

State of Illinois Interest Arbitration  
S-MA- 09-133  
Ellen J. Alexander, arbitrator

Village of Minooka, Employer

and

Metropolitan Alliance of  
Police, Minooka Police Chapter 348

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Appearances on behalf of the Union  
Steven Calcaterra Esq  
Matthew Roeschley Esq

Appearances on behalf of the Village  
Nicholas Sakellariou Esq,  
Marji Swanson Esq

Heard : March 16, June 7, 2010

A. INTRODUCTION

The Village of Minooka and the Metropolitan Alliance of Police, chapter 348, entered into their first collective bargaining agreement (CBA) in 2006 and that three year agreement expired in April 2009. That initial contract had been reached solely through direct negotiation. Negotiation and mediation for the successor CBA reached impasse, and the parties appointed the undersigned to conduct an interest arbitration under authority of and pursuant to the Illinois Public Labor Relations Act, 5 ILCS 314/1 et seq. Following an initial hearing of March 16, 2010, the matter was continued to allow further exchange between the parties of information pertinent to health care coverage. Amended proposals and additional exhibits on that subject were presented at the second day of hearing, June 7, 2010. All testimony was transcribed. Briefs were submitted by August 10, 2010. Much of the hearing record consists of narrative discussion and presentation by counsel; witness testimony is reviewed below. The parties stipulate that this

CBA will be a three year agreement, retroactive to May 1, 2009. There are nineteen unresolved issues, including largely

new proposals from the Union. Through discussion on the first hearing date, party counsel were able to stipulate as to most proposals their economic or non economic classification. They further stipulated that this writer must base her findings, decisions and orders on the following statutory criteria, where applicable.

- a) The lawful authority of the employer
- b) Stipulations of the parties.
- c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- d) 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:
  1. In public employment in comparable communities.
  2. In private employment in comparable communities.
- e) The average consumer prices for goods and services, commonly known as the cost of living.
- f) 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.
- g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h) 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.

## B. BACKGROUND

The Village of Minooka Illinois is located 50 miles southwest of Chicago Illinois. It is a non home rule municipality with a population for year 2000 estimated at 7,695 and estimated for the present as 10,900. Utilizing information effective 2008 provided by the Union (Union ex 3 afr reports 2008), the Village per capita equalized assessed valuation is \$40.61. Its general revenue per capita is \$631. Its median family income is \$81,190. State sales tax revenue is shown as \$1,96,471 and total revenue of \$5,224,164. The Union states that the total EAV was just under \$313 million dollars whereas the Village EAV figure is \$338 million dollars.

The Village has a president and Board of Trustees, with day to day operations directed by a Village manager. Its *total* 51 employees include a police department of twenty one sworn officers: fifteen patrol officers, four sergeants, a deputy chief, and -- usually-- a chief. In the course of this proceeding the chief of police for the past three years retired and the deputy chief became interim chief.<sup>1</sup> The bargaining unit consists of both patrol officers and sergeants. The department has no ranks of lieutenant or captain. Of the current fifteen patrol officers nine have been hired since January 2007 and there is an applicant eligibility list numbering 61. The Village has one other small union; IUOE Local 150 represents some clerical and public works employees.

The Minooka Police Department operates on twelve hour shifts. One week an officer will work three shifts, and the second week four shifts (=84 hours per pay period). Each 12 hour shift fully manned has two teams of patrol officers and sergeant. Of the fifteen patrol officers, two are assigned as detectives and work a more traditional work week.

## C. COMPARABLES

Minooka occupies 7.8 square miles in part of Will and Grundy counties and a small part of Kendall county. The parties each proposed as external comparables the communities of **Morris, Shorewood and Wilmington**. Each proposed additional but different communities for the rest of comparables. The Union created a spread sheet of twelve measurements ("contacts") for 32 of the municipalities located within a 25 mile radius of Minooka, yet acknowledged that to come up with municipalities having even six of twelve "contact" criteria it had to go with a plus or minus 50 % variation from Minooka figures. The Union did not propose two small towns that met the "six contact" criteria but were not unionized. Nor did the Village propose those two communities.

After my own careful consideration of all information supplied, including in

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<sup>1</sup>For 2007 he was "an administrator," and for 2008 and 2009 titled as Police Chief

particular population, sales tax revenue, equalized assessed valuation, household income, distance from Minooka, and size of police department, I accepted as additional comparables from the communities proposed by either party **Channahon** (which shares a border and covers close to the same square miles), **Mokena, Oswego, and Yorkville**. There are thus seven comparables when including **Shorewood, Wilmington and Morris**. I rejected Bollingbrook, (population 70,000, six times the revenue and twenty four miles away), Lockport (population 24,000), Crete, Elwood, (population 2626) and Montgomery. While all comparables in my "final list" were suggested by one or the other parties, there are significant variables in addition to limited if any information about their budgetary restraints. The parties have provided the most recently available labor contract for each municipality discussed.

#### D. COST OF LIVING

The cost of living sheds little light on the discussion that will follow.<sup>2</sup> The Union cites a CPI increase in 2009 "for all Urban Consumers" of 2.6% which it notes is "generally consistent with the across-the-board increases in the parties' wage proposals." The Village in turn informs me that "the annual average Consumer Price Index for 2009 was negative -1.2%." (This is for "Chicago-Gary-Kenosha," see Village exhibit 26.) The Village notes the Naperville, Chicago, Joliet area unemployment rate of 10.6% and points to the evidence of the adequacy\appeal of its wages and benefits as demonstrated by the 100 applicants at the last police testing. The Village also points to the stability (length of tenure) of its police force, which also, however, has increased in size rapidly with nine new hires since January 2007 and two probationary officers departing.

#### E. ISSUES FOR REVIEW

##### 1. Section 5.10 Shift Schedules

###### Current Wording

"The Village shall establish work schedules for employees. The schedule shall be in effect for a minimum of six (6) normal work cycles. Schedules shall be posted 30 days before they become effective. During each schedule period, the Chief or

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<sup>2</sup> " Thus, the Union asserts that, while cost of living is typically a particularly important consideration for the Arbitrator to consider, *See e.g., City of Bloomington, S-MA-02-040* (2002) (utilizes the Consumer Price Index in consideration of awarding the Union's wage proposal); *City of East St. Louis and Local Union No. 23* (2000); (Union's wage proposal is consistent with cost of living considerations), in this particular case it does little to distinguish the parties' proposals on wages."(Brief p. 10)

his designee reserves the right to implement reasonable schedule changes, without any notice, for operational reasons, including but not limited to, special assignments and manpower constraints.”

The Employer proposes retaining the above status quo. The Union proposal reads:

The Village shall establish work schedules for employees. **Shift bidding will occur on an annual basis before October 1 of the year being scheduled for Members in order of seniority, to be effective January 1 of each calendar year. Work shifts shall not be adjusted to avoid the payment of overtime.** The schedule shall be in effect for a minimum of six (6) normal work cycles. Schedules shall be posted 30 days before they become effective. During each schedule period, the Chief or his designee reserves the right to implement reasonable schedule changes, without any notice, for operational reasons, including but not limited to, special assignments and manpower constraints.

#### Discussion and Finding

The Union contends that this revision would “in essence codify the current practice within the Minooka Police Department,” asserting that since the date of its first contract, “the Village has instituted a shift bidding procedure that operates in order of seniority” and that this is now a “past practice that should be incorporated into the successor agreement.” The Village responds that

Any determination to permit limited selection was made pursuant to the Employer’s management rights to assign its employees. The Chief has allowed officers to pick day or night shifts by seniority but within days or nights, the Chief assigns individuals to the two teams....

This is a small department. Shift bidding could result in an imbalance of experienced officers on a shift. If that happened, the Union’s proposal does not have a way for management to fix that problem. Additionally, the ability to assign employees with particular skills or abilities to a particular shift would be hampered as would the ability to resolve personality conflicts. Further, scheduling of vacation time would be limited. (Village brief, p 17

Of the seven comparables used by this writer, only Wilmington provides for shift bidding. Other contracts reference the “discretion and responsibility of the Chief” (Channahon, Shorewood) or are silent (Morris). And while Wilmington allows annual bidding, its CBA also states that the City may “adjust selection of officers based on levels of experience” and “change established schedules (for).... operational needs.” At Minooka, Chief Hayse utilized his management discretion; this does not create a binding or mutually agreed practice. This writer takes in to account, here and elsewhere, that the

language in place was bargained for the first contract and that this is only the second. As for shift assignments, no problems have been identified, and in my view, the Union's proposed revision and elimination of key status quo language would cripple an essential aspect of police management, including the freedom to place less experienced officers with more senior officers. The shifts are set at present for "a minimum of six normal work cycles." Officer preference to plan far ahead for vacations and time off is insufficient basis for the drastic limits on management contained in this proposal.

**The status quo is adopted.**

## **2. Section 5.11 Specialty Pay (New Proposal)**

The Union proposal reads:

In the event the Police Chief, or his designee, appoints a bargaining unit employee to serve in a specialty position designated below, then such employee shall be eligible for a specialty bonus as follows:

Detective	2.5% additional salary
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There is no such provision in the contract and the employer opposes this new item.

### Discussion and Finding

The detective assignment is voluntarily held by a patrol officer. Department detective Kiedra Meece testified that she has been a police officer for "a little over ten years," and a detective for almost two years, a position she was offered. She remains a patrol officer in rank, but works a schedule of two ten hour days and two eleven hour days each week, (start time 6:30am or 7:30 am), for the same total of 84 hours per two week pay period. Officer Meece testified that she follows up on initial reports that patrol officers have written in preceding shifts, sharing the work with a second detective, and she estimated that 200 cases were followed up per year. "It could be anything as simple as just making a phone call to gathering further documentation, evidence, interviews." She would not say that she generates more paperwork; "the reports are already generated." She has regular contact with other police departments and states attorneys, and she testifies in court more than she had done as a working patrol officer.

The detective has use of a squad car when needed, can take weekend overtime shifts as a patrol officer and has all weekends off. The detective does not perform patrol duties of issuing tickets or doing building safety checks. Officer Meece is on call 26 weeks a year as detective and if called out aside from duty hours she is paid overtime.

The Union contends that

...employees who are appointed to serve as Detectives perform duties that are additional to and different from the normal duties performed by patrol officers and that warrants additional pay

The "additional and different" duties that the Union described, relying on the Meece hearing testimony, were "a different schedule," the reviewing of initial reports, identifying cases and then "following up" on them in some fashion, having "much more contact with other law enforcement agencies" than regular patrol officers, and testifying in court more than the average patrol officer.

