

BEFORE
JAMES R. COX
INTEREST ARBITRATOR

VILLAGE OF BROADVIEW

and

ILLINOIS LABOR BOARD
S-MA-06-145

ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL

DECISION AND AWARD

The Hearing in this matter was conducted in Broadview, Illinois January 18, 2007. Attorney Edward Burke, assisted by Blanca Dominguez, represented the Village. The Union case was presented by FOP General Counsel Thomas Sonneborn and Field Supervisor Becky Dragoo. Each Party filed a Post-Hearing Statement in April 2007.

This Award is issued in accordance with applicable provisions of Section XIV of the Illinois Public Relations Act.

THE ISSUES

Following unsuccessful efforts to reach complete agreement during 2006 Collective Bargaining Negotiations, the Parties bring several unresolved economic issues to this Interest Arbitration¹. Negotiations were not extensive and did not involve at least two of the Issues set forth in the Village's Final Offer. I list the unresolved issues.

¹ As to each economic issue, the Arbitrator is required to adopt the Last Offer of Settlement which, in his opinion, more nearly complies with applicable factors prescribed in subsection 14(h). The Statute does not indicate that any particular factor predominates. The underlined factors are of primary importance here. The Arbitrator may not make any modifications in the Last Offer adopted. He must base his findings upon the following factors to the extent applicable.

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally: A) In public employment in comparable communities.
(B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

1. Wages
2. Term of Agreement
3. Sick Leave
4. Health Insurance – Employee contributions
5. Work Schedule & Compensatory Time
6. Personal days
7. Longevity
8. Sickness in Family Article 18.5
9. Economic benefits and Work Practices
10. Village of Broadview's Employee Policy Manual, Section 33.5

The Broadview/FOP 2002 Labor Agreement expired April 30, 2006. A Demand to Bargain a new Agreement had been served January 3, 2006 and, following unsuccessful Mediation efforts, the dispute was properly advanced to Interest Arbitration.

In this proceeding the Village proposes a first year wage freeze and curtailment and/or elimination of a number of employee benefits in order to achieve labor cost savings, uniformity in Village procedures and what they see as a fair benefit structure in the Police Department. They seek economic relief and cost reductions as shown below. They assert that, considering the critical state of their financial position, their proposals should be viewed as progressive. They maintain that they are not seeking unreasonable takeaways but proposing substitutions for benefits that have become regressive.

Requirements for a Breakthrough.

Proposals to eliminate or substantially modify a long standing benefit are generally considered as seeking "breakthroughs". As the Village acknowledges, Arbitrators take a conservative approach in making breakthrough determinations, favoring the status quo. A greater weight of evidence to support a breakthrough is required the longer the provision or policy sought to be changed has been in effect. A clear cut justification for change must be shown.

In what is often called a Landmark Award involving this doctrine, as far back as 1988, Harvey Nathan laid out three tests to be satisfied before a proposed substantial change in an Agreement should be adopted. He wrote the existing system is not working, there are problems creating operational hardship and the party seeking to maintain the status quo has resisted attempts at the bargaining table to address those operational problems. Will County, S-MA-88-9, (Nathan 1988). He wrote, as a condition of the Arbitrator's adoption of a change from the status quo as part of a Last Offer, the parties must have bargained about the change. There is wide spread agreement among Arbitrators on the bargaining prerequisite.

As Arbitrator Briggs commented in City of North Chicago and Illinois FOP, S-MA-99 – 101 (Briggs, 2000), the parties must have given the process a chance to work. Prior to any Interest Arbitration determination that there should be a *breakthrough*, whatever standard may be used by the Arbitrator, **there should be serious collective bargaining on the disputed issue, at the least including constructive alternate proposals.**

As noted in the opening statements² and confirmed by my review of the testimony and documentary evidence, prior to Interest Arbitration there had been very little bargaining, in some

(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 private employment.

cases none, on the proposals the Village has placed before this Arbitrator seeking changes. Several of the sought changes are substantial. However, of their proposals, two were not been made known to the Union prior to the exchange of last Offers at Arbitration – the request to incorporate Policy Manuel provisions into the Agreement and the language on Economic Benefits and Work Practices. Except for Wages, the changes sought by Broadview involve what the Union calls *take backs*.

The FOP took a status quo position on the changes in benefits sought by the Union. They modified a previous position on Wages in their Final Offer moving from a first year demand for an increase of 4% to 3%. As far as the evidence shows, there had not been any discussions or alternate positions expressed on the concessions sought by the Village. Often, following a status quo response, alternatives are presented by the moving party.

Interest Arbitration is not intended to initiate a bargaining process but only to determine which of the final positions after bargaining most closely complies with applicable factors set forth in subsection 14(h). It is not up to the Arbitrator to decide the best solution in connection with an economic issue but only to select from the last offers of the Union and Employer. He may not modify those positions.

A recent and comprehensive review of reported Awards which have considered the breakthrough issue was presented by Attorney Terrence Creamer in a paper presented at the December 2006 symposium at Chicago Kent Law School entitled, Proposed changes to the Status Quo, Protecting the Collective Bargaining Process requires the application of a stringent standard. His presentation was very thoroughly researched and presents an up to date perspective.

Creamer wrote,

“According to Arbitrator Goldstein, “this brand of Interest Arbitration was clearly intended to supplement the bargaining process, not supersede it.” City of DeKalb and DeKalb Professional Firefighters Ass’n, Local No.1236, IAFF, (S-MA-87-26), (Elliott H. Goldstein, June 9, 1988). To further the objectives of Section 14, final offer interest arbitration, a stringent standard must be applied by arbitrators when considering proposals to change the status quo. He continued, “Because there is practically no opportunity to appeal an Arbitrator’s Award, Section 14 gives tremendous power to arbitrators over the parties’ collective bargaining relationship. This power has the potential to cause great harm to the collective bargaining relationship between the parties when an arbitrator accepts an offer that results in a significant change to the parties’ contract...”

