BEFORE THE ILLINOIS LABOR RELATIONS BOARD

In the Matter of Interest Arbitration	)	
Between	)	
	)	
Village of Palatine,	)	**Hearing Date: March 22, 2006**
Employer,	)	**Village Hall, Palatine, IL**
	)	
and	)	**Case No. S-MA-05-070**
	)	
Illinois Fraternal Order of Police	)	**Marvin Hill, Jr.**
Labor Council, Lodge No. 158,	)	**Arbitrator**
Union.)		
_____	)	

Appearances

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Preliminary Statement

Pursuant to Section 14(c) of the Illinois Public Labor Relations Act ("IPLRA" or "Act"), the parties selected the undersigned Arbitrator to decide five (5) unresolved economic issues in connection with the parties' negotiations for a successor collective bargaining agreement. The parties waived the requirements of Section 14(d) of the Act, and a hearing was held before the

Arbitrator at the Village Hall in Palatine, Illinois on March 22, 2006. At the hearing, the parties waived the provisions of Section 14(b) of the Act with regard to the appointment of delegates by the employer and exclusive representative, and mutually agreed that the case would be decided by the neutral Arbitrator (Joint Exhibit 1). A transcript of the testimony at the hearing was made by Ms. Lisa Breiter, CSR. Post-hearing briefs were submitted on or about May 9, 2006, and exchanged through the offices of the Arbitrator. The record was closed on that date.

I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The parties submitted five (5) issues for resolution (Jt. Ex. 1, at 2). Those items are: (1) Wages, commencing January 1, 2005 through December 31, 2007; (2) Hours and Overtime/Work Schedule (the so-called "6 and 3" schedule); (3) Holidays and Premium Holiday Pay; (4) Longevity; and (5) Specialty Pay/Dual Career Ladder Program (Jt. Ex. 1, at 2.). The parties further agree that each of the five items for resolution are economic issues within the meaning of Section 14(g) of the Act. (Jt. Ex. 1, at 2; Tr. 4.).

* * *

The Village of Palatine is a suburb of Chicago, with a population, according to the 2000 census, of 65,479. (Vill. Ex. 4; U. Ex. 9.) Palatine is the sixteenth largest municipality within the State of Illinois, in terms of population. (U. Ex. 8, at 2; Tr. 5). The Village is a home-rule unit and employs approximately 341 full-time employees. (U. Ex. 9, at 4; Vill. Ex. 14).

The Village's Police Department (the "Department") currently employs 106 sworn police officers (Village Ex. 14). The bargaining unit consists of 89 sworn officers, each of whom is below the rank of sergeant (R. 16; U. Ex. 7; U. Ex. 3, at Sec. 2.1). The bargaining unit's service ranks from one-and-one-half month to 26 years (R. 16).

A. The Parties' Bargaining History

The Village currently negotiates with two separate bargaining units: (1) a unit of police officers below the rank of sergeant represented by the Fraternal Order of Police Labor Council ("FOP"), and (2) a unit of public works employees represented by the International Union of Operating Engineers, Local 150 ("Local 150, IUOE") (Village Ex. 40). The Village has negotiated eight (8) collective bargaining agreements with Local 150 covering public works employees, with the most recent agreement currently running through December 31, 2006 (Village Ex. 19; Village Ex. 40). The Village has negotiated seven (7) prior collective bargaining agreements with the police bargaining unit. (Village Ex. 19.). The most recent agreement expired on December 31, 2004. (Village Ex. 40).

B. Negotiations for the 2005-2007 Police Contract

The parties began bargaining for the 2005 successor agreement in November 2004, with the Union presenting its initial proposal to the Village on November 17, 2004 (Village Gr. Ex. 43). The Union's initial proposal contained twelve items: (1) the Dual Career Ladder program; (2) the Grievance Procedure concerning discipline; (3) the definition of Seniority; (4) Holidays; (5) Vacations; (6) Hours of Work and Overtime (6 + 3 schedule); (7) Other Reimbursements (payments for accrued sick leave at retirement); (8) Questioning (suspension of an officer pending a disciplinary hearing); (9) Insurance; (10) Uniforms; (11) Salaries; and (12) Longevity. (Village Gr. Ex. 43.) (The Union subsequently modified its Dual Career Ladder program proposal by substituting a Specialty Pay proposal).

Subsequent to November 17, 2004, the parties continued to bargain, ultimately meeting for fifteen (15) separate bargaining sessions. Four of those bargaining sessions involved the utilization of a mediator. During the course of such negotiations, on or about September 19, 2005, the parties reached tentative agreements on each of the items that were not previously withdrawn by the Union. Subsequently, the bargaining unit conducted a ratification vote and selectively rejected five (5) of the tentative agreements. In the Employer's view, "the bargaining unit selected five topics on which it sought to 'get a better deal' than that which was arrived at pursuant to the tentative agreements: (*Brief* at 11).

> Dual Career Ladder Program/Speciality Pay;
> Hours and Overtime;
> Holidays;
> Wages;
> and Longevity Pay.

C. Items Dropped by the Union During Bargaining, but Submitted to Arbitration: Dual Career Ladder Program/Speciality Pay; and Hours and Overtime ("6 and 3" schedule)

The Union initially proposed the elimination of the Village's Dual Career Ladder Program ("DCL program")(Village Ex. 37). However, at the fourth bargaining session, held on February 25, 2005, the Union proposed maintaining the DCL program, but added a provision that officers could continue to collect the DCL bonus if they became detached or reassigned from the Patrol Division. (Tr. 72; Village Gr. Ex. 43). At that same session, the Union made its first proposal for Specialty Pay (Tr. 72-73; Village Gr. Ex. 43).

At the seventh bargaining session, held on April 4, 2005, the Union made its third written proposal, in which it eliminated its proposal for the implementation of Specialty Pay (Tr. 72-73; Village Gr. Ex. 43). The Specialty Pay issue was no longer discussed by the parties. Subsequent to the bargaining units' rejection of the tentative agreements, the Union's proposal for Specialty Pay

re-emerged in the Union's final offer submitted during the hearing on March 22, 2006. (Tr. 73-77; Village Ex. 39; Village Gr. Ex. 43).

With respect to Article XII, Hours and Overtime, the Union proposed to require the implementation of a 6 + 3 work schedule. That proposal was withdrawn by the Union in its third written proposal on April 4, 2005. (Village Gr. Ex. 43). The parties did not discuss the implementation of a 6 + 3 work schedule at any time after it was withdrawn on April 4th (Tr. 88). The Union has now made a proposal requiring the implementation of a 6 + 3 work schedule in its final proposal (U. Ex. 6.) which is before the Arbitrator.

D. Remaining Items that were not Dropped by the Union in Bargaining: Holidays, Wages, and Longevity Pay

The Union's proposal regarding Article X, Holidays was the subject of a tentative agreement reached by the parties on April 15, 2005. (Village Ex. 39). On April 15, 2005, the parties agreed to add an eleventh holiday, conditioned upon the Union withdrawing the remainder of its holiday proposal, which was to pay premium pay to an employee who worked on any of the specified eleven holidays (Village Ex. 39; Village Gr. Ex. 43). Subsequent to April 15, 2005, the parties did not discuss holiday pay. According to the Administration, the bargaining unit failed to ratify this tentative agreement. At the hearing, the Union presented its final offer, which was to receive premium pay on three additional holidays, in addition to the two holidays previously specified in the collective bargaining agreement, along with increasing the number of holidays to eleven.

Wages and Longevity Pay, were the subjects of tentative agreements, both reached on September 19, 2005. (Village Ex. 39; Tr. 85-87). Both of those tentative agreements were rejected by the bargaining-unit members, and are subjects of this interest arbitration (see, *infra* note 4, and corresponding text)

E. Summary

Throughout the course of fifteen (15) bargaining sessions from November 2004 through September 19, 2005, the Union withdrew its proposals on two economic issues, (1) DCL Program/Specialty Pay, and (2) implementation of a "6 and 3" work schedule. These two issues are now subjects of this interest arbitration.

In addition, the Union reached tentative agreements with the Village on the remaining ten (10) topics. Three (3) of those tentative agreements were rejected by the bargaining unit and are now subjects of this interest arbitration, (3) Holiday Premium Pay, (4) Wages and (5) Longevity Pay.

II. THE PARTIES' FINAL OFFERS

1. The Village's Final Offers

a. Salaries.

Section 21.1. Salary Schedules. The salary schedules set forth in APPENDIX B shall apply for the duration of this Agreement. A pay-step denial may be grieved, but in any arbitration the grievant must show that the denial was arbitrary and capricious.

Appendix B - Wage Schedule

	January 1, 2005	January 1, 2006	January 1, 2007
Step 1	49,149	51,115	53,160
Step 2	51,509	53,569	55,712
Step 3	55,600	57,824	60,137
Step 4	58,269	60,600	63,024
Step 5	61,066	63,509	66,049
Step 6	63,997	66,557	69,219
Step 7	66,237	68,886	71,642
Step 8	68,555	71,297	74,149

b. Schedule.

Status quo. (No change to the Side Letter, which read as follows:)

SIDE LETTER UNDERSTANDINGS

3. Work Schedule

. . . . . .

(b) During calendar year 2003, the period January, 2003 through June, 2003, the parties jointly shall meet at reasonable intervals and discuss the feasibility of implementing a "6 and 3" work schedule during the second year of the contract. The union understands that the Employer will not implement a 6 and 3 work schedule if the same will result in additional expense to the Employer (i.e., additional paid time off and/or overtime expense that is other than nominal) and/or operational disruptions (i.e., manpower allocations). Additionally, if the Employer determines that it is appropriate to make such a change, it will be implemented on a three-month trial basis and then revisited by the Employer for a determination as to whether or not the change should be continued.

c. Holidays and Premium Pay.

Section 10.1. Holidays. Each officer covered by this Agreement shall annually receive ~~ten~~ eleven ~~(10)~~ (11) days off without loss of pay. If an officer elects not to take all ~~ten~~ eleven ~~(10)~~ (11) days off and the Village agrees, then the officer shall be paid straight time for each holiday not taken to a maximum of five (5) days. Officers shall not be eligible for holiday pay until after the holiday; however, this shall not prevent officers from taking a holiday off before it occurs. In addition to other pay, officers who work on either Thanksgiving and/or Christmas will receive four (4) hours' extra pay.

d. Longevity.

Article XXII. Longevity.

The Village shall continue its current longevity schedule for the life of this Agreement.

The longevity schedule applies to all officers covered by this Agreement.

8 - 10 years of service	$~~300~~ 350 annually
11 - 14 years of service	$~~550~~ 600 annually
15 - 19 years of service	$~~750~~ 850 annually
20 or more years of service	$~~1,000~~ 1,150 annually

These payments will be made by the Village two (2) paydays prior to the Christmas holiday of the year the officer's longevity anniversary date occurs. For the term of this Agreement, the Village agrees that bargaining unit members will receive the same longevity as other Village employees. Longevity pay shall be included in an employee's base pay for purposes of determining an employee's overtime hourly rate of pay.

e. Specialty Pay and Dual Career Ladder

Section 5.2. Dual Career Ladder.

Status quo

(Village will introduce a DCL program for investigators.)

(NEW) Section 21.3. Translation Reward Program: Bargaining unit members shall be eligible to participate in the Village's Translation Reward Program, described in Section 5.11 of the Palatine Employee Handbook, and as such Section may be hereafter amended.

2. The Union's Final Offers

a. Salaries.

Section 21.1. Salary Schedules. The salary schedules set forth in APPENDIX B shall apply for the duration of this Agreement. A pay-step denial may be grieved, but in any arbitration the grievant must show that the denial was arbitrary and capricious.

Appendix B - Wage Schedule

	January 1, 2005	January 1, 2006	January 1, 2007
Step 1	49,268.23	51,238.96	53,544.71
Step 2	51,633.15	53,698.48	56,114.91
Step 3	55,734.31	57,963.68	60,572.05
Step 4	58,409.64	60,746.03	63,479.60
Step 5	61,213.15	63,661.68	66,526.45
Step 6	64,151.59	66,717.65	69,719.95
Step 7	66,396.72	69,052.59	72,159.96
Step 8	68,720.81	71,469.64	74,685.77

b. Schedule.

SIDE LETTER UNDERSTANDINGS

3. Work Schedule

. . . . . .

(b) During calendar year ~~2003~~2006, the period ~~January, 2003 through June, 2003~~ July 1, 2006 through December 31, 2006, the parties jointly shall meet at reasonable intervals and discuss the ~~feasibility of implementing~~ implementation of a "6 and 3" work schedule during the ~~second~~ third year of the contract. The union understands that the Employer will not implement a 6 and 3 work schedule if the same will result in additional expense to the Employer (i.e., additional paid time off and/or overtime expense that is other than nominal) and/or operational disruptions (i.e., manpower allocations). However, if the Union agrees to language superseding that found in Article XII to ensure that officers earn overtime only after a normal workday and normal work cycle (and other pertinent language that provides no greater or lesser benefits for the officers or the Employer), the Employer will implement a "6 and 3" work schedule, commencing on or about January 1, 2007. ~~Additionally, if the Employer determines that it is appropriate to make such a change, it will be implemented on a three-month trial basis and then revisited by the Employer for a determination as to whether or not the change should be continued.~~

c. Holidays and Premium Pay.

