

IN THE MATTER OF INTEREST ARBITRATION)
BETWEEN:)
)
VILLAGE OF NILES,) Marvin Hill, Jr.
ILLINOIS (EMPLOYER)) Neutral Arbitrator
)
and) S-MA-02-257
) S-MA-01-228
) Interest Arbitration
INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 726 (UNION).)
_____)

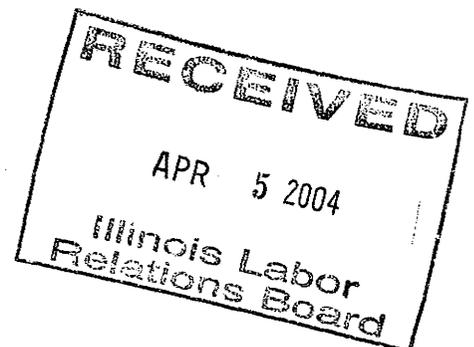
Appearances

For the Union: Joel D'Alba, Esq., Asher, Gittler, Greenfield & D'Alba, Ltd., 200 West Jackson Blvd, Ste 1900, Chicago, Illinois 60606.

For the City: Bruce C. Mackey, Esq., Franczek & Sullivan, 300 South Wacker Drive, Ste 3400, Chicago, Illinois 60606.

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

In accordance with the parties' stipulations, the undersigned Arbitrator was appointed to hear and determine this interest dispute involving a first collective bargaining agreement (Jt. Ex. 3). Hearings were held on December 17 & 18, 2002, and on January 21, 2003, at the Niles Fire Station facility. In addition, a mediation session was held between the undersigned Arbitrator and Board Members Barry Mueller (for the Village) and Donald Kaderabek (for the Union) on January 20, 2003. At that session numerous issues were resolved and made part of the record (R. 303-340). Lengthy post-hearing briefs were filed on March 18, 2003, and exchanged through the offices of the Arbitrator. The record was closed on that date. A second executive session was held on April 3, 2003, in Arlington Heights, Illinois.



A. Unresolved Issues

As cited by the Union, what remains unresolved (generally) are the following issues (not necessarily final offer impasse items for purposes of the statute):

- I. Economic Issues
 - A. Wage Increases
 - C. Retroactivity
 - E. Lieutenant Pay\District Chief Differential
 - F. Out of Rank Pay
 - G. Step FF-Ten Years of Service

- II. Health Care [economic]
 - A. Premium Payments-Employee Share
 - D. Retiree Health Insurance

- IV. Additional Time Off [economic]
 - I. Floaters
 - II. Vacation Time
 - III. Carry Over of Floaters
 - IV. Pay for Working on a Holiday

- V. Manning [economic]
- VI. Sick Leave [economic]
- XVI. Hours of Work [economic]
- XVII Discipline/file retention [non-economic issue]

The above list (which retains the original classification and numeric designation of "open issues" in the pre-hearing stipulations (See, Jt. Ex. 1), also retained by the undersigned) reflects the Union's view as to the impasse items for resolution (See, *Brief for the Union* at 3-4). The Village asserts that certain portions of the Union's final offer, specifically salaries, includes fractionalized proposals inconsistent with the underlying purpose of the Illinois Public Labor Relations Act (See, *Brief for the Employer* at 6-9, and supporting citations). To this end the Administration lists ten (10) broad issues for arbitral resolution: 1) retroactivity; 2) out-of-rank pay; 3) health care; 4) floaters; 5) vacation time and carryover; 6) pay for working on a holiday; 7) manning; 8) file retention; 9) sick leave; and 10) salaries. *Id.* at 1. The conflicts in the parties' positions will be addressed in this opinion.

The parties have further stipulated to reserve the right to submit to the arbitrator any issues arising from the preparation of contract language for tentative agreements which have not been

reduced to writing. The Union submitted a list of these issues along with its final offer. The Board accepts the stipulation.

B. Statutory Authority

As noted, this dispute involves both economic and non-economic issues (discipline). As the parties know, the Act restricts the Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. Section 14(g) of the Illinois Public Labor Relations Act (the "Act") reads:

As to each economic issue, the arbitrator panel shall adopt the last offer of settlement which, in the opinion of the arbitrator 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).

5 ILCS 315/14.

In ruling on this dispute, the Arbitrator is guided by criteria established by Section 14(h) of the Act. The eight factors specified by the Act for arbitrator guidance are as follows:

- (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 costs 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.

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable." Accordingly, a listing of the eight (8) separate factors does not necessarily mean that all eight factors are relevant or controlling. While the statutory factors must be considered and applied within the context of the parties' existing collective bargaining relationship, depending on the issue, certain factors are undoubtedly more important than others. The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue.

III. POSITION OF THE FIREFIGHTERS

The position of the Firefighters, as outlined in its written final offer of January 29, 2003, and exchanged with the Village, is as follows:

I. Economic Issues

A. Wage Increases

The Village Grade and Step Salary Plan for Fire Fighters and Lieutenants shall be increased on May 1, 2002 by 3.75 %.

The Village Grade and Step Salary Plan for Fire Fighters and Lieutenants shall be increased on May 1, 2003 by 3.75 %.

The Village Grade and Step Salary Plan for Fire Fighters and Lieutenants shall be increased on May 1, 2004 by 3.75 %.

C. Retroactivity

Employees covered by this agreement who were in payroll status as of May 1, 2002, shall receive a retroactive payment, which shall be based on the difference between the salary they receive between May 1, 2002 in the beginning of said payroll period and the salary they would have received during the same period of time based upon the salary increases contained in the arbitration award. All overtime hours, holiday pay and any other economic benefits based upon the hourly wage rate or salary paid during the retroactivity period shall be recalculated based upon the salary increase awarded by the arbitrator.

E. LIEUTENANT PAY/DIFFERENTIAL - DISTRICT CHIEF
DIFFERENTIAL

The wage section of the contract shall contain the following provision:

An employee promoted to the rank of lieutenant shall be placed on the lieutenant pay schedule with the pay step that is two steps higher than the employees' current pay step.

Lieutenants shall receive a two (2) percent equity adjustment of one (1) percent effective May 1, 2003 and one (1) percent effective May 1, 2004.

F. Out-of-Rank Pay

Employees who work as acting lieutenants shall be paid on the basis of the lieutenants' pay level for each hour worked as an acting lieutenant.

G. STEP FF-10 YEARS OF SERVICE

The Village Grade and Step Salary Plan shall be amended by adding a pay step, FF for all bargaining-unit employees with 10 years or more of service, which shall be two and one-half percent (2 & 1/2 %) higher than step F of the Village Grade and Step Salary Plan. Step FF is to commence when an employee commences the tenth year of service.

II. HEALTHCARE

A. Premium Payments-Employee Share

The contract shall contain the following health insurance provision: The Village agrees to continue to provide medical insurance for employees and their dependents at substantially the same levels as provided in the 2001 fiscal year. The Union agrees that, if the Village decides to implement village-wide cost containment measure, those measure shall apply to members of the bargaining unit. The Village agrees to pay 100 percent of the cost of the premiums of both the single and family insurance -plans.

B. Retiree Health Insurance

The health insurance section of the contract shall contain the following: Employees who retire from the Fire Department because of age and service or disability shall along with their dependents remain eligible under the group health care benefit program. Surviving spouses of employees (or retirees) and surviving dependents fo employees (or retirees) shall also be covered by such program. The Village shall pay fifty percent (50%) of the cost of the premium for their persons covered in this sub-paragraph until the individual becomes Medicare eligible. Persons covered in this section upon becoming Medicare eligible shall remain eligible, at their option, to be covered by the Village's supplemental Medicare policy by paying the them current premium.

Employees who retire from the Fire Department because of duty disability shall along with their dependents remain eligible under the group health care benefit program as if they were current employees. Such persons shall however pay for their dependents= health care benefits at the Village rate.

IV. ADDITIONAL TIME OFF

A. Floaters

Article IV of a collective bargaining contract shall include the following section concerning floaters:

Effective January 1, 2003, Employees shall be allowed to have time off of ten 10 days or approximately one duty day every 28.07 calendar days. These days off are work reduction days in accordance with the FLSA operating schedule of twenty-seven (27) days for each tour of duty. These work reduction days will be known as floaters. Five (5) floaters will be assigned per member for 2003, and five (5) floaters will be designated by each Employee. The average work week shall be _____. The selection of floaters shall be made after all vacation, personal days and assigned floaters are designated.

Effective January 1, 2004, employees will be allowed to have time off of twelve (12) or approximately one duty day every 28.07 calendar days. These days off are work reduction days in accordance with the FLSA operating schedule of twenty-seven (27) days for each tour of duty. These work reduction days will be known as floaters. Six (6) floaters will be assigned per member for 2004, and six (6) floaters will be designated by each Employee. The average work week shall be _____. The selection of floaters shall be made after all vacation, personal days and assigned floaters are designated.

B. Vacation Time

Article XI, the vacation article shall contain the following:

Section 11.4. Selection for all vacation, personal days and employee designated floater days shall be made between October 1 and December 31. Only four persons per platoon may be on vacation or floater each day. Only two lieutenants per platoon may be on vacation each day, for vacation days entered on the first and second pick. Other selections as floaters, personal days can be made to a maximum of two lieutenants per duty day. These will be no minimum number of days for the first pick. The original posted vacation request list is to be signed by each employee. Upon completion of the second picks, the district chief will complete a typewritten list of the vacation days selected by each member of his shift, and the original list will be forwarded to the fire chief for his records. Vacation days will be recorded for each employee in the Duty of Record Log.

If vacation days are not used by the end of the calendar year, the employee will forfeit the unused vacation benefit, except as provided in the sick leave article of this agreement. Vacation days cannot be carried over into the following year. Employees will accrue vacation time if they are on an excused, paid leave of absence. If the employee is on an unexcused and unpaid leave of absence, the vacation time is not accrued.

C. Carry over of floaters

The vacation section of the contract shall include the following provision for the carry over of floaters.

Section 11.5. Scheduled floaters vacation days or personal days occurring during sick leave will be rescheduled, but an employee shall be allowed to carry over into the next calendar year any vacation time or personal time that could not be used due to an on duty injury and to April 30 of the next calendar year and vacation

time or personal time that could not be used due to off-duty illness or off-duty injury.

D. Pay For Working on a Holiday

The holiday pay provision shall contain the following:

Employees shall receive eight (8) hours of pay at one and one-half the employee's regular rate of pay for each holiday. Holiday pay will be calculated based on the Employee's straight time pay rate as of the date of the holiday. Shift personnel on unpaid leave of absence shall not receive the holiday pay benefit.

Employees shall be paid two times the employee's regular rate of pay for being hired back to work on a holiday.

V. Manning

The contract shall contain a manning section as follows.

On-duty daily minimum manning levels shall be three personnel for fire trucks, three personnel for engine companies and two personnel - paramedics for ambulances.

VI. Sick leave

The union believes there should not be any change in the employer's current sick leave program.

XVI. Hours of work

The contract shall contain the following provisions for the Hours of Work Section.

4.1 Duty Day. This article is intended to define the regular hours of work per day or per week during the term of this Agreement and shall not be construed as a guarantee of work per week.

Employees shall be assigned regular duty shifts. The normal duty shift shall commence at 8:00 a.m. and end at 8:00 a.m. the following day, including a accumulative one hour lunch and two fifteen (15) minute breaks. The normal duty schedule shall be one shift (twenty-four (24) hours) on duty followed by two shifts off duty (forty-eight (48) consecutive hours.

The work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) is an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 8:00 a.m. to 8:00 a.m., the following day. The amounts set forth on the salary schedule represent a fixed annual amount to be received for the annual number of hours worked under this schedule minus floating holidays and personal leave days

4.2 Overtime. Any time worked beyond an employee's scheduled work day shall be defined as overtime, including emergency recall, hireback due to personnel shortage, holdover, mandatory training, including paramedic training, emergency maintenance, public education programs directed by the Fire Chief or his designee. Overtime shall be paid at time and one half of the employee's regularly hour rate. An employee required to work on the employee's day off with the exception of holdover shall receive a minimum of two hours pay at the employees overtime rate. Employees who are forced back due to incomplete manning to work a shift on a regular scheduled day off shall be paid at two times the employee's hourly rate of pay.

An employee shall receive compensation for overtime on the next scheduled day after working the overtime. Any overtime accrued as a result of the Fair Labor Standards Act shall be included on the next schedules pay day following completion of the work cycle. An employee's straight time hourly rate of pay for purposes of the overtime calculation and payment of overtime shall be based upon a ____ work week for 2003 and upon a ____ work week for 2004, determine by dividing the annual salary including paramedic pay, longevity pay, speciality pay, e.g. engineer pay, and any other stipends by _____. Paid time not worked, including sick leave, vacation time and holiday time shall be included in hours worked for purposes of calculating overtime.

4.3 Overtime Work. The Fire Chief of his designee(s) shall have the right to require overtime work and employees may not refuse overtime assignments, except where the employee or a member of the employee=s family has an extraordinary emergency condition.

4.4 Call back - Callback shall be defined as overtime for employees who return to work for general alarms. Call back shall be voluntary except when the Department has an unusual emergency condition. An employee responding to a callback shall receive a minimum of two hours pay at the employee's overtime rate. When the callback ends, the employees on callback shall be dismissed.

If the callback is cancelled prior to an employee's arrival at the fire station, the employee shall receive one hour minimum call in pay if the employee has responded in a reasonable time to the cancelled callback. In the event of a callback that occurs between 0600 and 0800, employees who are scheduled to work at 0800 shall be paid only for the additional hours worked, not the guaranteed two hours.

4.5. Holdover

(a) Holdover shall be defined as overtime for which an employee of the appropriate classification is held over or extended after the completion of the scheduled shift to cover a manpower shortage or to complete a service call.

(b) In order to cover an unexpected manpower need at the beginning of a shift and not anticipated to last longer than five hours, an employee may be held over for up to five hours beyond their regular scheduled shift. In order to cover an unexpected manpower shortage at the beginning of a shift and anticipated to last longer than five hours, an employee may be held over during the period a hireback is located or longer if a hireback is not obtained. The Fire Chief or designee will first request volunteers of the appropriate rank of classification from the preceding shift to work the position for which the manpower shortage exists. If after requesting volunteers from the preceding shift, the manpower shortage still exists, the Fire Chief or designee may require employees from the preceding shift to work on the basis of a reverse seniority list that restarts at the commencement of each calendar year.

4.6 Hireback

(a) Hireback shall be defined as overtime for which an employee voluntarily returns to work because of a manpower shortage. An expected hireback shall be defined as a manpower shortage that is reasonably anticipated prior to the date it is needed. An unexpected hireback is a manpower shortage that arises just prior to the start of a shift. The Department shall provide a fair distribution of overtime opportunities through the use of rotating lists of employees. The first employee on the seniority hireback list who can be utilized to satisfy a manpower shortage shall be offered the hireback. If all employees available to work the hireback hours decline the opportunity, the employees on furlough and floaters will be offered the hireback, and of those employees who decline, the Village shall assign the hireback in reverse seniority. The least senior employee who has not been previously assigned a forceback shall be assigned to work the hours and additional employees shall be assigned to work the hireback until all employees have been hired to work at which time the process shall repeat itself.

(b) The hireback list shall be maintained by a District Chief for each shift and shall be sent by facsimile transmission to Station 3 at the end of the normal work day. Two hireback lists shall be maintained: One list for hirebacks of twelve hours or more and one list for hirebacks of less than twelve hours. The initial hireback lists will be rotating lists according to seniority from the highest seniority to the lowest seniority. New hires will be placed at the bottom of the lists.

(c) Attempts to contact the employees on the list will be made by telephone or pager. The employee shall provide a phone or pager number for this purpose. If an employee first on the list is unavailable or does not respond to the phone call or pager, the employee next on the list shall be contacted. Employees shall have fifteen (15) minutes to respond to a pager or phone call. Any employee contacted shall have the option of accepting or refusing the hireback. If the hireback is accepted, the employee's District Chief will advise the employee by copy of roster of what time to report for duty, as well as the station to which the employee should report. If the hireback assignment is accepted or refused, the employee's name shall go to the bottom of the list unless one of the follow conditions exist:

1. The employee is already committed to another department activity (i.e., on duty, school, public education assignment).
2. The employee is on furlough, holiday, Kelly day or duty trade when the hire back is to occur.
3. The employee is not eligible for the hire back due to roster considerations.
4. If more than one hireback is needed for a specific shift, hirebacks of twenty four (24) hours shall be offered first.
5. An employee on hireback may not be compelled to work more than a twelve (12) hour tour of duty.
6. Failure to respond to a phone call or pager shall be considered a refusal to accept the hireback assignment.
7. An employee on sick leave shall not be offered a hireback until the employee returns to duty.