Arbitrator Kossoff warned of potential harm when he cautioned against awarding a wage package to either party that would be significantly superior to the wage increase that would have been obtained in collective bargaining. “That party is not likely to want to settle the terms of its next contract through good faith collective bargaining. The temptation, and political pressures, will be very great to try one’s luck again in arbitration in hopes of getting a better deal than is likely available at the bargaining table. This undermines the collective bargaining process which is the cornerstone of our national and state labor relations policies.” Village of Bartlett and County, Municipal Employees’, Supervisors’ and Foremen’s Union, Local 1001, (FMCS 90-03589), p. 14 (Sinclair Kossoff, August 27, 1990).”

Terry Creamer discussed a Harvey Nathan Award issued 6 years following the Will County Decision.

“In addition to compelling need and evidence of a quid pro quo, the moving party must offer evidence of repeated good faith attempts at the bargaining table to secure agreement from the other side. Arbitrator Nathan stated that “[t]he party seeking the change has the burden of showing not only a clear justification for the proposal but also that it was unable, despite repeated attempts, to obtain relief at the bargaining table.” Village of Elk Grove Village and Elk Grove

Village Firefighters Association, Local 3398, IAFE, (S-MA-93-231), pp. 67-68 (Harvey A. Nathan, October 1, 1994).

Arbitrator Nathan emphasized that “, If the collective bargaining process is to be protected, evidence of the party’s negotiations must be examined. Without such evidence, there is a danger to the bargaining process if a change to the status quo were granted. It certainly would be relevant if the moving party made one package proposal, had it rejected, and afterward never raised the issue again. A change to the status quo should not be granted when the moving party conveys a proposal late in the bargaining process. Also, there should be no change to the status quo if the proposal at arbitration was previously withdrawn or tentatively agreed to by the moving party.”

Creamer continues, “Only after the moving party is able to carry the burden of compelling need, quid pro quo and exhaustive, good faith collective bargaining should external and internal comparability and other Section 14 factors be examined by an arbitrator. See Will County Board, p. 52 (Harvey A. Nathan, August 17, 1988). “Without first examining these threshold questions, the arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining”.

As caretakers of the parties’ collective bargaining relationship, Arbitrators must adhere to a compelling need-bargaining history standard when changes are sought to the status quo. As Arbitrator Harry Graham explained when he rejected a Union proposal to modify a contract that required employees to pay fifty percent (50%) of health insurance premium increases:

[T]he Union is seeking that the Arbitrator rescue it from a bargain it has come to regret. That cannot and will not occur. Arbitrators should have a limited view of their writ. They are not circuit riders, dispensing industrial justice as they are given to see it. Rather, they enforce the bargain of the parties. In this case, the Union bargained that its members would pay half of the health insurance premium increase. If it wants to rid itself of that bargain the Union must strike another bargain with the State. Presumably there exists some quid pro quo which would induce the State to alter its position on health insurance. Certainly adoption of a comprehensive major medical plan would be expected to slow the rate of increase of health insurance premium increases. If the Union is unwilling to countenance a change in coverage, it must pay the piper. American Federation of State, County and Municipal Employees, Iowa Council 61 and State of Iowa, pp. 15-16 (Harry Graham, February 27, 1991).

Similarly, it would be inappropriate for an employer to obtain a “take away” in interest arbitration without evidence of having proposed a quid pro quo. As noted by Arbitrator Goldstein, *“it is inappropriate for the Employer to have the ability to unilaterally obtain “takeaways” which potentially quite clearly could result in adding costs to bargaining unit members without concession bargaining or obtaining a quid pro quo exchange for increased life insurance costs to these employees.”*

Application of a standard calling for compelling need, a quid pro quo and exhaustive, good faith collective bargaining will promote stability in labor relations and result in a measure of predictability to the Section 14 process.” Teamsters Local Union No. 714 and County of Cook and Sheriff of Cook County, (L-MA-95-001), p. 56 (Elliott H. Goldstein, December 8, 1995).

Broadview Bargaining History

The Parties have had a long-standing bargaining relationship dating back to the April 1986 FOP certification. In these negotiations the Union contends that the Village is attempting, in a single stroke, to nullify benefits gained through give and take bargaining over a twenty-year

period. It is the Union's position that the Village is seeking to cut Employee costs with the expectation that conditions will not improve. There is no proposal for a restoration process if financial considerations do stabilize.

The successor Agreement before me will be the seventh between the Village and the Illinois FOP. There has only been one previous Interest Arbitration and it primarily dealt with a non economic issue.³

Ability to Pay Factors

Detailed and extensive evidence establishes that, during the term of the previous four year Agreement, various financial concerns caused the Village to institute service reductions which included a substantial cutback in employment. Their claim of financial hardship is real⁴. The essential question is the impact of present circumstances upon their proposals for a three year agreement... The cost savings of the proposals were not specified. Moreover, in addition to benefit proposals which may be less expensive than the present package, there are proposals to both increase employee costs for insurance coverage coupled with a failure to recognize the increase in Cost of Living which has taken place during the first year of the new Contract... While they do not raise an inability to pay and do propose increases after the first year, Broadview asserts that their financial situation makes their three year offer with limited wage increases and reductions in some fringe benefits reasonable.

It was in June 2006, following expiration dates of four Labor Agreements covering represented employees in this non home rule municipality, that Village wide layoffs were instituted⁵. In the course of the reductions in force, in the Police Department 10 Patrol Officers were laid off and another retired without being replaced. Shortly thereafter, for unexplained reasons, three of the laid off were recalled.

By January 2007 there were 16 Patrol Officers in the Unit, 8 Officers fewer than the staff of 24 employed during the May 1, 2005 – April 30, 2006 fiscal year. The Broadview Police Department currently appears to be a bare bones operation necessarily curtailed because of Voter reluctance to provide the Village Administration with adequate funding... The deteriorating financial condition which has developed during the past few years has not had positive response from the Citizens of Broadview. This bargaining is not about staff increases in the Department but wages, benefits and working conditions for the present complement of Officers who remain in the Unit after the 2006 reductions in cost.