Section 10.1. Holidays. Each officer covered by this Agreement shall annually receive ~~ten~~ eleven ~~(10)~~ (11) days off without loss of pay. If an officer elects not to take all ~~ten~~ eleven ~~(10)~~ (11) days off and the Village agrees, then the officer shall be paid straight time for each holiday not taken to a maximum of five (5) days. Officers shall not be eligible for holiday pay until after the holiday; however, this shall not prevent officers from taking a holiday off before it occurs. In addition to other pay, officers who work on ~~either~~ Thanksgiving, Memorial Day, Independence Day, Labor Day, and/or Christmas will receive four (4) hours' extra pay.

d. Longevity.

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The Village shall continue its current longevity schedule for the life of this Agreement.

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8 - 10 years of service	$~~300~~ 350 annually
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These payments will be made by the Village two (2) paydays prior to the Christmas holiday of the year the officer's longevity anniversary date occurs. For the term of this Agreement, the Village agrees that bargaining unit members will receive the same longevity as other Village employees. Longevity pay shall be included in an employee's base pay for purposes of determining an employee's overtime hourly rate of pay.

e. Specialty Pay and Dual Career Ladder.

Section 5.2. Dual Career Ladder.

(NEW) Section 21.3. Specialized Fields. Officers who have not applied for the Dual Career Ladder program or are not receiving benefits under the Dual Career Ladder program shall receive a bonus for specialty certification. The specialist program is voluntary and all officers shall have equal access to training and development necessary to attain a "specialist" competency category.

Officers trained in the following competencies will receive specialty pay:

	Specialty	Compensation
1.	Language Translator (Spanish, sign, etc.)	$750 per year
2.	Investigative Specialist	$1,500 per year
3.	Evidence Technician	$1,200 per year
4.	Accident Reconstructionist	$1,200 per year
5.	Department Instructor	$750 per year
6.	Range Officer/Firearms Instructor/Armorer	$750 per year
7.	Field Training Officer	One hour pay or one hour of comp time (the officer's choice) for each day in which the officer performs training.

III. POSITION OF THE ADMINISTRATION

The position of the Administration, as outlined in its lengthy 50-page post-hearing *Brief*, is summarized as follows:

1. THE ARBITRATOR SHOULD CHOOSE THE VILLAGE'S FINAL OFFERS BECAUSE THEY COME CLOSEST TO WHAT THE PARTIES WOULD HAVE AGREED TO AT THE BARGAINING TABLE AND THEY FULLY COMPORT WITH THE FACTORS OUTLINED IN SECTION 14 OF THE IPLRA.

The Village initially maintains that arbitrators have long acknowledged that the principal goal of interest arbitration is to attempt to predict what agreements the parties would have reached if

the bargaining process had not broken down. Therefore, says the Employer, it becomes the Arbitrator's mission in this case to predict which proposals come closest to those on which the Village and FOP would have reached agreement, if they had mutually resolved their differences at the bargaining table. This mission is to be accomplished while utilizing the factors which are required to be applied to this arbitration process (*Brief for the Employer* at 16-17, citations and quotations omitted).

To assist the Arbitrator in his "prediction" of how the parties would have resolved their differences at the bargaining table, the Employer presentes different types of evidence based on the factors outlined in Section 14 of the Act. The Village has gathered economic data on police officers' wages, longevity, holidays, specialty pay, and work schedules from comparable jurisdictions. In addition, the Village points to the terms of the tentative agreements reached by the parties, as well as the proposals which were either withdrawn or abandoned by the Union during the course of negotiations, as relevant "predictors" of what resolution the parties would have reached at the bargaining table.

As described at the hearing (and further below), in the Employer's view the evidence and the bargaining history of the parties during 2004-2005 leads to one obvious conclusion: the Village's proposals are indisputably reasonable and come closest to the settlement that the parties would have reached. In addition, the Village's proposals most closely reflect those factors in Section 14 of the Act, which are required to be applied in cases such as this (*Brief* at 17).

THE WEIGHT TO BE ACCORDED TO THE PARTIES' TENTATIVE AGREEMENTS

The Village points out that during the course of negotiations, the parties reached tentative agreements on each of the five disputed issues. On the issues of wages, longevity and holidays, the parties agreed to amend the language of the expired contract. On the issues of specialty pay and work schedules, the Union withdrew its proposals, resulting in tentative agreements to leave undisturbed the language of the collective bargaining agreement.

Management notes that on four (4) of the issues, the Village's final offer reiterated the terms of the tentative agreements. However, on the issue of specialty pay, the Village's final offer differs from the tentative agreement to maintain the *status quo*, by extending to bargaining-unit members a stipend for foreign language translators, which was implemented for other Village employees in January 2006. (Tr. 93-94, 100-101.)(*Brief* at 19).

This Arbitrator's opinion on the proper weight to be given to tentative agreements being known to the parties when this Arbitrator was selected as the neutral, it has to be assumed that the parties would rely on such view being applied in the instant case. Therefore, the parties should be confident that this Arbitrator will not ignore the tentative agreements, nor will the Arbitrator rule that such tentative agreements are *res judicata* (*Brief* at 20).

In this light, argues the Administration, the terms of the tentative agreements would be deemed valid indicators of what the parties' bargaining representatives considered to be reasonable. A review of the record shows it is devoid of any evidence as to the reasoning regarding the Union's rejection of the tentative agreements. No rationale was offered by the Union as to the reasons its membership declined to ratify the valid and reasonable agreements reached by its authorized representatives, according to the Employer. The only reasonable conclusion would be that the terms were rejected because the membership believed that it might have been possible to "do a little better" at the arbitration hearing. Such a conclusion requires that the tentative agreements be accorded considerable weight during this Arbitrator's deliberations (*Brief* at 21).

EXTERNAL COMPARABILITY FACTORS SUPPORT THE VILLAGE'S FINAL OFFERS ON EACH OF THE FIVE ISSUES

A. The Arbitrator Should Select the Village's Comparable Jurisdictions, Because the Village's Proposed Jurisdictions More Closely Resemble the Demographic and Economic Status of the Village

Management submits Palatine is in a rather unique position among Chicago's suburban jurisdictions. The Village finds itself surrounded by other suburbs that generally have more sales tax revenue, requiring the Village of Palatine to elevate its tax rate in order to generate more real estate tax revenue. (Village Ex. 6.) This heightened tax rate, when coupled with the Village's rather modest equalized assessed valuation, elevates Palatine to a much higher ranking in terms of real estate tax revenue than its equalized assessed value would seem to predict. (Village Ex. 5; Village Ex. 7.)(*Brief* at 22).

On the other hand, the Employer notes that its population ranks it sixteenth largest in the State of Illinois. This combination of high population with lower equalized assessed valuations requires the Village to have a police force of sufficient size to provide proper police services to such a large population, without having the sales tax or real estate tax revenue that one would expect from such a highly populated municipality.

1. The Village selected its comparable communities based on a rational and objective methodology

The Village selected nine (9) comparable communities (Village Exhibit 3), that are listed as follows:

Arlington Heights	Oak Park
Des Plaines	Schaumburg
Evanston	Skokie
Hoffman Estates	Wheaton
Mt. Prospect (*Brief* at 22).	

2. The Union has failed to provide a rational basis for the selection of its comparable communities

Aside from listing those communities which were previously utilized in the "experiment" which has now been rejected by the Union, the Union offered no objective methodology for selecting its comparable communities. Rather than establishing a series of benchmarks which each municipality must reach in order to survive the cut, the Union appears to offer economic data simply for illustration purposes, rather than as selective criteria.

3. A comparison of the Union and Village comparable communities demonstrates that the Village's list more closely resembles the Village

In selecting comparable jurisdictions, the Village urges that the Arbitrator should compare how close an employer's economic and demographic status comes to the proposed comparable jurisdictions.

* * *

In summary, the Union's lack of a rational and reasonable selection methodology makes it difficult to justify selecting the Union's comparable communities under any circumstances. The only criteria which appears to have been utilized by the Union was the fact that those communities were utilized by the parties during the "experimental" years. However, the Union's rejection out-of-hand of the formula utilized for such "experiment" should also be accompanied by the exclusion of those municipalities from consideration as comparable communities, unless their inclusion can be justified on an objectionable basis, without resort to the old formula.

When one considers that the Village has proposed a set of comparable communities that are generally much closer to the Village in most of the traditional demographic and economic categories, the Arbitrator is faced with a choice between an objectively selected group versus a group highly suggestive of "cherry-picking." In the final analysis, the Arbitrator should select the Village's comparable communities over the Union's (*Brief* at 26).

B. The External Comparable Data Supports Acceptance of the Village's Final Offers over the Union's Final Offers

1. Wages

a. The 2004 Salary Ranking Resulting from the Parties' Good Faith Bargaining

Here, the Employer asserts in the last year of the FOP contract, during the process of collective bargaining for their prior contract, the Village and the FOP voluntarily positioned the salaries of the Village police officers in the middle of the Union's comparables. In most steps, the Village and the FOP voluntarily agreed to 2004 police salaries that equaled or slightly eclipsed the average salaries of the Union's comparable communities. With regard to the Village's comparable communities (Village Exhibit 23), during that same contract year, the Village and the FOP voluntarily agreed to rank the Village's police officers fifth (out of ten) in starting pay, and then respectively second, fourth, fifth, fifth, fifth, second and third, for salaries after years one through seven, in comparison to the Village's comparable communities.

b. The 2005 Salary Ranking at Issue

With this voluntary positioning in mind, a comparison of the proposals in question with the 2005 salary comparability data demonstrates that the Village's proposal of 3.75% is appropriate, in the Employer's eyes.

Notably, even if one were to use the Union's comparable communities, the Union's proposal for 2005 finds little justification. **Considering that the FOP voluntarily chose to position itself at or slightly above the average salaries for its comparable communities in 2004, the Village's proposal would maintain that placement in 2005. (U. Ex. 11.)** On closer analysis, the Village's percentage increase over the average salary would <u>increase</u> by almost 1.5% in each of the steps in 2005 if the Village's proposal were accepted. For example, the salary for a police officer after 20 years in the Village of Palatine was .02% above the average salary in 2004. If the Village's offer of 3.75% is implemented, the difference between the Village's offer and the average salary would grow, resulting in the Village being 1.31% <u>above</u> the average salary. (U. Ex. 11)(*Brief* at 27-28).

c. The 2006 Salary Ranking

Since the Union and the Village have both proposed an increase of 4.0% in 2006, there is no difference between the parties' two proposals. However, it should be pointed out that the Village's relative position in 2006 will be maintained, regardless of whether the Arbitrator views the Union's comparables or the Village's comparables. More importantly, the Village's position with respect to the two jurisdictions within the Union's comparable communities that have settled 2006 contracts would remain the same. In 2004, the Village exceeded Hoffman Estates and Mt. Prospect in terms of salaries. The Village's 2006 wage proposal would keep the Village of Palatine ahead of Hoffman Estates and Mt. Prospect. (U. Ex. 11.)(*Brief* at 28).

d. The 2007 Salary Ranking

The Village has proposed a salary increase of 4.0% commencing January 1, 2007. The Union has proposed a 4.5% increase for 2007. An examination of the percentage increases for the Village's comparable communities demonstrates that the Village has exceeded the average in each of the years, based upon the known data. (Village Ex. 27.) With respect to the year 2007 increases,

the only known communities are Hoffman Estates and Skokie. Conveniently, Hoffman Estates is listed by both the Village and the Union. Hoffman Estates approved a salary increase of 3.5% in the year 2007. The Village also proposes Skokie as a comparable community. Skokie also approved a 3.5% increase for the year 2007. The average of those communities is 3.5%. The Village's offer of 4.0% is .5% over the two known quantities (*Brief* at 29).

e. Comparison of Village's Final Offer to the Averages of the Comparables

A review of Village Exhibit 27 (*infra*, this opinion) reveals that in comparison to the Village's comparable communities in the year 2006, the Village's offer once again exceeded the average wage increases in those communities by nearly .5%.

In summary, the average increase over the years 2005 through 2007 of the known proposed comparable communities equals 10.63%. The Village's proposal for those three years equals 11.75%, or more than one percentage point in excess of the known average. (Village Ex. 27.)

Therefore, in the Employer's eyes, the Union has absolutely no justification for demanding a higher percentage increase than the Village's final offer. Police officers are not being paid drastically less than their counterparts in other *comparable* jurisdictions.

