

were deemed pertinent. The Parties stipulated that all provisions of the Collective Bargaining Agreement had been complied with and that the matter is properly before the Arbitrator. Final briefs were received on October 15, 2010.

ISSUES

1. Wages:

	<u>Effective</u> <u>May 1, 2009</u>	<u>Effective</u> <u>May 1, 2010</u>
Village offer:	1.75%	1.75%
Union offer:	2.25%	2.75%

2. Employee Discipline:

Village: The Employer wishes to keep the status quo which means that issues of discipline remain subject to the statutory jurisdiction of the Village Board of Fire and Police Commissioners.

Union: For discipline or suspension of five (5) days or more including termination, the employee has the option of appealing the disciplinary action either before the Board of Fire and Police Commissioners or through the grievance procedure set forth under Article IV.

ARTICLE XV

DISCIPLINE

Section 15.1. Forum Selection. An Employee who is charged with a disciplinary infraction, or issued discipline, where the penalty may result in termination or suspension of five (5) days or more, that Employee has the option of appealing such disciplinary action either before the Board of Fire and Police Commissioners (“BOFPC”) or through the grievance procedure set forth in Article IV of this Agreement within twenty-one (21) days of receiving written notice of the charge(s) against her or him.

Employees electing to have their discipline resolved through the grievance procedure will begin that process at step 4. If the Employee elects to appeal the discipline through the contractual grievance procedure, (s)he shall be deemed to have waived his/her right to appeal the matter before the BOFPC. Upon receipt of the Employee’s step 4 grievance, the Chief may immediately impose the discipline.

If the Employee elects to appeal the discipline through the contractual grievance procedure, the Village will bear the burden of proving the discipline was issued for just cause by preponderance of evidence. The arbitrator deciding a discipline grievance will be empowered to issue a suspension without pay of up to 30 days in length or termination. The arbitrator will only rule on discipline that is before him/her as presented in the written charges as they existed at the time the discipline was imposed. The arbitrator is empowered to order

the Employer to make the Employee whole for any loss of pay, benefits, or other losses incurred due to discipline being decreased or overturned.

If the Employee elects to appeal the discipline through the Board of Fire and Police Commissioners the Employee shall voluntarily sign and present to the Employer an express waiver of the Employee's right to appeal the matter before an arbitrator.

If an Employee is suspended for less than five (5) days, he/she will have the right to appeal that discipline to the BOFPC. During such an appeal, the BOFPC will not have the power to suspend for any longer than five (5) days.

III.

THE STATUTORY CRITERIA

IPLRA, Section 14 – Interest Arbitration Provisions

The statutory provisions, in pertinent part, governing the issues in this case are found in Section 14 of the IPLRA:

(g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the

applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

(h) Where there is no agreement between the parties,...the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.**
- (2) Stipulations of the parties.**
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.**
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.**
 - (B) In private employment in comparable communities.****
- (5) The average consumer prices for goods and services, commonly known as the cost of living.**
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of**

employment and all other benefits received.

- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

This arbitration involves two issues: wages and discipline involving the Board of Fire

and Police Commissioners.

The Employer's position regarding wages is supported based on the overall compensation of the employees in the bargaining unit and the external comparables which are agreed upon by the Parties. The wage increases offered place the bargaining unit in the mid-range of comparable departments. In addition, police officers reached the highest annual pay within five (5) years, which is much shorter than the external comparables. In addition to the above, the Employer provides extra compensation for specialty occupations that is superior to the external comparables. The Employer would note that the Union focuses only on the top annual salary. The Employer would note that some of the comparable communities negotiated their contracts prior to the recent economic collapse.

The internal comparables support the Employer's final wage offer and are a statutory factor. The Public Works Department received greater benefits than what the Employer is offering the Union here. That resulted from the bargaining unit accepting a five-year Collective Bargaining Agreement and the wage increases were granted before the collapse of the economy.

With respect to the non-unionized internal comparables, the Village has provided no wage increase for either 2009 or 2010 for all non-unionized employees. The Village supplied information regarding a decline in revenues and the importance of keeping an appropriate cash balance. The Employer would note that it has fixed costs which cannot be reduced. The Village is merely following the advice of its external financial auditors and its own Finance

Director.

The Village would further note that national and state economic factors should be considered. The cost of living is extremely low, if not in a negative position. The state unemployment rate is extremely high and other economic indicators show a close-to negative growth. The Village would also note the increased cost of insurance for the bargaining unit and would note that it pays 95% of those premiums.

