

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION,
CHICAGO, ILLINOIS REGION**

IN THE MATTER OF INTEREST)	51 390 01383 06
ARBITRATION)	Case No. S-MA-07-007
)	
BETWEEN)	Marvin Hill, Jr.
)	Arbitrator
VILLAGE OF SKOKIE, ILLINOIS)	
)	Hearing Date: November 11, 2008
and)	
)	
SKOKIE FIREFIGHTERS, IAFF 3033)	
<hr/>		

Appearances

For the Administration: R. Theodore Clark, Esq.
 Seyfarth Shaw et al.
 131 South Dearborn Street, Ste 2400
 Chicago, Illinois 60603-5577

For the Union: J. Dale Berry, Esq.
 Cornfield & Feldman
 25 East Washington Street, Ste 1400
 Chicago, Illinois 60602-1803

I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

This is the continuation of an interest arbitration that was invoked by the parties to resolve an impasse that arose between them in connection with the negotiation of the 2006-2009 successor collective bargaining agreement . The parties have agreed that the Arbitrator's ruling in this matter will govern the terms of the 2006-2009 contract with respect to issue in dispute and that such terms will remain in effect for the terms of the successor collective bargaining agreement to the 2006-2009 agreement (R. 15-16). The one major item remaining in dispute between the parties is that of promotional procedures and promotion to the Captain rank. The parties' respective offers at arbitration are in the record as Joint Exhibit 10 (Union) and Joint Exhibit 12 (Employer).

A hearing was held at the administrative offices of the Village of Skokie, 5127 Oakton, Skokie, Illinois, on November 11, 2008. The parties appeared through their representatives and entered exhibits and testimony. Post-hearing briefs were filed and exchanged through the offices of the Arbitrator on February 6, 2009. The record was closed on that date.

* * *

As noted, this dispute involves one (1) non-economic issue – promotion to the rank of Captain. Although the dispute arose under the parties' Alternative Impasse Resolution Procedure contained in Appendix A of the Labor Agreement, which provides for interest arbitration of unresolved issues, the parties have stipulated that the Arbitrator is to resolve this dispute based upon the factors of Section 14(h) of the Illinois Public Labor Relations Act, Ill.Rev.Stat, ch. 48. § 614(h). Section 14(g) of the Act sets forth eight (8) criteria to be considered by an arbitrator:

- (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.” As noted by the Union in its *Brief* at 4, “the listing of the eight separate factors does not necessarily mean that all eight factors are relevant or controlling.” In the instant circumstances, where the only dispute relates to a non-economic item, the economic comparisons references in criteria (3), (4), (5) and (6) are not applicable.. *Brief* at 5.

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.

II. THE PARTIES’ FINAL OFFERS

In its post-hearing *Brief* at 14-20 the Administration presents a side-by-side comparison of the final offers before me. That outline of the respective positions is reprinted as follows:

VILLAGE’S FINAL OFFER	UNION’S FINAL OFFER
<p><u>Section 1. General.</u> The examination process for promotion to the rank of Captain shall be competitive among employees in the rank of Lieutenant who meet the eligibility requirements set forth in Section 2 below and desire to submit themselves to such process. Such promotions to the rank of Fire Captain shall be in accordance with the provisions of the Fire Department Promotion Act (“FDPA”), 50 ILCS 742, and the contractual provisions set forth below.</p>	<p><u>Section 1. General.</u> The examination process for promotion to the rank of Captain shall be competitive among employees in the rank of Lieutenant who meet the eligibility requirements set forth in Section 2 below and desire to submit themselves to such process. Such promotions to the rank of Fire Captain shall be in accordance with the provisions of the Fire Department Promotion Act (“FDPA”), 50 ILCS 742 and the contractual provisions set forth below.</p>
<p>Unless otherwise specifically provided in this Article, the promotion process to the rank of Captain shall be administered by the Village of Skokie’s Personnel Director.</p>	<p>Unless otherwise specifically provided in this Article, the promotion process to the rank of Captain shall be administered by the Village of Skokie’s Board of Fire and Police Commissioners.</p>
<p><u>Section 2. Eligibility Requirements.</u> Members of the bargaining unit in the rank of Lieutenant shall be eligible to participate in the process for promotion to Captain if they (1) have completed one year in the rank of Lieutenant as of the date of the announcement of the Captain promotional process, (2) are certified or provisionally certified as Fire Officer II, and (3) have at least 60 semester hours of credit or an Associate Degree from an accredited college or university.</p>	<p><u>Section 2. Eligibility Requirements.</u> Members of the bargaining unit in the rank of Lieutenant shall be eligible to participate in the process for promotion to Captain if they (1) have completed one year in the rank of Lieutenant as of the date of the announcement of the Captain promotional process, and (2) are certified or provisionally certified as Fire Officer II. Possession of at least 60 semester hours of credit or an Associate Degree from an accredited college or university shall be an eligibility requirement. This announcement shall</p>

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	be no later than 30 days before the expiration of the current list.																										
<p><u>Section 3. Notification.</u> Prior to the announcement of the Captain promotional process, the Village of Skokie's Personnel Director will review the steps of the process with the Executive Board of Local 3033.</p>	<p><u>Section 3. Notification.</u> Prior to the announcement of the Captain promotional process, the Village of Skokie's Personnel Director will review the steps of the process with the Executive Board of Local 3033.</p>																										
<p><u>Section 4. Resume.</u> At the time the candidate makes application to participate in the Captain promotional process, the candidate shall submit a resume with written supporting documentation along with the application. This resume shall document the candidate's satisfaction of the eligibility requirements stated in Section 2 above. This resume shall include documentation (e.g., transcripts, certifications, etc.) and must be submitted within two (2) weeks of announcement of the Captain promotional process.</p>	<p><u>Section 4. Resume.</u> At the time the candidate makes application to participate in the Captain promotional process, the candidate shall submit a resume with written supporting documentation along with the application. This resume shall document the candidate's satisfaction of the eligibility requirements stated in ¶2. This resume shall include documentation (e.g., transcripts, certifications, etc.) and shall be submitted within two (2) weeks of announcement of the Captain promotional process.</p>																										
<p><u>Section 5. Components of Promotional Process and the Weighting of Components.</u> The placement of eligible candidates on a Captain promotion list shall be based on the points achieved by the candidate on each of the following components:</p> <table border="0" data-bbox="219 913 836 1176"> <thead> <tr> <th><u>Component</u></th> <th><u>Percentage Weighting</u></th> </tr> </thead> <tbody> <tr> <td>Written Examination</td> <td>20%</td> </tr> <tr> <td>Assessment Center</td> <td>20%</td> </tr> <tr> <td>Promotability Potential Evaluation</td> <td>15%</td> </tr> <tr> <td>Oral Interview</td> <td>40%</td> </tr> <tr> <td>Seniority</td> <td>5%</td> </tr> </tbody> </table>	<u>Component</u>	<u>Percentage Weighting</u>	Written Examination	20%	Assessment Center	20%	Promotability Potential Evaluation	15%	Oral Interview	40%	Seniority	5%	<p><u>Section 5. Components of Promotional Process and the Weighting of Components.</u> The placement of eligible candidates on a Captain promotion list shall be based on the points achieved by the candidate on each of the following components:</p> <table border="0" data-bbox="836 913 1453 1228"> <thead> <tr> <th><u>Component</u></th> <th><u>Percentage Weighting</u></th> </tr> </thead> <tbody> <tr> <td>Written Examination</td> <td>40%</td> </tr> <tr> <td>Assessment Center</td> <td>25%</td> </tr> <tr> <td>Promotability Potential Evaluation</td> <td>10%</td> </tr> <tr> <td>Oral Interview</td> <td>10%</td> </tr> <tr> <td>Seniority</td> <td>10%</td> </tr> <tr> <td>Ascertained merit attached (Maximum of 5 points)</td> <td>5% as</td> </tr> </tbody> </table>	<u>Component</u>	<u>Percentage Weighting</u>	Written Examination	40%	Assessment Center	25%	Promotability Potential Evaluation	10%	Oral Interview	10%	Seniority	10%	Ascertained merit attached (Maximum of 5 points)	5% as
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<p><u>Section 6. Promotion Process Components</u></p> <p>a. <u>Written Examination.</u> The subject matter of the written examination shall fairly test the capacity of the candidate to discharge the duties of a Captain. The written examination shall be developed by an independent outside agency and shall have been independently validated. The examination shall be based only on the contents of written materials that the Village has identified and made available to potential examinees at least 90 days before the examination is administered. The test questions and material must be pertinent to the rank of Captain.</p> <p>b. <u>Assessment Center.</u> The Assessment Center shall be administered by the Institute of Public</p>	<p><u>Section 6. Promotion Process Components.</u></p> <p>Each component shall be administered in accordance with the requirements of the FDPA: §35 (written examination); §40 (seniority points); §45 (ascertained merit); §50 (subjective evaluation), as amended 2008 (SB 2070) and as supplemented in the subsections set out below. Points for the subjective, seniority and ascertained merit shall be awarded and posted before the written examination is administered. The components shall be administered in the following order:</p> <p>A. Assessment Center.</p> <p>The Assessment Center shall include the use</p>																										

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
<p>Safety Personnel ("IPSP"). A panel process shall be used to conduct the Assessment Center. Depending on the number of applicants, multiple panels may be needed. Each panel shall consist of two (2) or three (3) fire officers in the rank of Deputy Chief or above from other Illinois public sector jurisdictions, provided that all panel members meet the certification or provisional certification requirements of the Fire Department Promotion Act as amended. For two (2) member panels, panel members shall be selected by the parties from a list of five (5) fire officers in the rank of Deputy Chief or above provided by IPSP. For three (3) member panels, panel members shall be selected by the parties from a list of seven (7) fire officers in the rank of Deputy Chief or above. The parties shall alternately strike names from the list(s) provided by IPSP until the requisite number of names remain. A coin toss shall determine which party strikes the first name. The Assessment Center shall include the use of multiple assessment techniques and tactical exercises.</p> <p>c. <u>Promotability Potential Evaluation.</u> The Promotability Potential Evaluation criteria used for the 2006 Captain promotion process will continued to be used, provided, that Item 1 (Attendance and Punctuality) will be revised to be based on the average of the candidate's non-duty related absences over the past five (5) years, ending with the date of the most current promotional written exam. The promotability potential evaluation process shall be based on an evaluation conducted by all the current Captains (employees in the position of Captain as of the date of the announcement) who will convene to review the resumes and rate the applicants. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion. A Deputy Fire Chief will facilitate the Promotability Potential Evaluation meeting with the Captains.</p> <p>d. <u>Oral Interviews.</u> A team of three Village administrators (i.e., the Village Personnel Director, the Fire Chief, and the Police Chief) shall conduct an individual oral interview with each candidate. The panel of Village administrators will remain consistent throughout all interviews. Questions asked during the oral interview shall be structured and applied uniformly for all candidates, shall be job-related and designed to enable the team of three Village administrators to determine the candidate's</p>	<p>of multiple assessment techniques and tactical exercises.</p> <p>The Assessment Center shall be conducted by the Institute of Public Safety Personnel ("IPSP"), who shall use a panel of fire officers in the rank of Battalion Chief or above from other Illinois public sector jurisdictions to conduct the Assessment Center, provided that all members of said panel meet the certification or provisional certification requirements of the Fire Department Promotion Act as amended. Compliance with the Act shall be presumed when the panel of assessors conducting the assessments are obtained as follows:</p> <ol style="list-style-type: none"> 1) At least thirty (30) days prior to the date the assessment component is to be conducted, the IPSP shall provide the parties with a panel of assessors who shall be qualified as Certified Assessors as provided by §50(f) and (g) of the FDPA as amended (SB 2070) and listed on rosters established by the Office of the State Fire Marshall ("the Office"). 2) Such panel shall consist of not less than 2½ times the number of assessors required to conduct the test. 3) The parties shall then select 1½ times the number of assessors required to conduct the test according to the following procedure: <ol style="list-style-type: none"> a) They shall alternatively strike names from the list provided by the "IPSP" until only the number of required assessors remain. b) A coin toss shall determine which party strikes the first name. c) The parties shall designate one-third (1/3) of the assessors selected as alternates to the primary assessors by agreement, or absent agreement by using the same alternate striking procedure described in paragraphs (a) and (b). d) If the parties fail to notify the Office in a timely manner of their selection of assessors, the Office shall appoint the assessors required from the roster of certified assessors.

