

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

OPINION AND AWARD

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IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**THE VILLAGE OF BENSENVILLE**  
("Employer," "Village" or "Management")

AND

**THE METROPOLITAN ALLIANCE OF POLICE,  
BENSENVILLE POLICE CHAPTER #165**  
("Union" or "Bargaining Representative")

ISLRB NO. S-MA-05-104

Arb. Case No. 05/002

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**Before:** Elliott H. Goldstein  
Sole Arbitrator by Stipulation of the Parties

**Appearances:**

**On Behalf of the Union:**

Thomas P. Polacek, Attorney  
Bruce Nichols, Union Representative  
Thomas James, Union Representative

**On Behalf of the Employer:**

Carl Tominberg, Attorney  
James Johnson, Village Manager  
Frank Kosman, Chief of Police

**I. INTRODUCTION**

In a January 12, 2005 letter, attorney Thomas P. Polacek notified the undersigned of his selection as Arbitrator in an interest dispute between this Village and the Union. An interest arbitration hearing was scheduled for Wednesday, April 6, 2005 and was held at the Village Hall, Village of Bensenville, 12 South Center Street, Bensenville, Illinois, commencing at 9:00 a.m.

At the outset of the evidentiary hearing on April 6, 2005, the parties stipulated as to my authority pursuant to the Illinois Public Employees Relations Act, 5 ILCS 315/1, as Amended, and seek (hereinafter referred to as the "Act"), sitting as Chairman and sole member of the Arbitration Panel, to hear and decide this case on the merits. The parties also submitted their final offers with regard to all outstanding issues pertaining to this dispute and also stipulated that the issues presented in this case are all non-economic as that term is understood under the applicable provisions of the Act.

As a result, the parties agreed, my authority is not limited to a selection of either party's "last, best offer", as would be the case for economic issues under the provisions of the Act; furthermore, the parties stipulated that in deciding the outstanding issues in this matter, I am to base my "findings, opinions and order" on the applicable factors set forth in Section 14(h) of the Act, as well as any interest arbitrations and decisions of the Illinois Labor Relations Board that may constitute

relevant precedence in interpreting these statutory factors.

At the hearing of the merits, the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. As has become customary in the presentation of the evidence in interest arbitrations in the State of Illinois, pursuant to the above-mentioned Act much of the evidence came in by way of oral presentation by counsel for this Village and Union, respectively, and their references to the documentary evidence admitted into the record, including 8 exhibits proffered into the record by the Union and 30 exhibits proffered into the record by this Village, all of which I formerly admitted into evidence at the conclusion of the evidentiary hearing in this matter.

A 166-page stenographic transcript of the interest arbitration hearing was made. At the hearing, the parties summarized their respective positions orally, chose not to file post-hearing briefs, and the date for issuance of this Opinion and Award was set and subsequently extended, so that the final date for the arbitrator to render this Opinion and Award was ordered to be August 25, 2005.

## **II. BACKGROUND**

The facts of record establish that this Village is located in northeastern Illinois in what is commonly referred to as the Chicago land area. Specifically, the Village of Bensenville is in close proximity to the O'Hare International Airport and, at several points, is actually adjacent to O'Hare Airport. Its governance is

conducted by a Mayor and Village Board, the record evidence further shows. The Village employs 35 sworn officers, six of whom are sergeants, in addition to Police Chief Cosman. The six sergeants are in a separate bargaining unit, represented by Teamsters Local Union No. 714. There is a current collective bargaining agreement covering the sergeants' unit, effective May 1, 2003 to April 30, 2006.

The record further disclose that there are firefighters employed by this Village and that they are covered by a bargaining unit represented by a local of the International Association of Firefighters (IAFF). The parties have indicated that the Village and the firefighters' labor organization were, at the time of the interest arbitration hearings in this case, still in negotiations for a collective bargaining agreement.

The evidence of record also discloses that this Union M.A.P. Chapter 165, represents a bargaining unit of 29 sworn police officers and has represented this police unit for a number of year.

The parties further agree that there have been several collective bargaining agreements between these parties covering the terms and conditions of employment of the sworn police officers represented by M.A.P. The most recent collective bargaining agreement prior to the current labor contract between the parties expired midnight May 1, 2003 and was replaced by the current agreement, which was agreed to on November 4, 2003, retroactive to May 1 (Er. Exs. 10-11; Union Ex. A).

The instant case raises several difficult and unusual questions with respect to the actual issues before me and their proper resolution, but the essential facts are not in dispute, I note. Perhaps the most salient fact is that in the late fall or early of 2001, the Village made a decision to adopt a new "public safety initiative" which involved the incorporation of police and firefighters being transformed into "public safety officers (PSOs)".

The basic idea is that police officers should be cross trained to act as "first responders" in situations that would normally require a firefighter or an emergency medical technician (EMT) and firefighters would be similarly cross trained to act as peace officers under certain circumstances, the Village asserts. This idea, according to the Village, germinated because of the terrorist attacks of September 11, 2001. In response to the changed circumstances and perceptions after "9/11", the Village, concerned over its proximity to O'Hare International Airport and the potential for a serious involvement of its safety forces in the event of some sort of terrorist action at O'Hare Field, concluded that the overall efficiency and capability of its entire safety department would be enhanced by this significant change in the traditional roles of sworn police officers and firefighters.

Certainly by March, 2002, the Bensenville "Public Safety Program" was held out to the public as established policy and also was made part of an announcement soliciting applications to become

a police officer in this Village. (Er. Exs. 1-2). For example, as part of the March 6, 2002 job solicitation announcement for police officer, it was stated that new candidates for employment "must receive certification as Police Officer, Firefighter II and EMT-B to successfully complete their 18 months probation." This job announcement continued with the statement that "police officers may be assigned to a variety of Public Safety duties including fire and police activities." (Ers. Ex.2).

As both parties clearly acknowledge, this decision had far reaching ramifications for the negotiations that preceded the current collective bargaining agreement. First, there are only two other municipalities in Illinois which currently have a similar integrated public safety program utilizing "public safety officers" in the manner contemplated by this Village, namely, the villages of Glencoe and Rosemont, two other Chicago land municipalities, although the City of Peoria at some point in the recent past also had a similar program.

Although it is the Village's assertion that the sergeants' bargaining unit represented by Teamster Local 714 bought into the idea relatively quickly (especially when a 12% premium in pay above the across the board pay scale for sergeants was agreed to for their current contract) and although it is unclear what the precise position of the firefighters bargaining unit and the IAFF has been from the evidence on this record, there is absolutely no doubt M.A.P. Local 165 and the bargaining unit employees it represented

at first totally rejected the whole idea of the public safety initiative out of hand when the idea was first brought up, the evidence also establishes.

Indeed, as part of the collective bargaining process for the now-current contract, this chapter of M.A.P. fought the concept of sworn peace officers being trained and assigned to any duties that require a Firefighter II or EMT-B for most of the negotiations for the current contract, i.e., from mid-2002 until October, 2003, the evidence of record discloses. The bargaining history also reveals that the negotiations went beyond the prior contract's expiration date of midnight, April 30, 2003, I further note. Moreover, because of the sharp difference of opinion over the changes that Management desired as part of its Public Safety Initiative, the parties also noted at hearing that, effectively, this can be characterized as one of active warfare between the Union and Village based on the difference of opinion over whether police officers could be mandated to become public safety officers, with firefighter and EMT duties in the normal course of events.

Both parties went to great pains to detail at the hearing of this matter just how bitter and intense the disagreement over the propriety of Management's establishing of Public Safety Initiative became. The parties agree that unfair labor practices were filed by this Union with the Illinois Labor Relations Board, based on its belief that the Employer was implementing changes concerning the basic duties and working assignments of bargaining unit members,

surely mandatory subjects of bargaining under the Act, unilaterally and without good faith negotiations with M.A.P.

The Employer, in turn, believed it had a right to at least hire and train individuals after the above-noted public announcement as Public Safety Officers (PSOs), trained to be certified under the requirements of the State of Illinois both as sworn peace officers and as Firefighter II/EMT-B, since these new hires began their employment under the PSO rubric and requirements.

