

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

VILLAGE OF ALSIP, ILLINOIS

-and-

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL NO. 3074

ILLINOIS LABOR RELATIONS BOARD; CASE NO. S-MA-03-235

1. The Arbitrator, Aaron S. Wolff, was designated by the parties pursuant to their Agreement and the procedures of the Illinois Labor Relations Board.
2. Hearings were held on January 12, 15, March 11, 12 and April 28, 2004 at the Village Hall, 4500 West 123rd St., Alsip, Illinois.

Appearances for the Village were:

Mr. James A. Spizzo, Esq.

Vedder, Price, Kaufman &
Kammholz, P.C., Attorney

Appearances for the Union were:

Mr. J. Dale Berry, Esq.
Richard J. Tupper, Esq.
[On the Brief]

Cornfield & Feldman, Mr.
Attorneys

3. The hearings were transcribed. Post-hearing briefs were received on August 16, 2004.
4. Subject matter of award: Best Last Offer interest arbitration as to non-economic issue of residency and economic issues as to hours of work, wages, tuition and incentive pay.
5. Summary of Award: The Union's proposals as to residency and wages are accepted; the Village's proposal as to hours of work, tuition and incentive are accepted.

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INTEREST ARBITRATION FINDINGS, OPINION AND AWARD

Preliminary Statement

This is an interest arbitration pursuant to the Illinois Public Labor Relations Act [the “Act” or “IPLRA”]. The parties to this proceeding are the Village of Alsip [the “Village,” “Alsip” or “Employer”] and the Alsip Firefighters Local 3074 [the “Union”]. The IPLRA [5 ILCS 315 et seq.] provides in §14(g) that “As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel,¹ more nearly complies with the applicable factors prescribed in subsection (h).”

The “applicable factors” set forth in §14(h) 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 cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration

¹The parties waived a tri-partite board, designating undersigned as sole arbitrator.

proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The parties last contract [May 1, 2000 - April 30, 2003; the “Contract”] in large part mirrors the Act, stating in Article 21, §2 [JX 1, pp. 45-46]:²

***The arbitration panel shall base its findings, opinions and order upon the following factors as applicable:

- A. The lawful authority of the employer.
- B. Stipulations of the parties.
- C. The interests and welfare of the public and the financial ability of the Village of Alsip to meet those costs.
- D. 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 in comparable communities and with other employees generally.
- E. The average consumer prices for goods and services, commonly known as the cost of living as set forth in the CPI-W for Chicago as reported by the U.S. Department of Labor discounted for the Village paid benefits furnished to members of the bargaining unit such as, but not limited to, insurance and clothing.
- F. 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. These are to be compared with general economic conditions and trends of wages benefit settlements in private bargaining.

²Joint, Alsip and Union exhibits are cited as “JX,” “AX” and “UX.” Most of Alsip’s exhibits are contained in six ring binders separated by “Tabs” and those are cited, e.g., as “AX 8, Tab 3 or 4A.” The five hearing days are in five volumes and, unfortunately, each one begins with page 1. Accordingly, the transcripts, which exceed 1200 pages, are cited by volume and page, e.g., “T. 1: 45.” The Village and Union post-hearing briefs are cited as “VB” and “UB,” respectively.

- G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- H. 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.

Bargaining for a new contract was initiated in January 2003 and continued intermittently, including a mediation session, until January 2, 2004. The unresolved economic issues remaining at the commencement of arbitration on January 12, 2004 were as follows: wages and hours of work for the next three years; tuition reimbursement, incentive pay and college incentive pay. Non-economic issues included residency and discipline [the Fire and Police Commission]. However, after the hearings closed, the last issue, discipline, was withdrawn from arbitration by the parties by letter dated July 22, 2004. The parties did not completely agree on the external comparable communities, leaving resolution of that issue to the Arbitrator also.

The key issues in this case are residency, wages and hours of work. Although they involve economic and non-economic issues, they are all linked or intertwined.

Relevant Provisions of the 2000-03 Contract

The provisions of the Contract as to which issues remained during arbitration are as follows
[JX 1]:

ARTICLE 14. GENERAL PROVISIONS

Section 6. Tuition Reimbursement and Seminar Program

The Village will provide each full time employee with assistance for job related schooling under the following conditions and guidelines:

- A. Prior approval must be given to employees by the department head and the Village Board to the extent permitted by the current budget.
- B. Expenses to be reimbursed are: tuition, seminar and

- applicable laboratory fees.
- C. Job related schooling is defined to mean a course by course evaluation. In the case of a Bachelor's Degree or Associate Degree program, an unrelated but required course will be reimbursed on a fifty percent (50%) basis.
- D. Tuition and lab expenses will be reimbursed upon completion of the course with "C" grade or better.
- E. No reimbursement will be given for educational efforts financed by any other source, i.e., the State, County and/or Federal grants, etc.
- F. No reimbursement will be given for transportation, meals or lost time from the employee's job.
- G. Application request forms are to be distributed by the Treasurer's office.
- H. Training required by the Fire Department will be paid in accordance with current practice.

Section 16.

All firefighters shall reside in the Village of Alsip within [6] months of completion of their probation. Violation of this provision shall be grounds for termination. Additional extensions must be approved by the Mayor and Alsip Board of Trustees.

ARTICLE 15. WAGES AND HOURS OF WORK

Section 2. Work Hours

A. A work period of ten (24) hour shifts will work with the eleventh shift off. An annual schedule shall be posted. The average work week will be 51.23 hours.

B. 24 hour shift starting at 07:00 (a.m.) and ending at 07:00 (a.m.).

C. Vacation, Paternal, Bereavement, and Disability hours will be counted as hours worked.

D. Suspension hours and sick time will not be counted as hours worked.

E All hours worked above the employees regularly scheduled hours shall be paid monthly as follows:

1. The first four (4) hours worked each month will be paid at straight time.

2. Hours worked in excess of four (4) hours above regularly scheduled hours shall be paid at 1.5 times the employees' regular hourly rate of pay.

3. When sick time has been used, those hours worked above regularly scheduled will be paid at straight time until all hours have been

made up plus the standard four (4). Example: Take one sick day and the next extra twenty eight (28) hours worked would be at straight time for that month.

4. Monetary overtime worked will be paid monthly.

Section 8. Retirement Provisions

- A. If an employee retires with at least twenty (20) years of service and is under the age of 50 years, the employee can retire with a 15% buyout (paid per hour only for the last pay period) added to and made part of the base salary. The employee will also have the option of applying all unused vacation and holiday time to their yearly salary for the final pay period for pension purposes, unless the Pension Board shows an adverse impact on the Pension Fund providing the inability to fund this provision. An employee must declare the application of this provision at the start of the vacation selection process. (In the event that vacation has been selected prior to the ratification of this agreement it may be returned for the purpose stated above.)
- B. If an employee retires with at least twenty (20) years of service and is 50 years of age or over, the employee can retire with a 15% buyout (paid per hour only for the last pay period) added to and made part of the base salary. The option of adding vacation and holiday time as above also applies. However, the employee must retire in the anniversary year upon obtaining both eligible years of service and eligible age to begin receiving pension benefits.
- C. If an employee exceeds both the 20 years of service and age 50 and has not utilized the option above (B) the employee will not be eligible for the buyout provisions in the future.
- D. There will be a notification deadline (commencing with the signing of this agreement and ending July 1, 2000 or 120 days whichever is longer) for any employee covered by this agreement who currently exceeds 20 years of service and is 50 years of age or older to notify management of the intent to retire.
- E. Any employee who chooses to retire before April 30, 2001 shall be eligible for the provisions of the buyout. Once an employee

chooses to retire that employee may utilize the sick time provision in Article 20, Section 4, paragraph g. However, the use of this sick time shall not extend the retirement date into a new fiscal year to obtain additional or new benefits.

**APPENDIX A
WAGES AND SALARY
Wages Effective May 1,**

Months of Service 2000 2001 2002

SALARY OF FIREFIGHTERS

0/12	14.91	15.49	16.06
13/24	15.44	16.04	16.63
25/36	15.91	16.52	17.14
37/48	16.45	17.09	17.72
49/60	16.94	17.59	18.24
61/72	17.51	18.19	18.86
73/UP	18.28	18.99	19.69

SALARY FIREFIGHTER-PARAMEDIC

0/12	15.81	16.42	16.06
13/24	16.37	17.00	17.63
25/36	16.88	17.53	18.18
37/48	17.98	18.67	19.36
49/60	18.21	18.91	19.61
61/72	18.56	19.28	19.99
73/UP	19.34	20.09	20.83

SALARY OF LIEUTENANTS

0/12	19.07	19.81	20.54
13/24	19.48	20.23	20.98
25/36	19.96	20.73	21.49
37/ UP	20.61	21.41	22.20

SALARY OF LIEUTENANT-PARAMEDIC

0/12	20.02	20.79	21.56
13/24	20.62	21.42	22.21
25/36	21.15	21.97	22.78
37/ UP	21.85	22.69	23.53

APPENDIX C

FIRE DEPARTMENT INCENTIVE PAY PROGRAM

In order to qualify for the incentive, the individual must meet all of the guidelines as defined by the State Fire Marshall or other agency with similar authority unless otherwise specified. The individual must be assigned the duties and be available to perform the duties as specified.

