

STATE OF ILLINOIS

---

VILLAGE OF OAK PARK

Employer

Case 165  
S-MA-03-104

v.

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHERS, LOCAL NO. 95

Union

---

DECISION AND AWARD

The undersigned was selected by the parties through the procedures established under Chapter 5, Section 315 of the Illinois Public Labor Relations Act. A hearing was held on November 21, 2003. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.<sup>1</sup>

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of those tentative agreements are incorporated into this Award. The only remaining open issue remaining is:

UNION OFFER:

Modify Section 13.4 to add:

The parties hereto agree that vacations for each calendar year shall be drawn by employees on the basis of seniority, by shift. To the extent that such scheduling will not interfere with the normal operations of the Fire Department, three (3) employees per shift, covered by the terms of this agreement, shall be allowed on vacation leave on any duty day...

---

<sup>1</sup> The parties waived the use of an Arbitration Panel in this proceeding.

For the purpose of such selections, “normal operations” shall be deemed to entitle bargaining unit employees to select their vacation time off in at least one slot on each shift day of the calendar year and in a second slot during prime vacation time: i.e. May 15<sup>th</sup> through September 15<sup>th</sup> November 24<sup>th</sup> through November 30<sup>th</sup>, and December 24<sup>th</sup> through January 1<sup>st</sup>. (New Language)

EMPLOYER OFFER:

No change in existing language.

BACKGROUND

The Village of Oak Park is an Incorporated Village. An elected Village President and six Village Trustees govern the Village. They appoint a Village Manager to run the day-to-day operations. It has a population slightly in excess of 50,000.

The operation of the Village is made up of several different departments. The Fire Department is one of those Departments. Chief Beeson is in charge of that Department. The Department in turn is divided into two divisions. One division is Operations and the other is Support Services. Deputy Chief Hansen is responsible for the running of the Operations Division. That Division is divided into three shifts. Each shift is composed of 21 individuals. There is one Battalion Chief, 4 Lieutenants and 16 Firefighters in each shift.<sup>2</sup> A shift works for 24 consecutive hours and is then off for 48 hours. Every tenth workday the employee is given off as a “Kelly Day.” There are ordinarily two employees per shift that are off every day on a Kelly Day. When the Battalion Chief has his Kelly day there are three employees that have a Kelly Day on that shift. This occurs once each month.

The Chief in October of 2000 issued a memo that limited the number of employees that could be off for vacation, holidays or vacation days at the same time to five. This was done because of minimum manning requirements, and the desire to avoid overtime costs. Whenever the number of personnel working on a shift falls below a set minimum, employees need to be called back to

---

<sup>2</sup> 39 of the 48 Firefighters are licensed as paramedics.

work on an overtime basis. The required minimum manning level has changed over the years. Chief Beeson on September 2, 2002 set the minimum staffing level at 14. This lowered the previous minimum.

The composition of the Department was different in the mid 1990's. Instead of Lieutenants and Battalion Chiefs there was a Deputy Chief, three Captains and six Lieutenants on each shift. The number of command personnel was reduced over time. The Battalion Chief replaced the Deputy Chief and the Captain rank was eliminated. The number of Lieutenants on a shift was gradually reduced from six to four.

All of the employees in the Department are entitled to vacation time. During the time that the Deputy Chief and Captain ranks existed, the top Command Officers made their vacation selections first by seniority. The top command structure chose and then the Captains and then the Lieutenants. Firefighters chose vacation slots by seniority over other firefighters. Their selection process was independent from the selection process of the supervisory personnel. The Lieutenants were not in a bargaining unit at the time this vacation system was in place. Lieutenants subsequently formed their own Union and negotiated with the Village. In their 1994-6 collective bargaining agreement, they incorporated new language that addressed vacation selection. That language read:

There shall be one vacation slot designated for Fire Command Association Officers from which to pick their vacation. This will be done by seniority per shift, as in the past, with each officer taking one pick at a time. The pick can be from one workday to their entire vacation, provided that all days selected in the vacation pick shall run consecutively.

