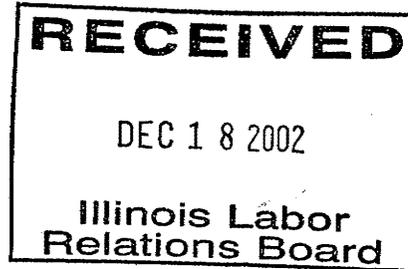


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S-MA-02-199

**BEFORE
EDWIN H. BENN
ARBITRATOR**



In the Matter of the Arbitration

between

THE VILLAGE OF LISLE, ILLINOIS

and

**POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION LABOR
COMMITTEE**

Arb. Ref. 02.162
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

For the Village:	James Baird, Esq. Pamela Quigley Devata, Esq.
For the PB&PA:	Richard Reimer, Esq.

Place of Hearing:	Lisle, Illinois
Dates of Hearing:	May 1, June 18, July 26, August 19, 2002
Dates Briefs Received:	October 29, 2002 (Village); October 30, 2002 (PB&PA)
Date of Award:	December 16, 2002

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I. BACKGROUND

The Policemen's Benevolent & Protective Association Labor Committee ("PB&PA") represents approximately 35 sworn patrol officers employed by the Village of Lisle ("Village"). The PB&PA was certified as the officers' representative in May, 2001.¹

Previously, the officers were represented by the Fraternal Order of Police ("FOP"). The Village and the FOP negotiated five Agreements (1986-1989, 1989-1992, 1992-1995, 1995-1998 and 1998-2001).²

The parties reached impasse on various issues for their new Agreement. This interest arbitration followed under the terms of the Illinois Public Employee Labor Relations Act ("IPLRA").³

II. ISSUES IN DISPUTE

The following issues are in dispute (PB&PA Brief at 2; Village Brief at 3):

1. Wages
2. Duration of the Agreement

¹ 7/26/02 Tr. 54-58; Joint Exh. 3 at Article I; Village Brief at 5.

² Village Exh. V-2-B (the prior Agreements between the Village and the FOP).

³ The parties waived the tri-partite panel for this proceeding. Joint Exh. 1, Ground Rules and Stipulations at par. 1.

III. THE STATUTORY FACTORS

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

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit 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 determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. COMPARABLE COMMUNITIES

For purposes of this proceeding only, the parties stipulated that the following communities are comparable to Lisle:⁴

1. Batavia
2. Bensenville
3. Bloomingdale
4. Glen Ellyn
5. Libertyville
6. Morton Grove
7. Villa Park
8. Westmont

V. RESOLUTION OF THE ISSUES IN DISPUTE

Turning to the issues in dispute, the following resolutions are made:

⁴ 5/1/02 Tr. 10; Village Brief at 3; PB&PA Brief at 8.

A. Wages

1. The Parties' Final Offers

The Village proposes that effective each May 1 of the years 2001, 2002, 2003 and 2004, there shall be a 4% increase for each step listed in the salary schedule and that effective each November 1 of those same years, there shall be a 1.25% increase for each step listed in the salary schedule.⁵

The PB&PA proposes a 4% across the board increase effective in May; a one time equity adjustment of 11.72% for top pay and 16.73% for starting pay, effective in the first year of the Agreement.⁶

2. Discussion

a. The Officers' Previously Negotiated "Place"

Initially, the Village argues a concept concerning evaluation of wage offers and the comparable community factor in Section 14(h)(4) of the IPLRA which must be addressed.

The Village makes the argument that the officers have negotiated

⁵ Village Brief at 8; Joint Exh. 4-B at 27.

⁶ PB&PA Brief at 3; Joint Exh. 4-A at 1.

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themselves into a place with respect to the comparable communities — *i.e.*, the bottom — and that is where any wage offer selected in this proceeding should keep them:⁷

In terms of the issue of wages, the Village will show its relative position concerning the communities the parties have agreed to be comparable, even though it's just for purposes of this hearing. And the proofs will show that the Village has maintained a position vis-a-vis these comparables -- a fairly steady position over the last 10 to 15 years and, I might add, a mutually-agreed position.

The Village will acknowledge that it is paying its officers below the average of the comparables. The Village will explain the parties have by mutual agreement agreed to do that.