8. Nothing set forth herein shall limit the ability of the Fire Chief to require an employee to work overtime when an unusual emergency condition exists.

4.8 House and Routine Duties

House duties, routine work duties, training, drilling, and pre-plans of Village structures shall be performed only between 0800 to 1700 hours Monday through Friday, 0800 to 1400 hours Saturdays and 0800 to 1200 Sundays and recognized holidays. The work routine for Sundays and holidays will be maintained. Stand down time shall commence no later than 1700 hours Monday through Friday, 1400 hours on Saturday and 1200 hours Sundays and all holidays recognized by the Village. Under no circumstances shall an employee meet with customer or clients or potential customers at the fire station during either assigned or stand down time. No employee shall use Village equipment for their private business pursuits. The work routine for Saturdays, Sundays and holidays will be maintained.

Employees will continue to perform those duties sworn employees have performed in this past, any duties normally performed by firefighters, as well as new duties reasonably related to duties the firefighters have performed in the past. Employees will not be required to perform any duties requiring the services of an electrician, mechanic, painter, plumber, or carpenter and will not be required to test fire hydrants, remove snow from fire hydrants unless more than eight inches of snow have fallen in a 24 hour period and will not be required to operate snow plows.

Employees can exercise, during assigned hours, between 1600 - 1700 or during their lunch period, and the Village reserves the right to require physical exercise. Employees electing to exercise during their lunch period agree to waive any right to a lunch period.

The Department will allowing a reasonable number of employees from each station a reasonable amount of time for grocery shopping each day, provided that this does not interfere with calls for service. Use of a department vehicle is allowed.

It is further provided that except for emergencies, employees may retire for the day after completion of the house and the routine duties as set forth above, but not before the end of the work day without approval of the Company Officer.

4.9 Light Duty

Fire Chief or his designee, at his/her discretion, offer light duty work to an employee with a physician approval, provided there is meaningful Fire Department work to be performed and the employee is unable to perform full duty responsibilities because of injury or disability. The hours of work for an employee with a light duty assignment shall be eight consecutive hours per day for two days per week, Monday through Friday, between 7:00 a.m. and 7:00 p.m. if, excluding an one hour unpaid lunch period.

4.10 Compensatory Time Off

Each firefighter may elect to be paid overtime in compensatory time off, also known as time due, to be taken in increments of one hour or more. Each firefighter may have or holdover up to 96 hours for use as compensatory time in any calendar year.

4.11 Pyramiding

Compensation may not be paid more than once for the same hours under any provision or provisions of this Article or Agreement.

Article XVIII. Discipline

The discipline section of the contract shall contain the following:

The parties further agree that all discipline shall be expunged from an employee's personnel and /or disciplinary file(s) three (3) years after the discipline is received by the employee, so long as there has been no additional discipline during the three (3) year period. All such expungements shall take place upon the applicable anniversary of the last discipline.

The parties have stipulated that they have reserved the right to submit to the arbitrator any disputes arising from the preparation of contract language for tentative agreements that have been reached but which have not been reduced to writing. See attached list.

IV. POSITION OF THE VILLAGE

The Village's January 30, 2003, final offer on the impasse items, exchanged with the firefighters, is as follows:

A. Wage Increases

Firefighter/Paramedics 2002-2003 (a 3.00% raise at each step)

Start	\$45,485
After 1 year	\$47,759
After 2 years	\$52,654
After 3 years	\$55,287
After 4 years	\$58,051
After 5 years	\$60,953

Firefighter/Paramedics 2003-2004 (a 3.50% raise at each step)

Start	\$47,077
After 1 year	\$49,431
After 2 years	\$54,497
After 3 years	\$57,222
After 4 years	\$60,083
After 5 years	\$63,086

Firefighter/Paramedics 2004-2005 (a 3.50% raise at each step)

Start	\$48,725
After 1 year	\$51,161
After 2 years	\$56,404
After 3 years	\$59,225
After 4 years	\$62,186
After 5 years	\$65,294

Lieutenants

The Village proposes no additional raises beyond those already given to the Lieutenants for 2002. Those raises are set forth below:

Lieutenants 2002 - 2003 (a 3% raise at each step)

Start	\$58,051
After 1 year	\$60,953
After 2 years	\$64,001

After 3 years \$67,201

Lieutenants 2003 – 2004 (a 5.5% raise at each step)

Start \$61,244
After 1 year \$64,305
After 2 years \$67,521
After 3 years \$70,897

Lieutenants 2004 – 2005 (a 3.5% raise at each step)

Start \$63,388
After 1 year \$66,556
After 2 years \$69,884
After 3 years \$73,378

If an employee is promoted after 4 years of service in the department, the employee is placed in the start step.

If an employee is promoted after 5 years of service in the department, the employee is placed in the after 1 year step.

If an employee is promoted after 6 years of service in the department, the employee is placed in the after 2 years step.

Initial Salary Placement For Firefighter/Paramedics

The above salary schedules are for untrained hires. New hires state certified as Firefighter II will be placed at the "after 1 year" step. New hires state certified as Firefighter II and as a system recognized paramedic will be placed at the "after 2 years" step.

Step Increases For Firefighter/Paramedics and Lieutenants

Employees who were hired or promoted before December 31 of the previous year will be entitled to their step increases on the next May 1. Employees hired or promoted after December 31, will receive their step increase on May 1 of the following year.

Longevity For Firefighter/Paramedics and Lieutenants

Years of service shall be calculated based upon the most recent full time starting date with the Village.

Employees shall receive longevity pay in the amount of one week's pay, less regular deductions, after eight years of service, if the anniversary falls with the current fiscal year. (May 1 to May 1).

Employees shall receive longevity pay in the amount of two week's pay, less regular deductions, after fifteen years of service, if the anniversary falls with the current fiscal year. (May 1 to May 1).

Out of Rank Pay

Any firefighter/paramedic assigned to perform the duties of a lieutenant shall be paid at the hourly rate for that position for all hours worked in that position.

B. Retroactivity

Salary increases shall be retroactive to the beginning of the contract.

C. FF Step

The Village proposed that no FF Step be awarded.

D. Overtime Pay For Paramedic's Training

Effective January 1, 2003 employees taking paramedic training for initial paramedic certification will be paid overtime for the time they spend in training outside of normal work hours.

II. HEALTHCARE/INSURANCE

A. Premium Payments - Employer Share

B. Retiree Insurance

ARTICLE ____ (proposed)

INSURANCE

Section ____ Coverage. The comprehensive group insurance program in effect when this agreement becomes effective shall be continued during the term of this agreement, provided, however, the Village reserves the right to change insurance carriers and benefit levels as long as the coverage and benefits remain substantially similar.

The Village agrees to make a HMO or other lower-cost insurance option available beginning on May 1, 2003 under the following conditions. The selection of the HMO and / or terms of the lower-cost option are entirely at the discretion of the Village and shall not be the subject of mid-term negotiations. The Village shall only be obligated to implement the HMO or lower-cost insurance option if at least 10 bargaining unit members irrevocably elect such coverage for the year. The Village may terminate the HMO or lower-cost insurance option on May 1 of any succeeding year if less than 10 bargaining unit members elect such coverage. If less than 10 bargaining unit members elect the HMO or lower-cost option, the Village shall be relieved from the obligation to provide such coverage for the remaining term of the Agreement.

The Village reserves the right to self-insure or utilize group insurance carriers as it deems appropriate. The Village will notify the Union of any changes in insurance, and upon request, will discuss these changes prior to implementation.

Section _____. Cost of Coverage. Beginning on the same date that any wage increases become effective under this Agreement, employees will contribute the following amounts monthly toward the cost of insurance:

	Medical		Dental	
	Single	Family	Single	Family
2001	\$18.65	\$50.37	\$1.82	\$4.88
2002	\$21.65	\$58.44	\$1.70	\$4.55

Employees shall share in the cost of any HMO or lower-cost insurance option at the same percentage contribution as the regular plan. Contributions will be made by pre-tax payroll deduction. On each succeeding May 1, the employee contribution rates shall be adjusted such that employees shall share the same percentage of insurance cost from year to year. Beginning May 1, 2003, the Village shall also establish equivalent rates for single plus one dependent and single plus children.

Section _____. Cost Containment. The Village reserves the right to institute any cost containment measures relative to insurance coverage, provided that group health, medical and hospitalization insurance and dental benefits will be substantially similar to those provided prior to the signing of this Agreement. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider options, prohibition on week-end admissions except

for emergency situations, and mandatory outpatient elective surgery for certain designated surgical procedures.

Section _____. Retiree Coverage. For the term of this Agreement, the Village will permit active bargaining unit members who retire during the term of this Agreement to continue their insurance coverage on the same terms as are granted generally to all other Village employees from time to time and will comply with applicable legal requirements such as the Firemen's continuance privilege (215 ILCS 5/367f). Such retirees shall be required to pay 100% of the monthly premiums as may be established from time to time for insurance benefits.

Section _____. Section 125 Flex Program. The Village will offer bargaining unit members the opportunity to participate in the Village Section 125 Flex program on the same terms and conditions applicable to other Village employees generally.

IV. ADDITIONAL TIME OFF AND HOURS OF WORK

- A. Floaters
- B. Carryover of Floaters
- C. Pay for Working on Holidays
- D. Vacation Time

ARTICLE ____ (proposed)

HOURS OF WORK AND OVERTIME

Section ____ Duty Day. This article is intended to define the regular hours of work per day or per week during the term of this Agreement and shall not be construed as a guarantee of work per week.

Employees shall be assigned regular duty shifts. The normal duty shift shall commence at 8:00 a.m. and end at 8:00 a.m. the following day, including a one accumulative hour lunch and two fifteen (15) minute breaks. The normal duty schedule shall be one shift (twenty-four (24) hours) on duty followed by two shifts off duty (forty-eight (48) consecutive hours).

Effective January 1, 2003, the work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) will be an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 8:00 a.m. to 8:00 a.m., the following day. The amounts set forth on the salary schedule represent a fixed annual amount to be received for the annual number of hours worked under this schedule minus floaters and personal leave days.

Section ___ Overtime. Any time worked beyond an employee's scheduled work day shall be defined as overtime, including emergency recall, hireback due to personnel shortage, mandatory training, emergency maintenance, and public education programs directed by the Fire Chief. Effective January 1, 2003 employees taking paramedic training for initial paramedic certification will be paid overtime for the time they spend in training outside of normal work hours. Overtime shall be paid at time and one half of the employee's regularly hour rate in quarter hour increments. If the employee works less than fifteen minutes, the employee shall be paid the overtime rate for each six minutes worked. An employee who has left the Fire Station after working a scheduled shift and is required to return or an employee who receives training shall receive a minimum of two hours pay at the employees overtime rate.

Section ___ FLSA Work Period. Effective January 1, 2003, the work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) will be an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 8:00 p.m. to 8:00 p.m. The amounts set forth on the salary schedule represent a fixed annual amount to be received for straight time pay for 2648 hours (2912 hours minus 10 floaters and one personal leave day.)

Section ___ FLSA Overtime. An employee shall, in addition to regular compensation, be paid time and one-half times his/regular straight time hourly rate for all hours of actual work in excess of 204 hours in the employee's regular twenty-seven (27) day work cycle. An employee's regular rate shall be computed in accordance with the requirements of the Fair Labor Standards Act.

Section ___ Overtime Work. The Fire Chief or his designee(s) shall have the right to require overtime work, and employees may not refuse overtime assignments except where the employee or a member of the employee's family has an extraordinary emergency condition.

Section ___ Floaters. Effective January 1, 2003, employees will be allowed to have 10 days off per year. These days off are work reduction days in accordance with the FLSA Operating Schedule of twenty-seven (27) days. These work reduction days will be known as floaters. Six of these floaters will be assigned by the Chief or his designee and four may be selected by the employees. Employees may use duty trades to change their floater days, provided that the change does not result in any overtime for the Village.

Section _____ **Call Back.** Callback shall be defined as overtime for employees who return to work for general alarms. Call back shall be voluntary except when the Department has an unusual emergency condition. An employee responding to a callback shall receive a minimum of two hours pay at the overtime rate.

If the callback is cancelled prior to the employee's arrival at the fire station, the employee shall receive one hour minimum call in pay if the employee has responded in a reasonable time to the cancelled callback. In the event of a callback that occurs between 0600 and 0800, employees who are scheduled to work at 0800 shall only be paid for the additional hours worked, not the guaranteed two hours.

Section _____ **Holdover.**

(a) Holdover shall be defined as overtime for which an employee of the appropriate classification is held over after the completion of the scheduled shift to cover a manpower shortage or to complete a service call. Overtime shall be paid at the rate of time and one half (1 ½) in quarter hour increments.

Section _____ **Hireback.**

Overtime distribution for predetermined hire back situations will be distributed by the following procedure. No rank or job classification shall monopolize or be excluded from the opportunity to hire back. Distribution shall be controlled by the following guidelines:

- Each shift will have three hire back roster lists consisting of the personnel assigned to that shift. One hire back roster list will be for voluntary hire backs of twelve (12) hours or more. The second hire back roster list will be for voluntary hire backs of less than twelve (12) hours. The third hire back roster list will be for mandatory hire backs.
- All of the hire back roster lists shall be initially compiled in a descending order of seniority based on employment date and will contain all shift personnel below the rank of District Chief.
- Predetermined hire backs will be obtained from the shift being relieved, with as much notification as possible.
- For a predetermined hire back situation, hire backs shall be first offered on a voluntary basis according to the order of the appropriate voluntary hire back roster list. The hire back shall be offered to the person highest on the voluntary hire back roster list that can fulfill the required duties of the shift in need of the hire back.
- If the person either accepts or declines the hire back offer or is off on sick leave (excluding duty related injury/illness), that person's name is placed at the bottom of that hire back roster list.

- If the person is already committed to other department activities, can't be offered the hire back due to roster considerations or is already on duty for the shift in need of the hire back then that name is passed over.
- This process will continue until the hire back is filled.
- If the necessary hire back has not been filled after proceeding in this manner through the entire appropriate voluntary hire back roster list, the person highest on the mandatory hire back roster list that can fulfill the required duties of the shift in need of the hire back shall be required to work the hire back or find a suitable replacement.

When an employee must be replaced for an extended period of time, hire backs for that employee will be obtained based on the following guidelines:

- The hire backs will be divided by date between the two unaffected shifts.
- The shift preceding the shift in need of the hire backs will take the hire backs on odd dates.
- The shift that follows the shift in need of the hire backs will take the hire backs on even dates.
- The Fire Chief or his designee will enact this hire back procedure.

When a hire back becomes necessary during the course of a duty day for that duty day the following procedure shall be followed:

- All of the department issued pagers shall be activated and a code shall be transmitted indicating the need for a hire back.
- The first employee that responds, either in person or by telephone, that can fulfill the required duties of the shift and be available to report to work within one (1) hour shall be granted the hire back.

General Guidelines:

- A person will not have their name moved to the bottom of the hire back roster nor be required to work a hire back if that person has any of the following occurring on their duty day before or after the day for which the hire back is needed:

- A. Scheduled Leave
- B. Emergency Leave
- C. Bereavement Leave

- An individual may request to be contacted during any of the above listed leaves in order to be notified of a hire back. This request shall be in writing to the persons responsible for procuring hire backs. If an individual is contacted a decision regarding the hire back will be made and posted accordingly. One page or one phone call at the number provided by the requesting employee will be considered contact and the waiting period for a response will be fifteen (15) minutes. If there is no response in fifteen (15) minutes that person's name is placed at the bottom of that hire back roster.

