

**In the Matter of the Interest Arbitration Between**

VILLAGE OF HOFFMAN ESTATES )  
 )  
 and )  
 )  
 INTERNATIONAL ASSOCIATION )  
 OF FIREFIGHTERS (IAFF), )  
 LOCAL NO. 2061 )  
 )

FMCS No. 120306-01778-T  
Illinois State Labor Board  
Case No. S-~~NA~~-12-106  
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The Undersigned Arbitrator was appointed by the Parties pursuant to the applicable rules and regulations of the Federal Mediation and Conciliation Service (FMCS), the Illinois Public Labor Relations Act (IPLRA), and the Collective Bargaining Agreement of the Parties. (Joint Exhibit No. 1). The hearing of this matter was held at the offices of the Village of Hoffman Estates located at 1900 Hassell Road, Hoffman Estates, Illinois, on Tuesday, October 9, 2012.

Ms. Amy Moor Gaylord and Mr. Neil S. Goldsmith, Attorneys, represented the Village of Hoffman Estates (hereinafter referred to as “the Village” or “the Employer”). Mr. Daniel P. O’Malley, Deputy Village Manager; Mr. Jeffrey Jorian, Deputy Fire Chief; and Mr. Patrick Seger, Director of Human Resource Management, all testified on behalf of the Village.

Mr. J. Dale Berry, Attorney, represented the Hoffman Estates International Association of Firefighters, Local 2061, IAFF (hereinafter referred to as “the Union”). Mr. Robert Orr, Local Union Executive Board member; Mr. Dean Slater, Firefighter/Paramedic; and Mr. Craig Olsen, Firefighter/Paramedic, all testified on behalf of the Union.

The Parties filed post-hearing briefs in the instant matter, the last of which received by the Undersigned Arbitrator on or about December 21, 2012. The hearing of this case was conducted according to the applicable rules and regulations of the Federal Mediation and Conciliation Service (FMCS), the Illinois Public Labor Relations Act (IPLRA) 5 ILCS 315/14, and of the Collective Bargaining Agreement. (Joint Exhibit No. 1).

The Parties also met in Executive Session on March 22, 2013, to further discuss the issues presented and the respective positions of the Parties. The Parties subsequently filed their Executive Session briefs, the last of which was received on May 4, 2013. The above-named Parties had a full and fair opportunity to present and cross-examine witnesses and to produce pertinent documents and other evidence.

### **THE ISSUES**

The Parties submitted the following issue(s) to the Undersigned Arbitrator for resolution.

It is the position of the Union that there are two issues in dispute between the Parties: (1) wages/"Time Due Bank" (Sections 21.1 and the Union-proposed Section 16.6-8 of the Collective Bargaining Agreement); and (2) the Voluntary Separation Plan (VSP) (Section 21.15 of the Collective Bargaining Agreement).

It is the position of the Village that the only remaining issue in dispute relates to wages. The Village asserts that at the hearing, the Union contended that there are three issues in dispute: (1) Wages; (2) the VSP; and (3) Health Insurance (Joint Exhibit No. 3a). However, the Village notes that during the July 16, 2012 mediation session with the

Undersigned Arbitrator, the Parties reached a "tentative agreement" on Health Insurance (Joint Exhibit No. 2). The Village therefore presents the issue as follows:

**Wages:** The Village is proposing the following yearly increases: 1.5%; 2.25%; 2.25% (6%). The Union is proposing the following yearly increases: 2.5%; 0.0%; 2.5% (5%). The wage proposal of the Union is contingent upon the Village agreeing to offer a breakthrough benefit by creating a new "Time Due Bank" for each Firefighter and depositing 72 unearned hours of paid time off in that bank to be used or cashed out at the Firefighters' option (72 hours = 3% bringing the Union's proposal to 8% over three years).

**VSP:** The Village does not recognize this issue as one properly before the Arbitrator because the Union dropped this issue early on during negotiations. In the alternative, if the Arbitrator finds the issue properly before him, the Village is proposing to maintain the *status quo*, which does not include offering a VSP. The Union is proposing to implement a new VSP in this successor contract on the same terms as the VSP that was previously offered as a one-time benefit during one year of the previous contract.

### **INTEREST ARBITRATION STATUTORY STANDARDS**

This is an interest arbitration between the Village of Hoffman Estates ("the Village") and IAFF Local 2061 ("the Union"). The instant arbitration proceeding is governed by the Illinois Public Labor Relations Act (IPLRA). It is undisputed that Section 14(g) of the IPLRA states that as to each economic issue, "the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." 5 ILCS 315/14(g). Section 14(h) lists the eight relevant factors as follows:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of

the employees involved in the arbitration 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. 5 ILCS 315/14(h).

## **BACKGROUND**

The two issues presented during the instant interest arbitration arise out of the following facts and circumstances. According to the Village, the Village of Hoffman Estates is a 22-square mile home rule municipality located approximately thirty-one (31) miles Northwest of downtown Chicago with a population of 51,895. The Village is composed of an elected Village President and six Trustees. The Village President, otherwise known as the Mayor, is elected for a four-year term. Village Trustees are also

elected to serve overlapping four-year terms. James Norris serves as the Village Manager and oversees the day-to-day operations of the Village. Daniel O'Malley is the Deputy Village Manager.

