ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration

between

THE VILLAGE OF NILES
Niles, Illinois

and

METROPOLITAN ALLIANCE OF
POILCE, NILES CHAPTER #357

Before

HARVEY A. NATHAN

Sole Arbitrator

ISLRB No. S-MA-08-219

Hearing Held: April 29, 2010
May 17, 2010

Briefs Exchanged: June 30, 2010

For the Employer: Jill P. O'Brien
Laner Muchin Dombrow
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For the Union: Richard J. Reimer,
Keith A. Karlson
Richard J. Reimer & Associates

OPINION AND AWARD

I. INTRODUCTION

A. Background

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Board"). The parties are the Village of Niles ("Village") and the Metropolitan Alliance of Police, Chapter #357 ("Union"). In addition to counsel, the Village was represented by George Van Geem, Village Manager, and Dean Strzelecki, Chief of Police. In addition to counsel, the Union was represented by Anthony Molinaro, Legal Assistant, and Lisa Heene, Chapter president.

The Village of Niles, a home rule community in Cook County, Illinois, has a population 28,666. It consists of 5.9 square miles adjacent to a portion of the northwest side of Chicago. The Village has 246 full time and approximately 200 part time employees. About half of the full time employees are represented by labor organizations. Local 150 of the International Union of Operating Engineers represents the public works employees. Local 726 of the Teamsters Union represents the fire fighting employees. MAP Chapter 327 represents 42 police officers below the rank of sergeant. There are also three vacant positions in the police department. This case involves the parties attempt to reach their second collective bargaining agreement ("Agreement"). The first Agreement was for the period of May 1, 2004 through April 30, 2008.

On February 18, 2008, the Union made a formal demand for the Village

to commence bargaining for a second Agreement. Due in part to the personal illnesses of Union Chapter President Lisa Heene and its Chief Negotiator Richard Reimer, negotiations were delayed. On April 30, 2008 the Agreement expired. In September, 2008, the Village requested that the Union submit a first proposal. That month, the Teamsters, on behalf of the fire fighter unit, entered into a new four year bargaining agreement with the Village. The Union's initial proposal was submitted on December 11, 2008. There were five bargaining sessions between February and September 2009.

In June, 2009, the Union filed an unfair labor practice charge against the Village alleging that the Village had unlawfully frozen step increases which were in the now expired Agreement. The Union asserted that the expired Agreement as well as Section 5 ILCS §315/14(I) of the Illinois Public Labor Relations Act ("Act") prohibited the unilateral change of terms and conditions of employment during collective bargaining.[1]

The parties jointly requested mediation in September, 2009. In November, 2009, the Union demanded compulsory interest arbitration. The undersigned was appointed as the neutral arbitrator on December 11, 2009.

B. Statutory Factors

Section 14(h) of the Act provides that the arbitrator shall base his findings, opinions and order upon the following factors, as applicable:

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[1] The Charge was pending at the time of the arbitration hearing and the parties have not advised the arbitrator of its disposition.

"(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, and 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 private employment."

II. THE ISSUES

As represented by the Village, during collective bargaining the parties were able to resolve about 17 issues. These tentative agreements are

incorporated by reference into this award as stipulated by the parties at the outset of the hearing. While the great majority appear to be "language" issues, and facially appear to be beneficial to employees and the Union, others are "economic" issues and all of them, all be they of modest scope, are favorable to employees. They include mileage reimbursement for the use of a personal car, court time, and detective clothing allowance. A final issue agreed to by the parties prior to impasse was an increase in employee contribution toward health insurance premium costs. Commencing on May 1, 2010 employees will contribute 10% of premium costs, an increase from 9%.

Initially, the parties stipulated that were six issues in arbitration, all of them economic. As framed by the parties those issues were wage rate increases, step plan for 2009, wage increase retroactivity, specialty pay stipend, personal days and hours of work. However, as the hearing progressed and as reflected in the final offers, the final issue, referred to as hours of work, consisted of separate issues. The first is an economic one and involves the computation of total hours in the employees' work year using the six days on and three days off formula. However, it also appeared that the parties were seeking other changes in the hours of work language. Indeed, the Union's final offer contains a substantial re-write of the terms of Article IV, Hours of Work and Overtime. The Village suggests and the arbitrator agrees that this is really an issue separate from the discreet question of the re-computation of pay for the 6 on/ 3 off work schedule and the Village's proposal for restitution of

alleged overpayments.

The final offers on the open issues are as follows:

1. Annual Salaries

Union		Village	
Effective 5/1/08	3.5%	Effective 5/1/08	3.5%
Effective 5/1/09	3.5%	Effective 5/1/09	3.0%
Effective 5/1/10	3.75%	Effective 5/1/10	3.0%
Effective 5/1/11	3.75%	Effective 5/1/11	3.5%

2. Step Plan for 2009

The expired Agreement does not explicitly provide for movement on a step plan where an employee is paid on a scale related to years of service. The wage scale itself is contained in the contract, but nothing provided for step movement each year. While the policy for step movement is not before the arbitrator generally it is obvious that one exists. Indeed, the Village is proposing a freeze in step movement for the fiscal year starting May 1, 2009. Because this freeze was already effectuated, and is the subject of the aforementioned unfair labor practice charge, the Union's proposal is to reinstate the step movement for fiscal year 2009. The parties' proposals are as follows:[2]

Union "All employees who were eligible for

[2] The arbitrator recognizes that in selecting either of these proposals he is inserting language that impliedly makes the step increases a term of the Agreement.

wage step increases in and did not advance to the higher pay grade during the May 1, 2009 'wage step freeze' through the date of the arbitrator's award shall be granted that pay which would have been had they advanced through the wage steps for that year as part of the retroactive payment included in the award. Members who did not advance to the higher pay grade during the May 1, 2009 "wage step freeze" shall be placed in the appropriate wage classification had said "wage step freeze" not have been imposed by the employer."

