

BEFORE  
ROBERT W. McALLISTER  
ARBITRATOR

In the Matter of the Arbitration	)	Interest Arbitration
	)	
between	)	
	)	
VILLAGE OF SCHAUMBURG	)	
	)	
and	)	
	)	
SCHAUMBURG FIREFIGHTERS	)	
ASSOCIATION	)	

APPEARANCES:

For the Village:

R. Theodore Clark Jr., Esq.  
Seyfarth Shaw

For the Union:

Mr. Rick Merrill  
Vice President At-Large  
Associated Firefighters of Illinois

HEARING DATE:

August 8, 2003

PLACE OF HEARING:

Schaumburg, Illinois

## I. BACKGROUND

Pursuant to the parties' alternative impasse resolution procedure and the provisions of Section 14 of the Illinois Public Labor Relations Act ("IPLRA"), the parties selected the undersigned as the arbitrator to decide three unresolved economic issues and two unresolved non-economic issues. A hearing was held before the Arbitrator in Schaumburg, Illinois, on August 8, 2003. Pursuant to the provisions of their alternative impasse resolution procedure, the parties have waived the provisions of Section 14 of the IPLRA with respect to a three-member panel and have mutually agreed that the case will be solely heard and decided by the neutral arbitrator.

## II. RELEVANT STATUTORY CRITERIA

The statutory provisions governing the issues in this case are found in Section 14 of the IPLRA.

(g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

Pursuant to the IPLRA, the Arbitrator is required to base his findings, opinions, and order upon the following factors as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.

- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

No issue with respect to the lawful authority of the Joint Employers was raised by either party. The Joint Employers introduced no evidence nor did it argue financial inability to meet the economic costs of the five issues in dispute. No evidence was presented indicating any substantial change in circumstances of either party during the pendency of the proceedings.

### III. EXTERNAL COMPARABLES

The Village states the parties are in agreement on eight communities for external comparability purposes. They are:

1. Arlington Heights
2. Des Plaines
3. Elgin
4. Elk Grove Village
5. Hanover Park
6. Hoffman Estates
7. Mr. Prospect
8. Palatine

The Union states the communities that should be used for external comparability purposes are:

1. Skokie
2. Rolling Meadows
3. Des Plaines
4. Hoffman Estates
5. Elgin
6. Arlington Heights
7. Palatine
8. Oak Park
9. Mt. Prospect
10. Elk Grove Village

At the outset of the hearing, the parties specifically agreed upon all the communities listed by the Village with the exception of Hanover Park. Then, towards the end of the hearing, the Union named Hanover Park, Oak Park, Rolling Meadows, and Skokie as communities it sought to have considered as comparable to the Village. The Village expressed its opposition to Oak Park, Rolling Meadows, and Skokie, then reiterated its belief that Streamwood should also be considered as a comparable community.

In the interest arbitration between these same parties, Arbitrator Steven Briggs issued an award in February 1998 wherein he compared population and staffing of the proposed comparable communities. As a result he found the Union's arguments with respect to Rolling Meadows unpersuasive because it was just too small. Nothing significant has changed with respect to Rolling Meadows. Its population has increased by some two thousand and its staffing remains at just over 40 firefighters. With respect to Hanover Park and Streamwood, Briggs stated: "Each has a full-time firefighter complement dwarfed by that of Schaumburg and, in contrast to all of the stipulated comparables, each is staffed in part by volunteers."

Hereinafter is an updated chart effective August 1, 2003, (Union Exhibit 3-3) with the exception of Streamwood (Village Exhibit 5):

<u>Communities</u>	<u>Population</u>	<u>Staffing</u>
Schaumburg	75,386	135
Skokie	63,348	110
Rolling Meadows	24,604	42
Des Plaines	58,720	95
Hoffman Estates	49,495	94
Elgin	94,863	107
Arlington Heights	76,031	99
Palatine	65,479	85
Oak Park	52,524	69
Mount Prospect	56,265	66
Elk Grove Village	34,727	94
Hanover Park	38,278	20
Streamwood	36,407	38

It is noted that Streamwood augments their firefighter force with part-time employees. It is understood that Rolling Meadows, and Streamwood offer some demographics which are comparable to the Village. Notwithstanding, the use of these two communities as comparables to Schaumburg is not logical. These communities have half the population of Schaumburg and barely a third of the staffing. While Rolling Meadows is tiny compared to Schaumburg, it simply cannot reasonably be argued that a slightly larger community, such as Streamwood, can realistically be considered comparable.

