

**INTEREST ARBITRATION  
ILLINOIS STATE LABOR RELATIONS BOARD**

**METROPOLITAN ALLIANCE OF POLICE  
CHAPTER 6**

and

**THE VILLAGE OF ROMEOVILLE**

**ILRB No. S-MA-10-064  
Police Officers**

**OPINION AND AWARD  
of  
John C. Fletcher, Arbitrator  
June 11, 2010**

**I. Procedural Background:**

This matter comes as an interest arbitration between the Village of Romeoville (“the Employer” or “the Village”) and the Metropolitan Alliance of Police, Chapter 6 (“the Union” or “the Chapter”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The record in this case establishes that the Village employs 68 sworn police officers, 59 of whom belong to the unit represented by this Union for purposes of collective bargaining. At present, the Department retains 44 patrol officers, 8 sergeants, and 7 detectives in the bargaining unit, who are supervised by a Chief of Police, 2 Deputy Chiefs, 3 Assistant Chiefs and 4 Commanders. Of the 44 patrol officers employed by the Village, 29 have college degrees.<sup>1</sup>

The issues herein in dispute arise from the parties’ impasse in the negotiation of the Collective Bargaining Agreement (“CBA”) effective May 1, 2009, which succeeds

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<sup>1</sup> It is noted that “Patrol with Degree” is a specific category in the parties’ existing salary schedule.

the incumbent contract that expired on April 30, 2009.<sup>2</sup> The parties are not in dispute as to the term of their new contract, which shall expire on April 30, 2012 by mutual agreement. It was further stipulated that wage increases awarded herein below in accordance with the prevailing “last best offer” on the economic issue of wages, shall be paid retroactive to May 1, 2009 “for all employees employed as of the execution of this agreement and those employees who have retired, or retired on a disability pension.”<sup>3</sup>

A hearing before the undersigned Arbitrator was held on February 10, 2010 at 13 Montrose Drive, Romeoville, Illinois, commencing at 10:00 a.m. The parties were afforded full opportunity to present their cases relative to the impasse issues set forth herein below, which included written and oral evidence in the narrative, and also examination and cross-examination of witnesses. Thereafter, the parties were invited to offer such arguments as were deemed pertinent to their respective positions, and the record was held open for submission of post hearing briefs. At the hearing, the Union was represented by:

Ronald N. Cicinelli, Esq.  
The Law Office of Ronald N. Cicinelli  
17W300 22<sup>nd</sup> Street, Suite 220  
Oakbrook Terrace, Illinois 60181

Counsel for the Employer was:

Nicholas E. Sakellariou, Esq.  
McKeown, Fitzgerald, Zollner, Buck, Hutchison & Ruttle  
2455 Glenwood Avenue  
Joliet, Illinois 60435

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<sup>2</sup> Union Exhibit 7.

<sup>3</sup> Union Exhibit 10, Employer Exhibit 4.

Post-hearing briefs were filed with the Arbitrator and exchanged on April 27, 2010. The record was declared closed on that date.

## **II. Factual Background**

The Village of Romeoville is a home rule municipality located in Will County, approximately 26 miles southwest of the City of Chicago. Romeoville has an estimated population of 38,000 and covers a land area of approximately 14.5 square miles.<sup>4</sup> The equalized assessed valuation (EAV) of Romeoville is 1.2 billion dollars, and the estimated median household income in 2007 was \$69,664 – above the state average of \$54,124 for that year.<sup>5</sup> Romeoville has a President (Mayor) and a Board of Trustees, who in turn employ a Village Administrator to attend to day-to-day matters of the Village. The Village has a total of 226 full time employees, among whom are Public Works and Clerical workers represented by the American Federation of State, County and Municipal Employees (AFSCME) Council 31 for purposes of collective bargaining. The record further establishes that the Village is currently negotiating a first-time contract with unionized Romeoville firefighters. (Tr. 15.)

## **III. The Parties' Bargaining History**

The parties' history of bargaining is not set out in this record in any detail. However, it is evident that, among other essentials recognized by the Arbitrator, the Village and the Union have not in recent memory engaged in the process of interest

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<sup>4</sup> Union Exhibit 4.

<sup>5</sup> Id.

arbitration under the Act. In point of fact, the Village explains that the parties have been bargaining together for more than 20 years, and “in each case, [they] reached final agreement without resorting to interest arbitration.”<sup>6</sup> The record also establishes that *at the present time* the Village and the Union have a particularly contentious bargaining relationship, and the Union repeatedly cites that fact as the *primary* cause for the parties’ obvious failure to resolve the 15 impasse issues set forth herein below. That being said, the record does evince that both sides met at least once for purposes of collective bargaining, and proposals and counter proposals relative to outstanding issues were exchanged. On July 10, 2009, the parties reached tentative agreements on all issues, except for those presented to the Arbitrator herein below.<sup>7</sup> Subsequent to that date, even with the assistance of a federally appointed mediator the parties were unable to effect a settlement. Additionally, as contemplated by the Illinois Statute, this Arbitrator offered to “mediate” before going to actual hearing, but, for a variety of reasons that need not be repeated here, this offer was not implemented.

#### **IV. Statutory Authority and the Nature of Interest Arbitration**

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

5 ILCS 315/14(g)

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

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<sup>6</sup> Employer brief at page 50.

<sup>7</sup> See; Tentative Agreements; Employer Exhibit 2, Union Exhibit 9.

which of these issues are economic shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Though citing the above statutory foundation and authority for interest arbitrations under the Act is standard in most, if not all, modern awards, the Arbitrator does so here

for the specific purpose of establishing context for his subsequent findings in this case. Certainly, the Arbitrator's basic philosophy on the subject of interest arbitration will hardly come as a surprise to the parties here, because he has set forth his opinion in detail in other Awards under the Act.<sup>8</sup> However, there is a particular reason why it is so important under these circumstances. Clearly, neither the Village nor the Union will deny that their contemporary bargaining relationship is strained at best. It is important to note, though, that negotiating conventional-term collective bargaining agreements in these unprecedented economic times is delicate even in the most congenial of associations, and obviously that truth has had negative impact on these parties' discussions concerning the meaningful economic issues of wages, health insurance, specialty premiums, and overtime. Not surprisingly, all of those matters are subjects of the Arbitrator's final and binding award in this case.

Since there is no evidence in this record that the parties have ever participated in interest arbitration before, it cannot be said, at least in this case, that they have "come back to the well" in hopes of gaining something in this setting that they were unable to achieve under identical circumstances before. In other words, the Arbitrator has come across instances, and has written about them, when one or the other party has simply "re-proposed" something that was expressly denied in prior interest arbitration under the Act, in hopes that a different neutral might see things their way. While that on the surface may seem irrelevant in this case, because no prior interest arbitrations involving these

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<sup>8</sup> See; e.g., County of Cook, Illinois/Sheriff of Cook County and Metropolitan Alliance of Police, Chapter 222, ILRB Case No. L-MA-04-006 (2006); City of Alton and International Association of Firefighters, Local 1255, ILRB Case No. S-MA-06-006 (2007).

parties is cited in the record, the Arbitrator notes his concern for one important reason. If these parties do not find a way to meet and deal with one another constructively in the future, there is a good chance that they will wind up right back in this forum for a subsequent contract. Indeed, while it is for the most part unspoken, the real goal of interest arbitration is to put interest arbitrators out of work. This is so, because, by far, the majority of conventional wisdom on the subject of interest arbitration dictates that this statutory process under the Act should never be used as a substitute for fair and constructive bargaining. The Arbitrator strongly infers that that is exactly what has occurred here.

The Arbitrator anticipates an immediate and perhaps outraged response from the Union that the Village, and more pointedly the Village's Chief of Police, is at fault on this point. However, close inspection of the true substance of the impasse issues presented in this arbitration provides inescapable proof that there was mutual disdain for the process of negotiating this successor contract. As set forth herein below, there is abundant evidence that the Union pressed forward with interest arbitration on some of the instant issues simply because the Village said "no" to them. Additionally, it appears, the Union also proposed certain contract alterations for the specific purpose of "curing" the improper manner in which present (and viable) language is being administered by the Village. While the Arbitrator certainly understands frustration naturally associated with a lack of success at the bargaining table, frustration (in the true sense of being kept from one's goal) alone is not enough, nor should it be, to persuade him to award any contract

language changes that with a *fair* reading may not be needed, or were never likely to be agreed to under any circumstances.

As the Arbitrator has stated on numerous prior occasions, interest arbitration in general is intended to achieve resolution to an immediate and *bona fide* impasse, but not to usurp, or be exercised in place of, traditional bargaining. Some arbitrators have characterized the unique, indeed discrete, function of interest arbitration, as opposed to that of grievance arbitration, as actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of collective bargaining. Otherwise, some, including this Arbitrator, have reasoned that the entire collective bargaining process could (or would) be undermined to the extent that parties, at the first sign of impasse, might immediately resort to interest arbitration simply because the avenue is open to them. See, for example, Will County Board and the Sheriff of Will County; (Nathan, 1988), in which the arbitrator concluded in relevant part as follows:

“If the process [of interest arbitration] is to work, it must not yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to the parties’ particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse...” (Emphasis added.)<sup>9</sup>

While the *Arizona Public Service* decision relied upon by Arbitrator Nathan predates this interest arbitration by some 36 years, the principles set forth therein (as they

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<sup>9</sup> Arbitrator Nathan quotes Arizona Public Service; 63 LA 1189, 1196 (Platt, 1974); accord; City of Aurora; S-MA-95-44 at pages 18-19 (Kohn, 1995).

are in Nathan’s *Will County*) are as rock-solid today as they were then. In sum and substance, there is a single overarching idea here; no substantial “breakthrough” should be awarded in the interest arbitration process, and the Arbitrator is absolutely convinced as to the soundness of this foundational thesis. Obviously, were this Arbitrator, or any other for that matter, to award an economic advantage significantly superior to that which could have been secured at the bargaining table, it would be very likely that the prevailing party would, in the future, simply by-pass bargaining altogether and jump right to interest arbitration in hopes of a repeat victory. Were that to happen, interest arbitration would most certainly “usurp” the near-sacrosanct purpose of sovereign and bilateral agreement between employees and employers, and that cannot be allowed to happen. Furthermore, it would be nearly impossible for an arbitrator to subsequently determine what the parties may (or may not) have been able to achieve had real bargaining occurred. Thus, without a crystal ball, determining which proposal the parties “would likely have achieved on their own” is, at best, problematic.

As noted in Metropolitan Alliance of Police Cook County Department of Corrections and the County of Cook/Sheriff of Cook County; ILRB Case No. L-MA-04-006, the Arbitrator’s opinion on this matter does not depart from the following relevant and long-held opinion he expressed in Village of Downers Grove and the Downers Grove Professional Firefighters; Case No. S-MA-94-246 (1994):

“For instance, explore the notion that impasse arbitration ought not to award either party a better deal than that which it could have expected to achieve through negotiations at the bargaining table. Without a crystal ball, who can tell with any degree of certainty what the expectations of either

party were. Going in, both sides know that the final option available, if impasse occurs, is last best offer arbitration. The bargaining table, in most negotiating environments, is not the final available stop. Mediation, fact-finding, emergency boards, arbitration, strike, lockout, blue flu, discharge, bankruptcy, discontinuance of the enterprise, decertification, as well as legislative lobbying and court action, may also be viable pursuits for negotiating objectives. Moreover, and importantly, under the IPLRA, impasse arbitration, with its last best offer approach, is an essential ingredient of the labor relations process for Illinois security employees, peace officers and firefighters. The Act is designed to substitute self-help and other traumatic alternatives, resources available in some other environment (and also the threat of self help which may hang as a sword over the negotiating table), with a less disruptive procedure to produce settlement...”

In context, the Arbitrator was acknowledging the fact that it is quite often difficult to discern what would likely have resulted from bargaining had impasse not occurred. However, notice also that the Arbitrator clearly explained (all those years ago) that interest arbitration under the Act is specifically designed to function in place of “self help and other traumatic alternatives” and not to serve as an escape from the bargaining table simply because those traditional “self-help” options are not available to peace officers in Illinois. In spite of that instruction, it nevertheless appears, that is likely what happened here *between MAP and Romeoville*.<sup>10</sup>

Given only the record before the Arbitrator, there is substantial evidence of a break in communications between the Union and the Village (or the Village and the Union), which prompted “breakthrough” pursuits in this narrow setting, generally on the part of the Union, for the simple reason that important proposals dramatically altering the pre-existing and negotiated *status quo* were rejected out of hand by the Village during

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<sup>10</sup> Inserting “MAP” first before “Romeoville” is not to be construed in any manner as placing more responsibility for this situation upon the Union than the Employer, the placement of the parties names in the sentence could just as easily be reversed.

what little bargaining and mediation actually occurred. In reality, however, contrary to the Union’s contentions, the fact that rejection occurred during negotiations does not, on its face, establish the Village’s lack of good faith during bargaining. This is true for two important reasons.

First, Article IB – Management Rights of the incumbent 2006-2009 contract, which was not altered by tentative agreements reached on July 10, 2009 for the successor contract, vests with management, “All the functions of management of the operations of the Village and the direction of its police officers which are not limited by the express language of this Agreement... [This right includes] the right to determine the means, methods and place of operation; to decide what work or services shall be performed by police officers; to establish number and classifications of positions; to discipline or discharge police officers... to maintain methods, materials, equipment or facilities; and to change or eliminate existing methods, materials, equipment or facilities... to plan, direct, control and determine the operations or services to be conducted by employees of the Village; to direct the work force; to require overtime... [and] to take any and all actions as may be necessary to carry out the mission of the Village and the Police Department.”<sup>11</sup> Actually, this is a rather broad management rights clause, in that, subject to amendment by subsequent express provisions in the Agreement, the Village retains exclusive jurisdiction over the entire operation of the Police Department and its employees. Certainly, this would include the impasse issues of “Work Week”, “Overtime,” and “Compensatory Time” as set forth herein below. In each of those examples, the Union

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<sup>11</sup> Union Exhibit 7 at page 1.

pursued a “breakthrough” change which the Village simply rejected pursuant to its pre-existing (and retained) contractual right to “manage the operations of the Village, to direct the work force, and to maintain order and efficiency” within the Department. What is important to note in the context of this introduction to the issues, is the fact that a “no” at the bargaining table from one side or the other, is not automatically indicative of a failure to bargain. There are simply some issues that are not “up for discussion”, and, certainly, that can be expected in any bilateral process.<sup>12</sup> Importantly, that brings us to the second and perhaps more fundamental truth regarding the prescribed function of interest arbitration under these particular statutes.

Because this is not a first-time contract and further because the parties in this case did not bring issues to the Arbitrator which were previously resolved through interest arbitration, we are, as a natural consequence, dealing with the negotiated status quo on each and every open issue. In other words, what either party seeks in terms of departing from the present “what is” must be necessarily viewed in terms of what has changed since the time the parties were in voluntary and mutual agreement as to what the “what is” should be. Obviously, then, whichever party proposes to depart from the mutual “what is” (*status quo*), must stand ready to defend its reasons for doing so. Then, and only then, can the Arbitrator be of real [statutory] help in terms of analyzing the nature of the impasse in the context of established statutory criteria. Certainly, a well-defended

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<sup>12</sup> For example, it is unlikely that the Union could legitimately be accused of failing to bargain in good faith if the Village suddenly pursued complete elimination of Fair Share contributions and the Union refused to entertain that idea. In other words, it is entirely reasonable to assume that the negotiated *status quo* of Fair Share contributions would not be “up for discussion” by the Union no matter what the Village offered in return for a change. A categorical “no” in such circumstances would not, in the opinion of this Arbitrator, be a failure to bargain in good faith.

“breakthrough” on an issue of genuine impasse is achievable in this forum. That much has been proven many times over. However, these parties are duly cautioned now and also for the future, that an arbitrator’s statutory function under the Act is not that of a “Santa Claus” or, in the alternative, an indulgent parent who simply acquiesces in order to silence quarreling. Above all, the integrity of the bargaining process must be protected, and this forum should be reserved for matters of true impasse where there is evidence that both parties are firmly in possession of good and defensible reasons for their respective positions of record.

The Arbitrator has gone to such great lengths to explain his philosophy on the subject of interest arbitration for a reason that is particularly important in this case. After reading the massive documentary record and analyzing the parties’ respective positions on the impasse issues set forth below, one clear truth emerged. In this matter, interest arbitration was invoked on a number of issues as a way settling “differences” on administration. In other words, on some of these issues, the contract itself was not “broken” – only the parties’ relationship relative to how it was being managed. In City of Chicago and Fraternal Order of Police Chicago Lodge 7; (Benn, 2010), the arbitrator recognized this very problem:

As shown by the burdens placed on the parties to obtain changes to existing collective bargaining agreements, interest arbitration is a *very* conservative process. It would be presumptuous of me to believe that I could come up with a resolution satisfactory to the parties on these issues when the parties with their sophisticated negotiators could not do so, particularly after of years of bargaining. For these issues, at best, the parties’ proposed changes were good ideas from their perspectives. However, it is not the function of an interest arbitrator to make changes to terms of existing collective

bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change.... (Emphasis original.)

Importantly, Arbitrator Benn noted that the party seeking a change in the *status quo* must prove that the change is more than just a “good idea.” Moreover, Arbitrator Benn instructed that the “existing condition” must be “broken and therefore in need of change,” in the interest of a “very conservative process” intended to preserve rather than replace bargaining. When Arbitrator Benn spoke of presumptiveness on his part to divine the specific interests of the parties and resolve their disputes when sophisticated negotiators representing them were unable to do so, he was absolutely right. Indeed, what may seem unimportant to a casual observer might actually be a critical issue in the unique context of the employer/employee relationship at hand. Conversely, traditional “sticking points” in contract negotiations, such as wages and health insurance, may not be as important under certain circumstances. The point here is this; proof, that is, evidence that the present system is really “broken,” is absolutely critical in this forum. When all is said and done, interest arbitrators are indeed “casual observers” of the inner workings of a bargaining relationship, albeit with a statutory duty to assist in the resolution of “brokenness” in the existing contract without substituting his or her judgment for that of the parties or enabling them to avoid good faith bargaining in the future.

True enough, if parties in a particular interest arbitration proceeding have a different view of the process such that the arbitrator is employed as a “striped shirt”, then so be it. Interest arbitrators in general, and this Arbitrator in particular, are bound by the statutes to resolve even the “quarrels” if and when they are called upon to do so.

However, as the Arbitrator has already observed on a number of prior occasions, interest arbitration is inherently risky, in that the parties are handing over to a “casual observer” complete authority to alter their contractual relationship, and thus the established *status quo*, for the future. While in years past arbitrators have concluded that a *status quo* established through interest arbitration should not (or does not) carry the weight of a negotiated one, those days will rapidly come to a close if the interest arbitration process morphs into something more like firefighting than substantive and thoughtful assistance with matters of authentic contractual deadlock. In other words, if parties subject to the Act begin using this process as an ongoing substitute for good-faith bargaining, and/or grievance arbitration, then resulting contracts will, after a number of rounds, more accurately represent unilateral arbitral opinion than the mutual goals and interests of the parties. If that happens, as a necessary consequence, “arbitral opinion” will become the new (and firm) *status quo*.

