

INTEREST ARBITRATION

OPINION AND AWARD

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IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**FRATERNAL ORDER OF POLICE LABOR COUNCIL**  
("Union", "FOP" or "Bargaining Representative")

AND

**VILLAGE OF LA GRANGE PARK**  
("Employer", "Village", or "Management")

IPLRB Case No. S-MA-08-171  
Arbitrator's Case No. 08/049

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**Before:** Elliott H. Goldstein  
Sole Arbitrator by Stipulation of the Parties

**Appearances:**

**On Behalf of the Union:**

Jeffrey Burke, Esq., Illinois FOP Labor Council

**On Behalf of the Employer:**

Timothy E. Guare, Esq., Hodges, Loizzi, Eisenhammer, Rodick & Kohn

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## **I. PROCEDURAL BACKGROUND**

This matter comes as an interest arbitration between the Village of LaGrange Park ("the Village" or "the Employer") and the Illinois Fraternal Order of Police Labor Council ("the Union" or "the FOP") pursuant to Section 14(p) of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit represented by the Union in this case, when fully staffed, consists of approximately 16 sworn patrol officers. (U. Ex. 26.) This dispute arises from the parties' impasse in the negotiation of the Collective Bargaining Agreement ("CBA") to be effective May 1, 2008.

The Village and the Union were parties to a Collective Bargaining Agreement in effect from May 1, 2005 through April 30, 2008. The parties opened negotiations for a successor agreement on January 10, 2008, and thereafter met for purposes of bargaining on January 29, 2008, February 12, 2008, and March 17, 2008. (U. Ex. 5.) The parties subsequently sought to resolve outstanding issues through mediation on May 23, 2008 and July 8, 2008. (Id.)

The mediation process proved unsuccessful in securing a new contract, according to the parties, and thus, on or about July 22, 2008, they jointly submitted four outstanding issues to interest arbitration under the Act. The parties' attendant stipulations are set forth in Section III of this Award.

A hearing before the undersigned Arbitrator was held on December 15, 2008 at the LaGrange Park Village Hall, 447 N. Catherine

Ave., LaGrange Park Illinois, commencing at 10:00 a.m.<sup>1</sup> The parties were afforded full opportunity to present their cases as to the impasse issues set out below, which included written and oral evidence in the narrative. The Village also presented one witness, whom the Union was duly permitted to cross-examine. A 104-page stenographic transcript of the hearing was made, and thereafter the parties were invited to offer such arguments as were deemed pertinent to their respective positions. The record was held open for submission of post-hearing briefs, which were received by the Arbitrator (on behalf of the Union) on February 28, 2009 and (on behalf of the Village) on March 2, 2009. At the hearing, the following individuals were present:

For the Village:

Timothy Guare, Attorney  
Bohdan J. Proczko, Village Manager of LaGrange Park  
Julia Cedillo, Assistant Village Manager of LaGrange Park  
Daniel McCollum, LaGrange Park Chief of Police

For the Union:

Jeffrey Burke, Attorney  
Richard Stomper, Illinois FOP Labor Council Field  
Representative

Post-hearing briefs were exchanged on March 2, 2009, at which time the record was declared closed.

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<sup>1</sup> The Exhibits introduced at the December 15, 2008 hearing will be cited in the following manner: Joint Exhibits as "Jt. Ex. \_\_\_\_", Union Exhibits as "U. Ex. \_\_\_\_", and Village [Employer] Exhibits as "Er. Ex. \_\_\_\_", respectively.

## **II. FACTUAL BACKGROUND**

### **A. The Parties**

FOP Labor Council, "the Union" in this matter, is a labor organization within the intent and meaning of Section 3(i) of the Illinois Public Labor Relations Act ("IPLRA" or "Act"), and is the exclusive bargaining representative, within the meaning of Section 3(f) of the Act, for all sworn full-time patrol officers employed by the Village. (U. Book 1, Ex. 1.) The Village is a municipality established pursuant to the Illinois Constitution and the Illinois Municipal Code and is an "Employer" within the meaning of Section 3(o) of the Act.

#### **1. The Village of LaGrange Park**

The Village of LaGrange Park is located in Cook County, Illinois, approximately 17 miles west of downtown Chicago. Its adjacent municipal neighbors include Brookfield on the east, LaGrange on the south, and Westchester on the north. Cook County Forest Preserve borders LaGrange Park to the west. In 1960, the population of the Village was 13,795, and subsequently peaked at 15,459 in 1970. According to the 2000 census, the most current data in this record, the population of the Village was 13,295. (Er. Ex. 26A.) The current land area of LaGrange Park is approximately 2.2 square miles. The Union characterizes the population of the Village as "predominately affluent and well-educated."<sup>2</sup>

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<sup>2</sup> Union brief, p. 1; Union Exhibits 15 and 24.

## **2. The LaGrange Park Police Department**

The LaGrange Park Police Department employs approximately 16 full-time patrol officers who are represented by the Union for purposes of collective bargaining. The Village also employs four police sergeants and a full-time Chief of Police. The record establishes that bargaining unit patrol officers are assigned to one of three shifts (midnight, day, and afternoon), and normal staffing includes three officers per shift. (Tr. 67.) Bargaining unit members' duties include patrolling the Village and responding to calls for service. (U. Ex. 25.)

### **B. The Parties' Collective Bargaining History**

The Illinois State Labor Relations Board ("the Board") certified the Union as the exclusive bargaining representative of the Village's full-time patrol officers in September, 2000. (U. Ex. 1.) Thereafter, the Village and the Union successfully negotiated and implemented two Collective Bargaining Agreements, the first in effect between May 1, 2001 and April 30, 2005, and the second [incumbent agreement] in effect between May 1, 2005 and April 30, 2008.

The parties, for the first time in their bargaining history, reached impasse on four outstanding issues during negotiations for a successor to the 2005-2008 contract, and thus, pursuant to the impasse resolution procedures set forth in the Illinois Public Labor Relations Act, 5, ILCS 315/1 et. seq., they submitted the issues to interest arbitration.

On the eve of the hearing before the Arbitrator in this matter, the parties reached agreement on one of the four outstanding issues,

which specifically related to the economic issue of wages. The Union agreed to accept the Village's last best offer of across-the-board wage increases of 4% in each of the three years of the new contract. Thus, the Arbitrator is only called upon to hear evidence and publish findings as to the three remaining outstanding issues. There is no evidence in this record of any particular contentiousness in the bargaining relationship between these parties, and the issues that remain open in this instance are the first in their history to reach impasse arbitration.

### **III. GROUND RULES AND STIPULATIONS OF THE PARTIES**

1. Arbitrator's Authority: Pursuant to Section 14(p) of the Act, the parties agree to waive a tripartite arbitration panel and appoint Arbitrator Elliott Goldstein as Arbitrator and Chairperson to hear and decide the issues presented. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to it as authorized by the Illinois Public Labor Relations Act, including but not limited to the authority to issue retroactively effective awards of wages to May 1, 2008.

2. The Hearings: The hearing in said case will convene on December 15, 2008, and shall continue, if needed, at such other and future dates and times as may be agreeable to the parties and necessary to conclude the hearing. The requirements as set forth in Section 1230.80(a) of the Rules and Regulations of the Illinois Labor Relations Board, regarding the commencement of the arbitration hearing within fifteen (15) days following the Chairperson's appointment, have been waived by the parties. All hearings will be held at the City Hall, or other location mutually agreed upon by the parties or ordered by the Arbitrator.

3. Transcription: The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.

4. Attendance: The parties agree that the arbitration hearing(s) is not subject to the public meetings requirement of the Illinois Open Meetings Act, 5 ILCS 120/1 et seq. All sessions of the hearing will be closed to all persons other than the Arbitrator, court reporter(s), representatives of the parties, including witnesses who may be called to testify at the hearing, resource persons of the parties, members of the bargaining unit represented by the Union and the elected officials and Management staff of the Village.

5. Issues in Dispute: The parties agree that the following issues remain in dispute: Arbitrability of discipline, compensatory time use, employee insurance co-pay, and wages.<sup>3</sup> The parties agree that there are no other issues in dispute. Final offers shall be submitted on all of the issues prior to the start of the hearing on December 15, 2008. Once exchanged at the start of the hearing, final offers on each issue in dispute may not be changed except by mutual agreement.

6. Evidence: The parties agree that the following information shall be submitted by stipulation to Arbitrator Goldstein at the start of the hearing:

- a. The parties' recently expired (April 30, 2008) Agreement (Jt. Ex. 1);
- b. All tentatively agreed upon articles, sections or subsections of the proposed Collective Bargaining Agreement (Jt. Ex. 2), which the parties agree shall be incorporated into the Arbitrator's award; and
- c. These Ground Rules and Stipulations of the Parties (Jt. Ex. 3.)
- d. Materials or testimony offered as evidence of the parties' bargaining history shall not include the parties' "off-the-record" proposals.

7. Presentations: The Union shall proceed first with its case-in-chief. The City shall proceed next with its case-in-chief.

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<sup>3</sup> As noted above, the parties reached agreement as to the outstanding issue of wages on the eve of the arbitration hearing in this matter. As such, it was jointly removed by the parties from the Arbitrator's consideration at hearing. (Tr. 3-4.)

Once both parties have presented their cases-in-chief, the parties may present additional rebuttal evidence and/or witnesses. The parties may present evidence by witnesses and/or by narrative presentation of the advocates, who may be sworn on oath.

8. Post-Hearing Briefs: A post-hearing brief shall be submitted to Arbitrator Goldstein no later than thirty (30) days from the receipt of the full transcript of the hearing by the representatives of the parties. Extensions of time to file briefs may be mutually agreed to by the parties or allowed by Arbitrator Goldstein absent mutual agreement. The post-marked date of mailing shall be considered to be the date of submission of a brief. There shall be no reply briefs.

9. The Award: Arbitrator Goldstein shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Public Labor Relations Act and issue the same within sixty (60) days after the submission of briefs or any agreed upon extension requested by the Arbitrator, retaining the entire record in this matter for a period of six months or until sooner notified by the parties that retention is no longer required.

10. Continued Bargaining: Nothing contained herein shall be construed to prevent negotiations and settlement of the issues identified in Paragraph 5 at any time, including prior, during, or subsequent to the arbitration hearing.