The employees of the Village are organized into nine Departments: Development Services, Finance, Fire, Police, Information Systems, Health & Human Services, Public Works, General Government, and Human Resources Management. There are four bargaining units within the Village: the Metropolitan Alliance of Police, Local 96, which represents the Police Officers of the Village; Metropolitan Alliance of Police, Local 97, which represents the Police Sergeants of the Village; the International Brotherhood of Teamsters, Local 700, which represents the Public Works employees of the Village, and the Hoffman Estates Professional Firefighters Association, International Association of Firefighters, Local 2061, which represents the 86 Firefighter/Paramedics, Lieutenant/Paramedics and Captain Paramedics.

The Village maintains four (4) fire stations located throughout the municipality. The Village Fire Department (hereinafter called "the Department") is headed by Fire Chief Robert Gorvett, who has been with the Department since 1975. The Fire Chief reports directly to Village Manager Norris. The Department currently has a total of approximately 94 employees, 92 of whom are sworn personnel. There is one Fire Chief, one Deputy Fire Chief, one Assistant Fire Chief, and three Battalion Chiefs, all of whom are non-bargaining unit sworn personnel, and 86 Firefighter/Paramedics, Lieutenant/Paramedics and Captain/Paramedics, all of whom are in the bargaining unit. The Department also employs two civilian employees who perform various administrative functions.

The Department operates three 24/48 hour shifts which means that the Firefighters work 24 hours on duty followed by 48 hours off duty. Each shift is supervised by one of the Battalion Chiefs. The Fire Chief, Deputy Fire Chief, and Assistant Fire Chief work a traditional Monday through Friday 40-hour work week.

With respect to the Collective Bargaining Agreement, the previous negotiated contract was in effect from January 1, 2009 through December 31, 2011 (Joint Exhibit No. 1). On September 22, 2011, the Parties began negotiations for a successor Collective Bargaining Agreement (Tr. at p. 13). The Parties met for seven non-mediated sessions and numerous mediated sessions. The mediated sessions were mediated by either Charles Evans of FMCS or the Arbitrator. Through these non-mediated and mediated sessions, the Parties were able to come to agreement on almost all outstanding issues.

Pursuant to Sections 7 and 14 of the IPLRA, the Parties initiated interest arbitration to resolve the remaining disputed issues. The Undersigned Arbitrator was appointed on May 7, 2012. The Arbitrator facilitated mediation sessions between the Parties on July 16, 2012, August 20, 2012, and August 24, 2012. These mediation sessions further narrowed the issues submitted to interest arbitration.

On October 9, 2012, an interest arbitration hearing was held to resolve the remaining disputed issues. The Parties were unable to agree on these disputed items and thus invoked their right to interest arbitration. Accordingly, the instant matter was submitted to the Undersigned Arbitrator.

## **THE POSITION OF THE UNION**

It is the position of the Union that the Last Offers by the Union should be accepted by the Undersigned Arbitrator and incorporated into the successor Collective Bargaining Agreement.

### **WAGES/TIME DUE BANK**

With respect to wages and the time due bank proposal, the Union asserts that the Village's offer on wages, over the Parties agreed three year term, is as follows: effective 1/1/12 - +1.5%; effective 1/1/13 - + 2.25%; effective 1/1/14 - +2.25%. The Union's last offer on wages is as follows: 1/1/12 - +2.5%; 1/1/13 - +0%/72 hours "time due bank"; 1/1/14 - +2.5% (Tr. at p. 8; Joint. Exhibit No. 3A). According to the Union, the aggregate base salary increases of the three year term is: Village - +6.0%; Union - +5.0%.

In lieu of a wage increase in the second year to the contract, the Union proposes adding 72 hours of "time due bank" annually to a "Time Due Bank". The Union argues that this benefit is an extension of the "time due bank/comp time procedure" that the Parties previously negotiated for an "Overtime Bank" in Section 16.6 of the expired 2009-11 Collective Bargaining Agreement. (Joint Exhibit No. 1, p. 24). However, the Union states that its proposal includes additional limitations that benefit the Village (and its taxpayers). The annual banked deposit of 72 hours "may be carried over, but if not cashed out by 12/31 of the year in which it is accrued it may not thereafter be cashed out". (Joint Exhibit No. 3A, Section 16.6-8).

The central paragraph of the proposal of the Union on this issue provides:

Effective 1/1/13 or no later than 30 days from the issuance of the

arbitrators award, the bargaining unit shall receive no wage increase in 2013, but shall receive 72 hours of "Time Due Bank" that shall be added annually into a "Time Due Bank." The use of time due shall be as described for the "Overtime Bank" with the following exceptions: 1) "Time Due Bank" may be carried over, but if not cashed out by 12/31 of the year in which it is accrued it may not thereafter be cashed out; 2) one additional slot shall be established to be used for scheduling "Time Due Bank" off each shift day in addition to the slots allocated in Section 16.6-4; and (3) any use of "Time Due Bank" by Battalion Chiefs shall not affect the use or charge rate of Time Due Bank by Bargaining Unit personnel. 4) cash outs shall not exceed more than 25% per quarter except in the 4th quarter the remaining balance may be cashed out. (Joint Exhibit No. 3A, Section 16.6-8).