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
<p>qualifications and abilities to discharge the duties of Captain.</p> <p>e. <u>Seniority</u>. Seniority points shall be computed as of the date of the written examination. One point shall be granted for each full year of service as a Lieutenant on the Skokie Fire Department up to a maximum of five (5) points. The seniority list shall include the seniority date, any breaks in service, the total number of eligible years, and the number of seniority points.</p>	<p>e) In the event an assessor is not able to participate in the Assessment Center process for which he was selected, either of the parties involved in the promotion process may request that additional names of certified assessors be provided by the "IPSP."</p> <p>B. <u>Promotability Potential Rating</u>. The Promotability Potential Rating criteria used for the 2006 Captain promotion process will continue to be used, provided, however, that Item 1 (Attendance and Punctuality) will be revised to be based on the average of the candidate's non-duty related absences over the past five (5) years, ending with the date of the most current promotional written exam. The promotability potential rating process shall be conducted by all the current Captains (employees in the position of Captain as of the date of the notification) who will convene to review the resumes and rate the applicants. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion. A Deputy Fire Chief will facilitate the Promotability Potential Rating meeting with the Captains.</p> <p>C. <u>Oral Interviews</u>. A team of five (5) Village officials (i.e., the Village Personnel Director, the Fire Chief, and three Fire & Police Commissioners designated by the Fire Chief) shall conduct an individual oral interview with each candidate. The panel of Village administrators will remain consistent throughout all interviews. Questions asked during the oral interview shall be structured and applied uniformly for all candidates, shall be job-related and designed to enable the team of three Village administrators to determine the candidate's qualifications and abilities to discharge the duties of Captain. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion.</p> <p>D. <u>Seniority</u>. Seniority points shall be computed as of the date of the written examination. A maximum of 10 points shall be awarded for seniority. Seniority points shall be granted as follows: (1) One point shall be granted for each full year of service as a Lieutenant on the Skokie Fire Department up to a</p>

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
	<p>maximum of five (5) points. The seniority list shall include the seniority date, any breaks in service, the total number of eligible years, and the number of seniority points. (2) Five points shall be granted for service on the Skokie Fire Department. The most Senior Lieutenant shall receive 5 points. Less Senior Lieutenants shall be awarded points pro rata based on the most Senior Lieutenant's years of service or 20 years whichever is less.</p> <p>E. <u>Written Examination.</u> The subject matter of the written examination shall fairly test the capacity of the candidate to discharge the duties of a Captain. The written examination shall be developed by an independent outside agency and shall have been independently validated. The examination shall be based only on the contents of written materials that the Village has identified and made available to potential examinees at least 90 days before the examination is administered. The test questions and material must be pertinent to the rank of Captain.</p> <p>F. Monitoring rights as provided under §25 of the FDPA and §11 of the Article shall apply for each component unless expressly modified in writing.</p>
<p><u>Section 7. Scoring of Components and Posting of Preliminary Promotion List.</u> The scores for each component of the promotional process shall be disclosed to each candidate as soon as practicable after the component is completed. The composite score for the subjective components shall be posted before the written component is administered. Once the candidates have completed all components of the promotional process, the scores for all components for each candidate shall be tallied and a preliminary promotion list shall be prepared by the Village Personnel Director on which candidates shall be ranked in rank order based on the highest to the lowest points scored on all components of the promotional process. The Preliminary Promotion List will only include the scores of those candidates who have completed all the components of the promotional process with a score of 70 or higher. This preliminary promotion list shall then be posted on the bulletin board at each fire station.</p>	<p><u>Section 7. Scoring of Components and Posting of Preliminary Promotion List.</u> The scores for each component of the promotional process shall be posted and disclosed to each candidate as soon as practicable after the component is completed. The scores for subjective components shall be scored and posted before the written component is administered. Once the candidates have completed all components of the promotional process, the scores for components for each candidate shall be tallied and a preliminary promotion list shall be prepared by the Village Personnel Director on which candidates shall be ranked in rank order based on the highest to the lowest points scored on all components of the promotional process. This preliminary promotion list shall then be posted on the bulletin board at each fire station. The Preliminary Promotion List of eligible candidates shall be listed in rank order of total points awarded on all components of the exam.</p>
<p><u>Section 8. Veteran's Preference Points and Posting of Final Promotion List.</u> A candidate on the preliminary promotion list who is eligible for veteran's preference points under applicable law may file a</p>	<p><u>Section 8. Veteran's Preference Points and Posting of Final Promotion List.</u> A candidate on the preliminary promotion list who is eligible for veteran's preference points under applicable law may file a</p>

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
<p>written application within 10 days after the initial posting of the preliminary promotion list. If requested, the veteran's preference points shall be added to the candidate's total score on the preliminary promotion list. The Village Personnel Director shall then make adjustments to the rank order on the preliminary promotion list based on any veteran's preference points that have been awarded. The Final Promotion List shall then be posted on the bulletin board at each fire station listing in rank order by name from highest to lowest the scores of all candidates who have achieved a score of 70 or higher.</p>	<p>written application within 10 days after the initial posting of the preliminary promotion list. If requested, the veteran's preference points shall be added to the candidate's total score on the preliminary promotion list. The Village Personnel Director shall then make adjustments to the rank order on the preliminary promotion list based on any veteran's preference points that have been awarded. The Final Promotion List shall then be posted on the bulletin board at each fire station listing in rank order by name from highest to lowest the scores of all candidates who have achieved a score of 70% or higher.</p>
<p><u>Section 9. Order of Selection.</u> When there is a vacant or newly created position in the rank of Captain that the Village Board of Trustees has funded and authorized to be filled, the Fire Chief shall recommend to the Village Manager and the Village Manager shall appoint the person with the highest ranking on the final promotional list, except that the Fire Chief shall have the right to pass over that person and recommend the appointment of the next highest ranked person on the list if the Fire Chief has reason to conclude that the highest ranking person has demonstrated substantial shortcomings in work performance or has engaged in misconduct affecting the person's ability to perform the duties of the promoted rank since the posting of the promotion list. In such event, the Village Manager shall appoint the next highest ranked person on the list. If the highest ranking person is passed over, the Fire Chief shall document his reasons for his decision to recommend the next highest ranking person on the list. Unless the reasons for passing over the highest ranking person are not remediable, no person who is the highest ranking person shall be passed over more than once. Any dispute as to the selection of the first or second highest-ranking person shall be subject to resolution in accordance with the provisions of the grievance and arbitration procedure set forth in Article XIII of this Agreement; provided, however, any such grievance must be filed within forty-eight (48) hours of the date the time the employee is advised that he/she is being passed over. Any such grievance will be filed at Step 3 of the grievance procedure.</p> <p>Any candidate may refuse a promotion once without losing his or her position on the final promotional list. Any candidate who refuses a promotion a second time shall be removed from the</p>	<p><u>Section 9. Order of Selection.</u> When there is a vacant or newly created position in the rank of Captain that the Village Board of Trustees has funded and authorized to be filled, the Fire Chief shall appoint the person with the highest ranking on the final promotional list, except that the Fire Chief shall have the right to pass over that person and appoint the next highest ranked person on the list if the Fire Chief has reason to conclude that the highest ranking person has demonstrated substantial shortcomings in work performance or has engaged in misconduct affecting the person's ability to perform the duties of the promoted rank since the posting of the promotion list. If the highest ranking person is passed over, the Fire Chief shall document his reasons for his decision to select the next highest ranking person on the list. Unless the reasons for passing over the highest ranking person are not remediable, no person who is the highest ranking person shall be passed over more than once. Any dispute as to the selection of the first or second highest-ranking person shall be subject to resolution in accordance with the provisions of the grievance and arbitration procedure set forth in Article XIII of this Agreement; provided, however, any such grievance must be filed within forty-eight (48) hours of the date the time the employee is advised that he/she is being passed over. Any such grievance will be filed at Step 3 of the grievance procedure.</p> <p>Any candidate may refuse a promotion once without losing his or her position on the final promotional list. Any candidate who refuses a promotion a second time shall be removed from the final promotion list, provided that such action shall not prejudice a person's opportunity to participate in future promotional processes.</p>

