

**IN THE MATTER OF THE INTEREST ARBITRATION  
BEFORE ARBITRATOR  
STEVEN M. BIERIG**

<b>IN THE MATTER OF:  THE VILLAGE OF HOMEWOOD,  AND  THE HOMEWOOD PROFESSIONAL FIRE FIGHTERS LOCAL 3656, IAFF</b>	<b>INTEREST ARBITRATION  PRIMARY ISSUE: SHIFT MANNING  ISLRB CASE NO. S-MA-011-034  ARB. NO. 10-164</b>
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**Before:** Steven M. Bierig, Arbitrator

**APPEARANCES:**

**For Village of Homewood:** Carl S. Tominberg, Antonio Caldarone  
Laner, Muchin, Dombrow, Becker, Levin and Tominberg

**For The Homewood Professional  
Fire Fighters Local 3656, IAFF:** Lisa B. Moss  
Carmell Charone Widmer Moss & Barr

**Location of Hearing:** 2020 Chestnut Road  
Homewood, Illinois

**Dates of Hearing:** April 26, 2011  
April 29, 2011  
April 30, 2011

**Date Briefs Exchanged:** August 18, 2011

**Date of Award:** November 29, 2012

**AWARD:**

For the reasons stated in this Opinion and Award, the Arbitrator finds:

The Village's proposal is accepted. I find that the increased minimum staffing requirement proposed by the Union is a breakthrough issue seeking to change the *status quo* of the Contract. The Union failed to prove that the current minimum staffing has not worked as the parties had anticipated when they entered into the Memorandum of Agreement. Further, the Union has failed to establish any inequities with the existing minimum staffing requirement, and has failed to show that the Village has resisted attempts to bargain over the change.

Even if I were to apply the relevant criteria as identified in Section 14(h) of the Illinois Public Labor Relations Act, the Union fails to meet those factors. Specifically, the addition of one full-time firefighter per shift does not significantly impact the interests and welfare of the public, but does add significant costs to the Village. Further, a comparison of the working conditions of firefighters in the Village to firefighters in comparable villages does not reveal a significant discrepancy that would require adoption of the Union's proposal in this Interest Arbitration.

As a result, I select the Village's proposal that makes no changes to minimum staffing and the Memorandum of Agreement, and I reject the Union's proposal. As a result of my rejection of the Union's minimum staffing proposal, I deny the Union's proposal to revise the language of the Article III, the Management Rights clause.

Finally, pursuant to the parties' request, the Tentative Agreements identified in Union Ex. 1, Tab 9 as amended by the email of June 16, 2011 are hereby incorporated into this Award.

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Steven M. Bierig, Arbitrator  
November 29, 2012

## **I. INTRODUCTION**

The Hearing in this matter took place on April 26, 2011 at 10:00 a.m., April 29, 2011 at 7:30 a.m., and April 30, 2011 at 8:00 a.m. at the Village of Homewood, located at 2020 Chestnut Road, Homewood, Illinois. The Hearing took place before the undersigned Arbitrator who was selected to render a final and binding decision in this matter. At the Hearing, the parties were afforded a full opportunity to present such evidence and arguments as desired, including examination and cross-examination of all witnesses. A 752-page transcript was prepared. The parties exchanged Post-Hearing Briefs on or about August 9, 2011, at which time the evidentiary portion of the Hearing was declared closed. All parties stipulated to the Arbitrator's jurisdiction and authority to issue a final and binding Award in this matter.

## **II. THE PARTIES' STIPULATIONS**

The Union and Homewood made the following pre-hearing stipulations:

1. The parties' final proposals, exchanged prior to the hearing, may not be modified after arbitration (Tr. 15);
2. The parties agree that their tentative agreements will be incorporated as part of the Arbitrator's Award (Un. Ex. 1, Tab 9; Tr. 18, 750);
3. The parties agreed to the list of comparable communities (Tr. 31, 616, 678);
4. Chief Schullo's employment with the Village ceased in September, 2008 (Tr. 120);
5. Minimum manning here is an economic issue and the Arbitrator must select one party's proposal over the other's (Tr. 283);
6. The issue before the Arbitrator concerns full-time staffing and would only impact the language contained in the first sentence of paragraph 12 of the Village of

Homewood Use Of Part Time Personnel Memorandum of Agreement of July 6, 2009 (“Memorandum of Agreement”) (Tr. 285-287);

7. The parties agree that the Union's Unfair Labor Practice charge resulted in issuance of a complaint against the Village (Er. Ex. 11; Tr. 574); and
8. The Part-Time Memorandum of Agreement arose out of a series of negotiations (Tr. 746).

### **III. ISSUE**

The economic issue before me involves the proposal of an increase in the minimum staffing requirement identified in the Memorandum of Agreement, and pursuant to such an increase, requires modifications to Sections 3.1 and 3.2 of the Contract.  
(Tr. 285-287)

### **IV. CURRENT CONTRACT LANGUAGE**

Current Language – Memorandum of Agreement

Each shift shall be scheduled with 5 full time firefighter/paramedics with at least 4 full time firefighter/paramedics working at all times and with 1 of these 4 serving as a lieutenant or acting shift officer. Part time firefighter/paramedics may be scheduled up to a maximum of 72 hours total per 24 hour shift. The part time slots comprising the first 36 hours of the 72 hours per shift may be unscheduled or unfilled.

(Un. Ex. 1, Tab 2)

**V. FINAL OFFERS**

**A. Union's Final Offer**

Union Proposal:

ARTICLE XXIV, Section 24.6 Staffing [New]

Effective May 1, 2009, each shift shall be scheduled with five (5) full-time firefighter/paramedics with at least four (4) full time firefighter/paramedics working at all times and with one (1) of these four (4) serving as a lieutenant or acting shift officer.

Effective January 1, 2012, or within six (6) months after the issuance of Arbitrator Bierig's Interest Arbitration award in Case No S-MA-11-034, whichever occurs first, each shift shall be scheduled with at least six (6) full-time firefighter/paramedics with at least five (5) full-time firefighter/paramedics working at all times and with one (1) of these five (5) serving as a lieutenant or acting shift officer.

(Un. Ex. 1, Tab 7)

Additionally, the Union proposes modification of language currently contained in

Article III. The Union proposal concerning Article III reads as follows:

ARTICLE III, Sections 3.1 Sole Rights of Village and 3.2 Purpose and Mission

Section 3.1B. shall provide as follows:

To plan, direct, control and determine the operations or services to be conducted by employees of the Village, including assignments, deployment, and authorized strength.

Section 3.2 shall provide as follows:

The Village President, or Village President Pro-Tem and the Board of Trustees have the sole authority to determine the purpose and mission of the Village and the overall Village budget to be adopted thereto and total manpower for the Homewood Fire Department.

(Un. Ex. 1, Tab 7)

**B. Homewood's Final Offer**

Homewood's final offer is no change to the Memorandum of Agreement or to Sections 3.1 or 3.2 of the Collective Bargaining Agreement (*status quo*). (Un. Ex. 1, Tab 8)

**VI. RELEVANT STATUTORY LANGUAGE**

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

On or before the conclusion of the heard held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute. . .the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. . .

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable facts prescribed in subsection (h).

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, if applicable:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - a. In public employment in comparable communities.
  - b. In private employment in comparable communities.
5. The average consumer price 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 hospital benefits, the continuity and stability of employment and all other benefits received.<sup>1</sup>
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.

5 ILCS 315/14(h)

Each of these factors is relevant, although no one factor is determinative. An Arbitrator has discretion to rely on some factors more heavily than others where appropriate. The statute

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<sup>1</sup> The parties agree that Factors 5 and 6 do not apply. (Un. Br. at 29, fn. 18)

does not rank the factors in importance. In *City of Decatur and International Association of Firefighters, Local 505, S-MA-29* (Eglit 1986), Arbitrator Eglit observed that the importance of each statutory factor is not ranked: "... moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make the determination as to which factors bear most heavily in this particular dispute." Thus, some of the statutory factors may be deemed more significant than others, depending upon the issues and the evidence presented. In the instant case, I have considered all relevant factors in reaching my decision.