The Union points out that this proposal also protects the Village from the pyramiding effect ordinarily associated with "comp time" benefits by providing that if time due bank scheduling creates overtime (i.e. 1½ costs), the employee's "Time Due Bank" is reduced hour for hour (i.e. 24 off = 36 hours withdrawal). The Union argues that this is the same formula provided by the existing "overtime/time due bank" of the Parties. (Joint Exhibit No. 3A, Section 16.6-6(c)).

The Union argues that the proposal is innovative and economical. The Union states that because the "Time Due Bank deposit" beginning in the second year of the Collective Bargaining Agreement is in lieu of a base salary increase, the aggregate effect of the offer of the Union is to increase the base salary of firefighters over the term of the contract by 1% less than the proposal of the Village, which also has great significance to the pension costs of the Village.

The Union argues that this effect is realized by three cost components: the contract terms, the careers of the existing bargaining unit, and the costs of funding employee pensions over their actuarial lives. The Union notes that the reduction in the pension costs of the Village under the proposal of the Union in comparison to the proposal of the Village is described in Union Exhibit No. 13. The Union states that

Union Exhibit No. 13 calculates the savings to the Village. The Union states that the total savings resulting from this differential is \$3 million. (Union Exhibit No. 13, p. 42). The Union submits that the key difference between the proposal of the Union and the proposal of the Village that results in this large savings is the difference in final salary, on which pension is based. The Union maintains that the 1% lower base salary in the proposal of the Union results in a final salary at retirement of \$23,979 less than under the proposal of the Village. (Union Exhibit No. 13 at p. 40).

The Union argues that it is important to recognize that while the opportunity of employees to cash out time due bank deposits and the cost of replacement employees at straight time is a cost, it is non-compounding cash cost that is analogous to an employer offering its employees a “bonus” instead of a base salary increase. The Union argues that the cost saving to the Village of the “time due bank” proposal of the Union is a result of the fact that any costs from the payout of time due bank are as cash. The value of time due bank is not money on the base. The Union points out that since cash payments are not added to base salary, they do not figure in the calculation of pension.

In addition to the career salary and pension savings, the Union asserts that the Village will also realize an actual cash savings from the dollar value of 72 hours deposited in the “Time Due Bank”. The Union maintains that all time due bank taken as time off when the employee does not need to be replaced would be actual cash savings. Second, the Union contends that the all “carried over banked time” that is not taken as time off or cashed out during the year before the employee’s retirement or separation would be a savings, because carried-over time cannot be cashed out. According to the Union, these two events will certainly occur, though their precise extent cannot be

estimated. At the same time, as known from the experience with the overtime/"Time Due Bank", the proposal of the Union ensures that overtime costs cannot be greater than straight time. Therefore, the Union submits that in addition to the savings from pension demonstrated above, the Village is guaranteed to save money under the operation of the "Time Due Bank", as opposed to what would happen if all banked time were cashed out.

The Union disputes that its innovative solution as to "time due bank" is not a "breakthrough" item as the Village asserts. The Union points out that the Parties already have experience with a "Time Due Bank" for "comp time" taken in lieu of overtime pay. The annual deposit of 72 hours starting in the second year of the proposal of the Union (in lieu of a raise that year) is merely a new application of the existing time bank system. Under Section 14 interest arbitration disputes, the Union states that discussions of "breakthrough" principles often refer back to the decision of Arbitrator Harvey Nathan in *County Of Will (Sheriff) and American Federation Of State, County And Municipal Employees, Local 2961, (Deputies), S-MA-88-09* (Nathan, 1988) wherein Arbitrator Nathan stated:

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." *County of Will*, p. 50 (emphasis added).

The Union asserts that the reaction of the Village to the proposal of the Union confirms that the Union is not seeking an "entirely new" benefit, but merely the extension of an existing benefit. At hearing, the Union notes that the Village objected to the proposal of the Union because it would increase "banked time off" beyond the "banked

time off “that the members of the bargaining unit already enjoy. The Union states that the Village did not really object to any aspect of the proposal of the Union that was different from the existing overtime bank (and as noted, differences between the two systems are drawn so as to protect the Village, not the Union).

The Union also submits that the use of a "breakthrough" analysis is inappropriate where, as here, the proposal of the Union would certainly be less expensive to the Village, over the long term, than the proposal of the Village. The Union notes that by way of comparison, the other issue between the Parties involves the Voluntary Separation Plan. As to that issue, the Village has put forward a theory as to why the proposal of the Union might cost money rather than saving money. Here, by contrast, the Union states that the Village offers no argument as to how the proposal of the Union could be more costly than the proposal of the Village. Therefore, the Union concludes that the Village is in the anomalous position of: (1) asking the Arbitrator to place an extraordinary burden on a Union proposal that will cost the Village considerably less money; and (2) asking the Arbitrator to reject the VSP benefit because while it could save money it might cost more.