The Union says that a concomitant of the ability to pay factor is the provision for maintaining the public interest –in this case public safety. Indeed the two are listed together in

³ The only previous such Arbitration principally involved a residency issue, often considered non economic by Illinois Arbitrators. Broadview and The Illinois FOP, S MA 99 62 (2000 Cox).

⁴ During the term of the prior Agreement there have been a complex series of transfers between accounts and Funds. Presently, unlike in the past, all revenue for police salaries currently comes from the General Fund. A review of reported deficits in the General Funds – even without considering the causes for these problems pointed out in detail by the Village through documentation and testimony – shows a \$54,000 Deficit for the Fiscal year ending April 30, 2002 – the prior Contract had become effective January 2002. Thereafter there were successive years in which expenditures appear to have exceed revenues into the fund - \$3,341,350, (fiscal year ending April 30, 2003)⁴ \$4,738,647 (2004), \$2,316,164 (2005) and \$1,400,000 (2006)⁴. While there is a continuing deficit as of the January 2007 Hearing, the bleeding has somewhat abated.

⁵ It was reported that in June 2006 38 Village employees were laid off about 35% - an unprecedented percentage –wise reduction in municipal government.

Factor 3 of 14(h) The FOP indicates that Broadview Officer's workloads have increased as a consequence of the staffing reductions and that crime has not been shown to have decreased.

Law enforcement activity has diminished even though the staff reductions were effective for only about half of calendar 2006. Traffic arrests were down 50% in 2006. Parking arrests declined 18%. Criminal arrests decreased 26%. Yet the number of Complaints for service in 2006 were as numerous as they had been in 2003 – over 14,000. While there was formerly one Sergeant and four Patrol Officers in Investigations in 2003, as a result of re-staffing and reallocation of the workforce, that figure in 2006 is down to one Sergeant and two Patrol Officers. This is a very significant problem. Nonetheless, the Clearance Rate for criminal cases was for a period in excess of 56% but has now fallen to 43%. While residents, according to a Village Board 2006 survey, placed the highest value on safety, they have not supported that interest at the ballot box

Arbitrators have held that it is in the public interest to pay Police Offices at levels consistent with what the local labor market says they are worth even when an increase will add to an existing deficit. Jefferson County and FOP, S MA 95-15 (Briggs 1994); East Saint Louis and Firefighters 5 MA 03 062 (McAlpin 2004)...They emphasize the importance of maintaining effective essential services. It had been held that even in a near bankruptcy situation, Arbitrators find that Officers engaged in protective services should not suffer a cut in real income because of a failure to provide a cost of living increase.

It is significant that it will not be until after the issuance of this Award that we will know the full effects on expenses from the Village wide June 2006 work force reduction, the transition to a premium based health insurance program or the results of various other changes including those instituted for non bargaining unit personnel. Looking at some recovery in the General Fund, there appears to be reason to foresee a turnaround at the current employment levels. A favorable Voter response would boost that possibility... The Arbitrator is advised that the Village is continuing to seek additional revenue sources.

The Village of Broadview is a non-Home Rule municipality with a population of 8,500 encompassing 1.3 square miles of land. They currently have a work force of approximately 70 Employees. During the fiscal year which commenced May 1, 2005 there had been 24 Patrolmen in the FOP Bargaining Unit. The total size of the Police Department at that time was 41. Excluded personnel included the Chief, two Lieutenants, and seven Sergeants as well as those in the Telecommunications Unit. As a consequence of the June 2006 cut backs, the Bargaining Unit is now 16 Patrol Officers. Two of that number are Detectives. The Command Unit presently consists of the Police Chief, a single Lieutenant, and five Sergeants. As a result of Citizens choice and the failures to obtain necessary revenue, Department staffing went from 41 to 23!

Voter Response

Broadview was reluctant to cut employment costs. Instead they went to the voters in an attempt to obtain revenue to maintain services. Except for health insurance, there was no evidence of any attempt to obtain mid- term modifications. It was remarkable that, despite the cost squeeze, the Police Department unilaterally instituted new merit and attendance bonuses beyond what was required by the Labor Agreement as shown below.

Broadview Citizens have repeatedly rejected Village Administration efforts to obtain needed tax revenue to fund services⁶. The Citizens should understand that employees cannot be

⁶ The evidence established that the Village Administration has made substantial efforts to raise revenues. Several of those efforts have been rejected by residents. Mindful of the need for establish new revenue sources, the Village unsuccessfully sought Home Rule status in March 2006. Home Rule status had been previously rejected in 2004. The 2006 quest, proposed in a referendum, was also rejected.

expected to subsidize the cost of Village Services in circumstances, such as here, where the evidence shows that their pay and benefits are in line with those paid in comparable communities. Yet Broadview Citizens have continually refused to fund an efficient and effective operation of their Village as recommended by Village Administrators. That failure is working to the own detriment in terms of public safety.

The money problems in Broadview do not derive from overspending by the Police Department. Considering General Fund Expenditures for the Police Department, Broadview is not spending significantly more than other Villages. Within the seven comparable Villages, on average, 42% of total General Fund expenditures are spent on their Police Departments - Broadview has been right in the middle, spending 41%. Countryside only spends 30%.

The Outlook

The Union's perspective of Broadview finances is somewhat optimistic. They suggest that there would be more meaningful negotiations than during 2006 were the terms of the 2006 Agreement limited to a single year⁸. They expect that in 2007 new and more current data will provide an opportunity to realistically evaluate the cost of operations at the current reduced levels..

Three other tax revenue incentives were placed before Broadview voters in fall 2006. Each was defeated. One was a non-Home Rule Municipal Use Tax proposal tied to the selling price of tangible personal property, increases in Sales and Service Taxes and other rates raises.