The Village argues that

This is an economic issue and a breakthrough proposal requiring additional compensation of 2.5% of base pay for any employee assigned to detective duties. The Union presented no evidence justifying the additional pay for bargaining unit employees assigned to detective duties. In fact, as the testimony of detective Meece showed, the detective duties are performed in place of patrol duties, in that the duties that she performed as a patrol officer she no longer has to perform as a detective (Tr. 120-122.) A detective does not work any additional hours or have to perform detective work on top of patrol duties (Tr. 120-124.) Additionally, instead of rotating weekends, all detectives have Saturdays and Sundays off. Moreover, detectives have the authority to accept or decline that assignment (Tr. 125-126.) The detective works the same number of hours as a patrol officer. The Detective receives overtime pay and court time pay. With respect to the ability to work overtime, detective Meece is able to work weekend overtime, if she desires, and receives overtime for call-outs relating to her detective duties. (Tr. 122- 125) Nobody is assigned to detective duties if he or she does not wish to perform those duties.

Among both the Employer and the Union comparables, some jurisdictions provide for a stipend for the detective and some do not. The comparables do not present a unanimous approach to this form of compensation and therefore, standing alone, do not provide justification for granting the Union's proposal.(Village brief, p. 20)

As for comparables, Shorewood pays a \$1200 annual bonus to its detectives, Oswego pays \$75 biweekly. Yorkville has no such bonus, nor Channahon, Mokena, or Morris. Wilmington's new contract provides for \$1000 per year prorated.

The Village notes that its two detectives are at the top of their salary schedule and that under the Union proposal, by the third year of this contract the stipends "would be \$1791 annually per detective, which "far exceeds any comparable stipend." The Village

argues that “the Union’s proposal is merely a subterfuge for attempting to increase the compensation of two bargaining unit members....unsupported by any compelling need, or a showing that detective duties impose a greater burden on the employee.( Village brief p 21)

Arguably, the comparable communities support either position. This writer finds significant the lack of supportive evidence or justification within Minooka. The job duties as described by Officer Meece are not more onerous, nor do they appear to require a skill not also required of a well performing patrol officer. The comparables information is financial only, not revealing what the duties, training, or work load of detectives is in those other communities. This is a breakthrough economic proposal and the Union has not met its burden for such an imposed addition.

**Status quo is adopted.**

### **3. Section 5.12 Officer in Charge (OIC) ; New proposal**

The Union’s proposal reads

Patrol Officers assigned as Officer in Charge (OIC) shall be compensated for working out of classification at an additional \$1.25 per hour for every hour worked as Officer in Charge. The Parties agree that Officer in Charge shall be selected from those Patrol Officers on the Sergeant’s promotional list maintained by the Board of Fire and Police Commissioners in order of seniority. If there is no officer working who is on the Sergeant’s promotional list, then the officer with the most seniority shall serve as Officer in Charge.

The Employer has made no proposal and seeks status quo, asserting that there is no such designated individual or function and never has been.

#### **Discussion and Analysis:**

As Union counsel explains this new economic proposal:

Simply put, the Officer in Charge on a particular shift is the Patrol Officer who fills in as the point person for the shift, serving in an oversight role when there is no sergeant working. Tr. 28. The Village currently uses an Officer in Charge on a fairly regular basis, and the patrol officers who sometimes serve in the capacity – essentially performing the job of a Sergeant – currently receive no extra compensation for such work. Tr.28.

It is the Union’s position that the Officer in Charge should be selected from the

Sergeant's promotional list because it affords future sergeants an opportunity to essentially train on-the-job by performing the duties of a Sergeant and allows them to demonstrate their worthiness for promotion. Tr. 27. Additionally, the Union believes the Sergeants' promotional list to be a trustworthy indication of a Patrol Officer's capability for serving in the capacity of Officer in Charge. Id. In essence, if a Patrol Officer is the most qualified for promotion to the rank of Sergeant, it follows that he or she is most qualified to do a Sergeant's work and serve in the capacity of Officer in Charge. (Brief p 29.)

The parties have stipulated that this is to be treated as a split proposal: "selection of the officer in charge, if it is to be included in the collective bargaining agreement, should be a non economic issue....the level of compensation is agreed as an economic proposal." (Calcaterra, Tr 28.)

Village counsel Sakellariou argued that

....the Union's proposal makes some assumptions, and we want to get on the record the issues that the employer has with that. Number one, we currently don't have OICs, or officers -in-charge, in place. There was even an incident where a senior officer on a shift allowed something to happen and there was some question as to whether or not he should have been disciplined and he was not disciplined because he didn't have supervisory authority to go with that.

The objection, beside the cost....if you look at the language and if you listen to the rationale from the Union is, number one, that it's automatically done based on the sergeant's promotion list...the sergeant's promotion list is compiled by the Fire and Police Commission and we know that being number one on the promotion list doesn't mean you will ever be a sergeant because the Fire and Police Commission has the option of asking from the top three.

So the mere fact of your ranking on the sergeant's list doesn't mean that you will ever be promoted or are even suitable to be a sergeant ultimately in the eyes of the Commission. So to make that selection automatic is a very serious error and a very serious erosion of management rights....the next flaw is that if there is no Officer in Charge, then (the union) wants the most senior person in the shift to automatically serve as the officer in charge....

The last flaw...is that whether or not there is to be an officer in charge is ultimately a decision that ought to be made by management...not by the imposition of an arbitrator in granting a break-through in the bargaining (tr 152-154)

Counsel Sakellariou stated that from January through March 11, 2010 there were 39 shifts

that operated without a sergeant, and for all of 2009 there were 125 such shifts. Union counsel Calcaterra reiterated that

“our understanding is that officers in charge exist and they have additional responsibilities... The Union’s proposal is that whenever there is not a sergeant working, that somebody should be designated as an officer in charge to answer questions...to deal with circumstances, to settle jurisdictional disputes, to deal with situations if some employee calls in sick and non scheduled overtime is therefore required, to deal with citizen complaints if they come in (tr 157)

Counsel Calcaterra then suggested\warned that if there is no OIC, “the converse is true here, and that is the Village is going to have to deal with the fact that it is saying now `there are no OICs, no officers have any of these responsibilities....” This writer gives no credit to such claimed implication.

For the reality of the situation I rely upon the hearing testimony of Chief Douglas Hayse, who testified that when there are no sergeants on a shift

...there are times when they call me if it’s something very complicated. I know that they have called the deputy chief and then ...a few days they have called off-duty sergeants.....which I’d rather be called than bother an off duty sergeant...but it’s not that often that they come up with issues that they don’t handle as a patrol officer a on a day to day basis”

Police Chief Hayse estimated that the need for a patrol officer to himself call in an off duty officer due to last minute sickness “in the last three years I don’t think it’s happened three times.” (Tr 163) The chief could not think of any “border disputes” not handled by the involved officers. He saw no need for designated Officers in Charge, with things running smoothly now. In a final exchange

Union counsel Calcaterra: “One of the most important things I think we need to address here is we are under this understanding .....that there are OICs and that they have certain specific responsibilities above and beyond that of the rank and file patrolman..”

Village counsel Sakellariou: “And we’re here to clarify that and the answer is `not true.’ There are no OICs. There are duties that officers have been expected to perform while on patrol. That doesn’t make them OICs if a sergeant is not there.” (Tr 165-166)

There was no Union witness testimony presented on this greatly contested “fact.” In summary, this record fails to establish that there are patrol officers currently acting as “OIC” or performing duties that do not fall within broad patrol officer responsibilities.

Viewing comparables on this subject, the result is mixed. There is no mention of an OIC position in the CBAs of Yorkville, Oswego, Mokena or Morris.<sup>3</sup> Shorewood provides for an OIC “*when assigned by chief or designee*” to receive \$1.25 extra per hour. Wilmington provides for a .30 (thirty cent) per hour bonus when an officer is *directed* to act in that capacity. Channahon provides for \$1.00 per hour to an officer *assigned by the Chief* and where there is no higher ranking officer on duty.

The instant proposal is far more crippling than the provision in any comparable. As drafted, the Chief here would have no say in who would be an OIC, or of whether such would even be needed. The Union proposal makes it automatic that such position comes into existence whenever no sergeant is on duty, and automatic that whatever patrol officer is on duty, is most senior and is on the Sergeant’s promotional list gets to act in such capacity. This iron grip on a vital management function, inserted in only a second ever contract, is without justification in the record, the comparables, or the needs of the community.

**Status quo is adopted.**

#### **4. Section 5.13 Field Training Officer (FTO)**

Employees shall receive a stipend of \$1.00 per hour for each hour worked training a recruit officer.

The employer has rejected this new item and has proposed no language of its own on this subject. This is stipulated economic.

#### **Discussion and Analysis**

The Union explained that “employees who serve as Field Training Officers take on duties that are additional to and different from their normal duties, thus providing an additional service to the Village that warrants extra compensation “ (brief p 31). This writer notes that there are such provisions in Morris (.50 per hour), Oswego (\$30 per day), Shorewood (\$1.00 per hour), Channahon (\$1.00 per hour.) Mokena provides an annual stipend of \$1250. The Yorkville and Wilmington CBAs make no mention of such position. Thus, five of the seven comparables being consulted by this writer do provide extra pay, three as a per hour stipend.

In hearing comments, Union counsel Calcaterra stated

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<sup>3</sup>The Morris contract provides that when a person is assigned in writing by the Chief to act as “shift commander,” their pay will be \$1.00 extra per hour.

What we are seeking is some amount for these officers who are assigned to be a field training officer in light of the fact that they work on a daily basis and evaluate and train recruits. This is to give them some added incentive and compensation for their additional service that they are providing the Village. (Tr 29).

Village Counsel Sakellariou did not deny that such function existed when needed. At the hearing he stated

The field training officer, again, I think is fair to say it's probably not a very expensive proposal because field training officers only happen and are only used when you have a rookie to train, and if you are not in a hiring mode...then that doesn't happen. Typical field training would last anywhere from 12 to 15 weeks and, you know, we could obviously calculate that for you in a brief. But, you know, with the work cycle using 12 hour shifts and 84 hours in a 14 day period, you can calculate that dollar an hour cost. (Tr 150-151)

I have done the calculation. Assuming a rookie staying with his trainer a full shift and identical pay period, and for seven pay periods (x 84 hours) which is fourteen weeks, such stipend would cost the Village roughly \$588 per recruit per field officer for that time. (The Village figure in its brief is "up to an additional \$1260." I do not see how such is reached.) The per hour stipend is well in line with comparables and key to this analysis is the fact that the FTO assignment decision is not being taken from management. There is also better evidence in this instance of history of such work than found for the two other "specialty position" proposals that I have rejected.

In its brief the employer argues that

This is yet another break through proposal by the Union without any evidence justifying it need nor a qui pro quo offered for this additional benefit (brief p 27)

I cannot agree.