#### **IV. THE PARTIES' FINAL PROPOSALS**

##### **A. The Union's Final Proposal**

The Union's final pre-arbitration proposal is as follows:

##### **ARTICLE IX - HOURS OF WORK AND OVERTIME**

Status quo is proposed, with specific reference to Section 7 - Compensatory Time.

##### **ARTICLE X - SENIORITY**

##### **Section 1 - Definition of Seniority**

A. Seniority shall be defined as an employee's length of full-time continuous service as a police officer in the LaGrange Park Police Department, calculated from

most recent date of hire. *(No change from incumbent contract language.)*

- B. In the event that two or more officers have the same seniority date, seniority shall be determined by the officer's placement on the Board of Police Commissioners eligibility list. *(No change from incumbent contract language.)*
- C. Except for vacation purposes, probationary employees shall have no seniority rights. If an employee satisfactorily completes the probationary period, his/her seniority shall be the date of original employment. *(No change from incumbent contract language.)*

## **Section 2 - Loss of Seniority**

- A. The employee resigns or quits;
- B. The employee retires;
- C. The employee is discharged or permanently removed from the payroll, and the separation is not reversed through the appeals process;
- D. The employee does not return to work at the expiration of a leave of absence; *(Change from incumbent contract language referencing such loss of seniority as "subject to the procedures of the Board of Fire and Police Commissioners.")*
- E. The employee is absent for three (3) consecutive scheduled work days without authorization or notice to the Department; *(Change from incumbent contract language referencing such loss of seniority as "subject to the procedures of the Board of Fire and Police Commissioners.")* or;
- F. The employee does not return to work when recalled from layoff. *(Change from incumbent contract language referencing such loss of seniority as "subject to the procedures of the Board of Fire and Police Commissioners.")*

**ARTICLE XIII - HEALTH INSURANCE**

Status quo is proposed.

**ARTICLE XXI - GRIEVANCE PROCEDURE**

**Section 1 - General Statement**

This policy shall apply to all bargaining unit employees. *(Change from incumbent contract language, omitting reference to "the Police Chief and the Fire and Police Commission of the Village of LaGrange Park".)*

**Sections 2 - 6**

Status quo is proposed.

**Section 7 - Appeal of Discipline**

A. No employee covered by this Agreement shall be suspended, relieved of duty, disciplined in any manner, or separated without just cause. The Police Chief or his designee or such other individual as specified by the Employer shall have the authority to suspend or terminate bargaining unit employees. The Union and the Employer hereby abrogate the authority of the Board of Fire and Police Commissioners with respect to such discipline. Suspensions and terminations may be grieved and arbitrated consistent with the grievance procedure set forth within this Agreement. *(Change from incumbent contract language which also abolishes Section 7(B) in its entirety. All references to the unilateral authority of the Police Chief and/or the Board of Police Commissioners with respect to disciplinary matters are omitted or modified as set forth above.)*

**ARTICLE XXX - SUSPENSION, DISCIPLINE AND DISCHARGE**

No officer other than a probationary officer, shall be disciplined or discharged without just cause. Any such actions must be in compliance with Illinois Compiled Statutes, 50 ILCS 725/1. *(Change from incumbent contract language, omitting reference to 65 ILCS 5/10 2.1 - 17.)*<sup>4</sup>

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<sup>4</sup> U. Ex. 9.

**B. The Village's Final Proposal**

The Village's final pre-arbitration proposal is as follows:

**ARTICLE IX - HOURS OF WORK AND OVERTIME**

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**Section 7 - Compensatory Time** (*Proposed amended language*)

(a) Officers who are entitled to overtime pay may elect compensatory time at time and one-half (1-1/2) in lieu of overtime pay. An officer who has accrued compensatory time may make requests for time off in a minimum of 1/2 day increments, or less subject to the rule of reason and department operating needs. The officer shall provide 24-hour advance notice for any use of comp time, or less subject to operating needs. Such time off will be approved subject to departmental needs. Comp time in hourly increments may be approved when requested for the end of a shift subject to department operating needs. *The scheduling of compensatory time off shall be within the discretion of the Police Chief or his designee in accordance with the practices and procedures in effect on April 30, 2008; provided however, such requests to schedule compensatory time off shall not be denied or withheld arbitrarily. Compensatory time cannot be accumulated beyond eighty (80) hours.*

(b) *In the event that any court or administrative agency of competent jurisdiction over the Village finds that Section 7(a) above, or the Department's practices or procedures administering Section 7(a), are unlawful and/or unenforceable, the Village may declare Section 7(a) null and void, and the Department's prior compensatory time practices shall be promptly terminated, subject to the Village's obligations under Article XXV, Section 3 below to bargaining over a replacement provision. In the event that no replacement provision is agreed to or awarded by an arbitrator, officers' comp time banks in existence as of the date of such termination shall be paid out to the affected officers as salary. The Village agrees to bargain with the Council over the timing of such payouts of accrued but unused comp time.*

**ARTICLE XXV - MISCELLANEOUS**

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**Section 3 - Partial Invalidity** (*Proposed amended language*)

*If any provision of this Agreement is subsequently declared to be unlawful or unenforceable, in whole or in part, by federal or state legislative authority, or by a court of competent jurisdiction and binding authority over the City, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement. Such unlawful, unenforceable or modified provision(s) may be the subject of immediate negotiations between the parties upon the written request of either party. Any such dispute involving a mandatory topic of bargaining which arises under this Section 3 and is not resolved by mutual agreement shall be resolved in accordance with the provisions of Section 14 of the Illinois Public Labor Relations Act.*

**ARTICLE XXI - GRIEVANCE PROCEDURE and ARTICLE XXX -  
SUSPENSION, DISCIPLINE AND DISCHARGE**

Status quo is proposed.

**ARTICLE XIII - HEALTH INSURANCE**

*Proposed amendment increasing employee health insurance premium contributions from the current rate of 10% to:*

11.0% on May 1, 2009  
12.5 % on May 1, 2010<sup>5</sup>

**V. RELEVANT STATUTORY LANGUAGE**

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act ("IPLRA"). In relevant part, they state:

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<sup>5</sup> Er. Ex. 21.

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive... 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).

5 ILCS 315/14(h) - [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

- (1) The lawful authority of the Employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the 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.

## **VI. EXTERNAL COMPARABLES**

The parties each submitted a list of proposed "externally comparable communities" as contemplated in Section 14(h)(A) of the Act. The Village relied upon a number of comparables it alleges have been used "for years" to assess its relative competitiveness in the pertinent labor market. They are:

- Brookfield
- Clarendon Hills
- Countryside
- LaGrange
- Lyons
- Oakbrook Terrace
- Riverside
- Summit
- Westchester
- Western Springs
- Willowbrook

The Union, on the other hand, submitted the following adjacent (or nearly adjacent) communities as proposed external comparables, which it contends are more representative of the relevant labor market for purposes of comparison, given their geographic proximity to

Village borders, than the communities offered by the Village as external comparables:

- Broadview
- Brookfield
- LaGrange
- North Riverside
- Westchester
- Western Springs

Obviously, there is some harmony in the two lists, as Brookfield, LaGrange, Westchester and Western Springs are all proposed by both the Union and the Village as external comparables. However, both parties recognize the particular significance of this important statutory consideration, and thus urge the Arbitrator to adopt their respective proposed lists.<sup>6</sup>

The Union's proposed list of comparables, it explains, is made up of all the towns sharing a border with the Village. These communities, the Union notes, "form a pocket" inside Interstates 294 and 290 and the police departments of all are organized. Additionally, says the FOP, several other factors besides the obvious one of being geographically contiguous, support these comparables. The Union thus provides, among others, statistics relative to population, median household income, average household size, average family size, and mean travel time to work, for the communities of

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<sup>6</sup> See, e.g., City of Naperville and the Illinois FOP Labor Council, S-MA-92-98 (Benn, 1994); Bureau County and the Sheriff of Bureau County and the Illinois FOP Labor Council, S-MA-96-14 (Nathan, 1997); City of DeKalb and the DeKalb Professional Firefighters Association, Local No. 1236, I.A.F.F., S-MA-87-76 (Goldstein, 1988).

North Riverside and Broadview (which do not appear on the Village's list of proposed comparables). However, I note that the variance values between those communities and the Village in any category are not specifically calculated for purposes of comparison in this record.

In any event, the Union argues, the statistics adequately demonstrate that the Union's proposed external comparables to this Village are all also "bedroom" communities, occupied mainly by married couples "who have put down roots, had children, and work in the area."<sup>7</sup> Moreover, the Union submits, fiscal year 2007-2008 financial statements for North Riverside and Broadview reflect parallel EAV's, which, it contends, "is certainly a by-product of their proximity and similarity" to the Village.<sup>8</sup>

The Village rejects the Union's list of comparable communities as an "eleventh hour" proposal which frustrates rather than promotes good faith bargaining. Furthermore, at the arbitration, the Village pointed out, Union counsel admitted that the parties had not negotiated an actual list of proposed comparables during this or the previous negotiations between them. More important, the Village suggests, statistics relative to North Riverside and Broadview, as they compared with the Village, were never produced during bargaining.

In contrast, the Village submits, throughout these (and prior) negotiations, the Village measured the reasonableness of its positions on all issues against the list of 11 allegedly historically comparable communities proposed by the Village, as set out by me above.

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<sup>7</sup> Union brief, p. 11.

<sup>8</sup> Union brief, p. 11.

The Village further notes that the Union was ably represented during this current period of bargaining by a "seasoned representative." Thus, if the Union wanted to deviate from the 11 "historic comparables," there was a duty on the part of the Union to propose new [different] comparables during negotiations. Again, the parties had routinely used the 11 "historical" comparables and this was surely known and obviously ignored by the FOP only when it came time for this interest arbitration, the Village suggests. Indeed, proposing new comparables for the first time at arbitration effectively ambushed the entire process, and unnecessarily muddied the waters, the Village strongly maintains.

The Village also vigorously defends the adequacy of the alleged "historical external comparables" for purposes of comparison in this arbitration because all relevant criteria, if realistically assessed, fall within the widely accepted +/- 50% variance in the majority of applicable categories. Certainly, the Village acknowledges, geographic proximity and population are important and commonly-used measures of comparability. However, the Village argues, the Union's use of "adjacency to the Village" as the sole "litmus test" for comparability carries the criterion of proximity to an absurd extreme.