During these years Operating deficits were adjusted by borrowings from the Capital Projects Fund in fiscal year ending April 30, 2005 and the General Fund borrowed money to solve the ever increasing operating deficit in the General Fund. During the 2006 fiscal year there was a bond issue of \$3,867,836 addressing the \$7,317,836 operating deficit in the General Fund. The Village points out that there have been continuing and increasingly larger operational losses during recent fiscal years.

The Village points out that they do not have, what they refer to as "asset power" within the Village to support further borrowing and that their current bond rating is one level above that of junk bonds (BBB) and carries relatively high interest rates which would create a further drain on Village revenues. Aggravating operating difficulties caused by the lack of revenue are the ever increasing demands for repair and maintenance of an aging infrastructure maintained without any contingency fund. Repairs have been deferred. Considering the limitations of their asset bank, limited revenues, and declining reserves, the Village contends that they have no realistic entry point to the bond market.

⁷ See comments of Arbitrator Whitley McCoy in Gary Transit 8 LA 641 (1948) at page 64.

⁸ They argue, according to the Management Discussion & Analysis governmental units are required to incorporate into their audited financial statements, that during the most recent fiscal year, whereas assets of the Village exceeded liabilities by \$14 million and it had been highlighted that, while net assets did decrease 21% decrease for 2005 - that decrease was attributed in part to the issuance of a \$5,000,000 Developer Note for improvement of a shopping property, a development which can be expected to produce sales tax revenue gains. They also suggest that, had that Note had not been issued, net assets would have actually increased. They argued that the unreserved and designated fund balance of \$3 million was betterment over preceding years. It was further stated that, the \$20 million in expenses related to governmental activities, that \$5 million developer note was included. The Union also maintains that, with respect to the Bonds - required to be carried as a liability - and the Developer Note, the Village is not obligated for the retirement of the bond debt which is to be paid from incremental taxes generated by the TIF. If sufficient funds were not available to pay the TIF debt at the end of its useful life, that obligation would be cancelled and the Village would accordingly report a gain on the cancellation. The FOP draws the Arbitrator's attention to a financial report showing that the Village's real estate holdings were shown to have increased \$1.9 million in 2005 to \$3.9 million. The Union also noted that the Village had a program of acquiring land at the same time they were proposing benefit cuts. It is not the Arbitrator's job to inquire into the reasons for the allocation of Village funds.

Small but favorable developments have been reported. There have been Property Tax receipt increases as well as increased revenue from Sales, Utility and Cable taxes. Grants and Contributions are up. There have been increases in Water revenue. Police Officer salary expense has been reduced, declining from \$1.5 to \$1.1 million primarily as a consequence of the first few months of the 2006 Layoffs. The liquidity rate was asserted to have improved from 1.6 to 5.1.

The Union argues that, while financial conditions may not be good at the Village, they are "*On the mend, things have improved.*" .

Comparables

As part of their presentation the Union identified seven municipalities they assert are comparable to Broadview based upon Population, Median Household Income, Median Home Values, Estimated Assessed Valuation, Property Tax Revenues, Demographic and Income Factors: Countryside, Hillside, Lyons, North Riverside, Northlake, River Grove and Schiller Park. The validity of that grouping was not contested although the Employer maintains that four of these entities are Home Rule municipalities which, unlike Broadview, have an advantage in obtaining revenue.

The Village did not base their wage proposal on nearby municipalities but references State wide data as well as Patrolmen salaries in large cities distant from Broadview -- Springfield, Champaign, Kankakee, Peoria, Decatur, and Rockford, generally considered to be outside the recruitment area. While not disputing the comparative data provided by the Union, the Village argues that the Arbitrator should give weight to wage levels derived from Illinois Department of Labor wage data and a grouping called Protection Services into which Police Officers fall. That grouping, however, includes occupations much different from Municipal Law Enforcement Officers and was collected from areas in Illinois distant from Broadview. Their figures do not delineate between Police and Sheriff Police and, in some communities include wages paid for disparate work like Bailiffs, Gaming Surveillance Officers and Ski Patrol. A Champaign Illinois wage figure (\$52,540) covers Police Officers and Sheriff Deputy (itself a significantly different labor category than street cops). The Officers at Broadview, under the expired Agreement were according to the testimony, "*for the most part*" being paid a mean hourly rate of \$30.73.

The Village does address Union proposed comparables. Using the ten year benchmark for jurisdictions within that group, we find that Broadview Officers would fall from their present 4th rank from the top to 6th should there not be any wage increase in 2006. It is probable that their relative position would decline further putting them ahead of only River Grove and Schiller Park... The Village states that the Northlake contract had expired December 31, 2005 but that since they were unable to verify whether any wage increase had been obtained January 1, 2006, they continue to use the 2005 rates. As of that year, Broadview Officers with 10 years' service were only \$500 ahead of their peer in Northlake at the 10th year.

FINAL OFFERS

WAGE AND CONTRACT TERM ISSUES

As of 2005, Broadview's Police Department had been staffed with a greater number of Officers than comparable Departments. They employed 34 Patrol Officers against an average of

28 in those other municipalities. An examination of the work load factor shows only North Riverside had more serious crime than Broadview.

The Union's Final Offer is a single year Agreement with a 3% increase effective May 1, 2006. That raise would not provide any real increase but would keep Officer wages on pace with the Cost of Living – one of the principle factors for Arbitrator's consideration and listed as Factor 5 in 14(h). As the Union states in their Brief, the three percent increase would cost about \$27,000, a small percentage of General Fund expenditures during 2006 and an amount covered by wages saved as a result of the June cutbacks. Their proposal includes retroactive payment, on a pro-rata basis through the last day of employment, to anyone who retired or voluntary quit during the year. They stress that the remaining Officers have an increased work load⁹ and that their first year Cost of Living demand is made in recognition of the financial condition. They assert that, by the time negotiations start in 2007, a clearer view of the financial situation will have emerged- effects of the 2006 changes will have become more evident – and more meaningful bargaining will be possible¹⁰. It is meaningful that there is no evidence in the record of projected savings for 2007 from the 2006 retrenchment...

