village to maintain in full pay status under PEDA those employees who may have contracted the flu or some other commonplace illness while on duty (Tr. 976-978). It would also mean such employees would have no deduction from their sick leave credits. But, the Village argues, PEDA only covers “any injury in the line of duty which causes [the employee] to be unable to perform his duties.” The Village therefore maintains that the Union’s final offer is unreasonable on that dimension as well.

Union Position

The Union’s final offer on sick leave accrual is quoted below:

Section 14.1 Accrued Sick Leave. All members of the Wilmette Fire Department shall receive six (6) sick days or 144 hours annually. Members will be allowed to use sick hours in 12-hour blocks of time. Members who use more than three (3) consecutive days of sick leave must provide the Village with a Doctor’s note before returning to work. Members who become ill while on duty will be covered by the Public Employees Disability Act.

Employees may use sick leave for absence from work due to the employee’s illness or the illness of an immediate family member, or an off the job injury, provided proper notice to the employer has been given. Members will be allowed to work for other members or donate up to 2 sick days to

members who have exhausted all of their sick leave. Any member who voluntarily works for another member or donates up to 2 sick days does so with no compensation from the Village. The procedure for requesting sick leave will be as follows:

The employee must call in a minimum of one (1) hour before the start of his scheduled shift. Members can accumulate sick leave with no sick time leave ceiling.

[If a member is laid off by the Village, the Village agrees to buy back the time that the employee has accrued. In the event of the death of an employee, his/her surviving beneficiary is entitled to this benefit.] (See Section 8.5, brackets). During FMLA leave an employee may, at the employee's option, use available unused paid leave or go on unpaid leave.⁴⁴

The Union asserts that the external comparables support adoption of its final offer on this issue, especially with regard to its proposal that employees be able to use sick leave for the "illness of an immediate family member." It notes that Evanston, Highland Park, Lake Forest, Northbrook, Park Ridge, Skokie, and (to a certain extent) Winnetka, all provide that benefit to their firefighters. The Union also characterizes as unreasonable the Village's proposal to limit the use of sick leave to situations involving "... the employee's own illness, injury or disability."

Also, the Union points out, the Village has allowed the use of sick leave for family members in the past. And the Union believes the restriction against such usage in the Village's final offer is inconsistent

⁴⁴ Quoted from Joint Exhibit 6 ("Proposed Agreement Including Tentative Agreements and Union's Final Offers.") During the May 8, 2003 arbitration hearing the parties engaged in a lengthy discussion about the practicality of relocating certain elements of the Union's offer. (Tr. 1809-1837) The Arbitrator will retain jurisdiction to address that and a variety of other matters, many of which stem from the difficulties associated with assembling a complex initial labor agreement through the interest arbitration process.

with §6.17 of the Wilmette Fire Department Administrative Manual, which allows sick leave usage in the event an immediate family member is quarantined.

Moreover, the Union argues, the Village's proposal does not specify that sick leave may be used for an injury which occurs off duty. Such usage is covered by the above-cited Administrative Manual, the Union adds, as well as by the Wilmette Police contract and by collective bargaining agreement provisions in Lake Forest, Northbrook, and Winnetka.

The Union asserts as well that its proposed PEDA provision is not designed to expand what is normally covered by that statute, i.e., "an injury in the line of duty which causes [a firefighter] to be unable to perform his duties." It also notes that two of the external comparables (Lake Forest and Evanston) have written provisions allowing firefighters to donate sick time to colleagues who have exhausted all of their own sick leave.

Finally, the Union believes the Village's final offer is flawed because it excludes the annual sick leave bonus for employees who use no sick leave. In contrast, the Union notes, §6.17.3 of the Administrative Manual provides a 12-hour personal time bonus to employees who did not use any sick leave in a given year.

Discussion

Both parties' final offers contemplate the accrual of 144 hours' sick leave annually. The parties have also tentatively agreed under the non-economic "Request for Sick Leave" issue that "[a]n employee may use up to (36) hours of sick leave annually for the illness of an immediate family member." Thus, to the extent possible, the parties' final offers on the economic "sick leave accrual" issue must be interpreted in a way consistent with that tentative agreement. Certainly, the Union's final offer can be reconciled with the TA. It provides that "[e]mployees may use sick leave for absence from work due to ... the illness of an immediate family member, ... " The Union's final offer does not contain the phrase "without limitation" or any other enabling provision that would negate the 36-hour limit the parties tentatively established in their "Request for Sick Leave" clause. Likewise, the Village's final offer on sick leave accrual does not necessarily conflict with the TA. It does not expressly prohibit the use of sick leave for the illness of an immediate family member. Thus, neither party's final offer seems more reasonable than the other regarding that element of sick leave usage.

The Union claims that the Village's final offer would somehow prohibit continuation of the 12-hour sick leave bonus for those employees who use no sick leave during a calendar year. Specifically, the Union argues that the offer "is also deficient because it excludes the sick leave bonus ... " ⁴⁵ The Arbitrator finds no exclusionary language in

⁴⁵ Union post hearing brief, p. 148.

the Village's final offer, however. The apparent source of the Union's argument is the Village's proposal that "An employee may only use those sick leave days the employee has earned." But the sick leave bonus comes in the form of an "Additional 12 Hour Personal Day,"⁴⁶ not as unearned sick leave. Moreover, nothing in the Union's final offer specifically acknowledges or provides for continuation of the sick leave bonus either. The parties' final offers therefore seem equally reasonable with regard to the sick leave bonus question raised by the Union.

The Union's final offer departs from the current sick leave accrual system in two respects. First, it allows Wilmette firefighters to work for other members or to donate up to two sick days to members who have exhausted all of their sick leave --- and to do either "with no compensation from the Village." That noble and compassionate proposal is mirrored in the Evanston Firefighter contract,⁴⁷ and in Lake Forest personnel policy as well. Such a provision is not found, however, in the firefighter collective bargaining agreements for Highland Park, Northbrook, Park Ridge, Skokie and Winnetka. The Arbitrator did not find such a clause in the Wilmette Police contract or its Public Works contract either. Accordingly, I conclude that the internal and external comparables do not support the quest of Wilmette firefighters to come to an ill colleague's assistance --- no matter how admirable from a humanistic perspective that proposal may be.

⁴⁶ Union Exhibit 56.

The Union's demand concerning PEDDA coverage (i.e., "employees who become ill on the job shall be covered) calls for discussion. The Village claims that such coverage is unreasonable, for it would mean that employees who catch cold while on duty would qualify for time off with full pay and with no impact on their accrued sick leave bank. That benefit, the Village avers, goes far beyond the PEDDA benefit covering "any injury in the line of duty which causes [the employee] to be unable to perform his duties." Though the Union claims that acceptance of its proposal would not bestow upon Wilmette firefighters any greater benefit than that provided by the statute, the wording of its final offer demonstrates otherwise. Selection of the Union's proposal on this issue would indeed provide PEDDA benefits to employees who "become ill" while on duty. That circumstance is clearly different from PEDDA's exclusive focus: the employee who suffers an "injury in the line of duty" which renders him/her "unable to perform his(/her) duties." Represented firefighters in the external comparables do not have the expanded PEDDA benefit that adoption of the Union's final offer on this issue would provide, nor do any other Wilmette employees.

One final aspect of the Union's final offer is particularly troublesome, principally because it conflicts with what the parties TA'd in Section 14.2 (Request for Sick Leave):

... When the employee is absent for three (3) consecutive shift days, the employee shall be required by the Village to

⁴⁷ §9.5(g), p. 21. The Village's claim to the contrary on p. 113 of its post hearing brief is incorrect.

bring in a doctor's certificate in order to receive sick leave pay and also to be able to return to work. ...

As noted, the Union's final offer on Sick Leave Accrual (§14.1) requires members "who use more than three (3) consecutive days of sick leave" to submit a doctor's certificate "before returning to work." (emphasis added) Thus, selection of the Union's final on §14.1 would grant to Wilmette firefighters a benefit more liberal than the one to which the parties have already committed in §14.2. Obviously, doing so would be an inappropriate application of the interest arbitration process.

Though there is strong moral fiber associated with the Union's final offer, especially with regard to its compassion for firefighters who exhaust all of their sick leave, the Arbitrator is compelled by the IPLRA to select the final offer of one party or the other in its entirety on this economic issue. For all of the foregoing reasons, I have concluded that the final offer of the Village is the more reasonable.

USE OF FMLA (ECONOMIC)

Village Position

The Village claims that the parties have already resolved this issue by means of the following tentative agreement entered into on January 9, 2001:

Section 14.7 Family Medical Leave Act. In order to be in compliance with the Family and Medical Leave Act of the (sic) 1993 ("FMLA") and applicable rules and regulations, the Village may adopt policies to implement the Family and

Medical Leave Act of 1993 that are in accord with what is legally permissible under the Act and the applicable rules and regulation (sic), as long as such FLMA (sic) policies are applicable to Village employees generally.

The Village further notes that, consistent with the FMLA, its Village-wide policy requires that an employee use paid leave when off on a qualifying FMLA leave. It urges the Arbitrator not to sanction the Union's attempt to revisit this issue --- one that was resolved more than three years ago.

Union Position

The Union's final offer on this issue was originally included in its Accrued Sick Leave proposal:

Section 14.1 Accrued Sick Leave. During FMLA leave an employee may, at the employee's option, use available unused paid leave or go on unpaid leave.

The Union argues that the parties' tentative agreement under the FMLA Section did not address whether employees would be able to use paid time in connection with FMLA time off. Moreover, the Union asserts, the parties did not even discuss the issue embodied in the above-quoted proposal when they reached that tentative agreement. It emphasizes as well that adoption of its offer on this issue could protect employees from termination under certain circumstances. For example, the Union posits, if an employee had exhausted the permissible FMLA leave and did not have additional paid time available, that employee

might be subject to termination. The Union also opines that since the Village submitted no final offer on this issue, its own offer should be adopted.

Discussion

The tentative agreement reached by the parties on January 9, 2001 grants the Village broad authority to "... adopt policies to implement the Family Medical Leave Act of 1993 ..." Clearly, the question of whether employees may use other forms of paid leave during an FMLA unpaid leave falls squarely within the scope of that tentative agreement. Some employers allow it; others do not. Here, the parties agreed that the Village could construct its own implementation policies, so long as they are (1) legally permissible under the FMLA, and (2) applicable to Village employees generally.

The Arbitrator concludes from the broad-brush language tentatively embraced by the parties for §14.7 that this economic issue has already been resolved. Accordingly, I have no jurisdiction over it. If the Union believes that a particular FMLA implementation policy adopted by the Village for firefighters is not legally permissible, or that it is inconsistent with the way in which the FMLA was implemented for other Village employees, it can explore those beliefs through the contractual grievance procedure.

FUNERAL LEAVE (ECONOMIC)

Village Position

The final offer of the Village on funeral leave is set forth below:

Section 14.5 Funeral Leave. In the event of a death in the immediate family, the employee will be granted one shift day (24 hours) with pay to attend the funeral. For this purpose, family shall be defined as the employee's spouse, parent, sibling, child, grandparent, grandchild, the parent, sibling or child of the employee's spouse, or another dependent of the employee as defined by the Internal Revenue Service. The Village retains the right to require proof of the funeral and the employee's attendance at the funeral.

The Village maintains that its final offer tracks parallel provisions in the Police and Public Works contracts, and that it is supported by the mixed external comparability data as well. It notes with regard to the former that the definition of "immediate family" is the same, and that neither of those two contracts grants employees the right to use sick leave as an extension of funeral leave. The Village also argues that Wilmette firefighters can request additional time and that, if granted, it is deducted from other paid time off (e.g., vacation, compensatory time off, or holiday time), but not from sick leave.

Union Position

The Union's funeral leave proposal is quoted here:

Funeral Leave- All employees are entitled to Funeral leave of one (1) workdays (sic). The Fire Chief or his designee will grant one (1) day of paid Funeral Leave per incident due to a death in an employee's family. An employee shall be allowed to use available sick-time if additional bereavement time is

needed. Employees may be required to substantiate the basis for Funeral Leave to the Fire Chief or his designee.

The Union highlights the fact that the Village's final offer on this issue differs from the current Wilmette Personnel Manual and the Fire Department Administrative Manual, in that it reduces the scope of "immediate family" by excluding the employee's spouse's grandparent and grandchild. Moreover, the Union notes, the Village provided no explanation for that proposed change.

The Union also points out that its own offer (under "Emergency Leave and Funeral Leave") excludes the employee's grandchild, but adds "aunt or uncle, niece or nephew." It argues that the external comparables all provide more generous family definitions than that sought by the Village, and that Evanston, Northbrook and Winnetka provide two shift days for funeral leave. The Union believes its own definition of "family" is within the range of those used in comparable communities --- even though only one comparable includes aunt, uncle, niece and nephew. The Union also asserts that its offer is balanced by the absence of "grandchild" in the definition of family.

Discussion

Both parties' offers on the funeral leave issue provide for an absence of one shift day. The Village offer specifies that the leave is "to attend the funeral." While the Union offer is less specific, its use of the

term “Funeral Leave” implies that actual funeral attendance is required to qualify for the benefit. Thus, there is little difference between the parties’ positions on those elements of the funeral leave issue.

The parties’ offers differ markedly with regard to whether an employee can supplement funeral leave with sick leave if additional bereavement time is needed. The Union’s proposal specifically provides that benefit; the Village’s does not mention it. Another difference between the parties on this issue concerns the types of “family” members whose funerals are covered. The Village includes employees’ grandchildren; the Union does not. The Union’s offer covers employees’ aunts, uncles, nieces and nephews; the Village’s does not.

This is an extremely volatile issue. As virtually any adult knows, the intensity of bereavement has less to do with official family kinship status than with the character of the relationship shared by two persons. A man might be very close to an aunt, for example, but somewhat distant emotionally from his own mother. Thus, no generic funeral leave clause can sufficiently accommodate the variety of legitimate bereavement needs that might arise from a group of 30 or so people. Accordingly, I cannot predict with any degree of certainty which of the parties’ family definitions will better suit the Wilmette firefighters’ bargaining unit.

Perhaps in recognition of the need for flexibility alluded to in the foregoing paragraph, funeral leave in the Wilmette Police and Public

Works contracts can vary, depending upon individual circumstances.⁴⁸ Neither of the parties' offers for firefighters parallels those provisions exactly. The Union's proposal departs markedly from them, though, as it would allow Wilmette firefighters to supplement funeral leave with sick leave at their own discretion.

As illustrated in Table 12 on the next page, funeral leave provisions across the comparable external communities are mixed:

Table 12
Summary of Funeral Leave Provisions As of
July 1, 2002 Across Comparable Communities⁴⁹

Jurisdiction	Provision Summary
Evanston	Two 24-hour shifts for members of immediate family; additional time may be requested and if granted is deducted from unused vacation time (§9.6)
Glenview	One 24-hour shift for members of immediate family; additional time may be requested. If granted, it is charged to vacation.
Highland Park	One 24-hour shift for members of immediate family; additional time may be requested and if granted is charged to sick leave (§17.8
Lake Forest	Maximum of "24 hours per year, whether used for a funeral or hospitalization;" "time in excess of 24 hours [for funeral leave] must be taken from accrued vacation time and must be approved by the department head"
Northbrook	One 24-hour shift for members of immediate family other than spouse;

⁴⁸ The Police contract provides "up to three consecutive days;" Public Works employees "may be granted up to three (3) days of paid funeral leave."

⁴⁹ Adapted from Village post hearing brief, p. 121.

	two 24-hour duty days if spouse; one-half 24-hour shift for death of other relative “which is ... defined to mean a person having blood relationship to the employee or spouse spanning two generations; four hours “to attend the funeral of a close friend or neighbor of the employee” (§16.07)
Park Ridge	One duty day for death of employee’s parent, grandparent, grandchild, mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, child or spouse; 8 hours for death of employee’s aunt, uncle, first cousin, niece or nephew (§13.3)
Skokie	One 24-hour shift for members of immediate family, plus balance of work day if notified while on duty; employee may request extension and if granted “shall be charged to sick leave, emergency leave, and any other accrued leave time in that order” (Article IV, §3)
Wilmette (currently)	One 24-hour shift for members of immediate family; additional time may be requested and if granted is deducted from other paid time off (e.g., vacation, compensatory time, holiday time --- but not sick leave)
Winnetka	One 24-hour shift for members of immediate family other than spouse or child; two 24-hour shifts if spouse or child (§11.4)

Though funeral leave clauses vary across the external jurisdictions, one universal provision stands out from review of Table 12 --- none of the comparable departments allow firefighters to decide on their own whether they wish to use available sick leave for additional bereavement time. In every case where additional time is an option, permission from management must be obtained to exercise it. Presumably, that mechanism allows for consideration of a balance between the department’s operational requirements and the employee’s need for additional bereavement time. That same type of system exists in Wilmette now, as firefighters may use vacation time, compensatory time or holiday time to extend periods of bereavement, so long as they have command staff permission. Nothing in the record suggests that management has been unreceptive to employees’ requests for such

extensions. Accordingly, the Arbitrator sees no compelling need for the Union's bid to give Wilmette firefighters the apparently unfettered discretion to use sick leave as a supplement to funeral leave.