2. Scheduling

The Comparable Data Does Not Support the Implementation of a 6 + 3 Work Schedule

According to the Administration, the Union's proposal on scheduling was couched in terms of having the Village and the Union meet from July 1, 2006 through December 31, 2006, in order to *discuss* the implementation of a "6 and 3" work schedule during 2007 (U. Ex. 12.). The Union's proposal maintains the express provision found in the predecessor language of the Side Letter Understanding, that the Village will *not* implement such a schedule if it will result in additional expense to the Village, other than nominal overtime, or if it will disrupt the Village's manpower allocations.

Therefore, the Union's proposal is that the parties will *discuss* the implementation of a 6 + 3 schedule, but the Village will not implement such 6 + 3 schedule if it costs the Village more money or adversely affects the number of officers on the street. This proposal is "iffy" up to this point. It then takes a dramatic turn and requires implementation of the 6 + 3 schedule, provided the Union agrees to a minor concession. That minor concession would be that officers would not earn overtime after 40 hours in a seven day work week, but would earn overtime if they worked beyond the normal work day or worked extra days (regardless of whether the provisions of Section 207(k) of the FLSA are implicated).

Aside from the numerous issues that still need to be resolved by the parties (*e.g.*, length of shift, length of work cycle, training days, etc.), the Union still phrased its proposals in terms of "if the Union agrees to language . . ." The Union has not proposed any such language, let alone engaged in any bargaining over that topic, according to the Administration. The Arbitrator is asked to change the dynamic which has existed with regard to scheduling, and allow the Union to have total control over scheduling. The Union's proposal, distilled to its essence, is <u>if</u> the Union agrees to a minor language concession, the 6 + 3 schedule is a done deal and, hopefully, the hard details will be worked out later.

A review of the Village's proposed comparable jurisdictions reveals that only two of the nine municipalities (Arlington Heights and Schaumburg) utilize a 6 + 3 schedule (Village Ex. 35).

When analyzing the Union's proposed comparable communities, four of the eight proposed municipalities utilize the 6 + 3 schedule. (U. Ex. 12.) (Those four include the two municipalities contained in the Village's proposed comparable communities.) This means that half of the jurisdictions proposed by the Union utilize such schedule and half do not. Schaumburg did not enter into such a schedule voluntarily, but rather had it imposed by an interest arbitration award. *Village of Schaumburg* (Feb. 2003) (Cox, Arb.).

Management points out the majority of communities proposed as comparables by the Union have refused to voluntarily implement such a work schedule.

Of the twelve communities offered by either the Village or the Union as comparables, only four of those municipalities, or only one-third, have gone to the 6 + 3 work schedule.

In summary, the Village has maintained that a 6 + 3 work schedule will cost the Village in overtime or in new hires, in order to overcome the fifteen additional days off for each employee, the natural result of such schedule. The Village has provided data that demonstrates that in a 6 + 3 system, manpower would be at or below minimum most of the time. Such situations result in excessive overtime costs. The Village's implementation of the 6 + 3 work schedule would result in higher hire-back costs. (Village Ex. 44.)

In conclusion, the comparable data does not support the Union's final offer. The Village's proposal is to maintain its management right, as provided in Section 5.1 of the collective bargaining agreement, and further clarified in Section 12.2 of the collective bargaining agreement, to schedule its employees, after having considered the financial costs involved in alternative work schedules.

3. Holidays

The External Comparability Data Supports Acceptance of the Village's Final Holiday Offer

The Union's final offer would add one holiday to the current ten holidays recognized by the Village, and also add three days (Memorial Day, Independence Day, and Labor Day) as days on which an employee who worked would be compensated at a premium rate of pay. The Village has proposed to add one additional day off for a holiday, increasing the number of days off for holidays from ten to eleven, but not providing any additional days on which premium pay would be earned. Pursuant to the current collective bargaining agreement, premium pay is earned only on Thanksgiving and Christmas.

The Employer points out that the manner in which holidays are treated varies among the jurisdictions. Some municipalities provide employees with days off in recognition of holidays. Those days off may be scheduled throughout the year. Other jurisdictions provide premium pay to officers who work on certain designated holidays. The designated holidays differ from municipality to municipality. A few municipalities provide a combination of days off and days on which premium pay is earned. Palatine is one of those municipalities that combines both types of benefits.

The charts prepared by the Village (contained within its *Brief*) differ from the charts offered by either the Village or the Union during the hearing. The charts contained in its brief have been designed to identify the number of days off which employees receive in recognition of holidays, rather than the number of actual holidays recognized by a municipality. The fact that a municipality recognizes a holiday does not equate to an employee being given time off on such holiday. Rather, the number of holidays recognized by a municipality can be used to indicate either days on which some premium pay is earned, or days which employees may schedule a day off. The charts included in its *Brief* are intended to clarify this differentiation.

Once again, *it is important to determine how many municipalities provide the dual benefit of days off for holidays, coupled with premium pay for regular days worked on a scheduled holiday.* Only three of the ten municipalities within the Village's proposed comparable communities provide such dual benefit, including the Village of Palatine. Seventy percent, or the vast majority of the ten communities, provide only one of the two possible holiday benefits.

The Combined Data

An analysis of the above data discloses that of the five municipalities who provide eleven or more days off for holidays (Arlington Heights, Evanston, Oak Park, Palatine and Rolling Meadows), only Oak Park and Palatine provide a combination of days off with premium pay. By adding an additional day off with pay for holidays, the Village of Palatine would become either tied for third or ranked fourth out of the thirteen municipalities offered by either the Village or the Union, in terms of the number of days off.

The Village's final offer to add one additional day off with pay will keep the Village of Palatine among the top-ranked municipalities, in terms of days off, and further advances the Village's position as one of the few municipalities offering a combination of days off, along with premium pay for working on some holidays. In addition, within the Village's comparable

communities, the Village of Palatine would jump from the number 5 ranking in terms of the number of holidays recognized, to the number 3 position, by adding an eleventh holiday (*Brief* at 37-38).

4. Longevity

The Village's final offer on longevity (*Brief* at 38) was to increase the longevity payments as follows:

8-10 years	~~$300~~ 350
11-14 years	~~$550~~ 600
15-19 years	~~$750~~ 850
20+ years	~~$1,000~~ 1,150 (Village Ex. 42.)

The External Comparable Data Supports Acceptance of the Village's Final Longevity Offer

The Employer submits that a review of the data concerning its proposed comparable communities discloses that the Village's longevity pay proposal will either maintain its ranking amongst those municipalities or increase its ranking by one step (*e.g.*, 11-14 years), from 2004 to 2005. (Village Gr. Ex. 28; Village Gr. Ex. 29.)(*Brief* at 38).

Despite maintaining Palatine's long-established position in comparison to the comparable jurisdictions, the Village urges that simply looking at longevity data by itself does not portray an accurate picture. Therefore, the Village has offered data which combines the annual salary with the longevity paid by the various municipalities at years 8, 9, 10, 15, 20 and 25. (Village Gr. Ex. 30; Village

5. Dual Career Ladder/Speciality Pay

The External Comparability Data Supports Acceptance of the Village's Final Offer on Specialty Pay and the Dual Career Ladder Program

In support of this proposal the Village asserts it has maintained a Dual Career Ladder (DCL) program since 1981. This program provides additional compensation to officers who have <u>obtained</u> advanced police officer skills and knowledge, and who have <u>performed</u> effectively in that specialty. The DCL program includes, among its recognized specialties, those seven competencies offered by the Union, plus ten additional competencies offered by the Union. (Village Ex. 37, p. 4.)(*Brief* at 40). Those officers obtaining certifications in such competencies and performing effectively in such fields are eligible to receive additional compensation per year, in the minimum amount of $1,100, pursuant to the DCL program. (Village Ex. 37, p. 7.)

The Union has proposed that officers who do not participate in the DCL program shall still receive compensation for having obtained a speciality certification, even though such officers are not utilizing such certification. In other words, the Union's proposal does not require that an officer actually perform in the specialty field, in order to receive the specialty compensation. (U. Ex. 15.) Even if the Village does not need every officer in the Department to have a specialty, the Union's proposal would entitle each officer to such specialty pay.

The Union has not offered any data from its comparable jurisdictions in terms of the amount of compensation that is paid for such specialties, other than attaching their collective bargaining agreements.

Once again, there is no data offered whether officers need to perform in order to receive specialty pay in the comparable jurisdictions.

On the other hand, the Village has prepared a chart which sets forth the compensation paid by the Village's proposed comparable communities, for the specialties in the areas of evidence technician, detective, language specialist and field training officer. (Village Ex. 34.) Only four municipalities pay compensation for an evidence technician. Five municipalities pay compensation for detectives. Four municipalities pay compensation for language specialty. Five jurisdictions compensate their field training officers. Four of the municipalities do not provide any specialty pay.

In addition, in its final offer, the Village proposed extending a benefit that was implemented on January 1, 2006, to non-bargaining unit employees, which provides compensation to employees who utilize their foreign language skills on a regular basis. The Village offered to extend the Translation Reward Program, found in the Palatine Employee Handbook, to bargaining unit members (Village Ex. 38). This program provides compensation in the amount of $500.00 to employees who have translated during the prior twelve-month period. Once again, this program requires performance in order to obtain such compensation. The Village's Translation Reward Program is offered in addition to the Dual Career Ladder program, which includes foreign language translator as one of the specialties. Therefore, it is possible for an employee to receive compensation through both the DCL program and the Translation Reward Program.

It is argued that a review of the comparable data discloses that the Union's proposal for specialty pay is not supported by such data. The Union's proposal would reward officers for simply obtaining a certification, even though they do not use it or are not needed. The Village's proposal to maintain the Dual Career Ladder program, which has been in existence for 25 years, is reasonable. In addition, the Village amended the DCL program to include a provision for investigators. This was in response to a request by the Union during bargaining. The Village's final offer on specialty pay and the Dual Career Ladder program is the most reasonable, and should be awarded by the Arbitrator (*Brief* at 42).

THE TENTATIVE AGREEMENTS PROVIDE A VALID INDICATION OF WHAT AGREEMENTS THE PARTIES WOULD HAVE REACHED ON THEIR OWN.

Management submits the five issues before the Arbitrator each involve issues which were the subject of tentative agreements reached by the parties.

The 6 + 3 Schedule

The Village points out that on April 4, 2005, the Union withdrew its proposal to implement a 6 + 3 work schedule. The Union's third written proposal stated "(6) Article XII. Hours and Overtime: The FOP withdraws its proposal to implement a 6 x 3 schedule." (Village Gr. Ex. 43, April 4, 2005 proposal, p. 2.) In Management's eyes, from April 4, 2005 until the rejection of the tentative agreements during the ratification process, the parties never once discussed the issues concerning implementing a 6 + 3 schedule. The Union's final offer acknowledges that there are a myriad of issues which need to be resolved before the parties can implement such a schedule. However, the Union walked away from this issue early on in the bargaining process, and it never engaged in the hard bargaining necessary to work out those details (*Brief* at 43). **The tentative agreement should be enforced on this issue, because it demonstrates that the Union placed little, if any, weight on this proposal, having abandoned it so early in the bargaining process.**

Holidays

On April 15, 2005, the parties tentative agreed to a Village proposal to add an eleventh day off with pay, in exchange for the Union withdrawing the remainder of its proposal on holidays. Previously, the Union had proposed to receive time and one-half pay for hours worked on each holiday (currently, only Thanksgiving and Christmas Day). As a result of the tentative agreement, the Union dropped its proposal to receive premium pay for holidays, as of April 15, 2005. Once again, the parties never again discussed premium pay for holidays after April 15, 2005. However, the Union wants to retain the eleventh holiday that it received in the form of a compromise, without fulfilling its portion of the bargain. The Union is now proposing that it receive not only the eleventh day off for a holiday, but that it also pick up an additional three days of premium pay for working on holidays (*Brief* at 45).

The rejection of the compromise which resulted in the tentative agreement places the Village in an untenable position. Having previously agreed to add an eleventh day off for holidays, how could the Village abandon this proposal during interest arbitration? The Union knew that such a scenario would not occur, and has attempted to take advantage of the Village's earlier commitment to provide such eleventh day off. Such a tactic should be disavowed by this Arbitrator.

Specialty Pay

On November 17, 2004, the Union presented its initial proposal to the Village. (Village Gr. Ex. 43.) That proposal did not contain a request for specialty pay. More than three months later, on February 25, 2005, the Union presented a second written proposal, in which it proposed specialty pay. (Village Gr. Ex. 43.) Five weeks later, on April 4, 2005, the Union presented its third written proposal, in which it abandoned its proposal for the establishment of specialties. (Village Gr. Ex. 43.)

