

IN THE MATTER OF ARBITRATION)
)
 BETWEEN)
)
 THE VILLAGE OF)
 SCHAUMBURG, IL)
 Employer,)
)
 and)
)
 INTERNATIONAL ASSOCIATION)
 OF FIREFIGHTERS, LOCAL 4092)
 Union,)
)

Hearing Date: September 13, 2007
 Schaumburg, IL

Issue: Pay Period/Re-Opener

Marvin Hill, Jr.
 Arbitrator

APPEARANCES

For the Village: R. Theodore Clark, Esq.
 Seyfarth Shaw et al
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For the Union: J. Dale Berry, Esq.
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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

This is a mid-term dispute initiated by the Employer.

By way of background, on or about December 12, 2006, R. Theodore Clark, counsel for the

Village of Schaumburg, sent the following letter (Union Ex. 4) to J. Dale Berry, counsel for the IAFF, invoking interest arbitration under Section 14 of the IPLRA:

As you know, during negotiations for a new contract, the Village proposed changing the pay date and our recollection is that you had no real problem with this issue as it was phased in. When the Memorandum of Agreement was agreed to, however, this issue was not specifically included in the MOA and thus was not made part of the contract.

Over the past month or so [Human Resource Director] Darold Pitzer has discussed this issue with [Union President] Rick Skala. The Village has proposed language that would track a provision that will be incorporated as part of the Village's 2005-2008 collective bargaining agreement with the Metropolitan Alliance of Police (MAP):

Section 20.3. Pay Date. Effective on or after January 1, 2007, the Village may change its payroll policy and practice and move the pay date to Friday of the week following implementation over five payroll periods, i.e., the pay date will be moved forward one weekday for five consecutive pay periods.

In addition, the Village and Operating Engineers Local 150 have agreed to include a substantively identical provision in their new 2006-2009 collective bargaining agreement, to wit:

Pay Date. Effective on or after January 1, 2007, the Village shall have the right to change its payroll policy and practice to move the pay day to the Friday of the following week after completion of the payroll period. If the Village moves the pay day, it will be implemented by moving the pay day by one week day per pay period until the new pay day is the Friday of the following week after the completion of the payroll period. Thus, in the first pay period of implementation the pay day will be moved to the following Monday, in the second pay period of implementation the pay day will be moved from Monday to Tuesday, and so on.

The Village will also implement this same pay date change for all of the Village's unrepresented employees.

Rick Skala, however, has resisted any change. Since the issue has not been resolved, the Village is invoking the provisions of Section 14 of the IPLRA based on the ILRB's recent CMS decision. The Village is ready to commence the process for the selection of an interest arbitrator to resolve this mid-term bargaining dispute.

Please contact me at your earliest convenience to discuss the selection of the interest arbitrator.

On January 23, 2007, Mr. Berry responded to Mr. Clark:

Responding to your proposal to submit the City's proposal to change the pay date as referenced in your December 12, 2006 letter, I have discussed it with my clients. It is their understanding that the Village had dropped that proposal when it was not asserted at the final mediation session.

I understand your desire for uniformity. However, there is the little matter of the contract's Entire Agreement Clause. When I raised this to you, you advised me that it did not apply because the subject of pay date was not expressly covered by the contract. A broad reading of Article XXI would not support this view. However, as you know I have never favored such constructions and believe that, generally, existing disputes should be resolved sooner rather than later. Accordingly, if you will write me confirming your view as to the inapplicability of Article XXI to this dispute, I will agree to recommend to my client that the dispute be

submitted to interest arbitration as you request. We do not wish to waive mediation, particularly since it provided so helpful to our settlement of the successor contract.

On January 25, 2007,¹ Mr. Clark sent the following letter (UX5a) to Mr. Berry:

In response to your letter dated January 23, 2007, the Village did not consciously or intentionally drop its proposal concerning a change in the Village's pay date during mediation. As I stated in my letter to you dated December 5, my recollection was "that you took the position that it was a negotiable issue and that if the Village wished to make this change during the term of the parties' new 2005-2008 contract, it would be required to negotiate over it." That is exactly what the Village has done.

As for your inquiry concerning the Village's position on the applicability or non-applicability of Article XXI (Entire Agreement) to this issue, the Village is willing in this situation involving mid-term negotiations over the Village's proposal to change the pay date for bargaining unit employees to agree, on a non-precedential basis, that this issue is, in the words of the last sentence of Article XXI, "not referred to or covered by [the] Agreement," and that, therefore, Article XXI is not applicable to this mid-term issue.

Although the Village would have preferred to go directly in interest arbitration over this issue, it will accede to your request to go to mediation to see if the issue can be resolved short of interest arbitration. Accordingly, I have attached a joint letter to FMCS requesting that a mediator be appointed. Please sign the letter and forward it to FMCS, with a copy sent to me for my file.

On January 26, 2007, Mr. Berry responded (UX 5b). In relevant part that response is as follows:

In response to your letter dated December 19, 2006, I can appreciate your statement that the Village did not "consciously or intentionally drop its proposal . . ." regarding the change in pay date. However, the Union cannot be bound by the Village's subjective and unexpressed intentions. The fact is when we settled after a significant hiatus, the pay date proposal was not put forward. Moreover, the express language of the "Memorandum of Agreement" (which you drafted) includes the following language at paragraph 11:

"Status of Other Proposals – All other proposals submitted by either party during the course of negotiations are specifically dropped. No 'supposal' submitted by the mediator during mediation that is not incorporated verbatim in this Memorandum of Agreement may be used by either party in any forum."

