

**INTEREST ARBITRATION
OPINION AND AWARD**

In the matter of Interest
Arbitration

Between

VILLAGE OF DEERFIELD

And

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL

(Case No. S-MA-07-148)

Hearing Held

January 8, 2009

Deerfield Village Hall
850 Waukegan Road
Deerfield, IL 60015

Appearances

For the Union:

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Arbitrator

Steven Briggs

For the Village:

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BACKGROUND

The Village of Deerfield, Illinois (the Village) is a Chicago suburban community. The 26 full-time police officers in its employ¹ are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union; the FOP). The Village and the FOP have been in a collective bargaining relationship since May, 1988. They have administered four labor contracts since then, the last of which expired April 30, 2007. As indicated in Table 1 below, the Village and the Union have heavily relied upon the interest arbitration process in recent years to settle their bargaining table disputes.

TABLE 1
POLICE LABOR AGREEMENT HISTORY

Duration	Dates	Method of Resolution
2 Years	5/1/98 – 4/30/00	Negotiated Settlement
2 Years	5/1/00 – 4/30/02	Negotiated Settlement
2 Years	5/1/02 – 4/30/04	Interest Arbitration (Cox)
3 years	5/1/04 – 4/30/07	Interest Arbitration (Benn)
2 years	5/1/07 – 4/30/09	Interest Arbitration (Briggs)*

* - Currently pending.

The parties' negotiations for the above-noted May 1, 2007 through April 30, 2009 collective bargaining agreement, which is the focus of these interest arbitration proceedings, began on June 29, 2007. At that meeting they discussed ground rules for the ensuing bargaining sessions. The parties next met on September 4, 2007, when they discussed additional ground rules and Union Field Representative Richard Stomper presented its initial proposals. Their next meeting was

¹ That is, those below the rank of sergeant.

October 2, 2007, wherein the Village presented its counterproposal on the issues raised by the Union. At that same meeting the Union presented a revised proposal dated September 25, 2007. The parties also reached “a couple” of tentative agreements on what have been characterized as “minor issues.”² The parties met again on November 15, 2007 for another bargaining session, one which produced no additional tentative agreements. They met with an FMCS³ mediator on December 7, 2007; no tentative agreements resulted from that meeting either.

Ultimately, the Union advanced the parties’ unresolved interest dispute to arbitration. In a May 13, 2008 letter the the parties notified the undersigned of his selection as their Interest Arbitrator. An Interest Arbitration hearing was scheduled for December 5, 2008. Discussion ensued between the parties and the Arbitrator at its outset about the issues in dispute, whereupon at the Village’s request the proceedings were continued until January 8, 2009. The parties’ final offers were exchanged through the Arbitrator electronically on December 10, 2008. The January 8, 2009 hearing took place as scheduled, it was transcribed, and the parties’ timely post hearing briefs were exchanged through the Arbitrator on March 5, 2009.

At the outset of the interest arbitration hearing the parties entered into several stipulations, including one confirming their waiver of the tripartite arbitration panel provision of the Illinois Public Labor Relations

² Tr. 58.

³ Federal Mediation and Conciliation Service.

Act and appointing Steven Briggs as the sole arbitrator in this dispute. They also stipulated that their tentative agreements on all issues shall be incorporated by means of the following Award into the May 1, 2007 – April 30, 2009 successor Agreement.

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.
- (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

- (a) In public employment in comparable communities.
 - (b) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
 - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
 - (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (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.

THE ISSUES

The parties have placed the following issues before the Arbitrator for resolution:

- (1) Wages
- (2) Career Development Program
- (3) Health Insurance
- (4) Disciplinary Appeal⁴

⁴ The Arbitrator has concluded that all of these issues are economic, as their outcome in these proceedings will affect the Village's costs to one degree or another.

THE EXTERNAL COMPARABLES

Union Position

The Union asserts that the following communities are comparable to the Village of Deerfield for interest arbitration purposes:

Barrington
Glenview
Lake Zurich
Libertyville
Lincolnwood
Morton Grove
Rolling Meadows
Vernon Hills
Wilmette
Winnetka

The Union notes that the parties agree as to the comparability of Wilmette, Winnetka and Glenview, and that the remainder of its proposed comparable communities share many of the demographic characteristics found in those three jurisdictions.

