IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN:	)	
	)	**Marvin Hill**
VILLAGE OF SCHAUMBURG,	)	**Arbitrator**
	)	
Employer,	)	**Hearing Days: May 16, 2011 & June 13, 2011.**
and	)	
	)	
SCHAUMBURG FIRE COMMAND ASSOCIATION,	)	**Schaumburg, Illinois**
	)	
Union.	)	

Appearances

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

The Employer, the Village of Schaumburg, is a home-rule community as defined by the Illinois Constitution, which means that it has no tax rate or debt limits, nor is a referendum required to authorize additional debt or to raise taxes. Ninety-nine percent (99%) of the Village is located in Cook County, with the remainder in DuPage County. The Village is 19.13 square miles and reports a population of 75,936, with approximately 11 percent 65 or older. As pointed out by the Administration, while Schaumburg is fortunate to have the Woodfield Mall and other significant retail operations within its boundaries, the average home value in Schaumburg is $268,000, less than six of the Village's comparables, i.e., Arlington Heights, Des Plaines, Elk Grove Village, Hoffman Estates, Mt. Prospect and Palatine. Moreover, the median family income in Schaumburg of $88,152 is lower than two of the nine jurisdictions which the Village believes should be used for external comparability purposes, i.e., Arlington Heights and Palatine (*Brief* at 2).

The Union in this proceeding, the Schaumburg Fire Command Officers (hereinafter "SFCA" or the "Union"), was first certified as the exclusive bargaining representative for full-time Schaumburg Fire Officers holding the rank of Captain and Battalion Chief, beginning June 27, 1987. SFCA currently consists of eight (8) members: five (5) captains and three (3) battalion chiefs. All members are employed by the Village of Schaumburg Fire Department (hereinafter "Village" or "Employer.") SFCA is the smallest of the Village's four (4) public safety (i.e. fire or police employees) unions. As of May 1, 2010, all but one of the members of the bargaining unit was at Step 5, the top step of the salary schedule. The remaining member of the bargaining unit (John Steele) was at Step 3 of the salary schedule as of May 1, 2010, meaning that he will be entitled to two step increases during the term of the two-year collective bargaining agreement (*Brief for the Village* at 2).

Management points out that this unit has tremendous job security with no memory of any unit employee ever being laid off (*Brief* at 2).

The parties' bargaining relationship dates back to the mid 1980's. Altogether, there have been seven (7) prior collective bargaining agreements between the parties (UX 14-20).

The current collective bargaining agreement between the Village and SFCA expired on April 30, 2010. On January 23, 2010, the SFCA filed a timely demand to bargain over the terms and conditions of a successor collective bargaining agreement (UX 1). On March 9, 2010, the Union filed a timely "Request for Mediation Panel" with the Illinois Labor Relations Board pursuant to §14(j) of the Illinois Labor Relations Act (hereinafter "IPLRA"), thereby preserving the Arbitrator's authority to award retroactive salary increases (UX 2). The parties met five times in an attempt to agree on terms for a successor contract. (R. 8).

The parties tentatively agreed to some non-substantive editing and non-economic language changes proposed by the Village. (UX 4). The parties reached impasse and agreed to proceed to mediation. Mediation did not resolve the remaining open issues, and the parties agreed to the appointment of the undersigned arbitrator. Pursuant to the provisions of the parties' alternative impasse resolution procedure, the parties have waived the provisions of Section 14 of the IPLRA with respect to a three-member panel and have mutually agreed that the case will be solely heard and decided by the neutral Arbitrator.

In addition to SFCA, the Village has three (3) other public safety bargaining units, with which it has a long-standing bargaining history. Metropolitan Alliance of Police #195 (hereinafter "MAP") has represented the Schaumburg Patrol Officers since at least 1999. Currently MAP #195 represents approximately one hundred (100) Schaumburg Patrol Officers. Schaumburg Firefighters and Lieutenants, which is currently represented by IAFF Local #4092, has a collective bargaining relationship with the Village dating back to 1987. As of August of 2003, the Village reported one hundred and thirty-five (135) members of IAFF Local #4092.

The third public safety bargaining unit is Schaumburg Police Command MAP #219. MAP #219 currently consists of twenty-two (22) members: six (6) lieutenants and sixteen (16)

sergeants (R. 6). In 2008, following the retirement of two (2) sergeant bargaining-unit members, the Village did not fill these two (2) positions.

According to the Union, the Village has an established bargaining history of maintaining equal percentage salary increases, or "parity," between all of its public safety unions dating back to at least 1986, if not longer. Most important, the parties have maintained parity between the Police and Fire Command Unions, in the eyes of the Union. As discussed *infra*, the parties dispute which way the parity relationship should be examined, i.e., Firefighters rank-and-file to Fire Command (Village) or Fire Command to Police Command (Union). How this issue is resolved is arguably dispositive of the wage/salary issue. [1]

In addition to the four (4) public safety unions, the Village of Schaumburg employs an additional two hundred ten (210) full-time employees that are non-union, exempt, managerial, or confidential employees under IPLRA. The parties dispute the relevance of comparing these non-union employees with employees whose benefits are determined through collective bargaining.

While the Village has been a party to numerous interest arbitration proceedings, this is the first interest arbitration case for this bargaining unit.

II. ISSUES FOR RESOLUTION

Pursuant to the parties' stipulation, and by agreement of the parties, the following issues are open and are "economic" issues (JX 2):

A.	**SALARIES**	**(SECTION 15.1)**
B.	**SICK LEAVE INCENTIVE PLAN**	**(SECTION 18.4)**
C.	**FURLOUGHS**	**(SECTION 19.12 – NEW)**

[1] The parties do not dispute that the so-called "parity relationship" between the rank-and-file police and firefighters bargaining units was voluntarily broken in the last round of negotiations between the Village and the IAFF bargaining unit. To this end, the Village and MAP, in late 2008/early 2009, agreed to a 4% across-the-board salary increases effective May 1, 2010. Over one year later, and at a time with the Administration was experiencing the full effects of the recession, the Village and the IAFF agreed to a zero percentage increase for FY 2010-2011. As correctly noted by management (*Brief* at 4), "this agreement effectively and voluntarily ended the parity relationship between the rank-and-file fire and police units." Management asserts that Fire Command was effectively a third-party beneficiary to the "no layoff" promise made by the Village to the Firefighters Unit (*Brief* at 4 n.4).

The fact that the Firefighters *voluntarily* took a zero percentage increase is not insignificant in the instant proceeding. See, Arbitrator Yeager's comments in *Village of Schaumburg v. MAPP # 195* (2007)(discussed *infra*)("as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntarily agreement with other unions the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstances surrounding such an agreement(s) that diminish its persuasive value." *Yeager* at 14).

At the same time, notwithstanding the zero increase by the Firefighters unit for FY 2010-2011, whichever offer is selected will not change the Fire Command's relative ranking *vis-à-vis* the external bench-mark jurisdictions.

III. THE PARTIES' FINAL OFFERS

A. SALARIES (Section 15.1)

1. Union

The Union proposes that all steps of the Salary Schedule be increased by 3% retroactively to May 1, 2010, and that all of the steps of the Salary Schedule be increased by 3% on May 1, 2011. The Union makes this proposal without prejudice to its historically recognized and bargained for lock-step parity with other public safety employee unions.

2. Village

The Village's final offer on salaries for the May 1, 2010 to April 30, 2011, fiscal year is to freeze the existing salary schedule (but not step increases for eligible employees) and to increase salaries by 2.0% across the board effective May, 1, 2011. As a result, the Village's final offer is to revise Section 15.1 to read as follows:

Section 15.1 - Salaries

Effective May1, 2010, employees covered by this Agreement shall continue to be paid on the basis of the same salary schedule that was in effect for the 2009-10 fiscal year. Accordingly, for the 2009-10 fiscal year, employees covered by this Agreement shall be paid on the basis of the following:

Steps	Annual Salary Captains	Annual Salary Battalion Chiefs
One (1st 12 mos. of work)	$94,425	$95,415
Two (13-24 mos. of work)	$96,785	$100,436
Three (25-36 mos. of work)	$99,203	$105,721
Four (37-48 mos. of work)	$101,684	$111,286
Five (more than 48 mos. of work)	$104,225	$117,143

Effective May 1, 2011, employees covered by this Agreement shall receive an across the board salary increase of two percent (2.0%). Accordingly, for the 2011-12 fiscal year, employees covered by this Agreement shall be paid on the basis of the following:

Steps	Annual Salary Captains	Annual Salary Battalion Chiefs
One (1st 12 mos. of work)	$96,314	$97,313
Two (13-24 mos. of work)	$98,721	$102,445
Three (25-36 mos. of work)	$101,187	$107,835
Four (37-48 mos. of work)	$103,718	$113,512
Five (more than 48 mos. of work)	$106,310	$119,486

Employees covered by this Agreement who are still on active payroll as of the beginning of the next payroll period immediately following the issuance of the interest arbitration award shall receive a retroactive payment, which shall be based on the difference between the salary they received between May 1, 2011 and the beginning of said payroll period and the salary they would have received during the same period of time based on the foregoing salary schedule. Provided that any employee who dies or retires, including disability retirement, after May 1, 2011, but before the issuance of the interest arbitration award shall also be eligible to receive retroactive pay based on the difference between the salary received between May 1, 2011, and the date of death/retirement.

B. SICK LEAVE INCENTIVE PLAN (Section 18.4)

1. Union

The Union proposes *status quo* as its proposal for the successor agreement.

2. Village

The Village's final offer on this issue is to eliminate the Sick Leave Incentive Plan effective May 1, 2011.

C. FURLOUGHS (Section 19.12 – New)

1. Union

The Union proposes to retain the *status quo*, and proposes no new provision for furloughs.

2. Village

The Village's final offer on Furloughs is to add the following new Section 19.12 (Furloughs)[2]:

> Section 19.12 Furloughs.
>
> Effective May 1, 2011, upon fourteen (14) days advance notice to the Union, the Village shall have the unrestricted right to temporarily furlough employees for a definite length of time, which shall not exceed five (5) 24-hour shifts per employee in any fiscal year. Time spent on furlough shall be unpaid and shall be treated as time spent on temporary layoff. Such time spent on furlough shall not affect any command officer's seniority. The Village shall not be required to follow any contractual lay off procedure with regards to such furloughs. The employee's health insurance coverage and benefit accrual (i.e., sick leave and vacation) shall continue without change during the furlough period. In the event that not all employees in a rank covered by this Agreement are required to serve the same number of furlough days in accordance with the schedule generated by the Village, the more senior employees shall serve the smallest number of furlough days required by the schedule.

While the parties were not able to resolve the major economic issues, they were able to reach tentative agreement on seven different items (UX 4). At the hearing, the parties requested that the Arbitrator incorporate these tentative agreements as part of this award (R. 9).

IV. STATUTORY CRITERIA

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

> (g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
>
> (h) Where there is no agreement between the parties,...the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.

[2] This final offer is without prejudice to the Village's position that it believes it has the power under the existing collective bargaining agreement to reduce the hours of work for one or more bargaining-unit members. The Union , of course, disputes this contention. See, e.g. VX 51.