The Union argues that although the proposal of the Union is not a breakthrough item, but merely an extension of an existing benefit, the Union argues that even if the issue were analyzed under breakthrough principles, the Union should prevail. The two key elements of breakthrough analysis are whether the party proposing the breakthrough has offered an adequate *quid pro quo*, and whether the party resisting or opposing the breakthrough has offered an objection that is not reasonable. The Union notes that as Arbitrator Marvin Hill stated in *City Of Urbana and International Association of Fire*

*Fighters, Local 1147, S-MA-97-245 (Hill, 1998):*

I am on record as noting that an interest arbitrator should not deny a party a benefit simply because no other comparable jurisdiction has adopted it. In such a case, however, the party that wants the benefit included in the collective bargaining agreement has a heavy burden to demonstrate that the opposing party is being unreasonable in rejecting the benefit desired by the proposing party. One indication of an unreasonable stance is where the proposing party offers an adequate quid pro quo and the opposing party, for no rational reason, continues [to] reject[t] it. *City of Urbana*, p. 19.

The Union avers that by offering to take a zero raise in the second year of the Collective Bargaining Agreement, the Union has demonstrably offered not just an adequate *quid pro quo*, but a compelling one. The Union further notes that the objections of the Village are fanciful. At hearing, the Arbitrator asked the attorney for the Village: “I want you to come back and explain to me why you’re still opposed to this. Okay? On the record. Can you do that?” (Tr. at p. 111).

The Union states that the arguments the Village offered in response were completely unconvincing. For example, the Union points out that the Village argued at the hearing that “pensions aren’t based simply on salary and on time and service, they’re based on the market” and “[t]he liability [of] the Village is based on the marketplace, how the funds do and everything like that.” (Tr. at pp. 207-208). The Union asserts that all of which is beside the point: while the costs of the Village to fund employee pensions will be lower if the investments of the pension fund achieve a higher rate of return, lower base salary will always mean a lower pension liability because the employees’ amount of pension that must be funded will be lower.

The Union further notes that whenever “comp time” is scheduled without the need

for overtime callback, the Village will save money. Second, with regard to the stated need of the Village for transparency, the Union contends that this fact is as readily transparent as a percentage increase on the base. The Union posits that certainly most taxpayers can discern the significance of the costs between a “bonus” cash payout and a structural increase in base salary.

It is the position of the Union that its proposal on wages/time due bank is fully supported by the applicable statutory criteria. The Union argues the fact that the proposal of the Union is less costly to the Village than the proposal of the Village impacts all the relevant statutory criteria in favor of the Union. The Union asserts that as to the wages/time due bank proposal, the offer of the Union is supported by the following criteria: Section 14(h)(3), (4), (6), (7), and (8)(the other criteria being inapplicable).

Specifically, the Union submits that the decision criterion in Section 14(h)(3) of the Act is stated as “The interests and welfare of the public and the financial ability of the unit of government to meet those costs.” In Illinois, as in other states, the Union points out that the future cost of pension liabilities and the ability of government to meet them is a pressing issue. In this case, the Union maintains that this consideration favors the position of the Union on wages/time due bank. The Union notes that most cost analysis is focused on the contract term. As the public is “aroused” by increased property taxes and pension costs, the Union notes that its proposal addresses those concerns while still providing a benefit that the employees desire.

With regard to Section 14(h)(8) of the Act, the Union notes that arbitrators frequently place great emphasis on internal comparables, as they are relevant under Section 14(h)(8) of the Act. The Union submits that as its proposal on wages/time due

bank is less costly to the Village than the proposal of the Village, an analysis of comparables is actually beyond the point. However, the Union notes that there was evidence presented as to internal as well as external comparables.

The Union notes that there are two police unions, representing police officers and sergeants, which are nearing the end of 5-year contracts. The police officer contract expired on December 31, 2012, while the sergeant's contract expired on December 31, 2013. In both cases, the police officers and sergeants are receiving 4% increases for all 5 years of the contract. (Union Exhibit Nos. 3, 4; Tr. at p. 40).

The Union further notes that the Village has recently reached an agreement with its Public Works employees providing for greater wage increases than contained in either the proposal of the Village or the proposal of the Union herein. The contract with the Public Works employees is a 3-year contract with raises of 2.5%, 2.5%, and 2.5%. The Union notes that this information was provided to the Arbitrator subsequent to the hearing, under the authority of 5 ILCS 315/14(h)(7), and upon belief of the Union verified by the attorney for the Village. The Union points out that the Village appears to argue, as to the Public Works contract, that the Public Works employees had previously made concessions. The Union argues that the Village Firefighters also made concessions in the past, and took a zero increase, because of the recent fiscal crisis.