**Union proposal as to FTO hourly stipend is adopted.**

#### **5. Section 5.14 Compensatory Time**

The Union seeks to add this new provision with language as follows:

In lieu of overtime pay, an employee may earn compensatory time at a rate equal to one and one-half (1 ½) hours for each overtime hour worked in accordance with the provisions of Section 5.3. Employees may accumulate up to 84 hours of

compensatory time. Compensatory time usage shall not be unreasonably denied, and in accordance with applicable law. Generally compensatory time requests shall be submitted at least forty-eight (48) hours prior to use, however compensatory time usage shall not be denied if submitted with less than forty-eight (48) hours notice if manpower levels permit. Compensatory time may be taken in 1-hour increments.

The employer has rejected this Union proposal and has proposed no language of its own.

### Discussion and Analysis

The nature of this proposal for purposes of arbitral authority was discussed at length at hearing. Union counsel first theorized that “the staffing components are non economic...number hours accumulated would be economic and the components regarding staffing and advance notice to be non economic. “ Village counsel did not think that “you can segregate the two components because under federal law you can’t deny the use of comp time.... because it’s going to require you to bring somebody in on overtime.” Union counsel subsequently stated

We are comfortable with agreeing that it is an economic provision that can be either accepted or rejected. I think it’s the most fair thing to do for an arbitrator is to give her direction on how to deal with this.....I would prefer that it either be accepted or rejected rather than run a risk that we have a dispute later about what the arbitration award means (Tr 39-40)

Village counsel

I guess my concern is that—and that’s why it’s a blend—is if you were to grant it, the language is so bad, so bad operationally, that it becomes unworkable, and in that sense, you know, it’s non economic.

The Village post hearing brief states the position that “since this is an economic proposal, it cannot be revised and must therefore be rejected.” (p 33 brief). The Union, in its brief asserted

...It is the Union’s position that, as the parties originally stipulated, the maximum accumulation of compensatory time is clearly an economic provision and that the staffing aspect—how requests for compensatory time are submitted, how far in advance they are to be submitted, and on what basis they may be denied—is non economic, subject to possible revisions or changes by this arbitrator.(brief p 31-32)

Amidst such uncertainty, it is tempting to this writer to agree that this a split issue,

especially so as to clarify the language. I do not chose that path.

Compensatory time gives the officer the alternative to receiving overtime pay by building a block of time to use with permission. When that officer is using his compensatory time, the Village must staff another officer, presumably often or generally at overtime rate. The Village only pays overtime once, to the staffed substitute officer, although as Counsel Sakellariou points out, when accrued and unused compensatory time is paid out upon permanent separation, it is "at the then current rate of pay."

This writer will treat this as a purely economic proposal to stand or fall on its merits as written, and on the adequacy of the justification given for it. As to the meaning or anticipated implementation of the phrase "employees may accumulate up to 84 hours of compensatory time," Village counsel Sakellariou stated that "84 hours, which means under the comp time rules you can accumulate up to 84, you can then come in and use 10, and then you can go back up to 84. So there is no real hard time maximum accumulation. ...it's not the annual maximum. (Tr 3-36) The Union did not dispute this interpretation, confirming that "this is a maximum at any one time." It notes that the Fair Labor Standards act permits 480 such hours.

A review of the comparable municipalities reveals the following. **Morris** provides that "compensatory time at a time and one half rate may be earned at such times and in such time blocks as are mutually agreed upon between the involved employee and the supervisor." "Employees may accumulate no more than one hundred and twenty hours of compensatory time during a calendar year." If not used in the same year it is earned, "it shall be paid out." **Morris** provides for use in one hour increment "with at least 48 hours notice, except upon written approval of the chief or his designee..." **Shorewood** provides that compensatory time may accumulate to a maximum of forty hours on a use and accumulate basis" to be granted "at employee request at such time and in such blocks as are mutually agreed..."

The **Channahon** and **Wilmington** Contracts do not provide for compensatory time. **Mokena** provides that compensatory time "may accrue to a maximum of eighty hours" and that requests are subject to approval of the Chief...taking into account work needs of the Department." **Oswego** newly provides that "employees may accumulate up to 100 hours of compensatory time on a rolling basis" and that the Village "shall approve" such use "provided there are sufficient personnel to cover the Village's minimum manning requirements at no additional cost..." **Yorkville** provides that employees "may elect" such time "to a maximum of sixty hours" to be taken with approval given "based on Departmental needs." Looking further at proposed comparables not used elsewhere in this decision, one finds that Lockport provides for it ("at the sole discretion of the Chief" and only to be taken in eight hour increments.) Montgomery provides that no more than 40 compensatory hours may be earned for a whole fiscal year, use as mutually agreed. Elwood allows an accumulation to 80 hours, Crete is silent.

New Lenox provides for maximum accrual of 84 hours, its "use shall be subject to the approval of the Chief." In short, compensatory time is nearly universally found in CBAs in this region.

This employer opposes the Union proposal; its arguments summarized, paraphrased or quoted from its brief follow :

1."Denial of compensatory time has recently been made more difficult for municipalities" with recent case law stating that its use can be denied only if allowing it "would unduly disrupt agency operations."<sup>4</sup> And the reasons that an employer may assert as "unduly disruptive" are limited.

2. Overtime taken as compensatory time may not be denied on the basis that it will cause overtime to be paid to others covering that shift, and "overtime begets overtime."

3. The comparable communities allowing compensatory time "also require the approval of the Employer to permit accrual of compensatory time...based on the external comparables...the Union's proposal as a whole is not reasonable in that it does not require the Employer's mutual agreement for the accrual.....and as an economic proposal must therefore be rejected."

4. The overtime hours used in 2009 (2035 hours) and 2008 (2183 hours) makes the present time "the worst leave time to force the Employer to provide..if all those hours convert to compensatory time then you can add another time and one half on top of that as more accrual to fill in for these hours. "

5. The Union "proposal contains a major flaw in that it does not permit the Employer to participate in the decision of permitting employees to accrue compensatory time for overtime work. Since this is an economic proposal, it cannot be revised and must therefore be rejected." ( pp 30-32)

The Union argues that its proposed maximum accumulation of 84 hours is well within the maximums and the median granted in comparable communities, and that

...data gleaned from its proposed comparable communities as well as those proposed by the Village illustrates a compelling need for the inclusion of

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<sup>4</sup>The Village then argues that the Union's proposed standard for having to grant a request of "operational needs will not be adversely affected."... is contrary to the requirements of the Federal Regulations." But this writer views the Union proposal as easier for the employer to meet than the "unduly disrupt" cited CFR wording.

compensatory time provision in the successor collective bargaining agreement and supports the reasonableness of the Union's proposal on this subject.( Brief p 33)

This writer agrees that the option of an officer to take some compensatory time has become the norm in collective bargaining agreements in this part of Illinois and that for total accumulation, 84 hours is within the range. It is unfortunate that the Union's proposed wording includes "unreasonably" as in

Compensatory time usage shall not be *unreasonably* denied, and in accordance with applicable law. Generally compensatory time requests shall be submitted at least forty-eight (48) hours prior to use, *however compensatory time usage shall not be denied* if submitted with less than forty-eight (48) hours notice *if manpower levels permit*.

However, in my view, this "hire an arbitrator language" need not\should not be interpreted to supercede that operational discretion of the chief clearly set forth in most of the comparables' contracts. Does the Union by the second sentence intend to negate the first sentence? Does it become "unreasonable denial" to deny a less than 48 hours advance request for any reason other than manpower levels? The Union has drafted this language, the implication of its poor drafting to be decided by the next arbitrator. The proposal on the whole is sufficiently coherent, and in line with general and developing trend. The hours already paid of course will not be available. The Village has not conceded that this is a split issue. Therefore,

### **Union proposal is adopted**

#### **6. Section 5.15 Overtime Assignments**

The Union has proposed new language providing for the assignment of non-scheduled overtime on a rotational basis in order of seniority. The Union's proposal is as follows:

Non-scheduled overtime shall be in order of seniority on a rotational basis. If no officer chooses to work the overtime, it shall then be assigned in order of inverse seniority, provided that no officer shall be ordered to work more than sixteen (16) consecutive work hours. Scheduled overtime shall be offered to members in a fair and equitable method as needs dictate and agreed to between the Union and the Employer. There shall be no bumping for scheduled overtime assignments.

#### Discussion and Analysis

Union witness Sergeant Christopher Chiaventone, started with Minooka as a

patrol officer in 1996 and became a sergeant in May 2005. He explained that a call out list for police officers is maintained and if staffing falls below two officers needed to work an upcoming shift, and there is a sudden vacancy, he would go to the overtime list and would pick the officer having the least credited (worked or rejected) overtime to call in. He believes this system was initiated by Chief Hayse. He knew of no limit placed by the Department on the number of hours that an officer could work consecutively. Some patrol officers have been held over for a half of a next shift while efforts are made to bring some one in. With the current twelve hour shifts, this means that officers can be compelled to work 18 consecutive hours.

This witness explained that for scheduled overtime (primarily for school and sports events), a "school resource officer" maintains a sign up sheet. The same method is not used to fill scheduled overtime as is used for non scheduled overtime. A careful review of Sergeant Chiaventone's uncertain testimony does not establish that scheduled overtime is currently awarded by seniority or that the compelled selection by amount of overtime credited method has been inequitable.

Chief Hayse testified that when he arrived at Minooka he found that

....the distribution of overtime was not equal. More senior sergeants were getting the majority of the overtime and younger officers, even younger sergeants weren't getting an equal amount of overtime.

The second thing that was happening was that officers were getting forced to work on a regular basis saying it was up to that sergeant making the call out whom he forced, or was the least senior officer getting forced which was forcing the least senior officer to always be forced. (Tr 174-177)

The Chief created annual lists starting out in seniority order, at zero level each January. Overtime offers to an officer whether or not accepted are added up. The chief also sent out instructions to call in officers for overtime who were *not* connected to (scheduled to work) an adjacent shift; "the instructions are to call people who would be able to take all twelve hours." Only after failing to obtain a voluntary agreement or failing to contact officers not on duty to come and work the full twelve hour shift would he "come back and we start offering the eighteen hours based on the officers who are working or coming on," asking them to work half the adjacent shift, for a total of eighteen hours. The chief added that if sixteen consecutive hours was the maximum that could be forced—as per this union proposal--- it would take two or three officers to fill one shift.

Per the chief, as with the Sergeant, scheduled events such as high school graduation, games, etc are posted on the board and officers fill it in. "Traffic grant" hours are posted and officers sign up for them. Those two types of scheduled overtime do not

use the officer with the least hours but the hours of scheduled overtime thus obtained are added to their department total. Neither the chief nor the Sergeant were asked whether among those seeking scheduled over time, the more senior officers got preference. As for *scheduled* overtime, the union proposal calls for it to be agreed between these parties and implies that the current fair method was with its agreement. I note no "mutual agreement" provision is any comparable contract.