What is good for the goose is good for the gander. I hardly think, based on previous experiences, you or the Village would be bending over backwards to accommodate the Union's desire to negotiate an item that the Union had inadvertently failed to raise prior to settlement.

As to your response to the Entire Agreement issue, it is not acceptable. If you want to pursue negotiations of the pay date issue "mid-term," we are not going to agree that it is being done on a "non-precedential basis."

Actually, this is not a huge concession on the Village's part in view of the general view of the State Labor Board as to the scope of Entire Agreement Clauses, as most recently expressed in Elk Grove Village,

¹ The letter (UX5a) was incorrectly dated December 19, 2006 (UX5).

Case No. S-MA-04-327 (2006), which I am sure you have read. You may want to re-read page 14 on “waiver.”

So try again, Ted. The Union is willing to go forward to negotiate or arbitrate a resolution of this issue on a mid-term basis for the reason I expressed in my letter. We will not agree to do it in the shadows; it must be in full sun light.

On or about February 17, 2007, Mr. Robert Smith, on behalf of the Village, filed a demand for compulsory interest arbitration with the ILRB (UX5). The undersigned arbitrator was selected to hear the case. A hearing was held at the Village’s offices on September 13, 2007. The parties appeared through their representatives and entered exhibits and testimony. Post-hearing briefs were filed on November 6, 2007, and exchanged through the offices of the arbitrator. The record was closed on that date.

II. ISSUE FOR RESOLUTION

At the hearing, the Union submitted the issue for resolution in two parts: First, whether to change the *status quo*, and second, “if there is going to be a change in the *status quo*, as the Village is proposing, then our position is grant us the *quid pro quo* which we are proposing, which would be recognizing three additional holidays which would be one 12 hours of pay for each shift. There are three recognized now, there would now be six.” (R. 5-6).

The Administration asserts the issue is whether its pay-period proposal – a matter *not* covered by the current collective bargaining agreement – should be awarded by the interest arbitrator (R. 6-8).

III. POSITION OF THE UNION

The Union’s offer (JX5b) in response to the Village’s pay-date change proposal is as follows:

In the event the Arbitrator decides to grant the Village’s proposal to move back the date on which Firefighters are to receive their pay, the Union proposes that as a “*quid pro quo*” for such change that the Firefighters be granted additional holiday pay by recognizing three (3) additional holidays: Memorial Day, Labor Day, Thanksgiving Day.²

² At the end of the hearing Mr. Berry clarified its final offer “as being not in the alternative.” (R. 117). In Mr. Berry’s words, “I think it could be easily done by saying instead of “in the event” we just say “when.” *Id.*

The Arbitrator: “I am fine with that and here’s what I interpreted this to be. But either way the parties are going to have a successor collective bargaining agreement that contains the pay date, which everybody else is going to be in. The question is should a *quid pro quo* follow it.” *Id.*

Mr. Berry: Right.

In its *Brief*, the Union acknowledged as follows: “The sole issue is whether or not a *quid pro quo* is due the Union because the competing proposals before the Arbitrator both contemplate a pay date change.” (*Brief for the Union* at 3).

Because of this concession, any discussion regarding the merits of going to a new pay date *versus* retention of the old date is really pointless.

The proposed contract language is as follows:

Section 10.2. Holidays for Employees Assigned to 24-Hour Shifts. Effective July 1, 2006, 24-hour shift personnel who are regularly scheduled to work on July 4, Christmas or New Year's Day, shall be compensated at the rate of time and a half rather than straight time for all hours worked on said holidays. The July 4, Christmas and New Year's holidays shall be the 24-hour period commencing at 8:00 a.m. on the date of the actual holiday (i.e., July 4, December 25 and January 1) as opposed to the day on which the holiday may be observed by the Village.

Current with the effective date of the Village's proposed pay-day change, all 24-hour shift personnel shall be compensated at the rate of time and a half (1&1/2) their regular straight time rate for all hours worked on the following additional holidays: Memorial Day, Labor Day and Thanksgiving Day.

The Union asserts that the effect of the Employer's proposal is that employees are going to get less money, "basically holding back a week's wages which are going to be held by the Employer, maybe paid when they retire. So . . . that's cash being taken out of their cash flow. Employees don't like that." (R. 9).

According to the Union, the other unions that agreed to the Employer's pay-period change did so as part of a package. In counsel's words: "They didn't get it for nothing. And we are not going to give it to them for nothing." (R. 9).

Discussing external comparability, the Union maintains this criterion supports its holiday proposal as an appropriate *quid pro quo* for agreeing to change the pay date. According to the Union, the following bench-mark jurisdictions are appropriate comparables: Skokie, Hoffman Estates, Arlington Heights, Palatine, Elgin, Elk Grove Village, Des Plaines, Mount Prospect, Oak Park, and Hanover Park (UX 2; R. 42-43).³ The Union submits the average holiday pay for Schaumburg is \$317, or .46 percent of career salary. The average for the comparables is \$2,139, or 3.26 percent of salary. Schaumburg would be doubled if the Union's proposal were granted (Union Ex. 3; R. 49). Granting the Union's proposal would still place them 2.25 percent below salary in terms of the benefit (R. 49). The holiday benefit is *de minimus* relative to the comparables (R. 122).