The Village opposes the inclusion of Oak Park and Skokie because they are more than 10 miles from Schaumburg and are not in the same labor market. Whether 10 or 15 miles plus distance from Schaumburg, the Arbitrator is unaware of any geographic limitation imposed upon the parties by the Illinois Public Labor Relations Act (IPLRA). To be sure, distance and the labor community are factors that should be given serious consideration.

The undersigned agrees that in order to more effectively bargain, both parties would be expected to fully explain their respective positions. One can reasonably state that surprise is not appreciated in negotiations. Nonetheless,

the statutory provisions of the IPLRA governing such proceedings do not bar a party from including in its final offer a subject matter not previously discussed.

Examination of the demographics and economic data submitted by the parties argues for consideration being given to Skokie and Oak Park, with geographic distance being a caveat. The remaining comparable communities are Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hanover park, Hoffman Estates, Mt. Prospect, and Palatine.

#### IV. ECONOMIC ISSUES

##### ISSUE NO 1

##### Union's Final Offer

The Union's final offer to maintain the status quo and continue longevity pay is as follows:

##### Section 8.2 - Longevity Pay

Employees on the active payroll with continuous unbroken service with the Village in a position covered by this agreement shall receive longevity pay in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Amount</u>
5 years by less than 10 years	\$ 450
10 years by less than 15 years	600
15 years by less than 20 years	900
20 years by less than 25 years	1200
25 years or more	1500

##### Village's Final Offer

The Village's final offer is:

##### Section 8.2 - Longevity Pay

The Village's final offer on longevity pay is to add the following paragraph at the end of longevity pay section of Appendix A:

No employees employed in a bargaining unit position after he issuance of Arbitrator McAllister's interest arbitration award shall be eligible to receive longevity pay. Any bargaining unit

employees who were employed as of the date of Arbitrator McAllister's interest arbitration award shall continue to receive longevity pay in accordance with the schedule set forth in the first paragraph of this Section.

The Union asserts the Village's proposal would break the parity between police and fire officers. The Union points out the longevity provisions have been a part of labor agreements between the parties since 1986. The Union stresses the Village has offered no quid pro quo for such a take-away. By the Union's calculation, the value of this benefit to each employee is \$16,500 over a 25 year career. (Union Exhibit 3-6) The Union states the Village was unable to achieve this change in the arbitration before Arbitrator James Cox earlier this year involving the police unit and the Village.

The Union views the Village's proposal as a method of reducing longevity pay for new employees. The Union contends the Village has not put forward any claim of economic hardship, difficulty of paying, or inability to pay.

The Union believes the Village's agreements with the Fire Command Association and Public Works are weak support for the change since the most comparable unit within the Village, the police unit, gave no concession nor was there an arbitration award in favor of the Village.

The Village maintains that on the date the Arbitrator issues his award, no member of the firefighter bargaining unit who is employed on that date will in any way be affected by the elimination of longevity pay. As for a quid pro quo, the Village argues that, if applicable, the generous wage and benefit increases already agreed to and the demonstrated overall compensation and benefits received by firefighters and fire lieutenants is the quid pro quo.

The Village asserts that if longevity pay were eliminated, the total compensation received by Schaumburg firefighters would still rank them number one in terms of career earnings. (Union Exhibit 3-14) The Village

submits the salaries firefighters receive will more than make up for the prospective elimination of longevity pay.

#### Discussion

Essentially, the Village supports its position by referring to the amendment of the Village's personnel policy by its Board making employees not covered by a collective bargaining agreement ineligible for longevity pay. (2000) The Village stresses the Public Works Advisory Committee, as well as the Fire Command Association, adopted a similar provision in their agreements. Lastly, the Village views this take-away as a de minimus economic factor.