This new language gave the Lieutenants a separate slot to choose from for their vacation. As a result of this change, the Battalion Chief now chose vacation slots from the same sheet as the Firefighters, instead of from the Lieutenant sheet. The Battalion Chief makes his choice before the most senior firefighter. Following the completion of negotiations for the 1994 Lieutenant collective bargaining agreement, an issue arose regarding vacation slots on the Lieutenant's sheet

that were not selected by a Lieutenant. Did those slots then become available for Firefighters or were they reserved exclusively for Lieutenants? The Lieutenants voted to keep that slot for their exclusive use. Thus, a firefighter could not select that slot for him or herself even if the number of employees off did not reach 5, as described in the Chief's October of 2000 memo.

The Union grieved the Village's determination that a slot could be reserved for the exclusive use of Lieutenants. Arbitrator Nathan dismissed the grievance. He noted that the Department had the right to set the minimum staffing level. He then found that the Union argument that the provision in the Firefighter collective bargaining agreement that permitted up to three individuals off during normal operations did not give it the right to a vacation regardless of minimum manning requirements. The Department retained the right to set the minimum and to deny vacations that could impact the minimum. He then found that requiring Battalion Chiefs to select after Firefighters as argued by the Union would be an "abnormal situation."

The Union and the Village have gone through the interest arbitration process in years past. One such arbitration was held before Arbitrator Fleischli. One of the issues that the Union presented to Arbitrator Fleischli concerned vacation selection. It wanted to correct the disparity between the firefighter language and the language in the Lieutenant's agreement. Arbitrator Fleischli did not decide the issue, but remanded the issue "to the parties for bargaining during negotiations for a successor contract." The arbitration was over the 1997-1999 agreement. The parties had one other negotiation before the present set of negotiations. That negotiation was voluntarily settled and no change in the relevant vacation language was made.

The parties began negotiations for the current agreement in September of 2002. The Union proposed deletion of the reference to normal operations in Section 13.4 and instead sought a guarantee of two vacation slots each shift. The Village rejected the Union proposal. The Union then made the same proposal in June of 2003 as part of a package. It was again rejected. The Union's final offer in this proceeding was not made during negotiations.

## POSITION OF THE UNION

The issue raised in the instant proceedings is not an economic issue. The Union's proposal does not add any additional cost to the Village. Possible additional overtime is at most an indirect cost and only represents a potential cost. These possible additional costs should not be considered. If they were, then conceivably every proposal could be considered economic. Arbitrators have never reached such a conclusion. Adopting the Union proposal would not even put the manning level below 14. There would still be 16 employees scheduled to work each day. If employees not scheduled for vacation then had to call-in sick it would be the illness that required overtime, not employees on scheduled vacation. Since the issue is not economic, the Arbitrator is not bound to accept the final offer of either party.

The only relevant factors in this dispute are external comparables and the "catchall provision" that allows the Arbitrator to consider "other factors." Internal comparables falls into the category of other factors. Here, there is a disparity in what the command officers get and the firefighters are allowed. Arbitrators have regularly stressed the importance of internal comparability. Arbitrators that have heard disputes between these parties have also considered internal comparability. Each time the Village has increased the disparity in wages between the lieutenants and the firefighters, an arbitrator has stepped in and restored the prior differential. The Arbitrator here should adopt a vacation provision that is equitable between the ranks. The Lieutenants' did not have an exclusive slot until it was granted to them in their 1994 collective bargaining agreement. They were given this slot despite the fact that they had and still have far fewer employees on a shift than the firefighters and fewer personnel per shift than they used to have. The firefighters should similarly be granted slots of their own. The Union exhibits clearly show the disparity between the ranks. Equity requires that the firefighters similarly be granted slots of their own.

The Union proposal is similar to the vacation selection procedures used by other communities. This factor is a “predominant factor” in this type of dispute. The parties agree upon the comparables with the exception of Oak Lawn. That Village should be included in the list as it has previously been included in the list of comparables for the parties. Looking at the list of comparables, it is clear that in every community employees select across ranks. There is no slot that has been set-aside exclusively for command personnel. Employees in the Village have fewer slots to select from than firefighters in comparable communities. Even adopting the Union proposal, there would still be fewer slots for Oak Park firefighters than anywhere else.

The Village has demonstrated hostility towards the Union and its officers. Arbitrators and the Illinois Labor Relations Board have already found that the Village has granted excess benefits to Command personnel and discriminated against the Union and its officers. This is another example of that preference.