On balance, the final offer of the Village seems to be the more reasonable on the funeral leave issue.

EMERGENCY LEAVE (ECONOMIC)

Village Position

The Village's final offer on this issue is quoted below:

Section 14.4. Emergency Leave. The Fire Chief, with the approval of the Village Manager, may grant an employee up to a maximum of 24 hours of paid emergency leave per fiscal year. Employees are not automatically entitled to emergency leave and the number of hours granted, if any, shall depend on the circumstances surrounding the request to use emergency leave. For the purposes of this Section, an emergency is defined as an unexpected occurrence such as birth of a child, adoption or placement for foster care of a child, or sudden illness of a family member (i.e., employee's parent, spouse, spouse's parent, child, or any individual who is a dependent of the employee as defined by the Internal Revenue Service) that requires the presence of the employee. Since paid time off due the death (sic) of a family member is covered by Section 14.5 immediately below, emergency leave may not be used for the death of a family member.

The Village asserts that its offer on emergency leave "in all relevant ways" tracks the emergency leave provisions in its Police and Public Works contracts. It notes, however, that the Union's final offer would extend to firefighters unlimited emergency leave on a mandatory --- not discretionary --- basis. The Village contrasts the 24-hour per fiscal year

provision in its final offer with the Union's proposed 24 hours per occurrence. Moreover, the Village points out, the Union's offer includes emergency leave for "other extraordinary situations," a benefit not available to other Wilmette employees.

The Village argues that the external comparables do not support adoption of the Union's final offer either, since only Glenview, Lake Forest and Skokie have specific emergency leave policies. And, the Village emphasizes, none of those jurisdictions have emergency leave provisions so liberal as that advanced by the Union in these proceedings.

Union Position

Here is the Union's final offer on this economic issue:

Emergency Leave – the Fire Chief or his designee shall grant paid emergency leave up to a maximum of one (1) days (sic) per occurrence. The number of days granted should depend on the circumstances of the incident. An emergency is defined as an unexpected occurrence such as the birth of a child, adoption or placement for foster care of a child, or serious illness of a family member requiring the employees' (sic) presence to care for the family member or other extraordinary situations. It is not intended to provide employees with Emergency Leave for the death of a family member. For the birth of a child, adoption or placement of foster care of a child, employees may choose any of three workdays within ten days of the birth, adoption, or placement. For the purpose of this section, family shall be defined as parent, spouse, in-laws, brother, sister, child, aunt or uncle, niece or nephew, grandparent, or any individual who is dependent on the employee as defined by the Internal Revenue Service. Employees shall be required to substantiate the emergency to the Fire Chief or his designee.

The Union underscores the fact that its proposed inclusion of the phrase “extraordinary situation” is based upon the Village’s own Administrative Manual.⁵⁰ Moreover, the Union notes, its proposed definition of “emergency” was derived from the Village’s Personnel Manual.

The Union also asserts that among the comparables, “there are no contractual provisions providing for emergency leave.”⁵¹ It also points to the Lake Forest Personnel Manual, which allows emergency leave when an employee needs to be present for the hospitalization of an immediate family member.

The Union believes its own proposal on this issue should be granted because it includes emergency leave coverage for as yet undefined instances. It cites as justification for doing so the actual instance where a Wilmette firefighter was stranded in another city and was not able to report for a scheduled shift due to circumstances beyond his control. In that extraordinary situation, the Union points out, emergency leave was denied.

Discussion

The Union’s final offer on this issue would bestow upon Wilmette firefighters a benefit not received by other internal employee groups or contractually guaranteed to their firefighter counterparts in any of the

⁵⁰ The Village of Wilmette Fire Department Administrative Manual, 6.171, Emergency Leave, p. 27.

comparable jurisdictions. As it stands currently, Wilmette's unrepresented employees are afforded "a maximum" of 24 hours of emergency leave annually (i.e., three 8-hour days).⁵² The Wilmette Police and Public Works contracts provide those employee groups with that same benefit --- one currently received by Wilmette firefighters as well under the Fire Department's Administrative Manual. The Union's final offer would expand that 24-hour annual maximum emergency leave to a maximum of one (1) day "per occurrence." That provision removes for firefighters the 24-hour annual emergency leave limit currently in place Village-wide --- a departure not justified by the evidence in the record.

There is also no support in the external comparability data for granting the Union's bid for 24 hours of emergency leave per occurrence. That is, there is no evidence that firefighters in any comparable jurisdiction receive 24 hours' emergency leave for each emergency they may experience.

In view of all the foregoing circumstances, the Arbitrator has concluded that the final offer of the Village on the emergency leave issue is the more reasonable.

TUITION REIMBURSEMENT (ECONOMIC)

Village Position

⁵¹ Union post hearing brief, p. 156.

⁵² Village of Wilmette Personnel Policy, p. 17.

Both parties' final offers on this issue are extensive. Here is the Village's proposal:

Section 10.4 Tuition Reimbursement. The Village recognizes the benefit to the employee and the Village in the employee pursuing continued education. Therefore, the Village has established a tuition reimbursement policy to encourage continued education.

Approval of any tuition reimbursement request is conditioned upon the availability of funds in the appropriate department budget and the authorization of the Management Services Department and Village Manager. The minimum amount of funds which the Village shall appropriate for purposes of tuition reimbursement each fiscal year shall be sufficient to reimburse each employee who has applied for such reimbursement in the proper and timely manner as directed by the Fire Chief, in the amount determined pursuant to the terms of this Section, but the Village shall not be obligated to appropriate more funds than are necessary to reimburse six (6) employees to the maximum amount allowed by this Section. The Village may appropriate more funds for tuition reimbursement than this minimum, but the decision to do so shall rest in the sole and exclusive discretion of the Village.

a. Eligibility

- i. Employees must have completed their probationary period.
- ii. Employees should seek to exhaust all other sources of assistants (veteran's benefits, scholarships, and grants), with the exception of student loans. The Village's share shall not exceed the difference between a tuition bill and the amount of coverage from all other sources and will be limited to no more than \$2,000.00 in a fiscal year.

b. Institutions

Employee may be required to furnish information about the accreditation of the particular educational institution.

c. Eligible Courses

- i. The program is available for high school, college, or vocational degree programs that are job-related.
- ii. Courses are to be taken on employee's own time, unless otherwise approved by the Department Head and Village Manager.
- iii. The number of courses in which an employee can enroll in a given semester or quarter shall be reviewed during the approval process and shall in no way interfere with the employee's job duties and responsibilities.

d. Eligible Expenses

- i. If the initial tuition reimbursement request is approved, the Village will pay, upon enrollment, the equivalent of 50% of the cost of tuition for a similar course offered at a state university, plus books and laboratory fees upon enrollment.
- ii. Upon successful completion of a course (grade of "C" or better, or the equivalent), the employee will receive 50% of the total cost of a course as determined above.
- iii. If the employee does not successfully complete the course, the employee will be required to pay back to the Village the entire amount of the initial tuition reimbursement request made to the employee.

e. Obligation Period

If an employee voluntarily leaves the Village within three years of completing a reimbursed course, a percentage amount of reimbursed expenses will be due the Village according to the following schedule.

0 – 12 months	100%
13-18 months	75%
19-24 months	50%
25-36 months	25%

f. Procedure for Approval of Tuition Reimbursement Request

- i. Requests for tuition reimbursement must be made, in writing, at least thirty (30) days before the course begins.
- ii. After a course has been completed, the employee must complete a “Request for Final Tuition Reimbursement” form.
- iii. The approval of the Department Head, Management Services and Village Manager is necessary.

The Village notes that its final offer on this issue tracks verbatim the tuition reimbursement section in the last two Wilmette Police collective bargaining agreements. That provision obligates the Village to fund reimbursement for six employees to the maximum amount allowed. The tuition reimbursement policy in the Village’s Personnel Manual parallels its final offer here, except that it does not contain the aforementioned funding obligation.

The Village argues that its final offer preserves Village-wide uniformity with respect to this fringe benefit. It also points out that between 1999 and 2002 the most firefighters who received tuition reimbursement in a given fiscal year was four --- i.e., two less than the six who could be funded under its final offer.

The Village also asserts that the Union's final offer is not reasonable. For example, it provides 100% reimbursement for college courses, with no specified maximum. The Village cites the absence of a coordination of benefits clause in the Union's offer as well, arguing as a result that it departs significantly from the reimbursement program in place for all other Wilmette employees. Another Village concern relates to the "blank check" nature of the Union's offer --- i.e., it has no funding cap. And, the Village adds, the Union's final offer does not require employees to repay all or a portion of tuition reimbursement they received if they leave the Village's employ within three years of course completion. For all of the foregoing reasons the Village believes its offer on this issue should be adopted.

Union Position

The Union's position on the tuition reimbursement issue is quoted in its entirety below:

Section 16.5 Employers (sic) Contribution to Tuition Expense. Full-time non-probationary employees may be eligible for reimbursement of one hundred percent (100%) tuition, books and course fees if such an employee is enrolled in an accredited University, College, or Junior College (Community College). Such reimbursement shall be subject to budget limitations established by the Village and shall be conditioned upon the employee having obtained

either a grade of “C” or a passing grade (in a pass/fail course).⁵³

The Union believes that the Village’s final offer on this issue unreasonably and artificially limits tuition reimbursement to six employees per year. It notes as well that the Village Personnel Policy contains no such limitation, nor does any comparable collective bargaining agreement. The Union acknowledges that the six-employee limit appears in the Wilmette Police Agreement, but argues that there is no justification for it.

Also, the Union asserts, its final offer recognizes budget limitations established by the Village --- a safeguard for its interests. The Union argues as well that the 100% tuition reimbursement provision it proposes simply echoes that contained in Chapter VI(I) of the Village Personnel Manual. The Union also believes that since the Village final offer does not contain the word “remaining” in its §d.ii., as does the Personnel Policy, it is unclear as to whether that offer would provide 100% tuition reimbursement.

Discussion

The internal comparability evidence on this issue lends strong support to adoption of the Village’s final offer, which does indeed mirror

⁵³ The Union also submitted a related final offer entitled “Section 16.6 Advanced Education Training Program.” In its post hearing brief the Village treated that proposal as if it were a part of the Tuition

nearly verbatim the tuition reimbursement language of the last two Police contracts. It parallels the Village Personnel Policy for non-represented employees as well.⁵⁴ The one exception is the absence in the Village's offer of the phrase "the remaining" in §d.ii. That Section refers to the reimbursement payment due upon successful completion of the course.

Both the Village offer and the Police contract read in pertinent part:

Upon successful completion of a course (grade of "C" or better, or the equivalent), the employee will receive 50% of the total cost of a course as determined above.

The Personnel Policy at Chapter VI.I.4.b. states:

Upon successful completion of a course (grade of "C" or better, or the equivalent), the employee will receive the remaining 50% of the total cost of a course as determined above. (emphasis added)

The Arbitrator has read both of the above provisions carefully, within their respective contexts, and has concluded that there is no significant difference between the two. It is clear that both clauses constitute an additional reimbursement to the employee. The first payment, which is tendered "upon enrollment," reimburses the employee for "50% of the cost of tuition for a similar course offered at a state university." Obviously then, a 50% payment "upon completion of a course" references the other half --- in addition to the half paid "upon

Reimbursement issue; the Union did not. In fact, the Union neither quoted the proposal nor so much as mentioned it in its own post hearing brief.

⁵⁴ The Tuition Reimbursement provision set forth in the Personnel Policy is incorporated by reference in the Public Works contract.

enrollment.” The Arbitrator therefore concludes that the Union’s expressed concern about the absence of the word “remaining” from the Village’s final offer is not warranted.

The Village’s tuition reimbursement proposal differs from the Village Personnel Policy in one other respect. Unlike that Policy, it contains a discretionary limit on the number of employees the Village must reimburse each fiscal year (i.e., six employees). Clearly, the universe of individuals covered by the Personnel Policy is significantly larger than the thirty or so bargaining unit employees under consideration here. A six-person limit for the Firefighter contract would still provide tuition reimbursement for twenty percent of the bargaining unit. Moreover, in recent history there have never been more than three firefighters per fiscal year who took advantage of the tuition reimbursement mechanism. Against that backdrop, a discretionary limit of six per fiscal year does not seem unreasonable. And besides, the same limit appears in the Police Agreement. Nothing in the record before me suggests that limit has been unduly restrictive.

The Union’s final offer is significantly different from both the Personnel Policy and the other Wilmette collective bargaining agreements in that it contains absolutely no payback provision for employees who leave the Village’s employ within three years of completing a reimbursed

course. The evidence from the external comparables with collective bargaining agreements is mixed on that issue.⁵⁵

On balance, the Arbitrator finds no compelling reason in the record to depart from the internal parity pattern by selection of the Union's final offer on tuition reimbursement. Evidence from the external comparables does not support such a departure either. I have therefore concluded that the final offer of the Village on this issue is the more reasonable.

ACTING PAY (ECONOMIC)

Village Position

The final offer of the Village on this issue is quoted below:

Section 10.5 Serving in Acting Capacity. Employees who are assigned to serve in acting capacity as acting lieutenants for a (sic) twelve (12) hours or more shall receive an additional one and one-half hours of pay at their regular straight time hourly rate of pay. First preference in making such assignments will be given to employees who are on the then current fire lieutenant's eligibility list; second preference will be given to employees who have taken the written examination for promotion to the rank of fire lieutenant; third preference will be given to employees who have specifically expressed an interest in taking such examination and have been reasonably determined to be qualified to serve in acting capacity as an acting lieutenant.

The Village notes that its proposed 12-hour minimum to qualify for acting lieutenant pay will have no appreciable effect, because rarely is a

⁵⁵ Highland Park and Winnetka require some form of payback; Evanston, Northbrook and Skokie do not. No tuition reimbursement provision appears in the Park Ridge firefighter contract.

firefighter asked to serve in that capacity for less than 12 hours.⁵⁶ Also, the Village points out, under its own offer those on the current fire lieutenant eligibility list would have first preference; under the Union's offer they would have first priority. Thereafter, second preference under the Village proposal goes to employees who have taken the written lieutenants' exam. The Union's proposal grants second preference to anyone with ten years on the job, without providing any supporting evidence to demonstrate that no other qualification is necessary. The Village underscores the importance of managerial discretion in making such assignments, since the qualifications of those selected can have a significant effect on employee safety, not to mention that of the public. It also claims that five of the six jurisdictions with contracts place no limitation on the discretion of command staff to determine who is qualified to serve in an acting lieutenant capacity.

The Village argues as well that its final offer provides acting lieutenant pay at least as high as the median across the external comparables pool. That is, at \$31.51 per shift Wilmette acting lieutenants are paid more than those serving in that acting capacity in Glenview, Lake Forest, Skokie and Winnetka. The Village also asserts that there is no justification for the Union's proposal to double the current amount of acting pay.

⁵⁶ In support of that claim the Village cites its Exhibit 85, which shows that only 2 instances of 150 in 2002

Union Position

The Union's final offer on the Acting Pay issue is quoted below:

Section 10.7 Acting Officer's Pay. Any time a member of the Union is requested to act in place of a sworn Lieutenant, the member shall be compensated for two (2) hours of pay at time and one-half (1 ½) of his regular rate of pay. In order to act as a Lieutenant the member must:

Be on the current promotional list, or; Have ten (10) years of service on the Wilmette Fire Department, or; Have five (5) years of service on the Wilmette Fire Department and one (1) of the following:

Has passed the written test for Lieutenant,
Holds F.O.I. (provisional) Certification or greater,
Holds an Associate of Science Degree in Fire Science

The member on the Lieutenants' Promotional List shall have first priority to act in the place of a sworn Lieutenant.

The Union notes that under the current system there is no minimum-hour block to qualify for acting capacity pay. It points as well to the testimony of Union witnesses Clemens and Klausing, both of whom described situations where they have worked in the acting lieutenant capacity for less than twelve hours and have been paid the premium for having done so.

The Union acknowledges the mixed nature of the external comparability evidence on this issue, but underscores the fact that no comparable has a 12-hour minimum. It also argues that the Village's proposed 12-hour minimum is inconsistent with the Wilmette Police

involved less than 12 hours.

contract, which currently requires only a 1-hour minimum to qualify for officer-in-charge pay.

