IN THE MATTER OF ARBITRATION	)	
	)	
Between	)	**Marvin Hill, Jr.**
	)	**Arbitrator**
VILLAGE OF MIDLOTHIAN, IL	)	
	)	**Hearing Dates: September 6, 2006 &**
– and –	)	**November 7, 2006**
	)	
IBT LOCAL No. 726 (Union)	)	
	)	
	)	

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Illinois Labor Relations Board

Appearances:

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

The Village of Midlothian is a municipality with a population of approximately 14,579. The Village work force consists of approximately 125 employees. In order to protect and serve the community, the Midlothian Police Department is staffed by forty-nine (49) employees, including twenty-four (24) full-time police officers below the rank of sergeant. The 24 full-time police officers, represented for collective bargaining purposes by the International Brotherhood of Teamsters, Local 726 (IBT) are split into three watches. The only other Village employees who are represented by a union are the 33 employees who work for the Midlothian Fire Department. The

evidence record indicates that the Union has represented the patrol officers since approximately 1997 (R. 19; Jt. Ex. 19).

On December 10, 1998, the Village and the Union signed their first collective bargaining agreement. This contract ran from November 1, 1997 to October 31, 2001. On November 25, 2002, the parties signed their second collective bargaining agreement, running from November 1, 2001 until October 31, 2007.

The negotiations of the current collective bargaining agreement. The current collective bargaining agreement was signed after lengthy negotiations. In fact, the parties tentatively agreed upon contract terms that were not ratified by the bargaining unit. One concern of the bargaining unit was the treatment of the residency issue. When the police rejected the first proposed contract, the parties negotiated an extended, six-year contract with improved residency language. In exchange for the Village's concession regarding residency requirements, the contract also included wages that both parties knew were slightly below the market rate for police officers, according to the Village. The Union has disputed the relevance of the residency quid-pro-quo argument. The collective bargaining agreement also included a wage re-opener for the final two years of the contract, which, in relevant part, reads as follows:

ARTICLE XV
WAGES

Section 15.1, Base Wages. The annual base wages and longevity payments through the effective date of this Agreement shall be as stated below. The base wages earned by bargaining unit personnel are as follows, effective on November 1 of the year referred to in the left-hand column, for employees who have completed the number of years of service with the Department which are referred to in each column:

WAGE SCHEDULE

EFF. 11-1	START	1 Year	2 Year	3 Year	4 Year	5 Year	6 Year
2001	37,631.90*	41,094.68	43,943.18	46,934.97	48,212,11	49,489.23	50,766.38
2002	38,760.86**	42,327.52	45,261.48	48,343.02	49,658.47	50,973.91	52,289.37
2003	39,923.69**	43,597.35	46,619.32	49,793.31	51,148.23	52,503.12	53,858.05
2004	41,221.21**	45,014.26	48,134,45	51,411.59	52,810.54	54,209.48	55,608.44
2005	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2006	N/A	N/A	N/A	N/A	N/A	N/A	N/A

* The Village may elect to freeze the starting rate at 36,353.83 or to increase the rate by an amount not to exceed the sum listed in the table above.
** The Village may, at its discretion, pay starting employees less than the stated amount.

Section 15.2, Wage Schedule Administration.

* * *

The Village may, in its discretion, either freeze the start rate or designate a starting pay not to exceed the stated rate in the Wage Schedule referred to in Section 151, above. On or before September 1, 2005, the parties agree to begin negotiations for the base wages effective November 1, 2005 and November 1, 2006, and such re-opener negotiations will be limited solely to discussing and negotiating base wages under Section 15.1. (Jt. Ex. 1 at 31-32; emphasis mine).

In the Administration's view, the Village understood that the Union asked for the wage re-opener because the Union was uneasy signing a six-year agreement during a time when it was difficult to predict the future rate of inflation. This Agreement was ratified by the bargaining unit, and the parties signed this collective bargaining agreement on November 25, 2002.

The wage re-opener negotiations that preceded this interest arbitration. On May 11, 2005, the Union requested that the parties begin negotiations regarding the wages that would become effective on November 1, 2005 and November 1, 2006. On September 5, 2005, the Union proposed a 6% increase in wages for both 2005 and 2006. In this same proposal, the Union also proposed eliminating the Village's discretionary power to freeze the starting salary, and proposed increasing longevity pay by $500 at each step. The Village made it clear to the Union that it thought the proposals regarding longevity pay and the Village's discretionary power were non-mandatory subjects of bargaining. The Village reiterated this position when the parties met on October 26, 2005.

On December 21, 2005, the parties requested that the Federal Mediation and Conciliation Services (FMCS) assign a mediator to assist in the wage negotiations. On March 27, 2006, the Union formally requested that the matter be referred to interest arbitration, pursuant to the terms of the Illinois Public Labor Relations Act ("Act" or "IPLRA").

To this end hearings were held at the Village Offices on September 6, 2006, and November 7, 2006. The parties appeared through their representatives and entered testimony and exhibits. A transcript, scheduled for distribution on November 21, 2006, was eventually produced on or about December 1st. Inexplicably, the Union did not receive its transcript until December 27th. Accordingly, post-hearing briefs were scheduled to be filed and exchanged through the offices of the Arbitrator on or about February 5, 2007. The Union asked for and received an extension from company counsel. The Union's brief was filed on February 14th. The record was closed on that date.

II. ISSUES FOR RESOLUTION

The parties agree that one economic issue remains unresolved for the successor collective bargaining agreement – police officers' wage increases. The Union further asserts that the Employer's authority to freeze starting salaries is at issue. The final offers of the parties are as follows:

The Village's Final Offer (September 25, 2006)

The Village is proposing a 3.0% base wage increase effective November 1st of both years of the remaining two years of the contract. No other changes will be made to the collective bargaining agreement. Under the Employer's final offer, the first-year raise will be fully retroactive to November 1, 2005. (JX 3).[1]

The Union's Final Offer (September 25, 2006)

Effective 11-1-05, the Union proposes the following:

Starting Wage:	2005:	$38,760.86
	2006:	$39,923.69

Under the Union's proposal, the Village will no longer have the discretionary ability to freeze the first year starting salary, or the discretion to start new employees at a rate between $36,535.83 and $41,221.21.[2]

The ** noted in Section 15.1 of the current collective bargaining agreement is not applicable to these rates. All new hires can be hired solely at these rates.

Step Increases:

The Union is proposing a 4.375% base wage increase effective November 1, 2005 (including full retroactivity) of both years of the remaining two years under the contract. The first year raise will be fully retroactive to November 1, 2005.

The Wage Schedule is as follows:

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[1] In addition to an across-the-board wage increase, the Administration made a unilateral and unconditional offer to the Union to increase longevity pay for police officers. Under the Village's longevity offer, police officers would receive an increase in their base salary of $500 after the completion of five years; $1,000 after the completion of ten years; $1,750 after the completion of fifteen years; and $2,500 after 20 years. As of the hearing date, the Union has not indicated whether it will accept the Employer's offer (R. 79). In its *Brief* the Union characterizes this as a "cynical and clearly obvious ploy to rid itself of having to address this internal comparability factor . . ." (*Brief* at 13). If the Union accepts the Village's offer (it is expected it will), the Administration will pay an additional $2,250 in the first year of the program (See, *Brief for the Employer* at 9; R. 80)(V. Ex. 10).

[2] The Employer disputes that this item is subject to the re-opener language. The issue is addressed *infra* this opinion at 24.