* * *

In summary, the Union rejects the Village's position, distilled to its essence, as "No fair, we weren't looking." According to the Union, "that track has the perverse effect of exonerating the Village while simultaneously implicating bad faith on the Union. This takes a special verve because it presupposes a duty upon the Union to tend to the Village's knitting." (*Brief* at 20). Asserting that, overall, it presented the most credible evidence in favor of its final offer of a *quid pro quo* for a change in the pay date, the Union requests that it be awarded three extra holidays for the above

³ The Union later acknowledged that Hanover Park "is not very comparable." (R. 44). "It is certainly no way comparable to Schaumburg." (R. 45-46).

reasons.

IV. POSITION OF THE ADMINISTRATION

The Administration's final offer (JX 5a) on the mid-term pay-date issue is to add a new Section 8.6 to the parties' 2005-2008 collective bargaining agreement. The language reads as follows:

Section 8.6. Pay Date. Effective on or after January 1, 2007, the Village may change its payroll policy and practice to move the pay date to Friday of the week following completion of the payroll period. If the Village changes such policy, it will be implemented over five payroll periods, i.e., the pay date will be moved forward one weekday for five consecutive pay periods. The Village will not change its pay date policy as provided above unless such change is done on a Village-wide basis and covers both represented and unrepresented Village employees.

* * *

In support of its position, the Administration first notes that when the parties reached an agreement with the federal mediator that resulted in a Memorandum of Agreement, the Village's director of Human Resources, Darold Pitzer, was not present. In the Employer's view, the change in the pay period "wasn't that big a deal. There was concern about how would it be implemented, could it be staggered and we said we would be open to that." (R. 6).

Management contends that on the final day "it [the pay-date change] slipped through the cracks and didn't get into the agreement." The Village asserts it is in the process of changing its payroll system and wants to adopt a system "where we are dealing with actual facts as opposed to presumed facts." (R. 6). In other words, the pay date follows the completion of the payroll period, a period where the Village operates on the basis of actual facts with respect to overtime, comp time, etc. In counsel's words:

Quite frankly, it's a fairly simple issue of the Village wanting to change on a Village-wide basis for all employees the pay date so that it occurs after the completion of the payroll period in order to accurately reflect what has occurred during the payroll period from the overtime, comp time, et cetera, and to avoid situations where you have to have overrides or make corrections after the fact and after employees have already been paid. (R. 13).

To this end, the Village points out that its outside auditors agree that the date for the payroll should be sometime after the end of the payroll period. This will ensure accuracy, reduce errors, and increase efficiency.

The Employer maintains it has negotiated the pay-period issue with every other bargaining

unit in the Village⁴ without any payment or *quid-pro-quo* by the Village. “It was something the folks recognized that made sense.” (R. 8). Counsel Ted Clark further asserted:

In the negotiations in 2006, my recollection is that it was sometime last summer, last summer being summer of 2006, early on in the negotiations the parties agreed to the inclusion of this. My recollection of the conversations over this issue was that it was no big deal, yes, this made sense, we could avoid errors and we could get paid in a more timely fashion for overtime. And it was agreed to, there wasn’t any demand and that they got something more, something extra for agreeing to it. My recollection is they thought it was a good idea and it was agreed to and it was incorporated as part of the parties’ collective bargaining agreement. (R. 18).

Management notes that employees are inconvenienced when overtime was not properly paid and they had to wait for it until the following week. The Firefighters are the lone holdout. Since the matter was not covered by the collective bargaining agreement, the Village was seeking to change during the term of the contract. These kinds of matters could be submitted to mid-term interest arbitration if the parties were unable to reach agreement and, accordingly, the parties did so in this case.

In the Administration’s view, what the Union is proposing is a one-time event that has been accepted by four of the five bargaining units. Under the Union’s offer, the Firefighters would get “a doubling of a holiday pay benefit that would be on going in their mind forever unless changed through negotiations or interest arbitration.” (R. 121). On average, the benefit is worth \$317 to a Firefighter (R. 120). Also, when one examines all paid time off, including holiday paid time off, Schaumburg ranks number one and provides 42 more hours of paid time off than any of the comparables (*Brief for the Employer* at 20; VX 9A). In the Employer’s view, the Union’s external comparability argument does not support doubling the holiday pay provision in the parties’ 2005-2008 collective bargaining agreement, given the parties’ long history of negotiations over holiday pay and two prior interest arbitration decisions in which Arbitrators Briggs and McAllister denied the Union’s final offers on holiday pay (*Brief* at 20).

With respect to overall compensation and benefits received by the bargaining unit, the Administration submits that the most important Section 14 criterion is salary, followed by time off without loss of pay. On salary alone, Union Exhibit 3 shows that Schaumburg’s average hourly rate of \$26.40 is 7.4% higher than the average hourly rate of \$24.58 for the grouping of comparables used by the Union. It is submitted that the overall compensation criterion likewise supports the Village’s

⁴ There are five different bargaining units at Schaumburg: A command bargaining unit in fire represented by the Schaumburg Fire Command Association, a rank-and-file police bargaining unit represented by the Metropolitan Alliance of Police Chapter #195 (MAP), a police command bargaining unit represented by MAP #219, a rank-and-file bargaining unit for Firefighters which also includes lieutenants, represented by IAFF #4092, and a bargaining unit for public works employees represented by Local 150 of the International Union of Operating Engineers (IUOE).

final offer (*Brief* at 20-21).