With regard to external comparables, relevant under Section 14(h)(4), the Union states that Hoffman Estates ranks highest in terms of top base pay (base pay at the top of the wage scale), though not in terms of base pay at lower rungs. (Union Exhibit No. 7(1); Village Exhibit Nos. 3-5). The Union maintains that this actually is another reason to adopt the proposal of the Union on wages/time due bank, since the proposal of the Union

would result in a lower base pay than the proposal of the Village.

The Union argues that in terms of the wage increases (rate of increase) being received by external comparables, Union Exhibit No. 7-1 shows that the average increase in base salary for the three years at issue here is 1.77%, 2.37%, and 2.2%. The first-year (2012) figures are somewhat artificially reduced because Mount Prospect provides a zero increase for 2012, having failed to seek to reopen their contract. The Union avers that the key comparison here is between the average 2.37% increase in the second year, and the proposal of the Union of a 0% base increase in the second year, which would give the Union a slower rate of increase overall than the external comparables.

Lastly, the Union submits that with respect to overall compensation, Section 14(h)(6) directs the arbitrator to consider not only wages, but also “overall compensation.” In terms of overall compensation, considering all cash benefits and hours worked, Hoffman Estates was slightly above average in 2011, and will fall to slightly below average by 2013 under the proposal of the Union. (Union Exhibit Nos. 7-28 to 7-31). The Union concludes that because the proposal of the Union is less costly than the proposal of the Village, it is supported by all the relevant statutory criteria and should be accepted by the Undersigned Arbitrator.

#### **VOLUNTARY SEPARATION PLAN (VSP)**

The offer of the Union contains a continuation of the Voluntary Separation Plan (VSP), or early retirement plan, in Section 21.15 of the Collective Bargaining Agreement. The Union notes that the provision states that “the Village shall offer a Voluntary Separation Plan that includes as a retirement incentive Village paid health insurance for

three (3) years and such other terms and conditions as determined by the Village.” (Joint Exhibit No. 3A, Attachment 2; Joint Exhibit No. 1, p. 45). The offer of the Village proposes that the VSP not be continued.

It is the position of the Union that it did not waive its proposal on the VSP. The Union states that the Village argues that the Union waived its position on the continuation of the VSP because not all Union proposals over the course of the negotiations contained that term. “VSP” The Union submits that this argument is without merit. The Union notes that the Village concedes that the Union made a written proposal that provided for the continuation of the VSP. (Tr. at p. 263). The Union points out that the Village produced no evidence of any agreement to remove the issue from negotiations, but points only to some subsequent proposals (some of which were clearly delineated as “off the record”) that did not contain the continuation of the VSP.

The Union states that even subsequent to those Union proposals, the Village made the Union a proposal on the VSP, on July 16, 2012. (Tr. at p. 261). This was conceded by the attorney for the Village, even as she contended that the Village continued to argue that the Union had dropped the issue. (Tr. at p. 262).

The Union asserts that there is no requirement in the Act that a party must include all its proposals in every single one of its offers, under penalty of losing the ability to present the issue at arbitration. Rather, Section 14(g) of the Act provides as follows:

(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of

the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. 5 ILCS 315/14.

The Union states that in other words, the arbitration panel (i.e., the Undersigned Arbitrator) will identify the issues in dispute at the time of the hearing. The Union maintains that the VSP was obviously in dispute at the time of the instant hearing, and had been the subject of several proposals throughout the negotiations. The Union submits that there should be a heavy burden for any party to argue that the other party has withdrawn one of its proposals, especially in the absence of any written agreement to that effect. The Union argues that under Illinois law, a waiver of rights under the Illinois Public Labor Relations Act must be “clear and unmistakable”. *State Dept. of Cent. Management Services (Department of Corrections) v. State, Labor Relations Bd.*, 373 Ill.App.3d 242, 256, 869 N.E.2d 274 (4th Dist. 2007). The Union states that the argument by the Village that the Union waived its position on the VSP is especially inappropriate here, as the VSP is the *status quo* between the Parties. The Union emphasizes that the expired Collective Bargaining Agreement does not refer to the VSP as a one-time-only system, but instead merely states: “Effective January 1, 2011, the Village shall offer a Voluntary Separation Plan...” (Joint Exhibit No. 1).

The Union argues that the VSP is an appropriate and fiscally responsible program. The Union states that the position of the Village is that it agreed to the VSP in the previous negotiations because it had a desire to achieve attrition within the bargaining unit. Individuals who retired under the VSP were not replaced. Now, however, the Union notes that the Village asserts with the VSP it would have to replace retirees with new

hires, which could end up losing the Village money even though the new hires are paid at a substantially lower rate. The Union notes that there was a dispute at hearing between the Village witness Jeffrey Jorian (the Deputy Fire Chief) and Union witness Craig Olsen (Secretary of the Union). Specifically, the Village witness detailed the various costs that might be necessitated by new hires, particularly the payment of overtime during training. While the Union witness argued that even under the calculation by the Union, the Village would save money by replacing senior and more highly-compensated employees with new hires. (Tr. at pp. 267-72). This assumes that those senior employees would not otherwise take early retirement.

