

AWARD OF INTEREST ARBITRATOR

In the Matter of Interest
Arbitration

between

Village of Glenwood

and the

Metropolitan Alliance of Police,
Chapter 612

Opinion and Analysis,
Findings of Fact,
and Award
by
Arbitrator
Peter Feuille
in
ILRB No. S-MA-11-185
FMCS No. 13-01319-6

Date of Award: April 18, 2014

APPEARANCES

For the Village:

Mr. Jeremy Edelson, Laner Muchin, Ltd., Attorney
Mr. Mark Bennett, Attorney
Ms. Donna M. Gayden, Village Administrator
Mr. Demitrous Cook, Chief of Police
Mr. Derek Peddycord, Deputy Chief of Police
Ms. Sandy Chandler, Human Resource Coordinator
Mr. Gregory Ray, BFPC Commissioner

For the Union:

Mr. Keith A. Karlson, Reimer & Karlson, LLC, Attorney
Mr. Alfred J. Molinaro, Legal Asst., Reimer & Karlson
P.O. Glenn White, President
P.O. Zachary Cotton, Vice President
P.O. Daniel Fisher, Recording Secretary
P.O. Gene Shedore, Witness
Mr. Robert Trevarthen, Expert Witness

I. INTRODUCTION AND BACKGROUND

The Metropolitan Alliance of Police, Chapter 612 ("Union," "MAP") and the Village of Glenwood ("Village," "Employer") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2010-2011 CBA that expired on December 31, 2011 (Union Exhibit 6 ("UX 6"), Employer Exhibit 3 ("EX 3")). During their negotiations, the parties resolved all open issues except one. Accordingly, they invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," "Act"). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format, and agreed that I would serve as the sole Arbitrator (Transcript, page 6 ("Tr. 6")). The Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter.

Additionally, the parties constructively waived the Act's requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator's appointment, and the parties constructively agreed to extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter. Among other things, the parties agreed that I would not have a deadline to issue the instant Award. I am most grateful for the parties' willingness to modify the arbitration process timelines contained in Section 14.

By mutual agreement, the parties held an arbitration hearing on October 10, 2013, in Glenwood, IL. This hearing was stenographically recorded and a transcript was produced. The

parties waived oral closing arguments at the hearing and instead submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs and supporting materials on January 4, 2014, the record in this matter was closed.

II. THE ISSUE

The record shows that the parties agree there is only one issue on the arbitral agenda: promotions. The parties additionally agree that promotions is a non-economic issue within the meaning of Section 14 of the Illinois Labor Relations Act (Tr. 18).

III. STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel [or the sole arbitrator, if the parties have waived the panel format], more nearly complies with the applicable factors prescribed in subsection (h)." Regarding non-economic issues, Section 14 directs that the "findings, opinions, and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h)." As this latter language indicates, on non-economic issues Illinois interest arbitrators are not limited to a decision choice between selecting only the final offer of either the employer or the labor organization. Rather, on these

issues interest arbitrators have a considerable amount of decision flexibility (see Employer Brief, page 2 ("Er.Br. 2")).

Section 14(h) directs that the arbitration panel shall base its findings, opinions and order upon the following factors, "as applicable." These factors, in their entirety, are:

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

As noted, the Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the

Arbitrator's responsibility to decide how each of these criteria should be weighed.

More importantly, because the promotion issue is a non-economic issue within the meaning of the Act, the Arbitrator is not constrained to a decision choice that is limited to selecting one party or the other party's final offer. Instead, the arbitrator may determine the outcome on this single issue on the arbitral agenda in a manner that reflects the Arbitrator's belief in the appropriate outcome.

IV. THE PARTIES' OFFERS AND ARGUMENTS

The Parties

Village. The Village is a general purpose, home rule municipality of about 9,000 people located in the southeast suburbs of Chicago near the Indiana border. The Village Administrator is the Village's chief administrative officer.

Among the services provided by the Village is police protection through the Glenwood Police Department ("Department"). The Chief of Police is the top official in the Department. The current chief is Chief Demitrous Cook, and the current deputy chief is Deputy Chief Derek Peddycord.

Union/Bargaining Unit. The Union is the exclusive bargaining representative for a bargaining unit of about 21 Department sworn officers, including about 15 patrol officers and six sergeants (UX 25).

Village-Union Bargaining Relationship. The Union was certified as the exclusive representative of the rank-and-file

police bargaining unit in 2010. The first CBA between the Village and the Union expired on December 31, 2011 (EX 3, UX 6), and the parties have been negotiating since then for a successor agreement. Prior to this unit's representation by the MAP, Teamsters Local 726 represented this unit for a period of approximately 15-20 years (Tr. 33).

The Parties' Positions

Status Quo. Although both parties propose a change in how the current CBA addresses the police promotional system in Glenwood, it is accurate to portray the Union as the moving party on this issue (Tr. 15-17; Er.Br. 1-2). The current CBA contains no language that addresses promotions (UX 6), and there is no evidence in the record that promotions were governed by language in any of the parties' prior CBAs. Instead, the promotional process is governed by the following language from the Board of Fire and Police Commissioners ("BFPC") Rules and Regulations (EX 1):

CHAPTER IV – PROMOTIONAL EXAMINATIONS

SECTION 1 – GENERAL

The Board, by its rules, shall provide for promotion in the Police and Fire Departments on the basis of ascertained merit and seniority in service and examination, and shall provide in all cases, where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank as desire to submit themselves to examination. Probationary police officers and fire fighters shall be ineligible to test for promotion during their probationary period. All promotions shall be made from the three (3) individuals having the highest rating, and where there are less than three (3) names on the promotional eligibility roster, as originally posted, or remaining thereon after appointments

have been made there from, appointments to fill existing vacancies shall be made from those names or the name remaining on the promotional register. The method of examination and the rules governing candidates for promotion are specified below. The Board shall strike off the names of candidates for promotional appointments after they have remained thereon for more than three (3) years, provided there is no vacancy existing which can be filled from the promotional register. For the purpose of determining that a vacancy exists, the Board must have received notice from the appropriate corporate authorities to fill an existing vacancy prior to the date the name(s) are to be stricken from a promotional eligibility register. Each weighted component of the examination process shall be based upon a scale of 1 to 100.

- a) The final Promotional Examination score shall be determined as follows:

<u>Examination</u>	<u>Weight</u>
Written Test Score	45%
Oral Test Score	45%
Department Merit and Efficiency (based on a scale of 1-100)	10% maximum of 10 points

Seniority

½ point per year for each full year of service on the Glenwood Police or Fire Department up to a maximum of five (5) points.

- b) In the event no candidate from an immediate next lower rank qualifies for promotion, the Board in determining next in order of rank in professional examinations herewith determines a policy of extending the examination successively through all the orders of rank in the services in an endeavor to qualify suitable eligible or eligibles for the vacancy or vacancies existing before extending the examination to the general public.
- c) Candidates who are otherwise qualified and have timely requested credit for prior military service shall be granted veterans preference points as provided by state statute.

SECTION 2 - TOTAL SCORE

A Candidate's total score shall consist of the combined scores of the merit/efficiency rating, written examination and oral examination plus seniority and veterans' preference points. A Candidate's total score must be 70 or greater to be placed upon a final promotional eligibility list. Candidates shall take rank upon a promotional eligibility roster in the order of their relative excellence as determined by their total score. In the

event of a tie score, the placement of the tied candidates' names on the eligibility list shall be determined by lot, in the presence of a quorum of the Board, in whatever manner the Board deems appropriate.