Village

"Employer proposes status quo of current language for each year of the successor term; provided, however, there is a temporary freeze on implementation of this provision for fiscal year 2009. The result is that police officers are treated exactly the same as all non-union employees of the Village and all Public Work employees whose collective bargaining agreement was negotiated during these same economic difficulties which did not exist when the fire contract was negotiated.

3. Wage Increase Retroactivity

Union

"The employer agrees to increase the salaries of employees by 3.5% for 2008/2009 and 2009/2010 fiscal years. Salary increases shall be 3.75% for 2010/2011 and 2011/2012 fiscal years, fully retroactive to May 1, 2008 on all salary and wages."

Village

"The Employer proposes that its Base Wage Rate Increases, as set forth in Proposal No. 1 above, be made on a retroactive basis for those covered employees who are actively employed on both the effective date(s) indicated for the increase, and the effective date of the Arbitrator's award."

4. Specialty Pay Stipend

Union

"Specialty Pay. Specialty Pay will be as follows with the amounts listed meaning that the affected

Village

"Employer proposes status quo."

employee's base pay is increased by that amount. An employee is entitled to only one (1) specialty pay increase. This will not be cumulative. An employee is entitled to specialty pay if the employee is assigned to the unit or is utilized in that capacity. All employees covered by this Agreement shall only be paid for one (1) specialty with the higher pay specialties taking precedent over the lower paid specialties. Specialty pay stipends will be paid every May at the beginning of the fiscal year."

Assignment	Additional Pay
School Resource Officer	$500
Evidence Technician	500
Firearms Instructor	500
Canine Officer	500
Bike Patrol	500
Detective	500
Truck Officer	500
Bilingual Officer	500

5. Personal Days

Union

"Employees covered under this Agreement will be granted three (3) personal days per year. Use of a "1st pick" vacation request will supercede requests for a personal day when a conflict arises between employees seeking to take time off the same day. Personal days cannot be denied based on perceived future manpower shortages. Emergency circumstances shall not be denied."

Village

"Employer proposes status quo."

6. Hours of Work (Recalculation of 6/3 Schedule)

Union	Village
No proposal (maintain status quo)	Section 4.14 (new) "To accommodate the Department's 6/3 work schedule, covered employees working this schedule must understand the 28 day FLSA/contract work cycle will vary based on the assigned day off key. Every covered employee on this schedule works less than 2080 hours per year and will be required to "*pay back*" 2 days per year to make up the difference as training days. If the officer does not repay both days through training days worked prior to December 31, the remaining time owed will be offset from the officer's earned benefit time."

7. Article IV HOURS OF WORK AND OVERTIME - Language

	Union[3]	Village
Section 4.1 Definitions	No Change	NO CHANGE
Section 4.2 Normal Shift Preference	No Change	
Section 4.3 Normal Work Day - Patrol Division Delete final paragraph addressing training classes on an employees scheduled day off.		

[3] The Union's paragraph construction and numbering differs slightly between the final offer for Article IV as submitted separately and as contained in its brief. In order to accommodate the many sections of Article IV for which no changes are proposed, the arbitrator has adjusted the numbering and paragraph structure of the Union's proposal to fit the scheme of the language already in place.

Section 4.4 Non-Patrol Shift Normal Work Day
Introductory paragraph - No change

Paragraph A. Detectives - No change

Paragraph B. Canine Units -Delete 2 shift schedule

New Language (2nd ¶)"The normal hours of work for the K-9 units will generally consist of three (3) shifts commencing from (midnights) 2230-0700, (days) 0630-1500, and (afternoons) 1430-2300. The normal workweek for the K-9 officers will generally consist of six (6) continuous workdays followed by three (3) consecutive days off. The officers will end their workday thirty (30) minutes early to perform duties relative to the maintenance of the K-9 dog.
(3rd ¶ - No change)

Paragraph C. School Resource Officers (2nd¶)

Change end of paragraph from "based on departmental seniority among the School Resource Officers" to "based on their departmental seniority and bargaining unit members shift selection.

Section 4.5 Employer Discretion to Change Shifts or Other Provisions of this Article IV DELETE

Add the following:

Section 4.5 "Village Discretion to Change Shifts or Other Provisions of this Article IV

"As of May 1, 2008, it is the Village's intention to maintain the current work shift schedule and day off rotation which is currently in effect (and as summarized above) for a period of one (1) year. Thereafter (any time after May 1, 2011 and each year after the collective bargaining agreement is in effect), the Village has the discretion to modify the normal work day or work shift schedule or day off rotation of the employees, including (without limitations) the right to change the length of the work shift or work day for any Division(s), provided it notifies the Union at least sixty (60) calendar days

in advance of the intended implementation date of the modification. In the event the Village modifies the length of the work shift, work day or work schedule, the Parties agree that Section 4.6 (overtime pay) will be modified to provide that one and one-half times the regularly hourly rate shall be paid for all "hours worked" in excess of the modified regular work shift or modified regular work day of the employee(s) affected (and not after 8.5 hours as in the past). Additionally, upon written notice to the Union, the Parties agree to commence mid-term good faith bargaining for the purpose of attempting to reach an agreement as to the impact of the modified schedule or modified work shift or work day on the remaining provisions of this Agreement. In the event of impasse during said mid-term bargaining (if any), The Village may implement its last best offer, and the Parties agree that impasse procedures under the Illinois Public Labor Relations Act shall be applicable only if required by law."

