

In the Matter of the Interest Arbitration Between

Village of Flossmoor
 :
 -- and --
 :
 FOP Labor Council
 :
 ILRB Case No. S-MA-05-138
 :

OPINION OF THE CHAIR
AND
AWARD OF THE PANEL

Before Matthew W. Finkin, Neutral Chairperson, and Arbitrators James Baird, Esq., Employer designee, and Gary Bailey, Esq., Union designee.

This interest arbitration was heard in Flossmoor, Illinois, on May 8, 2007. The Village was represented by James Baird, Esq. The Union was represented by Gary Bailey, Esq. A stipulation was agreed to by the parties and entered on the record to the effect that all procedural statutory requirements have been met and as to other relevant matters developed below. A full opportunity to adduce all relevant evidence, testimonial and documentary, was afforded. Post-hearing written submissions of the parties were exchanged under date of July 13, 2007.

In both their oral presentations and in their post-hearing written submissions the facts were marshaled and the arguments were made as crisply and cogently as the Chair has encountered in more than two decades of experience. The matter could not have been better presented. It is now ready for disposition.

The Last Offers

Three issues are presented: wages, sick leave policy, and contract duration. The Illinois Public Labor Relations Act (IPLRA), 5 ILCS 315/14, directs the arbitration panel, as to "each economic issue" to "adopt the last offer . . . which, in the opinion of the arbitration panel, most

nearly complies with the applicable factors” set out in subsection (h). In this case, both parties have acknowledged that their last offers of settlement on the economic issues of wages and sick leave are intimately interconnected. This will be developed below. The respective offers are:

A. Wages

<u>Union Offer</u>	<u>City Offer</u>
effective May 1, 2005—3.5%	effective May 1, 2005—3.85%
effective May 1, 2006—3.5%	effective May 1, 2006—3.85%
effective May 1, 2007—4.0%	effective May 1, 2007—4.0%
effective May 1, 2008—4.0%*	effective May 1, 2008—4.0%*

B. Sick Leave Policy

<u>Union Offer</u>	<u>City Offer</u>
Sick leave to continue to accrue as per current contract. Annual buy-back of unused sick leave to terminate after 2007. Thereafter, unused sick leave can be “cashed in” at retirement.	Sick leave to continue to accrue as per current contract. Annual buy-back as per current contract to be maintained. No “buy back” of accumulated sick leave.

C. Duration

<u>Union Offer</u>	<u>City Offer</u>
Contract to terminate 30 April 2008.	Contract to terminate 30 April 2009.

Comparable Communities

* Subject to the Panel decision on contract duration.

The parties have stipulated to a set of comparable communities pursuant to IPLRA § 14

(h)(4). *Viz.*:

Glenwood

Lynwood

Olympia Fields

Orland Hills

Palos Heights

Richton Park

Basic Facts

What follows will lay the undisputed facts regarding each of the parties' respective last offers. Analysis will be provided in the ensuing section. The Village's ability to pay is not at issue.

A. Wages

The bargaining unit consists of thirteen positions which, after retirement of the most senior officer, will be constituted by twelve incumbents. The unit seniority list is set out directly below. As it shows, the complement of current officers is of short service.

Unit Seniority List

<u>Name</u>	<u>Date of Hire</u>	<u>20 Yr. Date</u>
1. Robinson, Stanley	03-14-88	03-14-08
2. Swanson, Mark	01-03-00	01-03-20
3. Schade, John	08-01-00	08-01-20
4. Karner, Dennis	06-07-01	06-07-21

5. Wagner, Clinton	12-12-01	12-12-21
6. Nemecek, Kathleen	07-07-02	07-07-22
7. Freeman, David	07-01-03	07-01-23
8. Rodman, Michael	12-08-03	12-08-23
9. Hall, Larry	09-27-04	09-27-24
10. Salisbery, Eddie	11-14-05	11-14-25
11. Carden, Michael	01-04-06	01-04-26
12. Cagle, Mark	07-05-06	07-05-26

The schedule for base wages as of May 1, 2004 is:

Start	39,219.00
2nd Year	42,754.00
3rd Year	46,790.00
4th Year	50,819.00
5th Year	54,851.00
6th Year	59,711.00