Arbitrators, the Village then argues in support of this contention, have held that, as a general rule, geographic proximity (which effectively establishes the structure of the local labor market) is not always the controlling element. Size, financial similarities, and tax revenues are other important keys to de novo

assessment of comparable communities in interest arbitrations.<sup>9</sup> Its list of historical comparables, the Village concludes, is appropriate in every respect, including all the above factors, and should therefore be adopted in this case.

Also according to its stated position, this Village and the FOP have historically considered as comparable communities those with unionized police departments which are within 10 miles of the Village's borders. Moreover, the Village stresses, Management particularly scrutinized the 11 allegedly comparable communities in a more formal [interest arbitration] analysis in order to determine whether or not they would survive recognized tests of comparability. After examining comparables in light of the criteria of Distance from the Village, Population, Median Household Income, Median Home Value, Per Capita Income, County, Total EAV, EAV per Capita, Aggregate Revenues, Aggregate Expenditures and Number of Full-Time Employees, explains the Village, it was found that each of Management's proposed communities fell within the +/- 50% range in at least 6 of the 11 categories. In fact, the Village states, all but two of the Village's 11 proposed comparable communities fell into the +/- 50% range in at least 8 of the 11 criteria. Interestingly, the Village notes, the two communities which scored lower (Westchester and Western Springs) are also proposed by the Union as comparables.

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<sup>9</sup> Franklin County Sheriff and Illinois FOP Labor Council, ILRB Case No. S-MA-99-46, (Nathan, 2000); Village of Crest Hill and Metropolitan Alliance of Police, Chapter 15, ILRB Case No. S-MA-97-115 (Goldstein, 1998).

Perhaps the most important matter weighing against the addition of Broadview and North Riverside as comparable communities, further says the Village, is the fact that no Collective Bargaining Agreements or other information regarding current wages, and hours and terms and conditions of employment for those two communities were included by the Union in this record for purposes of objective comparison. The last Broadview and North Riverside contracts submitted by the Union, the Village notes, both expired on April 30, 2007, nearly two years ago. In contrast, the Village argues, the record does contain comparable contracts on the 11 comparables. The only exception is Western Springs, whose contract between the Village and Union expired on April 30, 2008, the last date on which these parties, too, had an effective contract, the Village points out.

For all the foregoing reasons, then, the Village urges the Arbitrator to adopt its list of "historically comparable" communities for purposes of examining the outstanding issues.

After examining the record in its entirety before reaching a decision as to the matter of true (or at least dependable) external comparability, the Arbitrator affirms that, at least for purposes of this particular arbitration, the Village's "historical" comparables should be used. It is, of course, important to note that because this is the first (and hopefully the last) occasion these parties were unable to reach a complete negotiated settlement, the statutory criteria of external comparability may not be characterized as actual "historic comparables." In other words, it could be said that external comparability did not become a statutory consideration (and

therefore formally subject to evaluation according to traditionally accepted variance assessments) until such time as interest arbitration under the Act was formally invoked. As previously noted, this is the first venture into interest arbitration by these parties.

However, and this is an important "however," in my view, it is certainly reasonable to assume that at least some evaluation of relevant neighboring labor markets was performed during negotiations for the initial contract between these parties in 2001 and in the 2005 negotiations, too. The Village states without real contradiction that the 11 communities proposed by Management in this record represent those informal "historical" comparables which were considered, at least to some degree, during these prior contract negotiations, and the current bargaining also, I note. Even if those "historical" comparables were not nearly as subject to scrutiny and critique (in terms of standard criteria) then as they are now in this forum, the prior behaviors of the parties must be given significant weight, in my view. That is the whole idea of "past practice," and has applicability, in these circumstances, just as in contract interpretation, I am persuaded.

Second, this record establishes that the parties met to negotiate on numerous occasions, and also sought mediation in an obvious concerted effort to avoid the instant process altogether in this bargaining process, I find. The record demonstrates, though, that interest arbitration was invoked some weeks after mediation failed. It is hardly surprising that the Union was "silent", as the Village puts it, on the specific subject of binding external

comparables until a specific stand had to be taken in the new context of interest arbitration. I do not blame either party for jockeying for position at that point.

Thus, the Arbitrator does not see the Union's failure to raise comparability as an issue earlier in the negotiations as a deliberate "ambush." I do think what the parties did in past negotiations is extremely important, though. Additionally, however, the importance and relative value of external comparability is somewhat minimal in this case, considering the fact that only one economic issue remains unsettled: that involving employee contributions to health insurance premiums. Finally, I and many other arbitrators have found, on the health benefits issue, that internal comparability is much more useful, as some communities are clearly more adept at negotiating insurance policies than others, and some communities have client bases or workforces which require certain types of coverage and thus varying premium rates.

As to the other issues, and specifically that of discipline arbitrability, the criterion of external comparability does have some value, but since the statutory requirement to bargain over this issue is so new (2007), not even all of the Village's proposed comparables are useful. It will be a while before this particular issue shakes down under the new statutory provision on this issue; Collective Bargaining Agreements effective prior to the amendment on this point in some comparable communities still remain in effect. Thus, no negotiated status quo (unless the matter has been voluntarily negotiated as a permissive issue previously) is available for

consideration, I emphasize. Moreover, in a number of other cited communities, interest arbitrators have ruled on this issue in the [superseding] context of ILRB Section 8, and not in the context of external comparability, I also point out.

Thus, for now, the Village's external comparables are accepted, primarily because counsel for the Village has done sufficient homework to justify, in a measurable way, that this is a reasonable decision. Certainly, as observed in other cases, "Consistency of comparables from bargaining season to bargaining season is an obvious boon to the [interest arbitration] process, for it cannot help but establish a predictable 'jumping off' place."<sup>10</sup> However, "[T]imes and fortunes of comparable communities do change. For better or worse, this is a fact of life."<sup>11</sup>

With these caveats, I adopt the Employer's list of 11 external comparables for use in the current case. This theoretically may put this particular matter to rest for the parties' next negotiations, but I understand that particularly in this economic climate, the list might possibly be subject to change later, even though in normal times that would be rare. At any rate, I find the 11 external comparables fit the statutory requirements, and, where relevant and useful, these

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<sup>10</sup> Metropolitan Alliance of Police, Cook County Department of Corrections and Sheriff of Cook County, ILRB No. L-MA-04-006 (Fletcher, 2006).

<sup>11</sup> Id.

comparables are the "universe of comparability" to which the Village will be compared, I hold.<sup>12</sup>

#### **VII. INTERNAL COMPARABLES**

In this particular instance, the matter of internal comparability is somewhat different from the situation in other cases, because Collective Bargaining Agreements involving police and firefighter bargaining units are the ones that traditionally serve as points of comparison when it comes to issues of wages, benefits, and other relevant common working conditions. Here, however, LaGrange Park firefighters are not represented by a Union, and thus share no real commonality with the FOP in terms of the bargaining environment. The Village's Public Works employees, however, are represented by the IUOE. The IUOE unit employees serve, in the Union's view, as an internally comparable group in the particular context of employee health insurance contributions, I recognize. The FOP further contends that the strong presumption must be that the IUOE unit, as the only other internal group of employees represented by a Union, is similarly the only other "internal comparable" that is available for consideration on the issue of the health benefit contribution rate for the FOP unit. And, the FOP is quick to stress, the IUOE Labor Contract provides for no employee contributions, let alone an increase in such a contribution.

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<sup>12</sup> See my discussion in City of DeKalb and The DeKalb Professional Firefighters Ass'n., Local No. 1236, I.A.F.F., S-MA-87-76, supra, at pp. 21-24. ("...it is extremely interesting to note the actual evidence with respect to this crucial factor [external comparability] really did very little [for either parties' case])." Id. at p. 23.

As discussed in more detail below, the Village argues against the Union's position as to the "validity of an internal comparison between FOP bargaining unit employees and the IUOE represented employee unit in Public Works as the sole proper internal comparable." Instead, it must be emphasized that all Village employees other than those in the IUOE unit have maintained internal parity as to the Employer contributions to health insurance premiums since the FOP police unit has been certified, as the Village sees it. This has been the case for the last two contracts between the Village and the FOP, Management insists, without specific protest with respect to the relevancy of non-unit employee contribution rates by this Union. Consequently, the Village considers internal comparability for all its employees other than the IUOE unit as a permissible basis for judging the reasonableness of its proposed modest increase in the police officer unit's rate of contribution, it claims. It was upon these facts that this interest arbitration came to me for resolution.

#### **VIII. DISCUSSION AND FINDINGS**

##### **A. Issue No. 1 - Arbitrability of Discipline**

Issue No. 1 raises several questions with respect to the meaning and application of the controlling statutory provisions as well as to the facts that underlie the dispute over how disciplinary actions against both police officer members of this bargaining unit should be reviewed both procedurally and on the merits. Obviously, this Union and Village completely disagree as to the meaning of the applicable statutory sections (and in particular Section 8 of IPLRA and the August, 2007 amendment to the Board of Fire and Police

Commissioners Act); the parties also disagree as to the impact of the material facts on the proper resolution of Issue No. 1, I note.

To the FOP, substantial evidence was presented in the course of the arbitration dealing with the FOP and the bargaining unit members' problems with the current process of reviewing police officer discipline. Further, the FOP points to the evidence it presented which indicated there are often significant delays before cases are disposed of by the Board of Fire and Police Commissioners. In the course of this delay, police officers in some instances remained suspended without pay during the hiatus and were never made whole for those losses even if the officer was exonerated on the original disciplinary charge. Moreover, says the FOP, the Village's Board of Fire and Police Commissioners does not apply the "black letter" arbitral rule concerning disparate treatment as a neutral Arbitrator would. This is so, argues the FOP, since controlling case law permits comparisons "only in completely related incidents involving the same factual situation, which does not permit comparison of how a particular rule has been applied throughout the bargaining unit,"<sup>13</sup> the FOP claims.

From the Union's standpoint, these differences are completely unsatisfactory, since such a narrow conception of the disparate treatment rule "unhinges an essential component of just cause: treat like cases alike."<sup>14</sup> It adds that other procedural due process

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<sup>13</sup> Union brief, p. 19.

<sup>14</sup> Ibid.

defenses are often similarly misapplied by Boards of Fire and Police Commissioners.