(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.

Furthermore, "It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party's *status quo*, an "extra burden" must be met before the arbitrator resorts to the criteria enumerated in Section 14(h)." Additionally, where 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 negotiations, the onus is on the party seeking the change." *Village of Maryville and Illinois Fraternal Order of Police,* S-MA-10-228 (Hill, 2011).

The so-called "breakthrough" items in this case include the Village's offer on the sick-leave incentive plan issue, where the City desires to delete Section 18.4 in its entirety from the parties' collective bargaining agreement, and to add language on furloughs, Section 19.12, giving the Village the right to temporarily furlough employees for a definite length of time, not to exceed five, 24-hour shifts per employee in any fiscal year (the Union's final offer is to maintain the *status quo* on both issues).

V. DISCUSSION

As noted, this dispute involves three (3) *economic* issues. The Act significantly restricts an Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. Unfortunate (or not), there is no Solomon-like "splitting of the child." [3]

Clearly, in this case the most difficult issue for resolution is that of wages where, in one form or another, parity-type relationships have developed over time where the compensation of the police and fire units moves in "lock step" with one another. Making the case even more difficult, both parties have played the "parity card" (the Union more so than the Village), arguing that internal comparability should be controlling if not dispositive of this proceeding.

ECONOMIC ISSUE No. 1: WAGES

A. The Comparables

1. External Comparables

The Village advanced exactly the same group of external comparables that it used in the last several interest arbitration proceedings involving both the police and fire rank-and-file bargaining units (*Brief* at 10):

Arlington Heights
Des Plaines
Elgin
Elk Grove Village
Hanover Park
Hoffman Estates
Mount Prospect
Palatine
Streamwood

Rather incredulously, argues management, the Union did not specifically propose a list of municipalities for use in making external comparability determinations. Instead, it relies on the Edward Krinsky award involving the Police Command Unit (discussed *infra*). The Village has advanced the same group of comparables in both the police and fire interest arbitration cases. Since no interest arbitrator has made a definitive determination in the police cases, prior case analysis is instructive, in the Employer's view.

[3] *Cf.* 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

In 1998, the Village and the IAFF submitted the issue of which municipalities should be used for external comparability purposes to Arbitrator Steven Briggs. In that case the Village submitted the same list of municipalities that it submitted in this case. The IAFF objected to the use of Hanover Park, Palatine, and Streamwood as proposed by the Village and also advanced Rolling Meadows as an external comparable. In his decision, Arbitrator Briggs adopted the following seven municipalities advanced by the Village as comparables:

Arlington Heights
Des Plaines
Elgin
Elk Grove Village
Hoffman Estates
Mt. Prospect
Palatine

His reason for not accepting either Hanover Park (a.k.a., Ontario Fire Protection District) and Streamwood as comparables in 1998 was because each "had a full-time firefighter complement dwarfed by that of Schaumburg, and in contrast to all of the stipulated comparables, each is staffed in part by volunteers" (VX 4 at 7). He also rejected Rolling Meadows as proposed by the IAFF because it was "just too small" (VX 4 at 6-7)(*Brief* at 11).

Since this 1998 decision, the demographic facts concerning both Hanover Park and Streamwood have changed, making them more comparable to Schaumburg. First, Hanover Park is no longer a fire protection district but, rather, the fire department is now part of the Village of Hanover Park (R. 95-96). Whereas in 1998 the populations of both Hanover Park (32,895) and Streamwood (31,197) were less than Elk Grove Village (33,429), one of the comparables adopted by Arbitrator Briggs, the current populations of both Hanover Park (37,502) and Streamwood (40,608) are greater than Elk Grove Village (34,877). And, in terms of staffing, the number of full-time fire department employees employed by both Hanover Park (now 36) and Streamwood (currently 52) has increased significantly since 1998, whereas the number of full-time Schaumburg fire department employees has decreased somewhat (148 to 135).

In view of the changed demographic circumstances between 1998 and the present, the Village submits that in 2011 both Hanover Park and Streamwood (both are contiguous to Schaumburg) should be included in the grouping of municipalities used for external comparability purposes. (See the discussion of Arbitrator Briggs in *Village of Arlington Heights and IAFF Local 3005* (January 29, 1991)("geographical proximity is the best descriptor of the relevant labor market).

In the most recent fire interest arbitration case – the 2009 IAFF case – the undersigned Arbitrator used the same nine (9) municipalities that the Village has consistently advanced in the

past. Thus, in reviewing the issue of paid time off this Arbitrator relied on "an analysis of the externals" and used for this purpose the nine comparables advanced by the Village (VX 5 at 16-17).

The Village is the only party that has submitted a list of communities to be used for external comparability purposes in this case. Moreover, they are the same jurisdictions advanced by the Village in every police and firefighter interest arbitration case since the Fleischli case, and accepted, in large part, by Arbitrator Briggs in his 1998 interest arbitration award, and accepted in its entirety by this Arbitrator in his 2009 interest arbitration award involving the Schaumburg rank-and-file firefighter bargaining unit.

For the above reasons the Village's list of comparables meets the foregoing standards and should be accepted by the Arbitrator in the instant case.

The Union argues that this case should not be determined by external comparability data because Schaumburg is unique and particularly difficult to compare to any other municipality. To this end Section 14(h)(4)(A) permits an arbitrator to consider the wages, hours, and conditions of employment of other employees performing similar services in public employment in comparable communities.

Citing case authority, the Union submits that there are a number of factors that interest arbitrators review in determining which comparables to accept. Generally speaking, population, size of the bargaining unit, geographic proximity and, where as in this case, most of the revenue comes from local property taxes, property values and EAV are important. Further, geographical proximity is a well-established measure of comparability in interest arbitration, as are population, assessed value and sales tax. See, e.g., Jefferson County at 25 (Goldstein, 1998); Macon County Board, S-MA-94-70 (Feuille, 1994); Macoupin County Health Department, S-MA-080103 (2008); City of Mt. Vernon & IFOP, S-MA-94-215 (Briggs, 1995). However, these factors only establish a baseline from which comparisons may be drawn. City of Peru & IFOP, S-MA-93-153 (Berman, 1995).

In the Union's view, an arbitrator should consider the nature of the work performed by the alleged comparable employees. The arbitrator should also consider as "critical factors" population, the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. An arbitrator should look to those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace.

An arbitrator should also consider whether a party provided sufficient comparability data for the proposed external comparables. Finally, an arbitrator should consider whether a party actually asserts that any of the proposed external comparables were inappropriate.

For the above reasons, the Union asserts, this Arbitrator should place little, if any consideration on the Village's proposed comparable communities and place more weight on the internal comparables proposed by the Union.

The Village's Proposed Nine Comparable Communities are <u>not Comparable to the Village of Schaumburg</u>

There is no evidence of historical use of the Village's proposed comparable communities for purposes of negotiating any collective bargaining agreement with SFCA, the Union asserts. Moreover, the parties never discussed comparable communities during the course of these negotiations, the Union asserts. While it appears that the Village's proposed comparable communities were discussed and adopted in some of the previous interest arbitration proceedings between the Village and its other public safety unions, the Administration at this proceeding offers little insight into its methodology in terms of selecting its proposed comparable communities based on factors uniformly recognized by other arbitrators in similar proceedings.

* * * *

Given this specific evidence record, where internal parity arguably trumps virtually every statutory criterion, reference to external bench-mark-jurisdictions will, as argued by the Union, take a "second seat" to internal considerations. Still, reference to external criteria is discussed where appropriate in supporting a particular economic allocation. [4] I note that the Village has advanced comparables citing all of the contiguous communities with a population of at least 30,000 and all communities with a ten-mile radius with a population that is either greater than Schaumburg's or a population within 25,000 of Schaumburg's population (VX 1; R. 92). Indeed, I find the Village's grouping especially relevant with respect to labor markets which, of course, is a surrogate for geographic proximity. I also find it significant that the Village has not "cherry picked" comparables every year, a practice not unknown to interest arbitrators.

Consistent with arbitral precedent (especially Briggs and Hill), I have adopted the Village's list of external comparables and thus find its bench-mark-jurisdictions relevant (but not dispositive) in the analysis.

2. <u>Internal Comparables</u>

<u>The Union</u> maintains it is seeking to maintain a more than twenty-five (25) year historical pattern of parity with the Village's other public safety unions. Citing case authority, the Union submits that a well-established internal pattern generally is given greater

[4] A valid case could be made that the parity arguments of both parties really cancel each other, i.e., that a case could be made *either way* that parity between Fire and Police Command "rules" (Union's position), rather than rank-and-file Firefighters being compared to Fire Command (Village position). Accordingly, under this evidence record resort to external criteria, as mandated by the statute, is not only advisory but obligatory.

consideration by arbitrators than external patterns. Citing, Elkouri & Elkouri, *How Arbitration Works* 1422(6th Ed. 2003); County of Cook and Cook County Sheriff, L-MA-03-004. (Nathan, 2006)(finding a history of comparable agreements with other "sworn personnel" unions to be particularly convincing"); City of W. Bend, Wis., 100 LA (BNA) 1118 (Vernon, 1993); City of St. Paul, Minn., 101 LA (BNA) 1205 (Jacobowski, 1993)(a "historical pattern of parity" is particularly persuasive); City of W. Bend, Wis., 100 LA (BNA) 1118 (Vernon, 1993)("where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables. The reasons for this are well known and relate primarily to the negative affect that breaking the pattern could have on the stability of bargaining and overall employee morale."); City of Edmond, Okla., 112 LA (BNA) 1137 (Baroni, 1999)(arbitrator ought to find the areas of agreement which the parties have achieved in the past [and] build on those to form a new agreement. In this way the arbitrator stays closer to the intent and needs of the parties as they themselves have defined them.).

In this case, argues the Union, there is a historical pattern of lock-step parity between unionized police officers and firefighters employed by the Village of Schaumburg. Police officers and firefighters are uniquely comparable because "these units are involved in public safety and are often put at great personal risk in carrying out their assigned duties." *City of Taylorville, Ill.*, (S-MA-04-274 (McAlpin, 2006); See also, *City of Effingham, Ill.*, S-MA-07-151 (McAlpin, 2009). Relying on this comparability, SFCA and its employer have enjoyed nearly a quarter-century tradition of parity between its firefighter and police unions. The parties consent to wage parity has provided an uninterrupted historical pattern of bargaining stability for Schaumburg's public safety employees, the Union asserts.

To this end Arbitrators Fleischle, Briggs, Cox, McAllister, Yeager, and Krinsky all agree that Schaumburg's internal bargaining parity is dispositive on the issue of wages. The Village has not presented a case that warrants destroying established and bargained for parity. In order to do so, the Village must show such a breakthrough is warranted. None exists, the Union argues.

