

ARBITRATION
BEFORE MICHELLE CAMDEN

In The Matter of the Arbitration Between:)	
)	
THE VILLAGE OF MONTGMERY.)	
)	INTEREST ARBITRATION
Employer,)	
)	
AND)	
)	<i>S-MA-10-156</i>
METROPOLITAN ALLIANCE OF POLICE, MONTGOMERY)	CASE NO. S-MA-07-104
POLICE CHAPTER #333)	
)	
Union.)	

Appearances:

On Behalf of the Union:

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Hearing Date:

April 26, 2011

I. INTRODUCTION

The hearing in this matter was held on April 26, 2011 in Montgomery, Illinois. A 312 page transcript was taken. The parties both submitted post hearing briefs which were exchanged through the Arbitrator.

The Village of Montgomery sits on the far western edge of suburban Chicago, between Aurora and Oswego. (VX A1). Montgomery has experienced tremendous population growth in the years just before the country's recession. From 2001 to 2011, the Village's population increased by 237%, from under 5,500 residents to nearly 18,500. (R. 135; VX C2).

The Village employs approximately 60 people and has two groups of unionized employees. The Metropolitan Alliance of Police, Chapter 333 ("MAP" or "Union") represents between 14 and 17 police officers. There are also five unrepresented management employees in the police department. The second bargaining unit involves the public works employees. There are 9 employees in the public works department who are represented by the International Union of Operating Engineers, Local 150 ("Local 150"). (VX A5). There are thirty-one other unrepresented employees in other departments throughout the Village. (VX A5).

II. BARGAINING HISTORY

The parties attempted to reach agreement for this first successor agreement which expired on April 30, 2010. They were successful in tentatively agreeing to a number of issues. Those issues are set forth as Exhibit A to this Award. Those tentative agreements are incorporated by reference into this final award.

The negotiations for the initial agreement were begun by the Village and a different Union, Local 150. At some point during the process, the Metropolitan Alliance of Police union took over and completed the negotiations. MAP was the Union to negotiate this successor agreement here. The negotiations spanned a number of months, but included only three official on the record offers – an initial Union proposal, an initial Village proposal and one subsequent Village package proposal. There were numerous off the record proposals during this process between the parties.

The parties were unable to reach agreement on 16 other issues and those issues were presented to this Arbitrator at the hearing. During the course of the hearing, one issue, Section 4.13 – Shift Bids was resolved, leaving 15 remaining for resolution. The parties stipulated which issues were economic and which were non-economic.

III. STATUTORY CRITERIA

This proceeding is governed by the provisions of the Illinois Public Labor Relations Act, 5 ILCS 315 *et seq.* The IPLRA makes a distinction between economic and non-economic issue. The IPLRA states, "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(g)(2006). That same restriction is not placed on the items considered non-economic. The applicable statutory factors are as follows:

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 proceedings with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In the 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 of private employment.

5 ILCS 315/14 (h) (2011).

While the statute sets forth the criteria for consideration in interest arbitration, there is no guidance on which factor or factors are to be given the most consideration. It is up to the individual arbitrator to determine the relative merits of each factor. There is flexibility in applying the relative worth of each factor to each case. Historically, the comparability factor has been one of the primary considerations for both the parties and interest arbitrators. Recently, there has been a shift toward considering other factors which take into greater account the economic reality that this country is facing. Some arbitrators have strengthened the relative weight of other factors in an attempt to keep from holding unions or municipalities hostage to contracts that were negotiated under a very different economic landscape. The cost of living factors have become increasingly important. *See County of Cook and Cook County Sheriff's and AFSCME, L-MA-09-003, 004, 005, 006 (Benn, 2010)*

There has been no evidence presented that any of the proposals are beyond the lawful authority of the employer.

a. STIPULATIONS

The second enumerated statutory factor is the parties' stipulations. Prior to the commencement of the hearing, the parties presented the Arbitrator with a joint exhibit "Ground Rules and Stipulations of the Parties" which stated:

1. By Agreement of the parties, and pursuant to Section 14(p) of the Illinois Public Labor Relations Act ("Act"), the Arbitration Panel in ILRB Case No. S-MA-07-104 shall consist of Michelle Camden as the sole Panel Member and Chairperson; the parties each waive their right to appoint their own Panel Member. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and the Arbitration Panel has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to it as authorized by the Act and the laws of the State of Illinois.
2. The hearing in this case will be convened on April 26, 2011, at the Montgomery Village Hall, 200 N. River Street, Montgomery, Illinois, beginning at 9:30 a.m. and continuing into the evening, if necessary, until the hearing is concluded. The requirements set forth in Section 1230.90(a) of the Rules and Regulations of the Illinois Labor Relations Board, regarding the commencement of the arbitration hearing within fifteen (15) days following the Chairperson's appointment, have been waived by the parties.
3. The hearing will be transcribed by a court reporter or reporters whose attendance will be secured for the duration of the hearing by the Union, upon approval of the Village and at the direction of the Panel Chairperson.
4. The parties stipulate that the arbitration hearing involves "collective negotiating matters between public employers and their employees or representatives" and, therefore, is not subject to the open meetings requirements of the Illinois Open Meetings Act, 5 ILCS 120/1 *et. seq.*
5. All sessions of the hearing will be closed to all persons other than the Arbitration Panel, the court reporter(s), representatives of the parties including negotiating team members, hearing witnesses, members of the bargaining unit represented by the Metropolitan Alliance of Police, elected officials of the Village, and the management staff of the Village), and such other persons as may be permitted to observe the proceedings by mutual agreement of the parties.
6. The parties agree that the following UNION issues remain in dispute, and that these issues may be submitted for resolution by the Arbitration Panel, subject to any reservations and objections that may be asserted by the Employer in accordance with Paragraph 8 below:
 - a. Issues Principally Economic in Nature
 - i. Section 4.6 – Compensatory Time
 - ii. Section 9.1 – Wages & Appendix B (Wage Scale)
 - iii. Section 10.2 – Insurance Premium Allocation
 - iv. Section 12.1 – Sick Leave
 - v. Section 12.2 – Funeral Leave
 - vi. Section 13.2 – Uniforms
 - vii. Section 13.15 – Part Time Employees
 - b. Issues Principally Non-Economic in Nature
 - i. Section 1.5 – Dues Deduction
 - ii. Section 1.6 – Fair Share
 - iii. Section 1.8 – Indemnity