Summary Schedule of Union's Salary Offer – 2005 & 2006

Effective 11-01-05	Start	1-year	2-years	3-years	4-years	5-years	6-years
2005	38,760.86	46,983.63	50,240.33	53,660.85	55,121.00	56,581.14	58,041.31
2006	39,923.69	49,039.16	52,438.35	56,008.51	57,352.54	59,056.56	60,580.62

III. POSITION OF THE UNION

The position of the Union is that the trend of police officers' salaries in this municipality over the last five years warrant a "make-up" increase of 4.375% in wages. In counsel's opinion: "And we believe the evidence . . . show(s) that the officers of this department, in relationship to the external comparables, their rank and their salary that they enjoyed at the beginning of the contract to where we have come now has substantially changed and that the evidence will show that when we started collective bargaining in 2000 the officers in this town, their salaries compared to the comparable communities we agreed upon at the top out was pretty much at the top by 2004 is now pretty much at the bottom." (James Green; R. 20).

In contrast to the Employer, the Union asserts there are two economic issues for consideration: (1) the starting wage and (2) the overall wage increase.

In support of its position on the starting wage, the Union advances the following arguments:

THE UNION'S FINAL OFFER ON THE STARTING WAGE IS MORE REASONABLE THAN THE VILLAGE'S FINAL OFFER WHEN IT IS WEIGHED AGAINST THE APPLICABLE STATUTORY CRITERIA

A. The Village no longer retains the discretion to hire at a rate lower than the stated starting rate pursuant to the clear language of the agreement

The Union initially asserts that the question of whether the Village retains the right to continue to hire employees at less than the negotiated rate is a preliminary question of contract interpretation which should be resolved by the Arbitrator based on the clear language of the contract. The parties clearly agreed that for the first four (4) years of the agreement the Village retained the right to hire at less than the negotiated starting rate. The starting rate cell for 2001, 2002, 2003 and 2004 contains a double asterisk which notes that, "The Village, may at its discretion, pay starting employees less that the stated amount." That notation is specifically excluded from the starting rate cells for 2005 and 2006. The parties further agreed that they will bargain "base wages" for 2005 and

2006. They did not agree to bargain base wages only for the steps above the starting rate and allow the Employer to hire at less than the stated rate for another two (2) years. The contract is clear. *The parties intended to permit the employer only to hire at less than the starting rate for those years so noted*, in the Union's view.

The Union's position is reinforced by the fact that the Village has exercised its discretion to hire at less than the stated rate for four years – i.e. the actual rate at which employees have been hired has not increased in four (4) years. It is inconceivable that when the Union entered into this agreement that it intended to allow the Employer *carte blanche* to freeze the starting salary for six (6) years.

B. The Union's proposal for starting rates is more reasonable and more compatible with the statutory criteria than the employer's and should be awarded

The Union's proposal to increase the rate at which the Village has actually paid new hires the last four (4) years by 3% for each of the last two years of the contract is clearly more compatible with increases in comparable communities, than the Village's proposal to simply keep increasing the figure in the starting rate cell while choosing to pay less.

a. The Village's starting rate of pay has dropped dramatically compared to the comparable communities during the term of this agreement

The evidence overwhelming shows that the Village's starting rate of pay has dropped during the term of this agreement.

1.) The Village's starting rate of pay has dropped from first to last among the comparable communities

In 2000, the year prior to this contract, and in 2001, the first year of the contract, the Village ranked number one in starting pay among the comparable communities. As a result of its decision to freeze the starting rate for new hires, its rank steadily declined until 2004 when it ranked fourth of seven. Then in 2005, with either the Employer or the Union proposal, it drops to fifth and in 2006 it remains fifth with the Union proposal, but drops to sixth with the Employer's proposed figures.

2.) The flat dollar Village deviation from the average dropped dramatically

The starting salary for a Midlothian Police Officer was $1762.00 above the average in 2000. By 2004, the starting salary dropped to $472.91 below the average. Even with the Union proposed 3% increase, a starting officer will be $1,207 below the average in 2005 and $2,336 below the average with the Employer's proposed continued freeze in 2005. The deviations grow even wider in 2006. The difference increases to $2,187 under the Union's proposal and to $3,849 with the Employer's continued freeze.

3.) The Village percentage increase to the minimum has not kept up with the comparable communities

The average starting wage among the comparable communities increased a total of 13.14 percent during the first four years of this contract or an average of 3.28% for each year. In comparison, the Village increased its starting wage 0% or a total deviation from the average of the comparables of 13.14 % for 2001-2004. The deviation of the Village's starting wage from the norm increases to 20.74% over the entire term of the Agreement for an average of 3.46% per year, accepting the Employer's figures that it will continue to freeze the starting rate for 2005 and 2006. Even if the Union's modest 3% increases are granted in 2005 and 2006, the Village's starting wage would still have decreased 14.74% or an average of 2.40% per year in comparison to the average of the comparable communities during the term of the contract.

b. Any argument by the Employer that recruiting and turnover have not been affected by the freeze in the starting rate of pay cannot overcome the dramatic drop in relationship to the comparable communities

According to the Union, the Employer cannot overcome the overwhelming evidence that Midlothian has dropped from first to last in starting pay by simply saying "so what, it is our business and we want to keep it that way." Unfortunately, the gap between a new hire and a Step 1 officer continues to widen. At some point, that may create economic problems for the Employer, not to mention potential resentment among new hires with the huge discrepancy.

In support of its position on a general wage increase, the Union advances the following arguments:

THE UNION'S FINAL OFFER AS TO GENERAL WAGES IS MORE REASONABLE THAN THE VILLAGE'S FINAL OFFER WHEN IT IS WEIGHED AGAINST THE APPLICABLE STATUTORY CRITERIA

A. Adoption of the Union's proposal will most closely retain the position of Midlothian Police Officers in relationship to comparable communities (*Brief for the Union* at 9).

The Union's proposal helps to restore the position of Midlothian Police Officers to where they were in relationship to the stipulated communities in 2001, while the Village's proposal continues to reduce the position of Midlothian Officers in relationship to the comparable communities.

In the Union's view, the most crucial comparison figures are the top out salaries for each community. The Village's attempt to have the arbitrator compare officers at the various steps,

including longevity, is self-serving and not helpful. The Union's approach of comparing the top base salary more accurately reflects the base rate communities pay their officers. Each community has determined the range of steps and the amount of time that it takes an officer to reach the top of their scale in bargaining with its respective Unions. One can only speculate at the reasons in each instance.

In the year 2000, the last year of the prior agreement, the Village ranked second in top salary, but dropped to fifth by 2004, the fourth year of the contract. Pursuant to the Union and the Employer's proposals for 2005, the Village would continue to rank fifth among the comparable communities. In the final year of the Agreement, the officers would move up to fourth place under the Union's proposal, while remaining at the fifth with the Employer's proposal.

Additionally, the Union's proposal helps restores the Officers to where they were prior to this contract in terms of the flat dollar deviation of Midlothian from the norm.

The Village's proposal in the instant matter thus results in a continued deterioration of the officer's relative position *vis-a-vis* the comparable communities, while the Union's proposal makes a modest effort to restore the *status quo.*

B. The Union's proposal is more consistent with the raises received by comparable communities

The Union's proposal for a 4.375% raise to the maximum base rate the last two years of the Agreement is more consistent with the pattern of raises granted in the comparable communities during the entire term of the contract. (*Brief* at 10-11). The average wage increase to the maximum base for the six communities for the first four years of the Agreement was 4.13%, while the average for Midlothian was 3.07%, resulting in a deviation from the average of 1.06% per year or a total deviation from the norm of 4¼% over four years. The Village's proposal to increase top salaries for 2005 and 2006 by 3.0% is 1.875% below the average for those two years, while the Union's proposal is slightly more than 1% above the average. Even if the Arbitrator believes the Union's proposal is high for 2005 and 2006, which the Union certainly does not believe, the Village's proposal is clearly out of sync with raises being awarded in the comparable market during the contract.