It is and will remain the individual's responsibility to attend the required classes and make whatever arrangements to attend and take examinations.

Probationary firefighters shall not be eligible for the incentive program; the exception shall be paramedic training and appropriate salary increase.

If a person who is assigned and qualified in a field obtains a higher certification within that field, this does not create an opening for the lower certification. It does, however, qualify that individual for the higher incentive pay if available.

The number of personnel receiving incentives will be limited to the amounts shown below.

Any vacancies will be filled by the following procedure.

1. When an opening for a specialty position is to be filled, a notice will be posed by the Chief or his designate. This notice will be posted at both stations for at least ten (10) days.
2. All interested employees will place their names on the notice/sign-up sheet.
3. A committee composed of the Deputy Chief, a Lieutenant, a member of Local 3074 Executive Board, and a current member of the specialty group that has the opening, will conduct interviews of the interested parties.
4. The committee will make a recommendation to the Chief upon the completion of all the interviews.
5. Shift and station assignments may be made in order to fill any positions.
6. All members applying for an incentive position shall have minimum training one level below that of the incentive applied for.
Example: Haz-Mat Technician A-B applied for must have FF III and Haz-Mat Operations.
7. Minimum service requirements. To remain eligible for incentives all members shall maintain a minimum of 75% of drills or training and 50% of the call outs for their specialty team. Vacation and sick time will not be held against the minimum service requirements.
8. The specialty positions are as follows.

FIRE INSPECTORS

1. A total of six (6) Fire Inspectors is the maximum allowed.
2. All current Fire Inspectors will receive an annual incentive of \$750.00, will now receive an annual incentive of \$1,000.00.
3. Any new Fire Inspectors will be required to qualify as follows:
 - A. Upon starting in the Fire Prevention Bureau an annual incentive of \$350.00 shall be paid.
 - B. Upon Fire Prevention Officer certification an annual incentive of \$1,000.00 shall be paid.
 - C. In the event that a Fire Prevention Officer qualifies as a Public Fire & Life Safety Educator and is assigned additional duties, the incentive shall be \$1,000.00.
 - D. All Fire Inspectors that attend the Fire Prevention Officer class shall be compensated as per the current contract guidelines and will be covered if needed while on duty.

FIRE INVESTIGATOR/ARSON

1. A total of four (4) is the maximum allowed.

2. An annual incentive of \$700.00 shall be paid.

AUTO EXTRICATION TECHNICIAN II

1. A total of three (3) is the maximum allowed.
2. An annual incentive of \$500.00 shall be paid.

FIRE INSTRUCTOR III

1. A total of one (1) is the maximum allowed.
2. An annual incentive of \$1,000.00 shall be paid.

FIRE INSTRUCTOR II

1. A total of three (3) is the maximum allowed.
2. An annual incentive of \$500.00 shall be paid.

FIRE OFFICER II

1. A total of six (6) is the maximum allowed.
2. An annual incentive of \$700.00 shall be paid.

HAZARDOUS MATERIALS TECHNICIAN A & B

1. A total of four (4) is the maximum allowed.
2. An annual incentive of \$700.00 shall be paid.

CONFINED SPACE TECHNICIAN

CERTIFIED AS CS/TRA, VERT. I

1. A total of nine (9) is the maximum allowed.
2. An annual incentive of \$250.00 shall be paid.

The following guidelines apply to all specialties with the exception of Fire Inspectors.

1. When schooling is needed to obtain the basic certification for the above specialties, the employee will be allowed to attend class on duty and the employer will provide coverage as needed.
2. When the employee attends classes as stated in No.1 and is off duty, he will be on his own time.
3. When an employee responds to a call-back or mandatory training pertaining to their specialty, they will be compensated as per the contract.
4. The goal of the incentive program is to involve as many employees as possible, however, should an employee be assigned as per page 58, paragraph one, in more than one area, an annual combined incentive of

no more than \$2,000.00 will be paid.

5. No employee will collect incentive more than once in the same specialty field.
6. The limit for total incentive paid shall be \$2,000.00. Any member who reaches his limit, or by taking additional incentives will go over the limit, will be allowed to participate in additional specialties without the incentive. In the event that more than one person applies for a specialty, priority will be given to those who are not at their \$2,000.00 limit.

SALARY ADJUSTMENT

It is agreed by the employer and the employees that should other comparable pay grades receive a salary increase of 1.5% or more greater than that received by members of the Fire Union, the salary of the Fire Union members will be adjusted accordingly.

For ease of calculation and clarification, the only pay grades deemed comparable for calculation purposes related to this provision will be "Topped Out Patrol Officer" and "Topped Out Firefighter." The percentage increase of the hourly salary of these pay grades is the determining factor as to whether or not an adjustment is to be made to Appendix A of this contract.

General Background Facts

The Village, with a population of 19,275, is a south suburban community in Cook County located south of Interstate 55 about five miles from Chicago's far southwest side. The Illinois North-South Toll Road [Interstate 294], also runs through it. [AX 12, Tab 1A] The parties have had an amicable collective bargaining relationship since 1988. This is their first interest arbitration and they have had only one rights arbitration. [T. 2: 132] The Village also has collective agreements with the Fraternal Order of Police [the "FOP"], representing sworn peace officers, and AFSCME, representing a unit of clerical, public works and maintenance employees. Altogether, Alsip employs 126 persons. Of these, 36 are firefighter-paramedics and lieutenant-paramedics.

For over 25 years, by Village ordinance and Fire & Police Commission rule, Alsip has had a

requirement that its employees reside within Village limits. However, in 1997 the IPLRA was amended to make residency a subject of mandatory bargaining. In the current Contract, their first one after the law was changed, the Union sought to delete the residency requirement but finally agreed to the Village's request to retain it in exchange for the early retirement benefits now found in Article 15, §8. The residency requirement is now found in Article 14, §16. [Supra, pp. 4-5]

Under their first contract in 1988, a work period was 28 consecutive days; 212 hours under the then current shift schedule and shifts were 24 hours. Hours worked in excess of 212 were overtime; and annual salaries established prior to 1988 were to be converted to hourly rates by dividing the annual salary by 13.04 [the number of 28 day work periods in a year] and then dividing by the 212 hours in a work period. Pay increases under the 1988 contract were to be calculated on hourly rates after the conversion. Under the 1988 contract, a firefighter who worked the maximum schedule, counting vacation time, sick leave and disability hours as hours worked for FLSA purposes, would have 2764.48 scheduled hours a year, or an average of 53.16 hours a week. There were no "Kelly" days³ under the 1988 contract. But firefighters had partial and full furlough days off, totaling about 8 full days, of which only 1½ days were paid. [T. 3: 96-98, 110-35; AX 8, Tab 4; see also, UB 79]

Scheduling under the 1988 contract resulted in some scheduled overtime that the Village sought to eliminate under the 1991 contract. This was accomplished by agreeing to have 11 furlough or "Kelly" days off without pay. The 1991 contract changed the work period to ten 24-hour shifts with the 11th shift off and provided that the "average work week will be 51.23 hours." [T. 3: 98-101;

³"Kelly days" are furlough days for which firefighters are not paid. They are not named for Lt. Denis Kelly, who has worked for Alsip since July 1979 and has been the Union president for

AX 8, Tabs 4 & 7] Under such schedule, the normal work hours would be 2664 annually [51.23 x 52] instead of the 2764.48 under the 1988 contract, a difference of about 100 hours a year.

As set forth below, the Village states, and it is not disputed,⁴ that beginning with the 1991 contract and up to the present time, the Village has been paying firefighters's on the basis of a regular work schedule of 2764.48 hours a year instead of 2664. It states the overpayment, which it says was a mistake, totals about \$900,000. [T. 1: 62, 2: 155-56] Mr. Jerome Marzec, the Village Administrator, testified that he discovered the error in November 2003. However, this error and its discovery had a severe impact on the efforts to reach agreement in 2003 on the central issues of residency, wages and hours of work.

Some Highlights of the 2003 Bargaining

Lt. Kelly testified that in the first or second formal bargaining session in February or March, the Union proposed "unrestricted residency" and wage increases of 5% a year compounded over a 3-year contract. As an inducement to obtain open residency, the Union proposed wage increases that were frozen for the first two years as to firefighters with less than 25 months' service. [UX 40; T. 2: 65-66, 76-80] The Village proposed a 2-year contract with a 3% increase non-compounded. While

15 years and its chief negotiator for many years. [T. 3: 99]

⁴At one time or another during the five days of arbitration, most or all of the firefighters were present. None testified that their pay checks were based on the shorter work schedule of 51.23/2664 hours a week/year. Instead, the Union argues that the increased pay is a benefit that has become a "past practice." [UB 76-82]

indicating reasons why it wanted to keep the residency requirement, the Village also indicated it was willing to discuss that issue but would want major concessions. [UX 40, pp. 17, 19 & 23; T. 2: 86, 92]

In April, the Union sought a 13.5% non-compounded cost of living wage increase over a 3-year contract. It also stated its rationale for Alsip to drop the residency requirement and limited the area of non-residency to a 45 mile radius from Alsip's borders. [UX 40, pp. 30, 41-44; T. 2: 97-99, 106] The Village did not change its March wage proposal [except to reduce the top out rate for Lt. Firefighter/Paramedic from 4 to 3 steps]; and it rejected the Union's April proposal on residency. [UX 40, pp. 49, 56; T. 2: 125-27] Later in April, the Union came back with a 12% non-compounded wage proposal with a 2-year freeze on salaries for firefighters and firefighter/paramedics as a concession on residency along with a cut in the area for residence to a 35 mile radius. [UX 40, pp. 58, 64; T. 2: 128, 130] At the April 15 meeting, Lt. Kelly testified, the parties acknowledged that residency was the "overriding issue" and, for the first time, the parties went to mediation. [T. 2: 131-33]

During mediation in June, Alsip made this on the record offer of settlement [UX 40, p. 65]:

1. Union accepts all provisions of Village offer dated April 11, 2003; except the following which is added to the offer:
2. Residency is granted with a 15 mile radius requirement;
3. The Village will pay health insurance premiums limited to 85% of single coverage at the current dollar amount of \$355.10. The employee will pay 100% of the difference including any future premium increases that may be required by the carrier. Alternatively, an employee may opt to arrange his/her own coverage at no cost to the Village.
4. If in any future Agreement the foregoing health insurance premium sharing arrangement is altered in any way, then out of town Residency shall be eliminated and all employees shall be required to reside in town as is presently the case.

