

employee seek paramedic status which requires a course of study equivalent to 29 college credit course hours, 40 hours of classroom training, completion of work observation sessions in various departments of a hospital and on the job training. These efforts generally require as much as nine months in order to complete them. Finally, a state examination must be successfully completed. Once certified by the state the Employer requires that its firefighter-paramedics complete 30 hours of training each year.

There are apparently, no certifications required of those who wish to become police officers. Rather, the Employer requires that candidates for hire as such possess at least two years of college education or an associate's degree. One hired a police officer must complete a twelve week course of study at a police training academy and then a fourteen week field training program during which his or her performance is continuously evaluated. Once these requirements are met, police officers working for the Employer do in fact receive annual training, but there is no minimum amount of training that a police officer must undergo.

The Employer enjoys a rather secure fiscal position in that its fiscal year 2007 budget allows for 1.13 million dollars in additional revenues over the preceding year and actual revenues have grown by almost twenty-one percent between fiscal year 2003-4 and the last fiscal year. Its general fund revenue grew by two million dollars between those two years and its total cash and investments in 2006 were such that it could pay off its current liabilities almost eight times with those funds. Finally, it is currently undertaking substantial capital improvements to its downtown area, at a cost of approximately \$27.3 million dollars, a downtown area that has been recognized for outstanding planning by various entities.

The parties most recent collective bargaining agreement expired on May 1, 2006 and during negotiations they reached tentative agreements on a number of subjects including sick leave; annual shift bidding procedures; written warnings, reprimands, and suspension; patrol bureau alternative work schedules; probationary employee eligibility; probationary periods; step increments; longevity table; and a retirement health savings plan. However, despite two mediation sessions with the undersigned and other efforts, they have found themselves in this interest arbitration.

THE COMPARABLE COMMUNITIES

The parties have agreed that the comparable communities for the purpose of this arbitration are as follows: Elgin, Schaumburg, Palatine, Skokie, Des Plaines, Mount Prospect, Hoffman Estates, Buffalo Grove, Elmhurst, Lombard, Park Ridge, Elk Grove Village, Wheeling, Northbrook, and Rolling Meadows. There are also the communities deemed comparable by the arbitrator in the 1991 interest arbitration between the Employer and its fire union.

THE ISSUES

Wages

On this issue the parties agree that there should be an equity adjustment at all steps of the salary schedule and that the across the board wage increase for the first year of the agreement be four percent, retroactive to May 1. They differ however on the amount of the equity adjustment and the amount of across the board salary increases in the second year of the agreement. More specifically, the Union proposes a \$1,000 equity adjustment and a second year percentage wage increase of four percent while the Employer proposes a \$300 equity adjustment and a second year wage increase of 3.75 per cent.

In support of its final offer the Union urges that police wages have historically lagged behind those of the Employer's firefighter-paramedics and that the disparity between those two positions also exceeds the disparity between those two positions among the comparables. The Employer on the other hand contends that the proper comparison point is between the police and fire engineers and that there has been strict parity in the wage increases between those two positions. It further argues that the Union has failed to present evidence that the parity should be disturbed, especially in light of the fact that any wage disparity has been the product of bilateral negotiations between the parties. The Employer also compares its final offer to the wages paid in the comparable communities and argues that its final offer compares favorably with the wages paid in those communities. Finally, it relies on the fact that turnover in its police department has been such that the Union's final offer must be rejected and that its final offer compares favorably with the cost of living¹.

First, a history of the wage relationship between police and fire at the Employer. As noted above, in 1991 the Employer and its firefighters resolved their contract dispute in interest arbitration. There, Arbitrator Briggs held that he was "reluctant to grant...an arbitrated outcome which would take Arlington Heights Firefighters beyond what the FOP gained through collective bargaining...absent clear and convincing evidence of the need for an inequity adjustment." Since then, the record reflects, the percentage wage increases that the Employer has agreed to with both the firefighters and the police have, in each year, been identical and such that annual salaries for police and fire engineers have also been identical, with the exception of rounding deviations.

¹ The Employer has also characterized the Union's wage offer as a "breakthrough" and thus subject to a more stringent quantum of proof. It views the Union's offer in this fashion because in negotiations the Union attempted to ameliorate the wage disparity via "certification pay" and that it conceded that any such approach would in fact be a "breakthrough." Thus, the Employer argues, to couch its final wage offer now as it does, simply in terms of an equity adjustment and a percentage wage increase, the Union is simply attempting to camouflage its final offer so that it can escape the "breakthrough" analysis. I however, find it unnecessary to address this argument because, as described *infra*, the Union's final offer does not warrant adoption using the more traditional, rather than "breakthrough," analysis.

