

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 Days: January 8, 24;
and)	March 27 & 28; May 22, 2007
)	
SKOKIE FIREFIGHTERS, IAFF 3033)	
)	

Appearances

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OPINION AND AWARD

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The Village of Skokie, Illinois, hereinafter referred to as the “Village,” Employer,” or “Administration,” and Local 3033 of the International Association of Firefighters, hereinafter referred to as the “Union” or “Firefighters,” reached an impasse regarding a successor collective bargaining agreement to a contract that expired at 11:59 p.m. on April 30, 2006 (Jt. Ex. 1 at 90). Pursuant to the provisions of the parties’ negotiated impasse procedure,¹ the undersigned was selected as arbitrator from a panel provided by the American Arbitration Association. Hearings were held on January 8, 24, March 27, 28, and May 22, 2007, at the Skokie Village Office, 5127 Oakton Street, Skokie, Illinois. There are 13 economic items and 4 non-economic items at issue (R. 7). Three non-economic issues are being deferred pending resolution of unfair labor practice charges. The parties submitted post-hearing briefs on or about July 31, 2007, which were exchanged through the offices of American Arbitration Association. The record was closed on that date.

¹ Section 12.8, Impasse Resolution, reads in relevant part:

In the event the terms and conditions of a successor agreement cannot be resolved by negotiation, disputed items shall be resolved in accordance with the statutory impasse resolution procedure (IPLRA, SILCS 315/4), except that the parties agree that the variances from statutory impasse procedures expressly set forth in Appendix A shall be followed to resolve an impasse arising between the parties as to the terms and conditions of the successor agreement to this agreement. The parties’ agreement to such variances in procedures as are set forth in Appendix A shall not be construed as in any way binding on either party to continue such procedures in any successor agreement.

II. UNION'S FINAL OFFER OF SETTLEMENT

A. Economic Items

1. Term of Agreement – Article XXIII

Three years - effective May 1, 2006 through April 30, 2009, as described in "Union's *Exhibit 1*" (*reprinted infra, Appendix "A", Union Exhibits*).

2. Salaries - Section 6.1

Increase all steps of the salary schedule in effect on 4/30/06 as follows:

- a) Effective 5/1/06, 4%;
- b) Effective 5/1/07, 4%, plus grant an equity increase of 1% for Fire Lieutenants effective 11/1/07;
- c) Effective 5/1/08, 4%, plus grant an equity increase of 1% for Fire Lieutenants effective 11/1/08; All as described in "*Exhibit 2*" (*infra*)

3. EMT Paramedic Stipend – Section 6.4

Increase Paramedic stipend to the following amounts:

- a) Effective 5/1/06 - \$3,850
- b) Effective 5/1/07 - \$4,000
- c) Effective 5/1/08 - \$4,150; All as described in "*Exhibit 3*" (*infra*)

4. Hours of Work - §§10.2, 10.3 & 10.7

- a) Effective 5/1/07 reduce the length of the normal work week by reducing the period for scheduling Kelly Days off from every 18th shift to every 14th shift;
- b) Modify the FLSA work cycle from 27 days to 21 days (§10.3) to continue elimination of FLSA overtime liability;
- c) Modify annual work hours for computation of straight time hourly rate from 2,750 to 2,711; All as described in "*Exhibit 4*" (*infra*).

5. Serving in Acting Capacity – §12.21

Modify existing language to provide that employees assigned to perform the duties of officers (FF as Lt.; Lt. as Capt.) be compensated respectively as follows: (1) Acting Lieutenant - a 5% a pay differential above the employee's applicable hourly rate and (2) Acting Captain - a 4% pay differential for all hours worked in the acting capacity; provided that they serve as acting officers a minimum of 12 hours of the shift, as described in "*Exhibit 5*" (*infra*).

6. **Sick Leave – Good Attendance Incentive – §6.1**

Modify existing language to eliminate time off incentive and slot reserved for scheduling Sick Leave Bonus Days Off and substitute cash incentives payable into a post retirement medical savings account, as described in "*Exhibit 6*" (*infra*).

7. **Health Insurance – §15.1**

Modify existing language to provide, effective 5/1/08:

- a) Increase the amount of employee contribution for single or family coverage as applicable from 12% to 13%;
- b) Add a single + 1 [single plus one] option to existing coverage;
- c) Increase the lifetime cap for PPO coverage from \$1 million to \$2 million, as described in "*Exhibit 7*" (*infra*).

8. **Specialty Pay – §6.6 (New)**

Provide for a stipend payable to Firefighters who have obtained certification as Fire Apparatus Engineer (FAE) and who are assigned to drive a fire apparatus as part of their regular duties in the following amounts:

- a) Effective 5/1/07 - \$250;
- b) Effective 5/1/08 - \$500; as described in "*Exhibit 8*" (*infra*).

9. **Post Retirement Medical Savings Plan - §15.8**

Modify existing language to provide bargaining-unit employees with the opportunity to change from the existing entity to an alternative by offering

employees a choice between different vendors according to the procedure described in "*Exhibit 9*" (*infra*).

10. **Scheduling of Vacations and Holiday Time Off – §§ 9.1 & 9.3**

Modify existing language to provide a procedure to more efficiently and equitably distribute vacation allotments among bargaining-unit employees with designated slots based upon the agreed procedure applied to expanded slots by allowing bargaining unit employees to select their three (3) floating holidays in slots that are not picked after Captains have picked their vacation and holiday time off, as described in "*Exhibit 10*" (*infra*).

11. **Retirement Vacation Allowance - §8.6**

Maintain existing benefit.

12. **Military Leave - §4.5**

Maintain existing benefit.

13. **Vacation Conversion Formula - §8.1(a)**

Maintain existing benefit.

B. **NON-ECONOMIC ITEMS**

1. **Promotion to Rank of Captain - §12.28**

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "*Exhibit 11*". (*infra*)

2. **Foreign Fire Tax Board - §12.31 (NEW)**

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "*Exhibit 12*".

(infra).

3. Probationary Period - §5.2

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "Exhibit 13" (infra).

4. Duty Trades - §9.5

Maintain existing benefit.

III. FINAL OFFER OF THE ADMINISTRATION

A. ECONOMIC ITEMS

1. Sick Leave – Section 4.2

The Village's final offer on Sick Leave is to maintain the *status quo* with respect to Section 4.2.

2. Amount of Vacation and Application – Section 8.1(a)

The Village's final offer on this issue is to delete the last paragraph of Section 8.1(a) and to substitute the following provisions to govern vacations to employees assigned to 40-hour weeks for a period of a year:

Effective January 1, 2008, employees assigned to 40-hour work weeks for at least a one year period (e.g., the assignment of a fire lieutenant to the Bureau for one year) shall accrue vacation as of their anniversary date of employment for use during the year of such assignment (assuming the vacation eligibility provisions of Section 8.2 have been met) in accordance with the following schedule:

<u>Completed Years of Service</u>	<u>Annual Accrual</u>
1st year to 5th anniversary	10 8-hour working day shifts
6th year to 12th anniversary	15 8-hour working day shifts
13th year to 18th anniversary	20 8-hour working day shifts
19th year to 23rd anniversary	25 8-hour working day shifts
24th year and over	30 8-hour working day shifts

When reassigned to 24-hour shifts, such employees shall accrue vacation as of their anniversary date of employment for use during the year following such reassignment (assuming the vacation eligibility provisions of Section 8.2 have been met) in accordance with the annual accrual rates set forth above for 24-hour shift employees.

3. Normal Work Day and Work Week (Section 10.2), Normal Work Cycle (Section 10.3), and Computation of Straight Time Hourly Rate of Pay (Section 10.7)

The Employer's final offer on both Normal Work Day and Work Week (Section 10.2) and Normal Work Cycle (Section 10.3) is to maintain the *status quo*. With respect to Computation of Straight Time Hourly Rate of Pay (Section 10.7), the Employer's final offer is to revise Section 10.7 to read as follows:

Section 10.7. Computation of Straight Time Hourly Rate of Pay. The straight-time hourly rate of pay for employees shall be calculated by dividing the employee's annual base salary by the annual hours of work. The annual hours of work for employees assigned to 8-hour shifts shall be 2,080. The annual hours of work for employees assigned to 24-hour shifts shall be 2,750 (2,650 hours effective May 1, 2007).

4. Salaries – Section 6.1

The Village's final offer on Salaries is as follows:

- * Effective 5/1/06 – 3.50%, plus an extra 0.50% for Lieutenants eff. 11/1/06
- * Effective 5/1/07 – 3.75%, plus an extra 0.50% for Lieutenants eff. 11/1/07
- * Effective 5/1/08 – 3.75%
- * Effective 5/1/09 – 3.50%

Section 6.1 as revised to reflect the Village's final offer on salaries is attached as Employer's Exhibit "A" (reprinted *infra*).

5. EMT-P Stipend – Section 6.4

The Village's final offer on the EMT-P Stipend is to revise Section 6.4 as follows:

An employee who is certified and functioning as an EMT-P shall receive stipend per fiscal year (pro rata is less than a year) on the basis of the following:

Eff. May 1, 2006 Upon Paramedic Certification	\$2,500
---	---------

After 2nd Year	\$3,625
Eff. May 1, 2007 Upon Paramedic Certification	\$2,600
After 2nd Year	\$3,750
Eff. May 1, 2008 Upon Paramedic Certification	\$2,700
After 2nd Year	\$3,875
Eff. May 1, 2009 Upon Paramedic Certification	\$2,800
After 2nd Year	\$4,000

6. Specialty Pays (New Section)

The Village's final offer on Specialty Pays (New Section) is to maintain the *status quo* and to not provide for any specialty pays beyond the EMT-P Stipend that is covered by Section 6.4.

7. Retirement Vacation Allowance – Section 8.6

The Village's final offer on Retirement Vacation Allowance is to revise Section 8.6 to read as follows:

Section 8.6. Retirement Vacation Allowance. An employee with at least twenty (20) or more years of continuous full-time service at time of retirement and who notifies the Fire Chief in writing at least one month in advance of the last day of work prior to retirement shall be entitled to an extra half shift (i.e., 12 hours) of vacation for each full year of employment for employees assigned to 24-hour shifts and an extra 8-hour shift of vacation for each full year of employment for employees assigned to 8-hour shifts. The employee shall receive a payout for this extra vacation time (RVA) in a lump sum that is deposited into the employee's Retirement Health Savings Plan, in accordance with Section 12.30.

8. Scheduling of Furloughs and Floating Holidays – Section 9.1 and 9.3

The Village's final offer on Scheduling of Furloughs and Floating Holidays (Sections 9.1 and 9.3) is to revise Section 9.1 by adding the following new second paragraph:

Four (4) slots per duty day shall be allotted for both furlough and floating holiday picks. In addition and in lieu of the SLBD Memorandum of Agreement, in order to accommodate all earned furlough and floating holiday picks during the term of the contract that is the successor to the parties' 2002-2006 collective bargaining agreement, five additional slots per month per shift (i.e., a fifth slot) shall be made available for both furlough and floating holiday picks during the months of January through April and September through December.

9. **Military Leave – Section 4.5**

The Village's final offer on Military Leave is to revise Section 4.5 to read as follows:

Section 4.5. Military Leave. During each calendar year, any full-time employee who is a member of the reserve components of the Armed Services will be given a leave to fulfill their commitment. Employees may use vacation or take leave without pay to attend their annual two-week reserve training tour. Employees choosing to use their vacation leave will be granted an extra three 24-hour days of vacation for that particular year and will be allowed to retain all military pay. These three vacation days may be chosen on any open leave slot (i.e. Kelly Day, Furlough, SLBD) except holidays. Employees choosing to take leave without pay will be reimbursed for the difference between the military pay and their Village pay, provided the latter is greater. In order to receive the pay for the difference, employees must submit a signed statement from their Commanding Officer showing the amount earned while on such service.

10. **Serving in Acting Capacity – Section 12.21**

The Village's final offer on Serving in Acting Capacity is to revise the second paragraph of Section 12.21 to read as follows:

Based on the arbitration award issued in 1995 by Arbitrator Randi Hammer-Abramsky, the parties have agreed to use the following 1987 base line numbers to determine occurrences of acting out of rank:

Assigned to serve as acting Captain	63
Assigned to serve as acting Lieutenant	783

Effective January 1, 2007 and January 1, 2008, the base line numbers to determine occurrences of acting out of rank shall be as follows:

	1/1/07	1/1/08
Assigned to serve as acting Captain	50	45
Assigned to serve as acting Lieutenant	700	630

No additional compensation shall be paid if the number of occurrences during the applicable calendar year does not exceed either or both of the foregoing numbers as set forth above. If the number of occurrences exceeds either or both of the foregoing base line numbers for the applicable calendar year, the rate of compensation for the occurrences that exceed either or both of the base line numbers shall be 5% above the employee's applicable hourly rate of pay for each hour that the employee is assigned to work in acting capacity during such an occurrence. For this purpose, an occurrence shall be defined as serving in acting capacity for 12 hours or more. If more than one employee is assigned to work in acting capacity during one occurrence, each employee shall be paid for the respective number of hours that they worked in acting capacity during the occurrence in question.

11. Comprehensive Medical/Dental Insurance Program – Section 15.1

The Village's final offer on Comprehensive Medical/Dental Insurance Program is to change the percentage that employee pays toward cost of the comprehensive medical program and dental program as follows:

- * Effective 5/1/07, increase premium contribution to 13%
- * Effective May 1, 2008, increase the lifetime cap for the PPO to \$2 million

Section 15.1 as revised to reflect the Village's final offer on the Comprehensive Medical/Dental Insurance Program is attached as Employer's Exhibit "B" (*infra*).

12. Post-Retirement Medical Savings Plan – Section 15.8

The Village's final offer on the Post-Retirement Medical Savings Plan is to revise Section 15.8 to read as follows:

Section 15.8. Post-Retirement Medical Savings Plan. One percent (1%) of each employee's base annual salary will be deducted from each employee's paycheck and will be placed into the Village's Retirement Health Savings Plan (currently Vantage Care Retirement Health Savings Plan) as referenced in 12.30, to be used by the employee upon retirement to pay for eligible medical expenses. This one percent payroll deduction will not be deemed to decrease an employee's annual salary as set forth in Section 6.1 of this Agreement that is used in determining the amount of an employee's pension. The purpose of this section is to establish an employee-funded post-retirement medical account at no cost to the Village that can be used by the employee following retirement to pay for eligible medical expenses.

In addition, in Section 12.30 delete the phrase "employee's Section 457 account" and substitute in its stead the phrase "employee's Retiree Health Savings Plan account."

13. Duration and Term of Agreement – Article XXIII

The Village's final offer on Duration and Term of Agreement is to provide for a four- year contract through April 30, 2010.

Article XXIII as revised to reflect the Village's final offer on the Term and Duration of Agreement is attached as Employer's Exhibit "C" (*infra*).

B. NON-ECONOMIC ITEMS

1. Duty Trades – Section 9.5

The Village's final offer is to revise the second to the last sentence of the first paragraph of Section 9.5 to read as follows:

No employee shall be involved in more than sixteen (16) duty trades during each calendar year, and both the taking and the repaying of a duty trade shall be counted as a duty trade; provided, however, that a duty trade for approved training or schooling shall not be counted as a duty trade for either employee involved in the trade.

NOTE: Pursuant to the direction of the Arbitrator, no final offers are being submitted at this time on promotions to rank of captain, foreign fire tax, and probationary period (Section 5.2.).

IV. DISCUSSION

A. BACKGROUND – STATUTORY CRITERIA

As noted, this dispute involves both economic (13) and non-economic (4) issues. 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). The Act restricts the Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child."² As to non-economic issues, however, the Arbitrator's discretion is not so limited. Section 14(g) of the Act reads:

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

5 ILCS 315/14.

The eight factors specified in Section 14(g) of the Act are as follows:

² Cf. 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the costs of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

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

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

B. COMPARABLE BENCH-MARK JURISDICTIONS

The parties are in agreement regarding the relevant bench-mark jurisdictions, which include the following communities, corresponding population and number of firefighters and lieutenants:

<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

* As of 11/06. Source: Union Ex. 4 & Er. Ex. 1

Significantly, while overall third in population, Skokie ranks second in sales tax receipts (\$11,887,663) and total EAV (\$1,461,604,411)(Union Ex. 4). Skokie is fourth in collected revenue (\$50,853,722)(*Id.*). With 106 Firefighters & Lieutenants (116 total sworn employees), Skokie is the largest jurisdiction of the comparables. The disparity in sworn employees (ranking first), population (third) and collected revenue (fourth) is less than ideal in funding fire and police protection services. While the Administration has not entered an inability to pay argument, overall the financial obligations of a package must be taken in account in rendering an award. To this end, I find it noteworthy that Skokie's *per capita* revenue of \$803 is 5.7% below the average of \$849 for the bench-mark jurisdictions (Union Ex. 4; *Brief for the Administration* at 5).

C. ANALYSIS OF PARTIES' POSITIONS

Economic Issues

1. Term of Agreement – Article XXIII

Union: Three (3) years

Employer: Four (4) years

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Neither party in their final offers changed their position with respect to the terms of agreement. The Village maintained that there should be a four-year term in line with the term of the parties' last collective bargaining agreement. For reasons articulated in this opinion, the Union held to its position that the term should cover three years.

Position of the Village. The Administration asserts the Arbitrator should accept its final offer of a four-year term since it matches the four-year term of the parties' last collective bargaining agreement and the four-year term of the current FOP collective bargaining agreement (*Brief for the Employer* at 10). Further, given the time and expense that both parties spent in this case (hearings stretched from January 8, 2007 to May 22, 2007, and briefs were not filed until July 31st), common sense dictates that the Village's final offer should be accepted, especially since nearly 15 months of the term of the parties' agreement have already lapsed (*Brief* at 11). Thus, based on the Village's final offer, the termination date would be April 30, 2010, less than three years from the date on which the parties will receive the award. On the other hand, submits management, if the Union's final offer were accepted, the parties would be back to the bargaining table in about two years' time.

Wholly apart from the common-sense considerations, the Village's final offer on term is supported by the parties' recent collective bargaining history, as well as internal data. And while the external comparability data is mixed, the contract term for five of the external comparable matches the four-year term contained in the Village's final offer (*Brief* at 11). Taken as a whole, the parties recent bargaining history and the internal/external comparability data definitely support acceptance of the Village's final offer for a four-year term, the Employer asserts.

The Union's Position. In support of a three-year contract, the Union points out that a great preponderance of the communities among the comparables have agreed to contracts with terms of three years or less (*Brief for the Union* at 17). The Union notes that fully two-thirds of the comparable communities have agreed to contracts of three years or less. The median length is three years, thus supporting the Firefighters' position.

Further, the Employer's four-year proposal has the effect of limiting the Union's right to bargain on promotions. Specifically, a four-year term will have the effect of interfering with the Union's right to bargain promotional procedures to the rank of Lieutenant (*Brief* at 18-19). The parties were only able to execute two tentative agreements over the course of negotiations, one during the last day of hearing relating to partially resolving vacation selection procedures. The only agreement made bilaterally between the parties during negotiations was an agreement covering promotional procedures to the rank of Lieutenant. The Union has a right to negotiate modified procedures for the next promotional exam after the expiration of the pending list, it argues. The current list will be posted sometime in July 2007. By the terms of the tentative agreement, Section 12.28(9) provides that the list will have a life of two years, which means it will expire in 2009, shortly after the expiration of a contract with a three-year term. Thus, the Union would be in a position to bargain revised procedures for the next lieutenant's exam as part of the successor

collective bargaining agreement. Granting the Village's proposal for a four-term will interfere with this ability. This is because Section 12.28N provides that the provisions of the Promotion Article "shall remain in effect for the duration of the successor collective bargaining agreement to the parties' 2002-2006 collective bargaining agreement." (*Brief* at 19). This issue, argues the Union, is of great import to the bargaining unit because the provisions of the tentative agreement are permissive subjects of bargaining in that they are variances from the statutory procedures provided under the Promotion Act, 50 ILCS §742, *et seq.* Section 10(e) of the Act allows for this as noted in §12.28M of the tentative agreement. They represent concessions to the Village as part of the overall agreement. In the Union's eyes, these concessions cannot be continued without the Union's agreement for the next promotional exam. A three-year term will preserve the Union's bargaining rights as to these issues (*Brief* at 20).

Analysis and Award. Generally, I would favor a longer-term agreement versus a shorter-term contract when not much bargaining occurred and arbitration hearings take place over an extended period of time, as they have in this case. To this end, I agree with the reasoning of Arbitrator Edwin Benn in *City of Springfield & PBPA* (1990):

The entire design of the impasse resolution contemplated by requiring consideration of the interests and welfare of the public in Section 14(h)(3) and the "other factors . . . which are normally or traditionally taken into consideration" criteria found in Section 14(h)(8) have common threads of a bottom line goal of stability and "industrial peace" as those concepts translate into the public employment setting. A hotly contested matter such as this with the amount of time, effort and expense that have been invested by the parties and the corollary uncertainties that have arisen (which may be prolonged or even exacerbated if a short contract is imposed which requires the parties to once again face each other across the bargaining table in the near future), coupled with the obvious present breakdown in the parties' ability to agree, on balance, all weigh against the arguments made by the Union. Given the particular history of this matter, the overriding goal of stability dictates a contract of longer duration than the one sought by the Union.