The Union is also quick to point out that in the Board of Fire and Police Commissioner's current procedures, the burden of proof is placed on the police officer protesting any discipline of five days or less. Worse yet, the FOP contends, under the Board of Fire and Police Commission statute, and the Employer's Board of Fire and Police Commission's rules, the individual officer is made the moving party if there is an appeal of a suspension of five days or less. Additionally, the FOP claims, the Village Board currently can sustain the appealed discipline; overturn it; or, most significantly, increase the discipline up to and including termination. It is also the current procedure for the Village Board that for suspensions of five days or less, the police officer may not even be entitled to an evidentiary hearing, the FOP argues. And, when there is discipline over five days, and the police department must then file the charges with the Board, the "unsatisfactory administrative problem" of delay still exists while the officer is in an unpaid status but not on an actual suspension, I am reminded.

The context of the disagreement on this issue is perhaps the most pivotal in this arbitration, for if it were not for a change in applicable statute language pertaining to mandatory subjects of bargaining, the Arbitrator would not likely have this issue before him, the counsel for FOP credibly stated at hearing, I further note.

To the FOP, substantively, IPLRA and considerable case law in existence before August 2007, created circumstances where, in home

rule jurisdictions, municipalities and Unions could mandatorily bargain over disciplinary review to bring disciplinary actions against police officers. These home rule municipalities thus were privileged to agree to deviate from the then-existing "mandatory statutory scheme" of Boards of Fire and Police Commissioners as the exclusive reviewers of police and firefighter discipline under the earlier Fire and Police Board Commissioners Act.

Conversely, in non-home rule communities, of which this Village is one, the FOP stresses, no such privilege existed prior to January 1, 2008. In other words, there was no statutory authority in non-home rule communities (and thus the instant Village) to even discuss, much less agree on, any alternate arrangement from Fire and Police Boards handling all issues of discipline, the FOP submits.

This state of affairs, however, changed in 2007, effective January 1, 2008, mid-term of the incumbent agreement between these parties, the Union adds. At that point, the Illinois legislature amended the Board of Fire and Police Commission statute, as mentioned above, so that police discipline may be reviewed through provisions in the parties' Labor Agreements providing arbitration, the FOP stresses.

The key applicable portion of that amendment, says the FOP, provides that:

"[s]uch bargaining [over the terms of review of sworn officer disciplinary actions] shall be mandatory unless the parties agree otherwise. Any such alternative agreement shall be permissive." (U. Ex. 44).

Because this amendment merely authorizes "permissive alternative arrangements" to the rights of the parties to negotiate the new mandatory topic of police officer discipline under IPLRB, not

under the Board of Fire and Police Commissioners Act, the strong presumption must now be that IPLRA takes precedence over the older Board of Fire and Police Commissioners Act, the Union insists.

Consequently, the situation facing the FOP and this Village in the bargaining preceding the instant interest arbitration was exactly the opposite of what was the legal setting for the parties' prior two contracts, the FOP specifically strenuously argues. The history of applicable law and arbitration precedent under IPLRA, then, is now completely relevant in this case, despite the non-home rule status of this Village, it reasons.

Indeed, Section 8 of IPLRA and not the criteria set out in Section 14(h) directly controls the proper resolution of this case, as Arbitrators Benn, Wolff, Meyers and Nathan have directly ruled, the FOP insists. The grievance and arbitration of employee discipline for this unit must be incorporated into the parties' Labor Contract under the rubric of Section 8 as a matter of law, and not in actuality as a topic to be subject to give-and-take bargaining. See Wheeling Firefighters Ass'n and Village of Wheeling, 17 PERI ¶2018 (ILRB SP, 2001) at pp.5-6. See, especially, Village of Shorewood and FOP Labor Council, S-MA-07-199 (Wolff, 2008).

Thus, urges the FOP, the Union pressed its desire to negotiate a Labor Contract alternative to the existing Board of Police Commissioners disciplinary review scheme in existence at the Village before the 2007 amendment in these negotiations, when the parties for the first time came to the table to bargain to settlement or impasse

on who hears and how the discipline is to be reviewed, the Union urges.

The Union then reasons that all terms of a parties' Collective Bargaining Agreement, now including the ability to eliminate by negotiation the authority of the Village's Fire and Police Board to hear and review discipline, and the Village's ability to impose the actual discipline itself, must be found to be subject "just cause" and to the grievance and arbitration procedures always contained in the parties' negotiated Labor Agreement. That is at the core of the Union's legal argument, I note.

As the FOP sees it then, the 2007 amendment to the Board of Fire and Police Commissioners Act result frees this Union and the Village on this particular subject "from bondage to the prior case law preserving the authority of the Fire and Police Board to solely review discipline in a non-home rule jurisdiction."<sup>15</sup> This new flexibility, in the end, only enhances the bargaining process and frees individual municipalities to craft suitable negotiating structures for themselves, it reasons.

Once again, the 2007 amendment must be read in conjunction with Section 8 of IPLRA, the Union says. The FOP's position is that Section 8 now covers non-home rule jurisdictions with respect to police officer disciplines. Unless an alternative is negotiated permissively, Section 8 mandates that police officer discipline go to the grievance procedure and arbitration as a matter of law. The Union

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<sup>15</sup> Union brief, p. 26.

cites considerable arbitral precedent to support this contention, I specifically note. See, e.g., Will County Bd. and AFSCME, Local 2961, S-MA-88-09 (Nathan, 1988); Village of Elk Grove Village, S-MA-93-164 (Nathan, 1994); City of Springfield, X-MA-89-74 (Benn, 1990); Village of Shorewood and Illinois FOP Labor Council, S-MA-07-199 (Wolff, 2008) at p. 17.

Ultimately, the FOP says that the bargaining unit membership is absolutely unwilling to accept continuance of the existing practice of hearing discipline under the Fire and Police Board's rules, I understand. That is the nub of the case, the Union insists.

As to the merits of its particular position with respect to bargaining unit discipline "as a matter of fact," the Union strongly argues in favor of the privilege to grieve discipline and arbitrate the issue before a neutral ad hoc Arbitrator, too. It points out that the parties' two past agreements require "just cause" to be present when discipline or discharge is imposed by the Village on a member of this bargaining unit. It further argues that "the present reviewers of whether or not the burden of demonstrating just cause has been satisfied (the Village's Board of Fire and Police Commissioners)"<sup>16</sup> are neither qualified as triers of fact nor unbiased enough to rightly discern whether a rule infraction by a police officer has been committed and the punishment meted out by Management is fitting. The FOP simply does not consider the Village's Board of Fire and Police Commissioners to be truly neutral in its review function, I note.

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<sup>16</sup> Ibid.

In additional support of its argument that the Board process is in fact unworkable and unfair, the Union points out that Board members are appointed by the Village President, with the advice and consent of the Village Trustees. Thus, the current Board review process is akin to "granting the prosecution in a criminal case the unilateral right to select and appoint the judge and jury. . .<sup>17</sup> Moreover, the Union argues, Board members are not necessarily selected on the basis of qualifications, and consequently are not likely to grasp the "subtle contours of workplace discipline." In contrast, the Union argues, arbitrators are "eminently qualified to analyze just cause issues, without a duty to anyone or anything but to justice, [and to] routinely make these important determinations." These are the primary FOP arguments.

The Employer on the other hand believes the status quo Village and Board procedures establish a comprehensive discipline system for police officers. It also submits that the "mere parroting of some cliché" about Board bias or lack of neutrality is insufficient to prove the Union's claim that the arbitration of discipline is needed. The Employer directly argues that the FOP is wrong in its contention that the continued meaningful existence of the Village's Board of Fire and Police Commissioners is, after the 2007 amendment under review, merely a "permissive topic of bargaining."<sup>18</sup> It further says that the Union's demand for complete removal of the Board of Fire and Police

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<sup>17</sup> Union brief, p. 16.

<sup>18</sup> Village brief, p. 51.

Commissioners from the police officers' disciplinary appeals function is without support under Section 14(h) of IRLRA.<sup>19</sup>

Relying on two of my decisions (City of Elgin, S-MA-00-102 (Goldstein, 2002) at pp. 71-72 and Kendall County and FOP Labor Council (S-MA-92-16 and S-MA-92-161 (Goldstein, 1994), the Village urges that the FOP has not established that its proposal is reasonable or necessary, I note.<sup>20</sup> The Village concludes that the criterion of the "interests and welfare of the public" has not been proved to favor the FOP proposal. In actuality, the Village states that this standard (Item 3 of Section 14(h)) fully demands that the Village Board's review police employee discipline be maintained.<sup>21</sup> In sum, the Village urges that it is appropriate for me here to make my decision on Issue No. 1 based only on my review, "through the filter of the statutory criteria," of the facts of record at the time of the arbitration hearing and my decision. A fair assessment of the facts pursuant to the Section 14(h) criteria demands the award of the Village's proposal on Issue No. 1, namely that there be no change in the current language or process.

The Village further states that, before 2007, disciplinary appeals for police officers and firefighters in non-home rule communities had been the sole province of the municipalities' Boards of Fire and Police Commissioners. After passage of House Bill 1542 on August 23, 2007, effective January 1, 2008, however, the issue of

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<sup>19</sup> Village brief, p. 57.

<sup>20</sup> See the Village brief at pp. 51-58. See, especially, p. 63.

<sup>21</sup> Village brief, p. 74.

disciplinary appeals for sworn officers became a mandatory subject of bargaining, the Village concedes. The Village rejects, however, the Union's indicated understanding of "alternate arrangement" as that phrase appears in the 2007 amendment to the Board of Fire and Police Commission statute, arguing that the mention of "permissiveness" in the amended statute refers only to the fact of the parties' duty to bargain, not to any presumption as to the results of that bargaining.

To the Village, the 2007 amendment does not create a guarantee of any particular position nor does it require the application of Section 8 of IPLRA to the issue as somehow being legally mandated. That is of great importance to the correct resolution of Issue No. 1, the Village strenuously urges. And, says the Village, the statutory criteria of Section 14(h) strongly support its proposal and not the Union's demand for change on this issue.

With that premise in mind, the Village argues, the "proper and natural" application of relevant statutory criteria demands adoption of its proposal in order to avoid "total evisceration" of the Board of Fire and Police Commissioners.<sup>22</sup> The Village opines that the statutory criteria of "interest and welfare of the public;" "external comparability;" and "other factors normally or traditionally taken into consideration" are particularly relevant here. Specifically, the Village avers that the Union failed to present any evidence at hearing as to the number or type of cases brought before the Village Board, and what sort of adverse economic impact the Board's decisions had on

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<sup>22</sup> Village brief, p. 63.

the public. Moreover, the Village contends, the Union made no showing at all that the interests of the public would be otherwise served by eliminating the Board from the disciplinary appeals process.