Village counsel Sakellariou contended that:

The employer's position is status quo, and that

...the (proposed) overtime assignment language limits the consecutive hours that an officer can work....and in a 12-hour shift that's certainly an unreasonable proposal.... when you can't fill a spot voluntarily, it mandates that the least senior person always be called out to fill that and places a great burden on the least senior person as always being the called out person and it's cumbersome.....

..... It is not uncommon in a department to, when you have the next shift being absent, to split that shift, that means you are going to be working eighteen hours straight, and I don't know of a department that mandates a limitation on hours worked. Does that mean except in an emergency? I don't know what this means...

...I read it at face value, and I don't think that the Village wants to have an arbitration hearing, a grievance arbitration hearing later because some officer worked eighteen hours you know, between taking his regular shift and a half the next shift, or six hours in the preceding shift and then his regular shift...I think it's totally unreasonable. It's a break through proposal and there is no basis for it. There is really no testimony as to why it's been necessary or what the problems have been (tr 171-172)

Union counsel Calcaterra stressed that the Union's proposal was only that "no officer shall be ordered to work more than sixteen hours. It doesn't have anything to do with whether an officer can voluntarily agree to work more. It's strictly on the order." (tr 172)

The contracts of comparable municipalities vary. In the Channahon patrol contract the Chief can require overtime. For scheduled overtime there is a volunteer sign up sheet. The most senior employee who volunteered will work, but there remains management discretion. In Morris overtime may be required. There are no other procedures mandatory on the Chief, but s/he is to seek to equalized overtime on an annualized basis. In Shorewood there is no limit on consecutive hours, and no requirement of use of seniority; the employer is to equalize available overtime opportunities. In Wilmington scheduled overtime is offered on a rotating seniority basis Unplanned overtime is to be distributed

fairly and equitably. Chief can required overtime. Mokena provides for planned overtime to be offered on a rotating seniority basis and unplanned overtime to be distributed "fairly and equitably." Oswego provides that scheduled overtime is to be offered in a fair and equitable method and non scheduled overtime can be forced in inverse order of seniority. It sets a sixteen consecutive hour work limit.

In its brief, the Union contends that while the predecessor contract did not contain an overtime assignment provision, the Village implemented a procedure "to which the Union assented," and which it now intends to codify and incorporate into the new agreement as to non scheduled overtime It contends that for scheduled overtime the method as currently carried out "is fair and effective for both parties" and that

..the Union simply intends to allow the Village room to continue the current practice while ensuring that any future changes in the practice are made with the mutual agreement of the parties.....brief p 35

Read in its entirety, the Union's proposal would remove the managerial discretion of the chief to modify scheduled overtime distribution methods and the managerial freedom-- when it had no other solution--- to require departing or arriving shift officers to work an additional half shift. It would limit compelled overtime, and it would virtually set in stone a "rotational by seniority" offer of unscheduled overtime. That is found in only one comparable.

Eighteen consecutive hours served by a patrol shift officer certainly is onerous, and frankly off- putting to this writer when she considers the alertness (lack thereof) of such an officer in the final hours. But for proof purposes, this record fails to show that the current method of adding half a shift to an adjacent shift working officer in order to cover a sudden vacancy--- which the Chief carried out only as a last ditch solution---was used with any frequency. And the great staffing problems posed by the Union-proposed sixteen consecutive hour limit has no basis in any identified problems. The Union has not established that the current system, in place for the three years that Chief Hayse was in charge, has not worked. If a serious problem existed such as safety, certainly some limiting language would be needed, but not the proposal here. This proposal would remove core management rights to schedule and cover shifts to meet operational and personnel priorities.

**Status Quo is adopted**

## **7. Vacation Article VI**

Proposed by Union:

Each full-time police officer shall receive annual paid vacation leave in accordance with the following schedule:

Years of Service	Vacation <u>8hr &amp; Mod 12hr</u>	Vacation <u>12hr</u>
After 1 year	40 hours	42 hours
After 2 years	80 hours	84 hours
After <del>8</del> <u>6</u> years	120 hours	126 hours
After <del>15</del> <u>12</u> years	160 hours	168 hours
After 20 years	200 hours	210 hours

All vacations shall be scheduled with the approval and consent of the Police Chief.

**Vacation time is to be accrued and used on an employee anniversary year basis.**

Vacations must be used **during** each calendar **employee's anniversary** year, unless the employee is required by the employer not to use said vacation time. Except as provided herein, all earned vacation not used by the employee by the end of the Calendar **their anniversary** year shall be forfeited unless the vacation time is not used because of the employer's requirements.

### **Discussion and Analysis**

The narrative changes shown above, apart from the chart, have been agreed by the parties. The dispute pertains to this Union effort to improve\increase\speed up vacation allotment, to shorten by two and three years the service period when the patrol officer can move to 120 hours or 160 hours annual vacation. I first note that the present scale was negotiated just four years ago, for the very first contract and in a far more solid economic environment. I further note that the hours of vacation, and service length for increased vacation, are currently identical for all Village employees, including the only other bargaining unit.

On the other hand, the Union argues that "Minooka falls well below the mean, median and mode for vacation accrual at both the five and ten year anniversary." While the Union reaches this conclusion using three comparables that I am not using, nonetheless, the vacation patterns in the seven comparable communities -adding Channahon--show that Minooka employees generally serve a longer time to get to certain vacation levels. In Minooka it takes eight years to get to 120 hours compared to five years to get there in six of seven comparables. It takes 15 years service for Minooka police to get to 160 hours vacation compared to ten years to get there with six comparables. Only Shorewood tracks Minooka almost exactly. A vacation benefit is one financial benefit

within a full benefits picture for all comparables.

In its brief, the Village stresses that

Interest arbitration is not intended to replace negotiations. It is inherently a conservative process which is not intended to give the parties something that they could not achieve through negotiation.....under current economic conditions the historical greater reliance on external comparables must give way to a more balanced approach which relies more on internal comparability. Such is the case here. Additionally, the Employer's wage proposal (as well as the Union's) provides sufficient increase in the value of the contract without the increase in other benefits. (p. 40 brief)

This writer responds that the Union indeed does seek here a major rewrite of a vacation benefits schedule strictly on the basis of numbers elsewhere, which to truly compare would require, for those comparables, close analysis of length of bargaining relationship, current wage pattern, health coverage contributions, and other benefits. The improved vacation benefit would go against the entire pattern for all other Village employees, and is sought only four years after the Union negotiated the existing benefit. I have searched for a showing of other benefits inequities or of any quid pro quo from the Union. Neither is in this record. .<sup>5</sup>

It is true that this is a low seniority or young force (see below) with fully twelve officers having well less than ten years of service. This proposal may be a back door way to add to wages. But with earlier wider availability of more vacation, overtime pay to scheduled replacement officers is part of the equation. In my further view, vacation hourly totals and schedules in such a new contract are a matter of exchange and negotiation.

### **Status Quo is adopted**

#### **8. Holidays, Section 7.1**

The Union proposes to add a tenth paid holiday to the current nine paid holidays with the language to read:

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<sup>5</sup> See i.e., statutory factor: "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."

### **Section 7.1 Holidays**

The following are paid holidays:

New Year's Day

### **President's Day**

Memorial Day

Independence Day

Veteran's Day

Labor Day

Thanksgiving Day

Day after Thanksgiving

Christmas Eve

Christmas Day

### **Discussion and Analysis.**

The employer seeks status quo and notes that all Village employees have the same nine paid holidays which do not include Presidents' Day, and that to grant any tenth day would put police officers in a superior position to all other village employees. A study of comparables does reveal that Minooka is at the bottom. There are eleven paid holidays in Channahon and Morris, ten paid holidays in Mokena, Shorewood, Wilmington and Oswego (10.5) and 12 paid holidays in Yorkville. The Union picked Presidents' Day as "the most prudent" among options. The Union characterizes its offer as "reasonable," being still under the "market average of 10.7" The Union adds that it "does not seek to 'make up the gap' all at once, but simply to pull closer to the market average for comparable communities." (Brief p 38)

The Village contends that in addition to the fact of its internal comparable, there would be significant cost from having to pay *both* holiday pay plus time and one half for the hours that officers worked. Over the three years of the contract, the estimated cost would be \$21,371 which is "an additional increase of two percent of the value of the bargaining unit wages over the life of the contract. The Village again argues that "interest arbitration is not intended to replace negotiations, or to give the parties something that they could not achieve through negotiation." And citing to Arbitrators Benn and Fletcher, the village argues that "under current economic conditions the historical greater reliance on external comparables must give way to a more balanced approach which relies more on internal comparable. Such is the case here." It contends that the pending wage proposals must be viewed as "a sufficient increase in the value of the contract without the increase in other benefits." (Brief p 42)

This writer takes into account the wage package increase being obtained in this proceeding. I take further into account that all other employees of the village, including the other Union, have nine paid holidays. I note that the effect on "real wages" is greater than the fact of the paid holiday itself, since unlike most other employees, the patrol positions still must be staffed and paid for during the paid holiday. I note that on the current schedule, officers work either a three day or four day week and can also exchange shifts. The tenth paid holiday proposal is more appropriately handled in the next contract negotiation in a context of full exploration of all financials.

### **Status Quo is adopted**

## **9. Section 8.2 Sick Leave**

### **Employer's Proposal – Sick Leave**

Sick leave may only be used for illness **or injury** of the employee or an illness **or injury** of the employee's spouse or minor children residing in the employee's house. If the duration of the illness lasts longer than one day, the employee must notify the Chief of Police and/or his designee daily. An employee may be required, after three (3) consecutive shift absences, to furnish a certificate from a licensed physician to support their sick leave claim; such certification must be approved by the Chief for continuance of sick leave benefits. An employee who has three events of sick leave usage in a six month period may be required to furnish a certificate from a physician to support the sick leave claim for any further sick leave usage for the six month period following the third event. The employee may be required to be examined by a physician designated by the Village at the expense of the Village.

### **Union's Proposal – Sick Leave**

Sick leave may only be used for illness, **injury or required medical appointment** of the employee or an illness, **injury or required medical appointment** of the employee's spouse or minor children ~~residing in the employee's house~~. If the duration of the illness lasts longer than one day, the employee must notify the Chief of Police and/or his designee daily. An employee may be required, after three (3) consecutive shift absences, to furnish a certificate from a licensed physician to support their sick leave claim; such certification must be approved by the Chief for continuance of sick leave benefits. An employee who has three events of sick leave usage in a six month period may be required to furnish a certificate from a physician to support the sick leave claim for any further sick leave usage for the six month period following the third event. The

employee may be required to be examined by a physician designated by the Village at the expense of the Village

### **Discussion and Analysis**

The parties have agreed to add the concept of **injury** of employee or employee spouse or minor child. The Union also seeks further expanded use of sick leave for **medical appointments** of employee, employee spouse and minor children whether or not the children are residing in the employee's house as well as for illness or injury of non resident minor children. The union referred to one instance where an officer was denied use of his sick leave to attend a medical appointment where his daughter was to get a cast put on her arm. The union asserts that until then it had not known sick leave could not be so used.