The Union maintains that while it is perhaps not as certain that the Village would save money from continuing the VSP as it is certain that the Village would save money from the “time due bank proposal” of the Union discussed above, the Union has the better of the argument on the VSP as well. The Union contends that savings from replacing a senior employee with a junior employee are definite, while overtime costs relied on by the Fire Department Chief are somewhat speculative.

The Union further states that in Hoffman Estates, the difference between top base pay and bottom base pay is considerably greater than it is in other jurisdictions. The Union notes that Village Exhibit Nos. 3-5 demonstrates that the Village ranks first in top base pay, but only average in bottom base pay. The Union asserts that as the Village would probably save money from continuing the VSP, and in any event would not lose a lot of money, the VSP program should be continued.

## EXECUTIVE SESSION SUMMARY POSITION

The Union states that the wage offer of the Village over the three-year term represents a 6.0% aggregate increase in base salary (1½, 2.0, 2.5). In contrast, the Union states that the Union's offer reflects only a 5.0% increase in base salary (2½, 0, 2½). The second year "time due bank" component of the offer in lieu of a base increase in wages is not added to the base and at the maximum represents a cash payout of 72 hours at the employee's straight time hourly rate. The Union notes that the Village argues that the 72 hours is "onerous" and is paid out annually. The Union counters that it is no more onerous than the base wage increases offered by the Village, and the Union notes that the 2.0% base wage increase the Village offer makes effective January 1, 2013 is "in the base" of the salary in effect on December 31, 2013 to which the 2½% wage increase of the Village effective January 1, 2014 will be applied. Further, the Union points out that the increase will be in the base of every annual salary paid to employees during their career with the department and their life as pension beneficiaries. According to the Union, Time Due Bank will be either taken as time off or paid out in cash annually. Also according to the Union, Time Due Bank will not be added to the base or compounded in successive years. It is essentially a "static benefit" that will increase only to the extent that the employee's straight time hourly rate increases as a result of base salary increases made in successor contracts which is reflected in the exhibits of the Union. The Union states that its exhibit, noted above, demonstrating the impact of the differential in the 1% lift in general base salary resulting from the wage/time due bank offer of the Union documents the cost differential over time and it is indisputably massive.

The Union maintains that throughout the Executive Session, the Village resolutely denied this fact.

The Union asserts that the colloquy between Deputy City Manager Daniel O'Malley and the Undersigned Arbitrator is instructive. In an attempt to refocus the mindset of the Village, Mr. O'Malley was asked to recall the position of the Village taken during the negotiations that produced the 2009-2011 predecessor contract. He acknowledged that the Village sought to obtain the agreement of the Union to a 0% increase in the first year of the contract. The Union stoutly opposed this proposal and resisted threats of layoff made concurrently by the Village. This dispute was submitted to interest arbitration to Arbitrator George Fleischli who attempted to mediate a settlement. Ultimately a compromise was struck and layoffs avoided. The compromise involved a concession from the Union in agreeing to a 0% raise for 364 days of the year 2009 in exchange for a 3½% wage increase effective on December 31, 2009. The Union states that its concession amounted to a cash savings in 2009 payroll costs on the order of \$2,813 per Firefighter/Paramedic in exchange for securing a base salary "lift" of 3½% effective on the last day of the contract (Jt. Exh. 1, §21.1C Firefighter/Paramedic salary over 7 years effective January 1, 2009 81,765; effective January 1, 2010 81,765; effective 12/31/10 84,627). The third year of the successor contract provided for a 2½% general across-the-board wage increase effective January 1, 2011 and a 1% increase effective July 1, 2011. Mr. O'Malley during the conversation expressed frustration with that fact that while the Union agreed to the 0% for all but one day of the year 2010, the 3½% increase on December 31 when added to the 2½% increase effective January 1, 2011 gave the Union a "6% increase". Of course Mr. O'Malley's perception is correct in the

aggregate. And this effect is precisely why the Union insisted on at least a 3½% lift in the base as the predicate for the third year wage increase.

The Union states that for some inexplicable reason however Mr. O'Malley and no one representing the Village during the executive session, was willing to apply the same logic to the Union's time due bank offer. The Union states that the central and undeniable fact however is that while 72 hours of time due bank has a value either as time off or as cash, is not added to the base and is therefore not compounded. The 2½% the Union proposes effective January 1, 2014 compounds only the 2½% effective January 1, 2012 for an aggregate increase of 5.0% — not the 6.0% provided under the Village's offer and not the 8% suggested in some of the Village's arguments which treated the value of 72 hours of cash payment as equivalent to 3% added to the base.

It is the position of the Union that the Union's time due bank is analogous to “a supplemental” benefit in that it is a benefit valued by employees (time off) but if it is converted to cash it is received as a separate check annually and is not added to base salary. The Union states that the persistence of the Village and its refusal to distinguish between money added to the base and annual cash payments makes no sense.