SECTION 3 - PROMOTIONAL VACANCY - PROBATION

Upon notice from the appropriate corporate authority that a promotional vacancy exists, the Board shall select the individual to be promoted in the manner specified in Section 1 of this Chapter IV. All promotional appointments shall be for a probationary period of twelve (12) months from the original date of appointment. Upon notice to the Board, during an officer's probationary period, that a recently promoted officer is not performing in a satisfactory manner, the Board, at its discretion, may summarily remove the officer from his newly acquired rank at which time the individual will revert to his or her former classified rank. (EX 1).

Because there are only two ranks in the Glenwood Police Department below the rank of Deputy Chief, the above-quoted promotional language regulates promotions only from police officer to police sergeant. In addition, these are the only two ranks in the bargaining unit covered by the parties' CBA (EX 3, UX 6).

Union's Final Offer

The Union seeks to thoroughly overhaul the police promotion system in the Village due to the Union's firm belief that the current promotional system is "broken" (Tr. 15). Specifically, the Union proposes to add a new Section 6.6 to Article 6 of the CBA, as follows (UX 30):

SECTION 6.6 - PROMOTIONAL EXAMINATIONS

SECTION 6.6.1 - GENERAL

The Board of Fire and Police Commissioners ("Board") shall provide for the promotion to the rank of sergeant at the Police Department on the basis of ascertained merit, seniority in service, and examination. The Board shall provide, in all cases, where it is practicable, that vacancies to the rank of sergeant

shall be filled by promotion. All examinations for promotion to sergeant shall be competitive among members of the bargaining unit holding the rank of patrol officer; officers seeking promotion to sergeant shall offer notice of their desire to submit themselves for examination. Probationary police officers shall be ineligible to test for promotion during their probationary period. All promotions shall be made from the three (3) individuals having the highest rating, and where there are less than three (3) names on the promotion eligibility register, as originally posted, or remaining thereon after appointments have been made there from, appointments to fill existing vacancies shall be made from those names or the name remaining on the promotional register. The method of examination and the rules governing the examinations for promotion are specified below. The Board shall strike off the names of candidates for promotional appointment after they have remained thereon for more than three (3) years, provided there is no vacancy existing which can be filled from the promotional register. For the purpose of determining that a vacancy exists, the Board must have received notice from the Village Board of Trustees to fill an existing vacancy prior to the date the name(s) are to be stricken from the promotional eligibility register. Each, [sic] weighted component of the examination process shall be based upon a scale of 1 to 100.

- a) The final Promotional Examination Score shall be determined as follows:

<u>Examination</u>	<u>Weight</u>
Written Test Score	45%
Oral Test Score	45%
Ascertained Merit	10%
(based on a scale of 1-100) maximum of 10 points	

Seniority

1/2 point per year of each full year of service on the Glenwood Police Department up to a maximum of five (5) points.

- b) Candidates who are otherwise qualified and have timely requested credit for prior military service shall be granted veterans preference points as provided by state statute.

SECTION 6.6.2 - TOTAL SCORE

A Candidate's total score shall consist of the combined scores of the ascertained merit rating, written examination, oral examination, plus seniority and veterans' preference points. A Candidate's total score must be 70 or greater to be placed upon a final promotional eligibility list. Candidates shall take rank upon a promotional eligibility roster in the order of their relative excellence as determined by their total score. In the

event of a tie score, the placement of the candidates' names on the eligibility list shall be determined by seniority.

SECTION 6.6.3 - PROMOTIONAL VACANCY

Upon notice from the Village Board of Trustees that a promotional vacancy exists, the Board shall select the individual to be promoted in the manner prescribed herein.

SECTION 6.6.4 - WRITTEN EXAMINATION

No less than six (6) weeks prior to the written examination, the Board will provide all officers participating in the promotional process with the following information:

1. The date and time of the written examination;
2. The name of the person or entity administering the test;
3. A copy of all the reference materials from which the questions on the test will be drawn; and
4. A description of the general format and approximate number of questions on the test.

The written test will be valid and deemed reliable by an appropriate third party authority, the [sic] written test will be administered by a properly credentialed third party. The written test will be administered only after ascertained merit and oral examination scores have been issued. The test will be graded by the properly credentialed third party. Tests and test results will be preserved for the duration of the promotional list.

SECTION 6.6.5 - ORAL EXAMINATION.

The oral examination will be administered by a properly credited [sic] third party. The oral examination will be validated and deemed reliable by an appropriate third party authority. No less than six (6) weeks prior to the administration of the oral examination, participants will be provided with the following information:

1. The date(s) and time(s) of the test;
2. The name of the person or entity administering the test;
3. A copy of all reference materials upon which the oral examination will be based; and
4. A general description of the format of the oral examination.

SECTION 6.6.6 ASCERTAINED MERIT

No less than six (6) weeks prior to the beginning of the process for promoting officers to the rank of Sergeant, the Board will provide officers with the following criteria by which ascertained merit will be determined. Ascertained merit will be awarded on a scale of 1 - 100 and determined as follows:

1. Any certifications and training issued by an entity certified by the Illinois Law Enforcement Training and Standards Board or similar certifying entity. Officers will receive 2 points per 8 hours of post academy training (up to 50 points);

2. Formal Education as follows to a maximum of 25 points

Associates	10 points
Bachelor	20 points
Masters or Higher	25 points

3. Performance evaluations to a maximum of 25 points

Performance evaluations will be administered annually in an impartial and fair manner. All patrol officers will be evaluated by the same standard. Each employee will receive up to 25 points for his/her raw score on the two (2) most recent performance evaluations. The 25 points will be calculated by dividing the employees combined raw evaluation score by the maximum available score, then, [sic] then multiplied [sic] that number by 25.

Formula $\frac{\text{Employee combined score}}{\text{Total combined score possible}} \times 25 = \text{Performance Eval. Points}$

SECTION 6.6.7 - ORDER OF TESTING.

Testing and scoring will be performed in the following order. At least 4 weeks before the oral and written examinations are scheduled, patrol officer's [sic] ascertained merit and seniority scores will be posted. After ascertained merit and seniority scores have been posted, the oral examinations will occur followed by the written examination.

SECTION 6.6.8 - TRANSPARENCY

After each stage of the promotional process, officer's [sic] scores will be posted. After the results have been posted, officers and the Union will have the opportunity to review copies of completed tests and other materials used in evaluating officers seeking promotions.

Union Arguments

The BFPC conducted its most recent round of police sergeant promotional testing in or about December 2012 (EX 1). The Union says that the promotional testing used during this promotional process was flawed, as will be explained more fully below.

The Union says that the current system by which police officers are promoted to sergeant in the Village is broken. Neither the Chief of Police nor the Village's labor attorney understands what "ascertainable merit" is. The Village agrees that it did not accurately calculate scores used for promotions.

Nevertheless, the Village says it is "comfortable" with retaining the current standard of merit and efficiency (Tr. 242). As a result, the Union's goal in this proceeding is to implement a more open, accurate, and predictable system by which unit members will be measured during the promotion process.

For instance, an accurate and objective productivity measurement system would accurately record the occurrences of police officer activities that the Village believes should be recognized. And for each occurrence (e.g., each moving violation citation, each misdemeanor arrest, each felony arrest (with gradations based upon the seriousness of the offense), each DUI driving arrest, and so on), an accurate measuring system would assign the same point value to that particular activity each time it was performed by an officer. These scores would be collected for specific time periods (weeks, months, years, etc.) in a manner designed to determine the "productivity" of the officer during a particular time period and over time.

However, the Union argues that the productivity scores assigned in the Glenwood P.D. are neither accurate nor objective, as the Union demonstrated at the instant arbitration hearing.