The Village points out that before the first contract was negotiated, its employees did not have use of sick leave for even the illness of spouse or children, only for the employee. "Consequently, adding this benefit for the bargaining unit was a significant increase in the sick leave benefit and is only one three year contract old." The Village contends that the concept of medical appointment is "overly broad." It notes that its other union, and a "majority of the comparables require sick leave to be used only for family members who reside with the employee" and that "a majority also do not allow sick leave to be used for medical appointments not related to illness or injury."

Comparables show that the requirement that family members reside in the house is almost universal (Oswego, Channahon, Shorewood, Mokena.) There are very few references to use of sick leave for medical appointments per se. Wilmington references "medical consultations." Oswego allows 24 hours of sick leave to be used for 'personal reasons' subject to department staffing and needs. In Morris, sick leave to care for a family member requires chief's approval

The parties have stipulated that this writer shall decide whether this issue is economic or non economic.(tr 9). In my view, the question of how sick leave may be used does not affect the bargained amount of such leave paid or what can be paid out if unused.. It is a non economic issue. Treating it as an non economic issue, allowing for medical appointments to be better defined, and reinstating the residency requirement, Section 8.2 shall read as follows

Sick leave may only be used for illness or injury, or medical appointment related to such illness or injury of the employee, or an illness or injury or medical appointment related to such illness or injury of the employee's spouse or minor children residing in the employee's house. If the duration of the illness lasts longer than one day, the employee must notify the Chief of Police and/or his designee daily. An employee may be required, after three (3) consecutive shift absences, to furnish a certificate from a licensed physician to support their sick

leave claim; such certification must be approved by the Chief for continuance of sick leave benefits. An employee who has three events of sick leave usage in a six month period may be required to furnish a certificate from a physician to support the sick leave claim for any further sick leave usage for the six month period following the third event. The employee may be required to be examined by a physician designated by the Village at the expense of the Village.

**Adopted as amended**

#### 10 .Section 8.3 Sick Leave Accrual and Usage

##### **Union's Proposal – Sick Leave Accrual**

In order to use accrued sick leave and receive compensation while absent the employee shall comply with the provision of Section 8.1 and 8.2. The deduction for sick leave used shall be in increments of four (4) hours.

Employees shall accrue sick leave at the rate of 8 hours per month for eight and modified twelve hour shifts and 8.4 hours per month for twelve hour shifts. An employee shall receive credit for a month worked if that employee has worked at least one-half of the workdays in a calendar month, or has been absent on a paid leave at least one-half of the workdays in a calendar month, or any equivalent combination of work and paid leave.

An employee may accumulate sick leave to a maximum of ~~320~~ 480 hours.

**50% one half (1/2) of his unused sick leave at his then current salary. The value of the employee's sick day payout deposited into an account to pay for health insurance on a pre-tax status, per IRS regulations, to be established by the Employer**

The Employer proposes the status quo for this economic provision.

##### Discussion and Analysis

The current (expired) contract does not provide for retirement pay out at all. The Union proposal provides for payment of unused sick leave (into a health insurance account) after minimum 20 years of service, (no minimum age set), but it also adds half again as much to the present amount of sick leave that can be accumulated (480 hours instead of current 320 hours). And when paid out, it will be at the employee's final higher hourly rate. The employer argues that

Nobody in the Village of Minooka is offered this benefit...additionally the benefit

appears as a contingent liability on the village's annual audit, which impacts bond ratings....assuming 2012 salaries for these employees and maximum accrual of the ...480 hours, a 50% buy back would create a liability of \$137,146.81 for the Village, which is approximately 13% of the bargaining units wage cost. The liability will increase every year (brief p 48-49)

The Village contends that this is not merely a Union attempt to increase hours of paid sick leave, but also an attempt

...to create a new retirement benefit. This is an economic proposal...without any offer of anything in exchange to the Employer. It is a massive change to a sick leave agreement which is only three years old. Because this is an economic proposal, it must either be rejected or accepted in its entirety.(Brief p 49)

The Union asserts that as employees are staying with the department a longer time they find their sick leave accumulation nearing the current maximum of 320 hours. However, no statistics showing accrued leave of the officers were provided.<sup>6</sup> The Union relies upon external comparables in support of its "...offer (sic) to increase the accrual maximum." Of those seven comparables that this writer is primarily using, one finds as follows

Mokena: 840 hours, pay out per policy at the time (=no specifics)

Morris 1080 hours, payout up to 50% of 540 hours (1 year notice,50 yrs old)

Oswego 1040 hours: useable for health insurance premiums

Shorewood 960 hours, no buy back<sup>7</sup>

Wilmington 960 days, buyback only of 60-90 days, at 50%

Channahon: accumulate 1440 hours; no buy back

Yorkville Yearly buy back at 50%; total accrued age 50, 20 yrs 50%

There is a split among comparables, but the Union is correct that its requested new maximum accumulation is in line with many of the comparables. But its further proposal of the new benefit of a buy out of 50% of the new high total of 480 for use in post retirement cost of insurance use has little evidentiary back up other than the theory of "median and mode values." To grant the full Union proposal as written (my only option) would create an entirely new payment, with the financial cost and bonding implications set

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<sup>6</sup> Using employer exhibit 6, I note that of the total sergeants (4) and patrol officers (15), five have hire dates of 1989,1994, 1995 (2) 1996. One was hired in 2000, the rest have been hired since 2003. The Union has not set out the data to support its "near the top" of 320 accruable hours claim for what is largely a low service length force.

<sup>7</sup> For Shorewood, my reading of the contract confirms no buy back, as the Village writes. The Union chart of accrued sick time (brief p 40) reads for Shorewood "sell back up to five days per year 25% buyout at retirement."

out by the Village as relevant factors. I cannot modify, only select. This is more appropriate for quid pro quo bargaining.

### **Status quo is adopted**

## **11. 11 Personal Time, Section 8.8**

### **Union Proposal**

Each employee shall receive twenty-four (24) hours of personal time each fiscal year which may be used upon mutual agreement between the Chief or his designee and the employee. The use of personal time shall **generally be submitted** require at least 72 hours notice to the chief prior to the anticipated use **and shall not be denied if staffing levels permit**. Use of personal time may be denied due to manpower needs of the employer. At the end of each fiscal year unused personal time shall be forfeited unless the personal time is not used because of the employer's requirements.

The employer proposes the status quo.

### **Discussion and Analysis**

The Union asserts that its proposal "removes the absolute requirement that requests for use of personal time must invariably be submitted to the Chief 72 hours or more before anticipated use and makes the Chief's ability to deny requests contingent upon the sufficiency of staff levels thus reducing the possibility of arbitrary denial." The sole factual problem given by the Union was a single episode where an officer had made a verbal request to a sergeant (not to the Chief) six days ahead, the sergeant may (not?) have transmitted it to the Chief. The village manager denied the leave but the Chief later granted it.(Union ex 13, affidavit)

The Union characterizes this as an "unreasonable denial of personal time...based on a strict technical interpretation of the notice requirement." But the Union had, of course, just negotiated that "technical notice requirement." Advance notice (to the right person) serves obvious police force management goals of the 24 hour staffing and preparing for absences. To this writer, it is a big leap from one episode of poor handling all around, to setting a limit of only one reason that the department can now deny leave requests. There is clear language in the existing clause. To add "*generally* be submitted" is doomed to raise more problems than resolve them. When is "generally 72 hours" not the rule?

The Village points out that Local 150's contract states that "except in cases of emergency, employees shall provide a minimum of 72 hours notice" and that that bargaining unit does

not face the 24 hours operation and minimum staffing unique to a police unit operation. The Village contends that the Union's

proposal is so vague as to essentially eliminate any notice requirement for the use of personal leave and provide fodder for grievance arbitrations. If it is only "generally" to be submitted 72 hours in advance, that has taken away any employer discretion to deny it when it isn't 72 hours in advance.....None of the comparables provide for a lack of notice coupled with no discretion of the Chief. Even where there is no notice requirement provided for the utilization of a personal day, the discretion is always with the Chief in granting it....there is no compelling argument for changing this provision.(brief 51)

In my review of seven comparables, two make no mention of personal leave. Five follow the persistent theme of discretion of the Chief to approve leave. The other Union in Minooka has an "emergency exception" which is an event rather concrete to prove. This would remove "preferential dealing" arguments while leaving the concrete and reasonable requirement in place. No other proposed modifications are advisable.

**Status quo is adopted with this added sentence: "except in the case of emergency the use of personal time shall require at least 72 hours notice to the chief prior to the anticipated use...."**

## **12 Section 11.1 Discipline**

The Union Proposal reads:

~~The Village and the Union recognize that suspensions and terminations are within the sole jurisdiction of the Fire and Police Board and are not subject to the terms of this Agreement.~~ **Prior to imposing discipline, the Chief of Police or the Chief's designee will set a meeting with the employee to advise the employee of the proposed discipline and the factual basis therefore, in writing. At the employee's request, the employee shall be entitled to Union representation at that meeting. After the conclusion of said meeting, the Chief or the Chief's designee will issue a Decision to Discipline, in writing, as to the proposed discipline ("Decision to Discipline"), to the affected employee and the Union. At the employee's option, disciplinary action against the employee may be contested either through the arbitration procedure of this Agreement or through the Board of Fire and Police Commissioners ("BOFPC"), but not both. In order to exercise the arbitration option, an officer must execute an Election, Waiver and Release form ("Election Form" attached as Appendix ). This Election Form and disciplinary process is not a waiver of any statutory or common law right or remedy other than as provided herein. The Election Form shall be given to the officer by the employer, at the time the officer is formally notified of the**

## **Decision to Discipline.**

**The employee shall have three (3) calendar days to submit a copy of the Election Form and Decision to the Union for approval to arbitrate the discipline. The Union shall have an additional seven (7) calendar days to approve or deny the request for arbitration. If the Union authorizes an arbitration concerning the discipline, it shall notify the Chief or the Chief's designee in writing of the intent to arbitrate within ten (10) calendar days of the issuance of the Decision to Discipline. If approved by the Union for arbitration, the Election Form shall constitute a grievance which shall be deemed filed at the arbitration step of the grievance procedure. When a grievance is elected, the arbitrator will determine whether the discipline was imposed with just cause, and whether the discipline was excessive. If the arbitration is not approved by the Union within ten (10) calendar days of the Decision to Discipline, or is not elected by the employee, the employee retains his rights to appeal discipline before the Village of Minooka Fire & Police Commission in accordance with the Illinois Municipal Code, Division 2.1, Board of Fire and Police Commissioners, 65 ILCS 5/10-2.1 *et seq.*, as amended.**