The Union's final offer however breaks with that trend and the Employer's final offer continues that trend. Thus, the inquiry is whether the Union has justified such an approach. For the reasons described below, I conclude that it has not.

First, the parties cross swords over the relative knowledge, skills, and abilities of firefighter-paramedics versus those of police and the relative work level and productivity of those two categories of employees. More specifically, the Employer relies on the disparate certification and training necessary for firefighter-paramedics versus those of police and the Union relies on the fact that the Employer's police responded to substantially more calls than fire personnel. In a more general, and perhaps visceral sense, the Union argues that the Employer has failed to "understand the perception of the police officers and the message that the (disparity) sends to them..," that the police "have waited long enough for equity..," and asks "...how long should...the patrol officers be relegated to a subordinate status to their fire counterparts²?"

On the first point, the relative knowledge, skills, abilities, type of work and productivity, the parties have submitted evidence that would be in the nature of what is known in the human resources literature as a job structure analysis, i.e. determining the relative worth of various jobs in an organization. (See e.g., *Human Resource Management: Gaining a Competitive Advantage*, Noe, Hallenbeck, Gerhart, and Wright, McGraw-Hill Irwin Publishers, 5th Edition at page 468.) In doing so one ordinarily conducts a job evaluation which is a process by which the compensable factors (those characteristics of jobs that are of value and should be paid for) of jobs are identified and then each factor is given a value or weight. Then, when those compensable factors are identified and given a value, the total value for each job is computed and compensation is determined accordingly. (See, *Noe et al*, at 468-9).

The first question that arises is whether I, as an interest arbitrator, am best equipped and positioned to perform this task. I doubt that I am because it requires a sophisticated analysis as that set forth above and as such the proper person not among the parties to complete the task would be either a specialized arbitrator or other party such as a human resources consultant. Moreover, even if I could do so, the record on this issue, an issue on which the Union bears the burden of proof, is wholly inadequate to enable me to do so, perhaps more indicia that interest arbitration is not the place to resolve this issue³.

With regard to the wage disparity between police and firefighter-paramedics and the wisdom and propriety of perpetuating it, I find that I am compelled to do so. First, the evidence clearly shows that percentage wage increases between police

² It ends this argument with the following eloquent plea:

Salary is the measurement of worth in employment. Recompense determines value...If one continually tells an employee he is worth less, he is less valuable, he is less important, he will...see himself as that. Of all services provided to the citizens,..one would think the police is the last one...leadership would want to feel or see itself as second class. Yet,...such is the case.

³ In fact, to the extent that this record contains any data to enable me to perform a job structure analysis, most of that evidence was proffered by the Employer.

and fire have been identical for a significant period of time. Second, those wage increases, and the resulting disparity, were the product of bilateral negotiations between the Employer and its police union on the one hand and its fire union on the other. It might very well be that in prior negotiations the Union herein valued other subjects more than the wage disparity and concentrated its energies and bargaining efforts and leverage on those issues. However, in doing so it voluntarily agreed to continue the wage disparity and if it wishes to end that state of affairs it must do so at the bargaining table. (See e.g., *University of Illinois at Springfield*, S-MA-00-282 (Perkovich, 2002); *City of North Chicago*, S-MA-96-62 (Perkovich, 1997); Marvin Hill and Emily DeLacenserie, *Interest Criteria in Fact-Finding & Arbitration: Evidentiary and Substantive Considerations*, 74 Marquette Law Review 399, 413 (1991).

The only exception to the above proposition is, as Arbitrator Briggs, I, and others have held, if the Union can show compelling evidence to the contrary. It is to that issue that I now turn.

On this point the Union vigorously argues that the Employer's placement among the comparable communities on various measures (relative population, average median home value, median household income, and general fund revenues and expenditures) justifies adoption of the Union's final offer because the Employer is among the highest ranked of those communities on these measures, yet its final offer will pay its police only slightly above or below the average pay of police in those communities⁴. This argument is not compelling for a variety of reasons. First, as the Employer points out, on other measures (equalized assessed value per capita, sales tax per capita, and general fund revenue per capita) it is among the lowest of the comparables. Secondly, and perhaps more importantly, I am unaware of any external comparability analysis in any interest arbitration where the relative merits of final offers have been determined by the placement of the employer among the external comparables on measures such as equalized assessed valuation. Rather, external comparability analysis has consisted of weighing each final offer against the wage increases awarded in the comparable communities and the wage placement that the final offer would cause.