* * *

In summary, the Administration maintains that the reason for the pay-date change is that the Village would like to implement for all its employees, both represented and unrepresented, a pay date that accurately reflects what has occurred during the payroll period with respect to such things as overtime, compensatory time, etc., and to avoid situations where overrides and corrections are executed after the fact. Since the other bargaining units have already agreed to the pay-date change, the Union, in this case, “is the lone holdout.” (*Brief* at 21). While the Union asserts that the other bargaining units received something in return, the evidence record demonstrates otherwise. None of the other units received nothing in return for agreeing to the pay-date change, let alone anything of substantial value such as the Union in this case is seeking.

For the above reasons, the Administration requests that its final offer be awarded.

V. DISCUSSION

In an exchange between Mr. Berry and Mr. Clark, the latter acknowledged that the pay-date issue “fell through the cracks:”

Q. [By Mr. Berry]: So, the fact of the matter is you were present when we finally settled negotiations and you never raised as part of the issues this pay-date issue, right?

A. [By Mr. Clark]: On the final day I candidly acknowledge that was something that fell through the cracks. No, it was not raised on that day. (R. 26).

Significantly, during the hearing Mr. Berry explained that the *status quo* is not an issue before me:

Arbitrator Hill: Just so the record is clear, what is before [me when I go to write the case] and I have the briefs, I am of the opinion today –

Mr. Berry: Right,

Arbitrator Hill: – that *status quo* period is not before me.

Mr. Berry: Right.

Arbitrator Hill: It's not in either one of your offers.

Mr. Berry: Right.

Our agreement to do this interest arbitration implies that we are letting you resolve this issue whether there should be a *quid pro quo* or not.

Arbitrator Hill: Okay. I got that. (R. 34-35).

Paradoxically, this case started as an impasse over the pay date, *not* holiday pay. Indeed, holiday pay was an issue actually discussed in bargaining and specifically addressed in the parties' collective bargaining agreement. The Union was able to obtain additional pay for work on three holidays – July 4th, Christmas, and New Years – for agreeing to a 27-day work cycle, a change from a 28-day cycle, thereby eliminating FLSA-mandated overtime, thus offering up a significant *quid pro quo* to obtain additional pay for work on three holidays. (R. 27-28). The Firefighters now argue that awarding three additional holidays is a fair *quid pro quo* for moving to a new pay date, specifically one week forward, albeit implemented over five bi-weekly periods, so that employees' paychecks are based on actual time worked, rather than assumed time worked, thus eliminating the need for corrections. Significantly, the Union maintains that the other bargaining units at Schaumburg received a *quid pro quo* for agreeing to move to a new pay date and, thus, it too should receive something in return, in this case *doubling* of the current holiday pay benefit. Is its argument supported by the evidence record?

Central to the resolution of this case is a determination whether (1) some *quid pro quo* is warranted, either (a) because other Schaumburg bargaining units received one, or (b) because the pay-date change results in such a financial hardship to the Firefighters that a *quid pro quo* should be awarded notwithstanding the other units, and (2) if a *quid pro quo* is warranted, whether a doubling of the holiday benefit is disproportionate to the exchange.

A. It is Clear that a Majority of Schaumburg's Units Did Not Receive a Quid Pro Quo for Moving to the Administration's Pay Date

Local Union #4092 President Richard Skala testified that he was involved in negotiations that produced the current collective bargaining agreement (R. 53). Skala went on to discuss the issue of the pay date:

Q. Did the City raise an issue of pay date at that time?

A. Yes.

Q. Was the Union – that was a no brainer?

A. Absolutely not, no.

Q. Why not?

A. Their first proposal was that we would just move it back a week. I think it took collectively amongst the negotiating team less than a second to tell them "no."

Then, further in negotiations they proposed a change of pay date, that they would move it, and I think it was you that said it would be under consideration and when we caucused we told you absolutely not.

Q. So then what happened to that pay date issue prior to the impasse?

A. Prior to the impasse it was dropped.

Q. Well, I mean, we never agreed to anything?

A. Absolutely not. (R. 54-55).

Union witness and Battalion Chief Ken Wood, a member of the Fire Command Association bargaining unit, testified he was involved in representing the Command Association in negotiations with the Village (R. 64). In an exchange with Union counsel, Wood outlined his recollection of bargaining with the Village for a change in the pay date:

Q. Well, first of all, before the mediation, did the City come to you and propose that you agree to this pay date?

A. Yes.

Q. What was your response?

A. We declined to agree. We couldn't agree.

* * *

At mediation there was discussion of some various tradeoffs of what, for lack of a better description, the Command Association could get if we agreed to the change of pay date, and in the end we came to an agreement on that.

Q. And what were the elements of the agreement?

A. The agreement was that – we settled for a handshake agreement with Chief Schumann, who gave us his word. He was willing to keep the current hire-back procedure for the command group, which basically affects captains within our group, the way it was, as it was standing now. We enjoy that benefit now and talking amongst our group we believed that was something that might wind up on the negotiating table in contract negotiations. We looked at that as a possibility to settle it there or get a tradeoff for a change of pay date.