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
final promotion list, provided that such action shall not prejudice a person's opportunity to participate in future promotional processes.	
<p align="center"><u>Section 10. Duration of Final Promotion List.</u></p> A final promotion list shall be effective for a period of two years from the date of its posting.	<p align="center"><u>Section 10. Duration of Final Promotion List.</u></p> A final promotion list shall be effective for a period of two years from the date of its posting.
<p align="center"><u>Section 11. Monitors.</u></p> Up to two (2) impartial persons who are not members of the Skokie Fire Department may be selected by the Union to serve as monitors by giving written notice to the Village's Personnel Director at least seven (7) days prior to the first day that monitors are to be used. If the Union designates a monitor/monitors, the Village may also designate an equal number of monitor(s). Each party shall be responsible for all the costs and expenses of its designated monitor(s). Monitors shall not interfere with the promotional process, but shall report in writing the full details and facts concerning any observed or suspected violations of the provisions of this Article applicable to the component being observed to both the Union and the Village's Personnel Director. To be considered, such written report must be submitted within 48 hours of the date of the observed or suspected violation.	<p align="center"><u>Section 11. Monitors.</u></p> Up to two (2) impartial persons who are not members of the Skokie Fire Department may be selected by the Union to serve as monitors by giving written notice to the Village's Personnel Director at least seven (7) days prior to the first day that monitors are to be used. If the Union designates a monitor/monitors, the Village may also designate an equal number of monitors. Each party shall be responsible for all the costs and expenses of its designated monitor(s). Monitors shall not interfere with the promotional process, but shall report the full details and facts concerning any observed or suspected violations of the provisions of this Article applicable to the component being observed to the Union and the Village's Personnel Director. To be considered, such written report must be submitted within 48 hours of the date of the observed or suspected violation.
<p align="center"><u>Section 12. Right of Review.</u></p> Any individual participant in the promotional process who believes that an error has been made with respect to eligibility to take an examination, examination result, placement or position on a promotion list, or veteran's preference may file a grievance in accordance with the provisions of the grievance and arbitration procedure set forth in Article XIII of this Agreement; provided, however, to be considered timely, any such grievance must be filed within 48 hours of the time the final promotion list is posted. If a grievance is filed, the promotion shall be held in abeyance pending completion of the grievance process.	<p align="center"><u>Section 12. Right of Review.</u></p> Any individual participant in the promotional process who believes that an error has been made with respect to eligibility to take an examination, examination result, placement or position on a promotion list, or veteran's preference may file a grievance in accordance with the provisions of the grievance and arbitration procedure set forth in Article XIII of this Agreement; provided, however, to be considered timely, any such grievance must be filed within 48 hours of the time the final promotion list is posted. If a grievance is filed, the promotion shall be held in abeyance pending completion of the grievance process.
<p align="center"><u>Section 13. Duration of Agreement.</u></p> The provisions of this Article shall remain in effect for the balance of the term of the parties' 2006-2009 collective bargaining agreement, and for the duration of the successor collective bargaining agreement to the parties' 2006-2009 collective bargaining agreement.	<p><i>The Union did not submit a final offer on this aspect of the fire captain promotion article.</i></p>

III. DISCUSSION

A. External Comparables

Unfortunately, the parties are *not* in agreement regarding the selection of external comparables for the remaining issue. The Administration argues that for purposes of external comparability, the focus should be on the 15 agreed-upon comparable jurisdictions. As part of the earlier proceeding, the parties agreed that the following 15 municipalities would be used for external comparability:

<u>Community</u>	<u>Population</u>	<u>No. of Firefighters & Lieutenants</u>
Arlington Heights	76,031	99
Des Plaines	58,720	84
Elk Grove Village	34,727	83
Elmhurst	42,762	44
Evanston	74,239	102
Glenview	41,847	78
Highland Park	30,038	48
Morton Grove	22,451	39
Mount Prospect	56,265	67
Northbrook	33,435	57
Niles	30,068	51
Oak Park	52,524	61
Park Ridge	37,775	42
Wheeling	34,496	48
Wilmette	27,651	41
Average population	43,535	
Skokie	63,348	106
Relation to Average	31.28%	
Rank	3	1

Despite this agreement, in this proceeding involving the deferred issue of promotions to the rank of Fire Captain the Union seeks to expand the external comparables to include 11 additional jurisdictions beyond the mutually-agreed 15 comparables. According to the Union, "because bargaining over the Captain promotion exam has begun only recently, it is reasonable to look at the components and weights for communities other than the agreed-upon comparables. This is particularly true because only one department among the historically comparable communities, Glenview, has Captains." (*Brief for the Union* at 17; 23; R. 47). The Village responds that there are actually four (4) departments that have negotiated language that deals with captains or the equivalent position, which would be battalion chief." (*Brief* at 11; R. 47). The Union took issue whether battalion chief is necessarily an equivalent position (R. 47).

* * *

As I indicated at the hearing (while agreeing to admit the Union's exhibits with expanded comparables), presumptively the Administration makes the better point regarding comparables. Parties that submit comparables in an interest arbitration, and proceed to argue over the relevance of such comparables, do so for both economic and non-economic reasons. (R. 48-49).¹ If the benchmark jurisdictions do not encompass the benefit or term desired by the proponent of the term in the successor collective bargaining agreement, it goes against that party's case. Generally the parties do not shop around for one set of comparables for economic items and another set for non-economic items, or one set of comparables for generally-established items and another for what's left. Three cases discussed by the Employer in its *Brief* at 12-13 support this ruling.

In *City of North Chicago and Illinois FOP Labor Council*, ILRB Case No. S-MA-99-101 (Briggs, 2000), Arbitrator Steven Briggs rejected the FOP's attempt to use a different comparability pool for the issue of residency. His reasoning is instructive:

Moreover, the Arbitrator is reluctant to adopt a supplemental set of external comparables to be applied selectively and exclusively to one issue. Doing so in these proceedings might inappropriately encourage parties elsewhere to propose different sets of comparables for different issues. To the extent that interest arbitrators allow that to happen, the result might not only fragment the bargaining process, it might also unduly complicate and prolong subsequent interest arbitration proceedings.

Similarly, in *City of Alton and PBPA, Unit 14* (Kossoff, 2003), Arbitrator Sinclair Kossoff adopted Arbitrator Briggs' reasoning in North Chicago and had this to say when one party wanted to expand the comparables for purposes of residency:

Residency was first raised by the Union as an issue in the 1999 negotiations where it was one of a number of issues, both economic and non-economic. If the parties used comparable jurisdictions in evaluating each other's bargaining proposals, it is not likely that they would have used a separate set of comparables for different issues. The fact that they were able to reach agreement on the other issues but not residency is not a justification for using a separate set of criteria for determining comparable jurisdictions in deciding the residency issue that would be applicable for economic and other non-economic issues. Moreover, as a practical matter, whatever selection of jurisdictions is made in this proceeding is likely to carry great weight in future negotiations or interest arbitrations where issues other than residency will separate the parties. The jurisdictions in this case should therefore not be selected in an atypical manner. **In addition, as Arbitrator Briggs observed, setting a precedent of using different comparables for different issues is likely to complicate and even fractionate future bargaining. The arbitrator does not agree to a different method of selection of comparable jurisdictions in this case than would apply generally.** *Id.* at 13 (emphasis mine).

Finally, in *City of Alton & IAFF Local 1255*, ILRB Case No. S-MA-06-006 (Fletcher, 2007), after reviewing the decisions of Messrs. Briggs and Kossoff, rejected the union's offer to use a "wider lens" on the issue of residency. His reasoning is arguably reflective of the better rule:

¹ By Arbitrator Hill [to Mr. Berry]: "Put your evidence in. I think presumptively I would have to agree with Mr. Clark that when the parties outline comparables they do that for economic items and non-economic items. At the same time, though, there may be such an absence of components within the comparables that they go outside. We'll take it in the record. You may be right." (R. 48-49).

This Arbitrator finds Arbitrator Kossoff's (and Arbitrator Briggs') reasoning eminently sound, and he thus adopted it in response to the Union's suggestion in this case that communities other than those already established for purposes of external comparability on the economic issues be considered for purposes of external comparability on the issue of residency alone. Certainly there is little doubt that finding in favor of the Union on this point could, and likely would, frustrate collective bargaining and interest arbitration processes in general. Moreover, permitting "issue oriented" comparable analysis into this (or any record) would specifically negate the inherent value of comparables (for better or worst) as a functional statutory criteria, because the inevitable pursuit of favorable comparables for each individual issue would effectively demolish any (however perfect) common ground upon which arbitral resolution of contentious issues could be reasonably construed. In this regard, then, the Arbitrator sees little value (and more harm) in distinguishing between economic and non-economic issues with respect to comparables.

Thus, and for all the foregoing reasons, the Arbitrator concludes that the communities relevant to all four issues in this case for purposes of external comparability, shall be the recognized historical comparables . . . *Id.* at 18.

I also find it significant that at the time of the hearing in November 2008, more than five years had passed since the passage of the FDPA, August 4, 2003 (JX 3). All of the agreed-upon comparable jurisdictions had the opportunity to negotiate over fire department promotions. In short, in 2008 promotions to the rank of Captain was not a new issue to the parties. Moreover, the matter of promotions is not a new issue to *these* parties. The evidence record indicates that the parties have negotiated and arbitrated over the issue of promotions *since 1996*, as evidenced by Arbitrator Briggs' 1998 interest decision on promotions (JX 2).

For the above reasons, and for purposes of this arbitration – a continuation of the former arbitration – the parties' agreed-upon comparables are adopted. I see no utility or legal reason for changing "mid-term" the comparables previously agreed to by the parties. This is especially supported when it is recalled that contract provisions dealing with promotions have been a mandatory subject of bargaining since 1994.²

B. Bargaining History

Management devoted significant resources analyzing the parties' bargaining history on promotions, some of it relevant to the resolution of the captains' promotion issue. In relevant part, that history, as outlined in the Administration's *Brief*, is summarized as follows:

Promotions to the Rank of Fire Lieutenant. Following the 1994 decision in *Village of Franklin Park v. Illinois State Labor Relations Board*, 265 Ill.App.3d 997 (1st Dist. 1994)(JX 8) (the "*Franklin Park*" decision), a case in which the subject of promotions was held to be a mandatory subject of bargaining, the parties, in their 1995-96 contract, negotiated over promotions the rank of

² Clark: "Obviously that has changed [collective bargaining agreements with provisions dealing with promotions] since *Franklin Park* and the Fire Department Promotion Act. Negotiations have been a mandatory subject of bargaining since 1994." (R. 46).

fire lieutenant (R 117-18). After reaching impasse on this issue, the matter was submitted to Arbitrator Steven Briggs for decision (JX 2). Ultimately, following six days of hearings in 1997, Arbitrator Briggs issued his decision on April 17, 1998.

Relevant for present purposes are the following rulings of Arbitrator Briggs:

External Comparables: Although the Union argued that since the promotion issue is non-economic, the Arbitrator should not place much emphasis on the comparability pool. Arbitrator Briggs adopted the comparability grouping advanced by the Village (i.e., the same 15 jurisdictions that the parties in the first phase of this interest arbitration proceeding agreed should be used for purposes of external comparability).

Written Examination: The written examination should retain its place as the gatekeeper to the other predictors. That is, it should continue to be given at the outset of the process and used as a screening-out device (JX 2 at 30). The weight of the written examination should be increased to 25% (JX 2 at 30).

Assessment Center: Arbitrator Briggs rejected the Union's proposal to reduce the weight of the assessment center to a mere 10%, holding that a weight of 20% seems more appropriate (JX 2 at 31).

BFPC Oral Interview: Arbitrator Briggs ruled that the weight for the oral interview by the BFPC should be set at 35% (JX 2 at 31).

Chief's Points: Arbitrator Briggs found that there was no reason in the record to diminish the weight given to the Chief's points and, as result, he ruled that it shall remain at 5% (JX 2 at 32).

Professional Achievements (a.k.a., Ascertained Merit): Arbitrator Briggs rejected the Union's proposal to add a new component to the promotion process, noting that the Union's proposal deserves to be refined more than the version reflected in the Union's final offer (JX 2 at 32).

Seniority: In rejecting the Union's proposal to weight seniority at 10%, Arbitrator Briggs increased the weight from 4% to 5% (JX 2 at 33).