## **VII. STATEMENT OF FACTS**

### **A. Introduction**

The instant matter arises from a dispute between the parties regarding the appropriate number of full-time firefighters for the Homewood Fire Department (the "Department"). The Union contends that the current level of minimum staffing and full-time firefighters should be increased by one full-time firefighter per shift. The Union cites concerns regarding the safety of firefighters on duty and the ability of the Department to adequately respond to calls when only the minimum number of firefighters is on duty. Conversely, Homewood contends that the parties agreed to the appropriate number for minimum staffing when it negotiated the Memorandum of Agreement ("MOA") and that there is no reason to change the MOA. Additionally, Homewood contends that the safety and response issues raised by the Union are meritless.

**B. The Parties and Present Staffing**

Homewood (the "Village") is located approximately 30 miles south of Chicago in Cook County, has a population of 19,278, and covers approximately five square miles. The Village is a non-home rule unit of government with an elected Village President and a Village Manager serving as the chief administrative officer. (Tr. 5-6)

The Department employs one Chief, Robert Grabowski, one Deputy Chief, Clint Johnson, three lieutenants, 15 full-time Union firefighter/paramedics, 19 non-Union part-time firefighters and one secretary. The parties referred to part-time and paid-on-call ("POC") firefighters interchangeably as "part-time", and the 19 non-Union firefighters include both classifications. A true POC is a firefighter who is not in the fire station and is called in to fight a fire or perform other duties. The lieutenants and full-time firefighter/paramedics are represented by the Homewood Professional Firefighters Local 3656, IAFF. Employment as a full-time employee in the Department requires possession of a paramedic license. The most recent Contract went into effect May 1, 2004 and was to expire April 30, 2009. (Er. Ex. 5, 17; Un. Ex. 1 Tab 10, Tab 20; Tr. 7, 20, 233-234, 586-587)

The Department operates one fire station and has a second building used only for training and storage. From 1980 to 2010, the Department also operated two Advanced Life Support ("ALS") ambulances, three engines, including one backup, a ladder truck, and a squad. On June 1, 2011, the Department replaced the ladder truck and the backup engine with a new apparatus called a quint. (Er. Ex. 6; Tr. 290)

The Village runs a typical operation consisting of three shifts of employees. Full-time employees work 24 hours on followed by 48 hours off. On a daily basis, five full-time firefighter/paramedics and three part-time firefighters are scheduled to work, with a minimum staffing requirement of at least four full-time firefighter/paramedics working each day. Part-time firefighters are assigned to work three dedicated shifts. One 12-hour shift extends from 6:00 a.m. to 6:00 p.m., another 12-hour shift begins at 6:00 p.m. and ends at 6:00 a.m., and a 9-hour shift spans from 9:00 p.m. to 6:00 a.m. The following table illustrates the current shift schedule:

Shift	Scheduled Per Shift	Minimum Staffing Per Shift
<b>6:00 a.m. to 6:00 p.m.</b>	<b>5 full-time firefighter/paramedics</b> <b>1 part-time firefighter/paramedic</b>	<b>4 full-time firefighter/paramedics</b> <b>1 part-time firefighter/paramedic</b>
<b>6:00 p.m. to 6:00 a.m.</b>	<b>5 full-time firefighter/paramedics</b> <b>1 part-time firefighter/paramedic</b>	<b>4 full-time firefighter/paramedics</b> <b>1 part-time firefighter/paramedic</b>
<b>9:00 pm. to 6:00 a.m.</b>	<b>5 full-time firefighter/paramedics</b> <b>2 part-time firefighter/paramedics</b>	<b>4 full-time firefighter/paramedics</b> <b>2 part-time firefighter/paramedics</b>

As a result, five or six firefighter/paramedics are on duty from 6:00 a.m. to 9:00 p.m., and six or seven firefighter/paramedics are on duty from 9:00 p.m. to 6:00 a.m. (Jt. Ex. 1)

**C. The Department's Staffing History**

The Village's Fire Department history began with an all-volunteer Department that evolved into the employment of paid full-time and part-time firefighters. Over the past twenty years, the number of full-time firefighters has increased. In 1989, the Department employed 11 full-time firefighters, including three lieutenants. The number of full-time firefighters rose to 12 by 2001 and to 14 in 2004. Since 2007, the Department has maintained its present staff of 15 firefighters, including three lieutenants. (Er. Ex. 5)

Prior to July 2007, when Alan Schullo was hired as Fire Chief, the Village assigned five full-time firefighters to each 24-hour shift. The Department required at least four of the five full-time firefighters to be on duty. If fewer than four full-time firefighters reported for duty, the Department called in a full-time firefighter to work on an overtime basis. (Tr. 291-293)

Part-time firefighters were assigned to work with the full-time firefighters on a different schedule. The Department assigned two part-time firefighters to work each day from 9:00 p.m. to 6:00 a.m., one part-time firefighter to work Monday through Friday from 6:00 p.m. to 9:00 p.m., and one part-time firefighter to work weekends and holidays from 7:00 a.m. to 9:00 p.m. (Tr. 292-94)

Upon his arrival in July 2007, Chief Schullo reviewed scheduling issues and changed the part-time schedule. Thus, assigned to each of the three current shifts during any given 24-hour period was one part-time firefighter. As a result, when all five scheduled full-time firefighters, as well as the scheduled part-time firefighters, reported for duty, either six or seven total firefighters would be on duty. The Village continues to follow the schedules established by Chief Schullo. (Tr. 297-300)

Also during the last 20 years, the number of part-time firefighters has decreased from 48 in 2001 to 26 in 2007, and approximately 14 in 2011. The Department experienced problems using part-time firefighters. Part-time firefighters were unreliable because an estimated 20% did not respond to calls, they responded from their homes, there was a high turnover rate, and part-time firefighters lacked organized training requirements. (Tr. 116, 345)

Since 2007, the Village has implemented various measures to improve the part-time staffing. In 2007, the Department established the three current dedicated shifts for part-time firefighters. As a result, part-time firefighters work a specific shift and respond to calls from the fire station, along with the full-time firefighters. Part-time firefighters are now required to maintain similar qualifications as full-time firefighters, and part-time firefighters are selected from the same eligibility list used to hire full-time firefighters. Today, part-time firefighters in the Village are required to attend more training than is required under state law. (Tr. 297, 490-493)

According to Chief Grabowski, part-time firefighters are more reliable today than they were in 2007. For example, between May 1, 2010 and April 26, 2011, part-time firefighters have worked 98.84% of the shifts that they were scheduled to work. Additionally, almost half of the Village's part-time firefighters have five or more years of experience. Chief Grabowski testified that a part-time firefighter today is better trained and more reliable than a part-time firefighter was prior to 2007. (Er. Ex. 14, 15; Tr. 493, 600-603)

Additionally, the parties presented evidence regarding the Department's call history. Since 2006, fire calls have decreased by 15% from an average of 7.9 calls per day in 2006 to 6.6 calls per day in 2010. Over the last 10 years, medical calls for an ambulance have consistently

accounted for between 63% and 73% of all fire emergency calls received by the Department.  
(Er. Ex. 13)

**D. Mutual Aid and the E-Com Dispatch Center**

Like all fire departments in the South Suburban area, the Village supplements its staffing with Mutual Aid for assistance during periods of high call volume or when an incident requires additional personnel. Mutual Aid encompasses the two concepts of Automatic Aid and Mutual Aid, which are included within an organization called the Mutual Aid Box Alarm System ("MABAS"). MABAS consists of various fire departments within a region that aid one another in times of need when outside resources are required. A fire department may use Mutual Aid in situations involving back-to-back ambulance calls, car accidents with multiple victims, back-to-back fire calls, structure fires, specialty team call outs (i.e., divers), or hazardous material spills.  
(Tr. 437, 441)