In sum, the Arbitrator’s above opinion and analysis will serve as foundation for the Orders which follow. The Arbitrator’s approach to the issues of impasse presented in this record will follow current arbitral teaching, and will be made from a foundation that this process is not a substitute for grievance arbitration or collective bargaining, but instead an extension of the process designed to bring closure and a collective bargaining agreement. Thus, holding the truth that the Arbitrator does not enjoy the advantage of a crystal ball in tension with the task at hand, three tests and an additional observation established by Arbitrator Nathan in *Will County*; supra, will prove particularly useful. In

*Will County*, Arbitrator Nathan rightly concluded that the party seeking change must, at a minimum, demonstrate the following:

- That the old system or procedure has not worked as anticipated when originally agreed to;
- That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
- That the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems.

At this juncture, the Arbitrator reminds the parties, and the Union in particular, that Arbitrator Nathan was not specifically referring to grievances or complaints (even legitimate ones) under existing contract language when he instructed that the *status quo* need not necessarily be favored when the party seeking to maintain it “has resisted attempts at the bargaining table” to address the other party’s concerns. In context, Arbitrator Nathan specifically referenced “these problems”, which, according to his immediately preceding instruction, were those establishing that a prior contractual commitment was not working as it was [mutually] intended to work, and/or that the existing system was creating operational hardships for the employer or due process problems for the union. *That is distinctly different from what the Union has complained of on a number of issues in this case*, which could have, and should have, been resolved through the parties’ established grievance process. In other words, as set forth in detail herein below, on a number of “impasse” issues in this case, the contract is not genuinely broken – only the parties’ relationship (as to the manner in which the contract is being administered by the Village’s Chief of Police) is broken. Such problems, while certainly

real, likely important, and assuredly frustrating for the Union, are appropriate for grievance arbitration and not interest arbitration.

That being said, Arbitrator Raymond McAlpin further established the following additional and equally helpful principles in an interest arbitration involving the Cook County Deputy Sheriff Sergeants:

When one side or the other proposes significant changes to the *status quo*, there is a special burden placed on that party. When one side or another wishes to deviate from the *status quo* of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This panel recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. The party desiring the change must show that:

1. There is a proven need for the change;
2. The proposal meets the identified need without imposing an undue hardship on the other party;
3. There has been a *quid pro quo* offered to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision.<sup>13</sup>

As he has stated before, this Arbitrator finds the guidance of Arbitrators Nathan and McAlpin (among others) on this subject to be a reasonable alternative to the “crystal ball” approach. The Arbitrator will thus examine each of the parties’ proposals on the issues at bar in the context of the above “tests” where applicable, and equally importantly, in light of their promulgated proofs.<sup>14</sup>

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<sup>13</sup> County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council; LLRB Case No. L-MA-96-009 (McAlpin, 1998).

<sup>14</sup> See also; City of Burbank and the Illinois Fraternal Order of Police Labor Council; ISLRB Case No. S-MA-97-56 (Goldstein, 1998).

**V. Outstanding Issues**

Section 2.2 – Fair Share

Section 2.3 – Indemnification

Section 10.1 – Family Medical Coverage

Section 11.2 – Normal Workday and Workweek

Section 11.3 – Overtime

[Proposed] Section 11.5 – Compensatory Time

Section 18.3 – Vacation

Section 20.1 – Chapter Activity During Working Hours

Section 20.2 – Access to Premises by Chapter Representatives

Section 20.3 – Bulletin Board

Section 25.1 and Appendix C – Wage Schedules

Section 25.3 – Stipends

Article 26 – Physical Fitness

Article 27 – Wellness Program

Article 28 – Drug Free Workplace

**VI. External Comparables**

Section 14(h) of the IPLRA establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration. As noted by Arbitrator Benn in *City of Chicago*; supra, none of the eight factors receives more attention under statutory language than the others. However, before to 2009, greater weight was generally afforded the factor of comparability (both internal and external), and indeed many cases were tried and [reasonably] decided on comparability alone. In relevant part, Arbitrator Benn commented further as follows:

“Wisdom too often never comes, and so one ought not to reject it merely because it comes late.”<sup>15</sup> It is fair to conclude that prior to 2009, few in this area of practice – public administrators, union officials, advocates and neutrals – could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give the same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became “apples to oranges” comparisons...

The Arbitrator cites Arbitrator Benn on the issue of comparables for a couple of reasons. First, as noted, it is nearly impossible to find that contracts negotiated in more favorable economic times are truly comparable in the present statutory sense, because the context of those contracts, i.e. the timing and tenure of them, renders them intrinsically disparate. Just as Arbitrator Benn observed, while two communities may themselves be legitimately “comparable” in the statutory sense, it is impossible to make an “apples to apples” comparison when the essential framework in which their contracts are being (or were) negotiated is completely different. This conundrum is particularly troublesome when arbitrators operating in these trying times are charged under the Act with resolving truly contentious economic issues such as wages and health insurance. In attempting to fulfill their statutory duty under the Act to do so at present, arbitrators are now finding that communities which under other circumstances would be considered “comparable”, are no longer so because substantive wage increases (for example) negotiated before the

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<sup>15</sup> Arbitrator Benn quotes a maxim from Henslee v. Union Planters National Bank & Trust Co., 334 U.S. 595, 600 (1949) (Frankfurter dissenting) long held as one of this Arbitrator’s most favored citations. *See also*, Rose v. Mitchell, 443 U.S. 545, 575 (1979)(Rehnquist concurring).

economy's crash make no sense at all now. That is why "rejecting wisdom" in favor of unwavering (and blind) reliance on the [formerly] pre-eminent statutory criterion of comparability must be carefully avoided, at least for the time being.

That being said, Arbitrator Benn duly noted that this is not necessarily a permanent divergence from what was once the "norm" in interest arbitrations under the Act. In relevant part, he noted:

But before leaving comparability, one final finding must be made. My conclusion in this case – i.e., that comparisons to comparable communities are not appropriate for the reasons set for the above – is without prejudice to either party's ability to advance comparability arguments in future negotiations and interest arbitration proceedings. For example, during the next round of negotiations or any interest arbitration, [the union] retains the right to argue that its members are entitled to above average or "catch up" wage increases to restore whatever differentials or rankings it believes have been compromised by this award or that the then current wage rates should be not considered the *status quo* given the unique circumstances of this case. Likewise, the City retains the right to argue that above average or "catch up" wage increases are not appropriate based on comparability or other relevant factors. For me, and for the time being, this economic downturn has merely caused a hiatus in the use of the comparability factor. That is how I believe comparability should be approached for the present and that is how I have ruled in other awards decided in this recession.<sup>16</sup>

This Arbitrator is in agreement with Arbitrator Benn's cogent analysis of his often-cited "that was then, this is now" reasoning. However, it is also true, that at some point, the flip side of the same coin will come into play. In other words, the "that was then, this is now" argument might actually favor larger than average increases for bargaining unit employees down the road because the economy has turned around. For many reasons we all hope for that, for it would mean a return to some form of economic

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<sup>16</sup> *City of Chicago; supra.*

normalcy, if not huge growth. In the meantime, however, we are forced to live with what presently “is”, and that economic reality no longer looks like it did in 2007 and 2008.

In this particular case, for what they are worth, the Union and the Village have proposed different external comparables, which, given the nature of interest arbitration in these unsettled economic times and for the foregoing reasons, is not entirely unforeseen. The Union proposes a list of nine municipalities; Addison, Algonquin, Bolingbrook, Carpentersville, Channahon, Darien, Lombard, Plainfield and Woodridge. The Village also proposes a list of nine municipalities. However, only two are common with the Union’s list. The Village proposes Plainfield, Frankfort, New Lenox, Mokena, Lockport, Lemont, Shorewood, Crest Hill and Channahon as external comparables. It is duly noted that the communities of Plainfield and Channahon are common to both the Village’s and the Union’s list of proposed comparables.

In relevant part, the Village argues that the Employer’s proposed external comparables are more reliable than those promulgated by the Union for a number of reasons. First, the Village argues, the Metropolitan Alliance of Police is the exclusive bargaining agent for police (and some sergeant) units in Channahon, Crest Hill, Lemont, Lockport, New Lenox and Plainfield. All of these communities, the Village notes, are located either entirely or partially within Will County. In point of fact, the Village argues, Plainfield, Crest Hill and Lockport all share boundaries with Romeoville. Plainfield, Channahon and New Lenox are also home rule municipalities, as is Romeoville, the Village submits. In population, Romeoville ranks first among the

Village’s proposed comparable communities. Plainfield and Channahon, also common to the Union’s list of comparables, rank second and tenth respectively, in terms of population.

As to geographical size, Romeoville is also the largest, with Plainfield and Channahon ranking second and fifth, respectively, the Village states. The EAV of Romeoville is second only to Plainfield among the Village’s proposed comparables and Channahon (also common to the Union’s list) ranks tenth in terms of EAV. Median household income and average household income favor Plainfield and Channahon, with Romeoville ranking ninth above Crest Hill.

The Union expends little effort defending its proposed comparables. Indeed, as the Village points out, the majority of the Union’s proposed external comparables are not even in Will County. Addison, Darien, Lombard and Woodridge are located in DuPage County. Carpentersville is in Kane County and Algonquin is in McHenry County. There is no disputing record evidence that the “out-of-county” comparables proposed by the Union are significantly removed from Romeoville in terms of geographic proximity. Certainly, while proximity is not, alone, sufficient to render two communities comparable (or incomparable for that matter)<sup>17</sup>, it must be considered crucial from the labor market standpoint, which has a direct impact on the relative viability of wage proposals.

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<sup>17</sup> The Arbitrator is aware that sometimes there may exist no “real” in-county or close-by community comparables, because of size or other distinct differences (City of Chicago for extreme example), thus, the parties are privileged to roam far a field under this criteria. However, in this matter Romeoville does not fall into this category.

After carefully examining this record, the Arbitrator concurs with the Village that the Union’s process of selecting external comparables was, in the end, result-oriented. This is particularly evident when examining the final wage proposal submitted by the Union. The relative “contact points” among the Union’s proposed comparables with the Village are not sufficient to establish true comparability, for what comparability will ultimately be worth, and moreover, this record does not establish any reasonable need, other than to pursue favorability on economic issues, to stray so far from geographic proximity to Romeoville. This is not a specialized bargaining unit, or an otherwise unique employer/employee bargaining relationship whereby true comparability with proximate employee groups would be difficult, at best to establish. [See; e.g., Metropolitan Alliance of Police Chapter 471 and Forest Preserve District of DuPage County; FMCS Case No. 091103-0042-A (Goldstein, 2009).] Thus, the Arbitrator selects and hereby adopts for purposes of comparison, again for whatever purpose it will ultimately serve, the Village’s list of proposed externally comparable communities. For the record, they are:

- Plainfield
- Frankfort
- New Lenox
- Mokena
- Lockport
- Lemont
- Shorewood
- Crest Hill
- Channahon

## VII. Internal Comparables

Internal comparability will, if it has not already, become more important in the overall scheme of bargaining and interest arbitration than the formerly pre-eminent statutory criterion of external comparability. While most interest arbitrators, and this Arbitrator is no exception, endeavor to avoid the trap of traditional (and expected) “me-too” arguments, the fact remains that, in today’s economic environment, context is important. With particular attention to matters of wages, health insurance, specialty stipends, and vacation accrual, internal comparability serves to establish an internal framework in which the collective bargaining agreement must, once again, make sense. In the Village of Romeoville, there are approximately 226 full time employees, and not all are represented by a union for purposes of collective bargaining. As previously noted, AFSCME represents Public Works and Clerical employees, and has successfully negotiated contracts with the Village in effect from May 1, 2009 through April 30, 2012.<sup>18</sup> The Village is currently negotiating with firefighters for a first-time contract, and the remaining Village employees (not represented by this bargaining unit) are non-union. As set forth in more detail herein below, both parties, to some degree, rely on the statutory criterion of internal comparability in support of their respective arguments pertaining to impasse issues in this case. While not trustworthy as an exclusive or definitive benchmark on any single point, internal comparability will serve to establish the “norm” for this Village in certain matters, and will thus provide context for any

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<sup>18</sup> Employer Exhibit 8.

ultimate finding as to which “last best offer” should prevail on matters of economic interest to this bargaining unit.

### **VIII. Consumer Price Index (CPI) and Other Relevant Factors**

The record establishes that at the time of the hearing, the annual average Consumer Price Index for 2009 was negative at -1.2%.<sup>19</sup> This is relevant to the Arbitrator’s following analysis of the parties’ respective wage offers, of which, because it is an economic issue, one must be adopted over the other in its entirety. The Village proposes across the board wage increases of 2% per year<sup>20</sup> for all three years of this contract. In real terms, with pre-existing step increases factored in, the average wage increase for the bargaining unit over the life of the contract would be 13.29 % under the Village’s proposal.<sup>21</sup> The Village argues, as will be set forth in more detail herein below, that at a time when many employers are providing modest salary increases, if any at all, this Employer is proposing substantive wage increases even though inflation is statistically low at this point in time.

The record further establishes that at the time of the hearing, the unemployment rate for Illinois was 11.1%.<sup>22</sup> Even in the Chicago suburban area, the Village notes, unemployment rates at the time of the hearing were at 10.6%. It is hardly surprising, then, that the overall economic climate in which this Agreement will eventually come to completion is patently unfavorable to employers struggling to just “keep the boat

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<sup>19</sup> Employer Exhibit 26.

<sup>20</sup> An increase in wages of 2% per year will actually cost the Village an additional 4.7% the first year, 4.32% the second year, and 3.71% the third year (Employer brief at page 48).

<sup>21</sup> Employer brief at page 49.

<sup>22</sup> Employer Exhibit 27.

floating.” Certainly, as set forth herein above, due weight and consideration will be given to the statutory criteria of external comparability (using the Village’s list of proposed comparables), internal comparability, cost of living indices, and “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.”<sup>23</sup>

## **IX. The Issues**

### **Section 2.2 – Fair Share**

#### The Union’s Final Proposal

During the term of this Agreement, police officers who are not members of the Chapter shall, commencing thirty (30) days after the effective date of this Agreement, pay a fair share fee to the Union for collective bargaining and contract administration services tendered by the Union as the exclusive representative of the officers covered by this Agreement. Such fair share fee shall be deducted by the Village from the earnings of non-members and remitted to the Union each month. The Union shall annually submit to the Village a list of the officers covered by this Agreement who are not members of the Chapter and an affidavit which specifies the amount of the fair share fee, which shall be determine in accordance with the applicable law.<sup>24</sup>

#### The Village’s Final Proposal

During the term of this Agreement, Employees covered by the terms of this agreement, who are not members of the Chapter shall, commencing thirty (30) days after their employment or thirty (30) days after the effective date of this Agreement, whichever is later, pay a fair share fee to the Chapter for collective bargaining and labor Agreement administration services rendered by the Chapter. Such fair share fees shall be deducted by

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<sup>23</sup> 5 ILCS 315/14(h).

<sup>24</sup> Union Exhibit 10 at page 2.

the Employer from the earnings of non-members and remitted to the Chapter. The Chapter shall submit to the Employer a list of members covered by this Agreement who are not members of the Chapter and an affidavit which specifies the amount of the fair share fee. The fair share fee shall not include contributions related to the election or support of any candidate for political office or for any member only benefit.

The Chapter agrees to assume full responsibility to insure full compliance with the requirements laid down by the United States Supreme Court in *Chicago Teachers Union v. Hudson*, 106 U.S. 1066 (1986), with respect to the constitutional rights of fair share payers.

Non-members who object to this fair share fee based upon bona fide religious tenets or teachings of a church or religious body of which such Employee is a member shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed upon by the Employee and the Union. If the affected Employee and the Union are unable to reach an agreement on the matter, the organization shall be selected by the affected Employee from an approved list of charitable organizations established by the Illinois State Labor Board, and the payment shall be made to said organization.<sup>25</sup>

#### The Position of the Union:

The Union argues that its proposed “Fair Share” language is in full compliance with the law. Indeed, states the Union, MAP recognizes case law stemming from *Hudson*, but endeavors to distinguish itself as a collective bargaining agent from a teacher’s union. MAP is a police union, not a teacher’s union, it is argued. Clearly then, the Union argues, by incorporating reference to “applicable law” and also a contractual requirement to be bound by it, there is no need to be more specific with respect to expanding existing Fair Share language to include express reference to the Supreme Court’s decision in *Hudson*.

#### The Position of the Village:

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<sup>25</sup> Employer Exhibit 4 at pages 3-4.

In this case, the Village argues, it is the Union pursuing a change in *status quo* Fair Share language. Actually, the Village states, management’s counter-proposal as set forth herein above represents an “attempt to reach an agreement,” as in reality, there is no real need to alter existing provisions. In particular, the Village argues, the Union failed to articulate, or document for that matter, any issue or complaint with respect to how Fair Share contributions are currently being administered. Nevertheless, the Village argues, the language the Employer proposes to replace existing Section 2.2 provisions “is typical of many fair share provisions found in most bargaining agreements.”<sup>26</sup>

Discussion:

While there was little or no important discussion in the record as to the impasse issue of Fair Share language, the governing principles of fair share contributions have already been established by the United States Supreme Court. What appears to be the problem in this case, is how the parties wish to memorialize what is already a matter of law. By way of background, in Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Court rejected a claim that it was unconstitutional for a public employer to designate a union as the exclusive bargaining agent of its employees, and then to require nonunion employees, as a condition of employment, to pay a fair share of the union’s cost of negotiating and administering its collective bargaining agreement. In subsequent Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986), the Court went on to address the process by which fair share contributions may (or may not) be collected pursuant to

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<sup>26</sup> Employer brief at page 12.

*Abood*; supra, and further how nonunion employees may legally bar the union from spending fair share contributions in ways which violate their constitutional rights.

In this case, it appears that neither party purposes to depart from either *Abood* or *Hudson* in theory or in practice, but there is apparently some conflict as to precisely how these controlling decisions should be memorialized in this new contract. The Union proposes fresh and purposely general language pertaining to Fair Share contributions, though it is not clear from this record as to the reason why it wishes to depart from the *status quo*, other than perhaps to add some type of reference to *Hudson*, which many modern agreements now do. In the end, it appears that because the entire structure of Article II is being re-written, the Union chose to submit new Fair Share language in concert with new Indemnification language which, it clearly states, is a much more contentious issue.

The Village, on the other hand, offers what is now somewhat “standard” Fair Share language in police contracts expressly mentioning the Union’s obligations pursuant to *Hudson*. In the end, the Arbitrator finds the Union’s proposal to be unnecessarily general, where in contrast the Village offer is clear, easily understood, and in articulated compliance with established case law. The Arbitrator understands that the Union’s real issue with Fair Share language in this new contract pertains to its concern over the extent to which the Village is indemnified against legal action arising from its contractual obligation to collect Fair Share contributions on behalf of the Union. As that concern is addressed herein below as a separate impasse issue, the exclusive matter before the

Arbitrator at this juncture is which of the two Fair Share proposals before him is more reasonable.

Certainly true is the fact that this is a non-economic issue, and thus, if the Arbitrator found neither proposal appropriate, he would be privileged to craft alternative suitable language. However, in the Arbitrator's opinion, this particular privilege under the statutes should be exercised cautiously, and only in cases where neither proposal adequately resolves the non-economic impasse issue. This is so, because in the end, the contract should, to the greatest extent possible, be reflective of the parties' prior negotiations. Fortunately, neither proposal is "off base" in terms of lawfulness, but in the end, the Arbitrator finds the Village's proposed language both appropriate and not unduly restrictive.

It is important to note here, that what the Village proposes is relatively standard contract language these days. In point of fact, nearly identical Fair Share provisions appear in other MAP contracts that have been negotiated (or resolved through interest arbitration) within the last few years.<sup>27</sup> Thus, for all the foregoing reasons, the Arbitrator concludes that the Village's final offer should be adopted. The following Order so reflects.

