

**INTEREST ARBITRATION  
OPINION AND AWARD**

In the matter of Interest  
Arbitration

Between

VILLAGE OF BROOKFIELD,  
ILLINOIS

And

ILLINOIS FRATERNAL ORDER  
OF POLICE LABOR COUNCIL

Case No. S-MA-07-141

Hearing Held

July 24, 2008

Brookfield Village Hall  
8820 Brookfield Avenue  
Brookfield, IL 60513

Arbitrator

Steven Briggs

Appearances

For the Union:

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For the Village:

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## **BACKGROUND**

The Village of Brookfield, Illinois (the Village) is located approximately 13 miles from Chicago. It has a population of just over 19,000, and is a non-home rule unit of government. The Village employs 32 sworn police officers, 6 of whom are classified as sergeants. All full-time officers in the rank of sergeant or below (n = 28) are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union; the FOP). There are four additional bargaining units of Village employees: (1) a Police Department telecommunicators and dispatchers unit, also represented by the FOP; (2) a Department of Public Works employee unit, represented by the Service Employees International Union (SEIU) Local 73; (3) a unit of firefighters in ranks below captain, also represented by SEIU Local 73; and (4) a clerical employee unit, represented by SEIU Local 73 as well.

The Village and the Union have been in a formal collective bargaining relationship for the police unit since approximately 1989. They are currently signatory to a May 1, 2004 to April 30, 2007 Agreement. In extended negotiations for its successor, the parties tentatively resolved all of issues voluntarily. Ultimately, though, the patrol shift schedule was not ratified by the bargaining unit membership. The Union appealed that issue to compulsory interest arbitration, and through the Illinois Labor Relations Board the parties selected Steven Briggs to serve as their Arbitrator.

An interest arbitration hearing was held on July 24, 2008, and the parties exchanged final offers at its outset. They also entered into several stipulations, including one confirming their mutual waiver of the tripartite arbitration panel provision of the Illinois Public Labor Relations Act. The parties stipulated as well that their tentative agreements on all of the other issues shall be incorporated into the May 1, 2007 – December 31, 2009 successor Agreement. The interest arbitration hearing was transcribed. The parties' timely post-hearing briefs were ultimately received by the Arbitrator on September 10, 2008.

### **RELEVANT STATUTORY PROVISIONS**

Section 14(g) of the Illinois Public Labor Relations Act (the Act) provides in pertinent part:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration 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).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.

- (1) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (2) 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.
- (3) The average consumer prices for goods and services, commonly known as the cost of living.
- (4) 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.
- (5) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (6) 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.

## **THE ISSUE**

As noted, the parties have advanced the following matter to interest arbitration. They have mutually characterized it as an economic issue.

- (1) Patrol Work Schedule

## **THE EXTERNAL COMPARABLES**

The parties have stipulated that for purposes of these interest arbitration proceedings, the following communities shall constitute the external comparability pool:

Bellwood

Forest Park

LaGrange

LaGrange Park

Lyons

Westchester

## **PERTINENT AGREEMENT PROVISION<sup>1</sup>**

### ARTICLE XIV: HOURS AND OVERTIME

#### Section 14.6. Scheduling and Shift Assignments

So long as permanent shifts exist, shift preferences shall be submitted by each officer on an annual basis, and shall be assigned by November 1<sup>st</sup> for implementation the January following. This process shall not apply to officers on probation. The Chief shall assign shifts by seniority within

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<sup>1</sup> Quoted from §14.6 of the parties' 2004-2007 Agreement.

each grade; but the Chief reserves the right to make adjustments in order to achieve the Department's mission, so long as the adjustments are not arbitrary or capricious.

The Chief reserves the right to modify said schedule or change the Department shift schedule, including a return to rotating shifts, provided the Chief notifies both the affected officers and the Labor Council at least sixty (60) days prior to the intended implementation date of any change. The Labor Council reserves its right to impact and effects bargaining over such change, including the right to move to interest arbitration; but the Chief shall not be prevented from implementing such change, so long as such implementation is not less than sixty (60) days after notice was given to the affected parties.