Sections 4.6 through 4.13 NO CHANGE

NEW SECTION: Employee Training

"When an employee is scheduled to attend a school, training class, departmental training, mandatory training or any training seminar on the employee's regular day or days off (RDO), the employee shall have the option of receiving overtime compensation or rescheduling of the affected day(s).

" After notification of the impending training or school, if the employee has chosen to reschedule the affected day(s) off, they shall submit in writing the date(s) chosen to their immediate supervisor. Requested payback dates for training or schools shall not be arbitrarily denied, and may be scheduled for anytime within 30 days of the affected RDO.

" In the event a training class is cancelled for any reason, the employee shall notify their immediate supervisor. The employee would return to the normal work schedule, unless the employee and supervisor have agreed upon other

day(s) off arrangements. (Example: Class/training is cancelled at the last minute, and the supervisor and employee mutually agree the employee may use other benefit time or continue with a scheduled day off switch.)

"An employee electing to receive overtime compensation would submit the request for overtime after attendance at the class or training.

III. ANALYSIS OF EVIDENCE ON RELEVANT STATUTORY FACTORS

The Act identifies eight areas of facts and circumstances to be used in determining an appropriate award for each issue. The key factors looked at by arbitrators are internal and external comparability, financial resources to support the proposals and the cost of the entire package, cost of living (*i.e.* consumer price index), very recent changes in circumstances, and bargaining history (one of the traditional measurements not specified in the statute.) In this case the parties have sharp differences in their assessments of the critical factors.

A. Interests and Welfare of the Public and Ability to Pay

This is an often misunderstood factor. In most public employment venues the bargaining unit represents a measurable but relatively small part of the employer's budget. There are exceptions of course, such as in very large cities where the cost of public safety is disproportionate to the other costs of government.[4] But in municipalities such as Niles it is difficult to argue that the

[4] Another example would be with school districts where the teacher bargaining units dominate everything else in the employers' budget.

employer does not have the "ability to pay" economic proposals made by the collective bargaining representative. It is more often a question of *willingness* to pay.

The Act provides that the ability to pay must be considered in the context of the "interests and welfare of the public." But even here the concept is troublesome because the "interests and welfare of the public" is a political determination and no arbitrator should be in the position of making political decisions. This arbitrator interprets *ability to pay in light of the interests and welfare of the public* to mean that an arbitrator must consider whether economic proposals should be granted if they materially impair the municipality's ability to provide the level of services to the public that the elected officials have had in place for a meaningful period of time. Viewed in this light the arbitrator does not determine the interests and welfare of the public but only whether the proposals at issue materially impair the a politically determined public service.

However, an employer's claim that granting an economic proposal will materially affect its ability to provide programs in place does not gain validity simply because the employer says so. Stated another way, it is not for an arbitrator to decide whether three police officers for every thousand residents is a good or bad policy if that is what the elected officials of the municipality have had in place. It is appropriate for the arbitrator to determine whether the demands at issue will materially impact the employer's ability to maintain that

staffing. Again, this must be proven by the employer. Its mere statement that if a certain proposal is selected by the arbitrator it will cause the employer to reduce its staff of police officers, etc., is not probative unless the employer demonstrates that it has no other reasonable options.

In the case before the arbitrator, the Village argues that the Union's wage-related proposals are not in the "interests and welfare of the public."[5] It thus argues that if the Union's proposal is selected by the arbitrator the Village will be required to reduce the number of police officers it currently employs. It relies upon facts that clearly show that the Village has lost a considerable portion of its sales tax revenue because of the present distressed economy. The historical development of the revenue streams available to the Village shows that it is able to collect a disproportionate, compared to other villages of its size, amount of revenue from the many retail stores within the Village. It has been able to keep real estate taxes, the other major source of revenue, at a moderate level. However, its reliance on the sales tax puts it in a vulnerable position because it cannot control the public's spending habits. Real estate taxes, on the other hand, are certain. There may be dips in its collection, but in all likelihood real estate taxes due are a reliable asset.

The record in this case shows that between 2007 and 2009 the Village has lost more than 10% of its sales tax revenue. Its collections here went from

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[5] It acknowledges that as a general matter it has the ability to pay the proposals before the arbitrator. on the table.

$23,229,000 to $20,875,000. Additionally, the costs of health coverage has gone from $3.5 million to almost $5.2 million. The Village also put a hiring freeze in place in 2009.[6] The Village has announced a general reduction of Village staff, the freezing of step increases for unrepresented employees, an increase in fees charged for vehicles and other services.

B. Bargaining History

The area encompassing Niles and adjacent communities to the north/ northwest of Chicago were settled about the same time as Chicago itself. By the middle of the 19th century Niles was a clearly identifiable community. It was incorporated at the end of the 1800s and employed its first peace officer at that time. The community grew and prospered after World War II and after the advent of expressways, two of which run adjacent to Niles. As communities grew and as the services they provided expanded many public safety officers organized into union locals. In several Illinois cities these local unions bargained, sometimes informally, for terms and conditions of employment. In 1984 the right of public sector employees to bargain collectively became the law in Illinois. Many communities, particularly in the greater Chicago area were organized and collective bargaining agreements were negotiated.