Second, the Village strongly emphasizes that, of the 11 proposed comparable communities, only one municipality (Oakbrook) has the discipline structure proposed by the Union here. The remaining communities, the Village observes, fall into two categories; five that use the Board structure exclusively, and five that permit grievance/arbitration for suspensions of five days or less and the Board for all others. Moreover, the Village argues, of the 11 comparable communities cited, six have executed contracts since the effective date of the amendment.

Thus, the Village reasons, it is obvious that there has been no "stampede" away from the Board as a reliable system for dealing with disciplinary appeals.

The Village goes to great length to explain and distinguish the facts in the case of Officer Chester Lauth. The Village insists that Officer Lauth did not testify at the interest arbitration; it thus must be inferred that Officer Lauth would not give testimony against the Village's Board of Fire and Police Commissioners, the Village maintains.<sup>23</sup>

In sum, the Village does not agree with the Union's proposition that the current process is unfair or biased. Management believes instead that it is inadvisable to change the current process of

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<sup>23</sup> Village brief, p. 63.

reviewing discipline by the Village Board of Fire and Police Commissioners without strong evidence that an arbitrator's review would be better. Such a change would be a "breakthrough" and the Village urges that there is no proof that such a "breakthrough" from the "status quo" is either necessary or appropriate for this non-home rule Village.

What jumps out in this case is the fact that, in my view, the desirability of the avenue of the grievance procedure and grievance arbitration as compared to a Board of Fire and Police Commissioners' jurisdiction, with respect to police officer disciplinary matters, is not an issue to be decided by me in the abstract in the instant case. I recognize that some arbitrators have analyzed the issue as one to be judged by that criterion. Others have decided the issue on the 14(h) criteria set out in Section 14(h) that apply to noneconomic issues. See City of Galesburg and Galesburg Firefighters' Local 555, S-MA-94-97 (Doering, 1994). Indeed, the Employer is correct that I at least in part utilized that mode of analysis in City of Elgin and the PBPA, supra, at S-MA-00-102 (2002 at pp. 71-72).

After extremely careful consideration, I find that I am legally bound to base my decision upon the eight factors enumerated under Section 14(h) of the Act, as will be the case for the other two issues in this case and I cannot automatically apply Section 8 of IPLRA as the controlling source of law to judge whether disciplinary actions are subject to the review of the Village's Board of Fire and Police Commissioners or to the grievance procedure/arbitration requirements of the parties' Collective Bargaining Agreement. My reasons follow.

I initially emphasize that most of the decisions set out in detail by both parties in this case were before the 2007 amendment to the Municipal Code making "disciplinary appeals" a mandatory subject of bargaining for non-home rule jurisdictions, I note. Simply put, I conclude that the Village has considered the impact of the 2007 amendment too narrowly, but the FOP has overstated their effect, too, I find.

At the outset, I also note that, not long after IPLRA was made applicable to police officers, the Illinois Supreme Court ruled that a Union's proposal to review discipline through the Collective Bargaining Agreement's grievance procedure was a mandatory subject of bargaining. The Court further noted that the Illinois Legislature expressed a preference for arbitration as a method of resolving disputes during the life of the Collective Bargaining Agreement. City of Decatur v. AFCME, 122 Ill.2d 350, 522 N.E.2d 1219 (1988).

The significance of that fact is that it was the Illinois Supreme Court's finding of legislative intent that has informed the analysis of the meaning and scope of Section 8 of IPLRA ever since -- not some arbitrary "jurisprudence" represented most clearly by Arbitrator Edwin Benn, as the Village would have it, I stress. See Village Brief, p. 70; see, also, Village of Lansing and Illinois FOP Labor Counsel, Lodge 218, S-MA-04-240 (Benn, 2007); City of Springfield and PBPA, Unit No. 5, S-MA-89-74 (Benn, 1990); City of Highland Park and Teamsters Local 714, S-MA-98-219 (Benn, 1999).

What precisely is the logic underlying Section 8 of IPLRA? Simply put, it is that one "trade-off" for mandating a grievance and

arbitration unless otherwise negotiated by the parties, as a matter of statute and not through negotiation as is the case in the private sector, is the idea that grievance procedures resolve disputes while a Labor Contract is in force. It is a required "no-strike provision."

For the sworn employees covered by IPLRA, who may not even strike even when there is no contract in existence, and who must seek interest arbitration on the creation of the parties' contract, too, I note, the grievance and arbitration machinery also provides a statutorily mandated no-strike clause for the duration of the parties' existing contract. It is still a method to resolve disputes over the meaning and application of the parties' Labor Contract, and over their labor relations and the bargaining unit employees' working conditions. Discipline certainly is one of those conditions, I stress. See Richard W. Laner and Julia W. Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 Chicago Kent L.Rev. 839 (No. 4, 1984) at pp. 839-340, and Footnote 3 thereof.

The idea of grievance arbitration as the preferred method for resolving contractual disputes is embedded in the IPLRA, not created by Arbitrator Benn's imagination, I emphasize.<sup>24</sup> Yet the real issue is not what Section 8 of IPLRA demands, but what the effect of the 2007 amendment to the Fire and Police Commissioner Act has on the obligations of the parties where the Employer is a non-home rule jurisdiction who presently has a Police Board reviewing police officer

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<sup>24</sup> See, also, Charles Craver, "Public Sector Impasse Resolutions Procedures," 60 Chicago Kent L.Rev. 779 (1984) at pp. 795-797.

discipline. Is the mandatory topic for bargaining the police Board's jurisdiction, with grievance arbitration a persuasive option, or is it grievance arbitration, with the Police Board a permissive option? Neither, I believe.

Of course, as the parties recognize, in Markham v. State and Municipal Teamsters, Chauffeurs and Helpers 726, 299 Ill.App.3d 615, 701 N.E.2d 153 (1st Dist. 1998), the Illinois Appellate Court for the First District carved out an exception to the mandatory bargaining requirement for a grievance arbitration procedure in discipline cases, this was loosely based on the Dillon Rule or delegation doctrine, i.e., that purely legislative power cannot be delegated.<sup>25</sup> In the Markham case, the holding was actually predicated on the narrower idea that, in non-home rule jurisdictions, since those political instrumentalities do not have the authority to deviate from mandatory statutory schemes, non-home units could not agree to arbitrate disciplinary suspensions and discharges.

The important fact is that the involved legislation, the Board of Fire and Police Commissioners Act, has now been amended to overturn Markham's holding. The reach of Section 8 of IPLRA is not blocked by judicial rule based on another law, the Illinois Legislative has declared. The unavoidable question is what precisely has been made the subject of mandatory bargaining -- the Board, the arbitration process, or the entire topic of review of discipline?

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<sup>25</sup> See Craver, Public Sector Impasse Resolutions Procedures, 60 Chicago Kent L. Rev., supra, at pp. 787-791.

I agree with the Employer that these changes do not make the continuation of the Village's Board of Fire and Police Commissioners a "permissive" topic of bargaining.<sup>26</sup> To that extent, Arbitrator Benn and the ILRB, too, may have gone too far in their above-cited decisions. For instance, if there had been established on this record (which there was not) that there was a negotiated status quo for an alternative to grievance arbitration of police officer discipline, i.e., the Village's Board of Fire and Police Commissioners, the application of Section 8 would not necessarily trump the negotiated bargaining, in my view. In that example, I agree with Arbitrators Nathan and Kohn. See City of Rock Island, S-M-03-211 (Nathan, 2004) and City of Northlake, S-MA-03-074 (Kohn, 2004). The prior negotiated clause is then not voidable by the Union, I am convinced.

Absent such a negotiated status quo, however, I do not find the status and authority of the Board of Fire and Police Commissioners to be the mandatory topic of bargaining, and the grievance arbitration to be a merely permissible alternative, as the Village would have it. That goes much too far. I am convinced that the entire topic of review of discipline and disciplinary appeals must be mandatorily bargained, with no presumption that the Village Board is the preferred method of handling the matter, because that is the "current way things are done," I hold.

The parties indeed have identified all the underlying arguments and I understand the underlying issues. After careful consideration,

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<sup>26</sup> Village brief, p. 63

I agree with the FOP on the merits and adopt its proposal on this issue. My reasons follow.

First, this issue is a close one. While the external comparability data on the record, as the Employer has outlined it, supports the Employer's position, the Employer's analysis misses a basic point: the record evidence amply demonstrates that this is the "deal breaker" for both parties and, as such, what other communities are doing with respect to disciplinary review counts less than is normally the case, as I see it.

Nor can this be considered a case where the "breakthrough" analysis is applicable at all, since the 2007 amendment to the statute with respect to disciplinary review as a mandatory subject of bargaining set out above, altered the entire legal landscape, I find. See Village of South Holland, Ill. and Ill. FOP Labor Council, S-MA-98-120 (Goldstein, 1999). Arbitrator Robert Perkovich has presented the clearest discussion of this point. He correctly stated that "when the parties faced the issue before it became a mandatory subject of bargaining and ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties . . . [t]hus they did not create a base from which to consider subsequent bargaining." City of Lincoln, S-MA-99-140 (Perkovich, 2000). (Emphasis mine). Arbitrator Perkovich also stated that "when a matter is first before the parties after a history of tacit approval, rather than bilateral agreement, there is no status quo such that the issue can be characterized as a breakthrough." City of Blue Island, S-MA-00-138 (Perkovich, 2001).

As with the issue of residency, which was made a mandatory subject of bargaining in 1997 and was the subject at issue in these three cases just noted, this was the parties' first opportunity to bargain over this disciplinary issue. Accordingly, it is not a status quo or breakthrough issue, I specifically rule. Under these circumstances, then, I am convinced that, given the 2007 amendment concerning disciplinary review, converting that review to a mandatory subject bargaining, the Union and Management proposals on Issue No. 1 should be treated as if the parties were making a new contract. The entire "breakthrough" doctrine is inapplicable to this case, I hold.

Moreover, since this is a non-economical dispute, the parties have not placed at issue many of the decisional criteria specified in Section 14(h) of IPLRA. For instance, there is no relevancy, for the resolution of this issue, as to the Village's ability to pay. Similarly, this dispute has not been driven by the overall rate of inflation, so there is no need to present or analyze cost-of-living data. The parties did not place such evidence into the record, the documentary evidence reveals.