The Longstanding Pattern of Internal Comparability between the Schaumburg Police Command Unit and the Schaumburg Fire Command Association is Controlling

Not only have the parties maintained a long-standing pattern of internal comparability between Schaumburg's public safety unions, more specifically, the parties have maintained a long-standing pattern of parity between the Schaumburg Police Command Union and the Schaumburg Fire Command Association. Moreover, according to the unrebutted testimony of B.C. Wood, at no time during negotiations for a successor collective bargaining agreement did the Village of Schaumburg make a proposal to the SFCA based on external comparability. In this case, the SFCA proposes a three percent (3%) annual wage increase for fiscal years 2010/2011 and 2011/2012. This is identical to the wage award issued by Arbitrator Krinsky in April 2011 (UX 12).

Arbitrator Krinsky's award of April 28, 2011, was issued less than a month prior to the initial hearing held before this Arbitrator on May 16, 2011. The Village did not reject the award as permitted under §14(n) of IPLRA. In addition, the Village has not produced any evidence that since the issuance of Arbitrator Krinsky's award, that there have been any changes in any of the circumstances concerning the Village's financial position as contemplated under §14(h)(7) of IPLRA. Accordingly, the SFCA urges this Arbitrator to follow the award of Arbitrator Krinsky, for purposes of this proceeding, and maintain parity between SFCA and MAP #219, the Police Command Union.

Schaumburg's Non-Union and Civilian Employees Should not be Compared to the Fire Command Bargaining Unit

The Union asserts that contrary to the Employer's position, firefighters (and police officers) are not comparable to public works employees, janitors, secretaries, clerical workers, administrators, and non-union employees. The Employer's position is willfully blind to its historical pattern of initial wage parity, and ignores the need to compare police and fire unions apart from other public employees, the Union asserts. See, e.g., City of Taylorville, Ill., S-MA-04-274, (McAlpin, 2006)(holding, "clerical units, court units, department of public works units, etc. are not directly comparable to police units."). See also, City of Effingham, Ill., S-MA-07-151 (McAlpin, 2009) (holding, "As this Arbitrator knows, public safety units are very hard to compare with non-public safety units and are, therefore, not helpful in resolving the instant case."). The Village has not shown any similarity between the work performed by the members of SFCA and its non-unionized and civilian employees. At the same time, there is no evidence of a historical pattern of lock-step wage parity between Schaumburg's public safety bargaining units and its non-union employees. Therefore, the Village's three other public safety unions are the most comparable group to SFCA. As such, the Arbitrator should place the most weight on the Village's internal comparables of its other public safety unions, particularly the parity between SFCA and its Police Command counterparts represented by MAP #219.

Management asserts that Union Exhibit 80 (UX 80) demonstrates its final offer is the only salary offer that maintains the long-established parity relationship with the IAFF bargaining unit (*Brief* at 18). The percentage increases for both the IAFF rank-and-file bargaining unit (Firefighters) and the Fire Command bargaining unit have been exactly the same over the last decade:

FISCAL YEAR	IAFF BARGAINING UNIT PERCENTAGE INCREASE	FIRE COMMAND BARGAINING UNIT PERCENTAGE INCREASE
2001-2002	3.0%	3.0%
2002-2003	3.5%	3.5%
2003-2004	4.0%	4.0%
2004-2005	4.0%	4.0%
2005-2006	3.5%	3.5%
2006-2007	3.0%	3.0%
2007-2008	4.0%	4.0%
2008-2009	3.5%	3.5%
2009-2010	3.5%	3.5%
2010-2011	0.0%	0.0%--VILLAGE FINAL OFFER 3.0%--UNION FINAL OFFER

The Village points out that the parity relationship between the rank-and-file police and fire bargaining units was voluntarily broken in the last round of negotiations between the Village and the IAFF bargaining unit. Thus, the Village and the Firefighters bargaining unit agreed to a 0% salary increase for fiscal year 2010-2011,[5] even though the rank-and-file police contract provides for a 4% for 2010-2011. This agreement effectively and voluntarily ended the pre-existing parity relationship between the rank-and-file fire and police bargaining units, management asserts.

It must be emphasized that in the last round of negotiations for the rank-and-file Firefighters bargaining unit the parties maintained the pre-existing salary percentage parity relationship with the Fire Command bargaining unit, by agreeing to the same 3.5% salary increases effective May 1, 2008 and May 1, 2009 that were negotiated as part of the last Fire Command contract. Thus, the Village maintained the pre-existing percentage differential between a top-step fire lieutenant and a top-step fire captain (R. 196-97).

For purposes of internal comparability among the four public safety bargaining units, this case presents the issue of which comparison is more important, i.e., the comparison with the MAP Police Command bargaining unit (on which the Union relies) or the comparison with the IAFF bargaining unit (on which the Villages relies). Between

[5] Management points out that while the Village agreed to no layoffs for FY 2010-11, this was essentially "window dressing" since the Village had made the policy decision to reduce headcount by attrition Village-wide. As a result, no Village employees have been laid off, including Fire Command bargaining unit members. The Fire Command was, in effect, a third party beneficiary of the no layoff commitment in the IAFF contract for the 2010-11 fiscal year. As for the year covered by the Village's final offer of 0.0% salary increase, the Village's attorney noted that offering a no layoff guarantee "wasn't necessary here because there have been no layoffs and that year ... had already lapsed by the first day of the hearing and when we exchanged final offers" (R. 198).

these two internal comparisons, the internal comparison with the IAFF bargaining unit is clearly the more important, the Administration argues (*Brief* at 19-20). It simply makes more sense to give substantially greater weight to the parity relationship between the two fire public-safety bargaining units than comparing Fire Command to Police Command, submits the Village. Indeed, in the *Krinsky* award the Police Command bargaining unit made the very same contention, i.e., that among the four public safety bargaining units, the most relevant comparison was with the other police bargaining unit as opposed to a comparison with the rank-and-file fire bargaining unit. Thus, in its post-hearing *Brief*, the Union asserted that the Police Command's "most comparable bargaining unit, among the other three Schaumburg public safety unions, is MAP Chapter #195, the Union representing Schaumburg's one hundred (100) patrol officers" (VX 31A, at pp. 31-32). By parity of reasoning, the Fire Command's "most comparable bargaining unit, among the other three Schaumburg public safety unions, is [IAFF Local 4092], the Union representing Schaumburg's [113 firefighters and lieutenants]." *Id.* As discussed *infra*, the Village advances the better argument.

Since the size of the rank-and-file Firefighters bargaining unit dwarfs the size of the Fire Command bargaining unit, not surprisingly, the IAFF bargaining unit is clearly the dominant group, and not the other way around. This is recognized by the fact that on economic issues in addition to wages, the parties have recognized that the IAFF bargaining would take the lead and the Fire Command bargaining unit would follow. Thus, management submits, on the issue of pay for working on holidays the parties agreed to the following provision in their 2004-2007 contract (UX 19, Section 16.1 at 32):

> In the event paid holidays are granted to the 24-hour employees covered under the Fire Fighter Association collective bargaining agreement, the same benefit will be granted to the 24-hour employees covered under the Fire Command Association collective bargaining agreement.

Subsequently, in the 2005-2008 negotiations with the IAFF, the parties agreed that effective July 1, 2006, 24-hour shift personnel would be paid time and one-half for scheduled hours of work on three designated holidays (UX 31, Section 16.2 at 27). As a result, the 24-hour shift personnel in the Fire Command bargaining unit likewise received extra pay for scheduled hours of work on the same three designated holidays and in the subsequent negotiations for the 2007-10 contract the parties included parallel language for the same three paid holidays (UX 20, Section 16.5 at 11). Moreover, the parties agreed to the following revised "me-too" provision (UX 20, Section 16.5 at 11):

> In the event the number of paid holidays granted to the 24-hour covered under the Fire Fighter Association collective bargaining agreement is more than three (3) paid holidays provided above, the same number of paid holidays will be granted to the 24-hour employees covered under the Fire Command Association collective bargaining agreement on the same effective date.

In short, between the two sworn fire bargaining units, the IAFF bargaining unit is the "leader" and the Fire Command bargaining unit is the "follower," management asserts.

The Village submits that this leader/follower relationship dictates that the Village's final salary offer should be accepted.

The Village's Recent Wage Adjustments for its Public Works Employees (represented by Local 150 of the Operating Engineers) and its Unrepresented Employees (including the Fire Chief and two Deputy Chiefs) Strongly Support Acceptance of the Village's Final Salary Offer

The following table sets forth the wage adjustments provided to the Village's 338 unrepresented employees for the 2009-2010, 2010-11, and 2011-12 fiscal years (VX 30):

FISCAL YEAR	SALARY ADJUSTMENT, IF ANY
2009-2010	Salaries frozen; no step or merit increases; all unrepresented employees were paid on the basis of their annual base salary for the 2008-09 fiscal year
2010-2011	3% increase to the salaries paid in 2008-09; no step or merit increases
2011-2012	Salaries frozen; no step or merit increases; all unrepresented employees will be paid on the basis of their annual base salary for the 2010-11 fiscal year

Significantly, among the Village's unrepresented employees are "the Fire Chief, two Deputy Fire Chiefs, and all the non-sworn personnel in the Fire Department, i.e., Fire Marshal, Training Coordinator, EMS Coordinator, Logistics Coordinator, and three clerical employees" (VX 30).

The Village's public works employees are represented by Operating Engineers Local 150. In the recently completed negotiations for a new three-year collective bargaining agreement (VX 8, 29), the parties agreed to a 0% salary increase for the 2010-11 fiscal year and a 2% salary increases for both the 2011-12 and 2012-13 fiscal years.

The following chart compares and contrasts the salary adjustments for the Village's unrepresented employees and the public works employees represented by Local 150 with the parties' final salary offers for the two fiscal years at issue in this case, as well as the immediately preceding fiscal year, *i.e.*, the 2009-2010 fiscal year:

FISCAL YEAR	VILLAGE'S NON-UNION EMPLOYEES	LOCAL 150 PUBLIC WORKS EMPLOYEES	FIRE COMMAND BASED ON VILLAGE'S FINAL OFFER	FIRE COMMAND BASED ON UNION'S FINAL OFFER
2009-2010	0.0%	3.5%	3.5%	3.5%
2010-2011	3.0%	0.0%	0.0%	3.0%
2011-2012	0.0%	2.0%	2.0%	3.0%

TOTAL	**3.0%**	**5.5%**	**5.5%**	**9.50%**

In summary, the Employer contends that considerations of internal equity and fairness *vis-à-vis* the public works employees (Local 150 IUOE) and the over 300 unrepresented Village employees strongly support the Village's final salary offer.

3. External Comparability Data

Management asserts that the external comparability data for the Fire Command Unit "demonstrates beyond any doubt that the Village's final salary offer is the more reasonable [relative to the Union's final offer] and that it should be awarded by the Arbitrator." (*Brief* at 23).