The Village final position is that, consistent with the previous pattern of Contract Terms in this Village and in the comparables, there should be a three-year Contract. Such a term with a first year wage freeze would, they argue, provide a breather and a chance to assess their situation. Hopeful of creating additional revenue streams through new tax initiatives, they state by 2009 they will eventually will be able to look at a wage adjustments from a positive perspective. Therefore, during the term of that their proposed three year Agreement, Broadview proposes that there not be any wage increase the first year, a 2% raise the second year and a 3% increase the third year. The Village also stresses the compounding benefit over the life of the Agreement of the percentage increases and the expected spillover effect on other Village Departments. None of the other three unionized Units have yet settled...

The Village does not contend that their proposal is in step with wage adjustments among the comparables but points out the exigencies brought about by their financial condition and the aforementioned rejections of revenue sources by the Broadview Voters. We do not know what new money, if any, would become available as a result of the proposed changes they would make in the new Agreement or from the 2006 financial restructuring.¹¹

Comparing 2005 and 2006 wage increases negotiated in comparable Units, we find raises each year in Countryside of 3% and 4%, 5% and 3% in Hinsdale, 3.5% and 3.5% in Lyons,

⁹ The Village points to a lack of evidence of increases in crime greater than during periods prior to the reductions in force.

¹⁰ As a consequence of the June 2006 workforce restructuring, there is an expectation of a slight excess of revenue over expenses - \$300,000 - for April 30, 2007. Broadview stresses that, considering what they project as a \$3 million balance deficit, even with the restructuring benefits it would take ten years to achieve a zero balance in the General Fund were no benefit and wage increases and only a "static" growth in Health Care expenses. If additional tax revenue were obtained in proposed referendums, the picture would change dramatically.

¹¹ Pension costs have been shown to be a major factor in labor costs for this Unit - \$504,906 was contributed in 2005 and \$816,588 in fiscal 2006.¹¹ The effect of the reduction in force upon such contributions was not shown. Other non reoccurring costs would include the more than \$100,000 paid to Police Officers and others no longer employed by the Village

There will be declines in total Health Insurance costs. We do not know about the funding but Health Care costs under the self insured approach were running less than \$30,000 in 2002 through 2004. Under the new Plan, in 2005, Village costs increased to \$434,271 and there was said to be a small percentage increase in that number for 2006. For the Unit there will be premium costs savings as a result of the reduction in the number of covered Officers. At least what would otherwise be spent for insurance coverage will be available for wages for those Officers in active service.

4% and 4% in North Riverside and 5% and 4% in Northlake. River Grove granted a 3.75% across the board increase to their Unit and Schiller Park increased wages 4%. 2005 increases across the comparables were 4.04%. The Broadview increase that year had been 3%. In 2006, the average increase in this group was 3.75%. As mentioned, the Union seeks 3% and the Village would not provide any increase for May 2006 through April 30, 2007.

From a comparability standpoint, the Broadview wage schedules compares less favorably with those of the comparables at the higher steps – a matter of significance since, after the layoffs, the remaining Officers in the Unit have relatively long service. An Officer with 10 years' service is more than \$2600 behind and, at 15 years service, is paid about \$3,900 less on average than his counterpart.

The Union acknowledges their proposal for a one-year Contract Term would have the effect of incurring additional time and expense for bargaining within a few months. However, the Union maintains that, rather than cutting back benefits at a time when there is an indication of improvements in net revenue, it is more reasonable to agree upon a hold the line cost-of-living equivalent increase for a single year, so that the incipient revival may be reviewed before substantial long term changes can effectively be addressed.

AWARD

Having considered the evidence and the arguments I find the most reasonable last positions on both the Wage and the Term of Agreement Issues to be that of the Union.

In making that determination, I find that neither the Village present financial condition nor the volatility of that financial situation justifies locking either party into Contractual obligations beyond April 30, 2007 in this proceeding. While we do not have the cost data, it appears that, as a consequence of the restructuring, there have been positive developments in the Village financial condition. I cannot ignore the fact that the work load of the Officers has increased as a result of the reduction in staffing and that Cost of Living increased during 2006 close to 3%. In order that there be stability in the Unit, wages must, at the least, keep up with the Cost of Living.

In these circumstances there is no reasonable basis for the Employer's proposal not to provide a first year wage increase that is a Cost of Living equivalent. The sought first year increase would assist in preventing erosion of Broadview Officer's pay rank relative to Officers in comparable communities. Most importantly, the increase, from a comparability standpoint, is not unreasonable especially since the Officers have, commencing in 2006, been participating to a larger extent in paying for their health insurance. For these and other reasons set forth above, the FOP Final Offer is adopted and shall become a part of the new Agreement.

MAKING VILLAGE POLICY PART OF THE CONTRACT

The Village proposes the incorporation of their Policy Manual into the Agreement through addition of the following language to Section 33.5.

The Employee Policy Manual, as adopted and promulgated by the Village of Broadview, will prevail, on all matters, including wages, hours and terms of employment not otherwise expressly addressed in this Agreement. The Agreement will prevail in all matters expressly addressed herein.

The Policy Manual contains a comprehensive exposition of terms and conditions of employment expressed in detail not found in the Labor Agreement. Several subjects dealt with in the Manual are not addressed at all in the Agreement but, as the proposal is phrased, would have

an effect upon the interpretation of Contract Language and could be used to unilaterally eliminate existing practices not otherwise subject to elimination without bargaining...

Significantly there is no evidence that any of these policy provisions have been addressed during bargaining or that, in their administration of the Contract, the Village has found conflicts between present Policy Procedures and the terms of the Labor Agreement. The Union is being asked to buy what, in earlier times, was often characterized as a "pig in a poke".¹² It would give the Employer an opportunity to make binding unilateral changes in past practice. I do not know of comparable language in any Labor Agreement.