The Union notes that the Village contended that the projected savings documented by the Union Exhibits are “speculative” because it has no assurance that the 1% differential will not be recovered in some future negotiation. Implicit in this concern is an acknowledgment that the 6% aggregate base wage increase is at the lower margins of increases granted to comparable communities. The Union would agree: but for the “time due bank” component of its proposal, the Union submits that a general wage increase of 2½, 2½, 2½ has more support under the Section 14 criteria than would the

Village's 5%. The Union draws support from internal comparability data with the police and public works employees – all of which exceed the Village's offer to its firefighters. Moreover, during the pendency of these proceedings the Union notes that the Village has given the Battalion Chiefs salary increases of +2.55 for 2013.

The Union asserts that external comparability is an express factor under §14(h)(4). As previously noted, the Union states that the Union Exhibits establish that wage settlements among the comparables exceed an average of 2% per year. Also, during the pendency of these proceedings Mt. Prospect has reached a settlement with its firefighters for a new contract effective January 1, 2013 through December 31, 2015. The settlement includes increases in both firefighters' base pay as well as paramedic incentive. According to the TA'd agreement the top base salary effective on December 31, 2012 (Firefighter and Paramedic pay) increases from \$87,372 to \$93,470 effective July 1, 2015. This is an aggregate "lift" of 7.0%, 2.0% more than the Village offer to firefighters. The Mt. Prospect settlement also adopts the "comp time/time due bank" language reflected in the predecessor contract as a new §3.4. A copy of the relevant provisions of this contract are attached as "Exhibit 3(a)" (Wage Schedule) and "Exhibit 3(b)" (comp time).

Further support can be drawn from the fact that the Union conceded on the order of \$300,000 in cash salary as part of the 2009-12 settlement. Whereas the police units did not. However the Union does not seek to "have its cake and eat it too". But it is proposing the 72 hour time due bank benefit as a straightforward *quid pro quo* for a 0% base salary increase in 2013. The Arbitrator can readily enforce this exchange by describing it in these terms in the language of his award. The award will be a precedent

and readily available as a reference to any Village negotiators who might be faced with a Union bargaining team seeking to use the 0% raise in 2013 as a “factor supporting an equity adjustment” in future negotiations. The Union suggest the following language:

That the [72][48] hour time due bank contribution effective January 1, 2013 is a full “*quid pro quo*” for the 0% wage increased applied for the 2013 contract year and that such agreement is intended to ensure that the Union shall not prospectively use the fact of 0% in 2013 as a factor to support any claim for an equity adjustment or other base salary increase or other pensionable salary in any future negotiations.

The Union asserts that the Village has sought to persuade the Arbitrator to reject the Union’s offer by insisting that he would be awarding a “breakthrough” to the Union. The Union maintains that this is sophistry. “Time Due Bank” is not a new concept or benefit to the Parties. It was mutually agreed as a component of the Parties’ last contract. As the Arbitrator knows, “time due bank” in Hoffman Estates is a form of compensatory time off originally designed to facilitate the continuation of a benefit established between the Village of Palatine and the Palatine Firefighters. The Union states that the language makes compliant with FLSA regulations a practice they had developed of setting up a “short time” bank where overtime was deposited at a straight time rather than time and a half and from which employees could draw to get time off that would otherwise create overtime. The Union notes that this benefit was extended to Hoffman Estates and agreed to in other municipalities such as Naperville, Schaumburg, Northbrook and very recently Mt. Prospect. The Union argues that this benefit has served both Parties well. The Union avers that it has afforded an opportunity for firefighters to obtain more opportunities for time off to deal with short notice events involving their families and it has resulted in

savings for the Village where comp time used did not create overtime callbacks.

The Union's motivation for proposing the "time due bank" proposal arises out of two concerns. More immediately, as Local President Dean Slater explained, opportunity to earn overtime has been significantly diminished over the term of the predecessor contract by the Village's hiring of three additional Firefighter/Paramedics and its decision to take out of service an ambulance. The Union argues that a reduction in overtime opportunities clearly diminishes the ability of the bargaining unit of Firefighters to deposit "time due bank" in their banks. On a broader level, the Union notes that the Firefighters expressed concern that they not be seen by residents of the Village as "overreaching" in their wage demands. The Union maintains that time due bank was presented initially as a "happy compromise" that they expected to be welcomed by the Village.

The Union asserts that its creativity in developing a benefit that both satisfies its members' desires to improve their working conditions and significantly reduces the costs to be borne by present and future taxpayers should be reinforced not obstructed. Creation of a separate time due bank assures that the time due bank benefit will continue independent of overtime practices. The Union also notes that since it is not tied to overtime, it is not subject to FLSA regulations. The proposal expands and extends the existing time due bank benefit by facilitating its continued availability and use by members of the bargaining unit for their benefit and to the benefit of the Village and its citizens. The Union submits that common sense reinforced by horse sense compels the selection of the Union's final offer on this wage item.

With respect to the Voluntary Separation Plan (VSP), the Union notes that at the

hearing the Village's attorney asserted in his opening statement that the Union had "withdrawn" its VSP proposal after the 9-22-2011 proposal (Tr. at p. 13). The Union argues that analysis of the record demonstrates that the only basis for this claim is mere inference. The Union has made various package proposals that focused on certain priority demands and excluded others. The Union notes that some of these proposed to drop the VSP if the Village accepted the priority proposals. The Village rejected the offer. The Union states that it cannot be bound by the terms of a rejected package proposal. The Union maintains that as to the 9-22-11 proposal, this proposal is central to the Village's ULP. However, paragraph 8 does not even reference an agreement to withdraw the VSP proposal. It only references "minimum apparatus and shift manning." A copy of the Union's Answer to Complaint is attached as "Exhibit 4".