- iv. Section 4.13 – Shift Bids (and side letter)
 - v. Section 7.1 – Definition of Grievance
 - vi. Section 7.8 – Arbitration of Suspension or Termination
 - vii. Section 13.5 – Medical Examination
 - viii. Section 13.15 – Part Time Employees
 - ix. Article XIV – Board of Fire and Police Commissioners
7. The parties agree that there are no VILLAGE issues remaining in dispute.
 8. The listing of an issue in dispute above in Paragraph 6 is not intended and shall not be construed to waive objections to the appropriateness of submitting the issues to the Arbitration Panel. All parties reserve the right to contest in an appropriate forum under applicable laws the submission of any final offer of any other party on the grounds that it constitutes a non-mandatory subject of bargaining or bad faith bargaining or is an unlawful proposal.
 9. Final offers of settlement shall be submitted by the parties to the Arbitration Panel and to each other at the commencement of the hearing on April 26, 2011. Once the proposals of the parties have been submitted to the Arbitration Panel, they may not be changed or altered without the written consent of the other party.
 10. The parties agree that the following information shall be submitted by stipulation to the Arbitration Panel on or before convening the hearing on April 26, 2011:
 - a. The current agreements between the Union and the Village, and any other Village bargaining units currently in existence (Jt. Ex. 1(a) and (b)).
 - b. Each party's Final Offer of Settlement on each of the economic and non-economic issues to be considered and decided by the Arbitration Panel (Jt. Ex. 2 [Union] and Jt. Ex. 3 [Village]).
 - c. These Ground Rules and Stipulations of the Parties (Jt. Ex. 4).
 - d. Any tentative agreements reached between the parties (Jt. Ex. 5)
 11. As the moving party in the arbitration, the Union will proceed with its case first on all Union issues, subject to cross-examination. Once the Union has presented its case-in-chief as to all Union issues, the Village will present its evidence on all Union issues, also subject to cross-examination. Once the parties have presented their cases-in-chief, the hearing shall be closed.
 12. Post-hearing briefs shall be submitted to the Panel no later than thirty (30) days from receipt of the full transcript of the hearing, by the representatives of the parties responsible for preparing the briefs, or such further extensions as may be mutually agreed to by the parties or allowed by the Arbitration Panel. The postmark date of mailing shall be considered the date of submission of the brief.
 13. The Arbitration Panel shall base its findings and decision upon the applicable factors set forth in Section 14(h) of the Act. The Arbitration Panel shall issue its award within sixty (60) days after submissions of the post-hearing briefs or any agreed upon extension as requested by the Arbitration Panel, and such approval shall not be unreasonably withheld.
 14. Nothing contained herein shall be construed to prevent further negotiations and settlement of the terms of the contract at any time, including prior to, during or subsequent to the arbitration hearing.

The document was signed by the Village representative, however, the Union counsel refused to sign, only verbally indicating his agreement with the statements contained therein at the start of the hearing. There was discussion of dissent regarding the notion that all of the issues listed were Union issues. This is discussed more below.

b. VILLAGE'S FINANCIAL ABILITY TO BEAR THE COSTS

The third enumerated statutory factor considered the employer's ability to cover the costs. The parties have stipulated that some issues are economic and others are non-economic. For the non-economic issues, the Village's financial condition is irrelevant. For the economic issues, it is one of several factors that the statute requires this Arbitrator to consider.

There can be no doubt that the state of the economy is not that of tremendous growth. In 2010 and into 2011, the local, state and national economies were all in recession. Unfortunately for the Village of Montgomery, the recession hit just as the Village was spending millions of dollars in capital improvements to pay for the recent population explosion.

Village Finance Director Jeff Zoepfel testified about the Village's financial condition. Zoepfel explained that from 2001 to 2011, the Village's population increased by 237%, from under 5,500 residents to nearly 18,500. (R. 135; VX C2). Because of the population growth, the Village saw an increase in the demand for Village services ranging from snowplowing to building inspections to water. (R. 135). To meet this demand, between 2001 and 2008 the Village added 22 full-time equivalent employees, including 13 full-time equivalent employees in the police department. (R. 136). Because of the additional staffing, the Village's general fund expenditures increased by nearly 50% from 2005 to 2008. (VX C3; R. 136).

Although the Village was in the middle of exponential population growth, the Village's finances suffered because the revenue received from the new residents lags behind the expenses paid to support those residents. Property tax revenue payments do not come to the Village until at least one year after the resident has moved in. Income tax is paid to the Village on a per capita basis, and the cost of conducting a special census makes it unprofitable to have a special census taken every year. Therefore, according to Zoepfel, income tax lags two years or more behind the time when a new resident moves in. (R. 137). As a result of the income lag, the Village had a net general fund loss of approximately \$1.3 million for the period from 2005-2008. (R. 138; VX C4-5). These losses caused the Village's general fund balance to fall to just 16% of the forecast expenses, which is far less than the policy to maintain at least a 25% balance, which would be enough to pay 3 months of expenses. (R. 138).

When the recession hit in 2008 the residential and commercial development dried up. (R. 141). The Village lost expected general fund revenues from building permits, engineering fees, and overweight truck permits. Furthermore, sales taxes stagnated, property values declined, and income taxes stagnated and later decreased as more people lost their jobs. (R. 141). Zoepfel testified that from 2008 to 2011, general fund revenue fell by \$500,000. (VX C8).

At the same time, the Village was also experiencing increasing expenses from insurance and pensions. Health insurance costs increased at a double-digit pace in the last two years, with a staggering 33 percent increase for fiscal year 2012, even though the Village now has fewer employees on its

payroll. (VX C9; R. 142). The Village's liability insurance premium increased over 60 percent. (*Id.*) And even though the Village has conscientiously made all of the recommended contributions to the police pension retirement program, this year's pension contribution increased by 40 percent. (*Id.*)

In 2009 the Village took several steps to improve its financial health. The Village laid off six employees, reduced the work hours of two employees, and reassigned one employee to a lower-paying position. (R. 138-139; VX C6). No police officers were impacted by the layoffs, reductions and reassignments. In addition, the Village moved the expense for its snow removal supplies from the general fund to the motor fuel tax fund to save \$150,000 a year for the general fund. (R. 139-140).

To further help save costs, the Village froze the wages for all unrepresented employees and for all Local 150 employees in fiscal year 2010. (VX C6; R. 140). In fiscal year 2011, the Village's unrepresented employees did not receive any merit increases. They did receive a 3% COLA, but it was deferred from May 1 to November 1, 2010. (*Id.*) In that same year, the Local 150 employees received no COLA, but they did receive merit increases ranging from 2-4%, depending on their performance evaluations. (VX C11). The Village has also deferred filling vacancies that were created by retirements. (VX C6; a 140).

The Village has also taken steps to increase revenues. The Village increased its impoundment fees and its building fees (R. 143); it also increased its property tax levy in December 2010. (R. 148). The Village has forecast a 5.5% increase in sales tax for fiscal year 2012. (R. 143). Based on the current forecasts, the Village anticipates a balanced budget for fiscal year 2012 (R. 143). Finance Director Zoephel summarized the Village's financial condition by stating that the Village is not destitute, it is not in the financial position that it should be in. (R. 144).

c. COMPARABLES

The fourth statutory factor for consideration in the interest arbitration process is the selection of comparables. There are external comparable communities, as well as internal comparables in the form of other bargaining units within the municipality. It is likely one of the factors that the parties spend the most time and resources to establish, but is not the only factor for consideration. In fact, the Union stated that "most of our issues are rather unique to Montgomery" which would further erode the values of the comparables. (R. 30) The process of determining the appropriate pool of comparable communities or jurisdictions is as much art as it is science. Both sides have proposed a list of comparable communities based on factual data, but neither side proposed the same pool of communities or used the same source or types of data in their selection, thus making it difficult to make an "apples to apples comparison" of the parties' two lists. Nonetheless, it is an important factor and a task that must be addressed before the issues can be considered.

The Union proposes a list of comparables that includes: Lisle, Huntley, North Aurora, Oswego, Plano, South Elgin, Sugar Grove, Sycamore, Warrenville and Yorkville. (UX 2) The Employer proposes a

list that includes: Crest Hill, Lemont, North Aurora, Minooka, Plano, Shorewood, South Elgin, Warrenville and Yorkville. (VX B) There is consensus that North Aurora, Plano, South Elgin, Warrenville and Yorkville are comparables. There is disagreement on Lisle, Huntley, Oswego, Sycamore, Sugar Grove, Crest Hill, Lemont, Minooka and Shorewood.