This is not a first Agreement. Through negotiation and practice, the Parties have developed procedures for dealing with the conditions of employment. The proposed Final Offer of the Village would permit them to institute policies which would prevail over any term and condition of employment not expressly addressed in the Agreement. There is no evidence of any justification for such a policy overlay nor any example where there had been any previous problem resolving a conflict between the Manual and the Labor Agreement.

AWARD

Although this is a breakthrough issue, it was not, proposed or discussed during negotiations. The Union opposes the addition of this language into the Contract. Their position is the most reasonable final position on this issue.

LONGEVITY

Presently Officers with 20 years or more of Service receive a longevity increase of 8.5% in salary for the two pay periods thirty days prior to their effective date of retirement...

While the Union seeks to maintain the status quo on this issue, the Village proposes elimination of the longevity benefit set forth in Section 30.2 of the Agreement asserting that costs to provide such a benefit have not only contributed to the recent Village General Fund Operating deficit but that the benefit comes late in an employee's career and that, rather than encourage employment stability, is principally designed to enhance pension benefits by raising the calculation basis shortly before retirement. They correctly point out that no longevity benefit at all is provided in Hillside, Northlake and North Riverside or in Riverdale a community outside the comparative group. In two of the comparable Villages, Countryside and Lyons, the benefit kicks in at 20 years. In River Grove, longevity is spread over a longer period with step increases commencing for employees with more than two years of service. In Stickney, the enhancement kicks in at the 10 and 20 year levels. There was no reason given for mention of Stickney and Riverdale nor any contention that those communities should be added to the list of comparables.

The Village proposes to completely eliminate the Longevity benefit because of what they see as a substantial impact on annual expenses. However, the dollar impact of this benefit on pension cost to the Village was not shown.¹³ The Cost Savings during the three year term sought by the Village was not made a part of the Record. The Longevity Benefit is reportedly

¹² A phrase of advice from the 16th century, a 'caveat emptor' warning to buyers to be certain they examine what they are being offered and know what they are buying.

¹³ . During the Hearing, it was said that this provision may be vitiated by DROP Plan legislation said to be pending in the State Legislature.

funded separately from the General Fund. The Village contends that the requirement to fund separately diverts tax revenues from the General Fund. The extent of that effect was not shown.

We do not know the bargaining history. There is no evidence of whether placing the large payment at the end of an Officer's career was a trade off to placing the benefit into the wage schedule at earlier points - as in River Grove - in order to avoid compounding effects. There was no indication of the internal equities on this issue.

Again this is a breakthrough issue I do not overlook that reoccurring problem in these negotiations which has been addressed above – the failure to address the issue during bargaining. As the Union argues, alternatives commonly proposed include health savings accounts to offset costs of post retirement health care and making a modification in the longevity benefit. Here there is no evidence of any alternate proposal having been offered and, in fact, no evidence that there had been any bargaining on the issue. The evidence does not provide sufficient evidence to justify an elimination of this benefit.

AWARD

The Union final position on this Issue is accordingly adopted.

SICK LEAVE

Sick Leave is also a long standing benefit. The final position of the Village would clearly be a “*breakthrough*” were it adopted. The Village Final Offer on this point is that the present Sick Leave plan be abolished. They do not propose a cap or modification of sick leave accruals. Instead, in lieu of modification, the Village proposes that a new Short and Long-Term Disability Insurance Programs be adopted. – a new concept. There were no provisions for the proposed benefit transition.

In providing compensation protection in the event of disability, the Village recommends a 45-day Short Term Disability Program followed by Long Term insurance with the Village paying 100% of the premium. Under their Offer, as a wage backup, the disabled Employee would be entitled to receive 60% of his wage until age 65 – tax-free subject to the conditions of the Plan. Not only would the premium be less expensive for Long Term Disability coverage than alternative costs of Sick Leave accumulation, but Short Term Disabilities would be covered with full-time pay for one pay period and half-time for two pay periods – as a trade off for the fact that the Village would be paying the full premium for the Long Term Disability coverage. Short Term Disability would be paid once a year without any carry over. Long Term Disability would renew itself every 12 months.

Unfortunately the evidence reveals that the details of what is a new approach to income protection in disability circumstances was presented to the Union for the first time at Interest Arbitration. According to the Union's analysis, there would be only one pay period of full pay when an Officer was sick and two pay periods of half pay. And then the Employee could be eligible for the Long Term Plan. The proposal is a substantial variance from the benefit presently provided by this Village and in comparative municipalities¹⁴.

This Sick Leave proposal is not supported by the comparables. Each has one sick leave day per month with differing caps on accrual. Northlake has no limit on accrual. While certainly it

¹⁴ Broadview does not have any Sick Leave buy-back. Countryside, Hillside, Lyons, North Riverside, Northlake, and River Grove do.

is a proposal which may have merit and a credible alternative to be considered at the bargaining table, as presented in Arbitration, not only is the proposal vague and the scope not unclear, but the Village fails to carry the burden of proof required in such breakthrough proposals. The Union raises several questions in their Post Hearing Brief which, had there been bargaining, would have been answered. The proposal comes with too many undefined ramifications and is just not ripe for resolution at Interest Arbitration... Without more detail, this new approach to dealing with disability absences cannot be evaluated.

Again this is also a breakthrough issue. The proposed deviation from the Sick Leave benefit presently provided and from the pattern of such a benefit in comparable jurisdictions comes to this Arbitration procedure without evidence of any previous discussions during bargaining. It is apparent that there are numerous details that require further exposition.

AWARD

The Unions final position of status quo on this issue is adopted.

HEALTH INSURANCE

Since their 2002 Contract Negotiations, Health Insurance Premium costs for employees in this Village have risen substantially although recently the rate of increase has moderated. The Village has made efforts to obtain increased employee contributions and to better control costs by switch from a Village Funded Plan... Effective July 1, 2006, the Village instituted Blue Cross/Blue Shield coverage maintaining, they assert, substantially similar benefits in accordance with their Labor Contract obligations. There are both HMO and PPO Plans in the bifurcated Last Offer they present on this issue...