The Village has offered no valid rationale or justification for maintaining the current inequitable procedure. The unilateral decision by the Chief to allow Battalion Chiefs to select from the firefighter sheet instead of the command officer sheet as had been done in the past eliminated one slot for firefighters. The Chief never testified to explain why he made the change. This change did not occur as a result of legitimate bargaining, but through a repeat of the favoritism previously shown towards command personnel. Any argument that the current provision is needed to insure that the “squad” would be in-service is erroneous since the exhibits show it is rarely in service now. Finally, any argument from the Village that the change is not needed because there has been no problem in the selection process should be rejected. Firefighters voluntarily have chosen to leave prime slots for junior employees to promote harmony in the station. The fact that junior employees can trade shifts with others is also no justification. That right is available to command as well and any employee that trades a shift

must work a shift as part of the trade. A trade is not required when an employee is using vacation time.

### POSITION OF THE EMPLOYER

The issue before the Arbitrator is an economic issue. Other Arbitrators have held that the issue of vacation selection is economic, because it can cause additional overtime costs to an employer. This Arbitrator should follow that precedent. The Arbitrator under the Statute may then only select from the offers of one of the parties.

The Union is seeking to change the status quo. To change the status quo, it must meet a three-part test. It must show that the current system has not worked; has created a hardship or inequity; and that the Village has resisted attempts at the bargaining table to change the system. The Union has not met any of those three requirements. There is no evidence that the current system has caused problems for firefighters. There are more slots available than are needed. Firefighters have requested and been given vacation time during primetime. For those who did not get primetime slots, they were able to trade with others to get that time. The Union has also failed to properly bargain over this issue. It made only two proposals during negotiations. It made no real attempt to obtain changes. By failing to adequately seek changes at the table, it cannot seek those changes in arbitration. It must give the Employer a chance to address the issue and it has failed to do that.

The Statutory Criteria do not support the Union's position. In examining the practices in other communities, the Arbitrator should not consider Oak Lawn. It was not on the stipulated list of comparables. In the other communities, there is no consistent practice. The collective bargaining agreement in many of those communities includes both firefighters and command staff. Thus, the fact that they pick vacations across ranks is not significant since they are all covered by the same

agreement. None of the other communities has language requiring the employer to designate one slot for a rank. The comparables have no bearing on the outcome for all these reasons.

Internal parity also does not support the Union's proposal. The fact that one unit has a particular benefit and another does not is not justification for the change. Many arbitrators have found that "inter-rank rivalry is not a sufficient basis for expanding that benefit to other units." The Lieutenants obtained their benefit after considerable negotiations with the Village. The Union seeks to gain a benefit without engaging in the same type of bargaining.

The remaining statutory factors also favor the Village. The interests of the public are served best by the Village proposal. It will keep the squad in service more often and cause less overtime costs than the Union proposal. The other grievances and proceedings offered as exhibits by the Union have no bearing here and have no relevance to this proceeding. The desire to overturn an arbitrator's decision is not a valid reason to upset the status quo.

#### STATUTORY CRITERIA

The Arbitrator must utilize several statutory factors in reaching a decision in this type of proceeding. Section 14(H) lists the following factors for consideration:

1. The lawful authority of the employer;
2. Stipulation 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 price for goods and services, commonly known as the cost of living;

6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;
7. Changes in any of the foregoing during the pendency of the arbitration proceedings; and
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 or private employment. 5 ILCS 315/14(h).

### DISCUSSION

The Union is seeking to modify the existing language in Section 13.4. The Employer has proposed maintaining the status quo. Since it is the Union that is seeking a change, it has the burden of proof. As the Employer correctly notes there is a test that is used to determine whether that burden has been carried. The Union must show that there is a need to change the current system. It must also show that the current procedure is inequitable or creates a hardship. Finally, it must show that the Employer has been resistant to changing the status quo. Has the Union met all parts of this test? In answering those questions, I shall address the equity question first.<sup>3</sup>

The Lieutenants have a provision in their agreement that is not included in the agreement of any other bargaining unit in the Village.<sup>4</sup> They have their own dedicated slot. That provision is not in the Firefighter's agreement. The Employer argues that simply because a provision is in one agreement and not in the other does not automatically mean that the agreement without the provision is entitled to have it. It notes that where the provision was obtained through hard bargaining and as part of the give and take of negotiations, as it believes it is here, the different

---

<sup>3</sup> It is uncertain exactly where to pigeonhole this test under the criteria set forth in the Statute. The Union is probably correct that it falls under Sub-section 8, "Other Factors."