Employer Proposal: Section 11.1

11.1 Oral and written reprimands shall be subject to the Grievance Procedure Article of this agreement ~~but shall not be subject to arbitration~~

11.1.2 Contesting Discipline-Suspensions and Termination

### (1) In General

Prior to imposing discipline, *involving a suspension or termination*, the Chief of Police or the Chief's designee will set a meeting with the employee to advise the employee, in writing, of the proposed discipline and the factual basis therefore. At the employee's request, the employee shall be entitled to Union representation at that meeting. After the conclusion of said meeting, the Chief or the Chief's designee will issue a Decision to Discipline, in writing, as to the proposed discipline ("Decision to Discipline") to the affected employee and the union. At the employee's option, disciplinary action against the employee may be contested either through the arbitration procedure of this Agreement or through the Board of Fire and Police Commissioners (BOFPC) but not both. In order to exercise this option, an officer must execute an Election Waiver and Release form ("Election form") attached as appendix \_\_\_\_\_. The Election Form shall be given to the officer by the employer, at the time the officer is formally notified of the Decision to Discipline. The employee shall have five (5) calendar days upon receipt of Election Form to tender the executed Election Form to the Chief or the Chief's designee

(2) Suspensions of Five Days or Less

If the discipline is a suspension for five (5) days or less, the Chief may impose the suspension immediately upon the issuance of the Decision to Discipline. If the employee elects to contest the suspension through the grievance/arbitration procedure, the Election Form shall constitute a grievance, which shall be deemed filed at the arbitration step of the grievance procedure

(3) Termination or Suspension of More Than Five (5) Days

For discipline involving suspensions in excess of five (5) days or termination, if the Employee elects arbitration, the Chief of Police has the right and discretion to impose discipline immediately upon the receipt of the Election Waiver and Release Form. In such cases, the Election Form shall constitute a grievance, which shall be deemed filed at the arbitration step. During this process, the employer shall have the burden of proving that the discipline was issued for just cause.

(4) Termination or Suspension of More Than Five (5) Days; Board of Fire and Police Commissioners

For discipline involving suspensions in excess of five (5) days or termination, if the employee elects to have the case heard by the BOFPC, the Chief must file the appropriate charges before the BOFPC

(5) Failure to Return the Election Form in Cases of Termination or Suspensions of More Than Five (5) days

If an officer fails to timely return the Election Form in the case of termination or suspension of more than five (5) days, such failure shall be deemed a waiver of the right to contest discipline via arbitration and require the Chief to file charges before the BOFPC.

Discussion and Analysis

Both parties propose significant changes creating an alternate system of discipline (The previous brief single sentence merely stated that suspensions and terminations were not subject to the CBA.) The Illinois Board of Fire and Police Commissioners Act (65 ILCS 5/10 -2.1) now allows non home rule municipalities to bargain an arbitration alternative into their CBAs. These parties have both proposed to allow the employee to chose from two options for appeal of discipline.

Under the BOFPC system a Chief of Police cannot suspend an employee for more than five days or terminate him/her until charges are filed with the Board of Commissioners. Under a grievance arbitration system, the Chief/designee will levy

discipline subject to later arbitral review. Again, both parties have created proposals which give the employee a choice of forum. Their first paragraphs read almost identically except that the Village provides for a meeting with the Chief/designee before imposing suspension and termination. The Union proposal merely refers to "discipline."

Village language specifies that suspensions of five days or less may be imposed immediately and makes it clear that for greater than five days suspension or for termination, if the employee elects arbitration, discipline may be imposed immediately upon receipt (by management) of the Election\Waiver\Release form. Where an employee elects to have the BOFPC hear his appeal, discipline cannot be imposed until after Board action.

In its proposal, the Union has created a fairly long "consideration period" for itself after its member has selected arbitration,

**The employee shall have three (3) calendar days to submit a copy of the Election Form and Decision to the Union for approval to arbitrate the discipline. The Union shall have an additional seven (7) calendar days to approve or deny the request for arbitration. If the Union authorizes an arbitration concerning the discipline, it shall notify the Chief or the Chief's designee in writing of the intent to arbitrate within ten (10) calendar days of the issuance of the Decision to Discipline**

The Union offers this reasoning:

The Union....proposes a total of ten (10) calendar days for an employee to complete and submit the Election Form—three calendar days (for the employee ) to submit the form to the Union and seven (7) calendar days for the Union to approve or deny the request for arbitration .....

„,the Village proposal of 5 calendar days...effectively amounts to 3 calendar days or fewer for the employee to submit his election form to the Union and for the Union to make an executive decision concerning whether or not to proceed with the grievance arbitration.....the Village's offer presents...a potentially unduly condensed time frame..and is ripe for possible abuse by the Village...

The employee choice provisions are new and the only comparable having the choice system is Shorewood. The Union draws attention to other comparables with generally longer deadlines given employees (seven, ten or even thirty calendar days) to notify their employer of an intent to appeal. The Village has submitted four "special" comparables only for the purpose of showing me that language similar or identical to its proposal exists with other MAP units: New Lenox, Lemont, Romeoville. I have confirmed that.

In my view, the language proposed by the Village is much clearer as to when discipline can be imposed immediately and when not. The Union- proposed separate evaluation period can be more simply handled within the village proposal by a more generous deadline to be given the employee.<sup>8</sup> The Union system with its two different deadlines, brings to mind substantial problems. If the Union—which receives simultaneously with the employee the notice of decision to discipline-- does not reach or report its own decision by its own 7th day, does the employee who herself timely selected to arbitrate still have the right to proceed?

The Union's language does not set out when discipline can or cannot be immediately imposed. I understand that for suspensions of more than five days or terminations, the Chief has to wait to file charges under the BOFPC forum while the employee decides which forum to use. For egregious misconduct charges may have to be drawn more quickly "in case" of a BOFPC choice. In my further view, whichever wording is used, "cause" or "just cause" are one and the same to all arbitrators .

This is a non economic issue. I adopt the employer's language (including appendix) as modified to give the employee (the Union having its copy to evaluate) the total ten days to report his/her decision:

The employee shall have ~~five (5)~~ ten (10) calendar days upon receipt of Election Form to tender the executed Election Form to the Chief or the Chief's designee"

### 13. Provision of Insurance Section 13.1

Union Proposal:

For the duration of this Agreement, the Village shall provide group health insurance coverage at substantially the same level of benefits in effect on the execution of this Agreement. ~~The parties acknowledge and agree that with respect to certain insurance plans, the Village is limited in its selection of plans by the availability of specific provider plans and therefore the benefit levels may not be identical to the current plan. In the event that the Village changes benefits as a result of a change in the availability of benefits to the Village, the Village, without further negotiations with the Union, may obtain alternative coverage which approximates the current coverage. The Village agrees that the said insurance coverage provided to bargaining unit members shall be no less than the~~

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<sup>8</sup> The Union also inserted a clause toward the end of the first paragraph which reads **"This Election Form and disciplinary process is not a waiver of any statutory or common law right or remedy other than as provided herein."** Such waiver decisions should be made case by case, not pro forma.

*coverage plans provided for the general non-represented employees of the Village.*

*The employee premium contribution for the above coverage shall be as follows:*

***Employee single coverage: No contributions***

***Any coverage in excess of employee single coverage: 50% of the difference between single coverage and the excess coverage selected.***

Three chapter members shall be appointed by the Union to participate in a Health Insurance Review Committee, and shall together with the Village's representatives, meet and confer annually to review insurance proposals to ensure that any proposed changes to the existing coverage to conform to the current insurance benefits. No changes or diminishment in the existing benefits shall be implemented without bargaining between the parties.

If the Village ultimately determines that changes to existing coverage or employee contributions are necessary, or if the Village determines that an aspect of existing coverage should no longer be offered, the Village shall notify the Union in writing of the contemplated changes. If the Union believes that the proposed changes are substantial, it shall have the right to demand bargaining over the impact of such changes by making a written demand within fourteen (14) calendar days.

If the parties do not agree within thirty (30) calendar days of the commencement of bargaining over the proposed insurance changes, the parties shall agree to refer their insurance bargaining impasses to binding arbitration. Such arbitration shall determine whether the changes to be made are substantial, and if so, what relief, if any, should be given to employees who will suffer a loss as a result of such changes.

The Union proposal strikes virtually all of the current CBA language and would require mid term bargaining. The Village proposes status quo language (all of the language above in italics), but also specifically incorporates into and attaches as part of its proposal its newer insurance plan ("Blue Edge HSA") that went into effect for the rest of its employees as of April 2010. (Village Supplemental Ex S 1).

#### Discussion and Analysis

Some history is needed. On January 19, 2010, well after direct new contract negotiations had concluded, Village administration was informed by its insurance broker that its existing PPO Plan with BlueCross BlueShield would have a premium increase of 33.5 percent, and that even with the new premium there would be two mandatory changes: a separate co-pay of \$40 for *specialist* physician visits and an Emergency room co-pay of \$150 instead of the previous \$75. The Village's broker brought in seven more preliminary provider quotes, and the two lower ones changed once information was given to the bidders

about village employee "medical census" (i.e. conditions or claim history). No final quote was less than the BlueCross\BlueShield 33.5% plan increase (nka "Renewal Plan").

The higher cost replacement "PPO Renewal" Plan has been put\kept in effect (for the MAP Union only) despite its 33.5% premium increase; The Village will continue to cover MAP with this former plan for all 2010 but its proposal here would bring the MAP unit under the HSA plan in January 2011. The Union apparently wants the "PPO Renewal" plan kept as an option even though all but one of its members moved to single coverage to avoid the new far higher premiums for spouse or other family coverage under that plan.. Since April 1, 2010 all other Village employees, including Local 150, have moved to a new BC\BS Health Savings Account (HSA) plan . "It is the employer's proposal that the only plan that becomes available (to the MAP union) is the plan attached to the final proposal offer, the Blue Edge HSA 100/80 \$2500 deductible \$5000 out of pocket... This (HSA) plan becomes essentially the base plan that the (contract) language would operate off of." (Sakellariou tr 217,219)

Employees in the HSA plan pay the same formula as in the PPOs, no premium for single coverage, and the premium for those taking excess coverage (spouse, or spouse \child, child, family), is again 50% of the difference between the single premium and the premium for whatever excess coverage the employee selected. All HSA premiums are less per month than under the now unavailable "PPO Current" or the present MAP-only "PPO Renewal" plan. See i.e., Village chart analysis exhibit S-7 incorporated by reference. For example, under the discontinued " PPO Current" plan, employee and spouse coverage was \$1082 per month. Under the "PPO Renewal" it went to \$1,435. The Health Savings Account ( HSA) employee and spouse premium is only \$976. Discontinued PPO Family coverage, was \$1540, went to \$2,066 under the "PPO Renewal" and in the new HSA plan down to \$1405.