When the parties' final offers are viewed in this fashion the Employer's final offer would provide wage increases above the average wage increases in the comparable communities and both final offers would place the Employer's police officers at the same relative ranking among the external comparables at the starting rate of pay and at one, five, and twenty years of service and at top pay. It is only at the tenth and fifteenth year of service that the relative placement differs with the Union's final offer placing the officers at the fourth rank and the Employer's final offer placing them fifth. This distinction, when viewed against the internal

⁴ The Union elaborates on this argument that the Employer goes beyond "average" in other endeavors by citing its substantial downtown revitalization project. However, I and other interest arbitrators have held that an unwillingness to pay does not mean that an employer is unable to pay. Similarly, an ability to pay does not mean that an employer ought or must pay.

comparables, described *supra*, and other criteria, which supports the Employer's final offer and are described *infra*, do not warrant selecting the Union's final offer.

Two other measures are of relevance to this dispute, the matter of police turnover and the cost of living. In both instances they support adoption of the Employer's final offer. On the former, the record reflects that the Employer has had a turnover rate of only 5.8% during the last four year collective bargaining agreement and that the number of applicants taking the police hiring exam has grown over time. Similarly, wage increases provided under the parties' last agreement exceeded the cost of living and the Employer's final offer would continue to exceed projected increases to the cost of living in the future.

In essence, when the parties' two competing offers on wages are compared to one another the major distinction between them is how they will affect the historical wage disparity between police and firefighters. Because that distinction has been relatively long-standing and because it has been the product of bilateral negotiations, it should be disturbed in arbitration, under long-standing arbitral precedent, only if the Union can justify such a result. I find that despite its heartfelt concern and passion for what it perceives to be an injustice, the Union has not established a justification warranting adoption of its final offer for the reasons described above. Rather, those concerns and that passion can and should be addressed at the bargaining table. There, and only there, can the Union attempt to persuade the Employer to correct this state of affairs using the weight of its arguments, whatever objective evidence it might be able to put forth, and/or offering a *quid pro quo* that would, in the view of the Employer, be of sufficient value to persuade it to agree to that which the Union seeks.

Holiday Pay

Under the parties expired agreement the police do not receive compensation linked to particular holidays. Rather, they have agreed that in lieu of holidays police will receive twelve days off each year and that they will be paid for those days so long as the officer works the full scheduled day before and after the day in question unless there is proof of sickness or excusable absence. The record reflects that a similar approach was contained in the Employer's agreement with its firefighters until 1999 when those parties negotiated that firefighters would receive holiday pay for Thanksgiving and Christmas days. This agreement also contained a negotiated provision that phased in additional holidays to be treated in this fashion over that three year agreement such that by the time the agreement ended holiday pay was paid to firefighters for those two holidays plus Independence Day, New Year's Day, Labor Day and Memorial Day. Finally, with the current agreement between the Employer and the firefighters, for the period 2005-2008, firefighters receive twelve hours of straight time pay for these six holidays.

The Union's final offer is to include in their parties' agreement a provision whereby in addition to the twelve paid days off each year police officers received time and one-half pay Memorial Day, Independence Day, Thanksgiving Day, Christmas Day, and New Year's Day. The Employer counter offers that premium pay of one and one-half be limited to Thanksgiving and Christmas Days in the first

year of the contract and expanded to include Independence Day and New Year's Day in the second year of the contract⁵.

The Employer first argues that because the Union's final offer is a new benefit it must be regarded as a breakthrough and held to a higher quantum of proof. Ordinarily, I would agree with this argument because there can be no question that what the Union proposes is a new benefit, but I must take note that the Employer has offered the benefit as well. Thus, to use traditional breakthrough analysis as to the quantum of proof is not really applicable.

The Union contends that the external and internal comparables support its final offer, but the Employer replies that although the external comparables provide premium pay for between eight and thirteen holidays, none of them do so in addition to twelve scheduled days off and that its firefighters achieved the six premium holidays only after they were phased in over time. Thus, the Employer asserts, a similar result here would best replicate what the parties most likely would have agreed to in bargaining.

I agree with the Employer that the external comparables are readily distinguishable and thus, of no aid or comfort. However, I cannot agree that simply because the firefighters agreed to phase in the holiday pay over time this Union must also. Rather, a comparability analysis in interest arbitration is to compare and contrast a union's final offer with the terms and conditions of other employee groups on that same issue. I am unaware of any case where a *pattern* of terms and conditions of employment is the point that is to be compared or contrasted and the Employer has cited no authority for that type of comparability analysis. Thus, because the Union herein seeks five paid premium holidays for the life of the contract and because the firefighters have six, internal comparability requires that I accept the Union's final offer⁶.

Removal of Discipline

The record reflects that discipline in the Employer's police department is governed by General Order 26.3 which provides for, *inter alia*, "punitive" discipline in escalating levels from written warning, written reprimands, suspension, demotion, and ending in discharge. During the terms of the parties' last agreement, between 2002 and 2006, there were no disciplinary proceedings in arbitration or before the Employer's Board of Police and Fire Commissioners.