To this end the Village offers the following analysis of the top step for salary of the relevant bench mark jurisdictions:

JURISDICTION	CALENDAR YEARS 2009-11 MAXIMUM SALARIES FOR FIRE CAPTAIN RANK	CALENDAR YEARS 2009-11 MAXIMUM SALARIES FOR BATTALION CHIEF OR COMPARABLE RANK
Arlington Heights	N/A; no rank of fire captain	2010 -- $107,269 2011 -- $107,269
Des Plaines	2009 – Not available 2010 -- $99,052 2011 -- $101,281	2009 – Not available 2010 -- $103,775 2011 -- $103,775
Elgin	2010 -- $114,674 (eff. 1/1/10) 2011 -- $114,674 (eff. 1/1/11)	2010 -- $118,067 (eff. 1/1/10) 2011 -- $118,067 (eff. 1/1/11)
Elk Grove Village	N/A; no rank of fire captain	2009 -- $103,469 2010 -- $103,469 2011 -- $106,832
Hanover Park	N/A; no rank of fire captain	2009 -- $96,151.47 (eff. 5/1/09 2010 -- $97,593.74 (eff. 5/1/10) 2011 -- Not available
Hoffman Estates	2009 -- $94,503 (eff. 1/1/09) 2010 -- $94,503 (eff. 1/1/10) 2010 -- $97,810 (eff. 12/31/10 2011 -- $100,256 (eff. 1/1/11 2011 -- $101,258 (eff. 7/1/11)[6]	2009 -- $103,750 2010 -- $103,750 2011 -- $105,306
Mount Prospect	N/A; no rank of fire captain	2010 -- $104,948 2011 -- $104,948
Palatine	2009 – Not available 2010 -- $97,999.20 (eff. 1/1/10) 2010 -- $99,959.08 (eff. 7/1/10) 2011 -- $99,959.08[7]	2009 -- $103,751.96 2010 -- $104,789.36 2011 -- $104,789.36
SCHAUMBURG (Based on Village's final offer)	**2009 -- $104,225** **2010 -- $104,225** **2011 -- $106,310**	**2009 -- $117,143 (eff. 5/1/09)** **2010 -- $117,143 (eff. 5/1/10)** **2011 -- $119,485 (eff. 5/1/11)**
Streamwood	N/A; no rank of fire captain	2009 – Not available 2010 -- $94,463.27 2011 -- $94,463.27

Management points out that based on the Village's final salary offer, for calendar year 2010, Schaumburg's Fire Captains will rank 2 out 5 relative to the external comparables that have the rank of Fire Captain and Schaumburg Battalion Chiefs will rank 2 out of 10 relative to

[6] All salaries listed for Hoffman Estates fire captains are for the position of Fire Captain/Paramedic.

[7] The salary information for Palatine fire captains for 2011 is taken from the new Palatine fire contract was submitted as a supplemental exhibit on August 24, 2011 (VX 8); the wage schedule that includes the Palatine fire captain salary for calendar year 2011 is Appendix C of the January 1, 2011 to December 31, 2011 contract.

the bench-mark jurisdictions. And based on the Village's final salary offer for 2011, Schaumburg will maintain its rank of 2 out of 5 for Fire Captains and will actually move to 1 out 9 for Battalion Chiefs based on the information that is available for calendar year 2011. Remove Elgin, which really is an "outlier," [8] the unit ranks exceptionally well relative to the bench mark jurisdictions.

The external comparability data also shows that there were no salary increases for either calendar year 2010 or 2011 for the rank of Battalion Chief for eight of the nine external comparables (which I find noteworthy), thus favoring the Village's position (VX 31):

The Arlington Heights salary for 2011 ($107,269) is the **same** as 2010 ($107,269)

The Des Plaines salary for 2011 ($103,775) is the **same** as 2010 ($103,775)

The Elgin salary for 2011 ($118,067) is the **same** as 2010 ($118,067)

The Elk Grove Village salary for 2010 ($103,469) was the **same** as 2009 ($103,469)

The Hoffman Estates salary for 2010 ($103,750) was the **same** as 2009 ($103,750)

The Mount Prospect salary for 2011 ($104,948) is the **same** as 2010 ($104,948)

The Palatine salary for 2011 ($104,948) is the **same** as 2010 ($104,948)

The Streamwood salary for 2011 ($94,463.27) is the **same** as 2010 ($94,463.27)

And, while only four (4) of external comparables have the rank of Fire Captain, there were no salary increases for either calendar year 2010 or 2011 for three of those four comparables (VX 31):

The Elgin salary for 2011 ($114,674) is the **same** as 2010 ($114,674)

[8] Usually there by chance, an "outlier" is an observation numerically distant from the rest of the data. Statistically it is an observation that appears to deviate markedly from other observations/members of the sample. True statistical outliers are eliminated in analyzing data. Arguably, Elgin satisfies the criteria as an outlier for salary levels of its fire captains and battalion chiefs. Interestingly, those jurisdictions that actually gave a salary increase every year for the cited years for battalion chiefs (2 of 9) and captains (1 of 4) are really outliers relative to the external bench marks. As argued by counsel for the Village, there have been what amounts to freezes for virtually all of these jurisdictions for a one-year period of time (R. 124). Mr. Clark made his point regarding the external comparables:

> When we look at this, Mr. Arbitrator, what we see for battalion chief with a zero and a two as of May 1, 2011, we are at the top of the Company heap and by a very substantial amount in terms of the median or the average. This is a far cry from what the information showed with respect to the case before Arbitrator Krinsky. So it's another reason why that case is really distinguishable from the instant case. (R.125).

As noted *infra*, the externals favor the Administration's final offer.

The Hoffman Estates salary for 2010 ($94,503) was the **same** as 2009 ($94,503)[9]

Palatine salary for 2011 ($104,948) is the **same** as 2010 ($104,948)

See, *Brief for the Village* at 25-26.

This external comparability data demonstrates that one-year salary-schedule freezes are the mode for the external comparables supports the Village's final salary offer, an offer that (similar to the Firefighters unit) includes a salary freeze for fiscal year 2010-11 (*Brief* at 26).

The Village also points out that based on its final salary offer Schaumburg will be substantially ahead ($106,310 and $119,485) of the average salaries for fire captain ($104,293) and battalion chiefs ($105,681) for the external comparables in the last year of the parties' two-year collective bargaining agreement (see, *Brief* at 27). In management's words:

> Thus, with respect to average salaries, as of the last year of the parties' two-year collective bargaining agreement, i.e., the 2011-12 fiscal year, based on the Village's final salary offer, top-step Schaumburg fire captains will be paid **$2,017 more** than the average for the four comparables that have the rank of fire captain and top step Schaumburg battalion chiefs will be paid a startling **$13,804** more than the average for the eight comparables for which calendar year 2011 salary information for battalion chiefs is available.[10] That this unquestionably supports acceptance of the Village's final salary offer is to merely state the obvious.

The Union, as noted, rejects external comparability as an important criterion in the resolution of the instant salary dispute. Specifically, the Union submits that of the nine (9) communities proposed by the Village, five (5) of the nine (9) do not have union contracts with any of its battalion chiefs or captains (*Brief* at 35).

The five (5) communities that do not have collective bargaining relationships for either their Battalion Chiefs or Captains are Arlington Heights, Elk Grove Village, Hanover Park, Mount Prospect, and Streamwood. The remaining four (4), Des Plaines, Elgin, Hoffman Estates, and Palatine, have collective bargaining agreements only with its Fire Captains. Finally, none of the proposed comparable communities have negotiated collective bargaining agreements with both its Battalion Chiefs and Captains (VX 31). Schaumburg is the only municipality among the Village's proposed comparables that has a collective bargaining agreement with its Fire Department Battalion Chiefs. In the Union's eyes, "the Village's proposed comparable

[9] In fact, the Hoffman Estates salary of $94,503 remained in effect for almost two full years, i.e., from January 1, 2009 until December 31, 2010, management notes.

[10] Brian Costin, who lost his bid to unseat the Village's Mayor, Al Larson, in last spring's municipal election, included that following comment on his election website, "The number of employees making over $100K increased from 20 employees to 80 employees [from FY 2002-03 to FY 2008-09], which is a 300% increase" (VX 59A).

communities cannot fairly be compared to Schaumburg Fire Battalion Chiefs and Captains that have their labor agreements negotiated through collective bargaining for many years." (*Brief* at 35).

4. Prior Arbitration Awards Support Parity Between the Rank-and-File Fire and Police Units, but not Necessarily between Police Command and Fire Command Units

Both parties reference prior arbitration awards, including the awards between fire and police protective rank-and-file units *vis-à-vis* the fire and police command units. Overall, the awards clearly favor parity, although the parity considered by the arbitrators is generally between fire rank-and-file and police rank-and-file, rather than fire command and police command. [11] Sometimes reference is made to *fire* rank-and-file *vis-à-vis fire* command, or police rank-and-file *vis-à-vis* police command. No award is directly on all fours with the case at bar.

In *Village of Schaumburg and Schaumburg Lodge #71 Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-93-155 (Fleischle, 1994)(UX 7), the first arbitration between the Village and FOP Lodge #7, the FOP Union representing Schaumburg's Patrol Officers proposed external comparables. The Village relied heavily on internal comparability to support its wage offer. Arbitrator Fleischle noted:

> The Village relied heavily upon internal comparison and evidence of parity relationship between fire and police salaries to support its position on wages and other issues in dispute. It notes that its final offer on salary precisely tracks the terms of the negotiated agreement with the Schaumburg Professional Firefighters Association and points to evidence showing that across the board salary increases for police and fire for the past nine fiscal years have been exactly the same. (UX 7 at 10).

Arbitrator Fleischle adopted the Village's award on wages. **Significantly, the Arbitrator dealt with parity between the police and fire units. Fire and Police Command was not an issue before Arbitrator Fleischle.** Also noteworthy was the existence of a tentative agreement which the Arbitrator found deserved "serious consideration." *Fleischle* at 33. [12]

The second case where internal comparability was argued as determinative was *Schaumburg and Schaumburg Professional Firefighters Association*, Case No. S-MA-96-218

[11] Battalion Chief Kenneth Wood recognized that, at times, parity between Police and Fire Command units was not observed (R. 58-59). According to Wood: "If you look historically at all the years, what I am pointing out is that in 2002 and 2003 there was a slight difference, but that is because we were unaware the police had been given a one percent bump." (R. 59).

[12] To his credit the Arbitrator ruled that under the statute it would be inappropriate to treat the tentative agreement as "controlling" in that it was subject to ratification by the union's membership. *Fleischli* at 33. In the Arbitrator's words: "Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village Board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements." *Id.*

(Briggs, 1998) (UX 8). Again, the fire union proposed external comparable communities, as did the Village. Arbitrator Steven Briggs adopted the following jurisdictions for purposes of comparison: Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hoffman Estates, Mount Prospect, and Palatine. Arbitrator Briggs also placed great weight on the historical pattern of internal parity between the various public safety unions. Arbitrator Briggs stated:

> [S]electing the Union's final offer on this issue [pay raises] would represent a marked deviation from the system in place for the Schaumburg Police Department and Fire Command. If that pattern of internal consistency is to be broken, the parties themselves should be the ones to do it. The external comparables also support adoption of the Village's final offer on this issue. (UX 8 at 9).

Arbitrator Briggs relied on both internal and external comparability between the Schaumburg Police and Fire Command for the Firefighters' Union. The Village's final offer on wages was adopted. Arguably, the major focus was internal consistency between the police and fire bargaining units. Arbitrator Briggs never reached the issue of parity between Police Command and Fire Command when it involved a departure from parity between the rank-and-file bargaining unit and Fire Command. *Briggs* at 9.