In summary, there was no mention of specialty pay by the Union until the fourth bargaining session. The first written proposal by the Union on this issue was made at the fifth bargaining session on February 25, 2005. At the seventh bargaining session on April 4, 2005, the Union dropped any mention of specialty pay in its third proposal. At that point in time, the Union sought to add language to the DCL program, extending benefits to officers who were reassigned from the patrol division. At the tenth bargaining session held on May 10, 2005, the Union made its fourth written proposal. This fourth proposal did not contain a proposal on specialty pay. However, the proposal did seek to add language to the contract describing the amounts to be paid under the DCL program.

On September 19, 2005, the parties reached final settlement on all open items. The DCL program language was not modified in the collective bargaining agreement. In addition, the Union requested a verbal commitment from the Chief of Police that the money paid out by the DCL program would not be reduced during the life of the successor agreement. Such verbal assurance was provided by the Chief of Police on September 19, 2005.

The tentative agreements reached by the Village and the Union did not contain a provision for specialty pay. This specialty pay proposal, which had a shelf life of merely five weeks, was not a significant issue to the Union. Such proposal, made as a final offer, was an afterthought. The Arbitrator should provide considerable weight to the tentative agreement of the parties concerning the abandonment of any proposal for specialty pay (*Brief* at 46-47).

Wages.

On September 19, 2005, the Village and the Union reached a tentative agreement on the issue of salaries, in which the Village agreed to pay a 3.75% increase effective January 1, 2005, a 4.0% increase effective January 1, 2006, and a 4.0% increase effective January 1, 2007. This tentative agreement was reached by the parties at a time when the Village was proposing a 3.5% increase, which increase would have maintained its relative position in accordance with the formula previously contained in the now-abandoned "experiment." The Village offered to pay an additional .25% in the first year, rather than pay a larger increase in the third year of the Agreement. Since the parties remained in agreement on the middle year of the contract (2006), concerning a 4.0% increase, this appeared to be a reasonable compromise.

The Union has not claimed that it made a mistake or a miscalculation regarding the salary amounts generated by such tentative agreement. There is no justification for the Arbitrator to ignore this tentative agreement, absent a compelling reason. No such compelling reason has been advanced by the Union. The Arbitrator should give considerable weight to the tentative agreement on wages.

Longevity.

On September 15, 2005, the Village and the Union reached a tentative agreement on the issue of longevity pay. Once again, this tentative agreement was arrived at as the result of a compromise. The Village had proposed maintaining the longevity payment for years 8 through 10 at $300, but proposed increasing the payment for 20 years or more to $1,200. This Village proposal would have maintained the Village at mid-point in each of the steps, with the exception of the level concerning an employee with 20 or more years of service, in which level the Village would have been $100 above the mid-point.

In response, the Union chose to take $50 from the highest longevity step and add it to the longevity steps between 8 and 10 years. With that modification, the parties had a tentative agreement. The Union does not appear to claim, at the present time, that there was a miscalculation or misunderstanding with respect to the agreement reached by the parties on the longevity issue. This should stand in contrast to the Union's initial proposal on longevity, in which it proposed language bumping up the old longevities by certain percentages. (Village Gr. Ex. 43, p. 2.)

In the Village's initial proposal, dated December 13, 2004, the Village agreed to the FOP's proposal on longevity, but requested that the specific dollar amounts be set forth in the Agreement. At that point in time, the Union stated its initial proposal on longevity was not worded properly. The parties suffered no repeat of this incident when the tentative agreement was finally memorialized on longevity.

After months of bargaining, the final resolution of the longevity issue pursuant to the tentative agreement was not the product of a mistake. The Arbitrator should give considerable weight to the tentative agreement on the issue of longevity. The differences in the dollar amounts between the Village's final offer and the Union's final offer are relatively small, as demonstrated by Union Exhibit 14. These minor differences illustrate this most glaring example of the Union membership believing that they could "do a little better" at interest arbitration. Such attempt should be rejected by this Arbitrator.

THE CPI DATA STRONGLY SUPPORTS ACCEPTANCE OF THE VILLAGE'S FINAL SALARY OFFER.

Among the criteria the Arbitrator is to consider is the average consumer prices for goods and services, commonly known as the cost of living. 5 ILCS 315/14(a)(5). The Village supplied data concerning the CPI - All Urban Consumers Index for Chicago-Gary-Kenosha. (Village Ex. 36.)

Such data was downloaded from the U.S. Department of Labor, Bureau of Labor Statistics website. The percentage change for the twelve months preceding January 2004 was 1.5%. The change from January 2004 to January 2005 was 2.4%. The change from January 2005 to January 2006 was 4.0%. (Village Ex. 36.)

Based on this CPI data, it is clear that the Village's 2005 salary increase proposal of 3.75% is substantially more than the percentage increase in the CPI in the beginning of 2005.

The Union's proposal for a 4.5% increase for 2007 is not supported by this data, nor by the bargaining history of the parties in relation to the CPI. The Arbitrator should consider the CPI data as further support for awarding the Village's final offer on wages (*Brief* at 49).

* * *

On the basis of the facts, arguments and precedents set forth in the evidence record, and in accordance with the criteria mandated by Section 14 of the IPLRA to be applied by this Arbitrator, it is respectfully submitted that the Arbitrator should and must select the Village's final offer on the five remaining issues in dispute.

IV. POSITION OF THE FOP

The position of the FOP, as outlined in its lengthy post-hearing *Brief*, is summarized as follows:

Determining the External Comparables

The FOP proposes eight towns as comparables (R. 16) and addresses the differences between the parties' comparables as follows:

	Union's Proposed Comparables	Employer's Proposed Comparables
Agreed:	Arlington Heights	Arlington Heights
	Des Plaines	Des Plaines
	Hoffman Estates	Hoffman Estates
	Mt. Prospect	Mt. Prospect
	Schaumburg	Schaumburg
Disputed:	Buffalo Grove	Evanston
	Elk Grove	Oak Park
	Rolling Meadows	Skokie
		Wheaton

For the most part, the Union's comparables are Cook County towns.

As indicated, the parties are in agreement that the following are comparable jurisdictions: Arlington Heights, Des Plaines, Hoffman Estates, Mt. Prospect, and Schaumburg. The Union urges the Arbitrator to strongly consider the evidence it has offered to establish the appropriateness of the three additional external comparables it has proposed: Buffalo Grove, Elk Grove and Rolling Meadows (*Brief* at 6). These comparables are tied to the pool of jurisdictions the parties considered with respect to the "current salary experiment." (R. 17).[1]

In the Union's view, if the Employer succeeds and the Arbitrator changes the external comparables, it will only encourage the parties to seek interest arbitration as the method to manipulate the external comparables in the future. If the Arbitrator adds Oak Park or subtracts Rolling Meadows, then the Union will go to arbitration next contract to subtract Des Plaines and add Waukegan, Downers Grove or Elgin. And the practice will continue (*Brief* at 7).

In summary, the Union asserts the Employer is seeking to change the historical comparables without any basis in fact, and attempting to establish new comparables based upon arbitrary qualifications. A change in the comparables would cause instability, and promote self-serving motives to form the basis of structuring future comparable pools. The Union's proposed comparables have an established foothold and will be serve the parties well in the present and the future.

Therefore, the Arbitrator should find that the following comparables proposed by the Union are acceptable for the statutory analysis under Section 14 of the Act:

Arlington Heights
Buffalo Grove
Des Plaines
Elk Grove Village
Hoffman Estates
Mt. Prospect
Rolling Meadows

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[1] The Administration, through counsel, lodged an objection regarding the use of towns that were part of the so-called "salary experiment." In counsel's words: "That side letter of agreement specifically provided that the agreement was experimental in nature and it would not be used in any further collective bargaining agreements and would not be offered, argued or otherwise advanced in any form by either party, and I believe that is what is happening [in this case]." (R. 17-18).

The FOP responded that it was only referencing the comparables, not the experiment itself (R. 19).

Schaumburg

The evidence presented by the Union demonstrates the importance of these comparables (*Brief for the Union* at 6-12).

Wages/Longevity/Specialty Pay

The Union is proposing wage increases of 4% and 4% for the first two years of the contract while the Employer is proposing wage increase of 3.75% and 4% for the first two years of the contract. The Union acknowledged that the minor difference (.25%) in the final wage offers for the first two years of the contract equates to a minor dollar difference between the final offers:

Difference Between the Final Wage Offers At Each Step

	1/1/2005	1/1/2006
Difference at Step 1	$118.23	$123.17
Difference at Step 2	$124.12	$129.08
Difference at Step 3	$133.98	$139.34
Difference at Step 4	$140.41	$146.02
Difference at Step 5	$147.15	$153.05
Difference at Step 6	$154.21	$160.38
Difference at Step 7	$159.61	$165.99
Difference at Step 8	$165.19	$171.80

Union Book, Tab #11. The difference at the most extreme point on the pay scales (Step 8, as of January 1, 2006) is only $171.80, or $14.32 per month (*Brief* at 13).

The greatest difference between the final wage offers, notes the Union, is in the third year, illustrated as follows:

Difference Between the Final Wage Offers At Each Step

	1/1/2007
Difference at Step 1	$384.29
Difference at Step 2	$402.74
Difference at Step 3	$434.73
Difference at Step 4	$455.60
Difference at Step 5	$477.46
Difference at Step 6	$500.38
Difference at Step 7	$517.89

Difference at Step 8 $536.02

Union Book, Tab #11 (*Brief* at 13). The difference between the final wage offers is clear and distinguishable in the third year of the contract.

As the Union mentioned at the hearing, an analysis of the comparable communities is somewhat problematic. In 2005, the first year of the contract, the police officers in Des Plaines, Elk Grove and Schaumburg have yet to negotiate wage increases. Thus, a view of the communities back to 2004 is in order to provide an idea of where the Village of Palatine ranks among the comparables in terms of salaries before any increases are calculated. These numbers show that Palatine appears to be in the middle of the comparable communities, when both wages and longevity are taken into consideration (see, Union Book, Tab #11; *Brief* at 14).

If the Arbitrator were to consider these two issues (wages and longevity) in a vacuum, the task would be difficult. The parties have made final offers that are so near to each other it would be difficult to assess why one of the offers is more appropriate than the other. But, in this case, says the Union, there is one more factor for the Arbitrator to consider which makes the assessment easy: specialty pay (*Brief* at 15).

The Union asserts most of the comparable communities pay officers performing certain specialties an extra amount of wages for their work. The amounts vary, but in many instances the pay is significant. That is, in many cases, the specialty pay is equal to or greater than the small differences between the parties' wage and longevity offers:

Specialty Pay

Arlington Hts	none	
Buffalo Grove	K9: 50¢ per work day ($1,040)/1 hour (OT rate) for off-duty day ($3,023)	($4,063)
($28.79)*	AWC: ($1.50/hr. once every two weeks)	($312)
	FTO: ($1.50/hr. ten weeks)	($600)
Des Plaines	Community Relations Specialist, Evidence Tech, K9, School Resource Officer	
($30.54)	Bike Unit, Neighborhood Resource Center Officer, Traffic Unit,	
	Truck Weight Officer (5% of annual salary)	($3,177)
	Detective (6.5% of annual salary)	($4,130)
	Bilingual ($60 per month)	($720)
	FTO ($20 per day for ten weeks)	($1,000)
Elk Grove	none	
Hoffman Est.	Detectives	
($1,250)		
($28.59)	FTO (1 hour of pay for each day for ten weeks)	($1,430)
	Evidence Tech and Certified Traffic Crash Investigators	
($650)		
	Bilingual	
($350)		

Mt. Prospect	Detective	
($800)		
($29.21) Bilingual		($450)
	Evidence Tech	
($650)		
	Breathalyzer Operator	
($450)		
	Field Youth Officer	
($550)		
	Range Officer	
($450)		
	C.P.O.	
($1,550)		
	FTO (1 hour of pay for each day for ten weeks)	
($1,461)		
Rolling Medws	FTO ($100 per week for ten weeks)	($1,000)
	Detectives	
($1,100)		
	NIPAS	
($350)		
	Officers who have 3 - 6 years of service and two of the following specialties: Evidence Tech, Beat Officer/Community Policing Specialist, Firearms Instructor, Gang Specialist, Bike Unit, Self-Defense Instructor, School Liaison Officer, Juvenile Officer, Accident Investigator, DARE Instructor, Crime Prevention, Arson Investigator, MCAT Investigator, Motorcycle Officer, Bilingual, Truck Weight Enforcement Officer, Power Test, Bachelors Degree, FTO, Detective	($728)
	Officers with 7 years of experience and two of the aforementioned specialties	($4,021)
Schaumburg	Detectives	
($1,600)		
	Evidence Tech	
($900)		
	FTO	
($1,200)		
Palatine	none	

** Buffalo Grove has merit pay at five years, so hourly rate was conservatively figured by taking smallest of annual wages of group (Hoffman Estates) and adding the appropriate longevity step.*

If the "Specialty Pay" received by the officers in the comparable communities was added directly into the salary (wages and longevity) of the officers in the Village of Palatine, the salary ranking would change drastically (figures include the highest speciality position that can be attained)(*Brief* at 16):

2004 Salary Rankings* Of The Comparable Communities
With Specialty Pay Factored in as Salary

5 Years (No Specialty Adjustment)		5 Years (With Specialty Adjustment)	
Arlington Hts	$67,656	Schaumburg	$68,010
Schaumburg	$66,410	Des Plaines	$67,663
Des Plaines	$63,533	Arlington Hts	$67,656
Palatine	$61,684	Rolling Medws	$65,681
Rolling Medws	$61,660	Buffalo Grove	$63,555
Mt. Prospect	$60,764	Mt. Prospect	$62,314
Elk Grove	$60,385	**Palatine**	$61,684
Hoffman Estates	$59,492	Hoffman Estates	$60,922
Buffalo Grove	$59,492	Elk Grove	$60,385

** Buffalo Grove has merit pay at five years, so salary was conservatively figured by taking smallest of annual wages of group (Hoffman Estates) and adding the appropriate longevity step.*

The Union notes that Palatine is not in the middle of the comparables. Factoring in the specialty pay stipends that are common in the northwest suburbs, Palatine finds itself almost $4,000 below where it was previously ranked (*Brief* at 17).