In determining which communities to consider as comparable, the Village used a number of criteria starting with proximity to Montgomery. The Village used a 20 mile radius as a threshold to include jurisdictions. There are 43 communities within 20 miles of Montgomery. From those communities, the Village then compared populations to the population of Montgomery. The Village considered all communities that had +/- 50% the population of Montgomery, which brought the number down to 19.

From there, the Village considered a number of different financial factors. Each remaining community was compared to Montgomery and awarded a point if it fell within certain criteria – either being located in one of the two counties that contains Montgomery or falling within +/- 50% of the stated financial factor. The communities were then given a final score according to how many “hits” each had.

The Union provided a recommended list of comparable communities and then listed how Montgomery ranked when compared to their proposed pool. Both sides used a different set of criteria to determine which communities would be comparable and there is no prior award that has set the pool.

The Village used a well articulated, seemingly neutral method to obtain its pool of comparable communities and it therefore adopted. Applying that same type of analysis to the communities proposed as comparables by the Union will ensure that both are given similar consideration. First, proximity to Montgomery was evaluated. The Village has selected a 20 mile radius. If that is expanded slightly, four of the 5 remaining Union comparables survive.

Using the number of total hits theory utilized by the Village and the data provided by the Union, both Sycamore and Sugar Grove will be included to the group of comparable communities. These two jurisdictions have enough categories within the ranges to establish enough similarities to help establish a community of standard upon which to draw comparisons. The external comparable communities to Montgomery include: Crest Hill, Lemont, Minooka, North Aurora, Plano, Shorewood, South Elgin, Sugar Grove, Sycamore, Warrenville, and Yorkville.

As for internal comparables, there is one other bargaining unit within the Village. The employees in the public works department are unionized. The public works employees are represented by Local 150, Operating Engineers.

IV. OPEN ISSUES

The parties submitted sixteen issues for resolution at the start of the hearing. Fifteen remained unresolved at the end of the hearing. The issue of shift bidding, Section 4.13, was resolved during the hearing. (R. 62-4) The parties agree that the following issues are economic issues under Section 14(g) of the Act:

- (1) compensatory time
- (2) wages
- (3) insurance premium allocation
- (4) sick leave
- (5) funeral leave
- (6) uniforms
- (7) part time employees.

The parties further agree that the following issues are non-economic issues:

- (1) dues deduction
- (2) fair share
- (3) indemnity
- (4) definition of a grievance
- (5) arbitration of suspension or termination
- (6) medical examinations
- (7) part time employees (overtime distribution)
- (8) the use of the Board of Fire and Police Commissioners.

According to Joint Exhibit 4, the Union is the moving party on all issues.¹ (JX 4, ¶ 6-7) For several of the issues, the Union is arguing for a new benefit or a "breakthrough item." For those new or breakthrough issues, the Union has the responsibility to establish the need for the change in conditions. A well established principle in interest arbitration puts the responsibility for change squarely on the moving party:

The party seeking change must demonstrate that the system it seeks to change has not worked fairly, or even worked at all. The moving party needs to show that it has sought changes at the bargaining table unsuccessfully and that only through arbitration will change come about. *Will County Board/Sheriff and AFSCME, Local 2961*, (Nathan, 1988).

... The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiation is to place the onus on the party seeking the change....In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

¹ Joint Exhibit 4 purports to be a stipulation by the parties. The document was submitted as a joint exhibit, however, it was not signed by both parties at the hearing. It was only signed by the Village. Also, during the presentation for the Union, Union counsel indicated some dissent with the notion that everything was a Union issue. (R. 39-40)

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

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon the other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves. *Id.* At 51-52.

The Village has asserted that there is another requirement. The Village argues that the Union must offer a quid pro quo for each breakthrough item at hearing as well.² There is little precedent for that argument and in this Arbitrator's opinion a quid pro quo is an issue for the bargaining table and not the arbitration process. With those thoughts in mind, we take each issue one at a time beginning with the economic issues.

A. ECONOMIC ISSUES

The parties stipulated at hearing that there were seven issues principally economic in nature: compensatory time, wages, insurance premium allocation, sick leave, funeral leave, uniforms and part-time employees. As economic issues, the statute requires selection of one parties' final offer or the other, the one in the Arbitrator's estimation, most closely resembles the statutory factors set forth in section(h) of the Act. There is no discretion to fashion some middle ground on these issues. Interestingly enough, the statute does not give any guidance or recommendation as to the significance of each factor. This allows each Arbitrator to consider each factor in relation to the specific facts of each case. The economic issues will be addressed in the order in which they appear in the parties' collective bargaining agreement.

1. Section 4.6 – COMPENSATORY TIME

Both sides have proposed changes to Section 4.6. Those proposals are as follows:

² In support of their position the Village cites Arbitrator Perkovich in *University of Illinois at Springfield and Illinois FOP Labor Council, S-MA-00-282, at 8*(2002).

a. UNION FINAL OFFER:

Effective upon execution of this Agreement, an employee will be allowed to accrue up to ineligible to earn more than forty (40) hours of compensatory time off in lieu of overtime pay. (Once an employee has earned forty hours during a fiscal year, he or she shall not be eligible to earn any more compensatory time during the remainder of such fiscal year, **unless use of the compensatory time drops the accrual bank below forty (40) hours in which case the affected officer would be eligible to earn additional compensatory time to bring the accrual level back to forty (40) hours.**

Use of accumulated compensatory time shall be **allowed as long as manpower allows (part time employees working at their regular straight time hourly rate may be utilized to supplement manpower when an officer covered by this agreement is utilizing compensatory time off.)** ~~at time mutually agreed upon by the employee and the Police Chief or his designee.~~ **Employees shall be allowed to use consecutive days of compensatory time per the mutual agreement as set forth above. An employee will be paid for all accrued compensatory time, (up to forty (40) hours) during the last pay period of April**

c. ANALYSIS

For this issue, both sides have proposed changes to the language. The Union proposes a change in accumulation that would allow employees to replenish their compensatory time banks if the employee had accrued the maximum 40 hours and used some or all of those hours. The Union proposal would also allow their bargaining unit members to utilize their compensatory time on consecutive days and carry over time from year to year. The Village, on the other hand, proposed to increase the maximum accrual from 40 hours per year to 48 hours per year and change the accrual from the fiscal year to a calendar year.

The Union asserts that their proposal is more consistent with external comparable communities. The Union points out that the cap of 40 hours is lower than many of the comparable communities. Some communities have unlimited accrual and almost all allow the officers to replenish their comp time banks when it falls below the maximum accrual amount. (R. 47)

~~during each fiscal year.~~ **Employees shall be allowed to carry over the forty (40) hours from year to year at the affected officer's discretion.**

b. EMPLOYER FINAL OFFER:

Effective upon execution of this Agreement, an employee will be ineligible to earn more than ~~forty (40)~~ **forty-eight (48)** hours of compensatory time off in lieu of overtime pay, **during any calendar year, i.e. an officer who works up to 32 hours of overtime during the calendar year may accrue 48 hours of comp time in lieu of overtime pay for such hours. [32x1.5=48].** (Once an employee has earned ~~forty forty-eight~~ hours during a ~~fiscal~~ **calendar** year, he or she shall not be eligible to earn any more compensatory time during the remainder of such ~~fiscal~~ **calendar** year). Use of accumulated compensatory time shall be at time mutually agreed upon by the employee and the Police Chief or his designee. An employee will be paid for all accrued compensatory time, (up to ~~forty (40)~~ **forty-eight (48)** hours during the ~~last first full~~ pay period of ~~April during each fiscal year~~ **January of the following calendar year.**

The Village asserts that the Union has not shown a need for their proposed change. The Village points out that currently the officers use only 20 hours of compensatory time on average, this is only half of the current allotment of comp time. Because they don't use it, there is no need to expand it. Moreover, the Village reasons that to add an "earn and burn" feature would cost the Village more money. The Village argues that adding more comp time would create additional overtime opportunities when officers were off using their comp time. The second cost involved is the ability for officers to carry over their comp time. Currently officers are paid for their unused comp time in the same fiscal year they earn it, so it is paid out at the same rate at which it is earned. If officers are allowed to carry it over, and the comp time is paid out during a subsequent year it must be paid out at the current, higher rate and not the rate at the time it was accrued. Each hour of comp time becomes more costly with each salary increase.