If the Chief determines that a vacancy exists on a shift, the Chief shall first seek preferences from the officers as provided hereinabove and shall fill such vacancy in accordance with the first paragraph hereof. Notwithstanding the above, the Chief shall have the right to make temporary transfers to achieve the Department's mission, so long as such transfers are not arbitrary or capricious, and so long as such transfers do not exceed ninety (90) calendar days in duration, unless mutually agreed otherwise by the parties. Any time in excess of the ninety (90) days, or any mutually agreed extension, shall be filled in accordance with the first paragraph hereof.

### **THE FINAL OFFERS**

The parties exchanged final offers just prior to the commencement of the July 24, 2008 interest arbitration hearing. They are quoted in full here:

#### Village Final Offer

The Village characterizes its final offer as representing no change to the status quo. Quoted here in its entirety, the Village's final offer is "No change in Article XIV language."

## Union Final Offer

The following single-spaced paragraphs constitute the Union's final offer. It proposes that the italicized portion of §14.6 be deleted, and that the paragraph in bold print be added.

So long as permanent shifts exist, shift preferences shall be submitted by each officer on an annual basis, and shall be assigned by November 1<sup>st</sup> for implementation the January following. This process shall not apply to officers on probation. The Chief shall assign shifts by seniority within each grade; but the Chief reserves the right to make adjustments in order to achieve the Department's mission, so long as the adjustments are not arbitrary or capricious.

*The Chief reserves the right to modify said schedule or change the Department shift schedule, including a return to rotating shifts, provided the Chief notifies both the affected officers and the Labor Council at least sixty (60) days prior to the intended implementation date of any change. The Labor Council reserves its right to impact and effects bargaining over such change, including the right to move to interest arbitration; but the Chief shall not be prevented from implementing such change, so long as such implementation is not less than sixty (60) days after notice was given to the affected parties.*

If the Chief determines that a vacancy exists on a shift, the Chief shall first seek preferences from the officers as provided hereinabove and shall fill such vacancy in accordance with the first paragraph hereof. Notwithstanding the above, the Chief shall have the right to make temporary transfers to achieve the Department's mission, so long as such transfers are not arbitrary or capricious, and so long as such transfers do not exceed ninety (90) calendar days in duration, unless mutually agreed otherwise by the parties. Any time in excess of the ninety (90) days, or any mutually agreed extension, shall be filled in accordance with the first paragraph hereof.

**Effective January 1, 2009, the regular patrol shift shall be a twelve (12) hour day (with permanent shift assignments) as a pilot program. The pilot program shall be for the duration of this Agreement only and, for purposes of future interest arbitration proceedings, no particular schedule shall be presumed to be the "status quo." The parties are encouraged to use an accepted method to calculate the usage of sick time, the payment of overtime and changes in the deployment of manpower in order to use such data in the**

**determination of the appropriate patrol schedule for 2010.**

**If the parties are unable to agree to a patrol schedule for 2010 by September 1, 2009, the parties shall arrange for an expedited interest arbitration proceeding in order that an award can issue (sic) by no later than October 31, 2009.**

## **THE PARTIES' POSITIONS**

### Village Position

The Village believes its final offer should be adopted. Its principal arguments in support of that position are summarized in the following numbered paragraphs:

1. In September 2003, pursuant to §14.6 of the Agreement, the Police Chief implemented permanent (i.e., non-rotating) 12-hour shifts for calendar 2004 on an experimental basis. A memo to FOP representatives explained that: "At the end of 2004, the shift schedule may be changed back to 8 hour shifts if (the Chief) thinks it is within the best interest of the Department." Thereafter, patrol division personnel worked 12-hour shifts in 2005, 2006 and 2007. In February, 2007, Chief Schoenfeld advised the Union that the patrol division would be reverting to an 8-hour shift for 2008. Just a month later, in March, 2007, negotiations began for a successor collective bargaining agreement. The Union's initial, comprehensive proposal did not address work schedules.

2. Beginning with the second bargaining session on April 18, 2007, and continuing over the next seven sessions, the parties discussed

the Village's reasoning for adopting an 8-hour schedule for 2008. At the August 23<sup>rd</sup> session, the Union proposed a "Letter of Understanding" that 12-hour shifts would be maintained, and the text of Article XIV would remain unchanged for the duration of the successor contract. It proposed as well that the supplemental optical insurance coverage in §25.3 of the existing contract remain in effect until December 31, 2007, when it would be discontinued. The Village did not accept those proposals.