In *Village of Schaumburg and Metropolitan Alliance of Police, Chapter #195*, Case No. S-MA-02-102 (Cox, 2003), the third interest arbitration award between the Village and its public safety unions, and the second patrol officers' interest arbitration proceeding (UX 83), on behalf of the Village, Arbitrator James Cox that ruled that internal comparability was the most compelling factor for purposes of that arbitration proceeding. Arbitrator Cox, in fact, placed great weight on the internal bargained for parity between the firefighter and patrol unions. Arbitrator Cox explained:

> I have examined prior bargaining history for both the firefighters and patrol units at Schaumburg. <u>It is significant that salary increases in these two units have been identical since 1986, and even more remarkable that the top ten steps in these two units have been the same throughout sixteen (16) years</u>. (emphasis added) From an internal equity standpoint, there has been historic parity in the top step between police officers and firefighters. Firefighters have the same step progression as patrolmen in this bargaining unit." (UX 9 at 19)(emphasis Arbitrator's).

Arbitrator Cox adopted the Village's final offer on wages, concluding:

> * * * I cannot ignore the long history of parity between Schaumburg Firefighters and [the] Patrol Officers unit salaries and, with perspective, the fact that firefighters have resolved their wage issue with the same settlement proposed by the Village is very meaningful * * * Considering the <u>special significance of internal comparabilities</u> as well as recognizing the general level of increases in this year of moderation in the cost of living, I find the Village's offer to be most reasonable (UX 9 at 21-22).

Significantly, Arbitrator Cox also considered external analysis in arriving at his award. *Cox* at 15; 20-21.

The fourth arbitration, *Village of Schaumburg v. Schaumburg Firefighters Association*, (McAllister, 2004)(UX 10), reflects the second interest arbitration proceeding between the Village and its firefighters' union. Arbitrator McAllister adopted eight (8) external comparables: Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hanover Park, Hoffman Estates, Mount Prospect, and Palatine. However, agreeing with Arbitrator Cox, Arbitrator McAllister also placed great emphasis on internal comparability. Arbitrator McAllister wrote as follows:

> The internal comparability between the police officers and firefighters pay and benefits is an important factor. As Arbitrator Cox noted, had the firefighters' adopted the Village longevity phase out, the outcome of that issue before him may have been different, "in view of the historic salary parity between the two rank and file units. *McAllister* at 8.

Consequently, with respect to the Village's proposal to eliminate the patrol officers' longevity pay, Arbitrator McAllister adopted the union's offer and maintained the *status quo* because he valued the historical parity between Schaumburg's Firefighters and Police Officers. (UX 10 at 8, 24). Significantly, Fire Command had adopted what the Village was urging on the Firefighters rank and file unit independent of the firefighters' unit. McAllister also noted that the Police Command unit based its position on the outcome of the officers' interest arbitration, thus attempting to maintain parity with the bargaining unit of police. *McAllister* at 8.

McAllister lends support for the Administration's position that the parity should be between firefighters and its command unit.

Village of Schaumburg and Metropolitan Alliance of Police, Schaumburg Police #195, (Yeager, 2007)(UX 11) was the fifth interest arbitration award between the Village and its public safety unions, in this case the police unit. One of the issues before Arbitrator Thomas Yeager was the issue of salaries (UX 11 at 9-10). In the Union's opinion Arbitrator Yeager placed great weight on the pattern of internal parity. Arbitrator Yeager stated:

> The Village also argues there is convincing evidence of a parity/pattern relationship in terms of salary percentage increases negotiated with its supervisory bargaining units. It points to the fact that the Village's Police and Fire Command bargaining units both agreed to the same across the board percentage increases that the Village has proposed to this bargaining unit. It argues that acceptance of the Union's wage offer for 2006 would mean the police officers would receive one-half percent and one percent more in 2005 and 2006 respectively than the increases granted by the police and fire command staff bargaining unit. This it argues would create difficulties in the next round of negotiations with those bargaining units and would cause compression problems between rank and file command staff. (UX 11 at 10-11).

In issuing his award, Arbitrator Yeager reasoned:

> Another aspect to evaluating which offer to select is consideration of internal comparability. It is not uncommon to find that in municipalities with both police and fire departments a parity relationship has developed over time and their compensation moves in lock step with one another. It is also the case that many arbitrators, including myself have opined many times that internal comparability carries significant, if not controlling weight, in evaluating economic proposals and interest arbitration proceedings." (UX 11 at 13).

Arbitrator Yeager recognized the pattern of internal comparability between police officer and firefighters since at least 1986. Finally, Arbitrator Yeager concluded that this long-standing pattern of internal comparability was the determining factor in adopting the Village's final offer with respect to wages. Arbitrator Yeager held:

> Consequently, the internal settlements the Village has reached with other internal comparable bargaining units coupled with the long standing parity that exists between firefighter top stop salary and police top step salary is necessarily controlling in this case. (UX 11 at 15-16).

What was not at issue in that case was any parity arguments between Police and Fire Command units. To the contrary, Arbitrator Yeager noted that "there is no evidence that historically the wages increase received in this bargaining unit have been based upon such a comparison with the Command Staff settlements." *Yeager* at 15.

In *Village of Schaumburg and Metropolitan Alliance of Police, Chapter #219 Schaumburg Command Officers* (Krinsky, April 28, 2011)(UX 12), the most recent interest arbitration proceeding between the Village and one of its public safety bargaining units, Wisconsin Arbitrator Edward Krinsky did not place significant weight on external comparable communities, stating:

> The Union notes correctly that in bargaining the Village acknowledged that it was not relying on external comparables as the basis for its final offer. It is undisputed that the parties did not discuss which communities should be used as comparables. For these reasons, the arbitrator does not feel compelled to decide which are the most relevant comparables since the decision in this case, as viewed initially by the parties and now by the arbitrator, will not be decided in significant part based on the analysis of external comparables. A further reason for this conclusion is the small number of municipalities which bargain with sergeants, and only one of them which bargains with lieutenants. (UX 12 at 8).

The issue of wages was also before Arbitrator Krinsky, and he offered the following conclusion on the internal comparability of the Village's public safety units:

> The parties have always emphasized internal comparability and identical percentage wage increases among the protective units. For the years 2008, 2009, 2010 and 2011 the

rank and file police unit received 3.5%, 3.5% and 4%. The rank and file fire unit received 3.5%, 3.5% and 0%, with those figures accompanied by a quid pro quo that there would be no layoffs, and the failure to file a form with the ILRB which limited wage retroactivity. The fire command unit received 3.5% in both 2008 and 2009 and is in arbitration for 2010. The only settlement for 2011 is the 4% for the police rank and file. **In the arbitrator's opinion, there is no pattern in this round of bargaining, but the Union's final offer of 3% and 3% for 2010 and 2011 maintains the traditional lock-step percentage increases of the protective units more than does the Village's final offer of 0%, 2% and 2% for 2010, 2011 and 2012** (UX 12 at 16; emphasis mine).

Significantly, Arbitrator Krinsky found "no pattern in this round of bargaining." His comment on maintaining the lock-step increase was in reference to the police unit's increases. [13]

Where does this leave the parties?

This much is clear: Maintaining parity between the Fire Command and Police Command Units (the Union's proposal) is necessarily at odds with maintaining parity between rank-and-file Firefighters and the Fire Command Unit (the Village proposal), *given that the Firefighters voluntarily took 0% for 2010* (UX 80). Again, Arbitrator Ed Krinsky focused on MAP #195 (the rank-and-file police unit) relative to MAP #219 (police command) rather than fire command (which of course was "open" at the time of his award).

B. Salary Award & Additional Analysis

The evidence record compels acceptance of the Village's salary offer

While the Union seeks to maintain what it says is "the historical pattern of internal parity between SFCA and the Police Command Union," (*Brief* at 23), equally telling is the historical pattern between Firefighters and the Fire Command Unit. Indeed, in its *Brief* the Union recognizes that parity between Police and Fire has at times been broken (*Brief* at 43). [14]

The parity the Union seeks to maintain is "both dollar for dollar and percentage raises, what it says is the historical pattern between Fire and Police Command. According to the Union, "we were comparing fire department captains with police department lieutenants and fire department battalion chiefs with police department captains." (Kenneth Wood: R. 63).

[13] Since Fire Command was in arbitration, his reference point had to be with respect to the police unit. Otherwise, the "lock step" comment makes no sense.

[14] As acknowledged by the Union: "Accordingly, with two exceptions since at least 1990, SFCA and Police Command bargaining units have received the identical percentage increases. In both instances when parity was briefly broken, the parties mutually agreed to restore that parity." (*Brief* at 43).

Nothing in this evidence record convinces me that parity between the Police and Fire Command Units "trumps" parity between rank-and-file Firefighters and the Fire Command Unit. Stated another way, I am not convinced that Fire Command is more in line with Police Command than the rank-and-file fire unit, especially when there is no "mirror" position in police command *vis-à-vis* a Battalion Chief. [15] To the contrary, it makes more sense to compare raises between rank-and-file Firefighters and Fire Command than Fire Command and Police Command. Arguably, and supporting the Administration's case, this indeed was the focus of Arbitrator Krinsky in the Police Command arbitration. [16]

I also find significant the Village's argument that its offer on salary maintains the historic relationship between top-step fire lieutenant and top-step fire captain salaries. The Union' final offer would mean for the 2010-2011 fiscal year differential would jump nearly 30% from 11.25% to 14.59%, as the following demonstrates:

15 The following exchange by Ted Clark with Battalion Chief Kenneth Wood makes the point:

> Q. Now, as a battalion chief who do you compare yourself with now in the police department? There is no comparison is there?
> A. There is no direct comparison now. * * * (R. 76).

16 Management's argument regarding the problems in relying on the Krinsky award is well taken:

First, while Arbitrator Krinsky commented on the pre-existing parity relationships between the all four of the Village's public safety bargaining units, it is clear that he placed the greatest weight on the parity relationship between the two police bargaining units. Thus, he opined that "the Union's final offer of 3% and 3% for 2010 and 2011 maintains the traditional lock-step percentage increases of the protective units more than does the Village's final offer of 0%, 2%, and 2% for 2010, 2011 and 2012 (UX 12, at p. 16). Since the IAFF bargaining unit had agreed to a 0% for 2010 and the Fire Command bargaining unit was in interest arbitration, the only other protective bargaining unit that he could have relied on to make this determination was the rank-and-file police bargaining unit. Indeed, on the very next page of his decision Arbitrator Krinsky, after comparing and contrasting the parties' final salary offers in terms of lift with the percentage increases in the MAP rank-and-file contract, stated that "the Union's offer deviates less from the traditional parity relationships than does the Village's offer" (UX 12, at p. 17). The only parity relationship he relied on was the parity relationship between the two police bargaining units. And, it bears repeating that in the Krinsky case the very same attorney who is representing the Fire Command in this case argued in his post-hearing brief that the Police Command's "most comparable bargaining unit, among the other three Schaumburg public safety unions, is MAP Chapter #195, the Union representing Schaumburg's one hundred (100) patrol officers" (VX 31A, at pp. 31-32). The Village agrees.