In this case, however, there are considerations that work against a four-year contract.

The parties' first collective bargaining agreement covered fiscal years 1986-87 and 1987-88, a two-year term. The second labor agreement covered fiscal years 1988-89, 1989-90, and 1990-91 (three years) and contained a limited reopener for the 1989-90 fiscal year relating to salaries, longevity pay and the dollar amount of the EMT-P paramedic stipend. The parties reached impasse over the terms of the reopener and proceeded to arbitration before Chicago Arbitrator Elliott H. Goldstein, who issued an award on March 2, 1990 (Er. Ex. 23). The matter was the first time the parties failed to conclude a contract without proceeding to arbitration. Thus, up until 1992, the parties selected two and three years as the preferred contract term, although there is some history of four-year agreements at Skokie.

Noteworthy, in 1992 the parties were again at impasse regarding a successor collective bargaining agreement, and proceeded before Arbitrator Neil Gundermann. One impasse issue was the length of the agreement. On July 6, 1993, Arbitrator Gundermann selected the Village's position for a three-year term (Er. Ex. 24 at 35-37) covering the period 1992-95. The remaining contracts covered 1995-96, 1996-99, 1999-2002, and 2002-2006 (Jt. Ex. 1).

Further, an analysis of the relevant external comparables favors the Union's three-year proposal:

<u>Municipality</u>	<u>Contract Length</u>
Arlington Heights	4
Des Plaines	3
Elk Grove	4
Elmhurst	4
Evanston	2
Glenview	3
Highland Park	4
Morton Grove	2
Mt. Prospect	3
Niles	3
Northbrook	3
Oak Park	3
Park Ridge	3
Wheeling	4
Wilmette	3
Average	3.2
Local 3033 Proposal	3 years
3 years or less	10 of 15 (67%)
Village proposal	4 years
4 years or more	5 of 15 (33%)

Source: Union Ex. 61 (revised)

Only five (5) of the fifteen (15) comparables (one-third) have contract lengths of four (4) or more years, thus favoring the Union's proposal for a three-year contract. As noted, two of the benchmark jurisdictions, Evanston and Morton Grove, have contracts with two-year terms.

The parties' bargaining history and a study of the bench-mark comparables is not the end of the consideration regarding the term of the successor bargaining agreement. This was recognized by Arbitrator Gundermann in his 1993 interest award between these same parties. There, the Village argued that a two-year contract (the Union's final offer) made no sense, given that the parties would be back at the bargaining table in eight months dealing with the entire agreement. Awarding the Administration's proposal for a three-year contract, Arbitrator Gundermann had this to say:

It is readily apparent that the parties expended considerable effort in the negotiations which preceded the instant proceedings as well as in the proceedings themselves. It has required considerable time, great effort

and has been costly to the parties. Given this background, as well as both the internal and external comparables, a three-year agreement is appropriate. *Gundermann* at 36-37.

Significantly, and unlike the present situation, Mr. Gundermann pointed out that there was a reopener “providing the Union with the opportunity of addressing the issue of salaries for the last year of the agreement.” *Gundermann* at 37. I, of course, have no power to award a long-term contract *with a re-opener attached*, which otherwise would be a viable option given the concerns of the Union.

The present collective bargaining agreement will be retroactive to May 1, 2006. While the last contract the parties voluntarily concluded contained a four-year term, as indicated above the parties’ overall history and the bench-mark comparables arguably support a three-year deal. Significantly, I also credit the Union’s argument regarding the effect a four-year term will have on its ability to bargain new procedures regarding a second promotional exam for lieutenants (*Brief for the Union* at 19-20).

Finally, a three-year agreement will not lock the Union into a longer position to the extent it maintains the Firefighters are in a degraded position because of predecessor collective bargaining agreements (See, *Brief for the Union* at 29: “Here, the Village’s proposed four-year term would lock in the Fire Lieutenants and Firefighters into an even more degraded position than they experienced at the conclusion of the predecessor contract.”). Similar to the situation faced by Arbitrator Elliott Goldstein in *Village of Elk Grove & MAP Local 141* (1996), given the absence of serious bargaining by the parties in this case (discussed *infra*), I do not find that a four-year contract will necessarily encourage stability for the benefit of Management.³

A close call, given the past history of these parties not engaging in much bargaining prior to arbitration. For the above reasons, the position of the Union is awarded. The successor collective bargaining agreement will be for a three-year term.

2. Salaries - Section 6.1

Union: Increase all steps on the salary schedule in effect on 4/30/06 as follows:

Effective 5/1/06, 4%;

³ Goldstein: “After much consideration, I find what is clearly a controlling consideration is my disagreement with Management that the kind of three-year contract it has proposed would in fact encourage stability in the bargaining relationship, as opposed to budgetary stability for the benefit of Management.” *Id.* at 131.

Effective 5/1/07, 4%, plus grant an equity increase of 1% for Fire Lieutenants effective 11/1/07;

Effective 5/1/08, 4%, plus grant an equity increase of 1% for Fire Lieutenants effective 11/1/08 (see, Union Ex. 2, *infra*).

Employer:

Effective 5/1/06 – 3.50%, plus an extra 0.50% for Lieutenants eff. 11/1/06

Effective 5/1/07 – 3.75%, plus an extra 0.50% for Lieutenants eff. 11/1/07

Effective 5/1/08 – 3.75%

Effective 5/1/09 – 3.50%

* * * *

Comparison of the Parties' Final Offers on Salary with their Pre-Hearing Offers. Both parties made changes from their pre-hearing salary offers.

The Village in its final salary offer *increased* the percentage adjustments for Firefighters for the second and third years. The Village also added an extra 0.5% increase to Lieutenant salaries effective November 1, 2006 and November 1, 2007, providing for a total equity adjustment for lieutenants of one percent (1.0%) over the first two years of the contract.

The Union *increased* the un-compounded salary percentage increase for lieutenants over three years from 13.25% to 14% and *reduced* the un-compounded salary percentage increase for Firefighters over three years from 12.25% to 12.0%.

Position of the Village. Asserting its position is more reasonable than that of the Firefighters, the Village contends that internal (Er. Ex. 32) and external (Er. Ex. 51 & 52) comparability considerations support acceptance of its final salary offer (*Brief for the Employer* at 16-20). To this end the Administration asserts that its final offer will maintain or improve its 2002 ranking among the external comparables (*Brief* at 18-19). Further, the CPI data supports acceptance of its salary offer (*Brief* at 20). Finally, the Employer submits that the ease in attracting qualified applicants, the virtually non-existent voluntary turnover rate, and recent national public-sector wage negotiation data support acceptance of its offer (*Brief* at 21-26).

With respect to the Union's "slippage" and "total compensation" arguments, the Village responds that since its offer will maintain Skokie's rank among the external comparables that the parties voluntarily negotiated in their last contract, the Union's slippage argument is factually without merit (*Brief* at 27-31).

The Union's Position. The Firefighters first contend that they have suffered a serious decline in their comparative salary ranking since their last interest arbitration (*Brief for the Union* at 22-25). Specifically, since 1992, the last time the parties contested a salary increase in an interest arbitration, Skokie Firefighters have lost fully six ranks and more than 2.3% to the average (*Brief* at 22). While the average increase among the comparable communities for Firefighters was 3.87% and for

Lieutenants 4.09%, Skokie Firefighters and Lieutenants received only 3.5% (*Brief* at 22-23). Skokie's decline is especially amplified when compared to two of its neighboring communities, Evanston and Glenview. Here, the Union notes that since 1992 Skokie Firefighters have lost 6% to Evanston Firefighters and 3% to Glenview Firefighters (*Brief* at 24). The Union asserts that this trend must be reversed.

The Union further asserts that the "going rate" for settlements among the comparable communities is 3.78% for 13 of the 15 bench-mark jurisdictions (*Brief* at 26-27). Thus, for Skokie Firefighters to simply maintain their existing relationship among the comparables, they must receive at least a 3.78% increase. The Village's offer of 3.5% ensures further erosion of Firefighters' salaries (*Brief* at 27). The Union's 4.0% proposal is only .22% above the average and represents a very modest mitigation of the Skokie Firefighters' salary erosion.

Both parties recognize a need to address deficiencies in Fire Lieutenants' salaries. The Village's proposal of a 0.5% (½ percent) equity adjustment in 2006-07 is inadequate, particularly when considered in the context of its general wage increase offer which is below the going rate. When compared to comparable lieutenants, Union Ex. 15 shows that for 2005 their base salary put them at a rank of 11 out of 15 and \$1,449 below the average (*Brief* at 28). This deficiency is also reflected in the rank differential between base firefighter salary and lieutenant salary. The average differential among comparable lieutenants and firefighters is 19.43%. Skokie's rank differential is 17.16%, or 2.27% below the average (Union Ex. 85R)(*Brief* at 28), putting them at a rank of 12 of 14. The Union's equity adjustment will reduce this disparity and bring Skokie Lieutenants 2% closer to the average over a three-year term (Union Ex. 85AR). In the Union's view, Lieutenants need at least a 4.0% increase just to match the going rate of increases granted to comparable lieutenants (*Brief* at 28). Thus, the 1/2% equity adjustment proposed by the Village is not an equity adjustment at all. When combined with its 3.5% wage increase, it will only match the going rate (*Brief* at 28).

Citing parity arguments, the Union submits that adopting its proposal is necessary in order to avoid further erosion of the salaries of Skokie Firefighters and Lieutenants in relation to Skokie's Police Officers. (*Brief* at 30). The Union notes a substantial growth in the disparity in salaries between Skokie Firefighters and police officers (Union Exhibits 25, 26 & 27). At least since the Herb Berman interest arbitration police salaries are set in relation to external comparables and not internal relationships with Firefighters or any other Village employee (*Brief* at 31). Specifically, police salaries are subject to mid-term equity adjustments that will ensure their top step (F+) is in the middle of the top step of the communities that rank 6th and 7th (*Brief* at 35). Putting Skokie Firefighters in the middle of these comparable communities requires a salary of \$68,412, or a 2006 wage increase of 5.0%. Although the Union is not seeking dollar for dollar parity with police officers, it argues that a formula that maintains a ranking between 6th and 7th is fair for Skokie police officers, why is it not fair for Skokie Firefighters? (*Brief* at 35).

Finally, the Union asserts that cost-of-living considerations should be afforded minimal if any weight in an interest arbitration(*Brief* at 36-37).

a. External Salary Analysis

Significant in resolving the parties' salary offers is a consideration of external criteria. Indeed, the Act requires it. To this extent, Union Ex. 13 (revised) and Village Ex. 54 outlines the settlements through 2009 as follows:

**FIREFIGHTER BASE SALARY INCREASES FOR 2005 - 2009
(TO THE EXTENT KNOWN)**

<u>JURISDICTION</u>	<u>2005 Base SALARY % INCREASE</u>	<u>2006 BASE SALARY % INCREASE</u>	<u>2007 BASE SALARY % INCREASE</u>	<u>2008 BASE SALARY % INCREASE</u>	<u>2009 BASE SALARY % INCREASE</u>
Arlington Heights	3.0%	4.5%	3.75%	N/A	N/A
Des Plaines	3.5%	3.5%	N/A	N/A	N/A
Elk Grove Village	3.24%	3.25%	N/A	N/A	N/A
Elmhurst	3.75%	3.75%	3.9%	3.9%	3.5%
Evanston	3.77%	3.75%	4.0%	4.0%	N/A
Glenview	4.0%	3.75%	3.75%	3.75%	N/A
Highland Park	7.63%	3.5%	3.5%	N/A	N/A
Morton grove	3.0%	N/A	N/A	N/A	N/A
Mount Prospect	3.5%	3.75%	3.75%	N/A	N/A
Niles	N/A	3.5%	3.5%	N/A	N/A
Northbrook	3.75%	4.38%	3.75%	3.75%	N/A
Oak Park	4.0%	N/A	N/A	N/A	N/A
Park Ridge	3.5%	N/A	N/A	N/A	N/A
Wheeling	3.75%	3.5%	3.5%	3.75%	N/A
Wilmette	3.75%	3.75%	3.75%	N/A	N/A
Skokie	3.5%				
Skokie (Village offer)		3.5%	3.75%	3.75%	3.5%
(Union offer)		4.0%	4.0%	4.0%	N/A
Average % increase for comparables	3.87	3.74	3.71	3.83	3.5

Source: Union Ex. 13 (revised)(2005 figures) & Village Ex. 54 (2006 - 2009 figures)

The Employer's base salary offer for 2006 (3.5%) and 2007 (3.75%) is closer to the *average* (3.74% & 3.71%) than the Union's offer, but not by much. The number of bench-mark jurisdictions concluding contracts for 2008 are insufficient to make a valid appraisal, although the nod again goes to the Administration (3.75% vs. 3.83%, as an average for 2008).

Noteworthy, for 2007, the Employer's offer of an across-the-board wage increase of 3.75% is higher than percentage increases for three of the comparables, matches the increases for five of the comparables, and is less than the increases for only two of the comparables. Based only on this

criterion, the Administration advances the better argument on salaries, although only 1.0% differentiates the offers during the first three years for Firefighters and 1.0% is the difference for Lieutenants.

(1) **The Union's Argument Regarding a Decline in Comparative Salary Ranking Since the Gundermann Award in 1992**

What of the Union's arguments that the Skokie Firefighters have suffered a "serious decline" in their comparative salary rankings since their last interest arbitration in 1992?

Citing numerous arbitration awards, the Administration counters by asserting that a party should not use arbitration to "catch up" where the change in position is the product of voluntary collective bargaining between the parties, and that interest arbitrators will reject a union argument that it has fallen in relation to the internal or external comparables that have occurred through prior voluntary agreements of the parties. (*Brief for the Employer* at 8-10).

Wisconsin Arbitrator Edward Krinsky, in *Village of Greendale, Wisconsin*, Decision No. 30432-A (2003), considered a "catch-up" argument and found that arbitration was not the forum for correcting wage deterioration that was the result of bargaining:

The Association presented data showing that deterioration of Greendale's wage position relative to the comparables has occurred since at least 1991. The arbitrator is not persuaded of the need to review those figures. As the Village has emphasized, the Agreements which were bargained during this period were voluntary agreements, not the result of arbitration. Thus, to the extent that there has been wage deterioration, it is something which the parties realized, or should have realized was occurring when they mutually arrived at their settlements. The Association's arguments are not persuasive that arbitration should now be used to begin to correct the results of years of voluntary bargaining. *Krinsky* at 8.

Arbitrator Krinsky is not alone in his thinking. More at home, Chicago Arbitrator Elliott Goldstein voiced the same thought and analysis in *City of DeKalb*, Case S-MA-87-76 (1988):

[I]t is a central purpose of the act to encourage the parties to engage in genuine arms-length collective bargaining. It is not the responsibility of the arbitration panel to correct previously-negotiated wage inequities, if any. The concern of the panel and its authority to evaluate comparisons is limited to the current agreement. This is because the parties themselves had control over the salaries and benefits previously negotiated. They alone decided whether the "disparity" in either base pay or overall compensation between the FOP and IAFF was a pertinent consideration in their deliberations; and, if so, whether the agreed-upon salaries and overall compensation would meet, exceed or fall below either FOP or the AFSCME unit. The chair must presume that in the past the parties reached agreement in good faith and considered all the factors they believed pertinent. Otherwise, this interest arbitration would be relitigating the issues of 1975 – long before the statute itself was passed.

Arbitrator Goldstein further addressed the nature of interest arbitration in *City of DeKalb*, *supra*, and had this to say:

Interest arbitration . . . is designed to merely maintain the *status quo* and keep the parties in an equitable and fair relationship, according to statutory criteria.

* * *

Going beyond negotiations to catch up or give either party a breakthrough is contrary to the statutory scheme and undercuts the parties' own efforts, in rather direct contravention of the collective bargaining and negotiations process itself. *Goldstein* at 8-9.

In *Village of Elk Grove & Metropolitan Alliance of Police No. 141* (1996), Mr. Goldstein elaborated on the issue of the proper use of comparables in the face of a wage demand. His reasoning is particularly instructive in the present case:

As will be developed below, I thus agree with the Village's view that the process of bilateral wage and benefit establishment via collective bargaining over a period of seven years or longer is relevant and must be considered. It also represents sufficient time to have determined where arms-length collective bargaining had placed this community as compared to any other group of communities. Three separate sets of bargaining negotiations over wage rates have been held, I note, albeit these were with the FOP as the incumbent union, and not the current incumbent, the MAP chapter, which is the moving party on the economic issues, at least, in this interest arbitration, I of course recognize.

Considering all the relevant factors, it also appears to this writer that Management is generally correct on the question of the proper way to use comparables in this particular and in many ways unique case. **What has gone before must mean something not only as regards the "historical" comparables used for negotiations for the bargaining-unit employees, but also regards the additional issue of where, in relative terms, the earlier bargaining had placed Elk Grove Village on a whole range of issues bargained for in the past along the external market comparisons.** To do anything else would give unique advantage to MAP as the new incumbent Union; additionally, such a result is nowhere mandated by any provisions of the Act I could find. *Goldstein* at 46 (emphasis mine).

What I find significant in Mr. Goldstein's ruling is that he took this position (correctly, I believe) with respect to a *successor* police union (MAP), even though that union had nothing to do with the prior collective bargaining agreements. Mr. Goldstein astutely concluded:

The single fact of a change in Union representation cannot recreate the entire process, as I have indicated above, and that critical conclusion obviously shapes many of the determinations that are to follow, I specifically note. *Goldstein* at 47.

I think it noteworthy that, to the parties' credit, the three most recent contracts – 1996-1999, 1999-2002, and 2002-2006 – were the product of *voluntary* negotiations between these parties. They have avoided interest arbitration and in the process have placed themselves in comparative positions they felt equitable and advantageous to their economic interests. Significantly, the alternative – interest arbitration – was avoided. And as Mr. Goldstein stated, "what has gone before must mean something . . ." *Goldstein* at 46. **Accordingly, while it is indeed appropriate to note historical trends in rankings, including losses and gains, changes in relative rankings lose their significance over time when the relevant rankings are the result of arms-length bargaining. In certain circumstances there may be exceptions, but in general this**

principle represents the better weight of authority in interest arbitration.⁴ Arbitrator Goldstein said it best when he observed above: “It is not the responsibility of the arbitration panel to correct previously-negotiated wage inequities, if any. The concern of the panel and its authority to evaluate comparisons is limited to the current agreement.”

There is yet another consideration operative in these kinds of cases. Salary rankings are only one component of a contract. It may very well be the case that Skokie Firefighters and Lieutenants have lost some overall ground because of trade offs and *quid pro quos* they themselves implemented. In today’s market, for example, it is not unheard of for Unions to take less salary up front, and agree to a very long-term contract, in order to “lockup” their insurance.⁵ Thus, one reason interest arbitrators are reluctant to order changes in the *status quo* is that a party may have paid dearly for such a benefit by forgoing salary or another benefit. See, e.g., *City of DeKalb* (Goldstein, June 9, 1988) (where the Arbitrator stated: “Interest arbitration . . . is designed to merely maintain the *status quo* and keep the parties in an equitable and fair relationship, according to the statutory criteria.”); *Village of Arlington Heights and IAFF* (Briggs, January 29, 1991) (“Interest arbitration is artificial. It is a substitute for the real thing – a voluntary settlement between the parties themselves through the collective-bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . the party wishing to change the status quo must present compelling reasons to do so.” (Briggs at 12, Emphasis added)); *Will County and MAP, Chapter 123* (McAlpin, October, 1998) (“When one side wished to deviate from the *status quo* . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.”).

The point I’m making is this: I don’t see either offer – close by all accounts – as resulting in a big “make up” increment for the Union. What the Employer’s offer does is to maintain a comparable place that the parties negotiated over many years. And when considered with the rest

⁴ It goes without saying that this principle works both ways. An employer seeking a reversal in a trend established over the years by the parties pursuant to bargaining, such as health insurance, has a more exacting burden than if the trend was operative because of interest arbitrators acting like historical “circuit riders,” imposing their own sense of economic justice on the parties.

⁵ The recent collective bargaining agreement between the City of Chicago and the Teachers (AFT) for five years, and the agreement between the City of Joliet and the Firefighters for seven years, and the DeKalb & Firefighters just-concluded agreement, are examples illustrating this point. Issues other than salary can direct the outcome of negotiations and result in an distribution of benefits totally dependent on factors than may not be apparent by reference to mere salary rankings. Rarely, if even, is a valid competitive economic picture ascertained by mere reference to base salary rankings.

of this award (specifically, EMT paramedic stipend, acting-up pay, vacation conversion, *infra*), the package is more than competitive and, more important, arguably reflective of the position the parties would have placed themselves if left to their own devices.