The dollar amounts contemplated by the two final offers are as follows:

For 2005–2006

	<u>Village Offer</u>	<u>Union Offer</u>
Start	\$40,729	\$40,592
1 Year	\$44,400	\$44,250
2 Years	\$48,591	\$48,428
3 Years	\$52,776	\$52,598
4 Years	\$56,963	\$56,771

5 Years

\$62,010

\$61,801

For 2006–2007

	<u>Village Offer</u>	<u>Union Offer</u>
Start	\$42,297	\$42,012
1 Year	\$46,109	\$45,799
2 Years	\$50,462	\$50,123
3 Years	\$54,807	\$54,439
4 Years	\$59,156	\$58,758
5 Years	\$64,397	\$63,964

For 2007–2008

	<u>Village Offer</u>	<u>Union Offer</u>
Start	\$43,989	\$43,693
1 Year	\$47,954	\$47,631
2 Years	\$52,481	\$52,128
3 Years	\$57,000	\$56,616
4 Years	\$61,522	\$61,108
5 Years	\$66,973	\$66,522

For 2008–2009
(dependent on duration)

	<u>Village Offer</u>	<u>Union Offer</u>
Start	\$45,748	\$45,441
1 Year	\$49,872	\$49,536
2 Years	\$54,580	\$54,213
3 Years	\$59,280	\$58,881
4 Years	\$63,983	\$63,552
5 Years	\$69,652	\$69,183

What this means in actual dollars in terms of the Village's payroll cost is set out immediately below.

Payroll Cost Increases

	Village	Union	Dollar Difference
For 2005–06	\$56,082	\$53,581	\$2,501
For 2006–07	\$60,800	\$57,901	\$2,899
For 2007–08	\$46,620	\$46,298	\$322
For 2008–09 (dependent on duration)	\$50,033	\$49,696	\$337

As the parties recognize the difference between the two is in dollar amounts *de minimis*. In terms of the six stipulated comparable communities the two proposals would place the Village as follows.

Current Rank of Village of Flossmoor Among 6 Comparables

	<u>5/1/2004</u>
Start	3
1 Years	2
2 Years	2
3 Years	2
4 Years	2
5 Years	2
10 Years	2
15 Years	2
20 Years	3
25 Years	3
At Max	3

Comparison of Wage Offers on Comparative Ranking

	05-06		06-07		07-08		08-09	
	Village	Union	Village	Union	Village	Union	Village	Union
Start	3	4	3	4	3	4	3	3
1 Years	2	2	2	3	2	3	2	2
2 Years	2	2	2	2	2	2	2	2
3 Years	2	2	2	2	2	2	2	2
4 Years	2	2	2	2	2	2	2	2
5 Years	2	2	2	2	2	2	2	2
10 Years	2	2	2	2	2	2	2	2
15 Years	2	2	2	2	2	2	2	2
20 Years	3	3	3	3	3	3	3	3
25 Years	3	3	3	3	3	3	3	3
At Max	3	3	3	3	3	3	3	3

B. Sick Leave Policy

The relevant provision of sick leave policy in the collective bargaining agreement for the period May 1, 2001, through April 30, 2005, is as follows:

Section 12.6. Sick Leave Buy Back.

Employees shall be eligible to “cash in” unused sick days each year on the following basis:

Sick Days Used	Sick Days Available to “Cash In”
0	6
1	5
2	4
3	3

4
5 or more

2
0

Payment to Employees of “cashed in” sick time will occur in the first pay period of December of each year. Employees may not utilize this option in their first year of employment. *No sick leave buy back is permitted from accumulated sick leave.*

[Italics added.] This provision would be maintained unchanged in the Village’s offer. The Union would change it by adding the following.

Notwithstanding the language hereinabove in this Section, the ability to cash in unused sick time on annual basis will cease after 2007. Employees will be able to “cash in” unused sick time in December 2007, however, this benefit will no longer be available to employees beginning 2008.

Instead of the annual “cash in” of unused sick leave, employees will, as of January 1, 2008, be able to “cash in” a portion of their unused sick time upon retirement. For purposes of this section, the parties define “retirement” as the employee’s voluntary separation of employment from the Employer after twenty years of employment as a police officer.