3. After extensive further negotiations on this issue, at a November 1, 2007 mediation session the Village offered to leave the supplemental vision plan in the successor contract if the Union would withdraw its proposal to maintain 12-hour shifts. The parties agreed to that trade off, and tentative agreement was reached on all of the issues.

4. The above trade-off regarding supplemental vision coverage and the 12-hour shift was constructed despite the fact that the former had been eliminated for all other Village employees.

5. In a subsequent ratification vote the bargaining unit rejected the tentative agreements. However, the Union has made it clear that all of those tentative agreements --- including retention of the supplemental vision coverage --- are acceptable, save for its tentative pledge to withdraw the proposal to retain 12-hour shifts for the duration of the successor agreement.

6. The Village had the authority under §14.6 to implement an

8.5-hour schedule, which it did effective January 1, 2008.

7. At every bargaining session where the patrol shift schedule was discussed, the Village explained why the experimental 12-hour shifts had been a failure. Those reasons included (1) increased sick leave and overtime costs; and (2) communication difficulties, because command staff were not present when half of the patrol division was working (i.e., from 6 p.m. to 6 a.m.).

8. The Village's final offer is reasonable, and given the parties' own tentative agreement on this issue, it comes closest to approximating a voluntary resolution the parties would have reached on their own at the bargaining table.

9. The only issue before the Arbitrator concerns the patrol schedule. Once that issue is decided and the successor agreement takes effect, the patrol unit will enjoy the extended supplemental vision plan --- which the Village offered in exchange for the Union's willingness to leave §14.6 unchanged.

10. If a tentative agreement is rejected in a ratification vote simply because the members just wanted more, noted Illinois interest arbitrators have held that it should be viewed as a valid indication of what the parties' own representatives considered reasonable, and it should be given some weight in a subsequent interest arbitration.

11. At the interest arbitration hearing the Union indicated that the patrol schedule tentative agreement was rejected because the

members preferred the number of days and weekends they were off under the 12-hour schedule. That “life style” rationale has no regard for the Department’s operational needs and costs.

12. The Union’s final offer of a one-year pilot program for the 12-hour schedule is tantamount to a “breakthrough,” for it also eliminates the presumption of a “status quo” for this issue in the future. As it stands now, the Village has the “status quo” factor in its favor. It is therefore understandable that the Union prefers “no status quo” on this issue.

13. The external comparability factor supports adoption of the Village’s final offer. Only one of those six communities runs 12-hour shifts for patrol officers. And like Brookfield, three of the six (Westchester, LaGrange Park, LaGrange), have collective bargaining agreements which confirm their managerial right to set and alter police work schedules.

14. The Village currently has the lawful authority and the contractual authority to establish the length of the work day.

15. Data submitted by the Village (VX-14, VX-15) reveal that absenteeism hours increased steadily and significantly under the 12-hour schedule. It is in the public interest to reduce the costs associated with that increase. The same principle holds true for the increased overtime costs connected to the 12-hour schedule (VX-17, VX-18).

16. Both sick leave and overtime costs decreased meaningfully

under the 8.5-hour shift for the first six months of 2008 (VX-19).

17. The Union has the burden of proving that there are compelling reasons to change the status quo on this issue. That burden has not been met.

18. The 12-hour shift is not the status quo. From at least 1978 through 2003 patrol officers in Brookfield worked 8-hour shifts. From 2004 through 2007, the Village “experimented” with 12-hour shifts. Against the historical backdrop of 8-hour shifts, a brief and experimental four-year period of 12-hour shifts is not the norm. Besides, the 12-hour shifts were implemented by management, under the mantle of its §14.6 authority.

19. The Village has exercised its §14.6 authority reasonably in the past, and there is every reason to believe it will continue to do so.

20. Rather than providing a *quid pro quo* in its final offer to re-establish 12-hour shifts, the Union has chosen to retain the benefit of the bargain the Village made with it in exchange for withdrawing its demand for 12-hour shifts. That benefit (supplemental vision plan) is not enjoyed by any other Village employees.

21. Patrol officers enjoy liberal weekend time off under the 8.5 hour schedule. It is just that their days off are not always consecutive. Unfortunately, no work schedule can guarantee that officers will not miss their children’s school or sports activities on occasion.