The ILRB agreed with the Union's contention that the Employer made unilateral changes in the terms and conditions of employment of the employees in the M.A.P.-represented police bargaining unit and thus found that this Village had committed an unfair labor practice by disregarding its duty to negotiate over a mandatory subject of bargaining, namely, the broad concept and details of any changes in duties of police officers under the Public Safety Initiative.

This Village therefore challenged the Union's charges and ILRB findings of an unfair labor practice in court. Both sides demanded injunctive relief, apparently, although none was granted for any aspect of this litigation. Meanwhile, there was wide spread media coverage of the acrimonious negotiations and litigation and very public displays of conflict between the Village and M.A.P. Chapter 165 from the start of the negotiations for the current contract until at least October, 2003, the evidence suggests.

According to the Employer, one of the major stumbling blocks throughout the negotiations for the current contract, at least

prior to October, 2003, was M.A.P.'s insistence that any changes from normal or traditional police officer duties for employees in this bargaining unit had to come in exchange for a big increase in their pay.

The Village, on the other hand, maintained that the bargaining unit members pay already was high when judged by the pay rates in comparable communities. It consistently offered no premium in compensation in exchange for its demand that the members of the bargaining unit "endorse and support" the Village's proposal to cross train its public safety personnel (police and fire). This was despite the fact that Management, at that time, agreed to pay its teamster-represented sergeants' unit a 12% premium, above scale, to support the Public Safety Initiative for each sergeant, but only when that sergeant obtained a Firefighter II certification (9%) and a EMT-B certification (3%) and assumed additional duties in accordance with those certifications, the Employer stated.

It is also the position of Management that in early October, 2003, a breakthrough in the stalemated negotiations between the Village and this Union occurred when Management agreed to offer the identical compensation package to its police officers as it had agreed to with its Sergeants. Specifically, the offer for a 12% pay premium to the members of this bargaining unit was predicated on several undertakings by this Unit, the evidence indicates.

First, the offer was conditioned on the members of the bargaining unit endorsing and supporting the Village's public

safety initiative. Second, Management demanded a specific agreement be placed in the labor contract that the Village "may utilize members of the bargaining unit in the capacity of 'public safety officers', and may train and assign bargaining unit members to firefighter and EMT duties, subject to the terms [of the labor contract]."

Third, in order to obtain the 12% pay differential over scale, an officer would be required to obtain a certification as a Firefighter II and as an EMT-B (9% for the Firefighter II certification and 3% for the EMT-B certification, which are the identical terms in the Sergeants' labor contract).

As the record stands, it is somewhat unclear in precisely what sequence some of these demands were formulated by the Employer and presented to this Union. This is so because, at hearing, the Employer sought to introduce rejected Employer Exhibit 7, an "off the record" proposal by the Union presented to Management on October 13, 2003, as well as testimony concerning the details of that off-the-record "M.A.P./Bensenville Issues List." Upon objection by the Union, I ruled that the document and proffered testimony were inadmissible, despite the Employer's strenuous argument that the information was needed for a fair and full understanding of the context of the negotiations leading to the current labor contract between these parties, as well as the details about how the resolution of the impasse over the public service initiative came to be achieved.

Since I believed that "off-the-record" means precisely that, I did not change my ruling on that issue. As the Union has argued, although the specific interchanges on October 13 and 14, 2003 between the parties may not be absolutely clear as a result of my not admitting the proffered Management exhibit and testimony, still there is ample evidence of the on-the-record exchanges of proposals and counter-proposals so as to form a factual predicate for both parties' differing contentions concerning the bargaining history that resulted in the current labor contract, I note.

What is absolutely clear from the evidence of record is that the Employer's offer of a potential 12% pay premium to members of this bargaining unit identical to that already agreed to by the Sergeants' Unit, for at least 21 bargaining unit members, as well as whatever the Union presented in response in its October 13, 2003 off-the-record proposal resulted in the Employer making an offer on October 14, 2003, concerning its public safety initiative, as part of a draft Memorandum of Agreement presented by it to the Union that day, which, after further bargaining on some details, became the current Section 10.8 of the parties' contract.

It is also apparent that the agreement on the final language of Section 10.8 cleared the way for agreement on the overall contract. Tentative agreement on the current contract was reached on November 4, 2003, and the contract was finally approved on November 14, 2003, retroactive to Midnight, May 1, 2003, I note. (See Er. Ex. 10; Un. Ex. A).

Because of the importance of Section 10.8 to the resolution of the issues currently presented to me, and because both the Union and the Employer rely on several parts, if not all, of this Section 10.0, the entire section is set forth hereinafter:

**Section 10.8 Public Safety Initiative.**

The members of the bargaining unit endorse and support the Village's efforts to expand and enhance public safety services and to cross train public safety personnel in furtherance of those public safety initiatives. Therefore, the parties agree that, as a result of this Collective Bargaining Agreement, the Village may utilize members of the bargaining unit in the capacity of "public safety officers," and may train and assign bargaining unit members to firefighter and EMT duties, subject to the terms of this Agreement. The parties further agree

that there shall be a minimum of twenty-one (21) officers who will function in the capacity of "public safety officers." These positions shall first be offered on a voluntary basis to members of the bargaining unit on seniority. If the minimum is not achieved, inverse seniority will be applied to fill the required minimum.

Members of the bargaining unit, who are not currently designated as public safety officers, who were hired prior to March 25, 2001, and who volunteer for public safety training agree to use their best efforts to become certified as Firefighters II and EMT-B. All members of the bargaining unit understand they must maintain their certifications, if achieved, and be eligible to perform such duties. Provided, however, those members of the unit hired prior to March 25, 2001, who are not currently designated as public safety officers, may not be disciplined for their good faith failure to complete and/or pass the requisite training nor will they be disciplined because they are unable to perform public safety duties as a result of a bona fide medical condition.

Regarding the public safety initiative, the parties agree to negotiate changes in schedules, operational procedures, minimum training and chain-of-command issues, subject to the provisions of the Impasse Resolution Procedures of the Illinois Public Labor Relations Act. The parties agree to initiate said negotiations within forty-five (45) days of the execution of this Agreement.

The key provision of this case is, of course, the final paragraph of Section 10.8, quoted immediately above. This paragraph sets forth the parties' agreement to negotiate changes in schedules, operational procedures, minimum training and "chain-of-command issues." Additionally, the subject paragraph provided for the parties to initiate these negotiations within 45 days of the execution of the labor agreement which, as noted above, turned out to be November 14, 2003, the evidence establishes.

There is also no dispute that the 45 day time frame was adhered to, since Employer's Exhibit 12 reveals that M.A.P. presented a proposal for a Side Letter regarding "public safety

issues" pursuant to its understanding of the provisions of Section 10.8 on January 6, 2004.

As the above-quoted final paragraph to Section 10.8 contemplated, the parties then began negotiations for what the Union continues to call a Side Letter but what Management chooses to denominate the "set aside issues" still open regarding its public safety initiative.

After the Union's first proposal for the "Side Letter," Management quickly advised in writing that at least 2 issues then currently brought up by the Union seemed outside the matters the parties had committed for later discussion and negotiation under the rubric of Section 10.8, as Management read it.

The first Union proposals revealed themselves to include the four Duty Standards and Provisions about Uniforms. As to the four items the parties clearly committed themselves to negotiate in a Side Letter, or "as set asides", namely, changes in schedule, operational procedures, minimum training and chain-of-command issues, it quickly became evident that the parties as of January, 2004, were very far apart as to both the proper parameters for negotiations on these items and what the just agreed-to provisions of Section 10.8 meant in specific and concrete terms.

Perhaps foremost with respect to the areas of disagreement that became apparent the first exchange of proposals was the parties' completely different perspective on what remained to be negotiated "as set asides". During the negotiations, and indeed at

the arbitration hearing, M.A.P. argues that its commitment to endorse and support the public safety initiative of this Village was limited to its members becoming "first responders" as the sole change in their work status. Their belief is that the intent was the PSOs were to be a supplemental workforce whose certifications did not transform bargaining unit members into firefighters or EFTs, as this Village would have it, M.A.P. insists.