Village Position

The Village has proposed the following grouping of municipalities as an appropriate external comparability pool for this case:

Glenview
Highland Park
Lake Bluff
Lake Forest
Lincolnshire
Northbrook
Wilmette
Winnetka

Discussion

The parties agree that Wilmette, Winnetka and Glenview are comparable to Deerfield for the purposes of these interest arbitration proceedings. Accordingly, the Arbitrator hereby adopts those three communities as external comparables. The Arbitrator has not accepted any of the remaining external comparables proposed by the Village for two reasons: (1) the Village provided insufficient comparability data for those communities;⁵ and (2) the Village did not advance any arguments as to why they should be considered comparable to the Village of Deerfield.

In contrast, the Union provided comparability data for all of the communities in its proposed comparability grouping. Those data are displayed in Table 2:

TABLE 2
EXTERNAL COMPARABILITY DATA

Community	Population	MHV(\$)*	PCI(\$)**	MFI(\$)***	FT Officers	Crimes Per 100,000	Police Dept Employees
Deerfield	18,420	342,900	50,664	118,683	39	631	52
Barrington	10,168	329,900	43,942	102,120	32	2,091	39
Glenview	41,847	336,000	43,384	96,552	75	1,874	91
Lake Zurich	18,104	225,100	30,287	89,874	38	1,658	56
Libertyville	20,742	263,700	40,426	103,573	41	1,799	57
Lincolnwood	12,359	291,400	35,911	83,687	33	1,799	44
Morton Gr	22,451	217,100	26,973	72,778	46	2,034	60
Rolling Mdws	24,604	176,600	26,178	68,571	54	2,230	80
Vernon Hills	20,120	223,300	32,246	83,806	48	2,905	70
Wilmette	27,651	441,600	55,611	122,515	46	1,272	64
Winnetka	12,419	756,500	84,134	200,001	26	997	35

* - Median Home Value

** - Per Capita Income

*** - Median Family Income

Source: Union Exhibit 13.

⁵ While it provided selected police department collective bargaining agreements (Highland Park, Northbrook, Lake Forest, Lincolnshire, Winnetka, Wilmette & Glenview), the Village did not submit comparability data in any of the other conventional comparison categories (e.g., population, median family income, number of police officers, etc.).

Using Wilmette, Winnetka and Glenview (the three agreed-upon external comparables), the Arbitrator constructed a multi-faceted comparability profile against which to evaluate how comparable each of the Union's remaining proposed jurisdictions are to Deerfield. For example, the range of population figures acceptable to both parties in the three jurisdictions upon which they agreed ranged from a minimum of 12,419 (Winnetka) to a maximum of 41,847 (Glenview). All of the Union's proposed comparables fall within that range except Barrington, which is only slightly smaller than Winnetka on the population dimension. Generally speaking, similar results are found using the same methodology to evaluate the Union's proposed comparables against the six additional comparability criteria used to construct Table 2.⁶ Two exceptions are Morton Grove and Rolling Meadows, both of which fall below the range of selected community wealth criteria (median family home value, per capita income and median family income). There are a few additional exceptions to other benchmark criteria as well. Significantly, however, the Village did not argue that any of the Union's proposed external comparables were inappropriate.⁷ For all of those reasons, the Arbitrator adopts the Union's proposed 10-member external comparability pool.

⁶ Median home value, per capita income, median family income, full-time officers, crimes per 100,000 population, and number of full-time police employees.

⁷ Indeed, at one point in its post hearing brief the Village noted that wage comparison even with the Union's proposed comparables should cause the Arbitrator to conclude that "awarding the Employer's wage offer will not cause what is probably the highest paid police department in the area to 'slip' in its ranking." (Village post hearing brief, p. 19).

WAGES

Union Position

The Union proposes a 4% across-the-board wage increase for each of the two years of the contract. It argues that (1) such increases merely keep Deerfield police officers “where they were before the contract started,” (2) the average wage increase among the external comparables was greater than the wage increase agreed to by the Union for the term of the existing contract (2004-2007), and (3) adoption of its modest final offer would not make up for that differential.⁸ The Union argues as well that adoption of the Village’s final wage offer would not keep Deerfield police officers even with cost-of-living figures for the period of the two-year contract at issue.