22. The Village’s final offer should be adopted by the Arbitrator.

## Union Position

The Union urges the Arbitrator to adopt its final offer. In support of that position, it has advanced the following arguments:

1. The 12-hour shift has proven to be effective. After a successful introductory year in 2004, the Police Chief extended it to 2005. After a successful 2005, the Police Chief extended it to 2006. And after a successful 2006, the Police Chief extended it to 2007. It was not until near the end of 2007 that patrol officers were notified they were being moved to a new (8-hour) work schedule. That change was not made at the officers' request, but against their wishes.

2. The officers were originally told that the former 8-hour shift schedule would be reinstated; however, the Village instead implemented an unprecedented and unheard of 8.5-hour shift that no neighboring department uses and that features a bizarre day-off schedule.

3. Implementing the 12-hour schedule is in the public interest. During its four-year stint, the schedule increased the minimum staffing on the streets of Brookfield to four officers --- a fact the Village does not dispute (UX-11). Indeed, the schedule assigns six patrol officers to each shift, and guarantees that even after considering absences due to illness, vacation, etc., a minimum of four officers will be on duty at any one time. A greater police presence is of significant, if not primary, importance to the public.

4. Under the novel 8.5-hour shift schedule presently in place, there are less officers on the street and the new Chief of Police (Steven Stelter --- hired after the 8.5-hour schedule was implemented), in order to avoid falling below minimum staffing levels and forcing off-duty officers to work on an overtime basis, is regularly taking officers off investigation assignments and putting them on patrol beats for full shifts.

5. The new Chief has had no exposure to the 12-hour schedule. Under the Union's final offer, he would have one year to evaluate it, and to compare it with the 8.5-hour schedule. The Union's proposal is based upon its faith that the new Chief will thoroughly examine the pros and cons of each, and will insist on a schedule that will serve the interests and welfare of the public.

6. Of course the 12-hour schedule benefits the morale and personal lives of Brookfield patrol officers. While calling for officers to work the same number of annual hours (2,080) as other police schedules, it provides them with every other weekend off. That aspect of the schedule allows officers to participate in family life, while at the same time giving them a reasonable chance to recuperate from the stresses of police work.

7. A prime example of the above benefits, and of the problems associated with the 8.5-hour shift, was given by Union witness Dwayne Burrell. Officer Burrell, a divorced father, testified that when on 12-hour

shifts he was able to arrange custody visits with his children every other weekend. He could attend their ball games and other functions. But in 2008, under the new 8.5-hour schedule, his first weekend off did not come until March, and he was only able to see his kids once per week. Officer Burrell is rightly concerned about being a good father, and his situation is just one example of the negative impact the 8.5-hour schedule has had on Brookfield patrol officers.

8. The final offer of the Village does not benefit the public interest or welfare, because it retains the existing contract language allowing the Chief of Police to dictate the shift schedule, regardless of its impact on manpower or any other factor.

9. Most recently, the Village “determined” unilaterally that the 12-hour shift schedule was not working. But that determination has no facts to support it. For three consecutive years (2005, 2006, 2007) the Village could have departed from the schedule. It did not do so. The Department operated without incident during that period. If the 12-hour schedule had caused problems during that time, the Chief had the contractual authority to change it. He did not do so.

10. The Village offered nothing but inaccurate, illogical reasons for its determination that an 8.5-hour schedule was preferable. Primarily, it argued that the 12-hour schedule had increased sick leave usage (UX-16). But when the Union discovered that one officer accounted for 40% of the sick time used, it challenged the Village’s

position. Once the Union obtained raw sick leave data from the Village, it pointed out that the number of sick leave days had, in fact, not increased as a result of the 12-hour schedule (UX-18). And that finding makes perfect sense. When officers work fewer days annually, they are more likely to be sick on their days off.

11. Obviously, when an officer misses a day of work under a 12-hour system instead of an 8-hour one, sick leave hours increase by 50%. But other jurisdictions running a 12-hour patrol officer schedule experience that impact as well, and they have seen fit to retain it.

12. The Village's advocate acknowledged during the arbitration hearing that he could show no "cause and effect" between the 12-hour shift schedule and an increase in sick leave hours (Tr. 13). That sudden admission is diametrically opposed to the Village's repeated position that it went to the 8.5-hour schedule because the 12-hour schedule itself had spawned an increase in sick leave hours.

13. If a 12-hour shift is not the cause of increased sick leave, how could one possibly think that eliminating it would decrease sick leave hours? The Village's reasoning simply makes no sense.