To be a first responder, the Union strongly maintains, permitted members of this bargaining unit now called "PSOs" to be utilized as a supplement to the firefighter and EMT workforce and to fill in the gaps on the scene until regular firefighters or EMTs arrived on the fire ground or at the medical emergency. For those purposes, police PSOs are to be used within the Village limits and never outside the Village, under any mutual aid agreements that may be applicable to the Village's Fire Department. The law enforcement officer would have basic equipment in his or her vehicle and basic skills to help out for that short period of time when the police officer, by virtue of already being on the street, could arrive to help, and that was what M.A.P. foresaw when they agreed to the provisions of Section 10.8, the proposals in the bargaining for the Side Letter presented by M.A.P. clearly reflected.

Specifically, M.A.P.'s proposals for a Side Letter throughout much of 2004 (or at least until that October) contained the following:  
"No specific assignments to a fire department or the fires

station itself for police PSOs; the maintenance of the 8 hour per day normal police officer work schedule; provision for proper training for certification as Firefighter IIs and EMT-B for the members of the bargaining unit who volunteer for public safety training as per the requirements of Section 10.8, paragraph 2; no assignment to drive fire vehicles or operate fire equipment as a fire apparatus engineer (FAE); no requirements for training to become an FAE or obtain a certification to operate fire equipment or similar requirement to obtain a license to drive fire vehicles; and no assignment to any other firefighter duties or tasks."

In the ensuing negotiations, which finally came to span 10 months, until October 13, 2004, the Employer consistently disagreed with each of these propositions, I note. For example, the Village argued that it was improper to place on the table limitations on the Village's right to assign or schedule bargaining unit PSOs, since the "set asides" for bargaining under Section 10.8 and Management did not seek changes in the traditional 8 hour schedule for any PSO by virtue of the "set asides."

Similarly, the Union demand, over time, that the Employer specifically commit to not assigned PSOs to the fire station, did not fall under either the changes in schedule or operational procedure "set asides" and thus was outside the scope of negotiations proper under Section 10.8, the Employer contended.

Moreover, the training proposals of the Union during negotiations were not focused on minimum training, but were designed to prevent Management from assigning PSOs in this bargaining unit for training for FAE certification or to obtain a commercial driver's license so as to permit such an employee to drive a fire truck, the Employer contended.

The chain-of-command proposals proffered by the Union, as the Employer saw it, were designed to limit Management and direction of these PSOs to the police chain-of-command, the Employer also averred. As already explained, the demands for additional restrictions on proper uniform, fitness for duty, and also for manning limitations on PSOs potentially performing firefighter assignments, as negotiations progressed, were all outside the requirements of the "set aside" provisions of Section 10.8, the Village repeatedly asserted.

The drastic differences between this Union and this Employer's beliefs as to the nature of the commitment of both to the safety program initiative caused the stretching out of negotiations for the Side Letter already described, and, essentially, these negotiations to become completely stalled by summer, 2004, the record evidence reveals. Once again, the parties began to engage in litigation, with the Union filing another unfair labor practice charging a refusal to bargain over mandatory subjects of bargaining and unilateral changes in working conditions by this Village.

The Employer, believing it had the authority to assign training for those members of the bargaining unit who had volunteered for PSO assignment beyond training solely for certification for Firefighter II or EMT-B certification, assigned several individuals to receive training as Fire Apparatus Engineers or fire vehicle drivers. Again, no relief was granted and both sides, apparently, appealed some aspects of the resulting Illinois

Labor Relations Board decisions on the various charges to the courts. Throughout, the parties continued to negotiate, the evidence of record reflects.

Despite the Village's disclaimers as regards its obligation to bargain assignment and manning issues, uniforms or fitness for duty questions, offers were exchanged on these items, as well as the other topics mentioned above, especially in September, 2004, the evidence further discloses. After some tradeoffs on chain-of-command and operational procedures, as well as training, a commitment by the Employer to maintain a manning level of at least four police officers on the street at all times was reached in September, 2004. That fact, apparently, among others, triggered a further flurry of negotiations, wherein the Union dropped majority testing as a proposal and several other items relating to limitations on work assignments.

Finally, the parties negotiated a tentative agreement for the "set asides" or Side Letter on October 13, 2004. Each bargaining committee committed to recommend ratification and approval, the evidence of record also plainly demonstrates.

Given the fact of this arbitration, there should be no surprise that when the Union's bargaining committee presented the tentative agreement on the Side Letter just mentioned to the chapter for ratification on November 4, 2004, the membership, by a vote of 16 to 7, voted down the tentatively agreed to Side Letter agreement. It is also to be remembered that, although early

proposals for the "set aside" negotiations had provided for those negotiations being subject to the provisions of the parties' grievance arbitration provisions set forth in Article IX of their labor contract, the final paragraph of Section 10.8, quoted above, as actually contained in the collective bargaining agreement, provides for these negotiations to be "subject to the provisions of the Impasse Resolution Procedures of the Illinois Public Labor Relations Act."

As discussed earlier, it was under these provisions that the current interest arbitration was held to resolve the outstanding issues relating to the negotiations for the Side Letter or "set aside" agreement contemplated by the final paragraph of Section 10.8 of the parties' labor contract.

It was upon these facts that this case came to me for resolution. Also, pursuant to these provisions, the parties entered into the stipulations noted above and presented their respective final offers.

### **III. THE PARTIES' FINAL OFFERS**

#### **A. M.A.P.'s Final Offer**

In its final offer, the Union has proposed that instead of adopting a Side Letter based on the parties' presentation at this hearing, I should directly adopt a modification to Section 10.8 of the parties' contract so as to precisely reflect Union's final offers, as well as the evidence presented at hearing to support these offers, and the statutory factors relevant to this dispute,

as provided under the Act. (Un. Ex. B).

Additionally, the Union presents as another modification to the parties' labor contract its final offer on uniforms entitled Section 12.3 (Un. Ex. C). Alternatively, the Union requests that I adopt these exact proposals as a Side Letter, in the event that it is my conclusion that that vehicle for achieving agreement is required under the unique circumstances which causes this case to arise in the first place.

Specifically, the Union's final offers as presented at hearing are as follows:

Section 10.8 Public Safety Initiative.

The members of the bargaining unit endorse and support the Village's efforts to expand and enhance public safety services and to cross train public safety personnel in furtherance of those public safety initiatives. There-fore, the parties agree that, as a result of this Collective Bargaining Agreement, the Village may utilize members of the bargaining unit in the capacity of "public safety officers," and may train and assign bargaining unit members to firefighter and EMT duties, subject to the terms of this Agreement. The parties further agree that there shall be a minimum of twenty-one (21) officers who will function in the capacity of "public safety officers." These positions shall first be offered on a voluntary basis to members of the bargaining unit based on seniority. If the minimum is not achieved, inverse seniority will be applied to fill the required minimum.

Members of the bargaining unit, who are not currently designated as public safety officers, who were hired prior to March 25, 2001, and who volunteer for public safety training agree to use their best efforts to become certified as Firefighters II and EMT-B. All members of the bargaining unit understand they must maintain their certifications, if achieved, and be eligible to perform such duties. Provided, however, those members of the unit hired prior to March 25, 2001, who are not currently designated as public safety officers, may not be disciplined for their good faith failure to complete and/or pass the requisite training nor will they be disciplined because they are unable to perform public safety duties as a result of a bona fide medical condition.

Regarding the public safety initiative, the parties agree to negotiate changes in schedules, operational procedures, minimum training and chain of command issues, subject to the provisions of the Impasse Resolution Procedures of the Illinois Public Labor Relations Act. The parties agree to initiate said negotiations within forty-five (45) days of the execution of this Agreement.

Public Safety Assignments. Members of the bargaining unit are to be used for the purpose of supporting trained fire and EMT personnel at the scene of a fire. No member of the bargaining unit shall be trained or assigned to work as a Fire Apparatus Engineer or to operate fire emergency vehicles. Absent emergency circumstances, no member of the bargaining unit shall be assigned to work at a fire station.

Schedules. The parties recognize that covered officers shall continue to work pursuant to the existing eight (8) hour shift schedules, and that said schedules may not be modified without first bargaining over the proposed changes pursuant to the Illinois Public Labor Relations Act.

Chain of Command. The parties agree that covered officers are subject to the chain of command regulations set forth in Bensenville Public Safety Department Procedure No.4.008 and No. 4.009, as issued on August 6, 2004.