The Village further explains its position [emphasis in original]:⁸

... Where, as here, parties have *voluntarily* positioned themselves at a certain economic position through successive bargaining, there is no justification for altering this *voluntary* placement. ...

* * *

The Village has had a mature bargaining history with its police officers; but and since 1995 if not before, the Village has traditionally been at the bottom of the list in terms of wages when compared to this group of comparable communities. Over the last two labor agreements, the parties have negotiated through the collective bargaining

process, and have agreed to maintain their current relationship as compared to the comparable communities. ...

In simple terms then, according to the Village, if a union has negotiated itself into an unfavorable (*i.e.*, bottom) position with respect to other comparable communities, it cannot get out of that position through the interest arbitration process. I find that argument is not persuasive.

Section 14(h)(4) of the IPLRA says nothing about a union (or a public employer) being stuck at a certain level in the stack of comparable communities. Indeed, Section 14(h) says very little. All Section 14(h) says is that one "factor" to be considered in an interest arbitration is "[c]omparison 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) [i]n public employment in comparable communities" Without clearer guidance from the legislature or the courts, I cannot find that an offer must be selected which keeps a union at the bottom of the stack of comparables

⁷ 7/26/02 Tr. 189-190.

⁸ Village Brief at 44, 46.

because the union may have negotiated itself into that position in the past. "Comparability" is a factor to be considered — that is all.

Moreover, this is a two way street. What if the officers of the Village were always at the *top* of the stack of comparables in terms of wages and the officers in one of the other comparable communities negotiated a substantial increase to catapult them over the Village's officers? Wouldn't the Village's theory of the parties having negotiated the officers into a certain place require the selection of an offer in this hypothetical that would restore the officers to first place — even if that offer required the Village to make an exceptionally high percentage increase (e.g., 20% in one year) to already comparatively highly paid officers? Wouldn't the Village's theory lock the officers into a position of *always* being at the top of the stack no matter what the required increase to maintain that first place position might be? I hope not. Comparability is a factor — an important one — but, nevertheless, it is just a factor amongst several.⁹

⁹ Indeed, the Village's theory by itself would automatically preclude any changes
[footnote continued]

b. Evaluation Of The Wage Offers

There is no dispute that the wages currently paid to the Village's officers are the lowest when compared to the other comparable communities.¹⁰

The PB&PA contends that the Village's wage proposal does nothing to change the relative ranking for pay for the Village's officers with respect to the comparable communities.¹¹ The Village does not really

[continuation of footnote]

of the benefit it seeks to change — sick leave. See discussion *infra* at V(D). According to the Village (7/26/02 Tr. 187-188 [emphasis added]), "... the Village is seeking to change the provisions of the existing contract which are unusual and *exceedingly lucrative* and change those provisions to more of a common sick leave approach consistent with that of the comparable communities" Under the Village's theory concerning how the parties have negotiated that benefit in the past compared to the comparable communities (here, on the "lucrative" side), on the basis of comparability alone the Village could never achieve the change it seeks. The Village's argument that a union can negotiate itself into a specific place in the stack of comparables so as determine the selection of an offer is just not a persuasive one.

¹⁰ Village Brief at 41 ("... those wages place Lisle at the bottom of this particular group of stipulated communities"); PB&PA Brief at 10 ("... historically the Village of Lisle wages lagged far behind its comparable communities.").

¹¹ PB&PA Brief at 13-14 ("Should the Village's Final Offer be adopted, the Union will remain at the bottom of the stipulated comparable communities in terms of start-
[footnote continued]

dispute the PB&PA's assertion, but points out that its goal is to "narrow [t]he gap".¹²

The Village contends that the PB&PA's wage proposal catapults the Village's officers from the bottom of the comparables to a position over many of the other comparable communities.¹³ The PB&PA does not really dispute that assertion, but contends that its proposal places it more closer to the average of the comparable communities.¹⁴

In the past when I have had to analyze these kinds of wage disputes, at this point I would start a detailed evaluation of the respective

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ing pay ... [t]he Village's Final Wage Offer, for 2001 for top salary, results in the same disparity.").

¹² Village Brief at 42-43 ("Looking at the Village's proposal, the Village moves the percentage closer to the comparable communities at both start and (more importantly) top pay ... the Village's proposal is moving Lisle's wages in the direction of its comparable communities at both start pay and top pay over time.").