(2) National Trends Favor the Administration's Offer

Looking at national trends, state and local government contracts for 2006 provided an average increase of 3.1%, and a median increase of 3.0%, the same increase as reported in 2005. (Er. Ex. 19). For 2007, the data indicate average increases of 3.0%, the same increase as reported for 2006 by the Bureau of National Affairs (Er. Ex. 20). Both offers exceed national bargaining trends, with the data favoring the Administration's offer.

(3) Differentials Between Firefighters and Lieutenants

Since both offers contain an adjustment for Lieutenants, it is appropriate to examine external salary differentials between firefighters and lieutenants. 2006 Salary Differentials are as follows:

2006 Salary Differential

Municipality	Firefighter Base Salary	Lieutenant Base Salary	Differential
Arlington Heights	65,519	83,220	21.46%
Des Plaines	68,804	83,017	20.66%
Elk Grove	69,056	82,653	19.69%
Elmhurst	68,305	81,233	18.93%
Evanston	65,303	75,211	15.17%
Glenview	69,039	83,072	20.33%
Highland Park	68,967	82,020	18.93%
Morton Grove	N/A	N/A	N/A
Mt. Prospect	66,998	78,796	17.61%
Niles *	N/A	80,569	N/A
Northbrook	68,518	82,416	20.11%
Oak Park	N/A	N/A	N/A
Park Ridge *	N/A	N/A	N/A
Wheeling	67,578	82,416	21.96%
Wilmette	62,954	79,207	25.82%
Skokie (2005 figures)	65,098	76,266	17.16%
IAFF Proposal	67,702	79,312	17.15%
Average	67,640	81,142	20.06%

Relation to Average	62	(1,830)	(2.91%)
Rank	9 of 15	10 of 13	11 of 12

Source: Union Ex. 85 (revised)
Niles & Park Ridge not included in average

As indicated, the 2006 Firefighter-Lieutenant average salary differential for the comparables is 20 percent. The Village's 2005 differential of 17% is slightly less, around 3.0 percent, than the average for 2005. The Employer's offer includes a one-half percentage adjustment (1/2%) for Lieutenants for 2006 and 2007, an additional 1.0%. The Union's differential is 1.0%, effective 11/1/07 and another 1.0% effective 11/1/08, a one percent difference over the term of the contract. Both proposals move the Lieutenants closer to the average.

b. Internal Analysis

There is no serious dispute that internal comparisons are important in the bargaining and interest arbitration process. Arbitrator Neil Gundermann, in *Village of Skokie & IAFF Local 3033* (1993), discussed the importance of the internal criterion and had this to say on the subject:

Arbitrators in interest disputes frequently consider not only external comparables, which the Illinois Public Labor Act mandates be considered, but internal comparables as well. Internal comparables are considered for at least two purposes: first, to determine if there is a pattern of settlements between the employer and its bargaining units which may be applicable to the dispute before the arbitrator; and second, to determine if there has been an historical pattern of settlements involving bargaining units.

Generally, where internal comparables are considered for the purpose of determining if there is a pattern of settlements it involves a situation where agreements have been reached between the employer and a number of bargaining units and either the union or the employer is attempting to break the settlement pattern. *Id.* at 30.

Both parties have presented data concerning the various terms and conditions of the collective bargaining agreements between the Village of Skokie, the Firefighters, and the Police Officers. Indeed, at one time the Village could assert that "the most important salary relationship is between police and firefighters." *Goldstein* at 46.

With few exceptions, salary adjustments between police and fire have been remarkably similar, as illustrated by the following data:

**PERCENTAGE SALARY ADJUSTMENTS FOR POLICE AND
FIRE BARGAINING UNITS, MAY 1, 1999 TO DATE**

<u>Adjustment Date</u>	<u>Firefighters</u>	<u>Fire Lieutenants</u>	<u>Police Officers</u>
5/1/1999	4.0%	4.0%	3.0%
5/1/2000	3.5%	3.5%	3.5%

11/1/2000	—	—	1.80%
5/1/2001	3.75%	3.75%	3.5%
5/1/2002	3.75%	3.75%	3.5%
11/1/2002	—	1.0%	1.0%
5/1/2003	3.5%	3.5%	3.0%
11/1/2003	0.75%	1.0%	0.69%
5/1/2004	3.75%	3.75%	3.5%
5/1/2005	3.5%	3.5%	3.5%
5/1/2006	3.5% *	3.5% *	3.25%
11/1/2006		0.50% *	0.17%
5/1/2007	3.75% *	3.75% *	3.50%
Total (uncompounded)	33.75%	35.50%	33.72%

*** Employer offer**

Source: Employer Ex. 32, as revised by the Village's Final offer. See, *Brief for the Employer* at 16.

Significantly, since May of 1999, total adjustments for Firefighters are 33.75% while Police total 33.72%, virtually the same. Over a period of time covering the last two contracts, the total percentage increases received by the Village's Firefighters are just 0.03% more than police officers. The percentage increases received by the fire lieutenants over the same period are 1.78% higher. The Village's final offer of a 3.75% increase effective May 1, 2007, is higher than the 3.5% salary increase effective May 1, 2007 for the police unit.⁶

To the extent that parity-type arguments are being advanced (R. 416), the Employer's numbers are right on point. There is, as Arbitrator Goldstein put it, "an essential balance between police and fire salaries, and that the non-bargaining unit employees are really not a factor in the equation." *Goldstein* at 49. Both offers maintains this balance.

c. Cost-of-Living Data

The unadjusted 12-month cost-of-living increase ending in April 2007, as measured by the CPI, is 2.6% (Er. Ex. 17). The forecast for the core CPI figure is similarly low at 2.3% in each

⁶ The Village recognizes that there is a possibility of an equity adjustment as of November 1, 2007 for the FOP unit if necessary to bring Skokie's top-step police officer base salary up to the agreed to ranking "among the communities that the parties have historically used for comparability purposes." (Jt. Ex. 6, Section 13.1; *Brief for the Employer* at 17 n.4). As I note later in this opinion, tying the FOP to external criteria necessarily weighs against maintaining internal rankings, including parity considerations.

of the next three years (Er. Ex. 18).⁷ Both proposals on salary are within reasonable parameters relative to the CPI.

Arguably, cost-of-living trends will have more influence in bad times (i.e., when CPI increases are high), than when trends are low. Additionally, the most common way to view CPI data in terms of negotiations and interest arbitration is to use the year since the parties last negotiated over wages. As pointed out by Arbitrator Elliott Goldstein in his 1990 reopener award between these parties (Er. Ex. 23), "These figures are geared to present a picture of what happened since the last pay raise for which the parties bargained and agreed." And in *Kendall County and Sheriff's Department* (1994), Arbitrator Goldstein declared:

Additionally, each party has had recourse to cost of living data to justify its offer and discredit the other party's. As I have acknowledged, while cost-of-living does not exclusively control an interest arbitration . . . it is certainly one factor in any fair assessment of a final offer." *Goldstein* at 19.

Analysis of the cost-of-living data indicates an average of approximately 2.4% to 2.3% from 2001 to 2006, a number that favors both offers, with the nod going to the Administration.

d. Labor Market Considerations

The Administration advances the argument that among the criteria used in interest arbitration cases to determine whether salaries and benefits are competitive is the relative ease or difficulty in attracting qualified applicants, as well as the turnover rate among employees involved. (*Brief for the Employer* at 22-25). The validity of this criterion has been recognized by numerous arbitrators. In *Village of Arlington Heights*, ISLRB Case No. S-MA-88-89 (1991), Arbitrator Steven Briggs, had this to say on an employer's ability to attract and retain employees in relation to interest arbitration awards:

A third factor supporting adoption of the Village's salary offer concerns its record of attracting and retaining employees in the fire protection service. If wages were too low in relation to comparable jurisdictions, the Village of Arlington Heights would likely have experienced past difficulty in recruiting qualified applicants and encouraging those hired to stay. According to Village Exhibit 28, nearly 205 (15 out of 82) of the Firefighters in the bargaining unit left full-time jobs with other departments to join the Arlington Heights Fire Department. Village Exhibit 27 makes it abundantly clear that the Village enjoys an application rate well beyond what it needs to fill its few vacancies. And Village Exhibit 30 shows that one hired, Arlington Heights Firefighters do not voluntarily leave the Village's employ. * * * Overall, these statistics support the conclusion that the employment package received by Arlington Heights Firefighters (i.e., their wages, hours and working conditions) has been generally competitive with those offered in comparable jurisdictions. Catch-up is not warranted.

Briggs at 22-23.

⁷ As this award was being finalized, Mr. Clark, on August 23, 2007, submitted additional data on the most recent CPI data. Counsel points out that recent CPI information shows that all-city CPU and Chicago metropolitan area CPI-U increased by 2.4% and 3.1%, respectively, for the 12 months ended July 2007. I have accordingly considered counsel's data.

In *City of Highland Park & Highland Park Firefighters Association, Local 822* (1995), Arbitrator Goldstein likewise gave credence to labor market considerations:

In fact, the more probative public interest here is the City's payment of wages sufficient to attract and retain competent fire fighting personnel. *Goldstein* at 51-52, as cited in *Village of Elk Grove & MAP Local 141, supra* at 21.

I agree with Arbitrator Briggs' and Goldstein's position to this extent: A showing that an employer is having problems retaining competent staff, evidenced by high turnover, or attracting top-notch applicants would, other things equal, signal a disequilibrium in the labor market. Skokie has had no problems in turnover or retaining staff. Indeed, since June 23, 1999, the evidence record indicates not a single instance of voluntary turnover (Village Ex. 8, 9, 11). While this factor is not dispositive of the ultimate resolution on wages, it does support a decision for a market increase necessary to remain competitive in the market. Both parties' offers are within the competitive labor-market range.

Having said this, the Village's offer *at the top step* actually improves the Skokie bargaining unit. As of May 1, 2002, Skokie's top step of \$58,138 placed the Village 10th of 15th in the comparables (Er. Ex. 51). Based on the Village's final offer of a top step of \$67,376, effective May 1, 2006, *Skokie moves up to 9th among the comparables* (Er. Ex. 52). This is noteworthy when considering the Union's "catch-up" argument. It also supports my argument that an interest arbitrator has to look at more than trends in the base salary when evaluating final salary offers. Placement on the salary index, and other benefits, such as vacation allowances, etc., are also a consideration. Also relevant: As of May 1, 2006, the effective date of the parties' successor collective bargaining agreement, a total of 24 members of the bargaining unit were in salary steps below the top step, which means that all 24 will be eligible for one or more step increases during the term of the new contract. Moreover, as noted, Skokie's total sworn personnel (116) slots them at number one in terms of employees, just next to Evanston (110), mandating an overall higher payroll on both counts. I find this factor noteworthy in any analysis of the parties' positions.

For the above reasons, the nod goes to the Administration. The Village's final salary offer is awarded.⁸

⁸ Under the Illinois statute I do not believe an interest arbitrator has the authority to bifurcate a hearing and rule on a contract term *before* any other issues are considered. While one or two arbitrators have done so, even with the approval of the parties, if they are operating under the statute, and not the parties' negotiated procedure, they are without authority to do so. Clearly, such a procedure undermines the entire purpose of final-offer arbitration.

In the present case, both parties advanced salary proposals and contract term proposals that are "in sync" – "three and three" (Union), and "four and four" (Employer) without ever asserting that the contract term should be decided before submitting final offers.

Significant in this case is this: Union counsel did not object to the Employer's argument as to what should happen if a three-year contract term was awarded (Union proposal), and if the Employer's salary offer was selected, which would result in the last year of the Village's offer being dropped, leaving the Administration with a three-year salary offer. Recognizing that some interest arbitrators have acquiesced to a party "lopping off" the last year if a contract term was awarded that was less than the terms of a party's salary offer, I adopt this procedure on a non-precedent basis in this case, although I have serious misgivings whether this is permissible under the statute. Arguably, if deleting the odd year were permissible under the Act (whenever the term is one year less than a salary offer), *both* parties would always advance salary proposals for the last year, knowing that an

3. **EMT Paramedic Stipend – Section 6.4**

Union: Increase Paramedic stipend to the following amounts:

- a) Effective 5/1/06 - \$3,850
- b) Effective 5/1/07 - \$4,000
- c) Effective 5/1/08 - \$4,150; All as described in Union Ex. 3.

Employer: Revise Section 6.4 as follows:

An employee who is certified and functioning as an EMT-P shall receive stipend per fiscal year (pro rata if less than a year) on the basis of the following:

Eff. May 1, 2006	Upon Paramedic Certification	\$2,500
	After 2nd Year	\$3,625
Eff. May 1, 2007	Upon Paramedic Certification	\$2,600
	After 2nd Year	\$3,750
Eff. May 1, 2008	Upon Paramedic Certification	\$2,700
	After 2nd Year	\$3,875
Eff. May 1, 2009	Upon Paramedic Certification	\$2,800
	After 2nd Year	\$4,000

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Both parties' offers differ from their pre-hearing offers of settlement. While the Village retained its two-tier approach in its final offer, it increased the amount of the stipend that would be paid over the Employer's four-year term to a new maximum of \$4,000 for the 2009-2010 fiscal year. (*Brief for the Employer* at 32). The Union maintained its single-tier approach to paramedic stipends and reduced the amount of the stipend for each of the three years covered by the Union's final offer, ending with a stipend of \$4,150 as of the 2008-2009 fiscal year.

Position of the Village. As pointed out by the Employer, a side-by-side review of the parties' final offers shows that the Village's final offer is more in line with the parties' collective bargaining history than the Union's final offer. While the Village's final offer is based on two tiers rather than

arbitrator would just cut the last year if the awarded term was less than the salary offer. The better view, and one consistent with the purpose of the statute, is that the contract term and the salary offer would go "hand in hand" and not be split.

three, the Union's final offer totally eliminates the tier structure that the parties voluntarily agreed to in their last contract. Thus, a new paramedic would receive an increase of over \$2,000 in the first year of the contract over what the parties voluntarily agreed was appropriate compensation for the term of the 2002-2006 collective bargaining agreement (see, *Brief for the Employer* at 34-35).

The Union's Position. The Union responds that the Employer's final offer, while acknowledging the deficiency in the existing benefit, attempts to mitigate the delay in payment of paramedic certifications by reducing the period from four years to two years (*Brief for the Union* at 39). The Union goes on to argue that "these modifications still will leave Skokie Firefighters with a below-average stipend.

Analysis and Award. A side-by-side comparison of the parties' final offers indicates the following:

<u>Effective Date</u>	<u>Village's Final Offer</u>	<u>Union's Final Offer</u>
May 1, 2006	\$2,500 upon certification \$3,625 after 2 nd year	\$3,850
May 1, 2007	\$2,600 upon certification \$3,750 after 2 nd year	\$4,000
May 1, 2008	\$2,700 upon certification \$3,875 after 2 nd year	\$4,150
May 1, 2009*	\$2,800 upon certification \$4,000 after 2 nd year	No Offer

* Inoperative in view of award of a three-year contract. See, *Brief for the Administration* at 34.

An analysis of the 2006 Paramedic Differential indicates that Skokie is well below the average relative to the bench-mark jurisdictions:

2006 Paramedic Differential

<u>Municipality</u>	<u>Type</u>	<u>Differential</u>	<u>Percentage Differential</u>
Arlington Heights	Scale	\$5,301	7.59%
Des Plaines	Scale	4,663	6.78%
Elk Grove	Fixed	3,400	4.92%
Elmhurst	N/A	N/A	N/A
Evanston	Percentage	4,036	6.18%
Glenview	Scale	3,583	5.19%

Highland Park	Scale	3,579	5.19%
Morton Grove	Fixed	3,740	5.62%
Mt. Prospect	Fixed	2,500	3.73%
Niles	Scale	N/A	N/A
Northbrook	Scale	4,021	5.87%
Oak Park	Percentage	3,696	5.50%
Park Ridge	Percentage	3,972	6.0%
Wheeling	Scale	3,061	4.53%
Wilmette	Scale	4,508	7.16%
Average		\$3,843	5.71%
Local 3033 Proposal Fixed		\$3,850	5.69%
Rank		7 of 14	7 of 14
Relation to Average		7	-0.03%
Village Proposal Fixed		\$3,625	5.31%
Rank		9 of 14	9 of 14
Relation to Average		(218)	-0.40%

Source: Union Ex. 41R

For 2006, the Village's offer keeps the paramedic differential ranking at 9, while the Union's final offer bumps the ranking to 7. In 2002, at a maximum stipend of \$3,300 the Skokie Paramedics were in 10th place out of the 14 bench-mark jurisdictions.

I also find the Union's argument regarding Exhibit 45R and an analysis of stipends made over a 10-year period valid. When payments made over a 10-year career are analyzed, Skokie's average is reduced to \$2,954 which drops them to a ranking of 13 of 14 and \$672/yr below the average. (see, *Brief for the Union* at 39).

Equally important, I also find the Union's proposal is supported by work-load factors. When total runs are taken into account, Skokie ranks 3rd behind only Evanston and Des Plaines (8063, 7267, and 7242). In 2006, Skokie's rescue EMS runs put them in second place behind Des Plaines. In terms of total calls, Skokie ranked 2^d again behind Evanston but ahead of Des Plaines (8099, 7576 and 7443). Both Des Plaines and Evanston receive a much higher paramedic stipend than what the Union is proposing, and this stipend is based on a percentage of salary, not a fixed amount (Des Plaines 6.78%, Evanston 6.0%)(see, *Brief for the Union* at 41). The disparity in work loads *vis-à-vis* salary (in this case paramedic stipends) is an important consideration, and in this case this analysis favors the Union's proposal.

What does not favor the Union's case is a complete elimination of a tier system for compensating paramedics. In their most recent contract, the parties agreed to a three-tier structure

for the paramedic stipend that substantially increased the maximum amount that an employer could receive for being certified and functioning as a paramedic from \$2,250 to the following amounts during the term of the successor collective bargaining agreement:

Effective Date	Maximum Stipend
May 1, 2002	\$3,000
May 1, 2003	\$3,100
May 1, 2004	\$3,400
May 1, 2005	\$3,499

The three-tier structure was agreed to by the parties, presumptively as a way to significantly increase the maximum paramedic stipend (*Brief for the Employer* at 33). If the Union's final offer were accepted, and the tier system totally eliminated, a new paramedic would receive an increase of over \$2,000 in the first year of the contract over what the parties voluntarily agreed was appropriate for the 2002- 2006 agreement. Both final offers would provide significant increases for new paramedics, as well as paramedics after two years.

As pointed out by the Union, this is the third time that the issue of paramedic stipend has been raised by the Union in an interest arbitration. Noteworthy is the Village, relying on a previous award issued by Arbitrator Goldstein (where the Union's proposed increase in the stipend was rejected), proposed a stipend that still would have left the stipend below average. Arbitrator Gundermann awarded the Union's offer based on external comparability and work load considerations.

I find that external criteria and work-load considerations outweigh the Employer's two-tier structure approach. The Union's proposal moves Firefighter/Paramedics' wages closer to their work-load rankings than the Administration's final offer.

For the above reasons, the nod goes to the Union regarding the paramedic stipend. Its final offer is awarded.

4. Hours of Work - §10.2 (Normal Work Day and Work Week), §10.3 (Normal Work Cycle) & §10.7 (Computation of Straight Time Hourly Rate of Pay)

Union:

- a) Effective 5/1/07 reduce the length of the normal work week by reducing the period for scheduling Kelly Days off from every 18th shift to every 14th shift;
- b) Modify the FLSA work cycle from 27 days to 21 days (§10.3) to continue elimination of FLSA overtime liability;
- c) Modify annual work hours for computation of straight time hourly rate from 2,750 to 2,711; All as described in "*Exhibit 4*".

Employer:

The Employer's final offer on both Normal Work Day and Work Week (Section 10.2) and Normal Work Cycle (Section 10.3) is to maintain the *status quo*. With respect to Computation of Straight Time Hourly Rate of Pay (Section 10.7), the Employer's final offer is to revise Section 10.7 to read as follows:

Section 10.7. Computation of Straight Time Hourly Rate of Pay. The straight-time hourly rate of pay for employees shall be calculated by dividing the employee's annual base salary by the annual hours of work. The annual hours of work for employees assigned to 8-hour shifts shall be 2,080. The annual hours of work for employees assigned to 24-hour shifts shall be 2,750 (2,650 hours effective May 1, 2007).

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. The Union's final offer tracked its pre-hearing offer of settlement. The Village reduced the annual hours of work used to compute overtime from the 2,700 figure as of the first pay period after issuance of the Arbitrator's award to 2,650 hours, effective May 1, 2007 (*Brief for the Employer* at 37). Thus, the difference in the Union's and the Village's proposals is that the Union is advancing a reduction in the average work week from 2,750 to 2,711 hours of work.

Position of the Village. In the Employer's view, its final offer on this issue should be accepted for at least three reasons:

The Village's final offer on the annual hours of work used to calculate overtime is more generous than the Union's final offer. The Administration points out that its final offer of 2,650 hours is significantly more favorable to the bargaining unit than the Union's final offer of 2,711 hours. The reason for this: The Village would much more prefer to pay employees more for overtime than it would to increase the number of Kelly days by two as the Union has proposed. The difference between the final offers is sixty cents (\$0.60) per hour at the top annual salary of \$69,903,

or ninety cents (\$0.90) at the overtime rate (*Brief* at 37-38). What the Village is willing to do, and has demonstrated in its final offer, is to provide more money in lieu of more paid time off.