Public Safety Certification of Probationary Officers. Probationary officers who have not been afforded an opportunity to complete the firefighter II and EMT basic training and testing shall not be disciplined for a failure to obtain necessary certifications. Said officers shall not be required to serve an extended probationary period as a result of the Village's failure to provide such training or testing opportunities. Probationary officers who have unsuccessfully tested for certification for firefighter II or EMT basic shall have their probationary periods extended until such time as they can obtain the necessary certifications. No probationary officer shall be afforded more than three (3) testing opportunities each for firefighter II or EMT basic certification. The Village shall endeavor to provide reasonable assistance to probationary employees in their efforts to achieve the necessary certifications.

Public Safety Certification of Veteran Officers. As it regards officers hired before March 25, 2001, a maximum of three (3) of those officers who are medically/physically unable to obtain Firefighter II certification may still attempt to obtain EMT certification pursuant to the provisions of the Collective Bargaining Agreement.

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Section 12.3 Uniforms. The parties agree that, with the exception of officers assigned to plain clothes duties, all members of the bargaining unit shall be issued and required to wear the same basic uniform. It is agreed that the Village shall have the discretion to select the color and design of the basic

uniform, and may require officers to wear specific patches or other identifying items for the purpose of designating specialty assignments or status as public safety officers.

**B. The Village's Final Offer**

Uniforms. The parties agree that, with the exception of officers assigned to plain clothes duties, all members of the bargaining unit shall be issued and required to wear the same basic uniform. It is agreed that the Village shall have the discretion to select the color and design of the basic uniform, and may require officers to wear specific patches or other identifying items for the purpose of designating specialty assignments or status as public safety officers.

Public Safety Officer Assignments. The parties agree that the Village may continue to utilize and train bargaining unit members for firefighter/EMT duties to include driving of vehicles, being assigned to a fire station during regular police schedules, and/or engineer duties (FAE), so long as the Fire Department complies with existing safety standards of the Officer of State Fire Marshal (OSFM), which may be changed or adopted from time to time, and so long as all training requiring certification complies with and adheres to the standards set forth by the OSFM. During the term of this Agreement, the Village will require no more than fourteen (14) bargaining unit employees to be trained as set forth herein. Said training and assignments shall be offered on a voluntary basis to members of the bargaining unit based upon seniority. If the minimum is not achieved, inverse seniority will be used to meet that minimum.

Should a member of the bargaining unit be assigned to any of the duties set forth above, the duration of the scheduled assignment shall not exceed the officer's normal scheduled shift. No covered officer shall be assigned as set forth above if said assignment would result in the number of bargaining unit members assigned to regular patrol duties fall below four (4) officers. No covered officer shall be assigned as set forth above unless said officer has been certified for FAE and/or for the operation of fire vehicles. It is understood that, should the requirements of this paragraph not be met, any shift vacancy in the fire department shall be filled through alternate means. Officers trained and certified pursuant to this provision, once assigned to fire station duties during their normal shift, will not be moved back to patrol duties during that same shift, except for emergency circumstances and previously scheduled and communicated training.

Schedules. The parties recognize that covered officers shall

continue to work pursuant to the existing eight (8) hour shift schedules, and that said schedules may not be modified without first bargaining over the proposed changes pursuant to the Illinois Public Labor Relations Act.

Chain of Command. The parties agree that covered officers are subject to the chain of command regulations set forth in Bensenville Police Department General Order No. 4.009, in effect at the time of execution of this Side Letter of Agreement.

Public Safety Certification of Probationary Officers. Probationary officers who have not been afforded an opportunity to complete the firefighter II and EMT basic training and testing shall not be disciplined for a failure to obtain necessary certifications. Said officers shall not be required to serve an extended probationary period as a result of the Village's failure to provide such training or testing opportunities. Probationary officers who have unsuccessfully tested for certification for firefighter II or EMT basic shall have their probationary periods extended until such time as they can obtain the necessary certifications. No probationary officer shall be afforded more than three (3) testing opportunities each for firefighter II or EMT basic certification. The Village shall endeavor to provide reasonable assistance to probationary employees in their efforts to achieve the necessary certifications.

Public Safety Certification of Veteran Officers. As it regards officers hired before March 25, 2001, a maximum of three (3) of those officers who are medically/physically unable to obtain Firefighter II certification may still attempt to obtain EMT certification pursuant to the provisions of the Collective Bargaining Agreement.

The Union and the Village hereby agree to incorporate the above into the existing Collective Bargaining Agreement.

(Er. Ex. 26)

#### **IV. CONTENTIONS OF THE PARTIES**

##### **A. The Union**

Based on the unusual if not unique facts of this case, the Union urges that its two final offers should be selected as more reasonable in all their aspects. The Union's arguments in support

of that position may be summarized as follows:

1. Any analysis of the issues which have arisen in this case must begin with the actual current language of Section 10.8, when read in its entirety. The Union stresses that the only specific undertaking of the affected bargaining unit members is reflected at Paragraph 2 of Section 10.8, which merely provides that those bargaining unit members who volunteer for public safety training "agree to use their best efforts to become certified as Firefighter II and EMT-B." It contends that Management has improperly sought to expand that very limited commitment, so as to permit this employee to utilize members of the bargaining unit as almost completely interchangeable with the regular firefighters and EMTs who were actually historically working in the Village's fire department before its Public Safety initiative.

To the Union, not only does this interpretation by Management go far beyond any reasonable reading of Section 10.8, it also does not follow the spirit in which the parties entered into agreement for Section 10.8 nor does it follow the precepts of good faith bargaining, says M.A.P.

2. The above argument supporting the Union's narrow reading of its commitment under the provisions of Section 10.8 is supported by the Village's own policies and procedures. Specifically, the Union relies on two policies issued by the Bensenville Police Department on January 11, 2003 (Un. Exs. D and E, entitled, respectively, Firefighter Services Procedure and Emergency Medical Services Procedure), to show that this Employer always has held out

the commitment that any acceptance of the Public Safety initiative contemplated police PSOs being "first responders" and a very limited supplement to the fire department's personnel.

Specifically, in these two policies, it is set forth that bargaining unit patrol officers who accept PSO status would be trained and equipped only to "provide firefighter services prior to the arrival of a fully equipped fire service unit" and similarly to provide "basic life support (BLS) care, including defibrillation, prior to the arrival of an advanced life support (ALS) ambulance."

Moreover, these two policies also contained express provision that despite the existence of mutual aid agreements with other agencies undertaken by the Village's fire department, those individuals who volunteer as patrol officer PSOs "will not respond to fire calls outside the Village" and will similarly not respond "to medical calls outside of the Village."

Furthermore, the Union emphasizes two more recent policies, both issued on September 1, 2004, reiterate the fact that PSO patrol officers are merely to provide first response and initial treatment at an emergency medical or fire call, but are required to provide those firefighter and EMT services only prior to the arrival of a fully equipped fire service or life support (ALS) ambulance. See Un. Exs. F and G).

It is also the Union's reading of these two policies, both issued by this Village well after the Collective Bargaining Agreement was negotiated, including current Section 10.8, I am

reminded, that, once again, the fire department's mutual aid agreements with other agencies would not require the patrol officer PSOs to "respond to medical calls" or "fire calls" outside this Village. It is therefore the Union's position that I should consider and decide the issues arising in this case in light of the officially communicated Village position that the specific role of patrol officer PSOs was intended to be solely as a first responder or supplement to the fully equipped fire service or emergency medical care units of this fire department.

3. Throughout the negotiation process in Bensenville, the Union has maintained its objection to negotiating changes in the terms of employment and working conditions of bargaining unit employees in this unit beyond the specific negotiated items unambiguously set forth in the labor agreement. The pattern of this Employer consistently unilaterally changing mandatory subjects of bargaining in contravention of the Act had burdened this bargaining process and, the Union suggests, resulted in untoward pressure on the Union's bargaining committee.

It should be apparent from the facts of this case that the tentative agreement entered into by M.A.P.'s bargaining committee but clearly rejected by the chapter membership should not be imposed through my fiat simply because of the conceded existence of that tentative agreement, says this Union. In this given case, it submits, the equities mandate a respect for the democratic process embodied by the rank and file's acknowledged refusal to ratify what

is not the Employer's final offer to resolve the critical issues of the novel PSO patrol officer work assignment.

