
In the Matter of the Interest Arbitration Between

VILLAGE OF SCHAUMBURG

And

METROPOLITAN ALLIANCE OF POLICE,
SCHAUMBURG POLICE CHAPTER # 195

APPEARANCES:

Seyfarth Shaw, by Mr. R. Theodore Clark, Jr., appearing on behalf of the
Employer

Schenk, Duffy, Carey, Ford, Mazzone, Phelan Clemens, LTD., by Mr. Joseph R.
Mazzone, appearing on behalf of the Union

ARBITRATION AWARD

The Village of Schaumburg, hereinafter Village or Employer, and the Metropolitan Alliance of Police, Schaumburg Police chapter # 195, hereinafter Union, reached impasse in their bargaining for a successor collective bargaining agreement. Pursuant to the provision of Article 7 of their 2002-2005 collective bargaining agreement they agree upon the undersigned as the single arbitrator to hear and resolve their bargaining impasse. Hearing in the matter was originally scheduled for June 5, 2006, but prior to the scheduled hearing the parties, while meeting on May 17, 2006 to discuss the scope of their final offers, had a disagreement regarding the propriety of the Union's proposal for a "paramedic stipend" as a separate economic item in its final offer. The parties contacted the undersigned and requested a ruling in their dispute before proceeding with the scheduled hearing. Consequently the hearing originally scheduled for June 5, 2006 was rescheduled to June 21, 2006. The parties then briefed the issue and those briefs were received by the undersigned on June 2, 2006. The undersigned issued his ruling on the motion on June 7, 2006.¹ The hearing on the merits of the dispute was

¹ The Village filed a Motion for Reconsideration of the undersigned's ruling on June 9, 2006. The undersigned advised the parties via e-mail on June 16, 2006 that because time was of the essence he was going to defer ruling on the Village's Motion for Reconsideration until the hearing. But, a ruling proved

held as rescheduled on June 21, 2006 and the parties thereafter filed post hearing briefs the last of which were received on January 8, 2007. The undersigned requested as was granted an extension of time until April 15, 2007 to issue my award.

BACKGROUND:

This parties' dispute on the merits is over the terms of their 2005-2008 collective bargaining agreement. As noted above, prior to the hearing in the captioned matter on the merits the Employer asked the undersigned to resolve a dispute concerning whether the Union could separate into two proposals its final offer for wages and an offer for an increase in and an additional category of specialty pay. The parties filed briefs in support of their positions and the undersigned issued the following decision upholding the Union's position.

The dispute, as outlined in the parties' briefs, is concerned with the Union's position that it wanted to include among its issues to be submitted to the arbitrator a provision for a police officer's stipend "in a manner similar to the 'paramedic stipend' currently paid to Schaumburg Firefighters per Section 8.4 of their current collective bargaining agreement". The City takes the position that the question of a stipend must necessarily be treated as part of a single proposal dealing with wages -- one economic issue, rather than the Union's intention to have a proposal for across the board wage increases and a proposal for an additional stipend. E.g. a proposal for 4% ATB and a proposal for a police officer stipend.

The Village argues that final offer arbitration is designed to accomplish two basic purposes -- to encourage the parties to reach agreement and to "negate the chilling or narcotic effect of conventional interest arbitration" by requiring the arbitrator to select one or the other party's final offer on each economic issue. The Village contends that to accomplish these purposes it is imperative that the "economic issues" be viewed in "broader rather than narrower terms" or the "underlying intent and purpose behind final offer interest arbitration will be severely undermined". The Village cites the undersigned to an Iowa PERB declaratory ruling in support of its position in this matter.² It also argues that interest arbitrators in Illinois cases have likewise concluded that the term "economic issue" should be construed broadly as arbitrator Goldstein concluded in City of Elgin and PBPA, (Arb. Elliot Goldstein, March 12, 2002). Goldstein stated that

unnecessary as the Union's final offer on Specialty Pay removed the basis for the Employer's Motion for Reconsideration and, thus, the Village did not request the undersigned to rule on its motion.

² West Des Moines Education Association, PERB Case No. 805 (Iowa PERB, 1976, aff'd 266 N.W. 2nd 118 (1978); Maquoketa valley community School Dist. V. Maquoketa Valley Education Ass'n, 279 N.W. 2nd 510 (Iowa 1978) wherein the PERB stated "the legislature's goal of hard bargaining and reasonable offers is promoted by construing 'item' broadly as the statutory language otherwise permits".

“equity adjustments’ which are additional percentages in pay, and the second increase, the adding of the seventh step to the salary format, or the creation of longevity pay, must and should be considered in the aggregate”.

Similarly, arbitrator Hill in Village of Niles and IBT Local 726, (Arb. Marvin Hill, April 2003) concluded

“consistent with the better weight of arbitral authority, the Union’s final offer for wages will include components: (1) wage increases, (2) lieutenant differential, and (3) the additional FF ‘firefighter step’ The equity adjustment and the additional FF step is part of the broad category of ‘wages/salaries’ and, accordingly, should be considered as one impasse item under the Act.”

The Village also cites decisions by arbitrators Nathan and Briggs wherein they concluded dividing wage issues into various components and treating each as a separate economic issue “allows the parties to avoid hard decisions in planning an overall package”, and thus “the arbitrator has the ability to construct a contractual provision piece by piece”.³

Thus, the Village concludes the Union’s approach of treating its proposal for ATB wage increases and a stipend as separate economic issues should be rejected by the arbitrator in this case as well. It urges the arbitrator to rule that the salary schedule increases and the Union’s proposed fire parity salary increases are one economic issue.

The Union, however, argues that adoption of the City’s position with respect to the Union’s proposals for a police officer’s stipend and base wage increases “will serve as a severe hardship and prejudice the Union’s ability to proffer appropriate issues for resolution.” It contends that the Village’s position to treat these as one economic issue is a deviation from its established past practice. It also contends that “it is recognized past practice in public employee contract negotiations to bargain issues of base wages and specialty pay separately”. It asserts that the issues of base wage, longevity pay, overtime pay, and special stipends are separate and distinct provisions in public sector contracts, and it is such a well established and unchallenged principle that no case law exists.

The Union also contends that the Village has historically taken the position that a specialty stipend and base wage rates are separate bargaining issues. During the last contract negotiation the parties were unable to reach agreement. In the negotiations leading up to the arbitration proceeding the Union had bargained separately the issues of holiday pay, specialty pay, longevity pay and base wages without objection. And, arbitrator Cox issued an award that recognized each of these economic issues as distinct. In the current negotiations the village has already agreed to the longevity pay provision as separate from base pay and it has engaged in a course of conduct that that has consistently acknowledged that base pay and specialty pay provisions are separate and distinct for the purposes of the contract. Thus, the village has effectively waived its ability to object to the separation of the Union’s proposed economic issues by its

³ City of Moline (Arb. Harvey Nathan, December 1, 2003); Village of Schaumburg (Arb. Steven Briggs, February 23, 1998); Village of Wilmette and SEIU Local 73 (Arb. Steven Briggs, June 4, 2004)

conduct in past negotiations and in the current contract negotiations. Also, there is a 16 year history of the Village and its firefighter's union bargaining the "paramedic stipend" separately from base wages and they have included such a provision in their previous and current contract(s).

The Union also asserts that the only motivation for the Village to now take the position that a specialty stipend and base wages cannot be separated "is to severely prejudice the Union's position by seriously limiting the arbitration". This kind of all or nothing approach unfairly prejudices the Union. Thus, the Village only desires to deviate from its 16 year past practice in order to enhance its position in arbitration.

The Union also cites arbitrator Yaffe's Cook County arbitration award wherein he separated the parties' wage proposals and awarded the County's first and second year wage proposal and the Union's wage proposal for the third year of the contract in support of its argument that in this case the arbitrator should rule that the specialty stipend and base wages are separate economic issues.⁴ It argues that doing so would not prejudice either party and is the only fair approach given the parties' past practice and the generally accepted principles in public sector negotiations.

APPLICABLE STATUTORY LANGUAGE:

Illinois Public Labor Relations Act, 5 ILCS 315/14

* * *

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and to which of these issues are economic shall be conclusive. * * * As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions, and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

DISCUSSION:

The Illinois Public Labor Relations Act, 5 ILCS 315/14 (g) provides that "the arbitration panel shall identify the economic issues in dispute". In the undersigned's opinion that language is at the crux of this dispute. What did the legislative drafters intend with the inclusion of this language. It is not disputed in this case that a police officer specialty pay stipend is an "economic issue". What is in dispute is whether any proposal for such a stipend must necessarily be included as a part of the Union's proposal for a general base wage increase. In other words, under the statute providing for peace officer compulsory interest

⁴ Cook County, (Byron Yaffe, June 1, 2000)

arbitration can a specialty pay stipend proposal stand alone as an economic issue or must it necessarily be treated as part of the economic issue of wages.

Both parties have cited arbitrator decisions in support of their positions on this dispute. However, they have not provided the undersigned with any decisions of the Illinois Labor Relations Board or courts on this subject or the authority of the arbitration panel/arbitrator to resolve disputes such as the one before me. And, the arbitration decisions cited to the undersigned, with the exception of the Yaffe award, seem to stand for the proposition that the term "economic issue" should be used in its broadest sense rather than in a narrow sense such that items that impact or are related to wages would be encompassed under the "economic issue" of wages. On the other hand Yaffe's award lends support for the Union's position that notwithstanding that a specialty pay stipend is an issue impacting an officer's pay it nonetheless can stand alone as an economic issue separate from the issue of base wages. In Yaffe's Cook County decision he treated each year of the parties' three- year ATB wage proposals as a separate economic issue. In the undersigned's opinion the term "economic issue" as used in the statute cannot be read to permit both outcomes. That is, each contract year wage proposal cannot be treated as a separate "economic issue" yet a specialty pay stipend that may be paid to some or all of the bargaining unit classifications must necessarily be included as part of the "economic issue" of "wages".