With respect to the status quo for discipline, the Employer wishes to maintain the current contract language. The Union wishes to allow a choice between Fire and Police Commission and arbitration for discipline of five (5) days suspension or more. The Village would note that this Commission handles hiring and promotions. There was no evidence that the Commission is unfair with respect to disciplinary matters. Arbitrators have generally held that deviations from the status quo require a burden of proof that is absent in this case. The Union offered only conjecture. The Union's witnesses were not even aware of the procedural rules of the BFPC. These rules belie the unfounded speculation of inherent unfairness. There is an attorney that advises the Commission regarding rules of evidence. The Commission is supposed to act as an independent third party judging fairly the evidence presented and making a determination on whether or not cause exists.

Based on the above, the Village would ask that its position on wages and discipline be accepted by the Arbitrator.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Village “basks in budget health.” The Village was unable to show that its financial condition is worsening. The Union would point to a submission to Moody’s to facilitate a bond rating which was awarded at an Aa3 bond rating. Moody’s has never in recent years dropped the Village’s bond rating, in fact it has improved. The Village has an attractive and advantageous location, healthy reserve levels and an overall low debt burden.

The Village claims that in future years cash reserves will diminish as will its long-term financial health; however, the Village does budget conservatively which means that the Village overestimates its projected cash requirements. Over the term of the contract, the Village has budgeted 7.75% in police raises. The Employer claims that it cannot predict the future but it looks like it is going to be a while before better times are seen.

With respect to the arbitration of discipline, it is a mandatory subject of bargaining for non-home rule communities like South Elgin. This is the first time that discipline has been a mandatory subject of bargaining.

Both Parties agreed that arbitration is a fair way to resolve disputes. The current system has a chilling effect on officers appealing discipline. Testimony was provided by members of the bargaining unit. Previous members of the Department have resigned rather

than face the BFPC because it was a “foregone conclusion.” There is a clear perception that the BFPC is biased in favor of the Village. The Village appoints the members of the BFPC and it is perceived that they rubber stamp whatever the people who appointed them will ask them to do.

With respect to comparables, the Parties have agreed on external comparables for this arbitration only. They would include Cary, Hanover Park, Huntley, North Aurora and West Chicago.

With respect to internal comparability, police officers are not comparable to other employees of the Village. There is no showing that the work of public safety employees is in any way comparable to DPW employees. Non-union employees of the Village are also not to be fairly compared because they have no ability to bargain. If any internal comparable group should be considered, Local 150 received a 4% increase in fiscal 2009-2010. The Union’s comparability data from external comparable communities favor the Union’s position. While it is difficult to speculate, it is likely that West Chicago and Cary, when they finish negotiating their contracts, will continue to make more than South Elgin. The Union stated that the rates of pay in South Elgin are most closely related to officers in Cary and North Aurora. Although this Arbitrator generally disregards non-public safety unions as comparables, the DPW here achieved 4% across-the-board wage increases. The Union would note that its proposal is 2.5% lower than the budget set aside for this period of time.

The Union notes that the Village is not making an inability to pay argument. Its bond

rating is excellent and the set-aside is more than the amount sought by the Union. Regarding the arbitration of discipline, the Union is asking for suspensions of greater than five (5) days and/or terminations to be subject to the grievance procedure. The BFPC process fails to provide adequate protection for officers.

The Union's proposal is not subject to a breakthrough analysis. Numerous citations were provided. This does not constitute a significant change in the method of disciplinary review. This is not a status quo situation since this is the first time that the Union has been able to bargain a change in this area. There was no showing that a quid pro quo was given in order to have the BFPC control discipline. The Parties agreed that arbitration is fair and the best interest of both sides is served by a process which is as fair and unbiased as possible.

The concept of just cause is active in the arbitration process and there is a trend of favoring arbitration as a means of resolving labor/management disagreements. The BFPC is not required to consider the well held standards of just cause and certainly arbitration avoids the appearance of impropriety. Because of the way that police/fire commissions are appointed, the appearance is that they are not fair. This, of course, does not mean that they are truly not fair, but the appearance is well held. In this matter employees have chosen not to appear before the Commission since they consider it to be an unfair process.

In addition to the above, arbitration is private and avoids undue embarrassment. Arbitrators are better equipped to deal with disciplinary matters. Arbitration is faster and cheaper since, at a BFPC meeting hearing, the Village has to pay for two attorneys. The

internal comparability supports the Union's proposal as the DPW has access to binding arbitration. External comparability also supports the Union's proposal.