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<sup>27</sup> See; e.g., MAP and City of Crest Hill CBA in effect from 2007 to 2010 (Employer Exhibit 15); MAP (Representing Police Sergeants) and Village of New Lenox CBA in effect from 2008 to 2011. (Employer Exhibit 23.)

## Order

For all the foregoing reasons, the Arbitrator concludes that the Village's proposal with respect to Fair Share language should be adopted. It is so ordered.

### Section 2.2 – Indemnification

#### The Union's Final Proposal:

The Metropolitan Alliance of Police shall indemnify, defend and hold harmless the Village, its elected representatives, officers, administrators, agents and officers from and against any and all claims, demands, actions, complaints, suits or other forms of liability (monetary or otherwise) that arise out of or by reason of any action taken or not taken by the Village for the purpose of complying with the provisions of this Article, or in reliance on any written check-off authorization furnished under any such provisions, provided that the Village does not initiate or prosecute such action.<sup>28</sup>

#### The Village's Final Proposal

The Union shall indemnify, defend, and hold the Village harmless against any and all claims, demands, suits or other forms of liability (including costs and attorneys' fees) brought against the Village and arising out of or by reason of any action by the Village for the purpose of complying with any provisions of this Article. If an incorrect deduction is made, the Union shall refund any such amount directly to the involved employee.<sup>29</sup>

#### The Position of the Union:

The Union argues that the subjects of Fair Share contributions and Indemnification are intrinsically linked, in that, pursuant to *Hudson*, an individual employee now has the right to file an objection as to how his/her Union dues or, in the alternative Fair Share contributions, are being allocated for purposes of political interests. MAP understands the case law, the Union argues, and has every intention of remaining in compliance with

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<sup>28</sup> Union Exhibit 10 at page 3.

<sup>29</sup> Employer Exhibit 4 at page 4.

its instruction. However, the Union argues, the Village should not be indemnified under present contract language in cases where management initiates action on behalf of an employee. In short, the Union explains, “The Union does not want to have to pay the Village’s attorneys fees and costs if the Village decides to initiate a lawsuit on behalf of the individual Union Member who may or may not have an objection... The Union will indemnify the Village if the Union member files or initiates any legal action regarding fair share issues, and agrees to indemnify the Village on any legal costs and fees in the event that the Chapter members files suit.”<sup>30</sup> Said another way, “The Union’s biggest concern is that the Village shall ‘take up the sword’ or initiate an action on behalf of the individual Chapter member when, in fact, the Chapter member(s) may have no problem with any of the Fair Share language provisions.”<sup>31</sup>

In all, the Union asserts, the bargaining unit is not asking for anything new. In fact, the Union submits, the Chapter’s proposed change from existing indemnification language may be found in other municipal contracts where MAP represents police officers.

#### The Position of the Village:

On this issue, too, the Village asserts that *status quo* would have been entirely acceptable, as there is no evidence of record that the “concern” expressed by the Union has ever actually materialized under existing language. However, the Village explains, in order to allay the Union’s angst, it counter-proposed to add the phrase “brought against

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<sup>30</sup> Union Exhibit 10 at page 2.

<sup>31</sup> Union brief at page 6.

the Village” (referring to actions in which the Village would be indemnified) to existing contract language. Clearly, the Village argues, this small change sufficiently closes the door on any action brought by the Village, and thus solves the alleged problem with *status quo* without substantively altering it.

The Village specifically rejects the word “prosecute” in the Union’s proposed language, noting in particular that “prosecute” does not always mean “initiate.” From a purely legal standpoint, the Village argues, “prosecute” means “to follow up; to carry on an action or other judicial proceeding.”<sup>32</sup> Furthermore, the Village argues, to prosecute an action is not merely to commence it, but includes following it to its ultimate conclusion.<sup>33</sup> Thus, the Village reasons, the Union’s proposed language could be used to preclude indemnification, not because the Village initiated an action, but because the Village responded with all legal means available to an action brought against it.

The Village also argues that the Union, in proposing new indemnification limits, totally ignores the recognized fact that such language is traditionally included in collective bargaining agreements as a *quid pro quo* for the employer’s agreement to permit fair share deductions. In point of fact, the Village argues, the Union’s only stated rationale for its proposed departure from *status quo* is completely unsupported by any actual occurrence, because the Village has never engaged in the “subterfuge” promulgated by the Union on this subject.

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<sup>32</sup> Black’s Law Dictionary; Abridged Sixth Addition.

<sup>33</sup> Id.

In sum, the Village argues that its proposal reasonably addresses the Union's concern that the Village not be indemnified for initiating an action, while at the same time it protects the interests of the Village.

Discussion:

In truth, this particular “impasse” issue left the Arbitrator both curious and puzzled. Certainly, “boiler plate” indemnification language appears in most, if indeed not all collective bargaining agreements where Fair Share contributions and dues collection are handled by the employer on behalf of the union. These parties have a long-standing bargaining relationship, and there is absolutely nothing in this record to substantiate even a hint of what the Union has expressed as its pre-eminent concern on this subject. Specifically, it appears, the Union is somehow worried that the Village will suddenly decide to cast suspicion upon the Union's disbursement of dues and Fair Share contributions, prompt or even bring litigation under *Hudson*, and then sit back while the Union “unnecessarily” expends resources defending itself.

First of all, there is no evidence in this record that this has ever happened. Moreover, there is no real hint or speculation that it was ever going to happen, and thus there is now a need to depart from the negotiated *status quo* in order to cure the problem.<sup>34</sup> Guided by Arbitrators Nathan and McAlpin, then, there must be some other evidence that the present system is “broken”, or in the alternative, that it is causing issues of due process for the Union such that negotiated *status quo* should be abandoned in

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<sup>34</sup> The Arbitrator equates the Union's position here as building a straw man and then setting it on fire.

favor of the Union's proposal. Neither, the Arbitrator finds, is true in this case, as was the Union's exclusive burden to prove.

By way of addressing the Union's alleged concern, however, the Village offered to slightly expand existing language to the extent that indemnification would only apply to actions "brought against" the Village. Naturally, then, any action brought by the Village would be exempt from indemnification, and the Arbitrator can think of no reason why this slight, *but effective*, alteration did not satisfy the Union. As the Village noted, indemnification language is traditionally included in collective bargaining agreements as a *quid pro quo* for the employer's agreement to permit, or even facilitate, fair share contributions and dues collection. In this case, the Union has offered no viable explanation as to why existing language is genuinely problematic and/or no longer viable, nor is there any suggestion of an additional *quid pro quo* in exchange for substantively altering the *status quo*.

Moreover, the Village's objection to the term "prosecution" in the Union's proposal is well-founded. Likely, the Union used the term in the "generic" sense of initiating an action. However, as the Village notes, "prosecution" is also properly a term for taking up a defensive action. Thus, the use of that particular word in the Union's proposal is indeed inappropriate, as, from a purely technical standpoint, it could potentially *weaken* present indemnification provisions. Since it is not really likely that the Union actually intended to water down its indemnification responsibilities under the present contract, it is beyond the Arbitrator's understanding as to why there was no

apparent attempt to remove the term or substitute it for one less offensive (or potentially damaging) to the Village.

In any event, the Village's proposed language reasonably addresses the Union's alleged concern without unduly altering the *status quo*. As explained in detail herein above, it is the Arbitrator's statutory duty to protect the bargaining process, and, pursuant to the burden on the moving party, to insist on adequate evidentiary support for significantly departing from an arrangement that a mere three or four years ago, was perfectly satisfactory to both parties. At this juncture, the Arbitrator reminds his readers that, at least as far as this record indicates, these parties have never been in interest arbitration before. Accordingly, it was the Union's burden to establish that the "old system has not worked as anticipated when originally agreed to," or, in the alternative, that it is causing due process problems for the Chapter. There is no such proof in this record. Thus, the Arbitrator concludes that the Village's proposal should be adopted as the more reasonable of the two final offers, because it adequately addresses the Union's stated concern without otherwise disturbing the *status quo*. The following order so reflects.

### **Order**

For all the foregoing reasons, the Arbitrator concludes that the Village's proposal with respect to Indemnification provisions should be adopted. It is so ordered.

### **Section 10.1 – Family Medical Coverage**

#### The Village's Final Proposal

The Village shall provide group medical insurance coverage, dental coverage and vision coverage for bargaining unit employees with the same level of benefits that the Village provides for the general non-represented employees of the Village. The parties agree that changes in the coverage level of benefits may be made by the Village without any further negotiations with the Union. The Village agrees to notify the Union thirty (30) days prior to making any changes in coverage level of benefits, and to afford the bargaining unit employees the opportunity to change within available Village health plans prior to any plan coverage changes taking effect.

The employees shall pay the following sums toward the monthly premiums for said coverage as payroll deductions with the Village paying the remaining monthly premium amounts:

H.M.O Single Coverage Monthly Contribution	0% of the monthly premium
H.M.O. Family Coverage Monthly Contribution	0% of the monthly premium
P.P.O. Single Coverage Monthly Contribution	12% of the monthly premium
P.P.O Family Coverage Monthly Contribution	12% of the monthly premium

The Village will also make available to the employee dental care and vision care for themselves as well as for their families. There is no additional cost to the employee for the dental care and vision care programs.

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- B. In the event that a member of this Chapter is placed on disability for an on-duty or duty-related injury, the member group health insurance cost and coverage will continue until they enter another hospitalization plan or the disability ends.<sup>35</sup>

#### The Union's Final Proposal

The Union proposes to maintain the *status quo*.<sup>36</sup>

#### The Position of the Village:

The Village explains that, other than the impasse issue of wages, the matter of Family Medical Coverage is the only real departure from *status quo* proposed by the Employer in this case. Specifically, the Village explains, the Employer seeks liberty to change health insurance benefit levels during the life of this contract without negotiating

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<sup>35</sup> Employer Exhibit 4 at page 5.

<sup>36</sup> Union Exhibit 10 at page 4.

the change with the Union. Otherwise, the Village states, the Employer agrees to maintain *status quo* with respect to premium contributions, and also to keep benefit levels consistent with those afforded “general non-represented” employees of the Village.

As to support for the proposed change pursuant to statutory criteria, the Village first argues that internal comparability requires due consideration of the Employer’s offer. At present, the Village argues, the Employer has two collective bargaining agreements with AFSCME, one representing the Clerical employees and one representing Public Works employees. Both agreements, the Village argues, contain the same health insurance language and premium contribution provisions proposed by the Employer here.<sup>37</sup> Moreover, the Village argues, the Employer is presently privileged to alter benefit levels for non-represented employees without condition. What the Employer seeks here, the Village argues, is liberty to maintain consistency within the entire municipal operation in terms of health insurance, as both the AFSCME contracts and its present proposed language require that benefit levels be equivalent to those afforded non-represented Village employees.

The statutory criterion of external comparability also supports this departure from *status quo*, the Village argues. In point of fact, seven of its proposed externally comparable communities provide the same type of benefit level flexibility for the employer, and in some cases, their police contracts even permit mid-term premium

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<sup>37</sup> See; Employer Exhibit 9.

increases as well.<sup>38</sup> In this case, the Village argues, the Employer seeks to have flexibility in adjusting health plan benefits in order to provide cost-effective and uniform health care for all of its employees. Because this proposal is supported by both internal and external comparability, and also because it recognizes present difficulties in providing health care at a reasonable cost, the Village urges the Arbitrator to adopt its proposed change in the *status quo*.

The Position of the Union:

The Union argues that the Village should not have the ability to make unilateral changes in medical benefit levels without first negotiating such changes with the Union. Any change in the parties' present health care arrangement could have a major (and detrimental) monetary impact on the bargaining unit, the Union argues. Moreover, the Union argues, the Village had a duty to bargain in good faith on this issue, and patently rejected any notion of doing so. This, the Union surmises, was because the Village understood that a *quid pro quo* for the concession proposed by the Employer would be necessary, and the Employer had no intention of offering anything in exchange for the latitude it now pursues.

The Union also argues that the Village's proposed 2% wage increase in each of the three years of this contract, should that offer prevail, mandates rejection of the Employer's proposal with respect to the issue of employee health care. On this point, the

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<sup>38</sup> The communities referenced by the Employer are: Channahon (Employer Exhibit 14), Frankfort (Employer Exhibit 16), Lemont (Employer Exhibit 18), Lemont Sergeants (Employer Exhibit 19), New Lenox (Employer Exhibit 22), New Lenox Sergeants (Employer Exhibit 23) and Plainfield (Employer Exhibit 24). It is noted that Channahon and Plainfield police are represented by MAP and those communities are also proposed by the Union as external comparables.

Union relies on wage data for each of its proposed external comparables, noting in particular that “every single community used in the Union’s comparison was either 3% or above for wage increases for any given year during the term of their current contract.”<sup>39</sup>

In sum, the Union accuses the Village of “robbing Peter to pay Paul”, and urges the Arbitrator to see the Employer’s proposal for what it is; a petition for a “breakthrough” without an adequate *quid pro quo*.

Discussion:

Because this is an economic item, it is, as the Union says, generally appropriate to expect *quid pro quo* for a “breakthrough” departure from the *status quo*. However, what is important to note here, is that, at least for the time being, the latitude requested by the Village is not actually costing bargaining unit members anything over and above what they are paying now. Under the Employer’s proposal, health insurance premiums will remain at present levels for the lifetime of this contract, and permission to alter benefit levels mid-term may or may not change out-of-pocket expenses within the bargaining unit. What the Village is after here, is the ability to negotiate health care coverage for the Village as a whole, and in this present economic climate, with health care costs skyrocketing across the board, it can hardly be denied that “bargaining power” with

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<sup>39</sup> The Arbitrator cites the Union’s reliance on external comparability in this section only because it is argued. In so doing, he neither alters nor mitigates his earlier conclusion that, overall, the Village’s list of external comparables more closely comports with the intent of the statutes. It is also noted that many of the contracts relied upon by the Union in terms of scheduled wage increases were negotiated prior to the severe downturn currently plaguing the Nation’s economy. See; e.g. the following collective bargaining agreements, MAP and Village of Addison (2005-2009); MAP and Village of Bolingbrook (2005-2009); MAP and Village of Carpentersville (2006-2009), MAP and Village of Channahon (2006-2009); MAP and the City of Darien (2007-2010); MAP and the Village of Lombard (2007-2011); MAP and the Village of Plainfield (2007-2010) and MAP and the Village of Woodridge (2007-2012). Union Exhibits 14, 16, 18, 20, 21, 22, 23, 24.

insurance companies is a good thing overall. Thus, after reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Village's proposal is more suitable because it expressly recognizes a legitimate need for flexibility that will help keep health care benefits in line with what they are *currently* costing both the Employer and its employees.

First, in this particular case, uniformity of Agreement language among various Village bargaining units and operating departments is distinctly advantageous to employee and employer alike, in that, by virtue of an "all or nothing" approach, the Village greatly increases both leverage and buying power with insurance carriers. Thus, the Arbitrator finds, the concept of uniform Village-wide health care coverage is not merely "convenience driven." Nor, in this Arbitrator's opinion, is it representative of unwillingness on the part of the Village to bargain in good faith over an important issue concerning the welfare of the members of this particular Union. The unpleasant reality here is that, one way or the other, health care will continue to cost more now than it used to. With that truth firmly in hand, there are only two ways to handle this issue. Either the Village needs to raise employee premium contributions, or benefit levels, in other words what current dollars will buy in the present market, must be, in some manner responsive to skyrocketing costs. It is simply unreasonable in this economy to expect any employer, never mind this Village, to carry the entire burden of this inescapable and involuntary reality.

What the Village has proposed here is the “lesser of the two evils,” in the opinion of the Arbitrator. For the lifetime of this contract, employee health insurance premiums will remain where they presently are. In exchange, the Village will have flexibility to negotiate on a larger scale as to what those premiums will purchase, and there is no doubt that there is strength in numbers. It is also important to note that what the Village proposes here is exactly what all the rest of the Village employees currently live with. The AFSME contracts require that health care benefits must remain consistent with those of non-union employees employed by the Village. Likewise, the Village’s proposed contract language in this case requires that health care benefits remain consistent with those afforded non-union employees retained by the Village. Thus, there is an obvious pursuit of uniformity where health care is concerned, and while lock-step internal comparability is not always 100% persuasive, it is certainly compelling on this particular issue.

There is also, as an aside, evidence of external comparability that is worth mentioning. Certainly, the Union cannot argue that the Village’s proposal in this case is truly ground-breaking, because both Channahon and Plainfield contracts permit the very flexibility (and then some) pressed by the Village. The Arbitrator finds this persuasive, in that both of these communities were mutually promulgated as external comparables. Article XV – Insurance and Disability Benefits of the 2006-2009 contract between MAP and the Village of Channahon provides in relevant part as follows:

Section 15.1 – Medical and Life Insurance Plan

During the term of this Agreement, the Village shall continue to make available to non-retired, full-time employees and their eligible dependents the same medical and life insurance plan(s) as provided for regular, full-time unrepresented employees. The Village reserves the right to make any changes, reductions, modifications, deletions, or improvements with respect to employee medical or life insurance (including but not limited to changes in insurance carriers, insurance plans, benefit levels, deductibles, co-payment levels, opting for self-insurance etc) so long as such changes are equally applicable to regular, full-time unrepresented employees. (Emphasis added.)<sup>40</sup>

In MAP's contract with the Village of Plainfield, the Village is only contractually required to "make available to non-retired employees and their eligible dependents the same insurance coverage and benefits, including a vision insurance plan, on the same terms as are offered to other Village employees." Furthermore, "The extent of coverage under the insurance policies (including HMO and self-insured plans) referred to in [the] Agreement [are] governed by the terms and conditions set forth in said policies or plans."<sup>41</sup> Thus, in Channahon, the employer is free to "change, reduce, modify and/or delete" employee medical or life insurance as long as those changes are applied equally to full-time non-represented employees. Likewise, in Plainfield, the Village is only bound by a requirement to maintain health care benefits consistent with those of "other Village employees."

While the Union may argue that in both instances wage increases were at least comparable or greater than those the Union has proposed here (and thus less than the Village's base 2% offer in this case), it is important to note the context of the Channahon and Plainfield contracts. Even though those contracts were negotiated during more

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<sup>40</sup> Union Exhibit 20 at page 19.

<sup>41</sup> Union Exhibit 23 at page 15.

favorable economic times, it was recognized that health care costs were increasingly spiraling out of control, and there was real power in dealing with insurance carriers on an “all or nothing” basis. Moreover, as to the actual potential cost impact on this bargaining unit, neither party offers proofs as to what it might actually look like. What the Village seeks here is flexibility to negotiate benefit levels with insurance carriers with a set budget. From a statutory point of view, this is a reasonable departure from *status quo*, given full consideration of the factors of internal and external comparability, and the present state of the health care industry which, for better or worse, we all are presently forced to live with. The present system is indeed “broken,” and the incumbent contract terms are no longer viable with respect to Family Medical Coverage.

While this will be addressed in more detail herein below, it is further well-established that many arbitrators in these present economic circumstances have taken, and continue to take, the “that was then, this is now” approach in resolving some of these legitimately contentious economic issues. As Arbitrator Benn has cogently pointed out in a number of cases, and *City of Chicago, 2010*, supra in particular, this approach is responsive to current economic realities, and is not prejudicial to more favorable conditions down the road. In other words, by finding in favor of the Village on this issue, the Arbitrator does not foreclose any future proposal which the Union might submit under different and more favorable circumstances. Indeed, the “that was then, this is now” argument cuts both ways, and certainly that is what the bargaining process, and by extension interest arbitration, is intended to accommodate. Statutory factors establish

context above all else, and, if the process is exercised correctly, it is responsive to changes in context.