- Decisions Regarding the Taking of Hire Backs – When asked if available to take a hire back a decision shall be made within fifteen (15) minutes. However, at shift change or when time is critical and a decision is needed directly, five (5) minutes will be allowed. If no decision is made during these time frames, the individual's name will be placed at the bottom of the list.
- Posting of predetermined or extended leave hire backs will be allowed two duty days prior to the need. The two duty days will be counted on the shift providing the hire back.
- Trading of overtime will be allowed. However, this practice will be a personal matter between participating individuals and the Fire Department will encumber no expense.
- A District Chief or the department's clerical staff shall be responsible for procuring a hire back except in their absence. In their absence, a Lieutenant or his designee shall be responsible for procuring a hire back.

These guidelines cannot be expected to cover every contingent hire back situation. They have been developed to simplify and standardize the process in the department.

Section **Floater**s Employees will be allowed seven floater days. Effective January 1, 2003, Employees will be allowed ten floater days per year. Floaters cannot be carried over to the following year.

Section **House and Duties.**

Stand down time for 24-hour shift personnel shall normally commence no later than 5:00 p.m. Monday through Friday and 2:00 pm on Saturday and noon Sunday and the on the 10 holidays designated annually by the Village. No employee shall use Village equipment or supplies for their private business pursuits. Under no circumstances shall an employee meet with customers/clients or potential customers/clients at the fire station during either assigned or stand down time.

Employees will continue to perform those duties sworn employees have performed in the past, any duties normally performed by firefighters, as well as new duties reasonably related to duties the firefighters have performed in the past. Employees will not be required to perform any duties requiring the services of an electrician, mechanic, painter, plumber, or carpenter.

It is further provided that except for emergencies, employees may retire for the day after completion of the house and the routine duties as set forth above, but not before the end of the work day without approval of the Company Officer. Notwithstanding the above hours limitations, the Village may require employees to participate in a reasonable number of public education appearances or public education activities each year.

Section **Holidays** The following days shall be considered holidays:

New Year's Day (January 1)
Presidents' Day (third Monday in February)
Spring Holiday (Friday before Easter)
Memorial Day (last Monday in May)
Independence Day (July 4)
Labor Day (first Monday in September)
Veterans' Day (November 11)
Thanksgiving Day (fourth Thursday in November)
Day After Thanksgiving
Christmas Day (December 25)

A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on a Sunday will be observed on the following Monday.

Section Holiday Pay and Work Requirements Employees shall receive eight (8) hours of pay at one and one half times the regular rate for each holiday whether they work the holiday or not. To be eligible for holiday pay, employees must work the last scheduled day immediately preceding and the first scheduled day immediately following the holiday. In the event an employee does not work the day before or after a holiday, proof of sickness or excusable absence must be established to the satisfaction of the Chief or his designee.

If an eligible employee works on a recognized holiday, he/she will receive holiday pay. In the event the employee is scheduled to work on a holiday but calls in sick, he/she will not receive holiday pay.

Section Overtime Pay for Holidays Worked Employees working a hireback on a holiday will be paid double time.

Vacation Time

Section Eligibility and Allowances. Every employee covered by this Agreement shall be eligible for paid vacation time. Employees shall start to earn vacation allowance as of their date of hire. Vacation allowance shall be earned as follows:

After hire date, an employee will accrue 8 hours per full calendar month of service not to exceed five (5) duty days.

After completing five years of service - 7 duty days.

After completing thirteen years of service - 9 duty days.

After completing fifteen years of service - 10 duty days.

After completing twenty-five years of service - 12 duty days.

Each year, prior to vacation selection, a current Accrued Vacation Time schedule will be posted.

Section ___ Vacation Selection The vacation period extends from January 1 to December 31. All accrued furlough or vacation days shall be used in the current vacation calendar year. Vacation days shall be chosen by seniority within the bargaining unit

Section ___ All vacation, personal days and seventh, eighth, ninth and tenth floater selection shall be made between October 1 and December 31. Only three persons per platoon may be on vacation or floater each day. Only two lieutenants per platoon may be on vacation, personal day or floater each day. There will be no minimum number of days for the first pick. The original posted vacation request list is to be signed by each employee. Upon completion of the second picks, the district chief will complete a typewritten list of the vacation days selected by each member of his shift, and the original list will be forwarded to the fire chief for his records. Vacations days will be recorded for each employee in the Duty of Record Log.

If vacation days are not used by the end of the calendar year, the employee will forfeit the unused vacation benefit. Vacation days cannot be carried over into the following year, except with the approval of the Chief or as provided elsewhere in this Contract. In the event the Chief approves a carryover, the vacation days must be taken in either January or February of the following year. Employees will accrue vacation time if they are on an excused, paid leave of absence. Vacation time is not accrued during leaves of absence.

Section ___ Scheduled vacation days occurring during sick leave will be rescheduled, and an employee shall be allowed to carry over into the next calendar year vacation time that could not be used because of sickness or injury.

V. MANNING

Minimum manning shall be as follows: three personnel on all fire apparatuses and two on all ambulances.

VI. SICK LEAVE

The purpose of sick leave is to provide full-time employees with limited protection against loss of income due to genuine personal sickness or non-duty injury, which disables the employee and prevents the employee from effectively performing their duties. Sick leave

is not to be used as a means of obtaining additional paid time off. Sick leave shall not be used as personal days, additional holidays, extending vacation leave, or regular leave to be taken at the employee's discretion. Authorized sick leave will be utilized for an employee's absence due to an illness or injury that does not qualify for Workman Comp Benefits. This policy excludes pregnancy related absences. Pregnancy-related benefits are handled in accordance with the Village policy set forth in the handbook.

Sick Days Allotment.

Commencing on January 1, 2003, and each January 1 thereafter, all members of the bargaining unit will receive six (6) days of sick leave. Employees entering the program after January 1 will receive a prorated amount of sick leave. Sick leave does not carry over annually and is not accumulated.

Seasonal and part-time employees do not qualify for sick leave and will receive no compensation for absences from work due to illness or disability.

Sick Leave Usage.

Sick leave with pay shall be granted for the following reasons: personal illness or physical incapacity resulting from causes beyond the employee's control; enforced quarantine of the employee in accordance with community health regulations; special circumstances; and for medical and dental appointments which cannot be scheduled outside of working hours. Medical and dental appointments must be pre-approved by the Department Heads 48 hours in advance. Department Heads may require that the employee provide proof that they attended their medical or dental appointment.

The Department Head may authorize up to two (2) hours for sick leave related absences that will not be charged to sick leave. This authorization may be requested only three (3) times per year.

The abuse of sick leave, including evidence of patterns of use around an employee's weekend, holidays, or vacation, as well as excessive use of sick leave on frequent and recurring basis shall constitute just cause for disciplinary action, including termination of employment.

Notification of Absence.

To be eligible for sick leave compensation, the employee must notify their immediate supervisor of what illness or injury prevents them from reporting to work a minimum of one (1) hour prior to the beginning of their normal work time. Failure to provide this advance notice or failure to provide any notice at all may result in the sick leave compensation being denied.

Such notice shall include the general nature of the injury or illness, when they will be able to return to work, and the location at which the employee is recovering. The Village retains the right to have the Village Nurse or approved physician contact the employee at the location provided anytime during the employee's regular scheduled workday. Such contact may be made at the discretion of the Department Head. Failure of the employee to be contacted at the predetermined location, at which the employee is recovering, may result in the sick leave compensation being denied and or other disciplinary action, including termination of employment.

Medical Certificate Required.

A medical certificate from the employee's physician or a Village appointed physician may be required for the following reasons unless specifically excused by the Village Manager or Department head: any use of sick leave of three (3) or more consecutive days; reasonable suspicion of abuse; and if the employee has a total of four or more occurrences in a fiscal year. Such medical certificate may be ordered to determine the extent of the physical disability, prognosis, diagnosis, and possible date and ability to return to work. The failure or refusal by an employee to submit to such an examination is cause for disciplinary action, including the disallowance of any sick leave requested, cancellation of leave of absence and possible termination of employment.

Sick Leave Exceeded.

Employees who exceed their allotment of sick days will have any additional days of sick leave charged to leave without pay and will not receive compensation for those hours absent from the job. However, at the request of the employee and with the approval of the Department Head, absences that would have been charged to unpaid sick leave may be charged against the employee's accrued vacation (including vacation time earned during that current calendar year) or personal day. Employees with an extended disability or illness that does not qualify for Workman Comp Benefits may qualify for Extended Leave as defined below.

Extended Leave.

Employees that exhaust all of their sick leave and continue to be off may qualify for Extended Leave. Employees qualifying for extended leave may have sick days reinstated back to the beginning of the subject illness, with approval of Village Manager and Mayor.

An employee that does not qualify for Extended Leave may be required to exhaust accrued vacation and/or personal day.

Extended Leave for non-job related illness or injury is up to six (6) months in one year with full pay. This has not changed except it is limited to eighteen (18) months during the term of your employment. The definition of Extended Leave is not cast in stone. Wherever possible, the Village will define Extended Leave in favor of the employee – as long as there is medical documentation to back the decision. The Village Manager and the Mayor must approve extended Leave.

1. Definition: An Extended illness or injury is one that has totally incapacitated the employee from work for an extended period of time. These are illnesses or injuries that require long-term recuperation periods. Chronic illness and injuries, which result in intermittent absences from work, may be considered for Extended Leave (for example: cancer, stroke, major surgery). Employees suffering from short term illnesses including, but not limited to the common cold, influenza, or other minor injuries or illnesses, not likely to result in long term disability are not eligible for Extended Leave. Employees receiving Extended Leave pay shall not work outside their Village employment.
2. Benefit: Employees qualifying for Extended Leave will receive full pay with a doctor's certification that they cannot work. The employee will continue to be paid for up to a six (6) month period for a qualifying illness or disability that does not qualify for Workman Comp Benefits. Any work related illness or disability or injury is paid at full salary for a period of up to one year.

A maximum of six (6) months of Extended Leave may be used per year. Employees may only use a career maximum of eighteen (18) months of Extended Leave.

3. Application: The receipt of Extended Leave is dependent upon the employee making written application, accompanied by a physician's medical certification as to the nature and extent of the injury or illness which has occurred and an indication that the illness or injury will extend beyond the available sick leave days.

Failure to provide required documentation prior to Extended Leave will result in loss of pay.

The Village is entitled to take any and all reasonable steps to verify the legitimacy of the request for Extended Leave, the continuation, and/or extension thereof. The Village, at any time during a Extended Leave, may require an employee to appear for a physical examination at the office of a medical practitioner selected by the Village and paid for, at the Village's expense, to determine the extent of physical disability, prognosis, diagnosis, and

possible date to return to work. The Village Manager and the Mayor must approve all Extended Leave.

4. Return to Work: To the extent possible, the Village shall notify employees on Extended Leave approximately thirty days prior to the end of the leave, at which time the employee shall be provided with information regarding options if it appears that the disability will extend beyond the allotted six (6) months.

The employee shall be advised of the availability of other disability income protection through the employee's retirement fund. Non-work related disability leave benefits for Fire Fighters are governed by state law and their respective pension funds.

An employee off from work for Extended Leave requires a written certification of their medical release to return to work. This certification shall be from a licensed, practicing physician, certifying their full release from medical care and their ability to resume their full essential job functions. The Village may, at its discretion, require another evaluation as to an employee's fitness for duty by a licensed, practicing physician selected and paid for the Village. At the end of the maximum allowed Extended Leave, this benefit will cease and the employee must be able to return to their old position, apply for a disability pension, or may be terminated.

Employees will be assigned to limited duty when released by their physician in accordance with the provisions of this contract.

Emergency Leave

In the case of an extreme emergency, a full-time employee may request up to three days sick leave per a 12-month period. This emergency sick leave must have Department Head approval and may be granted only to fulfill family obligations relating to the birth of a child, or a serious health condition of the employee's immediate family member. "Immediate Family Member" is defined as the employee's child, spouse, or parent. Parent means the person who acted as the employee's parent when the employee was a child. The term does not include a parent-in-law. Other provisions such as the use of the "Family and Medical Leave Act" must be made if a dependent requires extended care.

Perfect Attendance Program

Full-time employees who do not lose time as a result of illness, on-the-job injury, off-the-job injury or suspension for the period of November 1st through October 31st shall qualify for

attendance incentive pay of \$200. Full-time employees with perfect attendance will be recognized at the Village's annual Holiday Party. Full-time employees will not be penalized for appropriate use of the following Village policies as defined in the Employee Handbook: Military Leave, Jury Duty and Bereavement Leave or applicable provisions of this contract.

Full-time employees who start their employment with the Village during the qualifying time period and qualify for perfect attendance shall be compensated on a pro-rated basis.

XVIII. DISCIPLINE

A. File Retention

ARTICLE ____ (proposed)

DISCIPLINE

5.1 The Village may discipline only for just cause. The parties agree that suspensions shall be expunged from an employee's personnel and/or disciplinary file(s) ten (10) years after the suspension is received by the employee, so long as there have been no additional suspensions during the ten (10) year period. All such expungements shall take place upon written request by the employee to the Chief of the Fire Department.

5.2 The Village endorses the concept of progressive discipline. Progressive discipline will be followed, except in cases of exigent circumstances. Normally, the following steps will be followed:

Oral reprimand

Written reprimand

Suspension

Other discipline, up to and including termination.

5.3 The parties further agree that the Fire Chief shall have the power and authority to impose such disciplinary actions as oral or written warnings and suspensions up to five (5) days and so long as such action is taken for just cause.

5.4 An employee disciplined by the Fire Chief shall have the option of appealing such disciplinary action, either before the Board of Fire and Police Commissioners or through the

grievance procedure set forth in Article VII of this Agreement, provided that oral or written warnings may not be submitted to arbitration. Such election must be made in writing within twenty-one (21) days of the imposition of the discipline. If the employee elects to appeal the discipline through the contractual grievance procedure, he/she shall voluntarily sign and present to the employer an express waiver of his/her right to appeal the matter before the Board of Fire and Police Commissioners when presented at the second step of the grievance procedure.

5.5 Should a court of law determine that the waiver of the right to appeal the Board of Fire and Police Commissioners mentioned above or the imposition by the Fire Chief of the power to suspend improper, unlawful, or unenforceable, then the parties agree that (1) the disciplinary procedure which predated this Agreement shall immediately be reactivated and take full force and effect for any interim period until a successor procedure shall be agreed upon; and (2) within seven days after the receipt of such a decision, the parties shall meet in accordance with Article XX (Savings Clause) of this Agreement to negotiate a substitute provision.

5.6 A copy of all suspension and discharge notices shall be provided to the Union.

5.7 Any employee found to be unjustly suspended or discharged shall be reinstated with full compensation for all lost time and with full restoration of all other rights, benefits and conditions of employment, without prejudice, unless a lesser remedy is agreed upon as a settlement or deemed proper by the appropriate hearing authority.

5.8 In an investigatory interview which an employee reasonably believes might result in discipline, the employee is entitled to have union representation upon the request of the employee.

5.9 The provisions of the Fireman's Disciplinary Act and the Illinois Personnel Records Review Act shall be incorporated into this agreement.

V. DISCUSSION

A. Preliminary Matters

1. Should Wages and Equity Adjustment be Considered as One Impasse Item?

The parties are in disagreement regarding whether the Union's request for a one percent (1.0%) equity adjustment for Lieutenants and the creating of a new FF firefighter step are separate impasse items under the statute. In its *Brief* at 6-9 the Administration cites a number of arbitration decisions in support of its position. They are worth citing and summarizing in this award.

In *West Des Moines Education Association*, 98 LRRM (BNA) 2875 (1978), the Iowa Public Employment Relations Board ("PERB") determined that under the Iowa statute, each issue which is subject to final arbitration should be defined by "category," as opposed to considering various subsections of it. Their reasoning was as follows:

Known as last offer arbitration, or forced-choice arbitration, this impasse resolution mechanism is designed to encourage hard bargaining by the parties before they resort to arbitration. Final offer interest arbitration enables "the parties to retain maximum participation all the way up to finalization of a decision with minimum exercise of power by a third party." Thus, the "emphasis in last offer is for the parties to reach agreement short of arbitration, but failing that, the goal of the procedure is to ensure that the offers will be reasonable and afford the arbitrator little discretion."

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. *Id.* at 2878.