The major changes with the new "PPO\HSA" are its far higher annual deductible and a new Village contribution to help offset that. Single coverage employee deductible went from \$250 to \$2500. All "excess (additional insured) coverage plan deductibles went from \$750 per year to \$5000.. However, once the deductible is met, employees are covered one hundred percent in the HSA. The other major change of the HSA plan is that the Village makes an annual \$ 1250 contribution to its employees to pay deductible expenses, and this is deposited whether they incur medical costs or not. The sum can accrue, and be paid out at departure if not used toward deductible costs or premiums.

The "PPO current" (the old pre- 33.5% increase) plan is gone. It is not attainable. The comparisons need to be between what the Village would have had to take (PPO Renewal) but for the availability of the HSA plan with its employer contribution. All employees with "excess" (other than single) coverage have reduced premiums compared to *either previous plan*. Coverage goes to 100% after the maximum out of pocket is met. There are no co-pays in the HSA plan after the deductible is met.

The Union castigates the Village on several grounds. First it asserts that the Village seeks to have defined as status quo insurance "...the Health Savings Account Plan that it unilaterally implemented without bargaining or notifying the Union.....(the Village) essentially asks this arbitrator to reward it for completely disregarding its duty to bargain collectively on its changes to the health insurance plan offered to employees by awarding it "status quo" language that is not, in fact, status quo at all." (Brief p 49)

The Union spends considerable time protesting this Village failure to involve the Union when it was looking in to its reduced options.

Without bringing this issue to the attention of the Union or even attempting to bargain collectively, the Village settled upon the Blue Cross Blue Shield Health Savings Account (HSA PPO) plan and eliminated all other previous plans it had offered....the Village implemented this HSA plan for all employee groups Village wide on April 1,2010 with the exception of the patrol officers and sergeants. The Village has attempted to justify this decision on the bases of the additional costs it faces for renewing the status quo, low deductible PPO plan and that it has maintained the status quo PPO plan only for the bargaining unit police department, as if, somehow, these factors relieved it of its duty to bargain. (Brief p 50)

The Village, in turn, protests that

The Union's proposal seeks to completely revise the health insurance provisions of the Agreement. It would eliminate the Employer's ability to provide revised similar coverage in the event that the current plan is no longer available. As is evident by the insurance history discussed above, for a small employer, the possibility and probability that the insurance carrier will continue to force plan modifications on the employer is a very real occurrence.(brief p 66)

This writer is not the NLRB, regardless of whether I would view the obligation of the village to bargain during the period, following the expiration of its contract, as met. The parties bargained for months, including mediation. During the active bargaining period the changes in coverage\cost had not been imposed by BC\BS--were unknown to either party. The successor CBA negotiations had evidently ceased before the Village was informed of its increased-no-choice premium (and two coverage changes.) . Further, the Village has since maintained the 33% premium increase plan coverage for MAP for all of 2010. This is not to say that the Union should not have been informed and the matter discussed in depth at minimum. It should have. But the chance to bargain in context of the new Village insurance coverage only existed starting in February or March 2010 when the coverage decision\choice was finalized ; there was of course the three months between this first hearing and second, and then until filing of these briefs in August.

The issue for the undersigned is whether the HSA plan in effect for all other employees, is or should be the "current plan" that is to be referenced under both Union and Village proposed language. This writer must pick one or the other proposal as written. The Union proposal, with an elaborate joint committee structure, in essence is a mandate for mid term bargaining at Union behest:

.....the Village shall notify the Union in writing of the contemplated changes. If the Union believes that the proposed changes are substantial, it shall have the right to demand bargaining over the impact of such changes by making a written demand within fourteen (14) calendar days

As the Village points out, the Union proposal could force binding arbitration each year of this three year contract (if health coverage is modified.). This is untenable. At the same time, under the contract language in effect in the first CBA and proposed for renewal, the Village is already restrained and constrained:

In the event that the Village changes benefits as a result of a change in the availability of benefits to the Village, the Village, without further negotiations with the Union, may obtain alternative coverage which *approximates the current coverage*. The Village agrees that the said insurance coverage provided to bargaining unit members shall be *no less than the coverage plans provided for the general non-represented employees of the Village*.

The comparable communities for which there is data reflect that Channahon and Yorkville have the same \$2500/5000 deductibles, plus they require an employee contribution toward the single premium (as Minooka does not). Mokena does not state other than that premiums will be the same as non union for PPOs and coverage and premium changes may be made without consultation with the Union. Oswego's new contract provides for an insurance committee to "review plan options and make recommendations" but disputes shall not be subject to grievance or arbitration. Oswego promises "no substantial decrease in benefits level" of PPO coverage. Shorewood has a provision very close to what the Union proposes for Minooka (Union to be notified of contemplated changes and for "substantial changes can demand bargaining. That contract even names what arbitrator will handle Shorewood's insurance bargaining impasse.) Wilmington states that "City's selection of health insurance plans is limited to those plans as offered...and the City cannot guarantee a specific level of individual benefit levels. Coverage "shall be no less than the coverage plans provided for the general non bargaining unit employees of the City." Yorkville "retains the right to change insurance carriers, benefit levels or to self insure as it deems appropriate" so long as the "coverage and benefits are substantially similar"

The Union argues to this writer that "had the Village chosen to approach the Union with this issue and bargain collectively, this matter could have been resolved

much differently. Obviously the purpose of bargaining it to facilitate a compromise.... based on a give-and-take quid pro quo process.” The difficulty with this Union argument is that by the time of this hearing, a full year of bargaining opportunity had passed, fruitless. Again, my role is not to punish the Village for not inviting Union input here whether or not the (expired) contract can be construed to even require it. My role is to view the two proposals in light of statutory criteria.

The language of these parties’ initial CBA was clear:

For the duration of this Agreement, the Village shall provide group health insurance *coverage at substantially the same level of benefits* in effect on the execution of this Agreement. The parties acknowledge and agree that with respect to certain insurance plans, the Village is limited in its selection of plans by the availability of specific provider plans and therefore the *benefit levels may not be identical* to the current plan. In the event that the Village changes benefits as a result of a change in the availability of benefits to the Village, the Village, *without further negotiations with the Union, may obtain alternative coverage which approximates the current coverage.* The Village agrees that the said insurance coverage provided to bargaining unit members shall be no less than the coverage plans provided for the general non-represented employees of the Village.

This writer finds that the current coverage plan is the HSA plan. When the village could not retain the original PPO, it kept the successor PPO Renewal plan, at the higher cost just for MAP pending a new contract. I must note that the status quo contract language waives the Village obligation to bargain with the Union when it has to change plans mid contract. And the change in coverage actually occurred between CBAs--presumably during an agreed extension. I do not find the HSA plan, in light of its greatly reduced family member coverage premium, its new \$1250 contribution toward the \$2500\5000 deductible, subsequent 100% coverage and the continued no premium single coverage to be out of line with comparables.

Compelling mid contract bargaining is found in no comparable except Shorewood. This is a second only contract for the parties. It is premature for an arbitrator to impose a requirement to bargain to impasse during a contract period. To warrant such, far more basis is needed in the record than was offered here. Finally, other comparables are far closer to the Village proposal as to the employer discretion to handle carrier coverage changes. I find no great financial discrepancies in respect to other benefits or wages in other comparables that are relevant here and I have considered all other arguments.

**Using statutory factors c.,d. f and g , the Village proposal, including HSA**

plan as the “level of benefits in effect” is adopted.

14. Uniforms Section 14.1

Employer’s Proposal – Uniforms

The Employer is seeking to retain the status quo.

Union’s Proposal – Uniforms

Uniforms shall be prescribed by the Employer. Uniforms shall be allotted to each Employee upon hire. Uniforms shall remain the property of the Employer. Uniforms shall be replaced by the Employer, as necessary, due to fair wear and tear. The cost of required uniform replacement, due to other than fair wear and tear, as determined by the Employer, shall be paid by the Employee. **The employer agrees to replace protective vests at manufacturer specification or earlier.**

Analysis and Discussion

The current CBA language reads as above, minus the final new sentence proposed by the Union. The rationale offered is that in a recent recall by the manufacturer of vests “due to a defect” the manufacturer offered to pay for only a portion of the cost of replacement. No data was provided. The Union wants the Village to pay for a new vest either on the Manufacturer’s replacement schedule or “earlier should they chose to.” The Village looked to replacement promises made by other villages and questioned the meaning of “or earlier.” I agree that “or earlier” is ambiguous. But the Union has raised valid safety concerns and several other village contracts tie in replacement to manufacturer recommended intervals.

**The Union proposal, with the words “or earlier” deleted, is adopted.**

15 Cellular Telephones: Proposed 14.6 new: Union

**Sergeants and detectives shall receive a twenty dollar (\$20.00) monthly stipend for reimbursement for personal cellular telephone usage, unless the Employer provides the Member with the use of a departmental cellular telephone.**

The Village opposes this added benefit.

Currently, by its discretion, the Village provides its detectives with cellular phones and reimburses Sergeants \$10 a month for carrying their personal phones. No evidence was presented about charges incurred due to Village business, no witness testified. No comparables presented such benefit. Rather, the Union argues that Sergeants are required to carry such phones and it "believes" that a monthly \$20 stipend instead of the current \$10 "more accurately remunerates Sergeants for their work related use." Proof of any insufficiency of reimbursement is missing.

**Status quo (silent contract) adopted.**

**16 Section 16.2. Loss of Seniority**

An employee shall lose all seniority credit in the event of the following:

- a. Voluntary or Involuntary termination
- b. an employee on layoff fail to give/make written application for reinstatement of position within the time prescribed in 65 ILCS 5/10-2.1-18.....
- c. the employee is **unreasonably** absent for three (3) consecutive scheduled work days without authorization
- d. the employee is retired

The Union proposal is to add the word "unreasonably." The Village's offer on this issue is *status quo*.

Analysis and Discussion

The Union explains that its

....offer seeks to clarify that loss of seniority for three consecutive absences from scheduled work shift without authorization can occur only when such absences are unreasonable. While the Union believes that an arbitrator when ruling on a grievance rooted in this provision would likely read into the provision an unreasonableness standard, the Union wishes to expressly articulate this standard in the contract to avoid any potential confusion or disagreement should a grievance over this provision ever arise. (Brief p 60)

The employer counters that

The language in this contract is consistent with what is provided to the other bargaining unit in the Village. Inserting the word "unreasonable" into the language just confuses the agreement and invites arbitration. Not one of the

Employer's comparable contracts provides the language proposed by the Union (brief p 71)

The Employer's position is not that it is entitled to be unreasonable, but rather that this is superfluous and confusing language. If the Employer was unreasonable in its application of this provision, arbitrators look to see if the decision was made for a legitimate business reason and not done arbitrarily. The Union's proposal is unnecessary and unsupported (brief p 72)

#### Analysis and Discussion

Absent any facts or histories whatsoever, it is difficult to see what problem the Union's proposal would resolve except to avoid the clarity of *three days absent without authorization*. A police officer absent for three days from his/her schedule, not for illness, vacation, jury duty or unpredictable genuine emergency, would be free to give any and all other bases to seek post facto authorization, free to present whatever defense to discipline was available to him or her. I assume the Union seeks to avoid such "technical" basis for discipline in which the fact of both the absence and the lack of authorization cannot be refuted. An arbitrator can evaluate whether a denial of authorization was arbitrary or capricious. Arbitrators generally consider all defenses even to contract-defined discharge grounds. There is no basis to insert a concept of "unreasonably absent." No comparables show such vague term. To dilute what was recently bargained as adequate is not my role.