The Union's response to this inequity is two-fold. First, create specialty pay positions, the types which are common to those listed above, and provide for a reasonable stipend:

Detectives	**($1,500)**
Evidence Tech and Accident Reconstructionist	**($1,200)**
Bilingual, Department Instructor, Range Officer	**($750)**
FTO	**(one hour for each day)**

Union Book, Tab #15. With these increases, the rankings would change only slightly (one upward move).

Additionally (or at least alternatively), the Union seeks to increase the wages and longevity slightly more to compensate for the lack of specialty pay. The Union's wage offer would add over $525 more to top pay than the Village has offered. The Union's longevity offer would add $100 more to top pay than the Village has offered. The result of the Union's wage increase, the Union's longevity increase and the Union's specialty pay increase would be:

2004 Salary Rankings Of The Comparable Communities With Specialty Pay Factored in as Salary

5 Years (No Specialty Adjustment)

Arlington Hts	$67,656
Schaumburg	$66,410
Des Plaines	$63,533
Palatine	$61,684
Rolling Medws	$61,660
Mt. Prospect	$60,764
Elk Grove	$60,385
Hoffman Estates	$59,492
Buffalo Grove	$59,492

5 Years (With Specialty Adjustment)

Schaumburg	$68,010
Des Plaines	$67,663
Arlington Hts	$67,656
Rolling Medws	$65,681
Palatine	$63,809
Buffalo Grove	$63,555
Mt. Prospect	$62,314
Hoffman Estates	$60,922
Elk Grove	$60,385

Even with the Union's proposals, the bargaining unit slips one spot in the rankings, but more importantly it becomes more competitive in the fifth position rather than mired in the seventh position.

With respect to the Employer's "tentative agreement" argument, the Union points out that its membership rejected the tentative agreements and demanded that the parties return to the bargaining table. The parties did so, and the substance of the ensuing discussions occurred in mediation, and therefore they were not identified at the arbitration hearing. The Union rejects the Employer's argument – that regardless of the statutory factors such as overall compensation and comparability, the tentative agreement trumps them all and must be given special consideration.

With respect to the cost-of-living criterion, the Union submits there are different methods by which to measure the cost of living in interest arbitration, but the most often used is the Consumer Price Index (CPI). The Union provided the statistical figures from the U.S. Department of Labor Bureau of Labor Statistics. It is pointed out that both the Union's offer and the Employer's wage offer is greater than the cost-of-living, but not significantly excessive.

Arbitrator Yaffe remarked in a case with similar facts that where the union is trying to diminish demonstrable wage disparities, wage increases greater than the cost of living are reasonable and to be expected. City of East St. Louis and IAFF, Local Union No. 23, (Arb. Yaffe 2000). The Union's proposal exceeds the cost-of-living because it addresses the inequities and faults in the salary system.

Finally, there was no evidence suggesting that the parties have ever used the Consumer Price Index or any other cost-of-living measurement as a basis for determining wage increases.

Based upon these reasons, neither offer is significantly more reasonable when analyzing the cost-of-living through the Consumer Price Index (*Brief* at 25).

The Union also maintains that the interests and welfare of the public are served by competitive and comparable salary structures, and that this consideration favors the Union's proposal (*Brief* at 26).

Holidays

As indicated, the Union proposes to increase the number of premium pay holidays from two to five. The Employer opposes this proposal. The parties both agree to increase the number of holidays from ten (10) to eleven (11).

The Union argues the parties' bargaining history shows that the current language that provides for premium pay for just two holidays was negotiated into the 1991-1993 labor contract (Union Book, Tab #13)(*Brief* at 27). For the past 15 years, the officers in the bargaining unit have worked ten holidays each year, but received only premium pay for working on Thanksgiving and/or Christmas.

Six of the eight comparables communities pay their police offices premium pay for working on a holiday. Each of those six communities pay their officers premium pay for working ***any or all*** of their designated holidays. Among the communities that provide premium holiday compensation, only in Palatine is the compensation limited to a reduced number of holidays.

The Union asserts it is not seeking to receive pay for all of the holidays, which would be supported by the external comparables. Rather, it seeks only to increase the number of holidays that are designated as "premium pay holidays" from two to five. Based upon the comparables, the Union's proposal is fair and reasonable. The Arbitrator should therefore adopt the Union's final offers on holiday pay (*Brief* at 28).

Schedule

Addressing its 6 and 3 proposal, the FOP initially submits the current bargaining agreement provides that the Employer must meet with the Union to discuss the feasibility of implementing a "6 and 3" work schedule. The Union proposes to change this language to ensure the implementation of the "6-3" work schedule and to provide for discussions on how to implement the new schedule:

> During calendar year ~~2003~~ **2006** , the period ~~January, 2003 through June, 2003~~ **July 1, 2006 through December 31, 2006**, the parties jointly shall meet at reasonable intervals and discuss the ~~feasibility of implementing~~ **implementation of** a "6 and 3" work schedule during the ~~second~~ **third** year of the contract. The union understands that the Employer will not implement a 6 and 3 work schedule if the same will result in additional expense to the Employer (i.e., additional paid time off and/or overtime expense that is other than nominal) and/or operational disruptions (i.e., manpower allocations). **However, if the Union agrees to language superseding that found in Article XII to ensure that officers earn overtime only after a normal workday and normal work cycle (and other pertinent language that**

provides no greater or lesser benefits for the officers or the Employer), the Employer will implement a "6 and 3" work schedule, commencing on or about January 1, 2007. ~~Additionally, if the Employer determines that it is appropriate to make such a change, it will be implemented on a three-month trial basis and then revisited by the Employer for a determination as to whether or not the change should be continued.~~
(*Brief* at 29).

In support, the FOP acknowledged there are a number of "traditional factors" that interest arbitrators consider when determining which of the parties' offers are more appropriate. One of the most often mentioned is the preference to preserve the *status quo* of what has been historically agreed upon by the parties as opposed to new "breakthrough" ideas that have no history of mutual acceptance (*Brief* at 29).

The Union points out examples of "breakthroughs" that have been awarded by interest arbitrators: (1) the creation of an annual pay step matrix where no pay matrix exists *(City of Loves Park and the Illinois FOP Labor Council, S-MA-95-113 (Arb. Berman 1996))*; (2) the option for employees to choose arbitration as a forum to litigate disciplinary charges where only a commission forum exists *(City of Calumet City and the Illinois FOP Labor Council, S-MA-99-128 (Arb. Briggs 2000), aff'd 344 Ill.App.3d 1000, 801 N.E.2d 147 (2003))*; and (3) the creation of personal days as a benefit where no such benefit exists *(Village of Libertyville and the Illinois Fraternal Order of Police Labor Council, S-MA-93-148 (Arb. Benn 1995)).* (*Brief* at 29-30).

Thus, it is not impossible to meet the burden to prove that a "breakthrough" change in the current collective bargaining agreement should be awarded. In such circumstances where one party is departing from the *status quo* and seeking a "breakthrough", interest arbitrators impose a burden on the moving party to show that special circumstances exist to impose the new benefit or the new procedure. The burden is not unattainable, as the cases above prove, but it is a burden which arbitrators scrutinize to ensure that the changes will rectify existing inequities which one party refuses to address at the bargaining table.

The Union's proposal regarding the "Scheduling" is a "breakthrough" in this arbitration. The Union asserts that it has met the burden to prove that its offer is more reasonable under the circumstances of this case (*Brief* at 30).

The comparable data supports the Union's offer. Arlington Heights, Buffalo Grove, Rolling Meadows and Schaumburg all have "6 and 3" work schedules. These police departments have adopted this work schedule and have not been adversely affected by its use. In fact, the schedule went into place in Schaumburg through interest arbitration. *Village of Schaumburg and MAP, Chapter 195*, S-MA-01-102 (Arb. Cox 2003).

Most important, the Union's offer is practical on every level. The current agreement provides the two issues that are vital to the Employer: cost and manpower allocation. Thus, the

Union has proposed that the "6-3" work schedule will go into effect as long as it does not create new financial obligations upon the Employer and manpower distribution is met.

The Union is merely moving these discussions to a certain end. In the current Agreement, the Employer is under only one obligation: meet and discuss. With the absence of any further obligations, the discussions have yielded no results. Under the Union's proposal, the Union must resolve financial and manpower allocation issues in a manner that its membership finds attractive. Thus, under the Union's proposal, the parties will either have a new schedule or the issue will be closed. Under the Employer's proposal, the matter could continue to drag for years and years.

Thus, the Union's offer is not an unconditional ratification of a "6-3" schedule, but rather a challenge to the Union to prove the viability of the schedule. Whereas four of the comparable communities have this schedule, the Union has at least some background models upon which to draw from when resolving these issues about the schedule. The Union's proposal inherently provides, however, that if the Union is successful in creating a viable "6 and 3" schedule and the Employer still will not implement the schedule, it may advance the matter to grievance arbitration to resolve any disputes. The Union's offer provides closure to this issue while the Employer does not.

In short, the Union's proposal is more appropriate when examining the traditional factors in collective bargaining, as well as the factor of comparability.

A review of the other three statutory factors reveals that they have little, if any, impact upon this case. These factors are: (1) the Lawful Authority of the Employer; (2) the Stipulations of the Parties; and (3) Changes During the Arbitration.

V. DISCUSSION

A. STATUTORY FACTORS USED FOR EVALUATING AND CONSIDERING FINAL OFFERS

Section 14(h) of the IPLRA provides that an arbitrator shall base his findings and decision on the following factors:

(1) The lawful authority of the employer;
(2) Stipulations of the parties;
(3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs;
(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
    (A) In public employment in comparable communities;
    (B) In private employment in comparable communities;
(5) The average consumer prices for goods and services, commonly known as the cost of living;

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received;

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

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

For the record, I have considered all of the statutory factors in formulating the following award.

B. THE EFFECT OF THE PARTIES' TENTATIVE AGREEMENT

Both sides, in their *Briefs*, have spent considerable time asserting the weight that should be accorded to the tentative agreement.[2] What is the effect of the parties' tentative agreement?

In *Peru and Illinois FOP Labor Council, ISLRB* S-MA-93-153 (March 1995), Arbitrator Herb Berman did not find that the facts of the dispute warranted ascribing importance to the tentative agreement, but nonetheless held that "[a] tentative agreement may be considered, but it is not dispositive. The weight to be given a tentative agreement necessarily varies with circumstances, but it does not have the same weight as the facts set out in Section 14(g)." *Id.* at 18. In *Oak Brook and Teamsters Local* 714, ISLRB, S-MA-96-73 (August 1996), Arbitrator Edwin Benn properly accorded a rejected TA "weight." The fact that the tentative agreement was not ratified by the union merely mitigated against the employer's burden of proof. In Arbitrator Benn's view: "the parties' well-framed arguments which are supported by authority serve to negate each other – the Village argues that the Union's bargaining team agreed; the Union argues that the Village must demonstrate why a change in the *status quo* is required." *Id.* at 5. Finally, Arbitrator Perkovich, *in Waterloo and Illinois FOP Labor Council, ISLRB,* S-MA-97-198 (November 1999), did not reject the importance of tentative agreements in the *Waterloo* decision. He simply remarked that the TA was not relevant in that case, because "there is no evidence in this record that the Union acted for this purpose [to seek more than it agreed to] or in some other fashion indicative of bad faith." *Id.* at 3.