The internal comparability for this issue is of relatively little value. Local 150 has compensatory time, but it is completely at the department head's discretion for how much and when it can be used. The system is completely unlike the police department. The Village concedes that the external comparables favor the Union on this issue.

Both sides have proposed changes to this section, so it is difficult to say in this section either side is asking for a breakthrough item. It would be therefore inappropriate to hold one side to an enhanced burden over the other side as is typical with breakthrough items. The question is which proposal is more in line with the criteria set forth in Section 8.

Both proposals will cost the Village more. The relative increase in the cost of either of these proposals is minor compared to the overall police department budget or the overall Village budget. As stated above the external comparables greatly favor the Union on this issue. Every comparable community allows their officers to accumulate at least 40 hours of comp time. All of those communities also allow the officers to replenish that bank. All of those communities allow officers to carry over at least 36 hours. As the Village has termed it, this "earn and burn" system is quite common among police agencies in the relevant labor market.

The Union proposal allows the Village the right to deny use of compensatory time if manpower does not allow. It does not give the officers complete and absolute discretion. The Union proposal also allows the Village to hire back the part time officers to allow the full time officers the ability to use their comp time. The ability to use the part time officers in this matter gives the Village more flexibility to schedule and greater ability to save costs. Given that the average officer only utilizes approximately 20 hours of comp time annually, this does not appear likely to be a great issue. The Union's proposal is adopted.

UNION PROPOSAL IS ADOPTED ON COMPENSATORY TIME.

2. Section 9.1 – WAGES

a. UNION FINAL OFFER

FY 2011 (5/1/10)	3%
FY 2012 (5/1/11)	2%
FY 2013 (5/1/12)	2%

b. EMPLOYER FINAL OFFER

FY 2011 (5/1/10)	0%
FY 2012 (5/1/11)	1%
FY 2013 (5/1/12)	2%

The Union proposes removing the phrase “During the term of this Agreement” from this paragraph.

And effective 5/1/11 any employee at the maximum of their range (currently \$70,671) shall be paid a one-time, lump sum bonus of \$1000 not added to their base salary.

There are three officers at top pay who would receive the one time lump sum payment if the Village’s proposal is adopted. (R.89-90)

c. ANALYSIS

The parties’ current collective bargaining agreement sets out the wages in Section IX. The current wage plan includes the typical wage matrix where the officers move through the matrix, advancing to the next step on their anniversary date if they meet set standards and receiving annual wage increases each fiscal year. Neither side has proposed any changes to the step plan itself. Both sides are proposing differing amounts to be added to the current matrix.

The Union argues that the 3% increase in the first year is the same wage increase that the Village gave the non-union employees in November 2010, which was offered to the Union at a time when the parties had been discussing rolling over the contract for one more year. (R. 74-5, UX 16-6) The Union also argues that the Village has money, that the Village is hiring, promoting and spending money on employees. (R. 76-8) According to the Union, management employees within the Village received 39.1% in salary increases between 2005 and 2009, which is the equivalent of 9.7% per year. (R. 77-8)

Regarding the change in language, striking the words “during the term of this agreement” the Union asserts that move was to protect the negotiated wage benefits of their members. The Union points out that when the parties could not reach agreement on the current contract, on May 1, 2010, the Village stopped giving out step increases to police officers. It was not reinstated until May 25, 2011, more than a year later. (R. 79-80, UX 16) The Union sees this change in language as closing a loophole that allowed the Village to deprive them of the use of their money. (R. 81)

The Village asserts the without any raises to the current wage schedule, the bargaining unit will receive the dollar equivalent to an 11.1% raise over the three years, which is the equivalent to 3.7% each year. (V.Br. at 10) With the Village proposal, the raises elevate to 14.23% over the life of the agreement, or the equivalent of nearly 4.75% per year. (V.Br at 11) The Village points out that the police

officers have been given higher raises over the rest of the Village employees for the four years prior to this contract period, up through year 2.

The Village reasons that Local 150 took a wage freeze for FY10, the year before the start of the contract in question, as well as the start of FY11, which started on May 1, 2010. (R. 181) Then, on November 1, 2010, all non-managerial employees received a 3% wage increase. For FY 2012 the public works employees are scheduled to receive a 1% wage increase. The Village is trying to keep consistency between the bargaining units.

Internal comparability –

	Public works	Non-Union	Mgmt
FY 2011	0% + merit (2, 3, or 4)	0%	0%
11/1/10	3%	3%	0%
FY 2012	1%	1% + merit	1%
FY 2013	undetermined	undetermined	undetermined

External Comparability –

Start	<u>5/1/10</u>	Top	<u>5/1/10</u>
Warrenville	\$54,125	Warrenville	\$79,689
Shorewood	\$51,979	Lemont	\$72,566
South Elgin	\$50,128	Shorewood	\$71,747
Minooka	\$49,169	South Elgin	\$71,531
Crest Hill	\$49,094	Crest Hill	\$70,639
Sugar Grove	\$47,721	Sugar Grove	\$69,105
Yorkville	\$47,512	Minooka	\$66,913
Lemont	\$46,342	Yorkville	\$66,000
Sycamore	\$45,324	Sycamore	\$63,172
Plano	\$44,070	Plano	\$58,760

With the Village proposal of 0%, Montgomery will continue to make \$50,742, which will rank them 3rd out of the comparable pool. With the Union's proposal of 3%, starting pay will be \$52,264, putting them 2nd in the comparable pool. At top pay, the Village proposal leaves the officers at \$70,671, or in the 5th spot, while the Union proposal puts top pay at \$72,791 or the 2nd spot. Beyond the first year, the external comparables provide less and less value. Many of the contract expire and do not have wages established beyond May 1, 2011. With only a couple of contacts settled as of May 1, 2012, the information contained in the external comparables is limited.

Another factor commonly considered in interest arbitration that has direct bearing on wages is the consumer price index. With the Village proposal, the officers' salaries continue to outpace inflation. They have not lost any buying power because their wage increases have kept up with and exceeded the increase in the cost of living as displayed by the CPI. Given the conservative nature of the arbitration process, it is incumbent upon the arbitrator to keep the award in line with something that the parties would have negotiated if left alone to do so, without unjustly enriching one party at the expense of the

other. Awarding the Union's wage proposal is in excess of what is needed for these officers to maintain their standard of living while working for the Village of Montgomery.

Moreover, the Village has not had issues with attracting and retaining quality candidates. In fact, the Village does not have an issue with turnover. The Village lost 3 officers in 2007, one in 2008, one in 2009 and one in 2010. Two went to work for higher paying agency – Aurora, two went to work for their hometown agency, another went to work where there was family. Given the increase in the number of eligible candidates, hiring has not been an issue.

Given the difficult economy, the comparables, the fact that the Village's proposal puts the officers above the CPI and the ability of the Village to attract quality candidates, there is no basis to award the Union's proposal.