Arbitrator Briggs directed the parties to draft a promotions provision to be incorporated in their collective bargaining agreement (JX 2 at 34). Based on that direction, the parties added a new section to their 1999-2002 contract entitled "Promotions to the Rank of Fire Lieutenant" (VX 3). The components and weights assigned to each were as follows:

Component	Weight
Written Test	25%
Promotability Potential Evaluation	10%
Assessment Center	20%
BFPC Oral Interview	35%
Chief's Points	5%
Seniority	5%

In addition, the parties provided that most aspects of the promotion process should be administered by the Village Clerk (VX 3).

Important here, Arbitrator Briggs found that "the perceptions of those being evaluated" is "an extremely important" element of fairness in any promotional process. (JX 2 at 26)(*Brief for the Union* at 14). Arguing for greater emphasis on objective criteria, the Union has echoed this finding in the present promotion process dispute.

The 2002-2006 collective bargaining agreement. In their 2002-2006 contract, the parties agreed to some language changes, but retained the same components and the same assigned weights (VX 4). Their agreement also provided for a reopener clause. Pursuant to this reopener provision and subsequent to the passage of the Fire Department Promotion Act (JX 3; hereafter the "FDPA"), the parties negotiated new provisions governing promotions to the rank of fire lieutenant, provisions which were executed by the parties on August 16, 2004 (R. 121-22; VX 9). In addition to providing that the process would be administered by the Village's Personnel Director rather than the Village Clerk, the parties agreed to the following components and the weights to be assigned to each:

Component	Weight
Written Test	25%
Promotability Potential Evaluation	10%
Assessment Center	20%
BFPC Oral Interview	35%
Chief's Points	5%
Seniority	5%

The foregoing fire lieutenant promotion provisions were retained without change in the parties' 2006-2009 contract (JX 1, Article XXI). This, says the Administration, is significant in the instant case.

Promotions to the Rank of Fire Captain. Following passage of the FDPA, the parties met to negotiate the provisions that would govern promotions to the rank of Captain. The Village's chief negotiator was Christa Ballowe, the Village's Personnel Director. On November 10, 2003, then Union President Wimer sent the following one paragraph letter to Village Manager Rigoni (VX 7, emphasis in original):

I am pleased to inform you that the membership of the Skokie Firefighters, Local #3033 IAFF, have voted and ratified APPENDIX – B Promotions to the Rank To [sic] Fire Captain.

Accordingly, the parties executed Appendix B on November 12, 2003 (VX 8).

The mutually-agreed-to provisions governing promotions to the rank of fire captain provided that the written examination would continue to be administered first, did not include any provisions concerning monitors, provided that the process would be administered by the Village's Personnel Director, and included the following components and the weights to be assigned to each (VX 8):

Component	Weight
Written Test	20%
Promotability Potential Evaluation	15%
Assessment Center	20%
Oral Interview	40%
Seniority	5%

In lieu of oral interviews by members of the BFPC and chief's points, the parties mutually agreed to an oral interview component with a weight of 40% that was described as follows (VX 8, Section 6(d)):

Oral Interviews. A team of three Village administrators (one of whom shall be the Village Personnel Director and one of who[m] shall be the Fire Chief) shall conduct an individual oral interview with each candidate. The panel of Village administrators will remain consistent throughout all interviews. Questions asked during the oral interview shall be structured and applied uniformly for all candidates, shall be job-related and designed to enable the team of three Village administrators to determine the candidate's qualifications and abilities to discharge the duties of Captain.

This mutually-agreed-to promotional process has been successfully used to establish two separate lists of candidates eligible to be promoted to the rank of fire captain, resulting in four promotions. Significantly, there have been no grievances or complaints about the process.

The negotiations for a successor contract to the parties' 2002-2006 contract began in February 2006. In the ensuing negotiations, the Village sought to maintain as much of the previously-agreed- to fire captain promotion provisions, including such provisions as the requirement that the written examination would continue to be administered first in order to serve as a "gate keeper" as Arbitrator Briggs had awarded, provisions that were admittedly permissive subjects of bargaining. It was in the context of the Village's efforts to preserve such permissive elements that the Village offered some concessions to the Union, including a proposal to include an ascertained merit component to the promotion process. Ultimately, however, the Union was unwilling to agree to any waivers on permissive subjects unless the Village agreed to changes in the components and the weighting of the components. Since that was not acceptable to the Village, the Village submitted proposals that were designed to eliminate the permissive elements, but it also tried to maintain as much of what had been previously agreed to, including the components and the weights.

When the parties' efforts to resolve this deferred issue failed to yield an agreement, the parties agreed that the matter would be submitted to the Arbitrator for a hearing and a decision on the merits. As indicated, a hearing was held on November 11, 2008, at the Village Hall in Skokie, Illinois.

C. The Final Offers & Arguments – Section-by-Section Analysis

1. The Agreed Upon Sections

A review of the final offers (*supra* this opinion at 3-9) shows that the parties' final offers on Section 3 (Notification), Section 8 (Veteran's Preference), Section 10 (Duration of Final Promotion List), and Section 12 (Right of Review) are identical.

2. The Six Sections On Which There Are Only Relatively Minor Differences

On six (6) other sections there are only relatively minor differences between the parties' final offers. There are as follows:

a. Section 2 -- Eligibility Requirements

A review of the parties' final offers on eligibility requirements shows that there are no substantive differences on the three basic requirements. The only difference in the two final offers is the additional sentence in the Union's final offer, i.e., "This announcement shall be no later than 30 days before the expiration of the current list." Since the subject of Section 2 is eligibility requirements, this additional sentence is a *non sequitor*, in the Administration's eyes. It has no real meaning in terms of eligibility requirements. In any event, the Union's proposed requirement setting the date for the announcement is not something required by the FDPA. Nor

is it something that was included in the parties' previously agreement on the provisions governing promotions to the rank of fire captain (VX 8).

b. Section 4 – Resume

The only difference between the parties' final offers is the use of the word "must" in the Village's final offer and the use of the word "shall" in the Union's final offer. This, says the Administration, is a non-substantive difference, and thus the Village would request that the Arbitrator award its final offer on Section 4.

c. Section 7 -- Scoring of Components and Posting of Preliminary Promotion List

There are two differences between the parties' final offers on Section 7: Whereas both parties' final offers provide the scores of each component are to be disclosed to each candidate, the Union's final offer provides that the scores for each component are to be posted as well. The Administration's final offer does not require the posting of the scores for each individual component of the process.

The Village's final offer provides that preliminary promotion list shall only include candidates whose scores are 70 or higher; the Union's final offer does not specify a minimum score to be included on the preliminary promotion list.

* * *

The Administration asserts that both of these differences should be resolved on the basis of the Village's final offer. First, with respect to how the scores of each component are disclosed, all that the FDPA requires is that "[t]he scores for each component of the testing and evaluation procedures shall be disclosed to each candidate as soon as practicable after the component is completed." (JX 3, Section 15(c)). Thus, the Village's final offer on this issue is fully consistent with the FDPA. Moreover, it is consistent with what the parties voluntarily agreed to when the issue of promotions to the rank of fire captain was first negotiated by the parties following passage of the FDPA (VX 8, Section 7). Since the Union did not identify any problems with either of these two provisions that would justify changing the status quo, the Arbitrator should accept in its entirety the Village's final offer on Section 7. (*Brief for the Employer* at 22-23).

d. Section 9 -- Order of Selection

A comparison of the parties' final offers shows that the only difference is that the actual appointment from the list is to be made by the *Village Manager* rather than the *Fire Chief*.

The Village's final offer provides that the Fire Chief shall recommend to the Village Manager the person who is highest on the list unless the Fire Chief has cause to bypass that person and recommends that second person on the list. Once the Fire Chief's recommendation is made to the Village Manager, the Village's final offer provides that "the Village Manager shall appoint the person with the highest ranking on the final promotional list," unless the Fire Chief has cause to bypass that person and recommends that the next highest person on the list, in which case the Village's final offer provides that "the Village Manager shall appoint the next highest ranked person on the list." In all other respects, including the provisions governing the Fire Chief's bypassing of the person highest on the list, the parties' final offers are identical.

Since it is mandatory that the Village Manager appoint the person recommended by the Fire Chief, in reality there is no substantive difference between the parties' two final offers on Section 9 in terms of the identity of the person who is to be appointed. Directly relevant to the Village's final offer is Section 2-472(a) of the applicable Village ordinance that specifically provides that "Fire Captains . . . shall be appointed by the Village Manager" (VX 6). Thus, in order to be consistent with the applicable Village ordinance, the Village urges the Arbitrator to award the Village's final offer on Section 9 (see, *Brief for the Employer* at 23-24).

e. **Section 11 – Monitors**

The only difference between the two final offers on Section 11 is that the Village's final offer states that if monitors observe or suspect violations, they are to report same in writing to both the Union and the Village's Personnel Director. The Union's final offer does not include the phrase "in writing," but it is implicit since its final offer, like the Village's, provides that to be considered, "such written report must be submitted within 48 hours of the date of the observed or suspected violation." Since the Village's final offer is explicit on this point, it should be awarded by the Arbitrator, in the Administration's view (*Brief* at 24).

f. **Section 13 – Duration Of Agreement**

On this issue management points out that the Union's final offer inexplicably failed to cover the duration of the new article governing promotions to the rank of fire captain, despite the fact that counsel acknowledged at the hearing that the Union agreed that it should be in effect for the balance of the parties' 2005-2008 contract, as well as for the term of the parties' successor contract, as the following excerpt from the transcript demonstrates (R. 15-16):

MR. CLARK: . . . Let me ask Dale. Can we confirm that when this is finally resolved by a ruling from the Arbitrator [whenever] that is, it will be in effect for the balance of this contract, which is only four or five more months to go, as well as the successor contract?

MR. BERRY: Well, I think we did agree to that.

MR. CLARK: Okay. That was my recollection.

MR. BERRY: Yes.

Accordingly, based on the parties' agreement and the inherent logic of providing that the new provisions governing promotions to the rank of fire captain will have a self life of more than a few months, the Village requests that the Arbitrator award the Village's final offer on Section 13.

* * *

Without comment, the Village's language on the above issues is awarded.

3. Three Sections On Which There Are Significant Substantive Differences

The three (3) remaining sections on which there are significant substantive differences between the parties' final offers are as follows:

Section 1 – Administration of the Process. (Personnel Director vs. Board of Police and Fire Commissioners).

Section 5 – Components of the Process and the Weighting of Components

Section 6 – Promotion Process Components

a. Section 1 – Administration of the Process

The only difference between the parties' final offers on Section 1 is the identity of the person or persons who are given the responsibility to administer the fire captain promotion process. Here, the Union proposes the Board of Fire and Police Commissioners administer the process while the Administration designates its Personnel Director as the administrative authority (*Brief for the Employer* at 30).