From a practical standpoint, I further am convinced that, under the present arrangement, the Board of Fire and Police Commissioners may actually increase discipline, up to and including an additional 30 days' suspension, with no avenue of appeal for the affected employee outside a costly Court battle.

Additionally, as the Union argues, there is no "make whole" structure built into the current scheme. Generally, as the Union notes, officers are suspended without pay pending hearing before the

Board of Fire and Police Commissioners. It is also not inconceivable, as the Union argues, for such hearings to take place some months after a precipitating incident. In such cases, the record suggests, the Board of Fire and Police Commissioners is not required to toll the unpaid suspension against the original discipline. As a result, an officer may be charged with a rule violation and much later be completely exonerated by the Board and still suffer the economic losses attendant to his suspension pending hearing.

Boards of Fire and Police Commissioners commonly do not consider evidence of disparate treatment either, the Union argues, without real contradiction from this Village. This is a serious perceived defect in the process, whether or not it is always true. Certainly, there is no disputing the fact that fairness in administering workplace discipline is a pillar of just cause and the disparate treatment doctrine is historically integral to grievance arbitration. That is basic, "black letter" arbitral jurisprudence, I again stress.

Disparate treatment or allegations thereof are often not treated in the Courts as they would be in arbitration, I understand, and so even an appeal to a Court from the Village Board's decision is not the same as an arbitration, I also hold. Specifically, as the Union has argued, the Courts (the only present avenue of appeal open to officers of the Village) permit comparison of employee treatment only in completely related incidents involving a common set of facts.

As to the matter of suspensions of five days or fewer, I find that there is no certainty that a hearing before the Board will occur

at all. Such hearings under the Village's rules are perhaps discretionary, as the Union has argued, I note. That is my reading of the applicable Village rules and the Illinois Board of Fire and Police Commissioners Act, I find.

Ultimately, then, Item 8 of the Section 14(h) standards seems most directly applicable to this issue, I hold. Item 8 provides the following standard: "[s]uch other factors . . . which are normally and traditionally taken into consideration in the determination of . . . conditions of employment through voluntary collective bargaining . . . arbitration or otherwise between the parties, in the public service or in private employment."

This standard has particular application because of the "trust" issue as between the Arbitrator and Board of Fire and Police Commissioners; the cost of arbitration versus the Village Board and appeals to Courts for review; the historic nature of arbitration of just cause issues as part of the collective bargaining process; and the fact that IPLRA, as a public employee collective bargaining law, represents the Illinois Legislature's choice to "favor" dispute resolution machinery contained in it as a matter of statute under IPLRA to be put in public sector Labor Contracts over local civil service rules "when faced with a conflict between the two." County of Rock Island and Rock Island Sheriff, S-MA-94-6 (Fisher, 1995) at p. 10.

Obviously, as the parties recognize, not all of the criteria under Section 14(h) are applicable to the review of discipline issue, I reiterate. The Village is correct that the external comparable

factor fully supports its position. On balance, though, the remaining factors support the FOP's proposal, as summarized above, and I so rule.

Especially important is the fact that, in my judgment, were I to accept the Village's instant proposal, a "status quo" would be created on the issue, and the breakthrough doctrine would apply in the next round of bargaining and probably in the foreseeable future. The Union is pressing its demand that employee discipline be subject to the parties' Collective Bargaining Agreement's grievance arbitration procedure to avoid any potential issue that it waived its right to make that proposal later. This was made plain by its claim that it is essential for it to secure this right now, in the first negotiations for which this issue has been bargainable. I agree.

In reviewing the record, I emphasize, I conclude that it is clear that there are deficiencies with the current process with respect to the review of employee discipline. That establishes that there is a current problem, in my view, especially in regard to the trust of the bargaining unit members in the process itself. Such was the case in City of Elgin and PBPA, S-MA-00-102 (Goldstein, 2002), where I found:

"Overall, the evidence of at least fairly widespread distrust of the current process for reviewing discipline is sufficient to support the Union's final offer. . . For that reason, I rule in favor of the Union on the issue of arbitration of discipline." City of Elgin, supra, at pp. 71-72.

By the same token, the Village has emphasized that the FOP has not seriously bargained the employee discipline issue in the negotiations leading up to the current interest arbitration. That argument depends, in large part, upon how the FOP's reliance on

Section 8 of IPLRA is characterized. My response is that both parties seem to have maintained their respective positions throughout negotiations, with little give and take under these specific circumstances. I do not assign fault to anyone. I do believe however that "bargaining" in this circumstance is not an absolute concept. I would characterize the bargaining history as representing "an agreement to disagree" and therefore to let an interest arbitrator resolve the issue, nothing more, nothing less.

In sum, I believe that the FOP's proposal is the more realistic one. Furthermore, the long-term prospect of this being resolved by later bargaining, if allowed to fester, is not likely under these circumstances. From my point of view, although there is no persuasive evidence that there was an abuse of authority by the Village Board in the past in this entire area, the course of negotiations, the proposals made by the parties, and the evidence on the record convinces me that the maintenance of the Village Board's authority to review police officer discipline is not the correct answer or the likely result of arm's-length bargaining if the parties were not tied to interest arbitration over their impasse issues. Therefore, for these reasons, I resolve Issue No. 1 in the FOP's favor as the most appropriate and consistent with the standards of Section 14(h), and I adopt the Union's proposal on that basis.

**B. Issue No. 2 - Compensatory Time**

On this issue, the Union proposes that the status quo, in particular the existing contract language referencing compensatory time, be maintained. It is especially important to note here, that,

as the Village has suggested, the FOP does not necessarily propose to retain the historical application of existing language. It wants the words and text to be unchanged. The key provision with respect to this issue is part of Article IV of the parties' most recent Labor Contract, i.e., Article IX, Section 7. Because of the importance of the section's current wording and because both the FOP and the Village rely on the exact wording of Section 7 currently in place in making their respective arguments as regards Issue No. 2, the entire section should be quoted:

"Officers who are entitled to overtime pay may elect compensatory time at time and one-half in lieu of overtime pay... in 1/2 day increments, or less, subject to the rule of reason and department operating needs... The officer shall provide 24-hour advance notice for any use of comp time, or less subject to operating needs. Such time off will be approved subject to departmental needs..." (Jt. Ex.1.)

Practically, Section 7 of Article IX has been administered by the Department in concert with Standard Operating Procedure ("SOP") No. 22.1, a unilaterally implemented policy predating the Union's certification in 2000 and thus the collective bargaining relationship between these parties, the evidence of record reveals. In relevant part, SOP 22.1 states that, "Generally, the Department will not pay overtime to facilitate a compensatory time off request," I note.

On this issue, the essential facts are not in dispute. Police Chief Daniel McCollum testified at arbitration that this Department has consistently applied Article IX, Section 7 in concert with SOP 22.1, as just noted. The manner of implementing such granting of this contractual benefit is that bargaining unit officers are afforded compensatory ("comp") time (with sufficient advance notice and subject

to departmental needs) when, generally, needs of service do not require payment of overtime. Almost never is a request for comp time requiring concomitant overtime granted, McCollum specifically testified, though that, on occasion, overtime has been paid by the Department when someone scheduled to work unexpectedly called in sick and compensatory time for another officer had already been authorized. Overtime is usually endorsed in such cases, McCollum testified, in order to avoid having to "renege" on previously approved compensatory time, as the Chief characterized it.

Before now, this practice of most often avoiding granting compensatory time if overtime was required to cover the Department's staffing needs was seemingly acceptable to the Union and to the Village, the Arbitrator observes. This is so because neither party proposed to alter either the contractual language or the specific application of it during negotiations for the recently expired contract, and negotiated Article IX, Section 7 in the first contract when SOP 22.1 was in effect and correctly was being applied to avoid overtime concomitant to compensatory time requests.

However, prior to the opening of bargaining for this instant contract, the Village became aware of a Court decision handed down by the Northern District of Illinois which prompted concern for future applications of existing Section 7 language, Chief McCollum said. According to the Village, in Heitmann v. City of Chicago, 2007 WL 2739559 (N.D.Ill, 2007) ("Heitmann"), a magistrate judge held in relevant part that:

. . .the City's refus[al] to authorize the payment of overtime in order to induce officers to act as replacements... [is] flatly contrary to the DOL regulations, which explain that the need to pay one employee overtime to allow another employee to use compensatory time is not sufficient to meet the undue disruption standard (for denial of requests to use comp time).

Thus, Heitmann raised specific questions for the Village as to its potential impact on current practices, because the Department's comp time status quo is specifically addressed in SOP 22.1 and only generally in Article IX, Section 7 of the Agreement. Though Heitmann is currently on appeal, the Village fears de facto abolishment of current status quo circumstances if it is upheld, this record makes clear.

In response, the Village proposes to alter existing contract language with respect to compensatory time (while the Union proposes to retain it). The Village's perception is that it is requesting only "to preserve current status quo practices."

Essentially, what the Village is saying is that, in light of Heitmann, it is clear that the FOP in point of fact seeks to achieve a "backdoor breakthrough" by urging that the status quo be maintained on the subject of compensatory time. The Village strongly argues that the FOP has in these negotiations resisted any change in current language expressly because there is at least a probability that the Village's current practices (denying comp time when overtime needed) will become unlawful by virtue of a Court decision. In other words, the Village argues, the Union obviously anticipates that it will ultimately obtain "on demand" comp time as a result of Heitmann or

some other applicable authority, which thus could result in the Village's being forced to pay overtime in contravention with SOP 22.1 and current practices.

Such "demand days" for compensatory time when overtime for another officer is the result, the Village argues, has never been a part of the negotiated compensatory time landscape in this bargaining relationship. Consequently, leaving existing language in place likely will result in conditions occurring completely outside the scope of the parties' collective bargaining relationship and their content and practice with respect to the granting of compensatory time. Thus, the Village contends, the Union's bid to retain the "status quo" is disingenuous, in that doing so could very likely result in a windfall benefit to the Union that neither party bargained for. The status quo would be to continue following SOP 22.1, it emphasizes, and the Village's change in contract language seeks to keep that "status quo" practice, it insists.