<sup>4</sup> The Police and Police Sergeants each have their own collective bargaining agreement. Each Agreement guarantees a slot independent of what the other unit is doing. That is contrary to what is happening here.

language is entirely proper. While in general that premise is true, the argument misses the mark in this case for two reasons. Even if in the beginning the provision was, for the sake of argument, obtained through hard bargaining, what transpired after the bargaining was completed was not any part of the bargaining process. Battalion Chief Biswerm was on the negotiation committee for the Lieutenants. He conceded during his testimony that the question of what happened to a vacation slot not selected by a Lieutenant did not arise during negotiations. The Department after ratification made a determination that the one slot that was given to Lieutenants was their slot permanently. Even if never used by any Lieutenant, it could not be used by a firefighter. The Department then decided that the Battalion Chief was now to make selections from the Firefighter's list, instead of the Lieutenant's. There was no negotiation over that change or the decision to lock up the slot for Lieutenants. How then could these changes be the product of hard negotiations?

The history between the Department and its command personnel and the Department and its firefighters also undermines the Employer argument. The Union has unquestionably demonstrated that there has been a history of favoritism towards command personnel. Therefore, whether the provision in question was truly the product of hard bargaining rather than simply another instance of favoritism is anything but certain. The Union offered several decisions from prior Arbitrators and an Administrative Law Judge as part of its case. The Employer has argued that those decisions are not relevant. The Arbitrator cannot agree. A review of the cases submitted by the Union clearly shows that equity or parity has been a recurring theme between this bargaining unit and the Employer. Several times the Fire Department has attempted to give a benefit to the Command Personnel that it did not offer to the Firefighters. Each time, the Union challenged the change and each time it was successful in gaining a comparable benefit for its members. Both Arbitrators Doering and Gunderman ruled in favor of the Union on this very

basis.<sup>5</sup> All have noted that it is important for any Department to maintain morale among the ranks and to treat all employees evenly. As Administrative Law Judge Africk noted when ruling on the legality of a change made by the Chief in the trade policy:

...the Respondent has established a preference in making shift trades which heretofore did not exist. In this context of the case, where the Respondent claims it has an obligation to bargain with both the charging party and the FOCA, the establishment of this preference is not an insignificant change, it upsets the balance of the competing interests of the employees represented by the Charging Party and the FOCA.

The Arbitrator finds based on the above that the Employer has created an inequitable situation, and that the inequity is not simply the product of hard bargaining and the give and take of negotiations. The history of changes in parity and the inevitable catch-up of firefighters have put equity in the forefront in the relationship between the Department and its command staff and the Department and its firefighters. As Arbitrator Dilts noted in Local 99 IAFF and City of Aurora:

Internal comparison of fire management personnel with bargaining unit personnel reflects the Internal equity of the compensation system offered. Fire Captains and Assistant Chiefs work for the same employer, accomplishing the same mission as the bargaining unit. This internal comparison is therefore among the most valid that can be made.<sup>6</sup>

This Arbitrator agrees and finds that the second prong of the test has been satisfied.

The Employer next argues that the Union failed to meaningfully seek to change the status quo in the bargaining process. This is the last prong of the test. It points out that the Union made one offer in 2002 and repeated that same offer well over one year later. It made no other offers. It believes the Union cannot now come to the Arbitrator to gain a change that it did not truly try to get at the bargaining table. It cites Will County Board and AFSCME Council 31 to support its argument. In that case Arbitrator Nathan noted:

Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate for themselves. In a manner of speaking, arbitration can never construct a better deal for the parties than

---

<sup>5</sup> Arbitrator Fleischli also ruled in the Union's favor on a monetary issue on that basis.