At “retirement”, the employee shall be paid 50% of his/her accumulated sick time at the employee’s rate of pay at the time of retirement.

Four aspects of this proposal were developed in the record concerning: (1) the bargaining history leading up to this demand; (2) the rationale for it; (3) the cost involved; and (4) treatment of this issue by comparable communities.

1. Bargaining History

The Village made an offer of proof, unchallenged by the Union, on the history of negotiations over sick leave. The first collective bargaining agreement (1986–1989) allowed accumulation of sick leave of 120 days; but, there was no discussion of “buy back” in any form. Negotiations for the successor contract (1989–1992) did not address that issue. For the next agreement (1992–1995), the Union did demand a buy back of up to sixty days; this was withdrawn. For the next agreement (1995–1998), there was negotiation over accumulation and buy back at retirement. This was withdrawn by the Union in return for the current annual buy

back and the current contractually express prohibition on any accumulation thereafter. This provision was retained in the 1998–2001 agreement. For the 2001–2005 agreement the Union sought a 100% buy back which was withdrawn, but the Village agreed to increase by one day the number of days eligible for annual “cash in.”

2. The Rationale for the Union’s Demand

Under the prior collective agreement an office could cash out a maximum of six unused sick days per year. This had to be done annually; these days could not accrue beyond the calendar year. Absent that restraint, a maximum of 130 unused sick days could otherwise accrue. Thus, the Union’s proposed to permit that accrual but allow an officer on retirement to “cash out” half of those accrued days, for a maximum of 65 days’ pay. In return, it would abolish the annual cash out of accrued sick pay.

To get a bit ahead, anticipating the analysis of the respective final offers in light of the statutory standards, the Union’s proposal would discriminate against those officers who will not maintain their full careers with the Village until retirement. When pressed by the instant panel’s Chair for the rationale for that, the Union representative stressed the unit members’ concern about maintaining their health insurance in retirement.

In colloquy, the City’s representative argued that if such were the employees’ concern, they could use their annual buy-backs of unused sick leave to finance individual health savings accounts. However, he acknowledged that the City had never made such a proposal.

3. Cost

Annual sick leave “buy outs” are accounted for on a “pay as you go” basis. *I.e.*, sums are budgeted that may or may not actually be expended. The Union has offered its accounting of the annual buy out cost history.

Annual Sick Leave "Buy Out"

(according to Union data)

	Budgeted	Expended
FY 2000-01	\$8,760	\$5,176
FY 2001-02	\$8,760	\$5,957
FY 2002-03	\$9,319	\$4,173
FY 2003-04	\$9,715	\$4,820
FY 2004-05	\$10,104	\$7,888

However, the Village has supplied the following and contrary accounts for actual annual "cash-in" cost for the past three years:

	Bought Out
April 30, 2004	\$2,093.73
April 30, 2005	\$4,509.86
April 30, 2006	\$3,438.00

In view of the disposition of this matter the difference in these accounts need not be pursued.

The Village points out that the State of Illinois requires the Village to abide by standards set by the Governmental Standards Accounting Board (GSAB) which, in turn, regulates how the Village is to account for compensated absences. According to the City's retained accountant:

If the current sick leave buy back program is replaced with a vesting accumulation of sick leave that would allow the buy back of fifty percent (50%) of accumulated sick leave upon termination or retirement (vesting at 20 years of service), GASB S-16 would require the immediate recognition of an expense and

a liability equal to fifty percent (50%) of the amount of accumulated but unused sick leave at April 30, 2006 by members of the FOP. Using actual data at April 30, 2006, a one time expense and liability of \$63,443.70 would have been recorded by the Village for amounts owed as of that date. . . .

First, the liability would be increased for any increase in salaries on an annual basis as the amount would be paid out at the salary in effect at termination/retirement, not when it was earned by the employee. At an estimated average increase of 3.5%, the liability (and expense) would grow by \$2,220.53 in the first year and compounded annually by this amount in the future. In addition, the liability and expense would be increased annually for any sick leave accumulated but not used by members of the FOP during that fiscal year. Again using data from 2006, this would result in an additional annual expense and liability of approximately \$7,953.49 to be accrued by the Village.