In the undersigned's opinion what the cited decisions represent is the individual arbitrator's notion of how the arbitration law should work -- create maximum risk to the parties in order that when formulating their final offers they will minimize the differences in their positions thus creating a greater opportunity for a voluntary resolution of their impasse -- not necessarily the legislative intent as determined by the State Labor Relations Board and/or courts. This is a question of statutory construction on a matter of statewide concern that should not be left to the whim of each individual arbitrator. While we as labor arbitrators have expertise in the workings of collective bargaining, mediation and the application of statutorily established criteria for resolving bargaining impasses we no doubt will be granted little, if any deference from a reviewing court on a matter of statutory construction. Certainly, not the level of deference the State Labor Relations Board charged with the administration of the Illinois Public Labor Relations Act would receive. However, because neither party has cited any decisions on point emanating from the Board or courts, I will proceed to decide the question for purposes of this case.

Let me say that I do not disagree with the premise that any procedures that have the effect of the narrowing the differences between the parties enhances the likelihood that the parties will be able to resolve their impasse voluntarily, and if they are not able to do so the result will tend closer to the results were all the weapons of economic warfare at the parties' disposal. That is the preferred outcome. But, numerous different statutory procedures have been adopted by state legislatures in an attempt to enhance the likelihood of a voluntary settlement thus minimizing the number of bargains where the impasse can only be resolved with an arbitrator's award. And, in the latter have any award tend as close as possible to the outcome traditional bargaining would have wrought. Wisconsin

has adopted a system that provides the arbitrator must select one or the other party's final offer on all impasse issues. In other words, the arbitrator is not free to choose the Union's offer on wages and the employer's offer on health insurance and so on as is the situation in this case. The reason the Village is objecting to the Union's intention to treat the specialty pay stipend as a "economic issue" separate from the "economic issue" of wages is because in its opinion there is less risk to the Union in doing so. The Union does not necessarily jeopardize its proposal on the specialty pay stipend if that proposal is not included with its proposal for an ATB increase to base wages. And, that kind of thinking was, in the undersigned's opinion, what drove the arbitrators' in the cases cited by the Village to their decisions regarding what constituted the permissible breadth of an "economic issue".

The Union has argued in this case that the Village has waived any right to object to a specialty pay stipend being treated as a separate "economic issue" because of its conduct in these and other negotiations. However, is not clear to the undersigned, inasmuch as there is no evidence of bargaining history before me, that the Village has waived its right to insist that the Union be required to combine any proposal for a specialty pay stipend with its proposal for an increase to base wages. As I have already discussed, this is a question of statutory interpretation and for there to be a waiver of a statutory right it must be clear and unmistakable. There is no basis at this time for concluding that the Village has waived its right to assert the position it now takes regarding the breadth of an "economic issue".

The Village is in essence arguing that the "economic issue" of wages necessarily encompasses any add on to base wages for such things as longevity, special licenses, educational attainment, specialized training, etc. In the undersigned more than 30 years of experience mediating contract proposals regarding such items they have been dealt with at the bargaining table first upon their individual merit and once the merit of such a proposal has been established then the cost of such a proposal and its impact on the total package cost is considered. So while such a proposal may be discussed as an individual item at the bargaining table, as the Union argues has repeatedly occurred in this and other Village negotiations, its impact on a complete package settlement is also necessarily considered. Thus, even though a proposal may have merit its cost in terms of total package costs may prevent its adoption unless the package costs are reduced in some other fashion thus permitting agreement to the item. In the end, bargains are generally costed on a year over year basis with all of the components of the bargain taken into account as well as roll-up costs. In the undersigned's opinion that is also the analysis adopted in interest arbitration when evaluating the parties' proposals. The analysis necessarily involves consideration of internal and external comparable settlements both on an individual item basis as well as from a total package cost perspective. Therefore, it seems to the undersigned that the Union in this case would be more likely prejudiced by a ruling that it combine any proposal for a specialty pay stipend with its base wage increase, than will the Village by a ruling that the Union's base wage proposal and a specialty pay stipend proposal be treated as separate "economic issues". That is because the

comparison of the “economic issue” of wages will necessarily be compared to internal and external wage increase settlements that may or may not include such a specialty pay stipend. If they don’t include such a stipend it would be an apple to oranges comparison not unlike comparing like named classifications at different employers where the duties and responsibilities are not the same. However, if it is treated as a stand alone “economic issue” the analysis of the propriety of such a proposal will necessarily look to the internal and external comparables as well and the cost impact of any specialty pay stipend. Thus, I do not believe the Village is prejudiced by permitting the Union to treat the specialty pay stipend as an “economic issue” separate from its base wage increase proposal.

Therefore, the Union in this proceeding may treat any proposal for a police officer specialty pay stipend as an “economic issue” independent of any proposal for an increase to base wages.

After issuing the above decision the parties filed the following stipulation with the undersigned regarding the “issues in dispute” regarding the terms of the 2005-2008 contract:

“The Village of Schaumburg (‘Employer’) and the Metropolitan Alliance of Police, Chapter #195 (‘Union’) hereby stipulate that the following are the economic and non-economic issues in dispute:

Economic Issues:

1. Wages
2. Compensatory time (Section 14.3)
3. Court time (Section 14.7)
4. Vacation Personal days (Section 24.1)
5. Health insurance, Flexible Benefits Plan (Section 25.1)
6. Sick Leave Income (Section 26.2)
7. Specialists Positions Compensation (Article 28)
8. Bureau vacation letter

Non-Economic Issues

1. Written reprimands
2. Drug testing (Article 30)
3. Pay Date⁵

At hearing, the parties also stipulated that tentative agreements reached in negotiations would become part of the 2005-2008 (5/1/05-4/30/08) collective bargaining agreement,

and that retroactivity was not in issue. Furthermore, the parties stipulated that page 49 of the 2002-2005 collective bargaining agreement had, by agreement between the parties, been omitted from the copy of the contract included in the exhibits provided to the undersigned.

APPLICABLE STATUTORY CRITERIA:

The undersigned in resolving the stipulated issues set forth above is required under Illinois law to apply the following criteria under Illinois statutes (ILCS 315/14):

“Sec. 14. Security Employee, Peace Officer and Fire Fighter Disputes.

* * *

(h) Where there is no agreement between the parties, * * * and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable”

- (1) The lawful authority of the employer.
- (1) Stipulations of the parties.
- (2) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (3) 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.
- (4) The average consumer prices for goods and services, commonly known as the cost of living
- (5) The overall compensation presently received the employees, including direct wage compensation, vacations, holidays and other

⁵ Prior to hearing in this matter the parties reached a tentative agreement resolving this issue.

excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

DISCUSSION:

As a practical matter, the comparability of a community from which data is drawn will still weigh in the consideration of criterion “d”, much as it always has where advocates and arbitrators have spoken in terms of “primary”, “secondary” and “general” comparables. The most persuasive evidence under this criterion will remain those communities which the parties have traditionally relied upon in bargaining. The expansion of the comparability language will, however, allow the consideration of communities beyond that traditional grouping, with a weight consistent with the degree to which those communities might reasonably be expected to guide the parties because of similarities in location, population, size, services, tax base, and other standard indicia of comparability. The record does not give any clear indication of a traditional comparability grouping for this unit.

Economic Issues:

1. WAGES:

The parties’ final offer on wages are set out below:

Village:

Effective May 1, 2005 increase salary at all steps by 3.5%

Effective May 1, 2006 increase salary at all steps by 3.0%

Effective May 1, 2007 increase salary at all steps by 4.0%

Union:

Effective May 1, 2005 increase salary at all steps by 4 %

Effective May 1, 2006 increase salary at all steps by 4%

Effective May 1, 2007 increase salary at all steps by 4%

The Village argues that internal comparability considerations strongly support selection of its final offer on wages. The Village states it cannot overemphasize the importance of the internal relationship between its police officers and firefighters and the total havoc that would result from an arbitral disruption to the well established parity relationship between the two groups of employees that has existed at the top pay step in each group since at least the 1986-87 fiscal year. It asserts that the top pay step firefighters and police officers have received the same annual salaries and exactly the same across-the-board percentage increases. The firefighter bargaining unit agreed to the same 3.5% wage increase in 2005 and 4% wage increase in 2007 as the Village has proposed in this bargaining unit. It also agreed that it would accept whatever wage increase was granted to the police officers in 2006 by virtue of the arbitration award in this case. The Village stresses that the significance of the parity relationship that exists between these two bargaining units was recognized by Arbitrator Fleischli's interest award in this bargaining unit in 1994 and was the catalyst for Arbitrator Cox's award for the 2002-2005 collective bargaining agreement for police officers. The Village also cites the undersigned to other interest awards wherein arbitrators have accepted the importance of not disrupting established parity relationships between police and firefighter bargaining units. The Village argues that the same rationale as utilized in those other cases should be adopted by the undersigned in this case.

The Village also argues that there is convincing evidence of a parity/pattern relationship in terms of the salary percentage increases negotiated with its supervisory bargaining units. It points to the fact that the Villages Police and Fire Command bargaining units both agreed to the same across-the-board percentage increases that the Village has proposed to this bargaining unit. It argues that acceptance of the Union's wage offer for 2006 would mean that the police Officers would receive ½% and 1% more in 2005 and 2006 respectively than the increases agreed to by the Police and Fire

Command staff bargaining units. This it argues would create difficulties in the next round of negotiations with those bargaining units and would cause compression problems between the rank and file and command staff.

The Village also argues that the external comparability data strongly supports selection of the Villages final offer. It argues that the Villages wage offer would place the base annual salary for the top step police officer at \$829 above the average of its comparables. It also asserts that it takes only four years for Village police officers to reach the top salary step whereas that is not the case in any of the Village's comparables. And when compared to the salaries paid to the Villages comparables employees after four years of service in the Village rank number one in terms of top salary. It also contends that when the longevity payment is added in after five years the Village is second only to Arlington Heights at the top step. And, it also asserts that when one looks at the salary and longevity for employees with seven years service, which is the point when police officers for all comparables are at the top step the Village salary is \$1333 above the average of the comparables. Also, the Village argues that its salary increase proposal of 7% over the final two years of the contract is exactly matches the average increase of 7% for the comparables for which salary increase percentages are available. An examination of total compensation for police officers among the external comparables is examined it shows that Village total compensation is \$3673 above the average for the nine comparables.