VILLAGE'S WAGE OFFER IS ADOPTED.

3. Section 10.2 – INSURANCE PREMIUM ALLOCATION

a. UNION FINAL OFFER –

The medical insurance premiums, which may change from time to time, shall be paid for on a contributory basis by the Village and the employee as follows: Commencing on May 1, 2011, the employee shall pay ten percent (10%) of the premium for single coverage, and the Village shall pay ninety percent (90%) of the premium. Commencing on May 1, 2011, the employee shall pay ten percent (10%) of the premium for Employee + Spouse, Employee + Child or Family coverage, as applicable, and the Village shall pay ninety percent (90%). The premium contributions by bargaining unit employees shall not exceed the premium contributions required by the Village for non-represented full-time Village employees generally. **In the last contract year (5/1/2012 through 4/30/2013) the contribution amount of employees covered by this Agreement shall not increase more than ten percent (10%).** The employee's share of the applicable premium shall be deducted from the employee's paycheck, whenever practicable. **The Village agrees that it will maintain the same or similar level of medical insurance benefits as those in place on 1/1/2011, for the duration of the agreement.**

The Village shall permit employee premium contributions to be deducted from their pre-tax earnings, pursuant to a plan established under Section 125 of the IRC, to the permitted by law.

b. EMPLOYER FINAL OFFER – status quo

c. ANALYSIS

The Union has proposed to add a cap on the final year's premium of this collective bargaining agreement, as well as a new provision that would require the Village to maintain the same or similar

level of medical insurance benefits as those in place on January 1, 2011 for the duration of the agreement. The Union points out that giving the Village complete discretion to change the insurance plan and costs has a direct impact on the discretionary spending of the officers.

The Village argues that the Union's proposal is not properly before the Arbitrator. According to the Village, the only issue properly before the Arbitrator is the matter of premium allocation. Here, the Union has added a cap on the costs and a limitation on the Village's ability to change the benefits. The question of insurance plan design is not contained in Section 10.2 and therefore there is no jurisdiction on any other matter. Moreover, the first time the Union proposed this on the record was in their final offer at the hearing.

The Village points out that the Union has already TA'd sections 10.1 and 10.3. Those provisions provide that the Village has, "the exclusive right to change carriers, alter or amend the group medical HMO insurance based on changes in coverage or insurance cost." (JX 5, § 10.1). The Union has also agreed that the Village has the right "to maintain or institute cost containment measures relative to insurance coverage." (JX 5, § 10.3). According to the Village, the Union's proposal directly conflicts with previous TA's.

The internal comparability favors the Village on this issue. Unlike wages or compensatory time, the issue of insurance is a village wide issue. Of great import to the Village is the ability to administer and negotiate a plan for not only the police department, but the public works, the administration and any other Village employee.

External comparability is a mixed bag on this issue. Several comparable jurisdictions (North Aurora, South Elgin, Sugar Grove and Yorkville) have limitations on changes in the policy, akin to the "substantially similar" language proposed by the Union. The cap on premiums is another matter. Only Yorkville, however, has a cap on the maximum contribution that employees can be required to pay.

The Village has argued that the Union's proposal is not properly before the Arbitrator because the Union has previously TA's sections 10.1 and 10.3³, and because the final offer at hearing was the first time this issue was brought up. The Village asserts that the Union's proposal is in direct conflict with these other two sections and therefore should not be considered.

Section 10.1 provides that the Village will provide insurance coverage in the form of a group HMO plan. It provides that the Village "reserves the exclusive right to change carriers, alter or amend the group HMO insurance based on changes in coverage and cost. Employees covered by this Agreement will, however, during the term of this Agreement, receive the same insurance coverage as other eligible non-bargaining unit Village employees." This paragraph does not address the specific costs or who will bear what share of the cost, or whether the employees' share of the cost should be

³ Joint Exhibit 5 at page 11 shows that the parties TA'd both sections 10.1 and 10.3 without making any changes to either section.

capped. This paragraph does not address the specific levels or types of coverage, only that this group of employees will be given the same level of coverage as another group.

Section 10.3 addresses specific cost containment issues such as second opinions for elective surgery. It does not address the costs of the coverage or the levels of coverage of the plan. It does not cover plan design as the Village argues. Nor does it address the costs of the plan. The Union's proposal on insurance premium allocation is properly before me.

The Union's proposal has two distinct elements. The first involves cap on the premiums for employees for the final year of the contract. As previously mentioned, neither the internal nor the external comparables support the Union's position on this point. I am likewise not inclined to award this provision in the Union's proposal.

With regard to the second part of the Union's proposal, there is some support in the external comparables, but not with the internals. Four of the jurisdictions have a provision that requires the employer to have substantially similar insurance benefits throughout the life of the agreement. Certainly the desire to have this language is obvious, it ensures that the Union gets the benefit of their bargain over the life of the collective bargaining agreement - that their benefits are not eroded over the life of the contract. However, given the conservative nature of the process, I am cognizant of the principle that an Arbitrator should avoid conflict or the possibility of conflict within a contract. As Arbitrator Meyers stated, "A collective bargaining agreement must stand as a unified whole, without contradictions between and among its various provisions." *MAP and Western Springs, S-MA-09-019* (Meyers 2010). Given that the parties have already agreed that the Village can "alter or amend the group medical HMO" there is merit to the Village's concern that by awarding this provision in this paragraph, it may cause confusion and unnecessary ambiguity given the parties tentative agreement on Section 10.1. It would be improper to award this portion of the Union's proposal.

VILLAGE'S INSURANCE PROPOSAL IS ADOPTED.

4. Section 12.1 – SICK LEAVE

UNION FINAL OFFER

Accrual. A full-time employee shall accrue 3.69 hours sick leave on a bi-weekly basis beginning with the first day of employment, up to a maximum of 320 hours. Sick leave shall not accrue during any period of unpaid leave.

...

Sick leave buyback. Upon termination, employees leaving in good standing shall be compensated for all unused sick leave up to a maximum of three hundred and twenty (320) hours.

c. ANALYSIS

The Union argues that their proposal is the benefit that is currently available to all non-represented employees in the Village. The Village handbook provides that “employees leaving in good standing shall be compensated for all unused sick leave up to a maximum of 320 hours.” The other non-union employees have no cap on the amount of sick leave that can be accrued. The Union is merely seeking a benefit afforded to all other Village employees. Moreover, the Union reasons, the external comparables support their claim. The Union points out that several of the comparable communities have some form of a sick leave buy back provision, including South Elgin, Huntley, Sycamore and Yorkville.

The Village has proposed to increase the cap from 320 to 640 hours. The Village asserts that there is no need to increase this benefit. The Union did not establish that the current benefit is inadequate. This proposal changes the purpose of the sick leave benefit into a retirement benefit. Finally, the cost of this proposal is way too high, without any quid pro quo.

Internally comparability does not support the Union’s proposal. The other bargaining unit in the Village, Local 150, does not have a sick leave buy back provision. Only the non-represented employees have the sick leave buyback and unlimited accrual. This benefit is found in the Village handbook. It is difficult at best to use the non-represented employees as internal comparables. That group of employees cannot be considered similarly situation to the union employees as they are not subject to a collective bargaining agreement.

EMPLOYER FINAL OFFER-

Accrual. A full-time employee ~~shall accrue~~ **shall earn** 3.69 hours sick leave on a bi-weekly basis beginning with the first day of employment, up to a maximum of ~~320~~ **640** hours. Sick leave shall not accrue during any period of unpaid leave.