Second, the Union's final offer to schedule a Kelly day every 14th shift, rather than every 18th shift, would result in appropriately two additional 24-hour shifts of paid time off. In the Administration's opinion, the evidence record simply does not support an increase in paid time off, let alone an increase of that magnitude. Here the Village points out that looking at the total paid time off for all comparables with 5, 10, 15, 20, and 25 years of service, Skokie's position rank vis-à-vis the comparables improves as Skokie's generous vacation allowance kicks in. Thus, while Skokie is tied at 13th place at 5 years, it is at 8th place at 20 years, and is at 3rd place at 25 years (Er. Exs. 42, 45, 46).

Third, the Administration submits that the Union has not offered a *quid-pro-quo* for its costly Kelly Day final offer (*Brief* at 39). According to the Village, the Union's final offer for two additional Kelly days is the functional equivalent of a 2% increase in salary, an increase for which the Union has offered no *quid pro quo*. The Village points out that when the parties negotiated the current provisions governing Kelly days (one every 18th shift), there was a *quid pro quo*, as acknowledged by the Union's counsel (i.e., it totally eliminated the Village's FLSA overtime liability and the administrative hassles of trying to keep track of whether employees are over the maximum) (*Brief* at 40).

The Union's Position. The Union's position is that its final offer – providing for a Kelly day every 14th shift – is justified based on external comparability alone. The Union's proposal produces an average (1.6 additional days) slightly less than two Kelly Days per firefighter per year (*Brief for the Union* at 43-44). No "breakthrough" analysis is appropriate, argues the Union, since Kelly days are already a recognized benefit in the parties' contract. While recognizing that the Village's proposal would reduce the annual hours of work by more than 100 hours, the Administration's proposal does not contemplate or acknowledge any explicit recognition of additional Kelly Days. In the Union's words: "The Village's proposal is a novel one which seeks to alter very significantly the existing relationship between Firefighters' hours of work and other paid-time-off benefits." (*Brief* at 43).

Addressing other time-off benefits at Skokie, such as holidays and vacation days (Er. Exs. 42-46), the Union submits that these exhibits are based upon "snapshot" analysis at five-year intervals. In addition to omitting relevant data (i.e., years 1 to 4, 6 to 9, 11 to 14, etc.), the Village ignores the differences between Kelly Days and other paid-time-off benefits (*Brief* at 46).

The Union also asserts that the Village's offer, while increasing the bargaining unit's hourly rate to an appropriate level, has the effect of reducing Skokie's Firefighters' other paid-time-off benefits by more than four days (*Brief* at 48-51). In the Union's eyes, "the modest increase in hourly rate (+3.6%) is an insufficient *quid-pro-quo* to impose this burden on the bargaining unit." (*Brief* at 50).

Analysis and Award. The existing work schedule provides for a Kelly Day every 18th shift, producing an average work week of 52.88 hours and annual paid hours of 2,750. As indicated, the average work week among the comparables is 2,668 hours, which puts Skokie's bargaining unit 82 hours below the average and at a rank of 12 of 16 (Union Ex. 52R). The Village's proposal will put Skokie slightly below the average work week of comparable firefighters (2,668 to 2,650). Looking at the number of Kelly Days or work-reduction days in the bench-mark jurisdictions, the data indicates the following:

Work Reduction Days

<u>Municipality</u>	<u>Days Off</u>	<u>Description of Work Reduction Days</u>
Arlington Heights	13.50	Every 9 th day
Des Plaines	8.0	8 days
Elk Grove	6.75	Every 18 th day
Elmhurst	9.00	9 days
Evanston	13.50	Every 9 th day
Glenview	12.15	Every 10 th day
Highland Park	6.0	6 days
Morton Grove	8.0	8 days
Mt. Prospect	13.00	13 days
Niles	13.00	13 days
Northbrook	5.0	5 days
Oak Park	12.15	Every 10 th day
Park Ridge		Included in total time off
Wheeling	4.00	4 days
Wilmette	6.75	Every 18 th day
Skokie	6.75	Every 18th day
Average	9.34	
Relation to Average	(-2.60)	
Rank	10 of 15	

Source: Union Ex. 53R

The above table, however, does not tell the entire story. An examination of total-paid-time off for the comparables for 24-hour shift employees with various years of service (Er. Exs. 42-46) reveals more than competitive benefits for this bargaining unit *as employees move up in seniority/years*. The data, compiled from five exhibits, indicate the following:

**TOTAL PAID TIME OFF FOR 24-HOUR SHIFT EMPLOYEES
WITH VARIOUS YEARS SERVICE AS OF JANUARY 1, 2006**

	Work Reduction days	Holidays and/ or personal days	Vacation days	Total paid time off	Relative Ranking
Skokie @ 5 years	6.75	3	7	16.75	13 th
@ 10 years	6.75	3	9	18.75	11 th
@ 15 years	6.75	3	11	20.75	9 th
@ 20 years	6.75	3	14	23.75	8 th
@ 25 years	6.75	3	16	25.78	3 rd

Source: Er. Exs. 42-46, *et seq.*

The above summary indicates that Skokie's position rank is not as disadvantaged as the Union would otherwise assert. To the contrary, as noted, at 20 years Skokie moves to 8th in relative ranking, and at 25 years it tops out at 3rd. This is not an unhealthy schedule of paid time off.⁹

I also credit the Administration's argument that when two outliers are eliminated from the analysis (Elk Grove and Park Ridge), Skokie at 2,431 (actual annual hours) fares much better relative to the average of 2,406 (Union Ex. 35R; *Brief for the Employer* at 39).

Finally, the Employer's argument that there is an absence of a *quid pro quo* for two additional Kelly days is well taken. An additional two Kelly days would collectively result in the loss of service of 4,992 hours (104 bargaining unit members x 48 hours each), not an insignificant number. As noted, the Village's proposal will place the bargaining unit slightly below the average work week of comparable firefighters (2,668 to 2,650), which is an increase in the hourly rate of approximately 3.6% (*Brief for the Union* at 50), an advantage to a firefighter when he or she receives a cash benefit or overtime. I do not see the Village's proposal "as a clever artifice which is guaranteed to sow more seeds of discord between the parties." (*Brief* at 51).

The Employer's final offer is awarded.

⁹ I recognize the difference between a Kelly Day, a so-called work-reduction day, and other paid-time-off benefits, such as vacation and holidays. Work reduction days are constants throughout an employee's career for each member of the bargaining unit irrespective of his or her service time. Also, work reduction days are not paid time off since the number of days are subtracted from annual paid hours to produce the straight time hourly rate. See *Brief for the Union* at 46 (explaining this difference). Still, in any analysis of a proposal for additional Kelly Days, it is appropriate and commonplace to reference total paid-time-off benefits in determining the merits of final offers.

5. Serving in Acting Capacity ("acting-up" pay) – §12.21

Union:

Modify existing language to provide that employees assigned to perform the duties of officers (FF as Lt.; Lt. as Capt.) be compensated respectively as follows: (1) Acting Lieutenant – a 5% a pay differential above the employee's applicable hourly rate and (2) Acting Captain – a 4% pay differential for all hours worked in the acting capacity; provided that they serve as acting officers a minimum of 12 hours of the shift, as described in "*Exhibit 5*".

Employer

Revise the second paragraph of Section 12.21 to read as follows:

Based on the arbitration award issued in 1995 by Arbitrator Randi Hammer-Abramsky, the parties have agreed to use the following 1987 base line numbers to determine occurrences of acting out of rank:

Assigned to serve as acting Captain	63
Assigned to serve as acting Lieutenant	783

Effective January 1, 2007 and January 1, 2008, the base line numbers to determine occurrences of acting out of rank shall be as follows:

	1/1/07	1/1/08
Assigned to serve as acting Captain	50	45
Assigned to serve as acting Lieutenant	700	630

No additional compensation shall be paid if the number of occurrences during the applicable calendar year does not exceed either or both of the foregoing numbers as set forth above. If the number of occurrences exceeds either or both of the foregoing base line numbers for the applicable calendar year, the rate of compensation for the occurrences that exceed either or both of the base line numbers shall be 5% above the employee's applicable hourly rate of pay for each hour that the employee is assigned to work in acting capacity during such an occurrence. For this purpose, an occurrence shall be defined as serving in acting capacity for 12 hours or more. If more than one employee is assigned to work in acting capacity during one occurrence, each employee shall be paid for the

respective number of hours that they worked in acting capacity during the occurrence in question.

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. The Village's final offer on serving in the acting capacity tracked its pre-hearing offer of settlement. While the Union's final offer continued to provide that employees serving in acting capacity as captains would be paid 4.0% more, effective May 1, 2006, for employees serving as acting lieutenants, its final offer provides that they would be paid 5% more rather than on the basis of the difference between their salary and Step E of the lieutenant salary schedule.

Position of the Village. The Administration points out that its final offer reduces the number of assignments that serves as the trigger for determining when acting pay of 5.0% above the employee's applicable hourly rate of pay is to be paid. On the other hand, the Union's final offer would completely jettison the provisions of Section 12.21 (Serving in Acting Capacity) that have evolved in straight time fashion since 1987 (*Brief for the Employer* at 45-46). And since there has been no real change in the external comparables since the last time the parties were at the bargaining table in 2002, the Arbitrator should accept the Village's final offer. "It is clearly more in line with what the parties would have agreed to if they has been able to reach agreement at the bargaining table." (*Brief* at 46).

Finally, the Village submits that the cost of accepting the Union's offer would be approximately \$23,934, based on the Village's experience in 2006 with respect to employees in an acting capacity. Moreover, this is the cost before any increases in salary that will be awarded based on either the Village's final offer or the Union's final salary offer. This cost information constitutes yet another reason for rejecting the Union's final offer (*Brief* at 46-47).

The Union's Position. Citing external comparables, the Union submits that in each and every jurisdiction acting pay is recognized and paid. The amount of pay varies depending upon the particular formula applicable. Common to all the payments is an agreement to pay an additional pay differential for employees performing the duties of a higher rank. The average percentage differential above the regular firefighter rate is 11.57%. The Union maintains that relative to the comparables, the 5.0% differential is modest (*Brief for the Union* at 53-54). In the Union's view, "the 'market' has clearly risen well above the scheme that the Village seeks to perpetuate in perpetuity."

Analysis and Award. An analysis of acting out-of-rank data in the external bench-mark jurisdictions indicates that Skokie is seriously out of line with the comparables. Union Exhibit 47R clearly supports the Union on this issue:

ANALYSIS OF ACTING OUT-OF-RANK

Municipality	Acting Pay	Hours to Qualify	Extra Hourly Rate	Differential	Description
Arlington Hts	Yes	8	\$1.89	7.50%	7.5% above regularly hr. rate for all hours
Des Plaines	Yes	24	\$2.95	12.12%	Rate attributable to Lt. step A
Elk Grove	Yes	0	\$1.22	5.0%	5% acting stipend on hr. for hr. basis
Elmhurst	Yes	0	\$1.78	7.30%	75% difference between top step and Lt's 2d step
Evanston	Yes	4	\$3.80	15.18%	G step pay rate for rank assigned
Glenview	Yes	0	\$3.00	13.16%	\$3.00/hr in addition to regular rate of pay
Highland Park	Yes	4	\$1.54	6.00%	(Annual Salary/121.33)/24 x 6% x # of hours
Morton Grove	Yes	0	\$2.50	10.00%	Hourly rate of pay plus additional 10%
Mt. Prospect	Yes	0	\$3.37	13.57%	\$3.37/hr in addition to regular rate of pay
Niles	Yes	0	\$3.33	12.38%	Hourly rate of Lt. for all hours worked
Northbrook	Yes	0.5	\$3.36	20.23%	Hourly rate of 12-month step Lt. (.5 hr increments)
Oak Park	Yes	0	\$2.72	11.02%	\$2.72/hr additional compensation
Park Ridge*	Yes	4	\$2.08	8.82%	\$50/day for four hours or more
Wheeling	Yes	2	\$4.35	18.75%	15 minutes add. pay @ 1.5 x reg. Pay for every 2 hrs
Wilmette*	Yes	2	\$2.76	12.50%	2 hrs pay at 1.5 x reg rate of pay

* Park Ridge & Wilmette #'s assume 24 hours worked

Local 3033 Proposal		12	\$1.18	5.0%	5% above hourly rate for each hour worked (12 hrs or more)
Rank		15/16	16 of 16	15 of 16	
Relation to Average		8.8	(\$1.53)	-6.57%	
Village proposal		8400	\$1.18	5.0%	5% above hr. rate for each hr. after 700 occurrences (12 hours or more being an occurrence)
Rank		16 of 16	16 of 16	15 of 16	
Relation to average		8,396.8	(\$1.53)	-6.57%	
Average		3.2	\$2.71	11.57%	

As indicated, the average percentage differential is 11.57%. The Union's proposed 5.0% differential is more than reasonable relative to the comparables. Significantly, only Elk Grove pays a differential as low as 5.0%, *and there is no minimum hours to qualify*. They are paid the differential on an hour-for-hour basis. In terms of qualifying hours, the Union's proposal is more than fair, requiring a minimum of 12 hours to qualify. As noted, only Des Plaines with a 24-hour minimum is higher. But there, the differential (12.12%) is higher. Also favoring the Union, the average number of hours to qualify among the comparables is only 3.2 hours with 7 comparable communities paying hour-for-hour with no minimum hour qualification. The Union is certainly correct in arguing "there is no parallel the Village can cite for its proposal." (*Brief* at 54).

There are times when a statutory criterion so favors a party that other considerations pale in comparison. See, *City of Batavia & IAFF Local 3436*, Case S-MA-95-36 (Hill, 1995) (awarding an "acting up" provision of one and one-half hours when the duties of a higher rank were performed for a minimum of eight hours, noting that "the Union's final offer is entirely consistent with the practice of comparable communities."). On external comparability alone (specifically, Union Ex. 47R), where each and every bench-mark jurisdiction grants acting-up pay, the Union has advanced the better argument. The 1995 award by Arbitrator Randi Hammer-Abramsky has little relation to existing comparables. The present situation is indefensible relative to the externals. In terms of qualifying hours, the Union's proposal is modest, requiring a minimum of 12 hours of work to qualify.

Finally, the Union's 5.0% proposal produces acting pay for a 24-hour shift of only \$28.32. With respect to the Administration's cost argument, unlike a salary index this is truly an item where (at least in theory) the Employer has significant control over the situation.

For the above reasons, the Union's offer is awarded.

6. Sick Leave – Good Attendance Incentive – §6.1

Union:

Modify existing language to eliminate time off incentive and slot reserved for scheduling Sick Leave Bonus Days off and substitute cash incentives payable into a post-retirement medical savings account, as described in "*Exhibit 6*".

Employer:

Maintain the *status quo* with respect to Section 4.2. (Sick Leave)

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Both parties' final offers match *verbatim* their pre-hearing offers of settlement. However, as a result of the Village's final offer on economic issue No. 10 (Scheduling of Furloughs and Floating Holidays), the contractual provisions governing the use of SLBDs would be reinstated.

Position of the Village. In support of its proposal, the Administration first points out that under the 2002-2006 collective bargaining agreement, the parties agreed that effective January 1, 2003, employees assigned to 24-hour shifts would be eligible to receive sick-leave bonus days, i.e., paid time off, based on the following schedule:

<u>No. of Sick Leave/Emergency Leave Days Used as of 12/31</u>	<u>No of Sick Leave Bonus Days/Hours</u>
None	1 & ½ days (36 hrs)
1 day	1 day (24 hours)
2 days	½ day (12 hours)
3 or more	none

The following schedule was also included in the 2002-2006 contract for employees assigned to 8-hour shifts (Jt. Ex. 1, Section 4.2(c), at p. 11):

<u>No. of Sick Leave/Emergency Leave Days Used as of 12/31</u>	<u>No of Sick Leave Bonus Days/Hours</u>
None	3 days (24 hrs)
2-3 days	2 days (16 hrs)
4-5 days	1 day (8 hrs)
6 or more	None

To further enhance the value of SLBD's, the 2002-2006 collective bargaining agreement set aside "a separate slot for scheduling sick leave bonus time for 24-hour personnel," with the agreement that "[o]nly one employee may schedule and take sick leave bonus time on any given day . . . [and] that sick leave bonus time cannot be scheduled or taken on holidays" (Jt. Ex. 1, Section 4.2(c) at p. 11). Management points out that during the term of the 2002-2006 contract the parties agreed to a Memorandum of Agreement (MOA) that superceded this scheduling provision in order to permit all employees to take all their earned vacation days and floating holidays (Union Ex. 59). Assuming that the Employer's final offer is accepted on this issue, as well as the Village's final offer on economic issue #10, the SLBD slot will be returned to its original status (*Brief for the Employer* at 50).

The Village also maintains that its contract with the FOP unit likewise contains a provision that provides up to 24 hours of paid time off for the nonuse of sick time (Jt. Ex. 6, Section 9.1 at 20). Similarly, the Village's unrepresented employees are eligible for up to three attendance recognition days (24 hours) of paid leave based on nonuse of sick leave (Er. Ex. 35).

According to the Employer, its final offer would maintain the *status quo* with respect to this fringe benefit. On the other hand, the Union's final offer would dramatically change the parties' previously agreed to program for rewarding employees based on non-use of sick leave. Rather than providing paid time off similar to other Village employees, whether or not represented, the Union's final offer would provide that employees would receive up to 72 hours of pay "to be paid into the employees' post-retirement accounts provided under Section 15.8 of this Agreement." In the Village's view, the Union's final offer contains the following three fundamental changes from what the parties previously agreed was appropriate:

- a) Rather than providing paid time off as all other Village employees presently receive, IAFF-represented employees would receive a monetary payment;
- b) The number of hours of monetary compensation that IAFF-represented employees would receive would double the amount of paid time off that they received under the parties' 2002-2006 collective bargaining agreement.
- c) The number of hours of monetary compensation that IAFF-represented employees would receive would far exceed that number of hours of paid time off that any other Village employees receive.

The Village asserts that the Union offers no *quid pro quo* for these fundamental changes, fundamental changes that will, for all intents and purposes, double the cost of this fringe benefit. (*Brief for the Employer* at 51-52).

The Union's Position. The Union proposes to convert the current existing good-attendance incentive from a time-off benefit to pay which will be placed in the eligible employee's post-employment health account. Concurrent with this conversion, the existing slot reserved for scheduling sick-leave bonus would become available for other scheduled needs (*Brief for the Union* at 56).

The Union submits that among the comparables that provide an incentive program to reward good attendance, only Skokie limits the benefit to a time-off incentive (Elk Grove provides no incentive benefit; Niles' information was not available)(Union Ex. 56R). Generally, the annual sick-leave buyback benefits provided among the comparables are less strictly tied to good attendance than the Union's offer. The prevailing benefit is to provide a cash incentive for all unused accrued sick leave days in a given year once a threshold level of sick leave days are accumulated. The Union's proposal reinforces good attendance by setting a standard – three days – and rewarding only those employees whose attendance succeeds the standard (*Brief* at 57).

Converting the good attendance incentive to a cash benefit benefits the Village in two ways, the Union points out. It creates an additional buffer against the need to schedule overtime and it makes available an additional slot for scheduling purposes (*Brief* at 59). In the Union's view, the Village has acted unilaterally to degrade the value of the existing SLBD benefit by utilizing the SLBD slot to schedule vacation days off that cannot be scheduled within the four slots allocated for that purpose (*Brief* at 58).

Citing the experience at Evanston and Peoria, the Union maintains a cash-based incentive system linked to establishing a post employment health care plan (PEHP) accounts serves as a powerful motivator for improving Firefighters' attendance (*Brief* at 59-60).

Finally, the Union submits that when the value of good attendance is considered over a 25-year period, and the impact of the cash versus time-off option is added to the Union's total compensation, the net effect is to reduce Skokie's position. (*Brief* at 62-63).

Analysis and Award. This issue has to be considered with issue #10, vacation scheduling. On both matters, the Administration advances the better argument.

The Union's proposal reinforced good attendance by setting a standard – three days – and rewarding only those employees whose attendance succeeds that standard. The parties are in agreement that it is in their common interest to provide an incentive for good attendance. The dispute is whether this incentive should be paid time off or a cash benefit. In the Union's view, cash is a better motivator than paid time off, especially when the Village has cheapened the paid-time-off benefit by utilizing the SLBD slot to schedule vacation days off that cannot be scheduled within the four slots allocated for that purpose. (*Brief for the Union* at 58-59).

As pointed out by the Village, on issues like sick leave where one party seeks a wholesale change that deviates from a uniform internal pattern, interest arbitrators have placed a heavy burden on the party proposing change. The proposal advanced by the Union – cash payments to an employee's post-retirement medical account – lacks internal comparability. Moreover, while other jurisdictions have cash incentives (so-called "buy-back" programs)(Union Ex. 56Ra & 56Rb), none have a program similar to that advanced by the Union. The Union's plea for an incentive program is meritorious, but internal criteria and cost considerations trump the other criteria. Finally, if there is a *quid pro quo* for the adoption of this benefit, it is not clear to me what it is.