The trend was not universal and in Niles the first collective bargaining

[6] From May, 2008 through December, 2009, seventeen employees left their employment with the Village. Between May, 2008 and October, 2008, the Village hired seven employees. One employee was hired in 2009.

agreement (for fire fighters) did not come into being until 2003.[7] It was a 3 year agreement expiring April 30, 2005. In 2004, a year after fire fighters agreement went into effect, the Village reached a 4 year agreement with the Metropolitan Alliance of Police ("MAP") for police officers, ending April 30, 2008. The following year, 2005, the Village and the Teamsters reached a second 3 year agreement for the fire fighters ending April 30, 2008. This second agreement provided wage scales for the fire fighters that were the same as the MAP agreement, then in its second year. Also in May, 2005, the Village entered into its first agreement with Local 150, Operating Engineers for a unit of Public Works employees.

The labor agreements for all three unions expired on April 30, 2008, the end of the 2007-2008 fiscal year. The fire fighters had their new Agreement by September, 2008. The public works employees had their next Agreement signed in August, 2009. The police will have a new Agreement in 2010, more than halfway toward its expiration.

What the arbitrator makes from all this is that the parties do not have much of a bargaining history. It is true that all employees received the same percentage increases for some years preceding collective bargaining. It is also true that when the second fire fighter contract was negotiated the wage rates

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[7] This was a three year agreement between Teamsters Local 726 representing Firefighters and Lieutenants for the period of May 1, 2002 through April 30, 2005. It was resolved by an interest arbitration award from Arbitrator Marvin Hill. The Teamsters negotiated successor labor agreements with the Village in 2005 and 2008.

mirrored those of the earlier MAP contract then in effect. But that is not a "bargaining history." Map and the Village signed their first agreement a year before the first contract with Local 150 was signed and in the second year of the Teamsters' second 3 year agreement. The Union argues that the wages of its first contract match the wages of the Teamsters' second contract, albeit that they were signed in different years. This circumstance of overlapping salaries for parts of <u>one</u> contract does not represent a "practice" as that concept is understood in labor relations. A "practice" is a course of conduct that has occurred repeatedly under similar circumstances. A comparison between the Teamsters' second contract and MAP's first does not establish a practice and now, on the occasion of MAP's second Agreement the circumstances are very different than they were in 2008 when the Teamsters' Agreement was reached. Whatever the merits of a lock step comparison among uniformed safety officers might be, there is insufficient evidence in this case that the parties have collectively bargained for that relationship over a measurable course of time.

The Village, on the other hand, has repeatedly cited the terms and conditions of employment for its unrepresented employees as a significant benchmark. While the Village might have political reasons for making a presentation to its unrepresented employees that their wages and working conditions are the same as the employees represented by a union, the reverse argument cannot be made. The unrepresented employees have no power to advance their wage and benefit terms. All be they generous (or not) they are

unilaterally imposed. The police officers are not bound by what the Village has imposed on employees with no legal bargaining rights. This is true in terms of bargaining history and regarding comparability, a factor to be discussed below.

Finally, the arbitrator has examined the changes already agreed to by the parties. They are almost all language clarifications with a slight increase in employee contributions toward health insurance. Nothing in that record should affect the determination of the open issues before the arbitrator in this case.

C. Comparability

As discussed above, under the heading of "bargaining history," there is no meaningful internal comparability analysis to be made in a municipality where there has been no bargaining until recently. It is true that there is a pattern that all employees, regardless of affiliation, received the same percentage increases since at least 2000. Whether this shows that the unorganized employees got what the organized employees got, *e.g.* the fire fighters, or whether it was the other way around is difficult to tell. In any event, bargaining history cannot include a comparison with unrepresented employees. Their work is essentially under different circumstances. Beyond some vague sense of public opinion, there are no checks and balances in the employment of unrepresented employees.

Likewise, for the reasons also discussed earlier, there is no established bargaining comparability among the three organized bargaining units. Not only has too little time elapsed but the sloping economy of the last few years

represents the elephant in the living room. It affects everything else. Whatever slight internal comparability existed in 2008 no longer exists in 2010.

External comparability is another story. In 2003, in the arbitration award for the first collective bargaining agreement for the Village, Arbitrator Hill found that the most appropriate comparable communities for fire fighters were Buffalo Grove, Des Plaines, Elk Grove Village, Highland Park, Hoffman Estates, Morton Grove, Mount Prospect, Northbrook, Park Ridge, Rolling Meadows and Wheeling. These communities are statistically similar to Niles in that they are relatively the same size, have similar bargaining units, are sufficiently geographically proximate to be with the same job market, have similar sources and sized revenues and property values.

In the present case, the only interest arbitration case since the 2003 case, the Union proposes that the same communities be used except for Buffalo Grove, which does not have an organized police department. (That was not true with the fire department.) In place of Buffalo Grove the Union proposes Gurnee, a municipality of similar size to Niles that also has a large shopping center within its borders, although it is measurably further (28 miles) from Niles than the average distance for the other nine communities (about 10 miles).

The Village does not propose a different group of comparable communities. Rather, it argues that comparability is a less important factor in these bad economic times. It cites arbitrators such as Edwin Benn, who stated

that because of the "recession *** there is a hiatus in the use of the comparability factor." (No case citation supplied.) This is nonsense. Comparability is a critical factor in Illinois interest cases. Terms and conditions of employment are not self defining. They are driven by the market place. What makes one offer more appropriate than another is strongly influenced by what the comparable communities are paying. If the comparability group is truly similar in the features discussed above, then they are more likely as a group to be suffering from the same economic climate. This is not a case where half the village burned down or some other unique catastrophe. The comparable communities, all of which are within easy driving distance of Niles, are faced with the same economic problems: People are out of work, afraid to spend if they are working, have homes that are decreasing in value, have seen their savings decrease in value, and are furious at whatever governmental entity is within spitting distance. If anything, comparability is more significant in these times than otherwise. Communities can learn from each other how to handle economic times not seen by taxpayers since before World War II.