14. The Village also contended that under the 12-hour system, overtime costs were out of control. The Union countered by noting that if the Department did not assign Kelly days at the beginning of the year, it could avoid overtime premium pay costs by assigning them more judiciously throughout the year. That is, police management could wait

until vacation days and training days have been scheduled, and until other forms of time off have been determined, then schedule the Kelly days in such a way that they avoid overtime exposure. But the Village seems to value administrative ease over money. In any event, the 12-hour schedule is not to blame for the Village's increased overtime costs.

15. The Village also contends that the 12-hour shift schedule conflicted with its typical 8-hour training modules, raising the question of whether, after 8 hours of training, officers should return to work or simply be paid for the remaining 4 hours of their shifts. But the new Chief has instituted roll call training, which never previously existed. He has also implemented "training days" where the entire patrol shift comes off the street for specialized instruction, and detectives are sent out to patrol in their place. Such changes have improved the way Brookfield officers are trained, and they have eliminated previous "concerns" about training within the context of 12-hour patrol shifts.

16. In impact negotiations after the move to 12-hour shifts, the parties agreed that officers would be paid for a full shift on work days when they attended training sessions (UX-11). If the Village had second thoughts about that bargain, it could have brought them to the bargaining table for discussion and made appropriate proposals in that regard. Instead, it decided to blame the 12-hour schedule for its training woes.

17. Deputy Chief Michael Manescalchi testified that the 12-hour

shift had created “communications” problems in the Department, apparently related to the fact that he had some need to see each and every patrol officer in the station on their duty days. He failed to clarify why such personal observations were important. In any event, the Brookfield Police Department has a staff of sergeants and lieutenants, all of whom observe patrol officers doing their jobs, regardless of the shift schedule.

18. The new Chief has implemented “hot sheets,” which inform oncoming officers about what transpired on the previous shifts. He has instituted “roll calls” as well --- a suggestion from the Union to improve communication between shifts, regardless of how many exist.

19. While interest arbitrators impose a burden on the party seeking to depart from the status quo, departures from it have been awarded in many cases. And interest arbitrators do not always require that unions offer a *quid pro quo* for the changes they seek to make.

20. In the present case the Village alleged that the Union membership obtained a *quid pro quo* in exchange for its willingness to drop the 12-hour shift proposal. But the Village provided no proof that the parties mutually contemplated such a trade off. Indeed, if such a *quid pro quo* had existed, the Village could have made the benefit allegedly offered (i.e., the supplemental vision plan) an issue in these interest arbitration proceedings. It chose not to do so, yet wants to maintain the argument that the so-called *quid pro quo* must be honored.

21. A “breakthrough” in interest arbitration is appropriate when (1) a proven need for it has been established, (2) the proposal at issue addresses that need, and (3) the proposal does not create an undue hardship. In the present case the Union’s final offer meets those requirements. The need to change the existing contract language is undeniable, because the existing shift schedule is ineffective and the Village’s right to make unilateral work schedule changes with no justification must be ceased. Moreover, the Union’s final offer creates no hardship for the Village.

22. The 8.5-hour schedule imposed by the Village is freakish and non-traditional. It is not used by any of the external comparables. Moreover, in Brookfield the 8.5-hour shift has caused numerous problems related to productivity losses, time off availability, and overtime cost increases. And figures provided by the Village show that sick time has significantly increased as well (UX-18).

23. When the Union agreed to the current §14.6 language, it never thought changes would occur without rational explanations, or that Brookfield patrol officers would be working a schedule that no one else uses.

24. The Union’s final offer establishes a one-year schedule and the temporary creation of an expedited interest arbitration mechanism to determine the next schedule. And it seeks no advantage in the determination of future schedules by imposing no “status quo”

characteristic on the 2009 schedule.

25. The Union bargaining team did indeed “tentatively agree” to take the Village’s proposal to the Union membership for a ratification vote. But in the wake of the 8.5-hour shift schedule nightmare, the membership overwhelmingly rejected the Village’s attempt to retain an unfettered right to determine the shift schedule.

26. The tentative agreement noted above is not binding on the Arbitrator. And there is no evidence to suggest that the Union membership rejected it simply because they wanted “more.”