Automatic Aid, or "Auto-Aid", is a written agreement between the Village and its neighboring communities, such as Hazel Crest and Country Club Hills, to provide assistance upon request. For example, Auto-Aid is used during a high call volume when both of the Village's ambulances are responding to calls and therefore occupied, and a third emergency call comes in. The Department's incident commander requests the assistance from an adjacent community, and a call for assistance is generated with virtually no delay via E-Com. E-Com is the area dispatch center that monitors the activity, knows the status of the Village's ambulances, and automatically dispatches another community to respond to the call, if necessary. These safeguards eliminate delays in responding to calls and ensure that no call

goes unanswered. Under Auto-Aid, all participating communities receive and respond to fire calls simultaneously. (Tr. 58-59, 462, 470)

Mutual Aid is the second concept utilized by the Village and other regional fire departments. The Village is one of 22 communities that have developed plans to provide assistance to one another, and comprise MABAS Division 24 ("MABAS 24"), which is included within the MABAS Illinois system encompassing nearly every fire department in the State of Illinois. MABAS 24 is broader than Auto-Aid and encompasses communities within the Village's region but is not limited to just neighboring communities as is Auto-Aid. Mutual Aid provides such functions as responding to structure fires, because individual departments within MABAS 24 cannot meet suggested staffing standards to do so. National Fire Protection Association ("NFPA") Standard 1710 recommends that 17 firefighters respond to a structure fire. None of the individual fire departments within MABAS 24 can meet the NFPA Standard 1710; therefore, these departments meet NFPA Standard 1710 by providing Mutual Aid through MABAS 24. (Tr. 438-439, 448, 450)

When Mutual Aid is needed, an E-com dispatcher automatically and simultaneously dispatches the Village's Fire Department and other fire departments using previously established MABAS "Box Cards" based on the nature of the call. Each community within MABAS 24 drafts box cards that describe specific plans of Mutual Aid implementation, depending on each circumstance, and each plan is assigned a specific number. The box cards are approved by an executive committee of MABAS 24 and incorporated into the dispatch system. For example, the Village's Box Card 501 covers a structure fire. If E-Com receives a call for a structure fire in the Village, the dispatcher will access the Village's Box Card 501 in the

system, and will automatically and simultaneously dispatch an Engine from the Department, Glenwood and Flossmoor, a truck from the Department and Hazel Crest, an ambulance from Country Club Hills, and a chief from the Department. (Er. Ex. 3; Tr. 454-455, 460-461)

In order to participate in MABAS, a community must represent that it will respond to a Mutual Aid call with a minimum of four firefighters, including one officer and three firefighters. Both full-time and part-time firefighters may comprise the minimum of four firefighters for purposes of MABAS response. Auto-Aid, by contrast, does not require that a department respond with four firefighters per engine/truck. (Tr. 75, 198-199, 217)

Various Union and Village witnesses presented divergent testimony regarding the timeliness of MABAS assistance. Chief Schullo testified that MABAS is not always able to provide timely assistance to a requesting community. Occasionally, neighboring departments are unable to respond to MABAS requests because they are busy with their own calls, or may not have the staffing necessary to respond to the Mutual Aid call. In such a case, the requesting department must either ask MABAS for assistance from another department, or its incident commander must make a determination as to how to best meet its needs. Additionally, when the Village is providing, as opposed to receiving, assistance, the Department becomes short-staffed during that time. For example, when the Department provides assistance by sending four firefighters to a MABAS call, the Village, which staffs only five full-time firefighters, will leave just one firefighter back in the station. (Tr. 59-61, 176)

According to Chief Grabowski, E-Com and the use of Mutual Aid through MABAS 24 and Auto-Aid are reliable. Chief Grabowski, a 30-year fire department veteran who has worked in both the Department and comparable South Suburban communities, explained that there has

never been an instance in which Mutual Aid has not responded, a call has gone unanswered, or in which insufficient personnel were dispatched. E-Com's procedures ensure that no call will go unanswered. (Tr. 467-470)

**E. The Tenure of Chief Alan Schullo**

Chief Schullo served the Village from July 2007 to September 2008. Shortly after Chief Schullo's arrival, the Village lost its license for one of its two ALS ambulances. Licenses to operate the ambulances, are obtained from the South Cook County Emergency Medical Service System ("SCCEMSS"), which requires staffing the ambulances with two paramedics each on initial response. (Tr. 171-172, 229, 333)

According to Chief Schullo, the Village was not properly staffing the ambulances, and had not done so for many years. The staffing failure resulted from the fact that when those assigned to the station at any one time, or the fire company, sent three firefighter/paramedics on a call, and one ambulance was simultaneously responding to a call with its two paramedics, no personnel remained to staff the second ambulance. (Un. Ex. 4; Tr. 171, 228-29, 242-43, 312)

At least two meetings regarding the ambulance staffing deficiency were held. One meeting was scheduled for December 11, 2007; present were Chief Schullo, Deputy Chief Johnson, Lieutenant Scott Moran, and SCCEMSS Medical Director Bernie Heilicser. During the meeting, Heilicser expressed the need for the Village to "... have a plan to proceed to a fully staffed condition, 24/7, with a target date". According to Deputy Chief Johnson's notes, when Chief Schullo asked why the license had not been revoked a year and a half earlier, Heilicser

replied that he had an ongoing dialogue with former Fire Chief Raymond Presnak, and that he had been "extremely close" to revoking the license. (Un. Ex. 4; Tr. 319-327)

A second meeting was held January 16, 2008. This meeting was attended by Chief Schullo, Mark Franz, Johnson, Moran, Heilicser, and SCCEMSS Emergency Medical Services Director ("EMS") Kim Stotts. The attendees discussed licensing and staffing of the second ambulance and once again, Heilicser replied that he had a dialogue with former Fire Chief Raymond Presnak about the ambulance's inadequate staffing, and acknowledged that he had been aware of the situation for about two years. Heilicser further stated that the second ambulance was being staffed only 30-40% of the time. Heilicser further stated that 100% staffing was required, with the exception of an occasional Mutual Aid response, and that the Village could not knowingly fail to regularly fully staff the ambulance. (Un. Ex. 5; Tr. 327-331)

On March 4, 2008, the Illinois Department of Labor ("IDOL") cited the Village for several violations of federal regulations, the most serious of which concerned what is commonly referred to as the "two-in, two-out" rule. This rule, codified at 29 CFR 1910.134 (g)(4)(1)(0), requires that when responding to a fire by sending two firefighters into a burning structure, two additional firefighters must be outside the structure, within voice or visual contact of those inside, equipped with a self-contained breathing apparatus ("SCBA") and ready to perform a rescue operation. According to the citation, the Village had failed to comply with this requirement. As a result, the Village issued a new policy requiring adherence to the two-in, two-out rule. (Un. Ex. 3 Tab 5 Ex. 9; Tr. 93-94)

Chief Schullo commenced a Departmental staffing study in August 2007. He considered a variety of factors, including how the Department conducted its business, the Department's

responses to calls, and the Department's operation at a fire scene, on EMS calls, and at accident sites. Schullo also compared the Department's performance with national standards. He compared the Department with other communities in such areas as Equal Assessed Valuation ("EAV"), and the numbers of firefighters per capita, per 100 residents, and per call. He also examined historical data on staffing in comparison to the number of calls that required a Department response and reviewed staffing studies conducted for other cities throughout the United States, including Dallas, Austin and Seattle. Chief Schullo's primary sources were the National Fire Protection Association ("NFPA") and the federal Occupational Safety and Health Administration ("OSHA"). (Tr. 66-68)

Schullo's staffing study provided authority supporting the deployment of a minimum of four personnel to an engine or a truck. In particular, the study cites NFPA Section 1710, MABAS agreements, and excerpts from ten studies that support the four-person minimum. It also cites OSHA's two-in, two-out requirement. (Un. Ex. 3 Tab 9)