* * *

FISCAL YEAR	TOP STEP LIEUTENANT SALARY	TOP STEP CAPTAIN SALARY	PERCENTAGE DIFFERENTIAL
2004-2005	$78,884 (UX 30, at p. 23)	$87,757 (UX19, at p. 29)	11.25%
2005-2006	$81,645 (UX 31, at p. 22)	$90,828 (UX19, at p. 30)	11.25%
2006-2007	$84,094 (UX 31, at p. 22)[17]	$93,553 (UX19, at p. 30)	11.25
2007-2008	$87,458 (UX 31, at p. 22)	$97,295 (UX 20, at p. 29)	11.25%
2008-2009	$90,519 (UX 32, at p. 22)	$100,700 (UX 20, at p. 29-30)	11.25%
2009-2010	$93,687 (UX 32, at p. 22)	$104,225 (UX 20, at p. 30)	11.25%
2010-2011 based on Village's final offer	$93,687 (UX 32, at pp. 22-23)	$104,225	11.25%
2010-2011 based on Union's final offer	$93,687 (UX 32, at pp. 22-23)	$107,352	14.59%

As pointed out by management, "under the Union's final offer not only would there be a nearly 30% expansion in the salary differential between a top-step lieutenant and a top-step captain, but there would also be a significant salary compression between a top-step battalion chief and the Village's deputy fire chiefs since the Village's deputy fire chiefs did not receive a salary increase for either the 2009-10 fiscal year or the 2011-12 (R. 89-90; VX 30). Only acceptance of the Village's final salary offer will preserve the historic salary differential between top step lieutenants and top step captions and not result in further salary compression between top step battalion chiefs and the Village's deputy fire chiefs." (*Brief* at 41-42).

While the Union's argument regarding the relevance of external bench mark jurisdictions is valid, to the extent that the externals are examined, arguably they favor the Village's final offer in the instant case. Using the four comparables with contracts covering fire captains (i.e., Des Plaines, Elgin, Hoffman Estates, and Palatine), acceptance of the Village's final salary offer will result in Schaumburg ranking 2 out of 5 for both the 2010-11 and 2011-12 fiscal years. Moreover, the average top-step fire captain salary for 2010 for these four comparables is $102,874. And based on the Village's final salary offer, top step Schaumburg fire captains would be paid $1,351 above the average. Moreover, since the average salary for 2011 for the four external comparables with contracts is $104,293, top step Schaumburg fire captains would be paid $2,017 above than the average.

[17] The salary increase for the 2006-07 was based on the outcome of the MAP rank-and-file interest arbitration case before Arbitrator Yaeger; since Arbitrator Yaeger awarded the Village's final salary offer (UX 11), the increase was 3% for the 2006-07 fiscal year.

Also, to the extent that the Operating Engineers Local 150 three-year settlement is relevant – a settlement by a union that has the right to strike – the record indicates that a successor collective bargaining agreement provided for a zero percentage increase of 2010 fiscal year and for 2.0% increases for the 2011 and 2012-13 fiscal years (*Brief for the Village* at 44). This settlement, of course, was not executed at the time Arbitrator Krinsky issued his award in Fire Command.

Finally, a note on the Village's financial environment which, overall, favors the Village's final offer on wages.

Although the Village has not entered an inability-to-pay defense, there is no serious argument that ability-to-pay considerations in the public sector simply amount to governmental priorities. Is the Village funding a new roof in the park pavilion and planting trees or putting another half percent on the firefighters' base? Clearly, decision making with respect to priorities is the bread and butter of public management.

The evidence record indicates the Village Manager's proposed budget for FY 2009-2010 included a number of significant actions designed to navigate tough economic waters, including the following: Freezing management merit pay; Freezing the funds used for equipment and building replacement and deferring the previously scheduled replacement of vehicles; Eliminating more than a dozen positions; Eliminating most overnight and national travel; Eliminating programs, including parkway tree replacement, the mountain bike program, the DARE program, and the lunchtime shopper shuttle; Substantially reducing tree trimming and the trolley service; Eliminating various events previously funded by the Village, including the Summer Cinema and Volunteer of the Year Luncheon (see, *Brief for the Village* at 6).

Overall, the Village Manager proposed over $5.9 million in cuts, all of which (with but one minor exception) were adopted by the Village Board as part of the 2009-2010 budget. While union concessions were sought, the record indicates that none of the unions including the Fire Command, agreed to any concessions.

Schaumburg has not been immune to the economic downturn. As in most cities, revenues are expected to fall short of expenses for 2009-2010 by approximately $12.3 million. The gap is being made up by cuts in expenses and the use of surplus. As pointed out by the Village:

> Since 2003, 114 full time positions have been eliminated. Numerous part-time positions have also been cut. Contributions to sinking funds have been reduced or stopped. Restrictions on travel and training have been in place for some time. Employees are required to contribute more for health insurance and non-union workers did not receive any kind of wage increase in 2009-2010. Some special events have been cancelled and expiring contracts have been reduced or held to the same prices as last year. Overtime is none existent except in critical area such as public safety and public works (*Brief* at 6-7).

Significantly, the Village Manager's proposed budget also included the elimination of 25 full time positions that have become vacant during FY 2010-2011, resulting in savings of $1.6 million (VX 57). Moreover, the Village imposed for the first time ever property tax. Add to this matrix foreclosures (which rose from 348 in 3007 to 1,162 in 2010)(VX 61), home and home sales in a near free-fall (VX 62 & 63), and sales tax declines only worsens the potential for a continued recession.

I find that the City's wage offer, albeit admittedly lower than what was awarded to Police Command by Arbitrator Krinsky, is a reasonable increase that reflects the current economic situation at Schaumburg. Arbitrator Peter Myers reflected on the weight that should be given to the current financial difficulties in the economy as follows:

> The economic situation that now faces all employers, public and private, is one factor that "normally or traditionally" should be taken into account when considering wages, hours and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and considered here. *Village of Western Springs and Metropolitan Alliance of Police, Western Springs Police Chapter #456*, S-MA-09-019 (Myers, 7/30/2010).

Arbitrator Benn devoted most of his opinion in *State of Illinois and International Brotherhood of Teamsters, Local 726*, S-MA-08-262 (1/27/2009, Benn) to an analysis of the "economic free-fall" which occurred in 2007, mentioning, in part, the sharp drop in the stock market, the freezing of credit markets and the worst unemployment rates in Illinois since June, 1993.

* * * *

In its Closing Argument (*Brief* at 52) counsel for the Administration outlines its take on the state of the economy and, more importantly, its effect on the Village of Schaumburg. In relevant part, that argument is as follows:

> Given all the cuts in expenditures that the Village has been forced to make, including cuts in services provided to the residents of Schaumburg, to require the Village to spend more than is called for by the Village's final offers would not be in the public interest. Relevant in this regard are the following observation made by the Village's attorney when he concluded his presentation of the Village's finances (R. 168):
>
>> The thrust of all of this, Mr. Arbitrator, is that all of the agony, all of the pain that the Village has gone through, including the adoption of a property tax, the elimination of positions, the reduction of programs, the savings that were accomplished by that and the revenue that was generated, painfully generated, were not done for the purpose of providing wage increases for employees who are already very well compensated.

Finally, the Village would leave the Arbitrator with one final question to ponder in this very important case. That question is, "Should the taxes that Schaumburg residents are paying go to provide above-average pay increases as a point in time when they are barely breaking even or perhaps falling further behind?" The Village submits that the answer to this question is an unequivocal "No." Accordingly, the Village respectfully requests that the Arbitrator award the Village's final economic offers in this case. Acceptance of those final offers will still maintain for the Schaumburg Fire Command bargaining unit the same internal salary percentage parity relationship with the IAFF [Firefighters] bargaining unit that has been in existence for decades, as well as put them in a far better position than their counterparts employed by the nine municipalities that the Village has historically used for external comparability purposes.

While counsel is not advancing an inability-to-pay argument, its focus on the current status of the economy and the termed "economic crisis" is valid. True, the Village ranks relatively high regarding revenues when compared to the relevant bench-mark-jurisdictions used for an external analysis. However, few if any neutrals who conduct interest arbitrations and read the financial pages would rule that a city cannot be cautious in this up and down, roller-coaster economy. [18]

Overall, the City's financial picture mirrors the national economic situation which, in turn, favors the Administration's final offer.

Lastly, to the extent that cost-of-living considerations are relevant in this parity-driven case, the evidence record indicates that the CPIU for the Chicago metropolitan area from April 2008 through April 2011 was approximately 2.9%, making both parties' final offers in the overall ballpark. The Administration's argument that it makes more sense to look at changes in the CPI over a broader time perspective is indeed valid (R. 1-5). Given this focus, the bargaining unit is not falling behind the external bench mark jurisdictions.

For the above reasons, the Village's final offer on salaries is awarded. [19]

[18] As I noted in *City of Aurora & APPO*, S-MA-11-121 (2011): With all due respect to the Union's analysis, recent data indicate that the so-called "recovery" is problematic. See, "Worries Grow over U.S. Jobs," *Wall Street Journal*, Saturday, July 9, 2011 at 1 (noting that the U.S. added 18,000 jobs in June (half of what was expected) and unemployment ticked up to 9.2%, "dashing hopes that the economy was getting back on track and raising pressure on policy makers.").

As of July 2011 the unemployment rate remained unchanged at 9.1% (VX 24B). According to the BLS, "since April, the unemployment rate has shown little definitive movement. The labor force, at 153.2 million, was little changed in July." In addition, consumer confidence tumbled in July to its lowest level since early 2009. (VX25A). Finally, according to the Federal Reserve, economic growth so far this year has been considerably slower than the Federal Open Markey Committee expected. "Indicators suggest a deterioration in overall labor market conditions in recent months, and the unemployment rate has moved up. Household spending has flattened out, investment in nonresidential structures is still weak, and the housing sector remains depressed." (VX 70). While there are some positive signs (business investment in equipment and software), overall not much has changed since drafting the Aurora award.

[19] There is an additional consideration in salary and benefit analysis that rarely gets mentioned in interest arbitrations, but will demand more consideration in the future – pension obligations of the government entity. The Village went from contributing $1,850,000 in 1999-2000 to over $4,000,000 for 2010-2011 (VX 40; R. 134). On an annual basis the Village is paying over $20,000/employee. Although the Village has not entered an inability-to-pay argument regarding pension obligations (unlike

ECONOMIC ISSUE No. 2: SICK LEAVE INCENTIVE PLAN

As noted, the Village's final offer on this issue is to delete Section 18.4 in its entirety. The Union's final offer is to maintain the *status quo*.

A. Position of the Village

The Administration initially argues that in the last round of negotiations, the Village agreed to substantially improve the contractual sick-leave buyback program. Under the old provisions governing this program, the maximum sick leave buyback for an employee with 25 years of service was 360 hours of pay regardless of the number of hours of unused sick leave the employee had at the time of his/her retirement. Under the old contractual sick-leave buyback program, the employee would only receive 360 hours of pay. Under the new sick leave buyback program that was agreed to in the parties' 2007-10 collective bargaining agreement, that same employee will receive 1,220 hours of pay, i.e., more than three times as much (R. 156-57)(*Brief* at 46).