4. The Union forthrightly concedes that there is case law interpreting the potential applicable provisions of the Act which permits an arbitrator to consider and even give substantial weight to the fact of a tentative agreement later presented in an interest arbitration. No generalization why another arbitrator in a separate and distinct case should provide binding guidance for the resolution of this very unusual, if not unique, problem of what the job duties of the patrol officer PSO properly may be under the rubric of Section 10.8.

It should be apparent from the facts of this case, asserts M.A.P., that the employees working in this bargaining unit did not trade away their rights to a normal work assignment or work schedule or grant permission for Management to assign them routinely to a fire station or to drive a fire truck or to be an FAE for the pay premium involved. Any generalization about the importance of tentative agreements must give way to the significant changes in work assignments or rolls that Management claims has been established but that its own policies by their plain terms refute, I am finally told.

5. The Union's final offers on the modification of Section 10.8 and on the new 12.3 of the parties' labor contract therefore should be adopted, the Union thus urges.

**B. The Village**

The Village's main arguments are summarized below:

1. The Union's backhanded recognition of the accepted rule

that tentative agreements are given great weight under the provisions of this Act, is certainly correct, as M.A.P. well knows.

Indeed, in this case, where the negotiations for the set aside issues agreement lasted over 10 months and the total negotiations represented here essentially covered a two year period, is particularly reprehensible that this Union now hides behind its representation that M.A.P.'s bargaining committee was intimidated into signing an agreement not representing an arm's-length bargain.

This is especially true when the Union committee was represented at all times by able labor counsel, and its members were experienced negotiators, at least by the time the two year process finally played out, Management says. The point is that this Side Letter Agreement is the best evidence of what the parties would obtain in collective bargaining even if this Union had the option to strike, precisely because the agreement is in fact what the authorized bargaining representatives of M.A.P. entered into in good faith on October 13, 2004, the Village submits.

2. By the same token, it cannot be over emphasized that the employees who rejected the Side Letter Agreement already had received the quid pro quo, that is, the opportunity for the 12% pay premium for volunteering for PSO status. This very substantial pay premium was not granted by the Village merely for having bargaining unit members obtain a Firefighter II or EMT-B certification, I am told.

What both sides must have understood, and in fact did

understand, when the tradeoff for this hefty pay raise was negotiated by the Union, was the express promise contained in the first paragraph of Section 10.8 that the Village "may utilize members of the bargaining unit in the capacity of 'public safety officers,' and may train and assign bargaining unit members to firefighter and EMT duties," subject only to the express terms of this labor contract, this Employer further claims.

For the Union to argue otherwise, as it is doing here, is either downright naivete or bad faith on its own part, the Employer therefore argues.

The Union claimed that Management overreached when it began to train patrol officer PSOs to drive fire equipment and to be FAEs takes on a very dark cast in these circumstances, the Employer opines. First, it emphasizes that the driver of a fire vehicle merely required a commercial driver's license, which in turn can be done in a matter of a day or two for those individuals who do not already possess such licensure.

Similarly, the FAE certification requires minimum training when compared to the weeks of training already invested in each PSO so as to permit him or her to obtain the Firefighter II certification. An FAE certification merely represents familiarization with how the water pumps work, which is basic to the role of firefighters on the fire ground, the Employer also maintains. Thus, clearly these training activities and work assignments fall precisely within the unambiguous language

contained in the first paragraph of Section 10.8, quoted above.

To rule otherwise, to rule as the Union would have it that some additional negotiated pay enticement is necessary to implement the already agreed upon and clear contractual language of Paragraph 1 of Section 10.8 would, as a practical matter, gut the deal for Management's point of view. What the Union is asking is not only that Management's already existing rights to utilize and assign PSOs in accordance with the provision of Paragraph 1, Section 10.8 already noted, it would, as a practical matter, diminish Management's right to utilize these PSOs in a manner consistent with its announced public safety program down to a nullity. Simply put, the rank and file employees covered by this bargaining unit are in effect looking for a free ride in exchange for the 12% pay increase given them by the Village, Management says.

It is in this factual context, the Village insists, that the rejection of the tentative deal by the bargaining unit must be considered. Applying the applicable precedential standards set forth in the prior decisions were rejected, arbitrators have found three reasons upon which the rejection must be judged. All three of these reasons, the Employer argues, favor the enforcement of the tentative agreement by its adoption by me, and cut against M.A.P.'s argument that the tentative agreement should be disregarded and/or given no weight.

**3.** Specifically, the Employer points out that there are three generally accepted criteria for deciding what weight should be

given a rejected, tentative agreement. One is the circumstances surrounding the negotiations that led to this agreement, namely, was it negotiated in good faith by informed and responsible representatives.

The second standard is the nature of the tentative agreement itself, that is, whether or not an analysis of the content of the agreement itself suggests that it is a reasonable reflection of and accord the party actually might have reached in a strike-driven bargaining process.

An additional reason for a potential rejection articulated by Arbitrator Briggs is whether or not the vote reflected legitimate concern over financial or other aspects of the terms and conditions of employment, a simple or unjustified desire for more, or, alternatively, a reflection of irrelevant, internal politics in the rejecting entity.

The Employer's response to its own articulation of the applicable standards is that it characterizes what the chapter vote rejecting the subject, tentative agreement must be considered to represent the negative side of each of those criteria. This is so, the Village again stresses, because both bargaining teams were able and experienced; the Village showed its willingness to bargain in good faith and compromise by the bargaining history presented in detail at the interest arbitration hearing; and, to paraphrase from the Employer's argument, the vote of the bargaining unit members must have been prompted by irrationality, selfishness and a desire

to renege on their commitment to support the Public Safety initiative in exchange for the 12% pay premium over scale.

4. The Village also makes it clear that internal comparability favors its final offer in the instant case. It strongly emphasizes that the labor contract between the Sergeants' Unit and the Village contains identical language as the first paragraph of Section 10.8 of this labor contract. It further stresses that the Sergeants received the same 12% pay premium over scale for volunteering to function as PSO Sergeants.

Moreover, the Sergeants have also been trained to drive fire vehicles at the function as FAEs, all without a grievance or protest whatsoever. By this fact, Management asserts, there is direct proof that the identical language has been interpreted by both it and the Union representing the Sergeants' Unit to mean precisely what M.A.P. now submits its membership never intended, understood or agreed to in exchanging their commitment to support the Public Safety initiative for the potential 12% bump in pay over scale.

5. The Employer also directly claims that at least 10 of the voters involved in the rejection of the ratification of the tentative agreement had been hired after Employer Exhibits 1 and 2, the announcement in 2001 concerning the Village's desire for the Public Safety program and the March, 2002 actual job posting, respectively, which gave notice as to the precise expectations or desired range of duties of patrol officer and firefighter PSOs.

It is thus difficult for the Employer to understand the current Union claim that, at least for those individuals, the manner in which the Village desired to utilize members of the bargaining unit in the capacity of Public Safety officers played out. The impact on these employees must be considered much less than in the situation of employees hired before 2001, Management contends. That at least some of these employees must have voted against ratification of the tentative agreement given the number of votes cast pro and con, causes the Employer to argue that it must be found, that, for these individuals, at least, their votes were "illegitimate and irrational."

6. For these reasons, Management urges that its final offer for the tentative agreement should be adopted as the more reasonable and consistent offer, in accordance with the applicable standards under the Act and these specific factual circumstances. As regards this final point, the Employer strongly emphasizes that four of the six items in the tentative agreement are identical to the provisions in the Union's final offers. The only genuine issues between the parties go to the overblown arguments of the Union that assignments to the fire house, in the discretion of Management, during a PSO's normal 8 hour shift constitute a "change in schedule" and the Union's bogus claim that FAE training and duties and licensing and assignment to drive a fire vehicle were outside the scope of what was contemplated by the first paragraph of Section 10.8, Management concludes.

V. **DISCUSSION AND FINDINGS**

A. **The Rejected Tentative Agreement**

The parties reached a tentative agreement on all issues with respect to the Side Letter on October 13, 2004, the record reveals, but that tentative agreement was rejected by M.A.P. Chapter 165, as mentioned at several points above, by a vote of 16 to 7. At the hearing, the parties' representatives strongly disputed what weight, if any, should be accorded the rejected tentative agreement and the resolution of that dispute must of necessity be my first task in deciding this case, I am persuaded. My analysis and resolution of this issue follows.