The Board noted that "... anything which serves to fractinalize a particular subject of negotiation will likely erode the effectiveness of the procedure." *Id.* The PERB accordingly found that the Union's position that each fiscal year must be treated as a separate issue would clearly fractionalize the issue and clearly "erode the effectiveness of the procedure." *Id.*

Of special note, the Iowa Supreme Court, citing a law review article by Arbitrator Arnold Zack, had this to say regarding the matter of step increases and salary schedules and how they should be treated in a final offer format:

Twin issues such as whether or not an additional step should be added to the increment schedule, or longevity increases granted, cannot practically be separated in an issue by issue final offer selection. Such related items are best handled in the package basis.

Id. at 2881, citing Zack, "Final Offer Selection -- Panacea of Pandora's Box," 19 N.Y.L.F. 567, 578-579 (Nov. 3, 1974).

Numerous Illinois arbitrators have taken the same perspective regarding final offer arbitration by issue.

In *Village of Elk Grove, Illinois* (ISLRB Case No. S-MA-96-86)(1997), Arbitrator Lisa Kohn ruled against the Union's attempt to have salaries for firefighters and salaries for fire lieutenants be treated as separate issues for each year of the contract. Echoing the reasoning of the Iowa PERB Board and Arbitrator Zack (and others), Arbitrator Kohn stated, in part, as follows:

Under the Act, interest arbitration is designed to be a safety valve for impasse resolution, not a substitute for the parties' strong efforts at self-determination. The goal of the Act is to encourage the parties to frame contractual solutions themselves. The underlying assumption of the Act is that it is the parties who can best weigh the issues in the context on which they arise, and formulate a settlement that will strike the optimum balance among competing considerations.

Significantly, the Arbitrator stated:

Fractionalizing economic issues before an interest arbitrator lessens each parties' risk by narrowing the range of gain or loss, and may dull the incentive for vigorous analysis and negotiation. (*Id.* at 4; emphasis added.)

Likewise, in *City of Elgin, Illinois*, (Arb. Case No. 00/058, 2002), the Union's salary proposal contained a provision for an equity adjustment in what the Union described as a second part of its proposal calling for an additional step. While the parties in Elgin agreed that the salary proposal was one package, Arbitrator Elliott Goldstein endorsed the concept of treating equity adjustments, step additions and base salary raises as one issue. His reasoning is as follows:

I specifically find that what is at issue with the three equity adjustment issues proposed by the Union, is plainly, in fact, just an additional increase in wages . . .

[The Employer] agreed that the two parts to the Union's proposal really added directly to wages and should be considered as part of one issue. I agree.

Based on the parties' stipulations and the manner in which the evidence was presented during these proceedings, however, there is no dispute that the two parts of the Union's proposal for increased compensation, that is "equity adjustments" which are additional percentages in pay, and the second increase, the adding of a seventh step to the salary format, or the creation of longevity pay, must and should be considered in the aggregate. *Id.* at 35 (emphasis mine).

Finally, the undersigned Arbitrator, in *City of Kewanee, Illinois* (ISLRB Case No. S-MA-138 (Hill, 2002)), adopted the reasoning of the above arbitrators and concluded as follows:

Management has advanced a valid argument that the Unions two impasse items, wages and equity adjustment, actually comprise just one item, that of "wages." I have no problem considering wages and equity adjustment as two separate issues, provided that both sides agree to treat them as two impasse items, which is not the case here. There may be special circumstances for treating wages and equity adjustments as two issues, but they are absent in Kewanee. Also, I find no compelling arbitral authority offered by the Union for treating wages and equity adjustments as two separate items. Both items (wages and equity adjustment) involve an across-the-board application for each of the three years . . .

* * *

I agree with the Administration that there are no "special circumstances" here. As such, and consistent with the better weight of arbitral authority, the Union's final offer for wages will include three components: (1) wage increases, (2) lieutenant differential, and (3) the additional FF "firefighter step." (See, *Union's January 29, 2003, Final Offer*, pages 1-2, *supra* this opinion). I find particularly instructive the reasoning and analysis of Arbitrator Elliott Goldstein in the *Elgin* decision (discussed, *supra*). The equity adjustment and the additional FF step is part of the broad category of "wages/salaries" and, accordingly, should be considered as one impasse item under the Act.

2. Selecting Comparables

The parties' difference with respect to comparable cities is minor.

Based on a survey of demographic characteristics consisting of population, median household income, median house value, number of full-time employees in both the fire and police departments, home rule status, fire insurance rating, municipal tax receipts and equalized assessed evaluation and related analysis performed by the Union, the following cities (both Union and City) are proposed as comparable communities:

Table 1

Union Proposed Comparables	Employer Proposed Comparables
----------------------------	-------------------------------

Buffalo Grove	Buffalo Grove
Des Plaines	Des Plaines
Elk Grove Village	Elk Grove Village
Highland Park	Highland Park
Morton Grove	Hoffman Estates
Mount Prospect	Morton Grove
Northbrook	Mount Prospect
Park Ridge	Northbrook
Skokie	Park Ridge
Rolling Meadows	Rolling Meadows
Wheeling.	Wheeling.

In determining its eleven Chicago suburban municipalities as comparable to Niles, the Administration identified eleven (11) comparable characteristics (See, *Brief for the Employer* at 2). The only differences between these two lists are Hoffman Estates and Skokie. The Employer has added **Hoffman Estates** to its list, and the Union has added **Skokie** to its list. Neither party includes "next-door" Chicago to its list.

Pointing to Union Exhibit 6 (a comparison of the twelve demographic characteristics of each of the towns proposed as comparables by the Union), the Union submits that those towns that have six or more demographic characteristics in common within a range of plus or minus 33 percent were chosen by the Union to be comparable communities. In addition to these demographic characteristics, the Union selected only those towns that have negotiated collective bargaining agreements with unions representing fire department employees and those towns that are within ten miles of Niles.

The Union contends Hoffman Estates was excluded because it had only five of the demographic characteristics in common with Niles within a range of plus or minus 33 percent. Management's view is that Hoffman Estates "is nearly a mirror image of Niles." (*Brief for the Employer* at 3). In the Union's view, Hoffman Estates met this range only in the following categories: median house value, home rule status, insurance rating, aggregate tax rates, and commercial equalized assess evaluation. The population of Hoffman Estates is 49,495 compared to the 30,063 persons in Niles. Employer Group Exhibit, Tab 1. Niles has a daytime population of 50,000 to 60,000 based upon "the substantial mercantile and industrial areas within the community." *Id.* Hoffman Estates has 95 firefighters compared to 54 in Niles. Union Exh. 9 and Employer Group Exh. 3 Tab. 1. The median household income for Hoffman Estates is \$65,937 compared to \$48,627 for Niles. Niles is not within the plus or minus thirty three percent range of each of these important characteristics. Hoffman Estates is a larger town and has higher household income and more firefighters. Because Hoffman Estates did not meet one half of the demographic characteristics, the Union believes it is not a comparable town for purposes of this interest arbitration (*Brief for the Union* at 4-5).

According to the Union, although Skokie has a larger fire department, 133 employees compared to 54 for Niles, there are demographic characteristics of Skokie that warrant its inclusion in the bench-mark group. These include population, median household income, median house value, home rule status, tax receipts, aggregate tax rate and industrial equalized evaluation. Skokie is one of the closest of the comparable towns to Niles, and Hoffman Estates is one of the farthest. For these reasons, the Union believes that Skokie should be included as a comparable and that Hoffman Estates should be rejected as a comparable. (*Brief for the Union* at 6).

* * *

Arbitrator Edwin Benn, in *Village of Algonquin & Metropolitan Alliance of Police*, S-MA-95-85 (1996), had this to say regarding the problem of selecting comparables for external analysis:

One of the most difficult tasks facing an interest arbitrator in Illinois is to select "comparable communities" as required by the Section 14(b)(4)(A) of the IPLRA. Aside from using the phrase "comparable communities," the statute gives absolutely no guidance on how to select those "comparable communities."

In *Village of Libertyville and FOP*, S-MA-93-148 (1995), I suggested an analysis on how to select comparable communities. I stated (*Id.* at 3-4)[footnotes omitted]:

Section 14(h)(4) of the IPLRA identifies examination of comparable communities as a factor for selecting the appropriate offer. The selection of comparables for examination is a most difficult task in large part because the IPLRA offers no guidance as to what [the] legislature intended when in Section 14(h)(4)(a) it directed interest arbitrators to examine 'comparable communities.'

Because comparability plays such a major role in these cases, rational approaches must be taken. In *Naperville, supra* at 20, I suggested a method for making an analysis:

The task then is to formulate an analysis for making the comparisons. The Act gives no guidance, so therefore a "rational" method must be chosen.

The parties have agreed that the part of the relevant universe of comparables must include Skokie, Schaumburg, Evanston and Arlington Heights. I am therefore bound by that agreement-- indeed, the Act requires that I abide by "stipulations of the parties." See §14(h)(2). The fact that the parties have agreed upon those municipalities as being comparable to Naperville allows for a conclusion that they intended that any other municipality which sufficiently falls within the range established by the set of agreed-upon

comparables requires a finding that such a municipality is also comparable to the agreed-upon set of municipalities.

The analysis shall therefore take the following steps:

First, agreed upon comparable communities shall be identified . . . [T]hose agreed upon communities shall form a range of agreed upon comparables for various factors to be used for comparison purposes to determine whether the municipalities upon which the parties could not agree are also comparable.

Second, the appropriate factors for making the comparisons shall be identified. If the parties disagree on certain factors, a determination will be made as to whether those factors are appropriate measuring tools for comparison purposes.

Third, the municipalities shall be ranked within the appropriate factors (through tables and charts).

Fifth, comparisons will be made for the contested communities to determine how they compare with the range of agreed upon comparables within the appropriate factors.

It is important to stress that this process of selection of comparables is not a mechanical one. This process is only a method for organizing the data and arguments offered by the parties in order to be able to rationally make certain judgments. This process is not one of merely counting factors or rigidly applying cutoffs. This process places great emphasis on the agreements based upon these agreements—a process that appears consistent with the mandate of Section 14(h)(2) of the IPLRA that I consider the "stipulations of the parties." *Id.* at 3-4 (emphasis mine).

A number of arbitrators have recognized that the most significant factor in awarding wage offers is a need to "catch up," and, at least, maintain a rough average among external comparables. In *Elgin and Local 439, IAFF*, S-MA-97-33 (Fleischli, 1997), arbitrator George Fleischli found that external comparables were most significant in the case of fire fighters. In his words:

While it is not possible to draw comparisons to the salaries paid and increases granted to other City employees and rely on those comparisons to produce reasonable and competitive salary ranges in the short run, an employer cannot allow its police and firefighter salaries to fall behind those paid by comparable communities. Even if it does not produce significant

turnover or recruiting problems, it will have an adverse impact on morale and performance of these vital functions.

Id. at 38. Noting that none of this is "an exact science," this same reasoning applies in this case. See, *Algonquin*, S-MA-95-81 (Benn), at 8 n. 14 ("But, this is not an exact science.").

* * *

Where does the above analysis leave the parties regarding the comparables?

The easy solution to the parties' dispute on the comparables would be to exclude both Skokie and Hoffman Estates as comparable Illinois cities, which would leave ten (10) cities for bench marks, a sufficient number for purposes of the statute. An acceptable alternative would be to include both cities as comparables. Both parties' make valid cases but the Administration makes the better case regarding excluding Skokie as a comparable. With a population and number of sworn employees more than double that of Niles, it is difficult to include Skokie based on the other criteria. The significant thing that Skokie has going for it is geography, presumptively a valid labor market criterion. On balance, however, geography should not trump population and number of sworn employees. Hoffman Estates, as argued by the City, is really a mirror image of Niles and, for these reasons, the Employer's comparable groups are adopted.

B. ANALYSIS OF PARTIES' POSITIONS

I. Wages

The following graph/schedule tracks the Village's final offer on the salary schedules, including longevity:

Fire Fighter/Paramedics

	<u>2002</u>	<u>2003</u>	<u>2004</u>
Start	\$45,485	\$47,077	\$48,725
After 1 year	\$47,759	\$49,431	\$51,161
After 2 years	\$52,654	\$54,497	\$56,404
After 3 years	\$55,287	\$57,222	\$59,225
After 4 years	\$58,051	\$60,083	\$62,186
After 5 years	\$60,953	\$63,086	\$65,292
After 8 years	\$62,125	\$64,299	\$66,548
After 15 years	\$63,297	\$65,512	\$67,803

The Village's proposed salary schedule for Lieutenants continues to have four steps. However, almost every person promoted to the rank of Lieutenant has entered the schedule at the after three years step, the top of the schedule. Because longevity begins after eight years, including time spent at the lower rank, the chart below shows longevity at "after 4" and "after 15" years:

	<u>Lieutenants</u>		
	<u>2002</u>	<u>2003</u>	<u>2004</u>
Start	\$58,051	\$61,244	\$63,388
After 1 year	\$60,953	\$64,305	\$66,556
After 2 years	\$64,001	\$67,521	\$69,884
After 3 years	\$67,201	\$70,897	\$73,378
After 4 years	\$68,493	\$72,260	\$74,789
After 15 years	\$69,786	\$73,624	\$76,200

If an employee is promoted after 4 years of service in the department, the employee is placed in the start step.

If an employee is promoted after 5 years of service in the department, the employee is placed in the after 1 year step.

If an employee is promoted after 6 years of service in the department, the employee is placed in the after 2 years step.

Longevity begins after 8 years, including time spend as a firefighter/paramedic; the after 4 years category above.

Management takes the position that the Union's final offer does not contain a single salary schedule. Instead, management believes the Union's offer for each of the three years refers only to the Village Grade and Step Salary Plan. For 2002, for example, the Union's proposal says: "The Village Grade and Step Salary Plan for Fire Fighters and Lieutenants shall be increased on May 1, 2002 by 3.75%." Because the Village Grade and Step Plan had already been increased by the Village by 3% on May 1, 2002, the first part of the Union's proposal would seemingly provide for a 6.75% raise for 2002. In management's view, in the absence of actual salary schedules, it is impossible to tell if the Union means a 3.75% raise based on the 2001 pay plan or the already adopted 2002 pay plan. Management proceeded with the assumption that the Union meant that the employees should have received a 3.75% raise on May 1, 2002 (See, *Brief for the Employer* at 5-6).

The second part of the Union's pay proposal calls for the creation of a new "FF-Step" for employees when an employee commences the tenth year of service. Because the rest of the existing schedule refers to steps as "after 1 year, after 2 years," etc., the Union's "FF step" must be deemed to commence "after 9 years." Management points out that according to Union Exhibit 3, there are

34 of the fire department's 50 employees who would receive this additional step. Stated otherwise, nearly 70% of the bargaining unit would receive the additional 2.5% raise.

In support of its proposal for the FF Step, the Union merely cites the pay plan for the Village's police officers. For over 20 years, the police pay plan has included an FF Step. (Tr.) Because the FF Step has been part of the police pay plan for more than 20 years, there can be no argument that the Village has a history of parity between the police and fire departments' pay plans.

In addition to its proposal for 3.75% increases and its proposal for a new step, the third part of the Union's salary proposal calls for so-called equity raises of one percent in 2003 and 2004 for lieutenants. Management asserts that the Union does not explain how the equity adjustments are to be made or how they affect longevity. One possibility is for 4.75% increases for both 2003 and 2004. Another possibility is for the one percent to be applied to the 2003 and 2004 salaries after the 3.75% raises are determined. Management assumes that the 1% "equity" raises are to be compounded on its 3.75% proposals (*Brief* at 6).

The Village contends that its final offer on wages is straightforward: Fire Fighter-Paramedics would receive a 3.0% raise in 2002, and 3.5% raises in 2003 and 2004. Lieutenants would receive 3% raises in 2002, 5.5 % raises in 2003 and 3.5% raises in 2004. Both pay classifications would continue to receive longevity stipends of one week of pay after eight years and two weeks pay after fifteen years. Both pay classifications would continue to receive holiday pay of 120 hours of pay, whether they worked the holidays or not (*Brief* at 9).