In this particular case, because the Village proposes flexibility identical to that which it already has with all other Village employees (with the possible exception of firefighters who are presently negotiating their first contract with the Employer) with respect to altering health care benefit levels without changing employee premium contributions for the life of this contract, the Arbitrator concludes that, in combination with scheduled wage increases at a time where some municipal employers are actually freezing wages during one or more years of a multi-year contract, the Village's offer is responsive to the needs of the community without causing measurable hardship on the bargaining unit at this point in time. The Village's offer is also common in other MAP contracts.

Thus, for the foregoing reasons, the Arbitrator finds that the Village's final proposal should be adopted. His Order to that effect follows.

### **Order**

For all the foregoing reasons, the Arbitrator concludes that the Village's proposal with respect to Family Medical Coverage should be adopted. It is so ordered.

### **Section 11.2 – Normal Work Day and Work**

#### The Union's Final Proposal

The normal workday shall consist of twelve (12) consecutive hours of work, the current starting times of which are 6:00 a.m. and 6:00 p.m. The

normal pay period shall consist of eighty (80) hours. Officers working the twelve (12) hour shift shall be scheduled off every other weekend. The Village will not alter or adjust the normal work day or work week solely for the purpose of avoiding overtime payments or to limit individual employee's opportunity to work overtime. Police officers and sergeants working in uniform assigned to patrol shall work twelve (12) hour shifts. Investigations and/or non-patrol related duties may be assigned to the traditional eight (8) hour shift at the Village's discretion.<sup>42</sup>

#### The Village's Final Proposal

The Village proposes to maintain *status quo*. For ease of reference, it is specifically set forth below:

The normal workday shall consist of eight (8) consecutive hours. The normal workweek shall consist of forty (40) hours per week. The normal workweek shall commence at the start of the first regularly scheduled duty day in any seven (7) consecutive day period (168 consecutive hours) which may begin on any day of the calendar week and enter into the next calendar week. The normal and calendar workweek for the Romeoville Police Department is that period beginning 11:00 p.m. Sunday and ending 10:59 p.m. the following Sunday night.<sup>43</sup>

#### The Position of the Union:

The Union characterizes the matter of 12-hour shifts as “a very strong issue for this Chapter.”<sup>44</sup> In today's working environment and in consideration of the “everyday demands that are placed on individual employees regarding personal and family obligations,” twelve-hour shifts provide more flexibility for officers employed by the Village to attend to personal and family matters, the Union argues. The Union also states that, “The 12-hour shift will also demonstrate an increase in manpower and cost thus saving the Village money in staffing its police department on a 12-hour shift.”<sup>45</sup>

Moreover, the Union argues, its request for a 12-hour shift schedule is not unreasonable,

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<sup>42</sup> Union Exhibit 10 at page 6.

<sup>43</sup> Employer Exhibit 4 at page 6.

<sup>44</sup> Union brief at page 7.

<sup>45</sup> It is not statistically clear from this record how 12-hour shifts will actually “save the Village money in staffing the police department.”

given the fact that many police departments in the Chicago area have adopted similar work schedules “with no complaints.”

The Union urges the Arbitrator to consider the testimony of Sergeant Christopher Burne, who explained at arbitration that 12-hour shifts would actually help alleviate some of the Village’s “financial problems.” Burne also testified, the Union notes, “there [would be] no foreseeable problem for the Village if it were to adopt the 12-hour shift.” In fact, the Union argues, Burne explained that at one point Village managers approached him regarding sick time abuse, and it became clear after some research that 12-hour shifts would, if not totally cure the problem, certainly mitigate it. This is so, Burne testified, because 12-hour shifts provide officers with an additional 80 days off, which would reduce “scheduling conflicts between home and work.”

In terms of *quid pro quo*, the Union asserts that, “There is no question mathematically [12-hour shifts] will in fact reduce staffing requirements and save the Village money.”<sup>46</sup>

For all the foregoing reasons, then, the Union urges the Arbitrator to adopt the Chapter’s final proposal and award new workweek provisions.

The Position of the Village:

At the outset, the Village argues that the Union’s proposal so fundamentally alters the operation of the Department that it must be considered a true “breakthrough”

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<sup>46</sup> The Union proposed tentative work schedules which it contends will save the Village in overall labor costs.

proposal. Beyond creating 12 hours shifts, the Village notes, the Union’s proposal as set forth above alters the operation of the Department in the following specific ways:

- Mandatory 12 hour “workday” with no Employer discretion as to the selection or the type of shift duration.
- Mandatory start time for shifts with no Employer discretion.
- A “normal” pay period consisting of eighty (80) hours. (The Employer is not certain what a “normal” pay period is intended to mean.)
- Mandatory schedule of locked days off for patrol personnel working 12-hour shifts with no Employer discretion.
- Language prohibiting the Employer from adjusting the work day or work week for the alleged purposes of avoiding overtime or limiting an employee’s “opportunity” for overtime.
- Permitting officers assigned to investigations or non-traditional patrol duties to work 8-hour shifts in contravention of the mandatory 12-hour work day.

Not one comparable submitted by the Employer requires management to schedule 12-hour shifts, the Village argues. Moreover, the Village argues, the factor of external comparability does not favor the Union’s resulting proposal to alter the terms under which overtime may be paid.<sup>47</sup> In Channahon, the Village notes, the agreement provides for the employer’s option of eight, ten, or modified twelve hour shifts. In Crest Hill, the agreement provides for eight-hour shifts only, and in Frankfort, the agreement provides that an employee’s “normal work day shall generally consist of eight to twelve hours” as assigned by the employer, the Village notes. In Lemont, the employer has the option of scheduling eight, twelve, or modified twelve-hour shifts, and in Lockport, the agreement provides for eight-hour shifts only. In New Lenox, Plainfield, and Shorewood, too, the

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<sup>47</sup> The issue of “overtime” is addressed as a separate impasse issue herein. However, it is also mentioned in this context because normal scheduling of work and accrual of straight-time hours naturally impacts overtime

Village argues further, the employer again has the “option” of scheduling shifts of varying lengths.

Moreover, the Village argues, the Union’s external comparables generally do not support the “breakthrough” proposal. For example, the Village notes, Addison police work 8-hour shifts. In Algonquin and Carpentersville, officers average 40-hour weeks with overtime after shift hours. In Darien and Lombard, officers work 8-hour shifts, and Channahon and Plainfield provisions are already mentioned above. The only “comparable” even close to the Union’s proposal here, the Village argues, is Woodridge. Even then, the Village argues, [While] it appears that the Union attempted to copy the Woodridge model, [it] left out or misstated so many critical components that the Union’s proposal becomes incomprehensible.”<sup>48</sup>

Thus, for all the foregoing reasons, the Village urges the Arbitrator to maintain *status quo* with respect to scheduled work weeks.

Discussion:

As the Village states, the Union’s offer in this instance is, in every sense, a “breakthrough proposal” of significant import to the Employer’s operation. As an initial matter, this record establishes that the Romeoville police officers have worked 8-hour shifts for some thirty years. While it is true that a number of externally comparable communities have instituted some flexibility in scheduling, one clear fact remains; for the most part scheduling of work is done at the Employer’s discretion. In point of fact, the

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<sup>48</sup> Employer brief at page 24.

right to “manage the operations of the Village... including [the right to] plan, direct, control and determine the operations or services to be conducted by employees of the Village [and to] direct the work force” is vested exclusively with management pursuant to Article IB of the Agreement. Thus, accepting the Union’s proposal here would be tantamount to negating Article IB of the Agreement, or at the very least to substantially weakening the Village’s right to operate its police department in whatever manner it deems necessary for the security and wellbeing of its citizens. While some broad “management rights” may be limited elsewhere in a contract, and in fact many management rights clauses so state, in this particular instance, the Union essentially attempts to usurp management’s right to schedule the working forces. This, clearly, is an unreasonable petition in this forum. Even without a “crystal ball”, it is safe to say that the Union would never have gained such an advantage at the bargaining table.

The Arbitrator stresses the Union’s obvious purpose here, because of the context in which the matter of 12-hour shifts is being dealt with. Absent good and sufficient reason to depart from the long-standing and negotiated *status quo* in accordance with established statutory criteria and well-settled arbitral principles, this is absolutely an issue for the bargaining table. Here, the Union’s sole rationale for this major departure from the norm is to “give individual officers the flexibility that they may need in tending to personal or family obligations.” While this certainly is a desirable end for the membership, the Arbitrator reminds the Union of his discrete function in this specific

context; that is to resolve promulgated issues in a manner that, in reasonable measure, resembles something the parties could have agreed to had impasse not occurred.

In this case, it is absolutely impossible to say that this is so. It is highly unlikely the Village would have agreed to relinquish its right to schedule officers as the needs of service demanded. Point after point, as the Village notes, the Union's proposal completely negates management's discretion where scheduling of employees is concerned. In particular, the Union's proposal mandates 12-hour schedules, establishes set starting times, locks in rest days, and inconsistently demands that officers assigned to alternate types of work be assigned in 8-hour shifts. It is so firmly established in the industrial and municipal setting that "direction of the working forces" is vested with management, that it hardly bears mentioning. However, it must be said in this instance, because the Union has promulgated a "pie in the sky" offer here in the mistaken belief that the Arbitrator's role in this forum is akin to that of a fairy godfather. As set forth in detail herein above, that is simply not the case.

On a more conventional note, the Union's offer can only prevail if: 1) The old system or procedure has not worked as anticipated when originally agreed to; 2) The existing system or procedure has created operational hardships for the employer or equitable or due process problems for the Union, and/or that 3) the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems. (*Will County* [Nathan]; supra.) First, it is evident that the "old system", which is indeed old, is working exactly as it was intended to work. The problem is that the

Union wants a “new” system, in which officers have set 12-hour schedules, set rest days, and an additional 80 days off each year.

Second, there is absolutely no evidence in this record that the existing system is creating true due process issues for the Union. There is nothing inherently unfair or inequitable about the present workweek/workday arrangement, and there is solid evidence of this in light of its 30-year tenure in Romeoville police contracts. Again, the Arbitrator understands what the Union wants here. But conventional wisdom dictates that departures from the *status quo* must be more than just “good ideas.”

Third, there is no evidence that the Village has resisted the Union’s attempts to address a “broken system” or a due process problem at the bargaining table. Arbitrator Nathan’s instruction, as pointed out above, in context does not automatically demand that the Village negotiate changes in the *status quo* simply because they are suggested by the Union in negotiations. In other words, “no” is a legitimate answer at the bargaining table, and “no” is not the same as refusing to bargain over important operational or due process failings in existing language.

Arbitrator McAlpin’s discussion in *Cook County Deputy Sheriff Sergeants*; supra, is further instructive. Here again, the Union has absolutely failed to demonstrate “a proven need for the change.” Again, the Arbitrator understands the Union’s appeal here. However, desire is substantively different from “proven need” in this particular setting. Moreover, the Union’s proposal has not “met the identified need without imposing an undue hardship on the employer.” Certainly, there has been no identified need, as

previously stated, and furthermore, there is significant evidence that the Union’s proposal as it stands right now, would indeed cause undue hardship on the Village in terms of its impact on management’s ability to meet operational needs as it sees fit. In other words, determining operational needs is not for the Union to do.

Finally, there is no measurable *quid pro quo* here. While the Union argues that the proposal “will save the Village money,” there is no costing evidence in this record demonstrating that this is true. Moreover, the promulgated “staffing schedules” offered by the Union to support the theory of cost savings to the Village on this issue are just that: the Union’s. Again, staffing decisions are not for the Union to make, and the Arbitrator has absolutely no way of knowing whether or not the Union’s proposed “staffing” suggestions would even work. Furthermore, it would be, at least in theory, possible for the Union to skew a staffing proposal to favor an argument that its workweek offer would actually save the Village money. The Arbitrator is not suggesting that that is what happened here. He is just stating that there is not dependable evidence of *quid pro quo* on this issue.

It is also inescapable that the Union’s offer, again as it stands in present form, creates havoc in other areas of the Agreement which are directly related to work schedules. There is, of course, the issue of overtime which is addressed in more detail below. However, there are other problems as well. For example, Article XVIII sets forth provisions for “personal days”, which shall be allowed at a rate of three per year. Under the Union’s proposal, will these “days” now be twelve-hour “days” rather than eight hour

“days” for pay purposes? If that is so, then labor costs to the Village will actually increase. Under sick leave provisions, “only a maximum of 275 ‘days’ may be used for retirement benefits...” Would these be 8-hour “days” or 12-hour “days”? What of bereavement leave? Presently, “Leave of absence with pay of up to three consecutive ‘days’ shall be granted...” Would these be 8-hour “days” or 12-hour “days” under the Union’s proposal? These are just a few areas in this contract which would be impacted by a change in workweek/workdays. In point of fact, the entire framework of the Agreement has its center in the fundamental truth that a “day” for purposes of pay, is 8 hours. Thus, as the Village suggests, the Union’s proposal at best, is not well thought out.

On a final note, the Union suggests that 12-hour shifts were, at least in part, suggested as a means of curing alleged sick leave abuse. On this point, the Union argued that if officers had 80 additional days off per year, they would not falsely claim sick time to accommodate schedule conflicts at home. Certainly, that might be true, and thus 12-hour shifts might be an “idea” worth considering. However, that is not the point. The Arbitrator would be abusing his authority under the Act to solve an alleged (and only alleged) management problem by supporting such a radical departure from the *status quo* on logic that is would, in the end, just be more convenient for the bargaining unit. The Union also argued that “there was no foreseeable problem for the Village if it were to adopt the 12-hour shift.” Again, perhaps that is true, though likely not, considering the way the present proposal is structured. In any event, there is neither arbitral nor statutory

support for granting a significant breakthrough in this forum on the sole basis that the Union is fairly certain that doing so would not cause a problem for the Employer.

In sum, the Arbitrator finds no support in this record for the Union's petition. The proposal was neither thorough nor substantiated. Moreover, there is no support for it from the standpoint of established statutory criteria and/or prior and reliable arbitral instruction. Certainly, the Arbitrator understands that 12-hour shifts are desirable in the prevailing opinion of the bargaining unit, and he is also aware that departures from the traditional eight hour day scheduling is occurring with increasing frequency. However, this is not the forum for a significant gain through arbitration that was never even remotely going to be achieved at the bargaining table the way it was presented by the Union. Clearly, in view of externally comparable contracts which provide for work week flexibility, it is possible to negotiate alternatives to straight 8-hour scheduling. Thus, if the Union pursues the matter further in future negotiations,<sup>49</sup> as there is no intended prohibition in this Award against doing so, there may be alternatives to the ill-conceived "all or nothing" approach the Chapter has taken in this interest arbitration. That, of course, is for the Union to decide.

For all the foregoing reasons, then, the Arbitrator concludes that the *status quo* should be maintained. His order to that effect follows.

### **Order**

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<sup>49</sup> Perhaps, in anticipation of such a proposal being made in the next round of negotiations the parties could appoint a committee to work on the matter, and the adjustments to the collective bargaining agreement need to be made, in addition to those discussed at the hearing with regard to the impact on the Fair Labor Standards Act, 29 USC 201.

The *status quo* is maintained. It is so ordered.

### **Section 11.3 – Overtime Pay**

#### The Union’s Final Proposal

All hours worked in excess of the normal eighty (80) hours bi-monthly shall be compensated at the overtime rate of time and one-half (1½) times the employee’s regular hourly rate of pay or compensatory time equivalent (at the employee’s option). For purposes of calculating overtime, all compensated hours shall be considered hours worked.<sup>50</sup>

#### The Village’s Final Proposal

The Village proposes that the *status quo* be maintained.<sup>51</sup>

#### Discussion:

For purposes of this particular matter, it is not necessary to address the merits of the parties’ respective opinions and arguments as to the impasse issue of overtime, because the Arbitrator’s above Order pertaining to Section 11.2 of the Agreement necessarily obviates the Union’s Final Proposal with respect to concomitant Section 11.3 overtime. To clarify, the Union’s stated overtime proposal is inextricably linked to 12-hour workdays, which the Arbitrator expressly rejected as set forth herein above. Furthermore, because the matter of overtime is an economic issue, the instant proposal as the Union has presented it, must be accepted or rejected in its entirety, regardless of the added reference to “compensatory time” which is presented to the Arbitrator as a separate impasse issue herein below.

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<sup>50</sup> Union Exhibit 10 at page 9.

<sup>51</sup> Employer Exhibit 4 at page 7.

Thus, for the foregoing reasons, the Arbitrator concludes that the Union's Overtime proposal should be, and is, rejected in its entirety. The *status quo* will be maintained, and the Arbitrator's order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

### **Section 11.5 – Compensatory Time**

#### The Union's Final Proposal

The Village agrees to grant compensatory time off in lieu of overtime payment at the Employee's discretion and at the same overtime rate. Compensatory time off may be accumulated to a maximum of eighty (80) hours. Compensatory time off shall be granted at the Employee's request that is mutually agreed between the Employee and his immediate supervisor. Permission to use compensatory time shall not be unreasonably denied if operational needs will not be adversely affected.<sup>52</sup>

#### The Village's Final Proposal

The Village proposes to maintain *status quo*; that is, no compensatory time shall be granted in lieu of overtime payment.<sup>53</sup>

#### The Position of the Union:

At the outset, the Union argues that all but two of the communities cited as external comparables offer compensatory time in lieu of overtime. Compensatory time, the Union submits, will, if awarded, afford both the Village and bargaining unit members with "more flexibility when dealing with overtime issues." Moreover, the Union argues, there is no evidence that compensatory time will harm any actuarial process where the

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<sup>52</sup> Union Exhibit 10 at page 10.

<sup>53</sup> Employer Exhibit 4 at page 8.

Village’s budget is concerned. In today’s economic climate, the Union argues, compensatory time “provides an effective option for any public corporation regarding budgetary problems and/or overtime issues... The more flexibility and financial options available to management and labor, the better off both parties will be when dealing with monetary issues in the future.”<sup>54</sup>

From the standpoint of internal comparability, the Union points out that non-sworn Village employees do have the option of taking compensatory time in lieu of overtime.<sup>55</sup> Thus, the Union argues, financial flexibility for the Village, time flexibility for the bargaining unit, and the statutory criterion of comparability all militate in favor of new compensatory time provisions.

The Position of the Village:

At the outset, the Village notes that the Union’s proposal does not clearly articulate the difference between earning compensatory time in lieu of overtime payment and the ability to use compensatory time once it has been accrued. The Employer assumes, the Village states, that the first sentence in the Union’s proposal means that the determination to accrue (or not to accrue) compensatory time rests solely with the employee. The Employer also presumes that, according to the Union, taking accrued compensatory time may be done at the employee’s sole discretion with approval from his or her immediate supervisor.

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<sup>54</sup> Union brief at page

<sup>55</sup> The Union does not discuss what specific group of employees is being referenced here.

With respect to the matter of internal comparability, the Village notes that Clerical and Public Works employees represented by AFSCME are permitted to accrue compensatory time in lieu of overtime payment. However, the Village argues, from an operational standpoint, those AFSCME bargaining units are not comparable to this one. Specifically, the Village argues, Public Works and Clerical employees generally work one shift Monday through Friday. Thus, the Village notes, when they are absent for any reason, including when they are using accrued compensatory time, no other employees are called in to work for them.