It was a handshake agreement. The chief came to the mediation and said that – you know, I would say he prefaced it with saying there could be a change in economic conditions in the Village that could cause him to have to take that away in the future. It's not a written agreement, it's a handshake agreement, but that he didn't have intention on changing the method by which command officers are hired back, and we agreed to that.

Q. How does that method help or why is that a benefit for your members as a method of overtime selection?

A. Well, it directly affects our group because it results in hire-back time and a half money for the captains of our bargaining group. Our bargaining group consists of battalion

chiefs and captains. The battalion chiefs are not subject to payment for any overtime work, captains are. So that's time and a half money for captains if they are hired back to work on a shift. (R. 66-67).

* * *

Q. So basically you are hiring a captain back instead of having a lieutenant act up?

A. Yes. If there is a need for a hire back, the captain gets the preference if there is not a second command member working that day. It is that procedure that we wanted to continue.

* * *

Q. How much is that worth to captains, do you think, on average in terms of overtime?

A. It's an estimate on my part because being a battalion chief, I don't enjoy it, but in general discussion with those captains I think it's in the range of \$30,000 to \$40,000 a year per captain. (R. 67-68).

During cross examination by Mr. Clark, however, Wood conceded that there was nothing additional given to the fire captains and the battalion chiefs. Moreover, nothing was put in writing; it was always a "handshake agreement", subject to change if conditions warranted:

Q. What he [Chief Schumann] said in essence was he had no present intent to change how overtime was distributed to the captains, but he couldn't guarantee it because there could be circumstances down the road that might cause him or the Village to make a change, but he didn't have any current plans to change it, is that correct?

A. That's correct.

Q. That was acceptable to you?

A. That's correct.

Q. There wasn't anything additional given to the fire captains or the battalion chiefs, correct?

A. No, that was the entire content.

Q. You are not getting any more overtime now than what you did before, are you?

A. No, we are not.

Q. It was just a continuation of what you had been receiving for three or four years?

A. That's correct.

Q. There wasn't any increase in salary or any increase in holiday pay, et cetera?

A. No.

Q. In terms of additional pay for work on the three holidays that's in the rank and file agreement, that was something that was extended to you under a "me too" provision in the fire command?

A. In the previous contract, yes. (R. 70-71).

Union witness Vito Rago, first vice president of MAP #195, also discussed the Village's proposal to change the pay date:

Q. Now, what is your understanding of that proposal [the proposal to change the pay date]?

A. The Village proposal is to – right now, I think, the way it was explained to us, how we are being paid is in advance of the one week and what the Village asked was to – in due time for one day per period is to get it down to even, so actual days you are going to be paid for.

Q. Now that had the effect of holding back money that you are currently getting when that is implemented?

A. When it was implemented it was explained it would delay one day per pay period for one full – for a total of one – for several pay dates which ended up per – day pay versus an advance pay.

Q. So in terms of the initial response of your bargaining team, what was your response to that proposal?

A. We were trying to get something – as far as negotiations go, something in return for that proposal from the Village?

Q. So, it's not something you just give the City because they asked for it?

A. No, there was something in return that the Union was looking for. (R. 76-77).

According to Rago, there was a connection between the pay date and an agreement on detail pay (R. 79). With respect to detail pay, Rago explained that "it does affect us in a way that you have, of course, officers who need extra pay for detail time would get more opportunity now because it's there, the opportunity is there and the jobs are there." (R. 80).

Rago also testified that the unit gets twelve recognized holidays. "You get compensated somehow, either take the day off or otherwise if you are off you get some type of straight pay or if you are working it the best scenario would be time plus time and a half on top of that." (R. 81).

During cross examination, Rago acknowledged that the holiday-pay provisions have been

in place for at least 25 years (R. 83). In an exchange with Mr. Clark, Mr. Rago acknowledged the issue of detail pay had been decided *prior* to the date of the arbitration, but the pay date issue was not resolved:

Q. And at the time of interest arbitration, the day that we were there before the arbitrator, June 21, 2006, the pay date issue had not been decided, resolved?

A. Prior to – no, that was not part of the items that were on the agenda for that day as far as arbitration.

Q. That was one of the disputed issues as of the start of that day, was it not?

A. I believe so.

Q. You were present before Arbitrator Yeager, you were in the audience?

A. Yes, I was.

Q. Do you recall Joe Mazzone saying to the Arbitrator and to me “We can agree with what the Village has proposed with respect to pay date. We can take that issue off the agenda,” in effect?

A. It was. It was.

Q. That was the only issue that was resolved on that day, right?

A. On that day, but prior to that day the Village conceded to the detail pay, so that was in return to what the Village gave to us.

Q. But in the discussion of detail pay, there was no discussion directly linked to the pay date issue, was there?

A. Not on that day, no. It was prior, prior to even the meetings that you were not there to. It was the package – there were different packages that went back and forth.

Q. Well, different packages that went back and forth. But when the Village agreed to the detail pay provision, the Village didn’t say “We will agree to this, but only if you gave us the pay date?”

A. Yes. That wasn’t presented that way, no. (R. 84-85).

* * *

Q. But we had TA’d the detail pay prior to June 21, correct?

A. Sure. And we decided as a Union that since the Village conceded on this, we would give our part and say, you know what, we are going to concede on the pay.