The Village also argues that the CPI data strongly supports acceptance of the Village final salary offer. It also contends that the ease in attracting qualified candidates and the virtual non-existent turnover rate among police officers also strongly supports adoption of the Villages final offer on wages. Also, the Village contends that the most recent employment cost index and national public sector wage negotiation data strongly support adoption of the its final offer. And, last, the Village believes that the interests and welfare of the public support adoption of its final offer on wages.

The Union argues that its final offer on wages as well as the Village's offer will be decreased due to the increase in out of pocket insurance plan increases. It contends that the employee's portion of family insurance coverage has increased from \$105 per year in 2002 to \$895 in 2005. If the Village has its way and the arbitrator does not accept

the Union's offer to cap the increase in employee contributions in 2006 the contribution will skyrocket to \$4675, a 500% increase over 2005. The increase is equal to over 7% of the current top pay rate of \$65,960, and this will more than offset the 3% and 3.5% pay increase proposed by the Village. Even if the arbitrator accepts the Union's medical expense proposal there will still be an increase from \$895 in 2005 to \$2576 in 2006, a 300% increase which is equal to approximately 3 ¾% of the top patrolman salary.

The Union also contends that when one looks at the comparables proposed by the Union the Village police officer ranked 11th in starting salary and in 6th in top salary in 2003. In 1998 the Village granted wage increases to its police officers in an attempt to place them in a more favorable position with respect to their comparables and the Village Manager said he believed the officers should be in the top 5% of their comparables, but clearly the Village has failed to bring officers within the top 5%. Officers are paid 9% less than officers in Wheaton and 7% less than officers in Arlington Heights. The starting and top salary for Village officers remains in the lower ½ of the comparables.

The Union also argues that the Village should not be allowed to strike deals with other internally comparable bargaining units and then attempt to use those agreements as precedent in determining the appropriate salary increase for this unit. Also, the Village fails to mention the 1% equity adjustment granted to the Command bargaining unit in 2002 in addition to the 3.5% ATB increase.

The Union also asserts that the actual dollar value of any increase should be taken into consideration when examining the increase granted to the Command bargaining unit. The 3% increase granted to the top Sergeant rate in the Command unit equals \$2520 per year and 3% increase for the top Lieutenant equals \$2806 per year. If the patrol officer is granted a 4% increase it will amount to an increase of \$2638 and this amount falls within the comparable dollar increases received by the Command Staff bargaining unit.

The Union concludes that its final offer maintains the status quo in so far as its comparables, especially in light of what is going to occur in terms of increases in the employees' insurance costs. Whereas, the Village offer undermines attempts made in recent years to improve the position of its police officers relative to other comparable communities. Therefore, it believes the arbitrator should select the Union's final offer on wages.

Award.

The parties' wage offers for 2007 are identical. Each offer proposes a 4% increase effective May 1, 2007. However, the Union's final offer on wages provides for a 4% increase in both 2005 and 2006, whereas the Village's offer provides for 3.5% and 3% increases in 2005 and 2006 respectively.

As of May 1, 2005 the date of the first scheduled increase under this contract the Villages final offer of 3.5% would take the base salary of a police officer from \$65,960 to \$68,269. The Union's 4% offer would take that salary to \$68,598. Of the 9 communities that the Village believes are externally comparable it ranks 4th as of May 1, 2005 after its 3.5% and it would also rank 4th if the Union's 4% offer were selected. Among the 10 communities the Union believes are comparable the Village's final offer for 2005 would put it in 7th place and so would the Union's final offer. In 2006 the Village's final offer would take the top step salary to \$70,317 and in 2007 it would go to \$73,129 whereas under the Union's final offer the top step salary in 2006 would be \$71,341 and in 2007 it would be \$74,195. Thus, in 2006 for the communities for which the parties had data the Village's final offer would put it in 8th place among the Union's comparables and in 4th place among its comparables. And, the Union's final offer would mean the Village would rank 2nd among the Village's proposed comparables and 5th among the Union's proposed comparables. In 2007 the Village's final offer would put it in 5th place among the Union's comparables and in 3rd place among its comparables. And, the Union's final offer would mean the Village would rank 2nd among the Village's proposed comparables and 3rd among the Union's proposed comparables.

Clearly, whichever offer is selected its relative ranking among the external comparables will change very little regardless which set of proposed comparables is used. Likewise the CPI data does not favor one final offer over the other.

Another aspect to evaluating which offer to select is consideration of internal comparability. It is not uncommon to find that in municipalities with both police and fire departments a parity relationship has developed over time and their compensation moves in lock step with one another. It is also the case that many arbitrators including myself have opined many times that internal comparability carries significant if not controlling weight in evaluating economic proposals in interest arbitration proceedings.

“ . . . as most arbitrators have concluded, including this one, an employer’s ability to negotiate to a successful voluntary agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes its persuasive value.⁶ See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator Nielsen in Dane County (Sheriff’s Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99).”

Thus, the facts concerning the issues of parity and internal comparability necessarily must be examined.

The evidence establishes that since at least fiscal year 1986-87 and up to and including fiscal year 2004-05 the top step salary for police officer and firefighter remained identical. This result was achieved by granting the same percentage across the board increase to the top step in each bargaining unit over the preceding 19 years. Adoption of the Union’s final offer in this case would break this parity relationship. While there may be circumstance when abandoning the concept of parity that the members of both bargaining units and the Village voluntarily established and maintained over many years of bargaining, in the undersigned opinion such an unusual circumstance is not present in this case.

The Union has raised several arguments in support of its offer to deviate from the voluntary wage settlements the Village negotiated with its firefighters and fire and police command staff bargaining units. First, it argued that any wage increase received will necessarily be diminished by the increases in the employees’ out of pocket costs for their health insurance. But, this unit is in no different position than the others that have the same health insurance options and that have already agreed to the wage increases the

⁶ I stated in City of Marshfield, Dec. No. 30726-A “The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the greatest weight and greater weight factors, receive paramount consideration”.

Village has proposed in its final offer. Thus, that cannot be the basis for distinguishing this bargaining unit from the other internal comparables

Second, the Union argues that the wage increases among the external comparables support its wage offer and justifies breaking the internal parity relationship and overcome the internal comparables. As discussed above, the undersigned does not view those settlements as supporting one final offer over the other, and thus certainly does not provide a basis to select the Union's final offer in the face of the significant impact of breaking the long standing parity relationship between police officers and firefighters, and/or overcoming the weight the voluntary settlements the Village was able to negotiate with this unit's internal comparables.

Third, the Union argues that the Village should not be rewarded for negotiating settlements with other internal comparables and then using those as precedent in this bargaining unit. But, one theory underlying compulsory arbitration is that the outcome should closely approximate what would result if the parties bargained to agreement. Consequently, arbitrators have almost uniformly adopted the concept enunciated earlier herein that absent some unusual circumstance internal voluntary settlements particularly where, like here, the Employer achieved the same result in most if not all its other bargaining units will receive significant, if not controlling weight. That is exactly the case here.

Last, the Union has argued that its offer more closely approaches the dollar value of the wage increase granted to the police and fire Command Staff bargaining units. However, there is no evidence that historically the wages increases received in this bargaining unit have been based upon such a comparison with the Command Staff settlements. While an argument can be made that by always stating ATB wage settlements in terms of percentage without regard to the dollar value of those increases any differentials that were established between the bargaining units will necessarily be expanded as a consequence of always increasing wages on a percentage basis. But, there is no evidence that this hasn't been going on for some time with these units.

Consequently, the internal settlements the Village has reached with the other internal comparable bargaining units coupled with the longstanding parity that exists between the firefighter top step salary and the police top step salary necessarily is

controlling in this case. Therefore, the undersigned selects the Village's final offer on wages and it shall be incorporated into the parties 2005-2008 collective bargaining agreement.

2. COMPENSATORY TIME (Section 14.3):

The Union's final offer contains a proposal to modify the existing language of Article 14, Hours and Overtime, Section 3. Specifically the Union proposes to amend the 5th paragraph of Section 3 as follows:

“Compensatory time and unscheduled vacation time shall be granted down to minimum manpower requirements as defined and set by the employer, and at such times and in such time logs as are mutually agreed upon between the involved officer and supervisor; permission to utilize compensatory time shall not be unreasonably denied by the supervisor if operational requirements will not be adversely affected. Once granted permission for such compensatory time and unscheduled vacation time off shall not be withdrawn other than [sic]for emergency reasons. Except as provided in Section 22.3 (Personal Days);

Compensatory time shall be granted in minimum of one-hour increments.

The Village proposes no change to the existing language, thus retaining the status quo.

The Union argues that since 2003 the comp time usage policy was changed in order to require minimum staffing patterns plus one in order to utilize the benefit. So if the officer's comp time request would take manpower to minimum manning the officer would need to call in one hour prior to the start of the shift to ensure he/she will be able to take comp time as requested. The Union's proposal would treat unscheduled vacation time the same as comp time and eliminate the minimum plus one requirement, and require that once the request has been granted the comp time or unscheduled vacation time could not be taken away except in the case of an emergency.

Sgt. Christiansen testified that during the period May through September the shifts are running at minimum staffing levels or minimum plus one and, thus, the officer is required to call-in one hour prior to the shift to confirm he/she can take the time off that was approved. Therefore, it is very difficult for officers to make plans when they does not know if he is going to get an earned day off. There is little question that before

the change in 2003 when the Village unilaterally instituted this change the practice was to allow comp time to be taken down to the minimum staffing level. The Union contends the change that requires an officer to call in one hour prior to the start of the shift is unfair and overly burdensome on the officers.

The Union contends that it is within the Villages power to make arrangements for staffing that does not deprive an officer of an earned day off. While the Village may argue the call-in requirement is to keep over time costs at bay the Village has already been successful in doing so. In 2002 the Village was \$600,000 over budget whereas in 2004 the Village was \$400,000 under budget. Because the Village can utilize officers in multiple roles to avoid overtime call outs this ability weakens the Village's claim that it needs this restriction upon the use of comp time to reduce its overtime costs.