Deputy Chief Derek Peddycord, the designer of the current productivity measuring system, testified he does not know the point value for each activity that is measured in his system (Tr. 77), his system was not designed to play any role in promotions (Tr. 74), and he readily admitted that sergeants are allowed to award additional points to officers if the sergeants believe the officer did a "great job" (Tr. 78-79). Peddycord also noted that

sergeants have significant leeway when determining how to reward various activities, e.g., "what Sgt. Cotton may see and award other [points] for Sgt. Sanchez may not" (Tr. 81). Moreover, Peddycord agrees that officers who work at different times of day or night have different opportunities, in that opportunities for achieving points varies across shifts (Tr. 82, 112). Further, Peddycord does not remember whether officers who sought to be promoted to sergeant were ever told the "productivity" system would be used as a promotional measure (Tr. 106). Similarly, officers were never told that, when they were performing tasks, the productivity system would be used for promotional purposes (Tr. 106-107).

When he compiled his data, Peddycord admitted he made mistakes (Tr. 82-83). For example, he gave Officer Wilbanks credit for 17 DUI arrests when Wilbanks had made no such arrests (Tr. 83). Peddycord also recorded an inaccurate number of times Wilbanks affected an arrest warrant (Tr. 93-94). Peddycord was aware of these mistakes, but he chose not to correct them because "that would not look good" (Tr. 91-92). Peddycord also marked Officer Burke as above average in productivity for 2012, when in fact he was below average (Tr. 111). Peddycord testified that he believes that the promotional process should promote the most qualified officers to the rank of sergeant, and to achieve that goal the promotional process should be accurate, be transparent, and hold officers to an ascertainable standard (Tr. 97).

The performance of Glenwood's police officers is periodically evaluated. Peddycord believes that performance

evaluations are the primary way management gives employees input about their performance (Tr. 112).

The Union called as an expert witness Dr. Robert Trevarthen. He testified he has represented more than 60 municipalities, fire protection districts, and school districts in Illinois (Tr. 120). He does not represent labor organizations in collective bargaining (Tr. 125). He has overseen and developed promotional testing processes for more than 50 boards of fire and police commissioners across Illinois (Tr. 124, 137). He testified that a promotional process "should be based on a measure and measures that are understood by everyone, should be related to what the department or the district wants their employees to do, and the measure should relate to their performance in pursuing those goals and objectives that are desirable to be effective in the position" (Tr. 133-134). Further, if a promotional process is "not accurate it's not credible" (Tr. 135). He believes that employees being evaluated for performance must be held to an ascertainable standard (Tr. 112). He additionally said that when an employer awards 10 percentage points to some promotion candidates and zero points to other promotion candidates, it mathematically skews the results (Tr. 148-149). An employer should only award zero points to an employee who is incompetent and ripe for termination (Tr. 148-149).

He also testified that having a credible promotional process is important in a paramilitary organization (Tr. 135). He testified that, in his experience, when departments implemented

an objective promotional process, marked improvement in morale followed (Tr. 139).

Another Union witness was Sgt. Zachary Cotton. He has been a Glenwood officer for 16 years (Tr. 157). He testified that Chief Cook told him he would use "productivity" as the sole method of determining ascertained merit points (Tr. 183). Cotton then testified there is no consistent system for measuring productivity in Glenwood (Tr. 159). He testified that the sergeants in Glenwood were never given any standards with which to administer the productivity tracking system in a fair and equitable manner (Tr. 159, 180). The Union contends this is probably the reason why the sergeants administer the system inconsistently. For instance, some sergeants allow officers to accumulate points for multiple citations issued during a traffic stop, while other sergeants only give points for the highest value citation issued during a stop (Tr. 167). Moreover, Sgt. Cotton is not aware of any time when any department management team made the rank and file officers aware that "productivity" would be used to determine "ascertained" merit points (Tr. 160). Sgt. Cotton explained that the numbers used by Chief Cook to measure "productivity" were not accurate (Tr. 161). UX 31 is Sgt. Cotton's original documents reflecting officers' reports of productivity, and the Union argues that the information in UX 31 (original reports regarding officers' productivity) conclusively establishes that the numbers used in UX 17 (which are the Chief's productivity calculations) do not accurately reflect the

information reported by patrol officers or their sergeants (Tr. 161-162, 164, 169-172).

Sgt. Cotton also noted that the Chief's calculations of "productivity" did not include all areas of activity tracked by the system (Tr. 164-165). For instance, "DWLS" (driving while license suspended) was reported by officers and sergeants, but the Chief omitted that performance measure when calculating who would be awarded ascertained merit points (Tr. 164-165).

Sgt. Cotton also testified that during the multiple promotional processes conducted by the BFPC while he has been employed in the Department, the BFPC, to his recollection, never informed promotional participants of their scores on the oral or written exams (Tr. 184).

BFPC Commissioner Gregory Ray testified on behalf of the Village (Tr. 245). Commissioner Ray agreed in his testimony that no officer seeking a promotion should ever receive a zero under BFPC Rules (Tr. 254-255). At the same time, Ray admitted that several officers received zero points for merit and efficiency points, which were awarded by Chief Cook (Tr. 262).

The Union notes that currently a third party vendor administers the written and oral examinations (Tr. 260-261). After receiving raw scores from the outside vendor, the BFPC calculates their weighted values (Tr. 261-264). Commissioner Ray admits the BFPC inaccurately calculated the weighted value of the scores during the most recent promotional process (Tr. 264-265).

Police Chief Demitrous Cook testified. He has been Glenwood's Chief of Police since December 2010 (Tr. 273), and he

was Chief during the Village's most recent police promotional process. He testified that he awards merit and efficiency points as part of the promotional process. UX 10 indicates the points he awarded for merit and efficiency. Initially, the Chief wanted to use the three criteria specified in EX 25 as the basis for awarding merit and efficiency points (Tr. 277-278; a 1.5 mile run, a productivity review based on each candidate's work productivity, and a 30-minute oral interview with the Chief, Deputy Chief, and Village Administrator (EX 25)). After the Union expressed its strong disagreement with that process, the Chief decided to award merit and efficiency points based upon whether officers were above average or below average with regard to productivity (Tr. 281-282). If an officer was above average the Chief awarded him 10 points, and if he was below average the Chief awarded him zero points (Tr. 281-282). Chief Cook admitted he did not award points on a 1-100 scale, even though he was required to do so by BFPC rules (Tr. 316, 319). The Chief also admitted the productivity points were not calculated in an accurate manner (Tr. 287). Commissioner Ray agreed that several officers received zero points for merit and efficiency points, which were awarded by the Chief (Tr. 262).

The Union notes that the Village has called for the Union to be subject to a "breakthrough" analysis requirement on this promotional issue (i.e., a heightened standard of proof based on the fact that the Union seeks to adopt a new issue in the CBA). The Union vigorously disputes the Village's reasoning. The Union vehemently denies it is subject to any sort of "breakthrough"

requirement. The Union argues that the breakthrough concept does not apply because (1) there is not a bargained-for *status quo* in the promotional process, (2) the Union need not pay a *quid pro quo* to have its final offer selected, and (3) the Village also proposes changes to the current promotional system.

The Union notes there is no bargained-for *status quo* because the Village never bargained for singular control over the promotional process. As a result, the traditional "breakthrough" analysis is inapplicable because the parties have never bargained over this issue. As noted by Arbitrator Perkovich, "when a matter is before the parties after a history of tacit approval, rather than bilateral agreement, there is no status quo such that the issue can be characterized as a breakthrough" (*City of Blue Island and Fraternal Order of Police*, ILRB No. S-MA-00-0138 (Perkovich, 2001)).