Arbitrator Peter Meyers, in *County of Sangamon*, S-MA-97-54 at 6-7 (February 12, 1999)

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[2] For the record, I understand that three issues were the subject of a specific tentative agreement (wages, longevity and holidays), while two issues (speciality pay and the "6 and 3" schedule) were withdrawn by the FOP in bargaining. Technically, however, all issues were part of the successor agreement, in one form or another.

recognized the inherent paradox that would be created if one relied on a tentative agreement as evidence of the hypothetical agreement that the parties would have reached if left to their own devices:

> Tentative agreements reached during the course of collective bargaining sessions are just what their name suggests, tentative. A tentative agreement on an issue has been reached by the parties' bargaining representatives does not represent the final step in the collective bargaining process; such an agreement instead is more of an intermediate step. For a tentative agreement to acquire any binding contractual effect, it generally must be presented to the parties themselves, ratified, and ultimately executed before it may be imposed as binding upon the parties' relationship.

Arbitrator Meyers went on to assert that tentative agreements cannot be given weight in a subsequent proceeding:

> . . . [T]he tentative agreements cannot be given great weight, or even any weight at all, because they do not necessarily represent what the parties would have agreed to if they had successfully negotiated a complete collective bargaining agreement. The so-called "busted TA's" therefore will not be considered in the resolution of the impasse issues presented in the proceeding.

Arbitrator Meyers' blanket position does not reflect what I believe to be the better weight of arbitral authority. In *Village of Schaumberg and Schaumberg FOP Lodge No. 71*, S-MA-93-155 (Fleischli, September 1994), Arbitrator George Fleischli held that in certain circumstances tentative agreements may be relevant in assessing the reasonableness of a party's offer. In this context, the inquiry focuses on what the surrounding facts tell about the reasons for a party's rejection of a TA. His words are instructive in this proceeding:

> It would be clearly inappropriate, under the law, to treat the terms of the tentative agreement as controlling. As the Union points out, both parties understood that the terms of that agreement were tentative in the sense that it was subject to ratification by both parties. However, the Village does not argue that the terms of the tentative agreement should be treated as controlling herein. Instead, it argues that they should be given great weight.
>
> * * *
>
> In dealing with this aspect of the dispute, a balance must be struck. On the one hand, it is important that the authority of the parties' collective bargaining team not be unnecessarily undermined. Specifically, in the case of the Union, its bargaining team ought not to be discouraged from exercising leadership. Some risk taking must occur on both sides, if voluntary collective bargaining is to work and arbitration avoided, where possible. Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements.
>
> On the other hand, serious consideration should be given to the stated or apparent reasons for either party's rejection of a tentative agreement. **If, for example the evidence were to show that there was a significant misunderstanding as to the terms or implications of the settlement, those terms ought not to be considered persuasive. Under those circumstances, there would be, in effect, no tentative agreement. However, if the terms are rejected simply because of a belief that it might have been possible to "do a little better," the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations.**

Id. at 33-34 (emphasis supplied). Arbitrator Fleischli subscribed to the view that interest arbitration is merely a continuation of the bargaining process, and, therefore, that "the function of the arbitrator should be to try and approximate the agreement the parties would have or should have reached themselves, knowing that either party could force the impasse into an interest arbitration proceeding." *Id.* at 34.

* * *

I am convinced that Arbitrator Fleischli makes the better argument regarding the weight to be accorded tentative agreements. **Like Mr. Fleischli, I am on record as concluding that an interest Arbitrator should strive to award a position the parties would have reached if both parties were left to their own devices, including, but not limited to, a strike.** See, Marvin Hill and Emily Delacenserie, *Interest Arbitration Criteria in Fact-Finding & Arbitration, Evidentiary & Substantive Consideration*, 74 MARQ. L. REV. 399 (1991). **A tentative agreement indicates what the parties, or their duly-appointed representatives, *thought* was a result otherwise conducive to their interests. They are the so-called "insiders" and presumptively know the environment and numbers better than any neutral. While certainly not dispositive (nor "*res judicata*") of a specified result in an interest arbitration, a party would be hard-pressed to argue that a tentative agreement should be ignored by an arbitrator.**

This view can also be deemed to have been a logical evolution from the view espoused by Arbitrator O'Reilly in 1995 in *City of Alton* (1995):

> There was no evidence that the tentative agreement reached on July 24, 1994 was negotiated based upon a lack of knowledge of parity relationships, misinformation, or a lack of awareness of external comparisons. Thus it must be considered to have been negotiated in good faith and the Neutral Arbitrator can find no compelling reason that he would be able to render an award which would be more reasonable than the parties were able to achieve during the collective bargaining process.
>
> While the Neutral Arbitrator reviewed all of the evidence and testimony related to the criteria as set out in the Act, he is of the opinion that the integrity of the parties' tentative agreement reached in good faith bargaining, must be the controlling factor in deciding the issues. That opinion I believe is permitted by factor no. 8 in Section 1230.100 of the Act. *City of Alton* (Sept. 29, 1995) (O'Reilly, Arb.).

It is from this prespective, as outlined by Arbitrators Fleischli and O'Reilly above, that the parties' final offers are analyzed.

C. <u>THE COMPARABLES</u>

The parties are not in agreement with respect to the appropriate bench-mark jurisdictions. As indicated, the parties agree on five bench marks (*infra*) and disagree on the rest. What results is this:

Union's <u>Proposed Comparables</u>	Employer's <u>Proposed Comparables</u>

Agreed:	Arlington Heights	Arlington Heights
	Des Plaines	Des Plaines
	Hoffman Estates	Hoffman Estates
	Mt. Prospect	Mt. Prospect
	Schaumburg	Schaumburg
Disputed:	Buffalo Grove	Evanston
	Elk Grove	Oak Park
	Rolling Meadows	Skokie
		Wheaton

(See, *Brief for the Union* at 6).

* * *

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

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

The Village notes it selected its comparable communities by applying the following criteria in successive steps:

> Those within the same labor market, reflected by a 20 mile radius from the center of the Village (Village Ex. 1.);
> Those within ± 25% of the Village's 2000 population (Village Ex. 2.); and
> Those within ± 25% of the state income tax revenue received by the Village during 2004 (Village Ex. 8.)(*Brief* at 23).

As noted above (*Position of the Administration*, *supra* at 12), the Administration's position on selection of its comparables is articulated as follows:

> Aside from listing those communities which were previously utilized in the "experiment" which has now been rejected by the Union, the Union offered no objective methodology for selecting its comparable communities. Rather than establishing a series of benchmarks which each municipality must reach in order to survive the cut, the Union appears to offer economic data simply for illustration purposes, rather than as selective criteria (*Brief for the Administration* at 23).

The Union's major counter is that the three (3) additional comparables it has proposed (Buffalo Grove, Elk Grove and Rolling Meadows), along with the agreed-upon comparables, *supra*, have been historically used by the parties for comparable benefits analysis, both formally and informally. To this end the parties formally entered into an experimental salary increase program. The parties, through arm-length negotiations, arrived as the jurisdictions proposed by the Union as those, and only those, to be designated as the "community pool." (*Brief for the Union* at 7).

The Union goes on to assert that history trumps the Employer's comparables:

> The Arbitrator should feel quite comfortable in adopting these communities as the external comparables. The parties chose them in 1999 (See, Union Book, Tab #25) as the communities they felt so comfortable with that they would form the basis to establish the salaries in the bargaining unit. The benefits in the Agreement are based upon these comparables, which were selected due to their similarity to the Village. Absent proof that there have been changes to these communities, the Arbitrator should adopt them as the external comparables otherwise he will open future negotiations to wholesale benefit changes (which could be substantiated by new comparables).
>
> More informally, the parties themselves have used theses comparables to form their proposals and to measure the appropriateness of the proposals they receive from each other. **The Employer's counsel admits that the Employer relied upon the comparables proposed by the Union during negotiations of this contract at issue and used those comparables as the basis to formulate its proposal regarding longevity (Tr. 86-87).** Thus, the external comparables advocated by the Union have a historical basis in the parties' negotiations over contractual benefits. (*Brief for the Union* at 7; footnote omitted; emphasis mine).

The Union goes on to assert the utility of its comparables relative to the four new communities proposed by Management:

> The Employer did not reduce or add to the number of comparable communities based on any subsequent demographic information (or any other information). Rather, the Employer stopped its comparable analysis after applying its concocted population limit to those communities within its arbitrary radius regardless of the demographic data it offered into evidence.

* * *

One fallacy that, with exceptions, continues to be perpetuated in interest arbitration is there exists a single set of comparable bench-mark jurisdictions that can serve as a significant independent variable for determining economic issues. The underlying assumption is if City A's demographics (population, geography, tax revenue, etc.) are similar to the demographics of Cities B, C, D, E, F . . . n, then A's economic benefic package should also be similar. As the parties know, a bargaining unit's wages (and most other benefits) are determined by a host of exogenous (external) and endogenous (internal) variables, not the least of which is union density in a particular organization. The economic – non-economic matrix in any organization and industry is far more complex than viewing an "eyeball" histogram depicting what's going on in a contiguous bench-mark jurisdiction. As such, even if one can agree on relevant bench-mark jurisdictions to consult (whatever criteria is used for selection, be it population or geography), nothing is ever dispositive when it comes to making an award.

While, on balance, the Union advances the better argument regarding the comparables to include in this analysis, nothing prevents a neutral from referencing the other party's comparables in making an award. Indeed, this makes more sense than picking one side's comparables over the batch offered by the other side. Of course, the standard "fall back" was articulated by Arbitrator Herbert Berman in *City of Peru and Illinois Fraternal Order of Police Labor Council*, S-MA-93-153 (1995)(cited in *Brief for the Union* at 9):

> An arbitrator must be mindful that within a large range of possibilities a party may have selected only those cities that support its positions. When in doubt, it makes sense to fall back on the comparables they themselves have selected. This cautious approach may also have the virtue of encouraging the parties to agree on comparables, thereby enhancing the possibility of settlement.

For the above reasons, I hold that the FOP makes the better case on the comparables to use, and this will be a starting, but not an ending, point. At the same time, when relevant, the Administration's comparability data is referenced in the analysis.

D. <u>ANALYSIS, DISCUSSION, AND SELECTION OF THE FINAL OFFERS</u>

<u>1. WAGES</u>

Both parties have proposed increases in the wages of the bargaining unit officers for each year of the three-year contract. Neither party has proposed any structural changes to the pay scale and both wage offers are retroactive on all hours paid. Side-by-side, the final offers are as follows:

	Union Offer	Village Offer [3]
Effective January 1, 2005	4.0%	3.75%
Effective January 1, 2006	4.0%	4.00%
Effective January 1, 2007	4.5%	4.00%

(*Brief for the Union* at 12).

By itself, the most difficult issue to resolve is that of wages, where both proposals are reasonable. In the Union's words: "the truth of the matter is our wage offers are so close that in terms of where we are with the comparables, it's really a race to stay even more than anything else." (R. 29). Indeed, only a quarter (1/4) percent the first year and a half (½) percent the last year separates the parties' positions. In the first year, the difference in step 1 is $118.00, and the difference in step 8 in the first year is $165.00. The second year, the differences are not much more, since both sides are at 4.0%. By the third year, the difference is from $384.00 to $536.00.

In resolving the wage issue, it is significant that the parties, in the last year of their collective bargaining agreement (2004), voluntarily positioned the salaries of the Village police officers in the middle of the Union's comparables. To this end, the parties specifically set 2004 police salaries that equaled or slightly eclipsed the average salaries of the Union's comparable communities. The numbers are as follows:

2004 Salary Rankings* of he Comparable Communities

Start Pay		**5 Years**		**10 Years**		**20 Years**	
Palatine	$47,373	Arlington Hts	$67,656	Arlington Hts.	$67,756	Buffalo Grove	$70,170
Hoffman Est.	$46,645	Schaumburg	$66,410	Rolling Medws	$66,673	Arlington Hts.	$67,956
Buffalo Grove	$46,413	Des Plaines	$63,533	Schaumburg	$66,560	Schaumburg	$67,160
Elk Grove	$45,727	**Palatine**	$61,684	Hoffman Est.	$66,483	**Palatine**	$67,067
Des Plaines	$45,570	Rolling Medws	$61,660	**Palatine**	$66,378	Hoffman Est.	$66,983
Rolling Medws	$44,962	Mt. Prospect	$60,764	Mt. Prospect	$66,173	Rolling Medws	$66,873
Schaumburg	$43,430	Elk Grove	$60,385	Elk Grove	$64,810	Mt. Prospect	$66,373
Arlington Hts	$42,669	Hoffman Est.	$59,492	Des Plaines	$64,361	Des Plaines	$66,011
Mt. Prospect	$42,536	Buffalo Grove	merit	Buffalo Grove	merit	Elk Grove	$65,010

* *Includes wages and longevity as of May 1, 2004, noting that Des Plaines' figures are over a year old.*

(See, Union Book, Tab #11; *Brief for the Union* at 14).

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[3] Both parties' final offers on wages call for the elimination of Appendix A and Appendix E, and the parties entered a stipulation to this effect. Mr. Bailey: "So in both cases both our wage proposals, D and E is going by the wayside. I just wanted to clarify that for the record." (R. 49). Mr. Durkin: "I can a stipulation on the record that our proposal also includes eliminating Appendices D and E." (R. 49).