Despite the actions of the Public Works Advisory Committee and the Fire Command Association; the police officers unit represented by MAP proceeded to interest arbitration. Arbitrator James Cox held that longevity pay would remain in the contract unchanged. As a result, the Police Command contract, which based its position on longevity pay upon the outcome of the officers' interest arbitration, retained longevity pay.

The internal comparability between the police officers and firefighters' pay and benefits is an important factor. As Arbitrator Cox noted, had the firefighters adopted the Village's longevity phase out, the outcome of that issue before him may have been different "in view of the historic salary parity between the two rank and file units . . ."

The logic behind arguing that a take-away is justifiable given the generous overall compensation package firefighters receive is questionable. It ignores the common sense question of justification. The idea that it will not have much economic impact at this time does not explain why the Village seeks such a take back if that is the case. In terms of external comparables, Union Exhibit 3-6 provides no justification for the Village given the fact that all

the comparable communities have longevity pay provisions with the sole exception of Elgin.

Award

The Union's final offer to maintain the status quo is adopted.

ISSUE NO 2

Union's Final Offer

The Union's final offer involves adding a new Section 10.5 that states:

Section 10.5 -

The following days shall be observed as holidays for employees who are assigned to work 24-hour shifts:

Independence Day  
Thanksgiving Day  
Christmas Day

The employee working on any of these recognized holidays shall receive one and one half times the employee's hourly rate, except if the employee is hired back as in Section 7.5. A holiday for purposes of this section shall be the 24-hour period commencing at 8:00 a.m. on the day listed.

Village's Final Offer

The Village's final offer on holiday pay for 24-hour personnel is to maintain the status quo of no holiday pay for 24-hour personnel.

The Union states it has been attempting to negotiate some form of holiday benefit for at least 20 years because people who work on a holiday should get some additional pay. The Union contends that in January 2004 it will be in last place in the comparison of external comparables. The Union maintains its proposal would cost about \$286 per employee and that would be but 87% of external communities. The Union insists this disparity is dramatic and needs to be corrected.

The Union acknowledges the Village will argue this is a benefit traded many years ago for a lower work week (A days), but it does not consider that

fact to be relevant any longer. The Union points out several communities have recently improved their work week without having to give up their holiday benefit.

The Union states its final offer is the same benefit provided for by Palatine, a comparable community. Moreover, the Union submits there are only three external comparables that do not get some form of holiday cash payment.

The Village explains that in 1982 it adopted A days in order to reduce the number of hours of work from 56 to 50 per week in exchange for holidays or holiday pay. The Village states a thirteenth A day was added in 1986 and then, in the 1993 -1996 agreement, A days were increased to 13.5 by scheduling one A day every ninth shift. The Village notes the Brigg's award for the 1996-1999 labor agreement does not provide holiday pay for 24-hour shift personnel.

The Village calculates the cost of the Union's proposal would increase its salary costs by 0.46%. The Village insists such an increase is unwarranted given the fact the top step firefighter's base salary of \$60,984 is the highest of all external comparable communities. This statement is accurate for Skokie and Oak Park as well. The Village further stresses its vacation allotment, hourly rate of pay, hours of paid time off (work reduction hours, holiday and personal hours), and annual hours of work with 15 years of seniority is at the top of or near the top of the external comparables.

#### Discussion

The Union has produced an exhibit showing the Village is dead last in comparable communities when it comes to holiday compensation. (Union Exhibit 3-13) This exhibit indicates most comparable communities pay overtime for holidays, grant time off, or provide a combination of holiday pay and time off. It is undisputed the parties' contract contains no provision for such pay

or time off for holidays. Union Exhibit 3-13 converts the overtime and time off into a total average value stated as \$2,202.48.