The Union calculates that its proposal on this issue would provide Wilmette firefighters with a premium of \$81.50, as compared to the \$40.75 under the Village's offer. It acknowledges that \$81.50 would be the second highest rate among the comparables, behind Northbrook at \$95.76, but believes the Village's offer is flawed by its 12-hour minimum requirement.

The Union also believes its final offer on this issue is more safety oriented than is that of the Village, chiefly because its eligibility requirements are more stringent. Under the latter, the Union notes, firefighters who merely took the lieutenants' exam (but did not pass it) would be eligible to act as lieutenants. The Union asserts that priority should be given to those who, by passing that examination, have demonstrated their ability to serve in a lieutenant capacity.

Discussion

The final offer of the Village does indeed represent a significant departure from the status quo. According to the credible and uncontroverted testimony of Firefighter Clemens, it is not at all uncommon for a firefighter to serve as an acting lieutenant while a lieutenant assigned to a particular shift is taking an 8-hour training class. Clemens himself has served in such an acting capacity, and has

received acting pay. Under the Village offer no additional pay would be received for such service.

And serving in an acting lieutenant's role can be very demanding. According to Firefighter Klausing, acting lieutenants are responsible for the entire crew on each call. They must complete related paperwork once the crew returns to the station. And, at the end of a shift they must ensure that all required paperwork gets to the Chief and/or the secretary. In addition, and perhaps more importantly, acting lieutenants direct the Department's responses to calls, orchestrate firefighting activities at a fire ground itself, and are generally responsible for firefighter safety. Under the Village's final offer, a firefighter in acting lieutenant capacity might carry that heavy responsibility all day, from 9 a.m. to 5 p.m., and receive absolutely no compensation for it. The 12-hour minimum requirement embodied in the Village's offer is its fatal flaw, especially since it departs so significantly from the current practice, since it is not duplicated in even one comparable jurisdiction, and since it is so much more restrictive than the 1-hour minimum in the Wilmette Police contract.

The Arbitrator is also concerned about the extent to which the parties' respective offers may restrict command staff discretion to make acting lieutenant assignments. I am not convinced by the Village's arguments that the Union's final offer in that regard is unreasonable. Appropriately, it grants "first priority" for acting lieutenant assignments

to those who are on the current lieutenant promotional list. Wilmette Fire Department management controls and administers the promotional exam process. Undoubtedly, the process is designed to ensure that only those qualified to serve as lieutenants achieve placement on the list. The Union's "first priority" proposal seems especially reasonable within that context. And under the Union's offer, if no one on the list is available, the Chief or his designee is free to choose from among the larger pool of those with ten years' service, or from those with five years service who have also passed the lieutenant's exam, hold an F.O.I. provisional certification or greater, or hold an Associate's Degree in Fire Science. Under those circumstances the Chief's discretion to select a qualified person would not be compromised.

The Union's proposal to provide such a large increase for those selected by management to act in a lieutenant capacity is somewhat problematical. It is quite likely a larger pay boost than what the parties would have agreed to themselves in an atmosphere of free collective bargaining. But in comparison to the Village's proposed 12-hour minimum, the robust pay increase sought by the Union is the lesser of two evils.

On the basis of the foregoing analysis the Arbitrator has concluded that the Union's final offer on the Acting Pay issue is the more reasonable.

SUPPLEMENTAL RETIREMENT PROGRAM (ECONOMIC)

Village Position

Here is the Village's final offer on Supplemental Retirement:

Supplemental Retirement Program. Effective January 1, 2002, if an employee has at least 600 hours of unused sick leave and has an approved pension from the Village of Wilmette Fire Pension Fund, the Village shall pay on a pretax basis on the employee's behalf into a Medical Savings Account an amount based on the following schedule:

<u>Years of Village Service</u>	<u>Number of Hours Paid</u>
20	45% of unused hours up to max. of 1,000 hrs.
25	50% of unused hours up to max. of 1,250 hrs.
30	60% of unused hours up to max. of 1,250 hrs.

For the purposes of this Section only, the employee's straight time hourly rate of pay shall be computed by dividing the employee's base annual salary (including longevity pay and the Firefighter III stipend) immediately prior to the date of the employee's retirement by 2,080.

Example: If an employee has 20 years of service and 1,050 hours of unused sick leave as of the date of retirement, the Village shall pay into the Village's Medical Savings Account on the employee's behalf an amount based of (sic) 45% of 1,000 unused sick leave hours, i.e., 450 hours of pay at the employee's straight time hourly rate of pay computed as provided above immediately prior to the date of retirement.

The amount so deposited shall be available for the purposes specified in the Village's Medical Savings Account plan documents, including but not necessarily limited to payment for continued coverage under the Village's group hospitalization and medical insurance program and for unreimbursed medical expenses approved by the IRS for a Medical Savings Account. The Medical Savings Account plan document shall provide that if there is any amount remaining in an individual's account at time of death, the remaining amount shall be made available for the same used by the employee's designated beneficiary.

The foregoing sick leave buyback provision shall be the sole post-retirement health benefit for employees covered by this Agreement. Nothing in this paragraph is intended to affect either the statutory right of employees to maintain continued coverage under the Village's group hospitalization and medical insurance program during retirement in accordance with the statutory provisions governing same or the use of Foreign Fire Tax monies as determined by the Foreign Fire Tax Board.

The Village argues that the internal comparability criterion strongly supports acceptance of its offer on this issue. More specifically, it notes that there are only two differences between that offer and either of its two negotiated supplemental retirement programs. First, the Public Works contract but not the Police contract provides that that 60% of unused sick leave hours at 30 years of service are paid into the Village's Medical Savings Account (MSA) on employees' behalf. The Village points out that its offer matches that benefit. Second, the Village's offer places a 600-hour eligibility threshold on unused sick leave for firefighters, as opposed to the 400-hour minimum for Public Works and Police Department employees. But given the way their respective hourly rates are calculated, assuming no sick leave usage it would take employees from all three groups exactly 50 months to reach the applicable hours threshold.

The Village notes that all of the external comparables provide some kind of additional benefit at retirement for employees who meet eligibility requirements, if any. It argues that only Winnetka pays a more lucrative benefit.

The Union's final offer, the Village points out, seeks to resurrect a voluntary early retirement incentive program (VERIP) adopted in certain fiscal years for all or certain designated Village employees. Each of those program documents advised that it was a "one-time program," requiring for eligibility full-time service of at least 20 years and retirement before a specific date (unless mutually agreed upon by the Village and the Plan participant). Participating employees received "single coverage under the terms and conditions offered to all active Village employees under any one of the Village's health care insurance programs that may be in effect during each plan year ... for a period of eight (8) years from the effective date of retirement or until the retiree attains the age of 65, whichever comes first." The Village notes as well that it did not offer VERIP in all years between 1995 and 2003, and that it has not offered it since 2001. Thus, the Village argues, there is no justification for the Union's offer on this issue.

Union Position

The Union's final offer on the issue of Supplemental Retirement is quoted below:

Section 10.6 Early Retirement Incentive Program. The Village shall offer employees the opportunity to participate in the early Retirement Incentive Program. Under the program, the Village will pay the current level of health coverage premium for health insurance made available to the Village employees each plan year for eight (8) years or until the

Employee reaches age 65 whichever occurs first. The program will be available to employees who have completed at least twenty (20) years of service with the Village and who voluntarily retire by the end of the calendar year in which the early (sic) Retirement Incentive program (sic) is offered. The qualifications and procedures for participation by employees in the Early Retirement Incentive Program shall be consistent with applicable Federal Laws and Regulations. Any employee who retired before the ratification of this contract shall receive any early retirement benefit granted by this contract.

During negotiations in 2000 the Village took the position that it would not discuss early retirement for firefighters until a collective bargaining agreement was in place. In the meantime, three firefighters (Steve Zich, John Leary and John Fragrassi) retired without the benefit of an 8-year program to subsidize their health insurance costs. The Union feels the Village's position is inconsistent with commitments made by Village Manager Voorhees in her October 11, 1999 letter to firefighters.

The Union argues as well that the Village presented its sick leave buy-back program without having discussed its details. Moreover, the Union asserts, it differs significantly wfrom the one included in the Wilmette Police contract --- particularly because of its 600-hour eligibility threshold (compared to the 400-hour minimum for police). The Union also believes the Village's offer would unfairly penalize firefighters who, through no fault of their own, are forced to use sick leave benefits. In addition, the Union maintains, the sick leave buy-back thresholds in the Village's proposal are higher than those set forth in external jurisdictions that have such minimum requirements.

Discussion

The parties' positions on this economic issue reflect the convergence of several differences of opinion between them. On the one hand, the Union resents the Village's unwillingness to extend an early retirement benefit to the three firefighters who retired prior to the commencement of these interest arbitration proceedings. On the other, the Village alleges that it extended an offer which would have accomplished that objective, but retracted it because the Union was reportedly unwilling to drop related demands. The Union argues that the Village's proposed sick leave buy-back incentive was never discussed at the bargaining table. The Village claims the Union is trying to resurrect here an early retirement program it has not offered since 2001. All of those claims stem from festering wounds apparently inflicted at the bargaining table, or even during the pre-election atmosphere surrounding the Union's organizational campaign.⁵⁷

The Arbitrator is very reluctant to adopt a final offer that the parties themselves have not explored fully at the bargaining table. Unfortunately, the record has not convinced me that either of the parties' final offers on this issue meets that criterion. Making matters worse, the parties' respective proposals do not even deal with the same type of

⁵⁷ The Arbitrator has reviewed Village Manager Voorhees' October 11, 1999 pre-election letter, and has concluded that it does not contain any commitment to provide an Early Retirement Incentive to firefighters.

benefit. The Village offer involves a buy back of unused sick leave upon retirement; the Union offer focuses on health insurance coverage for eight years after retirement. There is no overlap between the two --- and frankly, given the circumstances described in the foregoing paragraph, there is not solid justification for selecting one or the other in these proceedings.

The Arbitrator has concluded that adherence to the internal comparability pattern is the most prudent choice. The Village's final offer matches nearly identically the negotiated provisions already in place for Wilmette Police Officers and Public Works employees. The threshold hour eligibility difference (600 v. 400) is not significant, given the sick leave accumulation differentials between firefighters and members of those two other employee groups. Moreover, since the firefighters' bargaining agent has already agreed to essentially the same sick leave buy-back provision for Public Works employees that the Village proposes here, it is reasonable to assume that it is certainly adequate.

Given the mixed nature of the external comparability evidence, as well as the fact that the former "one-time-only" early retirement incentives have not been extended to any Village employee since 2001, the internal comparability criterion has been given controlling weight. I therefore conclude that the final offer of the Village is the more acceptable.

Rather, the letter simply reminds firefighters that such an incentive had been "consistently offered" in the

MAINTENANCE OF BENEFITS (ECONOMIC)

Union Position

Here is the Union's final offer on this issue:

Section 16.15. Maintenance of Benefits. The following privileges and benefits enjoyed by the employees at the present time shall remain in full effect in accordance with current practices and procedures, unless changed by mutual agreement, to include but not limited to:

- a. Shopping for on duty meals (in Department vehicle).
Car Washing.
After hours use of personal time.
Minor maintenance of personal vehicles.
The use of Fire Department equipment.
Holiday routine.
Phone and pager usage.
Preparing meals before 17:00 hours.

The Village shall furnish the following items for each member of the bargaining unit: Bed, Linens, Towels, and Pillows. These items shall be replaced on an as needed basis.

- b. Foreign Fire Fund.

The Village will continue to collect the 2% Foreign Fire Tax money to the extent permitted by law.

The Union asserts that various members of management have told Firefighter Clemens and others that current benefits not confirmed in the collective bargaining agreement will be lost. Thus, the Union argues, its proposal on this issue seeks to do just that --- merely to confirm existing and longstanding benefits.

The Union believes the Village's offer does not accomplish that objective, because it contains the unreasonable condition that: "All of the foregoing specific workday conditions shall be subject to such reasonable rules and regulations as the Village may from time-to-time prescribe." The Union argues that the external comparability evidence provides little justification for that one-sided provision. In contrast, the Union asserts, its balanced proposal would maintain privileges and benefits that are embodied in past practice, but not those which are not.

Village Position

The final offer of the Village on this issue is quoted below:

Section 16. Specific Work Day Conditions. During the term of this Agreement, the Village will provide the following work day conditions for employees who are assigned to 24-hour shifts:

- (a) The Village will provide, and replace on an as needed basis, the following items for employees who so request: beds, linens, towels, and pillows.
- (b) Each shift up to two employees will be allowed to use a Department vehicle to shop for food at grocery stores within Village boundaries or directly contiguous thereto. Such shopping time, not to exceed ninety (90) minutes, will be scheduled by the Shift Commander and will normally be in the first two hours of the shift.
- (c) On days when assigned duties and responsibilities are completed before 17:00 hours, one employee per station may request permission to prepare dinner prior to 17:00 hours and such requests will not be unreasonably denied.
- (d) Employees will have reasonable access to Village telephones and pagers for personal reasons. The

personal use of such telephones will continue to be subject to reasonable limits as determined by the Shift Commander.

- (e) During their non-assigned time, employees may engage in personal activities, including the washing and minor maintenance of their personal vehicles. Except for occasional phone calls and paper work during non-assigned time, employees shall not engage in secondary employment activities while on duty.
- (f) Fire Chief or Deputy Fire Chief may, in his discretion, approve in writing an employee's written request to borrow non-essential Fire Department equipment for his/her own personal use off premises, provided that such equipment shall not be used in any secondary employment activity.
- (g) On holidays, the non-emergency duties and responsibilities of employees shall normally be limited to between 08:00 and 10:00 hours. For the purposes of this provision, holidays shall be the actual day on which any of the following seven holidays fall: New Years Day, Memorial Day, July 4, Labor Day, Thanksgiving, Christmas, and Christmas Eve Day. The hours beyond which non-emergency duties do not normally extend on said holidays may be extended to perform work related to public education/public relations (e.g., station tours, parades, fireworks, children's fairs, etc.

All of the foregoing specific work day conditions shall be subject to such reasonable rules and regulations as the Village may from time-to-time prescribe. Moreover, none of the foregoing shall interfere with the emergency response obligations of bargaining unit employees or the normal operations of the Fire Department.

The Village argues that its offer was carefully drafted, and that the Union's "open-ended" offer would generate numerous grievances. It asserts as well that only its own offer defines what is specifically covered

by each term or condition. The Village also points out that the parties have already tentatively agreed to the following language:

After Hours Use of Personal Time: After 17:00 hours the workday will end and all members will be allowed to work on personal projects, study and be available at all times to answer emergency calls.

Holiday Routine: Sunday and Holiday work shall be from 0800 until 1000 hours for shift meetings, training, vehicle maintenance, and station maintenance. The work day will end at 1000 hours and members will be allowed to work on personal projects, study and complete the department fitness training program while being available at all times to answer emergency calls.

The Village argues that given the specificity embodied in the above tentative agreement, its detailed final offer is the more reasonable. The Village also asserts that the comparable jurisdictions with collective bargaining agreements that address existing conditions do so with a specificity similar to that contained in its final offer here.

Discussion

The Village is generally correct in its contention that a specific contract clause is less likely to generate grievances than one containing intentionally ambiguous phrases such as: “in accordance with current practices and procedures.” On the other hand, such phrases are common in negotiated labor agreements. Indeed, that phrase is no more ambiguous than some of those the Village has agreed to in contracts

covering its other employees (e.g., “just cause” for discipline in the Police contract).

Still, the administrative merit of spelling things out in a contract cannot be denied. To that end, the Village has apparently tried to capture in its final offer the ways in which the activities at issue here have been carried out in practice. Indeed, the Union has not argued that any of those activities have been omitted from the Village’s proposal, or that it describes them inaccurately. The contract language proposed by the Village therefore seems to address the Union’s stated concern that its members might lose the benefit of any practice not memorialized in the contract.

It is also important to recognize that the Village offer would not permit a wholesale elimination of firefighter benefits and privileges. Rather, it would simply allow the Village to prescribe “reasonable rules and regulations” with regard to the specific work day conditions contained therein. Practically speaking, employers have the authority to establish reasonable rules and regulations anyway, without the sanction of enabling contract language. Of course, such rules and regulations must be related to safe, orderly or efficient operation of the organization, and they cannot conflict with negotiated contract provisions. The related provision of the Village’s final offer seems merely to confirm that well-recognized inherent right. Put another way, it does not bestow upon the

Village the unilateral right to change or eliminate the work day conditions set forth in its offer.

The Arbitrator has also reviewed the internal and external comparability data, but finds those two sources to be inconclusive as to the reasonableness of the parties' respective offers on this issue. Based upon the above analysis, I have concluded that the final offer of the Village is the more reasonable.