The data for the twelve comparable communities shows that Niles is 10th in population but 1st in total and per capita sales tax revenue (in 2008). It is 4th in per capita E.A.V. but 8th in total E.A.V. (2009).[8] However, the Village

[8] Most of the data just cited came from the Union's exhibits. The Village's numbers were not as detailed and there were a few differences. However, exact numbers is assessing comparability are not important. The measurement is a relative one.

points out, it has relatively low total property tax revenue. The Village notes that among the several communities it has the most total employees, although it is relatively small in total geographic area.

The comparable communities for this arbitration involving the Village and MAP, for this unit of police officers is:

Employer	Population 2008
Des Plaines	58,710
Mount Prospect	56,265
Hoffman Estates	51,496
Wheeling	38,555
Park Ridge	37,775
AVERAGE	**37,093**
Elk Grove Village	34,747
Northbrook	34,419
Gurnee	31,536
Highland Park	31,457
NILES	**28,848**
Rolling Meadows	24,604
Morton Grove	16,700

D. Other Factors

The "cost of living" as measured by the Federal Bureau of Labor Statistics was stagnant in 2009 after modest increases since 2007. In 2010 the CPI-U (Consumer Price Index- All Urban Consumers) has increased so little that the as to be meaningless as a factor supporting the increase of terms and conditions of employment. Some items cost more and some items cost less than one year ago. While it is unclear to this arbitrator whether the cost of living consideration should be a "make up" factor measuring the effect of

inflation on wages and benefits paid during the expiring collective bargaining agreement, or whether it should be a reflection of what the parties anticipate the effect of inflation will be on wages and benefits now being paid. In either case, its impact on a contract commencing in mid 2008 is negligible.

The assessment of the total cost of the economic package and any increases being proposed is no more than a recapitulation of considerations of finances, bargaining history and comparability. Putting aside the appropriateness of the offers in light of these other factors, nothing in either offer will greatly impact the total costs of the employing police officers in this Village.

There have been meaningful changes in the economic environment since the parties reached impasse. The economy continues to be weak and the Village has considerably less resources than it had one year ago. The arbitrator cannot consider what would have been an appropriate package at the time the Teamsters contract was signed, or even when the Operating Engineers contract was renewed. Changes in circumstances is a specified factor in the Act. It has bearing on this present case.

IV. DISCUSSION OF THE ISSUES

1. Annual Salaries

Union			
		Effective 5/1/09	3.5%
		Effective 5/1/10	3.75%
Effective 5/1/08	3.5%	Effective 5/1/11	3.75%

Village

Effective 5/1/08	3.5%
Effective 5/1/09	3.0%
Effective 5/1/10	3.0%
Effective 5/1/11	3.5%

Even prior to the exchange of final offers the parties had agreed to a 3.5% for the first year of the contract. The Union has proposed 3.5. 3.75 and 3.75% increases for years two through four. These are the percentage increases negotiated with the Teamsters in 2008. The Village's offer represents a 1.5% difference, without compounding, over the same three year period. In other words, the most senior police officers will be earning $384 less than their comparable fire fighters by the end of the 2nd year (2010), $992 at the end of the 3rd year (2011) and $1,233 at the expiration of the Agreement in 2012.

For the years from 2004 through 2007 Niles ranked 4th among the comparables in wages. However, if the highest and the lowest paying communities are dropped off (there are often aberrations at the high and low ends), the spread for ten year police offices is tight. In 2007, at the ten year mark on wage scales police in Niles are paid a few hundred dollars a year more than the officers in the next four ranking communities. Its rate at this step, in 2007, is about $1800 a year higher than the second lowest community (Morton Grove), or about 2.5%.

The data for 2008 is incomplete because there was no information for

Highland Park and Morton Grove.[9] However the average increase was 3.44%. Considering the already agreed to increase of 3.5% for Niles, the Village would have retained its rank as 4th highest in the ten year salary mark. Of course, these increases do not present an accurate picture because there is no reference to other economic terms, such as health care, which can skew a total package.

For 2009, the same nine (of eleven) communities have settled agreements. For that year the average increase was 3.36% as against the Union's 3.5% and the Village's 3.0% increases. If the Village's proposal is accepted, it will move Niles two places lower, to 6th place, the difference being a few hundred dollars. The Union's proposal would cause the 10 year police officer to drop from 4th to 5th place, but the difference would be $76.00.[10]

The information for 2010 and 2011 is very sparse. There are five settlements of record for 2010 and three for 2011. All of the municipalities that have settled for 2010 and 2011 were in salary slots lower than Niles in any of the prior years. In all likelihood these contracts were agreed to before the impact of the recession was felt. Again, those that received the highest increases may also have been bargaining units which gave up other increases.

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[9] In 2007 Highland Park ranked 2nd in salary (at the 10 year mark) and Morton Grove was 11th.

[10] It should be noted that the data for Niles used in these comparisons does not include longevity pay whereas that factor is present in several if not most of the other bargaining units.

Additionally, the arbitrator has taken into consideration the testimony of Chief Strzelecki that he has obtained information that some of the comparable communities have made mid-contract adjustments with their police bargaining unit representatives. While this hearsay testimony cannot be credited as much as if it were documented, sum of this testimony is that other municipalities are taking action and the parties cannot rely solely on the written contracts negotiated before the economic reversals.