With regard to internal comparability, the Union acknowledges that the wages proposed by the Village here are the same as those negotiated by the Village and Operating Engineers Local 150 for the Deerfield public works bargaining unit.⁹ However, the Union points out, the Village presented no evidence that there is any history of parity between the Deerfield police and public works bargaining units. Accordingly, the Union asserts, the internal comparability criterion should be afforded no weight in the present case.

⁸ Quoted from Union post hearing brief, p. 9.

⁹ Full-time and regular part-time employees in the Deerfield Public Works Department are represented by The International Union of Operating Engineers (IUOE), Local 150, Public Employees Division.

Village Position

The Village has proposed a 3.25% across-the-board increase for the first year of the contract and a 3.50% increase for the second year. It suggests that to approximate what the parties themselves might have negotiated, had they not resorted to interest arbitration, the Arbitrator could consider each year of the contract a separate economic issue, then adopt the Village's first-year offer (3.25%) and the Union's second-year offer (4.0%).

The Village also asserts that adoption of its wage offer would be consistent with the negotiated settlement reached between the Village and IUOE Local 150 on behalf of the Deerfield public works employees. It argues as well that since the CPI-W actually declined between January 2008 and February 2009, its final offer is more acceptable than the Union's on the cost-of-living criterion. Also, the Village notes, another Illinois interest arbitrator has recently acknowledged that our economy is "in a long-term downward trend."¹⁰

Turning to the external comparability criterion, the Village underscores the fact that Deerfield police officers reach their top salary in just four years, as opposed to the much longer top-salary journeys adopted in most of the external jurisdictions. That means, the Village notes, that Deerfield police officers make more money per year for several years before officers in other communities catch up with them.

¹⁰ Quoted from Village post hearing brief, p. 15.

In addition, the Village argues, most Deerfield police officers take advantage of its voluntary Career Development arrangement, whereby on average they are awarded a 5% mid-career increase. It believes that the compressed salary schedule and voluntary merit-based Career Development Program in Deerfield have served its police officers well, bringing them to a salary leadership position among their police officer counterparts in comparable jurisdictions.

Discussion

The Village is absolutely correct in noting that Deerfield police officers advance to their top salary at a much faster rate (i.e., after completion of just four years' service) than do their counterparts in comparable jurisdictions. For that reason, as of their last wage increase (May 1, 2006), they enjoyed the number one salary ranking across the comparability pool at the "after 5 years" career stage. As illustrated in Table 3 on the following page, in 2006 they were ranked lower at all other career stage benchmarks.¹¹

¹¹ Table 3 does not include a "4 years" column. If it did, the salary figure for Deerfield police officers would be \$72,699 --- significantly higher than the salaries across other jurisdictions in the external comparability pool at that service level.

TABLE 3
2006 SALARY COMPARISON DATA

Community	Eff. Date	Start	1 year	2 years	3 years	5 years	10 years	15 years	20 years	Top
Deerfield	5/06	52562	56582	60226	63676	72699	72699	72699	72699	72699
Barrington	5/06	48693	53082	57325	61339	67933	69888	69888	69888	69888
Glenview	1/06	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Lake Zurich	1/06	50898	54391	59281	64636	71966	71966	72433	73433	74433
Libertyville	5/06	50105	53284	56824	60275	67480	74442	74442	74442	74442
Lincolnwood	5/06	46238	50080	54244	58757	68944	69633	70330	70330	70330
Morton Gr	1/06	53220	56470	59932	63601	68844	69444	69744	70044	70544
Rolling Mds	1/06	52780	56550	60320	60320	67860	77097	77285	77474	77662
Vernon Hills	5/06	51335	54596	57858	61120	67643	72556	71706	71856	71856
Wilmette	1/06	53620	56140	58778	61541	67462	71290	72786	74314	74314
Winnetka	4/06	50751	59015	62788	66138	69465	71476	71476	71476	71476
DF Rank			4/9	2/9	3/9	3/9	1/9	3/9	4/9	5/9
Avg w/o DF		50849	54845	58594	61970	68622	71977	72232	72584	72661
DF % Diff.*		3.26	3.07	2.71	2.68	5.61	0.99	0.64	0.16	0.05

* - Deerfield percentage above (below) average.