Supporting this reasoning is a decision reported by Wisconsin Arbitrator Edward Krinsky. In *City of Elgin & IAFF Local 439* (2005), the Union requested a sick-leave conversion benefit that was different than that granted the other Elgin bargaining units. Unlike Skokie, the Union in Elgin offered a discernable *quid pro quo*, giving up a conversion to severance pay as a *quid pro quo* for increasing the payout at retirement. *Krinsky* at 13. In awarding the City's final offer, Arbitrator Krinsky reasoned:

The internal comparables clearly favor the City. **Moreover, in the arbitrator's view, an item such as the administration of sick leave benefits should be uniform within a municipality whenever possible in order**

to avoid confusion and unfairness. The external comparables also do not support the Union's offer on this issue.

Although the Union may be correct that a more generous pay out formula upon retirement would be beneficial to the employees and perhaps also to the City, this is a benefit which should be bargained, not imposed by an arbitrator under present circumstances.

Krinsky at 14 (emphasis mine).

I believe Mr. Krinsky's reasoning is applicable in this case, where the Union is proposing a benefit that lacks internal comparability. While on its face the Union's proposal makes sense, such a radical departure from the *status quo* should be achieved through bargaining rather than arbitral fiat. As indicated in this opinion, the parties spent little time in a give-and-take bargaining structure, which works against throwing out the *status quo* that is supported by strong internal considerations.

Finally, an examination of the comparable bench-mark jurisdictions finds no support for what the Union is proposing (Union Ex. 37R). While it is true that only two jurisdictions other than Skokie (Des Plaines and Highland Park) have a paid-time-off benefit, *no other bench-mark jurisdiction has what the Union wants – cash contributions to a PEHP plan*. Implementation of a PEHP tied to good attendance standards may have effects that are not conducive to organizational goals.¹⁰ For example, will firefighters close to qualifying for a cash contribution to a PEHP plan nevertheless show for work sick when they otherwise would take sick leave? How will such a provision effect duty trades (assuming duty trades are allowed) where the number is limited by contract? There are too many uncertainties and questions to warrant an arbitral award on this proposal. At this time in the process, a cash contribution *with an attached PEHP* is one issue that is best left to the parties' negotiators.

For the above reasons, the Administration's final offer is awarded.

7. Health Insurance – §15.1

Union: Modify existing language to provide, effective 5/1/08:

- a) Increase the amount of employee contribution for single or family coverage as applicable from 12% to 13%;
- b) Add a single + 1 [single plus one] option to existing coverage;

¹⁰ Tony Ardis, President of Peoria Firefighters Local 50, testified to the effects that a cash incentive tied to a PEHP had in his jurisdiction. After implementation, over the first six months of the contract, average sick-leave usage was reduced 2.5 days, according to Ardis. (R. 559-562). I have no reason to doubt Mr. Ardis' testimony or his conclusions regarding the short-run. What is not known is whether the observed effects will continue past a six-month period. Notably, the system described was not imposed by a third-party neutral but, rather, resulted in an accord reached by the parties.

- c) Increase the lifetime cap for PPO coverage from \$1 million to \$2 million, as described in "*Exhibit 7*".

Employer

The Village's final offer on Comprehensive Medical/Dental Insurance Program is to change the percentage that employee pays toward cost of the comprehensive medical program and dental program as follows:

- * Effective 5/1/07, increase premium contribution to 13%
- * Effective May 1, 2008, increase the lifetime cap for the PPO to \$2 million

Section 15.1 as revised to reflect the Village's final offer on the Comprehensive Medical/Dental Insurance Program is attached as Employer's Exhibit "B" (*infra*).

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. The Village's final offer on health insurance contains two material changes from its pre-hearing offer of settlement. First, its final offer deleted the proposed increase to 14%, effective May 1, 2009, that employees pay toward the cost of health insurance. Second, the Village's final offer provides that effective May 1, 2008, the lifetime maximum for PPO coverage will be increased to \$2,000,000. While the Union did not change any of the substantive changes of its pre-hearing offer of settlement in its final offer, the Union did change the effective date of its substantive changes from May 1, 2007 to May 1, 2008.

Position of the Village. The Village asserts that it is merely seeking to maintain the Village-wide uniformity with respect to its comprehensive health insurance program. Thus, the Village's final offer will result in the maintenance of the same substantive provisions that are in effect for all the Village's other employees, including the police officers covered by the FOP collective bargaining agreement.¹¹ Unlike the Village's offer, the Union's final offer would result in the following two significant differences between the IAFF bargaining unit and the FOP bargaining unit:

Whereas the Village's collective bargaining agreement with the FOP provides that employees shall pay 13% of the cost of the health insurance premium effective May 1, 2007, the Union's final offer provides that the effective date for the 13% cost sharing is not until May 1, 2008.

¹¹ While the Village's final offer provides that the lifetime maximum for PPO coverage will increase from \$1 million to \$2 million effective May 1, 2008 (which tracks the Union's final offer on this component), the Village represents that if its final offer on health insurance is accepted, the increase in the lifetime maximum for PPO coverage to \$2 million will be extended Village-wide (*Brief for the Employer* at 54 n.22).

Whereas all Village employees, including the police officers covered by the FOP contract (Jt. Ex. 6, Section 14.1 at 32) have the traditional two options for coverage (employees only and family), the Union's final offer provides that effective May 1, 2008, employees would have three options – the existing two traditional options, plus a single-plus-one option. (*Brief for the Employer* at 54-55).

In the Administration's view, arbitrators have recognized the strong interest of employers in maintaining uniformity with respect to health insurance benefits (*Brief* at 55-56, citing numerous arbitration decisions).

The Union's Position. The Union points out that in terms of the premium costs for family insurance, Skokie's cost at \$1,217/month is the second lowest, with Arlington Heights at \$1,190 slightly lower (Union Ex. 89). When the amount of employee compensation is factored in, the Village's health insurance costs are the lowest. Skokie drops slightly below Arlington Heights because the 12% rate of contribution by Skokie Firefighters is 2.0% more than Arlington Heights Firefighters (*Brief for the Union* at 64).

Despite this, the Union's offer agrees to increase the cost of the employee's share to 13%, effective May 1, 2007. The Union argues that the Village offers no justification for wanting the increase one year earlier than the Union's effective date.

The Union had sought two improvements in the health insurance plan as a *quid pro quo* for its proposal. It sought to increase the lifetime maximum to \$2 million (offered by all the comparable communities except Elmhurst) and to establish a "single plus one" option (again offered by a compelling predominance of comparable communities)(*Brief* at 65). In the view of the Union, "the Village can do more very easily." *Id.*

With respect to the Administration's uniformity argument (citing Firefighters and other Village employees), the Union asserts that uniformity effective May 1, 2008 versus May 1, 2007 will not disrupt internal relationships. A delay of 12 months is more than justified by the disparity in salaries between Firefighters and police officers (*Brief* at 66). Moreover, the police settlement provides for the opportunity for a mid-term equity adjustment. The Union rejects the argument that collective bargaining results on health insurance should always be in lock step with the police and other comparables. *Id.* When changes are not justified by other statutory factors, arbitrators have issued awards which resulted in firefighters and police officers contributing different amounts towards the cost of health insurance, in the Union's opinion. *Id.* The gap between Skokie firefighters and police officers removes the police as a controlling internal factor on this health insurance item. (*Brief* at 67).

Analysis and Award. In *Village of Arlington Heights & IAFF Local 3105, S-MA-88-89* (Briggs, 1991), Arbitrator Steven Briggs had it right when he observed this on considering medical plans:

Consideration of comprehensive medical plans is one of the most complex tasks interest arbitrators face. Besides such characteristics as deductibles, joint contributions, and HMO options, comprehensive medical plans

have levels and ranges of coverage, dollar caps on payment for certain maladies, and a host of additional differences, many of which are not reflective in the record before me. *Briggs* at 49.

In its *Brief* at 55 the Administration points out that there are unknowns in the Union's insurance proposal and that these unknowns should preclude acceptance of the Union's offer. Specifically, the Employer argues:

A total of 85 bargaining-unit employees had family coverage as of January 2007 (VX 75). What is not known, however, is how many of those 85 employees would be eligible for single + 1 coverage if it were made available. The Union, as the moving party on this sub-component of this issue, did not present any evidence concerning how many of its members would be affected by this element of the Union's final offer. It should also be noted that if employees were given a single + 1 option, it would necessarily mean that the cost of family coverage would have to increase to offset the presumably lower costs for single + 1 coverage. As a policy matter, the Village does not want to take any action that would increase the cost of family coverage or be viewed as anti-family.

(*Brief for the Employer* at 55).

With the exception of its "anti-family" concern, the Administration's point is well taken. Unknown in this matrix is the effect of adding a "single plus one" option on the overall insurance cost package. Presumptively, when the risk pool decreases by less members in the "family pool" individual costs will increase. In effect, the "single plus one" category subsidizes those electing family coverage, and it is this that the Union objects to. Still, there are simply too many unknowns to have a third party mandate a new insurance classification.

Equally important, there is validity to the notion of internal consistency with respect to insurance coverage. Significant here is the fact that all other Village employees, including the Fire Chief and all excluded fire department supervisory personnel, are covered by the same comprehensive health insurance program that is encompassed by the Village's final offer. As stated by Wisconsin Arbitrator Edward Krinsky in *City of Elgin & Local 439, IAFF* (2005):

Given that the City's offer achieves internal consistency to a much greater degree than the Union's offer, and that both offers result in employees paying significantly smaller premiums than employees in the comparable jurisdictions, the arbitrator favors the City's offer with respect to Health Insurance Premiums (*Krinsky* at 9-10).

Arbitrator Krinsky accepted the City's offer even though the Firefighters would be making larger contributions in 2006 than any of the other units. *Id.* at 8. Also, the bargaining unit would be making contributions some three months before the police and other bargaining units. *Id.* at 9. Finally, in Elgin, like Skokie, the employer's insurance costs were significantly lower (second lowest) relative to the bench-mark jurisdictions. *Id.* While neither offer provided complete internal uniformity of benefits, Arbitrator Krinsky awarded the City's final offer since that offer achieved internal consistency "to a much greater degree than the Union's offer." *Id.*

Similarly, in *Village of Schaumburg & Metropolitan Alliance of Police Chapter 195* (2007), Arbitrator Tom Yaeger found compelling notions of internal consistency with respect to insurance benefits. On this subject the Arbitrator had this to say:

Village of Skokie & IAFF Local 3033
Interest Arbitration S-MA-07-007 (2007)

The Village argues that the Arbitrator should select its final offer to maintain the Village-wide uniformity with respect to its generous flexible benefit plan since the Union has not met its burden of demonstrating a compelling reason to create unique terms applicable only to this bargaining unit. It contends that Illinois arbitrators with amazing uniformity recognized the strong interest of employers in maintaining uniformity with respect to health insurance and cited the arbitrator to several of those decisions.

* * *

As I discussed earlier, **unless there is some compelling reason why this bargaining unit should not be treated like the other Village bargaining units, the Village's ability to negotiate the same provision with its other represented bargaining units should receive significant if not controlling weight in this interest arbitration.** Again, as was the case with the Union's wage proposal there is no record evidence that persuades me this principle should not be controlling in this instance. There is no evidence relevant to this issue that distinguishes this unit from the others. (*Id.* at 25-27, emphasis mine).

Chicago Arbitrator Elliott Goldstein, in *Elk Grove Village & Metropolitan Alliance of Police* (1996), agreed with the position articulated by the above arbitrators. His reasoning regarding uniformity of insurance benefits is noteworthy:

However, I believe that the factor of internal comparability alone requires selection of the Village's Insurance Proposal, as the Village believes. Prior to 1994, I note, the Village had always provided insurance benefits to all Village employees on an equal basis. All of the Village's various insurance options were made equally available to union and non-union employees alike, and on the same terms and conditions, including the same dollar amount of employee contributions.

* * *

Arbitrators have uniformly recognized the need for uniformity in the administration of health insurance benefits. Arbitrator Fleischli in *Village of Schaumburg and FOP* (September 15, 1994), perhaps stated it best when he explained:

In the case of benefits like health insurance, internal comparisons can be particularly important because of the practical need to establish uniformity in the largest pool for reasons of fairness and to hold down overall costs.

Id. at 36.

Arbitrator Feuille's analysis in *City of Peoria and IAFF* (September 11, 1992), is also illustrative. In that dispute, the City was "moving in the direction of bringing all of its employees under the new health insurance plan," while the fire union wanted a separate plan and program for its employees. Covering the weight to be given to the factor of internal comparability, Arbitrator Feuille was of the view that:

... the health insurance issue in dispute here is a city-wide issue, in that the City is trying to continue to maintain City-wide uniformity in its health insurance plan whereby all employees will receive the same medical and dental benefits and also make contributions according to the same contribution formula. In other words, health insurance is not an issue that is somehow unique to this City bargaining unit. Instead, it is most usefully addresses from a city-wide perspective.

Accordingly, the Panel believes that the internal comparability evidence deserves considerable weight. Unlike some other labor-management issues, this health insurance issue is the type of issue where comparisons with other City employees are imminently appropriate and useful. In this instance, other city employees constitute healthy appropriate comparison groups within the meaning of Section

14(h) of the Act. This internal evidence provides much stronger support for the City's offer than for the Union's offer.

Goldstein at 96-97, quoting Arbitrator Feuille at 31-32.

* * * *

I agree with Arbitrators Krinsky (2005), Yaeger (2007) and Goldstein (1996), along with many others cited by the Administration in its *Brief* at 55-57, regarding the issue of establishing an insurance provision that no other unit has.¹² Also, and more important, there are too many financial unknowns to mandate a change in the present insurance plan by adding a new category, a change that would be unique to Skokie Firefighters relative to other Skokie employees. Finally, I don't see the Administration's proposal as a *major* break-through/give-back scheme, where entirely different criteria would apply. Both parties have proposed increasing premium contributions to 13%. In addition, the Village has promised to extend the lifetime maximum for PPO coverage to \$2 million *Village-wide*. Aside from the "single plus one" category, and the effective date of the substantive changes (May 1, 2008 under the Union's offer), nothing else separates the offers.

For the above reasons, the Administration advances the better case. The Employer's final offer is awarded.

8: Specialty Pay – §6.6 (New Section)

Union: Provide for a stipend payable to Firefighters who have obtained certification as Fire Apparatus Engineer (FAE) and who are assigned to drive a fire apparatus as part of their regular duties in the following amounts:

- a) Effective 5/1/07 - \$250;
- b) Effective 5/1/08 - \$500; as described in "*Exhibit 8*".

Employer:

The Village's final offer on Specialty Pays (New Section) is to maintain the *status quo* and to not provide for any specialty pays beyond the EMT-P Stipend that is covered by Section 6.4.

¹² For the record, I would not deny a party's offer that included a provision that few or none of the comparables had for that reason only. However, the proponent of that provision would bear a heavy burden in establishing that the other side was being unreasonable in its stance.

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Both parties' final offers on this issue tracked their pre-hearing offers of settlement.

Position of the Administration. The Administration argues that while the parties have been negotiating for at least two decades, they have never agreed to a separate stipend for employees who are certified as fire apparatus engineers (FAE)(*Brief for the Employer* at 58). Such certifications have always been deemed to be a part of the normal job duties of Skokie Firefighters. As the Union's attorney acknowledged, ". . . everybody who is a Firefighter in this department also has as part of their responsibilities to perform driver's and engineering functions." (*Brief* at 58; R. 82).

To this end management points out that one half of the comparables pay nothing for Firefighters who are certified as fire apparatus engineers (VX 61). Since the parties' collective bargaining agreements from day one have not provided any additional compensation for Firefighters who are certified as fire apparatus engineers, there is no compelling justification for the Union's final offer to establish a "break through" FAE stipend. And since nothing has really changed since the parties were last at the bargaining table in 2002, the arbitrator should reject the Union's final offer and award the Village's offer to maintain the *status quo* (*Brief* at 59).

Finally, the Village points out that in terms of internal comparability, its collective bargaining agreement with the police unit does not contain any speciality pay provisions, and none should be awarded in this case (*Brief* at 59-60).

Position of the Union. Focusing on the overall deficiencies in Skokie Firefighters' salaries, the Union asserts that these deficiencies are exacerbated when the salaries are compared to salaries earned by firefighters in comparable communities that recognize the additional skill required for employees who drive fire apparatus vehicles and operate their pumps (*Brief for the Union* at 69; Union Ex. 11). When Firefighters who receive the engineers' salaries are considered, Skokie's rank falls to 12 of 16 and to more than \$1,053 below the average. The Union's offer will only modestly mitigate these deficiencies and the amounts involved are certainly within Skokie's ample financial resources (*Brief* at 70).

Analysis and Award. The Administration makes the better case regarding the utility of adding speciality pay for fire apparatus engineers. I credit the Employer's argument that for at least two decades the parties have elected *not* to include an FAE stipend in their labor agreements. And unlike some other issues discussed in this opinion (acting-up pay, for example), this is not a case where the external bench-mark criterion trumps other statutory criteria. If this special stipend is to be included in the successor collective bargaining agreement, it should come about through negotiations, not arbitral edict. This is especially true when, overall, there is no apparent trend one

way or the other among the comparables,¹³ where eight jurisdictions (Elk Grove Village, Elmhurst, Glenview, Highland Park, Oak Park, Wheeling, Wilmette, and Skokie; Village Ex. 61) do *not* have a specialized stipend. To this end I find the reasoning of Arbitrator Herb Berman's decision in *Skokie & FOP* (1995) noteworthy:

Had the evidence established that the Village had set up distinct, specialized jobs and that there was limited cross-training, I might be sympathetic to the argument that specialists are entitled to more pay. Speciality pay, however, would likely create pressure to establish permanent, specialized positions – pressure to change the very character of the police department. I shall refrain from making a decision upon such policy matters. (*Berman* at 59-60).

Similarly, Arbitrator Steven Briggs, in *Village of Schaumburg & Schaumburg Professional Firefighters' Association* (1998), rejected the Union's claim for speciality pay, reasoning in part that "there is little evidence in the record to suggest that the assignments included in the Union's speciality pay proposal have changed over the years." *Briggs* at 17. In Arbitrator Briggs' words: "Overall, the Union has not presented sufficient evidence to justify a change in such a well-established *status quo*." *Id.*

For the above reasons, the Administration's final offer is awarded.

9. Post-Retirement Medical Savings Plan - §15.8

Union:

Modify existing language to provide bargaining-unit employees with the opportunity to change from the existing entity to an alternative by offering employees a choice between different vendors according to the procedure described in "*Exhibit 9*".

Employer:

Revise Section 15.8 to read as follows:

Section 15.8. Post-Retirement Medical Savings Plan. One percent (1%) of each employee's base annual salary will be deducted from

¹³ I recognize that the new Evanston contract contains for the first time a FAE stipend (R. 516). I agree with the Employer that what is not known is whether this stipend was a *quid pro quo* for the substantially increased amount that Evanston Firefighters pay toward the cost of group health insurance. See, *Brief for the Employer* at 59 n.25. Significantly, there is no indication that this was awarded by an arbitrator. Indeed, the evidence record indicates that Evanston was a voluntary settlement.

each employee's paycheck and will be placed into the Village's Retirement Health Savings Plan (currently Vantage Care Retirement Health Savings Plan) as referenced in 12.30, to be used by the employee upon retirement to pay for eligible medical expenses. This one percent payroll deduction will not be deemed to decrease an employee's annual salary as set forth in Section 6.1 of this Agreement that is used in determining the amount of an employee's pension. The purpose of this section is to establish an employee-funded post-retirement medical account at no cost to the Village that can be used by the employee following retirement to pay for eligible medical expenses.

In addition, in Section 12.30 delete the phrase "employee's Section 457 account" and substitute in its stead the phrase "employee's Retiree Health Savings Plan account."

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. The Village's pre-hearing offer of settlement included a provision to permit a one-time irrevocable election to the employees' medical savings plan based on a fixed percentage of the employee's salary, in view of the intervening IRS ruling prohibiting such a tax deferred deduction (Union Ex. 75). The Administration's final offer provides for maintenance of the same *status quo* on this issue. Whereas the Union's pre-hearing offer of settlement provided for changing the post-retirement savings plan to a VEBA, the Union's final offer provides that the vendor to which the post-employment health savings plan deductions are to be remitted to is based on a majority vote of the bargaining unit within 30 days of the date the Arbitrator issues his award (unless extended by mutual agreement) following presentations made by up to two vendors nominated by each party.

Position of the Village. The Employer prefaces its argument by observing that "a whole lot of heat was expended during the hearing on the RHS/VEBA issue without necessarily providing much enlightenment but based on the parties' final offers it is now possible to see what the parties agree on and what they disagree on." (*Brief for the Employer* at 62). According to the Employer, the parties are in basic agreement on the following:

1% of an employee's base annual salary is to be deducted from each employee's paycheck and deposited in a tax-preferred basis in a plan designed to establish "an employee-funded post-retirement medical account at no cost to the Village that can be used by the employee following retirement to pay for eligible medical expenses."