The arbitrator concludes that the available comparability data does not strongly support one proposal over the other. While it is true that the Union's proposal would maintain Niles' placement among the ranks of ten year police officers, the differentials are so small numbers as to be meaningless. When less than $200 separate employees earning base salaries of $75,000, it is difficult to find this factor as compelling. And, as discussed earlier in this opinion, there is no real bargaining history to be followed. The Teamsters negotiated their increases in 2008 before the Village comprehended the seriousness of the economic decline. The circumstances have changed. Since 2008 the Village has initiated several cost saving measures. It has put a hiring freeze in place and increased vehicle fees. It even eliminated subsidies for seniors taking taxi cabs. It has altered the salary and benefits for unrepresented employees. In other words, it has taken many steps to shore up its bottom line. It has taken risks with regard to the interests and welfare of the public. Had the Village not taken these other steps there would be a

question of the legitimacy of the Village's claims. That consideration, plus the Village's respectable offer of 3.5, 3.0, 3.0 and 3.5% salary adjustments, and considering further the low CPI, tips the scales in favor of the Villages salary proposal.

2. Step Plan for 2009

As suggested above, in the listing of the issues, the contractual Step Plan is somewhat of an enigma. It does not provide for the placement of employees on the wage scale. That the value of the steps changes with each year of the Agreement is obvious, but there is nothing to indicate the circumstances or frequency of movement on the scale by employees. Neither the Union's unfair labor practice charge addressing the Village's "freeze" of the wage scale nor the Village's answer responding that step increases have to be negotiated address the circumstances enabling an employee to move to a higher step.

The arbitrator finds that the manner in which the parties framed their proposals regarding the Step Plan, presented evidence at the hearing and argued the issue in their briefs, confirms that there has been a past practice of moving down one step each year until the employee is on the top step. Thereafter increases in the value of the steps are to be negotiated and employees on the stop step would get salary increases only if the value of the step.

For those employees who have not reached the top step wage increases are two-fold. The employees enjoy the general wage increase, if any, and also

move down a step. The general increase for the new Agreement has been established above. Even if there was no step increase employees would get a wage increase.

The problem for the Village is that movement down the wage scale is a practice which precedes the advent of collective bargaining. Now that the Union has bargaining rights for these employee the annual one step down cannot be eliminated prior to bargaining with the Union.

Regardless of the merits of the unfair labor practice charge, a subject not within the arbitrator's jurisdiction, the Village proposes a "status quo of the current language for each year of the successor term ***" except that there will be a "temporary freeze on implementation of this provision for fiscal year 2009." The proposal then goes on to explain that theses employees will be in the same position as non-bargaining unit employees and Public Works employees who, based on the evidence in the record, will not have step movement in 2009.

The Union's proposal requests that the step movement that should have occurred in 2009 be restored and the employees entitled to step movement be paid retroactively.

The Village's proposal is unacceptable for several reasons. First, it fractures the bargaining unit, separating those employees who have had the benefit of moving through all of the steps from those employees who now will have one less step movement in their careers. In other words, because of the

structure of the wage scale, step movement only occurs in the early years of employment. Freezing the movement for a year penalizes a discrete part of the bargaining unit. There is no explanation of why it is appropriate for these younger employees to pay a price their seniors did not have to pay when they worked their way down the ladder. Not even addressing whether there is a need under the statutory standards to reduce wages, if it is going to be done it should affect all employees.[11]

Another problem with the Village's proposal is that it reflects the Village's pre-occupation with internal comparability when it suits the Village's needs (*i.e.* disregarding the fire contract because it was negotiated in 2008 but referencing the concession made by the Public Works employees.) Would it not have been more fair if there had to be a freeze, to propose it in a year after the Agreement was finalized rather than retroactively? In doing what the Village did there is an implied penalty for employees because their Union took so much time in resolving the contract. Assuming for the sake of discussion that the statutory standards demonstrate a need for additional economic restraints, had the Village addressed it as a matter to be negotiated for the remaining years the parties would have had more flexibility and it would not looked as if it were a penalty being paid because negotiations lasted so long.

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[11] Moreover, it is not clear from the language of the Village's proposal whether the frozen step will be restored in 2010 so that employees who did not get a step raise in 2009 will move two steps in 2010, or whether they will lose a year of movement altogether.

3. Wage Increase Retroactivity

The parties agree in principle that retroactivity for salary increases be as of May 1, 2008. They differ in the details of their language. The Union specifically ties retroactivity to the amounts it proposed for salary increases. This is unacceptable because their salary proposal was rejected. The Village also proposes retroactivity for its salary proposal. The problem is that the Village also includes language restricting back pay to those employees who are employed as of the date of the Award. The effect of this is that employees who worked in, for example, 2008, 2009, and the first half of 2010, but left employment before the date of this Award would not entitled to back pay even though they theoretically earned it. The arbitrator does not agree with that part of the Village's proposal because it penalizes employees for exercising their collective bargaining rights. But the arbitrator must accept the Village's proposal on this issue nonetheless because of the incorrect numbers contained in the Union's proposal.

4. Specialty Pay Stipend

The expired Agreement provides an annual stipend of $250 for employees working six specific assignments: School Resource Officer, Evidence Technician, Firearms Instructor, Canine Officer, Bike Patrol and Detective. It is proposing that two additional specialties be added: Firearms Instructor and Truck Officer.

It also proposes doubling the stipend to $500.[12] The Village proposes that there be no changes.

The Union argues that the $500 a year is appropriate because the fire fighters have several specialty categories that are paid $500. The Union asserts that parity with the fire fighters is appropriate. The Union also points out that comparable municipalities pay significantly more than the Village for the same specialties.