This opinion was not challenged by the Union.

4. Comparability

Village of Glenwood. By the terms of the collective bargaining agreement in effect May 1, 2001, through April 30, 2006, employees hired after April 16, 1998, can accrue sick leave to a maximum of sixty eight-hour shifts. The use of sick leave is restricted to the purposes set out in § 21.1 of the contract; but, for employees hired before April 16, 1998, and who have at least twenty years of service and who elect normal retirement, 100% of accrued sick leave may be taken up to a maximum of 130 eight-hour days.

Village of Lynwood. By the terms of a collective bargaining agreement in effect to April 30, 2007, employees who retire with twenty years of service are eligible for one half of accumulated sick leave which is limited to a maximum of 100 days' accumulation.

Orland Hills. No cash out.

Palos Heights. Under § 12.7 of the collective bargaining agreement expiring December 31, 2009,

An employee may elect to have 80% of his unused sick leave placed in a bank upon retirement to be used toward the purchase of medical insurance coverage. Such election must be made at least one month prior to the officer

retiring. If after the officer retires, he discontinues medical insurance coverage, any unused sick pay will be forfeited. If an officer prior to retirement elects not to bank his sick leave, he may elect to take the sick leave benefits in the form of a paid leave of absence immediately preceding his retirement date.

Richton Park. Under Art. 29, § 1(e) of the collective bargaining agreement expiring April 30, 2007, employees can accumulate a maximum of 240 days of sick leave which can be used for an extended illness. However,

Any employee retiring, having served twenty (20) years or more of service with the Village and having attained the age of fifty (50) will have the option of being compensated for any unused accumulated sick time up to a maximum of six thousand dollars (\$6,000.00), or will be able to continue group insurance coverage until such time as the dollar amount of the group medical insurance premium equals \$6,000.00 or equals the dollar value of the sick leave accumulated at retirement, whichever is less.

Olympia Fields. There is no collective agreement. The Union represented that the policy operative in this jurisdiction provided for a cash out of a maximum of twenty days accrued sick leave at retirement. The Village has maintained that there is no buy back on retirement in this jurisdiction—but that it does have an annual buy back. The Village's post-hearing Brief appended what it offers as the Personnel Manual of Olympia Fields (March 26, 2001) currently in effect. Under Art. 18, prior to 1990 employees could accumulate up to 120 days of unused sick leave. This was abolished as of that date and annual pay-out of unused sick leave was allowed instead. As there has been no objection to the introduction of this document, it will be treated as operative.

C. Duration

The parties agree the instant award would be retroactive to May 1, 2005. The parties are equally agreed on the wage increase for the bargaining unit were this award to extend to April 30, 2009. The question of contractual duration accordingly goes to when negotiation should commence for the successor collective agreement. Acceptance of the Union's offer would mean

that the contract would expire in about nine months. *I.e.*, the parties would need to gear up for the negotiation of a successor collective agreement within a few months of the award's issuance. Under the Village's offer, the real duration of the awarded contract would be about twenty months. This would give the parties a longer hiatus before gearing up for a new negotiation.

The history of the negotiations leading up to this proceeding has been placed on the record. The Union's initial package was put on the table on May 3, 2005. From August, 2005, to February, 2006, there were seven bargaining sessions consuming a total of about 15½ hours; in March and May, 13½ hours were consumed in mediation. In September, there was a four-hour bargaining session; and in November, 2006, the parties met for three hours (with Mr. Bailey being present). In sum, 36 hours of face-to-face bargaining occurred over the 16 month period, August, 2005, through November, 2006.

The Statutory Standards

Section 14(h) of the IPLRA sets out eight factors that an interest arbitration is to apply. Some are inapplicable to this dispute, *e.g.*, the lawful authority of the employer or the financial ability of the employer. Accordingly, the relevant statutory factors are these.

(4) Comparison of the ages, 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.

* * *

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

* * *

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

The next section will apply these to each of the three issues presented.