Q. On June 21, when the union’s attorney said we got an open issue, one of these issues is pay date. Detail pay wasn’t one of the issues being arbitrated, right?

A. Correct.

Q. Pay date was one of the issues that was being arbitrated?

A. It was. (R. 86-87).

Union witness Michael Imborido, Chairman of the Operators Local 150 bargaining unit, testified that the issue of pay date came up during bargaining for a successor collective bargaining agreement:

Q. During the course of those negotiations did the subject to pay date change come up from the Village side?

A. Yes, it did.

Q. Just explain to the Arbitrator how you reacted to that particular proposal.

A. When they proposed it, we took a look at it and our situation of public works is a little bit different because he don't work on scheduling overtime, it's emergency overtime.

For us – unlike fire and police – for us, to become current with overtime, actually their program was a benefit to us off the bat because the way our overtime is scheduled versus theirs.

Our big issue was not to adversely affect our rank and file as far as the pay date moving it one week at a time and making our rank and file wait three weeks for their pay.

We came up with a workable solution which he proposed back to the Village and we TA'd off on that proposal pending what everybody else did.

* * *

Indirectly, we didn't ask for anything.

During cross examination Imborido acknowledged that the pay-date issue was resolved on its own merits:

Q. Wouldn't it be fair to say, Mike, that in terms of the pay-date issue, it was proposed, discussed and resolved on its own merits?

A. Yes, it was. Like I said, that was something – the way our overtime works, it's easier for us to track our overtime, so for us it became a benefit.

Q. Isn't it true that the issue was resolved very early in negotiations?

A. Yes, it was one session. (R. 92-93).

The Union did not present a witness with respect to the circumstances that led to the mid-term agreement on the pay-date issue for the MAP #219 Police Command unit. Because the issue initially could not be resolved in negotiations, a mid-term interest arbitration hearing was scheduled before Arbitrator Cox on April 27, 2007, to resolve the dispute (R. 20). Mr. Clark testified that on April 26th he received a call from Rick Reiner saying that the command bargaining unit could accept

what the Village was offering and “would I [Clark] be kind enough to let the Arbitrator know the matter was resolved and [to] send along the appropriate paperwork to reflect that.” (R. 20). Clark testified that “the Village offered nothing extra in terms of securing the agreement from the command officers.” (R. 20-21).

Director of Human Resources, Darold Pitzer, testified that early on in the negotiations for the current collective bargaining agreement – the 2005 to 2008 contract – the Village brought up that pay-date was one of the issues for consideration. Discussing a conversation he had with Union President Rick Skala with respect to the pay-date issue, Pitzer stated that, at first, the Union was willing to go along with the change. Later, they came back and said that they were not going to be able to agree with the change. “They changed their mind.” (R. 103-04). Pitzer further noted that he had no recollection of holiday pay coming up as consideration for changing the pay date:

Q. At any time during the mediation session [June 2007], did either the Union directly or through the mediator, make any proposal for additional holiday pay as consideration for a willingness to agree to the the Village’s proposal to change the pay date?

A. I have no recollection of it. (R. 104).

When asked about any tie-ins to detail pay with the MAP, Pitzer maintained that there was no tie in with a change in the pay date:

Q. In terms of the agreement on detail pay, to what extent, if any, was there any tie-in with the Village’s proposed pay-date change?

A. I don’t recall any conversation with that.

Q. Now, on June 21, 2006, when the parties were appearing before Arbitrator Yeager, one of the stipulated issues to be resolved was the Village’s pay-date change?

A. Yes.

Q. What happened at the first day of the interest arbitration hearing?

A. Well, you know, just to put it in a nutshell, Joe Mazzone, the MAP attorney, withdrew it as an issue, that they were going to accept our proposal.

Q. Okay, So it was no longer an issue?

A. No longer an issue. (R. 106).

Significantly, Pitzer maintained that the first time he learned that the Union was seeking additional holiday pay as consideration for the Village’s proposal to change the pay date was the day of the hearing (“This morning when I read the e-mail that you [Clark] forwarded to me last night regarding Mr. Berry’s last offer, final offer.” R. 110-11).

In rebuttal, Richard Skala testified that Pitzer’s testimony was not in accord with what occurred (R. 112). In Skala’s words:

I told them if they wanted to change the pay date by week, they would give us a week's pay. They scoffed at that. I said then give us back the 28-day cycle. They laughed at that. Then I told them then we got to talk about holiday pay, additional holiday pay. And their directive to us was we have not given anyone else anything, we will not give you anything. (R. 112-13).

Q. Is there any way, shape or form that you told Mr. Pitzer that the Union had no problem with this change in the pay date?