Under the Employer proposal, I have discretion to choose which of the two Insurance Programs to put into effect if it were determined that an increase in Employee contributions should be instituted. Under Broadview's Last Offer, Employees have an option of selecting coverage under either Program or opting out of all health insurance coverage.

This Final Offer is presented with two alternative Programs. Both Programs offer PPO and HMO coverage. An HMO had not been previously offered in this Bargaining Unit...

The first Program would provide those employees who elect HMO coverage with non contributory health insurance. Were HMO coverage elected under that Program, throughout the term of the Contract the Employer would pay 100% of the HMO premium irrespective of whether the Employee chose single or dependent coverage. The first year of the Contract, an employee could elect PPO coverage if he made contributions retroactive to May 1, 2006 and paid \$75 a month for single coverage and \$100 for family coverage. During the Second and Third years, 20% of the premium costs would be paid by participating employees for both single and family coverage.

The Alternative second Program would also offer Officers coverage options. If an Officer elected insurance coverage under the HMO, he would pay 5% of the premium whether he selected Single or Family coverage. If he elected PPO coverage, over the term of the proposed three year agreement, the employee would contribute \$75.00 and \$100.00 a month respectively for Single and Family Coverage the first year and for the second and third year, contributions would be on a percentage basis. The second year the Officer would be obligated to contribute 10% of the Premium for whatever coverage chosen, with that contribution increasing to 12% the third year of the Village's proposed Agreement.

The Union's proposal is that there be no change in employee contributions.

There is no question but that the Village demand that the Officers in this Unit make greater contributions to health insurance is reasonable. The initial question is how much more.

Both alternate Programs require not just increases in contributions from current levels. The breakthrough aspect emerges from the demand that contributions be made on a percentage basis. Then there is the question of the substantially larger contributions required.

It has repeatedly been held that such proposed substantial increases for health insurance coverage without any offsetting wage increase is unreasonable. The proposal here would not meet the requirements in a breakthrough situation even had there been preliminary negotiations.

There is no question that Broadview Officers do make lower health insurance contributions than their counterparts in comparable communities and I expect that an accommodation of this inequity will be reached during bargaining. Had the approach for greater employee participation been bargained and instituted with a transitional approach, the outcome here would have been different. I note that it is unusual to make increased premium contributions retroactive. Finally, while contributions on a percentage level are proposed, there is no projection of what the dollar cost to the Village and the Officers will be during those years and the proposals are uncapped. The projections of premium costs in this Unit were unsubstantiated.

The Union takes the position that the changes in the Health Insurance Benefit should remain at status quo until bargained – reminding the Arbitrator that negotiations could commence in two months. They note that, were the Employer's position on this issue adopted, there would be a \$750 cut in take home pay for those Employees contributing toward single coverage the first year - \$75 a month - and, for family coverage, \$900 dollars. Such take home pay reductions would compound the loss of purchasing power in the absence of any Cost of Living Increase.

Unlike most percentage based contributions of which I am aware, the Broadview Plan would not have a cap on Employee contributions. The employee's exposure would be open ended...

In a Deerfield Interest Arbitration I stated that premiums calculated on a percentage were, depending on the rates, reasonable¹⁵. There are long term benefits to both parties.¹⁶ Here, in addition to the percentage increase without a cap concern, the increase is substantial.

My Award in a 2004 Carpentersville Arbitration dealt with a situation where not only was there a breakthrough with percentage costing proposed without any cap on employee contribution increases but there was a "*catch up cost*" factor. In circumstances where, as here, there is a new concept together with substantial increased costs, there is usually some sort of "*quid pro quo*" bargained for the dramatic change¹⁷ – especially where the dollars are so significant. There is no evidence of such an approach here¹⁸. Often when a large dollar step up increase is sought, it is phased in over the term of the Agreement. Here, although the Village appears to have had such an approach factored into their Offer as initially conceived, the passage of time neutralized that effort.

¹⁵ Village of Deerfield and Illinois FOP S MA 02-155 Cox, 2003).

¹⁶ An aspect not often considered is that the spread between employee and employer contributions increases over time.

¹⁷ City of Burbank and Illinois FOP S-MA-27-56 (Goldstein, 1998) Village of Bartlett, FMCS 90 – 0389 (Kossoff, 1990).

There is no example of such a sudden, large one year employee insurance cost contribution increase in the Record or in the experience of the Arbitrator without there having been some *quid pro quo*.

In my Carpentersville Award and others I found an inequity in the apportionment of insurance costs. In that Village there had not been any increase in employee contributions for almost 14 years despite double digit increases in premium costs over much of that period and the development of at trend throughout Illinois for greater employee contributions toward health care costs. However, there as here, there was no evidence of previous efforts to remedy this situation until a large increase was sought – an unreasonably large increase in an effort to catch up all at once.

AWARD

For the reasons expressed above, the Union position on this Issue is adopted as the most reasonable final position...

WORK SCHEDULE AND OVERTIME – COMPENSATORY TIME REQUISITES

During their most recent negotiations, the maximum compensatory time accrual had been reduced from 480 to 240 hours. Here the Village proposes a further reduction in the maximum hour accrual of Comp Time to 40. The rate at which it would be earned would remain unchanged.

The Village also proposes that the hours be paid as overtime at the time they are earned - a pay-as-you-go plan. Neither this facet of the demand or the substance of the proposal was discussed during bargaining. There was no indication of any exchange of proposal and no evidence of substantive discussions.

Once again there is no contest of the Union position that there had not been negotiations on this subject at the bargaining table. The Union asserted that the subject had been marked "*to be reviewed*" but that the substance of the proposal made at Arbitration had never been presented to the Union. Moreover, there was no evidence from any comparable supporting the Village's request for such a large reduction from 200 hours to 40 hours... The Union would preserve existing language.

AWARD

The Union position is adopted. There shall not be any change in the benefit.