As to the two communities which both parties assert are externally comparable; Channahon and Plainfield, one (Plainfield) provides compensatory time for police officers and the other (Channahon) does not. Nearly all of the others (Crest Hill, Frankfort, Lemont, Lockport, Mokena and New Lenox) permit police officers to take compensatory time in lieu of overtime, the Village acknowledges. However, the Village argues, the Fair Labor Standards Act and recent related litigation which establish certain guidelines with respect to compensatory time, are permissive. That is, there is mutual consent between the parties that compensatory time may be used in lieu of overtime; they do not *demand* that an employer acquiesce to a union's request that compensatory time be a contractual requirement.

From an operational point of view, the Village explains, in the Police Department, because of the need for minimum staffing, the absence of an employee, including one taking accrued compensatory time requires that another employee be called in on

overtime. The problem is magnified, the Village notes, because it is now unlawful for employers to deny compensatory time for that reason alone. Moreover, the Village submits, the Union's proposal leaves the initial request for compensatory time up to the employee, and thus there is no discretion whatsoever retained for management.

The Village also notes that, increasingly, communities which allow compensatory time are realizing that it is a liability. Specifically, the Village argues, compensatory time is carried on the "books" as a liability, and thus it, along with other liabilities, impacts municipal bond ratings. This is so, the Employer argues, because individuals leaving the employ of the Village may, pursuant to the law, cash in on accrued compensatory time at their last rate of pay, no matter when (and at what rate) it was actually accrued. Thus, contrary to the Union's statements, the Village argues, compensatory time does not solve budgetary problems in any municipality, especially when the employer has no authority over the manner in which it is accrued.

In sum, the Village argues, the Union has failed to present any evidence that receiving cash compensation for overtime worked causes problems in the bargaining unit. Moreover, the Village argues, the Union's final proposal on this economic issue is inherently flawed in that it removes from the Employer any ability to participate in the decision as to whether or not an employee should be permitted to accrue compensatory time in lieu of payment for overtime work and when the employee may take this time off. Thus, for that and all the foregoing reasons, the Village urges the Arbitrator to reject the

Union's breakthrough proposal on compensatory time, and maintain the present *status quo*.

Discussion:

It is again noted, as in the case of the Union's proposal for 12-hour workdays, that this final offer concerning compensatory time is truly "breakthrough". At present, there are no provisions in the Agreement for compensatory time at all, and thus, because this is a brand new item, it was incumbent upon the Union to establish adequate proof that departure from the *status quo* is justified pursuant to statutory criteria as set forth in the Act or, in the alternative, that the present system is causing undue hardship on the Union. Upon the whole of the record, the Arbitrator finds that the Union has offered no persuasive proof that this brand new proposal should be adopted.

First, in this particular case, the Arbitrator is only minimally persuaded by the Union's promulgated proof of external comparability. Indeed, the reasons why the communities cited by the Union agreed to contractually permit compensatory time in lieu of overtime payment are not clear, nor does the original timing of those decisions appear in this record. Thus, what went on at the bargaining table in each of those cases, and also what *quid pro quo* might have been offered by the unions in those communities to achieve the benefit of compensatory time, are not evident here. Moreover, as the Village points out, accrued compensatory time is now considered more of a "ball and chain" than it is worth. Specifically, recent litigation has established that an employer who has authorized accrual of compensatory time may not deny an employee's request to take it

simply because another employee must be called in to fill the vacancy on overtime. Moreover, accrued compensatory time must be carried, as the Village argues, as an essentially open-ended liability on the Employer's financials. Thus, for the Union to overcome the Village's desire to maintain *status quo*, the burden to establish "a need for the [proposed] change" must be satisfied. All in all, the Arbitrator concludes that that burden has not been satisfied here.

The Arbitrator understands, once again, that the Union wants the new privilege of accruing compensatory time in lieu of overtime payment. Indeed, the Arbitrator can see why the Union thinks it is a "good idea" that it be granted in this proceeding. However, as has already been stated, the Arbitrator's discrete and limited function here is not to honor with contractual obligation an "idea" for which there is no real foundation or demonstrable need. The present system is not "broken", nor is it causing equitable or due process problems for the Union. Moreover, there is no apparent *quid pro quo* for a request that may well result in the lowering of this Village's bond rating for the simple reason that compensatory time must be carried on the Employer's books as exactly what it is; an ongoing and unpredictable liability.

In the end, the Union has ostensibly offered the Village "financial flexibility" in terms of not having to pay cash for *some* overtime, which interestingly, the Village wants nothing to do with. So, if the Union intended "financial flexibility" to be *quid pro quo* here, such is not really the case. Moreover, the Union's proposal as it stands, removes all discretion from the Employer in terms of when an employee may be permitted to accrue

compensatory time in the first place, and thus eliminates all managerial control over the extent and scope of the “ongoing and unpredictable liability.”

Upon the whole of this record, then, the Arbitrator concludes that the Union has failed to demonstrate a need to depart from the present negotiated *status quo*. The *status quo* is accordingly maintained, and the Arbitrator’s order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

### **Section 18.3 – Vacation**

#### The Union’s Final Proposal

- A. An employee shall earn vacation at the rate listed below. An employee must begin employment on the first working day of the month to earn vacation credit for that month. Vacation with pay may not be taken during the first six months of employment.

#### ACCUMULATION RATE

<u>Years of Continuous Employment</u>	<u>Accumulation Rate</u>
4 years and less	6.66 hours per month (10 days)
5 to 9 years	10.00 hours per month (15 days)
10 to 14 years	13.33 hours per month (20 days)
15-19 years	16.66 hours per month (25 days)
20+ years	20.00 hours per month (30 days)

- B. Vacation selection will be made prior to March 1<sup>st</sup> by seniority, regardless of rank, as defined by Article IV, Section 1, for the time period from April 1<sup>st</sup> through March 31<sup>st</sup> of the next calendar year. Vacation time accumulated will not be taken in time less than one-half (1/2) a working day. An employee may alter or change his vacation selection thirty (30) days prior to use.

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- D. An employee must submit a request for a vacation day to the Chief of Police or his designee no later than five (5) days prior to use if he is requesting more than one (1) consecutive day off. An employee requesting only one (1) day off shall submit a request for a vacation day to his immediate supervisor no later than twenty-four (24) hours prior to use and shall not be [un]reasonably denied. Vacation time may be used provided that approval has been granted by the Chief of Police or his designee.<sup>56</sup>

The Village's Final Proposal

The Village proposes the *status quo*.<sup>57</sup>

The Position of the Union:

On this issue, the Union asserts as follows, “The Union’s main contention is that the Chapter would like to receive the same amount of vacation leave as the other Village employees currently receive.” The Union objects to the fact that the Village has relied on internal comparability in support of its final proposals on wages and health insurance, yet rejects the viability of internal comparability on the issue of vacation accrual.

Accordingly and for the foregoing reasons, the Union urges the Arbitrator to adopt the Chapter’s final proposal on the issue of vacation accrual.

The Position of the Village:

The Union, argues the Village, states that in support of its proposal, it relies heavily on the criterion of internal comparability. However, the Village notes, the Union’s presentation and argument addressed only the vacation accumulation aspect of its proposal, and not the Chapter’s promulgated changes in *status quo* language of Subsections B and D.

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<sup>56</sup> Union Exhibit 10 at page 11.

<sup>57</sup> Employer Exhibit 4 at page 11.

First, the Village argues, the Union’s reliance on internal comparability is “totally misplaced.” The *status quo* language in the present agreement was negotiated by the parties and not forced on the Union, the Village argues. It has, the Village notes, historically been part of this agreements between these parties for many years. Moreover, the Village argues, while the Union seeks to “follow suit” and receive the same vacation benefits as other Village employees, it ignores other differences in benefits between this bargaining unit and all other Village employees. In particular, the Village argues, this unit “enjoys an economically significant retirement benefit of having the Village match accrued sick leave at retirement, with the total benefit to be used to pay for retiree health insurance.” No other employee group receives this benefit, the Village argues.

Second, while the Union focuses on proposed vacation accrual rates, the Village argues, it sweeps under the rug additional proposed changes to Subsections B and D. On its face, the Village argues, permitting an employee to alter his vacation selection with thirty days notice (Subsection B) would destroy the entire reason for vacation selection. The proposed change to Subsection D, the Village argues, would remove the five-day notice requirement for requesting a single vacation day. This proposal, the Village further points out, also eliminates submission of the request to the “chief or his designee” and replaces that requirement with submission to the employee’s “immediate supervisor.” Interestingly, the Village notes, patrol officers in this bargaining unit are supervised by sergeants who are also represented by this Union.

Finally, in focusing exclusively on vacation accrual rates, the Union has failed to articulate any problem with existing language. Neither has the Union cited any abuse on the part of management, the Village argues.

Thus, for all the foregoing reasons, the Village urges the Arbitrator to reject the Union's Final Proposal and maintain the *status quo*.

Discussion:

At the outset, it must be noted that the impasse issue of vacations is one of an economic nature, and as such, one of the two proposals before the Arbitrator must prevail in its entirety over the other. There is no evidence in this record that the parties have authorized the Arbitrator to “cherry-pick” from both offers, and, for the Union, this will prove unfortunate. Unlike the process of lawmaking, wherein “pork” is often added to critical pending legislation as a means of accomplishing a hidden goal through the back door, this process in Illinois interest arbitration on economic items is an “all or nothing” venture. In other words, though the Arbitrator would, indeed have been persuaded by the statutory criterion of internal comparability on the particular matter of vacation accrual, the Union's quiet alteration of Subsections B and D served to negate what otherwise would have been a legitimate argument. The Arbitrator specifically notes the Union's manifest silence on proposed language changes in Subsections B and D, because internal comparability *as to accrual rates* has persuasive merit as a reason for departing from the former negotiated *status quo*.

While it is true that the parties agreed to the original vacation accrual schedule (i.e. it was not “forced upon the Union”), that argument cannot hold water indefinitely. Indeed that particular truth could be said of every negotiated provision in a collective bargaining agreement, and could just as easily be used against the Village who seeks departure from *status quo* on the issues of wages and health insurance. Taken to its extreme, the Village’s logic here would obviate the need for collective bargaining altogether, because, in theory, there would be no reason to change the “what is” because it was not forced upon the parties. Obviously, while the Village will ultimately prevail here, it is important for the parties to understand that it is not because the Village’s logic as to the specific matter of vacation accrual rates is reasonable.

The Village also relies on the fact that only police in Romeoville are privileged to receive matched sick leave pay upon retirement to help pay for retiree health insurance. While this may be a fact, and the Arbitrator assumes that it is, it alone is not sufficient to justify a death grip on this *status quo*, particularly when every other employee group in this Village has vacation accrual schedules more favorable than that of the Union. Importantly, there is no evidence in this record that the retiree sick leave benefit was (or is) in any way tied to contracted vacation accrual rates. In other words, in order for the Village to prevail with this particular argument, there would have to be evidence that the sick leave benefit relied on was the *quid pro quo* for lower than other Village employee vacation accrual rates. There is no such evidence in this record.

That being said, the Union committed a *fatal error* here by continuing to pursue “good idea” alterations in existing contract language. Yet again, the Arbitrator is compelled to point out that somehow the Union misunderstands this whole process. Interest arbitration is not the proper way to “sneak in” or in the alternative “beg for” changes in the existing negotiated *status quo* without establishing legitimate (statutory) grounds for doing so. Again, it is not the Arbitrator’s job to give the Union something in this forum that it clearly would not have been able to achieve through bargaining absent proof that proposed changes address some deficiency in the existing language, or that comparable work groups are simply passing the bargaining unit by in matters of economic importance.

Here, in Subsections B and D, the Union attempts to slide in patently favorable language which substantively alters the present negotiated *status quo* with no comment whatsoever, never mind a reasonable argument. Thus, there is a manifest absence of proof that present vacation administration procedures “do not work as they were intended”, or in the alternative that they are inherently unfair to the bargaining unit. Neither of those qualities has been established *in this record*.

Thus, while the Arbitrator would have otherwise been inclined to award the Union’s proposal on the impasse issue of vacation accruals, he is statutorily barred from doing so because the Chapter’s full proposal also contains undefended and dramatic changes in the procedural (and negotiated) *status quo*.

Thus and for all the foregoing reasons, the Arbitrator concludes that the Union's final offer on this issue is not reasonable. The *status quo* shall be maintained, and the Arbitrator's order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

### **Section 20.1 – Chapter Activity During Working Hours**

#### The Union's Final Proposal

The Village agrees to allow time off with pay with (5) working days notice to attend all grievance hearings, all negotiating meetings with the Village, all labor/management meetings, and committee meetings and activities to the Chapter representatives, stewards, witnesses or grievants.

The Village agrees that not more than two (2) officially recognized local Chapter representatives shall be permitted to attend Union meetings at the state or national level, provided that the required notice for such time off or duty trades is provided the Village.<sup>58</sup>

#### The Village's Final Proposal

Employees shall, after giving appropriate notice to their supervisor, be allowed reasonable time off with pay during their regular working hours to attend grievance hearings, negotiating meetings with the Village, labor/management meetings, committee meetings and activities if such committee or activities have been established by the Village and if such members are required to attend such meetings by virtue of being Chapter representatives, witnesses, or grievants.<sup>59</sup>

#### The Position of the Union:

It is explained by the Chapter that, "The Union is seeking change in the existing language, because of past problems with the Police Chief allowing Chapter

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<sup>58</sup> Union Exhibit 10 at page 12.

<sup>59</sup> Employer Exhibit 4 at page 14. It is noted that the Village's Final Proposal represents the current negotiated *status quo* except that reference to "steward" has been removed from the final sentence at the Union's request.

Representatives to deal appropriately with Union related issues including grievance hearings, negotiation meetings, labor management meetings, etc... The Chief of Police has a history of either interfering, harassing, or intimidating and has been ordered to cease and desist his actions as demonstrated by the current ULP decision S-CA-07-095 dated January 28, 2010.”<sup>60</sup> The Union presents a nearly identical complaint in the subsequent impasse issue of “Access to Village Premises by Chapter Representatives,” and in both instances asserts that the Village’s current Chief of Police has repeatedly obstructed the carrying out of Union business on Village premises. Thus, the Union explains, the Chapter has been forced to seek the above change in *status quo* language in order to cure the problem.

The Position of the Village:

At the outset, the Village argues that the Union’s proposal substantively changes the intended function of this section. In reality, the Village submits, the Union proposes *carte blanche* liberty for all Union members to become involved in Union-related activities as long as they give the Employer five days’ notice that they intend to do so. This, the Village argues, was never intended by the original authors of the language, because present Section 20.1 expressly references only those individuals whose presence “is required to attend such meetings by virtue of being Chapter representatives, stewards, witnesses, or grievants.”<sup>61</sup>

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<sup>60</sup> Union Exhibit 10 at page 12.

<sup>61</sup> Union Exhibit 7 at page 29.

Second, the Village argues, Officer Ramaglia, who testified at arbitration that he has “had trouble” obtaining permission to attend Union gatherings, admitted on cross-examination that he has participated in nearly every bargaining session the parties have held over the course of many years. Moreover, the Village argues, the Union presented no evidence in this record that grievances have ever been filed concerning alleged violations of present contract language. Neither, the Village argues, did the Union offer any legitimate reason for adding brand new language which would contractually require the Employer to grant time off for employee attendance at state and national Union meetings.

For all the foregoing reasons, then, the Village urges the Arbitrator to reject the Union’s final proposal and maintain the essential *status quo*.

Discussion:

This is the first of several issues to follow which are, in reality, grievance matters. In this and a number of subsequent instances, the Union is apparently attempting to cure a relational problem (though perhaps a legitimate one) with stronger and more restrictive contract language. It is duly noted that in this particular case, the Union has also added a fresh provision which would require the Village to allow two Union members time off for purposes of attending state and/or national Union meetings. However, what is essentially true, is that because the Union and the present Chief of Police are at profound odds with one another, the entire bargaining process, and by extension this interest arbitration, has effectively been hijacked. In other words, the Union proposes language for this new

contract *which does little more than drive home a point*, or in the alternative, press an existing advantage. This is so, because the record establishes that, while the Chief of Police may not necessarily have the most constructive rapport with the Union, present contract language, which again represents the negotiated *status quo* between these parties, is not being substantively violated.

In the end, conflict over contract administration is not what interest arbitration is statutorily designed to cure. “Grievances”, or specific complaints as to how existing and viable contract language is being applied, do not belong in interest arbitrations. In this issue, and in a number of issues that follow, contemporary contract language, which a mere three or four years ago was perfectly acceptable to both parties, is not really the problem. In other words, according to the proofs (or more accurately the lack of them) in this record, the present system is not “broken” or “in need of change.” It is certainly possible that the administrators of that system have broken faith with it, but that is a matter for grievance arbitration. In other words, no amount of linguistic posturing can cure a fundamental propensity of one party or the other to violate certain contract provisions. The only cure for contract violations is pursuit of justice through established grievance procedures, or if necessary, through repeat visits to the State Labor Board. That is why both avenues exist. That being said, there is no manifest proof in this record that incumbent Section 20.1 provisions are actually being violated by any agent of the Village.

In this particular case, the Union submits that certain bargaining unit representatives have “had trouble” with the Chief of Police allowing them to attend to Chapter business. However, present Section 20.1 clearly states that, “Employees shall after giving appropriate notice to their supervisor, be allowed reasonable time off with pay during regular working hours to attend grievance hearings etc....” There is no wiggle room in the word “shall”. Thus, the “trouble” encountered by the Union, or allegedly encountered by the Union anyway, represents an administrative crisis rather than a contractual one because the Union already has the privilege it seeks.<sup>62</sup> If the Chief of Police is presently violating Section 20.1 by refusing to allow Chapter representatives to attend grievance hearings, negotiating meetings and committee meetings in accordance with the incumbent [negotiated] Agreement, then the Union is absolutely justified in pursuing the matter to resolution through the established grievance process. Indeed, the Arbitrator wishes the Chapter well if that is the case. However, and this will be an important point down the road too, there is no statutory foundation under the Act for reinventing the wheel in this interest arbitration solely to “fix the Police Chief’s wagon.”

As to the bargaining unit’s additional pursuit of unrestricted permission to attend state and national Union events (and also any event not necessarily established by the Village), the Arbitrator finds absolutely no support for such a notion, and it defies reason that the Union even suggested it. Again, it is critical to note that the existing language in this Agreement was negotiated, and thus, before it can be altered in this forum there must

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<sup>62</sup> This, of course is not true of the additional proposition that two union members be allowed time off to attend state and national Union events.

be some proof that it is deficient under present circumstances. While “present circumstances” to the Union might mean having to deal with the Village’s current Chief of Police, interest arbitration under the statutes was never meant to function as a means of resolving personality conflicts among individuals, and perpetuating such thinking would most certainly short-circuit the parties’ collective bargaining relationship for the future. As stated at length herein above, that cannot be allowed to happen.

For all the foregoing reasons, then, the Arbitrator finds that the Village’s “one-word” alteration of *status quo* language (at the Union’s request) is more reasonable than the Union’s final offer for which there is no statutory support. Moreover, because in the Arbitrator’s opinion existing language leaves the door wide open for cure of promulgated complaints through established grievance procedures, there is no foundation, as the statutes have been interpreted, for crafting a modification thereof. Accordingly, the Village’s Final Proposal shall be adopted, and the Arbitrator’s order to that effect follows.

### **Order**

The Village’s Final Proposal is adopted. It is so ordered.