The Union also notes that its proposal brings the Village closer in line with the average increases given by the comparable communities during the entire term of the Agreement. The 4.375% increase proposed by the Union for 2005 and 2006 when averaged with the actual increases paid during the first four years to the bases (not including starting) salary, results in a net deviation of .57% from the annual average or a total of 3.42% behind the comparables for all six years. On the other hand, the net effect with the Employer's proposal for 2005 and 2000 included, is that the Village is 1.04% behind the annual average or a total deficit of 6.04% for six years.

C. The City's attempt to compare the proposals with other communities which include the Step increases and longevity is misleading and inappropriate

The Village's attempt to justify its salary proposal by comparing the salaries received by Midlothian Officers in their steps with officers from other communities who are in their steps and/or receiving longevity pay should not be given any or minimal credence.

In the Union's view the Village's assertion that pursuant to its proposal officers would be ranked second or third, while in the first six steps of their scales in relationship to the comparable communities is not only misleading, it does not provide a reasonable basis for the arbitrator to issue an informed decision. If one compares top-rated officers to top rated officers, Midlothian moves from second to fifth with the Village's proposal without steps or longevity included for 2005, but when steps and longevity Midlothian ranks second, according to the Employer, after six years of employment. It is no surprise that they want the arbitrator to compare officers in the steps rather than at the top. The Employer's figures are additionally misleading because it ranks the Village by the average salary paid over twenty years. That is a meaningless figure because it includes step increases and longevity pay, which are not at issue in this matter.

The reality is that the top pay of Midlothian Policed Officers has dropped dramatically over the last six (6) years and will continue to drop if the Employer's proposal is awarded.

D. The Internal Comparable Figures Support for the Union's Proposal

a) The Union's proposal will restore economic position of Patrol Officers in relationship to the other sworn personnel in the Department

1) The Employer granted unilateral equity rate adjustments to the Sergeants during the term of the Agreement (*Brief* at 11).

The Union notes that the Employer increased the salaries of Sergeants by 1.0% on November 1, 2004 and by an additional 2.0% on March 1, 2005, in addition to the annual 3% increases each November 1. The Union's proposed increases of 4.375% on November 1, 2005 and 2006 will not only allow the Patrol Officers to catch up with the loss they have suffered in relationship to the external comparable but will restore them to the position they had in relationship to the Sergeant's at the beginning of the Agreement. The net effect of the Union's proposal is that Sergeants and Patrol officers will have received equal salary increases during the term of this contract, in the Union's opinion.

The Employer's argument that this internal comparable is not relevant because the Sergeant's were at a purported disadvantage in relationship to the comparable communities should be rejected.

In any event, the unilateral increase of salary to other personnel in the same Department is clearly relevant and legitimate factor for the Arbitrator to review.

2) The Employer granted unilateral longevity adjustments to the Sergeants during the term of the Agreement and longevity

Likewise, the Arbitrator should take into account, that not only did the Employer unilaterally issue the equity adjustments discussed above to Sergeants, it unilaterally issued increases in longevity pay to Sergeants and other unrepresented employees. In a cynical and clearly obvious ploy to rid itself of having to address this internal comparability factor, on the eve of arbitration it unconditionally offered these same longevity increases to the Union, after insisting that it was not obligated to nor would it bargain with the Union regarding longevity pay as part of the wage re-opener.

The Employer has thus unilaterally provided two increases to Sergeants during the term of the agreement beyond that provided to Patrol Officers which puts them behind other members of their Department. The officer's proposal to catch up with their other departmental employees is certainly reasonable and a legitimate factor to be considered by the Arbitrator.

b) Other internal comparables

Any argument by the Village that because it gave its other employees 3% raises, or in the case of the firefighters a 3.25% raise in 2005, are irrelevant and should have no bearing on the Arbitrator's decision (*Brief* at 13). Other than the firefighters, none of the other units are represented by a collective bargaining representative and cannot provide the basis for a valid comparison.

E. The Employer's arguments that a less than market-rate wage adjustment is justified by the Village's economic difficulties or as some type of deal to eliminate residency or by the CPI are not supported by the credible evidence or arbitrable precedents

The Employer correctly admits that the increases for the first four years of the contract and their proposed increases for 2005 and 2006 are less than market rate increases. Its attempt to justify continued below market increases because of its economic difficulties or that an agreement was reached with the Union that the regressive affect of the below market rate could not be raised herein, or that the comparison of the wage increases to the CPI have no merit. Their economic difficulties are overstated, no such deal was reached, and while the CPI may be lower than the rates negotiated and/or proposed, the Village continues to regress in comparison with other municipalities which also are affected by the same CPI.

a The Employer exaggerates the impact of its "economic difficulties" as a basis for supporting its proposal

1). The cost difference between the parties proposals are not significant

A careful analysis of the data provided by the Employer shows that the total difference between the two proposals is less than $25,000 for two years or approximately $12,500 per year.

In the context of its entire budget and despite its "economic difficulties" a difference of $12,500/year is not going to put the City into financial ruin.

2) Despite its economic difficulties, the employer provided improved benefits to the sergeants and other municipal employees, increased the pay of certain patrol officers and offered unconditional increases in benefits to Union employees

The Employer's position that it must continue to provide under-market increases is undermined by the fact that it unilaterally granted 3% salary adjustments to Sergeants in addition to their regular increases (*Brief* at 14-15). Even if the Administration's argument is accepted that the Sergeants pay scale was out of sync with the market and that they deserved an equity adjustment, it may not now argue that it must continue to pay its patrol officers less than market rate increases because of its financial troubles when it has been able to make adjustments for other employees. The evidence is clear that these "troubles" have been in existence for several years.

Despite these "economic problems," the Village not only made an equity adjustment in Sergeants pay but increased the longevity pay of Sergeants and other non-represented employees and made significant changes in Kelly days for firefighters. Despite its "economic difficulties," it proceeded to unconditionally offer the police officers an increase in longevity pay and also chose to bump the pay of two officers from the entry level to Step 1 before they completed a year of service. By its own estimate, the longevity benefit was worth $2,250 per year which amounts to almost 20% of the cost difference between the Union and the Employer''s proposals. The cost of bumping up the officers cost the Village over $7,000 for one year (not even including the wage increase at issue herein) almost or 30% of the difference between the proposals.

The Employer's suggestion that the Union's proposal is not appropriate because of its "economic difficulties" has no credibility when by its own unilateral action it has or has offered to make economic modifications with the bargaining unit alone which amount to almost 50% of the difference between the parties respective proposals and has made other economic accommodations to other Village employees (e.g., longevity raises, equity adjustments, Kelly days).

3.) Despite its "economic difficulties" the Employer continues to abate taxes, has made timely payment on its bonds and has made no effort to increase property taxes

The Union points out that the Mayor testified and the evidence shows that the Village historically chose not to rely on property taxes (*Brief* at 15). It has, in fact, abated taxes annually for a number of years. Despite its ability to go to the community and request approval for an increase in property taxes by referendum, it has chosen to continue to rely on alternative sources of revenue (primarily sales tax) which puts it at great economic risk. It chose to float a bond in 2005 to raise funds to help address its financial situation. The evidence also shows that despite its "economic difficulties," it has received enough funds from alternative sources to pay its obligations for the bond and was able to continue to abate taxes as it pertains to the bond.

b) The Employer's argument that the CPI also justifies lower than market rate increases is without merit

The Employer introduced a plethora of documents regarding various CPI calculations covering the term of the contract. Its argument that because its proposal is closer to the CPI than the Union's proposal that its proposal should be awarded is not persuasive. The Union recognizes that while the CPI is a statutory factor, its relevance is diminished where, as in this situation, the Employer's wages relative to the comparable communities has been diminishing and, where the Union is attempting to catch up or, as in this case, recover its losses.