With regard to internal comparability, it is difficult to make a comparison with the fire fighter unit because the nature of the work is different. More significantly, however, most of the fire fighter specialties are paid at $250, not $500. There are a few specialties that pay $500 but the Union has provided no evidence that the police specialties require the same degree of training, skill or experience as the fire specalties.[13]

The Union does demonstrate that the specialties identified in its Agreement are paid much more in some comparable communities. Thus, in those communities that identify evidence technicians as a specialty the stipend is significantly higher than in Niles. The same is true for the position of detective, field training officer, and canine officer. On the other hand, most of

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[12] Stipends are paid once a year and employees are limited to one stipend a year.

[13] The arbitrator has some sense of the specialties based upon information gathered from other sources and other cases. But a finding in this case must be grounded on the record here. And here there is no record.

the communities, with the exception of evidence technician and field training officer, do not have the specialties recognized in the MAP/Niles Agreement.

The Village argues that there is no evidence to support the doubling of stipends. Moreover, although there are presently six specialties, the Village pays all officers the $250 for performing work in a specialty. Most employees perform specialty work and in total 26 officers get specialty pay.

A problem with the Union's proposal is that it seeks across the board increases for all specialties without any evidence that the work involved in all of these assignments is worthy of being doubled. Had the Union's proposal been more discrete and supported by specific evidence rather than a round house reference to the fire fighters it might had more merit. In truth the $250 is a very arbitrary amount. There is no particularization of the work involved, the time spent in one assignment over another, or the skills and unique training that prepares an officer for the specialty. With 60% of the bargaining unit getting specialty pay, there is some question for the arbitrator as to how special some of the work really is.

The arbitrator is <u>not</u> saying that the $250 is appropriate for each and every specialty. Clearly there is support among the comparables that at least field training officers and evidence technicians perform work recognized as more distinctive or exclusive from regular police officer duties that these skills must be rewarded. Rather, the Union has failed to establish any substantive evidence of the uniqueness or training requirements of these assignments, nor

any evidence that specific sum in for this work as opposed to police skills generally is appropriate. This is grist for the bargaining table. The demand may be a worthy one but it is not supported by the record in this case.

5. Personal Days

The Union is seeking an additional personal day, that is, an additional paid day off of the employee's choosing. The old Agreement provided two personal days per year. The Village proposed no increases.

The language the Union is proposing provides more than just an additional day off. That language is:

> "Employees covered under this Agreement will be granted three (3) personal days per year. Use of a "1st pick" vacation request will supercede requests for a personal day when a conflict arises between employees seeking to take time off the same day. Personal days cannot be denied based on perceived future manpower shortages. Emergency circumstances shall not be denied."

The old language provided that vacation schedules supercede requests for days off in the event of a conflict. The language now proposed by the Union now limits preference for vacation days over personal days to "1st pick" vacation requests. It also adds language that in effect requires the Village to grant personal days even if it anticipates a shortage of regularly scheduled employees for the day requested. The Union did not produce evidence of the extent to which there are conflicts with scheduled vacation periods, particularly with senior employees enjoying longer vacation periods. Nor did it demonstrate

that there has been a practice of a denying requested personal day because of staff shortages or for any other reason. If the Union seeks language such as this which affects the symmetry of personal day selection, then it must show that there have been problems that could not be settled and only a change in contract language will solve then problem. Here the Union has not even offered any grievances on this subject.

The Union also presents a case in relying on comparability. The fire fighters negotiated a change in their schedule that amounts to additional time off. Among the comparable communities most of those that have personal days have more than two. On the other hand, in terms of total days off, counting vacations, paid sick days and personal days, Niles is in the middle of the group. Some communities have more days off and some have less.

In balance, the evidence supporting the Union's request for a personal day cannot overcome the arbitrator's serious doubts about the need for a change in language that alters the Village's ability to schedule. Finally, the retention of the annual hours of work and its computation, as proposed by the Union (see the next issue, re-computation of 6/3 schedule, discussed below) convinces the arbitrator that this is not the time to grant an additional paid personal day off.

6. Hours of Work (Recalculation of 6/3 Schedule)

This is the final economic proposal and the only one where the Village seeks a change and the Union wants the *status quo*. The Village proposes a

new Section 4.14 in the Hours of Work and Overtime article. This is a proposal to correct what the Village sees as a prior mistake in the calculation of the hours worked by employees in the police bargaining unit. According to the Village, it was always the intention of the parties that these employees would work six consecutive days on followed by three days off for 2080 hours in a year. However, the 6/3 formula works out to be a 39.6 hour week and the hourly rate is based upon 2080 hours in a year . Thus, according to the Village, the each year the employees have been paid for 17 hours more than they actually worked. [14] The Village's proposal asks the employees to "pay back the two days each year as training days." Although the proposed language does not say this, the Village states that it will not collect for the extra days paid prior to 2010. In that year, employees would be required to have one extra training day. In 2011 the employees would have two extra training days.[15] The Village points out that within the comparability group those communities with 6/3 schedules recognize that this is a 39.6 hour week.

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[14] "To accommodate the Department's 6/3 work schedule, covered employees working this schedule must understand the 28 day FLSA/contract work cycle will vary based on the assigned day off key. Every covered employee on this schedule works less than 2080 hours per year and will be required to "*pay back*" 2 days per year to make up the difference as training days. If the officer does not repay both days through training days worked prior to December 31, the remaining time owed will be offset from the officer's earned benefit time."

[15] In its brief the Village uses different wording in reciting its final offer. This language does include the language calling for a payback of one training day in 2010 and two training days in 2011. This language was that which was discussed at the hearing, but not the text of the final offer. As will be discussed below the Village's offer is rejected for reasons other than the failure to specify the payback schedule.