LAYOFF BENEFIT (ECONOMIC)

Union Position

Here is the Union's final offer on this issue:

Section 16.19 Layoff Benefit. Employees may request, at the time of lay off, their sick leave buy-back as described in Article VIII, Section 5 of this Agreement.

The Union asserts that its proposal on this issue is not based upon a sick leave buy back program; rather, it is simply a matter of equity and fairness in the event an employee is laid off. It argues that laid off employees have earned those sick leave days, and that they should not lose them through no fault of their own. While the Village offer restores earned sick leave upon recall, the Union notes, it makes no provision for doing so once recall rights have expired.

The Union notes that Winnetka is the only external jurisdiction that has dealt with this issue. There, laid off employees are paid any earned but unused sick leave "on the same basis as the employee would

be eligible to be paid for such hours if the employee retired or his employment has been terminated.”⁵⁸

The Union believes its final offer on this issue reflects an appropriate equity --- that accrued sick time should not be lost in the event of a layoff. Accordingly, it urges adoption of that offer.

Village Position

The Village did not advance a final offer on this issue. It argues, though, that there is no justification for the Union’s proposal. It notes that while the Union’s final offer provides laid off employees with accrued but unused sick leave, its offer on “Effects of Layoff” allows laid off employees the right to request their sick leave buy back as specified in Article VIII, §5 --- the very same Section at issue here. The Village believes that such duplicity constitutes alternative final offers on the same topic, and that the Arbitrator should declare both offers invalid.

The Village also argues that neither the internal nor the external comparability data support adoption of the Union’s offer. Thus, the Village argues, the Union’s proposal represents an unjustified “breakthrough” on this issue and it should be rejected on that basis as well.

Discussion

⁵⁸ Winnetka Collective Bargaining Agreement, p. 13.

The Village is correct in its assertion that the internal and external comparability evidence does not provide sufficient support for the benefit sought by the Union here. Neither the Wilmette Police contract nor its Public Works Agreement contains such a provision. Moreover, only one of the external comparables (Winnetka) provides its firefighters with any form of accrued sick leave pay at the time of layoff. Accordingly, the Arbitrator finds insufficient justification to grant such a benefit to the Union here, as part of its initial contract with the Village.

There is also no compelling need for adoption of the Union's offer. That is, there is no evidence that Wilmette firefighters have ever experienced a layoff. Against that historical backdrop, one could reasonably argue that there is simply no need to provide contractual benefits to remedy a problem that has not occurred.

The Arbitrator is quick to acknowledge the equity embodied in the Union's final offer. No one wants to see employees laid off in the first place, and it does indeed seem humane in that event to provide them with as much compensation as possible. But that topic deserves further exploration by the parties themselves at the bargaining table. It is just not appropriate for such a benefit, quite novel among both comparability groups, to be born out of the interest arbitration process.

EFFECTS OF LAYOFF (ECONOMIC)

Village Position

The final offer of the Village on this issue is quoted here:

Section 8.5 Effects of Layoff. During the period of time that non-probationary employees have recall rights as specified above, the following provisions shall be applicable to any non-probationary employees who are laid off by the Village:

- (a) An employee shall be paid for any earned but unused vacation days (including holiday hours and compensatory time) accrued as of the effective date of layoff.
- (b) An employee shall have the right to maintain insurance coverage as set out in the federal COBRA law and the regulations promulgated thereunder.
- (c) If an employee is recalled, the amount of accumulated sick leave days that the employee had as of the effective date of the layoff shall be restored.
- (d) Upon recall, the employee's seniority shall be adjusted by the length of the layoff.

The Village notes that all of the above language has already been tentatively agreed to except item (c). Furthermore, the Village adds, item (c) in its offer tracks verbatim the language in both the Police and Public Works contracts. The Village argues as well that out of all the comparable jurisdictions with collective bargaining agreements, only Winnetka provides for the buy back of any unused sick leave at the time of layoff. Thus, the Village asserts, there is no support for the Union's bid on this issue.

Union Position

As noted, the parties have already tentatively agreed to items (a), (b), and (d) in the Village's final offer. The Union proposes the following language for item (c):

An employee shall be paid for any earned but unused sick days for personal time accrued as of the effective date of the layoff.

In its post hearing brief the Union did not present any argument related specifically to this issue. Rather, it simply referred the Arbitrator to the position statement it included for the "Layoff Benefit" issue.⁵⁹ The arguments contained in that statement have already been summarized in the preceding pages. Those summaries will not be repeated here.

Discussion

The parties' arguments over the language in dispute under the "Effects of Layoff" rubric have already been addressed in the previous section (Layoff Benefit). As discussed, there is paltry support from the internal and external comparables for adoption of the Union's final offer. For that and other reasons already explained, the Arbitrator has concluded that the final offer of the Village is the more reasonable on the "Effects of Layoff" issue.

TERMINATION OF SENIORITY (ECONOMIC)

Village Position

The parties have reached a tentative agreement on all of the following language except that bracketed, which the Village proposes:

Section 8.7 Termination of Seniority. Seniority and the employment relationship shall be terminated for all purposes if the employee:

- (a) quits;
- (b) is discharged and the discharge is not reversed;
- (c) retires [or is retired should the Village adopt and implement a legal mandatory retirement age];
- (d) is laid off for a period in excess of three (3) years;
- (e) does not perform work for the Village for a period in excess of twelve (12) months, provided, however, this provision shall not be applicable to absences due to military service, established work related injury compensable under workers' compensation, disability pension, or a layoff where the employee has recall rights.
- (f) is laid off and fails to notify the Fire Chief or designee of his/her intention to return to work within ten (10) calendar days after receiving notice of recall or fails to return to work on the established date for the employee's return to work;

[Seniority and the employment relationship shall be terminated for all purposes if the employee:

- (a) falsifies the reason for a leave of absence, or is found to be working during a leave of absence without the written approval of the Village Manager;
- (b) fails to report to work at the conclusion of an authorized leave or vacation unless there are proven extenuating circumstances beyond the employee's control that prevent notification; or

⁵⁹ Union post hearing brief, p. 173.

- (c) is absent for more than one shift (24 hours) without authorization unless there are proven extenuating circumstances beyond the employee's control that prevent notification.]

The Village emphasizes that the internal comparability data support inclusion of the bracketed language, noting that both the Police and Public Works contracts provide that seniority is terminated if an employee is “retired should the Village adopt and implement a legal mandatory retirement age.” Similarly, the Village points out, both provide for the termination of seniority if an employee “fails to report to work at the conclusion of an authorized leave of absence” or “is absent for three (3) consecutive working days without authorization.” Also, the Village adds, the Public Works contract states that seniority is terminated if an employee “falsifies the reason for a leave of absence, or is found to be working during a leave of absence without the written approval of the Village Manager.” And while the Police contract does not include such a provision in the termination of seniority clause, the Village points out, its Section 10.6 states in pertinent part:

Any employee who engages in employment elsewhere (including self-employment) while on any leave of absence as provided above may be discharged immediately by the Village, provided that this provision shall not be applicable to a continuation of employment (including self-employment) that the employee had prior to going on an approved leave of absence, so long as there is no significant expansion of such employment (including self-employment) or unless approved in writing by the Village Manager.

The Village also asserts that during early negotiations the Union itself proposed that seniority should be terminated for, among other things, falsification of the reason for a leave of absence and for being absent for more than a specified number of shifts. And, the Village concludes, any dispute between the parties about the propriety of a termination action under §8.7 would be subject to resolution through the grievance and arbitration procedure.

Union Position

The Union argues that the bracketed language in the Village's offer generally calls for automatic termination without appropriate due process. More specifically, it charges that the Village's proposal would allow it to impose a mandatory age limit for retirement without bargaining over that issue. The Union feels that the Village's offer seeks from the Arbitrator a waiver of its right to bargain over retirement age.

The Union notes also that only one of the external comparables (Skokie) has language similar to that proposed by the Village --- that is, language providing for automatic termination. Such language, the Union asserts, removes from arbitral discretion the opportunity to impose lesser discipline.

With regard to the internal comparability criterion, the Union acknowledges that the Public Works contract mirrors what the Village proposes for firefighters. It notes, however, that the Police contract

provides for termination of seniority if an employee fails to report for work at the conclusion of an authorized leave, is laid off in excess of one year, retires, is discharged, quits or is absent for more than three consecutive working days without authorization.

Finally, the Union also acknowledges that early in the negotiations process it made a proposal similar to the automatic termination language the Village seeks here. But that proposal, the Union argues, was part of a multi-element package rejected by the Village. In these proceedings, however, the Union urges the Arbitrator to reject the Village's proposal because it is not connected to any sort of balanced compromise package, and because there is a substantial lack of support for it among comparable jurisdictions.

Discussion

At the outset of this analysis it is important to recognize that the Village already has the tentative contractual right to discharge employees for just cause.⁶⁰ Thus, even if its proposed bracketed language is not adopted here, the Village could still initiate termination proceedings for the reasons outlined in items (a) through (c). Assuming that it met the elements set forth in the "just cause" standard, the Village would prevail in disputes about such cases.

⁶⁰ The parties TA'd a management rights clause (§3.1) which confirms that authority.

The Arbitrator has reviewed the internal comparability data, and has concluded that it does not support adoption of the Village's offer. For example, the Police contract does not include in its termination of seniority clause the provision that working during a leave of absence will be grounds for automatic termination. As the Village notes, the Police contract does address that general issue in its §10.6 (Other Leaves of Absence), but it includes in doing so an exception where there is "... a continuation of employment (including self-employment) that the employee had prior to going on an approved leave of absence, so long as there is no significant expansion of such employment (including self-employment) or unless approved in writing by the Village Manager." There is no such exception in the Village's final "Termination of Seniority" offer to the firefighters, and the Arbitrator finds that differential treatment somewhat troubling. On the one hand, the Village has argued that it is important to maintain parity across its three bargaining units; on the other, it proposes for firefighters a "Termination of Seniority" clause conspicuously lacking a protection it has already granted to its police officers.

The Arbitrator is also somewhat perplexed by the Village's proposal with regard to a mandatory retirement age for firefighters. It seeks to include the phrase: "or is retired should the Village adopt and implement a legal mandatory retirement age," among the reasons for which seniority shall be automatically terminated. The Union asserts that such

language would remove its right to bargain over that issue --- which the Union believes is permissive. The Village did not address that argument in its post hearing brief, and a straightforward reading of the language it has proposed does not really address it either. If the Union is correct in its interpretation of the language, selecting the Village's offer on this issue would extend the parties' disagreement over it and, quite likely, would compel them to invest additional time and money to resolve it.

Finally, the external comparables provide little support for adoption of the Village's proposal. With the possible exception of Skokie, none of the negotiated contracts contain a termination of seniority provision sufficiently parallel to what the Village seeks here.

For all of the foregoing reasons the Arbitrator has concluded that the Union's final offer on this issue is the more reasonable.

CHANGES IN NORMAL WORK PERIOD AND WORK DAY (ECONOMIC)

Village Position

Here is the final offer of the Village on this issue:

Section 9.6 Changes in Normal Work Period and Workday. Should it be necessary in the interest of efficient operations to establish schedules departing from the current normal workday, work schedule, starting or ending times, work period or work hours, the Village will give as much notice as practicable of such change to the employees affected by such change.

The Village asserts that the internal and external comparability evidence supports adoption of its final offer on this issue. Furthermore,

the Village maintains, its final offer merely provides management with reasonable latitude to change work hours if deemed operationally necessary. The Village notes as well that inclusion of the language it has proposed is consistent with another of the parties' tentatively agreed upon clauses, that "... nothing in this Agreement shall be construed as a guarantee of hours of work per day, week, tour of duty, work period, or year."⁶¹

Union Position

The Union did not submit a final offer on this issue, because it believes the normal work day and work period are already covered in the following tentative agreement:

Section 9.2. Normal Work Day. The normal work day and work period for employees assigned to 24 hours shifts shall be 24 consecutive hours of work (one shift) followed by 48 consecutive hours off (two shifts). A work reduction day (i.e., what would otherwise be a 24-hour duty day) shall be scheduled off every eighteen (18) duty days. Twenty-four hour shifts shall start and end no earlier than 8:00 a.m.

Notwithstanding the foregoing, an employee may be temporarily assigned to an eight (8) hour work day, forty (40) hour work week for the purposes of schooling or light duty, provided that the right to make such temporary assignments shall not be arbitrarily exercised.

The Union also argues that by means of its final offer the Village is seeking the right to make sweeping changes in the current normal work day, shift schedule, starting or ending times, etc. It asserts that the

⁶¹ Quoted from Section 9.1 of the parties' tentative agreements.

above tentative agreement is of little value if the Village is seeking to change it so quickly. Moreover, the Union opines, no employer should be given the right to make such changes unilaterally. The Union adds that the current work schedule and starting times have been in existence for a substantial period of time, and that of the external comparables, only Skokie has a clause similar to that proposed by the Village here.

Discussion

The Arbitrator was not persuaded by the Village's claim of support for its offer among the internal comparables. The Public Works contract does indeed contain in §9.4 language confirming the Village's right to establish schedules which depart from the normal work day or work week, or to change shift schedules, but it also includes the following clause:

Notwithstanding anything to the contrary in this Agreement, before establishing a normal work week for full-time employees that differs from Monday through Friday the Village will inform the Union of the effective date of the change and will, upon request, negotiate over the impact of said change.

The final offer set forth by the Village for the firefighters contract does not contain similar language confirming its willingness to negotiate with the Union about the impact of any change it might make to the normal work period or workday. Thus, the Village seeks a deviation in these proceedings from what it has already agreed to with S.E.I.U. on

behalf of Wilmette Public Works employees, and it has provided no compelling reason for it.

Moreover, what the Village proposes here is an even farther departure from the language contained in its Police contract at §9.1, quoted in pertinent part below:

The normal shift schedules (i.e., 6:45 a.m. to 2:45 p.m., 2:45 p.m. to 10:45 p.m., and 10:45 p.m. to 6:45 a.m., along with early cars as required), normal workday, normal work week/normal work cycle of employees in existence on the effective date of this Agreement shall remain in existence.

On balance, then, the internal comparability data do not support adoption of the Village's final offer on this issue. Nor is there much support for it among the external comparables. While Highland Park has the contractual right to make certain changes unilaterally, in the absence of an emergency it cannot change the basic 24-hour shift schedule without providing the union at least 30 calendar days notice and an opportunity to discuss it. The Winnetka, Northbrook, and Park Ridge contracts do not contain language similar to what the Village proposes here. And while the Evanston agreement confirms the City's right to assign employees to other than their "normal" schedules, the Fire Chief is contractually required to grant affected employees' interview requests concerning those assignments. He is required as well to solicit volunteers before making such schedule changes mandatory. In view of the approach taken to this issue at bargaining tables across comparable jurisdictions, the Village's final offer does not seem justified.

Firefighters in Wilmette have worked the same schedule and workday for many years, and the Village presented no evidence of a compelling need to change it. Besides, under the tentative agreement quoted in the foregoing “Union Position” section, the Village has the right to make temporary changes in firefighters’ work schedules for light duty or training purposes.

On the basis of the foregoing analysis, the Arbitrator has concluded that the final offer of the Village on this issue should not be adopted.

LIGHT DUTY (ECONOMIC)

Village Position

The Village has advanced the following final offer on this issue:

Section 16.4. Light Duty. The Village may require an employee who is on sick leave or Worker’s Compensation leave (as opposed to disability pension) to return to work in an available light duty assignment that the employee is qualified to perform, provided the Village’s physician has reasonably determined that the employee is physically able to perform the light duty assignment in question without significant risk that such return to work will aggravate any pre-existing injury and that there is a reasonable expectation that the employee will be able to assume full duties and responsibilities within six months.

An employee who is on sick leave or Worker’s Compensation leave (as opposed to disability pension) has the right to request that he be placed in an available light duty assignment that the employee is qualified to perform and such a request shall not arbitrarily and unreasonably be denied, provided that the Village’s physician has reasonably determined that the employee is physically able to perform the light duty assignment in question without significant risk

that such return to work will aggravate any pre-existing injury and that there is a reasonable expectation that the employee will be able to assume full duties and responsibilities within six months.

Unless the employee consents to a different work schedule, the hours of work for an employee with a light duty assignment shall be eight (8) consecutive hours (excluding an unpaid lunch period) between 7 a.m. and 7 p.m., Monday through Friday (unless the physician specifies a shorter workweek).

If an employee returns or is required to return to work in a light duty assignment and the employee is unable to assume full duties and responsibilities within six months thereafter, the Village retains the right to place the employee on disability leave or sick leave.