The existing program whereby the 1% deduction is paid to the VantageCare Retirement Health Savings Plan is to be continued until at least December 31, 2007.

Section 15.8 should not make any reference to Section 457, which is an entirely different program.

(*Brief* at 62).

While there are other essentially non-substantive differences in the wording of the parties' final offers, the parties differ on one major item, i.e., the plan to which the salary deductions are to be made as of January 1, 2008. Whereas the Village's final offer provides for a straightforward continuation of the existing plan, the Union's final offer sets up the following three-step procedure whereby the bargaining-unit members would ultimately determine the plan or vendor:

1. Each party will have seven days of the issuance of the Arbitrator's award to nominate up to two vendors each "who offer tax exempt post-employment health savings accounts in compliance with I.R.S. Code and regulations."
2. Meetings shall be held within 30 days of the date the award issues at which the vendors nominated by the parties will make presentations on "their product to members of the bargaining unit."
3. Within 10 days after the conclusion of such presentations, "the vendor selected shall be the vendor preferred by a majority of the bargaining unit."

(*Brief* at 63).

In the Employer's view, there are two major reasons why its proposal should be selected. First, the VantageCare Retirement Health Savings Plan is presently in place and is functioning as intended. While the Union sought to cast aspersions on this plan, it did not present any evidence that a 1% deduction is not being deposited with the plan or that the plan is not functioning as intended. Indeed, the Union's final offer contemplates that such deductions will continue until at least December 31, 2007. (*Brief* at 64).

Second, rather than concluding negotiations, the Union's final offer would extend the dispute for at least another month or more. And in so doing, it would raise a whole series of new issues, such as: (1) Are the employees meeting "on the clock" or "off the clock"? (2) Who pays any expenses that the Village might incur if the bargaining unit selects a new vendor, e.g., expenses for such things the legal review of the plan documents, etc? (3) What happens if a new vendor is selected by the bargaining unit and the parties' are unable to reach agreement on "all necessary action to implement a PEHP consistent with the vendor selected"? (*Brief* at 64). These are all issues that could have been discussed at the bargaining table, notes the Employer. The Union, however, presented its "select the vendor by majority vote of the bargaining unit" proposal for the first time in its final offer. In the words of the Employer, "this Arbitrator should be especially reluctant to grant a final offer that has not been appropriately vetted at the bargaining table." (*Brief* at 64).

The Union's Position. By way of background, the Union proposes to modify the existing language to afford employees the opportunity to change the existing entity administering their post-employment health insurance contributions to an alternative VEBA (Variable Employee Benefit Association) account. In the Union's view, the Employer's savings plan, described as VantageCare Retirement Health Savings Plan, is a corporate instrumentality of the International City/County Management Association (ICMA)(*Brief for the Union* at 70-71).

According to the Union, the opportunity to reconsider the ICMA vehicle arose because of a ruling by the IRS that certain components of the ICMA program contravene the U.S. Tax Code (Union Exhibits 75 & 76; R. 336-338; *Brief* at 71).

Without outlining the merits of a VEBA versus the City's ICMA program, the Union points out the certain facts are clear: (1) the money being collected is entirely money drawn from employees' salary; (2) there have been material changes in the RHS program subsequent to the time that employees were enrolled in the program by the Village; and (3) the resolution adopting the VantageCare RHS program are unilateral terms executed by Village officials. Elemental fairness requires that employees be afforded the opportunity to hear representatives of different vendors present the pros and cons of their respective plans and that the employees then be afforded the opportunity to choose their preferred plan. (*Brief* at 72). The parties' bargaining history does not support the Village's assertion that members of the bargaining unit freely selected the current VantageCare plan.

Finally, the Union points out that the language of Section 15.8 of the predecessor collective bargaining agreement, drafted to implement the establishment of the PEHP, reveals some confusion as to the proper vehicle. The reference to Section 457 is to a deferred compensation Code provision and is incorrect. The Village's offer only proposes to remove this reference but it would mandate that employees continue to contribute their salary to the plan selected by the Village (*Brief* at 73).

Analysis and Award. This is easily the most difficult item to resolve of all the impasse items because both parties are right (or both are wrong), which really makes for a difficult decision.

The Union makes a number of valid points regarding the utility of its proposal. What is at issue, after all, is the employees' money and employees should have a strong say where the one percent is going. The problem here is the Union advanced a final offer with a component that was not first disclosed during the hearing. As noted by the Employer, the Union failed to disclose that its final offer would entail involvement of the bargaining unit in making the decision as to which vendor would be used.¹⁴ The concerns voiced by the Administration in its *Brief* at 64 (cited above)

¹⁴ I note for the record that this was one of the issues I assigned the parties to attempt to resolve during a bargaining session to be held between hearing days. The Union reported no progress with the Administration, in part because additional issues were piggybacked on the post-retirement medical savings plan by the Union (according to the Administration). The Union was not, of course, obligated to resolve the issue, and neither was the Administration.

I am not convinced that sufficient bargaining ever took place on this issue. *At minimum*, a specific vendor should have been in line prior to final offers being submitted, especially when the process now advanced is one that was not disclosed prior to the close of the hearing. Here, it is appropriate to quote Arbitrator Steven Briggs in *Village of Schaumburg* (1998):

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are genuine. The VillageCare Retirement Health Savings Plan is presently in place and running and because of this, coupled with the above, the Administration's position is not without merit.

Finally, I note that the vehicle the Union espoused at the hearing – a VEBA – has been adopted in only two of the 15 comparables, Glenview and Oak Park (Er. Ex. 79)¹⁵, again favoring the Administration's position.

Resigned to the notion that awarding the Union's proposal may be perceived as a stamp of approval on the process of advancing entirely novel proposals after the hearing,¹⁶ still the employees' interest in selecting a plan that is appropriate to handle the bargaining-unit members' money trumps the arguments advanced by the Administration. It is, after all, their money and, accordingly, their interests play over all the valid arguments the Employer has advanced.

The Union's final offer is awarded.

10. Scheduling of Vacations and Holiday Time Off – §§ 9.1 (Furlough and Floating Holiday Picks for Fire Suppression Employees) & 9.3 (Floating Holidays for Personnel Assigned to 24-Hour Shifts)

Union:

Modify existing language to provide a procedure to more efficiently and equitably distribute vacation allotments among bargaining-unit employees with designated slots based upon the agreed procedure applied to expanded

Interest arbitration is supposed to be risky. It is supposed to be a last resort, only relied upon for resolution of future terms disputes when the parties themselves have exhausted all reasonable efforts to settle them at the bargaining table.

Briggs at 17.

Not only was the bargaining process *de minimis* at Skokie, the absence of final offers until *after* the hearing is not conducive to reaching a settlement. A fact of life in many Illinois cases, but nevertheless disconcerting and detrimental to concluding an agreement.

Quoting Arbitrator Elliott Goldstein in *Village of Elk Grove* (1996), *supra*, "I strongly believe the parties still need to bargain the issue when the contract expires . . ." *Id.* at 105. See, *infra* note 16.

¹⁵ In its *Brief* at 63 n.28 the Administration acknowledged there were three jurisdictions among the comparables that adopted a VEBA. Its Exhibit 79 lists only two, Glenview and Oak Park.

¹⁶ The parties agreed to wait until the hearing concluded before submitting final offers, which makes sense where little bargaining occurs prior to the arbitration hearing. When this is done, however, parties should not submit an entirely new offer that was not disclosed at the hearing. It is one thing to modify a salary offer from 4.0% to 3.5%, or increase a contribution from 12% to 13% in an insurance proposal. It is quite another matter to significantly revise a proposal or offer a new solution to an issue that was not made known at the hearing.

slots by allowing bargaining unit employees to select their three (3) floating holidays in slots that are not picked after Captains have picked their vacation and holiday time off, as described in "*Exhibit 10*".

Employer

Revise Section 9.1 by adding the following new second paragraph:

Four (4) slots per duty day shall be allotted for both furlough and floating holiday picks. In addition *and in lieu of the SLBD Memorandum of Agreement*, in order to accommodate all earned furlough and floating holiday picks during the term of the contract that is the successor to the parties' 2002-2006 collective bargaining agreement, five additional slots per month per shift (i.e., a fifth slot) shall be made available for both furlough and floating holiday picks during the months of January through April and September through December (emphasis mine).¹⁷

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Whereas the Village's pre-hearing offer of settlement provided for the continuation of the parties' Memorandum of Agreement with respect to the use of sick-leave bonus day ("SLBD") slots, its final offer added a new second paragraph to provide an additional five slots per shift per month for the middle of January through April and September through December, and specifically provided that it would *be in lieu of* the SLBD Memorandum. The Union's final offer continued to provide for the opening up of the slot heretofore exclusively reserved for use by captains, but changed the date from October 1 to December 15th (*Brief for the Employer at 67*).

¹⁷ In an August 8, 2007, correspondence to the undersigned and Mr. Berry, the Administration maintained that the Union's statement, made at page 56 of its post-hearing *Brief*, was incorrect. According to the Administration:

While the Union is accurate in stating that the Village's final offer is to maintain the status quo with respect to the SLBD time off incentive, it mistakenly asserts that the Village's final offer is to 'make the SLBD slot also available for scheduling vacation time off.' That is in error. The Village final offer on vacation scheduling specifically states that 'in lieu of the SLBD Memorandum of Agreement,' in order to accommodate all earned furlough and floating holiday picks . . . , five additional slots per month per shift (i.e., a fifth slot) shall be made available . . . during the months of January through April and September through December (emphasis added). In short, the Village's final offer is not predicated on using the SLBD slot for vacation or floating holiday picks.

The Village went on to assert:

At page 74 of the Union's brief the statement is made that "[t]he Village proposes that vacation and holiday time be made into a fifth slot that has been historically reserved for selecting SLBD days off." Contrary to this assertion, and as already noted above, the Village's final offer on Economic Issue 10 (Scheduling of Furloughs and Floating Holidays) is to provide a fifth slot that is "in lieu of the SLBD Memorandum of Agreement, the language of Section 4.2(c) concerning a separate slot for scheduling SLBD days would again be applicable. (Parenthetically, the Village understands that there is an issue over whether the status quo on SLBDs should be maintained as the Village's final offer provides or converted to cash as the Union's final offer provides). Stated differently, the fifth slot contained in the Village's final offer is in addition to the SLBD slot.

As I held in *Elk Grove Village & IAFF* (2006), a party is always entitled to define what its offer is.

Position of the Village. The Administration asserts the Arbitrator should accept its final offer on how to provide enough slots for employees to take all available vacation days and reject the Union's final offer that would give bargaining-unit employees access to the one slot that is exclusively reserved for Captains to schedule their paid time off (*Brief for the Employer* at 67).

According to the Employer, "the Union's final offer on this issue is fatally flawed because it illegally affects the terms and conditions of employment of persons who are not in the bargaining unit, i.e., the Village's Captains." (*Brief* at 69). The Village submits that the *Franklin Park* decision (*Village of Franklin Park v. ILRB*, 638 N.E.d 1144 (First Dist. 1994)) necessarily means that the Union's final offer that directly affects the vacation picks of Captains, a position excluded from the bargaining unit, is not a mandatory subject of bargaining and that, therefore, the Arbitrator has no jurisdiction to award the Union's final offer (*Brief* at 70). In this respect the Village would note that at the hearing it advised both the Arbitrator and the Union that the Firefighters' proposal to allow bargaining-unit employees to use the Captain's slot involved a non-mandatory subject of bargaining (*Brief* at 70; R. 122).

Even assuming *arguendo* that the Union's offer involved a mandatory subject of bargaining and the Arbitrator had the authority to rule on it, the Village's final offer is still more reasonable than the Union's final offer, it argues (*Brief* at 71). It provides more than sufficient slots to permit all bargaining-unit employees to make all their vacation and holiday picks and does so in a way that does not interfere with or affect the vacation/holiday slot reserved for Captains. Moreover, by adding an additional fifth slot in eight months of the year, the Village's final offer frees up the Sick Leave Bonus Day (SLBD) slot to be used exclusively for the purpose originally intended (*Brief* at 71).

The Union's Position. The Union proposes that the vacation holiday picks be made into a fifth slot that would consist of unused slots available *after* the Captains have picked their vacation and holiday time (*Brief for the Union* at 74). The Union asserts its proposal redresses a serious deficiency in available slots by utilizing unused slots.

According to the Union, the contract allocates four slots per day for selecting both vacation and holiday picks. There is no question that four slots are insufficient for bargaining-unit members to select their vacation and holiday time off to which they are entitled (Union Ex. 57; Village Ex. 64; *Brief* at 74). In the Union's view, the evidence record establishes that a fifth slot is needed to schedule employees' paid time off. The basic question before the Arbitrator is where the required fifth slot is to come from. The Union maintains its proposal seeks to utilize slots to mitigate the shortage. A surplus exists in a fifth slot within which the Captains pick their vacation and furlough time off, a surplus that exists because there are only two Captains assigned per shift. In aggregate, they need only one-third of the available slots in which to pick their time off. This leaves approximately two-thirds of the slots available on each shift unused (*Brief* at 75; R. 444-445). The Union submits the Village has put forth no reason why these unused slots should be reserved exclusively for Captains even when they are not used.

Addressing the Village's proposal, the Union says management's solution is to "rob Peter to pay Paul." (*Brief at 77*). In this case "Peter" is the Sick Leave Bonus Day slot, a fifth slot which has been historically reserved exclusively for scheduling sick leave bonus days off. "Paul" is the need for extra vacation slots to accommodate the days to which bargaining-unit members are entitled under the contract. In the Union's eyes, it made the mistake of accommodating the Administration, on an interim basis, "Paul's deficiency" by allowing the SLBD slot to be utilized for selecting vacation and floating holiday picks in 2006 (Union Ex. 59). The interim agreement terminated on April 30, 2006. Notwithstanding this, and over the Union's objection, the Village unilaterally continued to use the SLBD slot for 2007 vacation and holiday picks.¹⁸ It is argued that the Village's final offer would make the SLBD slot a permanent part of the vacation schedule during eight months of the year.

The Union concludes by asserting that the Employer's evidence is devoid of any explanation as to the necessity for degrading the SLBD slot while preserving sacrosanct the slot in which Captains pick their paid time off (*Brief at 79-80*).

Analysis and Award. During the course of the arbitration hearing the parties were able to reach a tentative agreement as to one of the areas in dispute. They agreed on the procedure by which the bargaining-unit members would select their vacation and holiday time off. The procedure bifurcates the selection of vacation days from the selection of floating holiday picks, with floating holiday picks being made *after* all vacation picks have been made. What remains is the number and quality of the additional slots that will be made available for bargaining-unit employees to pick into. A side-by-side comparison of the parties' final offers is as follows:

VILLAGE FINAL OFFER

Four (4) slots per duty day shall be allotted for both furlough and floating holiday picks. In addition, and in lieu of the SLBD Memorandum of Agreement, in order to accommodate all earned furlough and floating holiday picks during the term of the contract that is successor to the parties' 2002-2006 collective bargaining agreement, five additional slots per month per shift (i.e., a fifth slot) shall be made available for both furlough and floating holiday picks during the months of January through December.

UNION'S FINAL OFFER

Four slots per duty day shall be allotted for furlough and floating holiday picks. During the period December 16 through December 21 employees may select their floating holiday days off within a fifth slot into days that are "unpicked slots." "Unpicked slots" shall be defined as slots available to Captains for the selection of time off that have not been picked by Captains for vacation, Kelly Day or holiday time off by December 15th of the year preceding the calendar year starting January 1st.

As can be seen from a comparison of the parties' final offers, both parties propose using a fifth slot in order to accumulate all paid time off that bargaining-unit employees are eligible to

¹⁸ This action is the subject of an unfair labor practice which the Union has filed and is currently pending. See, *Brief for the Union at 77-78*.
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receive, but the method used to create the fifth slot is dramatically different (*Brief for the Employer* at 68).

The Village's final offer provides for five additional slots *per month per shift* (i.e., a 5th slot) for both furlough and floating holiday picks during the months of January through April and September through December. In the Administration's view, this would open up an additional 40 slots per shift, or a total of 120 additional slots per year for all three shifts. These additional slots will be more than sufficient to accommodate the total number of vacation days and floating holidays that bargaining-unit employees will be eligible to receive during the term of the contract awarded by the Arbitrator in this case (*Brief* at 68).

As noted, the Union's final offer would permit employees to pick floating holidays – but not vacation days – on any slot or day not used by Captains by December 15th for the selection of their vacation days, Kelly days, or holiday time off. Under the Village's current policy, one slot is exclusively reserved for use by Captains to select earned paid time off (i.e., vacation days, Kelly days and floating holidays). Moreover, there is no cutoff date for Captains to select such paid time off. Under the Union's offer, however, any day or slot not picked by Captains by December 15th would be available to bargaining-unit employees to pick their floating holidays (*Brief* at 69). This Captain's day is termed "sacrosanct" by the Union.

This is yet another issue where a negotiated solution should have been in reach by the parties. The Union's position regarding the "Captain's day" as "sacrosanct" is well taken. Applying a "cutoff" date for Captains to select paid time off appears reasonable by all accounts. It is worthy of consideration, if not adoption by the parties' bargainers. However, what tips the balance in favor of the Village's offer is the concern that the Union's position impermissibly affects the terms and conditions of employment of persons who are *not* in the bargaining unit, the Village's Captains. As argued by the Administration, while the Union's final offer does not totally dictate the scheduling of vacations for Captains, it does dictate the date by which they must be picked and it permits bargaining-unit employees to pick dates that Captains might want to pick at a later date. As Union witness Norris testified, Captains currently have the right to hold back furlough picks for use at a later date (see, *Brief for the Employer* at 69 n.32).

For the above reasons, the Administration makes the better case and, accordingly, I award the Village's final offer on this issue.

11. Retirement Vacation Allowance (RVA) – §8.6

Union: Maintain existing benefit.

Employer:

The Village's final offer on Retirement Vacation Allowance is to revise Section 8.6 (Jt. Ex. 1 at 31-32) to read as follows:

Section 8.6. Retirement Vacation Allowance. An employee with at least twenty (20) or more years of continuous full-time service at time of retirement and who notifies the Fire Chief in writing at least one month in advance of the last day of work prior to retirement shall be entitled to an extra half shift (i.e., 12 hours) of vacation for each full year of employment for employees assigned to 24-hour shifts and an extra 8-hour shift of vacation for each full year of employment for employees assigned to 8-hour shifts. The employee shall receive a payout for this extra vacation time (RVA) in a lump sum that is deposited into the employee's Retirement Health Savings Plan, in accordance with Section 12.30.

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Both parties' final offers on this issue tracked their pre-hearing offers of settlement.

Position of the Village. The Administration maintains that its final offer on retirement vacation allowance (RVA) should be accepted in order to implement the parties' intent during the 2002 negotiations (*Brief for the Employer* at 72). In support of its position, the Administration submits that its Personnel Director, Christa Ballowe, who served as the Village's chief negotiator during the 2002 negotiations, testified that there was a discussion throughout negotiations about developing a mechanism for employees to fund a retirement health savings plan (R. 531). She indicated that on August 16, 2002, the Village presented a package proposal that formed a basis for the parties' overall agreement, a package proposal that included the following provision (Er. Ex. 63A at 2):

Effective May 1, 2003, at retirement, any Firefighter or fire lieutenant will place all earned but unused vacation days, floating holidays, sick leave bonus days and retirement vacation allowance days . . . into a 457 account to be used for retiree medical insurance.

(*Brief* at 73).

In order to incorporate this provision that was ratified by both parties, Section 12.30 was added as a new section to the parties' collective bargaining agreement (R. 533). That Section reads as follows:

Section 12.30 Retiree Separation Benefits. The parties agree that the following provisions shall govern retiree separation benefits:

1. The official date of retirement will be the last day actually worked.
2. An employee who is retiring shall receive a payout for accrued but unused vacation, unused sick leave bonus days accrued prior to January 1, 2002, sick leave bonus days earned for the preceding calendar year and not used prior to the effective date of [the] employee's retirement, floating holidays and RVA in a lump sum that is deposited into the employee's Section 457 account (currently VantageCare Retirement Health Savings Plan) to be used to pay for eligible medical expenses.

(*Brief at 73*).

The Village, through Ms. Ballowe, asserts that the intent of the provision was to put the RVA benefit solely into the post-retirement savings account. And subsequent to the execution of the 2002-2006 contract, a total of eight bargaining-unit members retired and had significant based on RVA paid into their RHS accounts (Er. Ex. 63). However, since 2005 two employees believed they could use RVA as paid time off prior to retirement as long as they gave the Administration 30-days notice (*Brief at 73*). The changes to implement the parties' collective bargaining agreement were made in the new Section 12.30 and that no changes were made to Section 8.6, the RVA section of the contract, which, according to Ms. Ballowe, "was clearly an error . . . in drafting the final contract language." (R. 534). The Administration's pre-hearing offer of settlement was simply to clarify what the parties had agreed to and the intent of the language of 12.30 during the last bargaining session.