For the following reasons, and applying the statutory criteria, I award the Employer's final offer on wages.

a. External Analysis

The significance of external analysis in resolving an interest dispute cannot be overstated. Arbitrator Harvey Nathan, in *Village of Rock Falls & IAFF Local 3291* (1995), observed that external data may be the most important criterion in assessing the reasonableness of final offers:

It has been suggested that external comparability is the most significant of the factors to be considered by the arbitration panel. The appropriateness of one offer over another is often not apparent without some measurement of the marketplace. The addition or deletion of many terms and or practices, or the precise increase in remuneration, can often be best determined by analyzing the collective wisdom of a variety of other employees and unions in reaching their agreement. Every case has its known facts but the determination of the appropriate result can be better gauged by the struggles of those with similar characteristics and circumstances (*Id.* at 20-21, footnotes omitted; emphasis mine).

Interestingly, Arbitrator Nathan went on to discuss criteria arbitrators consider in determining the appropriate comparables:

Generally speaking, population of the community, size of the bargaining unit, geographic proximity and similarity of revenue and its sources are the features most often accepted in composing a comparability group. Some arbitrators emphasize geography because the marketplace concept is essential to comparability. (*Id* at 21, footnote omitted).

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute, Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v. International Association of Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.** *Id.* at 791 (citations omitted; emphasis mine).

The Administration contends that in the first year of the parties' collective bargaining agreement, the Union's proposal would catapult the firefighter/paramedics to the top ranking among the comparables. Specifically, its proposed \$68,274 salaries for top-paid employees would be \$1,359 higher than Buffalo Grove, the community in second place. As a result of its proposal for a new step for Lieutenants, its proposal for Lieutenants would jump their pay at the top step to second place among the comparables. Under the Union's proposal, top-paid Lieutenants would only be a year behind Northbrook, the community in first place (*Brief for the Employer* at 15).

The Administration goes on to assert, if its proposal is awarded, top-paid firefighter/paramedics would rank 2/12, while top-paid Lieutenants would be paid well above the average. Their pay would rank 5/12 (*Brief for the Employer* at 15).

While the Employer's 3.0% for '02 is on the low side, what tips the balance in this case toward the Village's salary offer is this: **With the equity adjustment considered as part of the salary proposal for Lieutenants, the Union's salary offer is really 3.75% for 2002, 4.75% for 2003, and 4.75% for 2004, plus the cost of the added FF step. For the firefighter/paramedics, the offer is 3.75%, 3.75%, and 3.75%, plus the cost allocation for the FF step, which is calculated at 2.5% for 70% of the bargaining unit.** A close call, especially for firefighter/paramedics, but overall, this allocation is not supported by external analysis.

Table 2, offered by the Union in its *Brief*, tracks the percentage increases for comparable towns 2002-04 (*Brief for the Union* at 12):

Table 2
Percentage Wage Increases Comparable Towns 2002-04

Town	2002	2003	2004	Total
Des Plaines	3.5	3.5	3.5	10.50
Highland Park	3.5	3.5	3.5	10.50
Rolling Meadows	4.0	4.0	4.5	12.50
Skokie	3.75	3.50	3.75	11.00
Wheeling	3.75	3.75	3.75	11.25
Average				11.15
Niles-Emp. Offer	3.0	3.5	3.5	10.00
Niles-Un. Offer**	3.75	4.75 (adjusted)	4.75 (adjusted)	13.25*
Niles-Un Offer*	3.75	3.75	3.75	

* excluding cost of added step, estimated to be 2.5% for 70% of the bargaining unit

** Lieutenants only

According to the Union, "the total of the employer's offer, 10%, is below the average by 1.07%. The total of the union's offer, 11.25% (unadjusted for the FF step increase) for firefighters' wage increases is much close to the average, 11.15%, than the employer's offer." (*Brief* at 12). The number is 13.25% for Lieutenants with the equity adjustment, and another 2.5% when the FF step is included. Again, when the equity adjustment is properly considered as part of the final wage offer, the Union's position is 3.75% ('02), 4.75% ('03), and 4.75% ('04) for the Lieutenants. The Union's salary offer is clearly 2.1% above the average (even when including Skokie as a comparable), not including the cost of the FF step (again, where approximately 70% of the bargaining unit will receive 2.5%, making the front-loaded package effectively 5.5% in 2002). This allocation would, as argued by the Administration, catapult the firefighter/paramedics to the top rankings among the comparables (See, *Brief for the Employer* at 15), a position they have not historically occupied.

Also significant in this award, when the health insurance award is considered (part of total compensation criterion under Section 14(h)(6) of the statute), with current language and benefits retained, and other items, such as "floaters," etc., discussed *infra*, the package offered by the Employer is completely in line with external criteria.

b. Niles Firefighters and Internal Analysis

I have noted that the trees of Wisconsin have been felled to make paper to write on the issue of fire vs. police parity (whether overall or item-by-item) in interest arbitration. Both police and fire units advance parity arguments in interest cases whenever it benefits their cause, and this is expected. See, Marvin Hill and Emily Delacenserie, *Interest Criteria in Fact-Finding and Arbitration: Evidentiary and Substantive Considerations*, 74 *Marquette Law Review* 399, 421-422 (Spring/Summer, 1991) (dealing with the question whether arbitrators have any special responsibility to maintain relationships between groups within a bargaining unit). And so it is in this case, specifically with respect to the additional firefighter step, FF-10, proposed by the Union (*Brief for the Union* at 25-27).

While there is merit in the Union's argument that placing firefighters and lieutenants at step FF is justified by their high work volume and will erase an inequality that has existed between the two uniformed services for over twenty years, even if this issue is considered as a separate impasse item under the statute, the addition of the proposed FF step is not warranted by the evidence record. As indicated, it would add an additional 2.5% for approximately 70 percent of the bargaining unit. With the other economic items awarded, including retention of insurance of sick-leave programs, and applying the statutory criteria, it would result in an unwarranted increase for Lieutenants. Moreover, apparently in this jurisdiction firefighter/paramedics have lagged somewhat relative to the police. This is a first collective bargaining agreement and, accordingly, to the extent that parity arguments are being advanced, they are better addressed in future bargaining rather than through the arbitration process.

C. Retroactivity

The Union's proposal for retroactivity (*Brief* at 18), Section I(C) is for full retroactivity, including overtime and other benefits re-calculation:

Employees covered by this agreement who were in payroll status as of May 1, 2002, shall receive a retroactive payment, which shall be based on the difference between the salary they receive between May 1, 2002, in the beginning of said payroll period and the salary they would have received during the same period of time based upon the salary increases contained in the arbitration award. All overtime hours, holiday pay and any other economic benefits based upon the hourly wage rate or salary paid during the retroactivity period shall be recalculated based upon the salary increase awarded by the arbitrator.

The Village's proposal is for retroactivity to commence *at the beginning of the collective bargaining agreement*.

As correctly argued by the Union, its proposal on retroactivity is more comprehensive *because it covers not only salary increases but also the obligation to recalculate overtime hours, holiday pay, and any other economic benefits based upon the hourly wage rate or salary paid during the retroactive period*. The Village's position makes no such allocation for the re-calculation of economic benefits (*Brief for the Union* at 18-19).

I agree with the Union, and numerous other arbitrators that have considered the issue (see citations, *Brief for the Union* at 19-20), that allowing the Administration to benefit by not recalculating overtime would give it an advantage in this and future negotiations based upon the issue of retroactivity. More important, it would create an incentive to prolong negotiations, especially if firefighters were working serious overtime. *Village of Arlington Heights*, ISLRB S-MA-88-59 (Briggs, 1991) (full retroactivity to include adjusting rates of pay for overtime and holiday pay). Both parties have agreed that wage increases are to be retroactive to May 1, 2002. (As agreed to by the panel in mediation, no retroactive overtime pay will be provided for paramedic training). This retroactivity is to include overtime and any other relevant economic benefits. It is accordingly appropriate that the firefighter/paramedics' overtime and holiday pay rates be re-calculated based upon newly established straight-time wage rates.

For the above reasons, the Union's language on full retroactivity is awarded.

E. Lieutenant Pay/Differential-District Chief Differential

The Union's final offer (*Brief* at 20) for Section I(E) is as follows:

An employee promoted to the rank of Lieutenant shall be placed on the Lieutenants pay schedule with the pay step that is two steps higher than the employee's current pay step.

The Employer has not proposed any differential for Lieutenants other than that outlined in its salary offer of Section I(A), the so-called wage progression for Lieutenants and step changes on promotion from firefighter. Specifically, the proposal (in small font, no less) proposes three steps. It is outlined as follows:

If an employee is promoted after 4 years of service in the department, the employee is placed in the start step.

If an employee is promoted after 5 years of service in the department, the employee is placed in the after 1 year step.

If an employee is promoted after 6 years of service in the department, the employee is placed in the after 2 years step.

* * *

While I view the two percent equity adjustment and the additional FF step as part of one economic impasse item, that of "wages." I consider the pay-differential issue to be a separate economic item under the statute, although the Village has included text on the matter within its overall salary offer.

To this end, I agree with the Union's position outlined in its *Brief* at 20-24. The Employer's three-step plan for Lieutenants apparently was not proposed during the collective bargaining process. Moreover, it constitutes a significant change in the way in which firefighters have received pay increases upon promotion to rank of Lieutenant. The Union's proposal is to move employees up two steps higher in the pay schedule so that they would receive the ten percent wage increase upon becoming Lieutenants. The Employer's pay proposal for Lieutenants would not yield wage increases for employees placed at the start or one-year steps. This, as pointed out by the Union, is contrary to the intention of the parties to have an out-of-rank pay system that rewards employees for assuming the additional burdens of working as a Lieutenant. If they are only paid the same amount as they are earning as a firefighter, for instance step 16F, there is not only no incentive for them to accept an acting Lieutenant position, but there is also no reward for assuming the additional burdens of that position.

For the above reasons, the Union's provision is awarded.

F. Out-Of-Rank Pay

The Union's offer on out-of-rank pay, Section I(F), is as follows:

Employees who work as acting Lieutenants shall be paid on the basis of Lieutenants' pay level and the basis of the Lieutenants' pay level for each hour worked as an acting Lieutenant.

The Employer's final offer on out-of-rank pay is:

Any firefighter/paramedic assigned to perform the duties of a Lieutenants shall be paid at the hourly rate for that position and all hours worked in that position.

While the final offers are exactly the same as to the amount of pay for an hourly rate, both offers provide for acting Lieutenants to be paid the hourly rate of the Lieutenants pay level. Under the Union's proposal, the pay level for acting Lieutenants is to be "Lieutenants' pay level." The Employer proposes the pay level would be the "hourly rate for that position." As noted by the Union, a firefighter at maximum level of 16(F) could conceivably be paid less of an hourly rate if the employee is paid at the Lieutenant pay level grade 18 in step A through D because 16(F) is more pay than steps A through C in level 18 and the same pay as step D (*Brief for the Union* at 14-25).

The Union's position is awarded.

II. Health Care [economic]

Perhaps the most contentious issue in this proceeding (arguably preventing a mediated settlement) is that of health care and the Administration's request for co-pays, a clear deviation from the past experience with these parties.

A. Premium Payments-Employee Share

Management asserts the Arbitrator should select the Village's offer on active employee health insurance. Specifically, the Administration's offer provides for health insurance co-pays, permits a low-cost HMO option and provides single-plus-one coverage in language that is similar, if not identical, to that of comparable communities. Co-pays are a fact of life, says management. They are required in all but one of the external comparables. The amount of employee contribution proposed by the Village is reasonable and in line with the comparables. As such, the Panel should accept the Village's proposal on insurance (*Brief for the Employer* at 16).

To this end the Administration submits that its co-pay proposal is reasonable. It notes that all but one of the comparable communities require co-pays. (Village Group Ex. 2(10); Tr. 8-9; *Brief* at 17). Moreover, the co-pay amounts are appropriate and supported by the comparables.

Specifically, the Village's offer requires a monthly co-pay of \$21.65 for single coverage and \$58.44 for family coverage in 2002. These amounts compare to the comparables as follows:

	Niles' Offer	U n i o n Offer	Average	Median	Low	High
Single	\$21.65	0	\$30.12	\$27.48	0	\$60.16
Family	\$58.44	0	\$71.24	\$59.02	0	\$137.46

(Village Group Ex. 2(10)).

Management argues its offer is below both the average and median amount charged by comparable communities with co-pays. The Village's offer is also in the lower half of the range. In contrast, the Union's proposal ranks dead last among the comparables. Only one community has a co-pay in the amount proposed by the Union.

The Village's offer is also supported by the comparables that charge on a percentage basis. The comparable percentages are:

Community	Rate
Rolling Mcadows	6%
Niles	6.5%
Wheeling	6.5%
Hoffman Estates	10%
Morton Grove	10%
Park Ridge	10%
Highland Park	10%
Elk Grove Village	15%

Clearly, the going rate on a percentage basis is 10%. Niles' offer of 6.5% is modest in comparison. There is a lower second tier in the 6% range. Further, Niles' offer places it squarely in the lower tier. (Village Group Ex. 8(5)).

Management also contends that its co-pays will buy better coverage for the bargaining unit. Specifically, its health insurance plan is better than the plans of comparable communities. Thus, employee co-pays buy more in the long run (*Brief* at 18).

First, there is no deductible under the Village's plan for the vast majority of medical services. Niles provides first dollar coverage for outpatient surgery, hospital care, emergency care and diagnostic services, i.e. they are paid for by Niles with no deductible. The only routine medical services that require a deductible are regular physician office visits. These are among the least costly services provided by the plan.

Second, the Village's plan offers the lowest out-of-pocket annual maximum of any of the comparables -- only \$300 per year for single coverage and \$900 per year for family coverage. An employee pays nothing for covered health care for the rest of the year if they reach this amount. What this means is that Niles' employees have the lowest maximum exposure to health claims of any of the comparable communities, in management's view.

Third, the Village's plan pays the highest in- and out-of-network benefits to its employees; 100% and 80%, respectively. This, says the Administration, translates into individual employee

savings for each visit to a doctor, hospital or clinic, regardless of the procedure performed or reason for the visit.

Also, the co-pays are reasonable in light of the Village's overall wage offer. In management's view, the Act requires the Panel to consider this fact. Section 14(h)(6) of the Act requires the Panel to consider "overall compensation" presently received by the employees. This includes "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." (*Brief* at 19-20).

Management also contends that its health plan costs are expected to rise by 17.37% fiscal year in 2002 (Village Group Ex. 8(3)(a) at page 3). In fiscal year 2001, health costs were projected to increase by 23.8%. Actual experience is in line with projections. Claims for the first seven months of fiscal year 2002 are up by \$270,874.67 or 17.1% on an annualized basis. Village Group Ex. 8(4)(a). See, e.g., *City of Highland Park and Teamsters Local 714* (Perkovich 1996) at 9 (The continuing concern with regard to rising health care costs . . . does not require elaboration.).

In further support for its proposal, the Village points out that the the language of the Village's offer is substantially similar to the language contained in the collective bargaining agreements of Elk Grove Village, Highland Park, Hoffman Estates, and Rolling Meadows. Much of the section on "coverage" is taken verbatim from the Elk Grove contract as are the sections on "cost containment" and "Section 125 Flex Program." The vast majority of contracts have similar provisions, allowing the employer to institute cost containment measures and change carriers as long as the benefits remain substantially similar (Village Group Ex. 2(18)). Thus, the Village's contract language should be adopted because it is typical of the comparables.

The Village also argues its proposal contains many provisions that address the Union's concerns. First, the Village proposed a section 125 plan. This will enable employees to make co-pays on a pre-tax basis. This proposal reduces the after-tax cost of health insurance for employees by their marginal tax rate. This will reduce the real cost of co-pays for a married firefighter earning \$50,000 by as much as 15% per year. The Village has also offered to include a low cost option such as an HMO. The Village has also offered to add a single plus one payment classification to mitigate the cost for employees with smaller families. Finally, the Village asserts its proposal is balanced in favor of employees because wage increases are guaranteed, while co-pays only increase if costs increase.

The Union's final offer is outlined as follows:

The contract shall contain the following health insurance provision: the Village agrees to continue to provide medical insurance for employees and their dependents at substantially

the same levels as provided in the 2001 fiscal year. The Union agrees that, if the Village decides to implement village-wide cost containment measure, those measure shall apply to the bargaining unit. The Village agrees to pay 100 percent of the cost of the premiums of both the single and family insurance plans (*Brief for the Union* at 33).