Nothing herein shall be construed to require the Village to create light duty assignments for an employee. Employees will only be assigned to light duty assignments when the Village reasonably determines that the need exists and only as long as such need exists.

The Village asserts that the internal comparability factor unequivocally supports acceptance of its offer on this issue, which is identical to the Light Duty clause found in the SEIU Public Works contract. The Village maintains its offer is essentially the same as the Light Duty provision in the Police contract as well. The only substantive difference between the Police contract, on the one hand, and the Village's final offer and the Public Works contract, on the other hand, is that both of the latter provide that light duty assignments will consist of eight hour workdays, Monday through Friday, "unless the physician specifies a shorter workweek." The Village argues that such language actually protects employees, because it precludes weekend and odd-hour light

duty assignments, “[u]nless the employee consents to a different work schedule.” In addition, the Village emphasizes, its final offer fully comports with existing light duty practices in the Wilmette Fire Department.

Externally, the Village notes from a November 2002 survey conducted by Deputy Chief Dominik that light duty assignments exist in all of the comparable jurisdictions, that they are required when injuries are job related, and that in all but two (Evanston and Northbrook), they are not limited to Fire Department work.⁶²

The Village also notes that the Union provided no proof of its contention that it is illegal for an employer to require an employee to return to work in a light duty assignment he is qualified to perform, and where a physician has determined that the employee is able to perform it. The Village points out as well that the Union never claimed before the ILRB that the final offer of the Village constituted a prohibited subject of bargaining. And, the Village asserts, adoption of the Union’s final offer on this issue would allow an employee with a work-related injury to stay home and collect full pay and benefits at the Village’s expense, with such income not being subject to federal or state income tax. Doing so would be contrary to public policy, the Village argues.

The Village believes as well that the Union’s final offer expands PEDAs benefits beyond the ordinary scope of its coverage. That is, while

⁶² Summarized from Village Exhibit 97.

PEDA provides benefits to employees who suffer “any injury in the line of duty,” the Union’s final offer would extend such benefits to employees who are “injured on duty.” Thus, the Village argues, a firefighter injured while working on his private vehicle during duty hours but on unassigned time would qualify for PEDA-type benefits under the Union’s final offer, but he would not under the PEDA statute.

Finally, the Village notes, Deputy Chief Dominik testified that in his 18 years on the Department there has never been a “disagreement between doctors” in a light duty situation (Tr. 1495). Thus, the Village claims, there is no need for the “third doctor” provision in the Union’s proposal. The Village also asserts that in the event of such a disagreement, the affected employee could grieve the matter.

Union Position

Here is the Union’s final offer on the Light Duty issue:

Section 16.4. Light Duty. Employees who are injured on duty shall be placed on Workers’ Compensation and shall be covered under the Public Employee’s Disability Act. An employee injured on duty shall not be assigned to work light duty unless the Fire Department has an operational need, an emergency situation or the employee possesses particular skills or qualification needed by the Fire Department provided the Village’s physician and the employee’s physician have reasonably determined that the employee is physically able to perform the light duty assignment in question without significant risk that such return to work will aggravate any pre-existing injury. In the event the Village’s physician and the employee’s physician disagree on the ability of the employee to perform a light duty assignment in the Department, a third neutral physician shall be selected to resolve the disagreement.

An employee who is on sick leave or Workers' Compensation leave (as opposed to disability pension) has the right to request that he be placed in an available light duty assignment that the employee is qualified to perform and such a request shall not arbitrarily and unreasonably be denied, provided that the Village's physician and the employee's physician have reasonably determined that the employee is physically able to perform the light duty assignment in question without significant risk that such return to work will aggravate any preexisting injury. In the event the Village's physician and the employee's physician disagree on the ability of the employee to perform a light duty assignment in the Department, a third neutral physician shall be selected to resolve the disagreement.

Unless the employee consents to a different work schedule, the hours of work for an employee with a light duty assignment shall be eight (8) consecutive hours (excluding an unpaid lunch period) between 7 a.m. and 7 p.m., Monday through Friday, excluding holidays, (unless the physician specifies a shorter workweek).

An employee who works on a light duty assignment shall receive his regular pay and benefits.

The Union believes that the Village's final offer on this issue conflicts with provisions of Illinois law regarding (1) payment of twelve months of full pay and benefits for an employee injured on duty and (2) the right of an employee to be placed on disability leave only upon action of the Village's pension board --- a board created by statute and designed to make independent decisions concerning employee disability pensions. The Union asserts that under the Village proposal an employee injured in the line of duty may be placed on sick leave and forced to use accumulated sick leave. In contrast, the Union claims, PEDPA provides for no deduction of sick leave credit during the one year an employee is

to remain in pay status. The Union therefore asserts that the Village's final offer constitutes an illegal subject of bargaining and the Arbitrator is prohibited from exercising jurisdiction over it. Moreover, the Union believes it is inappropriate for the Village to force an employee into a light duty position and undergo the tax consequences of receiving full pay subject to taxation.

In contrast to the Village proposal which contravenes employees' statutory rights, the Union asserts, several of the comparable jurisdictions have contract provisions sensitive to the issues it has raised here. The Winnetka contract, for example, states that nothing in the light duty provision "shall be construed to either expand or contract the provisions of the Public Employee Disability Act," and that an employee receiving benefits under that Act who does return to a light duty assignment will not have the time spent in that assignment count against the twelve month full salary and benefit period provided by the Act. Similar provisions, the Union claims, are found in the Skokie, Highland Park, Evanston, Park Ridge and Northbrook contracts, and in the Lake Forest personnel policies as well.

The Union also argues that the Village proposal departs from the current Wilmette Fire Department policy. For example, it notes, the former references a six month time limit for light duty assignments; the latter does not contain such a limitation. The Union asserts that not only does its own proposal contain a six month time limit, but it also

does not interfere with the rights of employees to receive benefits under either of the two statutes at issue here --- the Public Employee Disability Act and the Illinois Pension Code's Disability provisions.

The Union believes its proposal is the more reasonable because it specifically provides that employees on light duty shall receive regular pay and benefits, which is consistent with the statute. It notes as well that the Village offer makes no such commitment. The Union also asserts that the following light duty assignments would be appropriate under the first paragraph of its proposal concerning operational needs or particular skills: cleaning, maintenance and minor mechanical repair of apparatus, cleaning and maintenance of buildings and grounds, performing daily inventory, maintaining adequate tool and appliance supplies, conducting or attending training sessions, participating in fire inspections and pre-fire surveys, developing and maintaining certifications, preparing clear and accurate "incomplete reports," logging and documenting Department activities, entering computer data, performing such support duties as answering the telephone, assisting with data processing and filing, and conducting public education sessions about fire prevention and fire safety.

Discussion

The final offer of the Village on this issue is nearly identical to the Light Duty provision it negotiated with the SEIU Local 73 on behalf of the

Public Works unit.⁶³ And as noted before, that same local union represents Wilmette Firefighters in the present case. The Arbitrator notes, however, that Public Works employees are not “eligible employees” within the meaning of the PEDDA. Thus, the fact that the Light Duty clause proposed by the Village here is nearly identical to that contained in the Public Works contract does not contribute to resolution of the legal questions the Union has raised with regard to the former. Nevertheless, the similarity between the Village offer and the Light Duty clause in the Public Works contract lends support to adoption of the Village position on this issue.

Though it is worded somewhat differently, the Light Duty clause in the Wilmette Police contract is essentially the same as that proposed by the Village here. For example, it allows the Village to require employees on sick leave or Worker’s Compensation to accept light duty assignments they are qualified to perform, provided the Village’s physician has determined they are physically able to perform such assignments without significant risk of aggravating any pre-existing injuries. And unlike Public Works employees, Wilmette Police Officers are covered by the PEDDA. If legal conflicts had arisen between their negotiated Light Duty contractual provision and that statute, the Union in these proceedings surely would have brought such conflicts to the Arbitrator’s attention. There is no such evidence in the record.

⁶³ There is a minor wording difference with regard to an unpaid lunch period.

Moreover, according to the Village's unchallenged assertion, it was not until these interest arbitration hearings had commenced that the Union claimed it was illegal for an employer to require employees injured in the line of duty to work in light duty assignments they are qualified to perform, when a physician has determined they can perform those assignments. And while the parties sought declaratory rulings from the ILRB on two other issues, the Union did not submit the Village's final offer on Light Duty for such a determination. Those facts in and of themselves are not dispositive of the Union's legality arguments here, but they do lend credence to the Village's claim that they are without merit.

The Arbitrator is somewhat troubled by the scope of the Union's final offer. It covers employees who are "injured on duty," in contrast to the more narrowly defined "injury in the line of duty" coverage provided by the PEDDA. As the Village has noted, the Union's final offer would seemingly expand the application of PEDDA to employees who sustained horseplay-related injuries during their unassigned time while on shift. Such employees under the Union's proposal would then be eligible for full pay and benefits from the Village for up to a year, with no deduction from sick leave credits, compensatory time, or accrued vacation. The potential for such an outcome would be avoided by adoption of the Village final offer.

The Arbitrator notes that the final offer advanced by the Village does not restrict light duty assignments for firefighters to the confines of

the Fire Department. Under the Union's final offer, firefighter light duty work must address a "Fire Department" operational need, an emergency situation, or skills and qualification "needed by the Fire Department." No such restriction exists in Glenview, Highland Park, Lake Forest, Park Ridge, Skokie or Winnetka. Moreover, according to Deputy Chief Dominik's credible testimony, firefighters with job related injuries are required in all of the comparable jurisdictions to accept qualifying light duty work. Those comparability data provide strong support for acceptance of the Village's final offer.

Finally, the Union claims that the Village proposal changes current policy --- particularly with regard to its six month maximum for light duty assignments. While it is true that the Fire Department Administrative Manual does not contain a six-month limitation in its §6.18 (Light Restricted Duty), its overall thrust is more akin to the Village's position on this issue than it is to the Union's. For example, it speaks of members being "assigned" to light duty, thereby suggesting that the Village may compel them to perform such work. The Manual also provides that "members may be assigned to other Village departments" for light duty purposes. It therefore appears that the Union's final offer represents a greater departure from the current policy than does the final offer of the Village.

For all of the foregoing reasons, the Arbitrator has concluded that the Village proposal is the more reasonable on this economic issue.

COMMITTEES (ECONOMIC)

Village Position

The final offer of the Village on this issue is quoted below:

Section 16.20. Committees. As long as there are a sufficient number of qualified bargaining unit volunteers for participation on Fire Department committees, participation on such committees shall be voluntary. With respect to Fire Department committees where there are typically an equal number of bargaining unit employees from each shift (e.g., Safety Committee), attendance at meetings of such committees on non-duty days shall not be required as long as there is reasonable participation from all three shifts. Attendance at committee meetings on non-duty days shall be compensated at one and one-half times the employee's regular hourly rate of pay.

The Village notes that the Union's final offer guarantees three hours pay at time and one half for any employee who attends a committee meeting, and that its own offer has no guaranteed minimum. It asserts that the Union's minimum guarantee is unprecedented, in that none of the six external comparables with collective bargaining agreements have adopted one for committee meetings on non-duty days. Moreover, the Village emphasizes, the Department's various committee meetings are scheduled well in advance. Thus, they do not justify the type of minimum guarantee associated with callbacks. In addition, the Village explains, under the Union's final offer it could not require off-duty employees to attend committee meetings. Under certain circumstances

that situation might jeopardize the ability of a committee to achieve its objective.

The Village notes as well that under its own offer committee meeting attendance would only be mandatory if voluntary attendance proved insufficient. To justify the mandatory nature of its proposal, the Village points to a former situation in Skokie, where 16 firefighters resigned from committees during a two-week period and there seemed to be no effective legal recourse for the employer.⁶⁴

Finally, the Village argues, its final offer on this issue reasonably balances its own need for committee participation with firefighters' desire to have committee participation on non-duty days be voluntary.

Union Position

Here is the Union's revised final offer on Committees:

Section 16.20. Committees. An employee shall not be required to attend committee meetings on the employee's non-duty day, however, an employee who does attend a committee meeting on a non-duty day shall be compensated at one and one-half times the employee's regular rate of pay for minimum of three hours.

The Union correctly notes that since its revised final offer seeks a minimum payment for meeting attendance, this is an economic issue.⁶⁵ It also points out that non-duty day committee meeting attendance in

⁶⁴ Village of Skokie v. ISLRB, 714 N.E.2d 87 (Ill. App. Ct., 1st Dist., 1999).

⁶⁵ The Union's initial final offer, which did not contain a minimum payment demand, was declared by the ILRB to be a non-mandatory subject of bargaining.

Wilmette has historically been compensated at the overtime rate. And the Union underscores the testimony of Firefighter John Okonek, who reported that in the past, employees who did not attend such meetings have not been disciplined (Tr. 1016, 1026).

The Union argues that its proposal is consistent with current departmental policy concerning employee compensation for attending non-duty day committee meetings. It notes that lieutenants and duty chiefs receive compensatory time for their attendance at such meetings. Also, such attendance has not been mandatory. The Union asserts as well that the three-hour time and one-half minimum it proposes is consistent with the same minimum paid to Wilmette police officers for court appearances.

The Union also believes the Village proposal on this issue would create interpretation problems. What, for example, is “reasonable participation” from all three shifts? What if an employee cannot attend due to extenuating circumstances? Besides, the Union emphasizes, Wilmette Fire Department committees have functioned adequately in the past without a compelled attendance requirement.

Discussion

In its post hearing brief, the Village did not address the Union’s claim that the inclusion of a three-hour minimum in its revised final offer changed the character of this issue from non-economic to economic. The

Arbitrator could not locate any discussion of that matter in the transcript either. Clearly, however, the parties' current formal dispute over this issue is economic. The Arbitrator is therefore duty-bound to accept the final offer of one or the other in its entirety.

The Village claims that non-duty day meeting attendance, if insufficient, could prevent certain committees from being able to operate. Union witness Okonek acknowledged the importance of committee meeting attendance, especially for the New Hiring Committee. Significantly, however, Okonek also noted that non-duty day committee meeting attendance has never been a problem in the Wilmette Fire Department. He emphasized the fact that committee volunteers take their attendance obligation seriously (Tr. 1025). Indeed, as confirmed by Okokek, the Department to date has not found it necessary to direct anyone to attend a committee meeting because enough of those who volunteered to serve on committees have attended their non-duty day meetings of their own volition (Tr. 1025-1026). That unchallenged testimony illuminates a very important point: there is no demonstrated need for mandatory committee meeting attendance in the Wilmette Fire Department. None. The Arbitrator therefore concludes that the Village's quest to require it is not justified.

The Union's final offer also seeks to change the current way of doing things. Presently, there is no minimum compensation for firefighters who attend committee meetings on non-duty days. Still, the

Union's proposed three-hour minimum does not appear to be as drastic a departure from the status quo as does the Village's mandatory attendance proposal. After all, Department management can control the frequency, timing and duration of committee meetings. It could presumably orchestrate those variables in such a way as to minimize the economic impact of a three-hour minimum. And the Union has a sound point with regard to the equity of the minimum compensation it seeks. Wilmette Police Officers are guaranteed three hours pay at time and one-half for their off-duty court appearances. The record contains no reason to deny Wilmette firefighters a parallel benefit. Moreover, the Police Department has no control over the frequency, timing and duration of those instances. As noted, the Fire Department can manage the scheduling of committee meetings so as to minimize the financial impact of the Union's proposed minimum compensation.

For all of the foregoing reasons, the Arbitrator has concluded that the Union's final offer on this economic issue is the more reasonable.

NORMAL WORK CYCLE (NON-ECONOMIC)⁶⁶

Village Position

The Village has advanced the following final offer on this issue:

Section 9.3. Normal Work Cycle. The normal work cycle for employees assigned to 24-hour shifts shall be 27 days. For FLSA purposes, each employee's work cycle shall be established so that the employee's work reduction day (i.e., every 18th shift) starts at 8 p.m. on the shift of the 27th day of his work cycle and ends at 8 p.m. on the first day of the

⁶⁶ The parties have also referred to this issue as "FLSA Days."

succeeding work cycle. [If the shift starting time is changed, the employee's work cycle for FLSA purposes shall be adjusted accordingly.]

The normal work cycle for employees temporarily assigned to 8-hour work days and forty (40) hour work weeks shall be seven (7) days.

The Village notes that the parties have already entered into a tentative agreement providing that "24-hour shifts shall start and end no earlier than 8:00 a.m." That language, the Village points out, supersedes the last sentence of the first paragraph of its final offer on this issue. The Village therefore argues that the Arbitrator should strike that sentence, consistent with his authority to alter the parties' offers on non-economic issues.