The study also reviewed staffing requirements for ambulances. It observed that the Illinois Department of Public Health required that an ambulance be staffed with one paramedic and one EMT, whereas the SCCEMSS required that an ambulance be staffed with two paramedics. The NFPA specified that a minimum of four personnel should report to an ALS emergency, comprised of a minimum of two EMT-paramedics and two EMT-basics. (Un. Ex. 3 Tab 9)

The study provided a critical tasking analysis involving various scenarios distinguished by the degree of risk each posed and compared its results with both the Village's typical staffing, and "Minimum Safe Staffing (per NFPA)". In each comparison, the Village's typical staffing fell

below NFPA's safe minimum level. According to Schullo, "... regardless of the raw numbers of personnel available to a department, what matters most is the actual number of emergency responders the agency is able to deploy to an emergency scene." The study concluded that while current staffing might be sufficient for response to a low-risk incident, it did not provide consistent four-person engine staffing as outlined by NFPA 1710, ICMA, and MABAS agreements. As a result, Schullo determined that total fire ground operations were understaffed. (Un. Ex. 3 Tab 9)

The staffing study recommended the adoption of one of two staffing proposals. Option A called for the addition of 12 full-time firefighter/paramedics. Nine firefighters would be assigned per shift, with a minimum of seven reporting for duty. It would also allow the Village to license and staff two ALS ambulances with four firefighter/paramedics and one ALS company with three firefighter/paramedics. Option B called for the addition of six full-time firefighter/paramedics. Seven firefighters would be assigned to a shift, with a minimum of six reporting for duty. It would also allow the Village to license and staff one ambulance with two firefighters and one engine company; if a part-time firefighter were assigned 24/7, the Village would be able to license and staff two ambulances and one engine company. (Un. Ex. 3 Tab 9)

The study also included suggestions for funding the increased costs involved with the addition of full-time firefighters. One funding source suggested was the U. S. Department of Homeland Security pursuant to a program called "Staffing for Adequate Fire and Emergency Response", commonly referred to as a "SAFER" grant. Under the SAFER program, the federal government provides grant funding on a declining scale over a five-year period. Thus, in the first year of the grant, federal funds would pay approximately 90% of the cost of the additional

firefighters; it would pay a lower percentage in each of the succeeding years until the fifth year, when the Village would pay the entire cost. The study suggested additional funding sources, including increasing or creating user fees for ambulance calls, inspections, auto accident extraction, and EMS Mutual Aid. The study estimated that the additional funding sources would raise \$252,031.68. (Un. Ex. 3 Tab 9)

Chief Schullo testified that he shared the staffing study with Village Manager Mark Franz prior to its completion. Franz directed him to make changes, specifically eliminating Option A, the hiring of 12 full-time firefighters. The final version also included an option to add three additional full-time firefighters. Chief Schullo did not agree with this option, as six additional firefighters had been the minimum number he had recommended to add. Chief Schullo also disagreed with the final version of the study that included two options added pursuant to Franz's revisions. Option C added two part-time positions and Option D retained the *status quo*; Schullo considered both non-viable as they would not correct the problem. Franz testified that he recommended including these options and eliminating Schullo's Option A in order to give the Board options that it would potentially adopt. (Tr. 105-109)

**F. The Village Board Meeting on Department Staffing**

On May 1, 2008, in preparation for a special board meeting to be held on May 5, Franz issued a Memorandum to the Village President and Trustees concerning the staffing issue. In his memo, Franz provided his version of the factors affecting the staffing issue including staffing history, current operations, Mutual Aid, recent issues including licensing of the second ambulance and the two-in, two-out citation, operation and deployment analysis, operational

alternatives, a discussion of funding issues, and a recommendation. Franz stated, contrary to the Schullo's opinion, that "... maintaining the current operational staffing is an acceptable option". Franz added that regarding staffing, there should be "... no rush to judgment on such a critical issue". (Un. Ex. 6)

On May 5, 2008, the Village Board met as scheduled for a special council meeting. Chief Schullo attended and presented his Staffing Report. At the meeting, Lieutenant Scott Moran, Secretary-Treasurer for Local 3656, read a statement expressing his concerns, based on his experience within the Department, regarding the Department's inability to deliver effective and safe service without additional staffing. In particular, Moran stated that although the Village had issued a new policy requiring adherence to the two-in, two-out rule, strict adherence, with inadequate staffing, could result in delays while waiting for aid that could further result in increased fire damage, injury, and death. (Un. Ex. 3 Tab 12; Tr. 112, 270-271, 405)

During the meeting, Village President Hofeld told the public that he would fix the staffing issue. According to Chief Schullo, in prior conversations, Hofeld had stated that the Village would not hire any more full-time firefighters. (Tr. 112-113)

From March 12, through September 12, 2008, the Southtown Star published several articles regarding the Department, including the IDOL citation and the loss of the ambulance license. The articles were critical of the Village's failure to hire additional firefighter/paramedics. (Un. Ex. 3 Tab 13)

Following the May 5 council meeting, Franz directed Chief Schullo not to apply for a SAFER grant. Chief Schullo's employment with the Department ended in September 2008. (Tr. 113, 117-118)

**G. The Parties' Negotiations Regarding Part-Time Firefighters**

In 2008, the parties were required to respond to the enactment of Senate Bill 834 or Public Act 95-490. 65 ILCS 5/10-1-14; 65 ILCS 5/10-2.1-4. The law became effective June 1, 2008. It was enacted in response to firefighter unions' concerns about the use of part-time firefighters due to a lack of control over the qualifications and training of part-time firefighters. Among other things, the new law requires that part-time firefighters had to be hired from the same eligibility list as full-time firefighters, meaning that the part-time firefighters must possess the same basic certification and testing standards as full-time firefighters in the community. (Tr. 237, 558-559)

On January 20, 2008, the Union requested that the Village bargain over the Village's use of part-time personnel. When the Village did not respond, the Union made a second request on February 24, 2008. The Village responded on February 29, 2008 via a memorandum from Mark Franz, which stated that while the Village did not believe that the new law created a bargaining obligation, it was agreeable to hearing the Union's concerns. (Un. Ex. 3 Tab 5 Ex. 6, Tab 5 Ex. 8)

On March 19, 2008, the Union filed an unfair labor practice charge with the Illinois Labor Relations Board ("the Board"). The Union alleged that the Village had failed to bargain with the Union in violation of Sections 10(a)(4) and 10(a)(1) of the Illinois Public Labor Relations Act ("the Act"), and had retaliated against the Union's members for engaging in various protected concerted activities, including the filing of a grievance, demanding to bargain with respect to Senate Bill 834, filing complaints with IDOL regarding safety violations, exercising the right to organize the Department's lieutenants, and voicing its concerns in the local newspaper. The

Board subsequently issued a Complaint concerning the allegations contained in the charge and set the matter for hearing before Administrative Law Judge John Clifford. The parties executed a settlement agreement concerning the charges on May 21, 2009, in which the parties acknowledged that they had reached an agreement in principle regarding the Village's continued use of part-time employees that they would later append to the Contract. (Er. Ex. 11)

Simultaneous to the unfair labor practice proceedings, the parties engaged in negotiations that ultimately resulted in the Village of Homewood Use of Part Time Personnel Memorandum of Agreement of July 6, 2009, that was incorporated as an Appendix to the Contract (the "MOA"). During negotiation of the MOA, the Union submitted a 12-part proposal containing a shift requirement that five full-time employees be assigned to each 24-hour shift with a minimum of four working at all times, including a lieutenant or shift officer. The Village rejected that proposal. The Village presented two proposals to the Union which did not include minimum manning requirements. The Union never proposed the same minimum staffing requirements in this Interest Arbitration that was contained in its final MOA proposal to the Village. The MOA permitted the Department to use part-time firefighters, but with greater restrictions, and also provided for a written contractual minimum staffing requirement. (Un. Ex. 1 Tab 2, Tab 3; Un. Ex. 11; Er. Ex. 9, 10; Tr. 16, 569, 736)