### **Section 20.2 – Access to Premises by Chapter Representatives**

#### The Union’s Final Proposal

The Village agrees that non-employee Chapter representatives shall have reasonable access to the premises of the Village during Business hours. Such visitation shall be for the reasons of administration of this Agreement or other reasonable Union business. The Chapter agrees that such activity

shall not interfere with the normal work duties of the officers. The Village reserves the right to designate the time and meeting place of such meeting.<sup>63</sup>

### The Village's Final Proposal

The Village agrees the Chapter staff representatives shall have reasonable access to ~~the premises~~ **designated areas** of the Village **premises** so long as they give notice upon arrival to the appropriate Village representative and provided that such visits do not interfere with normal operations. Such visitations shall be for the reason of the administration of this Agreement. Nothing contained herein shall be construed as authorizing or permitting the Chapter or officers to engage in Chapter activities in the presence of the public or as permitting the convening of a Chapter caucus or meeting on Village time to consider a matter which can reasonably be discussed by the officers on non-work time.<sup>64</sup>

### The Position of the Union:

Again, it is explained that, “The Union is seeking change in the existing language, because of past problems with the police chief allowing Chapter Representatives to deal appropriately with Union related issues including grievance hearings, negotiation meetings, labor management meetings, etc. The Chief of Police has a history of either interfering, harassing, or intimidating and has been ordered to cease and desist his actions as demonstrated by the current ULP decision S-CA-07-095 dated January 28, 2010.”<sup>65</sup> Additionally, the Union accuses the Chief of Police of showing animus toward the Union and demonstrating “hostile resistance” which “flies in the face of the Illinois Public Labor Relations Act.”<sup>66</sup>

### The Position of the Village:

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<sup>63</sup> Union Exhibit 10 at page 13.

<sup>64</sup> Employer Exhibit 4 at page 15. The strikethrough and bold notations in Section 20.2 language as set forth in the Village's proposal represent the only changes from present *status quo* language.

<sup>65</sup> Union Exhibit 10 at page 12.

<sup>66</sup> Union brief at page 10.

First, observes the Village, the Union’s proposal eliminates any requirement that the Chapter notify the Employer of intended visits to the premises. The Union’s proposal also abolishes language requiring consideration as to whether or not Chapter business could just as well be conducted on non-work time, the Village argues. Finally, the Village notes, the Union proposes to allow “other Union business” to be conducted on Village premises which could potentially have nothing to do with this bargaining unit at all. All of these changes, the Village submits, are unacceptable. Moreover, the Village argues, there is no evidence in this record that the Union has ever grieved alleged violations of incumbent Section 20.2 language under the present contract.

According to the Village, then, the Union has failed to demonstrate a statutory basis for departing from the substantive *status quo*, and the Arbitrator is thus urged to reject the Union’s final proposal on this issue.

Discussion:

After weighing the record and considering the arguments of the parties, the Arbitrator is convinced that this is, yet again, a case of the Union attempting to cure through interest arbitration an administrative conflict more appropriately suited for grievance arbitration. The Union repeats nearly verbatim its argument under Section 20.1 above, accusing the Village’s Chief of Police of demonstrating “interfering, harassing, and intimidating” conduct toward Chapter representatives, and further showing intolerance for Union activity within the Department. As stated herein above, the Arbitrator does not doubt for one minute that this could be so. However, once again,

interest arbitration has been inappropriately invoked as a means of enforcing an essential contractual right that is already enjoyed by the Union. The only substantive alterations the Union has suggested here concern a new lack of obligation on the part of Chapter representatives to notify the Village that they are on the premises, and further that Chapter representatives should be allowed to discuss “other Union business” (not necessarily having to do with administration of this contract) during working hours.

Again, the Arbitrator is at a total loss as to why the Union believes that pressing for more expansive latitude in conducting Chapter business serves any constructive purpose in this setting. Moreover, and this is what is really important aside from the obvious lack of wisdom in such thinking, is the fact that there is absolutely no evidentiary support for departing from the negotiated *status quo*. As in Section 20.1 above, the existing language is not really the problem. In other words, as in that issue, the present system is not really “in need of change.” Again, if the Chief of Police or his administrators have broken faith with the parties’ present contractual arrangement, that is another matter entirely, and one that appropriately belongs at grievance arbitration. As before, the Arbitrator wishes the Union well if their instant complaints have merit under present contract language. However, it is inappropriate for the Union to pursue something brand new (and even more expansive) through interest arbitration with no substantive proof that, aside from personal conflict with Romeoville’s Chief of Police, the present negotiated arrangement somehow is functionally deficient. There is no such evidence in this record. There is no proof that Chapter representatives have been barred

from access to Village premises or from bargaining unit members in need of their services. Moreover, there is nothing before the Arbitrator suggestive of genuine due process problems for the Union that the Village has patently refused to address.

For all the foregoing reasons, then, including those set forth in Section 20.1 above and incorporated herein as if fully rewritten, the Arbitrator finds that the Village's minor alterations of negotiated *status quo* language are more reasonable than the Union's unnecessarily expansive and unsupported final offer. Moreover, because in the Arbitrator's opinion existing language leaves the door wide open for cure of promulgated complaints through established grievance procedures, there is no statutory reason to craft a modification thereof. Thus, the Village's Final Proposal shall be adopted, and the Arbitrator's order to that effect follows.

### **Order**

The Village's Final Proposal is adopted. It is so ordered.

### **Section 20.3 – Bulletin Board**

#### The Union's Final Offer

The Village will make a bulletin board space available in or proximate to the breakroom room for posting of Union notices. The Chapter shall limit its posting of notices and other materials to such bulletin board. The Chapter shall not use the bulletin board space for posting abusive or inflammatory material.<sup>67</sup>

#### The Village's Final Offer

The Village proposes the *status quo*. [The Chapter shall be entitled to use a bulletin board in the briefing room. Items posted by the Chapter shall not

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<sup>67</sup> Union Exhibit 10 at page 14.

be political, partisan or defamatory in nature and must be approved prior to posting by the Chief of police and a member of the Union Executive Board.]<sup>68</sup>

The Position of the Union:

The Union argues that the Village seeks to control the Union’s bulletin board by demanding that the Chapter receive prior approval before posting any materials, regardless of the nature or content of the materials being posted. Under present language, the Union argues, the Union President must seek approval from the Chief of Police before posting anything on the Union bulletin board. Assuming that the material is not abusive or inflammatory in nature, the Union submits, there is no reason for the Union to seek approval from the Chief of Police. “Again,” the Union argues, “If the Chief of Police were to demonstrate reasonableness, the Chapter would not be compelled to ask for the change.”

In support of its contentions on this issue, the Union cites the testimony of Union President Michael Michienzi, who testified at arbitration that “a couple different times,” he experienced difficulty attempting to post items of interest on the Union’s bulletin board. Specifically, Michienzi testified, he works shifts that conflict with hours when the Chief of Police is available to approve materials he intends to post on the bulletin board. Additionally, Michienzi explained, on one occasion the Chief questioned the accuracy of a Union posting concerning mediation of this contract, and “it took about ten minutes to

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<sup>68</sup> Employer Exhibit 4 at page 16.

argue a point that was just for a scheduling of a mediation date and inform the union members of it.” (Tr. 70.)<sup>69</sup>

In sum, the Union argues again that, of necessity, the contract must be altered in response to the Chief’s refusal to “demonstrate reasonableness” when dealing with matters concerning the Union. The Union accordingly urges the requested departure from *status quo*.

The Position of the Village:

The Village denies that the promulgated departure from *status quo* on the matter of the Union bulletin board is necessary. In support, the Village argues that the only testimony or evidence presented at hearing regarding a “problem” with this section was that, on one occasion, Officer Michael Michienzi “had to take 10 minutes to discuss the proper date listed in a posting he wished to place on the bulletin board.” Additionally, the Village notes, the Union asserts “difficulty” with present Section 20.3 language simply because the officer who the Union has designated to post materials on the bulletin board works nights and the Chief works days. However, the Village argues, Michienzi admitted at arbitration that there are four members of the Union board, a couple of whom work days and could post Chapter materials instead.

Importantly, the Village argues, the Chief of Police has, according to Michienzi’s testimony, never denied him permission to post anything on the Union bulletin board.

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<sup>69</sup> In particular, Michienzi testified, the Chief of Police challenged the accuracy of the date on the Union’s mediation notice, and refused to allow it to be posted until his secretary confirmed the information. As it turned out, the Union’s information was correct, and the notice was eventually posted.

(Tr. 75.) For all the foregoing reasons, then, the Village urges the Arbitrator to deny the Union's request and thus maintain *status quo*.

Discussion:

Once again, there is ample evidence in this record that the issue concerning Union bulletin boards is not truly a matter of the contract being “broken” or otherwise in need of change. In point of fact, the Union actually asserted that, “If the Chief of Police were to demonstrate reasonableness, the Chapter would not be compelled to ask for this change.”<sup>70</sup> Specifically, the Union refers to altering present *status quo* language requiring that all materials designated for posting on the Union bulletin board be approved by Romeoville's Chief of Police first. Importantly, that particular condition, while perhaps negotiated under a different and more favorable “regime”, was a mutual arrangement. Thus, for the Arbitrator to find that this bilateral agreement should be unilaterally altered, there must be some evidence that what it was intended to accomplish is not happening because the contractual arrangement is somehow flawed. That, evidently, is not the case here.

The Union first argues that it is “difficult” to get the Chief's approval for bulletin board materials because the bargaining unit's designated administrator works nights and the Chief works days. Specifically, the Union explains that, “The Union President must seek approval from the Chief of Police before posting anything on the Union bulletin

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<sup>70</sup> Union brief at page 11.

board.”<sup>71</sup> Indeed, Union President Michienzi complained at arbitration that on occasion, he has been forced to come in on his own time to post materials because he is contractually required to gain approval from the Chief before doing so. However, the present contract does not state that only “the Union President” is authorized to manage the bulletin board on behalf of the Union. The contract merely references “a member of the Union Executive Board”, and there is some evidence in this record that there are “members of the Union Executive Board” who work days. (Tr. 73-74.) Thus, it cannot be said that from a purely administrative standpoint, the Union is locked into language that is causing unanticipated hardship on the bargaining unit or any particular member thereof.

Second, the Union complains that the Chief has been “unreasonable” in his dealings with the Union regarding the bulletin board. However, even the record does not bear this out. True, Michienzi testified that on one occasion, he and the Chief argued for ten minutes about the date of a mediation hearing before notice of such could be posted on the Union bulletin board. While that particular exchange was certainly uncomfortable and likely frustrating in the moment, it was not prompted by a flaw in existing contract language. If, indeed, the Chief of Police was routinely denying the Union permission to post relevant business materials, then the Arbitrator would duly examine the possibility of “due process” problems for the Union stemming from inappropriately restrictive contract language, but that is not the case either. Michienzi clearly testified that the Chief of Police has never denied the Union permission to post materials on the bulletin board.

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<sup>71</sup> Id.

At this juncture, the Arbitrator is compelled to comment on the level of frustration that has caused the Union to, in essence, attempt to cure a number of grievances through this interest arbitration proceeding. While dissatisfaction with a contract is always what prompts one party or the other to seek change, pure “dissatisfaction” cannot be addressed in this particular forum, where normal “give and take” is no longer happening, unless there is statutory or evidentiary support for doing so. That is not to say that the Arbitrator is blind to what is evidently a very contentious working relationship between the Union and this particular Chief of Police, and he is not entirely unsympathetic to the plight of the Union from a purely administrative standpoint. However, interest arbitration is not the place where justice may be found for grievances under contract language that is functioning exactly the way the parties who negotiated it meant it to function.

Thus, the only real question here, is whether the “pre-approval” proviso is otherwise unlawful, as there is no evidence that it is causing *bona fide* “equitable or due process” problems for the Union. Again, it is noted that never has the Union been denied permission to post materials on the bulletin board, and that means the negotiated system, for better or worse, is actually working. (“The Chapter shall be entitled to use a bulletin board in the briefing room.”) Otherwise, pursuant to Article IB, managing “methods, materials, equipment, and facilities” is vested exclusively with the Village. In other words, what existing contract language regarding bulletin boards expressly recognizes, is management’s negotiated right to control what is posted in a facility wholly owned and operated by the Employer. Thus, to now negate a management right that appears *twice* in

the contract, there would have to be proof that the change was needed. There is no such proof in this record.

As to where the bulletin board is actually placed, this, again, has already been negotiated by these parties. The Union bulletin board may be found in the briefing room. That is what the contract says, and while the Arbitrator himself has no preference as to “breakroom” or “briefing room”, apparently the original framers of Section 20.3 did. Accordingly, the Arbitrator is not privileged under the statutes to make this particular alteration simply because the Union thinks it “makes more sense” or is a “good idea.” While the issue of bulletin boards appears to be a relatively minor concern, the integrity of the collective bargaining, and by extension interest arbitration, must be protected. What is true of the “big things” is also true of the small. The Union has not demonstrated any *bona fide* need to change the location of the Union bulletin board, according to statutory criteria or prior arbitral interpretation as to how they should be applied.

Thus and for all the foregoing reasons, the Arbitrator concludes that the *status quo* should be maintained. His order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

### **Section 25.1/Appendix C – Wages**

#### The Union’s Final Proposal

Wages shall be provided in the schedules attached hereto as Appendix C. Wages shall be retroactively effective as of May 1, 2009 for all employees

employed as of the execution of this agreement and those employees who have retired, or retired on a disability pension.

\*Appendix C of the Union’s proposal reflects an across the board wage increase of 3% above step for all classifications in each year of the new contract.<sup>72</sup>

### The Village’s Final Proposal

Wages shall be as provided in the schedules attached hereto as Appendix C. Wages shall be retroactively effective as of May 1, 2009 for all employees employed as of the execution of this agreement and those employees who have retired, or retired on a disability pension.

\*Appendix C of the Village’s proposal reflects an across the board wage increase of 2% above step for all classifications in each year of the new contract.<sup>73</sup>

### The Position of the Union:

The Union argues that 3% wage increases are both reasonable and justified, in part because each of its proposed externally comparable communities awarded police officers at least that much (or more) in any given year during the term of their current contracts. The Union further argues, in contrast with statistics provided by the Village, that the CPI is back in the positive, and now consistently rising. Certainly, the Union argues further, Romeoville can afford 1% above what it has offered. The demographics demonstrate that the Village is a “healthy, wealthy, and thriving community,” the Union argues, as total assets far exceed total liabilities. More importantly, the Union submits, the Village has over \$21,000,000 in unrestricted net assets. Thus, the Union concludes, the Village cannot advance an inability to pay argument, and prevail.

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<sup>72</sup> Union Exhibit 10 at page 15.

<sup>73</sup> Employer Exhibit 4 at page 18.

At no point in the last twelve “unadjusted” months has the CPI been under 2%, the Union argues. Moreover, the Union argues, that number is becoming increasingly unfavorable. Considering the fact that this contract will be binding for the next three years, the Union submits, “It is imperative that the individual Chapter member receive a wage increase that will help him and his family endure during these uncertain economic times.”<sup>74</sup> It is even possible, the Union surmises, that even with a 3% per year increase over the next three years, Chapter members will be insufficiently compensated.

At arbitration, the Union acknowledged that when its final wage proposal was prepared, the Chapter “had no idea that the Village was going to concede on the health insurance 9% increase that it wanted.” (Tr. 118.) However, the Union argues, the Village replaced the aforementioned increase with a proposal that would allow the Employer to alter insurance benefit levels mid-term. Thus, the Union argues, it is likely that any such change in health care benefits will still be more expensive for Chapter members. Thus, the Union argues, proposed 3% wage increases in all three years of this contract are both warranted and appropriate.

The Union urges the Arbitrator to consider the Village’s clear ability to pay more in wages than it has proposed, and further to take into account the statutory factor of comparability, which indicates that the Chapter’s proposal is in line with current wage increases awarded by similar employers in other communities. For those and all the foregoing reasons, then, the Union urges the Arbitrator to grant its final wage proposal.

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<sup>74</sup> Union brief a page 12.

The Position of the Village:

At the outset, the Village explains that these parties have been bargaining together for more than 20 years, and never, prior to this contract, have they had to resort to interest arbitration.<sup>75</sup> In the previous contract, when the economy was more favorable, the Village states, this bargaining unit saw a three-year increase in wages that averaged 29.82%.<sup>76</sup> Because the previous wage schedule was negotiated, the Village argues, there is no justification for an extraordinary increase for “catch up” purposes. Additionally, the Village points out, the Union’s proposal for 3% across the board wage increases was predicated on the Employer’s intention (since withdrawn) to increase health care costs to bargaining unit members by 9%. Since that is no longer the case, the Village submits, the Union’s final offer is no longer appropriate.

The Union’s proposal is also out of line with internally comparable employee groups, the Village argues. Specifically, the Village notes, non-bargaining unit employees within the Village received 0% raises this year. Additionally, the Village argues, the other two bargaining units in the Village, both represented by AFSCME, settled for 2% wage increases in each of their contract’s three years. Obviously, the Village argues, the Union’s proposal would give this bargaining unit greater wage increases than any other employee group in the Village without any evidence that they are already comparatively underpaid.

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<sup>75</sup> Employer brief at page 50.

<sup>76</sup> Employer Exhibit 7. It is noted that the Village’s average includes scheduled step increases in addition to general wage increases.

As to how this bargaining unit measures up with externally comparable employee groups, the Village argues that, among the Employer's proposed comparables, this bargaining unit is among the highest paid. In point of fact, the Village argues, Romeoville patrol officers have the highest starting salary, and the second highest top wage step of all the Employer's comparables. Although the starting wages for Romeoville sergeants are less than the comparables, the Village argues, at the top step they are the highest paid sergeants of all the Employer's comparables. After applying the Employer's proposed 2% wage increase to these salaries, the Village argues, Romeoville officers will still be at the top end of all wages paid among the Employer's comparables. Thus, the Village argues, the Union's proposed 3% wage increases would not only leave the relative rankings unchanged, they would cause an even greater gap between Romeoville and its next closest comparator.

Finally, the Village submits, while it is not strictly asserting an inability to pay argument, there is no getting around the fact that revenues for the Village of Romeoville have dramatically decreased over the course of the last 6 years. In fact, the Village argues, revenues for 2009-2010 are estimated to be only \$480,811 above what they were last fiscal year, and last fiscal year revenues were down \$1.53 million from the year before.<sup>77</sup> Thus, the Village argues, the general financial health of the community is not

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<sup>77</sup> Employer Exhibit 11.

what it was before the recent economic downturn, and this observation is both reasonable and necessary to determining the relative viability of these two wage proposals.<sup>78</sup>

In sum, the Village argues, Romeoville Police are still the most highly compensated of the Employer's comparables. While the Union claims that they are underpaid, the Village notes, it is clear from the analysis of comparables that, not only are they not underpaid under the Employer's proposal, they are among the best paid even when compared to employees of more affluent communities.<sup>79</sup> For all the foregoing reasons, then, the Village urges the Arbitrator to adopt its final proposal with respect to wages, and award 2% across the board increases in each of the three years of this contract.

Discussion:

Before addressing the merits of the parties' respective wage offers, the current state of the economy once again bears mentioning. Indeed, as has been observed in most recent interest arbitrations under the Act, these are trying times, and municipalities, as they are in the end "businesses" too, are not immune to the kind of financial erosion that has caused significant unemployment and financial hardship in every corner of the economy. In point of fact, the current recession has been characterized as the greatest experienced by this country since the Great Depression of the 1930's. This truth, however unpleasant, is particularly important, because traditional means of evaluating

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<sup>78</sup> In support, the Village cites Village of Deerfield and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-07-148 (Briggs, 2008), wherein the arbitrator observed that in today's economy, wage increases of 3 to 4% seem high when in the Fall of 2007 they did not.