The starting rate for Midlothian Police Officers during the term of this agreement has dropped dramatically during the term of this agreement compared both to the CPI and to the comparable communities as previously discussed. In fact, there has been no increase in the actual starting salary paid new hires from 11/1/01 to date. The Employer's CPI data appears to average about 2.25-2.5% per year during the term of the agreement and close to 3% for 2005 and 2006. Over a six year period, the starting salary alone is 20% behind the comparables with the Employer's proposal and 15% behind the CPI. The Union's proposal attempt to brings the starting salary in line with the CPI over the term of the Agreement.

The raises at the top of the scale were admittedly slightly above the CPI for the first four years of the Agreement, but must be looked at in conjunction with the raises for the comparable communities which during that period which averaged much higher than the CPI than did Midlothian. The net effect of the Employer's proposal in the final two years of the contract is to continue to deflate the value of the officers salaries comparison to the comparables in relationship to the CPI – i.e., if the salaries of other officers are rising in relationship to the CPI at a faster rate than that of the Village, then Village's Officers are losing ground to the comparable communities even if keeping ahead of the CPI.

F. Any argument raised by the Employer that the Arbitrator should not take into consideration the relative position of the Officers during the first four yeas of the Agreement because there was a quid pro quo in exchange for residency is not supported by any credible evidence

The Employer's apparent suggestion that the Arbitrator should not consider the change in position of Midlothian Police Officers relative to the comparable communities as the result of a *quid pro quo* to accept lower wages in exchange for residency is not supported by the facts (*Brief* at 16).

Union counsel advised the Employer in bargaining that it agreed to a six year contract with a wage re-opener because it expected that it would attempt to catch up for the wages it fell behind during the first four years of the agreement in bargaining wages for the re-opener. The Union expects that the Employer will attempt to rebut this testimony by reference to the documents contained in Employer Exhibit 31. The document entitled "VILLAGE OF MIDLOTHIAN-OFF-

THE-RECORD PROPOSAL . . ." is inadmissable by its own terms. The final page of the document contains an agreement, that the document may not be raised before an interest arbitrator if it has not been ratified. It is undisputed that this document was not ratified and cannot be now admitted. Furthermore, the document in entitled as "OFF-THE-RECORD." In any event, it is not the language in the contract which is the subject of this arbitration. In addition, the memorandum from JRS is not admissible either because: 1.) It is clearly hearsay; 2) It deals with matters that were discussed in mediation with the FMCS. The Arbitrator previously ruled at the preliminary hearing, that matters discussed in mediation are inadmissable (*Brief* at 16).

Even if the Arbitrator were to find that the Union agreed to the bargained rates in exchange for liberalization of residency, the statutory criteria do not preclude the Union from seeking an equitable adjustment to catch up with the market in the wage re-opener.

* * *

In conclusion, the Union submits that whether the Arbitrator determines that the Employer is correct that it retains the discretion to hire at less than the stated starting rate and/or that the wage package should be treated as one issue, the Union should prevail. In the Union's eyes, the Arbitrator must look at the entire proposal and take into account the Employer's action in freezing the starting rate for the first four years and its anticipated continuance of that practice in 2005 and 2006. As a result, the Village has gone from first to last in starting pay, a practice which cannot be supported by any of the statutory criteria. When viewed in conjunction with the stagnation of Officers at the top of the scale, the Union proposal is clearly the most reasonable and should be granted. For the reasons stated above, the Union respectfully requests that the Arbitrator adopt the Union's position with respect to each of the disputed items.

IV. POSITION OF THE ADMINISTRATION

The Administration's position, as outlined in its post-hearing *Brief*, is summarized as follows:

A. The Arbitrator has no Authority to Award a Wage Increase that is Retroactively Effective on November 1, 2005

The Administration initially submits that the Act prevents the Arbitrator from issuing an award that includes a wage increase that is effective back to November 1, 2005. Specifically, Section 14 (j) of the Statute provides that "increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award." 5 Ill. Comp. Stat. 315/14(j) (2006). The Act explains that rewards may be retroactive only for any "new fiscal year [that] has commenced ..... since the initiation of

arbitration procedures under this Act." *Id.* Finally, the Act says that "arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation." *Id.*

Thus, under the plain language Section 14 (j), arbitrators have no authority to issue wage increases retroactively, *unless the request for mediation occurred before the new fiscal year began.*

In this case, the Union initiated the arbitration procedures when it requested mediation on December 21, 2005. As required by state statute, however, the Village's fiscal year began on May 1, 2005. 65 Ill. Comp. Stat. 5/1-1-2(5) (2007). Thus, the arbitration was not commenced until after the Village's fiscal year began. Under Section 14 (j), therefore, the Arbitrator has no authority to issue an award that would retroactively increase wages between November 1, 2005 and October 31, 2006 (See, *Brief for the Employer* at 13-15).

B. Assuming, Arguendo, that the Arbitrator has Authority to Award either the Union's or the Village's Final Offer on Wages, the Village's Final Wage Offer is More Reasonable and, Under the Statute, Should be Awarded

1. The Arbitrator Has No Authority to Eliminate the Village's Discretionary Powers

The Union's wage proposal is improper and must be rejected because in addition to modifying the police officers' base wages, the Union has proposed eliminating the Village's discretionary ability to freeze the first year starting salary. The collective bargaining agreement specifies that the re-opener negotiations are "limited solely to discussing and negotiating base wages under Section 15.1 above." The language which allows the Village to freeze the first year starting pay rate, however, is contained in Section 15.2 of the parties' collective bargaining agreement. *Id.* The labor agreement does not anticipate reopening the language of Section 15.2 for negotiation. Thus, the Union has asked the Arbitrator to do something that he has no authority to do — modify the language of Section 15.2 and eliminate the Village's discretionary powers (*Brief* at 16).

2. Even if the Arbitrator Had Authority to Eliminate the Village's Discretionary Powers, the Union's Wage Proposal is Unreasonable

The Union's wage proposal regarding eliminating the Village's discretionary powers is not only legally improper, it is also unreasonable. The Union's wage proposal does not account for the increased costs incurred by the police department when new officers are trained. Thus, not only is the Union's proposal outside the bounds of the contractually agreed-upon wage re-opener and legally improper, but it is also unreasonable (*Brief* at 17).

3. Internal Comparability Favors the Village's Proposal

a. Internal Comparability with the Firefighters Unit Favors the Village's Wage Proposal

The only other labor organization representing Village employees is the Midlothian Professional Fire Fighters Association ("Firefighters"), who have already entered into a contract with the Village that covers years 2003 through 2008. The annual salary increases for Firefighters have matched the pay raises of the Village's police force. Specifically, from 2001 to 2004, both the fire and police officers received 3.0% pay raises. In 2004, the police force received a 3.25% pay raise. In response to this raise, the Firefighters received a 3.25% pay raise in 2005. The Village now proposes that the police receive 3.0% pay raises in 2005 and 2006. This proposal matches the current trend for both police and fire-department raises within the Village.

The Administration points out that the Union's proposal is 1.125% higher than the most recent pay raises received by the Firefighters. In the Administration's view, its proposal is the more reasonable proposal when compared with the Village's only other union contract. (*Brief* at 17).

b. Internal Comparability with the Village's Non-Union Employees Favors the Village's Wage Proposal

The Village's proposal is also the more reasonable proposal when compared with the Village's non-union salary increases. *The Administration points out that from 1998 through 2005, all non-union employees who work for the Village have received 3.0% pay increases.* The 3.0% pay increase proposed by the Village is identical to the pay increases for other Village personnel, while the Union's proposal is more than one full percentage point higher in each year in question than the pay raises received by the Village's non-union personnel (*Brief* at 18).