In terms of traditional package bargaining and/or the totality of wages and benefits received by a bargaining unit, the isolation of one contractual benefit without reference to other economic considerations has questionable value. For example, prior to establishment of Illinois public bargaining, the Schaumburg Firefighters Association met with Village management and discussed the possible reduction of the work week from 56 to 50 hours. (Village Exhibit 55, Archer arbitration) The record establishes employees then received 11 holidays and were asking for 12 "Kelly" (A days) instead of the holidays. In late 1982 a 50 hour workweek was permanently established, and the firefighters' salary remained the same. In 1998 Arbitrator Briggs reviewed the Archer award and concluded the firefighters received those work reduction days as a trade off for holidays or holiday pay. The Union has offered no evidence to now conclude otherwise.

To be sure, in the collective bargaining process, circumstances change. In the instant case, Union Exhibit 3-15 sets forth the hours of work for the Union's comparable communities. One community, Arlington Heights, works less hours than Schaumburg by two hours annually.

The Union offered additional exhibits dealing with actual hours worked that took into account vacation, personal, and holiday hours, but did not specifically address "Kelly" or "A" days. Village Exhibit 59, which does not include Skokie or Oak Park, shows the average work reduction in hours to be 223 whereas the Village's A days convert into 324 hours of work reduction. As a result, it is evident that if one overcame the geographical distances of Oak Park and Skokie, Schaumburg continues to have less hours of work than any comparable community except Arlington Heights. When vacations, personal

and holiday hours are accounted for, Schaumburg ranks third, but only if Oak Park is included.

The Village of Schaumburg is at the top or near the top of every meaningful comparison of comparable communities. The pay package agreed to by the parties substantially exceeds the cost of living (CPI). The record offers no indication Schaumburg's relative position with respect to comparable communities will be substantially altered during the life of the agreed term of the contract. The Union has not met its burden of proof, and its proposal to add holiday pay for 24-hour shift employees is unpersuasive.

Award

The Village's final offer to maintain the status quo of no holiday pay for 24-hour personnel is adopted.

ISSUE NO. 3

Union's Final Offer

The Union's final offer seeks the addition of a new contract Section 10.6, which states:

Employees assigned to 24-hour shifts shall be able to use 24 hours of personal time off each year. Personal hours used shall be deducted from accumulated sick time. Due to the way the Village calculates accrual of sick leave (see section 12.2) 5/6 of an hour shall be deducted for each hour of personal time used. The employee must notify the duty shift commander as soon as possible of the intent to use personal time, but no later than 7:00 a.m. of the actual day. If, while on duty, the employee needs sudden use of personal time, the employee may be required to stay until proper relief can be arranged, if manning is at minimum requirements. Employees may make use of personal time in six-hour increments.

Village's Final Offer

The Village's final offer is to maintain the status quo and not add a new Section 10.6 to the Agreement.

The Union states that in prior negotiations it has attempted to gain new paid days off as a personal day. The Union contends every other Village employee gets several personal days. According to the Union, the personal day benefit would be deducted from the employee's sick leave bank. The Union acknowledges this is a new benefit, but it comes from reducing an existing benefit.

The Union contends the current contract language deals with emergencies, but complains approval for time off can be denied retroactively. Moreover, the Union asserts internal and external comparables demonstrate a necessity for this change. Simply put, the Union states firefighters get no flexible time off to deal with last minute problems or emergencies.

The Village argues that what the Union is seeking in this final offer is to alter and change the already agreed upon language of Section 12.5, "Emergency Leave for Illness/Injury in Immediate Family." The Village emphasizes the language of Section 12.2 of the 2002-2005 Agreement specifically limits the use of sick leave to "cases where employees are actually sick." The Village maintains the Union's final offer changes what the parties agreed to with respect to sick leave and broadens the definition of emergency leave.

Assuming the Union's final offer is considered on the merits, the Village contends there is no compelling evidence which supports the Union's position. Moreover, the Village states all of its collective bargaining agreements, as well as its personnel policy for non-represented employees, specifies sick leave may only be used for an employee's own sickness or illness. When external comparables are considered, the Village notes six do not provide personal hours or days for 24-hour shift personnel. If Skokie and Oak Park were

included, the Village indicates the number of communities that do not provide personal hours would be eight.

Discussion

As indicated above, the Union describes its final offer as economically neutral because the personal day benefit would come from an employee's sick leave account.