The gravamen of the Union's case is that the Administration, without offering any *quid pro quo*, or requiring the non-represented Village employees to pay for health care, is requesting the Arbitrator to create a first-time health care cost obligation for those employees who chose a union to represent their interests. Furthermore, the Union advances a discrimination argument. As outlined in the Union's *Brief*:

The employer's proposal seeks cost sharing with the firefighters, but at no time has the employer ever exercised its unfettered management right to seek cost sharing from those employees who remain unrepresented. Even prior to the union's filing its representation petition, the employer made no effort to request employees to contribute to health insurance premiums. Instead, while healthcare costs were decreasing in fiscal years 1998-1999, 1999-2000, and 2000-2001, the single deductible charge was increased to 150 percent, and the family deductible charge was increased by the same amount. The arbitrator should not contribute to the Employer's sending a message to all employees, "If you join a union, like the fire fighters did, then you will have to pay for healthcare." This is a very powerful message. Because no internal comparables support the Employer's unreasonable position of discrimination in health care co-payments, the arbitrator should reject it (*Brief for the Union* at 34-35).

The Union also voices amazement that management would propose its co-payment language to be retroactive to 2001, while the collective bargaining agreement is only retroactive to May 1, 2002 (*Brief for the Union* at 35-37). Because the employer has propose the medical cost insurance payment obligation of employees become effective in 2001, the entire offer should be rejected. It is not only unreasonable, according to the Union, but it goes beyond the stipulations of the parties as to contract duration and statements on the record (*Brief* at 37).

* * *

There is no question that the Administration had outlined a valid argument for cost-sharing at Niles. As a matter of record, I find that the Administration advanced a need basis for such a change, especially when reference is made to the external comparables. Moreover, like it or not, co-pays are a fact of life in all sectors of work in today's America. Gone are the days in the private and public sectors where employees avoid co-pays simply because they have been a part of fringe benefits in the past.

In this case, however, what dooms the Administration's proposal are the following considerations:

First, in no uncertain terms the Administration is asking the firefighters to "set the table" for the rest of the organization. At the same time, however, management has not exercised its right to impose cost sharing from non-unionized employees. While management may argue that what other employees have or do not have in a contract is not controlling (see, *Brief* at 24-25), still, if the problem and need is as bad as management asserts, what explains why they did not "set the co-pay table" in their own house? What guarantee would the firefighter/paramedics and Lieutenants have that if they set the "co-pay table" the police would follow suit? Simply, stated, management would be on much stronger ground for a co-pay award had it come to the hearing asserting that they were the first to buy into the program it now asks the Arbitrator to impose on the union. The complete absence of internal comparables does not help management's case. Second, as already noted, this is a first contract for this bargaining unit. I am on record as holding that interest arbitrators should in part be guided by the principle of making an award that would reflect the position the parties would have reached had both parties engaged in economic sanctions, in this case management's willingness to take a strike and the Union's willingness to engage in one. Having participated in serious mediation efforts at Niles, I am not convinced that the parties engaged in sufficient good-faith, hard bargaining over the issue of co-pays. Whether traditional "break through" analysis is appropriate for a first-time contract is not the point in Niles. The imposition of a co-pay is a major change from the past, which requires serious deliberation by the parties. I do not believe that the parties ever devoted the time and energy on this issue rendering it appropriate for an arbitrator to impose an award. Third, as pointed out by the Union in its *Brief* at 38, there are sufficient ambiguities in management's proposal to give pause to awarding it. As so well put by the Union: "Apparently, the Employer seeks to change the employees a percentage that is to be based upon some calculation of health insurance costs, but the failure to explain how this information is derived is a sufficient reason to reject the Employer's proposal." The Union is not alone in voicing a concern as to how the percentage payments are to be calculated. The Union's conclusion is right on point:

The bargaining-unit employee members are being asked to be partners in payment for a plan negotiated by the Employer but which cannot be clearly and adequately explained to the employees as to the calculation of the amount they would be required to pay. No prudent partner should enter into an arrangement with another partner where the costs are indeterminate and without a proper explanation of the financial arrangements. The Employer's proposal is simply inadequate as to its financial information and for this additional reason should be rejected. No safeguards are built into the Employer's proposal to cap or limit the contributions of employees. This is also part of a good business practice that has not been included in the Employer's proposal (*Brief* at 40).

Finally, while all comparables but one, Highland Park, require employees to make health insurance co-payments, these co-payments are apparently spread out among *all employees, whether*

represented or unrepresented. The externals favor management (with respect to the existence of some co-pay) but the internals do not compare to other jurisdictions. Again, I see no reason why the firefighters should be designated as "table setters" while management and other employees elects to sit back and remain pat on the issue.

For the above reasons, the Union's proposal is awarded.

B. Retiree Health Insurance

The Village currently permits non-Medicare-eligible retirees to participate in the medical plan by paying 100% of the premium cost. Retirees who are accordingly Medicare-eligible may purchase Medicare supplemental coverage through the Village at 100% of the cost. The Village proposed to continue this arrangement on the same terms as are provided to other employees (*Brief for the Employer* at 27).

The Union proposes that the Village pay 50% of the cost of retiree medical benefits. The Administration points out that this proposal may only apply to future benefits for current active employees and may not apply to benefits for current retirees. Benefits for current retirees is a permissive subject of bargaining that the Union cannot, and the Village will not, arbitrate (*Brief for the Employer* at 27, n. 13).

* * *

The Administration's proposal is awarded. The Union's proposal is not supported by the comparables. Moreover, it is, as argued by the Employer, prohibitively expensive, imposing a significant economic cost on the Village during a time when the trend on retiree benefits is running the other way. The solution to this issue, as indicated by the Union, is to bargain a sick-leave buy back and some change in the sick-leave program to solve the post-employment healthcare financing problem (See, *Brief for the Union* at 64).

IV. Additional Time Off [economic]

- I. Floaters &**
- III. Carry-Over of Floaters**

Currently, bargaining-unit members are entitled to seven (7) floating holidays and one (1) personal day. The Village's final proposal on the number of floating holidays is that effective January 1, 2003, members of the bargaining unit shall be entitled to ten (10) floaters *which cannot*

be carried over into the following year. In addition, bargaining-unit employees will continue to receive one (1) personal-leave day. In accordance with the Village's proposal, the Chief would choose six (6) of the floater days and the employees would choose four (4) (*Brief for the Employer* at 31).

The Union proposes ten (10) floating days effective January 1, 2003, and two (2) additional floaters effective January 1, 2004. Employees would continue to receive one (1) personal leave day. The Union proposes that the Chief would assign half of the available floaters and half would be assigned by the employee: five chosen by the Chief and five assigned by the employee in 2003 and six chosen by the Chief and six assigned by the employee in 2004. (*Brief for the Union* at 48-49).

Although the Union's position during the hearing was that floater days could be carried over to the next year, it has abandoned that position, in management's view. The Union asserts otherwise (*Brief for the Union* at 55-56).

* * *

Union Ex. 29, modified to show the competing final offers on floaters days, is outlined in the following table:

Days Off Comparable Towns 2002

	5 years	10 years	15 years	20 years	25 years	30 years
Buffalo Grove*	21	22	24	25	25	25
Des Plaines**	16	18	22	23	23	23
Elk Grove	20	21	22	24	25	25
Highland Park****	19	19	22	22	22	22
Morton Grove	16	19	21	21	23	25
Mount Prospect	18	21	23	23	23	23
Northbrook	19	20	23	23	24	24
Park Ridge	16	19	23	23	23	23
Rolling Meadows	20	23	24	25	26	26
Wheeling	15	17	20	22	22	22
Hoffman Estates	17	19	22	25	26	26
Average	17.9	19.8	22.36	23.18	23.82	24.00
Niles	18	18	21	21	23	23
Union	20	20	23	23	25	25

* Includes three floating holidays for holiday pay.

** Does not include five days off given to Des Plaines firefighters in lieu of holidays.

*** Includes five floating holidays for holiday pay.

Hoffman Estates is substituted for Skokie. Pursuant to the Union's proposal, the number of days off available to bargaining-unit employees would exceed the average of the comparables in every year but the 20-year category. Management points out that even at step 20, it is only 18 days lower than the average. In accordance with the Village's proposal, the number of days off would be approximately one below the average. According to the Administration, the extra compensation contained in the Village's final offer on salaries, awarded in this opinion, would place both firefighter/paramedics and Lieutenants pay above the average. As such, the extra compensation more than compensates the employees for the day or so more they would work than employees in comparable communities (*Brief for the Employer* at 31-32).

The Union responds that while the Employer's proposal shows agreement with the Union on the need to increase days off, it fails to recognize the high volume of work performed by the Niles bargaining unit and that Niles (in the Union's view) ranks last among the comparables in total time off (See, *Brief for the Union* at 49). To this end, the Union argues that the Niles Fire Department, at 141 calls per employee, has the highest call volume of any of the comparable communities (*Brief* at 1; 6-9), thus supporting its claim for increased compensation and time off.

Accordingly, the Union's offer for January 1, 2003, requests the same number of floaters as the Employer, in this case ten (10). However, the Union's proposal for 2004 is based on the high workload and proposes an additional two (2) floaters to be implemented on January 1, 2004. At present, Niles provides only seven floaters. Thus, according to the Union, its offer of a guaranteed increase over a two-year period is reasonable and is designed to place Niles at least at the average level of days off for the ten year and thirty levels (*Brief* at 50).

Significant in resolving this impasse item is the Union's analysis regarding the impact of the parties' final offers, specifically Table 8 (Impact of Final Offers in 2004) (*Brief for the Union* at 51). As of May 1, 2004, the Union's offer would place the five-year employee above average by 2.1 days and would grant modest increases from 0.2 to 1.18 in the other service levels. Given the substantial amount of work performed by Niles' firefighters, its offer has appeal. The Administration's offer would place Niles 2.18 days below average at the 20-year mark and 1.8 days below average at the ten-year mark (*Brief* at 52).

Also favoring the Union is the validity of its assertion that the floaters are really work-reduction days designed to reduce the Employer's overall liability under the Fair Labor Standards Act (FLSA) (where time off has a significant benefit for the Employer and also the employee) (*Brief* at 52).

Applying the statutory criteria, particularly external analysis, the Union advances the better case regarding the floaters. Without comment, the Union's provision for carry-over of floaters is not awarded. No compelling reason exists to "carry over" this type of benefit.

II. Vacation Time

As noted, the Employer's Vacation Time proposal is as follows:

Eligibility and Allowances. Every employee covered by this Agreement shall be eligible for paid vacation time. Employees shall start to earn vacation allowance as of their date of hire. Vacation allowance shall be earned as follows:

After hire date, an employee will accrue 8 hours per full calendar month of service not to exceed five (5) duty days.

After completing five years of service - 7 duty days.

After completing thirteen years of service - 9 duty days.

After completing fifteen years of service - 10 duty days.

After completing twenty-five years of service - 12 duty days.

Each year, prior to vacation selection, a current Accrued Vacation Time schedule will be posted.

Vacation Selection The vacation period extends from January 1 to December 31. All accrued furlough or vacation days shall be used in the current vacation calendar year. Vacation days shall be chosen by seniority within the bargaining unit.

All vacation, personal days and seventh, eighth, ninth and tenth floater selection shall be made between October 1 and December 31. Only three persons per platoon may be on vacation or floater each day. Only two lieutenants per platoon may be on vacation, personal day or floater each day. There will be no minimum number of days for the first pick. The original posted vacation request list is to be signed by each employee. Upon completion of the second picks, the district chief will complete a typewritten list of the vacation days selected by each member of his shift, and the original list will be forwarded to the fire chief for his records. Vacations days will be recorded for each employee in the Duty of Record Log.

If vacation days are not used by the end of the calendar year, the employee will forfeit the unused vacation benefit. Vacation days cannot be carried over into the following year, except with the approval of the Chief or as provided elsewhere in this Contract. In the event the

Chief approves a carryover, the vacation days must be taken in either January or February of the following year. Employees will accrue vacation time if they are on an excused, paid leave, of absence. Vacation time is not accrued during leaves of absence. Scheduled vacation days occurring during sick leave will be rescheduled, and an employee shall be allowed to carry over into the next calendar year vacation time that could not be used because of sickness or injury.

The Union's final offer on vacation time, Section IV(B), is as follows:

Section 11.4. Selection for all vacation, personal days and employee designated floater days shall be made between October 1 and December 31. Only four persons per platoon may be on vacation each day, for vacation days entered on the first and second pick. Other sections as floaters, personal days can be made to a maximum of two lieutenants per duty day. There will be no minimum number of days for the first pick. The original posted vacation request list is to be signed by each employee. Upon completion of the second picks, the district chief will complete a typewritten list of vacation days selected by each member of his shift, and the original list will be forwarded to the fire chief for his records. Vacation days will be recorded for each employee in the Duty of Record Log.

If vacation days are not used by the end of the calendar year, the employee will forfeit the unused vacation benefit, except as provided in the sick leave article of this agreement, vacation days cannot be carried over into the following year. Employees will accrue vacation time if they are on an excused, paid leave of absence. If the employee is on an unexcused and unpaid leave of absence, the vacation time is not accrued (*Brief for the Union* at 53).

* * *

The primary difference between the parties on this proposal deals with the number of employees per day who may be able to take off due to a vacation or floater. The Union proposes four (4), while the Employer proposed three (3). The Union believes that its proposal is more reasonable due to the number of man days off per year needed to accommodate the demand for days off by current employees based on the increased number of floaters and the additional employees needed to be hired to cover the minimum manning that, in the Union's view, has already been agreed to by the parties.

I am not convinced that the language proposed by the Union can be operational at Niles. More important, I am not all convinced that the parties made a good faith attempt to reach an accord on this issue. The Employer's position is awarded.

IV. Pay for Working on a Holiday

The Union's proposal on Holiday Pay, Section IV(D), is as follows:

Employees shall receive eight (8) hours of pay at one and one-half the employee's regular rate of pay for each holiday. Holiday pay will be calculated based on the Employer's straight time rate as of the date of the holiday. Shift personnel on unpaid leave of absence shall not receive the holiday pay benefit.

Employees shall be paid two times the employee's regular rate of pay for being hired back to work on a holiday.

The Employer's proposal on holiday pay is virtually the same as the Union's proposal in terms of pay at one and one-half times the regular rate for each holiday whether they work or not, and double time for working a hire back on a holiday (*Brief for the Union* at 57).

The Village's language is awarded.

V. Manning [economic]

The Union's final offer on Manning, Section V, is as follows:

The contract shall contain a manning section as follows: On-duty daily minimum manning levels shall be three personnel for fire trucks, three personnel for engine companies and two personnel-paramedics for ambulances.

The Employer's final offer on Manning is as follows:

Minimum manning shall be as follows: three personnel on all fire apparatuses and two on all ambulances.

The Village argues that although the issue was supposedly unresolved, the parties have submitted proposals with the identical impact (*Brief for the Employer* at 45). The Union conceded that management's proposal is virtually the same as the Union's, except that its proposal refers to *daily* minimum manning levels while the Employer's proposal simply refers to "manning." (*Brief for the Union* at 57).

The importance of this issue cannot be understated, especially when the word "daily" is contemplated. Not understanding the full implications of the Union's language, the Village's language is awarded (although the undersigned Arbitration Panel assumes the Employer intends to have *daily* manning of three personnel for trucks and engines on a daily basis, for the sake of firefighter safety).

VI. Sick Leave [economic]

Another contentious issue at Niles is that of Sick Leave. It is accordingly instructive to outline with specificity the parties' positions on this issue.

By way of background, for many years the Village has offered its employees sick leave protection far exceeding that offered by most employers anywhere (*Brief for the Employer* at 42). In essence, employees could take up to six months of paid sick leave each year. According to the Administration, in recent years the number of people utilizing the Village's liberal policy has steadily increased. In 1999, the Village attempted to deal with the problem by issuing the explanation of the policy:

Six (6) Month Sick Policy Clarification

When the Village of Niles initially established the six (6) month non-duty injury sick policy, the intent was to provide protection for the employee and his/her family against the event of catastrophic illness. At the time of implementation, recovery time was much longer for many illnesses such as heart attack or gallbladder surgery than today.