To award the police officers greater percentage raises than those voluntarily negotiated by the Firefighters and granted to the Village's non-union employees would be to disregard arbitral precedent and internal comparability. In addition, such an event would undermine labor relations stability and lessen the likelihood of multi-year agreements with Village Unions in the future, according to the Employer.

c. The Merit Increases Given to Four Sergeants Do Not Justify the Union's Wage Proposal

The one-time equity adjustment given to four police sergeants does not indicate that the Union's wage proposal is more appropriate. In fact, when comparing the proposals to the pay raises given to all Village personnel, the internal comparability factor clearly and decisively favors the Village's proposal (*Brief* at 19).

4 External Comparability Favors the Village's Wage Proposal

The External Comparability of the police officers' wages shows that the Village's wage proposal clearly is the more reasonable proposal

a. The Comparable Communities Increased Salaries By Approximately 3% in 2005 and 2006

In 2005, the average police officer salary increase in the comparable communities was 3.1%. In 2006, the average increase was 3.30%. The Village has proposed salary increases of 3% for 2005 and 2006 — a variance from average of only 0.1% in 2005 and 0.3% in 2006. The Union has proposed salary increases of 4.375% for both years — a variance from average of 1.275% in 2005 and 1.075% in 2006, and nearly 33% larger than the average pay increase. The Village's proposal, therefore, is much closer to the average salary increase in the comparable communities (*Brief* at 20).

b. The Union's Argument That Minimum and Maximum Salaries Provide Support For Its Proposal Is Wrong

The Union's argument – that the police officers' salaries have fallen, compared to the other communities, since the contract was signed in 2000 – is faulty for two reasons: (1) the parties knew when they signed the contract that the Village traded away the residency requirement in return for below-market wages; and (2) the Union bases its analysis on the minimum starting salary, not on what Midlothian police officers are actually paid. The Union's use of minimum salaries is particularly deceptive since the Village has established that it has no problems recruiting new police officers. Furthermore, as soon as new recruits have finished their training, they are bumped to the appropriate level in the pay scale.

Management notes that the Union's own numbers demonstrate that in 2001, the first year that wages were paid based on the current collective bargaining agreement, the police officers' maximum salaries ranked fourth out of six comparable communities. In 2004, the last year of the collective bargaining agreement where wages were defined, the Village police officers changed only one position, they now rank fifth out of seven comparable communities. Under the Village's proposal, the Union concedes that the police officers will remain ranked at fifth place as compared to the agreed-upon comparable communities in 2005 and 2006. Thus, under the Village's proposal, the police officers' maximum salaries will remain in substantially the same position as when the collective bargaining agreement was originally signed. Thus, there is no justification for providing an above-market rate wage increase.

The Union's ranking of the maximum salaries, standing alone, actually means very little for two reasons: (1) officers in some communities take much longer to reach the maximum salary; and (2) some communities offer short-term spikes in their maximum salaries as incentive for officers to retire and receive greater pension benefits.

c. The Relative Ranking of Officers' Actual Projected Earnings Supports the Village's Wage Proposal

The Administration asserts that a proper analysis of the wages earned by police officers compared to other communities should not focus on minimum or maximum salaries. Instead, the analysis must focus on the average salary that a police officer will actually earn throughout his tenure with the police department (*Brief* at 22-23).

5. The Consumer Price Index (CPI) Data Strongly Supports Acceptance of the Village's Final Wage Proposal

In this case the cost-of-living criterion clearly favors the Village's final salary offer. In the years covered by the current collective bargaining agreement the police officers' wage increases have outpaced the cost-of-living increases as measured by the CPI-U. The average cost-of-living increase from 2001 through August of 2006 was only 2.33%. During this time period, the Village police officers received raises of 3.0% or 3.25% per year. Thus, the officers have been able to outpace the increased cost-of-living (*Brief* at 24).

6. The Total Compensation Received by the Police Officers Favors Adoption of the Village's Proposal

The total compensation received by the Village officers justifies adoption of its wage proposal. Over an officer's 20-year career, police officers in the seven (7) comparable communities, including Midlothian, will have an average of 578 total days off (including holidays, vacation, and personal days). Officers in Midlothian exceed the total number of days off — they will have 582 days of paid time off. When looking at the number of vacation days alone, Midlothian offers more vacation days to a police officer over the length of a 20-year career than all but 2 of the comparable communities. In addition, the health care benefits provided to the Village police officers are comparable to the benefits provided in the comparable communities. Because the total compensation paid to Village police officers is similar to that paid in the comparable communities, there is no reason to give the officers a pay adjustment that is substantially greater than the market-rate. As such, this factor weighs in favor of adoption of the Village's proposal.

7. The Parties' Bargaining History Favors Adoption of the Village's Proposal

In the Employer's view, the bargaining history between establishes that there is no basis for awarding the above-market wage increase that the Union seeks.

The Village's position on this issue is supported by the language agreed to in the tentative agreement signed by the parties on March 27, 2002. In the tentative agreement, under the section titled "Article XIV, Duration and Section 15.1, Base Wages," the Village specifically said that "[a]s

part of the *quid pro quo* for the liberalization of the Village's residency requirement the Village, in return, would like an extended contract to provide for labor relations stability. As part of this package proposal, then ..... [t]he Village proposes to increase the existing wage schedule by three percent (3%) ....." The Union agreed to this language, and both parties initialed, indicating their approval. (*Id.*). Thus, the Union understood that in return for a liberalized residency policy, they were agreeing to: (1) a long-term contract; and (2) slightly below market wages.

Since the collective bargaining agreement was signed in 2002, the bargaining-unit members have taken advantage of the liberalized residency requirements. To this end the Administration points out that over half of the bargaining unit now lives outside of the Village of Midlothian. The Arbitrator should not, therefore, choose the Union's proposal in order to provide the Union with "catch-up" wages. To do so would give the Union a windfall for which it did not bargain (*Brief* at 26-27).

8. Although the Village Makes No Claim of Financial Inability to Pay, "The Interest-and-Welfare-of-the-Public" Factor Compels Adoption of the Village's Proposal

The Administration asserts that having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure (*Brief* at 26-27).

9. The Village's Poor and Deteriorating Financial Condition Mitigates Against an Above Average Wage Increase

The Village has lost over $2.8 million in sales tax revenue in the last four years. As a result of declining revenues, the Village has been forced to freeze hiring in all departments other than the Fire and Police departments. The Village has also had to cut back on other expenses through measures such as reducing the number of people who can attend the annual Mayor's conference, curtailing the annual service award dinners, and cutting back on the frequency of the Village's open house events. In fact, to cover the Village's expenses, the Mayor had to request authority for a $1.2 million indebtedness bond from the Village Board.

Here, it is not in the public interest to provide a pay increase any greater than that offered by the Village. Certainly, it is not in the public's interest to provide a wage increase that would outpace the community's cost-of-living increases during a time when the Village is hard-pressed for money (*Brief* at 28-29).

10. The Village Is Not Facing a Recruitment and Retention Problem That Would Otherwise Justify Spending More Resources on an Above-Market Wage Increase

According to the Employer, recruitment has not been a problem for the police department and, accordingly, the Village does not need to increase the starting salaries of its police officers in order to improve recruitment (*Brief* at 29-30).

* * *

Based upon the above arguments, as well as the record evidence, the Village respectfully requests that its contract proposal on the single issue of wages be adopted. The Union's wage proposal is improper because it asks the arbitrator to implement a non-mandatory subject of bargaining, that of removing the Village's discretionary authority to freeze starting wages in a trainee's first year on the force. Furthermore, the Village's proposal for a 3.0% pay increase is the more reasonable proposal under the factors cited in Section 14(h) of the IPLRA: the Village proposal, unlike the Union's 4.375% proposal, is very similar to the raises offered to other Village employees; the proposal maintains the Village's rank compared to external communities; the proposal is closely tied to the cost-of-living data; and the parties' bargaining history favors adoption of the Administration's proposal. Finally, the Village's poor economic condition, coupled with evidence that the Village has had no problems recruiting and retaining police officers, supports a finding that the Village proposal is the more reasonable proposal and should be selected by the Arbitrator (*Brief* at 30-31).