Analysis

1. wages

The parties recognize that their respective positions on wages are almost indistinguishable with the Village's slightly more generous than the Union's. The Village argues to the need to attract and retain qualified officers vis-à-vis the cohort of competing communities. Brief of the Village at 13–14. It is important for the Village to maintain its competitive ranking and, as the statistics set out earlier evidence, the City's last offer does that better in the starting and first year steps than does the Union's, the rankings remaining identical thereafter under both offers. Brief of the Union at 10–11. Under § 14(h)(4), therefore, the Village's would be the more statutorily justified than the Union's.

In the hearing and in its Brief the Union posits its wage offer as a *quid pro quo* for its demand on the accumulation of sick leave: “*If the Union's wage offer is indeed a viable quid pro quo for its Sick Leave Buy Back offer, than traditional factors in collective bargaining suggest the Union's wage offer.*” Brief of the Union at 11 (italics added). For reasons that will be discussed under that head, as the Village's position on the sick leave buy out is more statutorily justified than is the Union's, the Union's wage demand is not a viable *quid pro quo* to render its sick leave demand statutorily preferable to the Village's.

It is not disputed that to comply with the Union's sick leave buy out plan the City would have to sequester over sixty-three thousand dollars *ab initio* and about an additional eight

thousand a year thereafter to comply with mandated accounting standards. On the one hand, not all of this money will necessarily eventually be expended for the benefit of the officers: those who leave before retirement would forfeit accrual; the sum due on retirement would be reduced by unpredictable sick leave usage before reaching retirement. But on the other hand, the pay out would of necessity be at the officers' highest rate of pay. The cumulative wage difference in the Village's favor worked by the Union's offer, 2005–06 through 2007–08, of \$5,722, does not significantly mitigate the substantially higher set aside the Village would be compelled to make. The rather modest difference in the Union's wage offer in the Village's favor, *i.e.*, the saving to the Village in terms of its wage cost, is not a viable *quid pro quo* for the larger set aside the Union's proposal would require.

2. sick leave buy out

The parties are agreed that the Union's is a "breakthrough" proposal. Brief of the Union at 15; Brief of the Village at 8. Consequently, they are in agreement that the burden of justifying this proposal rests on the Union. Both parties rely extensively on interest arbitration awards that are in agreement on how "breakthrough" proposals are to be analyzed and which accordingly need not be rehearsed here.

The Union makes three arguments: First, it places greatest weight on the treatment of this issue by comparable communities. Second, it stresses that as only one officer would be eligible for the buy out over the next ten years, its proposal actually creates a "temporary savings" for the Village in no longer paying out the accumulated unused sick leave to the entire cohort of officers on an annual basis. Brief of the Union at 17. Third, it returns to its wage offer as a *quid pro quo*.

The Village argues that an interest arbitration, as a substitute for the bargaining process, cannot be much in advance of what that process would produce—that radical or “breakthrough” change requires a strong showing that that would have been the likely result. Thus it stresses the radical nature of this proposal in light of the parties bargaining history in recent contracts resulting in an express *disclaimer* in the most recent agreement of the result the Union now seeks. The Village counters that while external comparability “slightly favors” the Union’s proposal by count of those jurisdictions that allow a buy out of career accumulation, the statute directs consideration of internal compatibility as well; and, on that, it stresses that none of the other employees of the Village have such an entitlement. The Village argues further that the Union proposal must be put in the total matrix of economic benefits the Village affords these officers vis-à-vis comparable communities; that even if comparables slightly favor this benefit, they pay less to their officers in other regards. Finally, it points to the accounting set aside the proposal would require which contradicts any claim of *quid pro quo* worked the Union’s lower wage offer.

The *quid pro quo* argument was dealt with in the previous section and need not be reiterated. Commonality of treatment of other of the Village’s employees is a statutorily mandated factor and it weighs in favor of the Village’s position. Brief of the Village at 20. So, too, under § 14(h)(6) does the overall composition of benefits vis-à-vis comparable police departments. The Union is correct that its proposal would effect a saving to the Village in terms of its pay out of unused sick leave for the next decade even as the Village would have to set aside unexpended sums against the future contingency of career pay-outs; but, as the Union also candidly recognizes, that saving would be “temporary”—and it is the longer term economic consequence that has driven the Village’s position.