27. The Union’s final offer should be adopted by the Arbitrator.

## **OPINION**

### The Tentative Agreement

The parties each argued eloquently and in an informed fashion about the significance of rejected “tentative agreements” in subsequent interest arbitration proceedings. While there is some variety across the collection of published arbitral opinion on that topic, the chordal theme among Illinois interest arbitrators can fairly be expressed with these points:

- (1) Tentative agreements reached by the parties’ bargaining representatives can be considered a reasonable estimate (not the reasonable estimate) of an outcome that might ultimately have been reached by the parties themselves, had they not resorted to interest arbitration.
- (2) Tentative agreements reached by the parties’

bargaining agents carry the risk of rejection by the parties themselves. Interest arbitrators should respect the parties' ratification authority, and should not give their agents' unratified tentative agreements binding or even controlling status.

- (3) In deciding what weight to give such tentative agreements, interest arbitrators should evaluate the reasons for which they were not ratified. For example, evidence that bargaining agents overlooked or intentionally ignored the expressed desires of their constituencies might justify affording little weight to the tentative agreements not ratified. Similarly, tentative agreements constructed in bad faith, without regard for the negotiators' obligation to represent their constituents fairly, should be given little or no weight. On the other hand, tentative agreements reached by responsible, informed bargaining agents merit sound consideration, especially if they are rejected simply because the principals wanted "more" from the negotiations process.
- (4) If the parties' bargaining agents construct a tentative agreement on the basis of a *quid pro quo*, each giving up something in exchange for a particular negotiated gain, interest arbitrators should give appropriate consideration to that *quid pro quo* as they attempt in their awards to approximate the outcome of free collective bargaining.

The undersigned Arbitrator subscribes to the mainstream arbitral thoughts summarized above, and gives some weight to the fact that the Union's bargaining team tentatively agreed to withdraw its demand for a 12-hour shift schedule. There is no evidence in the record to suggest that in tentatively agreeing to do so, the Union's team ignored the expressed desires of the membership or was motivated by anything other than responsibly protecting their interests. Indeed, it seems evident from the bargaining history evidence in the record that the Union's

negotiations team fought long and hard to convince the Village bargaining team that the 12-hour shift had merit. The bargaining history evidence has also persuaded the Arbitrator that the Village ultimately persuaded the Union team to withdraw the 12-hour proposal in exchange for an extension of the supplemental visual benefit --- one that was discontinued for its four other bargaining units and for non-represented employees as well.

It is also clear from the record, though, that patrol bargaining unit members did not reject the shift schedule tentative agreement simply because they wanted "more." After all, having had four years under the 12-hour shift schedule, they had enjoyed every other weekend off, and had become used to the family and social interaction benefits that accompany its free-time cadence. The intensity of employees' feelings about the impact of work schedules on their personal lives should not be underestimated. Thus, the Arbitrator also gives weight to the fact that the membership majority rejected the tentative agreement its bargaining agents made to withdraw the 12-hour shift proposal.

On balance, the Arbitrator has concluded that through the give-and-take of free collective bargaining the parties' bargaining agents responsibly reached a tentative agreement on this issue. But given the other principles and circumstances described in the foregoing paragraphs, that tentative agreement shall not be given controlling weight.

## The “*Status Quo*”

Interest arbitrators in Illinois and elsewhere have overwhelmingly embraced the “*status quo*” concept over the last few decades. As I myself have noted in a previous case:

The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give-and-take of free collective bargaining than they are by third-party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next round of contract negotiations. The exception, of course, is when a party shows “compelling need” for a change right away.<sup>2</sup>

When, in the past, a party in interest arbitration has shown a compelling need for change, I and other arbitrators have adopted their proposals to depart from the negotiated *status quo*. Indeed, the very same Union which represents the Brookfield Patrol Unit has been successful in that regard.<sup>3</sup>

In the present case, the current language of §14.6 (Scheduling and Shift Assignments) constitutes the *status quo*. It confirms the Chief’s right to “modify ... or change” the Department shift schedule, so long as

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<sup>2</sup> *City of Carbondale and Illinois Fraternal Order of Police Labor Council*, ISLRB Case No. S-MA-04-152, pp. 23-24 (Briggs, 2005).