<sup>79</sup> See, Employer Exhibits 14-25.

wage proposals are, at least for the time being, no longer completely practicable. Specifically, the statutory criterion of external comparability is, in stark contrast to interest arbitrations of the past, not particularly useful in the present day. As observed by Arbitrator Benn in County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-08-010 (March, 2009):

... With an economy in free-fall, unemployment marching steadily upward, credit markets frozen, businesses laying off or closing, revenue streams diminishing, government intervention programs of massive proportion seeking to prevent further harm and not knowing whether, when, or to what degree those programs will succeed in stopping the blood-letting, how am I as an interest arbitrator rationally supposed to set economic terms of a multi-year collective bargaining agreement which the parties unsuccessfully attempted to reach?

Arbitrator Benn's frustration is noteworthy and indeed shared by arbitrators who, like him, endeavor to find equitable solutions to opposing interests when there is absolutely no way of knowing what the future will hold. Although there are eight statutory criteria for guidance, with none receiving more attention under the language than others, it is nevertheless well-settled that, prior to 2009, the factor external comparability was of preeminent importance in resolving disputes concerning the economic issues of wages and employee benefits. Now, however, we are caught in a transition period where many of the contracts used for purposes of traditional comparison were negotiated prior to the "crash". Thus, they are of little benefit in this forum, because the specific context in which they were bargained is no longer analogous to the one we are dealing with here. Certainly, wage increases of significant percentages were

not unusual prior to 2009, and many of the contracts used for purposes of comparison in this case were negotiated before that time. Thus, while most if not all are still in effect, they are of little statutory value now because the economic environment in which we are forced to live is so very different from the one in which they were negotiated. Arbitrator Benn also observed in North Maine Fire Protection District and North Maine Firefighters Association; (September 8, 2009) in relevant part as follows:

Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for “apples to apples” comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.<sup>80</sup>

This Arbitrator agrees with Arbitrator Benn’s cogent analysis of present difficulties in interest arbitration because of the economy, and thus, for purposes of this particular impasse issue, there is little to be gained from external comparison except to

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<sup>80</sup> In this regard see this Arbitrator’s award in Village of Downers Grove and the Downers Grove Professional Firefighters; Case No. S-MA-94-246 (1994) where the external comparables dictated that firefighters be awarded one year increases in excess of 20%.

say that even now, police officers employed by the Village of Romeoville are among the highest paid in the comparable group selected by the Employer and approved by the Arbitrator. Moreover, the Village's 2% wage offer would not alter this bargaining unit's relative standing among comparable employee groups in other communities.

While the economy has prompted departure from reliance on external comparables, consideration of internal comparability is still particularly relevant. In other words, how has this Village treated other bargaining units, and even its non-unionized employees as compared to this one? This record establishes that non-unionized employees of the Village of Romeoville will receive no wage increase this year and will also be forced to take 5 unpaid furlough days during the fiscal year starting on May 1, 2010. In contrast, the Village is offering this bargaining unit a 2% wage increase on top of scheduled step increases and stipends for the same year. The evidence also shows that the Village recently reached agreements with Public Works and Clerical employees represented by AFSCME providing for the same scheduled wage increases the Employer has offered this Union. While this fact, in and of itself is not determinative, it is significant in terms of evaluating this bargaining unit's relative standing among other Village employee groups where the specific issue of wages is concerned.

On this point, the Employer offers essentially unchallenged evidence that members of this bargaining unit, even without the [lower] 2% proposed wage increases, are also among the highest paid employees in the Village.<sup>81</sup> Furthermore, the record

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<sup>81</sup> Employer Exhibit 6.

demonstrates that this Union received significant negotiated wage increases over the term of the prior contract. Thus, it was incumbent upon the Union to establish that the Chapter's proposed 3% wage increases were necessary to further improve the relative standing of this bargaining unit among other employee groups, both inside and outside the Village, and there is no proof of such need in this record.

There is also the matter of the Village's withdrawal of proposed insurance premium increases with no corresponding reduction in the Union's wage proposal. Even the Union acknowledges that its 3% wage proposal was submitted when the Employer had a significant (scheduled) insurance premium increase on the table. The Union further admitted that it was surprised by the Employer's subsequent withdrawal of that proposal, but nevertheless argued that replacement language authorizing the management to alter benefit levels without adjusting cash premium contributions was just as financially detrimental to the bargaining unit as the previously proposed premium increases. Given the fact that non-union employees of the Village and also those represented by AFSCME are subject to the very same conditions where health insurance is concerned, and will receive equal or lesser wage increases, the Arbitrator has little reason to believe that this bargaining unit will be substantially worse off than all other Village employees if the Employer's wage proposal is adopted.

The Employer has also offered un-challenged evidence that revenues have dramatically decreased in recent years. As Arbitrator Benn recognized in *North Maine*; supra, this is likely caused by loss of tax revenues as consumers cut back on spending

and/or on purchasing homes. The Village's cost analysis indicates that revenues for 2009-2010 are estimated to be only \$490,811 above what they were last fiscal year, and further that last fiscal year revenues were down \$1.5 million from the year before.<sup>82</sup> Still, the Village will pay out more than \$199,411 in additional wages in 2010 under its proposal, and nearly equal amounts of additional wages in the subsequent two years of this contract. Obviously, if revenues continue to decline at such an alarming rate, scheduled wage increases will no doubt serve to further erode the Village's overall financial health. True, the Village is not promulgating a true inability to pay argument here. However, with no evidence that the bargaining unit will lose ground comparatively with the Employer's offer, and moreover with no proof that 2% will not substantively keep up with inflation (given the fact that the 2% does not include step increases, stipends and overtime), there is no sound reason for the Arbitrator, given the state of the economy, to award this bargaining unit larger increases than any other employee group in the Village.

As noted by the Village, the goal of this interest arbitration is, or should be, to provide a reasonable solution to the present impasse issue of wages. Once that threshold of "reasonable" has been met according to applicable statutory criteria, anything over and above it likely represents a benefit that could not otherwise have been gained through the process of collective bargaining. That, for all the previously stated reasons, should be avoided, since awarding windfalls in this setting would do nothing but encourage

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<sup>82</sup> Employer Exhibit 11.

abandonment of fruitful, if sometimes difficult and contentious, bargaining during these challenging times.

For all the foregoing reasons, then, the Arbitrator concludes that the Village's final proposal with respect to wages is more reasonable and should thus be adopted. His order to that effect follows.

### **Order**

The Village's Final Proposal is adopted. It is so ordered.

### **Section 25.3 – Stipends**

#### The Union's Final Proposal

- B. Specialty Stipend: Employees assigned as Tactical Officers, Traffic Officers, Field Training Officers, Bilingual Officers, and Evidence Technicians on May 1<sup>st</sup> of each calendar year shall receive an annual stipend of \$600.00.

Bilingual is defined as any person who has translated (via any language other than English or has signed) for the benefit with the Romeoville Police Department on any occasion while on duty. Any officer requesting a bilingual stipend shall submit his name and his spoken language to the Union and Chief of police for recognition.<sup>83</sup>

#### The Village's Final Proposal

The Village proposes to maintain *status quo*.<sup>84</sup>

#### The Position of the Union:

The Union seeks a new stipend for evidence technicians under this proposal. In the incumbent contract, evidence technicians do not receive specialty stipends. The Union also proposes to add a second paragraph of new language defining "bilingual" for

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<sup>83</sup> Union Exhibit 10 at age 17.

<sup>84</sup> Employer Exhibit 4 at page 19.

purposes of qualifying for specialty pay under this section. At the outset, the Union accuses the Village of failing to bargain in good faith on the issue of stipends for evidence technicians, because every proposal submitted to the Employer on this subject has been rejected out of hand. Specifically, the Union argues, the Chapter originally proposed that specialty stipend caps be removed, and also that stipends be increased from the present \$600 to \$1500 annually. Later, the Union explains, those requests were withdrawn in a good faith attempt to gain stipends for evidence technicians.

Currently, the Union explains, there are seven bargaining unit members assigned as evidence technicians. Their duties and responsibilities are “extremely important and vital for both the execution and prosecution of any criminal case regardless of whether it is a misdemeanor or a capital offense.” Moreover, the Union argues, “An evidence technician’s role may very well be the most important specialty that can be assigned to an officer.”<sup>85</sup>

On numerous occasions in the past, the Union argues, officers assigned to the specialty of evidence technician have requested to be either compensated for their added responsibilities or to be released from their assigned duties. “The Chief of Police again has demonstrated an unwillingness to change and compensate his officers with a fair wage increase in the form of a specialty stipend.”<sup>86</sup> The Union further argues that evidence technicians in externally comparable Bolingbrook receive a 4% raise in base

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<sup>85</sup> Union brief at page 12.

<sup>86</sup> Id.

pay for that classification. Thus, for all the foregoing reasons, the Union urges the Arbitrator to adopt its final offer on this economic issue.

The Position of the Village:

At the outset, the Village argues that this is an economic issue, and thus, one or the other of the parties' proposals must be adopted in its entirety. Here, the Village notes, the Union seeks a specialty stipend for evidence technicians, but has offered no *quid pro quo* for the potential gain. Moreover, the Village argues, the Union has presented no evidence as to why the increase is justified now, when it was not under prior contracts.

As to the matter of additional proposed language for "bilingual" officers, the Village submits that the Union's offer is not well thought out. Current specialty stipends are paid when an officer has been "assigned" certain duties, the Village points out. That proviso, the Village argues, is still in place under the Union's present proposal. However, the Village notes, the Union's new language defining "bilingual officer" countermands what is written in the preceding paragraph, in that, under the Union's proposal, "Anyone who has translated even one simple sentence, such as, 'Where is the bathroom,' on *one occasion* would be entitled to be recognized as a 'bilingual officer' and receive a stipend." (Emphasis original.)<sup>87</sup>

Moreover, the Village argues, the Union's proposal would allow for the creation of multiple "bilingual officers" regardless of any actual need that a bilingual officer be so assigned. Additionally, the Village argues, the Chief of Police has no discretion under

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<sup>87</sup> Employer brief at page 59.

the Union’s proposal as to who would qualify for the proposed bilingual stipend, in that he must “recognize” any officer who submits his name for purposes of receiving the stipend. For that and all the foregoing reasons, then, the Village urges the Arbitrator to reject the Union’s proposal and maintain the *status quo*.

Discussion:

As the Village points out, this is an economic issue, and thus, the Arbitrator is not free to “cherry pick” from the parties’ proposals in order to achieve resolution of this impasse. That is important here, because the Union has essentially presented two “breakthrough” items in its final offer, and has only substantively argued one of them. The Union focuses almost wholly on the issue of new specialty stipends for evidence technicians, and allows new language pertaining to bilingual stipends to stand undefended. Thus, the Arbitrator considers the two matters separately, but must take the one or the other of the promulgated proposals in whole.

First, then, as to specialty stipends for evidence technicians, the Arbitrator concludes that this is a new request that must be defended on the basis of established statutory criteria. Certainly, the Union is not barred in this process from bringing such a petition. However, the Police Chief’s alleged “unwillingness to compensate his officers with a fair wage increase” is not a valid defense. In other words, there must either be evidence of a *quid pro quo* that has already been accepted by the Village, or, in the alternative, evidence that these officers’ “overall compensation” falls recognizably short of externally comparable employee groups. Neither, has been shown here.

The Union's submits that because the Chapter "came down" from its original proposal on the corporate issue of stipends and the Employer still said "no" to increases for evidence technicians in particular, the Village has not bargained in good faith on this matter. However, the Union's apparent concession during bargaining does not demonstrate a genuine *quid pro quo* for purposes of this arbitration. There is no evidence that the Union offered anything in exchange for amplifying pay in any corner of this bargaining unit where stipends are concerned. All we are left with, then, is the Union's assertion that evidence technicians just "deserve more money." That, the Arbitrator finds, is largely a matter of opinion, and for better or worse, that opinion must be defended with evidence upon which an increase must have certifiable foundation in this forum. Again, interest arbitration is not meant to supplant bargaining, and neither is the Arbitrator's role therein purely benevolent.

Perhaps the most powerful statutory criterion on the issue of evidence technician stipends is, interestingly, external comparability, and the Union cites the Village of Bolingbrook in support of its petition here. However, it is the only community in its list of external comparables that pays evidence technician stipends.<sup>88</sup> Thus, it cannot be said that on this matter alone, officers in this bargaining unit are recognizably worse off than other ostensibly comparable employee groups. The Arbitrator cites the Union's external comparables here, without even considering whether evidence technicians in accepted externally comparable communities (the Employer's comparables) are receiving stipends, because the Union cannot be permitted to submit a request for wage increases in any

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<sup>88</sup> See; Union "Demographic" summary.

form, and then not defend it with acceptable statutory proof. In other words, it is not the Arbitrator's job to make the Union's case here.<sup>89</sup>

As to the Union's proposal with respect to modifying Section 25.3 pertaining to bilingual officers, the Arbitrator finds the Village's concern well-founded. The way the proposal is framed, i.e. that a bilingual officer should contractually be defined as, "any person who has translated... for the benefit of the Romeoville Police Department on any occasion while on duty," it is conceivably true that an officer who simply utters a few words in translation of another language once in a year, could be entitled to receive a stipend of \$600. Clearly, that is not what is intended in this section and certainly it is not how other specialty stipends are awarded in this bargaining unit. It is highly unlikely, for example, that a patrol officer required to direct traffic at the scene of an accident would qualify as a "traffic officer" for purposes of collecting specialty pay under the contract's present language. However, that is precisely what the Union appears to pursue here for police officers employed in the Village of Romeoville who happen to be bilingual or multilingual.

Moreover, as the Village points out, the Union's added language with respect to bilingual officers runs counter to the original specialty stipend proviso that officers qualifying for stipends must be "assigned" in a specialty capacity. It is not for the Arbitrator to say what a "bilingual assignment" should look like. However, it cannot reasonably be said that any time an officer is asked to speak any language other than

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<sup>89</sup> It is nevertheless true that evidence technicians in Channahon and Plainfield, the two communities common to both lists of proposed external comparables, are not paid specialty stipends.

English while on duty, he or she automatically becomes “assigned” as a bilingual officer under Section 25.3.

There is thus little need to address the Village’s argument with respect to the Chief’s “discretion” under the Union’s proposed language, because the rest of it cannot be adopted for the foregoing reasons. However, it is noted that the Union’s reason for providing that bilingual officers “shall submit their names for recognition” is not clear in this record. In other words, it is not apparent whether this is an administrative provision or a demand that every officer so “recognized” receive the bilingual stipend. In any event, in light of the Arbitrator’s conclusions that the whole of this economic issued as it is presented by the Union cannot, and will not prevail, it is not necessary to pursue clarification on that particular question.

For all the foregoing reasons, then, the Arbitrator concludes that the *status quo* with respect to Section 25.3 Stipends should be maintained. His order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

### **Article 26 – Physical Fitness**

#### The Union’s Final Proposal

All employees who are hired after May 1, 1990 will be required to meet the Romeoville Police Department Physical Fitness Standards. Each member must successfully complete the program bi-annually, which will be administered by a certified physical fitness instructor. The guidelines and

requirements will be set forth in the PHYSICAL FITNESS PERFORMANCE REQUIREMENTS CHART (Appendix H).<sup>90</sup>

The Village's Final Proposal

The Village proposes the *status quo*.<sup>91</sup>

The Position of the Union:

It is noted that the above language proposed by the Union in its “Final Offer” presently appears in its entirety in the incumbent Collective Bargaining Agreement. Importantly, however, the second paragraph of present Article XXVI, which consists of a single sentence, has been omitted in the Union’s final proposal. That sentence is, “Employees who fail to meet the physical standards may be subject to discipline.” Thus, while the Village states that the Union urges complete elimination of Article XXVI, the real truth is that the Union seeks to omit language subjecting bargaining unit members to discipline in the event they fail all or a portion of their bi-annual physical fitness evaluations.

At arbitration, Union counsel summarized the position of the Chapter as follows:

“The main issue is that if an officer doesn’t meet the requirement that’s set in [Appendix H], they’re being disciplined... And if you look at the policy, which is very lengthy, on its face, it’s discriminatory. There’s no addressing older officers, and there’s no addressing female officers...” (Tr. 79.)

Post-hearing, the Union argued further that the Chief of Police has been punishing bargaining unit members for failing to meet the physical fitness standards “that he adopted for his police department.” Furthermore, the Union states, none of the eight

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<sup>90</sup> Union Exhibit 10 at page 18.

<sup>91</sup> Employer Exhibit 4 at page 20.

externally comparable communities proposed have such standards. The Union also argues that physical fitness tests have resulted in injuries, and there are actually workers compensation claims on record for officers who have been injured taking physical fitness tests.

Sergeant Christopher Burne testified on behalf of the Union at arbitration, and in relevant part, he explained that “the entire department” participated in implementing the original fitness program, and a third party agency was called in to assist in evaluating departmental fitness and establishing appropriate standards. The Union complains that the agreement in which physical fitness standards first became contractual was implemented before actual standards were published, and thus deems the entire program discriminatory because it now, as it did then, fails to address obvious strength differences between men and women, and also between younger officers and older ones.

Burne further testified that while he “had no idea how many” have been involved, police officers are being disciplined under the present contract for failing physical fitness evaluations. This is not fair, the Union argues, because Departmental administrators, including the Chief of Police himself, are not subject to the same standards of fitness even though they, too, are sworn police officers. Moreover, the Union argues, the Chief of Police was given 31 recommendations by the third party agency, and “only 16 of those are followed.” Thus, the Union surmises, “The Chief of Police has intentionally ignored 15 of the recommendations to suit his own personal agenda.”<sup>92</sup> Thus, for that and all the

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<sup>92</sup> Union brief at page 14.

foregoing reasons, the Union urges the Arbitrator to adopt its final proposal that any reference to officer discipline in Article XXVI be removed in its entirety.

The Position of the Village:

The Village argues that the physical fitness standards have been in the contract for a long time, and were bargained for with the Union. (Tr. 79.) The Village further points out that the Union has never filed a grievance over the application or legitimacy of Article XXVI. In point of fact, the Village argues, the Union agreed to have standards in the contract, and further that members of the bargaining unit would be held to a certain standard of physical fitness or risk discipline. It makes no sense, then, that the Union now argues that present standards are patently discriminatory, the Village submits. Importantly, the Village argues, the Union failed to present any evidence that the test is biased, even though the record is clear that a third party agency designed and validated the program from the beginning.

As to the matter of discipline, the Village points out that in contracts predating the incumbent Collective Bargaining Agreement, discipline for failing physical fitness evaluations was automatic. However, the Village explains, in negotiating the present Agreement, the parties bargained for modified language that employees “may be disciplined” for failing physical fitness evaluations. Now, the Village argues, the Union seeks to have that one remaining proviso removed from Article XXVI entirely, even though the avenue for challenging discipline through the Board of Fire and Police Commissioners has been, and remains, available to officers who wish to dispute specific

disciplinary occurrences under present provisions. For that and all the foregoing reasons, then, the Village urges the Arbitrator to maintain Article XXVI *status quo*.

Discussion:

At the outset, it is once again noted that the Union presents a “breakthrough” proposal with respect to the present negotiated provisions of Article XXVI. Specifically, the Union proposes to eliminate the Village’s ability to discipline bargaining unit members for failing to comply with established standards of physical fitness and readiness. The Union urges the Arbitrator to find present standards facially discriminatory, and discipline thus unwarranted under any circumstances. However, absent proof that things have substantively changed since the last contract (i.e. that the present system is not working as it was intended to work), the Arbitrator has no statutory basis for altering the present *status quo*.