The evidence record indicates the parties reached a tentative agreement as to what wages would be for the successor collective bargaining agreement. There was no dispute with respect to 2006, where both are at 4.0%. There was initially no dispute with respect to 2005 and 2007, where the Union agreed to 3.75% and 4.0%. As indicated, the Union is now at 4.5% for 2007, having added an additional 0.5%, and 4.0% for 2005, having added 0.25% over its tentative agreement.

In its *Brief* the Union concedes that if Wages (and Longevity) were considered in a vacuum, the Arbitrator's task would be difficult. In its words: "The parties have made final offers that are so near to each other it would be difficult to assess why one of the offers is more appropriate than the other." (*Brief for the Union* at 14-15).

The Union is correct. Although what's going to happen in the third year is a "wild card" (R. 29), either wage proposal can be supported by the parties' respective comparables. Voluntarily, the parties positioned themselves around the middle of the comparables. I have studied the Villages' exhibits, particularly Ex. Nos. 24-27, and conclude that a 2005 salary increase of 3.75% will more than maintain this ranking, from bottom (starting salary) to top (seven years, producing a ranking of third). The same conclusion is supported by the evidence record for 2006 (Village Ex. 25) to 2007 (Village Ex. 26).

Also supporting the Village is this exhibit regarding external comparability:

Percentage Increases for Village's Comparable)Communities
(Using the Village's Comparables)

Community	2005	2006	2007
Hoffman Estates	3.7	3.5	3.5
Skokie	3.5	3.25	3.5
Mt. Prospect	3.5	3.75	–
Wheaton	3.75	3.75	–
Arlington Heights	4.0	–	–
Oak Park	3.0	–	–
Evanston	3.5	–	–
Average	**3.57%**	**3.56%**	**3.5%**
Average increase: 2005-2007			**10.63%**
Villages' Final Offer	3.75%	4.0%	4.0%
Union's Final Offer (Village Ex. 27)	4.0%	4.0%	4.5%

As noted by the Administration, the average increase over the years 2005 through 2007 of the known proposed comparables equals 10.63%. The Village's proposal for those three years

equals 11.75%, or more than one percentage point in excess of the known average (*Brief for the Employer* at 29).

What is really significant in the wage issue (and, for that matter, the entire dispute in this case) is the tentative agreement reached by the parties' negotiators (see, discussion *infra* 47-48 this award). I see nothing in the evidence record that would otherwise warrant upsetting the tentative agreement reached by the parties' negotiators.

Based on the statutory criteria, I hold for the Employer on the wage proposal.

2. LONGEVITY PAY

The Village proposes to increase the longevity of the bargaining unit by set amounts as follows:

	2004	Village	Union
8-10 years of service	~~$300~~	350	350
11-14 years	~~$550~~	600	650
15-19 years	~~$750~~	850	900
20 + years	~~$1,000~~	1,150	1,250

(Village Ex. 42.; Union Ex. 14).

The Union is in agreement at the first step. It is in disagreement thereafter, by $50 the next two steps and by $100 at the final step. (R. 38). Both parties are in agreement that the longevity schedule applies to all officers covered by the collective bargaining agreement.

A comparison of the existing 2004 longevity plans (Union Book, Tab #14) reveals the following:

Longevity Plans

5 Yrs		10 Yrs		15 Yrs		20 Yrs	
Arlington Hts	$900	Rolling Medws	$1,350	Des Plaines	$1,719	Des Plaines	$2,643
Schaumburg	$450	Arlington Hts.	$1,000	Rolling Medws	$1,450	Rolling Medws	$1,550
Buffalo Grove	$400	Des Plaines	$ 839	Arlington Hts.	$1,100	Schaumburg	$1,200
Mt. Prospect	$400	Buffalo Grove	$ 600	Schaumburg	$ 900	Arlington Hts.	$1,200
Palatine	$300	Schaumburg	$ 600	Buffalo Grove	$ 800	Buffalo Grove	$1,000
Rolling Medws	$	**Palatine**	$ 550	**Palatine**	$ 750	**Palatine**	$1,000
Elk Grove	$	Elk Grove	$ 550	Elk Grove	$ 650	Hoffman Est.	$ 850
Hoffman Est.	$	Mt. Prospect	$ 500	Mt. Prospect	$ 600	Elk Grove	$ 750
Des Plaines	$	Hoffman Est.	$	Hoffman Est.	$ 600	Hoffman Est.	$ 700
Union Offer	$350	Union Offer	$ 650	Union Offer	$ 850	Union Offer	$1,250
Village Offer	$350	Village Offer	$ 600	Village Offer	$ 800	Village Offer	$1,150

Similar to the parties' final wage offers, the parties' final longevity offers are only slightly different (*Brief for the Union* at 14). In this respect, the Village maintains that its longevity proposal will either maintain its ranking relative to the bench-mark jurisdictions or increase the ranking by one step (see, Village Ex. 28). Both sides argue (correctly) that simply looking at longevity data by itself does not portray an accurate picture (see, *Brief for the Employer* at 38).

A study of Village Ex. 29 reveals that the bargaining unit's overall ranking will stay between sixth and eighth. Indeed, the Village's exhibits reveals that the longevity ranking declines to eighth at 15 years and above.

Looking at the Union's data, significant is the longevity allocation at the higher service levels:

Jurisdiction	Step	Amount
Arlington Heights	20 + years	1,200
Buffalo Grove	20 + years	1,000
Des Plaines	20 + years	2,643
Elk Grove	20 + years	750
Hoffman Estates	25 + years	1,100
Mt. Prospect	20 + years	700
Rolling Meadows	20 + years	1,550
Schaumburg	25 + years	1,500
Average:		1,305

While I again find it significant that the issue of longevity was the subject of a tentative agreement, reached on September 19th, in view of the absence of wage comparables for the third year of this contract (it really is, as characterized by the FOP, a "wild card"), I am awarding the FOP's longevity provision, notwithstanding the tentative agreement. A real close call, but the FOP has carried the burden on this one issue.

Applying the statutory criteria, I hold for the FOP on the longevity issue.

3. HOLIDAYS AND PREMIUM HOLIDAY PAY

The Union's proposal is to increase the number of holidays from 10 to 11, the number of holidays that the other Village employees receive. In Mr. Bailey's words: "And we want to increase

the number of premium pay holidays. Right now, we have two, Thanksgiving, Christmas. We want to add three more. . . There's been no change since the '91, '93 contract. Again, since then the Village has increased the number of holidays for their employees, so this contract we wanted to add to that. We wanted to add [three summer holidays] the number of premium holidays." (R. 36).

Discussing the Union's proposal on holidays, the Administration notes the following chart (*Brief* at 34):

Union's Proposed Comparable Communities
Holidays

Jurisdiction	Days Off	Premium Pay
Arlington Heights	12	No
Buffalo Grove	1	Yes - 9
Des Plaines	0	Yes - 10.5
Elk Grove Village	4	Yes - 8
Hoffman Estates	7	Yes - 6
Mt. Prospect	0	Yes - 8
Palatine	**11**	**Yes - 2**
Rolling Meadows	12	No
Schaumburg	0	Yes - 12

A review of this data for the Union's proposed comparables reveals that Palatine would rank third out of nine communities with the number of days off which it provides for holidays. Also, three of the Union's proposed comparable communities provide zero days off. Palatine is well above the average.

With regard to those communities paying premium pay for holidays worked, only four communities (Buffalo Grove, Elk Grove Village, Hoffman Estates and Palatine) provide a benefit which consists of *both* days off on holidays, coupled with premium pay for hours worked on such designated holidays.

Village's Proposed Comparable Communities
Holidays

Jurisdiction	Days Off	Premium Pay
Arlington Heights	12	No
Des Plaines	0	Yes - 10.5
Evanston	13	No
Hoffman Estates	7	Yes - 6
Mt. Prospect	0	Yes - 8
Oak Park	11	Yes - 11
Palatine	**11**	**Yes - 2**
Schaumburg	0	Yes - 12
Skokie	7	No
Wheaton	0	No

(*Brief for the Employer* at 36)

This chart discloses that the Village of Palatine is tied for the third position out of the ten proposed comparable communities in terms of providing days off. Four of the proposed comparable communities provide zero days off for holidays. The average number of days off by the ten proposed comparable communities equals 6.1. Six of the ten communities provide days off in excess of the average of 6.1, including the Village of Palatine. Four of the communities are below the average.

The comparability data supports the Village's 11-2 allocation.

The Parties' Tentative Agreement on Holidays

On April 15, 2005, the parties tentatively agreed to a Village proposal to increase the number of recognized holidays from ten to eleven, *in exchange for the Union withdrawing the remainder of its proposal*. According to the Administration, subsequent to April 15th, the issue of holidays was never again discussed by the parties (*Brief for the Employer* at 9).

I view the increase in recognized holidays from ten to eleven a *quid pro quo* for the Union

withdrawing the remainder of its proposal. This, along with the comparability data, and the other statutory criteria, supports the Employer's final offer. I see no reason to upset the bargain reached by the parties' representatives.

4. DCL PROGRAM/SPECIALITY PAY

Currently, there is no provision in the parties' collective bargaining agreement having to do with speciality pay (R. 16). Specifically, the FOP proposes new language (*supra* at 25-26) addressing speciality pay. The FOP proposes seven (7) speciality pay specialities that will receive compensation (Tab 15; R. 38-39). In counsel's words:

> Our feeling is really simple. Either you – it's like right now, we're not getting any extra money for having a degree in our contract because we all have one. So what does that mean? . . . Either the money is in the wages to make up for the lack of speciality pay to the places or do we get speciality pay? . . . And there's one way to do it, either give us larger across-the-board increases or give us a speciality pay (R. 40-41).

a. Background

Both Sections 5.1 and 5.2 of the collective bargaining agreement addressed the DCL program and the Village's authority to administer that program. The Village steadfastly maintained it retained the authority, through the provisions of Article V, Management Rights, of the collective bargaining agreement, to administer the Dual Career Ladder program (*Brief* at 7). The DCL program provides additional compensation to officers who have obtained advanced police officer skills and knowledge, and who have performed effectively in that speciality. Those officers obtaining certificates in certain competencies and performing effectively in such fields are eligible to receive additional compensation per year in the minimum amount of $1,100, pursuant to the DCL program.

The DCL Program dates back to 1981, when it was first implemented. (Tr. 69.)(*Brief for the Employer* at 39). A review of the parties' initial collective bargaining agreement, covering the period from July 14, 1987 through April 30, 1991, discloses the inclusion of Sections 5.1 and 5.2, which acknowledged the existence of the DCL program and the exclusive authority of the Village to administer the DCL program (Village Gr. Ex. 40). The six collective bargaining agreements which followed each reaffirmed the existence and nature of the DCL program (Village Gr. Ex. 40).

In its initial proposal, the Union proposed that the DCL program be eliminated (R. 72). Then, on February 25^{t}, 2005, at the fourth bargaining session, the Union continued its DCL proposal, but revised it. Instead of eliminating the program, the Union now proposed that the program language be maintained, but add officers leaving the patrol unit who became detached would continue to receive the DCL bonus (R. 72). At the 7th bargaining session, on April 4th, the Union

made another proposal in which speciality pay was no longer on the table. On May 10th the Union made a fourth proposal where, once again, no speciality pay was requested (R. 73). The Union then turned its attention to the bargaining the dollar amount for the DCL program. Finally, on June 21st, at the 11th bargaining session, the Union handed out its last written proposal. There was no change in its last proposal and, once again, no speciality pay. Indeed, there was no provision for speciality pay in any of the tentative agreements and no modification of the language for the DCL program (R. 75). Indeed, what took place on September 19th was that the FOP requested and received from the Chief of Police a commitment that the Chief would not reduce the dollar amounts in the DCL program during the life of the collective bargaining agreement. In addition, the Village added a DCL program for its investigators who were previously not in the DCL program. (R. 75).

b. The Employer Advances the Better Case Regarding the Speciality Program

Going back to 1981, there is no question the Administration has been a leader in pioneering speciality pay for the bargaining unit (Village Ex. 37). While the FOP is not incorrect when it points out that the DCL program appears in Article 5 as a program within the exclusive authority of Management (R. 69; Village Ex. 37), the Union's proposal mandates than an officer will receive compensation for holding a speciality certification, even though such officers may not be utilizing such certification. As pointed out by the Employer, "in other words, the Union's proposal does not require that an officer actually perform in the speciality field, in order to receive the speciality compensation (U. Ex. 15). Even if the Village does not need every officer in the Department to have a speciality, the Union's proposal would entitle such officer to such speciality pay." (*Brief for the Employer* at 40).

I agree with the Administration's argument. An officer receiving speciality pay should perform the speciality in order to be paid, or otherwise show that the speciality at issue has "carry-over" value.