A. Absolutely not. None whatsoever. (R. 115)....

* * *

Clearly, there was no *quid pro quo* given to MAP #219, the Police Command Unit (R. 20-21), nor to IUOE Local #150, the Operating Engineers' bargaining unit (R. 92-93). The "handshake agreement" secured by the Fire Command Unit, while perhaps good consideration (applying black letter contract law) for a pay-date change, appears "iffy" as an internal comparable, given the "hedge" it came with – that economic conditions could warrant a unilateral change, hence the "handshake" and not a written provision (an illusory promise comes to mind).⁵ The "detail pay" of MAP #195, cited by the Firefighters as an internal comparable, is also "iffy," given Mr. Joe Mazzone's comments,⁶ especially when it appears that the detail pay issue was agreed to *prior* to the date of the arbitration. Moreover, apparently the detail pay issue was without any cost to the Village since it concerned the hourly rate received by officers that outside corporations pay to use Village police officers. The bottom line here is this: I cannot find clear substantive *quid pro quos* from even a majority of the internals which would otherwise favor the Union's final offer. At best, the Union has demonstrated that one of the internals secured a *quid pro quo* for agreeing to change the pay date. The internal analysis criterion is resolved in favor of the Administration.

B. An Analysis of External Data Favors the Administration's Position that the Union's Proposed *Quid Pro Quo* is Not Warranted

Relevant to an analysis of the externals is Village Ex. 9A, reprinted as follows:

⁵ The Union recognized as much in its *Brief* at 6 when it conceded: "The Village's position is disingenuous at its core. Clark is sufficiently sophisticated to understand that in formal negotiations if you don't have it in writing you don't have it."

⁶ Before Arbitrator Yaeger, Joe Mazzone, Esq., stated: "If you open the book, gentlemen, the first page is a stipulation that we signed. If you will scratch the pay date there, that is no longer an issue." (VE 4; R. 60-61).

**MAXIMUM PAID TIME OFF FOR
ALL COMPARABLES AS OF JULY 1, 2006**

Jurisdiction	Work Hours Reduction	Holiday Hours	Personal Hours	Maximum Vacation Hrs	Total Paid Time Off
Arlington Hts	324	0	0	312 ⁷	636
Des Plaines	192	120	48	240 ⁸	600
Elgin	314	0	0	288 ⁹	602
Elk Grove Village	172	72	0	312 ¹⁰	556
Hanover Park	182	72	0	288	542
Hoffman Estates	270	0	0	336 ¹¹	606
Mt. Prospect	322	0	48	240	610
Palatine	144	144	24	288 ¹²	600
Average (excluding Schaumburg)	240	51	15	288	594
Schaumburg	324	0	0	312	636

When one examines all paid time off, Schaumburg ranks first and provides 42 more hours of paid time off than the average of the comparables ¹³ surveyed in VX 9A. ¹⁴ While the Union

⁷ At 24 years of service; at 15 years Arlington Heights Firefighters receive 10 shifts (i.e., 240 hours of vacation time).

⁸ At 15 years of service.

⁹ At 22 years of service; at 15 years Elgin Firefighters receive 10 shifts (i.e., 240 hours of vacation leave).

¹⁰ The number is for Firefighters; at 15 years, Elk Grove Firefighters receive 10 shifts (i.e., 240 hours of vacation leave).

¹¹ At 20 years of service; at 15 years Hoffman Estates Firefighters receive 10 shifts (i.e., 240 hours of vacation leave).

¹² At 25 years.

¹³ The parties are not in agreement regarding the external comparables. The Union maintains that the comparables include Skokie, Oak Park, Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hanover Park, Hoffman Estates, Mount Prospect, and Palatine (UX 3). The Employer maintains that there is no need for the undersigned Arbitrator to make a determination of relevant comparables in this case, but if compelled to rule on the issue, the Village's position is that the comparables determined by Arbitrator Briggs in his 1998 interest arbitration decision should be used (VX 11 at 8), plus the

devotes considerable text in its *Brief* addressing Schaumburg's holiday pay deficiency (*Brief* at 16-19), any argument that "an item-by-item analysis as required by the Act (§ 14(g)) is the only way to facilitate a fair side-by-side comparison of aggregated independent variables" misses the point. Both advocates and arbitrators know that parties make numerous trade-offs in arriving at a final accord. Just as neutrals examine more than a base salary in getting a picture of overall compensation to the bargaining unit, so too is it valid to examine numerous components of total paid time off to get the entire picture. To focus on one item alone would not serve the parties' interest.¹⁵

In summary, the evidence record regarding external comparability does not favor doubling the existing holiday benefit in the parties' 2005-2208 collective bargaining agreement.

C. The *Quid Pro Quo* Requested by the Union – Three Additional Holidays, Double the Existing Holiday Benefit – Far Exceeds the Value of what is "giving up" by the Bargaining Unit

Neither party offered numbers regarding what a Schaumburg Firefighter "gives up" under the Village's proposal. Addressing the new system, Mr. Berry maintained that the Village is "basically holding back a week's wages which are going to be held by the Employer, maybe paid when they retire. That's cash being taken out of their cash flow." (R. 9). Although Mr. Berry is correct, a traditional economic valuation of the parties' proposals still favors the Administration's position.

addition of Hanover Park that the IAFF agreed to include in the group of comparables in the 2004 interest arbitration before Arbitrator McAllister (UX 6 at 4)(*Brief for the Administration* at 20 n. 21). The Village does not believe that either Skokie or Oak Park should be used. Without holding that a prior arbitrator's decision regarding proper comparables in an interest proceeding is *res judicata* in a subsequent interest proceeding, I am inclined to give great weight to the two arbitrators that decided this issue, Arbitrators Briggs (1998) and McAllister (2004). Significantly, Skokie and Oak Park were not included, although I note for the record that Skokie provided three (3) holidays, while Oak Park provides four (4)(UX 3), comparable to Schaumburg.