Chronologically, the data in Table 3 reflect cumulative salary status for Deerfield police officers across the comparables at a point (2006) which resulted from free collective bargaining of two contracts (5/1/98 through 4/30/00, and 5/1/00 through 4/30/02) and two interest arbitration-assisted contracts (5/1/02 through 4/30/04, and 5/1/04 through 4/30/07). Thus, using 2006 as a base level here for salary comparison purposes seems appropriate. It captures a blend of the comparability mix established by the parties themselves at the bargaining table and one directed by two different interest arbitrators (Cox and Benn) in their separate attempts to approximate the outcome of free collective bargaining.

It is evident from Table 3 that Deerfield Police Officers have, through the collective bargaining and interest arbitration processes, achieved an enviable salary position among comparable police jurisdictions. As of 2006, they were above the average at all career

benchmark levels, especially from 1 to 5 years. Table 4 has been constructed to estimate the impact of the parties' respective wage offers on Deerfield police officer salaries versus the salaries earned by their counterparts in comparable external jurisdictions.

**TABLE 4
2007/2008 SALARY COMPARISON DATA**

Community	Start	1 year	2 years	3 years	5 years	10 years	15 years	20 years	Top
Deerfield	52562	56582	60226	63676	72699	72699	72699	72699	72699
07 Avg	53217	57239	61043	64513	71063	74547	75384	75761	76130
DF % Diff.*	(1.25)	(1.16)	(1.36)	(1.31)	2.25	(2.54)	(3.69)	(4.21)	(4.72)
DF 06 Rank	4/9	2/9	3/9	3/9	1/9	3/9	4/9	5/9	5/9
07 - V Offer	5/10	5/10	4/10	4/10	1/10	3/10	6/10	7/10	8/10
07 - U Offer	5/10	4/10	3/10	4/10	1/10	3/10	5/10	6/10	6/10
08 - V Offer	5/10	6/10	6/10	4/10	2/10	5/10	6/10	7/10	8/10
08 - U Offer	5/10	6/10	3/10	4/10	2/10	4/10	5/10	6/10	7/10

Sources – collective bargaining agreements, UX-14; rankings under parties' offers include 1st and 2nd year increases.

* - Deerfield percentage above (below) average.

It is obvious from the percentage figures in Table 4 that adoption of the Village's 3.25% wage offer would place Deerfield police officers below the pool average at the last three steps for 2007 (i.e., it would be insufficient to make up for the 3.69%, 4.21% and 4.72% deficits). Indeed, even adoption of the Union's 4.0% offer would not overcome the 20-year and top salary level deficits shown in Table 4.

Turning again to the 2006 rankings (row 5, Table 4), and comparing those numbers to the 2007 and 2008 ranking figures contained in Table 4, it is clear that adoption of the Village's wage offer would reduce the competitive position of Deerfield police officers for contract years 1 and 2 at the one-year level, for contract year 2 at the

two-year level, for contract year 2 and the five-year level,¹² for the same year at the ten-year career level, and for both contract years at the fifteen-year, twenty-year and top salary levels. In marked contrast, adoption of the Union's 4% wage offer would only increase Deerfield police officers' 2007-2008 competitive rankings for both contract years at the top salary level. And even the Union's final offer would reduce the competitive salary ranking of Deerfield police officers at certain additional cells in the salary schedule portrayed in Table 4. Generally speaking, then, adoption of the Union's final offer would better maintain their 2006 ranking among comparable jurisdictions than would adoption of the Village's final offer.

The internal comparability data in the record are limited. There is only one additional bargaining unit --- the public works employees represented by the International Union of Operating Engineers, Local 150. While those employees received negotiated increases of 3.25% and 3.5% for their contract years 2007-2008 and 2008-2009, the record contains no evidence that the Deerfield public works and police units have received identical wage increases historically. Moreover, due to the nature of their work and responsibility, police officers in Deerfield seem more comparable to their counterparts in surrounding jurisdictions than they do to public works employees in their own community.

¹² The Union's final wage offer would reduce the ranking of Deerfield police officers at this contract year and career level too.