The considerations taken up thus far might be neither here nor there where the weight of treatment elsewhere evidences that the Village is seriously out of step. Such would justify a “breakthrough” award, which the Union argues to accordingly: “The Police Officers in Flossmoor are missing an integral fringe benefit enjoyed by most police officers, as shown in external comparables. A sick leave buy back provision is an economic benefit that most communities provide their retiring police veterans.” Brief of the Union at 15.

There are six comparable communities. Two—Orland Hills and Olympia Fields—do not permit cash outs, the latter having permitted it prior to 1990, *i.e.*, it apparently has moved in an opposite direction; two—Village of Glennwood and Village of Lynwood—permit cash outs of 130 days and 100 days respectively; one—Richton Park—permits a cash out of up to \$6,000 which may be used to continue group medical coverage; and one—Palo Heights—permits a cash out of 80% of unused sick leave but only for the purpose of medical insurance coverage. The Village characterizes the head count of comparables as “slightly” in the Union’s favor, *i.e.* four-to-two. But the purpose for which the cash out is sought is an integral component of the benefit. Thus, half the comparables allow unrestricted cash outs, half do not. It is simply not the case that “most” of the comparable communities provide their officers with the same kind of benefit the Union is seeking: a third do; a sixth restrict usage for medical purposes; a sixth expressly contemplates that option and makes it available.

The Union argues to the need for this benefit as an inducement for long service. Brief of the Union at 16. The testimony concerning the need for this benefit never mentioned this aspect of accrued sick leave, however. The sole focus of the Union’s case was on the officers’ concern to maintain medical insurance coverage after retirement. The rationale for the proposal cannot

be divorced analytically from consideration of how officers in comparable communities are treated.

In sum, no matter how viewed, it cannot be said that the Village is so clearly out of step with the times, with the treatment accorded elsewhere, that an interest arbitration should break through the impasse surrounding this issue to bring the Village in accord with a prevailing practice.

3. duration

The Union argues that its is seeking a three year contract term consistent with past practice. (Union Book Tab. 14.) But, as it argues more candidly, the actual dispute, given the agreed-upon retroactively of the award, goes to the question of when negotiations should commence anew. Brief of the Village at 10. The Village makes three arguments: (a) to the history of contract duration between the parties; (b) to contract duration in comparable communities; (c) to the need to “repair” the bargaining relationship, to spare the Village’s staff the time and effort that new negotiations will necessarily entail, to give it a longer period of labor peace. On that, the Village points to public policy, evidenced the statutory contract bar rule, as supporting the Village’s proposal. Brief of the Village at 11.

The Union contests each of these. First, the Union points out that the Village’s response to the Union’s demands made on September 13, 2005, found the year 2008 termination date acceptable. It points out that the proposal for a four year contract was not made until the Village submitted its last offer in conjunction with this proceeding. Brief of the Union at 7. Consequently, the Union points to arbitral authority that discounts proposals that have not been seriously engaged with in the bargaining process. Brief of the Union at 8–9 (citing awards).

Second, the Union points the pattern of duration in comparable communities as evidencing a norm of three years. Brief of the Union at 9–10.

Third, it argues that neither a respite from bargaining nor public policy supports the Village's position. Brief of the Union at 5–6. It stresses its eagerness to go to the bargaining table and asserts that delay will only exacerbate whatever issues will need to be resolved. *Id.* at 5.

The critical question accordingly is whether the parties and the public interest are better served by a nine month vis-à-vis a twenty month delay before the expiration of the collective agreement; that is, whether the parties and the public are better served by commencing on a new round of collective bargaining earlier rather than later. On that neither the pattern of previous contract duration here nor in comparable communities is helpful: on the latter, there is nothing in the record to evidence what disputes remained open and unresolved at the conclusion of their respective terms. Nor does the contract bar rule help to resolve this issue. Rules on contract and recognition bar balance the need for stability in a bargaining relationship against employee free choice in the selection of a bargaining representative *vel non*. See ROBERT A GORMAN & MATTHEW W. FINKIN, BASIC TEXT ON LABOR LAW §§ 4.8, 4.9 (2004). There is no issue here of current or even potential instability in the bargaining relationship.