¹⁴ The Union offers no comparable exhibit showing total paid time off for its selected comparables. What data I have supports the Administration's external argument.

¹⁵ Two examples are noteworthy. The evidence record indicates that the trade off made by the Firefighters in moving from a 28-day cycle to a 27-day cycle was three holidays – July 4th, Christmas, and New Years. Holidays finally appeared for 24-hour employees after unsuccessful attempts to gain an award before two interest arbitrators, Steven Briggs in 1998 and Robert McAllister in 2004. The *quid pro quo* for the holiday benefit was not insignificant, the loss of hours of overtime. At some point in the future the Union may want to return to a 28-day cycle, citing what the comparables are doing regarding overtime. An Arbitrator examining the issue would have to consider "what went before." See, e.g., *Village of Elk Grove & Metropolitan Alliance of Police No. 141* (Goldstein, 1996)(stating that what went before must mean something).

Insurance is another example. One can conceive of a situation where a party wants a major revision in insurance – greater deductibles, contributions, etc. Before ruling on the matter, a neutral would have to consider any past bargaining and trade-offs for other benefits, not just the insurance issue in a vacuum. Did the employees pay for a top tier insurance provision by forgoing wages and other benefits?

In both cases, an item-by-item analysis only would lead to the wrong result.

Under the Village's final offer, when fully phased in, employees will be paid seven days "after the end of the pay period in such wages were earned." What a Firefighter "gives up" (after the phase in) is receiving his paycheck seven days earlier. He is effectively "loaning" the Village two weeks of his salary twice a month for seven days for the year. At 6.0% simple interest (high), the economic cost to the employee is approximately \$62.50 for the year, given an average take-home salary of \$50,000.¹⁶ On the other side of the ledger, he or she arguably "gains" an accurate paycheck, reflecting actual overtime worked during the pay period, comp time, etc. Corrections are avoided and, thus, the employee receives an accurate check. As outlined by Mr. Clark on cross examination: "It will allow for a much more accurate counting of what is owed the employee and what will be paid to the employee based on actual information as opposed to presumed information." (R. 25).

Based on the Union's final offer, each Firefighter would receive on average \$317 more per year (R. 120). However, the Union's offer is not for just one year but, rather, it would be an ongoing benefit that would be received each and every year thereafter (given, of course, that the parties do not "backtrack" and remove the benefit, an unlikely course of conduct). Over a 20-year career, the present value of the benefit (using a 6.0% discount rate) is \$1,016.62. The non-discounted value is approximately \$6,340 over 20 years, \$10,000 over a 30-year period (see, *Brief for the Employer* at 18).

Any way you work the numbers, the Village's arguments are favored regarding the disproportionately of the *quid pro quo* urged by the Union.¹⁷

D. Summary

To the extent that other bargaining units received something substantive for agreeing to move to the Village's new pay date, so too should the Schaumburg Firefighters. As indicated, however, the evidence record does not support the Firefighters' assertions that all the other units were rewarded for the new pay date. Other than the "hand shake" agreement secured by the Fire Command unit, which is substantively comparable to an illusory promise, the internal criterion favors the Administration.

Similarly, the Administration's external data regarding total time off (*supra* 17-18) also

¹⁶ One way to calculate the economic value to a Schaumburg Firefighter is to consider that by moving the pay date, effectively the Firefighter is allowing the Village to use the "float" by delaying payment one week. Every two weeks – 24 times/year – a Firefighter loans out his bi-monthly salary to his Employer for one week. At a rate of 6.0%, the lost opportunity cost is \$ 62.50/year [(\$2,083 x .06)/2]. When adjusting for the five-period phase in, the "cost" to the employee is really less than \$62.50/year (using 6.0% as the computational discount rate of interest). At a passbook rate of 4.5%, the cost is approximately \$47.00.

¹⁷ Another way to examine the economic value involved is to consider what the Union gave up in negotiations to achieve three holidays. The record indicates that the Union agreed to a move to a 27-day work cycle in exchange for three holidays, thus offering up a significant *quid pro quo* for the holiday provision. What the Union is "giving up" for changing the pay date hardly compares to what it seeks in return, a doubling of the holiday benefit.

favors the Village. As indicated, the Village of Schaumburg ranks first and provides 42 more hours of paid time off than the average of the comparables. This data cannot be ignored. Given the external data, it is difficult to resolve the issue for the Union.

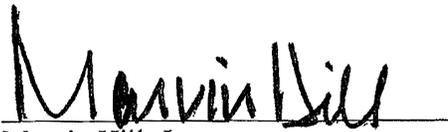
Finally, even assuming *arguendo* that every other unit at Schaumburg received a *quid pro quo* for agreeing to the new pay date, what the Union proposes (on average, 12 hours of additional holiday pay per year – an average of \$317 more per year) is disproportionate to the value what it is given up by the Firefighters. Simply stated, the value of doubling of the holiday benefit far exceeds an economic loss to the Schaumburg Firefighters. On all counts the Village advances the better argument.

For the above reasons, the following award is entered:

VI. AWARD

The Village's final offer is awarded.

Dated this 15th day of December, 2007,
at DeKalb, IL 60115



Marvin Hill, Jr.
Neutral Arbitrator