The Village does not intend to change the policy. However, the policy was never intended to be available to employees to provide unlimited "*sick time*" for colds, stomachaches, sprains, bruises and other minor ailments incurred in the course of every day living. While the Village does pay employees for time off for these incidents, it does not expect the privilege to be abused by the employees. Chronic abuse by an employee of 1, 2 or 3 day absences will not be acceptable or tolerated by the Village. These chronic absences preclude many departments from performing daily missions effectively (*Brief* at 43).

When the increase in sick-leave use continued to increase, the Village modified its sick leave plan to attempt to curtail the use of non-duty-related sick leave.

The Village's final offer is the plan which now covers all other Village employees. It differs from the old plan in several ways: First, it makes a distinction between extended leave and the more commonly-understood definition of sick leave: personal illness, medical appointments, etc. Second,

it limits the number of days to six a year, the number found for firefighters in most of the contracts of the comparable communities. Third, it continues the six months leave a year for extended illnesses, but limits its use to a total of eighteen months during an employee's career (*Brief* at 43).

According to the Administration, the Village has demonstrated the need for a change in its Sick Leave Program. Niles offers its employees three different types of sick leave benefits: On-Duty Illnesses, Short-Term Sick Leave, and Long-Term Sick Leave. Management notes that during the past five years, there has been an increase in the utilization of all three types of sick leave use. While the Union denies that there has been any sick-leave problems, Employer Ex. 6 shows a dramatic increase in the number of "duty illnesses." That exhibit also lists the specific reasons for the "illnesses." Examination of the list of illnesses shows that many are what appear to be very minor forms of illnesses: "felt pain," for example, is one of the most common entries. In 1998, there was only one day off due to such illnesses. In 1999, the number increased to 17; in 2000 to 25; in 2001 to 141; and in 2002 to 228 days off due to "duty illnesses."

Further, from 1998 through 2002, long-term sick-leave illnesses have also steadily increased peaking in the last two years. In 1998, there were only 95 days of paid sick leave for such illnesses. By 2002, the number of days off for long-term illnesses had nearly doubled. (189 duty days in 2002)

Also, the evidence shows a steady increase in the use of sick leave: 129.1 in 1998; 157.2 in 1999; 128.2 in 2000; 149.7 in 2001; and 181.7 in 2002 (*Brief* at 44). While on-duty illnesses, short-term sick leave, and long-term sick leave accounted for the loss of only 319.1 days of work in 1998, in 2002 the number of sick leave days used soared to 598.7 days or the functional equivalent to nearly six employees being off work for the entire years.

In the Employer's view, there is clear justification for its Sick Leave proposal. Management points out that the only argument the Union has advanced in support of its proposal that the old sick leave plan be maintained for bargaining unit members is its oft-repeated statement: "They did not offer any quid pro quo." The quid-pro-quo argument does not apply to a first contract, in the Administration's opinion.

The Union's position is that the present policy has been in effect for at least 20 years and, accordingly, the *status quo* should be maintained and there should be no change in the employer's current sick leave program (*Brief for the Union* at 58). The Union also contends that the Village's proposal "seeks a major breakthrough in employee working conditions without offering any kind of sick leave buy back provision, which exists in ten of the eleven comparable communities." (*Brief* at 59). Moreover, the Union contends that "the Employer expects the arbitration panel to select its offer without having made a serious attempt to seek a change in this benefit at the bargaining table." (*Brief* at 59).

In the Union's opinion, the Administration is proposing giving firefighters 60% of the sick days other employees will receive. The Union reminds the Arbitrator that a firefighter assigned to a shift works 24 hours/day. Just because a non-firefighter is assigned to eight hours per day does not justify limiting the personal illness needs of firefighters by reducing the number of days available to them for sick leave. Firefighters should be given the same number of sick days as all other employees because of the long past practice and because their health needs are the same as others. Thus, the change proposed by the Administration is significant (*Brief* at 60).

* * *

The Union has advanced the better argument regarding this impasse item. The benefit at issue has been in place for a long time, more than twenty years. Moreover, much (but not all) of the employer's economic concern is speculative. Also, I am persuaded that because of the 24-hour work day of firefighters, they should not be given a number of sick days that is effectively lower than all other Village employees (although the Employer has defended, asserting that all other employees have been required to be covered by the plan as of January 1, 1003). Further, and perhaps most important, there are also potential problems with the Employer's proposal *vis-a-vis* the Family and Medical Leave Act (FMLA) (See, *Brief for the Union* at 61-62). Finally, this issue apparently was raised late in bargaining and, like numerous other issues in this proceeding, I do not believe the parties adequately explored other options, such as a sick-leave buy back program as exists in many of the comparables.

For the above reasons, the Union's final offer is accepted.

XVI. Hours of Work [overtime][economic]

As correctly pointed out by management, some aspects of the issue were resolved in the undersigned Arbitrator's mediation efforts, and some aspects of it were included in tentative agreements even before the arbitration. To further complicate matters, management argues that in a number of places the Union's proposal is inconsistent with the tentative agreements. Additionally complicating this proceeding, the parties have not presented final offer proposals on IV. Additional Time Off and XVI. Hours of Work in a manner conducive to simple, logical, side-by-side analysis (compare, *Brief for the Village* at 7-12, with *Brief for the Union* at 64-68 (discussing hours of work) & *Brief for the Union* at 48-57 (dealing with floaters, carry-over of floaters, and vacation time)).

To "facilitate the panel's review" of the issues, the Administration sets forth its final offer on Additional Time Off and Hours of Work (to include floaters, carry-over of floaters, paying for working on holidays, vacation time, and overtime, all in a single analysis) and attempts to compare

it with the Union's final offer. The comments in italics, provided by the Administration, are designed to show the differences between the proposals.

Hours of Work and Overtime

Section ___ Duty Day. This article is intended to define the regular hours of work per day or per week during the term of this Agreement and shall not be construed as a guarantee of work per week.

The same language is in both proposals.

Employees shall be assigned regular duty shifts. The normal duty shift shall commence at 8:00 a.m. and end at 8:00 a.m. the following day, including a one accumulative hour lunch and two fifteen (15) minute breaks. The normal duty schedule shall be one shift (twenty-four (24) hours) on duty followed by two shifts off duty (forty-eight (48) consecutive hours).

The same language is in both proposals.

Effective January 1, 2003, the work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) will be an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 8:00 a.m. to 8:00 a.m., the following day. The amounts set forth on the salary schedule represent a fixed annual amount to be received for the annual number of hours worked under this schedule minus floaters and personal leave days.

The same language is in both proposals.

Section ___ Overtime. Any time worked beyond an employee's scheduled work day shall be defined as overtime, including emergency recall, hireback due to personnel shortage, mandatory training, emergency maintenance, and public education programs directed by the Fire Chief. Effective January 1, 2003 employees taking paramedic training for initial paramedic certification will be paid overtime for the time they spend in training outside of normal work hours. Overtime shall be paid at time and one half of the employee's regularly hour rate in quarter hour increments. If the employee works less than fifteen minutes, the employee shall be paid the overtime rate for each six minutes worked. An employee who has left the Fire Station after working a scheduled shift and is required to return or an employee who receives training shall receive a minimum of two hours pay at the employees overtime rate.

The Union's proposal is different in the following ways:

1. *It would make overtime pay for paramedic training retroactive: the panel decided that such overtime pay would be prospective only and was not an issue to be briefed. (Tr. 332 and 344 and 347).*

2. *The Union's proposal includes the word "hold over."*

3. *It includes language that says if an employee works on his day off, except for holdover, he is paid two hours pay at the overtime rate.*

4. *It provides that employees who are forced back due to incomplete manning to work a shift on a regular scheduled day off shall be paid at two times the employees hourly rate of pay.*

5. *It provides that employees shall be paid for their overtime "on the next scheduled day after working the overtime."*

6. *It provides that any overtime accrued as a result of the Fair Labor Standards Act "shall be included on the next schedule(sic) pay day following completion of the work cycle."*

7. *It provides that paid time not worked shall be considered as hours worked.*

Section FLSA Work Period. Effective January 1, 2003, the work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) will be an established regular re-occurring period of twenty-seven (27) consecutive days which shall run from 8:00 p.m. to 8:00 p.m. The amounts set forth on the salary schedule represent a fixed annual amount to be received for straight time pay for 2648 hours (2912 hours minus 10 floaters and one personal leave day.)

*The proposals are the same except for the last sentence above.
The Union's proposal calls for 13 floaters in 2004.*

Section FLSA Overtime. An employee shall, in addition to regular compensation, be paid time and one-half times his/regular straight time hourly rate for all hours of actual work in excess of 204 hours in the employee's regular twenty-seven (27) day

work cycle. An employee's regular rate shall be computed in accordance with the requirements of the Fair Labor Standards Act.

The Union's proposal does not include any reference to the number of hours in the work cycle; and as mentioned above, it wants all paid hours to count as hours worked.

Section ____ Overtime Work. The Fire Chief or his designee(s) shall have the right to require overtime work, and employees may not refuse overtime assignments except where the employee or a member of the employee's family has an extraordinary emergency condition.

The same language is in both proposals.

Section ____ Floaters. Effective January 1, 2003, employees will be allowed to have 10 days off per year. These days off are work reduction days in accordance with the FLSA Operating Schedule of twenty-seven (27) days. These work reduction days will be known as floaters. Six of these floaters will be assigned by the Chief or his designee and four may be selected by the employees. Employees may use duty trades to change their floater days, provided that the change does not result in any overtime for the Village.

The Union wants 12 floaters in 2004; the Village has offered 2. The Union wants to be able to choose when five of the floaters are to be used in 2003 and six in 2004. The City says that the employees can choose when 5 of the floaters are to be used.

Section ____ Call Back. Callback shall be defined as overtime for employees who return to work for general alarms. Call back shall be voluntary except when the Department has an unusual emergency condition. An employee responding to a callback shall receive a minimum of two hours pay at the overtime rate.

The Union's proposal adds the following language: "When the callback ends, the employees on callback shall be dismissed."

If the callback is cancelled prior to the employee's arrival at the fire station, the employee shall receive one hour minimum call in pay if the employee has responded in a reasonable time to the cancelled callback. In the event of a callback that occurs between 0600 and 0800, employees who are scheduled to work at 0800 shall only be paid for the additional hours worked, not the guaranteed two hours.

The same language is in both proposals.

Section ____ Holdover.

(a) Holdover shall be defined as overtime for which an employee of the appropriate classification is held over after the completion of the scheduled shift to cover a manpower shortage or to complete a service call. Overtime shall be paid at the rate of time and one half (1 & 1/2) in quarter hour increments.

The Union's proposal deletes the last sentence and includes a second paragraph (Union Proposal 4.5)

Section ____ Hireback.

Overtime distribution for predetermined hire back situations will be distributed by the following procedure. No rank or job classification shall monopolize or be excluded from the opportunity to hire back. Distribution shall be controlled by the following guidelines:

Each shift will have three hire back roster lists consisting of the personnel assigned to that shift. One hire back roster list will be for voluntary hire backs of twelve (12) hours or more. The second hire back roster list will be for voluntary hire backs of less than twelve (12) hours. The third hire back roster list will be for mandatory hire backs.

All of the hire back roster lists shall be initially compiled in a descending order of seniority based on employment date and will contain all shift personnel below the rank of District Chief.

Predetermined hire backs will be obtained from the shift being relieved, with as much notification as possible.

For a predetermined hire back situation, hire backs shall be first offered on a voluntary basis according to the order of the appropriate voluntary hire back roster list. The hire back shall be offered to the person highest on the voluntary hire back roster list that can fulfill the required duties of the shift in need of the hire back.

If the person either accepts or declines the hire back offer or is off on sick leave (excluding duty related injury/illness), that person's name is placed at the bottom of that hire back roster list.

If the person is already committed to other department activities, can't be offered the hire back due to roster considerations or is already on duty for the shift in need of the hire back, then that name is passed over.

This process will continue until the hire back is filled.

If the necessary hire back has not been filled after proceeding in this manner through the entire appropriate voluntary hire back roster list, the person highest on the mandatory hire back roster list that can fulfill the required duties of the shift in need of the hire back shall be required to work the hire back or find a suitable replacement.

When an employee must be replaced for an extended period of time, hire backs for that employee will be obtained based on the following guidelines:

The hire backs will be divided by date between the two unaffected shifts.

The shift preceding the shift in need of the hire backs will take the hire backs on odd date

The shift that follows the shift in need of the hire backs will take the hire backs on even dates.

The Fire Chief or his designee will enact this hire back procedure.

When a hire back becomes necessary during the course of a duty day for that duty day the following procedure shall be followed:

All of the department issued pagers shall be activated and a code shall be transmitted indicating the need for a hire back.

The first employee that responds, either in person or by telephone, that can fulfill the required duties of the shift and be available to report to work within one (1) hour shall be granted the hire back.

General Guidelines:

A person will not have their name moved to the bottom of the hire back roster nor be required to work a hire back if that person has any of the following occurring on their duty day before or after the day for which the hire back is needed:

- A. Scheduled Leave
- B. Emergency Leave
- C. Bereavement Leave

An individual may request to be contacted during any of the above listed leaves in order to be notified of a hire back. This request shall be in writing to the persons responsible for procuring hire backs. If an individual is contacted a decision regarding the hire back will be made and posted accordingly. One page or one phone call at the number provided by the requesting employee will be considered contact and the waiting period for a response will be fifteen (15) minutes. If there is no response in fifteen (15) minutes that person's name is placed at the bottom of that hire back roster.

Decisions Regarding the Taking of Hire Backs When asked if available to take a hire back a decision shall be made within fifteen (15) minutes. However, at shift change or when time is critical and a decision is needed directly, five (5) minutes will be allowed. If no decision is made during these time frames, the individual's name will be placed at the bottom of the list.

Posting of predetermined or extended leave hire backs will be allowed two duty days prior to the need. The two duty days will be counted on the shift providing the hire back.

Trading of overtime will be allowed. However, this practice will be a personal matter between participating individuals and the Fire Department will incur no expense. A District Chief or the department's clerical staff shall be responsible for procuring a hire back except in their absence. In their absence, a Lieutenant or his designee shall be responsible for procuring a hire back.

These guidelines cannot be expected to cover every contingent hire back situation. They have been developed to simplify and standardize the process in the department.

The proposals are very different. The Village's proposal is the language agreed upon in the mediation conducted by the arbitrator. (Tr. 309)

Section ____ Floater Employees will be allowed seven floater days. Effective January 1, 2003, Employees will be allowed ten floater days per year. Floaters cannot be carried over to the following year.

As noted above, the Union's proposal is for 12 floater days in 2003.

Section ____ House and Duties.

Stand down time for 24-hour shift personnel shall normally commence no later than 5:00 p.m. Monday through Friday and 2:00 pm on Saturday and noon Sunday and the on the 10 holidays designated annually by the Village. No employee shall use Village equipment or supplies for their private business pursuits. Under no circumstances shall an employee meet with customers/clients or potential customers/clients at the fire station during either assigned or stand down time.

The first sentence of the Union's proposal is different from any language in the Village's proposal.

Employees will continue to perform those duties sworn employees have performed in the past, any duties normally performed by firefighters, as well as new duties reasonably related to duties the firefighters have performed in the past. Employees will not be required to perform any duties requiring the services of an electrician, mechanic, painter, plumber, or carpenter.

The Union's proposal adds language different from the tentative agreement regarding fire hydrant testing and snow removal. (Tr. 31-312)

It is further provided that except for emergencies, employees may retire for the day after completion of the house and the routine duties as set forth above, but not before the end of the work day without approval of the Company Officer. Notwithstanding the above hours limitations, the Village may require employees to participate in a reasonable number of public education appearances or public education activities each year.

Section Holidays The following days shall be considered holidays:

New Year's Day (January 1)
Presidents' Day (third Monday in February)
Spring Holiday (Friday before Easter)
Memorial Day (last Monday in May)
Independence Day (July 4)
Labor Day (first Monday in September)
Veterans' Day (November 11)
Thanksgiving Day (fourth Thursday in November)
Day After Thanksgiving
Christmas Day (December 25)

A recognized holiday that falls on a Saturday will be observed on the preceding Friday. A recognized holiday that falls on a Sunday will be observed on the following Monday.