External comparability does not strongly support the Union's proposal. Several of the communities have no buy back at all – Crest Hill, Minooka, North Aurora, Shorewood, Sugar Grove. Others have some form of limited buy back, but none have full buy-back as proposed by the Union.

This was a benefit that the officers had and failed to include in their original contract. While it may have been nothing more than an oversight by the Union, the fact remains that it not contained in the parties' current contract. Given the conservative nature of the arbitration process, it would be improper to award a benefit that the parties could not themselves reach at the table. Further, the Union did not demonstrate the need to change the current system to their proposal. Even though the department is young, none of them are near the Village proposal of 640 hours. The Village proposal gives the officers the ability to accrue double the amount of sick time they have currently. It is more in line with the mandates of Section 14.

THE VILLAGE'S SICK LEAVE PROPOSAL IS ADOPTED.

5. Section 12.2 – FUNERAL LEAVE

a. UNION FINAL OFFER

Funeral Leave. All regular full-time employees are entitled to the use of up to three (3) days of Family Death Leave with pay in the event of the death of an immediate family member, defined as:

- (a) An employee's spouse, mother, step-mother, mother-in-law, father, step-father, father-in-law, son, step-son, son-in-law, daughter, step-daughter, daughter-in-law, brother, step-brother, brother-in-law, sister, sister, step-sister, sister-in-law, grandparent, grandchild, aunt, uncle, nephew or niece.

~~All regular full-time employees are entitled to the use of one (1) day of Family Death Leave with pay in the event of the death of an extended family member, as defined:~~

- ~~(b) An employee's grandparent, grandchild, aunt, uncle, nephew or niece.~~

b. EMPLOYER FINAL OFFER – status quo

c. ANALYSIS

The Union argues that their proposal is supported by the external comparables. There are six of the Union's comparables that give 3 days off for grandparents and grandchildren. Two more give two days off for the grandparents and grandchildren.

The Village points out that the internal comparables give the non-represented employees the same benefit that is in the officer's contract. The Village also argues that none of the external

comparable communities offer three days of funeral leave for aunts, uncles, nieces or nephews. There is simply no support for this change and no reason to adopt it.

The Union has not argued that there is a need for a change in the paragraph. There is no evidence that the old system is not working or that is negatively impacting the bargaining unit. Moreover, there is only limited support for the Union's proposal in the external comparables and none in the internal comparables. There is simply no need to change this provision.

THE VILLAGE'S PROPOSAL IS ADOPTED ON FUNERAL LEAVE.

6. Section 13.2 – UNIFORMS

a. UNION FINAL OFFER

Uniforms. Effective January 1, 2011, employees shall continue to receive an annual uniform allowance of **eight hundred and fifty dollars (\$850.00)** ~~Seven Hundred Dollars~~, payable in two equal installments during each calendar year, at times determined by the Village. In addition, the Village will continue its existing practice of providing body armor, one (1) service weapon, holster(s), magazines and magazine holder(s) pursuant to specifications and at such intervals as may be determined by the Chief of Police or his designee.

b. EMPLOYER FINAL OFFER – status quo

c. ANALYSIS

The Village asserts that there is no need to change the uniform allowance. The Village points to the internal comparability – public works employees get \$200 to buy boots and winter gear, and the code enforcement employees get \$287 - \$430.

Only four of the comparable communities receive a cash uniform allowance like the officers in Montgomery – Lemont, North Aurora, Shorewood and Sugar Grove. Many are on a quartermaster-like system. For those that do receive a cash payment, the average for FY10 is \$735, FY 11 is \$752.50, and for FY12 is \$772.50. The external comparables favor the Village's proposal.

The Union has not met the criteria required to award this proposal in interest arbitration.

THE VILLAGE'S PROPOSAL ON UNIFORM ALLOWANCE IS ADOPTED.

7. Section 13.15 – PART TIME EMPLOYEES

a. UNION FINAL OFFER

Part Time Employees. The parties agree that while the Chapter recognizes the Village's right to employee part-time police officers, those part time police officers will not be utilized in any manner whatsoever that will infringe upon, or reduce the benefits or compensation of full-time officers.

b. EMPLOYER FINAL OFFER – status quo

c. ANALYSIS

The Union argues that the need for this provision really has to do with the overtime provision. The Union does not want the Village to be able infringe upon or reduce the benefits of the full time officers with the use of part time officers. (R. 97)

The Village states that the use of part time officers is not new for the Village. They have been utilized here for many years, since the mid 1970's. There is no reason to change the way they are utilized. At one point, the Union even came to the Village and asked them to increase the number of part time officers.

There are currently seven part-time and between 14-17 full-time police officers in the Village.⁴ (R. 53, 100, 114, 116) The Village has used part-time officers for more than four decades. Their use of part-time officer is significant and different than most municipalities. There is no evidence in the record that would indicate that the part time officers are taking away or infringed upon the benefits or compensation of the part time officers. There has been at least one time in recent memory where the full-time officers asked the Village to increase the number of part-time officers. Now the Village has added staff and the issue is no longer present, but it is indicative of the willingness of both sides to allow and even welcome the use of part time officers. The mere concern that the part-time officers may take away something from the full-time officers is not enough to award this proposal. By the Union's own admission, this proposal has more to do with overtime than with the part-time officers themselves. There is simply not enough in this record to award the Union's proposal.

THE VILLAGE'S PROPOSAL ON PART-TIME OFFICERS IS ADOPTED.

B. NON-ECONOMIC ISSUES

The first three issues are all interrelated and will be discussed as a group. These include: dues deduction, indemnity and fair share. The Union has proposed adding these three paragraphs, where none currently exist.

⁴ There are 14 officers on the street and another officer in the police academy at the time of this hearing.

1. Section 1.5 – DUES DEDUCTION

a. UNION FINAL OFFER –

Section 1.5. Dues Deduction. Upon receipt of lawful written authorization from employees covered by this Agreement, the Village agrees to deduct from their salary, on the first paycheck of each month, the regular monthly uniform Union membership dues during the term of this Agreement. A copy of the dues deduction authorization that is to be utilized is attached hereto as Appendix __. Signing of the dues deduction authorization is voluntary with the individual employee. The dues shall be forwarded to the individual designate by the Union to receive such deductions. The regular uniform Union membership dues to be deducted will be certified in writing by the Union to the Village.

b. EMPLOYER FINAL OFFER – status quo (no current provision)

2. Section 1.6 - FAIR SHARE

a. UNION FINAL OFFER

Section 1.6. Fair Share. 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 Chapter for collective bargaining and contract administration services tendered by the Chapter as the exclusive representative of the officer covered by this Agreement. Such fair share fee shall be deducted by the Village from earnings of non-members and remitted to the Chapter each month. The Chapter 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 determined in accordance with applicable law.

b. EMPLOYER FINAL OFFER – status quo (no current provision)

3. Section 1.8 - INDEMNITY

a. UNION FINAL OFFER –

Section 1.8. Indemnity. The Chapter agrees to indemnify and hold the Village harmless against any and all claims, suits, orders or judgments brought or issued against the Village as a result of any action taken or not taken by the Village under any of the provisions of this Article, unless such action is initiated or prosecuted by the Village.

b. EMPLOYER FINAL OFFER – status quo (no current provision.)

c. ANALYSIS

These three items are interrelated and are logically addressed as a group of issues. There would be no need for a fair share provision, nor an indemnity clause without a dues deduction clause.

Therefore, the three will be addressed as a group. As has been previously discussed, it is the Union's burden to justify the addition of these items to the contract.