The Administration maintains that the Union presented no evidence that there were any problems with the Personnel Director's administration of the process. Thus, there is no reason why the Village's Board of Fire and Police Commissioners should administer the

promotional process (*Brief* at 31). Moreover, in the Employer's opinion, there are at least four additional reasons why the Union's final offer on this aspect should be summarily rejected.

First, during the 1996 case before Arbitrator Briggs, the Union was rather emphatic that the role of the BFPC should be sharply circumscribed if not eliminated in its entirety (VX 1). To now completely change its argument without any justification only shows the total lack of support of its final offer (*Brief* at 31).

Second, prior to the passage of the FDPA, the Administration removed to positions of fire captain and police lieutenant from the jurisdiction of the Village's Board of Fire and Police Commissioners ("BFPC") and provides that the Village Manager makes appointments to these two management positions. While the retroactive provisions of the FDPA effectively negated the exempt status of the fire captain position in terms of coverage under the FDPA, the remaining provisions of the Village's ordinance remain intact. Since the Village's BFPC no longer has any role with respect to the position of fire captain, the Arbitrator should award the Village's final offer that would maintain the *status quo* on this issue. *Id.*

Third, both parties' final offers on "Notification" provide that: "[p]rior to the announcement of the Captain promotional process, the Village of Skokie's Personnel Director will review the steps of the process with the Executive Board of Local 3033." In addition, both parties' final offers on "Scoring of Components and Posting of Preliminary Promotion List" provide that the "preliminary promotion list shall be prepared by the Village Personnel Director." Finally, both parties' final offers state that the Personnel Director is make any adjustment to the rank order that may needed because of veteran's preference points. Since both parties agree that the Village's Personnel Director is to review the promotional process with the Union's Executive Board, prepare the preliminary promotion list, and make any needed adjustments to the rank order based on veteran's preference points, then it should be the Village's Personnel Director who administers the entire promotional process (*Brief* at 32).

Fourth, the Village's Personnel Director has been involved in both the negotiations between the parties that preceded this interest arbitration case and this proceeding. As such, she knows firsthand the entire background concerning the new contractual provisions that will govern to promotions to the rank of fire captain. It thus makes eminently more sense that the Village's Personnel Director continue to administer the process. On the other hand, it simply does not make any sense to place the administration of the process in the hands of the BFPC, an entity that no longer has any jurisdiction or authority over the position of fire captain. *Id.*

Union Argument. The Union responds by advancing a statutory argument. Specifically, Section 10-2.1-15 of the Illinois Municipal Code provides that the promotion process in fire departments shall be administered by the Board of Fire and Police Commissioners (65 ILCS 5/10-2.1-15). Under Section 10(b) of the FDPA, provisions of the Municipal Code relating to promotions in fire departments continue to apply to the extent compatible with the FDPA. Accordingly, the Village's proposal that the promotion process to the rank of Captain be

administered by the Village's Personnel Director rather than by a Board of Fire and Police Commissioners is a permissive subject of bargaining that cannot be imposed by the Employer or the Arbitrator under Section 14 (*Brief for the Union* at 36).

* * *

But for the statutory arguments advanced by the Union, the Administration makes the better case regarding the administration of the process. However, the statutory argument tips the balance in favor of the Union, and I so hold.

The Union's language regarding administration of the promotion process is awarded.

b. Section 5 – Components & Weights; Section 6 – Promotion Process Components

Central to the resolution of this dispute is the components and assigned weights to the components. A side-by-side comparison of the parties' final offers, along with the parties' prior agreement, reads as follows:

Component	Previously Agreed to Weight & Village Proposal	Firefighters' Proposal
Written Examination	20%	40%
Assessment Center	20%	25%
Promotability Potential Examination	15%	10%
Oral Interview	40%	10%
Seniority	5%	10%
Ascertained Merit	None	5%

Management points out that its final offer on the components and weights precisely tracks the parties' prior agreement on components and weights, the negotiated *status quo*. As such, in the Employer's view, it follows that the Union has a heavy burden to prove that there is justification to add a new component (*Brief for the Employer* at 33). Management notes that the evidence record fails to identify any Skokie-specific problems with the previously-negotiated components and weights. Indeed, at the onset of negotiations the Union had no problems with either the components or the weights, according to the Administration.

(1) The Components

(a) Written Examination

With respect to the *written examination* component, there is no difference between both proposals. The only difference is with respect to the weight assigned, with the Union at 40% and the Village at 20% (*status quo*), as previously agreed by the parties in 2003 following the passage of the FDPA (*Brief* at 34). In management's view, there are at least three compelling reasons why the Village's final offer on this component should be awarded (*Brief for the Employer* at 34-35):

First, 20% is the weight that the parties mutually agreed was appropriate when they first negotiated the provisions governing promotions to the rank of fire captain after passage of the FDPA (VX 8) and the Union has not met its heavy burden of establishing Skokie-specific justification for changing the negotiated *status quo*.

Second, the Union's bargaining team was satisfied with the all the previously agreed to components and weights at the outset of negotiations.

Third, it is norm among the agreed external comparables to assign a lower weight to the written examination component for promotions to the rank of fire captain or its equivalent than for promotions to the subordinate rank of fire lieutenant. Thus, among the four comparables that have negotiated provisions governing promotions to the ranks of both fire lieutenant and fire captain, three have negotiated a lower weight for the written examination component for promotions to the rank of fire captain or its equivalent, i.e., Elmhurst (40% vs. 55%), Glenview (35% vs. 45%), and Oak Park (30% vs. 55%) (VX 17; UX 3). In this regard, it must be emphasized that the parties' existing collective bargaining agreement provides that the weight for the written examination component for promotions to the rank of fire lieutenant is 30% (JX 1, Section 21.6, at p. 83). It would be a total *non sequitur* to weight the written examination component for fire captain promotions at 40% as the Union's final offer provides (*Brief* at 35).

The Union's Position – Written Component & Weight. Asserting that its offer represents a fair balance of subjective and objective factors (*Brief* at 17-19), the Union proposes to afford the written examination component a weight of 40%, an increase from the current weight of 20%, which the Administration proposes to maintain "as is." The Union submits that it views the written examination as an objective component that tests job knowledge and commitment to study and learn the materials and seeks to increase its weight (*Brief* at 20). In the Union's eyes, the common practice is to give substantially greater than 20% weight to the written component of the promotion exam (*Brief* at 20-21).

* * *

Addressing other components of the promotion process, the parties advance the following points regarding language and proposed weights:

(b) Assessment Center

The following is a side-by-side comparison of the parties' final offers on the assessment center component (see, *Brief for the Employer* at 38-39):

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
<p>Assessment Center. The Assessment Center shall be administered by the Institute of Public Safety Personnel ("IPSP"). A panel process shall be used to conduct the Assessment Center. Depending on the number of applicants, multiple panels may be needed. Each panel shall consist of two (2) or three (3) fire officers in the rank of Deputy Chief or above from other Illinois public sector jurisdictions, provided that all panel members meet the certification or provisional certification requirements of the Fire Department Promotion Act as amended. For two (2) member panels, panel members shall be selected by the parties from a list of five (5) fire officers in the rank of Deputy Chief or above provided by IPSP. For three (3) member panels, panel members shall be selected by the parties from a list of seven (7) fire officers in the rank of Deputy Chief or above. The parties shall alternately strike names from the list(s) provided by IPSP until the requisite number of names remain. A coin toss shall determine which party strikes the first name. The Assessment Center shall include the use of multiple assessment techniques and tactical exercises.</p>	<p>The Assessment Center shall include the use of multiple assessment techniques and tactical exercises.</p> <p>The Assessment Center shall be conducted by the Institute of Public Safety Personnel ("IPSP"), who shall use a panel of fire officers in the rank of Battalion Chief or above from other Illinois public sector jurisdictions to conduct the Assessment Center, provided that all members of said panel meet the certification or provisional certification requirements of the Fire Department Promotion Act as amended. Compliance with the Act shall be presumed when the panel of assessors conducting the assessments are obtained as follows:</p> <ol style="list-style-type: none"> 1) At least thirty (30) days prior to the date the assessment component is to be conducted, the IPSP shall provide the parties with a panel of assessors who shall be qualified as Certified Assessors as provided by §50(f) and (g) of the FDPA as amended (SB 2070) and listed on rosters established by the Office of the State Fire Marshall ("the Office"). 2) Such panel shall consist of not less than 2½ times the number of assessors required to conduct the test. 3) The parties shall then select 1½ times the number of assessors required to conduct the test according to the following procedure: <ol style="list-style-type: none"> a) They shall alternately strike names from the list provided by the "IPSP" until only the number of required assessors remain. b) A coin toss shall determine which party strikes the first name. c) The parties shall designate one-third (1/3) of the assessors selected as alternates to the primary assessors by agreement, or absent agreement by using the same alternate striking procedure described in paragraphs (a) and (b). d) If the parties fail to notify the Office in a timely

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
	<p>manner of their selection of assessors, the Office shall appoint the assessors required from the roster of certified assessors.</p> <p>e) In the event an assessor is not able to participate in the Assessment Center process for which he was selected, either of the parties involved in the promotion process may request that additional names of certified assessors be provided by the "IPSP"</p>

The Village asserts there are four substantive differences between the parties' final offers on the language governing the assessment center component of the fire captain promotion process:

1. The Village's final offer would require that the assessors be in the rank of deputy chief; the Union's final offer would provide that they could be in the same rank as the position being filled, i.e., fire captain.
2. The Village's final offer would provide for panels of two or three assessors based on the number of candidates; the Union's final offer does not specify how many assessors are to be on the panel.
3. The Village's final offer does not specifically provide for alternate assessors; the Union's final offer provides that one-third of the assessors selected shall be designated as alternates.
4. The Village's final offer does not specify when the list of qualified and certified assessors is to be provided; the Union's final offer provides that it is to be requested 30 days in advance of the date when the assessment component is to be administered and if not, then the Office of the State Fire Marshal is to appoint the assessors.

On these language issues, the Village urges the Arbitrator to award its final offer for the following reasons:

First, on the rank of persons who will serve as assessor, the Village firmly believes that such assessors should be in the rank of deputy chief or above. That means that the assessors are in the rank that will be, in most instances, immediately above the rank of fire captain. Thus, the assessors will necessarily have wide knowledge of the job requirements for persons holding the position of fire captain. The Union's final offer would provide that assessors could be in the same rank as the candidates for promotions.

Second, the Village's final offer that the assessment panels specifies the size of the

assessment panel, i.e., either two or three assessors. The Union's final offer does not specify the size of the assessment panel. As a result, the more specific Village final offer is definitely more preferable than the Union's vague final offer on this point.

Third, since the Village's final offer is silent on the issue of alternate assessors, the provisions of SB 2070 would come into play if there was a need to have alternate assessors. Alternatively, the Village would not object if the Arbitrator included the following provision from the Union's final offer:

In the event an assessor is not able to participate in the Assessment Center process for which he was selected, either of the parties involved in the promotion process may request that additional names of certified assessors be provided by the "IPSP."