The Union also states that it grieved the Village's unilateral change in policy and that grievance was "partially" sustained by the arbitrator who ordered the parties to meet to discuss a remedy. But, when the Union attempted to resurrect the issue for final resolution the Village objected and the arbitrator took the position that he was without jurisdiction. Therefore, the Union requests the undersigned to make the decision the arbitrator could or would not make.

The Village argues that the Union's final offer regarding comp time should be rejected for the following reasons:

1. Acceptance of the Union's final offer would negate the exercise of the Village's management right to control overtime, a right the Union's attorney in the last interest arbitration asserted the Village should exercise.
2. Accepting the Union's offer would, in effect reverse Arbitrator McAlpin's award finding that the minimum manpower bulletin did not unreasonably restrict the use of compensatory time.
3. Since the 2002-2005 contract resulted in a change from a 5/2 shift schedule to a 5/3 schedule there are an additional 17 days that an officer is not scheduled to work, meaning that there should not be the same demand to use comp time.
4. Officers have two personal days per year that can be scheduled regardless of what the minimums are on a given day. Thus, an officer can schedule a personal day anytime before the start of the shift, including months in advance.

5. If an officer needs time off where comp time is not available, the officer can also use a vacation personal day (VPD), and VPD days are rarely if ever denied.

6. An officer can trade shifts with another officer if comp time is not available and shift trades would normally not be denied.

7. Since the officers receive generous vacation benefits that can be supplemented with a week of comp time, needed time off can be scheduled as vacation time. Once vacation days are scheduled they cannot be cancelled.

8. While it is true that requests to use comp time are denied under the existing minimum manpower bulletin the denial may result from the officers relative lack of seniority

9. For family emergencies and the like, leave is granted even if it results in going below the minimum staffing levels.

The Employer concludes that for these reasons the Union has not made a compelling justification to alter the language of Article 14.3. Furthermore, it notes that the Union has not offered a *quid pro quo* for its proposed change, such as a significant limit upon the number of hours of comp time that can be accumulated. And, most of the comparables have significantly greater limitations on when an employee can take comp time.

Award:

The Union has argued that its final offer in this case is merely designed to attain what arbitrator McAlpine's award concluded in his award – reestablishment of a practice. After reading the award the undersigned is persuaded that McAlpin found that there was a past practice of granting comp time requests down to minimum staffing levels without having to call in the hour before the start of the shift to insure the request would be fulfilled. He then opined that to get out from under a binding practice during the contract's term the Employer merely needed to meet and confer to discuss the change with the Union. He "partially sustained" the grievance and ordered the parties to "meet and confer". First, I do not agree that the weight of arbitral authority supports McAlpine's conclusion that the employer can end a binding practice during the contract's term by merely giving notice and offering to meet and confer about the change as McAlpine concluded. Rather, the weight of arbitral authority, in the undersigned's opinion, is that binding practices cannot be unilaterally terminated during the contract's

term, but rather the employer would need to advise the Union at or near the end of the contract's term that it did not intend to continue the practice after the contract expired thereby providing the Union with the opportunity to contractualize the practice during bargaining. He then retained jurisdiction for 60 days from the date of receipt of his award "to resolve any disputes that arise out of these discussions". But, the parties did not conclude their discussions within the 60-day period and the Village apparently argued and the arbitrator agreed that by the time the Union wanted to return to the arbitrator his jurisdiction had expired. However, had the Union succeeded in getting the matter back to the arbitrator the most the arbitrator could have done would have been to order the Village to adhere to the practice for the remainder of the term of the contract. Had that happened, in light of the Village's position regarding the Union's proposal herein, the Village no doubt would have given notice to the Union that it did not intend to continue the practice after the contract expired and the Union would no doubt have proposed in bargaining the offer that is currently before me.

The existing language gives management the ability to deny requests for comp time if operational requirements will be adversely affected, and also provides that requests will not be "unreasonably be denied". The Union contends the problem that needs to be addressed is that it is "unfair and overly burdensome" to require the officer, whose comp time request that was provisionally granted taking staffing levels down to the minimum, to call in one hour before the start of the shift to get final approval to take the day as comp time off. The effect of the Union's proposal would be to require the Village to irrevocably approve, except in the case of an emergency, comp time requests and unscheduled vacation requests even if the request will take the staffing level down to the minimum. This means that if someone calls in sick or makes a time off request that management has no discretion to deny the staffing level would fall below minimum and conceivably could necessitate overtime.

In the undersigned's opinion this proposal would unnecessarily interfere with the Village's management's right to effectively manage the Police Department's operation. Officers are given the option of receiving pay or comp time for overtime hours worked. So when an officer elects to receive comp time rather than pay he/she does so with the knowledge that he/she may not be able to use all of the hours earned because of

scheduling issues. The fact that all comp time earned cannot be utilized does not penalize the officer because he/she will be paid for those comp time hours not able to be taken as time off. Furthermore, the Union has not persuaded the undersigned that the Village's position of only guaranteeing comp time requests that take staffing levels down to one plus minimum staffing is unreasonable.

Also, the evidence of how comp time is treated among the external comparables does not support selection of the Union's final offer.

Therefore, the undersigned selects the Village's final offer to maintain the existing language of Article 14.3

3. COURT TIME (Section 14.7):

The Village's final offer contains a proposal to amend Article 14.7, Court Time as follows:

"Employees covered by this Agreement, required to attend court outside of their regularly scheduled work hours shall be compensated at the overtime rate with a minimum of ~~three (3)~~ **two (2)** hours **effective the first pay period following issuance of Arbitrator Yaeger's interest arbitration award.**

The Union does not propose to change the language of Article 14.7

The Village argues that based upon the unrebutted documentation presented concerning the excessive cost associated with the current court time minimum guarantee the arbitrator should accept its final offer and reduce the minimum guarantee from 3 hours to two hours. It contends that the record establishes that for the 2236 reported overtime court appearances in 2005 exact time records were available for 2087 of those occurrences. If officers had been paid for the actual time spent in court the cost would have been \$139,478 whereas with the three-hour minimum the cost was \$287,938.99, and if the minimum had been two hours the cost would have been \$204,884.05. Under the two-hour minimum the Village would still have been paying \$65,000 more than the actual cost of court overtime. For calendar year 2005 the evidence shows that the actual time spent in court for all appearances averaged 1.7 hours and ranged from 1 to 1.7 hours.

Also, the data for the external comparables demonstrates that the Village's proposal is within the range of court minimums.

The Union argues the three-hour minimum has been in effect since 1986 when the court was moved to Rolling Meadows. Prior to then court was held in Schaumburg and the two-hour minimum made sense. However, with increased travel distances the three-hour minimum is more appropriate and more accurate as to the time being spent and the wear and tear on vehicles. Among the agreed upon comparables Des Plaines, Elgin, Mount Prospect, and Palatine all receive a minimum of three hours overtime and are travelling comparable distances to Village officers. And Hoffman Estates pay a two-hour minimum at double time rates. Given the proximity and comparability of these communities the Union believes the status quo should be maintained.

Award:

The Employer identifies the problem that needs correction as being the amount of overtime paid to officers who have to attend court outside of their normally scheduled work hours and that the time which it is contractually obligated to pay for exceeds the actual time officers spend in court. It argues that the evidence establishes that the average amount of time spent in each court appearance is less than the three-hour minimum it is contractually required to pay.

What the Village argument ignores is the fact that generally the contractual minimums that are established in recognition of the inconvenience and disruption caused in employees personal lives in those situations where they are required to come in to work during non-scheduled hours. These contractual minimums are obviously negotiated with the knowledge that an employee called in to work may not be at work for a period of time equivalent to the contractually established minimum. But there is no record evidence of any bargaining history or otherwise that establishes that when this benefit was negotiated the basis for the three-hour minimum that was agreed upon was intended to approximate the amount of time, on average, the officers were spending or anticipated to spend attending each court appearance. Thus, the Village's argument that employees who are required to be in court on their scheduled off days and, on average, are in court for less time than the contractually established minimum of three hours is unpersuasive regarding the Village's proposal to reduce the minimum from three hours to two hours.

The solution to the Village's overtime problems associated with court time is not to penalize the officers by reducing the minimum. Rather, the solution lies in not having officers called to court during off duty time because regardless of the minimum the Village still will incur overtime costs associated with those appearances. I assume that the Village does not have control over when officers are scheduled to appear in court for if it did this problem would not exist because their appearances would be scheduled to occur during regularly scheduled work hours. However, if the Village examines the language contained in some of the external comparables contracts that were put in evidence in this proceeding it may come upon other ideas for impacting its overtime costs that the Union would find does not punish officers for circumstances that are outside of the officers and Village's control.

Therefore, the undersigned selects the Union's final offer that maintains the existing language of Article 14.7.

4. VACATION PERSONAL DAYS (Section 24.1):

The Village's final offer contains a proposal to add the following sentence to Article 24.1:

"Effective January 1, 2007 and beyond, employees may also use up to 25.5 hours of earned vacation each year as personal days in accordance with the provisions of Section 22.3 of this agreement."

The Union's final offer does not propose to change Article 24.1.

The Village argues that since none of the external comparables permit police officers to use vacation days as personal days (VPD), the Villages final offer to limit such use to not more than three days per year should be accepted. Sgt. Christiansen testified the officers hold back the VPDs and use them in situations where they can't use comp time because it would bring the shift to one over minimum or below. Thus, VPDs tend to be used in situations that could result in overtime, and the Village's final offer seeks to reduce overtime costs. The average number of VPDs used in fiscal years 2004-2005 and 2005-2006 was 2.45 days and 2.44 days respectively. So even under the Village's proposal the officers would still have the right to use more VPDs than the average number of days used in the preceding two fiscal years.

The Union argues that the Village is seeking to reduce from forty hours to 25.5 hours the number of VPDs days that offices receive. It contends the Village's attempt to take these days away is punitive in nature and its reasoning is pretextual. Under the present system if an officer is found to cover the shift in which the VPD is to be used then the VPD is granted. The Village's claim that this results in large unnecessary overtime expenditures is not substantiated. In the prior interest arbitration before Arbitrator Cox the Village attempted to phase out this benefit and the arbitrator said "there is insufficient evidence of VPD cost to justify the total elimination of the benefit over the term of the agreement that is sought".