<sup>6</sup> FMCS Case No. 91-00965 (1991)

they can obtain for themselves. It is not so much that arbitrators are so devoid of wisdom, but that what is right for particular parties in a particular relationship becomes such, or is self-defining, as a result of the collective bargaining process. There are no perfect collective bargaining agreements, but the ones which the parties themselves carve out are going to be a lot closer to what is best for them than those imposed by an outsider. Obviously, there are exceptions. . . . But it is the party seeking the change who must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

Has the Union sidestepped the issue at the bargaining table in favor of Arbitration as the Employer claims? The Union first sought to obtain a change in the vacation selection procedure in the 1997-99 Collective Bargaining Agreement. The issue was not resolved at the bargaining table and was subsequently submitted to Arbitration before Arbitrator Fleischli. He did not rule in favor of the Union. Instead he stated: "The issue of vacation slots to be remanded to the parties for bargaining during negotiations for the successor contract." The parties did not change the language in the "successor contract." The Arbitrator does not know what occurred during the bargaining for that agreement. However, it is apparent from the Fleischli decision that the precise question before this Arbitrator has been an on-going area of discussion since 1997. Despite that fact, the language has remained unchanged. It is true that the Union did not push the issue as hard as it probably should have pushed it in the beginning of negotiations. However, towards the end this was unquestionably an area where change was sought. The Employer's final offer did not include any change despite the fact that it knew the Union wanted change. It has argued that the Union has not shown that the Employer resisted that change, yet the offer it is asking the Arbitrator to accept makes no movement on the subject at all. It is simply the status quo. It cannot argue on the one hand that it has had no chance to address the issue and that it would be willing to discuss the matter and then ignore the issue in its final offer. The very issue before the Arbitrator has been on the table since the Lieutenant's were given their own slot ten years ago. There have been several negotiations since then and none of them has resolved the issue. Two contracts ago Arbitrator Fleischli deferred the matter to the parties for resolution and still there have been no changes made or offered by the Employer. Given that length of time, the Arbitrator

cannot find that the Union has by-passed the bargaining process in favor of Arbitration. While it may have done that in 1997, that is no longer true in 2004. Thus, the Arbitrator finds that this prong of the test has also been satisfied by the Union.

The last part of the test to be decided is whether the current system needs fixing. As the adage goes: "If it aint broke, don't fix it." Is the system broken? This is actually the first prong of test, but I have chosen to discuss it last. The reason this has been left for last is because I find this question the most perplexing one. The Employer attached to its brief several charts showing firefighters with differing levels of seniority. The chart showed that all employees were in most cases able to obtain some vacation time during primetime. This was true even for the junior employees. Employer Exhibit 14 contains a calendar for 2001, 2002 and 2003. It shows the number of employees that were off each day, including what the Union has defined as primetime days. In 2002 and 2003, there were approximately 45 instances where less than two firefighters were on vacation during primetime.<sup>7</sup> This is out of approximately 800 available primetime slots during this two-year period. This means that less than two were off only 5.6% of the time. That is not a high percentage and on that basis the need for the Unions proposal is questionable. In essence, the Union already has what it seeks to now obtain. Why then the need?

The Union answers that question by again referring to the history between the parties. It points to the change made by the Chief in 2000 when he lowered the number of employees that could be off at one time to 5. It argues that this change is symbolic of the Chief's attitude towards this unit. Specifically, the decisions from the prior interest arbitrations, the unfair labor practice case and grievance arbitrations, makes the need for this change apparent the Union believes. As has already been noted by this Arbitrator, there has been a history of favoritism followed by arbitration decisions correcting the imbalance. In one case, Arbitrator McAlister found that the Chief improperly reprimanded a Union official. An Administrative Law Judge

---

<sup>7</sup> This covers all three shifts. Excluded from the calculation are days when three employees had Kelly days.

then found that the Department violated the Illinois Public Labor Relations Act by retaliating against the employee, who was a Union official. Is not this history relevant to this prong of the test? The Employer does not believe it is not. Again, I must disagree.

Absent the above history, the figures discussed above would lead this Arbitrator to find that the Union has not satisfied the first prong of the test and has not shown a need for a change. If it were certain that the Chief would not change the minimum number that could be off from five to something less or increase the manning to something more than 14, the Union case would necessarily fail. No need would be shown. Absent the history, the Union would have to wait for abuse to occur before it could gain recourse through the arbitration process. This Arbitrator, however, cannot ignore the history that has already established a pattern of abuse. Time and again changes have been made by the Department that were detrimental to the rights of the members of this bargaining unit. An Unfair Labor Practice was sustained on the basis of this disparate treatment and discriminatory acts. Under those circumstances, the employees in this unit do not have to wait for there to be an abuse of the vacation system before it can accomplish change. Arbitrator Kohn noted in City of Aurora v. Firefighters Local 99<sup>8</sup>:

However, the record demonstrates that even under the present system, junior paramedics have been able to schedule vacation days during the ‘prime months...