Moving forward, the Union argues that it need not pay a *quid pro quo*. Relying on Arbitrator Goldstein's language in a prior interest arbitration case, the Union notes that the parties reached a "philosophical impasse" over the promotional process. In his award addressing fair share deductions in *Village of Western Springs and Teamsters Local 714*, 99 LA 125, 131 (Goldstein, 1992), Goldstein ruled that when the parties reach a "philosophical impasse" the moving party need not demonstrate that a *quid pro quo* was bargained for.

In the instant matter, the Village never asked why the Union wanted to have disputes over promotions resolved by an arbitrator. Instead, the Union says the Village just said "no."

Because the parties reached a philosophical impasse, they rendered the need for a *status quo* analysis inapplicable.

The Union further argues that another reason a breakthrough analysis does not apply is that the Village also presented a proposal to change the manner by which promotions are administered. In other words, in this proceeding, both parties are proposing to change the *status quo*. According to Arbitrator Goldstein, when both parties seek to change the *status quo*, the breakthrough analysis does not apply (*City of Belleville and Fraternal Order of Police*, 128 LA 452, 471 (Goldstein, 2010)).

The Union says that if it must meet a "breakthrough analysis" burden, it must show (1) that the existing system has not worked as anticipated when it was adopted, (2) the existing system has created operational hardships for the employer or else equitable or due process problems for the union, and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems (*Clinton County and Fraternal Order of Police*, ILRB No. S-MA-05-026 at 14 (LeRoy, 2005)). The Union argues that the Village's current promotional system creates intractable due process problems for the Union, especially when the Chief vetoes selected officers from being promoted. Additionally, these due process problems are compounded by the following: the BFPC does not follow its own rules, mathematical inaccuracies compromise the promotion process, the process is secretive, officers are not held to an ascertainable standard, Union representatives are discriminated

against, and officers perceive the promotional process as unfair and politically driven.

When examining promotion candidates' scores with and without "Chief's points" or "merit and efficiency points," the Union presented evidence that the Chief awarded selected candidates ten points and other candidates zero points, and no candidate received any points between zero and ten. Three candidates (Officers White, Fisher, and Schmidt) who ranked in the top four of all candidates when their scores were considered except for Chief's points, saw their rankings (and their chances for promotion) plummet after the Chief awarded each of them zero Chief's points while giving six other candidates ten Chief's points each (Union Brief, pages 40-42 ("Un.Br. 40-42")). The Union notes that Officer White is the Union President, and Officer Fisher is a Union delegate. The Union says that these data clearly show that the current system allows the Chief to pick and choose who will be promoted.

The Union says the evidence indicates the Chief has abused the discretion he is provided under the current system. When he was asked why he eliminated certain activities from the productivity system, he said "Because it was my discretion to pick what variables I wanted to measure" (Tr. 319). When asked to explain his reasoning, he replied "I just picked seven, that's all. No specific reason" (Tr. 315).

The Union emphasizes that the Chief did not follow the BFPC rules. Those rules clearly state, and Commissioner Ray confirmed, all of the elements of the promotional scores must be

issued on a 1 - 100 scale. Chief Cook clearly violated this requirement when he issued zero points to several promotional applicants. Moreover, the Chief made clear he had no intention of following that rule in the future (Tr. 316). He testified he would not award any points to an officer deemed to be "below average" (Tr. 316).

Chief Cook has not, and will not, follow the BFPC rules, and at the same time the BFPC has allowed Chief Cook to ignore the Board's rules. The Union notes that in Illinois, boards of fire and police commissioners are required to follow their own rules regarding promotions. The Union notes that Arbitrator Byron Yaffe held that the failure of a municipality to follow its own rules and regulations regarding promotions is sufficient cause to change the *status quo* and include promotional matters in the CBA (*North Maine Fire Protection District and North Maine Firefighters, IAFF, Local 2224*, ILRB No. S-MA-00-056 (Yaffe, 2000)).

The Union notes that all witnesses who testified agreed that a promotional process needs to be accurate. However, in Glenwood the numbers used to determine who will be promoted are not accurate. For instance, the Chief chose to award Chief's point in an invalid manner. As a result, the basis by which officers were awarded 10 percent of their promotional scores is questionable. This occurs because the Chief's productivity standard does not take into account a variety of police tasks requiring time, skill, and sacrifice. It also does not account for police officers who are trainers, assigned to various

specialties, interview witnesses, resolve disputes without an arrest, and so forth.

Both the Chief and DC Peddycord admitted that the numbers used for determining merit and efficiency points were inaccurate. In UX 17, Peddycord made a reference at the bottom of the first page to "11 Candidate officers." However, only nine candidates were subject to the productivity tracking system (UX 17). There are fifteen unit members assigned to patrol. The Village chose to only compare the candidate officers against others seeking promotion. Such a comparison does not reflect how candidate officers measure against other similarly situated Department members.

The Union notes that Detective Morache was awarded 10 points based solely on a recommendation letter from his supervisor (as a detective, he was not subject to the productivity system used for patrol officers). The Union says that if the special circumstances of a detective can be accommodated, other Department specialties such as SWAT members, training officers, and evidence technicians could have been considered in the productivity system. However, they were not.

The information used to calculate "productivity" is not reliable. Sgt. Cotton testified that DC Peddycord's calculations were not an accurate reflection of the information he was provided by the sergeants.

The "productivity" system does not account for differences in shift and seniority and supervision. Senior officers are more likely to be assigned to specialty positions that diminish their

opportunities to earn points under the system. On the other hand, senior officers have more benefit time than junior officers. Further, the productivity system does not consider different enforcement opportunities available to officers working different shifts. Also, sergeants do not award points in a similar manner. As the testimony of Sgt. Cotton and Officer White indicated, points are not awarded in a consistent manner for the same activities.

The Union says the promotional process is not transparent in Glenwood. As one example, the Union needed to twice subpoena Commissioner Ray just to obtain unit members' test scores. Additionally, as noted above, officers have never been told their scores on their promotional exams. Officers have never had the opportunity to ask questions or to point out mistakes. The BFPC promotional process is conducted in almost total secrecy.

The Union insists that Glenwood officers are not held to an ascertainable standard. Dr. Trevarthen, Commissioner Ray, and DC Peddycord all agreed that officers should be held to an ascertainable standard when being evaluated for promotion. Trevarthen explained that a promotional process "should be based on a measure and measures that are understood by everyone, should be related to what the department or district wants their employees to do, and the measure should relate to their performance in pursuing those goals and objectives that are desirable to be effective in that position" (Tr. 133-134). He went on "If [employees] perceive [the promotional process] as

being open and honest and fair the results will be more credible than if they believe the contrary" (Tr. 134).

The Village points to the lack of disputes over the promotional process as an indication that there is no problem with the current system. The Union says this argument is not at all persuasive. The BFPC's lack of transparency deprived officers of the opportunity to know if they had been treated unfairly. And without access to the grievance process for promotional issues, officers would be required to file lawsuits against the BFPC to achieve any sort of remedy.

The Union says that the Village's final offer is a step in the right direction, but it is inadequate to fix the problems plaguing Glenwood's promotional process. The Village proposal still leaves the Chief as the king-maker subject to no apparent review. This will not solve the existing problems with the Village promotional system.