The MOA provides that each shift must be scheduled with at least five full-time firefighter/paramedics with at least four full-time firefighter/paramedics working at all times. The Village also is given the discretion to schedule part-time firefighter/paramedics up to a maximum of 72 hours per 24 hour shift, of which the first 36 hours may be unscheduled or

unfilled. However, if the first 36 hours remain unscheduled, and if the Village desires to schedule part-time firefighter/paramedics beyond the first 36 hours, and the part-time firefighter/paramedic does not appear for his/her shift, then a full-time firefighter/paramedic must be given the first opportunity to work any vacant slots in excess of the first 36 hours. However, the Village cannot mandate that a full-time firefighter/paramedic fill vacant slots over 36 hours. Therefore, if no full-time firefighter/paramedic accepts an offer to work a vacant slot, beyond 36 hours, then the slot must remain vacant for the shift and the Department cannot fill it, even with an available part-time firefighter. (Un. Ex. 1 Tab 2; Tr. 656)

**H. March 30, 2010 Fire Incident and Subsequent NIOSH Report**

On March 30, 2010, a career firefighter, Brian Carey, died, and a part-time firefighter was injured when responding to a fire call involving a residence in the Village. (Un. Ex. 3 Tab 15)

The National Institute for Occupational Safety and Health (“NIOSH”) investigated the March 30, incident. On September 30, 2010, NIOSH issued its initial report and after giving the Village the opportunity to provide input on its proposed findings, issued a revised report on November 17, 2010. In its report, NIOSH listed 14 contributing factors to the incident. One factor was identified as "Insufficient staffing", based on NFPA Standard 1710. Specifically, the report stated the following regarding the staffing:

During this incident, the victim's department responded with three personnel on the engine and two personnel on the ambulance, but the Still assignment also consisted of an engine, two ladder trucks and a squad, with four fire personnel on each. It was routine to

have an ambulance respond with an engine on a first due fire assignment. Due to short staffing, the ambulance personnel were tasked with fire suppression activities, thus taking them out-of-service as a medical unit. Also, due to short staffing, the lieutenant/acting officer (IC) was required to ride and operate as the officer of E534. This removed him from his command response vehicle which would have allowed him to command at a tactical level versus having to potentially perform tasks.

(Un. Ex. 3 Tab 15)

The Village disputed this portion of the NIOSH Report, specifically that NIOSH mistakenly concluded that the Department responded with three firefighters and two ambulance personnel when in fact five firefighters responded. The responders consisted of one lieutenant and four firefighter/paramedics, three of which rode on the fire engine and two who rode on the ambulance. On January 3, 2011, Chief Grabowski sent a letter to NIOSH requesting a correction to the factual error and explaining that the Department responded with five firefighters, not with personnel dedicated to an ambulance. Chief Grabowski testified that a total of 21 firefighters from the Department and neighboring fire departments initially responded to the fire on March 30, 2010, four more firefighters than the 17 that are required under NFPA Standard 1710. Additionally, the Chief Investigator from NIOSH told Chief Grabowski that the Department met NFPA Standard 1710 on March 30, 2010. (Er. Ex. 4; Tr. 505-510)

**I. The Village's Financial Condition**

Since 2008, the Village has experienced a decline in each of its four major revenue sources, comprised of sales tax, property tax, utility tax and income tax. These four revenue sources combine for 79% of the Village's total revenues and these revenues have declined by over \$400,000 since 2008. Additionally, the State of Illinois is routinely three months tardy in providing the Village its share of income and sales taxes. (Er. Ex. 20; Tr. 664-665)

The Village has addressed its decline in revenue by instituting a number of cost saving and revenue generating measures. Cost saving measures have included the elimination of positions, a hiring freeze for any new positions, and an increase in the employee share of health insurance premiums from 10% to 20%. The Village has attempted to generate revenues by increasing ambulance transport fees, implementing a red light ticket program, increasing police ticket fees and passing a tow ordinance enabling the Village to tow the cars of such drivers as those with warrants or suspended licenses for a fee. (Tr. 668)

The Village has used its Reserve Fund for the past three years to balance its budget. The Reserve Fund has been depleted by 25% since 2007. The Village's Budget Policy requires that the Village maintain three to six months' worth of operating funds. As of April 30, 2011, the Village had only approximately three months' worth of operating funds in the Reserve Fund. (Er. Ex. 21; Tr. 668-669)

According to the Village, the Union's proposal would add between \$217,285 and \$294,785, or a 9-10% increase, to the Department's \$2 million annual budget, depending on whether the Village eliminates a dedicated part-time shift to cover the additional full-time firefighter per shift sought by the Union.

**J. Bargaining History Between the Village and the Union**

The parties have successfully bargained three contracts, with the third having effective dates from May 1, 2004 to April 30, 2009. In 2009, the parties began negotiating a successor contract, their fourth. The parties were able to resolve most issues, with the exception of the Union's new proposal to increase the minimum staffing requirements, leading to the instant Interest Arbitration. (Tr. 581, 676-677)

Initially during negotiations for the fourth contract, the Union proposed minimum staffing of equipment, rather than minimum staffing of firefighter/paramedics per shift. The Union's initial staffing proposal included the requirement of a minimum of two paramedics on an ambulance and four firefighters each on an Engine, Truck or Squad, which would have resulted in hiring 21 additional full-time firefighter/paramedics. This proposal remained on the bargaining table throughout negotiations until the Village received the Union's Final Offer for Interest Arbitration. (Un. Ex. 1 Tab 3; Tr. 582)

In its Final Offer, the Union withdrew its initial minimum equipment staffing proposal and instead proposed to modify the first sentence of Paragraph 12 of the MOA to increase the minimum scheduled staff from five full-time firefighter/paramedics to six, and a minimum staffing increase from four full-time firefighter/paramedics to five per shift. (Un. Ex. 7; Tr. 582)

**K. The Interest Arbitration Proceedings**

Pursuant to Section 14 of the Act, the parties selected, and the Board appointed this Arbitrator to serve as the Interest Arbitrator and Chairman of the arbitration panel in this proceeding. Thereafter, the parties waived the tripartite panel, allowing this Arbitrator sole authority to issue the Award in this matter. In accordance with the agreement of the parties, on February 21, 2011, the parties exchanged their respective lists of issues for Arbitration. On April 1, 2011, pursuant to agreement of the parties, the parties exchanged final offers on each issue. Prior to the Arbitration, the parties reached tentative agreement on all issues contained in their final offers with the exception of the issues related to minimum staffing. (Un. Ex. 1 Tabs 5-8)

**VIII. COMPARABLE COMMUNITIES**

Pursuant to Section 14(h)(4) of the Act, an arbitrator may base findings, in part, on a comparison of wages, hours, and conditions of employment with those of employees performing similar services in comparable communities. 5 ILCS 135/14(h)(4). Relevant data typically includes population, department size, total number of employees, number of bargaining unit members, income levels, sales tax revenues, Equal Assessed Valuation ("EAV"), general fund revenues, and geographic location. *City of Alton and Policemen's Benevolent and Protective Association, Unit 14*, Case No. S-MA-02-231 (Kossoff, 2003).

Here, the parties have stipulated to the following comparable communities:

Community	Minimum Staffing of Full-Time Firefighters	Population (2009)	Firefighters Per 1,000 Residents	Residents Per Firefighter
Burbank	8	28,095	1.14	878
Chicago Ridge	4	14,127	1.34	744
Country Club Hills	8	16,764	1.07	931
Forest Park	7	15,688	1.40	713
Hazel Crest	4	14,075	1.35	741
<b>Homewood</b>	<b>4 (lowest)</b>	<b>19,278 (5th)</b>	<b>0.83 (lowest)</b>	<b>1,205 (highest)</b>
La Grange	5	15,608	1.28	780
Matteson	8	17,420	1.84	544
Oak Forest	6	28,051	0.89	1,122
Park Forest	5	22,687	1.06	945
Villa Park	6	22,517	1.11	901

To summarize these statistics, the Village is among the lowest number of minimum staffing of full-time firefighters, with four. The Village has the fifth largest population, and has the lowest number of firefighters per capita and the highest number of residents per firefighter.