Both internal and external comparables favor the Union on these issues. The external comparables have these types of clauses in their collective bargaining agreement. Local 150 also has these types of clauses in their collective bargaining agreement with the Village.

The dues deduction provision of a collective bargaining agreement is the most common method for Union to collect the dues that allow the Union to function and represent their members. As is the case for the Union here, it can be difficult for the Union to otherwise collect the funds necessary to properly conduct the business of the union without some moderate assistance from the Employer. The Union introduced evidence that it has had difficulties collecting dues from several members. (UX 27) As the Employer is uniquely situation to collect dues from the union member and remit them to the Union it would appear to be only a minor administrative inconvenience to do so. The Village here does not argue otherwise.

Inherent in that right to dues is the responsibility to account for how the dues are spent and to provide a fair share amount for those members who choose that status. It would seem illogical and even illegal to include a dues deduction without a mechanism for the membership to avail themselves of the fair share option.

The same logic would also require inclusion of an indemnity clause. If the Village were required to collect dues on behalf of the Union, logic would again dictate that an indemnity clause be include in the parties' collective bargaining agreement. The Union must prevail on all three of these issues.

THE UNION'S PROPOSAL ON DUES DEDUCTION, FAIR SHARE AND INDEMNITY IS ADOPTED.

4. Section 7.1 – DEFINITION “GRIEVANCE”

Much like the three issue above, the issues in Section 7.1, Section 7.8 and Article XIV are all dependent on each other and must be considered together. These three sections all read together would allow the Union to grieve all discipline in lieu of a hearing before the Board of Fire and Police Commissioners. In order to facilitate the Union's desired change, several articles must be modified. The contract must amend the definition of a grievance (Section 7.1), the language regarding arbitration must be modified (Section 7.8) and the language regarding the Board of Fire and Police Commissioners in Article XIV must be altered to effect the change sought by the Union. The Union's proposed changes are listed below:

a. UNION FINAL OFFER

A “grievance” is defined as a dispute or difference of opinion raised by an employee against the Village during the term of this Agreement involving an alleged violation of an

express provision of this Agreement, except that any dispute or difference of opinion concerning a **non-disciplinary** matter or issue which is subject to the jurisdiction of the village Board of Fire and Police Commissioners shall not be considered a grievance under this Agreement.

b. EMPLOYER FINAL OFFER – no change

5. Section 7.8 – ARBITRATION OF SUSPENSION OR TERMINATION

a. UNION FINAL OFFER

Section 7.8. Arbitration of Suspension or Termination. The parties agree that the Chief of Police (or the Chief's designee) shall have the right to suspend a non-probationary officer for up to thirty (30) days or dismiss a non-probationary officer for just cause, without filing charges with the Village Board of Fire and Police Commissioners. The decision of the Police Chief or the Chief's designee with respect to the suspension or dismissal action shall be deemed final, subject only to the review of said decision through the grievance and arbitration procedure, provided a grievance is filed in writing within five (5) calendar days after such disciplines is imposed. The sole recourse for appealing any such decision by the Chief of Police shall be for the employee to file a grievance as described herein.

If the employee elects to file a grievance as to his or her suspension or dismissal, the grievance shall be processed in accordance with Article VII of this Agreement, except that it shall be filed at Step 3 of the procedure. The Metropolitan Alliance of Police retains the authority to make a final decision as to whether a disciplinary matter is arbitrated. If the grievance proceeds to arbitration and the arbitrator determines that the disciplinary action was not supported by just cause the arbitrator shall have the authority to rescind or to modify the disciplinary action and order back pay, or a portion thereof. No relief shall be available from the Board of Fire and Police Commissioners with respect to any matter which is subject to the grievance and arbitration procedure set forth in Article 6 of the Agreement. Any appeal of an arbitrator's award shall be in accordance with the provision of the Uniform Arbitration Act as provided by Section 8 of the IPLRA.

Pursuant to Section 15 of the IPLRA and 65 ILCS 10-2.1-17, the foregoing provision with respect to the appeal and review of suspension or discharge decision shall be in lieu of, and shall expressly supersede and preempt, any provisions that might otherwise be contained in the Rules and Regulations of the Village Board of Fire and Police Commissioners.

Discipline of probationary officers, as well as any verbal warnings, written reprimands, written warnings or other discipline not involving any unpaid suspension or dismissal shall not be subject to the grievance and arbitration procedure.

b. EMPLOYER FINAL OFFER – no change

6. Article XIV – THE BOARD OF FIRE AND POLICE COMMISSIONERS

a. UNION FINAL OFFER

Except as provided in this agreement, the parties recognize that the Village Board of Fire and Police Commissioners has certain statutory authority over employees covered by this Agreement, including but not limited to the right to make, alter and enforce rules and regulations. Nothing in this Agreement is intended in any way to replace or diminish the authority of the Board of Fire and Police Commissioners of the Village of Montgomery.

b. EMPLOYER FINAL OFFER – no change

c. ANALYSIS

The Union asserted at the hearing that its final offer was actually a Village proposal with the addition of only one sentence. (R. 65) It had previously been offered as part of a larger package deal, the initial Village proposal from June 21, 2010. (R. 66) The Union argues that allowing officers to grieve all discipline will streamline the cost, establish a shorter time frame and provide a truly fair hearing to the officers. (R. 70-1)

The Village argues that keeping discipline within the purview of the Board of Fire and Police Commissioners protects both parties for two reasons: the decision can be appealed and the officers get a hearing before they are suspended or terminated. This eliminated worries from the officers because they know the results before losing pay and it eliminates the worry of backpay for the Village. The Village argues that since 1999, only three disciplinary matters have been brought before the Board of Fire and Police Commissioners. The Village reasons that there is no evidence that any of these three matters fell short of the mandate of due process.

There are no internal comparables on this issue. The only other bargaining unit in the Village involved employees with the public works department. Those employees are not subject to the Board of Fire and Police Commissioner or any other similar body.

What is an interesting point for this issue is the notion of “status quo.” The idea of referring to the status quo implies that the parties have had the opportunity to bargain the current provision and that changing it, providing the “breakthrough” requires some heightened burden. Here, that traditional analysis does not apply. In August 2007, the statutory provision for discipline was amended to allow non-home rule communities the opportunity to bargain over the disciplinary provisions. Prior to this time, it was only a mandatory subject of bargaining for home rule communities. In the parties’ prior collective bargaining agreement, the subject of forum for resolving discipline was not a mandatory subject so the parties have not had the opportunity to

bargain this issue prior to this contract.⁵ As a result, it would be improper to hold the moving party, in this case the Union, to the heightened burden.

Since the change in the law, there have been a number of interest arbitration awards on this particular subject. See *Village of Bolingbrook and MAP, Chapter #3*, FMCS (Neumann, 1/31/11), *Village of Maryville and ILFOPLC, S-MA-10-228* (Hill, 2011), *Village of Oakbrook and ILFOPLC, S-MA-09-917* (McAlpin, 2011), *Compare Village of Westchester and MAP, Chapter 504, S-MA-10-035* (Nathan, 2011) When reviewing these prior cases, it is clear that interest arbitrators have embraced the idea that Section 8 of the Act mandates a provision in the parties' collective bargaining agreements for final and binding arbitration for disputes involving the interpretation of the Agreement. This would include discipline where the contract contains a provision for "just cause" for discipline as is the case here.⁶ Given the facts of the case, the change in the law since the parties last negotiated agreement and arbitral precedence on this point I am compelled to adopt the Union's final offers for these three provisions.

THE UNION'S PROPOSAL ON DISCIPLINE IS ADOPTED.