Lt. Kelly stated that such offer was deemed too "excessive" for a *quid pro quo* and the Union did not attempt to negotiate it down. The parties next met on October 7 in the office of the Village's

attorney, Mr. Spizzo, to discuss issues and matters in preparation for arbitration but nothing was “TA’d,” or tentatively agreed upon. [T. 2: 137-40] On October 30 Mr. Spizzo sent Union counsel, Mr. Dale Berry, a “red-line” draft collective bargaining agreement indicating certain revisions “agreed to by the parties” and listing the issues remaining for arbitration. [UX 40, pp. 66-68, JX 4; T. 2: 140-41] Following that, the parties agreed to meet again on January 2, 2004. [T. 2: 141-42]

Meanwhile, Lt. Kelly testified, he was called into the office of the Village Administrator, Mr. Marzec, who gave him a letter dated December 3 containing a new offer on residency.⁵ That offer stated [UX 40, p. 69]:

“To resolve the issue of residency in the contract, the Village proposes the following: ‘All sworn members of the Alsip Fire Department shall, within six [6] months of the completion of their probationary period, establish permanent residence within the following boundaries: North to I-55; South to I-80; East to the Illinois border; West to the proposed I-355 extension.

‘In exchange for the relaxation of residency, all reference to Article 15, Section 8, “Retirement Provisions,” will be removed from the contract.”

Lt. Kelly read the letter and told Mr. Marzec that he would have to review it with his committee and attorney “before we could move on that.” [T. 2: 143]

On December 9, Kelly continued, Marzec came to the firehouse and gave him a letter dated December 9 stating that “since the Union has not yet responded” to the Village’s proposal dated December 3, that offer was withdrawn. Kelly read the letter and told Marzec that this issue would be discussed at the January 2, 2004 meeting, but Marzec indicated that that meeting might not take

⁵Lt. Kelly suggested that the meeting may have been subsequent to the date of the letter. [T. 2: 142]

place. [UX 40, p. 70; T. 2: 143-44]

The January 2 meeting was canceled, but then rescheduled and held. [T. 2: 144-45] The Union submitted a detailed and comprehensive proposal [UX 40, pp. 71-85] which, in pertinent part, provided for a three year wage increase of “4% ATB” and a modified residency proposal with a 25 mile perimeter and a *quid pro quo* that increased employee health insurance contributions from 15% to 20% and by reducing the number of Kelly days off from 11 to 10. It also offered, for the first time, to amend the “Hours of Work” in Article 15, §2, “to clarify work schedule and straight time hourly rate to conform to an average work week of 51.23 hours (i.e., annual hours of 2664: 51.3 x 52)***.”

The Village’s proposal on January 2 contained six items including these: [1] a 5-year contract; [2] wage increases of 0% in year one and 3.25% for the next four years, non-compounded; and [3] no change in residency.

This change in the parties’ position is explained by Mr. Marzec’s testimony about the “100 hour” error and how it occurred in 1991 and was carried forward until discovered by him in November 2003.⁶ He was the Village’s negotiator in 1988 and 1991 and other contracts up to 2000 and was involved late in the 2003 negotiations. He testified [T. 3: 97-105]:

*** All wages in 1987 for the fire department were covered under an annualized amount via ordinance. This is the formula that breaks that annualized amount down into an hourly wage schedule.

By using that formula tied back into the annualized salary from the 1987 salary ordinance, the hourly wages were then computed for 1987 and the appropriate raises were included to determine in the agreement the first year's hourly wage number on Appendix A [the Wages and Salary Schedule].

⁶Village and Union counsel, as well as Mr. Marzec, suggest that the discovery might have been or was in December. [T. 1: 22, 59; T. 3: 104]

After that, the increases were calculated for the second and third years which would have been May of '89 and May of '90.

Q. What happened in 1991?

A. In 1991 -- let me back up to the 1988 contract. This particular schedule did result in certain overtime hours being scheduled in a normal course of duty.

In 1991 when the negotiations began, the fire department presented a schedule to the Village basically in an effort to remove the scheduled overtime hours which included the use of at that time Kelly days as scheduled unpaid days off.

This resulted in a decrease in the scheduled work hours for each individual from the 53.1 hours I believe it was originally to the 51.23 hours listed in the wages and hours work schedule from the 1991 contract.

Q. Who made the proposal for these days off?

A. The Union made the proposal for the days off.

Q. Who was the negotiator for the employer in 1991?

A. I was.

Q. Would you describe the parties' agreement as you understood it at the table reached at the table?

A. The agreement reached at the table along with the change in the hours of work included a conversion of the salaries back into an annualized salary.

Q. Who did those calculations?

A. I believe they were joint at that point.

Q. Why was the calculation made?

A. The calculation was made basically so that the increase reflected in the wage and salary section of the 1991 contract reflected a true increase to the annualized salaries from the 1990 pay scale.

Q. What do you mean by a true increase?

A. We annualized the hourly rate from the 1990 contract, then applied the percentage increase to that annualized number to establish the annual salary for 1991, then divided the 1991 annualized salary determination by the new hours of work which is 2,664 to arrive at an hourly rate to coincide with that annual salary number.

Q. Why didn't you divide the new annual salary calculation by 2,764.48?

A. Because that was no longer the hours being worked at that point.

Q. Are you sure in 1991 that the 2,664 number was used?

A. Yes.

Now, the problem that we've run into is that the calculation for wages for pay periods are given to the treasurer's office by the fire department members and have never gone back through the Village Board other than the hourly figures.

Q. What did you learn in your investigation of this issue in December of this past year as to what happened in the treasurer's office all this time? [Emphasis added]

A. The treasurer's office had mistakenly used the old calculation from the 1988

contract of payment of wages.

This calculation appears on the top of every pay sheet turned in by the fire department to the treasurer's office.

THE ARBITRATOR: What was the old calculation?

THE WITNESS: The old calculation multiplies the hourly wage by 2,764.48 hours. This is the hundred-hour mistake that the Village maintains has been in existence for the last 13 years.

MR. SPIZZO: And our proposal seeks to rectify that. The new contract made the annualized calculation based on 2,664 hours and then use that number to ascertain the hourly rate of pay with the appropriate wage increase agreed upon at the table.

THE WITNESS: None of the contracts dating back to 1988 reflect an annual salary. All contracts refer to an hourly salary and the determination by calculation of the hours worked per pay period.

Mr. Marzec's testimony is also summarized in AX 8, Tab 7, pp. 1-2, as follows:

HOURS OF WORK ISSUE 1988-2003

Prior to the initiation of Furlough Days [Kelly Days, Garcia Days], annualized hours for firefighters were calculated as follows:

Work Period: 28 days

Average Hours per Period: 212

Periods per Year: 13.04

Annualized Hours of Work per Year: 212 x
13.04=2764.48

[See AX 8, Tab 4, p.2, language from 1988 collective bargaining agreement]

Beginning with the 1991 contract, the parties for the first time agreed to establish a regular system of Furlough or Kelly Days. Accordingly, eleven (11) Furlough or Kelly Days were inserted into the schedule. This proposal and the contract language codifying the parties' agreement originated with the Union and its chief negotiator, Lt. Dennis Kelly. The agreement to insert eleven (11) Furlough or Kelly Days resulted in a schedule that met FLSA standards without built-in overtime. The 1991 contract, and every contract since then, sets forth a description of annual hours of work as follows:

Work Period: ten (10) twenty four (24) hour shifts with the eleventh shift off

Average Hours per Work Week: 51.23.

Annualized Hours of Work Per Year accordingly are:

51.23 x 52 weeks/year = 2664

Another method producing the same result is to take the maximum annual number of hours of work for a firefighter working a 24 hours on /48 hours off routine [365/3 = 122 x 24 = 2928] and subtract the total hours off represented by eleven Kelly Days: 2928-264 = 2664.

In order to maintain a standard gross paycheck the average hours of work per week, 51.23, were specifically stated in the contract by the parties [See AX 8, Tab 4, p.4, language from 1991 collective bargaining agreement].