Additionally, among the comparable communities, five do not have any minimum staffing requirements in their contracts, namely Burbank, Chicago Ridge, Forest Park, Hazel Crest, and La Grange. Only two, Country Club Hills and Park Forest, have minimum staffing requirements prescribed by a contract. Additionally, both parties presented evidence regarding the number of calls per firefighter in the year 2010.

<b>Community</b>	<b>Calls per Firefighter in 2010 (Union Statistics)</b>	<b>Community</b>	<b>Calls per Firefighter in 2010 (Village Statistics)</b>
<b>Homewood</b>	<b>151</b>	Country Club Hills	195.54
Country Club Hills	141	<b>Homewood</b>	<b>164.73</b>
Matteson	139	Hazel Crest	163.53
Forest Park	136	Chicago Ridge	160.33
Hazel Crest	126	Forest Park	147.62
Chicago Ridge	126	Matteson	141.47
Park Forest	126	Park Forest	139.76
Oak Forest	120	Burbank	129.48
Villa Park	95	Oak Forest	128.17
La Grange	90	La Grange	106.42
Burbank	75	Villa Park	100.21

Additionally, the Village presented evidence regarding the make-up of each department. (Er.

Ex. 18)

<b>Community</b>	<b>Full-time Fire-fighter</b>	<b>Part-time Firefighter</b>	<b>Calls (2010)</b>	<b>Stations (2010)</b>	<b>Equipment</b>
Homewood	15	19	2,471	1	1 Truck, 2 Engine, 2 Ambulance
Burbank	27	n/a	3,496	2	n/a
Chicago Ridge	15	n/a	2,405	2	n/a
Country Club Hills	13	20	2,542	2	2 Truck, 2 Engine, 2 Ambulance
Forest Park	21	n/a	3,100	1	n/a
Hazel Crest	15	0	2,453	1	1 Truck, 2 Engine, 2 Ambulance
La Grange	19	0	2,022	1	1 Truck, 2 Engine, 2 Ambulance
Matteson	32	0	4,527	2	3 Engine, 1 Truck, 1 Brush Engine, 2 Ambulance, 1 Reserve Ambulance
Oak Forest	24	20-25	3,076	2	1 Truck, 3 Engine, 3 Ambulance
Park Forest	21	18	2,935	2	3 Engine, 2 Ambulance
Villa Park	24	0	2,405	2	Ladder, Squad, 2 Ambulance, 1 Reserve Ambulance

## **IX. POSITIONS OF THE PARTIES**

### **A. The Union**

The Union contends that its proposal to increase minimum staffing should be adopted to increase the safety of firefighters and the general public. The Union argues that this is not a breakthrough issue requiring a higher standard of review because the Contract already provides for a minimum staffing requirement; it is not requesting a new benefit, merely the expansion of an existing benefit. As a result, the Union contends it need only prove that its staffing proposal

is more equitable than the current system and should have been agreed upon by the parties. Further, the Union contends that even if I were to apply the higher standard, the Union asserts that the current system is not working, creates operational problems for the Village, and is inequitable to the employees, and the Village has resisted the Union's attempts to address these problems. Particularly, the Union contends that the Village consistently opposed any increase to the number of full-time firefighters.

Regarding the Section 14(h) factors, the Union contends that the current system of minimum staffing is not working and its proposal is better suited to protect the interests and welfare of the public. According to the Union, Chief Schullo's staffing study, which applied NFPA 1710 standards, showed that the Department is currently understaffed and needed at least six additional full-time firefighters to resolve the issue. The Union contends that Schullo's staffing study should be given significant emphasis because it is the only study submitted into evidence. While the Union seeks three additional full-time firefighters rather than the six recommended by Schullo, the Union asserts that its proposal is intended as a stepping stone towards a well-staffed Department.

The Union also contends that the current staffing level raises issues of firefighter safety. The Union contends that the recent history of the Department reveals safety issues, pointing to the IDOL Citation, the March 30, 2010 incident and NIOSH Report, and the loss of the ambulance license. With additional full-time firefighters on each shift, the Department will be better able to staff all of its equipment.

Additionally, the Union contends that a review of comparable communities shows that the Department is understaffed. The Village has the lowest minimum staffing requirement with

four firefighters, while other villages have up to eight. According to the Union, the Village receives among the highest calls per firefighter, yet the lowest number of firefighters per capita. As a result, the Union contends that the Department should have additional full-time firefighters to align with its comparable communities.

The Union also contends that the Village has the ability to pay for three additional full-time firefighters. According to the Union, economic difficulties and a depressed economy are not a sufficient basis to deny this proposal. Further, the Village's current general fund balance and salary liabilities provide it the capacity to hire additional firefighters.

Lastly, the Union contends that the use of part-time firefighters and Mutual Aid should not replace the more reliable use of full-time firefighters.

As a result, the Union contends that this Arbitrator should adopt its proposal to add one additional firefighter to each shift.

## **B. The Village**

The Village contends that the current minimum staffing requirement is working as the parties intended and the *status quo* should not change. The Village argues that the parties resolved the issue of minimum staffing when it negotiated the MOA and the Union is attempting to increase those requirements shortly after this agreement was implemented.

The Village contends that this is a breakthrough issue, and as such, the Union has a higher standard of proof than that of a minor change in the existing *status quo*. The Village contends that the Union has not provided sufficient evidence to prove that in less than two

years after the MOA was negotiated, the *status quo* is dysfunctional or created inequities. The Village argues that the Union relies on evidence previous to the MOA, which does not reflect the current operations of the Department. Additionally, the Village contends that the NIOSH Report, which was issued after the MOA, contains factual inaccuracies and otherwise made only one recommendation regarding staffing.

Additionally, the Village contends that the Union's proposal of adding three full-time firefighters would not have a practical effect of increasing staffing because the Village has the contractual right to add or subtract the use of part-time firefighters. As a result, the Village would merely replace the part-time shifts with full-time firefighters, leaving no gain in staffing per shift. The Village also contends that even with the Union's proposal, the Village would experience no change in its reliance on Mutual Aid. Finally, the Village contends that the addition of three firefighters would result in a 9-10% budget increase without improving operations or increasing the total number of firefighters on a shift.

As a result, the Village contends that the current staffing requirements remain in place.

## **X. DISCUSSION AND FINDINGS**

### **A. Introduction**

After a complete and thorough review of all the evidence and argument presented in this case, I find that the increased minimum staffing requirement proposed by the Union is a breakthrough issue because it seeks to significantly change the *status quo* of the Contract. Applying the burden of proof in a breakthrough situation, the Union has failed to show that

the current minimum staffing has not worked as anticipated by the parties at the time that they entered into the MOA, nor has the Union established any inequities with the existing minimum staffing requirement. Finally, the Union has been unable to prove that the Village has resisted attempts to bargain over the change.

Additionally, even if this was not a breakthrough issue, the Union failed to establish that it met the Section 14(h) factors for Interest Arbitrations. The parties specifically discussed Factor 3, regarding “the interests and welfare of the public and the financial ability of the unit of government to meet those costs”, and Factor 4, regarding a “comparison of the wages, hours and conditions of employment” of the Union employees with employees in comparable communities.

Regarding Factor 3, the Village has established that the benefit to the Department of adding one full-time firefighter per shift does not significantly impact the interests and welfare of the public. Because the Contract makes staffing of part-time firefighters optional, the net result would mean no additional firefighters would be added to any shift. Meanwhile, the addition of three full-time firefighters would add significant costs to the Village during a difficult economic period.

As for Factor 4, a comparison of the working conditions of the Department’s firefighters with those in comparable villages does not reveal a significant discrepancy that would require adoption of the Union’s proposal in this Interest Arbitration.