¹³ Village Brief at 44 ("The Union's proposal ... would result in a drastic 'jump' over many of the stipulated comparable communities.").

¹⁴ PB&PA Brief at 14 ("If the Union's Final Wage Offer is adopted, the Union will be closer to the average of starting and top salary among stipulated comparable communities."). See also, 6/18/02 Tr. 8 ("We want a fair and average wage when you compare average wages looking at comparable communities which we have now stipulated to").

wage offers looking to see where the offers place the employees with respect to the other comparable communities and whether there is movement up or down as a result of the offer, and if so, the degree of such movement. I don't have to do that in this case. The parties' positions have done that for me. Simply put, the facts show that the Village's officers are presently paid at the bottom of the comparable communities; the Village's wage offer seeks to close the gap with respect to these other communities, but still keeps the officers at the bottom of the stack of comparable communities; and the PB&PA's wage offer seeks to place the officers more towards the average of those communities.

So what I am faced with here is the Village's proposal — a substantial one in terms of percentages (4% in May of each year with further 1.25% adjustments in November of each year) and the PB&PA's offer — a *very* substantial one (4% each year with a one time equity adjustment of 11.72% for top pay and 16.73% for starting pay). According to the Village, its offer will serve to move the officers closer to the pay structures in the comparable communi-

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ties, but will still keep the officers at the bottom of the stack and the PB&PA's offer will move the officers towards the average pay in the comparable communities.

By statute, I can only select one of the offers — I cannot construct something in between.¹⁵ The more I do these cases (some 22 now that have gone to decision and some 50 others that have otherwise resolved or are pending), the more I realize that the statutory factors are merely an outline for the interest arbitrator to select the economic offer which is more fair and reasonable.

The difference between the parties' positions on this issue is quite significant. According to the Village, "[t]he amount in dispute between each parties' final offer on wages is \$336,900 or \$112,300 per year."¹⁶

In my opinion, what drives the decision on the wage issue in this case is the *enormous* equity adjustments sought by the PB&PA. The

parties are in agreement on the basic yearly percentage increases (4% per year) but disagree on the further adjustments. The Village seeks to add an additional 1.25% each November 1st of that contract term. However, the PB&PA seeks an *extraordinary* increase at the beginning of the Agreement — a one time equity adjustment of 11.72% for top pay and 16.73% for starting pay.

The PB&PA seeks to add those extraordinary sums to the officers' pay at a time when we are in a non-inflationary economy. Section 14(h)(5) of the IPLRA states that I should look at "[t]he average consumer prices for goods and services, commonly known as the cost of living." That factor weighs heavily against the PB&PA's offer.

According to the *Daily Labor Report* (BNA, 11/16/01 at B-1):¹⁷

Inflation is not a problem for 2002. The consumer price index is expected to moderate from 2.9 percent in 2001 to 1.7 percent in 2002.

See also, the detailed presentation made by the Village showing that its salary proposal substantially ex-

¹⁵ See Section 14(g) of the IPLRA ("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 presented in subsection (h)" [emphasis added]).

¹⁶ Village Brief at 33.

¹⁷ Village Exh. 17-H. *See also*, Village Exh. 17-G.

concept of merit pay appears in Article XIV of the most recent (1998-2001) Agreement which also permits an officer to grieve a "below standards" rating.²⁹

In seeking to eliminate the merit pay system in its entirety, the PB&PA argues, in part, that the standards are based on a "quota" system and are "arbitrary and capricious and unreasonable"; are not applied consistently; are solely controlled by work volume and initiative; and do not permit a satisfactory remedy for disputes because grievances are limited to only situations when an officer receives a

"below standards" rating.³⁰ Therefore, according to the PB&PA, "... the merit system is truly broken and the only way to fix the problem is to eliminate it completely."³¹

By seeking to eliminate the merit system, the PB&PA seeks to change the *status quo*. The PB&PA therefore has the burden to show, as it states, that the merit system is "truly broken". The PB&PA has not carried that burden.

First, the system in general is a product of the collective bargaining process. Merit pay has been in the Agreements dating back to 1986. Moreover, aside from the negotiation of the merit pay concept in the Agreements, as shown by the testimony of Chief Damico (see note 28), the officers' former bargaining representative had a good deal of input into the evaluation tool used for the system. The fact that there is a new employee representative does not negate the existence of the long history of merit pay as a product of the bargaining and labor-management processes.