The record establishes the parties bargained over and altered the prior sick leave language of Section 12.2. (See Union Exhibit 35 and Joint Exhibit 1.) The parties did not alter the language which limits the use of sick leave to cases "when employees are actually sick or ill." Twenty-four hour shift personnel accrue 10 hours of sick leave for each month they are on the active payroll and may accumulate up to 2400 hours. While there is nothing to prevent the Union from suggesting the hours necessary to fund its final offer come from an employee's sick leave account, this proposed solution is highly questionable. If the Union contemplated the use of sick leave for personal time off, it seems evident the time to make such a proposal was when the limiting language of Section 12.2 was agreed upon.

The Village characterizes the Union's final offer as a back door attempt to revisit an issue already resolved. The Arbitrator has insufficient information to reach the same conclusion. The Union, however, is advised that its final offer does serve to reopen and redefine the last sentence of Section 12.1 of Joint Exhibit 1.

The one example of difficulty with an emergency situation offered by the Union is insufficient justification for acceptance of its final offer. The external comparables do not support the Union. Eight of the comparable communities offered by the Union do not provide personal hours for 24-hour shift personnel.

As reviewed in Economic Issue No. 2, the Union, apparently, would like not to treat A days as a factor in addressing comparables. The Union persists in viewing A days as not paid time off. This vexatious issue serves to skew the objective external comparables. In the 1990 Archer case, the issue involved counting A days for overtime purposes. Therein, the Fire Command Association took the position that A days were with pay and should be included as hours worked. Arbitrator Archer held the parties did not agree to include A days in overtime computation. It is also noted that in addressing A days, Arbitrator Archer stated, "They are 'paid' only in the sense that when they were adopted or added to in number, the firefighter's salary was not decreased."

The bottom line is that it is disingenuous to claim A days are, in effect, leave without pay. As Arbitrator Briggs opined in 1998, if A days were not paid time off, Schaumburg firefighters ". . . would be working 13.5 additional days per year without a corresponding pay increase." (Union Exhibit 3-7)

The probative evidence in this record leads to the inescapable conclusion that Schaumburg's 24-hour firefighters are paid for 324 hours they do not work by reason of A days and, by the Village's calculation, receive 312 hours of vacation with 15 years of service for a total of 636 hours of paid time off. (Village Exhibit 64) The Union calculates average vacation hours to be 238. (Union Exhibit 3-17) Whichever chart one uses, the fact is Schaumburg is ranked either number two or three in the comparison of comparable communities.

The Union's reliance on internal factors affecting 40-hour employees is misplaced. The distinction between 24-hour and 40-hour employees is well established. Nothing in this record compels a breakthrough ruling that blurs this consistent distinction.

Award

The Village's final offer to maintain the status quo and not grant a new Section 10.6 is adopted.

V. NON-ECONOMIC ISSUES

ISSUE NO. 1

Union's Final Offer

The Union's final offer is to revise Article XVI as set forth below:

Section 16.1 - Outside Employment

Employees shall file and keep current with the fire chief a written record, including a description of the duties involved, of their ousted employment (including self-employment) and addresses and telephone numbers where they can be contacted if necessary (See Appendix C). Employees may not hold outside jobs, including self-employment, which will result in a conflict of interest, impair their ability to perform their Fire Department duties, or constitute an unusual or unreasonable risk of injury or illness. Prior approvals of outside employment shall not constitute an unusual or unreasonable risk of injury, while prior denials are determined to be an unusual or unreasonable risk of injury.

Employees who suffer an occupational injury or disability compensable under the Workers' Compensation Act as a direct result of other employment shall not be eligible for workers' compensation benefits from the Village. An employee's filing of a claim for workers' compensation benefits from the Village for an injury or disability that is the direct result of other employment may result in discipline, up to and including discharge.

An employee who suffers an injury or disability that is the direct result of other employment shall have the obligation to file a claim for such workers' compensation benefits as may be available to him or her from their other employment. Upon receiving workers' compensation benefits awarded pursuant to such claim, he or she shall reimburse the Village for sick leave used while absent due to their compensable injury or disability, provided that such reimbursement shall not exceed the amount of absence from work benefits received pursuant to the workers' compensation claim.