Management submits it is significant that Ms. Ballowe's testimony concerning the parties' intent during the 2002 negotiations was not challenged or contradicted in any way by the Union. Although the Union could have called one of the members of its 2002 bargaining team to testify with respect to this issue, the Union elected not to do so. Accordingly, Ballowe's testimony concerning the parties' intent with respect to the RVA benefit must be credited by the Arbitrator (*Brief at 74*). And in order to fully effectuate the parties' intent, the Village requests that its final offer be accepted on this issue (*Brief at 74*).

The Union's Position. The Union asserts that the Village's proposal is to convert what is currently an optional time off or cash benefit to a benefit that is exclusively cash (*Brief for the Union at 81*). To this end, the Union submits that the Administration has failed to establish any compelling need for implementing any of the reduction in benefits that its proposal seeks to achieve (*Brief at 82*). Citing Arbitrator Berman's award in *City of Springfield & IAFF Local 37*, the Union notes that "without economic or operational justifications it is inappropriate to take away employee' benefits." (*Brief at 83*). Further, where Skokie Firefighters' overall compensation is so inferior, any takeaway or diminishment of existing benefits must carry a heavy burden (*Brief at 83*).

Analysis and Award. The National Academy of Arbitrators, in its recent text *The Common Law of the Workplace* 69 (BNA, 2005), had this to say regarding rules of contract interpretation, albeit in a rights case:

Labor arbitration is a matter of contract. It is the role of parties to a collective bargaining agreement to determine the value of their exchange and, then, the role of arbitrators to interpret the labor contract consistent with the parties negotiated preference. Arbitrators generally refrain from evaluating the prudence of a particular contractual term or inquiring into bargaining power imbalances and issues of justice. **It is the role of arbitrators to use standards of contract interpretation to understand the meaning of the parties' contractual goals and to render a decision in keeping with the parties' intent.**

* * *

§ 2.2 The Prime Directive: Intent of the Parties

Standards of contract interpretation used by arbitrators are designed to determine the intent of parties in adopting certain language to express their rights and obligations.

Id. at 71.

As articulated by the National Academy of Arbitrators, there is no question that the primary goal of the labor arbitrator is to effect the intent of the parties. Arbitrator Jules Justin, in the often-quoted (albeit dated) *Phelps Dodge Copper Products Corp.* decision, 16 LA (BNA) 229, 233 (1951), stated that the parties' intent is to be ascertained from the words used in their agreement. In the words of Arbitrator Justin:

Plain and ambiguous words are undisputed facts . . . An Arbitrator's function is not to rewrite the parties' contract. His function is limited to finding out what the parties intended under a particular clause. The intent of the parties is to be found in the words which they, themselves, employed to express their intent. When the language used is clear and explicit, the Arbitrator is constrained to give effect to the thought expressed by the words used.

Ms. Ballowe articulated her view of the intent of the parties regarding the use of an RVA benefit. In her words, "the intent was to put it solely into the post-retirement savings account." (R. 534). Her testimony was not contradicted by the Union, although the Union clearly could have called one of its members who participated in the negotiation of the successor collective bargaining agreement. I agree with the Union's position regarding "give backs" in interest arbitration since a party could have paid dearly to retain the disputed provision in the prior contract. In this case, however, the Administration makes the better argument regarding the use of the RVA benefit.

I also credit the Administration's argument that the Union's proposal may have IRS implications if paid time off is an option. (see, *Brief for the Employer* at 74-75). According to the Employer: "The Village's final offer makes it explicit that the RVA benefit must be paid into the employee's retirement health savings plan. This means that it will be made on a tax-free basis, which substantially enhances the value of this benefit when it is being used to fund a retirement health savings plan." (*Brief* at 74).

For the above reasons, the Employer's final offer is awarded.

12. Military Leave - §4.5

Union: Maintain existing benefit.

Employer:

The Village's final offer on Military Leave is to revise Section 4.5 to read as follows:

Section 4.5. Military Leave. During each calendar year, any full-time employee who is a member of the reserve components of the Armed Services will be given a leave to fulfill their commitment. Employees may use vacation or take leave without pay to attend their annual two-week reserve training tour. Employees choosing to use their vacation leave will be granted an extra three 24-hour days of vacation for that particular year and will be allowed to retain all military pay. These three vacation days may be chosen on any open leave slot (i.e. Kelly Day, Furlough, SLBD) except holidays. Employees choosing to take leave without pay will be reimbursed for the difference between the military pay and their Village pay, provided the latter is greater. In order to receive the pay for the difference, employees must submit a signed statement from their Commanding Officer showing the amount earned while on such service.

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Both parties' final offers on this issue tracked their pre-hearing offers.

Position of the Village. The Employer asserts that the Arbitrator should accept the Village's final offer to provide that if an employee opts to use vacation leave while on military leave, the three extra days of vacation must be taken in an open slot for vacations (*Brief for the Employer* at 76). Under the current provisions of Section 4.5 governing military leave, an employee who opts to use vacation leave is granted an extra three-24 hour days of vacation. The one employee who exercised this option has used the extra days vacation on prime days where all the slots are filled, so it results automatically in the Employer having to bring somebody back on an overtime basis (*Brief* at 77; R.

439). Under the Village's final offer, an employee who exercises the option to have three additional days of vacation would be required to take said days "on an open leave slot" (R. 439; *Brief* at 77). The Administration's intent is to accommodate those days on an open slot as opposed to days where there are no open slots. Parenthetically, the Village would note that it honors requests for military leave even though the taking of such leave may well result in overtime (*Brief* at 77).

Relevant to the resolution of this issue, argues the Administration, is how military leave is handled for all of the Village's other employees, whether represented or unrepresented. The Employer points out that since the military leave provision in the FOP collective bargaining agreement merely references the military leave provisions in the Village's Personnel Manual, which provides that employees have the option to use any accrued vacation leave before being placed on a no-pay status, its final offer should be accepted. While the Village is not seeking to change the current benefit of an extra three days of vacation leave, the Employer very much believes that the use of such extra vacation leave that other similarly situated employees do not receive should be taken on open slots so as to not result in unnecessary overtime expenditures (*Brief* at 77).

The Union's Position. The Union notes that the Village's proposal as to military leave seeks to circumscribe the times during which employees on military leave may use their vacation leave to cover their military leave time off (*Brief for the Union* at 81). Under the existing collective bargaining agreement employees who elect to use vacation leave to cover military leave are granted an extra three vacation days off. The only restriction on the selection of these days is that they may not be used on holidays. In the Union's opinion, the Village's new proposal further restricts the use of these vacation days to only days on which there is an open leave slot (i.e., Kelly Day, furlough, SLBD). The predecessor contract would not allow vacation leave slots to be picked in the SLBD slot. Thus, in addition to a new restriction limiting the extra vacation days to open slots, the Village's proposal would further erode the exclusivity of the SLBD slot (*Brief* at 82).

Analysis and Award. The Union advances the better case regarding Section 4.5. I agree with the Union that the Village's proposal further restricts the use of vacation days to only days on which there is an open slot. The Administration has not advanced a sufficient cause to alter the *status quo*.

The Union's proposal is awarded.

13. Vacation Conversion Formula - §8.1(a) (Amount of Vacation and Application)

Union: Maintain existing benefit.

Employer:

Delete the last paragraph of Section 8.1(a) (Amount of Vacation) and to substitute the following provisions to govern vacations to employees assigned to 40-hour weeks for a period of a year:

Effective January 1, 2008, employees assigned to 40-hour work weeks for at least a one year period (e.g., the assignment of a fire lieutenant to the Bureau for one year) shall accrue vacation as of their anniversary date of employment for use during the year of such assignment (assuming the vacation eligibility provisions of Section 8.2 have been met) in accordance with the following schedule:

<u>Completed Years of Service</u>	<u>Annual Accrual</u>
1st year to 5th anniversary	10 8-hour working day shifts
6th year to 12th anniversary	15 8-hour working day shifts
13th year to 18th anniversary	20 8-hour working day shifts
19th year to 23rd anniversary	25 8-hour working day shifts
24th year and over	30 8-hour working day shifts

When reassigned to 24-hour shifts, such employees shall accrue vacation as of their anniversary date of employment for use during the year following such reassignment (assuming the vacation eligibility provisions of Section 8.2 have been met) in accordance with the annual accrual rates set forth above for 24-hour shift employees.

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. Neither party changed its position on this issue.

Position of the Village. The Village asserts that its final offer to align the vacation accrual for 40-hour fire department employees with the vacation accrual in place for all of the Village's other 40-hour employees should be accepted by the Arbitrator (*Brief for the Employer* at 79). The Village's final offer on this issue is designed to provide bargaining-unit members who are assigned to eight hours for at least a one-year period with the same annual vacation accrual as all the Village's other eight-hour employees. A comparison of the Village's final offer with Section 11.1 of the FOP contract (Er. Ex. 38) and the Village's personnel policy governing vacation shows that the accrual rates in the Village's fi are exactly the same (Er. Ex. 39). Since their use of vacation while assigned to the Fire Prevention Bureau is based on 8-hour days, their accrual of vacation while assigned to the Fire Bureau should likewise be based on 8-hour days (*Brief* at 79).

In consideration of this issue the Administration points out that when employees are assigned to eight-hour shifts, they receive eight (8) paid holidays, i.e., time off without loss of pay, even

though two of the vacation days for Firefighters are in lieu of holidays. As a result, employees assigned to eight-hour shifts end up with substantially more time off than any other Village employee who works on the basis of eight-hour shifts (*Brief* at 79). All the Village is seeking on this issue, it argues, is to provide that employees assigned to the Fire Prevention Bureau for one year or more earn and use vacation on the same basis as the Village's other eight-hour employees. On this matter the Village would note that the parties have agreed to a similar provision with respect to sick leave, i.e., when assigned to eight-hour shifts, employees accrue and use sick leave on the basis on eight-hour shifts (*Brief* at 80, citing Section 4.2 of the 2002-2006 contract).

The Union's Position. The Union rejects the Employer's attempt to reduce benefits to employees on a 40-hour shift. It submits that a change in the vacation conversion formula has the effect of reducing vacation accruals for Firefighters temporarily assigned to 40-hour shifts (*Brief for the Union* at 82). The Village's proposal will only exacerbate existing deficiencies borne by Skokie Firefighters.

Analysis and Award. In *City of Urbana* (1998) I noted that it is rare when interest arbitrators take away benefits previously negotiated by the parties:

Simply stated, the Administration has not met its burden of demonstrating a compelling need for having an interest arbitrator effect a reduction of benefits, a position rarely taken by labor arbitrators. *Hill* at 38.

Furthermore, any arguments regarding internal comparisons to the FOP collective bargaining agreement are diminished when the Administration agreed to peg police salaries in relation to *external* comparables (Jt. Ex. 6 at 30). Specifically, the current FOP agreement provides for the opportunity of equity adjustments in addition to a 3.5% base salary increase. This is not to assert that the Village's collective bargaining agreement relationship with the FOP is to be ignored. To the contrary, it is appropriate to consider the impact that an award will have on other units, especially those that have concluded successor agreements. However, once the Village elects to make police salaries a function of external comparables, internal comparisons lose some of their significance as a criterion.

The Union advances the better argument with respect to vacation conversion and, accordingly, its final offer (*status quo*) on this issue is awarded.

Non-Economic Issues

1. Promotion to Rank of Captain - §12.28

Union:

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "*Exhibit 11*".

2. **Foreign Fire Tax Board - §12.31 (NEW)**

Union:

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "*Exhibit 12*".

3. **Probationary Period - §5.2**

Union:

Defer Arbitrator's determination pending ruling by the ILRB on pending ULP filed by the Union as to Village's claim that it has no duty to bargain as to Union's proposal which is attached and described in "*Exhibit 13*".

4. **Duty Trades - §9.5**

Union:

Maintain existing benefit.

Employer:

Revise the second to the last sentence of the first paragraph of Section 9.5 to read as follows:

No employee shall be involved in more than sixteen (16) duty trades during each calendar year, and both the taking and the repaying of a duty trade shall be counted as a duty trade; provided, however, that a duty trade for approved training or schooling shall not be counted as a duty trade for either employee involved in the trade.

* * * *

Comparison of the Parties' Final Offers with their Pre-Hearing Offers. In their final offers, neither party made any changes to their pre-hearing offers.

Position of the Village. The Administration maintains that its final offer should be awarded in order to close a loophole that directly undercuts the numerical limitation on the use of duty trades (*Brief for the Employer* at 81). Under the current language governing duty trades, employees are limited to eight (8) duty trades per year. However, some employees have found a loophole. They can get around the eight (8) duty trade limit by not being the employee who nominally requests the duty trade since the contract provides that “the repaying of a duty trade shall not be counted as a requested duty trade.” As a result, some employees have been involved in far more than eight (8) duty trades per year. To close this loophole, the Village’s final offer increases the number of duty trades to 16 and provides that both the taking and the repaying of a duty trade is counted as a duty trade (*Brief* at 81). The Village requests that the Arbitrator award its straightforward final offer to correct an inadvertent problem with the existing contract language. All the Village is seeking on this issue is to bring the letter of the section into line with the spirit of what the parties originally agreed to (*Brief* at 82).

The Union’s Position. The Union again asserts that the Employer’s proposals will only exacerbate existing deficiencies. On this issue the Union submits that the shortage of available vacation slots is to some extent mitigated by allowing duty trades. In contrast to the external comparables, Skokie Firefighters already have a cap on duty trades. Indeed, only three of the external bench-mark jurisdictions have any cap at all (Union Ex. 63R) and in two of the bargaining units that do, Arlington Heights and Evanston, firefighters enjoy more time off and more available slots (Union Exhs. 35R & 58R). Awarding the Village’s proposal on duty trades would make Skokie Firefighters’ trade policy the most restrictive of any department (*Brief* at 84). The Union concludes by asserting:

An award granting any of the Employer’s proposed reductions in existing benefits would not only strip Skokie Firefighters’ already sparse forest, but it will reinforce the Village’s disposition to litigate rather than negotiate its differences with the Union. (*Brief for the Union* at 86).

Analysis and Award. The Union advances the better argument. Unexplained is what, if any, benefit enures to the Administration by limiting duty trades of Firefighters by closing a so-called “loophole.”

VI. AWARD

Based upon full consideration of the evidence record, including all applicable statutory criteria, the undersigned Arbitrator awards the following with respect to the successor collective bargaining agreement:

A. Economic Items

1. Term of Agreement – Article XXIII – Three Years – Union’s Proposal
2. Salaries - Section 6.1 – Employer’s Proposal
3. EMT Paramedic Stipend – Section 6.4 – Union’s Proposal
4. Hours of Work - §10.2 (Normal Work Day and Work Week), §10.3 (Normal Work Cycle) & §10.7 (Computation of Straight Time Hourly Rate of Pay) – Employer’s Proposal
5. Serving in Acting Capacity – §12.21 – Union’s Proposal
6. Sick Leave – Good Attendance Incentive – §6.1 – Employer’s Proposal
7. Health Insurance – §15.1 – Employer’s Proposal
8. Specialty Pay – §6.6 (New) – Employer’s Proposal
9. Post Retirement Medical Savings Plan - §15.8 – Union’s Proposal
10. Scheduling of Vacations and Holiday Time Off – §§ 9.1 (Furlough and Floating Holiday Picks for Fire Suppression Employees) & 9.3 (Floating Holidays for Personnel Assigned to 24-Hour Shifts) – Employer’s Proposal
11. Retirement Vacation Allowance (RVA) – §8.6 – Employer’s Proposal
12. Military Leave - §4.5 – Union’s Proposal
13. Vacation Conversion Formula - §8.1(a) (Amount of Vacation and Application) – Union’s Proposal

B. Non-Economic Items

1. Promotion to Rank of Captain - §12.28 – (deferred)

2. Foreign Fire Tax Board - §12.31 (NEW) – (deferred)
3. Probationary Period - §5.2 – (deferred)
4. Duty Trades - §9.5 – Union's Proposal

Dated this 28th day of September, 2007,
at DeKalb, Illinois, 60115.



Marvin Hill, Jr.
Arbitrator

APPENDIX A – UNION EXHIBITS

"EXHIBIT 1"

ARTICLE XXIII

DURATION AND TERM OF AGREEMENT

Section 23.1 Termination in 2006 2009. This Agreement shall be effective as of the day after the contract is executed by both parties *and as otherwise specified in specific contract provisions* and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 2006 2009. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date.

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives at least ten (10) days' written notice to the other party of its desire to terminate this Agreement, provided such termination date shall not be before the anniversary date set forth in the preceding paragraph. Even though this Agreement has terminated pursuant to the provisions of this Article, during the pendency of impasse arbitration proceedings, existing wages, hours, and other conditions of employment shall not be changed without the consent of the other but a party may so consent without prejudice to its rights or position in any such proceedings.

"EXHIBIT 2"

ARTICLE VI

SALARIES AND OTHER COMPENSATION

Section 6.1 Salaries. Effective May 1, 2006 employees covered by this Agreement shall be paid on the basis of the following:

Firefighters

<u>Step</u>	<u>Annual</u>
A	51,132
B	53,697
C	56,454
D	59,264
E	62,264
F	65,384
F+	67,702

Lieutenants

<u>Step</u>	<u>Annual</u>
A	60,053
B	63,067
C	66,212
D	69,546
E	73,000
F	76,642
F+	79,312

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2006-2007 consist of a salary increase at all steps of 4%.

The salary increases effective May 1, 2006 shall be retroactive to May 1, 2006 for employees still on the active payroll on the date this Agreement is ratified by both parties, provided that any employee who retired after May 1, 2006 but before the at this Agreement was ratified shall also be eligible to receive retroactive pay based on the hours worked between May 1, 2006 and the date of retirement.

Effective May 1, 2007 employees covered by this Agreement shall be paid on the basis of the following:

Firefighters

<u>Step</u>	<u>Annual</u>
A	53,178
B	55,845
C	58,712
D	61,635
E	64,755
F	68,000
F+	70,410

Lieutenants

<u>Step</u>	<u>Annual</u>
A	62,456
B	65,590

C	68,860
D	72,328
E	75,920
F	79,708
F+	82,485

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2007-2008 consist of a salary increase at all steps of 4%.

Effective November 1, 2007 Lieutenants at all steps shall receive a 1% equity adjustment and, as a result, effective November 1, 2007 Lieutenants shall be paid on the basis of the following:

Lieutenants

<u>Step</u>	<u>Annual</u>
A	63,080
B	66,246
C	69,549
D	73,051
E	76,680
F	80,505
F+	83,310

Effective May 1, 2008 employees covered by this Agreement shall be paid on the basis of the following:

Firefighters

<u>Step</u>	<u>Annual</u>
A	55,305
B	58,079
C	61,061
D	64,100
E	67,345
F	70,720
F+	73,227

Lieutenants

<u>Step</u>	<u>Annual</u>
A	65,603
B	68,896
C	72,330
D	75,973
E	79,746
F	83,725
F+	86,642

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2008-2009 consist of a salary increase at all steps of 4%.

Effective November 1, 2008 Lieutenants at all steps shall receive a 1% equity adjustment and, as a result, effective November 1, 2008 Lieutenants shall be paid on the basis of the following:

Lieutenants

<u>Step</u>	<u>Annual</u>
A	66,259
B	69,585
C	73,054
D	76,733
E	80,544
F	84,562
F+	87,509

"EXHIBIT 3"

Section 6.4 EMT-P Stipend. An employee who is certified and functioning as a EMT-P shall receive a stipend per fiscal year (pro rata if less than a year) on the basis of the following:

Eff. May 1, 2006 Upon Paramedic certification \$3,850

Eff. May 1, 2007 Upon Paramedic certification \$4,000

Eff. May 1, 2008 Upon Paramedic certification \$4,150

"EXHIBIT 4"

Section 10.2 Normal Work Day and Work Week. The normal work day and work week for fire suppression employees shall be 24 consecutive hours of work (one shift) followed by 48 consecutive hours off (two shifts). A Kelly Day (i.e., what would otherwise be a 24-hour duty day) shall be scheduled off every eighteen (18) duty days, thereby reducing the normal work week to an average of 52.88 hours. *Effective May 1, 2007 a Kelly Day shall be scheduled every 14th duty day, thereby reducing the work week to an average of 52.14 hours.*

The normal work day and work week for employees assigned to the Fire Prevention Bureau shall be 40 hours based on five 8-hour shifts Monday through Friday.

Section 10.2 Normal Work Cycle. The normal work cycle for employees assigned to 24-hour shifts shall be 27 days. For FLSA purposes, each employee's work cycle shall be established so that the employee's Kelly Day (i.e., every 18th shift) starts at 8 p.m. on the shift of the 27th day of his work cycle and ends at 8 p.m. on the first day of the succeeding work cycle. If the shift starting time is changed, the employee's work cycle for FLSA purposes shall be adjusted accordingly. *Effective May 1, 2007 the work cycle for FLSA purposes shall be 21 days commencing at 8 p.m. so that each employee's Kelly Day (i.e., every 14th shift) falls across the last 12 hours of the 21st day and the first 12 hours of the first day of the succeeding cycle.*

The normal work cycle for employees assigned to 8-hour shifts shall be 28 days.