However, states the FOP, the Village's new proposed language contains an embedded benefit to the Employer. After all, it is to be remembered that the Village's proposed change states that, "Compensatory time off shall not be denied or withheld arbitrarily." Under such a proposal, the Union reasons, the arbitrariness standard would not proscribe an "unreasonable" denial of compensatory time, for unreasonableness is not equal to arbitrariness under this view of the Village's proposal. Apparently, the Union submits, the Village seeks to unreasonably deny compensatory time-off requests or to extinguish

the comp time benefit, if overtime is not a blocking point to "on demand" compensatory time grants.<sup>27</sup>

In my thirty-seven years of hearing ad hoc arbitration cases, and twenty-three years as a full-time Labor Arbitrator, I was just about ready to conclude that I had heard about all the wrinkles to legal arguments that it is possible to make. However, the instant issue falls into a unique category, I find. As should be evident, there is certainly a clear indication that the Union's desire to maintain the status quo language is motivated by a desire to effectively hitch a ride on the legal change in status quo in light of Heitmann. As the Village observes, this is going through the back door, but in my mind hardly surprising. Why would the Union bargain to change language it already has when perhaps something entirely independent of the bargaining process is likely to result in a boon no one ever expected? However, this fact does not make the FOP's position unreasonable, just as the Village's desire to maintain the status quo by changing a contract provision is not evidence of bad faith, I rule. What the ruling for me boils down to is "what is the status quo?"

The dictionary definition is, "the existing condition or state of affairs," from the Latin, "state of which."<sup>28</sup> I believe that "status quo" in this context refers to the "status of something," which is the circumstance of the practice or application of granting

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<sup>27</sup> Union brief, p. 33.

<sup>28</sup> American Heritage Dictionary of the English Language, 4th Edition, Houghton Mifflin Co., 2000).

comp time now. Thus status quo is not just the continuation of the same words with different meanings. There is meaning, and observable reality in the status quo here. The Village seeks to maintain the true status quo, while the Union (ironically through retention of current language) hopes to change it, based on Heitmann, I conclude.

As broad and sweeping as the "status quo" doctrine is,<sup>29</sup> it will not bear stretching to encompass a situation where the application of current contract language has been changed by operation of law, I am thus convinced. For example, if the Courts, for whatever reason, put the Village's ability to grant compensatory time off into the realm of non-delegable powers, so as to preclude the application of the current Article IX, Section 7 to any aspect of Management's decision, the opposite side of the coin to Heitmann, at least to some degree, it hardly could be argued that the status quo would be the same even if no words in the contract changed. The meaning of the words may not have changed, but their legal effect obviously has. This logic applies whether the Court ruled to the "benefit" of municipalities or employees, I hold. The "status quo" is both the content of the provision in words and its required legal application, I rule.

I also note that this finding is consistent with the normal rules of contract construction. One ancient maxim is ut res magis valeat quam pereat (a contract interpretation is preferred that makes an agreement valid over one that makes it unlawful). Another traditional precept of contract construction is that to ascertain the

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<sup>29</sup> See, County of Will and the Sheriff of Will County and AFSOMS Local #2961, S-MA-88-089 (Nathan, 1988).

meaning of a contractual term, the interpreter should give appropriate weight to all relevant circumstances of the parties' continuing relationship. A third rule is if the interpreter can determine the principal purpose of the parties, contract interpretation favors that meaning. Finally, of course, when a provision in a Labor Contract is able to be interpreted with more than one meaning, and one interpretation would result in an unlawful contract term while another would not, arbitrators strive to interpret the subject term in conformity with the law.

I understand that I am being called upon in this instance not interpret Article IX, Section 7, but to actually create the term for the parties on this non-economic issue. Yet my role is still only to stand in the shoes of the bargainers, that is, to formulate the particular contractual provision in a way I consider most consistent with what the parties likely would have negotiated at arm's length absent the interest arbitration option. An interest arbitrator is nothing more than a substitute for the bargaining process; the bargaining relationship of the parties is still the standard that governs my authority. The statutory factors contained in Sec. 14(h) actually embody that idea in specific ways, along with the standards the Illinois Legislature set out, I rule.

In that sense, I again emphasize, the maintenance of the current existing literal language on compensatory time as expressed in Article IX, Section 7, would result in "on demand" comp time for bargaining unit members if Heitmann or its progeny finally becomes the binding external law. Yet the consistent application of the current

language when read in conjunction with SOP 22-1 has been to allow Management discretion to not permit compensatory time use if it creates overtime, with very minor exceptions, as noted above. The section, as it has been applied, broadly prohibits "on demand" comp time use.

Intent of the parties in this case may not be a necessary element in determining the formulation of the rule at issue at present, but awareness or knowledge of its application obviously is. And, the bargaining history in point of fact is that the Employer may have demanded at the start of the current negotiations that comp time be eliminated because of Heitmann. It moved off that position, while the Union had never in the bargaining preliminary to this interest arbitration actually demanded "on demand" comp time, as the Village suggested.

I am therefore convinced that the "status quo" in fact would not be maintained by the Union's current proposal, and that its offer on issue really is a demand for a "backdoor" breakthrough.

I am also convinced that the meaning of Section 7(b) of Article IX, as proposed by Management, includes in its rubric the Union's ability to demand interest arbitration in according with Article XXV, Section 3, despite the Union's expressed concerns over that issue. The parties have agreed Issue No. 2 is not an economic one, so "conventional" interest arbitration rules apply. I can formulate the most appropriate terms with respect to Issue No. 2; there is no "last, best" final offer rule in that case. On that basis, I believe I may craft a simple modification to the Village's proposal to ensure that

interest arbitration is available to the parties in the event impasse is reached on bargaining over the reopened terms of Article IX, Sec. 7.

Accordingly, I adopt the Village's final offer with the addition of the phrase "and subject to interest arbitration at the demand of either party in the event that reopened bargaining over a replacement provision for Article IX, Sections 7(a) and 7(b) reaches impasse" at the conclusion of the first sentence of Article IX, Section 7(b).

With this specific modification, the Village's offer on Issue No. 2 will be accepted as more appropriate under the applicable Section 14(h) criteria, I rule.

**C. Issue No. 3 - Health Insurance Premium Contribution**

The Union argues that the Village's proposed increase of employee health care contributions in the second and third years of this contract is not supported by evidence that there is a real need to depart from the status quo. The Village, the Union argues, has sought to increase employee health care contributions since the opening of negotiations, and has never offered an associated quid pro quo.

More importantly, the Union further argues, from a standpoint of internal comparability, bargaining unit members pay more for health insurance than does any other represented group in the Village. Specifically, the Union notes, Public Works employees, who are also unionized, are not required to contribute anything at all to their health coverage, while, at present, FOP members are contributing 10%

of premium costs. This is patently unfair, the Union suggests, even though it is recognized that IUOE members do not participate in the Village's health care plan.

The Union also points out in its post-hearing brief that otherwise internally comparable non-Union employee groups did not have their 10% contribution rates increased in the manner proposed by the Village here. However, by letter dated April 28, 2009 (some four months after the hearing in this matter), the Village informed both the Union and the Arbitrator in pertinent part as follows:

Pursuant to Section 14(i)(7) of the Illinois Public Labor Relations Act (regarding changes during the pendency of the proceedings), and your closing instruction at the hearing, enclosed herewith please find a copy of the Village's "Notice" to its non-Union employees that, effective July 1, 2009, their health insurance premium co-payment share will be increased from the current 10% to 11%. The Village requests this document be added to "Village Exhibit 24" (internal comparability data re; employee insurance contributions) as page 4.

As already argued more fully on the record and in its Brief, the Village has historically treated all of its employees who participate in the Village's Plan similarly... As shown by the enclosed "Notice", the Union's claim that the Village's proposal seeks to have the FOP pay "more" than "what everyone else pays" during the second year of the FOP contract term, is incorrect.

By letter dated May 12, 2009, the Union responded as follows:

This letter is in response to the Employer's April 28, 2009 correspondence regarding the above captioned matter. The Employer has requested to supplement the record with "page 4" of Village Exhibit 24, attached to its letter.

There is nothing in the Village's change of position that justifies the increased employee contribution when

examined next to its comparable communities. As the Union argued in its Post-Hearing Brief, a greater than 10% employee contribution is unwarranted, unjustified and unsupported by the evidence, notwithstanding the Village's belatedly forcing its non-Union employees to pay more for insurance in order to conform to its bargaining proposal to the Union. (Union Brief, pages 34-38.)

Thus, the Union submits, the Village merely increased insurance premium contributions for non-Union employees in an attempt to substantiate its position in this case, and also to render the Union's "internal comparability" defense void.

As to external comparability, the Union argues that there are no comparable communities proposed by the Union in which police officers pay more than do FOP members in LaGrange Park. In support, the Union notes that, at the present 90% / 10% rate, bargaining unit members pay \$41.04 per month for single HMO coverage and \$120.65 per month for family HMO coverage. Brookfield employees pay the same, Broadview and Westchester employees pay less across the board, North Riverside employees pay less for family coverage and more for single coverage, and Western Springs employees pay the same percentage for single coverage and a greater percentage for family coverage. Thus, the Union reasons, the Village's proposed contribution increases would effectively put this bargaining unit "at the top of the heap" for employee health insurance contributions.

The Union further contends that the Village's proposed external comparables prove the point as well, noting that from a percentage perspective, most if not all communities (Clarendon Hills, Countryside, Lyons, Oakbrook Terrace, Riverside, Summit, and

Willowbrook) fall below this Unit's current 10% contribution rate.<sup>30</sup>

In sum, says the FOP, this record demonstrates that adopting the Village's proposed premium contribution increase would result in the bargaining unit members paying a disproportionately large share of health care costs as compared with those in externally comparable communities.

For all the foregoing reasons, then, the Union urges that the status quo of 10% health care contributions be maintained.

The position of the Employer on this issue is of course quite different. It begins by exhaustively analyzing existing health care costs in light of present economic circumstances. Based on this analysis, the Village concludes that its proposed increases in employee contribution rates in the second and third years of the proposed new contract are modest and must be considered in concert with the agreed-upon wage increases mentioned above, namely, 4% per year across the Board for the three-year term of the agreement (Tr. 4). When considered in view of the applicable 14(h) factors, this increase is reasonable and the Village's final offer in Issue No. 3 should be adopted, it argues. That is the major thrust of the

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<sup>30</sup> The Arbitrator notes that the data referenced by the Union concerning the Village's proposed external comparables expresses Employer/employee contributions in terms of percentages rather than dollars. It is thus impossible from the Union's analysis to discern whether the out-of-pocket contributions are greater or lesser than those of LaGrange Park officers. Moreover, no data was supplied by the Union demonstrating whether the percentage of total income spent on health insurance in those communities is more or less favorable than that of this bargaining unit.