The Union anticipates that the Village will argue that the Union's proposal will unduly limit management's discretion. This argument is unfounded. In discussing police promotions, Arbitrator Gordon said "The contention that the provision limits management discretion is a complaint that can be made about virtually every collective bargaining promise. Indeed a major purpose of labor-management agreements is to restrict management decisions in defined situations regarding wages, hours and other terms and conditions of employment" (*City of Oklahoma City and FOP*, 110 LA 912, 916 (Gordon, 1998)).

Finally, the Union notes that both parties agreed that the promotional process should be accurate, transparent, and administered according to an ascertainable standard. The Union believes that its final offer, and the evidence supporting that offer, more nearly complies with the applicable factors in Section 14(h) of the Act. Accordingly, the Union asks that its final offer be adopted.

Village's Final Offer

The Village proposes to add the following language to the CBA in its final offer (EX 1):

All promotions from patrol officer to the position of Sergeant are governed exclusively by the Village of Glenwood Board of Fire and Police Commissioners Rules and Regulations ("Board Rules and Regulations"). The Board Rules and Regulations grant the Village Police Chief authority, at his/her sole discretion, to issue "Sergeant Points" based on "Department Merit and Efficiency." Within thirty (30) days of receiving notice from the Board of Fire and Police Commissioners that a promotion test will be administered, the Police Chief will issue a Memorandum which sets forth the criteria that will be used by the Police Chief in awarding "Sergeant Points."

The Village says that these "Sergeant Points" will be the 10% of the points currently designated as "merit and efficiency" points in Chapter IV of the BFPC Rules and Regulations.

Village Arguments

The Village notes that it has had a lengthy collective bargaining relationship with its police officers and sergeants. In all of that time, until February 2012 when the current round of bargaining commenced (Tr. 193), the bargaining unit had not

proposed to modify the CBA so that it would govern the process by which the Village promotes officers to sergeant. As a result, the promotion process continues to be governed by Chapter IV of the Rules and Regulations of the Village's Board of Fire and Police Commissioners (BFPC).

The Village says that in February 2012 during contract negotiations the Union proposed a complete overhaul of the BFPC's promotion rules, including a seven-fold increase in the weight given to seniority, and to reduce the weight given to the written and oral examinations. Later the Union modified its proposal to declare null and void the most recent promotion list created (in or about January 2013) by the Board pursuant to its longstanding rules, and demote any sergeants who were promoted pursuant to that promotion list (EX 4). Then, on the day of the arbitration hearing (October 10, 2013), the Union changed its final offer by abandoning its proposal to overhaul the weight of the various examination components, dropping its proposal to declare the prior promotion list null and void and to demote unit members who had been promoted, and it presented its current final offer (UX 30).

In or about December 2012 the BFPC administered a sergeant promotion examination (EX 1). For these promotion candidates, the Chief initially planned to determine merit and efficiency points based on three criteria: a 1.5 mile run; a candidate interview; and a candidate productivity review (EX 25). The Union threatened to file an unfair labor practice charge over the 1.5 mile run, so the Chief withdrew the run and also withdrew the

interview and went forward with assessing merit and efficiency points based only on productivity (Tr. 281; EX 9).

Each promotion candidate's productivity was calculated by a point system where officers received a variety of points for various work-related activities (moving traffic citations, misdemeanor arrests, felony arrests, DUI arrests, warrant arrests, and so on; EX 9) that were measured by the Department during the years 2011 and 2012 (Tr. 72-73).

The final scores of the promotional examinations were posted on January 29, 2013 (Tr. 312; EX 24).

In February 2013 the Union notified the Village that there was a mistake regarding the productivity report as it applied to Officer Kyle Wilbanks (Tr. 287-288). Deputy Chief Peddycord subsequently determined that there were typographical errors in the DUI and Warrant sections for Wilbanks, and Peddycord testified that the corrections resulted in no change in Wilbanks' overall promotional score (Tr. 287-288).

On May 7, 2013, the Village promoted to sergeant the three patrol officers who obtained the highest overall scores in the promotional examination that was administered in December 2012 - Officers Curtis Perry, Patrick Owens, and Christopher Burke (Tr. 102; EX 24).

The Village has taken note of the Union's request that I apply a neutral burden of proof in this matter, and the Village argues that such a request is inappropriate here. The Village says that the Union is the moving party seeking a substantial change to the *status quo* at interest arbitration, and in that

posture the Union must meet a "breakthrough" burden. The Village notes that this breakthrough burden is very well settled in Illinois public sector interest arbitration, and is fully justified in light of the fact that, despite the parties' lengthy bargaining history, promotional criteria have never been included in the CBA. As Arbitrator Harvey Nathan noted, "The party seeking a change in the basic system has the burden of proving to the arbitrator not only that the change is necessary but that reasonable efforts to secure the change at the bargaining table have failed" (*City of Rock Island and IAFF, Local 26*, No. S-MA-03-211, at 22 (Nathan, 2004)).

The Village says that Arbitrator Goldstein has gone further by developing a three-factor test that a party must meet to demonstrate that a change in the *status quo* is needed: (1) the *status quo* is dysfunctional or the old system has not worked; (2) the *status quo* has created inequities or hardships; 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 and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-97-056 (Goldstein, 1998)). The Village points to many other Illinois interest arbitration awards for support of its heightened burden arguments (Er.Br. 12-13).

The Village insists that the Union cannot meet any of these tests. After many years and several CBAs using the same promotional rules, the Union cannot now demonstrate that these rules suddenly have become dysfunctional, or have created hardships, or that the Village has resisted attempts to bargain

over changed rules. Pulling these conclusions together, the Village insists that the Union has not demonstrated, nor can it demonstrate, that a change in the *status quo* is justified.

In its supporting arguments, the Village emphasizes that very well-settled arbitral precedent establishes that I require the Union to meet a breakthrough burden on this issue. The bargaining agents for the instant bargaining unit could have bargained for revising the promotional process on several occasions during the relatively lengthy time period that police officers have had union representation in Glenwood. More specifically, MAP bargained one labor agreement to completion without any attempt to negotiate a change in the status quo regarding the Board rules on promotions. The Village argues that it should not be disadvantaged because the Union failed to exercise its right to bargain over this issue, nor should the Union be excused from its breakthrough burden for this reason.

The Village notes that the Union is proposing a massive change in the rules governing promotions. Not only is the Union seeking to include in the CBA for the first time the rules governing the promotion process, it seeks to undercut the Board's longstanding authority to modify Chapter IV of its Rules and Regulations whenever the Board determines that such a change is necessary, and it seeks to put the Chief of Police on the sidelines during future promotional processes. The Union's final offer (UX 30) calls for the Chief to have no role in selecting the criteria for promoting officers to sergeant. Put simply, during the long history of the Village bargaining with

representatives of its police officers, promotional criteria have never been included in the labor agreement, nor has the Board ever been subjected to such a diminution of its authority. As a result, under these circumstances the Village strenuously argues the Union must meet a breakthrough burden.

The Village says that in its final offer it responded directly to the Union's stated concern that the promotion process lacked "transparency." In its final offer, the Village offers the Union a benefit it has never had before: notice from the Chief, thirty (30) days in advance of the promotion examination, setting forth the criteria that the Chief would apply in administering Department Merit and Efficiency points (EX 1).

The Village points out that the "ascertained merit" section in the Union's final offer (UX 30) seeks to add three new components to the promotion process - certifications, education, and performance evaluations (UX 30). The Union stated that these three components were included because they are utilized by fire departments pursuant to the Fire Department Promotion Act, 50 ILCS 742 (UX 19). The Village argues that fire department promotions, and the state statute that regulates them, have no relevance of any kind to the instant dispute.