First, this record establishes that the present physical fitness program was a collaborative effort, and not a unilateral action on the part of the Village. The test itself was prepared by a third party agency, and though it was apparently implemented after the effective date of the contract in which it was first referenced, the Union registered no complaint as to its validity, enforceability, or stated importance. This point is crucial to the impasse issue before the Arbitrator, because the Union appears to now, belatedly, challenge the program’s inherent soundness and viability on the basis that it is facially discriminatory and thus unreasonable. That cannot be said, however, in light of the inescapable fact that the present *status quo* is a completely bilateral arrangement. What

thus appears to be the real problem here, is the manner in which the present fitness program is being implemented. Yet again, this is a grievance matter.

While the Union argues that the present program is unfair, the record establishes a number of opposing truths. First, crucially, both the existence and the terms of the physical fitness protocol were negotiated. This is important, because one of the Union's fundamental arguments with respect to the current *status quo* is that it discriminates against women police officers and older police officers. If this is indeed the case, then the Union was obligated to establish that there were no women or "older" police officers in the Department when the present terms were agreed to. While the Union may argue that the exact protocol post-dated the contract in which this program first appeared (and thus it was never bilateral), there is absolutely no evidence that the Union has ever promulgated a formal complaint on the basis that actual tests were unreasonably difficult for those two employee groups, or, in the alternative, that there should be different "levels" of fitness requirements in the Department. While the record does indicate that on certain occasions discipline has been reduced in amount by the Board of Fire and Police Commissioners, it is important to note that the record fails to establish evidence that the Board did so because the tests were inherently discriminatory and thus unlawful.

As to the difficulty of the tests, then, and thus the Union's concerns with respect to disciplining employees for failing them, there is merit in considering the question of whether or not the present system is "broken" or does not work as it was originally intended. On both points, given the evidence in this record, the Arbitrator is persuaded

in the negative. As the Village points out, there are provisions in the current fitness program which expressly allow for retaking all or portions of fitness examinations which may have been failed on the first try. Second, the present contract does not mandate automatic discipline even if a fitness test should be failed again. Instead, the incumbent Agreement provides that officers “may be subject to discipline.” This, again, is important, because there is contractual recourse in the event an officer feels he or she has been unfairly dealt with under Article XXVI if discipline has been issued. Specifically, as previously noted, there is remedy in either the contractual grievance process, or in the alternative, through the Board of Fire and Police Commissioners.

Moreover, the record demonstrates that under prior agreements, discipline was mandatory, and the present language was a concession on the part of the Village during negotiations for the incumbent Collective Bargaining Agreement. Thus, it was even more important for the Union to establish that the *status quo* was no longer reasonable (the system is “broken”), because the former agreement was so much more restrictive and the Village evidently recognized that it was unduly harsh by agreeing to compromise its absolute right to discipline employees for failing to maintain contractual standards of physical fitness.

Constrained by arbitral wisdom that neither party should gain a significant breakthrough as a result of this process without substantial evidence that one is warranted, the Arbitrator is convinced that eliminating all of the Village’s disciplinary rights under Article XXVI would be tantamount to fundamentally altering the parties’

entire bargaining history concerning contractual physical fitness requirements. In other words, granting the Union's petition here would eliminate all recourse for the Village in cases of blatant disregard for physical fitness requirements that both parties once agreed were more than "a good idea," and that would indeed be a breakthrough for which there is no evident *quid pro quo* or recognition of the practical purpose of Article XXVI. Certainly, it cannot be disputed that fitness is a necessary part of a police officer's job, and Article XXVI contractually recognizes that fact. The Arbitrator stresses "contractually" here, because the Village's physical fitness standards are not a matter of unilateral policy. They are before the Arbitrator as a bilateral contract which the Union now seeks to effectively eviscerate by demanding that the Village not be permitted to hold police officers accountable for violating them. Clearly, that is not an appropriate proposal in the absence of some evidence that the present system is causing authentic due process problems for the Union. Given the fact that there is recourse through the grievance process, or, in the alternative through the Board of Fire and Police Commissioners, as with any discipline, that cannot be said.

Importantly, the Union has not presented evidence as to how many officers have actually been disciplined under present Article XXVI, or for that matter how much of that discipline has ever been appealed because it was allegedly "unjust". Instead, the Union argues that the Chief of Police was given 31 recommendations from the third party agency charged with preparing the current standards, and only 16 of them are presently being followed. In fact, the Union argues, "The Chief of Police has intentionally ignored

15 of the recommendations to suit his own personal agenda.” That is a strong statement for which there is no record evidence. If in fact the Chief of Police is ignoring the policy as it presently exists, then that is a grievance matter. And again, if that is truly the case, the system itself is not broken – only the administration of it. That is not a matter for impasse arbitration under the statutes.

The Union also argues that external comparability does not support the Village’s present physical fitness requirements, in that, “Of the eight communities that [the Union] used as comparables, none of them have Physical Fitness Standards.” What the Union has lost sight of, however, is the fact that the present Standards are contractual. In other words, these parties, some time ago, deliberately set themselves apart from other communities in this specific regard, and thus it would be inappropriate, indeed nonsensical, for the Arbitrator to negate that particular effort for lack of external comparability.

Finally, the Union argues that the present physical fitness tests are inherently dangerous, because injuries to police officers have occurred during testing. While on its face this might seem a legitimate argument, there is a manifest lack of medical evidence upon which the Arbitrator could find for the Union on this point. The Arbitrator is not a fitness expert, though the administrators of these tests clearly are. (“Each member must successfully complete the program biannually, which will be administered by a certified physical fitness instructor.”) Moreover, the fact that injuries have occurred during testing does not, itself, indicate that the methods used by administrators are dangerous or

improper. The Union's attempt to cite injuries as an additional means of impeaching Article XXVI presents, in the end, a medical question for which there are neither proofs nor answers in this record.

As to the Union's argument that the present system is unfair because the Department's command staff is not required to participate, the Arbitrator finds it to be without merit. Again, the present provisions of Article XXVI are negotiated, and exist as terms between these parties only. The Department's command staff has never been party to this contract, and thus is not bound by its terms. Certainly, it is reasonable to observe that "leading by example" is a good idea. However, the Union again misunderstands this process in citing that precept as a reason for the Arbitrator to alter the negotiated *status quo*. This is not a court of equities, nor is it a forum for instruction in the "tenets of good leadership." Interest arbitration is reserved for resolution of impasse issues which have their foundation in proof that there is merit in considering adjustment of the contractual (and in this case bilaterally negotiated) *status quo*. Ethical directives are not part of that process, and violations of existing provisions (or "arbitrary or capricious" treatment of them) are reserved for the established grievance process.

For all the foregoing reasons, then, the Arbitrator concludes that the *status quo* with respect to Article XXVI should be maintained. His order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

## Article XXVII – Wellness Program

### The Union’s Final Proposal

The Union proposes that the “Wellness Program” language be removed in its entirety.<sup>93</sup>

### The Village’s Final Proposal

The Village proposes the *status quo*.<sup>94</sup>

### The Position of the Union:

The Union argues that the present Wellness Program should be removed from the Collective Bargaining Agreement, “Because, if this Arbitrator was to conduct his own cost benefit/burden analysis, he would find that the Chapter would benefit from the removal of the Wellness Program.”<sup>95</sup> The Union presents proof that the Village has spent approximately \$43,010 to administer the program over the course of 6 years, and argues that the Chapter “would rather that money be used toward other benefits (i.e. wages, reduction in health care costs, etc.) to help relieve the financial stress that each individual Chapter member is feeling in today’s stressful times.”<sup>96</sup> The Union further submits that, “The lack of supporting evidence to keep the Wellness Program would further demonstrate the Village’s *laissez faire* attitude toward bargaining.”<sup>97</sup>

For those reasons, the Union urges the Arbitrator to find in favor of the Chapter’s proposal to remove the present Wellness Program from the new contract.

### The Position of the Village:

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<sup>93</sup> Union Exhibit 10 at page 19.  
<sup>94</sup> Employer Exhibit 4 at page 21.  
<sup>95</sup> Union brief at page 15.  
<sup>96</sup> Id.  
<sup>97</sup> Id.

At the outset, the Village explains that the Wellness Program was incorporated into the agreement along with physical fitness provisions several contracts ago. The Wellness Program, the Village argues, provides optional health screening, testing and physical examinations for members of the bargaining unit. Now, the Village argues, the Union proposes to eliminate the program so that funds spent to support it might be available to the Chapter for other purposes. What the Union does not appreciate, however, the Village argues, is the fact that the Wellness Program was designed to help keep insurance costs down, which is stressed in existing Article XXVII language as follows:

One of the most compelling reasons for worksite health promotion programs is the greater emphasis insurance companies are placing on controllable risk factors to determine an organization's insurance risk. Since seventy percent (70%) of all health care costs arise from controllable habits, many insurers are considering employer's efforts to decrease controllable risk in determining group health insurance premiums. Self-insured groups can also realize cost reductions through early detection, treatment, and education of their employees regarding risk factors. Our risk reduction programs focus on these controllable factors.<sup>98</sup>

Moreover, the Village argues, the Wellness Program is completely voluntary and, interestingly, while the Union claims it would rather have the money spent elsewhere, the record establishes that bargaining unit members are actually taking advantage of the program. The Village further argues that the Physical Fitness and Wellness programs were negotiated in tandem many years ago, and were designed to encourage medical and physical fitness as a means of keeping healthcare costs down. This is one provision that is a win/win for all parties, the Village submits.

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<sup>98</sup> Employer Exhibit 1 at pages 34-35.

For that and all the foregoing reasons, the Village urges the Arbitrator to reject the Union's proposal, and thus maintain the *status quo*.

Discussion:

This alleged "impasse" issue was particularly puzzling to the Arbitrator. When all is said and done, the Union has apparently decided that "wellness" is not important to the bargaining unit, and therefore demands that the Village spend an equivalent number of dollars elsewhere for the Union's sole and desired benefit. Indeed, the Union actually argues that, if the Arbitrator were to conduct his own "cost benefit/burden analysis" (which is not appropriate in his statutory role as neutral), he would find that the Chapter "would benefit from the removal of the Wellness Program." Yet again, the Union appears to misunderstand the statutory purpose of interest arbitration, which certainly does not include awarding stand-alone "benefits" to the Union or directing the Village as to how it should spend its resources. Importantly, the Wellness Program is not jointly funded, and thus, any and all expenditures made by the Village in support of it are entirely within the purview of management *as long as the basic goals of the program are being met and the Agreement is not otherwise violated*.

Moreover, as the Village points out, it can hardly be said that the present system is "broken" and the Union is now suffering because it is not working the way it was originally intended. Actually, the evidence establishes that the system is working precisely the way it was intended, in that the Village's expenditure of some \$43,000 over six years demonstrates the Employer's continuing commitment to employee health. The

Union presented that amount as the “cost to administer” the program. Actually, the Village spent \$43,000 on *bona fide* tests, screenings, and health evaluations. In other words, these were not administrative expenditures. Those dollars represent an actual benefit to the bargaining unit which the Union, for whatever reason, now urges the Arbitrator to make disappear. Interestingly, if the Arbitrator *were* to grant the Union’s request on this issue, it would result in a pure cash savings to the Village, as he would be unable to mandate that an equal number of dollars be spent on other non-specific union interests. In other words, the Village’s resources are theirs, and neither the Arbitrator nor the Union can direct how they should be spent in the absence of a specific contractual arrangement.

It is also well-established that preventative medicine does help keep insurance costs at bay, and the parties expressly recognized this when the Wellness Program was first incorporated into the Agreement. Thus, for the *status quo* to be so substantively altered, there must be evidence that things have changed significantly since then. There is no such evidence in this record.

For all the foregoing reasons, then, the Arbitrator concludes that the *status quo* with respect to Article XXVII should be maintained. His order to that effect follows.

### **Order**

The *status quo* is maintained. It is so ordered.

## Article XXVIII – Drug Free Workplace

### The Union’s Final Proposal

The Union proposes that the “Drug Free Workplace” language be removed in its entirety.<sup>99</sup>

### The Village’s Final Proposal

The Village proposes the *status quo*.<sup>100</sup>

### The Position of the Union:

The Union argues as follows: “The Union was never opposed to random drug testing. At the start of negotiations between the Union and the Village, the Union made a good faith effort to re-negotiate the issue of random drug testing, in particular, the procedural random selection of the individual Chapter members (i.e. who, when, where, and how). Instead, the Union was met with complete resistance by the Chief of Police, who refused to bargain over the issue or discuss it. The Union has been left with no choice but to request from this Arbitrator to remove the random drug testing language in its entirety, because the Chief of Police refused to bargain over this issue, period.”<sup>101</sup> When all is said and done, the Union explains, the Chapter is at odds with the Village as to the method of random selection that is presently used by the Chief of Police. Because the Village has essentially refused to address the Union’s concerns, then, it has proposed that the drug-free workplace language be removed from the contract in its entirety.

### The Position of the Village:

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<sup>99</sup> Union Exhibit 10 at page 20.

<sup>100</sup> Employer Brief at page 63.

<sup>101</sup> Union Exhibit 10 at page 20.

The Village urges the Arbitrator to reject the Union’s proposal for lack of proof that the process of random selection is somehow discriminatory or improper. The methods used by the Employer to select employees for random drug testing were negotiated with the Union, the Village argues. There was no testimony, the Village notes, establishing that the Employer has not followed contractual provisions, nor is there evidence that the Union has ever filed a grievance complaining that the contract was being violated. Furthermore, the Village argues, there was no substantive evidence presented by the Union to confirm any belief that the selection process has been unduly biased.

The Village also accuses the Union of circumventing the bargaining process by refusing to propose alternate Article XXVIII language in a good faith attempt to resolve the Chapter’s concerns with respect to the method of selection for random drug tests, and instead petitioning the Arbitrator to remove “drug free workplace” language altogether. Thus, the Village argues, the Arbitrator should not reward the Union’s effort to that end.

For that and all the foregoing reasons, the Village urges the Arbitrator to maintain the current *status quo*.

Discussion:

At the outset, the Arbitrator is compelled to comment on the Union’s manifest lack of any good faith effort to resolve the impasse issue of random drug testing. The Union’s lack of effort is demonstrated by its failure to submit a reasonable final offer on this issue. The Village’s argument on this point is well-taken, and the Union’s proposal here

is indeed indicative of a misunderstanding and misuse of this process. Both parties are aware that this is a non-economic issue, and thus, the Arbitrator has some latitude in crafting a solution to the impasse in direct response to their respective arguments. The Union's proposal that drug-free workplace language be removed from the contract entirely is churlish and disingenuous, because, certainly, were this an economic issue and the Arbitrator statutorily barred from "cherry picking", there is absolutely no question that the Village's proposal to maintain *status quo* would prevail as the more reasonable.

That being said, there is some hope for the Union on this point, because the Chapter's fundamental complaint here is relatively easy to fix. Unlike some collective bargaining agreements providing for random drug testing, the incumbent contract between these parties establishes a fixed process by which subject selection must be made. It is understandable, if the present system is not working as it was intended, or if there are genuine due process issues for the Union, that the Chapter would seek procedural revisions which would not substantively alter the process, but would insure its fairness. Indeed, it is beyond the Arbitrator's understanding why the Village would balk at the idea of ensuring fairness. Perhaps the Village is "digging in its heels" in retaliation for being accused of bias. However, that, too, is childish. Random drug testing, and the preservation of that right under the law, is serious business, and fairness should be an *absolute* hallmark of the process in the interest of both parties.

At present, Sections 28.4 (A)(4) and 28.4 (A)(4)(a) state:

As part of a Police Department wide program covering all sworn members, all employees shall be subject to random drug testing. Employees shall be assigned a permanent number and the selection of those to be tested shall be determined by a random drawing conducted by the Chief of Police and/or Lieutenant. The Chief will be permitted to have four random drawings per year with a maximum of twenty-five percent (25%) of total bargaining unit membership tested per drawing. No employee will be subject to more than three (3) random tests per calendar year. Random testing shall only affect bargaining unit personnel when it applies to all sworn police personnel.

- a) The Chief, without looking, will select officers for random testing by picking the assigned permanent numbers out of a container. The selection of numbers will be witnessed by a member of the chapter chosen by the Chapter. After an officer is selected, the testing will proceed as described in this Article...

At arbitration, Officer Michael Michienzi testified that Chapter members are concerned as to whether the process as set forth above is truly *random* because the Union has no way of knowing what numbers are being placed in the “container” for drawing. Moreover, Michienzi testified, it appears that newer officers are being tested more frequently than more senior employees. Whether or not this is true, the Union’s concern for the integrity of the process is not unreasonable. In other words, procedures can be easily clarified, if not entirely modified, to ensure that the process is indeed “random”, which is exactly what it is intended to be. Certainly, it cannot be lost on the Village that if the Employer were ever forced to defend its selection process in response to wrongful discharge litigation, demonstrable fairness would be of significant benefit.

Thus, in response to the Union’s legitimate desire to maintain integrity in random drug testing procedures (while not honoring its manifest lack of constructive conduct on

this issue), the Arbitrator concludes that only Sections 28.4 (A)(4) and 28.4 (A)(4)(a) of the Agreement shall be modified as follows:

Section 28.4 (A)(4)

As part of a Police Department wide program covering all sworn members, all employees shall be subject to random drug testing. Employees shall be assigned a permanent number, **and a complete list of bargaining unit members and their designated numbers shall be provided to the Union quarterly beginning in January of each year. The** selection of those to be tested shall be determined by a random drawing conducted by the Chief of Police and/or Lieutenant **from a container in which all bargaining unit members' numbers have been placed.** The Chief will be permitted to have four random drawings per year with a maximum of twenty-five percent (25%) of total bargaining unit membership tested per drawing. No employee will be subject to more than three (3) random tests per calendar year. **Once an employee has been selected for three (3) random tests in a single calendar year, his/her number shall be removed from the drawing until commencement of the following calendar year.** Random testing shall only affect bargaining unit personnel when it applies to all sworn police personnel. **Violation of the selection process set forth herein below shall be subject to the grievance procedures established in this Agreement.**

- a) The Chief, without looking, will select officers for random testing by picking the assigned permanent numbers out of a container. **Prior to drawing the first number in the selection process, the Chief of Police or his designee and a representative from the Union shall mutually confirm that every employee to whom a permanent number has been assigned will be subject to selection for random drug testing unless his/her number has been removed because he/she has already been selected three (3) times in the current calendar year.** The selection of numbers will be witnessed by a member of the Chapter chosen by the Chapter. After an officer is selected, the testing will proceed as described in this Article...

The Arbitrator further concludes that the *status quo* should be maintained for the remainder of Article XXVIII, and that the Union's proposal to eliminate it in its entirety should be specifically rejected. Article XXVIII – Drug Free Workplace shall remain in the contract in its entirety, and only the above modifications to Sections 28.4 (A)(4) and

28.4 (A)(4)(a) shall be incorporated therein to alter the present *status quo*.. The Arbitrator's order to that effect follows.

### **Order**

For reasons set forth above and incorporated herein as if fully rewritten, the Arbitrator concludes that Article XXVIII should, and will, be retained in its entirety, albeit with incorporation of the above Section 28.4 (A)(4) and 28.4(A)(4)(a) modifications. It is so ordered.

### **X. Conclusion and Award**

The foregoing orders represent the final and binding determination of the Neutral Arbitrator in this matter and it is directed that the parties' collective bargaining agreement be amended to incorporate their previously agreed upon modifications along with the specific determinations made above.

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**John C. Fletcher, Arbitrator**

Poplar Grove, Illinois, June 11, 2010