In like vein, the Village cites the parties' tentative agreement for §9.9 (Duty Day Trade), which provides in pertinent part that "[r]equests for trading of regular workdays, FLSA days or hours, shall be submitted in writing to the Shift Commander for approval." Such language, the Village asserts, supersedes the last sentence of the Union's final offer on this issue. The Village therefore encourages the Arbitrator to disregard that sentence as well.

The Village believes that once the foregoing amendments have been made to the parties' offers, its own simply memorializes established policy concerning the normal work policy for FLSA purposes. And, the Village notes, while the Union's final offer purports to accomplish that

same objective, it is vague and could lead to contract interpretation difficulties in the future.

Finally, the Village asserts that its final offer is substantially more similar to negotiated language across comparable jurisdictions than is the Union's.

Union Position

Here is the Union's final offer on this issue:

Section 16.22. FLSA Days. It is the Union's and the Village's intention to meet the guidelines of the Fair Labor Standards Act. Therefore, the Union members have every eighteenth (18th) day assigned off to comply with a 27 day work cycle under the FLSA. Members have the right to exchange FLSA days.

The Union objects to the last sentence of the first paragraph of the Village's final offer because it implies the Employer has the right to change starting times.⁶⁷ Without that sentence, the Union argues, the parties' offers are essentially the same. That is, both provide for a 27-day work cycle with prearranged FLSA work reduction days every 18th day. In doing so, each offer avoids the 204-hour threshold for overtime imposed by the FLSA on 27-day cycle firefighters. The Union therefore concludes that simply due to the last sentence of the Village's proposal, its own final offer is the more reasonable.

⁶⁷ In its post hearing brief at p. 121, the Union expressed concern about "the last sentence of the Employer's offer." It became clear upon further inspection of the Union's arguments that it really meant "the last sentence of the first paragraph" of the Employer's offer.

Discussion

Since the Union did not object to anything in the Village's final offer except the last sentence of its first paragraph, and since the Village urged the Arbitrator to excise that very same sentence, the Arbitrator has done so. The following provision is hereby adopted for inclusion in the parties' Agreement:

Section 9.3. Normal Work Cycle. The normal work cycle for employees assigned to 24-hour shifts shall be 27 days. For FLSA purposes, each employee's work cycle shall be established so that the employee's work reduction day (i.e., every 18th shift) starts at 8 p.m. on the shift of the 27th day of his work cycle and ends at 8 p.m. on the first day of the succeeding work cycle.

The normal work cycle for employees temporarily assigned to 8-hour work days and forty (40) hour work weeks shall be seven (7) days.

OTHER TIME OFF (NON-ECONOMIC)

Union Position

The Union has proposed the following contract language on this issue:

Section 9.10. Other Time Off. Vacation days, holidays, floaters, hours, and compensatory time off requests shall be submitted to the Duty Chief for approval. The Duty Chief or his designee shall approve/deny any such request on the

duty day it is submitted. Floaters, holidays, odd hours, and compensatory time off shall not be denied because of schools, workman's compensation, or illness. No request under this section shall be unreasonably denied.

The Union believes its proposed language is necessary to avoid delayed responses to employee requests for time off. Moreover, it notes that under current policy, if an employee is ill, on worker's compensation leave, or assigned to a school for additional training, another firefighter is still allowed to take a prearranged vacation day and the vacancy is filled on an overtime basis to bring staffing up to the 11-person minimum. The Union's final offer would extend that same protection to floaters, holidays, odd hours, and compensatory time, when those days are requested during the calendar year.

The Union asserts that events of a family or personal nature may arise during the calendar year that could not have been anticipated the prior November when vacation slots were selected. According to the uncontroverted testimony of Firefighter Clemens, delays in time off approval prevent employees from being able to purchase airline tickets or to make other specific travel plans. The Union also asserts that the time off arrangements referenced in other parts of what will become the parties' first collective bargaining agreement do not address the problem covered by its offer on this issue.

In addition, the Union notes, Deputy Chief Dominik acknowledged that he could control the use of overtime simply by not scheduling

schools, or in certain instances even by canceling classes. The Union emphasizes the inequity of denying floaters and compensatory time to employees who need additional time off, and argues that illness and workers' compensation problems are unpredictable. Accordingly, it asserts, its final offer should be adopted.

Village Position

The Village asserts that there is no need to include a separate Agreement provision on this issue, as it is covered in other sections of the contract. It notes, for example, that the parties have already tentatively agreed to language providing that "[c]ompensatory time shall be scheduled by mutual agreement as long as it will not result in overtime." Moreover, the Village argues, that tentative agreement conflicts with the Union's proposal that "compensatory time shall not be denied because of schools, workmen's compensation or illness." In such situations, minimum staffing levels would require filling the vacancy created by the compensatory time on an overtime basis.

The Village objects as well to the Union's demand that requests for time off must be answered on the very day submitted, noting that the requested time off might be in the distant future. It also expressed serious concerns about the provision in the Union's offer that would prohibit the Village from denying requests on the basis of schools, worker's compensation or illness. Firefighters could still engage in duty

trades under such circumstances, the Village notes, and the parties have already tentatively agreed to language providing that duty trade requests must be answered on the same day they are submitted.

Finally, the Village argues, allowing employees to use floaters at will, without regard to the impact on minimum staffing, could be very costly to the Village. Deputy Chief Dominik testified that under such circumstances the overtime cost per each 24-hour shift would be \$785 in 1999 salary numbers.

Discussion

The Union's final offer on this issue does indeed conflict with the parties' tentative agreement on the avoidance of overtime in connection with scheduling compensatory time off. It would also create an increased financial burden on the Village, which would be forced to hire back firefighters on an overtime basis when others opted to take floaters at the same time there were firefighters in school or off on account of injury or illness. It seems evident from the record that adoption of the Union's final offer on this issue, even with mild revision, could hamstring management's ability to control overtime costs. Moreover, as the Village reasonably argued, employees who need time off under circumstances which would otherwise generate overtime costs can always arrange for a duty trade. Under language already tentatively agreed to by the parties,

the Village will be contractually obligated to answer such requests in very timely fashion.

The Arbitrator also notes that the Union did not cite any supportive evidence on this issue from either the internal or the external comparables. On balance then, I am not convinced there is a compelling need for the language it proposes here. If time off scheduling problems persist once these proceedings have terminated, the Union will have the opportunity in just a few short months to address them with the Village at the bargaining table.

SICK LEAVE – MISCELLANEOUS (NON-ECONOMIC)

Village Position

The Village proposes the following final offer on this issue:

Section 14.3 Miscellaneous. It is specifically agreed that the Village retains the right to audit, monitor, and/or investigate sick leave usage and, if an employee is suspected of abuse, or if the employee has prolonged and/or frequent absences, to take corrective action, including such actions as discussing the matter with the employee, requiring that the employee seek medical consultation, instituting sick leave verification calls, and/or, where appropriate, taking disciplinary action, including dismissal, subject to the contractual grievance and arbitration procedure.

The Village notes that the foregoing language is also contained in its Public Works contract, and that there is somewhat similar negotiated language in its Police contract with Teamsters Local 714. It points out in addition that several of the external comparables have negotiated identical or similar clauses, and that during the present arbitration

proceedings the Union attorney stated that he had no objection to the Village proposal, so long as it did not include the words “including dismissal.”

Union Position

The Union did not advance a final offer on this issue, nor did it address the matter specifically in its post hearing brief. During the October 14, 2002 interest arbitration hearing, however, Union Advocate D’Alba did indeed object to inclusion of the phrase “including dismissal” in the Village’s final offer (Tr. 962). Beyond that one element, the Union appears to be in agreement with the Employer’s proposal.

Discussion

The internal comparability data strongly support adoption of the Village’s final offer on this issue and, to a lesser extent, the external comparability evidence does as well. Moreover, the only obstacle to its acceptance by the Union is specific reference in the proposal to “dismissal.” The Union’s concern about that term is not necessary, though, for under the Management Rights language tentatively agreed to by the parties the Village will have the right “to discharge non-probationary employees for just cause.” Clearly, if an employee were to use sick leave fraudulently, such conduct could indeed constitute “just cause” for dismissal. Thus, including the term “dismissal” in Section

14.3 of the contract does not alter the disciplinary landscape already established by the parties themselves. And besides, if the Village were to dismiss any employee without just cause on account of sick leave usage, the Union could pursue the matter through the contractual grievance and arbitration procedure.

For all of the foregoing reasons, the Arbitrator has decided to adopt the final offer of the Village on this issue.

NO SOLICITATION (NON-ECONOMIC)

Village Position

The Village proposes the following contract language on this issue:

Section 16.5. No Solicitation of Local Businesses. Members of the bargaining unit will not solicit merchants, businesses, residents or citizens located within the Village of Wilmette for contributions, donations or to purchase advertising in any Union or Union related publication or associate membership in the Union or any Union related organization without the prior written approval of the Village Manager.

The Village name (including the words “Wilmette Fire Department”), shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitations by bargaining unit employees that are not prohibited by this Section may not be done during paid hours of work.

The Village advises that its final offer on this issue was declared to be a mandatory subject of bargaining by the ILRB General Counsel, and that the Arbitrator has the authority to rule on it. It notes as well that both of its other collective bargaining agreements contain no solicitation clauses, and that the firefighter contract should also.

Union Position

The Union did not submit a final offer on this issue. It asserts that the Village's offer presents serious problems, since it bans the solicitation of contributions for worthy charities and firefighter-related causes. Moreover, the Union argues, the Village proposal would bar the Wilmette Firefighters Association⁶⁸ and perhaps even the Wilmette Fireman's Association⁶⁹ from soliciting contributions or purchasing advertising.

Firefighter Clemens testified that Wilmette firefighters want to be able to solicit donations so that the Wilmette Firefighters Association, a not-for-profit organization, may contribute to the Illinois Burn Camp, athletic team sponsorships, scholarships for local residents, and other charitable causes (Tr. 832-847). The Union believes that the Village proposal would ban such activities without the written permission of the Village Manager, and that it constitutes an impermissible restraint in contradiction of sentimental constitutional rights.

Furthermore, the Union argues, the external comparability evidence does not support adoption of the Village proposal. The Union therefore asserts that the Village final offer on this issue should be rejected.

⁶⁸ According to the Union, this organization includes bargaining unit members, but it is not the same as Local 73, SEIU.

⁶⁹ The Union points out that this entity includes all sworn members of the Wilmette Fire Department.

Discussion

It appears from the parties' arguments on this issue, and from the evidence they have presented, that a provision could easily be drafted to accommodate their respective concerns. For example, the Village does not appear intent on banning all solicitation. Rather, it just wants to ensure that bargaining unit members do not cloak their solicitation efforts under the mantle of Village or Fire Department indicia. It also wants to prohibit the solicitation of funds to finance Union activities. On the other side of the coin, the Union argues that bargaining unit members should not need written permission from the Village Manager to solicit donations for certain charities --- especially the Illinois Burn Camp. And in the past, the Village Manager has apparently authorized solicitation for such charitable purposes.

Given the foregoing considerations, and in view of current Village policy, the internal comparables, and the external comparables, the Arbitrator hereby adopts the following "No Solicitation" provision for the Firefighter contract:

Section 16.5. No Solicitation. Members of the bargaining unit will not solicit merchants, businesses, residents or citizens located within the Village of Wilmette for contributions or donations to the Union or to any Union-related organization without the prior written approval of the Village Manager. Neither shall members of the bargaining unit solicit said entities or persons to purchase (1) advertising in any Union or Union-related publication, or (2) associate membership in the Union or any Union-related organization without the prior written approval of the Village Manager.

Bargaining unit members may, without such permission, solicit said entities or persons for contributions or donations to the Illinois Burn Camp and other legitimate charitable causes, so long as the funds derived from such solicitation are not used to benefit the Union or any Union-related organization.

The Village name (including the words "Wilmette Fire Department"), shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitation not prohibited by this Section may not be done during paid hours of work.

DRUG AND ALCOHOL TESTING (NON-ECONOMIC)

Village Position

The Village has advanced the following final offer on this issue:

Section 16.8. Drug and Alcohol Testing. The Village's drug and alcohol testing policy in effect on January 1, 2002, that is applicable to Village employees for whom a commercial driver's license (CDL) is a condition of employment shall be applicable to all employees covered by this Agreement.

Use of proscribed drugs at any time while employed by the Village, abuse of prescribed drugs, as well as being under the influence of alcohol, the possession of alcohol or the consumption of alcohol while on duty shall be cause for discipline, including termination, subject to the contractual grievance and arbitration procedure.

The Village argues that the random drug testing provision included in its drug and alcohol policy is constitutional. It notes that the internal comparables lend support to adoption of its final offer on this issue as well. For example, Public Works employees required to possess a commercial driver's license (CDL) are subject to periodic random drug and alcohol testing. And, the Village asserts, its final offer on this issue

tracks verbatim the contract language negotiated by this same Union on behalf of the Public Works unit. The Village acknowledges that its Police contract does not currently provide for random drug and alcohol testing. It notes, however, that unlike firefighter/paramedics, police officers do not have access to controlled substances as part of their regular job duties and responsibilities.

The Village asserts as well that external comparability data support acceptance of its final offer on this issue. It notes that three comparable jurisdictions (Lake Forest, Skokie and Winnetka) have random drug and alcohol testing for firefighters, and that two of those three (Skokie and Winnetka) have been negotiated in the last two years. Moreover, the Village claims, there is a trend across Illinois fire departments toward the adoption of random testing.

The Village underscores the fact that it has no evidence of alcohol or drug problems in its Fire Department. It also believes, though, that random drug/alcohol testing will serve as a future deterrent and will assure Wilmette citizens that they have no reason to suspect any sworn Fire Department employees are in violation of its drug/alcohol policies.

Turning to the Union's final offer, the Village asserts that its cutoff standard for alcohol (.10) conflicts with the St. Francis EMS System "zero tolerance" policy. It is also out of line with cutoff standards across the comparable jurisdictions (e.g., Skokie - .04; Winnetka - .04). For all of

the foregoing reasons the Village urges the Arbitrator to accept its final offer on this issue.

Union Position

The Union's final offer on this issue is quoted below, as is its proposed "Appendix B" providing specific details regarding drug and alcohol testing:

Section 16.8. Drug and Alcohol Policy. It is the intended purpose of the Village of Wilmette and the Union to have a drug free work place. Attached Appendix B is the Drug and Alcohol policy.

APPENDIX B DRUG AND ALCOHOL TESTING

POLICY AND PROCEDURES

Section B.1 General Policy Regarding Drugs and Alcohol. The use of illegal drugs and the abuse of legal drugs and alcohol by Village employees present (sic) unacceptable risks to the safety and well-being of other employees and the public, invites accidents, injuries, and reduces productivity. In addition, such conduct violates the reasonable expectations of the public that the employees who serve them obey the law and be fit and free from the effects of drug and alcohol abuse.

In the interests of employing persons who are fit and capable of performing their jobs, and for the safety and well-being of employees and residents, the Village and the Union agree to establish a program that will allow the Village to take the necessary steps, including drug and/or alcohol testing, to implement the general policy regarding drugs and alcohol.

Section B.2. Definitions.

- A. "Drugs" shall mean any controlled substance listed in the Illinois Compiled Statutes, 70 570/101 et seq Substances Act, for which the

person tested does not submit a valid pre-dated prescription. In addition, it includes “designer drugs” which may not be listed in the Controlled Substances Act but which have adverse effects on perception, judgment, memory or coordination.

Some drugs covered by this policy include:

Opium	Methaqualone	Psilocybin-Psilocyn
Morphine	Tranquilizers	MDA
Codeine	Cocaine	PCP
Heroin	Amphetamines	Chloral Hydrate
Meperidine	Phenmetrazine	Methylphenidate
Marijuana	LSD	Hash
Barbiturates	Mescaline	Hash Oil
Glutethimide		

- B. The term “drug abuse” includes the use of any controlled substance which has not been legally prescribed and/or dispensed, or the abuse of a legally prescribed drug which results in impairment while on duty.
- C. “Impairment” due to drugs or alcohol shall mean a condition in which the employee is unable to properly perform his duties due to the effects of a drug or alcohol in his body. When an employee tests positive for drugs or alcohol, impairment is presumed.

Section B.3. Prohibitions. Employees shall be prohibited from:

1. Consuming or possessing alcohol or illegal drugs at any time during the workday on any of the Village’s premises or job sites, including all of the Village’s buildings, properties, vehicles and

the employee's personal vehicle while engaged in Village business.

2. Using, selling, purchasing or delivering any illegal drug during the workday or when off duty.
3. Being under the influence of alcohol or prohibited drugs during the course of the workday.
4. Failing (sic) to report to their supervisor any known adverse side effects of medication or prescription drugs which they are taking.

Violation of these prohibitions shall result in disciplinary action up to and including discharge.