The Village also notes that the most recent promotional process was implemented fairly. Officers who took the written and oral examinations had their exam scores posted on January 29, 2013 (EX 24). The productivity of each candidate was calculated by a point system whereby officers received points for specific work-related activities (EX 9). Chief Cook awarded ten points to

each promotion candidate who scored above the individual average of the yearly productivity point totals for 2011 and 2012, and he awarded zero points to each candidate who scored below this average (Tr. 282; EX 9).

After reviewing the Union's arguments in this matter, the Village argues that the Union cannot establish any of the factors presented by Arbitrator Goldstein in his award in *City of Burbank and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-97-056 (Goldstein 1998). The Union has failed to demonstrate that the current promotional system is dysfunctional. The Village notes that the evidence shows that Chief Cook established criteria that were uniformly applied to every promotion candidate. Some candidates fared better than others under this system, but that result does not establish that there was anything the least bit dysfunctional about the Chief's Merit and Efficiency points. The Village says that Chief Cook went to great lengths to develop objective criteria in an effort to address the Union's desire for "transparency." Most important, the Union has not demonstrated a single case where a patrol officer was unfairly promoted by Chief Cook.

The Village argues that the Union's other justifications for changing the *status quo* also fail. The Village argues that Dr. Robert Trevarthen, the Union's expert witness, testified that he dealt with promotional processes in a grand total of two municipalities - Wheaton and West Chicago. He admitted he had never been involved in negotiating actual promotion language in either city (Tr. 127). He also admitted he was unaware of any

police department with language in its labor agreement similar to what the Union proposes here (Tr. 143). The Village argues that Dr. Trevarthen is not an expert in police promotional systems by even the loosest definition of that term, and his testimony should be given no weight in determining whether promotion language for a police department should be adopted into the instant labor agreement.

The Union attempts to make much of a typographical error regarding information about Officer Wilbanks in the productivity report prepared by DC Peddycord (UX 17). However, DC Peddycord testified he recalculated the points for Officer Wilbanks after the Union notified him of the error, and there was no net effect on Wilbanks' productivity report scores or his placement on the promotion list after his score was recalculated.

The Village notes that the Union also attempts to make much of the fact that it filed an unfair labor practice charge with the Illinois Labor Relations Board against the Village over this promotional process (UX 16). The Village notes that this ULP charge contains only allegations presumably prepared by Union counsel and they are not supported by any evidence. The Village describes this as nothing more than a long shot effort to manufacture evidence in support of its proposal.

Well-settled arbitral precedent in Illinois establishes that the Union has the burden of establishing that it made reasonable efforts to address its promotion concerns at the bargaining table, and that these concerns were rejected by the Village. In this proceeding, the Village points out that the Union failed to

present any evidence that it made reasonable efforts to address its concerns at the bargaining table that were rejected by the Village of Glenwood. As noted above, the Union's earlier offers in the current round of bargaining - to implement a seven-fold increase in the weight to be given to seniority in determining promotions, and then insisting the results of the December 2012 promotional exam be thrown out and demote those officers who had been promoted based on these results - were anything but "reasonable."

It is well-settled in Illinois interest arbitration that the party seeking a change in the *status quo* must offer a *quid pro quo* for such a change. The Village notes that in the instant matter the Union never offered a *quid pro quo*.

On the internal comparability dimension, the Village notes that it is not a party to any other CBAs. Nevertheless, the BFPC is responsible for administering the promotional process for the Village's fire and police departments. As a result, the BFPC applies Chapter IV of its Rules to promotions in both the fire and police departments. However, Glenwood's non-union fire department is sufficiently small that it does not have supervisory positions for which promotions are covered by the BFPC's Rules and Regulations, and the result is that the Board has not administered a fire promotional exam in the recent past.

On the external comparability dimension, the Village notes that conditions of employment in comparable communities is one of the factors considered by interest arbitrators under Section 14(h) of the Act. In this case, the Village calls attention to

the fact that the lack of promotional language in the police labor agreements in comparable communities strongly favors maintaining the *status quo*.

The Village submitted into the record evidence on eleven comparable communities: (1) Calumet Park, (2) Flossmoor, (3) Lynwood, (4) Markham, (5) Orland Hills, (6) Palos Heights, (7) Palos Hills, (8) Richton Park, (9) Riverdale, (10) Sauk Village, and (11) Worth (EXs 11-22). All of these communities are located within 25 miles of Glenwood and are similar to it on at least nine dimensions identified in EX 6.

As shown in EX 7, six communities follow their respective Board Rules and Regulations. One municipality (Flossmoor) follows an "Orientation Guide," which is similar to the Board Rules in Glenwood. Lynwood states it follows the law, and two municipalities did not respond to Glenwood's information request (Orland Hills and one other). Only one municipality (Markham) had language in its CBA specifically governing promotions, and Markham weighed "Departmental Points" at 10 percent, which is very similar to Glenwood's Merit and Efficiency points (EXs 5-7). Not one of these eleven comparable communities uses an "ascertainable merit" component in its promotion process. Instead, eight communities (Flossmoor, Markham, Palos Heights, Palos Hills, Richton Park, Riverdale, Sauk Village, Worth) allow the Police Chief to administer merit and efficiency points.

This evidence shows that the heavy majority of comparable communities do not maintain any promotion requirements prescribed by a labor agreement. The information from comparable

communities strongly supports Glenwood's offer and refutes the Union's offer. Moreover, the Union provided no evidence regarding comparable communities. The Village argues that this lack of Union-supplied evidence should be construed as an admission that the Union is acutely aware that there is no comparable community that has language consistent with the Union's final offer.

Summing up, the Village says the evidence presented at the arbitration hearing, and the facts and authorities submitted in the Village's arguments, strongly show that the Union has failed to establish the current police promotional system needs to be changed. Rather, the evidence establishes that the current system is fair and reasonable, and the Village asks that its final offer be selected.

ANALYSIS AND OPINION

We first examine whether a "breakthrough" burden of proof applies to the Union in this matter, as the Village vigorously argues. The Union argues with equal vigor that it does not. After examining these arguments, I find that the breakthrough burden of proof applies to the Union. The reason for this is straightforward. Here the Union seeks a wholesale change in the language that governs and regulates promotions in the instant bargaining unit, and the Union proposes that this promotion language be included in the CBA. As two examples of the magnitude of change the Union seeks, the Union's final offer seeks to completely remove the Police Chief from having any role

in the promotion process, for under its proposal there would no longer be any "merit and efficiency" points awarded by the Chief to promotion candidates (Un.Br. 4-7; UX 30). Instead, the Union proposal would use a combination of (1) certifications and training, (2) formal education, and (3) performance evaluations to determine the "ascertained merit" of a promotional candidate (UX 30). Second, the Union's final offer would prohibit the BFPC from exercising their current role of governing the promotional process.

Temporally, the parties have never used their CBA to regulate the promotion process. As a result, not only would the selection of the Union's final offer use the CBA as a vehicle to govern the promotion process for the first time in the parties' bargaining relationship, the selection of the Union's final offer would impose significant changes in the governance of this promotion process. Perhaps the Union's most substantial proposed change is that promotions would be subject to grievance arbitration if the Union and the Employer disagree that a particular promotion was not made in compliance with the new promotion language in the CBA. As this description indicates, the Union's final offer does not seek to do some minor tweaking of how the promotional process is governed. Instead, it proposes a significant overhaul of the entire promotion process. In this setting, I find that the breakthrough burden definitely should be applied.

I note that there is a large and impressive body of arbitral authority that has emerged during the many years that interest

arbitration has been used in Illinois public sector impasse resolution that applies here. For instance, Arbitrator Harvey Nathan had this to say in an interest arbitration award issued more than 25 years ago:

"The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change." (*Will County Board/Sheriff of Will County and AFSCME Council 31/Local 2961*, ILRB No. S-MA-88-009, at 50, Harvey A. Nathan, 1988).