<sup>3</sup> See, for example, *Calumet City and Illinois Fraternal Order of Police Labor Council*, ISLRB Case No. S-MA-99-128, pp. 62-73 (Briggs, 2000).

proper notification is given to affected officers and the Union. The Union's final offer represents a major departure from that *status quo*, in that it would remove from the Chief the unilateral right to make such changes. Accordingly, the Arbitrator places the burden of proof directly on the Union's shoulders in this case --- a burden the Union seems to acknowledge in its post hearing brief. In order to prevail, the Union must convince the Arbitrator that there is compelling need to revert to the 12-hour shift schedule right away --- a claim that stands in sharp contrast to the Village's assertion that the 8.5-hour schedule is working reasonably well.

Another aspect of the "*status quo*" principle deserves comment here. The Union's final offer contains a provision that "... for purposes of future interest arbitration proceedings, no particular schedule shall be presumed to be the "*status quo*." That provision would hamstring future interest arbitrators secured by these parties, prohibiting them from relying upon one of the most well-accepted principles in the canons of published arbitral thought. Accordingly, I am reluctant to adopt it.

#### The 8.5-Hour Schedule

The Union acknowledges that the Village followed the procedural requirements of §14.6 in adopting and implementing the 8.5-hour shift schedule. It argues, though, that the *status quo* should be changed because that Section contains no standard by which the Chief is to be

held accountable in making such unilateral decisions. That argument has some merit, but only on the surface. While there are no express shift modification criteria specified in §14.6, arbitrators generally hold that employers must follow the “rule of reasonableness” when exercising their managerial rights. That is, they must invoke contractually permissible management rights for sound organizational reasons, and cannot do so in arbitrary, capricious or discriminatory fashion. Were the Village to defy those well-accepted arbitral criteria and use its §14.6 authority to adopt work schedules without regard to their potential impact on Department operations, or were the Village to adopt an oppressive work schedule simply to punish its patrol officers, a legitimate grievance could be filed over either action. The Union can rest assured that the current §14.6 does not permit the Village to change patrol officers’ shift schedules whimsically, for absolutely any reason, or for no reason at all.

Besides, the Village has acknowledged its obligation to implement §14.6 shift schedule changes on the basis of sound organizational principles. It cited, for example, a correlation between higher sick leave costs and the 12-hour work schedule. That relationship seems intuitively logical, for a 12-hour absence on account of illness would generate higher sick leave costs than would an 8-hour one. Sick leave data submitted by the Village lend support to its claim that in terms of sick leave hours incurred, it experienced higher costs under the 12-hour schedule than it had under the previous 8-hour schedule. That is true

even for 2006, when the unusually high sick leave hours of one officer (1172.5), represented about half of the 2347-hour total for all sworn officers (VX-15). Factoring out that officer's impact on overall sick leave costs, the remainder still reflected an increase over the Village's average annual sick leave costs under an 8-hour schedule.

The Union's argument that average sick leave "days" actually decreased for some officers over the four years (2004-2007) that the 12-hour schedule was in effect is not persuasive. As noted, one day of sick leave from a 12-hour shift costs the Village 50% more than one day of sick leave from an 8-hour shift. The Arbitrator has also considered the Union's argument that since officers have more days off under a 12-hour schedule, they are be more likely to become sick on their own time. That argument is interesting, but there is no empirical support for it in the record.

The Village also claims that under the 12-hour schedule, overtime costs have risen. The accuracy of that claim is supported by the overtime data it submitted (VX-17). From 2001 through 2003, under an 8-hour shift schedule, overtime hours averaged approximately 2600 annually. For 2004 through 2007 under the 12-hour schedule, they averaged about 3360 hours --- nearly a 30% increase. That rather significant statistic seems even more meaningful when considering the fact that from 2001 through 2007 the number of sworn officers in Brookfield was constantly on the increase. Put another way, the high

overtime hours under the 12-hour shift schedule are not likely attributable to an overall short-staffing level during those years.

The Union's argument with regard to the assignment of Kelly Days seems to have some merit. Perhaps overtime costs might be reduced if they were not assigned so early in the year. But that argument falls short of convincing the Arbitrator that readjusting the Kelly Day assignment mechanism would take care of the increased overtime usage associated with the 12-hour schedule.

As part of its comprehensive array of arguments about the 8.5-hour schedule and the need to change it, the Union claims that it has a "bizarre" day off provision, and that Chief Stelter is regularly removing officers from investigation assignments and putting them on patrol beats for full shifts. Curiously, though, in support of the relatively new Chief's judgment, the Union praised that same type of assignment arrangement for the "training days" he has implemented. The Arbitrator is therefore not convinced that using investigators for temporary patrol assignments is inefficient or counterproductive.