The hourly rates of pay set forth in the 1991 collective bargaining agreement were calculated using the new, agreed-upon formula of 2,664 hours of work per year.

An example using wage data for Employee 2030, a topped-out firefighter/paramedic:

1990 Wage Calculation:

$$$(12.26 \times 2764.48) + \$1500 = \$35,392.52 \text{ per year}$$

$$\$35,392.52 / 2764.48 = \$12.80 \text{ per hour}$$

$$$(12.80 \times 212) / 2 = \$1356.80 \text{ per pay period}$$

The firefighter's actual pay schedule, due to excess hours, was \$1379.71 [See attached pay sheets].

1991 Wage Calculation:

In order to obtain the correct hourly rate for 1991, the increase was determined by a 5.6% raise (for that particular pay grade) in the annual amount and then dividing by the new annualized hours.

$$\$35,393 \times 1.056 = \$37,375$$

$\$37,375 / 2664 = \14.03 per hour

$\$14.03 \times 51.23 \times 2 = \1437.52 per pay period

Employee 2030 was actually paid \$1491.76 per pay period based on pension records, attached. This result occurred because the 1991 hourly rate of pay was erroneously mixed into the 1990 calculation. The resulting raise for this employee amounted to a 9.59% for that pay grade instead of the agreed-upon 5.6%. This error in payment has been continued in every pay period from May 1, 1991 to present for all bargaining unit employees.

This 100 hour error, and the Village's claim that since 1991 firefighters have been "unjustly enriched" by \$900,000, was discussed during negotiations, apparently for the first time, at the January 2, 2004 meeting. It set the stage for the "Final Offers" made at the outset of arbitration on January 12, 2004. [T. 1: 62]

The "Final Offers" Made at the Outset of Arbitration⁷

A. The Village's Final Offer as of January 12, 2004 [JX 3; T. 1: 57-73]:

[1] As to wages, the Village offered 3.75% a year, non-compounded, on a 3-year contract. However, in substance and effect, there would be no increase or even a slight decrease in the first year because the offer was coupled with a recalculation of hourly rates in 2002-3, the last year of the expiring contract, to reflect that actual hours worked was 2664 and not 2764. After applying the lower hours worked to the 2002 hourly rate and multiplying that corrected baseline by the 3.75% "increase," the result is no pay increase for the first year. In making this offer, the Village also agreed that it would

⁷The various "Final Offers" set forth hereafter include only those portions relating to the issues which were unresolved by the end of the arbitration hearing, and excludes the disciplinary issue withdrawn afterward.

waive its back pay claim of \$900,000 and interest thereon. [T. 1: 62; 3: 51-52]

[2] As to Hours of Work, its proposal is virtually identical to its amended Final Offer on March 4, set forth infra, pp. 20-21,

[3] As to residency, maintain the status quo.

[4] As to Tuition Reimbursement, Incentive Pay and College Incentive Pay, it offered no change from the Contract.

B. The Union's Final Offer as of January 12, 2004 [JX 2; T. 1: 9-45]:

[1] As to wages it sought a 3.5% increase "ATB" for each year of a 3-year contract.

[2] As to hours of work, it sought to amend Art. 15, §2 of the Contract to "clarify existing work schedule and straight time hourly rate to conform to an average work week of 53.16 hours (i.e., annual hours of 53.16 x 52)***."

[3] The Union also requested improvements in Tuition Reimbursement and Incentive Pay, and a new Incentive for attaining college degrees. These requests will be set forth in the Discussion, infra, resolving these issues.

[4] As to Residency, the Union proposed expansion to these limits outside of Alsip: North to I-55, South to Manhattan-Monee Road, West to I-355's proposed extension and East to the Illinois border; and offered the same *quid pro quo* as in the January 2 negotiations.

Final Offers Made During Arbitration

A. The Village's Final Offer on March 11, 2004.

1. Application of Hourly Rates of Pay

Maintain and apply the hourly rates of pay in Appendix A according to the contractual formula (51.23 hours x 52 weeks = 2,664 hours):

APPENDIX A

WAGES AND SALARY

<u>Months of Service</u>	<u>Hourly Rate Effective</u> <u>May 1, 2002</u>	<u>Correct Annual Salary</u> <u>2002</u>
SALARY OF FIREFIGHTERS		
0/12	16.06	42,784
13/24	16.63	44,302
25/36	17.14	45,661
37/48	17.72	47,206
49/60	18.24	48,591
61/72	18.86	50,243
73/UP	19.69	52,454
SALARY FIREFIGHTER-PARAMEDIC		
0/12	17.02	45,341
13/24	17.63	46,966
25/36	18.18	48,432
37/48	19.36	51,575
49/60	19.61	52,241
61/72	19.99	53,253
73/UP	20.83	55,491
SALARY OF LIEUTENANTS		

0/12	20.54	54,719
13/24	20.98	55,891
25/36	21.49	57,249
37/UP	22.20	59,141
SALARY OF LIEUTENANT-PARAMEDIC		
0/12	21.56	57,436
13/24	22.21	59,167
25/36	22.78	60,686
37/UP	23.53	62,684

ARTICLE 15. HOURS OF WORK

Section 2. A. Regular Work Hours (REVISED)

The regular work schedule for Fire Fighters whose principal assignment is fire suppression and/or EMS duty shall be twenty-four (24) consecutive hours of duty, beginning at 7:00 a.m. The average work week shall be 51.23 hours which shall be accomplished by scheduling every 11th shift off as a “Kelly Day”.

B. Regular Straight Time Hourly Rate

An employee’s regular straight time hourly rate shall be computed by dividing the employee’s annual salary by 2,664.

C. FLSA Overtime

By scheduling every 11th shift off as a “Kelly Day,” it is the intent of the parties to eliminate any Village liability for FLSA overtime. To this end, the Employer may set an FLSA work period at any length from seven (7) days to twenty-eight (28) days to accomplish this purpose. In addition, any other paid or unpaid time off (i.e., vacation, paternal, bereavement, disability, suspension or sick time) shall not count as hours worked for FLSA purposes.

D. Overtime Hours

All hours worked above the employee's regularly scheduled hours shall be paid monthly as follows:

1. The first four (4) hours worked each month will be paid at straight time.
2. Hours worked in excess of four (4) hours above regularly scheduled hours shall be paid at 1.5 times the employee's regular hourly rate of pay.
3. When sick time, vacation, paternal, bereavement, disability, or suspension time has been used, those hours worked above regularly scheduled will be paid at straight time until all hours have been made up plus the standard four (4).
Example: Take one sick or vacation day and the next extra twenty-eight (28) hours would be at straight time for that month.
4. Monetary overtime will be paid monthly.

2. Wages/Term of Agreement

The Village proposes the following wage increases on May 1 of each year for a three-year term (May 1, 2003 – April 30, 2006):

<u>May 1, 2003</u>		<u>May 1, 2004</u>		<u>May 1, 2005</u>
3¾%	—	3¾%	—	3¾%

(non-compounded per past practice)

3. Retirement Provisions

Modify Article 15, Section 8, to provide a one (1) pay period window for employees with 20 years of service.

4. Tuition Reimbursement/Incentive Pay/College Incentive

No change. Apply contractual language as written.

5. Residency

No change to Article

B. The Union's Amended Final Offer on April 28, 2004, the Last Day of Hearings.

[1] As to Residency, the Union offered the identical *quid pro quo* contained in the Village's

offer [made and withdrawn in December] of giving back the early retirement benefits it received in 2000 in exchange for maintaining within-Village residency. The Union also accepted three of the four geographic boundaries for outside residency made in Alsip's December 3 offer.⁸

[2] As to wages increases it proposed: [A] Effective 5-1-03 convert the 2002 hourly rates into annual salaries paid upon agreed formula; i.e., biweekly hourly rate x 13.04 x 212 (2764.48 hours); and [B] increase each step of the salary schedule effective 5-1-02 by 3.0% effective on 5-1-03, -04 and -05. However, in the "Salary Schedule" attached as Ex. 9 to the Offer, in 2005 it divides the hourly rate by 2664 instead of the 2764.48 divisor used in 2003 and 2004.

[3] As to hours of work, it proposes to "modify" and "clarify" Article 15, §2, effective 5-1-03, so that the "existing schedule and straight time hourly rate conform to an average work week of 53.16 hours (i.e., annual hours of 53.16 x 52 [2764.48])," but effective 5-1-05 to modify §2 to 2664 annual hours of work. More specifically, Ex. 10 to the Final Offer would revise Article 15, §2 in pertinent part as follows:

Section 2. A. Regular Work Hours **(REVISED)**

The regular work schedule for Fire Fighters whose principal assignment is fire suppression and/or EMS duty shall be twenty-four (24) consecutive hours of duty, beginning at 7:00 A.M., followed by forty-eight (48) consecutive hours off duty. The average work week shall be 53.16 hours which shall be accomplished by scheduling every 11th shift off as a "Furlough Day."

Effective May 1, 2005 the average work week shall be 51.23 hours which shall be accomplished by scheduling every 11th shift off as a "Kelly Day."

⁸The southern border in the Village's offer was I-80. The Union's Final Offer is further south to Manhattan-Monee Road.

B. Regular Straight Time Hourly Rate

An employee's regular straight time hourly rate shall be computed by dividing the employee's annual salary by the annual hours paid of 2,764.48. Effective May 1, 2005 the annual paid hours shall be 2,664 and the employee's annual salary shall be divided by 2,664 to calculate the straight time hourly rate.