PERSONAL DAYS

The Labor Agreement provides 6 Personal Days. Here a reduction of one personal leave day is sought by the Village in order, they assert, to achieve internal comparability. Among external Union comparables the average number of personal days is 4. The evidence shows that employees have fully utilized the 6 personal days they have been entitled to take and, in addition, 8 Officers have been permitted to take paid personal days beyond 6..

Coupled with the reduction is the proposal that Employees be required to give two days notice prior to taking a Personal Day.

In contrast to the Final Offer proposal for a reduction, the Department has increased the number of paid days Officers may qualify to take off work and receive a day's pay. There is no indication that there is any notice requirement in order to take that additional time off. These days granted in connection with the attendance and merit bonuses are in addition to the personal day benefit... We are not advised of any problems which have arisen because the benefit, as presently constituted, does not contain a notice requirement or preclude taking two consecutive personal days.

The Union seeks status quo asserting that "*such reductions should be bargained with appropriate exchanges of consideration.*"

AWARD

Considering the Village financial situation and the personal day benefit in comparable municipalities, there is certainly a basis for reducing the number to 5 despite the Department's having granted additional paid days off in connection with the bonuses. However, there is insufficient evidence to justify the proposed restrictions on an employee's right to take "two consecutive personal days" and/or the requirement that there must be two days notice in advance of requested time off when taking a personal day. Based upon the lack of evidence to support those proposed restrictions and the fact that the Employer's final position must be evaluated in its entirety, the Last Position of the Union is adopted.

SICKNESS IN THE FAMILY – ARTICLE 18.5

According to this provision, an Employee may annually use a maximum of 24 hours of his paid sick time to take care of a family member as well as additional hours of sick time for that purpose with the permission of the Chief under certain circumstances. The Village seeks to limit those additional hours to 24. Moreover, under their proposal, any time used pursuant to that Section will be deducted from "*the Officer's accumulated sick leave time, vacation time and or personal days.*" It would be in the discretion of the Village to decide from which benefit the deduction should be made. We do not know if there is cost or operational justification for the change. We do not see why the use of the benefit for care of a family member should be charged against benefits to a greater extent than use of sick leave for other purposes.

Broadview sees this proposal as a complement to the FMLA covering absences outside the scope of those provisions. The evidence is that only one Officer has used more than 48 hours a year for this purpose. Such additional time is already contractually limited and is to be granted only in the *sole discretion* of the Chief. Again the cost consequences were not shown. They do not appear to be meaningful.

There is merit to the Union contention that the Village proposal is flawed in that it fails to specify from which benefit the deduction should be made. Under the proposal, the Village would not be required to give prior notice to the Officer of which benefit is to be reduced. The proposal and its effects are vague. One of the effects could be to reduce the number of "*standard*" sick days and the number of vacation days below those provided Officers in comparable groups.

AWARD

The Union final position of this Issue is adopted.

ARTICLE 22 - ECONOMIC BENEFITS AND WORK PRACTICES

The Village proposes to add language to the present Agreement which would state: "*Any past practice, economic or non-economic, which is unauthorized by the Board of Trustees and inconsistent with the terms of the Agreement or purports to create greater rights than those bargained for shall be null and void and not be construed as a term of this Agreement.*"

There is no identification of how many, if any practices are unauthorized by the Board of Trustees. There has not been any attempt to identify past practices let alone those which are both unauthorized by the Trustees and inconsistent with the terms of the Agreement.

The proposal is aimed to prevent a reoccurrence of the unilateral institution of benefits by the Police Chief.¹⁹ According to the evidence, two recently instituted benefits had been put into effect without prior authorization of the Village Trustees. The Police Chief unilaterally implemented an attendance bonus through a policy of providing three paid days off work for Officers who have not used any Sick Days during the Calendar year. Such an attendance bonus is in effect only at the Police Department. A record of only a single day's absence is recognized with a two-day paid bonus and two days absence during the year results in a single day off. There was no evidence of an attendance problem. There are paid days.

A Merit bonus – a day off with pay for those Officers who pass their review at the end of the year – was also instituted by the Chief. There was no indication that any officers had not passed their annual reviews or what the annual cost of this bonus would be. The bonus results not only in a paid day off work but causes attendant replacement costs in what appears to be an understaffed Department. Depending upon the number of Officers who pass their annual review – I would expect a high percentage - the costs could be substantial.

These benefits were instituted by Supervisory authority. The more typical practice is usually defined as an understood and accepted way of doing things that has developed over a period of time, possesses characteristics of clarity and longevity and is regarded by both supervisor and workers as the proper response to a situation. Practices are used to clarify ambiguous language, implement general provisions and may themselves constitute separate enforceable agreements. Depending upon several factors, some types of past practices may not be changed without negotiation. Due to their nature, it is unlikely that a Trustee would recognize the development of a past practice. There is no evidence of similar language in any comparable contract.

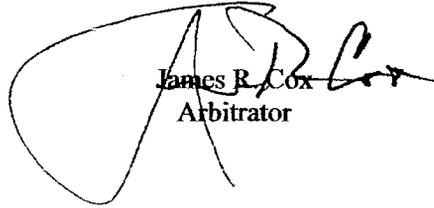
AWARD

The proposal was not disclosed to the Union prior to the Interest Arbitration Hearing and does not meet the preliminary requirement for breakthrough changes. There are several other aspects which make it unreasonable. The final position of the Union is adopted. The proposed language will not be added to the Agreement.

¹⁹ This is not a large Department. I would expect that the Chief would follow the directives of the Village Board. Such a proposal would not only create uncertainty. The Chief has been empowered to run the Department. The lines of his authority are clear.

AWARD SUMMARY

Having considered the evidence in accordance with applicable provisions of Statutory Criteria, I have made the Awards set forth above on each issue. The Parties May 1, 2006 – April 30, 2007 Collective Bargaining Agreement shall be modified accordingly and is to incorporate the Final Offer on Wages proposed by the Union and all other matters previously agreed upon and signed off by the parties. The Retroactive wage increase shall be paid within 30 days of this Award.


James R. Cox
Arbitrator

Issued this 12th of April 2007