Section 10.7 Computation of Straight Time Hourly Rate of Pay. The straight-time hourly rate of pay for employees shall be calculated by dividing the employee's annual base salary by the annual hours of work. The annual hours of work for employees assigned to 8-hour shifts shall be 2,080. The annual hours of work for employees assigned to 24-hour shifts shall be 2,750. *Effective May 1, 2007 the annual hours for 24 hour shift employees shall be 2,711.*

"EXHIBIT 5"

~~Section 12.21 Serving in Acting Capacity. After January 1, 1988, the Village agrees that it will not increase in any significant way the frequency with which employees were assigned to work in an acting capacity in a higher classification prior to January 1, 1988.~~

~~Based on the arbitration award issued in 1995 by Arbitrator Randi Hammer-Abramsky, the parties have agreed to use the following 1987 base line numbers to determine occurrences of acting out of rank:~~

~~Assigned to serve as Acting Captain 63~~

~~Assigned to serve as acting Lieutenant 783~~

~~No additional compensation shall be paid if the number of occurrences during a calendar year does not exceed either or both of the foregoing numbers. If the number of occurrences exceeds either or both of the foregoing base line numbers *Effective May 1, 2007*, the rate of compensation for the occurrences that exceed either or both of the base line numbers *Firefighters assigned to perform the*~~

duties of a Lieutenant shall be 5% above the employee's applicable hourly rate of pay for each hour that the employee is assigned to work in acting capacity during such an occurrence. *Lieutenants acting as a Captain shall be paid a differential of 4% above their applicable hourly rate of pay during such an occurrence.* For ~~this~~ *these* purposes, an occurrence shall be defined as serving in acting capacity for 12 hours or more. If more than one employee is assigned to work in acting capacity during one occurrence, each employee shall be paid for the respective number of hours that they worked in acting capacity during the occurrence in question.

~~The Village and Union shall each appoint one representative to calculate the yearly totals for acting out of rank by reviewing after December 31 the daily manpower sheet and, as needed, other reports and station log books for the preceding year to determine if there is an occurrence as defined above. If the total number of occurrences exceeds either or both of the base line numbers set forth above, the total number of occurrences in excess for either or both classifications shall be determined and shall reflect the date of the occurrence, the classification in which an employee(s) were assigned to serve in acting capacity, and the number of hours. This information shall be compiled in a summary report and forwarded to both the Fire Chief and Union President. A copy of the approved report shall be forwarded to the Village Finance Director for processing.~~

"EXHIBIT 6"

Section 6.1

(c) ~~Sick Leave Bonus Days Good Attendance Incentive.~~ Effective January 1, 2003 2007, employees assigned to 24 hour shifts shall be eligible for sick leave ~~bonus time to be taken during the current calendar year~~ *good attendance incentive* based on how many sick leave days and emergency leave days that the employee used during the preceding calendar year in accordance with the following:

No. of sick leave/emergency leave days used as of 12.31	No. of sick leave days/ hours paid	No. of sick leave days banked
None	3 days (72 hours)	3
1 day	2 days (48 hours)	3
2 days	1 day (24 hours)	3
3 or more	None	3 or less as applicable

To be eligible to participate in the good attendance incentive, employees must accrue a minimum sick leave bank of thirty (30) duty days. Incentive payments shall be paid into the employees' post-retirement accounts provided under §§15.8 of this Agreement.

~~Effective January 1, 2003~~ Employees assigned to 8-hour shifts shall be eligible for sick leave bonus time to be taken during ~~that~~ *the* calendar year based on how many sick leave days and emergency leave days that the employee used during the preceding calendar year in accordance with the following:

No of sick leave/emergency No of sick leave bonus days/hours

leave days used as of 12/31	bonus days/hours
None	3 days (24 hours)
2-3 days	2 days (16 hours)
6 or more	None

Use of sick leave for either the employee himself or his family and use of emergency leave for either the employee himself or his family will count in determining eligibility for sick leave bonus days.

~~There will be a separate slot for scheduling sick leave bonus time for 24-hour personnel. Only one employee may schedule and take sick leave bonus time on any given day, provided that sick leave bonus time cannot be scheduled or taken on holidays. Effective January 1, 2003, if any sick leave bonus time earned in the preceding year (i.e., calendar year 2002 and beyond) is not taken during the current calendar year, it will be added to the employee's accumulated sick leave hours up to but not above the maximum accumulation of 1,400 hours for employees assigned to 24-hour shifts and 960 hours for employees assigned to 8-hour shifts. Any additional sick leave bonus time will be forfeited if not used in the current year.~~

"EXHIBIT 7"

EXHIBIT XV

INSURANCE

Section 15.1 Comprehensive Medical Program and Dental Insurance Program. The comprehensive medical program and dental insurance program that are currently in effect shall be continued during the term of this Agreement. The terms of the program "currently in effect" are those described in the employee benefit booklet and plan document effective May 1, 2002. *Effective May 1, 2008 the comprehensive medical program shall be modified as follows:*

- 1) *Increase the lifetime maximum benefit coverage to Two (2) Million Dollars;*
- 2) *Add a Single + 1 coverage option.*

The Village retains the right to change insurance carriers, benefit levels, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially equivalent to those described in the aforementioned employee benefit booklet and plan document. Reasonably prior to the effective date of any such changes, the Village will advise the Union of the changes. Employees may elect single or family coverage in the Village health plan and in the dental insurance program offered by the Village during the enrollment period(s) established by the Village. The employee may also elect single or family coverage in an HMO selected and offered by the Village during the enrollment period(s) established by the Village. If the Village offers a different HMO from those currently offered, such new HMO option shall be reasonably equivalent to the replaced HMO, subject to the market alternatives for HMOs that are then available and provided that the cost for new HMO is not higher than the cost for the Village plan. The employee shall pay 12% of the premium or cost for single or family coverage, whichever is applicable, for the plan selected and said amount shall be deducted from the employee's paycheck.

Effective May 1, 2008 the employee contribution for single, single +1, or family coverage, as applicable, shall be increased to 13% of the premium cost applicable to plan selected.

"EXHIBIT 8"

Section 6.6 Specialty Pay. Firefighters who possess certification as a Fire Apparatus Engineer (FAE) and who are assigned to drive a fire apparatus as part of their regular duties shall be paid a stipend in the following amount:

Effective May 1, 2007 - \$250 per year

Effective May 1, 2008 - \$500 per year

"EXHIBIT 9"

Section 15.8 Post-Retirement Medical Savings Plan Post-Employment Health Plan. Effective the first payroll period beginning on or after January 1, ~~2003~~ 2008, one percent of each employee's base annual salary ~~will~~ shall be deducted from each employee's paycheck and ~~will~~ shall be placed into the same Section 457 account (~~currently VantageCare Retirement Health Savings Plan~~) as referenced in 12.30 to be used by the employee upon retirement to pay for eligible medical expenses a Post Employment Health Plan (PEHP) for each employee. All contributions to the PEHP shall be made as provided by this Agreement and in accordance with applicable provisions of the Internal Revenue Code and related rulings. All such deductions shall be contributed by the Employer to the Plan Administrator for the PEHP for deposit with the Trustee of the Plan. Employees shall be responsible for PEHP administrative fees. This one percent payroll deduction will not be deemed to decrease an employee's annual salary as set forth in Section 6.1 of this Agreement that is used in determining the amount of an employee's pension. The purpose of this section is to establish an employee-funded post-retirement medical account at no cost to the Village that can be used by the employee following retirement to pay for eligible medical expenses. The specific plan into which the contributions shall be made shall be determined according to the following procedure:

- 1) Within seven (7) days after the issuance of the Arbitrator's award the parties may nominate up to two (2) vendors each who offer tax exempt post employment health savings accounts in compliance with I.R.S. Code and Regulations.
- 2) Each company shall be invited to attend meetings to be scheduled at times and places as mutually agreed between the parties at which each interested vendor shall have an equal opportunity to describe its product to members of the bargaining unit. Such meeting shall be held within thirty (30) days of the date of issuance of the award unless the parties mutually agree to a longer period.
- 3) Within ten (10) days of the conclusion of the vendor's presentation, the Union shall survey its membership as to their preferences as to the vendor to be selected. The vendor selected shall be the vendor preferred by a majority of the bargaining unit.

4) The Union shall then notify the Village of the vendor selected and the parties shall take all necessary action to implement a PEHP consistent with the vendor selected.

"EXHIBIT 10"

ARTICLE IX

SCHEDULING OF FURLOUGHS

AND FLOATING HOLIDAYS

Section 9.1 Furlough and Floating Holiday Picks for Fire Suppression Employees. Furlough and floating holiday picks shall be made between October 1 and December 1 for the following calendar year, starting with the most senior employee. All furlough picks shall be in increments of at least one duty day. Floating holiday picks shall be selected in the same manner separately from furlough picks after all furlough picks are completed.

Four slots per duty day shall be allotted for both furlough and floating holiday picks. [THE NUMBER OF SLOTS FOR PICKING FURLOUGH AND FLOATING HOLIDAYS IS A DISPUTED ISSUE.]

During the period December 16 through December 21 employees may select their floating holiday days off within a fifth slot into days that are "unpicked slots". "Unpicked slots" shall be defined as slots available to Captains for the selection of time off that have not been picked by Captains for vacation, Kelly Day or holiday time off by December 15th of the year preceding the calendar year starting January 1st.

Not more than three (3) bargaining unit lieutenants may be on furlough, a floating holiday or scheduled off on a Kelly day at the same time. Accordingly, the number of furlough picks that may be picked by bargaining unit lieutenants is dependent upon the number of furlough days that have already been picked by bargaining unit lieutenants. Example: If only one bargaining unit lieutenant has picked a furlough day on a given duty day and another bargaining unit lieutenant is scheduled off on a Kelly day, there would be only one remaining furlough pick available for that duty day for bargaining unit lieutenants on that shift.

"EXHIBIT 11"

Section 12.28 A. Promotions to the Rank of Fire Lieutenant.

Promotions from the rank of firefighter to the rank of fire lieutenant shall incorporate the following principles and components:

* * *

B. Promotions to Rank of Fire Captain.

(1) General. Promotions to the rank of Captain shall be conducted in accordance with the provisions of the Fire Department Promotional Act, effective August 4, 2003, 50 ILCS §§742 (hereinafter the "Act"). A copy of this Act is attached as "Appendix " to this Agreement. The procedures for promotions shall be made in accordance with the provisions of the Act unless otherwise specified in this section.

(2) Eligibility. All promotions shall be made from employees who possess the following qualifications:

a) At least one (1) year seniority in the Skokie Fire Department in the rank of Lieutenant as of January 1st of the year in which the written component of the examination is administered;

b) Certification or provisional certification as a Fire Officer II;

c) Possession of at least 60 semester hours of credit from an accredited college or university.

(3) Rating Factors and Weights. All examinations shall be impartial and shall relate to those matters which will test the candidate's ability to discharge the duties of the position to be filled. The placement of employees on promotional lists shall be based on the points achieved by the employee on promotional examinations consisting of the following six (6) components weighted as specified:

a.	Written examination (\$35)	40%
B.	Seniority (\$40)	10%
C.	Ascertained merit (\$45)	10%
D.	Subjective components	
	(i). Assessment center	25%
	(ii) Promotability potential rating	15%

(4) Test Components:

a) Written Examination. As per §35 of the Act.

b) Seniority Points. Seniority points shall be granted as follows: 1/2 point per year of seniority to a maximum of 20 years for a maximum total of 10 points.

c) Ascertained Merit. A maximum of 10 points can be earned (10 pts. = 100%) for ascertained merit which shall be earned based on the professional achievements listed below:

College Education:

Master's Degree in Fire

Science or Fire Management 9 points

Bachelor's Degree in Fire

Science or Fire Management 6 points

Associate's Degree in Fire

Science or Fire Management 3 points

Bachelor's Degree in any

other field 3 points

Associate's Degree in any

other field 1.5 points

Highest level certification of the following:

Fire Fighter III 1 point

Fire Officer I 1 point

Fire Officer II 5 points

Fire Apparatus Engineer 1 point

Fire Investigator 1 point

Arson Investigator 1 point

Special Rescue Group:

Trench Operations 1 point

Trench Tech 1 point

Structural Collapse Operations 1 point

Structural Collapse Tech 1 point

Confined Space Operations 1 point

Confined Space Tech 1 point

Vehicle & Machinery Operations 1 point

Vehicle & Machinery Tech 1 point

Rope Operations 1 point

Rope Tech. 1 point

All Rescue Specialist Classes 1 point

Hazardous Materials Group:

Haz-Mat Operations 1 point

Haz-Mat Tech 1 point

Haz-Mat Incident Command 1 point

d) Subjective Evaluation.

(i) Assessment Center. An independent vendor who will use a panel of qualified impartial fire officers from other public sector jurisdictions with similar work experience to fire officers in Skokie shall conduct the Assessment Center. The Assessment Center

shall include the use of multiple assessment techniques and tactical exercises.

(ii) Promotability Potential Evaluation. The same promotability potential process used to establish the Captain's list that expired on September 20, 2003 will be used for the next promotion process for the rank of Captain. (Effective January 1, 2005, the newly adopted Promotability Potential Evaluation criteria will be used.) The promotability potential evaluation process shall be based on an evaluation conducted by all 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 who pass the written examination. 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 criterion. A Deputy Fire Chief will facilitate the Promotability Potential Evaluation meeting with the Captains.

e) Veteran's Preference Points. As per §§55 of the Act.

(5) Maintenance of Promotional Lists. Final eligibility lists shall be effective for a period of two (2) years. The Employer shall take all necessary steps to ensure that the Village of Skokie Fire and Police Commission maintain in effect current eligibility lists so that promotional vacancies are filled not later than 180 days after the occurrence of the vacancy.

(6) Reopener. Either party may reopen this Section 12.28 (Promotions to Fire Lieutenant/**Fire Captain**), by giving written notice to the other party not earlier than ninety (90) days prior to the expiration of the next Fire Lieutenant's eligibility list posted by the Village of Skokie Board of Fire and Police Commissioners (currently expected to be posted in February 2007) or not later than sixty (60) days prior to the expiration of said list. Although the parties have agreed this reopener is limited to Article XII, Section 12.28, the parties specifically agree that they are not altering or changing in any way the normal and customary rules governing the burden of proof in interest arbitration if either party during such reopener negotiations seeks to substantive change the provisions of Section 12.28 *that are mandatory subjects of bargaining.*

"EXHIBIT 12"

12.31 Foreign Fire Tax Board. The Village shall take all necessary action to enact an ordinance providing for the election of officers for a Village of Skokie Fire Department Foreign Fire Insurance Board by the members of the Department as required by Illinois Municipal Code, 65 ILCS 5/11-10-2. Such task shall be implemented no later than ninety (90) days after the execution of this Agreement unless an extension is mutually agreed by the parties.

"EXHIBIT 13"

Section 5.2 Probationary Period. All new employees and those rehired after termination of employment shall be considered probationary employees until they complete a probationary period of ~~eighteen (18)~~ **twelve (12)** months. During an

employee's probationary period the employee may be suspended or terminated at the sole discretion of the Village, subject to whatever legal rights, if any, such employees may have separate and apart from this Agreement. No grievance shall be presented or entertained in connection with the suspension or termination of a probationary employee.

The probationary *employment* period limitation may be extended, ~~if approved by the Board of Fire and Police Commissioners, for a comparable period of time (i.e., day for day extensions in the event a probationary employee is absent and/or on leave for any reason for a total of four (4) weeks or more during the first eighteen (18) months of employment) for an employee who is required, as a condition of employment, to be a certified Paramedic, during which time the sole reason that an employee may be discharged without a hearing is for failing to meet the requirements for Paramedic certification.~~

EMPLOYER'S FINAL OFFER ATTACHMENTS

APPENDIX "A"

Section 6.1. Salaries. Effective May 1, 2006, employees covered by this Agreement shall be paid on the basis of the following:

<u>Firefighters</u>	
Step	Annual
A	\$50,887
B	\$53,439
C	\$56,183
D	\$58,979
E	\$61,965
F	\$65,070
F+	\$67,376

<u>Lieutenants</u>	
Step	Annual
A	\$59,765
B	\$62,764
C	\$65,893
D	\$69,211
E	\$72,650
F	\$76,273
F+	\$78,931

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2006-2007 consist of a salary increase at all steps of 3.5%.

The salary increases effective on or after May 1, 2006 as set forth in this Section 6.1 shall be retroactive to May 1, 2006 for employees still on the active payroll on the date this Agreement is ratified by both parties, provided that any employee who retired after May 1, 2006 but before the date this Agreement was ratified shall also be eligible to receive retroactive pay based on the hours worked between May 1, 2006 and the date of retirement.

Effective November 1, 2006, Lieutenants at all steps shall receive a 0.5% equity adjustment and, as a result, effective November 1, 2006, Lieutenants shall be paid on the basis of the following:

<u>Lieutenants</u>	
Step	Annual
A	\$60,064
B	\$63,078
C	\$66,222
D	\$69,557
E	\$73,013
F	\$76,654
F+	\$79,326

Effective May 1, 2007, employees covered by this Agreement shall be paid on the basis of the following:

<u>Firefighters</u>	
Step	Annual
A	\$52,795

B	\$54,443
C	\$58,290
D	\$61,191
E	\$64,289
F	\$67,510
F+	\$69,903

<u>Lieutenants</u>	
Step	Annual
A	\$62,316
B	\$65,443
C	\$68,705
D	\$72,165
E	\$75,751
F	\$79,529
F+	\$82,301

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2007-2008 consist of a salary increase at all steps of 3.75%.

Effective November 1, 2007, Lieutenants at all steps shall receive a 0.5% equity adjustment and, as a result, effective November 1, 2007, Lieutenants shall be paid on the basis of the following:

<u>Lieutenants</u>	
Step	Annual
A	\$62,628
B	\$65,770
C	\$69,049
D	\$72,526
E	\$76,130
F	\$79,927
F+	\$82,713

Effective May 1, 2008, employees covered by this Agreement shall be paid on the basis of the following:

<u>Firefighters</u>	
Step	Annual
A	\$54,775
B	\$56,485
C	\$60,476
D	\$63,486
E	\$66,700
F	\$70,042
F+	\$72,524

<u>Lieutenants</u>	
Step	Annual
A	\$64,977
B	\$68,236
C	\$71,638
D	\$75,246
E	\$78,985

F	\$82,924
F+	\$85,815

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2008-2009 consist of a salary increase at all steps of 3.75%.

Effective May 1, 2009, employees covered by this Agreement shall be paid on the basis of the following:

<u>Firefighters</u>	
Step	Annual
A	\$56,692
B	\$58,462
C	\$62,593
D	\$65,708
E	\$69,035
F	\$72,493
F+	\$75,062

<u>Lieutenants</u>	
Step	Annual
A	\$67,251
B	\$70,624
C	\$74,145
D	\$77,880
E	\$81,749
F	\$85,826
F+	\$88,819

The foregoing salaries for Firefighters and Lieutenants for fiscal year 2009-2010 consist of a salary increase at all steps of 3.5%.

APPENDIX "B"

Section 13.1. Comprehensive Medical Program and Dental Insurance Program. The comprehensive medical program and dental insurance program that are currently in effect shall be continued during the term of this Agreement. The terms of the program currently in effect are those described in the employee benefit booklet and plan document effective May 1, 2002. Effective May 1, 2008, the lifetime maximum for the Village's PPO shall be increased to two million dollars (\$2,000,000). The Village retains the right to change insurance carriers, benefit levels, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially equivalent to those described in the aforementioned employee benefit booklet and plan document. Reasonably prior to the effective date of any such changes, the Village will advise the Union of the changes. Employees may elect single or family coverage in the Village health plan and in the dental insurance program offered by the Village during the enrollment period(s) established by the Village. The employee may also elect single or family coverage in an HMO selected and offered by the Village during the enrollment period(s) established by the Village. If the Village offers a different HMO from those currently offered, such new HMO option shall be reasonably equivalent to the replaced HMO, subject to the market alternatives for HMOs that are then available and provided that the cost for new HMO is not higher than the cost for the Village plan. The employee shall pay 12% of the premium or cost for single or family coverage (13% effective May 1, 2007), whichever is applicable, for the plan selected and said amount shall be deducted from the employee's paycheck.

APPENDIX "C"

Section 23.1. Termination in 2010. This Agreement shall be effective as of the day after the contract is executed by both parties and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 2010. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date.

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives at least ten (10) days written notice to the other party of its desire to terminate this Agreement, provided such termination date shall not be before the anniversary date set forth in the preceding paragraph. Even though this Agreement has terminated pursuant to the provisions of this Article, during the pendency of impasse arbitration proceedings, existing wages, hours, and other conditions of employment shall not be changed without the consent of the other but a party may so consent without prejudice to its rights or position in any such proceedings.

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