Village's contention but, as will be developed below, it went into great detail presenting its supporting arguments and data.

First, although the Village proposes to increase health care contributions from 10% to 11% the second year of the contract, and from 11% to 12.5 % in the third year, the evidence of record reveals that, relative to actual premium costs between 2004 and 2009, the actual costs for single coverage have increased an average of 8.9% per year over 4 years. Costs for family coverage have increased an average of 8.6% per year over 4 years, it further notes. Thus, the Village asserts, under either the Union's status quo proposal or the Village's modest proposed increases, the Employer will be paying over 7.0% and up to 8.9% more for health insurance premiums for single coverage in years two and three of the Agreement, and over 6.8% and up to 8.6% more for health insurance premiums for family coverage years two and three of the Agreement. The Village sees these numbers as of great important in any assessment of the reasonableness of the "bona fides" of the parties' final offers here. There must be a recognition of the real costs to Management of the Health Insurance coverage provided, the Village submits.

Second, the Village also notes that, even in the face of an economy that "tanked" after negotiations for this contract closed, it opted to stand by modest proposed increases in employee health care contributions, even though, with little legal risk, it could have altered or withdrawn its present proposal at the last minute. Still, the Village argues, it not only kept the proposal on the table, but ultimately agreed to across-the-board 4% wage increases.

Third, "overall compensation" also favors Management's position on health insurance premiums, the Village reasons. Wage increases for police officers have kept up with cost of living increases in recent years, and there is absolutely no evidence that relative "buying power" has diminished to the extent that ever-rising costs for health care should not, according to statutory criteria, be shared in the proposed manner by covered bargaining unit members.

In fact, the Village notes, this Arbitrator ruled in pertinent part as follows in Village of Elk Grove and Metropolitan Alliance of Police, Chapter 141, ISLRB Case No. S-MA-95-11 (Goldstein, 1996):

Public interest favors a reasonable cost sharing scheme, in order to mitigate the spiraling increases in health insurance costs. Employers' ability to pay the full cost of the premiums, or to have 10 or 15% contributions by each bargaining unit employee, is not at issue here and favors neither offer. The Employer's offer, otherwise favored by the comparability and public interests, is not disfavored when considered in light of the cost of living or the employees' overall compensation.

Indeed, the Village suggests, proposed increases in employee health contributions represent just such a "reasonable cost sharing scheme" expressly intended to "mitigate the spiraling increases in insurance costs." They are, in light of the current economic climate, the Village argues, "generous."

Finally, the Village argues, internal comparability strongly favors proposed changes in FOP member health care contributions, in that, on April 29, 2009, the rate of premium contributions for non-Union Village employees was increased from 10% to 11% effective July 1, 2009. This record absolutely establishes, states the Village,

that FOP members and non-Union Village employees have always paid exactly the same for health care since the Union was certified. There is internal parity, I am told.

Thus, should the Arbitrator rule in favor of the Union on this issue, the Village stresses, the historical parity between these groups would be abolished. Public Works employees have an entirely different plan, the Village is also quick to point out, and even so, coverage at 100% for members of the unit represented by the IUOE still costs less in terms of dollars actually spent than the Village presently pays for FOP members at the 90% contribution rate. Thus, the Village concludes, the FOP's argument that members of this bargaining unit are paying more for health care than "any other group of Village employees" is simply not true.

After careful consideration of all the 14(b) statutory factors, I agree with the Village's arguments summarized immediately above. My reasons follow.

After all is said and done, I agree with the Employer's basic stance as regards my considering the applicable 14(h) statutory factors. The IPLRA Act makes no attempt to specifically rank these factors in terms of importance or significance, I note. City of Decatur and International Association of Firefighters, Local 505, S-MA-29 (Eglit, 1986). Some statutory factors, depending on the issue and evidence, may be more significant than others. In this case, external comparability and cost of living are less relevant than in other economic issues, in my judgment. See my discussion in Village of Elk Grove Village, quoted above. I certainly understand the

conservative nature of the interest arbitration process. City of DeKalb and IAFF Local 1236, S-MA-87-76 (1988); City of Highland Park and IAFF Local 822, S-MA-94-227 (1995); and Kendall County and Illinois FOP Labor Council; S-MA-92-16 and S-MA-92-161 (1984). However, that does not mean changes or "breakthroughs" never are appropriate. Such a conclusion would make a travesty of the entire interest arbitration process, I stress.

The Village has covered the rather dismal state of the economy, including the "flat" or deflationary CPI numbers in the relevant geographic point of reference. Of particular note, the flat CPI prevents the Village from increasing its tax levy by more than .1% over last year's levy. There is thus simply no room in the budget or levy process to absorb the "hit" from any costs affiliated with a maintenance of the status quo, I find, given the costs associated with the health benefits package. Accordingly, this statutory criterion favors the Village's proposed desire to increase the employees' contribution, I find.

By virtue of the Village's agreement to pay 4% per year in wage increases, the officers here are already being treated generously in terms of overall compensation, even after consideration of an increase in their insurance premium contribution, I also conclude. The requirements of 14(h)(6) therefore favor the Village's proposed amendment of the Agreement to increase the contribution of bargaining unit members for health care benefits, I rule.

As the parties recognize, I have held that when it comes to insurance benefits, internal comparability is often the most important

statutory criterion, and may even serve as the only relevant criterion. See Village of Elk Grove Village, supra; see, also, Kendall County, supra, at p. 24 ("Internal comparables have much greater importance in benefits like health insurance than on percentage of wage increases, to be granted, I specifically hold"). The facts in the instant case compel a finding that internal comparability favors the Village's proposal, I again conclude. That observation is of great importance, in my analysis of this issue, I also frankly state.

Additionally, it is undisputed that every employee of the Village (except Public Works employees represented by the IUOE) is eligible to participate in the Village's health plan provided by Blue Cross/Blue Shield. It is also not a fact in dispute that, since at least 2004, the FOP officers and the Village's non-Union employees have paid the exact same percentage of contribution rate (Er. Ex. 24, pp. 1-2; U. Ex. 34, Tr. 15 and 75). Despite this clear history of lockstep treatment by Management in this issue, the Union attempts to raise the specter of being "singled out" for higher contributions, I note. (Tr. 15, 22 and 25). My response is that the facts do not support this argument, I find.

On the face of Exhibits submitted in evidence as noted above, the Village's proposal clearly states that it intends to hold the contribution rate at 10% for 2008-2009, and no increase was to occur until May 1, 2009 (Er. Ex. 21, p. 2). Indeed, that had been the Village's position since the May 23, 2008 mediation session between the parties (Er. Exs. 17, 18 and 19). The Village has never sought to

make the FOP pay more for coverage under the Village's health care plan than what is currently paid by any other Village employee, I am persuaded.

As for future years, the Union's own exhibit shows that, every time the FOP's contribution rate increased in the last few years, so did the non-Union employees; in 2004, everyone covered by the plan had a 5% premium co-pay; in 2006, the co-payment rate for everyone (FOP and non-Union) went up to 8%; finally, in 2007, the co-payment rate for everyone (FOP and non-Union) went up to 10% (U. x. 34; Er. Ex. 24, p. 2). The Employer's evidence is also that increases to non-Union premium co-payment obligations have always been implemented after the rate was set by the FOP negotiations, but that the non-Union employees have always paid the same contribution rate (Tr. 75 ).

In the area of the administration of health insurance benefits, Arbitrator George Fleischli, in Village of Schaumburg and FOP (September 15, 1994), perhaps stated it best when he explained:

"In the case of benefits like health insurance, internal comparisons can be particularly important because of the practical need to establish uniformity in the largest pool for reasons of fairness and to hold down overall costs." Id. at p. 36.

See, also, Arbitrator Feuille's analysis in City of Peoria and IAFF, issued September 11, 1992, and my own discussion of the importance of internal comparability in health care in Village of Elk Grove Village and MAPP, ISLRP No. S-MA-95-11 (1996, at p. 96). Finally, in Kendall County and Sheriff's Department of Kendall County and the FOP (November 28, 1994), at p. 24, I concluded that:

"Internal comparables have much greater importance on benefits like health insurance than on percentage of wage increases to be granted, I specifically hold."

There is a legitimate and logical concern on the part of the Management of this Village that the health benefit should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment has been proved, I find. The IUOE unit is one such case, I stress. As I noted earlier, however, and I reiterate here, I find that the Union's attempt to establish such a compelling need for the abandonment of parity of this unit with all other employees but the IUOE represented unit has not been established. The economic reasons for the Employer's final offer are clear and convincing, I also find. Based on all the foregoing, I adopt the Village's final offer on Issue No. 3.

#### **IX. AWARD**

Using the authority vested in me by Section 14 of the Act and by the parties' Arbitration Agreement, quoted above:

(1) I select the Union's last offer on Issue No. 1 with respect to employee discipline as being, on balance, supported by convincing reasons; also as being more appropriate than the Employer's Final Offer on employee discipline; and as more fully complying with all the applicable Section 14 decisional factors. It is so ordered.

(2) I conclude that this Village's proposal on compensatory time more accurately reflects and protects the parties' actual status quo, and the Union has not sufficiently met the "extra burden" necessary to warrant this Arbitrator's grant of the Union's request that the existing contract language be maintained under the unique

facts of this case. However, the phrase "and subject to interest arbitration at the demand of either party in the event that reopened bargaining over a replacement provision for Article IX, Sections 7(a) and 7(b) reaches impasse" is to be added to the first section of Section 7(b) of the Village's final contractual provision as fully explained above. It is so ordered.

(3) As per the discussion in the Opinion above incorporated herein as if fully rewritten, I award the Village's final offer as to Health Insurance co-payments because it complies more closely with the criteria of Section 14(h) of the Act than the Union's proposal. It is so ordered.

(4) By agreement of the parties, all tentative agreements admitted into the record in these proceedings are incorporated herein and made a part of this Interest Arbitration as the final disposition on these agreements between the parties. It is so ordered.

Date: August 27, 2009

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Elliott H. Goldstein  
Arbitrator