Finally, the Arbitrator notes that for the first six months under the new 8.5-hour schedule, overtime work for sworn officers did not decrease much. On an annualized basis it would be about 3300 hours --- just 30 hours under the 3360 yearly average for the 12-hour schedule. While that statistic is noteworthy, the record does not contain sufficient information to explain it.

A word is in order here about the statistical relationships between sick leave costs, overtime costs, and the 12-hour v. the 8-hour shift schedules. From the data presented, one can conclude only that they are relationships of simple correlation, not of causality. Village advocate Michael Durkin prudently acknowledged during these proceedings that the evidence in the record does not prove the 12-hour shift “caused” sick leave and overtime cost increases. Nevertheless, the correlation relationships discussed here constitute valid organizational reasons for the Village’s decision to depart from the 12-hour schedule. Put another way, it was reasonable for the Village to make an informed, educated guess from the data it had that such action might result in a corresponding decrease in its operational costs.

Turning to the important matter of patrol officer’s private lives, the Arbitrator is convinced from the record that the 12-hour shift schedule is preferable to them. The testimony of Officer Dwayne Burrell was particularly compelling in that regard. But there is just no evidence in the record to demonstrate that the new 8.5 hour shift is particularly oppressive to officers. And if it proves to be, given their professed admiration for the new Chief and his judgment, Brookfield patrol officers and their Union may well be able to convince him that the 12-hour shift schedule deserves another chance.

## The Public Interest

The Union argues, apparently with some accuracy, that under the former 12-hour schedule there were more officers on the street at any given time than there are under the current 8.5-hour schedule. The presumption from that comment is that Brookfield citizens were better protected in the years 2004 through 2007 than they are now. But the Union has cited no empirical evidence (crime statistics, for example) to support that presumption. Moreover, there is no evidence in the record to suggest that command staff in the Brookfield Police Department did not consider the public interest when they implemented the 8.5-hour shift schedule. Public safety is the primary reason for the Department's existence, and this sophisticated, experienced and well-prepared Union would surely have cited instances where the 8.5-hour shift had compromised it --- if such instances existed.

Inarguably, cost reduction is in the public interest, so long as it does not compromise the public welfare or safety. Accordingly, the Arbitrator considers reduction of the high sick leave and overtime costs associated with the 12-hour shift to be in the public interest. On balance, then, consideration of the public interest factor favors adoption of the Village's final offer.

### External Comparability

Consideration of the six stipulated external comparable jurisdictions lends support to adoption of the Village's final offer, in that only one of them runs a 12-hour shift for patrol officers. The remaining five run 8-hour shifts, which the Arbitrator is not convinced are much different from the 8.5-hour shifts Brookfield patrol officers work now.

It is obvious from review of the external comparables that 12-hour shifts are not the norm for police officers similarly situated to their Brookfield counterparts. Thus, it is reasonable to conclude that the Village of Brookfield does not need to implement 12-hour shifts right away --- an effect of the Union's final offer --- in order to attract qualified police officer candidates and retain the experienced officers currently in its employ. The fact that the arbitration record contains no evidence of recruiting problems or unusually high turnover rates for patrol officers in Brookfield lends support to that conclusion.

Also, the Arbitrator notes that three of the external comparables (LaGrange, LaGrange Park and Westchester) have police collective bargaining agreements which allow management to set and amend police work schedules. Police in two of those jurisdictions are represented by the Illinois FOP Labor Council, and those in the third (LaGrange) use the American Federation of State, County and Municipal Employees (AFSCME) as their bargaining agent. Thus, it is evident that unilateral managerial authority to alter patrol shift schedules is a concept that

responsible, sophisticated, experienced unions have found to be acceptable in and around Brookfield.

#### Additional Comments

In reviewing all of the conclusions stemming from the foregoing 30-page analysis of the patrol shift schedule issue, I find that the preponderance of the evidence favors adoption of the Village's final offer. The Award on the following page reflects that finding.

**AWARD**

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has adopted the final offer of the Village on the economic issue of the patrol work schedule. It shall be incorporated into the parties' May 1, 2007 - December 31, 2009 collective bargaining agreement, along with matters already agreed to by the parties themselves, and with provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 31<sup>st</sup> day of October, 2008.

  
Steven Briggs