The Union contends that the VPDs allows employees to plan their time off and to fairly utilize the time they have earned. To impose additional restrictions on the use of time off would unfairly prejudice the officers use of time off.

For the foregoing reasons the Union urges the arbitrator to maintain the status quo regarding this benefit.

Award:

Here the Village has identified excessive overtime costs as the principle reason for its proposal to reduce the existing VPD benefit. It also contends that these days are being used by officers to get around the minimum staffing plus one requirement relative to the use of comp time. Its proposal represents a 36% reduction in the amount of earned vacation hours that an officer can use as personal days.

In this case, just like in the parties' last interest arbitration with Arbitrator Cox, there has been no evidence adduced to empirically establish what, if any, impact VPD usage has had on the Village's overtime costs which is the purported reason for the Village's final offer. Also, the Village has argued that in 2004-2005 and 2005-2006 the average number of VPDs used by officers was 2.45 and 2.44 days respectively. This, the Village argues, establishes that officers will still have the right to use as many VPDs as they have used in the past. But, conversely, if officers are using fewer VPDs than the Village's proposal provides then how will the change reduce the Village's overtime costs which is the stated purpose for the change? Officers will still have the number of VPDs available to use that they have been using and can continue to use under the Village's proposal. And, even if they were to use them to get around the comp time approval

relative to the minimum staffing plus one requirement based upon the record evidence the Village's proposal has not been shown to have any impact upon its overtime costs.

Also important to any discussion of this issue is the language of Article 22.3, Personal Days, which specifically speaks to the issue of overtime and the use of VPDs. It provides that

“The employee must request the time off and must receive approval of his immediate supervisor, provided that such approval shall not be arbitrarily and unreasonably denied. The parties agree that every reasonable effort may be made to avoid the need to incur overtime costs in scheduling personal days.”

The parties have agreed that “every reasonable effort may be made” to avoid incurring overtime costs. Thus, the parties need to explore what efforts should be undertaken to lessen the impact upon overtime costs, if in fact overtime is being caused by the use of VPDs.

Consequently, in the undersigned's opinion, no additional discussion of the proposal is necessary other than to note that the Village also did not propose any *quid pro quo* for the reduction in the benefit it sought.

The undersigned selects the Union's offer regarding Article 24.1 which maintains the status quo language as to the number of earned vacation hours that an employee can use as personal days each year.

5. HEALTH INSURANCE FLEXIBLE BENEFITS PLAN (Section 25.1):

The Union's final offer is to amend Article 25.1 by adding the following language:

“The employer agrees that it will maintain the same or similar level of benefits (i.e., deductibles, co-pays, prescription co-pays, office visits, etc.) for the duration of this agreement.

The parties agree that “VILLAGE ANNUAL CONTRIBUTIONS” as set forth in the Village of Schaumburg cafeteria Benefit Plan Enrollment Form, specifically the “VOS Allowances for employee, employee + 1, family 3+, HMO single and HMO family, shall be in an amount equal to at least ninety

percent (90%) of the VOS-Medical Plan Option1 for employee, employee +1, and family 3+, amounts.”

The Village’s final offer is to retain Article 25.1 unchanged.

The Union states that it recognizes the value and progressiveness of the Village’s current health care plan and the fairness and efficiency of the current system. But it asserts that here is genuine concern over the widening gap between the Village contribution and the cost of the individual family health care plans this past year. The purpose of the Union’s final offer to is require the Village to maintain the same or similar level of coverage in order to prevent the Village from increasing the co-pays and deductibles so as to lower the premiums and impose a financial hardship on the employees.

The Union is also proposing to cap the employee contributions to no more than 10% of the actual family premium described in the enrollment forms as VOS-Medical Plan Option #1. The Village enrollment form for 2006 proposes an increase in the employee contribution from \$895 in 2005 to \$4675 in 2006. For the years 1999-2005 the VOS contribution by the Village for the VOS-Medical Plan Option #1 was at least 95% of the total cost. In 1999 employees were paying \$3 per month for family coverage over the Village’s contribution. In 2005 the employee contribution skyrocketed to a little more than \$75 per month. Under the Village’s final offer the monthly contribution would increase to \$389.58 per month, an astronomical increase over the status quo. The Union is seeking protection form such unpredictable and large increases. And, in essence any wage increase is more than negated by the current contributions to health insurance. Historically, the employee contribution has been approximately 5% and the Union is merely seeking a cap on employee contributions of 10%.

The Village argues that the arbitrator should select its final offer to maintain the Village-wide uniformity with respect to its generous flexible benefit plan since the Union has not met its burden of demonstrating a compelling reason to create unique terms applicable only to this bargaining unit. It contends that Illinois arbitrators with amazing uniformity recognized the strong interest of employers in maintaining uniformity with respect to health insurance and cites the arbitrator to several of those decisions. Here all other Village employees are covered by the same Flexible Benefits Plan encompassed by

the Village final offer. Thus, the Village offer clearly is the most reasonable and should therefore be selected.

The City argues that while the amount employees have to pay under PPO Option #1 went up in 2006 so did the Village's cost – from \$13,081 in plan year 2005 to \$21,085 in plan year 2006. And, while the Union has focused on Option #1 no officer selected PPO Option #1 family plan and only one officer selected PPO Option #1 single plan. Also, the comparable data shows that the Village officers pay substantially less than what officers in the comparable communities are paying for PPO family health insurance. The Village's monthly cost of PPO Option #1 of \$1699.50 per month is substantially higher than any of the nine historic comparables, yet the officers pay less per month than five of the nine external comparables for the PPO Option #1 family plan coverage. Thus, the comparables provide absolutely no support for the Union's final offer.

Award:

The undersigned can appreciate the Union's concern over the impact the increasing cost of health insurance is having on its members. But, these officers are not unique either in terms of their fellow Village employees or other employees whose employer offers to provide them with health insurance. The rising cost of health insurance is viewed by many as a national crisis. Most interest arbitration cases today involve an issue concerned with health insurance and many arbitrators, including this one, for many reasons wrestle with employer proposals to reduce their cost solely by means of having employees assume a greater share of the premium without first having utilized plan design changes as a means to hold down cost increases. That is not to say that in some circumstances having employees assume a greater percentage of the premium costs is inappropriate. So I view with great skepticism that part of the Union's final offer that I will refer to as the maintenance of benefits language. In the undersigned's opinion such language effectively eliminates the types of changes that can reduce the amount of increase in premium. Yet, the Union argues that is what its offer seeks to prevent - reduce benefits to reduce cost.

The 1999 and 2006 enrollment forms the Union included in its exhibits exemplify the problem facing the Village and its employees. The VOS Plan 1 family plan premium increased from \$8969 in plan year 1999 to \$25,760 in plan year 2006. That is an increase

of almost 300% or almost 50% per year. The documents also reveal the impact that plan design changes such as increased deductibles can have on premiums. Furthermore, the Village's Cafeteria Benefit Plan provides the employees with the ability to initiate choices regarding plan design in that they have the individual ability to select plans with higher co-pay, larger deductibles, etc. To many, that is preferable to a situation where the plan design changes are uniformly applied to all employees under the principle of one size fits all. It is also the case, as the Village argues, that the high cost plan which the Union relies upon to support its proposal has only been selected by one employee. Surely, that does not make the case for a need to change the status quo. Also, while the continuing escalation of costs can significantly impact an employee, some of the impact is lessened because an IRS 125 plan is available to employees in order that they can pay out of pocket health care costs with pre-tax dollars.

Finally, as was the case with the Union's wage increase proposal, its health insurance offer enjoys no support among the internal comparables. All of the Village's other bargaining units are covered by the same flexible benefit plan. As I discussed earlier, unless there is some compelling reason why this bargaining unit should not be treated like the other Village bargaining units, the Village's ability to negotiate the same provision with its other represented bargaining units should receive significant if not controlling weight in this interest arbitration. Again, as was the case with the Union's wage proposal there is no record evidence that persuades me this principle should not be controlling in this instance. There is no evidence relevant to this issue that distinguishes this unit from the others.

Therefore, the undersigned selects the Village's final offer which maintains the existing language of Article 25.1.

6. SICK LEAVE INCOME (Section 26.2):

The Union's final offer proposes to modify the Article 26. 2 by removing the current schedule for pay out of accrued sick leave that provides that

“After 20 years of service, 240 hours of pay

After 25 years of service, 360 hours of pay

After 30 years of service, 480 hours of pay” and insert in its place the following schedule:

“2005 after 25 years of service 50% of all hours minimum accrued 720 hrs

2006 after 25 years of service 50% of all hours minimum accrued 760 hrs

2007 after 25 years of service 50% of all hours minimum accrued 800 hrs”

The village proposes no change in the existing Article 26.2.

The Union argues that the goal of this benefit is to minimize the use of sick leave and accordingly reduce overtime necessary to cover the shifts of officers off on sick leave. However, under the current system the officer who uses very little sick leave is awarded the same benefit as one who uses all but the 720 hour minimum required to be eligible to receive the benefit. Further, the Union contends that civilian employees receive the same financial benefit but are also allowed to add unused sick leave hours to their IMRF retirement account.

The Union asserts that the increase in sick leave pay out it is proposing would result in a decrease in unused sick leave and would save money over time or at least be cost neutral. It contends this change would also benefit the productivity of the Police Department, and asserts that the City’s opposition to the proposal from a fiscal standpoint can only be described as punitive.

The Village argues that the current sick leave income benefit parallels the negotiated benefit in the other Village bargaining units, and therefore, should not be changed as the Union proposes. The Police Command Bargaining unit has the identical benefit and while the Fire fighters and Fire Command bargaining units pay out a greater number of sick leave hours than are paid out in this bargaining unit that is because firefighters work on the basis of 2600 hours per year whereas employees in this bargaining unit work on the basis of 2080 hours per year and accrue 8 hours of sick leave per month. Therefore, the amount of sick leave that is paid out to firefighters is directly proportional to the difference in the sick leave accrual rates between the two bargaining units. In other words firefighters earn more sick leave per month than police officers based upon their hours worked. The Village, therefore, argues that internal comparability does not support selection of the Union’s final offer.