As such, the Union has not been able to meet either burden of proof. It has not been able to show that the current staffing system is broken. Further, even if this were not a

breakthrough issue, the Union has not been able to meet its burden, using the traditional factors identified in Section 14(h).

The Village's proposal is accepted.

## **B. Discussion**

The initial inquiry in the analysis of this Interest Arbitration involves whether the Union's proposed changes to the MOA qualify as a relatively minor change in the *status quo* of existing benefits, requiring a lower burden of proof, or whether the Union's proposal constitutes a new or dramatically changed benefit that would be considered a breakthrough issue, requiring a heightened standard of proof. The party seeking to change an existing provision of a contract bears the burden of proving the need for the change. In cases in which the requested change is to improve the *status quo* of an existing benefit, such as an increase in pay or amount of vacation time, arbitrators require a burden of proof that demonstrates that the change is preferable or more equitable, based on the factors identified in the Act. *Village of Oak Brook and Illinois F.O.P. Labor Council*, Case No. S-MA-09-017 (McAlpin, 2011) Conversely, where the requested change seeks to create an entirely new or a significant change in a benefit or procedure, arbitrators apply a higher standard or a breakthrough analysis before the Section 14(h) factors are considered. "The traditional way of conceptualizing Interest Arbitration is that parties should not be able to obtain in Interest Arbitration any result which they could not get in a traditional collective

bargaining situation.” *City of Burbank and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-97-056 (Goldstein, 1998)

As established in *Will County Board and Sherriff of Will County*, Case No. S-MA-88-09 (Nathan, 1988) and *City of Burbank*, arbitrators typically apply a 3-factor test that a party must meet in order to demonstrate that a major change in the *status quo* is needed:

- 1) the old system or procedure has not worked as anticipated when originally agreed to;
- 2) the existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and
- 3) the party seeking to maintain the *status quo* has resisted attempts to bargain over the change (i.e., refused a quid pro quo).

*City of Burbank*, Case No. S-MA-97-056 (Goldstein, 1998).

With these principles in mind, the arbitrator considers, “... what the parties may have reasonably agreed to if they had been successful in compromising and settling the open issues.” *Wood Dale Fire Protection District and Wood Dale Professional Fire Fighters Ass'n*, S-MA-07-260, at 33 (Winton, 2008)

I have carefully considered the record in this case, including all the evidence and arguments that have been forwarded by the parties. I agree with the Village that the Union’s proposal to increase the minimum staffing requirement is a breakthrough issue. I find that the Union is attempting to dramatically change the *status quo* in the Department, rather than simply modifying an existing benefit. I disagree with the Union that this is a

minor change in existing benefits. Rather, it is a major modification to the existing manning structure.

On July 6, 2009, the Union and the Village negotiated in good faith and signed the MOA, for the first time establishing minimum staffing requirements. That MOA states as follows:

Each shift shall be scheduled with 5 full time firefighter/paramedics with at least 4 full time firefighter/paramedics working at all times and with 1 of these 4 serving as a lieutenant or acting shift officer. Part time firefighter/paramedics may be scheduled up to a maximum of 72 hours total per 24 hour shift. The part time slots comprising the first 36 hours of the 72 hours per shift may be unscheduled or unfilled.

Subsequent to the MOA, the Union sought during negotiations for the successor contract to increase the minimum staffing requirements. Rather than a mere increase in wages or amount of vacation time, the addition of three full-time firefighters is effectively a new benefit. While the Union argues that its proposal merely expands the benefit it already received under the MOA, in applying the 3-part test, it is evident that this additional staffing will change the *status quo* in a dramatic fashion.

Further, the Union acknowledged that its intent in negotiating the MOA was to achieve "getting its foot in the door" with a minimum staffing requirement, knowing successor contract negotiations were upcoming in which the Union would seek an increase in minimum staffing. This evidence indicates that the Union seeks to obtain through this Interest Arbitration a significant departure from an existing provision that qualifies as a breakthrough change based on the precedent cited above.

Addressing the three factors in turn, first, the evidence does not establish that the Department's minimum staffing has not worked as intended since the MOA. As the Village points out, much of the Union's evidence and arguments regarding minimum staffing relates to events that took place in 2007 and 2008, prior to the MOA's implementation in July 2009.

The Union relies heavily on the opinions and suggestions that Chief Schullo expressed in his staffing study. According to Chief Schullo, the Department would need the addition of at least six full-time firefighters for adequate staffing. However, Chief Schullo's Report preceded the improvements made to the staffing of part-time firefighters. Also subsequent to Schullo's Report, there was a decrease in the overall number of calls to the Department.

Additionally, and most importantly, the Union was aware of the recommendations made by Schullo when it negotiated the MOA. The Union did not propose Schullo's suggested staffing increases during the negotiations of the MOA, yet relies on them to establish its requested increase in this Interest Arbitration. The Union should not be able to obtain a benefit in this Interest Arbitration based on information it had prior to the MOA of the current Contract.

Next, the Union has not established that the Village's use of part-time firefighters has not worked since the execution of the MOA. The Union presented testimony from Chief Schullo and Deputy Chief Johnson that part-time firefighters were unreliable prior to 2007. However, the Village presented credible testimony regarding the improvements made to the staffing and training of part-time firefighters. Specifically, part-time firefighters work

more than 98% of their dedicated scheduled shifts and must complete all of the training requirements that the Illinois Department of Labor requires of full-time firefighter/paramedics. As a result, the Union's argument that the use of part-time firefighters has left the Department understaffed fails.

The Union additionally points to the Department's use of Mutual Aid as evidence that the present minimum staffing requirements are insufficient. Specifically, the Union asserts that when Department firefighters are responding to a Mutual Aid call, an insufficient number of firefighters will be available to respond to calls within the Village if only the minimum number of firefighters is on duty. However, the evidence has shown that 70% of all calls to the Department are medical calls requiring an ambulance, and the Union's proposal would not improve the Village's ability to respond to ambulance calls. The Village has two ambulances and two firefighter/paramedics are required to respond with the ambulance. Under the current minimum staffing requirements, if two ambulance calls are received at the same time, four out of the five or six scheduled firefighters would respond with the two ambulances, leaving one or two scheduled firefighters and no ambulances behind. If the Village receives a third ambulance call, the Village would have to use Mutual Aid because both ambulances are unavailable even though one or two scheduled firefighters are at the fire station. Under this example, the Union's proposal to add one additional full-time firefighter would not change this outcome because two or three scheduled firefighters would remain at the fire station. The Village would still have to use Mutual Aid to respond to the third ambulance call because both ambulances would be responding to the other calls.

Additionally, the evidence has shown that the Village's current staffing level does not violate any MABAS standard operating procedure. No MABAS 24 or Auto Aid fire department has raised any concerns with the Department regarding its ability to respond or its staffing levels. Further, the Village's current staffing allows it to effectively respond to 95% of ambulance calls on its own.

As a result, the Village's present use of Mutual Aid does not establish that the current minimum staffing is not working.

The Union also asserts that the Village's loss of its ambulance certification in 2007, for failure to adequately staff its second ambulance, shows that additional full-time firefighters are needed. The evidence showed, however, that SCCEMS found in its April 8, 2011 review of the Department that the staffing levels met its requirements. As a result, I cannot substitute my judgment for that of the licensing body, and find that the past license issue does not establish that the minimum staffing levels are not working as anticipated.

The Union did present evidence relating to events that occurred following the implementation of the MOA, namely the NIOSH Report relating to the March 30, 2010 fire and death of firefighter Brian Carey. However, the portion of the NIOSH Report that the Union relies upon apparently is based upon a factual determination regarding how certain personnel arrived on the scene. The Union presented no other evidence that the current minimum staffing requirements contributed to the events of March 30, 2010.

For these reasons, the Union has not shown that minimum staffing has not worked as the parties intended when they entered into the MOA.