C. FLSA Overtime

By scheduling every 11th shift off as a "Furlough Day/Kelly Day," it is the intent of the parties to eliminate any Village liability for FLSA overtime. To this end, the Employer may set an FLSA work period at any length from seven (7) days to twenty-eight (28) days to accomplish this purpose. In addition, any other paid or unpaid time off (i.e., vacation, paternal, bereavement, disability, suspension or sick time) shall not count as hours worked for FLSA purposes.

D. Overtime Hours

All hours worked above the employee's regularly scheduled hours shall be paid monthly as follows:

1. The first four (4) hours worked each month will be paid at straight time.
2. Hours worked in excess of four (4) hours above regularly scheduled hours shall be paid at 1.5 times the employee's regular hourly rate of pay.
3. When sick time has been used, those hours worked above regularly scheduled will be paid at straight time until all hours have been made up plus the standard four (4). Example: Take one sick day and the next extra twenty-eight (28) hours worked would be at straight time for that month.
4. Monetary overtime worked will be paid monthly.

[4]. As to Tuition Reimbursement, Incentive Pay and College Incentive Pay, the Union's Amended Final Offer on April 28, is the same as its Final Offer at the beginning of the Arbitration except for some slight changes as to Incentive Pay which will be noted below in the Discussion of these issues. The Village's Final Offer is to maintain the status quo and not change the current Contract in respect

to these issues.

Discussion, Findings and Opinion

The Comparable Communities

Based on the facts and issues peculiar to this case, the Arbitrator finds it unnecessary to resolve whether any of the Union's five proposed comparable communities should be added to the ten agreed upon. However, as seen below, where appropriate or necessary and to the extent I deem them relevant, I have considered the five comparable communities proposed by the Union.

A. The Non-Economic Issue-- Residency

On this issue, the Arbitrator finds that the Union should prevail. My reasoning follows:

When residency became a mandatory subject of bargaining for the first time in 1997 and the parties, in 2000, entered into their first post-1997 contract, the Union sought to end the residency requirement. But Alsip sought to retain the status quo, which required the firefighters to live within Village limits. To induce the Union to drop its request and retain the residency requirement, the Village offered an early retirement benefit. The Union accepted it and it became part of the Contract, Article 15, §8. When that Contract approached expiration in April 2003, the parties began bargaining on a new one in February 2003. From the outset and throughout those bargaining sessions and a mediation session, it was clear that the Union wanted to end the residency requirement and the Village indicated a willingness to bargain on that subject while also making clear that a substantial *quid pro quo* would be required. This became the key issue. Between February and

December, the Village made proposals that would drop the residency requirement in exchange for *quid pro quo*'s which the Union deemed too steep; and the Union made several counterproposals on the residency requirement which Alsip thought were too insignificant.

Finally, as noted above, on December 3 the Village offered to give up its strict residency requirement if the Union would give back the early retirement benefit it received in 2000 in exchange for Alsip's then request to retain the residency requirement. Another bargaining session was scheduled for January 2, 2004, but before it was held, the Village withdrew this offer on December 9. Although this offer was open only for about six days, the Village considered it a "serious proposal" and Mr. Marzec so described it to Lt. Kelly on or about December 3. [T. 4: 86-87] Kelly told Marzec that he would present it to the Union bargaining team. It was Kelly's "understanding" that the issue would be discussed at the scheduled January 2, 2004 meeting. [T. 2: 228] Mr. Marzec testified that December 3 was a Wednesday and that he asked Kelly for as early a response as possible. Two days later, he said, Kelly told him that he would try to get an answer back by Monday, but never did so. [T. 4: 87-88] On December 9, Alsip withdrew the offer, ostensibly because the Union had not yet responded to it. When Mr. Marzec so advised Lt. Kelly on December 9, Kelly said that this issue would "likely be discussed" at the January 2 meeting; but Marzec replied that that meeting possibly might not take place. [T. 2: 143-44; UX 40, p. 70]

As noted above, the January 2 meeting was canceled, reinstated and held. During it, the Union offered another *quid pro quo* for expanding residency which the Village deemed too little and unacceptable. At the outset of arbitration, the

Union's "Final Offer" further modified its proposed *quid pro quo* for deleting the residency requirement by reducing somewhat the areas in which firefighters could reside outside of Village limits. But, at the end of the arbitration hearings on April 28, 2004, the Union revised its Final Offer by agreeing to give up the early retirement benefit in order to eliminate the residency requirement. This was the exact *quid pro quo* demanded in the Village's December 3 offer.⁹

⁹As noted above, fn. 8, p. 22, the Union also agreed to three of the four boundaries the Village proposed for expansion of residency outside of Village limits.

Given these facts, I cannot agree with the Village's contention that this is a "breakthrough" issue. After extensive bargaining during 2003 and five days of arbitration in 2004, the Union agreed to the exact *quid pro quo* that the Village demanded in exchange for relaxing the residency requirement: giving up the early retirement benefit that it obtained in 2000 in exchange for maintaining the *status quo* on residency. Even if it were a breakthrough issue, it cannot be said [though Alsip does say at VB 27], "that the Union offers no meaningful *quid pro quo**** on the issue of residency." It is the same *quid pro quo* that Alsip deemed sufficient in its offer of December 3.¹⁰ Nor can that *quid pro quo* be considered insignificant. Mr. Marzec said it was a "serious proposal" [supra, p. 25] and Mayor Andrews testified that the early retirement benefit had created an unfunded liability for the Village in excess of \$1 million. [VB 26; T. 3: 268-69]

Since the Village made a good faith, serious offer on December 3 to relax the residency requirement, the Village would be hard pressed to argue successfully that allowing firefighters to reside outside Village limits would be harmful to the Village or the public interest. In any event, there is ample evidence in the record to support the conclusion that expansion of the residency limits to include geographic areas outside the Village should not adversely impact the Village's ability to protect the public interest. For example, the record shows that during a fire or emergency and off-duty firefighters are called back, the call-back is not mandatory and those who do

¹⁰Alsip's claim that the *quid pro quo* demanded was for both the end of early retirement and correction of the 100 hour error [VB 26], is not supported by anything in the record, including the record references cited at VB 26.

accept it are stationed at the firehouses [of which there are two] to man other equipment if necessary. More importantly, the Village has various “auto aid” and “mutual aid” agreements with other fire departments which can and do respond automatically to fire/emergencies in Alsip. These agreements have also reduced the need for call-backs. See, e.g., T. 2: 203-07, 248-54; T. 5: 40-49, 58-71; UXs 44-45; UB 60-67]

Most of the Village’s counter arguments are *in persona*, relating to its perceived effect on the employees and their families. Thus, it notes low crime rates and the quality of schools in Alsip and argues that Alsip is a good place to live. It also asserts that it will cost employees more to live outside of Alsip and suggests that if employees move out, Alsip will suffer a revenue loss. [VB 31-34]¹¹ Alsip also disputes testimony that strict residence requirement limits the pool of job applicants and encourages those hired to leave for towns with more open residency. [VB 34-37] However, in my view, the Union’s evidence and arguments on these considerations are more persuasive than Alsip’s. [See UB 18-31 & 38-43] See also, the Town of Cicero v. Illinois Association of Firefighters, IAFF Local 717, 338 Ill. App. 3d 364 (1st Dist.2003), quoted infra, p. 28.

Consideration of comparable communities also supports the Union’s and my conclusion on this issue. As Arbitrator Harvey Nathan recently observed in Arbitral Standards for Deciding Non-Economic Impasse Issues, 21 Illinois Public Employee Relations Report,

¹¹This assumes that no one will move in to replace those who leave, an assumption contrary to Alsip’s expressed belief that Alsip is a desirable place to live.

1 at p. 4 (Winter 2004): “Factor 4, comparability, is a critical factor in the consideration of non-economic issues.” In its brief, the Union states correctly [UB 36-37]:

Of the ten municipalities that the Village has identified as comparable, none of them imposes a strict in-town residency requirement. Similarly, none of the additional five communities proposed by the Union maintain a strict in-town residency requirement. Five of the comparable communities proposed by the Village – Bridgeview, Burbank, Homewood, Oak Forest and Park Forest – impose no residency requirement whatsoever. Calumet City, again a community proposed as comparable by the Village, requires only that employees reside in Illinois or Indiana. Bellwood and Forest Park only require that firefighters live within the state. Bensenville firefighters are required to live within a 25 mile radius of the town, while Villa Park firefighters must reside within a twenty-five mile radius. Both these residency requirements are less restrictive than the Union’s 15 mile radius proposal. The remaining comparable communities, Blue Island, Chicago Ridge, Franklin Park and South Holland maintain residency requirements defined by specific boundaries, all of which are either comparable to that proposed by the Union or less restrictive. The only arguably more restrictive residency requirement than that proposed by the Union is South Holland’s residency requirement. South Holland requires employees with less than four years of service to live with[in] three miles; those with four to eight years to live within ten miles; but those with eight or more years may live up to 20 miles away, a restriction that is less onerous than that proposed by the Union.¹²

Alsip’s willingness to relax its residency requirement, provided it receives a substantial *quid pro quo*, was perhaps motivated by the fact that so many area communities have already done so, as well as by a recent Illinois Appellate Court decision which held:

The Town [of Cicero] can not credibly argue that a residency requirement does not implicate and limit certain liberties on the part of employees subject thereto. Such employees lose, for example, the freedom to choose where to buy a home, to raise a family and to send one’s children to school. The Union stressed the importance of these freedoms repeatedly throughout the proceedings, and it was well within the discretion of the Arbitrator to consider those arguments as

¹²These conclusions are supported by the chart at UX 2; T. 1: 123-28 [the facts of which were not disputed by the Village]. The chart states the residency provisions of the ten comparable communities agreed upon by the parties and the five comparable communities advanced by the Union but objected to by the Village. But even if I were to exclude from consideration the Union’s proposed five communities, I would reach the same conclusion based on the ten agreed upon comparable communities.

part of what interests were to be balanced.¹³

I have carefully reviewed the Village's arguments to retain the *status quo* on residency [VB 25-41, but, as indicated above, find none of them persuasive. Further, the record does not support the Village's assertion [VB 26, citing: T. 2: 227 & 4: 85-93; see also, VB 31] that:

During negotiations for the 2003-2006 contract the Village named its price--it would relax the residency program to cover areas outside the village in exchange for [1] correction of the 100 hour wage overpayment, **and** [2] elimination of the Union's early retirement program. [Emphasis added]

¹³Town of Cicero v. Illinois Association of Firefighters, IAFF Local 717, 338 Ill. App. 3d 364, 367 (1st Dist. 2003).

There is no documentary or oral evidence that ties the Village's offer to relax the residency requirement to a *quid pro quo* of both early retirement **and** the 100 hour wage overpayment. Mr. Marzec said he discovered the 100 hour error in November but handed the December 3 offer to Lt. Kelly without mentioning in their conversation at that time or in the written offer itself, anything about the 100 hour error.¹⁴

Accordingly, I find, based on all the statutory and contractual factors that are pertinent and the record as a whole, that the Union's Final Offer on residency should be adopted: the strict residency requirements contained in Article 14, §16 of the Contract shall be deleted; and the early retirement provisions of Article 15, §8 shall be deleted. The new contract shall also describe the geographic boundaries in which firefighters must reside within six [6] months after completing their probationary period as set forth in the Union's Final Offer in Arbitration.¹⁵ If the parties had not reached impasse on this issue, this is the agreement that the record indicates they would have attained at the bargaining table.

B. The Economic Issues

1. Hours of Work

Although in certain respects both parties have integrated the hours of work issue into their

¹⁴Village and Union counsel stated that the "100 hour error" was discovered or became known in December. Although the record is not absolutely clear, it is possible, and I think quite probable, that when the Village representatives learned about the error from Mr. Marzec, Alsip decided to withdraw its December 3 offer. But, as noted above, there is no evidence that the December 3 offer was conditioned on rectifying that error **and** giving back the early retirement benefit. Moreover, as seen below, the Village does attempt to tie the 100 hour error to its wage proposal; but there is no evidence that it tried to tie it to both the residency and wage issue.

¹⁵This will include the Union's proposed southern boundary of Manhattan-Monee Road. Unlike economic issues, arbitrators are not limited to selecting between the parties final offers as to non-economic issues. See Arbitrator Nathan's recent article on Arbitral Standards for Deciding Non-Economic Impasse Issues, *supra*, p. 27 at p.2 and authorities therein cited.

wage proposals, I find that hours of work and wages are, and should be, considered as separate economic issues.

The hours of work issue stems, of course, from the Village's discovery, just before the end of negotiations for the new contract, that since the 1991 contract it has been paying firefighters based on a 2764.48 hour work year, or an average work week of 53.16 hours, instead of an average work week of 51.23 hours or 2664 hours a year. The Village states that this was its mistake and does not blame the employees or Union for it.¹⁶

The Union does not really dispute that the error was [and is being] made. It could hardly do so since the 1991 contract expressly provides in Article 15, §2 (a), Work Hours, that "An annual schedule shall be posted. The average work week will be 51.23 hours."¹⁷ The same language appears in the current Contract [see p. 4, supra]. There is no evidence of any proposal to change this language in any contract between 1991 and 2000. In stating the "Hours of Work" in 2002 for Alsip and the comparable communities, the Union notes that Alsip's is 51.2 a week and 2664 a year. [UX 24]¹⁸ Moreover, the Union's wage and work hour proposals in its Final Offer in arbitration seek to provide for annual paid hours of 2664 in the third year of the new contract. [supra, pp. 22-23] Inconsistently, the Union also seeks in those proposals to maintain wages for the first two years based on a 2764.48 hour work year [or 53.16 hours a week] that existed under the 1988 contract. The Union cannot have it both ways. The arbitrator cannot put his imprimatur on a mistake.

¹⁶Nor were the Mayor or Village Board aware that since 1991 the Treasurer's office had been using the old formula based on 2764.48 work hours in cutting payroll checks. [T. 3: 103-04, 108-110]

¹⁷UX 40, p. 89. [51.23 x 52 = 2664 work hours a year]. The 51.23 average work week appears in every contract after 1990. [AX 8, Tab 7]

¹⁸This exhibit also shows that the average hours worked in the 15 other communities is 51.0 a week and 2652.20 a year; and that only one community [Matteson] has hours of work longer than Alsip.

Accordingly, as to Work Hours in Article 15, §2 of the new contract, the arbitrator must reject the Union's Final Offer submitted on April 28, 2004 and accept the language for that provision contained in the Village's Final Offer submitted on March 11, 2004. [supra, pp. 20-21]

2. Wages

The Village's proposal on a wage increase ostensibly is for a non-compounded 3.75% increase in each year of the [now agreed upon] three-year contract. In fact, however, it offers no wage increase in the first contract year because of its attempt to recover for the 100 hour overpayments made from 1991 to date. [supra, pp. 19-21] Its attempt in this respect would be carried out by altering, or as it says, "correcting," the 1992 salary payments in the last year of the current Contract to reflect what they would have been had they been calculated on a 2664 work hour year instead of a 2764.48 hour year. [Id.] For several reasons, the arbitrator cannot accept this effort.

First, it is unfair. The vast majority of firefighters were hired after 1991. Most were hired in various years between 1994 and 2002. [AX 10, Tab 2] Thus, whatever overpayments were received, most of the employees did not receive the same amounts or for the same number of years. Yet, the Village's wage offer treats them all the same and that would be unfair to those hired more recently than those hired closer to or before 1991. Also, firefighters who have left or retired since 1991 probably would escape any reimbursement, leaving it all on the shoulders of current employees.

Second, since the Union did not violate the contract with respect to the overpayments, the applicable statute of limitations for the alleged "unjust enrichment" would be five years; and this would reduce substantially how much of the claimed \$900,000 overpayment that could be collected even by litigation.

Third, and perhaps of greater importance, the entire issue as to the 100 hour error did not emerge until December and the eve of arbitration. There is no evidence that any real or meaningful

bargaining ever took place as to what to do about the claim for reimbursement. Where parties have not discussed, or barely discussed an issue, interest arbitrators commonly decline to pass on it. In City of Jacksonville, Illinois, S-MA-03-098 (2003) [VB, Appx. Tab 21], Arbitrator Cox had before him the sole issue of residency, an issue he said: “comes to this Arbitration as a stand-alone question, not as part of any trade off or alternative proposal and most critically, without having been discussed at the bargaining table to any extent.” [*Id.* at 10; emphasis added] Continuing, he observed [*Id.* at 11-12]:

It is often expressed that an Interest Arbitrator should be guided by what the parties would rationally have agreed upon if they had bargained the issue to resolution. It subverts the process for the parties to present the Arbitrator an issue they have not considered in any detail or made any real attempt to mutually resolve. [emphasis in original]

As the Village itself observes [VB 29]: “The teaching of the relevant interest arbitration decisions is that if the parties have not engaged in serious bargaining on an issue, have not established evidence that change is warranted, and have not exchanged meaningful *quid pro quo* offers, there is no basis for changing the status quo via interest arbitration.” Since the parties have not engaged in bargaining over the issue of reimbursement for the 100 hour overpayment error, I do not believe that I can, or should, take into account the reimbursement issue in determining whose wage offer should be selected. And, since the Village has inextricably written into its wage proposal its resolution of the reimbursement issue, I am precluded from accepting the Village’s wage proposal.¹⁹

Accordingly, I have no choice but to accept the Union’s wage proposal which is otherwise reasonable and meets relevant statutory and Contract criteria. That proposal is for a 3.0% increase across-the-board on May 1 of 2003, 2004 and 2005. The base to which the first increase applies is

¹⁹My ruling in this respect does not, of course, bar the Village from seeking whatever legal redress is available to it regarding its claim of unjust enrichment; but hopefully that issue can and will be resolved at the bargaining table.

the hourly rate effective on May 1, 2002, the last year of the current Contract. In accordance with my ruling on the separate economic issue as to hours of work, the annual salaries shall be determined by multiplying the hourly rates by 2664 hours, not by 2764.48 hours.