### Village's Final Offer

The Village's final offer is to revise Article XVI, Section 16.1, as follows:

Employees shall not be employed in other occupations, including self-employment, without the approval of the department head and the Village Manager. Employees wishing to hold outside jobs, including self-employment, which will not result in a conflict of interest or impinge on their ability to do their job shall apply in writing to the department head for approval on the form provided. Where approved, employees may be allowed to engage in off-duty employment up to a maximum of twenty (20) hours per week. Employment by other emergency service organizations, including employment as voluntary firefighters or paramedics, will not be approved. Such applications shall be approved or denied within ten (10) working days after submission. (Emphasis added.)

The Union points out the record shows there have never been any documented problems with secondary jobs, and the Village has a mechanism in place to deal with any employee who falls short in employment expectations with the Village. The Union maintains its final offer is almost identical to existing language in comparable labor contracts. The Union states its modification is simple. It asks that employees notify the Village of secondary jobs and, if the job fits the criteria in the contract, the employee can hold the job.

The Village believes its proposed limitation of 20 hours per week of outside employment is reasonable. The Village states its position is supported by an analysis of 76 requests for outside employment in 2002. The Village notes the second part of its final offer would prohibit outside employment if it is with another emergency service organization.

At the hearing, the Village stated that in this post 9/11 environment, there may be occasions where there is a need for an emergency callback of all personnel, and in such situations the Village believes that if its firefighters are employed in fire fighting positions for other employers, the odds are significantly greater that they will not be able to leave that job and respond to an

emergency callback. The Village states Fire Chief Schumann testified that in the mid-1990s there was an emergency recall of all personnel in a situation where the department had to evacuate a retirement home due to the loss of heat in the middle of the winter.

While the Village believes its proposal in prohibiting secondary employment with other emergency service organizations is meritorious for the reasons advanced by the Village, it is relevant to note the IAFF has a provision in its Constitution and By-laws that prohibits members from working for volunteer fire departments.

#### Discussion

The Union believes the Village's final offer is a dramatic departure from current practices. The Union contends no comparable community has language similar to the Village's final offer.

The Village, likewise, looks upon the Union's proposal with askance, claiming it would totally negate the right of the Fire Chief to approve requests for outside employment. Instead, the Village asserts notification would replace approval of outside employment.

The parties dispute over the language dealing with outside employment is a classic case of proposing to change contract language when there is no objective basis to do so. Idealistically, it would be nice for an employee to assume his/her outside employment had absolutely no impact on the Village. But that is not so. The language that appears in the 1999-2002 labor contract is a reflection of the parties' respective needs. The Village's final offer is no less a radical departure from the language of Article XVI, Section 1 of the 1999-2002 agreement than is the Union's final offer.

There is no objective basis to consider either party's final offer. Nothing has transpired that would justify such radical modification of the existing

contract language. Neither party has met its respective burden of proof. The Union's final offer is not supported by external comparables. Approval not to be unreasonably withheld does not translate into no approval necessary.

Award

Neither party's final proposal is supported by compelling statutory factors. The language of the expired 1999-2002 collective bargaining agreement, Article XVI, Section 1, Outside Employment, is adopted.

ISSUE NO. 2

Union's Final Offer

The Union's final offer on this issue is to maintain the status quo.

Village's Final Offer

The Village's final offer on drug and alcohol testing is to revise Article XXI as follows:

The Village may require an employee to submit to urine and/or blood tests if the Village determines there is reasonable suspicion for such testing and provides the employee with the basis for such suspicion in writing within 48 hours after the test is administered. In addition, effective January 1, 2004, the Village may conduct random drug and alcohol testing up to four times per calendar year. The total number of such random tests per calendar year shall not exceed 25% of the total number of sworn employees in the bargaining unit, plus the Fire Chief and Deputy Chiefs. The selection of employees to be randomly tested shall be provided by the outside contractor that the Village uses to randomly select the employees who are to be tested.