Section B.4. The Administration of Tests.

A. Informing Employees Regarding Drug Testing

All current employees will be given a copy of the drug and alcohol testing policy upon execution of the Agreement between the parties. All newly hired employees will be provided with a copy at the start of their employment. In addition, this policy shall be placed as an appendix to the collective bargaining contract.

B. Pre-Employment Screening

Nothing in this policy shall limit or prohibit the Village from requiring applicants for bargaining unit positions to submit blood and urine specimens to be screened for the presence of drugs and/or alcohol prior to employment.

C. When A Test May Be Compelled

There shall be no random, across-the-board or routine drug testing of employees, except as provided by Section B.8. Where there is reasonable suspicion to believe that an employee is impaired due to being under the influence of drugs or alcohol while on duty, that employee may be required to report for drug/alcohol

testing. When a supervisor or management employee has reasonable suspicion to believe that an employee is impaired due to being under the influence, that supervisor or manager shall confirm that suspicion prior to any order to submit to drug/alcohol testing. In the absence of the other (sic) supervisor or manager, confirmation of reasonable suspicion shall be made by the on-duty supervisor in the Police Department. At the time the employee is ordered to submit to testing, the Village shall notify the Union representative on duty and if none is on duty, the Village shall make a reasonable effort to contact an off-duty Union representative. 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 will be cause for disciplinary action up to and including discharge.

It is understood that a drug or alcohol test may be required under the following conditions:

1. When an employee has been arrested or indicted for conduct involving illegal drug-related activity on or off duty;
2. When an employee is involved in an on-the-job injury causing reasonable suspicion of illegal drug use or alcohol abuse;
3. When an employee is involved in an on-duty motor vehicle accident where there is reasonable suspicion of illegal drug use or alcohol abuse.
4. Where an employee has experienced excessive absenteeism or tardiness under circumstances giving rise to a suspicion of off-duty drug or alcohol abuse.

The above examples do not provide an exclusive list of circumstances which may give rise to testing. Other circumstances may give rise to testing provided they conform to the reasonable suspicion standard.

D. Reasonable Suspicion Standard

Reasonable suspicion exists if the facts and circumstances warrant rational inferences that a person is impaired by alcohol or controlled substances. Reasonable suspicion will be based upon the following:

1. Observable phenomena, such as direct observation of use and/or the physical symptoms of impairment by alcohol or controlled substances;
2. Information provided by an identifiable third party which is independently corroborated.

E. Order to Submit to Testing

At the time an employee is ordered to submit to testing authorized by this Agreement, the Village shall provide the employee with the reasons for the order. A written notice setting forth all of the objective facts and reasonable inferences drawn from the facts which formed the basis of the order to test will be provided in a reasonable time period following the order. The employee shall be permitted to consult with a representative of the Union at the time the order is given, provided that such a representative is reasonably available. A refusal to submit to such testing may subject the employee to discipline, but the employee's taking of the test shall not be construed as a waiver of any objection or rights that he/she may have. When testing is ordered, the employee will be removed from duty and placed on leave with pay pending the receipt of results.

Section B.5. Conduct of Tests. In conducting the testing authorized by this Agreement, the Village shall:

- A. Use only a clinical laboratory or hospital facility that is licensed pursuant to the Illinois Clinical Laboratory

Act that has and/or is capable of being accredited by the National Institute of Drug Abuse (NIDA).

- B. Insure that the laboratory or facility selected conforms to all NIDA standards, including blind testing.
- C. Use tamper-proof containers, have a chain-of-custody procedure, maintain confidentiality, and preserve specimens for a minimum of twelve (12) months. The laboratory or facility must be willing to demonstrate their sample handling procedures to the Union at any time. The laboratory or facility shall participate in a program of "blind" proficiency testing where they analyze unknown samples sent by an independent party. The laboratory or facility shall make such results available to the Union upon request. All testing shall be by chemical analysis of a urine sample by gas chromatography/mass spectrometry (GS/MS). At the time a urine specimen is given, the employee shall be given a copy of the specimen collection procedures; the specimen must be immediately sealed, labeled and initialed by the employee to ensure that the specimen tested by the laboratory is that of the employee.
- D. Collect a sufficient sample of the same bodily fluid or material from an employee to allow for initial screening, a confirmatory test and a sufficient amount to be set aside reserved for later testing if requested by the employee.
- E. Collect samples in such manner as to ensure a high degree of security for the sample and its freedom from adulteration.
- F. Confirm any sample that tests positive in the initial screening for drugs by testing a second portion of the same sample by gas chromatography plus mass spectrometry or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;
- G. Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility of the employee's own

choosing, at the employee's own expense, provided the employee notifies the Village Manager in writing within seventy-two (72) hours of receiving the results of the tests of the employee's desire to utilize another laboratory or hospital facility.

- H. Require that with regard to alcohol testing, for the purpose of determining whether the employee is under the influence of alcohol, test results that show an alcohol concentration of .10 or more (or such lesser concentration as may hereafter be established by Illinois state statute for the application of prohibitions against driving while intoxicated) based upon the grams of alcohol per 100 millimeters (sic) of blood be considered positive;
- I. Provide each employee tested with a copy of all information and reports received by the Village in connection with the testing and the results;
- (J.)⁷⁰ Insure that no employee is subject to any adverse employment action except emergency temporary reassignment with pay or relief from duty with pay during the pendency of any testing procedure. Any such reassignment from duty shall be immediately discontinued in the event of a negative test result, and all records of the testing procedure will be expunged from the employee's personnel files.
- K. Require that the laboratory or hospital facility report to the Village that a blood or urine sample is positive only if both the initial and confirmatory tests are positive for a particular drug. The parties agree that should any information concerning such testing or the results thereof obtained by the Village be inconsistent with the understanding expressed herein, the Village shall not use such information in any manner or forum adverse to the employee's interest.
- L. Engage the services of a medical expert experienced in drug testing to design an appropriate questionnaire to be filled out by an employee being tested to provide information of food and medicine or other substances eaten or taken by or administered to the employee in

⁷⁰ The letter "J" was apparently inadvertently left out of the Union's final offer.

the event of a positive test results (sic) and to interview the employee in the event of a positive test results (sic) to determine if there is any innocent explanation for the positive reading.

Section B.6. Cutoff Levels. The following minimum initial cutoff level (sic) shall be used when screening specimens to determine whether they are negative for the five (5) drugs or classes of drugs:

Initial Test Level

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1000 ng/ml

All specimens identified as a positive on the initial screening test shall be confirmed using GC/MS techniques at the minimum cutoff levels listed below.

Confirmatory Test Level

Marijuana metabolites	50 ng/ml
Cocaine metabolites	150 ng/ml

Opiates:

Morphine	300 ng/ml
Codeine	300 ng/ml
Phencyclidine	25 ng/ml

Amphetamines:

Amphetamine	500 ng/ml
Metamphetamine	500 ng/ml
1 Delta-9-tetrahydrocannabinol-9-carboxylic acid	
2 Benzoyllecgonine	

The above minimum cutoff levels have been established based on Department of Health and Human Services recommendations. It is understood that changes in technology and/or the need to detect the presence of other prescription or illegal drugs may necessitate the adoption of new or changed cutoff levels. Should such changes or need arise, the parties agree to meet promptly to negotiate with

respect to the levels to be adopted. If no agreement is reached within sixty (60) days, the Village may for good cause (e.g., NIDA or Health and Human Services recommendations) implement new or changed cutoff levels on an interim basis while negotiations are proceeding. Subject to challenge by the Union through grievance procedures.

Section B.7. Right to Contest. The Union and/or the employee, with or without the Union, shall have the right to file a grievance concerning any testing permitted by this agreement.

Section B.8. Voluntary Request for Assistance. The Village shall take no adverse employment action against an employee who voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem unless the request follows a positive test result or unless the employee is found using illegal drugs. If the employee is then unfit for duty in his current assignment, the Village may authorize sick leave or other assignment if it is available and for which the employee is qualified and/or is able to perform. The Village shall make available through its Employee Assistance Program (EAP) a means by which the employee may obtain referrals and treatment. All such requests shall be confidential. When undergoing treatment and evaluation, employees shall be allowed to use accumulated sick and/or paid leave and/or be placed on unpaid leave pending treatment. Such leaves cannot exceed one (1) calendar year.

Section B.9. Discipline.

- A. Falsification of any document or information or failure to cooperate shall be considered grounds for discipline, up to and including discharge.
- B. Employees who have been found positive for drugs or have admitted to having a drug or alcohol problem, must follow the following rules:

1. You must admit yourself to a medically supervised drug or alcohol treatment program immediately.
2. Upon release from such program with clearance to work (a written medical release is required), the employee is made aware that he/she is open to random and probable cause drug testing by the department.
3. If the employee takes any absence from work (i.e. calling in sick, no-call, and no-show), the employee shall be responsible to report to a lab as designated in this policy for a drug screening within twenty-four (24) hours from the time the employee should have been at work. This requirement is automatic and does not require notification by the department that the employee must get a drug test.

Employees who violate any of this Section B shall be considered insubordinate and as a result will be recommended for termination of employment to the proper authorities.

Section B.10.⁷¹ Insurance Coverage. The Village shall pay 100% of the EAP but, if further treatment is necessary, coverage or lack of coverage will be determined by the employee's individual health plan.

The Union asserts that the Village proposal seeks major change in the existing drug policy by implementing random drug testing of firefighters in the same manner as that imposed on employees for whom a CDL is a condition of employment. The Union notes as well that in a September 28, 1999 letter from Village management to firefighters (Union Exhibit 114), random drug testing was characterized as being among provisions "... less favorable than what you have already achieved

without a union, or that impose requirements you do not currently have to meet, or that you will find are otherwise not in the best interests of Wilmette firefighters.” The Union also argues that the Village final offer would be subject to modification by the U.S. Department of Transportation, thereby making it somewhat open-ended.

The Union asserts additionally that for drug testing purposes there is no demonstrated similarity in the record between fire apparatus and the vehicles driven by public works employees who are required to have a CDL. State law does not require firefighters to maintain such a license, the Union notes, and the Illinois Secretary of State’s regulations concerning CDLs specifically exempt firefighting equipment operators. Moreover, the Union claims, reference in the Village proposal to its Drug and Alcohol Testing Policy would give it *carte blanche* authority to make changes in the Policy without bargaining with the Union.

The Union argues as well that its own proposal provides reasonable suspicion testing, details the manner in which drug tests and related procedures are to occur, and contains a comprehensive drug and alcohol policy consistent with the current Village policy. The Union also claims that there is no evidence of any drug and/or alcohol problem in the firefighter bargaining unit, and that the resource hospital for training and certifying Wilmette’s paramedics (St. Francis Hospital in Evanston) does not require random testing. It argues in addition that external

⁷¹ Incorrectly numbered in the Union’s final offer as “B.11.”

comparability data do not support adoption of the Village's final offer either. Thus, the Union claims, there is no need for the random testing the Village proposes.

Discussion

The Arbitrator is persuaded from detailed review of the evidence and the parties' arguments on this issue that the Village has not demonstrated compelling need to implement random drug/alcohol testing. There is absolutely no evidence, for example, that drug and/or alcohol abuse has ever existed in the Fire Department. Neither is there support among the comparable external jurisdictions for it. Indeed, only two of them (Skokie and Winnetka) have agreed to it.⁷² And internally, random drug/alcohol testing is limited in the Public Works unit to employees who are required to have a CDL. Firefighters are not required to obtain such a license to operate firefighting apparatus. Wilmette police officers are generally not subject to random testing. Moreover, there is no evidence to suggest that the current drug and alcohol testing policy applied to Wilmette firefighters (i.e., reasonable suspicion) has been in any way inadequate.

There is also little support in the record for wholesale adoption of the Union's comprehensive and detailed proposal. Many of its important

⁷² The random testing in Lake Forest was unilaterally implemented by the employer. I attached little weight to other jurisdictions cited by the Village, because they were outside the scope of the agreed upon comparability grouping.

elements (cutoff testing levels, for example) were not adequately addressed in these proceedings, by either party. In other words, there is simply not enough evidence in the record for the Arbitrator to make an informed decision about the merits of the Union's complex final offer.

Accordingly, the Arbitrator rejects both parties' proposals on this issue. Moreover, the inadequacy of the evidentiary record on this issue has made me reluctant to write a provision incorporating elements of each. I therefore adopt the following provision:

Section 16.8. Drug and Alcohol Testing. The drug and alcohol testing policy in effect for Fire Department employees on January 1, 2000 shall remain in effect for the duration of this Agreement.

As noted earlier, there is no evidence that the Department's current drug and alcohol testing policy has been problematical or in any way insufficient. Thus, the above provision is not likely to be troublesome for the duration of the Agreement either. In the meantime, the parties are encouraged to explore in bilateral negotiations their respective positions on this issue.

MAINTENANCE OF EMT-P STATUS (NON-ECONOMIC)

Village Position

The Village has advanced the following final offer on this issue:

Section 16.13. Maintenance of EMT-P Status. In accordance with applicable Village policy, all employees hired

on or after January 1, 1971, must obtain and maintain paramedic certification (EMT-P) as a condition of employment.

The Village maintains that its offer on this issue simply carries forward the current requirement that all Wilmette firefighters become paramedics. It also notes that the Union's paramedic decertification proposal was declared by the ILRB General Counsel to be a non-mandatory subject of bargaining. Thus, the Village argues, its proposal on this issue should be adopted.

Union Position

The Union claims there is no need for the language proposed by the Village on this issue, since all Wilmette firefighters are already required to obtain and maintain paramedic (EMT-P) certification. It also asserts that the Village proposal is a permissive subject of bargaining, and that the Arbitrator has no jurisdiction over it.

Discussion

Clearly, the Village proposal on this issue does not change a thing. It simply memorializes in the labor agreement a requirement that has been in place for decades. In addition, the Arbitrator is not convinced from the record that the Village's offer is a permissive subject of bargaining. Indeed, the record contains evidence to the contrary. In her October 23, 2002 Declaratory Ruling the ILRB General Counsel opined:

Section 4 of the Act preserves a public employer's right to determine the standard of service it provides and the organization of its departments. As I noted in my previous declaratory ruling, the Employer has decided that its Fire Department staff will consist entirely of firefighters certified as paramedics who can respond to requests for emergency medical assistance, which comprise the majority of calls to which the department responds, and perform those types of services. . . .

... A public employer's decision whether and to what extent its firefighters are to achieve paramedic certification is a public policy determination concerning the functions and standards of service it will provide its citizens. . . .

Since paramedic certification falls within the realm of a fire department's inherent managerial authority, and since Wilmette firefighters have been required to obtain and maintain EMT-P certification for more than twenty years, merely confirming that requirement in their collective bargaining agreement seems well within the Arbitrator's jurisdiction. Accordingly, the final offer of the Village on this issue is adopted.

PARAMEDIC DECERTIFICATION (NON-ECONOMIC)

Union Position

The Union submitted the following supplemental final offer on this issue:

Section 10.10. Paramedic Decertification. The Village and the Union shall establish a committee for the purpose of discussing options for employees to drop their paramedic decertification.

The Union acknowledges that its initial proposal on paramedic decertification was declared by the ILRB General Counsel to be a non-mandatory subject of bargaining. It notes, however, that the Arbitrator approved its July 19, 2002 submission of the above supplemental proposal. The Union urges the Arbitrator to accept it, as the existence of such a committee would allow the parties to deal with the tensions experienced by senior firefighter/paramedics who have become emotionally fatigued by dealing with the daily trauma of paramedic events.

Village Position

The Village did not present a final offer on this issue. It argues that the Arbitrator has no jurisdiction to decide it, because the ILRB General Counsel has declared the Union's supplemental proposal to be a non-mandatory subject of bargaining.