⁵ The parties' prior contract was signed in November and December of 2006. Pursuant to Article XX, it was effective upon execution.

⁶ Article III provides that the Employer has the right to ... "suspend and discharge non-probationary employees for just cause (probationary employees without cause)...."

7. Section 13.5 – MEDICAL EXAMINATIONS

a. UNION FINAL OFFER

Medical Examinations. If, at any time, there is any **reasonable** question concerning an employee's fitness for duty, or fitness to return to duty following a layoff, or paid or unpaid leave or absence of more than three (3) days in any twelve month period, the Village may require, at its expense, that the employee have a physical and/or psychological examination, or undergo a functional capacity test, by a qualified and licensed physician or other medical expert designated by the Village. A drug or alcohol test may be required as part of any medical examination required under this Section. The purpose of such examination or functional capacity test shall be to determine the employee's fitness for duty.

b. EMPLOYER FINAL OFFER

Medical Examination. If, at any time, there is any question concerning an employee's fitness for duty, or fitness to return to duty following a layoff, or paid or unpaid leave or absence of more than three (3) days in any twelve month period, the Village may require, at its expense, that the employee have a physical and/or psychological examination, or undergo a functional capacity test, by a qualified and licensed physician or other medical expert designated by the Village. A drug or alcohol test may be required as part of any medical examination required under this Section. The purpose of such examination or functional capacity test shall be to determine the employee's fitness for duty **and would be neither arbitrary nor capricious.**

c. ANALYSIS

This proposal involves adding only one word, reasonable. The Village countered the Union's offer by offering that the medical exams would not be arbitrary or capricious.

The Union expressed concern about how the sensitive decision to send an officer to a medical exam, a fitness for duty evaluation, was made by the Village. The Union opines that without the word "reasonable" the provision is not grievable. (R. 96) Including this one single word protects the union members from these very sensitive decisions being made without justification. The Union argues that their proposal should be adopted over the Village's offer because it is more in line with the internal comparables.

The Village argues that using the term "reasonable" subjects the Village to second guessing by an Arbitrator with the benefit of hindsight which would cost substantial back pay. The Village's proposal protects officers from random, baseless medical exams, while giving the Chief the flexibility to ensure that all officers are medically fit for duty.

The Union admits that this paragraph is seldom, if ever used. (R. 96) The difference in the parties' proposals on this point is minute. Both proposals give the Union a greater ability to ensure

fairness in the decision to send an officer for a medical exam. Both proposals ensure that the Village has the ability to ensure the officers are all medically fit to carry out the responsibilities of police officers. In essence, both proposals mean the same thing.

According to the Free Merriam Webster dictionary, “reasonable” (adj.) means “governed by or being in accordance with reason or sound thinking.” Compare that to the description of arbitrary and capricious found at USLegal.com, “When a judge makes a decision without reasonable grounds or adequate consideration of the circumstances, it is said to be arbitrary and capricious and can be invalidated by an appellate court on that ground.” At the core of both proposals is the idea of being reasonable and justified. The Union’s proposal is simpler and more direct and achieves the same end as the Village proposal.

THE UNION’S PROPOSAL ON MEDICAL EXAMINATIONS IS ADOPTED.

8. Section 4.10 – Overtime Distribution.

a. UNION FINAL OFFER

The Chief of Police or his designee shall have the right to require overtime work and employees may not refuse overtime assignments. In non-emergency situations, when overtime opportunities are known at **least 48 hours** ~~seven (7) days~~ in advance, the Chief of Police or his designee will ~~normally~~ post the overtime assignment for bidding **for full-time officers first, and, in the event no full-time officers are available, then such overtime shall be offered to part-time officers.** The most senior qualified bidder, as determined by the **full-time officer seniority list** ~~Police Chief or his designee~~ will ~~normally~~ be selected for the overtime assignment. **In the event no full-time officer is available and no part-time officer is available then, on a rotating basis, the least senior full-time officer shall be ordered to work such overtime assignment**

b. EMPLOYER FINAL OFFER – status quo

c. ANALYSIS

The Union would like any OT opportunity known at least 48 hours in advance to be posted and emailed to full time officers first. (R. 50-1) According to the Union, the Chief considers the schedules of the part-time officers for the overtime opportunities before the full-time officers. (R. 52) The Union asserts that those external comparable communities who have part-time officers use them they way the Union is proposing – as a supplement to the full time work force and not to displace the overtime opportunities from the full-time officers. The Union points out that the part-time officers have earned nearly \$200,000 in overtime since 2003. (R. 54)

The Village seeks to maintain the status quo. The Village argues that the Union has not shown a need for the change, nor has the Union established that the status quo does not work. The Chief

testified that there were not enough full-time officers to take every overtime opportunity, so part-time officers are necessary. (R. 300) According to the Village, the use of part-time officers saved the Village \$40,972 in just fiscal year 2011. (R. 293) The Village also points out that the full-time officers earned on average \$11,000 each in overtime. (VX. K8) Moreover, the Village reasons, the number of hours the part-time officers have worked has declined from 2,157 in 2008 to 1,644 in 2011 (VX K5).

As is the case for all of the breakthrough items in this matter, the Union has the heavy burden of showing why this is needed. There was no evidence introduced at hearing that would indicate that there is a problem with the way the Village currently utilized the part-time employees or distributed the overtime between full-time and part-time officers. The current system seems to be working as the parties anticipated when they put it into the original contract. There was no evidence to the contrary. There was also no evidence that the current system has not been equitable. The evidence showed that the current officers earned on average \$11,000 in overtime using the current system. Without a showing that there is an issue with the current system and a need to change it, there is no need to inquire further.

THE VILLAGE'S PROPOSAL ON OVERTIME DISTRIBUTION IS ADOPTED.

CONCLUSION

For all the reasons stated above, the Arbitrator finds as follows:

- a. Issues Principally Economic in Nature
 - i. Section 4.6 – Compensatory Time – UNION PROPOSAL ADOPTED
 - ii. Section 9.1 – Wages & Appendix B (Wage Scale) – VILLAGE PROPOSAL ADOPTED
 - iii. Section 10.2 – Insurance Premium Allocation – VILLAGE PROPOSAL ADOPTED
 - iv. Section 12.1 – Sick Leave – VILLAGE PROPOSAL ADOPTED
 - v. Section 12.2 – Funeral Leave – VILLAGE PROPOSAL ADOPTED
 - vi. Section 13.2 – Uniforms – VILLAGE PROPOSAL ADOPTED
 - vii. Section 13.15 – Part Time Employees – VILLAGE PROPOSAL ADOPTED

- b. Issues Principally Non-Economic in Nature
 - i. Section 1.5 – Dues Deduction – UNION PROPOSAL ADOPTED
 - ii. Section 1.6 – Fair Share – UNION PROPOSAL ADOPTED
 - iii. Section 1.8 – Indemnity – UNION PROPOSAL ADOPTED
 - iv. Section 7.1 – Definition of Grievance – UNION PROPOSAL ADOPTED
 - v. Section 7.8 – Arbitration of Suspension or Termination – UNION PROPOSAL ADOPTED
 - vi. Section 13.5 – Medical Examination – UNION PROPOSAL ADOPTED
 - vii. Section 4.10 – Overtime Distribution – VILLAGE PROPOSAL ADOPTED
 - viii. Article XIV – Board of Fire and Police Commissioners – UNION PROPOSAL ADOPTED

The parties Tentative Agreement are hereby incorporated by reference and attached as Exhibit A to this award.



Michelle Camden,
Arbitrator

Dated: October 13, 2011