1. **The Illinois Arbitral Precedent**

This inquiry begins with the charge given to Illinois interest arbitrators by the line of arbitral authority that has developed since impasse resolution came to police and fire in 1986 in this state and the precedent imported from those that preceded Illinois with third party resolution of interest disputes. The Arbitrator's commission is to approximate that to which the parties would have agreed had they been able to reach a bilateral agreement.

In the view of some, what better indication of what the parties would have agreed to than the agreement actually reached by their representatives? The parties' representatives are most often, if not nearly always, better informed on the issues, the comparables and the relative strengths and weaknesses of each party's bargaining positions. Who better than to delineate what

the parties would have agreed to if an overall agreement had been reached? This view was adopted by Arbitrator James M. O'Reilly in his City of Alton award:

There was no evidence that the tentative agreement reached on July 24, 1994 was negotiated based upon a lack of knowledge of parity relationships, misinformation, or a lack of awareness of external comparisons. Thus it must be considered to have been negotiated in good faith and the Neutral Arbitrator can find no compelling reason that he would be able to render an Award which would be more reasonable than the parties were able to achieve during the collective bargaining process.<sup>1</sup>

Others lean more to the democratic side of the equation -- regardless of what the negotiators agreed to, it was understood to be subject to ratification. Nothing should interfere with the absolute right of the governing body or membership to vote to approve or disapprove the tentative agreement their representatives reached. Arbitrator Peter Meyers articulated this view in his

County of Sangamon award:

Tentative agreements reached during the course of collective bargaining sessions are just what their name suggests, tentative. A tentative agreement on an issue has been reached by the parties' bargaining representatives does not represent the final step in the collective bargaining process; such an agreement instead is an intermediate step. For a tentative agreement to acquire any binding contractual effect, it generally must be presented to the parties themselves, ratified and ultimately executed before it may be imposed as binding upon the parties' relationship.<sup>2</sup>

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<sup>1</sup> City of Alton and IAFF Local No. 1255, FMCS No. 95-00225 (O'Reilly, 1995) at p. 3.

<sup>2</sup> County of Sangamon and Sangamon County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-97-54 at pp.

Arbitrators O'Reilly and Meyers seem to represent the polar extremes on the question. However, this question has been raised in several Illinois interest arbitrations, and while at first reading the awards might seem to be at extreme variance with each other, there is a pattern to the decisions. On some occasions the tentative agreements were ignored by the neutral; on others they were accorded some weight in the analysis. In still others, they were given great weight.

A careful reading of those arbitration awards, and taking into consideration all of the factors considered by the neutrals, a consensus of opinion can be found.<sup>3</sup> Tentative agreements, reached in bilateral good faith negotiations, but subsequently rejected by a party, are to be accorded some weight in a subsequent interest arbitration. What weight to be accorded is a question of the specific circumstances of each case.

In his 2002 City of Chicago award, Arbitrator Steven Briggs summed the positions of many of those Illinois interest arbitrators who had previously considered the question in Illinois:

In the relatively short history of Illinois public sector interest arbitration there have been a handful of cases where a tentative agreement was negotiated by the parties' representatives, recommended for ratification  
(..continued)  
6-7.

<sup>3</sup> See, e.g., City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-93-153 (Berman, 1995); City of Waterloo and Illinois Fraternal Order of Police Labor Council, S-MA-97-198 (Perkovich, 1999); and Oak Brook and Teamsters Local 714, S-MA-96-73 (Benn, 1996).

by the union bargaining team, then rejected by the union membership. The interest arbitrators to whom those cases were presented had to decide what weight, if any, should be given to the terms of the negotiated settlements. The parties to these proceedings cited each of those cases (citations omitted) and quoted selectively from them in their post hearing briefs. In the interest of brevity, the undersigned Arbitrator will not repeat those quotes here. Generally, Illinois interest arbitrators have concluded that the weight to be afforded a rejected tentative agreement depends upon:

- (1) the circumstances surrounding the negotiations that led to it (Was it negotiated in good faith by informed responsible representatives?);
- (2) the nature of the tentative agreement itself (Is it an accurate reflection of the accord the parties would have reached in a normal strike-driven process? Is it based upon miscalculation or other error?); and
- (3) the reasons for rejection (Legitimate concern over financial and other issues? A simple, unjustified desire for more? Internal union politics?)<sup>4</sup>

Among the arbitration awards that Briggs reviewed in his opinion was that of Arbitrator George Fleischli who also considered the import of a tentative agreement rejected by the union membership in Schaumburg in 1994:

In dealing with this aspect of the dispute, a balance must be struck. On the one hand, it is important that the authority of the parties' respective bargaining teams not be unnecessarily undetermined. Specifically, in the case of the Union, its bargaining team ought not be discouraged from exercising leadership. Some risk taking must occur on both sides, if voluntary collective bargaining is to work and arbitration avoided, where possible. Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village Board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements.

On the other hand, serious consideration should be given to the stated or apparent reasons for either party's rejection of a tentative

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<sup>4</sup> City of Chicago and Fraternal Order of Police Lodge #7 (Briggs, 2002), at pp. 19-20 (hereinafter "City of Chicago"). See Er. Ex. 29.

agreement. If, for example, the evidence were to show that there was a significant misunderstanding as to the terms or implications of the settlement, those terms ought not be considered persuasive. Under those circumstances, there would be, in effect, no tentative agreement. However, if the terms are rejected simply because of a belief that it might have been possible to "do a little better", the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations.<sup>5</sup>

Neither Briggs nor Fleischli found any error or misunderstanding of the cost as a basis for the rejections by the union memberships in their cases. Rather, in each instance it was determined the membership thought its negotiators had given away too much at the table and should have "hung tough" to do better. In both instances, the tentative agreements were accorded weight -- described by Fleischli as "persuasive" in Village of Schaumburg and as "significant weight" by Briggs in City of Chicago:

On balance, while the Board supports the FOP's right to reject the Tentative Agreement, it also recognizes that the Tentative Agreement reflects a delicate balance of accommodation.

Any significant change in that balance -- any material modification of the ecosystem that has evolved through the collective bargaining process - could easily inflict more harm than good on the parties, their future relationship, and on the many other entities affected by the outcome of these proceedings. Accordingly, and for the reasons explained in the foregoing paragraphs, the Board has decided to give the Tentative Agreement significant

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<sup>5</sup> Village of Schaumburg and Illinois Fraternal Order of Police Labor Council, Schaumburg Lodge No. 71, S-MA-93-155 (Fleischli, 1994) at pp. 33-34.

weight.<sup>6</sup>

Arbitrator Marvin Hill was presented with an opportunity to consider the weight to be given to rejected tentative agreements in his City of Waukegan decision. Hill indicated that he was in accord with Fleischli's Village of Schaumburg reasoning:

A tentative agreement indicates what the parties, or their duly appointed representatives thought was a result otherwise conducive to their interests. They are the insiders and presumptively know the environment and numbers better than any neutral. While certainly not dispositive (nor "res judicata") of a specified result in an interest arbitration, a party would be hard pressed to argue that a tentative agreement should be ignored by an arbitrator.<sup>7</sup>

Interestingly, based on the unique facts of his case, Arbitrator Hill determined that the tentative agreement in Waukegan -- otherwise, in his view, entitled to great weight in the arbitration -- would not be so honored because of a series of major mistakes by the City's management regarding the terms that led to the tentative agreement.

In management's words:

First, and most importantly, the City's bargaining team erred in its calculations of the total cost of the Union's final offer of 4 percent wages for each of the four years of the proposed contract. Chief Negotiator Baird confused the Union's offer of 4 percent plus a 2 percent equity with an earlier, off-the-record Union proposal of 4 percent plus a 1 percent equity adjustment. As a result the

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<sup>6</sup> City of Chicago at p. 21.

<sup>7</sup> City of Waukegan and IAFF Local 473, S-MA-00-141 (Hill, 2001) at p. 66.

City's bargaining team grossly underestimated the total wage cost of the four-year contract.