[Balance of Article as per the 1999-2002 Agreement]

The Union submits its proposal represents the status quo, and the Village has offered no acceptable reason to change. Citing Will County Board and AFSCME, the Union notes Arbitrator Harvey Nathan stated in relevant part:

In each instance, the burden is on the party seeking the change to demonstrate, at a minimum: (1) that the old system or procedure has not worked as anticipated when originally agreed to or (2) that the

existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

The Union insists the Village has not shown that the old system has not worked. (See Cox award, Union Exhibit 3-5.) The Union notes Arbitrator Briggs earlier ruled against the Village on the issue of random drug testing.

The Union acknowledges the Police Command and Public Works have accepted a like Village proposal. This fact, according to the Union, does not relieve the Village from establishing a substantial or financial need for the change. The Union maintains consideration of the statutory criteria is not controlling because the Village has not met its threshold burden.

The Union cites the following cases where random drug testing was ruled inappropriate:

1. Village of Westchester and Illinois Firefighters Alliance, Council 1, ISLRB S-MA 89-83, (Berman 1989) at 21 - "only reasonable cause testing."
2. City of Evanston and Evanston Fire Fighter Association, Local 742 IAFF, FMCS 90-07011, (Edelman 1990) at 14 - "2. Testing should take place only upon reasonable evidence of individual impairment."
3. Village of Westchester and Illinois Firefighters Alliance, Council 1, FMCS 90-23906, (Kossoff 1991) at 25 - "any employee who has given reasonable cause to suspect."
4. City of Granite City and Granite City Firefighters Association, Local 253 IAFF, ISLRB S-MA-93-196, (Edelman 1994) at 27 - "1. Only reasonable suspicion testing will be used, no random testing."
5. Village of Oak Brook and Teamsters Local Union 714; ISLRB S-MA 96-242, (Kossoff 1998) at 69 - "C. When a Test May be Compelled There shall be no random, across-the-board or routine drug testing of employees except as part of treatment."

6. City of East St. Louis and Local Union No. 23 International Association of Fire Fighters, (Yaffe 2000) at 11 - No random testing.

The Village states random drug and alcohol testing is constitutional. While there may have been a lingering question concerning the constitutionality of random drug and alcohol testing for public safety employees 15 years ago, the Village avers the Supreme Court put to rest this issue in National Treasury Employees Union v. Von Raab, 489 U.S. 655 (1989). The Village asserts the Von Raab decision has been specifically applied in the context of firefighters. For example, firefighters employed by the Department of the Navy are in a specifically designated sensitive position that is subject to random drug testing (Village Exhibit 70). The Village notes the constitutionality of the Department of Navy's random drug testing policy was upheld by the United States Court of Appeals for the Federal Circuit in Hadley v. Department of Navy, a copy of which was introduced as Village Exhibit 71. In Hadley the Federal Circuit stated (Village Exhibit 71, at p.3):

Petitioner was a firefighter. The safety of others was in his hands, and an impairment due to drug use could well have led to otherwise avoidable injury or death. It is generally established that employees responsible for the safety of others may be subjected to drug testing, even in the absence of suspicion of wrong doing. We conclude that the government's compelling interest in keeping its firefighters free of drugs outweighs the expectation of privacy of those employees. The drug testing program, as set forth in the regulations here applicable is reasonable within the meaning of the fourth amendment.

The Village points out that just this year, the Arizona Appellate Court in Petersen v. City of Mesa, 63 P.3d 309 (Ariz. App. 2003) upheld the constitutionality of the City of Mesa's random, suspicionless drug and alcohol

testing of city firefighters (Village Exhibit 72). In so ruling, the Arizona Appellate Court stated (Village Exhibit 72):

Other courts faced with constitutionally challenges to drug testing programs have upheld random and/or suspicionless testing of firefighters and those who occupy safety-sensitive positions.

If firefighters must be ever vigilant, we think the City can no be no less vigilant in detecting impaired firefighters and removing them from the workforce. Therefore, we conclude that the City's interests are sufficiently compelling to permit random testing.