Fourth, while the Village's final offer does not specify "when the list of qualified and certified assessors is to be provided," there is no requirement in the FDPA as amended by SB 2070 that sets forth such a requirement (JX 4). In short, this detail should be left to the Village's Personnel Director who will have the continuing responsibility to administer the fire captain promotion process based on the Village's final offer on Section 1 as discussed above.

As for the difference in the assigned weight for the assessment center, the Administration asserts that it is relevant to remember that in the 1998 promotion case, Arbitrator Steven Briggs noted that the Union requested that the weight assigned to the assessment center component be reduced from "its current 25% . . . to a mere 10%" (JX 2 at 31). Ultimately, Arbitrator Briggs ruled that "[a] weight of 20% seems more appropriate" (JX 2 at 31). Although Briggs' decision was only applicable to promotions to the rank of fire lieutenant, it should come as no surprise that when the parties first negotiated over promotions to the rank of fire captain after passage of the FDPA, the parties agreed that the weight for the assessment center should be set at 20% (VX 8). The Union has not presented any substantial evidence to suggest that the weight for assessment center component should be changed. Indeed, the Union's attorney in summarizing its pre-hearing offer stated, ". . . we are accepting continuing the assessment center at 20 percent" (R. 44; UX 10, Section 5).

The Union's Offer. The Union agrees that the Assessment Center would be conducted by the IPSP, but provides that the panel of fire officers be in the rank of Battalion Chief or above with all members of the panel being selected in accordance with the provisions of the FDPA (JX 3)(*Brief for the Union* at 8). Section 50(g) of the FDPA provides that the standards for certification of assessors who will grade candidates for promotion during an assessment center process shall be established by a Joint Labor Management Committee (JLMC). The Union points out that such JLMC has published recommended Rules (*Brief* at 10, "Appendix 2").

(c) **Promotability Potential Evaluation**

A side-by-side comparison of the parties' final offers shows only minor semantic difference between the proposals (*Brief for the Employer* at 36):

VILLAGE'S FINAL OFFER	UNION' FINAL OFFER
<p><u>Promotability Potential Evaluation.</u> The Promotability Potential Evaluation criteria used for the 2006 Captain promotion process will continued to be used, provided, that Item 1 (Attendance and Punctuality) will be revised to be based on the average of the candidate's non-duty related absences over the past five (5) years, ending with the date of the most current promotional written exam. The promotability potential evaluation process shall be based on an evaluation conducted by all the current Captains (employees in the position of Captain as of the date of the announcement) who will convene to review the resumes and rate the applicants. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion. A Deputy Fire Chief will facilitate the Promotability Potential Evaluation meeting with the Captains.</p>	<p><u>Promotability Potential Rating.</u> The Promotability Potential Rating criteria used for the 2006 Captain promotion process will continue to be used, provided, however, that Item 1 (Attendance and Punctuality) will be revised to be based on the average of the candidate's non-duty related absences over the past five (5) years, ending with the date of the most current promotional written exam. The promotability potential rating process shall be conducted by all the current Captains (employees in the position of Captain as of the date of the notification) who will convene to review the resumes and rate the applicants. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion. A Deputy Fire Chief will facilitate the Promotability Potential Rating meeting with the Captains.</p>

As noted by the Administration, the principal difference in the wording of the two final offers is that the Village's final offer refers to this component in both the title and in the description of this component as "promotability potential evaluation" and the Union's final offer uses the phrase "promotability potential rating." Since the parties' prior agreement used the phrase "promotability potential evaluation" to identify this component (VX 8) and since both parties' final offers use the same phrase in Section 5's identification of the components and the weights assigned to each, it is respectfully submitted that Village's final offer on this issue of semantics be awarded by the Arbitrator.

The Union's Proposal. The Union proposes to reduce the weight afforded to the promotability potential evaluation for the Captain promotion exam from 15% to 10%, while the Village proposes no change. Reducing the weight afforded to the promotability potential evaluation from 15% to 10% would help make the exam more objective and more fair and acceptable to potential candidates (*Brief for the Union* at 25).

The Administration's Proposal. Management responds that in addition to issues of semantics (*Brief* at 36), the Administration's final offer is fully justified for the following four reasons:

First, a weighting of 15% represents that negotiated status quo and the Union has not met its establishing a valid reason while the weighting should be changed. This, there is absolutely no evidence presented as to why this component should be given less weight than the parties previously agreed was appropriate (*Brief* at 37).

° Second, at the last bargaining session at which either party had the right to present new proposals for negotiations, several members of the Union's bargaining team said they had no problems with the existing components and weights assigned to each. As a result, the Union did not propose and changes to the components or weights.

Third, of the four mutually-agreed to comparables that have negotiated provisions governing promotions to the rank of fire captain (or equivalent), three have a component that is similar to Skokie's promotability potential evaluation, i.e., Elmhurst, Oak Park and Park Ridge (*Brief* at 37). Each of those three jurisdictions assigns a greater weight (30%, 20% and 20%) than the Union's proposal.

Fourth, the Captain's promotability evaluation includes an evaluation of a candidate's formal education and state certifications and thus incorporates what the Union would also incorporate as part of its proposed "ascertained merit" component. Since the Union assigns a weight of 5% for its proposed "ascertained merit" component, it makes much more sense to reject the Union's proposed "ascertained merit" component and maintain the weight of 15% for promotability potential evaluation, a component that both parties agree should be part of the fire captain promotion process (*Brief* at 38).

(d) Oral Interview

In addition to the different weights assigned to the oral interview (i.e., 40% by the Village and 10% by the Union), there are differences in the wording of this component, as the following side-by-side comparison shows:

VILLAGE'S FINAL OFFER	UNION'S FINAL OFFER
<p><u>Oral Interviews.</u> A team of three Village administrators (i.e., the Village Personnel Director, the Fire Chief, and the Police Chief) shall conduct an individual oral interview with each candidate. The panel of Village administrators will remain consistent throughout all interviews. Questions asked during the oral interview shall be structured and applied uniformly for all candidates, shall be job-related and designed to enable the team of three Village administrators to determine the candidate's qualifications and abilities to discharge the duties of Captain.</p>	<p><u>Oral Interviews.</u> A team of five (5) Village officials (i.e., the Village Personnel Director, the Fire Chief, and three Fire & Police Commissioners designated by the Fire Chief) shall conduct an individual oral interview with each candidate. The panel of Village administrators will remain consistent throughout all interviews. Questions asked during the oral interview shall be structured and applied uniformly for all candidates, shall be job-related and designed to enable the team of three Village administrators to determine the candidate's qualifications and abilities to discharge the duties of Captain. The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion.</p>

The Village argues that, once again, the Union has failed to meet its heavy burden of establishing Skokie-specific reasons why the oral interview component and its weighting should be revised. While the Union has proposed deleting the police chief from the process and adding three BFPC commissioners selected by the fire chief to participate in the oral interviews, the Union has not presented substantial evidence demonstrating why the existing interview team of the Village Personnel Director, the Fire Chief and Police Chief is somehow deficient and in need the substantial change that it proposes. Since the BFPC has not been part of the fire captain (or police lieutenant) promotion process for more than five years, the status quo on the composition of the Village's representatives for the structured oral interview should be maintained. Nor is there any reason to change how the three Village representatives conduct the oral interview process.

Finally, the *status quo* with respect to the 20% weight for the oral interview component should be maintained for at least three reasons (*Brief for the Employer* at 43-46):

First, and foremost, it is what the parties previously agreed was appropriate and the Union bargaining team when it presented its written proposals in April 2006 did not propose any changes (VX 10). Absent any Skokie-specific evidence that would justify changing the weight for this component, the *status quo* should be maintained (*Brief* at 43-44).

Second, the fact the written examination component in the four comparables that have negotiated provisions governing promotions to the rank of fire captain is weighted higher than 20% presumably takes into account what the parties in those jurisdictions believed was appropriate in light their unique circumstances. As the Union's attorney acknowledged at the hearing, "... we don't dispute the fact that the bill in terms of the components listed does not specify any specific weight. We wrote it that way, that [it] is supposed to be negotiated and it's variable and it's customized to the situation" (Tr. 186). In Skokie parties did just that, i.e., they

negotiated a weight of 20% that was "customized" to the Skokie's "situation." It should also be remembered that in the vast majority of the comparables, indeed in 11 out of the 15, the appointment of candidates to the position of fire captain or its equivalent is made by the village manager based on the fire chief's recommendation (VX 17)(*Brief* at 45).

Third, Arbitrator Steven Briggs in his 1998 award decided that it was appropriate to weigh the oral interview at 35% and to give an additional 5% to the fire chief. Since the parties in 2003 agreed to not establish a separate component for fire chief points and to instead involve the fire chief as one the three Village representatives who conduct the structured oral interview and to weight the oral interview at 40%, they, in effect, combined the oral interview with the chief points and gave it the same combined weight that Briggs decided was appropriate, i.e., 40% (JX 2). While Briggs' award concerned promotions to the rank of fire lieutenant, it is clear the parties used the fire lieutenant promotional process as a template for the fire captain promotion process, albeit with some changes deemed appropriate to the higher rank of fire captain. For example, the parties weighted the written examination at 20% for the fire captain process rather than the 25% that is used for the fire lieutenant process (*Brief* at 45-46).

Union's Proposal. While the Village proposes no change, the Union proposes to reduce the weight afforded to the oral interview to 10% from the current 40%. The oral interview, says the Union, is a subjective component and has historically been a source of considerable controversy between the parties (*Brief* at 22). To this end the Union asserts:

By Mr. Berry: And we submit that in contrast to the weight of the authority in the comparables, the subjective component here is not only high in weight, but it is administered by people who have no particular expertise or knowledge of the performance of fire lieutenants aspiring to be fire captains." (R. 60).

The Union points out that in Skokie, a weight of 75% in aggregate is currently afforded to subjective components of the Captain promotion exam: 40% to the oral interview, 20% to the assessment center and 15% to the promotability potential evaluation. The Union proposes to decrease the aggregate weight of the subjective components to 40% by decreasing the weight assigned to the Promotability Potential Evaluation to 10%. The Village proposes no change in any of the weights of any subjective component (*Brief* at 22).

With respect to *external criteria*, the Union submits that the lieutenant promotion components and weights for all comparable communities show that all assign less than a weight of 75% to subjective components (*Brief* at 22-23). Indeed, the comparable communities afford an average weight of 43% to all subjective components on the lieutenant promotion exam (UX 3). Also, a review of the components and weights for other Chicago metro departments with plus or minus fifty percent of the number of Firefighters in Skokie (UX 4) shows that such communities afford an average weight of 34% to subjective components on the Captain promotion exam (*Brief* at 23).