The 3% annual increases for firefighters is less than the increases granted by Alsip to its other employees in 2003 and 2004.²⁰ In 2003 and 2004 it was 3.83% and 3.69% for Patrol Officers and 3.79% and 3.72% for Sergeants. For AFSCME it was 3.84% and 3.70%, respectively. [AX 10, Tab 5; UB 73]

Comparing firefighter wage increases in the ten comparable communities that the parties agreed upon, eight had negotiated contracts for 2003²¹ and their average increase was 3.84%. Only four had contracts for 2004 and their average increase is 3.69%. Only three had contracts for 2005 and their average increase is 3.58%. [UX 12]²²

The Act also requires consideration of the cost of living, and the Contract limits that to the “CPI-W for Chicago as reported by the U.S. Department of Labor discounted for Village paid benefits furnished to members of the bargaining unit such as, but not limited to, insurance and clothing.” [JX 1, p. 46] The 3.0% wage increase under the Union’s offer exceeds the cost of living increases in 2003. [See VB 51-52 and AX 7, Tab 2 (A, B & C).

For the above reasons, the Union’s wage proposal is accepted and the Village’s rejected.²³

²⁰The contracts with the FOP and AFSCME end in 2004.

²¹The ten are: Blue Island, Bridgeview, Burbank, Calumet City, Chicago Ridge, Homewood, Matteson, Oak Forest, Park Forest and South Holland. Underlined are those who were in contract negotiations. [T. 1: 117-19; UB 10]

²²UX 12 includes the five communities [Bellwood, Bensenville, Forest Park, Franklin Park and Villa Park] the Union deemed comparable but the Village deemed objectionable. Without deciding whether any of the five are comparable, the Arbitrator excluded them for purposes of calculating the average % increases noted above. [T. 1: 117-19; UB 10]

²³The Union’s contention that “past practice” establishes the employees’ right and benefit

to be paid on the basis of 2764.48 work hours [UB 76] is not well taken. The party asserting a binding past practice has the burden of proof which is not met here. First, since 1991 the contract has provided for a 2664 hour work schedule. Second, the Union itself recognizes, both in its exhibits [e.g. UX 24] and Final Offer in Arbitration that the correct schedule of hours worked is 2664. Third, the Union offered no evidence to contradict Mr. Marzec's testimony as to how the error occurred and that the Village Administrators lacked knowledge of the continuing error. A binding past practice arises out of mutuality of agreement, not a unilateral mistake.

3. Other Economic Issues: Tuition Reimbursement, Incentive Pay & College Incentive Pay²⁴

(a) Tuition Reimbursement

Article 14, §6 [supra, pp. 3-4] provides for tuition reimbursement. The Union seeks to amend

¶F of §6 by adding the language in bold face:

F. No reimbursement will be given for transportation, meals or lost time from the employee's job **(except as provided in General Order No. 00-8-2, attached hereto as "Appendix D")**.

That General Order, "Revised & Posted 8/14/00," is headed "TUITION REIMBURSEMENT POLICY" and occupies a full page in two columns of small print. Under procedures in ¶1 it requires a form to be filled out completely for anticipated expenses, "including tuition, registration fees, books, hotel, per diem, fuel, etc." The "Note" in ¶5 of in the Order advises that "Per diem is up to \$25.00 per day for food." Obviously, this Order is at odds with ¶F of §6 of the Contract. Moreover, there is not very much evidence or argument in the record on this issue. Regarding this Order, counsel for Alsip stated during the hearing [T. 4: 258]:

The Union *** wants the Arbitrator to codify in the contract the provisions of a memoranda that one of the fire department management team drafted in error after the last contract was negotiated.

That memo expanded the benefit which is provided for in the contract to include books, hotel, per diem, fuel and shift coverage costs.

Those benefits are not provided for by any of the comparables that we have looked at in our set and certainly not the Union's. [See also counsel's statement at T.1: 67-68]

Lt. Kelly stated that what the Union was seeking to incorporate the "policy" of the Order "into some type of contract language." [T. 2: 69-70] Union counsel stated [T. 1: 256]:

***our basic argument here is that this is something that the City initially or at some point

²⁴On each of these issues, the Village's Final Offer would maintain the present Contract language.

in the bargaining history agreed to and it was only when we refused to withdraw our proposal on residency did they retract it.

Alsip did make early proposals in March and April 2003 accepting such changes. Thus, in its March 18 proposal on this issue it said [UX 40, p. 24]: “Why not just add Section 6 sub I ‘Administered as outlined in Alsip Fire department General Order & Directive No. 00-8-2.’” In subsequent proposals on April 4 and 11, the Village also indicated “agreement” to add a subsection to Article 14, §6 stating: “Administered as outlined in Alsip Fire Department General Order and Directive No. 00-8-2.” [UX 40, pp. 32 & 51.] At some point, Alsip withdrew these proposals when the Union would not drop its request as to residency. [T. 1: 257]

While these proposals raise questions as to whether the Order was overdrawn or in “error,” the Union offered no evidence that the Village ever made reimbursement for the items which are squarely excluded by the present Contract language. The Union has proved no more than that of the ten agreed upon and five Union proffered comparable communities, all but two include a tuition reimbursement policy. [UX 36; UB 89] The Village’s summary of the ten agreed on comparables indicates that apart from some provision for tuition itself, only three have some allowance for books. [AX 12, Tab 21]

My own review of the contracts shows that as to the ten agreed upon comparables, beside tuition only three allow for reimbursement for part or all books [Homewood, Matteson & Park Forest], one allows for lab fees and books [Oak Forest] and one allows for transportation and books [Calumet City].²⁵

²⁵And as the Village points out in AX 12, Tab 21, some contracts put limits on all reimbursements or make prior approval necessary or at discretion of the chief.

Review of the five contracts submitted by the Union as comparable, but objected to by the Village, reveals as follows. Villa Park [UX 46, pp. 35-36] does not define benefits but just refers to that village's 1989 tuition reimbursement policy. Franklin Park [UX 47, p. 22] allows for tuition and books. Bellwood [UX 48, 26] allows for tuition only. Forest Park [UX 50, p. 30] mentions only tuition. Bensenville's contract provides: [UX 49, p. 24; [emphasis added] "Books, fees, mileage, lodging and other incidental expenses will **not** be reimbursed, only tuition is subject to reimbursement."

Based on the comparable communities relied upon by the parties and the lack of evidence of any payments by Alsip in the nature of what the Union wishes to add to this Contract, I cannot find any basis for changing the existing Contract language as to tuition reimbursement; and this request of the Union must be denied.

(b) Incentive Pay

"With respect to incentive pay," the Union brief states only that it "is proposing slight changes which the Village agreed to on April 11, 2003 [UX 40, p. 54]. Again, this is an issue which the Village subsequently withdrew agreement²⁶ on once the Union's intent [became clear] to pursue its residency proposal." [UB 89]

²⁶Alsip's April 11 proposal offered these changes and comments on Incentive Programs [UX 40, p. 54]: Inspectors would receive a \$250 increase; and two Investigators and two Hazmat Techs would be added. As to the Confined Space Vertical 1 jobs, it said: "Lower number of vertical 1 (from 9 to 6 Via attrition? It is our understanding that there are currently seven (7) assigned and six (6) receive the incentive and the seventh is maxed out without his incentive. It would appear that this reduction has already occurred and only the contract language needs to change."

The Union's Final Offer [and its attached Exs. 13-14] in this respect was to amend Schedule C, the Fire Department Incentive Pay Program, as follows: increase the maximum number of Fire Investigator/Arson positions from four to six; increase the maximum number of Hazardous Material Technicians from four to six; and to reduce from nine to six the maximum number of Confined Space Technician Certified as CS/TRA, Vert. I positions. It also seeks to increase the annual incentive pay for Fire Inspectors from \$750 to \$1250.²⁷

In response, the Village states in its brief [VB 51]:

The Union also seeks to enhance Inspector Pay and to create four new specialty pay positions. The union offers no evidence in support of its demand for enhanced specialty bonuses. [T.4: 262; JX 2, Ex. 14] In contrast, the Village analyzed all of the comparables and proved that the Village provides the best job specialty pay program [AX 12, Tab 23; T. 4: 262] The Union did not in any way contest this conclusion. [T. 4: 263].

Lt. Kelly's testimony as to this issue is basically just a restatement of the offer with no supporting reasoning or evidence to support the requested changes. [T. 2: 73-74] Nor can I find any Union exhibits to support or explain the need for these requested changes. On the other hand, the Village offered some evidence that among the agreed upon ten comparables, Alsip was "leading the pack" as to stipends in bonus jobs. [T. 4: 261-63; AX 12, Tab 23] On this record, I can find no basis to grant any of the Incentive Pay requests by the Union.

(C) College Incentive Pay

²⁷ Although there seems to be some question on my copies of the exhibits as to the amount sought in the Final Offer of April 28, 2004, Union counsel made clear that this aspect of the offer did not change from its Last Offer at Arbitration which is clear that it is \$1250. [T. 5: 90]

The current Contract has no provision for “College Incentive Pay,” but, as noted above, does have provision for reimbursement for job related school tuition and certain expenses. The Union’s Final Offer would add an incentive pay provision to Appendix C as follows:

“Employees who earn advanced college degrees in Fire Science shall receive incentive pay upon submission of proof to the Village of having been awarded the referenced degree or their equivalents:

Associate’s Degree in Fire Science---\$ 500

Bachelor’s Degree in Fire Science---\$1000

Master’s Degree in Fire Science---- \$1500

Eligible employees are limited to those who are in leadership positions (i.e., Fire Lieutenant or Acting Officers).²⁸

In its post-hearing brief, the Union states [UB 89-90]:

With respect [to] College Incentive Pay, the Union is proposing modest incentives for attaining advanced degrees. ****[as described above].