#### **Status quo is adopted**

### **17 Entire Agreement (Article XX)**

#### **Union's Proposal**

This agreement shall constitute the full and complete commitments between both parties. It supersedes and cancels all previous agreements verbal or written or based on alleged past practices between the employer and the union.

The parties acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. ~~Therefore, the Board and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered by this Agreement, including the impact of a decision by the Village on an inherent managerial policy, even though such subjects or matters may not have been within the~~

~~knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. The Union specifically waives any right it may have to impact or effects bargaining for the life of this Agreement. Therefore, this Agreement constitutes the sole, entire existing Agreement between the parties hereto, supersedes all prior agreements, oral and written, expressed or implied between the Village and the employees' representative and expresses fully and without reservation all obligations and restrictions imposed upon each of the respective parties during the term of this Agreement.~~

~~All prior charges, complaints, grievances, discharges or reprimands, known or unknown, before signing of this Agreement are not subject to this Agreement.~~

The Village proposes status quo.

#### Analysis and Discussion

The Union explains its rationale for virtual deletion of this Article:

The Union's proposal to redact the above-referenced language from the collective bargaining agreement is rooted in several instances where – the Union believes – the Village has taken significant liberties with the language of the entire agreement article that the Union wishes to remove and has made some significant unilateral changes to mandatory subjects of bargaining that have resulted in three separate unfair labor practice charges filed by the Union against the Village in 2010.

... the first unfair labor practice charge...stems from unilateral changes made by the Village to the health insurance plans offered to bargaining unit employees..changes never even mentioned to the Union during collective bargaining or the days and weeks leading up to interest arbitration.”

The second charge is based on unilateral changes to educational tuition reimbursement for bargaining unit employees and the third is rooted in a new employee performance evaluation system imposed y the Village without bargaining that requires bargaining unit employees to perform additional duties (brief p 61-62)<sup>9</sup>

This writer is “not being asked to rule on any of these charges” which were filed with the NLRB the eve of the first interest arbitration hearing. At that first hearing , this

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<sup>9</sup>At hearing, it was somewhat clarified that this referred to the Chief's implementation of a daily activity report to be kept by officers but that “discipline would not be part and parcel of this performance evaluation system.” The third UFLP protests announcement by the Chief that the Village would no longer reimburse employees for tuition and asserts that “issues relating to tuition reimbursement are a mandatory subject of bargaining.” (Un ex 14)

writer directed the Village to share all information on its health insurance coverage and costs and three months later, the second hearing was held on that subject.

The Village notes that all its own external comparables contain an "Entire Agreement" (zipper) clause. It stresses that

.....this language was obtained through bargaining and agreed to by the Union in the last (first) contract. This proposal would render this Article essentially meaningless and inconsistent with all the external comparables. The Union has the burden to show a change to the language is compelled. There was no evidence presented that this change is necessary. (brief p73)

The Union asserts that the three cited events "are evidence of bad faith bargaining." (Calcaterra tr 93-94).

This writer has looked not only at the generally approved comparables but at all proposed comparables from either party on the issue of the waiver\'"zipper" clauses. Nine of the thirteen municipal contracts in my record reveal extremely similar language; three do not.<sup>10</sup>

The waiver clause, whether narrowly or broadly interpreted, serves a function of promoting stability and consistency. The goal of the labor contract is in part to incorporate decisions on all key "terms and conditions of employment" for its duration and prevent returning to the table. This does not excuse an employer from discussion obligation even when the subject was specifically addressed in the contract as here. In the instant matter the removal of such a clause by an interest arbitrator is not supported by the three matters alleged to have been unilateral changes in terms and conditions.

**Status quo is adopted.**

## 18. Wage Schedule

The parties have reached agreement to a 3% across the board retroactive increase for the 2009-2010 calendar year; and that annual compensation is based upon 2184 hours compensated per calendar year. Both parties note that these are significant wage increases. The balance of their respective proposals to be here resolved are

Union 2.5 % increase across the board for 2010-2011

2.5% increase across the board for 2011-2012

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<sup>10</sup> With the full provision: Channahon, Crete, Elwood, Morris, Lockport, New Lenox, Montgomery, Wilmington, Bollingbrook,..No version:Lemont; partial: Oswego, Mokena

new 9<sup>th</sup> patrol officer step at 4.5% above the 8<sup>th</sup> step (5/1/2011)

increase to the base S1 and S sergeant steps of 4.5% each effective 5/1/2011

Village 3.0% increase across board for 2010-2011

3.0% wage increase across board for 2011-2012

new step 3 sergeant's step after four years of service in sergeant step 2

### Discussion and Analysis

The Village reminds me that only police officers have both a step increase and a wage increase and all its other employees get only the latter. Its patrol officers advance a step on each yearly anniversary of their employment. Sergeants advance a step after four years in the first step; there are currently only two sergeant steps.

This is a young force; five officers were hired in 2008 four in 2007. One each was hired in 2000, 2003, 2004, 2005. Three (4?) patrol officers are the eighth step and would benefit immediately from the union-proposed ninth step. Three of the four sergeants are at their current (and the top) step 2, although whether they have been there for the four years needed under the village proposal to earn an added step 3 is not clear from exhibits I have studied. (Village 6, 10)

Because patrol officers advance a step for their first eight years, and all but three\four of them are still advancing, the resulting real increase in most officers' wages is of course much greater than 2.5 or 3.0%. The step increases appear to range between \$1500 and \$2000 for each step movement. The officers topped out at step 8 will receive just the annual increase unless the proposed ninth step is added.

While comparables are given considerable weight in wage analysis, the CBA time frames (length), year when the other contracts were bargained, and internal provisions and benefits vary considerably and much is not shown. Using Union figures and comparables, leaving out Bollingbrook and Lockport, the hourly starting patrol officer wage in 2008 ranged between \$18.85 per hour and 23.61, with Minooka at 21.32 second lowest.

Using Village figures and its proposed increase, in 5/2010 a Minooka starting patrol officer will be paid annually \$49,409 and top officers (8<sup>th</sup> step) will be at \$67,240. Using Village picked comparables, Minooka patrol officers will start higher than Wilmington Morris, Channahon, and Crete but lower than Shorewood by \$1500., Looking at the top pay for a patrol officer, using Village figures and comparables, Minooka at \$67,240 is well higher than all but Shorewood, (\$ 68,292) and Shorewood officers arrive at their top only after ten years, not the Minooka eight.

Comparisons by annual wage are most difficult reconcile, because neither Village nor Union has stated how many hours the patrol officers in their comparables work ( for that matter, one would really need to look at vacation, health benefits.) Union figures for top patrol wages (Un exhibit 5, Bollingbrook not given, Lockport excluded) for 2009, are given as per hour pay. Using the Village top figure of \$67,240\2184 hours, the per hour \$30.79 rate for Minooka falls 4<sup>th</sup> out of six. For per hour rate there are no 2010 union figures except Lockport.. I am satisfied that the top patrol officer in Minooka is within the acceptable range of comparables using either the Village whole list (or leaving out Crete and Elwood) or the Union list (declining Bollingbrook and Lockport.)

Moving to sergeants, the Minooka sergeant start pay--annual--- of \$76,183 is several thousand more than Channahon (\$ 72,843), Wilmington (\$ 65,249) with no other sergeant figures provided by the Village. The Union top sergeant wages analysis is done per hour. Using the 2184 hours per year for Minooka, the top sergeant step for 5/1/10 is \$ 81,545\2184=37.34 per hour. This is above the 37.08 average stated by the Union which used five comparables including out of sync Lockport (at 40.40) Without Lockport, the average per hour top sergeant rate of the four remaining Union comparables for 2009 is \$36.25, and Minooka is well above.

In summary both wage increases are well within or better indeed than CPI and adequately close to comparables. Costed out for the life of the new three year contract, the difference between proposals is minimal (\$5,000 difference in patrol wages and roughly \$3,000 difference in sergeant wages, Union brief p 65)

The issue is, as the parties recognize, the distribution of the increase within the bargaining unit. The Union is calling not for just a new patrol step, which will immediately benefit three long term officers, but for large increases in each existing sergeant step of 4.5% (third year) which would mean 7 % increases to each of them and would of course be the new higher base for all future increases. Against that, the Village proposes only a third sergeant step. If the Union proposal is accepted, sergeants will do very well in year three and beyond, and patrol officers will have their ninth step, which I find is justified.

I have considered the Village position that "if any adjustment is needed to the wage schedules it is at the top of the sergeant's schedule." But the Union proposal handles that by the 4.5% increase to S1 And S2 base which removes any need for a step 3 for sergeants. If the Union's "solution is to drive all wages up," as the employer argues, I do not see that occurring by virtue of giving patrol officers a 9<sup>th</sup> step.

I must pick. The Union proposal addresses both senior patrol officers and sergeant situations, by the higher sergeant pay effective 2011-2012 and ninth new top step for senior patrol officers. I take in to account the lower vacation benefit and new health plan. In summary

**The Union proposal is adopted**

F SUMMARY OF AWARDS

**Section 5.10 Shift Schedules-----status quo**

**Section 5.11 Specialty Pay**

**detective: status quo**

**Field Training: Union adopted**

**Section 5.12 Officer in Charge (OIC)--- status quo**

**Section 5.14 Compensatory Time ---Union**

**Section 5.15 Overtime Assignment ---Status Quo**

**Vacation Article VI ----status quo**

**Section 7.1 Holidays ---status quo**

**Section 8.2 Sick Leave Status quo**

**Section 8.3 Sick Leave Accrual and Usage Employer**

**Personal Time, Section 8.8 employer**

**Section 11.1 Discipline—Employer**

**Provision Insurance section 13.1 --- Employer**

**Uniforms Section 14.1 union adopted**

**Cellular Telephones: Proposed 14.6--- Status Quo**

**Section 16.2. Loss of Seniority--- status quo**

**Entire Agreement (Article XX) status quo**

**Wage Schedule: Union**



**Ellen J. Alexander**

**October 15, 2010**