The Arbitrator has also considered the Village's suggestion that the two contract years at issue here could be split, thus separating into two issues the parties' wage offers for the first and second years. But there is no evidence in the record to suggest that bifurcation of the wage issue was ever discussed between the parties themselves. Indeed, neither of them advanced two separate and distinct wage offers or suggested the merits of doing so at the interest arbitration hearing itself. Moreover, the Arbitrator believes that isolating the two contract years from each other for interest arbitration purposes is unrealistic. When the parties themselves negotiate wages at the bargaining table they are very much aware of the overall impact of multi-year wage offers. It simply makes no sense to separate those offers artificially by year, as if each exists in a vacuum and has no impact on the others. And finally, there is an inherent danger in carving up what have traditionally been considered single issues in interest arbitration and evaluating each element of them individually, as a separate issue, after the parties themselves have contemplated them as multi-faceted single issues and have conducted their give-and-take negotiations on that basis. Establishing a trend of dissecting singular multi-year wage offers into plural year-by-year offers exclusively for the purposes of interest arbitration, for example, might lead to an expectation that such issues as health insurance or grievance procedures might be similarly dissected for strategic reasons. The sound arguments against such a practice are legion. It would surely lead to an

ever-widening gap between the reasoning used by arbitrators in interest arbitration proceedings and that used by the parties themselves at the bargaining table. The former would be artificially compartmentalized. For all of the foregoing reasons, the Arbitrator is unwilling to consider the parties' first-year and second-year wage offers as separate issues.

It is also important to recognize that while these interest arbitration proceedings are taking place in the context of a dismal economy, the Arbitrator's major objective is to approximate in the following Award a result the parties might have reached themselves at the bargaining table. Thus, while one might reasonably argue today that wage increases hovering from 3% to 4% are high, they undoubtedly did not seem so back in the fall of 2007, when the parties were meeting face-to-face over the wage issue.¹³ And again, the Arbitrator favors adoption of the wage offer which seems to maintain Deerfield police officer wages at the 2006 level, as compared to their counterparts in externally comparable communities.

Overall, the Arbitrator has concluded from the record that the Union's final wage offer more closely adheres to the applicable statutory criteria than does the Village's final wage offer. For that general reason, and for the more specific reasons discussed in the preceding paragraphs, the Union's final wage offer will be adopted.

¹³ In addition, with the benefit of hindsight we now know that the Village's wage offer for the first year of the contract is below conventional cost-of living measures --- the CPI-U (Chicago) for that period was 3.39%, and the CPI-W (Chicago) was 3.40%.

CAREER DEVELOPMENT PROGRAM

The parties' existing Career Development Program (the Program) was described by Arbitrator James Cox in his October 18, 2003 Interest Arbitration Award for these same parties as follows:

The Village Career Development Plan allows eligible Officers to earn additional compensation for completing activities as determined by the Chief of Police. Officers are eligible to participate in the Career Development Plan after completing four consecutive years of full-time service. Under the present Plan there are three levels of achievement --- Advanced, First Class, and Master. Officers spend at least two years at each level. Annual compensation payable in December is awarded Officers who meet the goals or standards established by the Department. (UX-10, p. 13)

Participation in the Career Development Program is voluntary, and it represents an opportunity for Deerfield Police Officers who have achieved the five-year salary cap to continue enjoying compensation increases after that point. Unlike most of the comparable communities, the Village of Deerfield does not provide its police officers with longevity wage increases, so the Career Development Program is an important element of their overall compensation. It is a complicated, unique fifteen-page procedure originally drafted by the Village in 2002.

In the 2003 interest arbitration proceedings before Arbitrator Cox, the Union sought to freeze the Program's content temporarily, and to participate in a joint study with the Village to determine what changes, if any, should be made to it. The Village supported a joint study committee for that purpose as well, but wanted to retain the right to make

unilateral changes in the Program, or even to discontinue it. The Union prevailed, and the parties for the first time incorporated reference in their collective bargaining agreement to the Program. That reference indicated that the Program could not be changed except by mutual agreement.

The parties' successor collective bargaining agreement (5/1/04 – 4/30/07), ultimately settled by means of a stipulated Interest Arbitration Award (Benn), was supposed to contain language indicating that the Program would not be changed during its three-year term. That is, Arbitrator Benn had directed that "There will be no changes to the Career Development Program." No mention of that directive or of the Program itself was made in the collective bargaining agreement. Since then, the parties have hotly disputed whether they, in fact, agreed to remove reference to the Program from the collective bargaining agreement (the Village's assertion); or whether it was omitted in error (the Union's position). In any event, since the Benn Award the Village has made certain unilateral changes to the Program. Both parties agree on one aspect of this issue --- the Career Development Program has been the subject of heated dispute between them, and of lingering bitterness on the Union's part about the fact that it is no longer considered part of the collective bargaining agreement.