(e) Seniority

As asserted by the Administration, the Union's final offer dramatically alters the *status quo*, as the following side-by-side comparison of the final offers demonstrates:

PREVIOUS AGREEMENT (VX 8)	VILLAGE'S FINAL OFFER	UNION'S FINAL'S OFFER
<p><u>Seniority.</u> Seniority points shall be computed as of the date of the written examination. One point shall be granted for each full year of service as a Lieutenant on the Skokie Fire Department up to a maximum of five (5) points. The seniority list shall include the seniority date, any breaks in service, the total number of eligible years, and the number of seniority points.</p>	<p><u>Seniority.</u> Seniority points shall be computed as of the date of the written examination. One point shall be granted for each full year of service as a Lieutenant on the Skokie Fire Department up to a maximum of five (5) points. The seniority list shall include the seniority date, any breaks in service, the total number of eligible years, and the number of seniority points.</p>	<p><u>Seniority.</u> Seniority points shall be computed as of the date of the written examination. A maximum of 10 points shall be awarded for seniority. Seniority points shall be granted as follows: (1) One point shall be granted for each full year of service as a Lieutenant on the Skokie Fire Department up to a maximum of five (5) points. The seniority list shall include the seniority date, any breaks in service, the total number of eligible years, and the number of seniority points. (2) Five points shall be granted for service on the Skokie Fire Department. The most Senior Lieutenant shall receive 5 points. Less Senior Lieutenants shall be awarded points pro rata based on the most Senior Lieutenant's years of service or 20 years whichever is less.</p>

The Administration's Offer. The Village's asserts that its final offer on the seniority component should be awarded for at least six compelling reasons:

First, since at the outset of negotiations the Union bargaining team had no problems with the wording and weights of the previously agreed to components and proposed no changes in any of them, including the seniority component, the Union should not be able to get through interest arbitration what it never timely proposed at the bargaining table.

Second, the Village's final offer constitutes the *status quo* and the Union has not met its heavy burden of demonstrating sufficient justification to change the *status quo*.

Third, the IAFF in urging that its members call or write their State Representative to support passage of the FDPA included the following among its "talking points" (VX 20; emphasis in original):

There are **no seniority points** in this bill. Parties negotiate locally if seniority will be part of the process, and if so, how much the component is worth as part of the whole testing process.

In short, in selling the FDPA to the General Assembly, the IAFF did not deem seniority to an absolute essential to a fair testing process. Rather, the IAFF said that “if seniority will be part of the process,” it should be negotiated locally. Since the parties did just that after passage of the FDPA, the Arbitrator should not disturb that previously negotiated result just because the Union’s attorney thinks it should handled differently.

Fourth, in 12 of the 15 agreed to external comparables, the position of fire captain or its equivalent was established as an exempt position prior to January 1, 2002 (VX 17). As a result in only one of those 12 jurisdictions are promotions to the rank of fire captain or its equivalent covered in a collective bargaining agreement (i.e., Oak Park) (VX 17). That means that in the other 11 jurisdictions seniority is not given any weight.

Fifth, assigning a 5% weight for the seniority component for promotions to the rank of fire lieutenant came about as a result of Arbitrator Briggs’ 1998 decision. In that case, like this case, the Union argued that the weighting should be at 10%. While Arbitrator Briggs did ever so modestly increase the weight to 5%, he rejected that Union’s proposal to increase it to 10% (JX 2 at 33; VX 2 at 33). Although Briggs’ decision involved promotions to the rank of fire lieutenant, the same weight for the seniority component was agreed to by the parties for promotions to the both the rank of fire lieutenant and fire captain following passage of the FDPA. It does not make any sense to assign seniority a higher weight for promotions to fire captain than for promotions to fire lieutenant.

Sixth, awarding more than 5% for seniority fails to take into account that those candidates who have been fire lieutenants longer should do better on the other components of the promotional process based on their greater experience. See, *City of Edwardsville and IAFF Local 1700*, ILRB Case No. S-MA-94-226 (Meyers, 1995). In rejecting the union’s proposed weight for seniority of 15% and in accepting the City’s proposed weight of 5%, Arbitrator Meyers, after acknowledging a role for seniority in promotions, went on to reason as follows:

The skills, experience, and knowledge that a more senior applicant generally possesses, however, also is measured, in some fashion, and accorded weight through the other components of the testing procedure; a more senior applicant’s skills and experience should be demonstrated in the written and discretionary portions of the examination process. In addition, although it is important, time spent on the job does not absolutely guarantee that an individual applicant actually will possess the heightened skill, experience, and knowledge that would be expected in a more senior applicant....

[T]he City’s proposal that seniority account for 5% of the total is more appropriate.

By parity of reasoning, the Village's proposal to maintain the status quo on the seniority component and its weighting at 5% "is more appropriate."

The Union's Proposal. The Union proposes to increase the weight afforded to seniority to 10% from the previous 5%, which, again, the Village proposes to keep as is (*Brief for the Union* at 25). Currently, seniority is recognized as up to five (5) points for up to five years of service as a lieutenants with the Department. The Union proposes that a maximum of five (5) additional points be awarded as follows:

The most senior lieutenant shall receive 5 points. Less senior lieutenants shall be awarded points *pro rata* based on the most senior lieutenant's maximum.

The Union submits that it proposes to recognize work experience as meaningful in terms of seniority points (*Brief* at 26). As such, the Union's formula is a compromise that gives recognition to the existing practice, while recognizing the value of greater work experience for Firefighters. To this end the Union asserts that a review of the lieutenant promotion components and weights for the comparable communities show that a majority assign a weight of 10% or more to seniority.

(f) Ascertained Merit (new)

The Union has proposed to add a component of *ascertained merit* and to afford it a weight of 10%, with a maximum of 10 points being awarded for formal education and state certifications (*Brief* at 28). The Administration rejects any such component. This, says the Union, "provides a self-directed incentive for Firefighters to upgrade their skills and level of education." (*Brief* at 28). A review of the components of the lieutenant communities show that a majority of nine use the component of ascertained merit and that all nine assign a weight of 10% or greater to such component, with four such communities assigning a weight of between 15% and 30% to such weight (UX 3).

The Administration argues that it makes more sense to reject the Union's proposed "ascertained merit" component and maintain the weight of 15% for the promotability potential evaluation, a component that both parties agree should be part of the fire captain promotion process (*Brief for the Employer* at 38).

(2) Award and Analysis

Based on this specific evidence record, the following award is issued with respect to the components and weights:

Component	Status Quo/ Current Contract	Award (Changes in bold)
Written Examination	20%	30% (increase of 10 points)
Assessment Center	20%	20%
Promotability Potential Examination	15%	15%
Oral Interview	40%	30% (decrease of 10 points)
Seniority	5%	5%
Ascertained Merit	None	None

* * *

I agree with the Administration that there is a presumption that what the parties did in the past regarding their contractual language should not be upset by an interest arbitrator absent some compelling reason for so doing. Particularly useful in this respect are the three requirements set forth by Arbitrator Harvey Nathan in *Will County Board and Sheriff of Will County and AFSCME Local 2961*, ILRB Case No. S-MA-88-9 (1989), in order for a party to obtain through interest arbitration a departure from the *status quo*:

- (1) That the old system or procedure has not worked as anticipated when originally agreed to;
- (2) That the existing system or procedure has created operational hardships for the employer (or inequitable or due process problems for the union); and
- (3) That the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems

As Arbitrator Fletcher likewise stated in summarizing Arbitrator's Nathan's tests in *City of Alton, supra*, "... it is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process." *Id.*

Similarly, Arbitrator Steven Briggs in *Arlington Heights and IAFF*, ISLRB No. S-MA-88-89 (1991), noted that "the primary function of an interest arbitrator is to approximate "what the parties would have agreed to had they been able to settle the issue themselves." On the issue of promotions in *Arlington Heights*, Arbitrator Briggs rejected the union's effort to change the promotional process, concluding as follows:

Overall, I am convinced from a review of the evidence on this issue that the current system of evaluating applicants for promotion is fair. It includes several techniques for doing so (written test, interview & paired-comparison), and it employs several evaluators from both inside and outside the Department. This system is not without fault, but then again, no selection system is. I therefore find no compelling

reason to adopt the Union's final offer, which would reflect a departure from the status quo. *Id.*, at p. 97.

As noted by Arbitrator Fletcher, the union in *City of Alton* argued that "the bargaining process is not at risk in interest arbitration if the arbitrator is asked to depart from the *status quo* on issues that were never agreed upon by the parties in the first place." *Id.*

In this case, the parties in fact negotiated detailed provisions governing promotions to the rank of fire captain. As a result, the *status quo* doctrine, including the heavy burden on the party seeking to change the *status quo*, is applicable. This is not Marvin Hill's personal sense of industrial justice and circuit-riding equity but, rather, the better weight of authority (as indicated above) when one party seeks a change in the current collective bargaining agreement.

(a) Avoiding "cut-and-paste" – the focus of an interest neutral when awarding non-economic items

Unlike the situation where economic items are disputed, even though I am not constrained by picking one offer or the other when non-economic offers are at issue, I am on record as holding that arbitrators should proceed with caution before "mixing and matching" contractual language. With exceptions, there are too many permutations and combinations that potentially could cause problems in administering a given provision that warrants proceeding with caution. The parties know better than an outside arbitrator how everything works in practice. This is not the place to "cut and paste."

(b) Written and Oral Interview Component Weights

Having said this, the Union has advanced the better case with respect to effecting some change in the *written & oral interview component weights* (currently 20% and 40%), flip sides of the same issue – objective *versus* subjective criteria. Here, I credit the Union's argument that "when the parties negotiated the procedures for Captains promotions, their ability to bargain was constrained by uncertainties as to whether the duty to bargain established by the Act even applied to the Captains rank." (*Brief* at 38). The Union cited the Village's response to bargaining promotion criteria even after the *Franklin Park* decision where, in the Union's eyes, the Administration treated as a "non event." According to the Union, "the *status quo* the Village seeks to have this Arbitrator perpetuate is an anachronism legally and factually." (*Brief* at 40). In the Union's opinion, "It is an anachronism factually because perpetuating promotional procedures where 75% of the weight is based on subjective factors administered by city administrators or persons selected by them cannot be reconciled with promotional procedures negotiated under the Act or evolving professional standards." (*Brief* at 40).

As noted by the Union, in the case of lieutenant promotions in the comparable communities, the average weight afforded subjective components is 43% and the average for objective criteria is 57% (*Brief* at 17). Specifically, all but one bench-mark jurisdiction (Mount Prospect) affords greater than 20% weight to the written exam. Two comparable communities, Elmhurst and Oak Park, afford a weight of 55% to the written exam. Two other bench-mark jurisdictions, Arlington Heights and Des Plaines, afford a weight of 50% to the written exam and another two comparables, Elk Grove Village and Glenview, afford a weight of 40% to the written exam. In Skokie, a weight of 30% is afforded to the written exam (UX 3). I do not see the captain's promotion issue separate from the lieutenants' situation so as to make the lieutenants' experience irrelevant to the present allocation. Significantly, the parties' existing collective bargaining agreement provides that the weight for the written examination component for promotions to the rank of lieutenant is 30% and, indeed, it would be a total *non sequitur* to weigh the written examination component for promotion to captain at 40%, 10% higher than that allocated for the lieutenant rank. (*Brief for the Employer* at 35). An increase to 30% from the current 20% is clearly supported by the comparables and common sense. The written exam is an objective measure of job knowledge and commitment to study and learn the materials and, accordingly, I view the evidence record as supporting the Union's position for an increase. Thirty percent (30%) is a fair compromise between the Employer's *status quo* position (20%) and the Union's final offer (40%). On all accounts, the externals support an allocation of more than the Administration's 20% on the written examination. I award 30%, the number I believe is reflective of approximately where the Village and Union would have landed if the parties had been able to settle the matter themselves by whatever means.