It was, as the Village's attorney testified, "an oversight when that enhancement was agreed to that it wasn't explicitly tied at that point in time to elimination of the very modest sick leave incentive" (R. 157). When it subsequently "came to light" and "questions were raised why wasn't that done," the Village decided "to deal with that issue in this proceeding" (R. 157)(*Brief* at 47).

Significantly, the Village's Personnel Policies that cover the Village's unrepresented employees were amended to eliminate the old sick leave incentive program (VX 46; R. 155). And, in the recently completed negotiations with Local 150 for the Village's public works employees the parties agreed to eliminate the sick leave incentive that had previously been part of the Local 150 contract (R. 118; VX 29 at 6; VX 23A). What the Village is seeking in this case is to mirror the Village's Personnel Policies and the Local 150 contract on this issue (*Brief* at 47).

While the 2008-2011 rank-and-file IAFF fire contract includes the sick leave incentive program that the Village is seeking to eliminate in this case (IAFF fire contract, UX 32, Section 15.5 at 19), the IAFF contract also includes the same capped – and thus considerably more limited – sick-leave buyback program (IAFF fire contract, UX 32, Sections 15.6 at 19), i.e., the

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many cities across the United States, including Rhode Island, where 23 of 29 cities are financially under water with no help from the state), defined-benefit pension costs that increase with salaries should be recognized as an increased obligation on a government employer. See, "Faltering Rhode Island City Tests Vows to Pensioners," New York Times (national edition), August 13, 2011 (discussing bankrupt city's attempt to discharge pension obligations to retired employees). This Village is currently at 65% funding for its pension program. By 2040 it must be 90% funded, which means an increasing contribution over the next 29 years. My point is this: The pension obligations of an employer cannot be ignored in an interest arbitration proceeding, especially in the "wild west" stock market environment where the finance experts (investing the reserves) have to operate.

same program that the Fire Command bargaining unit and the Village agreed to uncap and thus make considerably more generous in the last round of negotiations.

Management points out that Arbitrator Edward Krinsky's decision in *City of Elgin and IAFF Local 439* (June 17, 2005) is relevant to its position. In *City of Elgin*, the union's proposal would have altered what was an otherwise uniform employer-wide benefit. In accepting the City's final offer, this Arbitrator stated that "an item such as the administration of sick leave benefits should be uniform within a municipality wherever possible, in order to avoid confusion and unfairness." *Id.*

In summary, the undersigned Arbitrator should accept the Village's final offer in this case since it is intended to restore uniformity. Although acceptance of the Village's final offer would result in the elimination of this benefit, it is an exceedingly modest benefit, one that pales in cost to the tremendously improved sick leave reimbursement program that bargaining unit employees now enjoy. It should be noted that the Village's final offer to eliminate the sick leave incentive would only take effect for the 2011-12 fiscal year. As a result, Fire Command officers, if otherwise eligible, will receive the incentive for the 2010-11 fiscal year (*Brief* at 48).

B. Position of the Union

1. SFCA's Final Offer on "Sick Leave Incentive Plan" to Maintain the "Status Quo" is Supported by Internal Comparability Data With Three of the Village's Other Public Safety Unions

The Union submits the Village is seeking a breakthrough on a long-standing contractual provision that has been in effect since the parties' initial collective bargaining agreement for 1989 – 1992 (UX 14 at 38).

In its original form, the sick-leave reimbursement provided for a forty dollar ($40) incentive for each consecutive three (3) month period during which the SFCA member did not use any sick time, and in the event that the SFCA member did not use any sick leave for four (4) consecutive three (3) month periods, or a year, a total of two hundred dollars ($200) in incentive would be paid by the Village (R. 66).

This provision was amended in the 1992 – 1995 agreement between the Village and SFCA, increasing the incentive to fifty dollars ($50) as an incentive for non-use of sick time for three consecutive months, and increase to two hundred and fifty dollars ($250) in the event a SFCA member did not use any sick leave for a full twelve (12) month period. (UX 15 at 37, R. 66). The current provision has remained "as is" since that change. Section 18.4 of the SFCA Agreement is identical to the "Sick Leave Incentive" provision found in the Police Command Contract. Similarly, the identical provision is found in IAFF Local #4092 (Firefighters/Lieutenants) Agreement.

In support of its final offer with respect to sick leave incentive plan, the Village introduced Employer Exhibit 40 (VX 40). No doubt, the Village will argue that these unilateral changes made to the Village Personnel Manual, with respect to sick leave incentive plan, supports its final offer. Once again, the Village is comparing apples to oranges by comparing non-union civilian employees with unionized public safety employees. The wages and benefits of non-union and civilian employees are not comparable to a public safety union. Consequently, **the fact that the Village made unilateral changes to its non-union civilian employees with respect to sick leave incentive plan should be irrelevant to this Arbitrator's analysis.**

While the collective bargaining agreement between the Village and MAP #195, representing the patrol officers, does not contain a sick leave incentive plan, **the current labor agreement between IAFF Local #4092 and the Village, contains the identical provision as contained in the current MAP #219 agreement** (UX 30 at 38). Consequently, three (3) out of the four (4) public safety collective bargaining unit agreements contain the identical provision for sick leave incentive that the Village now seeks to change. Moreover, if the Village's proposal were to be adopted, it would result in the inequitable outcome of supervisors receiving less benefits than the firefighters/lieutenants they supervise.

2. The Village has not met its Burden of Demonstrating a Need to Change the "Status Quo"

The SFCA and the Village have had a sick leave incentive plan in their collective bargaining agreement since 1989. The uncontroverted evidence shows that each of the previous agreements between SFCA and the Village of Schaumburg, examined during proceeding, contain a provision for "Sick Leave Incentive Plan."

In addition, the Village has introduced no evidence that the current system has not worked as anticipated when it was agreed to. The Village has introduced no evidence that the existing sick leave incentive plan has created an operational hardship for the Village. Conversely, to change the status quo would create equitable problems for the SFCA. Finally, the Village has introduced no evidence that it had offered a *quid pro quo* to the SFCA of sufficient value to "pay for" this significant change. The Village has not met the "extra burden" standard required for an arbitrator to depart from the status quo.

3. The Costs of Maintaining the *Status Quo* for the "Sick Leave Incentive Plan" are *De Minimis*

The Union submits that another compelling reason to adopt SFCA's final offer to maintain the *status quo* for the "Sick Leave Incentive Plan" contained in Section 18.4 of the agreement is the fact that the actual cost to maintain the status quo are *de minimis*. It must not be forgotten that SFCA consists of only eight (8) bargaining unit members. Also, the Village concedes that abuse of sick leave for the SFCA is "not a big issue."

As Section 18.4 currently provides, the worse case scenario for the Village would be that each of the eight (8) bargaining unit members of SFCA used no sick leave and received the

maximum of $250 per year for sick leave incentive. Meaning, should everyone be eligible for the $250 annual sick leave payment, the total cost to the Village would be $2,000 per year, or $4,000 over the two-year duration of the collective bargaining agreement. Village Exhibit 47 demonstrates that for fiscal year 2010/2011 the Village paid SFCA members a total of $1,550. The miniscule cost of maintaining the *status quo* does not unduly burden the Village of Schaumburg.

C. Sick-Leave Incentive Award

Significantly, the identical issue was recently presented to Arbitrator Ed Krinsky, in the arbitration proceeding between the Village and MAP #219, Schaumburg Command Officers (UX 12). In that proceeding the Village sought to eliminate the identical provision contained in Section 18.4 of the SFCA CBA, from the MAP #219 agreement. Arbitrator Krinsky rejected the Village's attempts to eliminate the identical provision from the MAP #219 contract and stated as follows:

> Clearly the Village is hoping to achieve uniformity of this benefit, but it still exists in two of its bargaining units. This is a long-standing benefit and in the absence of uniformity it should be bargained, not imposed by arbitration. *Krinsky* 25.

Further, Arbitrator Krinsky stated as follows:

> The Village also has not given cost figures for this item, or shown that implementation of its offer is necessary in the context of its financial difficulties. *Id.*

The Union correctly points out that the Village is seeking a so-called "breakthrough" on a long-standing contractual provision that has been in effect since the parties' initial collective bargaining agreement for 1989 – 1992 (UX 14 at 38)(*Brief* at 66). Further, the very provision the Village is proposing to eliminate is in the Police Command Unit's collective bargaining agreement (R. 67).

In *City of Aurora & IAFF 99* (Kohn, 1995), S-MA-95-44, Arbitrator Lisa Salkovitz Kohn considered Aurora's proposal to increase the length of time in the first two steps of the salary structure for firefighters hired *after* the effective date of the contract. The record indicated that the Aurora firefighters' maximum base salary was "approximately average for the comparison group, although they have the lowest starting rate." *Id.* at 18. In rejecting the City's final offer, Arbitrator Kohn had this to say regarding the City's burden when requesting a change in benefits:

> **When one party proposes to modify a benefit, that party bears the burden of demonstrating a need for a change.** *Village of Elk Grove & Elk Grove Firefighters Association, Local 2298, IAFF, supra* at 67. Here, the City offered no reason to lengthen the time period for Steps A and B from six months to 1 year, other than the fact that its police officers have accepted this change, albeit only for the duration of the current

contract, and the City, having imposed it on their executive and exempt employees, now intends to seek this extension from all other bargaining units. **However, a "break-through" of this sort is best negotiated at the bargaining table, rather than being imposed by a third-party process.** *Kohn* at 19 (emphasis in bold mine).

The lesson here is this: Arbitrator Kohn rejected Aurora's offer, reasoning that "a breakthrough is best negotiated at the bargaining table," a position endorsed by the better weight of arbitral authority.

I also note that the fact that the Village made unilateral changes to its non-union civilian employees with respect to sick leave incentive plan, while not completely irrelevant, carries little weight in the decision to change a long-standing benefit, especially in a small unit like Fire Command.

Finally, considerations of internal comparability/parity with the Firefighters unit support the Union's position. Indeed, three (3) out of the four (4) public safety collective bargaining unit agreements contain the identical provision for sick leave incentive that the Village now seeks to change.

For the above reasons, and absent any evidence of sick-leave abuse by this unit, [20] **the Union's final offer on sick-leave incentive is awarded.**

ECONOMIC ISSUE No. 3: FURLOUGHS (SECTION 19.12 NEW)

A. The Village's Final Offer

As noted, the Village's final offer on this issue is to add the following new Section 19.12 (Furloughs):

Section 19.12. Furloughs.

Effective May 1, 2011, upon fourteen (14) days advance notice to the Union, the Village shall have the unrestricted right to temporarily furlough employees for a definite length of time, which shall not exceed five (5) 24-hour shifts per employee in any fiscal year. Time spent on furlough shall be unpaid and shall be treated as time spent on

[20] Q. [By Richard Reimer]: Is sick leave a problem for your bargaining unit, the eight of you?
A. [By Kenneth Wood]: It is not a problem.