Union Position

The Union believes the Career Development Program, as amended by the Village since the June 2, 2005 Benn Award, should be attached to the 5/1/07 – 4/30/09 collective bargaining agreement as Exhibit A, and should continue to be in effect for its duration. It argues strenuously that the former contract provision which prevented the Village from making unilateral changes to the Program (i.e., §20.4 of the 5/1/02 – 4/30/04 Agreement) was inadvertently omitted from the “current” 5/1/04 – 4/30/07) Agreement.

Village Position

The Village notes that the current collective bargaining agreement has absolutely no language regarding the Program. It asserts that reference to it was removed by agreement between the parties, and that Village Attorney Murphey confirmed that understanding in a June 1, 2005 letter to Union Field Representative Kevin Krug. That letter is quoted in pertinent part here:

7. Section 20.4 has been stricken. It is my understanding that the parties have met and conferred. Recommendations have been made in implementing it.¹⁴

The Village argues that with the removal of the above contract Section, it now has the unilateral right to make changes in the Career

¹⁴ Section 20.4, entitled Career Development Program, does not appear in the parties’ fully-executed 5-1-04 - 4-30-07 collective bargaining agreement.

Development Program. It asserts that it needs such authority to provide appropriate incentives for its police officers, and that the Union's "oops" argument about inadvertently omitting Section 20.4 from the current collective bargaining agreement "cannot withstand minimal scrutiny."¹⁵

Discussion

It is true that Arbitrator Been's June 2, 2005 Interest Arbitration Award directed that "no changes" were to be made to the Career Development Program. The "current" Deerfield police labor agreement at the time --- the successor to which was affected by the Benn Award --- contained the following paragraph, identified as §20.4:

The parties shall jointly study the career development program by establishing a study committee consisting of not more than three (3) representatives of each party. Committee members shall report their recommendations to the representatives of each party not later than March 15, 2004. The committee members' recommendations shall be advisory only. There shall be no changes made to the career development program during the period this Agreement is in effect except by mutual agreement.

Implementation of the Benn Award as it was written would, at the very least, have retained the last sentence from the above-quoted provision in the successor (5/1/04 - 4/30/07) contract. But that document contains absolutely no reference to the Career Development Program. In fact, it contains no §20.4. And consistent with the Village's claim, the record before me contains a copy of a June 1, 2005 letter

¹⁵ Quoted from Village's post hearing brief, p. 12.

Attorney John Murphy reportedly sent to Union Field Representative Kevin Krug, stating in no uncertain terms that Section 20.4 had been stricken, and that the parties had met and conferred about that issue. Like Counsel for the Union in this case (Mr. Gary Bailey), Attorney Murphy is an honorable man, and the Arbitrator has every confidence in his veracity. I note as well Mr. Krug's conspicuous absence from these interest arbitration proceedings, which leaves Attorney Murphy's claim about the June 1, 2005 letter unrefuted.

Moreover, the arbitration record contains a copy of what the parties themselves "proofed" before printing the final version of their 5/1/04 – 4/30/07 contract. Representatives of each party initialed each page, thereby indicating their agreement that its content was a true and accurate reflection of their pacts on the various issues. If the Union's representative(s) somehow mistakenly indicated by their initials that §20.4 (Career Development Program) had been removed from the contract, they must now live with the result of that error.

In any event, the current status quo is that the parties' agreement contains no reference to the Program and no indication that the Village is prohibited from making unilateral changes to it. Moreover, the Union has presented no compelling evidence to justify a change in that status quo. Accordingly, the Village's final offer on this issue seems to be the more appropriate.

HEALTH INSURANCE

Village Position

The Village proposes that the negotiated status quo be retained on this issue. It argues that adoption of the changes sought by the Union would dramatically change the balance the parties themselves have hammered out at the bargaining table. In addition, the Village asserts, the health insurance changes the Union has advanced with its proposal on this issue have not been accompanied by any bargaining whatsoever.