The second prong of the 3-pronged test requires that the Union proves that the existing system poses any inequities for the Union; however, it has failed to do so. The Union contends that understaffing in the Department has created issues for the Union by compromising the safety of its bargaining unit members. The Union relies on Chief Schullo's opinion that he sometimes found fire ground operations to be "dangerous." Additionally, the Union asserts that IDOL's citation of the Village for failure to comply with OSHA's two-in, two-out requirement also creates safety concerns. Lastly, the Union points to the NIOSH Report regarding "insufficient staffing" as a contributing factor in the March 30, 2010 fire.

The Village, however, has presented compelling evidence that the Union's proposal would not guarantee that the total minimum staffing for each shift would be increased. The MOA gives discretion to the Village to eliminate one of the dedicated part-time firefighter/paramedic shifts and replace it with the additional full-time firefighter/paramedic. The MOA states, "Part time firefighter/paramedics may be scheduled up to a maximum of 72 hours total per 24 hour shift. The part-time slots comprising the first 36 hours of the 72 total hours per shift may be unscheduled or unfilled." Thus, while the Union's final offer would increase the total number of full-time firefighters from 15 to 18, those three additional full-firefighters could merely replace the part-time firefighters assigned to a shift. The Union's proposal ultimately provides more staffing for full-time firefighter/paramedics as a substitute for part-time firefighters, but it would not increase the total minimum staffing on a shift.

Given the current training requirements for part-time firefighters, there would be no significant improvements to the safety of firefighters as a result of the Union's proposal.

Therefore, the Union has been unable to prove that the existing minimum staffing poses inequities for the Union, sufficient for the Union to meet the second prong of the 3-part test.

The third prong of the test requires that the party seeking to change the *status quo* must prove that the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these issues. The Union has been unable to meet this burden. In support of its argument, the Union relies on evidence dating from before the parties entered into the MOA. Specifically, the Union contends that Village Manager Mark Franz made numerous revisions to the Schullo Report, suggesting that Franz attempted to undermine the Report. Further, the Union asserts that Village President Hofeld's indications to Chief Schullo that the Village would not be hiring any more full-time firefighters imply a reluctance to bargain on this issue. The evidence revealed, however, that the Village had been operating under a hiring freeze at the time Hofeld made those statements. The Village subsequently revised its part-time firefighter staffing, which addressed some of the staffing shortages. Additionally, Chief Schullo admitted at the Hearing that the only changes to his Report in disagreement with Franz were the changes to the number of options that Schullo was offering to the Village regarding hiring additional full-time firefighter/paramedics. Further, it is clear that subsequent to Schullo's Report, the parties successfully bargained for the MOA. Based on this evidence, I find that the Village did not resist attempts to bargain over minimum staffing.

Next, even if this was not a breakthrough issue, the Union has not met its burden of proof using the statutory factors. The first factor applicable to this matter is Factor 3, "the

interests and welfare of the public and the financial ability of the unit of government to meet those costs.” 5 ILCS 315/14(h) As discussed above, the Union has not provided sufficient evidence that the current minimum staffing does not meet the interests and welfare of the public, nor has the Union established that its proposal to add one full-time firefighter to each shift, at the potential expense of a part-time firefighter, would improve the interests and welfare of the public.

However, the Village did present compelling evidence that the addition of three full-time firefighters would add significant costs. There would be a cost increase of between \$217,285 and \$294,785 to a \$2 million budget. During a time period when the Village is using its Reserve Fund to balance its budget, this raises a significant question regarding the Village’s ability to pay for these additional positions.

Because the Union has not presented sufficient evidence of improvements to the interests and welfare of the public and there would be significant cost to the Village, the Union cannot meet this factor.

The second factor applicable is Factor 4, a comparison of the working conditions of firefighters in the Village to those in comparable communities. The Union asserts that the high numbers of calls per firefighter and low number of firefighters per capita, along with the low number of minimum staffing compared to the comparable communities, indicates that the Union’s proposal should be adopted.

The Village asserts however, and I agree, that the Union’s arguments regarding minimum staffing do not account for the Village’s use of part-time firefighters. For instance, Hazel Crest maintains a minimum staffing of four full-time firefighter/paramedics and

one part-time firefighter/paramedic, who does not have a set schedule. The Village uses part-time firefighters for minimum staffing, including one part-time firefighter during the day shift and two part-time firefighters during the overnight shift. Therefore, the Village staffs more total firefighters per shift than Hazel Crest.

Country Club Hills has four full-time firefighter/paramedics per shift, a population of 16,764 and is similar in size to the Village's population of 19,278. In 2010, the two communities received approximately the same number of calls. The Village employs a total of 15 full-time and 19 part-time firefighters, while Country Club Hills employees 13 full-time and 20 part-time firefighters. Country Club Hills borders on the Village and is one of the communities with which the Village maintains an Auto-Aid Agreement. With their similar populations, numbers of calls, numbers of total firefighter/paramedics and identical minimum staffing, the comparison to Country Club Hills supports maintaining the present minimum staffing. Overall, the comparison to other communities does not require a change to the *status quo* in this case.

As noted by numerous arbitrators, interest arbitration is a fundamentally conservative process and parties should not be able to obtain in interest arbitration what they could not at the bargaining table. In the instant case, the Union sought to significantly modify the minimum manning provision of the Contract. As noted above, I have determined that this is a breakthrough issue and the Union has not met its burden to prove that its proposal meets the standards under the 3-pronged breakthrough test. Further, even if this were a minor change to an existing benefit, the Union has not been able to prove that its proposal should prevail based on the factors set forth in the Act. As the Union has been unable to meet its burden to show

that this Interest Arbitrator should grant an increase in manning, it is now up to the parties themselves to negotiate any changes. I agree with Arbitrator Briggs' statement in *City of Rockford and City Firefighters, Local 413, IAFF*, Case No. S-MA-97-199, at 32 (Briggs, 1998) that "It is also clear that at the bargaining table the parties have successfully resolved their past differences of opinion with regard to minimum manning. Firefighter safety is fundamentally a matter for the parties themselves to address. Their respective bargaining teams have the necessary expertise to do so; interest arbitrators do not. For that reason, the Neutral Chair is inclined to favor the final offer on this issue which departs the least from the negotiated *status quo*." Here, the parties successfully negotiated over the minimum staffing levels, as set forth in the MOA, and the issue of minimum staffing should be addressed by the parties, not the Interest Arbitrator.

As a result of my denial of the Union's minimum staffing proposal, I also decline to grant the Union's proposal to revise the language in the Article III's Management Rights clause.

The Village's proposal to retain the *status quo* with regard to minimum manning as set forth in the MOA is accepted.

## XI. AWARD

For the reasons stated in this Opinion and Award, the Arbitrator finds:

The Village's proposal is accepted. I find that the increased minimum staffing requirement proposed by the Union is a breakthrough issue seeking to change the *status quo* of the Contract. The Union failed to prove that the current minimum staffing has not worked as the parties had anticipated when they entered into the Memorandum of Agreement. Further, the Union has failed to establish any inequities with the existing minimum staffing requirement, and has failed to show that the Village has resisted attempts to bargain over the change.

Even if I were to apply the relevant criteria as identified in Section 14(h) of the Illinois Public Labor Relations Act, the Union fails to meet those factors. Specifically, the addition of one full-time firefighter per shift does not significantly impact the interests and welfare of the public, but does add significant costs to the Village. Further, a comparison of the working conditions of firefighters in the Village to firefighters in comparable villages does not reveal a significant discrepancy that would require adoption of the Union's proposal in this Interest Arbitration.

As a result, I select the Village's proposal that makes no changes to minimum staffing and the Memorandum of Agreement, and I reject the Union's proposal. As a result of my rejection of the Union's minimum staffing proposal, I deny the Union's proposal to revise the language of the Article III, the Management Rights clause.

Finally, pursuant to the parties' request, the Tentative Agreements identified in Union Ex. 1, Tab 9 as amended by the email of June 16, 2011 are hereby incorporated into this Award.

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**Steven M. Bierig, Arbitrator**  
**November 29, 2012**