The Village also argues that uncapping the benefit would substantially increase the Village's accrued liability that would have to be included in its financial statements under the GASB's statement requiring accounting and reporting of post employment benefits other than pensions. The Village also argues data shows that while the external comparables all provide some level of the benefit it varies widely among them. But, the 480 hour maximum benefit provided by the Village is greater than that provided by all but two of the comparables. Thus, it argues that there is no support among the external comparables for the Union's proposal.

Finally, the Village argues that under the Union's final offer an officer would receive 700 hours of pay which is a 52% over what they could receive under the existing language.

Award:

The Union's proposal would change the existing contract language in two ways. First, under the current contract language, regardless of how many years the officer has been employed by the Village at the time of his/her retirement he/she must have accumulated 720 hours of unused sick leave in order to qualify for the sick leave income benefit, whereas under the Union's proposal starting in 2006 the minimum accrual level increases to 760 hours, and in 2007 increases to 800 hours. Second, the Union's proposal provides that eligible employees will be paid 50% of all hours accrued at the time of retirement, unlike under the existing language a specified number of hours are paid out depending upon whether the employee has 20, 25 or 30 years of service at the time of retirement. Third, under the Union's proposal in order to be eligible to receive the benefit an employee must have at least 25 years of service with the Village, whereas under the existing language an employee with 20 years service at the time of retirement is eligible to receive the benefit.

There is no question that employers have provided monetary incentives over the years to stem the unnecessary use and/or abuse of the sick leave benefit. It is true as the Union argues that the under the existing language the monetary incentive not to use or abuse sick leave ceases to exist once the employee accrues 720 unused hours because the number of hours paid out to the employee at retirement, once the eligibility threshold has been reached, is the same. Thus, whether an employee has accumulated 720 hours or a

1000 hours of unused sick leave at the time of retirement he/she receives the same pay out of sick leave income. The only factor affecting the level of income paid out under the existing language is the employee's length of service. Therefore, the Union's proposal addresses the issue of providing an incentive not to unnecessarily use and/or abuse sick leave regardless of the hours the employee has already accrued because under the Union's proposal the employee is paid out a percentage of all hours accrued/ unused. This, in the undersigned's opinion, is positive in so far as discouraging sick leave use and abuse. Obviously, the Union would be correct in its assertion that its proposal would improve productivity if adopted and it had the effect of reducing any unnecessary use and/or abuse of sick leave in the Department. It seems to the undersigned that Union's proposal also contains somewhat of a *quid pro quo* in that it raises the eligibility threshold from the current 720 hours to 800 over the term of the agreement.

The Union has done an extensive cost analysis of the impact of its proposal based upon several assumptions, which may or may not be reasonable. The undersigned is not able to determine if they are correct. Thus, this type of change is best achieved through mutual agreement rather than imposition by a third party. That way the issue of a *quid pro quo* can be addressed, if in fact one is necessary in that on balance the change may be cost neutral or better yet generate an overall cost saving.

The proposal must also be examined in light of both the external and internal comparables. The evidence is that this benefit is the same benefit the Village provides to its firefighters and the police and fire command bargaining units, but for the distinction between fire and police in the number of hours in a work year that are used to determine sick leave accrual rates as well as the maximum number of hours that can be accumulated. This difference explains the difference in number of hours an employee can be paid upon retirement. However, what neither party discussed but which examination of the firefighters contract reveals is that the firefighter's contract also contains a "sick leave incentive plan" which pays employees for not using sick leave. To that extent sick leave is not treated the same between the two bargaining units. However, the sick leave income programs do appear to be the same among the four bargaining units but for the difference accounted for by the difference in the number of hours in a work year. The DPW contract is different in that it deals with this matter in terms of what

appears to be a State retirement system program. However, the record in this case does not indicate that police officers could negotiate with the Village over participation in the same program. If they cannot, then the DPW unit does not afford a true internal comparable because of different statutory schemes impacting this benefit.

The record evidence with respect to the external comparables shows that there is no uniformity as to how others have dealt with this benefit. While the comparables provide such a benefit to their police officers the specifics of the programs vary considerably and to such an extent that it is impossible to conclude that they support selection to the Union's offer here.

For the foregoing reasons the undersigned selects the Village's final offer regarding Article 26.6 that maintains the existing contract language.

7. SPECIALISTS POSITIONS COMPENSATION (Article 28):

The Village's final offer adds three new specialists positions and increases the level of compensation for the three existing specialists.

Detective	\$1600.00 annually (\$1750 effective May 1, 2006)
Evidence Technicians	\$900.00 annually (\$1000 effective May 1, 2006)
Field Training Officers	\$1200.00 annually (\$1325 effective May 1, 2006)
Crime Prevention Officers	\$900.00 annually effective May 1, 2006)
Special Investigations Bureau	\$900.00 annually effective May 1, 2006)
Traffic Officers	\$900.00 annually effective May 1, 2006)

The Union's final offer does not include any increase in the stipend for the Detective, Evidence Technician, or Field Training Officer specialist positions. It creates one new specialist stipend. The Union's final offer proposes the following new language in be added Article 28.

Certified Police Officer Stipend	5.45% of the top step police officer annual base salary (i.e. step 5), and shall be added to the police officer's annual base salary.
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Village has sought to abolish all specialty stipends or substantially reduce the benefit. Thus, the Union believes that the Village's position in this arbitration is disingenuous and pretextual in order to divert attention from the issue of parity with the firefighters.

It is the Union's position that police officers should receive parity pay of the 5.45% stipend by the third year of this contract. In the firefighters contract the firefighters who are paramedics receive a stipend of additional compensation in the amount of 5.45% of the top step firefighter annual salary. Also, all new firefighters are required to possess and maintain a paramedic certification, except those firefighters who were employed by the Village prior to this requirement coming into effect in 1986. Effectively, over the next several years due to retirements and separations all firefighters will be certified as paramedics, yet they may never serve in the capacity of paramedic.

The Union also contends that both the firefighter and police officer are required to maintain on going education in order to maintain their certification and qualify for the stipend. Furthermore, police officers use their specialty training on a frequent or daily basis which is in sharp contrast to a firefighter who may only occasionally utilize paramedic training depending upon their assignment.

The Union asserts that historically firefighter and police officers have had the same base pay but the stipend was never included in this compensation. Based upon the history of this benefit and the way it is being applied to the base wages of firefighters and the additional skills being required of police officers the stipend now needs to be applied to police officers.

The Union also contends that the data for the comparables shows that out of the 16 known comparables police were paid more in nine of them and firefighters paid more in 7 of them. Thus, there is clearly no pattern among the comparables that would support maintaining the status quo in this bargaining unit.

The Union argues that while the Village asserts the firefighter stipend is some sort of specialty pay it is not because there is no requirement that the firefighters actually perform paramedic duties only that the certification is obtained and maintained. Whereas, specialty positions such as Detective and Evidence technician are performed by officers whose primary function is to serve and perform those specialty duties. Also in the last interest arbitration in this bargaining unit the Village argues extensively as to the

necessity of wage parity, but nowhere in its argument did the Village make reference to the paramedic stipend which the Village knew was calculated into the firefighter base wage. The Village's argument that there has always been parity between the police officer and firefighter is simply not true. However, the stipend was never taken into account.

Last, the Union argues that the data shows that the sheer volume of service calls handled by the Police Department far outnumber those handled by the Fire Department, not to mention the safety considerations constantly faced by police officers.

For all the foregoing reasons the Union believes the undersigned should select the its final offer to amend Article 28.

The Village on the other hand argues that since the Union has not presented any compelling justification or a *quid pro quo* for dramatically changing the specialist position compensation article, the arbitrator should accept the Village's final offer on this issue. It argues its offer is a natural out growth of negotiations that would increase the compensation for the three existing specialties and provide compensation for three new specialties. The Village contends that the arbitrator must give serious consideration to the issue of a *quid pro quo* and it is its position that the Union has neither justified the need for the change in the status quo nor has it offered a *quid pro quo*. Thus, the arbitrator should reject the Union's final offer.

The Village also contends that the 5.45% increase to the base pay of substantially all bargaining unit members predicated solely upon the long standing paramedic stipend provided to firefighters is totally without merit. The fact that firefighters who are paramedics is not news in that it dates back to at least 1990 and thus this bargaining unit has been aware of this fact for more than 15 years. Significantly, during that period of time the parties have negotiated multiple collective bargaining agreements and none of them has included a stipend predicated upon the firefighter paramedic stipend. The Village argues and cites an interest arbitration award where the arbitrator concluded any wage deterioration was something the parties realized or should have realized when they mutually arrived at their settlements. The village contends that is the case here and only the last contract went to interest arbitration whereas the others were arrived at voluntarily. The Village contends that even though this case involves internal comparability whereas

the awards it has cited deal with external comparability the same principles should apply in both cases.

The Village also asserts that the sheer magnitude of the cost of the Union's so called "certified police officer stipend compels its rejection. The Union's proposal to phase in the increase over the term of the contract provides that the stipend would be 1% in 2005 and assuming that 80% of the police officers were to be eligible it would cost \$54,126 in 2005 and escalate to \$315,989 by May 1, 2007. Because there is no compelling reason for such an expenditure and the fact that it is not supported by the external comparables the arbitrator should reject the Union's offer. Arbitrator Cox in 2003 rejected a substantially similar increase just for detectives and non-patrol officers because of the cost.

The Village contends that the Union's 5.45% stipend is nothing more than an artificial construct designed to provide an additional 5.45% of the top step to substantially all members of the bargaining unit. The requirements set out by the Union to qualify for the stipend are something that every new police officer must attain within a year or so of becoming a Schaumburg police officer. The bachelor degree requirement has been a requirement to be employed in the Village since 1997. So the stipend requirements do nothing more than capture the requirements to be a police officer in Schaumburg.

On the other hand the Village's proposal is an outgrowth of what occurred in negotiations. The Union in those negotiations proposed the exact three new specialties that the Village has now proposed in its final offer and therefore should be adopted. On the other hand, the Union's proposal is not a natural outgrowth of those negotiations. Also, the Village's final offer provides specialty compensation for an additional 21 officers at a cost of \$19,000 per year and increases the compensation for detectives by 9.3%, field training officers by 10.4% and evidence technicians 11.1%. The package cost of the Village's offer is approximately 1/4%.