The flip side of this matrix, of course, is that the subjective component weight for the *oral interview* criterion is reduced from 40% (*status quo*) to 30% (award). Here again, the Union advances the better case for reducing the subjective component, 75% in aggregate as computed by the Union (i.e., 40% to the oral interview, 20% to the assessment center and 15% to the promotability potential evaluation)(*Brief for the Union* at 22). Significant is this: A review of the lieutenant promotion components and weights for comparable bench-mark jurisdictions shows that all assign less than a weight of 75% to subjective components. Oak Park affords only a weight of 5% for the component of Chief Points, and (in the Union's view) this is objective because it is based on service time as a paramedic (*Brief* at 22). Arlington Heights and Elmhurst afford a weight of 30% to subjective components. Des Plaines, Elk Grove Village, Glenview, Highland Park and Park Ridge all afford a weight of 40% to subjective components. All in all, the comparable communities afford an average weight of 43% to all subjective components on the lieutenant promotion exam (UX 3; *Brief* at 22-23).

While the awarded allocation (30%) is not what the Union requested, with the increase to 30% for the written component it will go far to eliminate the perception "that there is something not on the up and up because it has been happening so long." (Lt. Robert Gaseor, R. 103).³

³ I note for the record the Village of Skokie has an excellent track record of promoting union officials (R. 110).

(c) **Assessment Center, Promotability Potential Examination,
Seniority and Ascertained Merit**

What of the Union's claim for changes & additions to the remaining criteria? With minimum comment, the following rationale for maintaining the *status quo* is offered:

Assessment Center. I agree with the Administration's assertion that the individuals doing the evaluation should be of equal rank or above. The Union's final offer provides that the evaluators could be in the same rank as the candidates for promotion. Here, the Administration advances the better argument. Then there is the question of size. As noted, the Union's final offer does not specify the size of the assessment panel. Finally, I find it significant that the parties themselves in prior bargaining and at the hearing concluded that 20% is the correct number.⁴ Except for the following, I award the *status quo* on both the language and weights, the Village's position.

The following provision from the Union's final offer is included in the assessment center language:

In the event an assessor is not able to participate in the Assessment Center process for which he was selected, either of the parties involved in the promotion process may request that additional names of certified assessors be provided by the "IPSP."

Promotability Potential Examination. The Union requests that the weight be reduced from 15% to 10% in order to make the exam more objective and more fair and acceptable to potential candidates. Again, 15% represents the number the parties concluded was appropriate in their labor agreement. I also find it significant that of the bench-mark jurisdictions that have negotiated provisions governing promotion to the rank of captain, three (Elmhurst, Oak Park and Park Ridge) have a component that is similar to Skokie's promotability potential evaluation. Each assigns a greater weight (30%, 20%, and 20% respectfully) than what the parties agreed was appropriate. Finally, I find it noteworthy that the captain's promotability evaluation includes an evaluation of a candidate's formal education and state certifications and thus incorporates what the Union would also incorporate as part of its proposed "ascertained merit" component. Fifteen percent (15%) is the number awarded, and I so hold (discussed *infra* 37-38).

⁴ Whether intended or not, at the hearing Union Counsel acknowledged that the Firefighters agreed that the assessment center number is 20%: "We are accepting continuing the assessment center at 20% . . ." (R. 44). What changed?

Seniority. Like the other components, the Village's final offer maintains the *status quo* of 5% (i.e., one point for each full year of service in the lieutenant classification, up to a maximum of five points). As noted by the Administration, the *external comparability* data shows that only four jurisdictions (Elmhurst, Evanston, Oak Park, and Park Ridge) have negotiated language in their collective bargaining agreements that governs promotions to the rank of fire captain or an equivalent rank (VX 17). Of those four comparables, two do not give any weight to seniority (i.e., Elmhurst and Park Ridge) and two give seniority a weight of 10% and 12.5%, respectively (i.e., Oak Park and Evanston). The provisions governing promotions that do not give any weight to seniority were both negotiated after passage of the FDPA and the other two were negotiated prior to passage of the FDPA. This external comparability data alone supports acceptance of the Village's final offer on the seniority component.

Ascertained Merit. As stated by Mr. Berry, in the promotion process it is "people getting points for taking courses and classes." (R. 91). In his words:

And what we came up with was this idea of professional achievement, which was that you would get points, not necessarily – some people would have to go on their own to get these points, they would go to class, but there was this idea that a guy goes and gets a HAZMAT certification or goes and gets a fire officer one or goes and gets arson investigator, that is good. The state fire marshal offers all these classes, people encourage that (R. 92).

This component is somewhat linked to the "promotability potential evaluation" component, a component that both parties agree should be part of the evaluation process. The Administration makes the better case that it makes more sense to reject the Union's proposed "ascertained merit" component ⁵ and maintain the weight of 15% for the promotability potential evaluation. An exchange with Chief Ralph Czerwinski is instructive on this issue:

⁵ By Mr. Berry:

"Arbitrator Briggs thought it was an interesting idea, but because it was so new he didn't include it. But since then not only will you find it generally throughout all contracts that have been negotiated, but it's an actual expressed component in the Act."

"Now in the Act it's called ascertained merit. It was professional achievement when we first negotiated it in Evanston. And we just redefined ascertained merit to be professional achievements, but that it what it is. And what it is is you get points for going out and getting certification, college degrees, educational things, and most people figure that's a good incentive for people to upgrade their skills. Apparently not in Skokie. But it is an objective component." (R. 57-58).

* * *

"It's a very popular and significant component." (R. 60).

Q. [By Mr. Clark]: To what extent, if any, are you satisfied with the qualifications and competence of the individuals that you now have as fire captains using the weighting and the process?

A. [By Chief Czerwinski]: I am very comfortable.

Q. Part of the promotion process to the rank of fire captain, one which the parties are actually in agreement on, relates to the promotional potential rating, is that correct?

A. Yes, sir.

Q. Directing your attention to Village Exhibit 19, is that the rating process that was used for the captain's exam?

A. Yes, it is.

Q. Attached to it are the components of that process, is that correct?

A. Yes, sir.

Q. And among the components to that process, I am looking at the third page of the exhibit, is formal education?

A. Yes, item number 2.

Q. And there is also career involvement?

A. Item number 4.

Q. And you have had occasion to look at what the Union has submitted in terms of its proposed ascertained merit?

A. I don't have it in front of me right now, but I have looked at it.

Q. Isn't it fair to say that what they are proposing for ascertained merit in many respects is duplicative of what is already part of the captain's promotability potential rating?

A. Yes. (R. 173-174).

I also find it significant that while the parties continued the role of the written examination as the "gatekeeper," they agreed to seniority at five percent and did not agree to anything with respect to "ascertained merit." Putting aside overlapping issues with the *promotability potential examination* criterion, it may indeed be a "good idea" to include ascertained merit in the process, but this step should be left to the parties through collective bargaining.

Conclusion

What tips the overall balance in this case in the Village's favor is this: these parties have previously negotiated language that suited their purpose, language that had worked and been used for two prior promotional lists and off of which four captains were promoted and with no grievances being filed (R. 161). As such, arguing that significant changes in the parties' process should now be mandated by an outside neutral is accordingly suspect.⁶ The Union has advanced a valid case regarding the weights accorded the written test and oral interview and for this reason changes of 10% either way were awarded. Also, because of statutory concerns, the Union has advanced the better case regarding the police and fire commissioner and some qualifying language regarding consensus on ratings. Aside from these changes, the *status quo* is awarded. The Village's argument is that the position of Captain is a very responsible management position and one that the Administration has major concerns about the process that is used in terms of selecting the individuals that will occupy that position. I credit this argument, along with the Union's notion that the process has to be fair, which impacts the objective – subjective matrix. With this in mind, the following award is issued:

⁶ This is especially the case when by all accounts it appears that the promotion criteria issue & weights emerged late in the negotiations process. As noted by the Administration in its *Brief* at 7-8:

At the third bargaining session on April 26, 2006, the Union presented its written proposals. On the issue of promotions to the rank of captain, the Union's sole proposal was as follows: "We propose that the Village convert the rank of Captain to a sworn position." Ms. Ballowe testified as follows concerning the discussion of this issue at bargaining (R. 142-43):

Bruce Wimer indicated that they had no issues with the [captain's promotional] process and also Bob Gaseor had stated that they had no issue with respect to any aspect of the promotional process including weights and components with the exception of the already discussed 60 semester hours versus or in addition to the associate's degree and the board of fire and police commission civil service [issue].

On cross examination, Ms. Ballowe reiterated that the Union prior to Mr. Berry's arrival had no issues with respect to the fire captain promotion process (R. 146):

Both Bob Gaseor, the union president, as well as Bruce Wimer, who was at the time the chief spokesperson for the Union, indicated that they had no issues regarding promotions.

While there was no TA on this issue, Ms. Ballowe observed that "[t]here was no need to TA anything if it was status quo" since it had always been the Village's understanding "that if we were remaining status quo for the contract language that wouldn't TA anything" (R. 147).

Significantly, it was on April 26, 2006, at the third bargaining session when the Union presented its limited proposal and said that it had no problems with the provisions governing promotions to the rank of fire captain (R. 153).

IV. AWARD

The Administration's language on the six (6) sections on which there are only minor differences (discussed *supra* at 16 – 18) is awarded.

The Union's language regarding the *administration* of the promotion process (Board of Fire and Police Commissioners) is awarded. To the extent that this change is inconsistent with any other provisions at issue, jurisdiction is retained in the event the parties cannot reach agreement on resolving these inconsistent provisions.

Two component weights are changed as follows: written examination – 30% (from 20%); oral interview – 30% (from 40%). All other component language & weights are retained (i.e., *status quo*) in the collective bargaining agreement with exception of the following language which will be added to the oral interview component:

The raters will attempt to reach a consensus on each criterion score. If the raters cannot reach a consensus, the high and low scores will be dropped and the remaining scores will be averaged to determine the score for the criterion.

With respect to the Assessment Center language, I also award the following provision from the Union's final offer, which was not objected to by the Administration:

In the event an assessor is not able to participate in the Assessment Center process for which he was selected, either of the parties involved in the promotion process may request that additional names of certified assessors be provided by the "IPSP."

With the exception of the above, all other language is *status quo*.

Dated this 9th day of March, 2009,
at DeKalb, IL 60115



Marvin Hill, Jr.
Arbitrator