Union Exhibit 37 is a survey of the education incentives offered by the external comparables. On average, the comparables offer \$767 for an Associate’s degree, \$1,100 for a B.A. Degree and \$1,500 for a Masters degree. Therefore the Union’s proposal reflects what the market pays for these degrees.

It is obvious that the Village’s refusal to agree to any of these modest proposals was based upon the Village’s attempt to deter the Union from pursuing its residency proposal. Had the Union agreed to concede on residency in return for the Village’s agreement on these items, there can be no doubt that the Village would have readily agreed to do so. Thus, if the Arbitrator rejects the Union’s proposal on residency, then the Arbitrator should grant these proposals by the Union. Such is a bargain the Village would have struck at the table.

The Union submits however that if the Arbitrator does accept the Union’s residency proposal, he should not automatically reject the Union’s proposals on these minor issues. To do so would reward the Village’s intransigence at the bargaining table. These proposals by the Union should be considered on their own. The Union’s proposal on tuition reimbursement simply reflects the existing practice and the Village has not demonstrated why it is entitled to a takeback on this issue. Moreover, the Union’s proposal is supported by the external comparables. The Union’s proposal on incentive pay was initially agreed to by the Village. Thus the Union’s proposal simply reflects what the parties were able to negotiate across the

²⁸The Union’s proposal was amended to reflect a comment made in Alsip’s April 11 proposal that: “The village believes that any incentives of this nature must be in Fire Science and the person must be in a leadership position, Acting Officer or Lt.” The Village’s proposal in which this comment was made, was withdrawn for the reasons indicated above. [T. 1: 266]

table before residency became an overriding issue. The Village's attempt to withdraw its agreement is merely an attempt to punish the union for pursuing the unrelated non-economic issue of residency. The Union's proposal on college incentive pay addresses the concerns of the Village and is well within what the market reflects is the going rate for such educational achievements. In short, but for the Village's intransigence on residency, there can be no doubt that the Union and the Village would have readily reached an agreement on this issue. Because the Village has refused any compromise, the Arbitrator must select either the Union's proposal or the Village's. The Union submits that its proposal is the more reasonable.

In support of its position, the Union submitted UX 37 as an "Analysis of College Educational Incentives." It lists what it considers the college pay incentives afforded within the 10 agreed on comparables and the 5 sought by the Union. Only 3 of the 10 comparables provide incentive pay and only 3 of the Union's 5 do so. In other words, such benefits of any extent or kind are found in only 40% of the "15" comparables. Of the 10, only Burbank provides for Associate, Bachelor and Master degrees [\$450, 700 & 1000, respectively]; while one other, Matteson, provides for Associate and Bachelor. According to UX 37, of the Union's 5 proposed comparables, one provides only for Associate degrees [Bensenville], one provides also for a Bachelor degree [Forest Park] and one provides for all three degrees [Franklin Park]. Totalling the amounts claimed to be paid in UX 37, the Union finds the "Average" incentive paid for Associate, Bachelor and Master degrees to be \$767, \$1100 and \$1500, respectively. [See UX 37 and AX 12, Tab 22]

Regarding UX 37, the record contains this discussion [T. 1: 264-66]:

MR. BERRY: ***In Union Exhibit 37, this surveys the contracts and identifies the educational incentive for college degrees among the comparable departments. And among those that get it, the average for associate's is 767, bachelor's 1100 and master's 1500.

Our proposals are respectively 500, a thousand and 1500. So among those that get it, our proposal is in the marketplace.

MR. MARZEC: Comment.

MR. BERRY: And we have added, consistent with the Village's stipulation when they made this offer, that the only people eligible to receive it would be those who are in a leadership position, that is to say, fire officers or people who are acting and that the degrees would have to be in fire science.

MR. SPIZZO: Which of these are annual and which of these are lump sum? There's a big difference obviously. A couple of these, a least a couple are lump sum and not annual

hours.

MR. BERRY: Well, we can clarify that. I know Bensenville is annual.

MR. SPIZZO: Franklin Park is not annual.

MR. MARZEC: It's a lump sum payment at the time they receive the degree and Matteson is a requirement for promotion.

MR. BERRY: But they get it and that's annual.

MR. MARZEC: But it's not based strictly on the fact that they have a degree. There are other requirements for promotion, not necessarily a --

MR. BERRY: Well, you can explain that. All I'm saying is you said you would do that if we agreed to these stipulations. We agreed to it so we said do it.

Mr. Marzec and Mr. Spizzo did later explain, in conjunction with AX 12, Tab 22, Alsip's

review-chart of the 10 agreed on comparables [T. 4: 258-61]:

MR. SPIZZO: ****[AX 12] Tab 22 sets forth in chart form the proposal on the issue of college degree incentives. Contrary to the Union's assertions in its chart [UX] No. 37, their average set forth therein is wrong.

The average for the comparables when it comes to college degree incentives is close to zero and the reason for that is that the chart [UX 37] that the Union created, *** has Franklin Park and Matteson as giving dollar amounts that are not for a degree but they are for an aggregate.

For example, Matteson. Jerry, why don't you explain these two numbers.

You're the one who did the research.

MR. MARZEC: Franklin Park, the numbers listed on *** [Union 37]***-- indicates an associate degree of a thousand dollar bonus, a bachelor's of 1500 and a master's at 2,000. Those are one-time numbers as the Union correctly indicated on their correction.

But they then included them into what appears to be an annual average and that grossly inflates that number.

In the case of Matteson, the \$900 and \$1200 levels are not necessarily bonuses paid for having the degrees. The degrees are part of a provision for promotion but not necessarily required for promotion.

MR. SPIZZO: So the average for the communities is much, much lower than what the Union's 37 shows. It is not 1100 for a bachelor's and 1500 for a master's.

It's much closer to hundreds of dollars based on the fact of three towns, according to the Union's own numbers, provide a benefit of this sort.

You'll see from our chart at Tab 22 that virtually none of the Village's proposed comparables provides a college degree incentive. Blue Island does, a thousand -- a hundred dollars a month and Burbank provides an annualized basis, on an annualized basis \$450 a year, 700 for a bachelor's -- that 450 is for an associate's, by the way, a thousand for a master's and 1300 for a Ph.D., but those are annualized numbers.

You divide those by 12 and you get 40 some dollars, 55 or 60 some dollars and on up per year, insignificant amounts of money.

The point here, Mr. Arbitrator, is that the college degree incentive issue is a break-through issue. It's never been agreed to before by the parties.

And the Union, through Lieutenant Kelly's testimony, established that it's proposed this in the past and it has dropped it in earlier negotiations and is not offering

a *quid pro quo* for this, a trade, if you will, of any dimension for the college incentive requested. Looking at Chart 2 -- go ahead.

MR. MARZEC: The chart is broken out this way with a hundred dollars monthly stipend being shown for Blue Island because they get paid monthly for that particular bonus. The Burbank numbers are paid as an annual payment.

MR. SPIZZO: Looking at the second page of Tab you see a similar result when you compare the Union's comparable communities on this issue. There's very few towns out there providing college degree incentives.

Regarding this issue and the evidence on it, the Village states in its brief [VB 50-51]:

The Employer presented evidence at the hearing establishing that the Village's current benefit for college degree incentives is the best of either set of comparables [T. 4: 259; AX 12, Tab 22; UX 37]. In general, neither the Union's nor the Employer's comparables provide college incentive pay. The Union can only point to three comparables providing any kind of college incentive pay, and for those few that do, the benefit is *de minimus* compared to the total group. Instead of admitting the fact, the Union distorts its numbers, presenting as an 'average' the one-time, lump-sum payments made by only a few of their fifteen comparables while ignoring the large majority offering no such benefit. Moreover, the Union's exhibit listing college degree incentive erroneously describes an annual benefit, aggregate dollar amount paid by Franklin Park and Matteson over long periods of time as part of an overall promotion package. (T. 4: 259-60; compare AX 12, tab 22 with UX 37).

The Union has proposed and dropped the college degree incentive issue in past negotiations. It offers no *quid pro quo* for its adoption (T. 1: 181; T. 4: 261) Moreover, the Union fails to explain whether its proposed incentives are intended as a one-time, lump sum or are annual in nature.

On the record before me, the Union has not presented evidence sufficient to warrant a new provision in the Contract for College Incentive Pay. Accordingly, on this issue also, the Village's proposal to maintain the status quo is accepted.

Award

For the reasons set forth in the Opinion, which Opinion is incorporated by reference in this Award, and based on all the statutory and contractual factors that are pertinent and the record as a whole, the Arbitrator finds as follows:

[1] The Union's Final Offer as to residency is accepted;

[2] The Village's Final Offer as to hours of work is accepted;

[3] The Union's Final Offer as to wages is accepted; and

[4] As to all other economic issues, the Village's Final Offer to maintain the status Quo is accepted.

Aaron S. Wolff, Arbitrator

Entered at Chicago, Illinois
this 12th day of November, 2004.