Second, the PB&PA focuses upon the categories used for evaluations

[continuation of footnote]

See also, the November 9, 1996 letter from FOP Lodge President Robert Legg to Chief Damico (Village Exh. V-26-B):

On behalf of the Lodge, I would like to thank you for allowing us to preview the new evaluation system and for soliciting our input. It is obvious that a great deal of thought and hard work went into condensing and simplifying the previous system into the one presented to the Lodge.

During the Lodge's review of the system, a number of items came into question. During our discussion, some clarification and perhaps some modifications to the proposed system were requested and suggested.

With that in mind, the Lodge Officers are requesting Labor/Management meeting

²⁹ Village Exh. V-2B; Joint Exh. 3.

³⁰ PB&PA Brief at 46-60.

³¹ PB&PA Brief at 46.

and concludes that an officer only receives credit for work in revenue generating categories.³² But, assuming for the sake of discussion that the PB&PA is correct that credit is given only for work in areas which generate revenue, the PB&PA offers *nothing* as an alternative that would require credit for non-revenue generating activity. Instead, the PB&PA merely seeks to *eliminate* the merit pay concept *in its entirety*. The PB&PA proposal does not seek to "fix" the problem it perceives exists. Given that merit pay exists as a result of the bargaining process and extensive input from the employees' former representative, such a drastic position taken by the PB&PA to change — indeed, to eliminate — the *status quo* has not been justified.

Third, the PB&PA points to individual circumstances where it argues that officers were not treated fairly in their evaluations.³³ Assuming for the sake of discussion that there were inequities in administration of the system, those alleged inequities cannot justify the wholesale sacking of a system that

has been the product of the bargaining process — be it at the bargaining table or through input at the labor-management level. If there were perceived inequities then there should have been an offer in this proceeding to tweak or modify the process to try and make it work better — not a proposal to totally eliminate the long-standing previously agreed upon process.³⁴

Fourth, in terms of external comparables, three of the nine agreed upon comparable communities use merit as part of their salary structures.³⁵

³⁴ The PB&PA argues that during negotiations it was not able to address the topic and that Section 21.2 of the Agreement ("... nor shall negotiations for the purpose of altering any or all of the terms of this Agreement be carried on at such [labor-management] meetings") precludes bargaining through the labor-management process. PB&PA Brief at 36-42. The Village disputes the assertion that the PB&PA was not allowed to bargain certain topics. Village Brief at 26. Whatever occurred (or did not occur) during negotiations is not material at this point. During *this* process — the procedure which structures the terms of the parties' contract — there should have been a proposal by the PB&PA to fix the allegedly broken process rather than simply gutting it.

³⁵ Bensenville, Bloomingdale and Glen Ellyn have merit pay provisions. Village Exh. V-29-A and attached contract sections. Bloomingdale and Glen Ellyn appear to use an evaluation tool similar to the Village's. *Id.* at C-3 to C-8. Bloomingdale specifically considers the number of tickets written. *Id.* at C-5.

³² PB&PA Brief at 47-51.

³³ PB&PA Brief at 51-58.

The PB&PA also attacks the fact that resort to the grievance and arbitration procedure can only be used by officers whose evaluations are assessed at "below standards".³⁶ But again, that limitation came about as part of the collective bargaining process. That limitation specifically appears in Section 14.3 of the 1995-1998 Agreement and in Section 14.4 of the 1998-2001 Agreement.³⁷ That negotiated limitation on access to the grievance procedure does not cause me to conclude that the system is broke and needs to be sacked (as opposed to being modified and "fixed").

The PB&PA also argues that the merit pay system violates the public policy of the State of Illinois.³⁸ That argument does not change the result. Arbitrators do not decide questions of public policy. That function is for the courts.³⁹

³⁶ PB&PA Brief at 59-60.

³⁷ Village Exh. V-2-B. Different limitations on grieving merit pay disputes appeared in Section 14.3 of the 1989-1992 and 1992-1995 Agreements. In the 1986-1989 Agreement under Section 14.2, merit pay grievances could not be arbitrated at all, but ended up at the step below arbitration. Village Exh. V-2-B.

³⁸ PB&PA Brief at 60-63.