VI. DISCUSSION

A.. Background: Focus of the Interest Neutral in Formulating Recommendations and/or Interest Awards

What should be the focus of the interest neutral when formulating a fact-finding or arbitration award? Should the award reflect the evidence-record facts or should it reflect the position the parties would have reached had they been permitted to engage in economic warfare?

Where both parties have come to the bargaining and arbitration table with extreme positions, one arbitrator found that the proper focus is to formulate an award based on "a position which both parties would have come to had they been able to reach an agreement themselves." [3] In another case, the arbitrator rejected the fact-finder's "recommendations based on compromise in an attempt

[3] *County of Blue Earth v. Law Enforcement Labor Serv., Inc.*, 90 LA 718, 719 (1988) (Rutrick, Arb.); *see also* 60 *City of Clinton v. Clinton Firefighters Ass'n, Local 9*, 72 LA 190 (1979) (Winton, Arb.) (the fact-finder declared "consideration was given to what the parties might have agreed to if negotiations had continued to a conclusion. In the final analysis, however, the Fact Finder must recommend what he considers to be RIGHT in this City at this time. . . ." *Id.* at 196.).

to gain the parties' support for an intermediate solution." [4] In the arbitrator's words, "this is a legitimate strategy for a Fact Finder, but not for an Arbitrator." [5] Management advocate R. Theodore Clark of Seyfarth Shaw, Chicago, Illinois, has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. [6]

I am on record as noting that arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result."[7] While I do not advocate that interest neutrals issue decisions that surprise both parties (i.e., decisions outside the "range of expectations" or "outliers"), there is much to be said for attempting to determine whether the parties would have found themselves with the strike weapon at their disposal. At times this would favor a large union and at other times the employer. The job of an interest neutral, however, is not to equalize bargaining power, or to do "what is right" or act like a "circuit rider," dispensing his own notion of economic justice but, rather, to render an award applying the statutory criteria. At the same time, if the process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining."[8] In this regard Arbitrator Harvey Nathan, in a 1988 arbitration under the Illinois statute, outlined the better view of an arbitrator's function as follows:

> [I]nterest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it the function to embark upon

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[4] *City of Blaine v. Minnesota Teamsters Union, Local 320*, 70 LA 549, 557 (1988) (Perretti, Arb.).

[5] *Id.*

[6] R.T. Clark, Jr., Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process: II. A Management Perspective, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.L. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take the strike." *Id.*

See also Des Moines Transit Co. v. Amalgamated Ass'n of Am., Div., 441, 38 LA 666 (1962) (Flagler, Arb.) "It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table." *Id.* at 671.

[7] See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion, in* Arbitration–1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators (B.D. Dennis & G.C. Somers, etd) 159, 186 (BNA Books, 1976).

[8] *Arizona Pub. Serv. Co. v. Int'l Bhd. of Elec. Workers, Local 387*, 63 LA 1189, 1196 (1974) (Platt, Arb.).

new ground and create some innovative procedural or benefit scheme which is unrelated to [the] parties' particular bargaining history. **The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.**[9]

It is from this perspective that the instant award is formulated.

B. Comparative Bench-Mark Jurisdictions

The parties have agreed that the following six municipalities represent comparable communities in accordance with Section 14(h)(4) of the Act: Country Club Hills; Hazel Crest; Richton Park; Riverdale; Markham; and Worth. All have geographic proximity to Midlothian.

C. Relevance of Internal vs. External Comparisons

Both parties have advanced arguments with respect to internal and external criteria, with the Administration asserting that internal comparisons should be given more weight than external comparisons. How significant is internal and external comparability as criteria in interest proceedings? Is one necessarily more important than the other?

In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that "the factor of internal comparability alone required selection of the Village's insurance proposal." Arbitrator Goldstein stressed that arbitrators have "uniformly recognized the need for uniformity in the administration of health insurance benefits." Similarly, in *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996)(unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such a health insurance, it "takes very compelling evidence" in the form of external comparisons to justify a deviation from that past practice.

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result),

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[9] *Will County Bd. and Sheriff of Will County v. AFSCME Council 31, Local 2961*, Illinois State Labor Relations Board, (Nathan, Chair., Aug. 17, 1988) (unpublished).

See generally, Hill, Sinicropi and Evenson, Winning Arbitration Advocacy (BNA Books, 1998)(Chapter 9)(discussing the focus of the interest neutral).

Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harve v. International Association of Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

> Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, "the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison." As Velben stated, "The aim of the individual is to obtain parity with those with whom he is accustomed to class himself." **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party's wage proposal.** *Id.* at 791 (citations omitted; emphasis mine).

Other considerations equal, I agree with those arbitrators who, with rare exceptions, find internal comparability equally or more compelling than external data. To this end, I find merit in the City's positions that both internal and external comparisons favor its wage proposal (see discussion, *infra*, this opinion).

D. Statutory Criteria

This dispute involves one economic issue – wages. The Act restricts the Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child." [10] As to non-economic issues, however, the Arbitrator's discretion is not so limited. Section 14(g) of the Illinois Public Labor Relations Act (the "Act"), reads:

> As to each economic issue, the arbitrator panel shall adopt the last offer of settlement which, in the opinion of the arbitrator panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

5 ILCS 315/14.

In ruling on this dispute, the Arbitrator is guided by criteria established by Section 14(h) of the Act. The eight factors specified by the Act for arbitrator guidance are as follows:

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[10] *Cf.* 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

(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 costs 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.

(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.

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable."

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue.

E. Analysis of Positions

The Administration's Authority to Freeze Starting Salaries – Section 15.2

A preliminary inquiry in this case is whether the Administration's authority to freeze a starting salary under Section 15.2 is subject to the wage re-opener provision. For the following reasons, I hold the Administration advances the better argument under the specific language of the collective bargaining agreement.

The parties are well aware that my function is to apply and enforce the terms of the parties' collective bargaining agreement. My authority is limited where the contract is clear and unambiguous. As stated by one arbitrator:

> Where one party or the other asserts that the written language is inexact, ambiguous or does not cover the particular factual situation, it bears a heavy burden of proving that because it is fairly assumed that knowledgeable and experienced parties entered into such contracts understand and accept the specific terms and conditions.

Hook-Up, Inc., 1999 WL 416374 (Daniel, 1999).

My charge is the wage salary in Section 15.1 and what the numbers are. I have no authority to remove the Administration's discretionary authority to freeze a starting salary under Section 15.2. The relevant language provides ". . . such re-opener negotiations will be limited *solely* to discussing and negotiating base wages under Section 15.1." (emphasis mine). While it is true that there is no asterisk for the 2005 and 2006 slots, the absence is not dispositive of the issue. Section 15.2's language trumps any argument favoring the removal of the Employer's authority under the collective bargaining agreement. A ruling for the Union would have the clear effect of reading out of the contract specific language contained in Section 15.2. The focus is on base wages and how much they will be increased for the relevant years. As such, my hands are tied: the discretionary power issue is simply out of the interest-arbitration equation under the parties' collective bargaining agreement.

Even if the discretionary power issue were before me, there is some merit to the Employer's position regarding training costs, which the Village incurs when it has to train new police officers who join the force with no prior experience. According to the Employer, when police officers complete the program, the Village routinely increases their starting salary to the salary listed in the negotiated wage chart (*Brief for the Employer* at 16; R. 116-117).