Discussion

The Village is correct. In her October 23, 2002 Declaratory Ruling on the Union's supplemental offer concerning paramedic decertification, the ILRB General Counsel stated:

Finally, I find that the respective burdens and benefits of bargaining over this proposal render it a permissive subject of bargaining. On the one hand, the Employer's interest is clear: it has determined that all firefighters should be certified as paramedics so that they can respond to requests for emergency medical services, which comprise the majority of calls the department receives. It has thus deemed that its standard of services will include paramedic services and that each employee present on a shift will be able to perform those functions. The burden imposed on the Employer's interest is imminently clear as well: the Union seeks to force the Employer to discuss options which would restrict or lessen the effects of its decision that all firefighters be paramedic certified. This mere discussion, in my view, continues to limit the Employer's managerial discretion because it requires the Employer to consider and discuss ideas directly contrary to the standards of service, training and departmental organization that is has already established. Essentially, then, the proposal requires the Village to discuss an issue --- paramedic decertification --- that I have already determined is a non-mandatory subject of bargaining.⁷³

In view of the above-quoted Declaratory Ruling, the Arbitrator does not assert jurisdiction over 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 reached the following

⁷³ Village of Wilmette and Service Employees International Union, Local #73, ILRB Case No. S-DR-03-001, October 23, 2002, at p. 8.

decisions with regard to what will become the parties' initial collective bargaining agreement (the Agreement):

1. Duration (economic) – The term of the Agreement shall be January 1, 2000 through December 31, 2004.
2. Salary (economic) – The revised final offer of the Village is adopted.
3. Applicability Of Other Changes (economic) – The final offer of the Village is adopted.
4. Educational Incentive (economic) – The position of the Village is adopted.
5. Preceptor Pay (economic) – The final offer of the Union is adopted.
6. Call Back Pay (economic) – The final offer of the Village is adopted.
7. Health Insurance (economic) – The final offer of the Village is adopted.
8. Holidays (economic) – The final offer of the Village is adopted.
9. Vacation Eligibility (economic) – The final offer of the Village is adopted.
10. Vacation Scheduling (economic) – The final offer of the Village is adopted.
11. Accrued Sick Leave (economic) – The final offer of the Village is adopted.
12. Use Of FMLA (economic) – The parties have resolved this issue themselves; accordingly, the Arbitrator has no jurisdiction over it.
13. Funeral Leave (economic) – The final offer of the Village is adopted.
14. Emergency Leave (economic) – The final offer of the Village is adopted.
15. Tuition Reimbursement (economic) – The final offer of the Village is adopted.
16. Acting Pay (economic) – The final offer of the Union is adopted.

17. Supplemental Retirement Program (economic) – The final offer of the Village is adopted.
18. Maintenance Of Benefits (economic) – The final offer of the Village is adopted.
19. Layoff Benefit (economic) – The position of the Village is adopted.
20. Effects Of Layoff (economic) – The final offer of the Village is adopted.
21. Termination Of Seniority (economic) – The final offer of the Union is adopted.
22. Changes In Normal Work Period And Work Day (economic) - The position of the Union is adopted.
23. Light Duty (economic) – The final offer of the Village is adopted.
24. Committees (economic) – The final offer of the Union is adopted.
25. Normal Work Cycle (non-economic) – The following contract provision is hereby adopted:

Section 9.3. Normal Work Cycle. The normal work cycle for employees assigned to 24-hour shifts shall be 27 days. For FLSA purposes, each employee's work cycle shall be established so that the employee's work reduction day (i.e., every 18th shift) starts at 8 p.m. on the shift of the 27th day of his work cycle and ends at 8 p.m. on the first day of the succeeding work cycle.

The normal work cycle for employees temporarily assigned to 8-hour work days and forty (40) hour work weeks shall be seven (7) days.

26. Other Time Off (non-economic) – The position of the Village is adopted.
27. Sick Leave – Miscellaneous (non-economic) – The final offer of the Village is adopted.
28. No Solicitation (non-economic) – The following contract provision is hereby adopted:

Section 16.5. No Solicitation. Members of the bargaining unit will not solicit merchants, businesses, residents or

citizens located within the Village of Wilmette for contributions or donations to the Union or to any Union-related organization without the prior written approval of the Village Manager. Neither shall members of the bargaining unit solicit said entities or persons to purchase (1) advertising in any Union or Union-related publication, or (2) associate membership in the Union or any Union-related organization without the prior written approval of the Village Manager.

Bargaining unit members may, without such permission, solicit said entities or persons for contributions or donations to the Illinois Burn Camp and other legitimate charitable causes, so long as the funds derived from such solicitation are not used to benefit the Union or any Union-related organization.

The Village name (including the words "Wilmette Fire Department"), shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitation not prohibited by this Section may not be done during paid hours of work.

29. Drug And Alcohol Testing (non-economic) – The following contract provision is hereby adopted:

Section 16.8. Drug and Alcohol Testing. The drug and alcohol testing policy in effect for Fire Department employees on January 1, 2000 shall remain in effect for the duration of this Agreement.

30. Maintenance Of EMT-P Status (non-economic) – The final offer of the Village is adopted.
31. Paramedic Decertification (non-economic) – The Arbitrator does not assert jurisdiction over this issue.
32. Provisions already tentatively agreed to by the parties themselves shall also be included in their January 1, 2000 through December 31, 2004 Agreement.
33. The Arbitrator retains jurisdiction in this matter for one hundred and eighty (180) calendar days from the date below to hear and decide any dispute which may arise between the parties with regard to the interpretation and/or application of this Award.

Signed by me at Hanover, Illinois this 4th day of June, 2004.

Steven Briggs

BACKGROUND

In a June 4, 2004 Interest Arbitration Award involving these same parties the undersigned Arbitrator retained limited jurisdiction by means of the following provision:

The Arbitrator retains jurisdiction in this matter for one hundred and eighty (180) calendar days from the date below to hear and decide any dispute which may arise between the parties with regard to the interpretation and/or application of this Award.

The Union notified the Arbitrator on August 5, 2004 of its desire to invoke the above provision with regard to “retroactivity and certain paragraphs of the draft collective bargaining agreement that (had) been exchanged between the parties.”⁷⁴ The Village had no objection to the Arbitrator’s reassertion of jurisdiction for that purpose. The parties ultimately agreed to submit position papers summarizing their respective positions on the outstanding issues. The Arbitrator received both position papers by October 4, 2004.

THE ISSUES

There are three retroactivity issues before the Arbitrator for resolution:

1. What is the effective date for Section 10.6 (Acting Officer’s Pay)?
2. What is the effective date for Section 10.7 (Preceptor Pay)?

⁷⁴ Quoted from Attorney D’Alba’s August 5, 2004 letter to the Arbitrator.

3. What is the effective date for Section 16.8 (Committees)?

PERTINENT AGREEMENT PROVISIONS

ARTICLE V – GRIEVANCE PROCEDURE

Section 5.4. Arbitrator's Authority. The arbitrator shall not have the power to amend, ignore, delete, add to or change in any way any of the terms of this Agreement. The arbitrator shall consider and decide only the question of fact raised by the grievance as originally submitted at Step 1 concerning whether there has been a violation, misinterpretation or misapplication of the express provisions of this Agreement. In addition, the arbitrator shall have no authority to impose upon any party any obligation not provided for explicitly in this Agreement, . . .

ARTICLE X – WAGES AND OTHER ECONOMIC BENEFITS

Section 10.3. Retroactivity. The salary adjustments awarded by Arbitrator Briggs shall be fully retroactive to the applicable date for all employees still on the payroll as of the date of issuance of Arbitrator Briggs' award or the date an agreement is ratified by both parties, whichever is earlier, as well as for employees who voluntarily resigned from the Department with more than two (2) years of continuous full-time service or retired pursuant to the Downstate Fire Pension Plan on or after January 1, 2000 and prior to the date of issuance of Arbitrator Briggs' award or the date an agreement is ratified by both parties, whichever is earlier. All overtime hours paid during the period of retroactivity shall be recalculated based on this Section. The hourly rate of pay used for retroactivity calculations will be as set forth in Section 9.3 (Hourly Rate of Pay).

Section 10.6. Acting Officer's Pay. Any time a member of the Union is requested to act in place of a sworn Lieutenant, the member shall be compensated for two (2) hours of pay at time and one half (1-½) of his regular rate of pay. In order to act as a Lieutenant the member must:

Be on the current promotional list, or;

Have ten (10) years of service on the Wilmette Fire Department; or;

Have five (5) years of service on the Wilmette Fire

Department and one (1) of the following:

Has passed the written test for Lieutenant,

Holds F.O. I (provisional) Certificate or greater,

Holds an Associate of Science Degree in Fire Science.

Section 10.7. Preceptor Pay. Any time a member must perform the duties of Paramedic Preceptor, the member shall be compensated for two (2) hours of pay at time and one half (1-½) of his regular rate of pay. In order to perform as a Preceptor, the member must have a minimum of three (3) years as a Wilmette Fire Department Paramedic.

ARTICLE XVI – MISCELLANEOUS PROVISIONS

Section 16.8. Committees. An employee shall not be required to attend committee meetings on the employee's non-duty day, however an employee who does attend a committee meeting on a non-duty day shall be compensated at one and one half times the employee's regular rate of pay for a minimum of three hours.

DISCUSSION

Village Position

The Village asserts that the three contract sections at issue did not become effective until September 8, 2004 --- the day following the date on which the parties' representatives signed the collective bargaining agreement. It notes as well that the time period between that date and its receipt of the June 4, 2004 Interest Arbitration Opinion and Award was due wholly to delays attributable to the Union.

The Village also points out that neither party is seeking a change in the way the three contract sections are worded. Rather, their only

dispute concerns the effective date of those sections. Thus, the Village opines, the undersigned is being asked to serve as a “rights” Arbitrator in these proceedings.

The Village believes that the first sentence of Article XIX (Duration and Termination) of the Agreement supports its position here:

Unless otherwise specifically provided in this Agreement, this Agreement shall be effective as of the day following its execution by both parties, and shall remain in full force and effect until midnight December 31, 2004.

It points out as well that the language before the comma in line one above was identical in both parties’ final offers. And, the Village avers, since the contractual provisions concerning Acting Officer’s Pay, Preceptor Pay, and Committees do not specifically provide otherwise, the effective date of each is September 8, 2004. Moreover, the Village adds, since the relevant portion of §19.1 is very clear, the Arbitrator should accept it at face value. The Village also refers to §5.4 of the Agreement, which contains the parties’ instruction that an arbitrator “shall not have the power to amend, ignore, delete, add to or change in any way any of the terms of (the) Agreement).”

The Village asserts as well that the parties’ §10.3 agreement on Retroactivity covers only the salary adjustments awarded by the Arbitrator, and that there is absolutely no hint or suggestion that it was intended to cover anything else. That argument, the Village adds, gains support from the Union’s own post hearing brief, which at p. 132 notes

that its final offer on additional holidays “has prospective effect only” since it was “not included in the parties (sic) retroactivity stipulation.” Also not included in that stipulation, the Village states, were the provisions covering Acting Officer’s Pay, Preceptor Pay, and Committees.

Citing other Agreement sections, the Village points to the parties’ inclusion of earlier effective dates with respect to various economic benefits (e.g, §10.4 – Firefighter III Certification Stipend; §10.8 – Supplemental Retirement Program; §11.1 – Insurance Coverages; §13.1 – Holidays; and §13.2 – pay for working Thanksgiving Day or Christmas day).

The Village also notes that none of the three contract sections at issue sets forth a specific effective date. It argues that in situations where parties have specifically established effective dates for certain economic provisions but not for others, arbitrators have repeatedly refused to give retroactive effect the latter group.

Union Position

The Union asserts that the Acting Officer’s Pay, Preceptor Pay, and Committees sections of the Agreement should be considered salary adjustments and that, accordingly, they should have been implemented retroactively pursuant to §10.3. In support of that assertion the Union reprises the Village’s argument that the Firefighter III stipend should be considered part of salary. It notes as well that in advancing that

argument the Village stated:

... it is significant that FF III pay is W-2 income, is included in every paycheck, and is included in the calculation of an employee's regular hourly rate of pay for overtime purposes. It is just as much salary as base pay and longevity pay.⁷⁵

The Union believes that Acting Pay, Preceptor Pay and pay for serving on Committees satisfy the tests advocated by the Village in the above-quoted passage from its Post Hearing Brief. That is, they are W-2 income, they will be included in employee paychecks, and they should be part of employee's hourly rate for overtime purposes.⁷⁶

The Union notes also that in the June 4, 2004 Interest Arbitration Opinion and Award the Arbitrator accepted the Village's anti-fragmentation approach to the salary issue. Using that same approach here, the Union urges, would require that Acting Pay, Preceptor Pay and pay for serving on Committees be considered elements of salary.

It is true, the Union acknowledges, that its final offer for holidays was prospective. But the Union asserts that its holiday proposal is substantially different from Preceptor Pay, Acting Officer's Pay, and Committees pay, in that all of those elements of salary are directly related to hours of work. Moreover, they are related to duties performed during the normal day, or when employees do committee work outside of their normal work hours. The Union notes that those forms of

⁷⁵ Village Post Hearing Brief, note 5, p. 21.

compensation are different from holiday time off.

The Union also freely acknowledges that during the interest arbitration proceedings it argued for the separate consideration of various salary elements. It also points out, however, that they were still elements of salary --- as are Preceptor Pay, Acting Officer's Pay, and Committees pay.

Opinion

Though retroactivity was one of the 29 economic issues originally submitted to the Arbitrator for decision, the parties subsequently resolved the matter through a tentative agreement which ultimately became §10.3 of their January 1, 2000 – December 31, 2004 collective bargaining agreement. Along with the parties' other tentative agreements, the retroactivity clause became part of the June 4, 2004 Award by reference. The present dispute arose from the parties' disagreement as to its proper interpretation.⁷⁷ Accordingly, this dispute falls within the parameters of the jurisdiction the Arbitrator retained with the issuance of the Interest Arbitration Opinion and Award.

Section 10.3 embodies the parties' meeting of the minds concerning the retroactivity of "salary adjustments" awarded by the undersigned. Significantly, though, it does not contain specific effective

⁷⁶ In support of its overtime calculation argument, the Union asserts that because the payments are required by the collective bargaining agreement, the Fair Labor Standards Act does not exclude them from calculation of the hourly rate (i.e., as a bonus or a gift).

dates for those adjustments. It simply says they shall be “fully retroactive to the applicable date” for employees who qualify according to other language in the provision.

But what is the “applicable date” referenced? The answer is found in §10.1, quoted in pertinent part below:

Annual salary adjustments shall be as follows:

Effective January 1, 2000:	3.0%
Effective January 1, 2001:	3.5%
Effective January 1, 2002:	3.75%
Effective January 1, 2003:	3.75%
Effective January 1, 2004:	4.0%

The above-quoted provision specifically identifies five effective dates for salary adjustments.⁷⁸ Clearly, each of them is an “applicable date” for retroactivity purposes. In contrast, the Preceptor Pay, Acting Officer’s Pay and Committees clauses contain no applicable date for retroactivity purposes.

Moreover, §10.1 refers to the increases it sets forth as “salary adjustments,” the same language the parties used in their §10.3 retroactivity clause. It is therefore logical to conclude that in the latter Section the parties meant for the phrase “salary adjustments awarded by Arbitrator Briggs” to mean those listed in §10.1. Nowhere in §10.3 did the parties suggest that its coverage should be more broad than the “salary adjustments” listed in §10.1. Had the parties mutually intended

⁷⁷ The same may be said for other Agreement provisions at issue here; that

for the Preceptor Pay, Acting Officer's Pay and Committees provisions to be included as part of the "salary adjustments awarded by Arbitrator Briggs," surely they would have set forth more specific guidance for retroactivity purposes than the "applicable date" language of §10.3.

The parties themselves also crafted the language of Article XIX (DURATION AND TERMINATION). In §19.1 they included the following language: "Unless otherwise specifically provided in this Agreement, this Agreement shall be effective as of the day following its execution by both parties ... " It is obvious from that provision that the parties contemplated one blanket effective date for the Agreement (i.e., the day after its execution), with additional effective dates for various clauses --- so long as those additional dates were "specifically provided" in the Agreement. As noted, the parties did not negotiate any specific effective dates with regard to the Acting Officer's Pay, Preceptor Pay or Committees clauses.

Concluding Comments

The Arbitrator's job in these Supplemental Proceedings is essentially one of contract interpretation. The parties themselves constructed their Retroactivity clause, and I must attach to it an interpretation which maintains its integrity. As explained, my interpretation of its language does not support adoption of the Union's

⁷⁸ The Union incorrectly claimed that the "salary adjustments awarded by the arbitrator (were) retroactive

position here. Similarly, I have concluded that bestowing retroactivity on the Preceptor Pay, Acting Officer's Pay and Committees provisions would be repugnant to the bargain the parties struck in §19.1. Indeed, awarding the Union what it seeks in these Supplemental Proceedings would require adding to the three provisions in question something that simply is not there. Doing so would also violate §5.4 (Arbitrator's Authority), since it would impose upon the Village an "obligation not provided for explicitly in (the) Agreement."

AWARD

After detailed study of the record in its entirety, including all of the evidence and argument presented by both parties, the Arbitrator has reached the following decisions:

1. The effective date for Section 10.6 (Acting Officer's Pay) is September 8, 2004.
2. The effective date for Section 10.7 (Preceptor Pay) is September 8, 2004.
3. The effective date for Section 16.8 (Committees) is September 8, 2004.

Signed by me at Hanover, Illinois this 7th day of December, 2004.

generally to January 1, 2000." (Union Position Paper, p. 2)

Steven Briggs