The Union proposes that the parties' agreement contain a provision whereby written warnings and written reprimands will be removed from an officer's file at his or her request provided that for eighteen months since the date of the discipline to be expunged there has been no recurrence of the same or similar misconduct. Moreover, the Union's final offer includes a provision that suspension and discipline

⁵ In all other respects the parties' final offers on this issue are identical.

⁶ I am mindful of the Employer's assertion that the firefighters, unlike the police, offered to the Employer a *quid pro quo* for this benefit. However, it did not identify in the record any evidence as to what the exchange consisted of.

relating to harassment or discrimination are exempt from this provision. The Employer's final offer tracks that of the Union but for its desire to limit expungement to written warnings and that the period during which there shall be no recurrence of misconduct in three years rather than eighteen months.

On this issue I find that the external and internal comparables support the Employer. With regard to its firefighters, they enjoy no similar provision in their agreement. With regard to the external comparables, only five address this issue and of those five three have a period during which a recurrence of misconduct will bar expungement that exceeds eighteen months⁷. Finally of the two comparable communities whose related provisions favor the Union, Mount Prospect at eighteen months and Schaumburg at twelve months, the first allows use of prior discipline before the police and fire commission and the other is in a contract that has expired and is now in interest arbitration.

In light of this comparability analysis I adopt the Employer's final offer on this issue.

Court Pay

The current state of affairs with respect to this condition of employment is that the parties have agreed that employees who make court appearances outside of their normal working hours receive time and one-half for that time with a minimum of two and one-half hours. The Union proposes that this benefit be amended so that those employees who meet this criteria after working the midnight shift receive a minimum of three hours. The Employer contends that the status quo should be maintained.

First, the external comparables. The record shows that only one of the comparable communities, Wheeling, treats midnight shift employees different from other employees making court appearances outside of their normal work hours. Thus, the external comparables favor the Employers' final offer. The Union counterargues that the fact that nine of the fifteen comparable communities pay more court time generally is reason to view the comparability analysis as favoring its final offer. I cannot agree however. Again, the purpose of a comparability analysis is to compare or contrast the benefit or contract provision in question. If arbitrators were to allow parties to compare and contrast different but related benefit provisions, there would be a risk that the comparability analysis would become of little use in police and fire negotiations and arbitration.

The Union also argues that there is a burden placed on midnight shift employees because when they attend court during the day it would be when they would otherwise be sleeping. This argument has some appeal because traditionally employers and unions have attempted to take into account the peculiar circumstances that midnight shift employees face. However, I agree with the

⁷ Elgin looks to a period of three years, Lombard looks to five years, and Rolling Meadows looks to two years.

Employer that the Union has failed to make the record on this point as there is no evidence as to the frequency with which midnight shift employees face these burdens and what, and how great, if any, those burdens might be.

I find therefore that the Employer's final offer on this issue must be adopted.

Detective On-Call Pay

One week out every nine detectives are on call and, the record shows, when they serve in this capacity they receive no additional compensation. The Union seeks to change this status quo by including a provision in the parties' agreement that when detectives are on call status they will receive two hours of compensatory time for each week that they are on call. The Employer on the other hand urges that the status quo remain unchanged.

The Union concedes that this proposal is a breakthrough. Thus, under established arbitral precedent not only does the Union bear the burden of proof, but that burden is a heavy one. Upon review of the evidence I must find that the Union has failed to carry that burden. First, it again attempts to use comparability in a fashion not ordinarily used. That is, it relies on the fact that in comparable communities detectives are paid more than other bargaining unit employees and that the Employer pays various forms of specialty pay to its firefighters. Again however, I conclude that using comparability as to different but related benefit provisions rather than the benefit provision at issue is of little help and great risk. When comparability analysis is used as it customarily is, the evidence does not support the Union's final offer in that the Employer does not pay on call compensation to its firefighters and that of the three comparable communities that do pay on call compensation none of them limit the compensation to detectives.

I find therefore that the Employer's final offer must be adopted⁸.

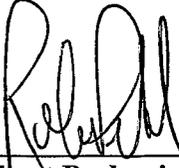
AWARD

1. The parties' tentative agreements are hereby adopted.
2. The Employer's final offer on wages is hereby adopted.
3. The Union's final offer on holiday pay is hereby adopted.

⁸ The Union also argues that to allow this type of compensation would be "a method by which the (Employer) could further compensate its patrol officers without creating rifts with other employee groups' compensation..." I reject this argument however for the very same reasons I rejected it as to the Union's final offer on wages. See, *supra*.

4. The Employer's final offer on removal of discipline is hereby adopted.
5. The Employer's final offer on court pay is hereby adopted.
6. The Employer's final offer on detective call out pay is hereby adopted.

DATED: April 9, 2007



Robert Perkovich, Arbitrator