Q. In other words, has the Chief or anybody from the Village ever come to you either in negotiations or outside negotiations and said, hey, your eight members or your bargaining eight are using excessive use of sick time?
A. Never. * * * (R. 80).

Counsel for the Village concedes that the Employer has not had a problem with sick-leave abuse (R. 119).

temporary layoff. Such time spent on furlough shall not affect any employee's seniority. The Village shall not be required to follow any contractual lay off procedure with regards to such furloughs. The employee's health insurance coverage and benefit accrual (i.e., sick leave and vacation) shall continue without change during the furlough period. In the event that not all employees in a rank covered by this Agreement are required to serve the same number of furlough days in accordance with the schedule generated by the Village, the more senior employees in the affected rank shall serve the smallest number of furlough days required by the schedule.

The Union's final offer is to maintain the status quo, i.e., no contract provision covering furloughs.

B. Position of the Administration

1. The Arbitrator Should Award the Village's Furlough Proposal in Order to Provide an Alternative to Layoffs in the Event the Village Finds it Necessary to Reduce Personnel Costs

The Administration first points out that under the parties' expired collective bargaining agreement, the Village has the clear contractual right to lay off employees if the Village determines that is necessary. Thus, the management rights article provides that the Village has the right "lay off employees . . . " (UX 20 at 14). As a result, if the Village determined it had to lay off bargaining-unit employees, it would have the contractual right to do so.

All the Village is seeking in this proceeding is to have an alternative to layoffs, i.e., to have the right to use furloughs in lieu of layoffs if the Village determines that such an action is necessary.

Significantly, the use of furloughs in the fire service as an alternative to layoffs has been used widely over the past few years, as the following news reports demonstrate (VX 53)[21]:

> "Baltimore's 1,600 firefighters and fire officers voted overwhelmingly Wednesday night to take five unpaid furlough days before June in order to help the city close a $60 million budget gap."[22]

> "Furlough days for police and firefighters part of latest Dallas budget proposal."

[21] The Village's attorney noted employees of the Illinois State Labor Relations Board "are all taking 20 unpaid furlough days a year as a way of dealing with the State's horrendous budget crunch" (R. 160).

[22] The Baltimore furloughs, as the Village's attorney reported, were in addition to the zero percent salary increase awarded by Arbitrator Joseph Sharnoff (R. 161; VX 38). Mr. Clark served as the City of Baltimore's arbitrator in the Sharnoff case (R. 161; VX 38).

"The proposal [that the firefighters union accepted] from [Tulsa] Mayor Dewey Bartlett includes a 5.2 percent pay cut and eight unpaid furlough days for each firefighter over the next 17 months. In addition, firefighters will have to pay for their own uniforms and they gave up fitness incentives. The union says it all amounts to an 11 percent pay cut."

"Over the objections of leaders of three local police organizations, but with support of the leader of the city's firefighters, the New Orleans Civil Service Commission agreed Wednesday to let Mayor Mitch Landrieu's administration start forcing almost all city workers to take unpaid furlough days next week."

Without contract language giving the Village the right to use furloughs as an alternative to layoffs, an arbitrator would likely hold that the Village did not have the right use furloughs. In fact, he noted that an arbitrator in a case handled by Mr. Reimer ruled that the Prospect Heights Police Department violated the parties' collective bargaining agreement when it used furloughs instead of layoffs to respond to the effects of the Great Recession (R. 159, 178; VX 51). Shortly thereafter, six Prospect Heights police officers were laid off (R. 159, 178).

That there is interest arbitration precedent that supports the awarding of the Village's final offer on this issue is clear from Arbitrator Ralph Colflesh's award in *City of Philadelphia and FOP Lodge No. 5* (Arb. Ralph Golflesh, December 18, 2009). In this case, Arbitrator Colflesh awarded, in relevant part, the following contract language giving the city the right to use furloughs (VX 52 at 21):

> Upon seven (7) days advance notice to the FOP and the affected employee(s) the City shall have the unrestricted right to temporarily furlough any employee or employees for a definite length of time, which shall not exceed thirty (30) days in any fiscal year. Time spend on furlough shall be unpaid and shall be treated as time spent on temporary layoff [sic] for purposes of accruing pension and service credits, but shall not be treated as a layoff for any other purpose and the City shall not be required to follow any contractual layoff procedure with regards to such furloughs * * * (*Brief* at 51).

Since the Village's final offer on furloughs tracks in relevant part the language awarded in the *City of Philadelphia* case, the Village respectfully requests that it be awarded in this case. The strong public policy considerations that support not increasing the ranks of the unemployed likewise support the use of furloughs as an alternative to layoffs. This is especially true in situations where the need to furlough employees is brought about by adverse economic conditions as opposed to situations where an employer is seeking to reduce the overall number of bargaining-unit employees for reasons other than adverse economic conditions (*Brief* at 51).

C. <u>Position of the Union</u>

1. The Union's Final Offer on "Furloughs," to Maintain the *Status Quo*, is Supported by Internal Comparability <u>Data With the Village's Other Public Safety Unions</u>

In the Union's view, the Village is seeking a "breakthrough" and proposes to include a new provision, Section 19.2, providing that bargaining-unit members may be "furloughed." The Village's proposal is not supported by internal comparability data with any of the Village's other public safety unions. Indeed, at the arbitration hearing the Village conceded that furlough language is not contained in any of the other Schaumburg public sector bargaining contacts with either IAFF Local #4092, MAP #195, or MAP #219 (R. 186). Further, the Village concedes that it made a similar proposal in the interest arbitration proceeding before Arbitrator Ed Krinsky, which Arbitrator Krinsky rejected. (R. 186) (UX 12 at 18-20).

The Union maintains the Village should not obtain a "breakthrough" in an attempt to whipsaw other bargaining units, once its contracts are up for negotiations for a successor collective bargaining agreement.

2. SFCA's Final Offer on "Furloughs" is Supported by External Comparability Data

Once again, while SFCA does not believe that this case should be decided on external comparability data, analysis of the Village's purported comparable communities, demonstrates that none of those communities that have entered into contracts negotiated through its fire captains, contain provisions for "furloughs."

As the following demonstrates, of the four (4) Village proposed comparable communities that have collective bargaining agreements with its Fire Captains, none (emphasis supplied) have any contract language that provides for "furloughs."

FURLOUGH LANGUAGE IN
COLLECTIVE BARGAINING AGREEMENT

MUNICIPALITY	DESCRIPTION OF LANGUAGE
DES PLAINES	NONE IN CONTRACT
ELGIN	NONE IN CONTRACT
HOFFMAN ESTATES	NONE IN CONTRACT
PALATINE	NONE IN CONTRACT

Source: UX 64, 65, 68, and 70

Not only is the Village's proposal to add a new provision for "furloughs" not supported by internal comparability data, it is not supported by its own proposed comparability data. For this reason, the Union's offer with respect to "furloughs" to maintain the *status quo* must be adopted.

3. The Village has not met its Burden of Demonstrating a Need to Change the *Status Quo* and Create a New Provision for "Furloughs"

The evidence in this case discloses that the SFCA and the Village have had a bargaining history dating back to 1989. In addition, the uncontroverted evidence shows that none of the previous agreements between SFCA and the Village, contained any contractual provision for "furlough" of SFCA members. (UX 14-20). The Village produced no evidence that during the recent "great recession" it somehow needed language to furlough SFCA members. Most telling is the fact that the Village conceded that it did not furlough any non-union or civilian employees during this same time period. (R. 185-186). Moreover, the Village conceded that even though it had the unilateral right to furlough non-represented and civilian employees, it did not do so. (R. 185-186).

According to the Union, the Village also concedes that it has not offered a *quid pro quo* to the SFCA as an enticement to agree to its "furlough" proposal. (R.186). Most significant is the fact that the adoption of a "furlough" provision for SFCA will create an equitable problem for SFCA. According to the Village, in the event that its proposal creating "furloughs" is adopted by this Arbitrator, the Village would have the ability to furlough SFCA members for up to five (5) twenty-four (24) hour shifts without pay. According to the Village, this could result in a five percent (5%) reduction in pay for SFCA members. (R. 187-188).

The Union submits that Arbitrator Ed Krinsky was faced with virtually the same proposal in the recent interest arbitration proceeding involving MAP #219 Police Command. Arbitrator Krinsky rejected the Village proposal, stating as follows:

> None of the communities cited as comparables which have contracts with either police sergeants or lieutenants contained provisions for furloughs. In the Arbitrator's opinion, this is an item which should be bargained, not imposed through arbitration, and particularly where there is no support for such provision among either internal or external comparables. The Village understandably wants to avoid having to layoff employees, but it would appear that the bargaining unit has made a determination that it prefers to see employees layed off if necessary, rather than to allow the Village to unilaterally impose furloughs. (UX 12 at 19).

Finally, Arbitrator Krinsky concluded as follows:

> In the Arbitrator's opinion, the Village's economic circumstances do not compel a decision in its favor on this issue and the *status quo* should remain in effect until the parties bargain something else.

For these reasons, the SFCA's proposal to maintain the *status quo* must be adopted.

D. Conclusion: The Union Advances the Better Case Regarding Adopting Language Permitting the Administration to Effect Furloughs

As noted by the Village, the advantage of furloughs is that nobody loses their job and employees continue to have health insurance coverage. On the other hand, when employees are laid off, they add to the ranks of the unemployed, contrary to the public policy of trying to reduce—not increase—the ranks of the unemployed. It is especially appropriate for public sector employers such as the Village of Schaumburg that they not be forced to utilize layoffs when the use of furloughs would be a reasonable alternative (See, *Brief for the Village* at 50).

While I see merit in the Administration's proposal (as an employee I would take a furlough rather than a layoff), in the end the complete absence of external and internal support favors the Union's final offer.

I also find Arbitrator Krinsky's analysis applicable to this dispute. This is an item that should be bargaining rather than included by arbitral fiat, and I so hold.

Finally, like the sick-leave incentive issue, I am not at all convinced that the parties spent a great deal of time on this matter in prior bargaining sessions, [23] a factor arbitrators find important when one party urges variance from the *status quo*. See, *Village of Schaumburg & SPFFA* (Briggs, 1998)(noting "it does not appear from the record that they [the parties] have spent a great deal of time in prior rounds of bargaining discussing this issue [personal days].").

For the above reasons, **the Union's position on Furloughs is awarded.**

[23] Q. [By Mr. Clark]: Wouldn't it be fair to say in terms of this last round of negotiations that they were relatively brief between the Fire Command Association and the Village?

A. [By Mr. Wood]: I would characterize them as brief compared to past times we have negotiated, yes. (R. 76).

VI. AWARD

Economic Issue No. 1: Wages – Village's Final Offer Awarded

Economic Issue No. 2: Sick Leave Incentive Plan – Union's Final Offer Awarded

Economic Issue No. 3: Furloughs (New) – Union's Final Offer Awarded

Dated this 19th day of September, 2011,
At DeKalb, Illinois 60115

Marvin Hill
Arbitrator