Based on the above, the Union states that its position with respect to wages and review of disciplinary matters is the most appropriate and should be included in the new contract,

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute interest arbitration for a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on

the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions. However, this is not your typical status quo situation due to the fact that this element was not a mandatory subject of bargaining prior to the current negotiations.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector

employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

Prior to the analysis the Arbitrator would like to congratulate the Parties for the large number of T/A's reached in this negotiations.

Regarding compensation, it is true that the members of this bargaining unit under the Employer's proposal would remain roughly in the mid-range of external comparable officers. Both sides are aware of this Arbitrator's view of comparing any internal comparables with the exception of firefighters to police officer units and, in particular, non-unionized employees who have no right to argue for their position with respect to wages but merely must accept whatever the Village offers.

The Arbitrator would note that it is total compensation and external comparables that are most meaningful to this Arbitrator. The Arbitrator would note that the officers in South Elgin get to the top rate faster than any other comparable bargaining unit. They also receive special pay at high levels and the argument that the rates of the external comparables were set

prior to the economic collapse all makes sense.

The record shows that the Village is in relatively good shape and that it has budgeted for more than the Union is asking for during the term of this contract; however, it is clear from the record that the Village has a history of over-budgeting so that it is not caught short at the end. It does look like the future will hold a decline in revenues and the Village is saddled with certain fixed costs over which it has no control. The bottom line is that the police officers will be in the middle of the rankings under either proposal during this Collective Bargaining Agreement. If that changes in the future, then that is something that needs to be addressed by the Parties. Based on all of the above, the Arbitrator would find that the Village's proposal most nearly meets the criteria expressed in the applicable statute.

With respect to the discipline proposal, it is very difficult for an Arbitrator of approximately thirty (30) years experience to argue against arbitration and in favor of a Police and Fire Commission. The facts are, in this Arbitrator's experience, that there is a clear trend of bargaining units in the public safety arena trending toward arbitration and away from fire and police commissions. This is understandable. Police/Fire Commissioners are appointed by the people who are making disciplinary decisions which affect this bargaining unit. There is an appearance, perhaps not a fact, but at least an appearance that this is patently unfair; and this Arbitrator agrees.

In addition, this is the first time that this has been a mandatory subject of bargaining. There was no showing that a status quo previously existed to allow this in the bargaining

agreement.

The fact is that arbitration is fair. Both Parties must agree on the arbitrator for an arbitration to proceed. Both Parties agree that arbitration is fair. Both Parties seem to agree that there is at least a perception that the Police and Fire Commission is biased in favor of the Village.

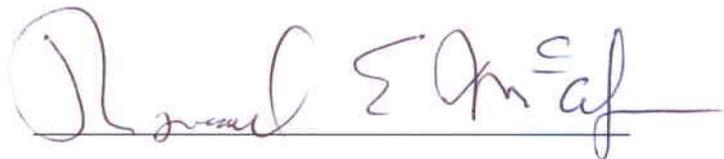
Arbitrators are much more experienced in handling these types of cases than Police and Fire Commissions, particularly in a small village like South Elgin with a small number of cases appearing before the Commission. The facts are that arbitrators know how to make rulings which have their basis in law, just cause and in fairness since both sides have a critical part in choosing the arbitrator and they have endorsed the process as being a fair and reasonable way to resolve a dispute. This Arbitrator finds himself in complete agreement with those arbitrators (Meyers, Briggs, Nathan, Perkovich and Wolf). The facts are that, as the Union stated, arbitration is private and avoids undue embarrassment. It can be a less expensive way to resolve these disputes. Arbitrators are much better equipped to deal with disciplinary matters than a commission. In addition, the internal and external comparables favor the Union's proposal and, therefore, it is that proposal that will be included in the contract which is in dispute in this matter.

AWARD

Under the authority vested in the Arbitrator by Section XIV of the Illinois Public Employees Labor Relations Act, the Arbitrator finds that the wage proposal with most nearly complies with Sub-section XIV(h) is the Employer's offer.

The Arbitrator further finds that the disciplinary proposal by the Union most nearly complies with the above sub-section, and that shall be incorporated into the Collective Bargaining Agreement.

Dated at Chicago, Illinois this 1st day of November, 2010.

A handwritten signature in blue ink, appearing to read "Raymond E. McAlpin", written over a horizontal line.

Raymond E. McAlpin, Arbitrator