The Union's position better serves the parties' and the public's interest. First, the record is clear that what has driven the Union's sick leave accumulation and cash out demand is its concern for the availability of affordable health insurance after retirement. In colloquy, the Chair pressed the Union on why it was sacrificing the interests of those bargaining unit members who would be likely to or would want to leave the Department before reaching retirement. Under the Union's proposal as they lose the right to annual cash out if they leave before

retirement. The trade-off only underlines the depth of the Union's concern; indeed, one can well take arbitral notice of the importance of this issue nationally.*

Second, the record is ample that this issue—the availability of post-retirement medical benefits, its character and cost—was not explored let alone exhausted in the bargaining process. The Union's address to this issue was embodied in its sick leave cash out proposal. This the Village consistently and flatly rejected on the ground of cost. The underlying issue was not mutually explored. The Village pointed out to the Chair the possibility of health savings accounts that would or could at least in part deal with the Union's concern. And that opens up at least one possibility already contained in an apparently dormant side agreement to the now expired collective agreement. But the argument is misdirected—it is to the Union that that option, the groundwork for which has already been laid, needs be put.

Third, tooling up for another round of bargaining does not present an onerous burden on the Village. Having just concluded this agreement there appears little in ongoing dispute save for the pressing question of health coverage for retirees. The parties have a tentative agreement on wages for the fourth year which, though not binding should a three year duration be awarded, indicates how limited the bargaining agenda is likely to be. As no member of the bargaining unit is due to retire for at least a decade the parties have unhurried breathing space to address the financing question which is better done earlier rather than later even if only by a few months. Nor does the prior record of face-to-face bargaining, of 36 hours—a day and a half—over a 16 month period, suggest the parties' exhaustion: there have been no marathon bargaining sessions, no 'round the clock bargaining or the like to which the argument of exhaustion would be most applicable. The absence of the need for a "respite" is only underlined by the Union's eagerness

* *2006 Labor Outlook: Collective Bargaining*, DLR No. 15 (Jan. 17, 2006); McDonnell, *Finances of Employee Benefits: Health Costs Drive Changing Trends*, 26 ERBI NOTES (Dec. 2005).

to return to bargaining. Thus, the public will be better served by having the parties address an underlying issue that, obviously, is festering and with which they have not really come to grips in this round of negotiations, earlier rather than later.

AWARD

Pursuant to the Parties' Stipulation all terms of the collective agreement governed by the proceeding that have been tentatively agreed upon are to be made part of the collective agreement for the period covered by this award retroactive to May 1, 2005.

As to the issues presented to the panel, the collective agreement will:

1. incorporate the Village's final offer on wages
2. incorporate the Village's final offer on sick leave policy
3. terminate on April 30, 2008

Mr. Baird concurs in (1) and (2) above and dissents in the award in (3). Mr. Bailey dissents from the award of the above in (1) and (2) and concurs in (3). Their signed attestations in these regards is appended and made part of this award.

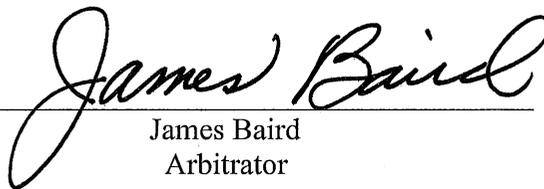


Matthew W. Finkin
Arbitrator

3 August 2007

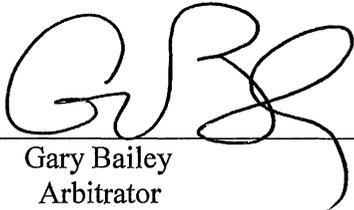
Date

James Baird, Arbitrator in the instant arbitration, concurs in the Award of the Village's final offer with respect to wages and sick leave policy and dissents from the award of the Union's final offer in the matter of contract duration.


James Baird
Arbitrator

August 6, 2007
Date

Gary Bailey, Arbitrator in the instant matter, concurs in the award of the Union's final offer or in the matter of contract duration and dissents from the award of the Village's final offer with respect to wages and sick leave policy.



Gary Bailey
Arbitrator

August 10, 2007
Date