There simply is insufficient information in this record to warrant that this panel impose a change in the parties status quo. The issue appears to be one more suited to the bargaining table than impasse arbitration.

Unlike that case, there is sufficient information before this Arbitrator to “warrant a change in the status quo.” For the above reason, the Arbitrator finds that the first prong of the test has also been met.

---

<sup>8</sup> ISLB Case No. S-MA-95-44

Both sides have argued that Sub-Section 4 is relevant. That Sub-section of the Act requires a comparison of the conditions and wages of employees in the unit with employees performing similar work elsewhere.<sup>9</sup>

The Employer and Union both presented exhibits showing what other Employer's provide to their employees regarding vacation selection.<sup>10</sup> Most of the comparable communities include both firefighters and command personnel in the same bargaining unit. Employees then pick across rank lines. No community has a slot designated solely for the use of either firefighters or command personnel. In that regard, this Employer is unique. The fact that many other Employers include multiple ranks in the same unit does, as the Employer has argued, diminish the value of the use of comparables in deciding the question presented here. Since the Employers in most instances were developing a system through negotiations within a single bargaining unit, the fact that selection went across ranks is not as persuasive as it would otherwise have been.

Union Exhibit 7 lists the comparable communities and the number of vacation slots available to firefighters in those communities. The number of employees per shift in some of the communities is almost double the number in this Employer. Arlington has 31 employees per shift. Firefighters by contract get 3 slots "provided that not more than two (2) lieutenants or one (1) Lieutenant and one (1) excluded supervisory employee" is off. This language does appear to give preference to Lieutenants since the number of firefighters permitted off can be less than three depending upon the number of supervisors that are off. Berwyn has a similar restriction on the total that can be off. Des Plaines, like the Village, retains the right to limit vacations so as

---

<sup>9</sup> The Employer also argues that the interests of the public are better served by its proposal because it will keep the "squad" in service more often. In reality, the squad is rarely in service now. Given the reality, the Arbitrator does not find this argument or this factor to be particularly relevant.

<sup>10</sup> The parties agree that Arlington Heights, Berwyn, Cicero, Des Plaines, Downers Grove, Elmhurst, Evanston, Hoffman Estates, Mount Prospect, Park Ridge and Skokie are all comparables. The parties disagree as to whether Oak Lawn should be utilized as a comparable. It is not on the stipulated list of comparables, but had been included in the list in years past. It makes no difference in this case who is correct. The number of vacation slots available for selection by firefighters in Oak Lawn is right at the average among comparables. Its method of selection is in line with the others. Therefore, whether it is included or not included does not change anything. The average would be the same either way.

not “to interfere with normal operations.” A review of the other jurisdictions shows, as the Employer noted, no discernible pattern. However, it does appear that the number of slots available to firefighters in other jurisdictions may be a little less restrictive and a little more generous than is true in this Employer.<sup>11</sup>

The Arbitrator has considered the factor of external comparability in deciding this case. Because benefits are involved, as opposed to wages, and because the scope of the bargaining units in other jurisdictions is broader than the unit here, I am more persuaded by the internal comparability discussed above than the external comparability factor. Although to the extent it is relevant, it slightly favors the Union.

#### Economic v Non-economic issue

The Arbitrator must now determine whether the issue presented is an economic one or a non-economic one. If the issue is an economic issue, the Arbitrator must select the final offer of one party, which the Arbitrator believes “more nearly complies with the applicable factors.” If an issue is non-economic, the Arbitrator does not have to select one of the parties’ final offers, but can fashion language that the Arbitrator believes is best suited to the needs addressed.

The Employer argues that there is a cost to the Union’s proposal. That cost is in the nature of overtime. The Union counters that this cost is only an indirect cost and should not be considered. Other Arbitrator’s have addressed this precise question. Arbitrator Kohn found the Union proposal made in Aurora was economic because of the increase in overtime costs. Conversely, in Batavia v. Fraternal Order of Police, Lodge 224, S-MA-95-15 Arbitrator Berman found that vacation selection could “only marginally be considered economic issues,” as it does not “raise the direct economic considerations present in wage, insurance and holiday proposal.” Where then does this proposal then fall?<sup>12</sup>

---

<sup>11</sup> Hoffman Estates has a minimum of five without any exceptions such as “normal operations.”