Second, Baird failed to recognize the fact that the Union was proposing a wage system that involved "double-compounding" ...

Third, the compressed bargaining/mediation time (2 1/2 hours) contributed to Baird's failure to compare the Union's offer to the other external comparable communities. Baird and the bargaining team only later realized that by adopting the Union's proposal, the City's traditional economic position vis-a-vis comparable communities with regard to wages would have drastically increased, without consideration of the City's relatively inferior and deteriorating economic position vis-a-vis communities such as Evanston.

Fourth, Baird failed to consider the lucrative total economic package that the IAFF bargaining unit employees would obtain, when one also factored in the tentatively agreed to increases in paramedic pay and holiday pay.

Fifth, and finally, the bargaining team grossly underestimated the impact of the economic settlement with the IAFF would have on other City bargaining units, most notably the FOP ...

Arbitrator Hill credited the City's arguments as to the wage portion of the tentative agreement, not the remainder of the settlement.<sup>9</sup> Clearly, the first two "errors" by the Waukegan management team were of the type described by Arbitrator Fleischli in Village of Schaumburg. Failing to discern that the offer from the fire union was different from a previous one goes to the question of whether there was ever a "meeting of the minds" in Waukegan and certainly bears on the weight of the tentative

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<sup>8</sup> City of Waukegan at pp. 66-67.

<sup>9</sup> City of Waukegan at p. 67.

agreement. The parties were not agreeing to the same offer. Failing to understand that the fire union was proposing a double-compounding also goes to the question of whether a true agreement was reached.

Every negotiator, whether experienced or amateur, knows that he or she had better evaluate a proposed deal before accepting it.

Allowing a party to extricate itself from the impact of a tentative agreement by pleading "dumb and careless" or by saying the political winds have shifted in the entity, here, M.A.P. Chapter 165, should not be enough to award the consideration of the tentatively negotiated terms of a labor contract, the better reasoned decisions all strongly indicate. I definitely agree for the reasons the Village and the above noted precedent have specifically suggested, and I so hold.<sup>10</sup>

## **2. The Bensenville/M.A.P. Chapter 165 Tentative Agreement**

What are the facts of this case against which the principles adopted by Illinois interest arbitrators may be applied to determine the weight to be given to this tentative agreement?

Any review of the relevant facts must begin with the acknowledged fact that the Employer made a decision to start its Public Safety initiative shortly after the tragic events of

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<sup>10</sup> Knowing the experience and sophistication of the management negotiator in Waukegan, the last three "mistakes" cited by the Employer struck the Union advocate more as the City's negotiator graciously falling on his own sword in hopes of strengthening the City's chances of negating the tentative agreement. I tend to agree, given my perspective on the arguments presented.

September 11, 2001. The decision to move along this new path was predicated on Management's belief that the Village's proximity to O'Hare International Airport resulted in a clear need to maximize the efficiency in both its police and fire departments, the undisputed facts of record show.

In accordance with this Management decision, it published Employer's Exhibit 2, a public posting for job applicants to the police department in February, 2002, showing that applicants for police officer slots were to be returned to the police department by March 6, 2002; that an orientation would be held at the police department on March 6, 2002; and that a written test and power test were scheduled to be given on March 10, 2002. As part of this solicitation for applicants, the Village, apparently for the first time, stated that candidates for the police officer job "must receive certification as Police Officer, Firefighter II and EMT-B to successfully complete their 18 month probation." This circular continued that "Police officers may be assigned to a variety of Public Safety duty including fire and police activities." The point is that this apparently was the first formal statement reflecting this Employer's quest to hire public safety officers, rather than traditionally trained and assigned police officers and firefighters as part of the Village's new Public Safety initiative.

The record also discloses that this Management decision to go to a Public Safety Department, to be manned by public safety officers along the lines described in detail above, sparked open

warfare between this Union and the Village. Earlier portions of this Opinion and Award give in great detail the ensuing spate of unfair labor practices, litigation, and publicity campaigns by both the Village and this Union arising from Management's decision to go this route in 2001 and 2002.

Ultimately, after lengthy and tedious negotiations between these parties, the record makes clear, the current Collective Bargaining Agreement was achieved, in November, 2003, apparently in large part by the parties' agreement that the Village would trade off a 12% pay premium over scale for police officers to become PSOs in exchange for the bargaining unit's agreement to "endorse and support the Village's efforts to expand and enhance public safety services and to cross train public safety personnel in furtherance of those Public Safety initiatives.

The Union's concession to accede to the Village's plan for a Public Safety Program is set forth in the first paragraph of Section 10.8 of the parties' current contract, as quoted above. This paragraph also states, "The Village may utilize members of the bargaining unit in the capacity of 'public safety officers,' and may train and assign bargaining unit members to firefighter and EMT duties, subject to the terms of this Agreement."

However, the parties decided that the details of the implementation of that Union commitment likely required more intensive negotiations that would be better accomplished through the device of a Side Letter or "set aside" issues to be done after

the actual contract was agreed to and ratified by both the Village and this Union. The agreement to negotiate four separate items is

set forth in Paragraph 3 of Section 10.8, quoted above, at numerous points.

The "set aside" or reserved issues for bargaining as reflected in Paragraph 3 were to be "changes in schedules, operational procedures, minimum training and chain-of-command issues." A 45 day time period for the start of negotiations was also provided for in Paragraph 3 of Section 10.8, as was a provision that these specific negotiations would be subject to the provisions of the "Impasse Resolution Procedures of the Illinois Public Labor Relations Act." Thus, the genesis for the tentative agreement at issue here was Section 10.8 of the current contract, the evidence of record clearly establishes.

Negotiations for the Side Letter began in January, 2004. Apparently, the same negotiators represented the Village and M.A.P. as had done so in the negotiations for the current contract which was ratified in November, 2003, I note. This Union has never suggested that its team was inexperienced or not authorized to enter into the tentative agreement under discussion here, I also note.

The record in this matter is, once again, replete with details as to the various proposals exchanged by the two bargaining committees in the ten months that ensued from the beginning of bargaining for the Side Agreement until the achievement of a tentative agreement on October 13, 2004. I also emphasize that, as the Village has suggested, there are numerous examples of trade-

offs made across-the-table, concessions and compromises by both the negotiation team for the Union and the Village. One important example is the Village's agreeing to a manning commitment of four police officers on the street at all times before PSOs can be utilized for other, non-traditional duties.

Another is the tentative agreement with respect to uniforms, even though that topic was actually not reserved under the requirements of Paragraph 3 of Section 10.8 for bargaining to be covered by the Side Agreement. In fact, significantly, four of the six items that are claimed to be at issue currently, as reflected in the parties' last offers, actually are identical in each of the parties' final offers, set forth above, and reflect the specific agreements hammered out by the bargaining committees in the negotiations for the tentative agreement, I emphasize.

My conclusion is that certainly the first factor set forth by Arbitrator Briggs in City of Chicago is fully satisfied in this case and favors the Village's contention that the tentative agreement should be given controlling weight here. I emphasize that there is not one bit of evidence that the Union's bargaining team was not experienced, competent and authorized to act as it did in this bargaining. I also stress that compromises and trade-offs were made, and that at least as to the agreement as to limitations on manning, the trade-off was to adopt the Union's proposal, and not the Village's position on that matter. The ten months of negotiations also reflect that the specific circumstances of this

case cannot be regarded as in any way showing that the negotiation

process was not done in good faith by informed and responsible representatives from both sides, I find.

As to the second critical factor in Arbitrator Briggs' opinion in City of Chicago is that for the tentative agreement to be given substantial weight, the nature of the deal must be reviewed in light of whether it was based upon miscalculation or some sort of other, similar "error" by the bargaining team. The only basis for that sort of argument by this Union is its claim that the Village's applicable policies on their face limit Management to using police officer PSOs solely for first responders and supplements to the fully trained firefighter service.

My response to this contention is that the Village policies relied upon by this Union, as quoted above, all were promulgated prior to the Union's bargaining team entering into the tentative agreement under scrutiny now, that is, before October 13, 2004. It is also significant to me

that, as will be developed below, that the actual commitment made by the Union in Paragraph 1 of Section 10.8 directly dealing with the utilization of the PSOs by this Village is much broader than that stated in the Village's four formal policies currently under scrutiny.