Union Position

The Union's proposed changes to the current Article 18 (Insurance Benefits) appear in underlined text below:

Section 18.1. Medical Insurance Provided

Deerfield will provide group medical insurance for all officers and their dependents as set forth herein. Notwithstanding the foregoing, the Village retains the right to change carriers or to self-insure or to adopt additional coverage alternatives or join a health insurance pool for the provision of medical benefits, dental benefits or life insurance provided that the overall coverage and benefit levels available to employees covered by this Agreement are substantially similar to that which was available on the effective date of this Agreement. The Village further reserves its right to institute, maintain and change cost containment, benefit and other provisions of the medical plan provided that such changes are made in the plan for all other eligible Village employees and, provided that changes made shall only take effect on the plan anniversary date, currently July 1, and further provided that the overall coverage and benefit levels available to employees covered by this Agreement are substantially similar to that which was available on the effective date of this Agreement.

Section 18.2 Cost. (no changes proposed)

Section 18.3. Coverage Changes

In recognition of the desirability of maintaining a uniform policy Village-wide with respect to insurance benefits and notwithstanding the foregoing provisions contained in this Article, the parties agree that if the Village makes any changes, modifications or improvements with respect to any of the Village's life, dental or medical insurance programs that are applicable to all other eligible Village employees, then such changes, modifications or improvements (including the cost-sharing arrangements between the Village and the employees, except as provided in Section 18.2) shall likewise be applicable to the employees covered by this Agreement and on the same terms and on the same date that they are applicable to all other Village employees provided that the overall coverage and benefit levels available to employees covered by this Agreement are substantially similar to that which was available on the effective date of this Agreement. The Village and the officers agree that before any changes are made to the level of insurance benefits that currently exists for eligible Village employees, the Village will meet and discuss such changes and seek the input and suggestions of the union before implementing such a change. It is agreed that such changes made shall only take effect on the plan anniversary date, currently July 1.

Section 18.4 Retiree Coverage (no changes proposed)

Section 18.5 Life Insurance Benefits (no changes proposed)

Discussion

The Union is correct that the language it seeks to have added to Article 18 is fairly common, and that it would protect Deerfield police officers from health insurance changes that might substantially alter their basic benefits and coverage. But as the Village argues, there is no evidence in the record to confirm that the parties have discussed the

Union's suggested changes or bargained over them in the collective negotiations arena. Moreover, the Union has not shown that the Village has in the past abused its contractually-confirmed unilateral authority to make medical insurance changes. Put another way, the Union has submitted no compelling reason to change the status quo on this issue.

Interest arbitration is meant to be a last resort for resolving issues after the parties have negotiated to impasse at the bargaining table. That important prerequisite does not appear to have been met with regard to the health insurance provisions of the Deerfield police contract. Those provisions appear to be working well, as the Union has shown no compelling need to change them. Accordingly, the Arbitrator favors retention of the status quo on this issue.

DISCIPLINARY APPEAL

The Status Quo

Article 6 (Grievance Procedure) of the parties' current collective bargaining agreement contains the following language:

Section 6.1. Definition. A "grievance" is defined as a dispute or difference of opinion raised by an officer or the Council against Deerfield involving the meaning, interpretation, or application of this Agreement. Disciplinary actions, up to and including suspensions of two days, may be grieved but are not eligible for review by an arbitrator at Step 5, or, for suspensions of two or less days, the officer may choose to appeal to the Board of Police Commissioners. Other than the disciplinary actions listed above, any other matter or issue subject to the jurisdiction of the Board of Police Commissioners shall not be considered a grievance under this Agreement.

Union Position

The Union seeks to change the status quo on this issue by proposing that officers be allowed to grieve any disciplinary action taken against them and have the option of choosing either arbitration or the Board of Police Commissioners process as a method of final resolution. It proposes deletion of the second sentence in the above-quoted provision, and addition of the following language to §6.1:

Employees may choose to appeal disciplinary actions, including suspensions and charges filed with the Board of Police Commissioners seeking suspension and/or discharge, through the grievance procedure; however, employees may nevertheless choose to address such disciplinary matters with the Board of Police Commissioners rather than through the grievance procedure. If the employee chooses to file such a grievance, it shall be filed directly at Step 5. Any appeal taken by way of one procedure shall be a waiver of any and all rights to have the appeal heard through the other procedure.