<sup>12</sup> The Union reference to a finding by Arbitrator Doering that just cause language is non-economic is not on point.

The Arbitrator has examined extensively the charts submitted by the parties. The Employer is certainly correct that there could have been additional overtime costs if it were operating under the Union proposal in 2002 and 2003. The Arbitrator has previously pointed to approximately 45 instances where less than two employees were off in primetime. Adopting the Union proposal could increase the number of employees that would have been off by one, if someone wanted that slot. While that might not cause overtime, if other employees were sick or on disability at the time, overtime could have been incurred to maintain minimum manning. It is unknown whether there were actually any others off at the time and whether an additional vacation slot would have put the staffing level below 14. If there were none off for other reasons on that day, or no one wanted that new slot, than there would have been no extra cost incurred. The Union is also correct that even under their proposal the staffing would never fall below the minimum based solely on those on vacation. In fact, it still leaves room for other absences before minimum manning is effected. Thus, whether this issue is economic or non-economic is a very close call. Fortunately, there is an answer that meets the needs of the Union while limiting the financial exposure of the Employer to a great degree. In so doing, the issue becomes a non-economic one.

The Union has demonstrated that a need exists. However, their proposal is broader than is needed to address the problem. Language can be fashioned that still meets the need presented but which limits to a large degree the likelihood that the vacation selection process for the firefighters will cause any overtime. The Arbitrator finds that a provision like that used in the Arlington Agreement would better address the needs of all concerned. The Arbitrator finds that the following language is the language that shall be incorporated into Section 13.4 of the parties' collective bargaining agreement.

For the purpose of such selections, "normal operations" shall be deemed to entitle bargaining unit employees to select their vacation time off in at least one slot on each shift day of the calendar year. Firefighters shall select from a second slot during prime vacation time: i.e. May 15<sup>th</sup> through September 15<sup>th</sup> November 24<sup>th</sup> through November 30<sup>th</sup>, and December 24<sup>th</sup> through January 1<sup>st</sup> provided that at the time the selection is made by the Firefighter, the Battalion Chief is not scheduled to be off for

Vacation or Kelly Day; and provided further that no more than two employees of any rank are scheduled for a Kelly Day.

This provision will give firefighters a guarantee of one slot that cannot be taken away under any circumstance. That is something that past practice shows they already have and thus has no impact at all. It then gives them the second slot they have sought during primetime as long as there are only two employees of any rank on a Kelly Day that day and the Battalion Chief is working that day.<sup>13</sup> The proposal is also in keeping with the Chief's order limiting the number off to 5, as the firefighters do not get their 2<sup>nd</sup> slot if 4 are already off when the selection is made. The use of the phrase "already scheduled" is intended to signify that it is at the time of selection that the determination is made, not the time that the day is actually taken. It is conceivable that others will ask for time off subsequent to the selection being made and that this could potentially cause overtime, however, the overtime at that point in time would be caused by the request of the individual that has subsequently sought the time off and not the initial vacation request itself. In this regard, the Union is correct that this would be an indirect cost that does not convert this language into an economic issue. In fashioning this language, the Arbitrator is also cognizant of the fact that the Employer alluded to earlier that in reality most of the time what is written here is already happening. For the most part, this provision is simply codifying the practice. Codifying an existing practice cannot be economic since the costs are already being incurred. It may restrict the right of the Employer to undo the practice, but that also does not make the language economic.

---

<sup>13</sup> This proposal also insures that there is always at least one slot for the Lieutenants per their agreement, as it eliminates the second firefighter slot when there are three Kelly Days occurring that day or when the Battalion Chief is otherwise off. Those are the only times when five could have been off without a Lieutenant slot having been used.

AWARD

The language of the Arbitrator shall be incorporated into the parties' Collective Bargaining Agreement. All other tentative agreements are adopted by the Arbitrator and shall also be incorporated into the parties new Agreement.

Dated: March 25, 2004

\_\_\_\_\_  
Fredric R. Dichter,  
Arbitrator