The Union has no corresponding language; they above is part of a tentative agreement and merely reflects the status quo.

Section Holiday Pay and Work Requirements Employees shall receive eight (8) hours of pay at one and one half times the regular rate for each holiday whether they work the holiday or not. To be eligible for holiday pay, employees must work the last scheduled day immediately preceding and the first scheduled day immediately following the holiday. In the event an employee does not work the day before or after a holiday, proof of sickness or excusable absence must be established to the satisfaction of the Chief or his designee.

If an eligible employee works on a recognized holiday, he/she will receive holiday pay. In the event the employee is scheduled to work on a holiday but calls in sick, he/she will not receive holiday pay.

The Union's proposal omits the following language:

To be eligible for holiday pay, employees must work the last scheduled day immediately preceding and the first scheduled day immediately following the holiday. In the event an employee does not work the

day before or after a holiday, proof of sickness or excusable absence must be established to the satisfaction of the Chief or his designee.

If an eligible employee works on a recognized holiday, he/she will receive holiday pay. In the event the employee is scheduled to work on a holiday but calls in sick, he/she will not receive holiday pay.

The Union's proposal contains the following two sentences which are not in the Village's proposal.

Holiday pay will be calculated on the Employee's straight time rate of pay as of the date of the holiday. Shift personnel on unpaid leave of absence shall not receive the holiday pay benefit.

Section ____ Overtime Pay for Holidays Worked Employees working a hireback on a holiday will be paid double time.

The language of the proposal is slightly different, but both call for double time.

Vacation Time

Section ____ Eligibility and Allowances. Every employee covered by this Agreement shall be eligible for paid vacation time. Employees shall start to earn vacation allowance as of their date of hire. Vacation allowance shall be earned as follows:

After hire date, an employee will accrue 8 hours per full calendar month of service not to exceed five (5) duty days.

After completing five years of service -- 7 duty days.

After completing thirteen years of service -- 9 duty days.

After completing fifteen years of service -- 10 duty days.

After completing twenty-five years of service -- 12 duty days.

Each year, prior to vacation selection, a current Accrued Vacation Time schedule will be posted.

The Union proposal has no language on the number and accumulation of vacation days.

Section Vacation Selection The vacation period extends from January 1 to December 31. All accrued furlough or vacation days shall be used in the current vacation calendar year. Vacation days shall be chosen by seniority within the bargaining unit.

Section All vacation, personal days and seventh, eighth, ninth and tenth floater selection shall be made between October 1 and December 31. Only three persons per platoon may be on vacation or floater each day. Only two lieutenants per platoon may be on vacation, personal day or floater each day. There will be no minimum number of days for the first pick. The original posted vacation request list is to be signed by each employee. Upon completion of the second picks, the district chief will complete a typewritten list of the vacation days selected by each member of his shift, and the original list will be forwarded to the fire chief for his records. Vacations days will be recorded for each employee in the Duty of Record Log.

If vacation days are not used by the end of the calendar year, the employee will forfeit the unused vacation benefit. Vacation days cannot be carried over into the following year, except with the approval of the Chief or as provided elsewhere in this Contract. In the event the Chief approves a carryover, the vacation days must be taken in either January or February of the following year. Employees will accrue vacation time if they are on an excused, paid leave of absence. Vacation time is not accrued during leaves of absence.

Section Scheduled vacation days occurring during sick leave will be rescheduled, and an employee shall be allowed to carry over into the next calendar year vacation time that could not be used because of sickness or injury.

* * *

The Administration asserts that the arbitration panel should not have to "mix and match" various sub-issues (and we agree). Management submits that because the Union's final offer contains a number of proposals which are inconsistent with the tentative agreements reached during the hearing, it appears to have been prepared without even a cursory glance at the transcript. In the Administration's view, a review of the transcript would have revealed that the following tentative agreements are inconsistent with its final proposal:

1. Paramedic Pay (Tr. 332 and 344 and 347);
2. Hireback (Tr.309);
3. Fire Hydrant and Snow Removal (Tr. 311-312).

- b. The Union's proposal contains internally inconsistent and/or impractical clauses.
- i. The Union's proposal provides that all paid time off is to be counted as hours worked (4.2) Yet the Union refers to floaters as "work reduction days in accordance with the FLSA." (IV A.) The sole purpose of granting floater or Kelly Days is that they are not counted as hours worked. At p. 40 of the Personnel Manual, it states that Fire Personnel will be compensated at time and one half for "any time worked in excess of their regularly assigned hours."
 - ii. The Union's proposal calls for "instant pay checks" for overtime. ("...on the next scheduled day.")

* * *

With the exception of "floaters" (resolved in the Union's favor), all other issues that overlap this proposal (vacation time, carry-over of floaters, and pay for working on a holiday) have been resolved in the Village's favor. Moreover, and consistent with the original format of unresolved issues presented at the first day of hearing (Jt. Ex. 1), "floaters," "vacation time," "carry over of floaters," and "pay for working on a holiday," were considered as single impasse issues under impasse item "IV. Additional Time Off." Accordingly, the major item left for consideration is Hourly Rate of Pay for Overtime Calculations.

As pointed out by the Union, its proposal on overtime provides for the calculation of the straight-time hourly rate (necessary for calculating overtime) based on the number of floaters in 2003 and 2004 (*Brief for the Union* at 65). The Employer has no comparable proposal that sets out the calculation for an hourly rate for overtime purposes, in the Union's view. Also, the Union's proposal provided for the hourly rate to be calculated based upon an annual salary including such items as paramedic pay, longevity pay, engineer pay and other stipens. There is no such comparable provision in the Employer's overtime proposals.

In support of its proposal the Union includes Table 9, Hourly Rates and Overtime Calculations for the comparables (*Brief for the Union* at 67-68). Many (Buffalo Grove, Highland Park, Morton Grove, Rolling Meadows), but by no means not all (Wheeling, Skokie, Northbrook, Elk Grove), include annual salary and some other stipens, including paramedic pay, longevity pay, differential pay, etc., in calculating an overtime rate.

* * *

An employee's overtime rate should be calculated by dividing "annual salary" by "annual hours paid." To this end there is a general consensus among arbitrators that "annual salary" includes all components that qualify for "salary" for pension purposes. Thus, base salary, longevity, and

annual certification or speciality pay (in this case firefighter/paramedic pay), educational incentive pay that is paid annually, etc., are properly included in the numerator of "annual salary." There is some variation in calculating the denominator in the equation, or "annual hours." The AFFI uses a base number of 2,922, reflecting an annual average of 121.67 scheduled shifts, minus the number of shifts scheduled off as "Kelly Days, making the annual hours for a firefighter/paramedic working a schedule providing 13.5 Kelly Days (a Kelly Day every 9th shift) as $2,922 - 324 (13.5 \times 24) = 2,598$, thus producing an average workweek of 49.46. Another measure of hours would be to simply take the base number of 2,912 (56 hrs/week x 52 weeks). Vacation days, paid leave days, bereavement days, etc., are scheduled work days on which an employee is granted leave with pay for a specified reason. Arbitrators routinely count these days as part of "annual hours." In contrast, Kelly Days are not scheduled days of work. Similar to the total pay of a 40-hour employee, his hours are 2,080, or 52 x 40 hrs/week. Their scheduled days off are generally Saturday and Sunday and are excluded from "total hours" worked.

Of special note in the Union's proposal is this: The final sentence of the proposal provides that sick leave, vacation time, and holiday time shall be included in the hours worked for purposes of the overtime calculation, standard in many contracts and generally accepted by arbitrators as correctly included. (*Brief for the Union* at 68). I conclude that, overall, the Union's proposal is more in line with the comparables and generally-accepted accounting of overtime calculation.

The Union's overtime provision (as discussed above) is awarded.

XVII. Discipline [non-economic]

The only unresolved non-economic issue in the Discipline section of the contract deals with language related to file retention.

The Union's proposal is as follows:

The parties further agree that all discipline shall be expunged from an employee's personnel and/or disciplinary file(s) three years after the discipline is received by the employee, so long as there has been no additional discipline during the three year period. All such expungements shall take place upon the applicable anniversary of the last discipline.

The Village's proposal is as follows:

The parties agree that suspension shall be expunged from an employee's personnel and/or disciplinary file(s) ten years after the suspension is received by the employee, so long as there have been no additional suspensions during the ten year period. All such

expungements shall take place upon written request by the employee to the Chief of the Fire Department.

Management submits that during the lengthy hearing, the Union offered no exhibits or testimony to support the need for a clause requiring the expungement of disciplinary actions in employees' personnel files. In fact, no evidence was offered concerning discipline in the Village. There were no horror stories about "old" documents having been used against an employee, for example.

In support for its position, of the eleven collective bargaining agreements the Administration deems comparable, only three contain any language dealing with limitations on the use of past disciplinary documents. In those contracts, the limitations imposed by the collective bargaining agreements were far less drastic than the Union's proposal here. In the Highland Park contract, the language provides that oral warnings, if not followed by any other discipline, shall not be used to justify any subsequent disciplinary action, except for a related offense. In other words, the Highland Park contract language deals only with oral warnings and deals only with the situation where the oral warnings are used to justify subsequent disciplinary action. The Highland Park contract does not require the expungement of disciplinary files.

The language in the Morton Grove and the Northbrook contracts is similar.

In contrast, the Union's proposal would require that all discipline be expunged three years after the discipline is received. If a document has been expunged, there is simply no way it can be used for rebuttal or for judging an employee for promotion.

Management also asserts that the Illinois Personnel Records Review Act provides further reasons why the Union's proposal should not be awarded. In this respect the Illinois Personnel Records Review Act provides, in relevant part, as follows:

Personnel record information which was not included in the personnel record but should have been as required by this Act shall not be used by an employer in a judicial or quasi-judicial proceeding. However, personnel record information which, in the opinion of the judge in a judicial proceeding or the hearing officer in a quasi-judicial proceeding, was not intentionally excluded from the personnel record may be used by the employer in the proceeding if the employee agrees or has been given a reasonable time to review the information. Material which should have been included in the personnel record shall be used at the request of the employee. (820 ILCS 40/4)

Section 7 further provides as follows:

(1) An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or other disciplinary action to a third party, to a party who is not a part of the employer's organization, or to a party who is not a part of a labor organization representing the employee, without written notice as provided in this Section. (2) The written notice to the employee shall be by first-class mail to the employee's last known address and shall be mailed on or before the day the information is divulged. (3) This Section shall not apply if: (a) the employee has specifically waived written notice as part of a written, signed employment application with another employer; (b) the disclosure is ordered to a party in a legal action or arbitration; or (c) information is requested by a government agency as a result of a claim or complaint by an employee, or as a result of a criminal investigation by such agency.

Finally, Section 8 provides:

An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old. (820 ILCS 40.8)

Management contends that by the clear wording of the statute, information which is not included in an individual's personnel record cannot be used by an employer in a quasi-judicial proceeding. It is clear the legislature had in mind arbitration as one of the types of quasi-judicial proceedings; it even refers to arbitration in Section 8. If the Union's proposal is granted, the documents would be "intentionally excluded." Accordingly, the language giving the hearing officer in a quasi-judicial proceeding the ability to permit the introduction of the evidence would not be available.

In summary, management submits that although none of the comparable contracts provide for expungement, in an attempt to appease the Union, the Village's proposal also provides for expungement, but only after a ten-year period. For the above reasons, the Administration submits that the Village's proposal should be awarded.

In the Union's view, ten years is simply too long to retain disciplinary files and, for that reason, the Employer's final offer should be rejected (*Brief for the Union* at 69). Instead, the Union has proposed a period of file retention for up to three (3) years.

The Union further asserts that the Administration's offer is unlawful as well as unreasonable. According to the Union, the relevant part of the Act, 820 ILCS 408, provides:

An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete

disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than four years old.

Because the Employer does not have the lawful authority to implement its proposal, the Employer's offer should be rejected.

* * *

Amazingly (as discovered in a mediation session), this, too, was a contentious issue, even though there has been no adverse history regarding the discipline of any firefighter. Indeed, management cites this fact in support of selecting its ten-year retention proposal.

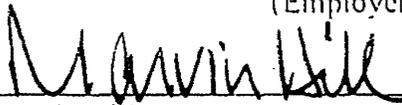
I agree with the Union that ten years is simply too long a time period to retain disciplinary files. More important, the Union has raised a valid issue regarding the legality of the Village's proposal relative to the Illinois Personnel Record Review Act. Given the problems with mixing and matching language items, the undersigned expressed a preference for treating non-economic items using a final offer rule. The Union's proposal is awarded.

VI. SUMMARY OF AWARD

I.	<u>Economic Issues</u>	
A.	Wages/Equity Adjustment	Village's Final Offer
C.	Retroactivity	Union's Final Offer
E.	Lieutenant Pay/Differential-District Chief Differential	Union's Final Offer
F.	Out-Of-Rank Pay [economic]	Union's Final Offer
II.	Health Care [economic]	
A.	Premium Payments-Employee Share	Union's Final Offer (status quo)
B.	Retiree Health Insurance	Village's Final Offer (status quo)
IV.	Additional Time Off [economic]	
I.	Floater	Union's Final Offer
III.	Carry-Over of Floater	Village's Final Offer
II.	Vacation Time	Village's Final Offer
IV.	Pay for Working on a Holiday	Village's Final Offer [language virtually identical]
V.	Manning [economic]	Village's Final Offer [language virtually identical]
VI.	Sick Leave [economic]	Union's Final Offer (status quo)
XVI.	Hours of Work [overtime] [economic]	Union's Final Offer
XVII.	Discipline [non-economic]	Union's Final Offer

Donald Kaderaber
(Union Board Member)

Barry Mueller
(Employer Board Member)



Marvin Hill, Jr.,
Neutral Arbitrator

Dated this 10th day of April, 2003,
at DeKalb, Illinois.

ADDENDUM

On March 10, 2003, after the record was closed, Union Attorney Joel D'Alba informed the Neutral Arbitrator that the Union wished to advise on an Open Issue, II (B), Retiree Health Insurance. According to the Union, at the time the parties reached tentative agreement on an issue involving retiree health care for Lieutenants Forest and Sweeney, the representative of the Union, Panel Member Kaderabek, was not aware that the Village had plans to offer another early retirement program to senior officers in the Fire Department. Apparently, the Union wants Firefighter Dave Schweigart, who will have 30 years of service as of April 16, 2003, to be covered by an early retirement program offered to Firefighters and Lieutenants pursuant to the tentative agreement. The Union accordingly requested leave to amend its final offer to include Firefighter Schweigart and allow the Union the opportunity to argue that he should be covered by the Union's Retirement Health Insurance Offer.

On March 18, 2003, Mr. Bruce Mackey filed a response. He asserted that the issue the Union seeks to open was defined during the hearing *as affecting only two employees* who were eligible for the Village's "one-time" early retirement program. Those employees were not offered the plan because the parties were in bargaining. A tentative agreement was reached on the issue during the hearing, and the issue was not listed as open for briefing. Indeed, the Neutral Arbitrator was not included in reaching this agreement. Mr. Mackey submitted that there is nothing in the statute permitting a party to amend a final offer. Moreover, in this case the parties were permitted an additional number of days after the hearing to develop final offers. According to the rules of the ISLRB, a hearing is deemed closed when the final offers are submitted (Section 1230.90 (C)4). Also, re-opening the hearing issue would be inconsistent with two tentative agreements. More important, the issue in question was clearly limited to just two employees. It was never discussed as being applicable to employees who might meet the requirements in the future (*Village Response* at 2). Finally, the request is arguably based upon an incorrect factual assumption. Village Manager Morrissey stated in an attached letter that ". . . there have been no discussions relating to [extending the benefit to other employees in the Fire Department] at the Village Board meetings or otherwise." Accordingly, the Union's motion should be denied.

The above matter was reserved for discussion in an executive session held on April 3, 2003. The full Board agreed that the issue on whether one employee can tap into a contractual provision is properly reserved for a grievance arbitration, especially when a record as large as this one has been closed. Accordingly, to the extent that the Union believes that an individual is contractually entitled to tap into the early retirement provision, or would otherwise be treated discriminately as not being included, the grievance procedure is the proper forum to air this complaint.