Last, the Village argues that there is no support among the external comparables for the Union's final offer whereas the external comparability data does support the Village's final offer. Of the nine external comparables five do not pay anything extra to detectives and six do not pay anything extra to evidence technicians. Also, eight of the nine comparables do not pay anything extra to traffic officers, special investigation

bureau officers or crime prevention officers as the Village's final offer does. Furthermore, there is not external comparable support for the Union's "certified police officer stipend". Two jurisdictions pay an extra amount for a "master police officer" the amounts pale in comparison to the Union's 5.45% final offer. And, seven of the nine jurisdictions do not have a master police officer classification or anything resembling such a classification.

Award:

The undersigned appreciates the Union's concern that the historical parity relationship in terms of base wages has been eroded by the paramedic stipend paid to firefighters. The Village has placed heavy reliance on the parity argument to support its wage offer and the undersigned has relied upon the concept of parity in selecting the Village's final offer on wages. So if in fact the paramedic stipend should be considered as part of the firefighter base wage that would be a significant factor if not controlling factor supporting the selection of the Union's final offer in this instance. However, the record evidence necessary to establish this point is to say the least incomplete.

The language of Article 8 of the firefighter contract indicates that there is more than one classification of firefighter with possibly differing levels of pay or add-ons/premiums which might equate to the police officer specialty stipends, but it is impossible to conclude that from the contract language alone. No wage rates or classifications are published in the firefighter contract that is in evidence in this case. Also, firefighter contract contains a side letter with language regarding "specialty training areas, but there is no indication of whether additional compensation is paid to firefighters who have attained the specialty.

Also, the existing police officer specialty stipends appear to be tied to actually performing certain responsibilities whereas the Union would have me believe that not all firefighters receiving the paramedic stipend actually are assigned paramedic duties. That would be a significant factor if the evidence substantiated it, but again there is no record evidence substantiating the assertion.

The Village argues that the firefighter paramedic stipend has been in existence since at least 1990 and that the Union has negotiate several agreements since that time and never sought to negotiate a stipend predicated upon the paramedic stipend. While at

first blush this argument has some persuasive value it would have little, if any at all, if there was evidence that the paramedic stipend has evolved over the intervening period into what the Union now claims has become part of the base wage unrelated to assignment(s) that require the use of the paramedic qualification.

Evidence regarding stipends existing among the external comparables, in the undersigned's opinion, has no persuasive value in determining the outcome here because the issue and circumstances are unique to this bargaining unit and this employer.

The Village's offer increases amount to be paid for the existing specialist classifications during the term of the agreement. It also creates three additional specialist positions for which it will pay a stipend. The Union's proposal provides no additional compensation for the existing specialist positions and instead creates the "certified police officer" position.

The Village argues that the qualifications to becoming a "certified police officer" merely mirror the already existing qualifications to be hired in the first place and maintain employment as Village police officer. However, that would be no different than what happens in the Fire Department if the Union's assertion was proven that in order to be hired as firefighter one has to be certified as a paramedic for which they then receive the paramedic stipend.

Clearly, the Union has not made its case for the "certified police officer" stipend that it proposes for the reasons discussed above. Therefore, the undersigned selects the Village's final offer that amends Article 28.

8. BUREAU VACATION SIDE LETTER.

The Union's final offer proposes to amend the existing side letter on vacation scheduling as follows:

~~"On an experimental basis during the term of the 2002-2005 agreement, Three (3) employees per bureau will be permitted to be off on vacation at the same time, provided that not more than one (1) employee per squad shall be permitted to be off on vacation at same time. Prior to the time for making furlough picks for a given calendar year, the Director of Police will advise the Chapter if he is willing to continue the provisions of this Side Letter for that calendar year.~~

The Village's final offer on this item is to only amend the dates to be 2005-2008.

The Union argues that historically there has been a side letter dating back to 1998 that three employees per bureau were allowed to be on vacation at the same time, provided that only one officer per squad would be permitted to be off on vacation at the same time. The Department is divided into three separate bureaus (shifts) and each bureau is divided into three squads. This process allows for two squads to be on duty and the third squad would be off, and this allows three officers to be on vacation at the same time – one per squad. Then in 2005 the Director decided that he was not willing to continue the practice and without discussion with the Union reduced the number to two. No rationale was ever provided to the Union for the change leaving the Union to surmise the change was the result of the deteriorating relationship between the parties. The Union therefore believes its final offer should be selected so this cannot be used as punishment.

The Union contends that the three-employee vacation rule was effective and did not cause any hardship and therefore the side letter should be codified in the body of the contract. The current system of only allowing two employees to be off on vacation at the same time results in there being inadequate vacation picks available. Under the old system when one officer per squad could be on vacation at the same time only two officers would be off work on any given day because the third employee would be on his/her squads regular day off.

The Village contends the arbitrator should select its final offer because the Union has not met its burden to substantiate the need to limit the discretion of the Director of Police in Scheduling vacation. During the term of the prior contract the Director exercised his discretion and determined that not more than two bureau employees should be scheduled off at any one time. There is no evidence to establish that bureau employees have been unable to schedule vacation because of this limit. It is the Village's desire to spread out vacations throughout the year so that there are not wide swings in the number of employees off at any time. And, although neither party submitted any external comparability data with respect to the side letter an examination of the comparables contracts shows that nearly all give the employer the right to limit the number of employees who may be off on vacation at any one time. For these reasons the Village believes its final offer should be selected by the undersigned.

Award:

Examination of the DPW, Firefighter and Fire Command contracts reveals that discretion is expressly reserved to management regarding the granting of vacations including the number of employees that may be on vacation at any given time. The language in the DPW contract provides:

“Reasonable management discretion will be exercised in the granting of vacation days”.

The Firefighter collective bargaining agreement provides:

“It is expressly understood that the final right to designate the vacation period and the maximum number of employees who may be on vacation at any one time is exclusively reserved by the Fire Chief in order to insure the orderly performance of the services provided by the Village”.

The Fire Command collective bargaining agreement contains the following language regarding vacation scheduling:

“It is expressly understood, however, that the final right to designate the maximum number of employees who may be on vacation at any one time is exclusively reserved by the Fire Chief in order to insure the orderly performance of the services provided by the Village”.

As the quoted language shows there is no internal comparable support for the Union’s proposal to convert the side letter from an experimental exercise into a situation where contractually the Director of Police has relinquished his/her discretion to determine the number of employees who can be on vacation at point in time.

Also, there is no support among the external comparables for doing so either. At least seven comparables have police contracts that provide the Chief has the discretion to determine the number of officers who can be on vacation at any one time.

Maintaining the existing language of the side letter doesn’t remove the possibility that the Director of Police will permit one employee per bureau to be off on vacation at the same time. It does, however, retain management’s ability to determine from year to year whether it will allow one employee per bureau to be on vacation at the same time. The side letter described the one employee per bureau allotment as an experiment. There is no record evidence indicating what the Village’s reasoning was in agreeing to the

experiment, what the results of the experiment have been and if there is evidence that the experiment was a success, and therefore, a basis for making the arrangement permanent.

For these reasons the undersigned selects Village's final offer to retain the existing language of the Vacation Side Letter.

Non-Economic Issues

1. PURGING WRITTEN REPRIMANDS:

The Union's final offer contains a proposal to add new language, Section 12.3 in the collective bargaining agreement.

“An employee may request that a written warning be removed from the employee's record if, from the date of the last reprimand, twelve months have passed without the employee receiving an additional reprimand for the same or similar offense or a suspension without pay. If the employee does not request, it shall be deemed to be removed. Notwithstanding the above, nothing herein shall be deemed to preclude or prohibit the introduction of any such written reprimands in disciplinary proceedings before the Board of Fire and Police Commissioners or as part of the promotion process, except that after three years from removal such written reprimand shall not be introduced before the Board of Fire and Police Commissioners or used as part of the promotion process.

An employee may file a grievance in accordance with the provisions of this Agreement with respect to an oral or written and said grievance may be processed up to and including Step 3, but any such grievance shall not be arbitrable.”

The Union argues in its brief that its final offer is merely seeking to maintain the status quo regarding the purging of written warnings by taking the language from a side letter and incorporating it into the contract. It also asserts that its proposal would bar written reprimands from being considered as “aggravation” in disciplinary hearings after three years from removal of the reprimand from the employees personnel file. It contends that currently such reprimands can follow an officer throughout his/her career and can be used against an officer in disciplinary and promotion processes. The Union believes the officer should be given an opportunity to rehabilitate himself/herself after an

infraction. It contends that similar restrictions have been in place in contracts dating back to the 1980's. The Union believes the current situation results in an unfair prejudice to an officer when the most minor form of discipline is allowed to follow an officer throughout his/her career.

The Village argues that the Union's proposal should not be selected for several reasons. First, in prior negotiations as the Union admitted that even if a written reprimand had been purged from the employee's personnel file it still could be introduced before the Board of Fire and Police Commissioners (BFPC) regardless of how long it had been purged from the employee's personnel file. And, the Union did not introduce any evidence of changed circumstances that would justify altering the parties' previous understandings. Second, the Union's offer is one sided in that it would bar use of written reprimands three years from their removal from the personnel file but the Union acknowledges that there would be no bar to introduction of letters of commendations regardless of when they were received. The Village also argues that even if the Union offer is rejected it could still argue before the Board as is done in grievance arbitration that the old written reprimands should be given little if any weight. Third, it believes the Union's proposed language would undercut the authority of the Board as there is already language in Article 13, Fire and Police Commission, that provides

“ Nothing in this Agreement is intended in any way to replace or diminish the statutory authority of the Fire and Police commission”.

For these reasons the Village concludes the jurisdiction of the BFPC should not be altered or changed by virtue of a contractual provision such as the Union proposes.