Significantly, reference to the Employer's Survey of Comparable Communities (Village Ex. 34) indicates that four specialities are recognized: Evidence Technician; Detective; Language Speciality; and FTO. Five (5) of the bench-mark jurisdictions (Schaumburg, Wheaton, Hoffman Estates, Mount Prospect, and Des Plaines) provide for some form of speciality pay. Four jurisdictions provide none (Oak Park, Skokie, Evanston, and Arlington Heights). I find the Employer's Dual Career Ladder allocation (*status quo*) consistent with the comparables.

As noted, the Village amended the DCL program to include a provision for investigators. This was in response to a request by the Union during bargaining. The Village's final offer on specialty pay and the Dual Career Ladder program is the more reasonable position. In this same regard I also find it significant that the parties reached agreement that there would be no speciality pay in the labor agreement. In fact, as argued by the Administration at the hearing, speciality pay was not talked about since April of 2005 by the parties. Yet the final offer of the Union includes a speciality pay provision. I find nothing in the record to "correct" the position of the FOP's bargainers and the result they reached during the negotiations.

What of the Union's argument that the Administration "is abandoning the tentative agreement is favor of improving its position as to the future of the dual career ladder program"? (*Brief for the Union* at 23). The Union argues:

> Given the "dual career ladder program" any legitimacy is against the interests of the Union and membership. The Employer seeks to improve upon the tentative agreement by adding broader recognition of the dual Career ladder program even though it asserts that the tentative agreement is sacred and should be adopted.
>
> Evidentially, the Employer would argue that portions of the tentative agreement) as opposed to the entire tentative agreements) deserve special weight. This argument is fundamentally flawed. The cases that support the adoption of a tentative agreement do not support the use adoption of just portions of a tentative agreement. Inasmuch as negotiations require gave-and-take over a variety of issues, the Arbitrator cannot be certain that the adoption of only a portion of a tentative agreement is a reflection of what the parties' representatives thought was a reasonable compromise.

The infirmity with the Union's argument is that the Employer's proposed revision of the tentative agreement favored the bargaining unit. If the Administration wanted to play it safe, it could have "stayed pat." I do not view the inclusion of the "translation reward program" (not part of the original tentative agreement) as a significant change in a tentative agreement so as to make the Employer's proposal subject to undue scrutiny.

Applying the statutory criteria, I hold for the Employer on this DCL/Speciality Pay issue (Village Ex. 42).

5. WORK SCHEDULE ("6 AND 3" SCHEDULE)

The Union's proposal is, in the words of counsel, "to go to the 6 and 3 shift that we've talked about for a long time, but leave the details of exactly whether it's eight and a quarter, eight and a half, whether the work cycle is 28 days, leave those ends for the parties to discuss . . . . There's obviously a limited number of models out there." (R. 31-33).

The ambiguities regarding the FOP's proposal were noted in an exchange with the undersigned Arbitrator:

> **Arbitrator Hill: Let me ask this: Your proposal, issue No. 2, as outlined in Tab 12.**

Mr. Bailey: Right.

Arbitrator Hill: It's a proposal for an interest award of a 6 and 3 schedule comma then the parties sit down and figure out how to implement it?
Mr. Bailey: Right. Very similar to what the parties did in Schaumburg.

Arbitrator Hill: Okay. It's not a proposal for the parties to sit down and figure out how to implement a 6 and 3 schedule, because there is a difference.
Mr. Bailey: That's right.

Arbitrator Hill: One, there's a condition subsequent, and one, there's a condition precedent.
Mr. Bailey: Right.

Arbitrator Hill: And then it goes to these folks to determine how to implement it?
Mr. Bailey: Right, exactly.

* * *

So our proposal is, well, let's just do it. If we're going to do it, then we'll probably sit down and really talk about how it's going to be implemented as opposed to implement it, we'll talk how – we'll talk about the details of it. (R. 34-36).

a. Background

With regard to preserving the *status quo* regarding Scheduling, the Village articulated its rejection of the implementation of a "6 and 3" (or 6 – 3) work schedule. On December 13, 2004, in its initial proposal, the Village specifically stated that its basis for rejecting such a schedule was that such schedule would leave the shifts at or below minimum (Village Ex. 45). Such a situation would result in additional expense being incurred by the Village, in order to continue to staff at its minimum levels, either by hiring additional officers or by ordering back officers at premium overtime rates of pay.

In April 2005, the Union appeared to accept the Village's argument that implementing a 6 + 3 work schedule was not economically feasible for the Village. To this end, a Side Letter Understanding, attached as page 43 of the expired collective bargaining agreement, stated that "the Union understands that the Employer will not implement a 6 + 3 work schedule if the same will result in additional expenses to the Employer (*i.e.*, additional paid time off and/or overtime expense that is other than nominal) and/or operational disruptions (*i.e.*, manpower allocations)." (U. Ex. 3, at 43.)

As argued by the Village, a 6 + 3 work schedule results in *each* employee having fifteen more days off of work (Village Ex. 35). That is fifteen more shifts *per officer* on which additional officers need to be available to cover those gaps, either by hire-backs or by hiring new officers. The Village has consistently maintained that such a schedule would result in either disruptions in manpower allocations or extraordinary increases in overtime expenses.

On April 4, 2005, the Union formally withdrew its proposal. "The FOP withdraws its proposal to implement a 6 x 3 schedule." (Vill. Gr. Ex. 43, at 2 of April 4, 2005). Following the withdrawal of this proposal on April 4, 2005, the parties never discussed the scheduling issue again. According to the Employer, there were no discussions concerning the numerous nuances that the Union now acknowledges must be addressed prior to the implementation of a 6 + 3 work schedule (*i.e.*, length of shifts, length of work cycles, training days, overtime, etc.).

b. The FOP's Proposal is a "Breakthrough" Item

The Union, as the moving party, has the burden to plead and prove that sufficient justification exists for an interest arbitrator to award a "breakthrough" item such as its proposal in this case, especially when the Employer demonstrated that the item was taken off the table by the Union during negotiations. See, City of DeKalb (Goldstein, June 9, 1988) (where the Arbitrator stated: "[i]nterest arbitration . . . is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria."); Village of Arlington Heights and IAFF (Briggs, January 29, 1991)("Interest arbitration is artificial. It is a substitute for the real thing - a voluntary settlement between the parties themselves through the collective bargaining process. **Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves.** It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. . . . It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . the party wishing to change the status quo must present compelling reasons to do so." (Emphasis added)); Will County and MAP, Chapter 123 (McAlpin, October, 1998)("When one side wished to deviate from the status quo . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.").

Arbitrator Elliot Goldstein explained what the proponent of a breakthrough change must show as follows:

In order to obtain a change in interest arbitration, the party seeking the change must at

minimum prove:

> (1) that the old system or procedure has not worked as anticipated when originally agreed to;
>
> (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
>
> (3) that the party seeking the change must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

While the Union has demonstrated that when compared to other cities, a "6 and 3" schedule is not completely out-of-line (Arlington Heights, Buffalo Grove, Rolling Meadows and Schaumburg[4] all have "6 and 3" schedules, and two are in the Village's comparable communities; see *Brief for the Union* at 32; R. 30), I am convinced that, as of the hearing date, the parties have not explored alternate ways of dealing with the "6 and 3" problem in collective bargaining. As I read the evidence record, if the proposal were adopted, days off would go from 106 to a minimum of 121, an increase of 15. This is a significant change in the staffing levels of the Village (see, Village Ex. 44; R. 79). There is also the problem of staffing given that the number of employees on the street is maintained. Management submits that the data shown that the Village would be running below minimum on the day shift 11 days per 28-day schedule, on the afternoon shift, 7 days per 28-day schedule, and on the midnight shift, the watch would only be above minimum five (5) days (Village Ex. 40; R. 80). Accordingly, I find that the implementation of the "6 and 3" schedule would have an adverse impact on the Village's ability to maintain its staffing levels at its normal rates of pay. The result would be increased overtime or the addition of more police officers.

Also of significance in this decision is the fact that in prior bargaining the Union dropped the proposal. As I have said in a prior case:

A neutral should keep in mind that, at one time a party may have "paid dearly" for a particular item and, thus, should proceed with caution before drafting an award that would upset the "quid pro quo." **In this respect, the parties' bargaining history may be particularly important in formulating fact-finding recommendations or interest awards.** For example, a party desiring an insurance package where the employer pays the full cost of coverage, with no employee deductible, may elect to take a relatively small salary increase in return for such a package. In a fact-finding proceeding the following year, it is argued that the employees have fallen behind and,

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[4] Significantly, Schaumburg went to the 6 and 3 schedule *by order of an arbitrator*, making it somewhat suspect as a comparable. The work cycles, for the most part, are 28 days, although Schaumburg gets nine days (R. 31).

thus a substantial salary adjustment must be granted to remove this inequity.

Bettendorf Community School District and Bettendorf Education Association (February 2, 1991)(unpublished)(emphasis mine).

After posing the above question, my argument is that arbitrators must take into account the prior bargaining that led up to the current contract, otherwise irreparable damages may be done to the parties' collective bargaining relationship. **Simply stated, concessions made in good faith at the bargaining table should not be used as a starting base to gain additional contract concessions from a neutral.** Both labor and management should fear neutrals that do not take into account the "deals that are cut" in prior negotiations. "Everything affects everything." What was gained at bargaining should not be lost by arbitral fiat. Nothing can be more detrimental to good faith negotiations than an arbitrator that acts as a "circuit rider," dispensing his own notions of fairness rather than what the evidence record warrants.

* * *

I hold for the Village on the "6 and 3" proposal. The Union has not carried the day in proving that this "breakthrough" item should be awarded by an outside neutral, especially when the matter was dropped on April 4th during bargaining. There are too many unknowns associated with this proposal to be vested on the parties. I further hold that it is not supported by the statutory criteria.

For the above reasons, the undersigned enters the following award:

E. CONCLUSION

In its *Brief* at 24 the Union correctly notes that:

> The cases that support the adoption of a tentative agreement do not support the use adoption of just portions of the tentative agreement. Inasmuch as negotiations require give-and-take over a variety of issues, the Arbitrator cannot be certain that the adoption of only a portion of a tentative agreement is a reflection of what the parties' representatives thought was a reasonable compromise.

I agree with the Union on this important matter.

Negotiations require a "give and take" process, as recognized by the Union. (*Brief* at 24). Nothing could be more destructive of collective bargaining if an interest arbitrator ignored this outcome, i.e., when one party picks what it likes in the tentative agreement and arbitrates the

remaining items. [5] While I agree with the Union that tentative agreements are not dispositive or *res judicata* of the result in arbitration, other things equal, an arbitrator should pay special attention to the bargain that the parties' representatives found reasonable, at least to the extent that the package was forwarded to the principals, the membership and the "Village fathers."

With this in mind, and applying the statutory criteria,[6] the following award is issued:

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[5] A careful reading of the Employer's *Brief* would lead one to conclude that the FOP membership "cherry-picked" those tentatively-agreed-to provisions it liked, and rejected the ones it disliked. Thus, when discussing grievance procedure, seniority, vacation, other reimbursements, the Administration, in its *Brief*, writes "the bargaining unit members have not rejected this tentative agreement." (*Brief for the Employer* at 4-6). In response, the Union representative, Gary L. Bailey, asserted "there was no selective rejection of particular tentative agreements (Letter of May 24, 2006).

What is clear is all five issues submitted to arbitration were the topics of tentative agreements that had been rejected by the Union. The other topics upon which tentative agreements had been reached were not submitted to arbitration, presumably because those tentative agreements were acceptable to the membership. Michael Durkin Letter, May 24, 2006).

Both parties should keep in mind the "goose – gander" theory regarding selective ratification of agreements. If the shoe were on the other foot, and the Village selectively picked those provisions it found favorable, and ordered counsel to arbitrate the rest, the FOP would legitimately (and should) protest from here to Iowa.

[6] (1) The lawful authority of the employer; (2) stipulations of the parties; (3) the interest and welfare of the public and the financial ability of the government to meet those costs; (4) a comparison of the wages, hours and conditions of employment of the involved employees with the wages, hours and conditions of employment of other

VI. AWARD

A.	**WAGES**	**EMPLOYER'S PROPOSAL**
B.	**LONGEVITY**	**UNION'S PROPOSAL**
C.	**HOLIDAYS**	**EMPLOYER'S PROPOSAL**
D.	**SPECIALITY PAY**	**EMPLOYER'S PROPOSAL**

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employees performing similar services and with other employees generally: (A) in public employment in comparable communities; and (B) in private employment in comparable communities; (5) CPI data; (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 the foregoing circumstances during the pendency of the arbitration proceedings; and (8) other factors not confined to the foregoing.

Again, while all of the above criteria have been considered, I have limited the text in this case to a discussion of the significant factors relevant to this case.

E. <u>WORK SCHEDULE</u> **EMPLOYER'S PROPOSAL**

Dated this 26th day of May, 2006,
at DeKalb, IL 60115

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Marvin F. Hill, Jr.,
Arbitrator