Given those circumstances, I find I cannot agree with the Union argument that the tentative agreement is contrary to the negotiated terms of Section 10.8 or is an inaccurate reflection of the accord these parties had actually already reached on the issue of the utilization of PSOs as that commitment was unambiguously stated in the first paragraph of Section 10.8. The four policies so strongly relied upon by the Union as showing the tentative agreement went beyond the intent of the rank and file of Chapter

165, thus are actually irrelevant to the bargaining process presented in such detail on this record. Simply put, these policies cannot avoid my conclusion that clear notice was given to the members of this Chapter by the terms of Section 10.8 of the current contract as to the likely scope of the Side Agreement which then in turn was negotiated and tentatively agreed to by this Union's bargaining team. No misinterpretation of intent, miscalculation or other error trumps the deal actually struck, I rule.

The third critical factor in evaluating potential weight of a tentative agreement set forth in City of Chicago by Arbitrator Briggs is a requirement for a careful review of the reasons for rejection, if those reasons are ascertainable and/or presented on the record at the interest arbitration. In this case, since four of the six items allegedly at issue in fact reflect identical offers and a meeting of the minds, the only two areas of disagreement relate to Management's demand to be able to train and assign PSOs to FAE duty and/or to drive a fire vehicle and the ability of this Employer to assign PSOs to duty at a fire station during their normally scheduled eight hour shift.

The proffered reason for the rejection by this bargaining unit of the tentatively agreed commitments is that the tentative agreement would permit such assignment and utilization. Such Management actions are clearly well beyond the intent of M.A.P. when it entered into Section 10.8, it however submits. Addition-

ally, if either of these rights are desired by Management, there should be a trade-off in pay or other benefits above and beyond the 12% premium, the Union also says. I disagree.

As already mentioned, as I see it, the basic commitments in the first paragraph of Section 10.8 are much broader than what the Union now concedes them to be and would in fact permit precisely these sorts of assignments and utilization by the Employer, even absent the tentative agreement, I am persuaded by my reading of the clear language quoted at several points above concerning utilization of the PSOs. Thus, to the extent the Union is arguing that the "unilateral assignment" of PSOs to train as FAEs or fire engine truck drivers, or their utilization in those capacities during a normal 8 hour shift, is an unexpected and unfair expansion of Section 10.8, I disagree. Consequently, I find this specific contention as a basis for rejection of the tentative agreement to be ill-founded and irrational.

All of the above observations should suggest the answer to the propriety of the final reason proffered by this Union for the rejection by its rank and file of the tentative agreement, that is, that the training and utilization of PSOs as FAEs or truck drivers, or their assignment to a fire station during a normal 8 hour shift, on their face, represent additional extra duty which require more pay than the 12% wage premium above scale already provided for.

My response to this last assertion is that I stand completely unconvinced and nothing presented by the Union on this record

specifically supports its argument that the 12% pay premium does not cover, and in fact was not intended to cover, precisely this training and utilization of PSOs, I rule.

In conclusion, I find the tentative agreement was reached between experienced negotiators from both sides. I am also persuaded that the only intervening event that altered the course of ratification of the collective minds of the members of the bargaining unit on the deal they had essentially agreed to almost exactly one year before their rejection of the ratification of this Side Agreement. The employees covered by the bargaining unit represented by this Union should not have the ability under these circumstances to reject the tentative agreement, and, essentially, void it. The Village sent authorized negotiators to sit down with the Union and reach an agreement, which they did. That agreement should be enforced, absent any strong facts dictating some other conclusion, and I so rule.

**B. Internal Comparability**

In this concededly unusual interest arbitration proceeding, the only statutory factor included in Section 14(h) of the Act is internal comparability, the facts of record show. The impact of internal comparability, from the standpoint of the degree of proof required in a given case, can be fairly characterized as somewhat elastic. For instance, interest arbitrators normally give much greater weight to external comparability for cost-of-living data or comparisons involving external comparability, I note.

Sometimes, however, internal comparability is more seriously considered in cases where the issues are of a non-economic nature.

The point is, in this case, the Sergeants' Union and this Village have a labor contract which contains language identical to Paragraph 1 of Section 10.8. How the parties to that agreement have interpreted the scope and reach of that language is at least somewhat relevant to the resolution of this matter, I specifically find.

Turning to the evidence as to how the Sergeants' Union and the Village have interpreted the language of Paragraph 1 of Section 10.8 of the contract actually before me in applying that same language in their contract, I find that no disputes or grievances have arisen as to the Village's ability to train, assign or utilize the Sergeant PSOs as FAEs or to drive fire vehicles.

Additionally, no disputes have arisen concerning work assignments to fire facilities for these Sergeants based on their role in the public safety program. I conclude that this statutory factor plainly favors Management's interpretation of the reach and scope of Section 10.8 in the labor contract actually before me, and I specifically so hold.

**C. The Unambiguous Language of Section 10.8**

As already referenced, I read the commitments undertaken by this Union and the employees of the bargaining unit represented by M.A.P. as expressed in Paragraph 1 of Section 10.8 to be much broader than M.A.P.'s reading here. As I see it, Paragraph 1

establishes a comprehensive commitment for these employees to be PSOs. The language reflecting that provision has been quoted at numerous points above, I am quick to point out, and will not be once again recited here.

Additionally, Paragraph 2 merely identifies the core certifications required of the 21 PSOs who were committed to function in that capacity by Paragraph 1. The references to Firefighter II and EMT-B, therefore, do not signify the sole certification and training that may be required or the sole task to be utilized by these PSOs, I rule. All three paragraphs of Section 10.8 contemplate the ability of the Employer to use the PSOs in a way reflected by the provisions of the tentative agreement, I thus hold. Given this structure of Section 10.8, the strong presumption must be that the tentative agreement is proper and must be enforced as the more reasonable final offer, I therefore conclude.

**D. The Village's Formal Policies**

It is already noted, I am convinced that M.A.P. is wrong in its basic contention that the four policies referenced above support its basic theory that PSOs may only be trained and utilized in the capacity of first responders pursuant to the commitments and terms of the current labor contract. The flaw in this argument is that all four policies were issued prior to the negotiation of the tentative Side Agreement which constitutes the Employer's final offer currently. To do as the Union asks, and find that these policies control what happened at a point later in time is not

completely logical.

Perhaps more important, what this Union is really asking me to do is to engage in guesswork as to what value the 12% quid pro quo truly was at the time the deal for Section 10.8 was made, I am persuaded. I am not in a position to do that in my role as interest arbitrator, I stress. In other words, despite the theory and teaching of the Section 14(h) factors, I am essentially being asked by this Union, at least indirectly, to weigh or judge the cost benefit of two negotiated deals in interpreting their scope and application, wholly apart from the actual language crafted by the negotiators. I find no authority in the statute to make that sort of judgment, I particularly rule, based on my firm belief that all the factors recited above militate against such a finding here.

That determination is the heart of this case, I emphasize, because to find that the rank-and-file could accept the 12% premium pay and then have second thoughts about the value of that benefit in light of the changes in duties put in place in actuality, and so reject the subject tentative agreement of M.A.P.'s bargaining team, would destroy all incentives for labor and management to bargain in good faith, outside the interest arbitration process, I hold.

#### **E. Conclusion**

The facts of this case, by necessary implication, mean that the Village's position that the tentative agreement should be adopted as the more reasonable final offer. All the factors outlined immediately above require precisely that finding and I rule that the Village's final offer therefore must be adopted.

With these findings in mind, I thus proceed to issue the following award.

**VI. AWARD**

Using the authority vested in me by Section 14 of the Act and the parties' stipulations, I select the Village's final offer in this matter, namely, that the tentative agreement set forth above be enforced as a binding Side Agreement for the remainder of the current collective bargaining contract. On balance, this offer is supported by convincing reasons as being more appropriate than the Union's two final offers, also as set forth above, and the Village's final offer is also found by me to more fully comply with the applicable Section 14(h) decisional factors summarized above. The adoption of the tentative agreement is thus ordered, I rule.

Respectfully submitted,

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**ELLIOTT H. GOLDSTEIN**  
**Arbitrator**

August 10, 2005