1. Internal Comparability

The following chart outlines the internal comparability criterion regarding police, fire, and all other Midlothian Village employees:

Internal Comparables: Annual Salary Increases

Year	Police	Fire	All Other Employees
1998	5.0%	4.5%	3.0%
1999	5.0%	4.5%	3.0%
2000	5.0%	3.0%	3.0%
2001	3.0%	3.0%	3.0%
2002	3.0%	3.0%	3.0%
2003	3.0%	3.0%	3.0%
2004	3.25%	3.0%	3.0%
2005	Village – 3.0% Union – 4.375%	3.25%	3.0%
2006	Village – 3.0% Union – 4.37%	N/A	3.0%

See, Union Ex. 7 & V. Ex. 12. Police and Fire are the only groups that have steps.

In every year since 1998, all Village employees other than police and fire received a 3.0% wage increase. As shown in the above table, beginning in 2001, and running through 2004, the Firefighters received a 3.0% pay increase. In 2005, the Firefighters received a 3.25% pay increase, matching the pay increase received in 2004. Clearly, the Village offer of 3.0% is more in line with the internal comparables than the Union's offer of 4.37%, an offer (in counsel's words) "as a means to catch themselves back up in the market with where they believe they should be and where they were when we started out here in bargaining back at the beginning of this contract." (R. 21).

What of the Union's argument regarding the Administration granting an equity rate adjustment to the Sergeants during the term of the agreement (*Brief for the Union* at 11-12)? To this end there is no dispute that the Employer increased the salaries of Sergeants by 1.0% on November 1, 2004, and by an additional 2.0% on March 1, 2005, in addition to the annual increases eacj November 1st (*Brief* at 11).

As pointed out by the Administration, the overall wage increase (5% in 2005), which affected only four (4) police sergeants out of 125 total Village employees, includes a 2% equity pay

adjustment. Even after the sergeants received the 2% equity adjustment in 2005, their wages still rank fifth out of seven comparable communities. Thus, despite this equity adjustment, the sergeants' salaries continue to lag behind the salaries paid in the comparable communities. All in all, the adjustments granted the Sergeants does not tip the internal criterion in favor of the police officers bargaining unit.

Whatever the motivation, I also find it noteworthy that the Administration offered longevity increases to the bargaining unit similar to those granted the Sergeants and other unrepresented employees.

2. External Comparability

The significance of external analysis in resolving an interest dispute cannot be overstated. Arbitrator Harvey Nathan, in *Village of Rock Falls & IAFF Local 3291* (1995), observed that external data may be the most important criterion in assessing the reasonableness of final offers:

> It has been suggested that external comparability is the most significant of the factors to be considered by the arbitration panel. The appropriateness of one offer over another is often not apparent without some measurement of the marketplace. The addition or deletion of many terms and or practices, or the precise increase in remuneration, can often be best determined by analyzing the collective wisdom of a variety of other employees and unions in reaching their agreement. **Every case has it known facts but the determination of the appropriate result can be better gauged by the struggles of those with similar characteristics and circumstances** (*Id.* at 20-21, footnotes omitted; emphasis mine).

Interestingly, Arbitrator Nathan went on to discuss criteria arbitrators consider in determining the appropriate comparables:

> Generally speaking, population of the community, size of the bargaining unit, geographic proximity and similarity of revenue and its sources are the features most often accepted in composing a comparability group. Some arbitrators emphasize geography because the marketplace concept is essential to comparability. (*Id* at 21, footnote omitted).

A study of external data also favors selecting the Administration's final offer. Important in this regard is (1) a study of percentage wage increases in the bench-mark jurisdictions, and (2) actual salary rankings:

External Comparables: Percent Wage Increases for 2005 & 2006

Bench-Mark Jurisdiction	2005	2006
Richton Park	4.0%	4.0%
C.C. Hills	3.5%	3.5%
Markham[11]	3.37%	3.37%
Worth	3.0%	4.0%
Hazel Crest	3.0%*	3.0%
Riverdale	4.0%**	4.0%**
Average (excluding Midlothian)	**3.47%****	**3.65%****
Midlothian – Union Offer	4.375%	4.375%
Midlothian – Employer Offer	3.0%	3.0%
Difference from average –	**0.90% (Union)** **0.47% (Employer)**	**0.725% (Union)** **0.65% (Employer)**

See, V. Ex. 16.

* In its original exhibits, the Union represented that the patrol officers in Hazel Crest received a 3.0% wage increase for 2005 (U. Ex. 5). That number matched the number presented by the Village (V. Ex. 16). In its revised Exhibit No. 5 (attached to its post-hearing *Brief*) the Union represented that the officers received a 5.5% salary increase in 2005. In a February 22, 2007, communication, the Employer pointed out that this number is incorrect. It is possible that the Union included the new step 18 when it calculated the raise at 5.5%.

** Revised, March 8, 2007, letter from B. Gehrt, indicating that Riverdale received two 2 percent raises in each year.

Significantly, no bench-mark jurisdiction has granted a wage proposal over 4.375%. At the same time, two (Worth and Hazel Crest) have enacted 2006 wage increases equal to or less than the Village's 3.0% offer. The Administration's argument regarding the comparables is persuasive, at least with respect to its offer being closer to the average than the Union's offer.[12]

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[11] The Union's exhibit (Ex. No. 6) does not have an entry for Markham.

[12] In an exchange between Messrs. Baird and Green, the point that the Village's offer is closer to the comparables in 2005 and 2006 is acknowledged:

> Q. [By Mr. Baird]: I'm asking the question, though. Isn't the Village's proposal closer to the average increase of the comparables [in reference to 2005]?
>
> A. [By Mr. Green]: It may be. I haven't done the calculations.
>
> Q. I'll do them. Could we have a moment please?
>
> [off-the-record discussion]
>
> It's approximately 3.1 percent [the column for 2005].
>
> And if you change Riverdale in 2006 from 4.0% to 2.0% – So the average increase in the second year of the comparables is closer, is it not, to the Village's proposed increase than the Union's?
>
> A. [By Mr. Green]: That's correct. (R. 44-45).

Especially relevant is a study of actual Salary rankings in the bench-mark jurisdictions:

External Comparables: Actual Salary Rankings, 2005 & 2006

	2005 Salaries		2005 Rankings		2006 Salaries		2006 Rankings	
	Union	Village	Union	Village	Union	Village	Union	Village
Starting Salary	38,761	37,632	5	5	40,455	37,632	5	7
1 year	46,984	46,365	3	3	40,037	47,755	3	3
2 years	50,240	49,578	2	3	52,436	51,066	2	3
3 years	53,661	52,954	2	2	56,006	54,543	2	2
4 years	55,121	54,395	2	2	57,530	56,027	2	2
5 years	57,081	56,336	2	2	59,576	58,026	2	2
6 years	58,081	56,336	2	2	61,100	60,267	2	2
21-yr average	**51,484**	**50,719**	**4**	**4**	**59,354**	**57,978**	**2**	**5**

While both proposals maintain the relative rankings for most cells, when the 21-year average is examined the Union's offer jumps their ranking two positions. More important, under the Village's 3.0% (2005) & 3.0% (2006) proposal, maximum salaries will remain in substantially the same position (5/6 & 4/6) as when the parties' collective bargaining agreement was originally signed (see, Union Ex. 1).

Significantly, a study of the externals in the relevant bench-mark jurisdictions indicates that a Midlothian officer fares better at the upper salary levels (2nd) than at the starting salary (5th). (See, V. Exs. 17, A-I).

Also important is a BNA report, dated August 18, 2005, regarding Average First-Year Wage Hikes (V. Ex. 27). Data complied by BNA through August 15th for national settlements reported in 2005 showed that the average first-year wage increase was 3.0 percent, compared with 3.3% in the comparable period of 2004. The median first-year increase for settlements reported to date was 3.0%, the same increase as that reported in 2004, and the weighted average was 2.3%, compared with 2.5%. *Id.* In tabular form, the data (lump sums not factored) is as follows:

Based on the integrated revisions, the Employer's offer is still closer to the comparables than the Union's 4.375% increase.