In a subsequent award, Arbitrator Nathan elaborated on the burden carried by the moving party in interest arbitration. He stated that:

"the party seeking a change in a basic system has the burden of proving to the arbitrator not only that the change is necessary but that reasonable efforts to secure the change at the bargaining table have failed. Any lesser standard would discourage hard bargaining and would encourage parties to rely on the judgment of outside arbitrators." (*City of Rock Island and International Association of Fire Fighters, Local 26*, ISLRB No. S-MA-03-211, at 22, Harvey A. Nathan, 2004).

The substantial body of arbitral thought represented by Arbitrator Nathan's comments holds that, to protect the process of collective bargaining from being eroded, "interest arbitration should not become an attractive substitute for collective bargaining" (*Northlake Fire Protection District and Northlake Professional Firefighters, IAFF Local 3863*, ILRB Case No. S-MA-03-074, at 13, Lisa Salkovitz Kohn, 2003). As other arbitrators have held, for a party in an interest arbitration proceeding to prevail on a demand to change the *status quo* in its CBA, that moving party must demonstrate "compelling need [for the change] and evidence of a *quid pro quo*, . . . [and] evidence of

repeated good faith attempts at the bargaining table to secure agreement from the other side. . . . Only after the moving party is able to carry the burden of compelling need, *quid pro quo*, and exhaustive, good faith bargaining, should external and internal comparability and other Section 14 factors be examined by an arbitrator" (*Village of Broadview and Fraternal Order of Police*, ILRB No. S-MA-06-145, James Cox, 2007, cited in *City of Danville and Policemen's Benevolent and Protective Association, Unit #11*, ILRB No. S-MA-09-238, at 82, Marvin Hill, 2010).

I find that, contrary to the Union's arguments, the presence of the Employer's final offer does not eliminate the breakthrough burden that exists here. I note that the Union has proposed a wholesale change in the promotion system, as described earlier in this Award. In contrast, the Employer has proposed one very modest change in the process of how merit and efficiency points will be awarded. Because the Employer's final offer presents a *de minimis* change in the promotion process, and does not seek to change any substantive element of the promotion system, I find that the Employer's offer does not eliminate the Union's breakthrough burden.

The Union also argues that there is no bargained-for *status quo* in this matter because the Village never bargained for singular control over the promotion process. Because the parties have never bargained over promotions, the Union argues that the "breakthrough" analysis does not apply here (citing *City of Blue Island and Illinois Fraternal Order of Police*, ILRB No. S-MA-00-0138 (Perkovich, 2001)).

The Union is correct that the instant parties never previously bargained over promotions. That fact, however, must be balanced against the equally important fact that promotions easily could have been bargained in Glenwood. The Union, however, chose not to do so. Similarly, so did the Union's predecessor as representative of the instant unit, Teamsters Local 726. Hearing testimony established that these two labor organizations represented this unit for at least 15 years (Tr. 33). The fact that neither labor organization made any effort to address promotions in the Glenwood police CBA does not mean that, somehow, the Union is free from meeting a heightened burden of proof on the promotion issue in this proceeding. Both labor organizations had ample opportunity to present promotion proposals at the bargaining table, and the fact that neither of them did so does not place the Union on more favorable terrain in the instant proceeding.

Because the Union is the moving party in this matter, let's examine the extent to which the Union has satisfied these three requirements of demonstrating a compelling need for the adoption of its final offer, demonstrating that it has offered the Village a *quid pro quo* if the Village agrees to its offer, and demonstrating that it has engaged in "repeated good faith attempts at the bargaining table" to obtain agreement from the Village on the issue of promotions.

On the compelling need dimension, the Union has presented some good reasons for the adoption of its final offer. Three of these reasons include (1) the lack of consistency in how the

existing productivity measures were applied by different sergeants across the officers they supervise; (2) Chief Cook's awarding of merit and efficiency scores to individual officers that were either ten points or zero points, which is directly contrary to the BFPC requirement that "each weighted component of the examination process shall be based upon a scale of 1 to 100" (UX 18, EX 1); and (3) officers are not properly informed in advance of how the productivity measurement system operates and what impacts it will have, particularly regarding promotions.

As these three shortcomings indicate, the Department's productivity measurement system sometimes operates in an inefficient and inconsistent manner. Perhaps the most visible example of this weakness is the Village's admission that sergeants often differ in the number of points they award to individual officers on their shifts for performing what are highly similar or even identical actions (such as a DUI arrest), especially if the sergeants believe that the officer has done a "great job" that is worthy of special consideration. There is nothing inherently wrong with sergeants going out of their way to reward individual officers for meritorious performance. However, when officer productivity over time is used as the Department's key measure of departmental merit and efficiency, and officers receive more or fewer promotional points as a result of a greater or lesser degree of supervisory approval of their performance during an applicable period of time (say, one or two years), this degree of supervisory discretion can result in some officers being awarded more productivity points than other

officers for performing the same or very similar quantity of police work. In turn, the higher-scoring officers appear "more productive," and the lower-scoring officers appear "less productive," with the members of these two groups concomitantly having increased or decreased chances of being promoted.

I agree with the Union that inconsistent application of the Glenwood police productivity measuring system will continue to have deleterious effects upon the affected Glenwood officers during future promotion rounds. Measurement of officer work performance, when it will be used as a criterion to determine promotions, must be as accurate as possible. The Glenwood promotion system has much room for improvement on the accuracy dimension.

More generally, does the evidence show that there is a compelling need to adopt the Union's final offer to properly govern the Village's police promotion system? The evidence clearly shows that there is a compelling need for the Village to clean up its act and modify the police promotion system so that it does a significantly better and more comprehensive job of measuring officer performance in an accurate manner that will result in the highest-performing officers being promoted. For instance, there is no excuse for allowing the Chief of Police to award merit and efficiency points on an all or nothing basis of 10 points to high productivity performers and zero points to low productivity performers as was done in the Village in 2012-2013, in direct violation of BFPC rules, and based upon the sometimes inaccurate measurements produced by this productivity measurement

system. There may not be a compelling need to adopt the Union's final offer to prevent this, but there definitely is a compelling need for the parties to adopt the changes necessary to generate an accurate, comprehensive, and transparent promotion system.

Turning to the *quid pro quo* dimension, the Union says that some of the tentative agreements entered into by the Union were done in partial consideration for the two remaining open issues (and the parties resolved one of these issues; Tr. 332-333; Un.Br. 23). In contrast, the Employer says that the Union never offered a *quid pro quo* for making a major change to the CBA at any point in the negotiations (Er.Br. 18). Perhaps not surprisingly on this issue, the parties are in direct conflict over whether or not the Union offered a *quid pro quo* to the Village for its agreement on the promotions issue.

I find that the evidence in the record does not support a conclusion that the Union extended a *quid pro quo* to the Employer during negotiations. I do not agree that the Union's tentative agreement with the Village on an unspecified number of undesignated issues constitutes a *quid pro quo*. The Union maintains that it has already paid a *quid pro quo* "by taking below market wages and other considerations" (Un.Br. 34). I note, however, that there is not a scintilla of evidence in the instant record to prove that the Union agreed to "below market wages and other considerations" as a *quid pro quo* on the promotion issue. This Union description of what occurred at the bargaining table is far too vague and unsupported by competent

evidence to be considered as a *quid pro quo* on the promotion issue.