The Village submits these decisions unquestionably support the conclusion that the Village's final offer on random drug/alcohol testing of firefighters is constitutional.

The Village turns to internal comparables, stating Village Public Works employees who have to possess a commercial driver's license are subject to periodic random drug and alcohol testing. The Village maintains that since the introduction of this testing six years ago there have been a total of six positive tests.

The Village further notes its labor agreement with MAP for the Command Officers unit provides for drug and alcohol testing as a result of an interest arbitration award issued by Arbitrator Steven Briggs. (Village Exhibit 67) The Village additionally states random drug/alcohol testing for the Police Command officers has been initiated.

The Village acknowledges that none of its proposed comparable communities contains mandatory random drug and alcohol testing requirements. Notwithstanding, the Village asserts there is a major trend toward the inclusion of random drug/alcohol testing provisions in Illinois public sector contracts covering firefighters.

### Discussion

In advancing its argument for adoption of mandatory random drug/alcohol testing provisions, the Village acknowledged there is no drug or alcohol problem in the Schaumburg Fire Department. Essentially, the Village seeks adoption of such testing as a deterrent and assurance of its citizenry that there is no reason to suspect its firefighters are under the influence of a controlled substance or alcohol when performing their duties. The logic of this argument is suspect. The evidence points to no circumstances by which a reasonable Schaumburg citizen could express concern about Village Fire Department personnel. As for acting as a deterrent, there is no evidence suggesting the existing reasonable suspicion provisions of Article XXI of the 1999-2002 collective bargaining agreement have not served as an effective deterrent.

Turning to the internal comparability, the Village stresses employees of its Public Works Department and the Command Officers unit (MAP) have random drug and alcohol testing provisions in their respective labor contracts. Addressing the police officers bargaining unit, the Village complains about Arbitrator Cox' decision to reject its final offer on random drug testing (Union Exhibit 3-5). Notwithstanding, analysis of the Cox award indicates he followed statutory criteria. Cox found no evidence of circumstances in the police officers unit which would justify expansion of existing contract language. Cox examined external comparables and found little support for random testing. As for internal comparables, Cox noted employees of the Public Works Department were already subject to such testing as a condition of maintaining their commercial driver's license.

Since the issuance of the Cox award, there has been no material change in circumstances relevant to random drug and alcohol testing. Internal

comparability weighs heavily against the Village's final offer given the outcome of the police units' interest arbitration case and the parity that exists between rank and file police officers and firefighters.

The Village acknowledges none of its proposed external comparable communities contains a provision requiring mandatory drug and alcohol testing. The Village of Skokie is the sole community considered in this matter that has a provision for random testing.

The Village forecasts of future trends may prove to be correct. But at the present time the statutory criteria upon which this issue is to be determined do not support the Village's final offer.

#### Award

The Union's final offer to maintain the status quo is adopted.

#### VI. RESTATEMENT OF AWARD

1. The parties executed a Memorandum of Agreement on (illegible) June 2003. In accordance with Item 2 of that Agreement and in compliance with the parties' directions, all the tentative agreements incorporated into the 2000-2005 collective bargaining agreement attached to the Memorandum of Agreement as Exhibit A are hereby incorporated in full and made an inseparable part of this interest arbitration award.

2. Based upon the above analysis and examination of the evidence and arguments presented by the respective parties and in full consideration of the applicable statutory criteria, the Arbitrator makes the following award resolving three (3) economic issues and two (2) non-economic issues.

#### Economic Issue No. 1

The Union's final offer to maintain the status quo and continue longevity pay is adopted.

Economic Issue No. 2

The Village's final offer to maintain the status quo of no holiday pay for 24-hour shift personnel is adopted.

Economic Issue No. 3

The Village's final offer to maintain the status quo and not grant a new Section 10.6 is adopted.

Non-Economic Issue No. 1

Neither party's final offer is supported by compelling statutory factors. The language of the expired 1999-2002 Agreement, Article 16, Section 1, Outside Employment, is adopted.

Non-Economic Issue No. 2

The Union's final offer to maintain the status quo is adopted.

January 28, 2004



Robert W. McAllister  
Arbitrator