Under the Union's offer on this issue, the last sentence of the current §6.1 would remain unaltered. The Union advanced the following arguments in support of its proposal:

- Commissioners are appointed by the Mayor, with consent of the City Council (or Village President with consent of Board of Trustees) for 3-year terms. They are not professional neutrals, and have an obvious allegiance to Village officials.
- Under the Fire and Police Commission Act (65 ILCS 5/10-2.1.1), the Village must pay for two attorneys --- one to represent the Police Commission and one to represent the Chief of Police. When officers choose arbitration, the Village would pay only for the Chief's attorney, and for half of an arbitrator's fees.

- Police Commissioners can add to the punishment already imposed by the Police Chief. Arbitrators are known not to do so.
- Police Commissioners can suspend officers indefinitely, pending the issuance of their decisions. Even if those officers are vindicated, the Police Commissioners can refuse to render any type of “make whole” remedy as well.
- Police Commissioners can refuse to consider “disparate treatment” evidence.
- Police Commissioners can switch the burden of proof to employees for short-term suspensions, forcing them to prove that the Village had no cause to discipline them.
- An evidentiary hearing before the Board of Police Commissioners in the case of short-term suspensions is not required.

For all of the foregoing reasons, the Union believes that the traditional factors in collective bargaining and the interest and welfare of the public support adoption of its final offer on this issue.

Village Position

The Village proposes no change to the status quo on this issue. It argues that the Deerfield Police Commission has functioned equitably in the past, and that the Union has shown need to change the current procedure. It asserts as well that the Union’s proposal is confusing, especially with regard to the timing of an appeal to arbitration. Moreover, the Village opines, the Union’s proposal suggests that

arbitrators would have the authority to impose discipline on police officers --- an option they have generally been loathe to exercise.

Moreover, the Village notes, the Union's argument about the bias of police and fire commissions is generic. It raised no concern about the neutrality or integrity of the current Police Commission in Deerfield. The Village argues as well that alternatives to final adjudication by a board of police commissioners is a permissive subject of bargaining in Illinois. Thus, the Village avers, the state legislature has not mandated that the police commission system be supplanted.

The Village believes that the status quo with regard to the appeal of disciplinary action against Deerfield police officers should not be disturbed. Thus, it urges adoption of its final offer on this issue.

Discussion

As noted many times by interest arbitrators, the party wishing to change the status quo has the burden of showing compelling reason for such a change. Here, the Union has not done so. It has not cited a single case where the Deerfield Board of Police Commissioners has exhibited a bias toward management or has otherwise treated a disciplined police officer unfairly or inappropriately. Neither has it submitted evidence of undue delays, exorbitant costs, or any other alleged undesirable characteristic of the way in which the Deerfield Police Commission adjudication system has functioned. Accordingly, the

Arbitrator has concluded that the Village's final offer on this issue is the more appropriate.

CONCLUDING COMMENTS

It appears to be true, as the Village alleges, that the parties to these proceedings did not come even close to exhausting their obligation to bargain in good faith over the issues discussed here. The Union believes they did, but that the Employer's expectations for the terms of a negotiated outcome were unrealistic. In any event, the record clearly reflects that the parties engaged in bilateral negotiations only about three times (October 2, 2007, November 15, 2007, and December 7, 2007), with the assistance of a mediator during their last session. The meetings they had on June 29 and September 4, 2007 appear to have been focused only on developing ground rules for their ensuing negotiations. I am just not convinced from the record that the parties gave the negotiations process a chance to work; moreover, it is quite likely that they are currently engaged in negotiations for a successor agreement to the one at issue here (i.e., 5/1/07 - 4/30/09). Thus, they will have ample and timely opportunity to negotiate once again on the issues for which the status quo was retained in these interest arbitration proceedings.

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 decided as follows:

1. The final offer of the Union on the Wage issue is adopted.
2. The final offer of the Village on the Career Development Program is adopted.
3. The final offer of the Village on the Health Insurance issue is adopted.
4. The final offer of the Village on the Disciplinary Appeal issue is adopted.

The parties' May 1, 2007 – April 30, 2009 collective bargaining agreement shall also incorporate the tentative agreements they reached at the bargaining table. It shall also include provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 15th day of June, 2009.



Steven Briggs