Moving on, we proceed to an examination of the Union's efforts at the bargaining table to obtain the Village's agreement on the promotions issue. When we do this, we quickly see that the Union has not engaged in any reasonable effort at the bargaining table to seek agreement from the Village on the promotions issue. I note the record contains absolutely no evidence, or even a passing mention, of any attempt by this Union or its predecessor to bargain over this issue prior to the 2012-2013 round of bargaining. Considering the Union's incentive to present such evidence if any existed, we may conclude that there was no Union effort prior to the current round of bargaining.

What evidence is there that the Union has engaged in a reasonable effort at the bargaining table regarding promotions during the current round of bargaining? There is no such evidence, none whatsoever. Moreover, the Union's 2012-2013 negotiating efforts on this topic cannot accurately be called "good faith attempts" to obtain agreement from the Employer on the promotions issue. According to the Employer, the Union's initial proposal on promotions in February 2012 sought to increase the weight given to seniority in the promotion process from 5% to 35%, and to simultaneously reduce the weight of the written examination from 45% to 35%, reduce the weight given to the oral examination from 45% to 20%, change the weight of veterans' points to 5%, and eliminate the 10% weight given to Department Merit and Efficiency and replace it with a new

standard of Ascertained Merit with a weight of 5% (Er.Br. 8-9, EXs 1, 4). By adjusting the weights attached to the various promotion elements, the Union proposed to adopt a seniority-favored promotion process, a proposal that very few municipal employers would be willing to embrace.

Moving forward, the Union submitted a revised promotion proposal in February 2013 (UX 8). This revised proposal included the changed weights to various dimensions of the promotion process as noted above. This second proposal also included a significant change: that Glenwood declare null and void the promotion list the BFPC had created pursuant to the December 2012 promotional examination, and that the Village also demote any sergeants that were promoted pursuant to this new list (EX 4, p. 3; UX 8). This second Union proposal remained unchanged until the day of the arbitration hearing (October 10, 2013), at which time the Union submitted its final offer as presented above. Not surprisingly, the Village characterized this modified Union proposal as "regressive" (Er.Br. 17).

As this examination of the parties' bargaining history plainly shows, the Union has not made any good faith attempts to bargain for reasonable promotion process language in the CBA. The Union knew, or certainly should have known, that neither of its negotiating proposals on promotions in the current negotiating round had any realistic chance of being accepted by the Village, or of becoming the basis for an agreement with the Village on the promotions issue.

Accordingly, the Union clearly has failed to meet two of the three elements necessary for it to satisfy its breakthrough burden.

We move to an examination of the "applicable" factors in Section 14(h) that are relevant here. The Union has not submitted any evidence under any of the factors specified in Section 14(h) of the Act. For its part, the Employer says that neither the internal comparables nor the external comparables under Section 14(h)(4) provide any support for the Union's proposal.

On the internal comparability dimension, the Village points out that its police officers are the only Village employees who are represented. As a result, there are no internal comparisons that can be made.

Turning to external comparability, Section 14(h)(4) specifies that comparison with other employees performing similar services in public employment in comparable communities is one of the interest arbitration decision criteria that may be applicable. Under this criterion, the Village has presented evidence from 11 comparable communities, all of which are located within 25 miles of Glenwood and within +/- 50% on at least nine of the dimensions identified in EX 6. There are 11 such communities: Calumet Park, Flossmoor, Lynwood, Markham, Orland Hills, Palos Heights, Palos Hills, Richton Park, Riverdale, Sauk Village, and Worth (EXs 11-22). The Employer emphasizes that none of these comparison communities have promotion requirements similar to what the Union proposes here.

More specifically, the Employer notes that six of the eleven comparable communities follow their respective Board Rules and Regulations in promotions (EX 7). One municipality (Flossmoor) follows an "Orientation Guide," which document is similar to the Board Rules in Glenwood (EX 7). One municipality reported that it follows the law (Lynwood) and two municipalities did not respond to Glenwood's FOIA request for information regarding their promotion examination rules (Orland Hills and one other municipality; EX 7). Only one community, Markham, had language in its police CBA specifically governing promotions (EX 7). Markham's "Departmental Points" are weighed at 10%, which is very similar to Glenwood's "Merit and Efficiency" points (EX 7). Of the eleven comparable communities, the evidence shows that none of them uses an "Ascertained Merit" component, and Flossmoor, Markham, Palos Heights, Palos Hills, Richton Park, Riverdale, Sauk Village, and Worth all provide that the Police Chief administers Department Merit and Efficiency points.

The Village emphasizes that the evidence from comparable communities shows that most of these communities do not maintain any promotion requirements in their police CBAs. In turn, this evidence strongly supports the Village's offer and refutes the Union's offer (EXs 5-7). It is noteworthy that the Union did not submit any comparability evidence.

Conclusions

Pulling all of this together, the evidence shows that the Union did not meet its heightened ("breakthrough") burden of

proof in this matter necessary to have its final offer selected. In addition, the evidence shows the current police promotional system in Glenwood is similar to the police promotional systems in comparable communities, and the Employer's offer largely preserves the current system. Accordingly, I find that the Employer's offer more nearly complies with the applicable decision factors prescribed in Section 14(h) of the Act. At the same time, I find that the Employer's offer needs to be modified so that the "Sergeant Points" called for in the Employer's offer are issued in compliance with the requirements of Chapter IV of the BFPC's Rules and Regulations and there is no repeat of the zero-or-ten Chief's points that were issued during the 2012-2013 promotion process. In particular, to be valid, "Sergeant Points" must be issued by the Police Chief in compliance with the BFPC requirement that "each weighted component of the examination process shall be based upon a scale of 1 to 100" that is specified in Section 1 of Chapter IV of the Board's Rules and Regulations (UX 18). This means there will be no more promotion candidates being issued "Sergeant Point" (i.e., merit and efficiency) scores of zero. I also note that this requirement takes precedence over the language in the Employer's final offer that the Police Chief has the authority, "at his/her sole discretion," to issue Sergeant Points. Going forward, this means that Chief Cook, and his successors as Chief, will abide by the BFPC's Rules and Regulations. Accordingly, and using the authority I have under Section 14(g) of the Act, I have modified

the Employer's final offer into the "Arbitrator's offer" to read as follows:

"All promotions from patrol officer to the position of Sergeant are governed exclusively by the Village of Glenwood Board of Fire and Police Commissioners Rules and Regulations ("Board Rules and Regulations"). The Board Rules and Regulations grant the Village Police Chief authority, at his/her sole discretion, to issue "Sergeant Points" based on "Department Merit and Efficiency." Within thirty (30) days of receiving notice from the Board of Fire and Police Commissioners that a promotion test will be administered, the Police Chief will issue a Memorandum which sets forth the criteria that will be used by the Police Chief in awarding "Sergeant Points." The Police Chief must award Sergeant Points to promotion candidates on a scale of 1 to 100 in order for the "Sergeant Points" to be valid."

Tentative Agreement Provisions

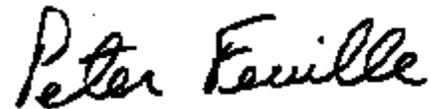
During their negotiations and the pendency of the instant arbitration proceeding, the parties resolved many issues via the tentative agreement ("TA") process. These TAs are included in EX 2. All of the parties' TA'd issues are hereby incorporated into this Award by reference.

V. AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the Arbitrator's offer on the promotions issue more nearly complies with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award the Arbitrator's offer on the promotions issue.

The "Tentative Agreement Provisions" described above are hereby incorporated into this Award by reference.

Respectfully submitted,



Peter Feuille
Arbitrator

Champaign, IL
April 18, 2014