The Village acknowledges that this is a change in the structure of a portion of the contract, and that the burden is on the party seeking the change to convince the arbitrator. The Village argues that the Union has steadfastly refused to discuss this subject and that the only thing left to correct the error is interest arbitration. It also points out it is not seeking recovery of the extra pay received in error by the employees in years past, and to that extent it is offering a *quid pro quo*.[16] It wants recognition of the principle and the payment of one training day in 2010 and two in 2011.

The Union opposes any change in the manner in which employees are paid for their 39.6 hour weeks. The Union states that this practice has been in effect for many years, perhaps 20 years. It argues that this was the framework from upon which all wage increases were granted in the past. The Union argues that there is no justification for the change.

The arbitrator rejects the Village's proposal because it amounts to a rollback of the payroll formula in existence for many years. Whether the present interpretation originated from a mistake, or otherwise, it is the formula that has become the standard for police officers in Niles. It is the base from which all past increases were negotiated and, before negotiations, the standard the Village accepted when it granted salary increases. The 39.6 hour week is

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[16] The Union acknowledges that the Village also attempted to get this changed in the first negotiations in 2004. For the tests for making changes in standards negotiated in a collective bargaining agreement, see Will County Board/Sheriff of Will County and AFSCME Council 31, S-MA-88-09 (Nathan, 1988).

the standard for these employees even though other Village employees may have 40 hour weeks. It has become a agreed upon past practice as a result of its many years of usage.[17]

The arbitrator also sees this issue in the context of the bargaining for this Agreement. The Village has pulled backed the reins and urged the arbitrator to exercise frugality in these troubled times. In large measure the Village has been successful in its approach. In this light the application of the new training days only in 2010 and 2011 is just not appropriate this time around.

7. Article IV HOURS OF WORK AND OVERTIME - Language

The Union is seeking several changes in the language of Article IV, including a new provision for training. The Village proposes no changes (other than the economic changes inherent in its proposed Section 4.14) and strongly objects to the Union's proposal primarily because the Union did not explain its new language at the hearing. Thus it believes there is an inadequate record to support what the Union is seeking.[18]

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[17] In fact, the arbitrator is not convinced that the Village did not know of the 39.6 hour week and the shortage of 17 hours a year at some earlier point in time. No one from the Village government who would have knowledge of why this error was permitted to exist for so many years testified. The arbitrator credits the Chief's testimony but finds it an inadequate explanation for pay formula that has existed for a generation of police officers.

[18] Among the minor drafting changes the Village objects to are: (1) Change in title of Article; (2) deletion of final paragraph of Section 4.3 without explanation; (3) Changes to the provisions of Section 4.4B (Canine Units) because none of it was raised at the hearing; there appears to be typographical errors in the Union's proposal.

As the parties are aware, the Act permits the arbitrator to pick and choose among the details of the language proposals. It is not a final offer, take it or leave it system. The arbitrator can even substitute his own language where he finds it appropriate. (See ILES 315/14(g).) With regard to Article IV, the Union's proposal for a new section on employee training is unacceptable because this language was not discussed at the hearing. Frankly, the arbitrator is not sure what the language means other than as a series of generalities. Some of the ideas may be worthy of consideration but they were not tested at the hearing or otherwise fully explained. The same is true with the changes proposed for the canine officers. The small changes in wording proposed by the Union must likewise be rejected because the has been no demonstration that these changes are needed and there is the risk that even small changes in wording can affect the operation of the language not anticipated by the parties. Where there is no record of the reasons for these changes the arbitrator has little choice but to reject them.

The last change being sought is with Section 4.5. This is the section that locks in the six workday/ three off day schedule but provides the Village with the right to change the schedule under certain circumstances. The Village did not initiate any changes under the old contract when it had the opportunity but intends to do so under the new Agreement. Thus it proposed that he old Section 4.5 be maintained as written. That language would immediately permit the Village to initiate proceedings to eliminate that schedule. The new Section

4.14, discussed above, would maintain the 6/3 schedule previously referenced in the old Section 4.5 but establish different principles affecting its application.

It is the arbitrator's belief that the Village's request to allow it to change the schedule by leaving the now expired Section 4.5 in the contract is tied in with its discomfort about how the 6 day/ 3 day shift system has worked. However, as explained by the arbitrator, in a year where the City wants to hold back on so many contractual terms that might otherwise be acceptable, it is not appropriate to remove the 6/3 schedule. Stated another way, it is too regressive in a year that the police see their wages differ so much from those of fire fighters. Accordingly, all of the language of Article IV as it appears in the 2004-2008 Agreement shall be maintained except for Section 4.5 which shall have the following changes:

The date **"March 9, 2007"** shall be changed to **"May 1, 2008"**

The date **"March 10, 2008"** shall be changed to **May 1, 2011."**

In all other respects the language of Section 4.5 shall remain the same. It is the arbitrator's intention to maintain the 6/3 schedule subject to the new dates recited above. In all other respects the language of Section 4.5 shall remain the same as is written in the 2004-2008 Agreement.

AWARD

1. The Village's offer for Base Wages is selected.

2. The Union's offer for Step Plan - 2009 is selected.

3 The Village's proposal for Wage Increase Retroactivity is selected.

4. The Village's proposal for Specialty Pay is selected.

5. The Village's proposal for Personal Days is selected.

6. The Union's proposal to pay back 2 days per year is accepted.

7. The language of Article IV shall remain as it is in the 2004-2008 Agreement except that the date **"March 9, 2007"** contained in Section 4.5 shall be changed to **"May 1, 2008"** and the date **"March 10, 2008"** shall be changed to **May 1, 2011."**

8. All Tentative Agreements signed by the parties prior to this arbitration award shall be incorporated into the new Agreement.

Respectfully submitted,

Harvey A. Nathan

August 24, 2010