Award:

In considering the Union's offer the first thing that becomes apparent is that contrary to parties stipulation at the commencement of the hearing that page 49 had been removed from the copy of the 2002-2005 agreement placed in evidence the language of side letter appearing in the parties' 2002-2005 collective bargaining was nonetheless mistakenly included in the Union's exhibits in a section entitled "Tentative Agreements". The following language appears in that side letter and explains why the document was not to be presented to the undersigned.

“This Side Letter may not be cited or referred to by either party in any impasse

proceedings involving the terms of the successor collective bargaining agreement to the parties 2002-2005 collective bargaining agreement.”

Thus, even though the undersigned has viewed the document as part of his examination of the documentary evidence presented at hearing, it is clear from the language of the Side Letter itself and the parties stipulation at hearing that they have agreed the undersigned’s decision on this issue should not be influenced by the existence of the Side Letter. I will honor that agreement and base my conclusions regarding this issue without regard to the prior Side Letter or any reference in the documentary evidence or argument to it.

The Union also adduced evidence that since at least 1984 and prior to 1999 written reprimands “may be removed from your file, upon your written request, after a two year period with no violations of a similar nature”. Then apparently, in 1999 the “two year period with no violations of a similar nature” was changed to “one year”. The Union argues that its proposal merely contractualizes the practice, but acknowledges that its proposal goes farther. It would bar consideration of written reprimands by the BFPC in the aggravation phase of its consideration of discipline imposed against an officer as well as in any promotions under its consideration if more than three years had elapsed since the reprimand had been removed from the employee’s personnel file.

First, there no evidence was adduced in this proceeding setting forth the Fire and Police Commission’s jurisdiction from which the undersigned could determine whether adoption of the Union’s proposal would undermine its jurisdiction as the Village has argued. Consequently, there is no basis for me to conclude that the Village’s argument is meritorious and the undersigned’s selection of the Union’s final offer would establish what in essence would be an illegal provision. If such an issue does exist then that must be resolved in another forum

There also was is no record evidence regarding how written reprimands are treated in the Fire Department as that Department also falls within the BFPC’s jurisdiction. Consequently, the record in this case makes it clear that this policy regarding written reprimands is unique to the Police Department. Also, there has been no argument presented regarding how written reprimands are dealt with among the external comparables.

Thus, the question is whether this proposal is a reasonable one without regard to how they are dealt with among the internal or external comparables. I concur with the Union's conclusion that if an officer has corrected his/her behavior after receiving progressive discipline in the form of a written warning for a violation of department rules such that he/she has not repeated the violation again over the next year that the employee has demonstrated he/she has learned from his/her mistake, which is the purpose underlying the use of corrective progressive discipline. And, therefore, that discipline should not be considered in disciplinary or promotion matters more than four years after the discipline was imposed and subsequently removed from his/her personnel file. The Village correctly points out that the Union/employee could argue to the BFPC that it should not accord such past discipline any weight in its deliberations, but why should the employee be prejudiced for the indefinite future by having such low level discipline presented for the BFPC's consideration in the first place. If the parties have seen fit over the years to allow such discipline to be removed from the employee's personnel file after a period they have deemed sufficient to demonstrate the discipline has accomplished its purpose then why should be an appropriate consideration of the BFPC four or more years later? The Village has not presented persuasive reasons for why such discipline should be provided to the BFPC for its consideration.

Therefore, the undersigned selects the Union's proposal on non-economic issue dealing with written reprimands.

2. DRUG TESTING (Article 30)

The Village's final offer contains a proposal to amend the existing language of Article 30, Drug and Alcohol Testing to provide for random testing beyond that which is authorized by statute. The Union's position on this issue is to retain the status quo language.

The Village's proposal is to replace the existing first paragraph of Article 30 with the following language:

“The Village may require an employee to submit to urine and/or blood tests if the Village determines there is reasonable suspicion for such testing, and provides the employee with the basis for such suspicion in writing at or about

the time the test is administered. If the written basis is not provided prior to the actual test, a verbal statement of the basis will be provided prior to administering the test. In addition, effective January 1, 2007, the Village may conduct random drug and alcohol testing up to four times per calendar year. The total number of such random tests shall not exceed 25% of the total number of sworn bargaining unit employees. The selection of employees to be randomly tested shall be provided by the outside contractor that the Village uses to randomly select the employees who are to be tested.”

Adoption of this proposed language would result in the deletion of the following language appearing at Article 30 in the 2002-2005 agreement:

~~“Providing that random testing shall be limited to employees who are regularly assigned to special assignments (including temporary full-time assignments) relating to narcotics and only during the period of time they are so assigned and any random testing shall be limited to testing for prescribed drugs.”~~

Therefore, the effect of the Village’s proposal is to substitute complete random testing for limited random testing related to employees “regularly assigned to special assignments”.

The Village argues that the courts have upheld the constitutionality of such random drug and alcohol testing of police officers. It also contends that there is internal comparability that provides substantial support for acceptance of the Village’s offer. It points to the Village’s collective bargaining agreement with this same Union for its Command Officers. It notes that the Command Officers collective bargaining agreement language on random testing resulted from Arbitrator Briggs accepting the Union’s final offer on the issue. It also argues that the Arbitrator Cox’s award in this bargaining unit where he rejected essentially the same contract language, in light of the Command Staff contract language, should be considered an aberration and should not be given any weight in this proceeding. The Village also asserts that although only two of its external comparables have language in their collective bargaining units, Elgin and Streamwood, the Village’s contract with this unit’s internal comparable the Command Staff should trump external comparability on this issue. It also believes that Arbitrator Leroy’s award in City of Kankakee and FOP Labor Council (3/24/2000) wherein he adopted the Employer’s proposal for random testing twice per year and rejected the Union’s

comparability argument because of the “very limited nature of this testing program”, supports adoption of its proposal.

The Union on the other hand urges the undersigned to reject the Village’s proposal and retain the status quo. It takes issue with the Employer’s characterization that the random testing in the Police Command officers contract was the result of an award by arbitrator Briggs, and argues that it was the result of a mutual agreement between the parties. Also, it contends it is not attempting to redact any language in the prior contract that permits random testing in certain specialty assignments and upon reasonable suspicion. It asserts that the Village attempted to have arbitrator Cox in the last bargain adopt its proposal for essentially the same proposal it now makes in this bargain and the arbitrator rejected the Village’s proposal. It also, contends that the only one of its external comparables that is permitted random testing of officers is Elgin, whereas the remaining comparables only permit reasonable suspicion testing. The Union concludes that the undersigned should reject the Village proposal and maintain the status quo.

Award:

Arbitrator Briggs February 14, 2002 award in the Police Command Officers bargaining unit for the 2001-2004 contract did adopt the Union’s proposal for random drug testing which mirrors the Village’s proposal in this bargaining unit that is before the undersigned. However, because there is no rationale for why arbitrator Briggs selected the proposals he did, in the undersigned’s opinion his award was a reflection of a voluntary agreement reached by the parties that they requested the arbitrator to incorporate into what amounted to a “consent award” – an award agreed to by the parties. Therefore, I agree with the Union’s assertion that the random drug testing language that first appeared in the 2001-2004 Police Command Officers contract was the product of a voluntary agreement between the parties.

One of the Village’s proposals for the 2002-2005 collective bargaining agreement for this bargaining unit was similar if not the same it proposes again for this contract. It is impossible to determine the exact language of the proposal because the Arbitrator Cox did not quote it in his award. Cox did not select the Village’s proposal to expand the scope of the existing limited random testing contract language because he did not find support for doing so among the external comparables and “lack of evidence that there

have been any drug problems or operational circumstances involving personnel in this Unit not presently subject to testing”.

There is no evidence of changed circumstances since the Cox award of three years ago. The Village does not argue that random testing has been adopted by any additional external comparables and it still believes, as it did the prior bargain that the internal Command Staff comparable should control in consideration of its proposal. While I would agree that internal comparables carry significant weight in any analysis of which offer to select, as I have previously discussed, I am unable to discern from this record the circumstances that led to the parties agreement to adopt such a testing requirement in the Command Staff bargaining unit. For example, was there a *quid pro quo* involved, or had there been problems in that bargaining unit that established the need for adopting such a program. Here there has been no evidence adduced that problems have resulted from the Village only having the ability to randomly test among certain specialty assignments in this bargaining unit. Thus, in the undersigned’s opinion, the Village has not presented a persuasive case for the adoption of its proposal. It presently has the ability to randomly test under certain circumstances and there has been no evidence presented showing that it exercised that option and the results of such testing, when conducted, suggested that there is a problem with drug and alcohol usage among bargaining unit members such that random testing of the entire bargaining unit is warranted on the basis of public safety concerns or otherwise. Thus, record in this case does not persuade me that there currently is a problem that needs to be addressed and that such a problem supports a need to implement such a program at this time.

Therefore the undersigned selects the Union’s final offer that leaves the existing language of Article 30.

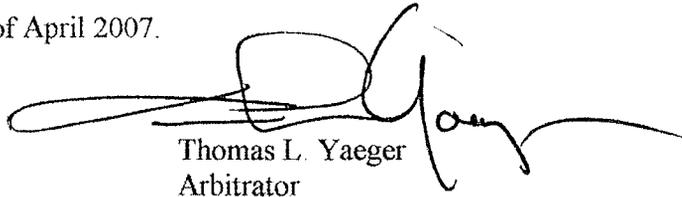
AWARD

After giving due consideration to the statutory criteria to be used in evaluating final offers (ILCS 315/14), as well as the exhibits, testimony, and arguments of the parties, I have selected the Village’s final offer on economic issues 1. Wages, 2 Compensatory Time (Section 14.3), 5. Health insurance, Flexible Benefits Plan (Section 25.1), 6. Sick Leave Income (Section 26.2), 7. Specialists Positions Compensation

(Article 28), and 8. Bureau Vacation Letter. I have selected the Union's final offer on economic issues 3. Court time (Section 14.7), and 4. Vacation Personal Days (Section 24.1), and non-economic issues 1. Written Reprimands and 2. Drug Testing Article 30.

The parties' 2005-2008 collective bargaining agreement shall reflect the undersigned's selection of the final offers on the stipulated economic and non-economic issues, as well as those items on which the parties have reached tentative agreements.

Entered this 14th day of April 2007.



Thomas L. Yaeger
Arbitrator