³⁹ *American Federation of State County and Municipal Employees v. Department of Central Management Services, et al.*, 671 [footnote continued]

I recently faced a similar issue where the union sought to change a provision that it had previously negotiated (there, one concerning scheduling). *County of Winnebago and FOP*, S-MA-00-285 at 19:

But the parties negotiated the 11.5 hour provision in the Agreement. The FOP may not now like that provision and perhaps anticipated eventually getting back to the 12 hour schedule. However, the fact remains that the provision came about through negotiations. Given the lack of comparability support for the FOP's position and no real reason for me to conclude that the 11.5 hour system is "broke" and in need of "repair", I cannot change the parties' previous agreement.

This case is really no different. On balance, where the existing procedure has evolved through negotiations and input from the bargaining representative through the labor-management process and where there is evidence that some other comparable communities use merit tools (albeit perhaps not precisely the same), the fact that a number of officers complain (right or wrong) that the system is unfair cannot cause me to conclude that the merit pay system is totally "broke" and needs to be eliminated in its en-

[continuation of footnote]
N.E.2d 668, 678 (1996) ("Questions of public policy are ultimately left for resolution by the courts.").

tirety. Proposals by the PB&PA to correct perceived inequities would perhaps have helped — but those were not made. There is simply no justification in this record for me to scrap the merit pay system.

In sum then, on merit pay the Village's offer is selected.

D. Sick Leave

1. The Parties' Final Offers

The Village proposes to retain current contract language in Article XII through April 30, 2002; effective May 1, 2002 the current language would continue for employees hired before May 1, 2002; and employees hired after May 1, 2002 would be covered by the Village wide sick leave policy.⁴⁰

The PB&PA seeks to maintain the *status quo* on the sick leave benefit.⁴¹

2. Discussion

Because the Village seeks to change the provisions of Article XII governing sick leave, on this issue the Village has the burden to demonstrate why the change should

be made. That burden has not been carried.

The Village argues that its offer exceeds the sick leave benefit provided to the other comparable communities and:⁴²

... the interest of the public supports the Village's proposal that the sick leave policy be modified. The Village of Lisle police officers cannot effectively serve the community when a large part of their force is taking an extraordinary amount of sick days. Also, when both bargaining unit members and non-bargaining unit members are regulated by the same sick leave system, the administrative burden is eased. Considering the above factors put into play by the parties, it is clear that the Village's sick leave policy should be modified to move closer to external comparables and in the interest of the public.

But this benefit was negotiated between the Village and the former bargaining representative. The structure of this benefit has existed in all of the Agreements since 1986.⁴³ For the same reasons discussed at V(C) which caused me to reject PB&PA merit pay proposal where the terms had been previously negotiated and it has not been demonstrated that the system was broke and in need of repair or that some other compelling reason ex-

⁴⁰ Village Brief at 9, 60-61; Joint Exh. 4-B.

⁴¹ PB&PA Brief at 64-66.

⁴² Village Brief at 60-61.

⁴³ Village Exh. V-2-B at Article XII of each Agreement.

isted to drastically alter the *status quo*, the Village's proposal on this issue to change the *status quo* must be rejected.

The PB&PA's offer is selected.

VI. CONCLUSION

The officers' attempts to make significant gains in this proceeding are understandable. There is a new bargaining representative and it stands to reason that the new representative would seek to demonstrate that substantial perceived inequities should be changed. Likewise, the Village understandably would like to diminish what it perceives to be benefits which are too high.

But this is an interest arbitration which is governed by statutory factors and burdens requiring the demonstration by the moving party for the need for drastic changes to the *status quo*. In the end, in the application of the statutory factors and burdens, hopefully reason is the ultimate deciding factor.

Taking into account the parties' strong presentations on the disputed issues, the Village shall prevail on wages, duration and merit pay and the PB&PA shall prevail on sick leave.

VII. AWARD

In sum, the following offers have been selected:

1. Wages - Village's offer (4% each May 1 and 1.25% each November 1 for the years 2001-2004).

2. Duration of the Agreement - Village's offer (four years, terminating April 30, 2005).

3. Merit pay - Village's offer (maintenance of merit pay system with the evaluation tool incorporated into the Agreement as an appendix).

4. Sick leave - PB&PA's offer (no change).



Edwin H. Benn
Arbitrator

Dated: December 16, 2002