First-Year Wage Increases

	Year-to-Date 2005			Year-to-date 2004		
	Wgt.Avg.	Average	Median	Wgt.Avg.	Average	Median
All Settlements	2.3%	3.0%	3.0%	2.5%	3.3%	3.0%
* * *						
State & Local Governments	2.9%	3.1%	3.0%	2.2%	2.7%	3.0%
State & Local Governments*	3.0%	3.2%	3.0%	2.2%	2.7%	3.0%

* Lump Sums Factored (V. Ex. 27).

In summary, both internal and external criteria (relevant bench-mark jurisdictions and national data) favor the Administration wage offer of 3.0% over the Union's position of 4.375%.

3. Cost-of-Living

Analysis of the cost-of-living data indicates an average of approximately 2.4% to 2.3% since 2001 (See, Table 5, *Brief for the Employer* at 10). For 2007, the government has predicted an increase in the CPI-U of 2.2%. As such, the Village's 3.0% – 3.0% offer is more in line with the CPI than the Union's wage offer, an offer that would exceed the published CPI.

4. Ability-to-Pay Considerations

The evidence record indicates that a 1.0% across-the-board increase in wages cost the Village approximately $8,435.76. The total base wage (without roll-up) for this bargaining unit is $843,567.22 (using the Employer's numbers)(V. Exs. 6 & 7). The overall costs of the Village's proposal is as follows:

Overall Cost of Village's Wage Proposal

	Cost as of 10/31/2005	Cost as of 10/31/2006	Total Increase	% Increase
Year 2005-2006	$843,576.22	$884,982.33	$41,406.11	4.91%

	Coast as of 10/31/2006	Cost as of 10/31/2007	Total Increase	% Increase
2006-2007	$884,982.33	$922,126.05	$37,143.72	4.20%
		TOTAL	$78,549.72	9.11%

The Union's proposal costs out as follows:

Overall Cost of Village's Wage Proposal

	Cost as of 10/31/2005	Cost as of 10/31/2006	Total Increase	% Increase
Year 2005-2006	$843,576.22	$898,628.44	$55,52.22	6.53%
	10/31/2006	10/31/2007	Total Increase	% Increase
Year 2006-2007	898,628.44	954,349.43	55,720.00	6.20%
		TOTAL	110,773.21	12.73%

Source: The Village and Union's Final Proposals and Human Resources Payroll Information as of 11/01/05 (V. Ex. 9).

Both sides address the financial situation at Midlothian, as they should Indeed, Section 14(h) of the Act (*supra*) provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in an interest proceeding. While the Administration has not entered an inability-to-pay argument, neither party would consider Midlothian's future similar to growing communities with increasing tax and income bases. As noted by management, Midlothian ranks towards the bottom in almost every major indicia of wealth, including general fund revenues/capita (*Brief for the Employer* at 27-29). The loss of major businesses, especially Dodge of Midlothian, a corresponding sales tax loss of over $2.8 million in the last four years (R. 128), plus spiraling health insurance costs (R. 129), must be recognized by an interest arbitrator under §14(h).

In this respect I credit Mayor Thomas J. Murawski's testimony regarding the economic health of Midlothian ("Obviously I can't go and flip a switch and turn that back on." (When questioned about a loss of 2.8 million in sales tax revenues over the last 4 years). Also relevant in any ability-to-pay determination is the pension levy obligation ($92,931 in 2002; $200,633 in 2003; $250,738 in 2004; and $262,419 in 2005)(R. 129). The Mayor concluded:

When I asked the Village board to give me the authority to go into debt $1.2 million, it was for no other purpose than I would not be placed in a position to have to reduce head count. I would not have to lay off police, fire, public works or administrative office personnel and in order to provide the services of this community. We're at that point (R. 131).

Where does this analysis leave the parties?

In *City of Gresham & IAFF Local 1062* (1984), a case cited by the Administration in its *Brief* at 27-28, Arbitrator Edward Clark observed: "Having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless it is satisfied that there will be come public benefits from such expenditure. The City exists for the service and benefit of its residents, not for the benefit of its employees." Consistent with the declarations of Arbitrator Clark, the absence of an inability-to-pay argument by the Administration does not engender a ruling for a wage and benefit increase notwithstanding the other statutory criteria. Given this evidence record the Village has advanced the better argument regarding ability to pay.

5. <u>Bargaining History</u>

What of the Union's argument that an above-average increase is warranted because the bargaining unit has fallen behind other comparable units?

As indicated, under both proposals the relative ranking is generally maintained, especially at the high end. What is particularly relevant is the bargaining history of the parties. As the Administration points out in its *Brief* at 26, in the parties' tentative agreement, under the section titled "Article XIV, Duration and Section 15.1, Base Wages," the Administration specifically stated that "as part of the *quid pro quo* for the liberalization of the Village's residency requirement the Village, in return, would like an extended contract to provide for labor relations stability. As part of this package proposal, then . . . [t]he Village proposes to increase the existing wage schedule by three percent (3%) . . ." (VX 31, R. 92). The Village's position is that a six-year contract was agreed to "because the Village made it clear that without a six-year agreement they would not – the Village wouldn't be changing its position on residency." (Baird; R. 91). At the same time, the Union made it clear that without the wage re-opener at the back end of the contract, it would not agree to a six-year labor agreement. *Id.*

The Union counters that the document titled "Village of Midlothian Off-the-Record Proposal" is admissible by its terms (*Brief for the Union* at 16). The Union points out that the final page of the of the document contains an agreement that it will not be raised during an interest arbitration. *Id.* In the alternative, the Union counters that even if the Arbitrator were to find that the Union agreed to the bargained rates in exchange for liberalization of residency, the statutory criteria do not preclude the Union from seeking an equitable adjustment to catch up with the market in the wage re-opener. *Id.*

Whatever position is taken, the evidence record indicates that Union did get a wage re-opener at the end of the agreement. And it did obtain residency relief. Regardless of whether the Union or the Administration's view is endorsed, the statutory criteria trumps the parties' bargaining history as a dispositive criterion for granting a major make-up wage increase. In the instant case I find internal and external comparability, Midlothian's serious financial constraints, and the relatively modest changes in the CPI as overriding any bargaining- history considerations.

6. The Retroactivity Issue

In the Union's view, the Administration's argument that the Arbitrator does not have jurisdiction to order any rate increases retroactive to November 1, 2005, clearly has no merit (*Brief for the Union* at 17 n. 3). According to the Union, "the clear language of the contract and the clear language of the Employer's proposal state rate increases are to be effective November 1, 2005 and 2006." *Id.*

For the record, the Union advances the better case. However, since the Employer's wage offer is awarded, with full retroactivity, the issue is, for all practical and legal purposes, moot. I note only for the record that the retroactivity issue was not a consideration in making the award.

F. Conclusion

As the parties well know, the Illinois statute mandates that the interest arbitrator apply a number of criteria when rendering the award. The Employer clearly makes the better argument when internal criteria (*supra* at 25), CPI data (*supra* at 29), national data (*supra* at 29), and ability-to-pay criteria (*supra* at 29-30) are considered. The parties are about "even" with respect to external criteria (*supra* at 27-29) (especially when the post-hearing corrections are noted in the comparables), with the Village getting a negligible edge. Indeed, the number most representative of the 2005 and 2006 trends in the comparables is approximately 3.5% for both years. On a final offer basis, however, the Employer's 3.0% offer is closer to 3.5% than the Union's 4.375% final offer. When the other criteria are considered, the Employer's position gets the nod.

For the reasons outlined above, the following award is issued:

VI. AWARD

The position of the Administration on Wages, with full retroactivity as outlined in its proposal, is awarded.

Dated this 10th day of March, 2007
at DeKalb, Illinois, 60115.

Marvin Hill, Jr.
Arbitrator