The Union reiterates that as a matter of law it is well-settled that any waiver of a right to bargain or to pursue a statutory right, i.e., here: to have a disputed item determined by an interest arbitrator pursuant to §14 of the Act, cannot be implied but must instead be established "clearly and unmistakably." See, *County of Cook v. Illinois Local Labor Relations Board*, 214 Ill.App.3d 979, 987 (1<sup>st</sup> Dist. 1991). Further, the Union notes that a valid waiver requires the "intentional relinquishment of a known right". *Village of Oak Park v. ILRB*, 168 Ill.App.3d 7, 20 (1<sup>st</sup> Dist. 1988). The Union avers that the record is barren of any such evidence.

Based upon the foregoing, the Union requests that the two instant interest arbitration issues be resolved in favor of the Union as indicated above.

## **THE POSITION OF THE VILLAGE**

It is the position of the Village that the Last Offer by the Village as to wages should be accepted by the Undersigned Arbitrator and incorporated into the Parties' successor Collective Bargaining Agreement. The Village disputes that any other issues exist.

### **WAGES**

According to the Village, the firefighters of the Village have consistently been among the second or third highest paid firefighters compared to the surrounding towns, with a significant benefit package and generous time off. The Village states that during the recent economic recession, when other employees – both in the Village and across Illinois – gave up wage increases and other benefits or suffered layoffs, the Village Firefighters gave up nothing but merely delayed their 2010 wage increase to the end of the year. The Village avers that their firefighters are now the highest paid firefighters among their comparable communities.

It is the position of the Village that the Union is attempting to hide a nearly 3% wage increase<sup>1</sup> in the form of 72 hours of unearned paid time off, essentially the equivalent of a two-week paid vacation for an average “40 hour/week worker”. The Village acknowledges that the wage offer of the Union – 2.5%, 0%, 2.5% – at first glance appears to be lower than the Village's 1.5%, 2.25%, 2.25% offer (5% v. 6%). The Village submits that the 5% over three years is not the offer of the Village as the wage offer is

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<sup>1</sup> Firefighters work approximately 90 24-hour shifts/year so 72 hours (or three 24-hour shifts) equals approximately 3%.

contingent upon the Village granting 72 hours (about 3% of the average Firefighter salary) of paid time off to each and every Village Firefighter in the second and third years of the contract, and every year thereafter.

Additionally, according to the Village, under the proposal of the Union, any Village Firefighter is able to cash out the 72 hours of time and walk away with the money in his pocket. The Village asserts that the Union expects the Undersigned Arbitrator to believe that these 72 hours of paid time off not only cost the Village nothing but will actually save the Village money. The Village maintains that a “3% raise is a 3% raise”, no matter how the Union chooses to present it to the Arbitrator.

The Village states that in contrast, it is offering a competitive and reasonable wage increase that maintains the Firefighters’ position among their comparables and is transparent to taxpayers. The reasonableness of the wage proposal of the Village of 6% over three years (2012-2014) is underscored by an interest arbitration award issued just a few weeks ago for the Village of Schaumburg, an agreed-upon comparable in the present case. In *Village of Schaumburg and IAFF Local 4092*, Case No. 12-190 (Feuille 2012), Arbitrator Peter Feuille selected the Village of Schaumburg’s final offer of 2%, 2%, 2% (6% over three years), finding that this increase was consistent with average pay increases in the comparable communities. In the instant matter, the Village urges the Undersigned Arbitrator to hold in a similar manner.

The Village further argues that what the Union is proposing is a “breakthrough benefit.” *Village of Arlington Heights and Arlington Heights Firefighters Ass’n*, Case No. S-MA-88-89 at 44 (Briggs, 1991) (declining to “break new ground” in interest arbitration on the basis that, “absent compelling circumstances,” departures from the *status quo*

“should be made by the parties . . . at the bargaining table”). The Village states that the Village firefighters do not currently have this benefit, and that no other Fire Department in Illinois offers this benefit. The Village seeks the *status quo* of offering its Firefighters competitive wage increases, and not offering this additional “breakthrough benefit” to its Firefighters, who already enjoy substantial time off. The Village maintains that the Union has not shown a compelling need to drastically depart from the status quo, and thus, the wage offer of the Village should be adopted.

The Village submits that the Parties are in agreement that the disputed issues are all economic issues. In resolving economic issues, arbitrators are constrained to select between the last offers of settlement of both the Village and the Union, without modification, and may not substitute their judgment for that of the Parties. See, 5 ILCS 315/14(g). With respect to each economic issue, arbitrators are required to adopt the final offer which “more nearly complies with the applicable factors prescribed in subsection (h).” The Village asserts that when applying the factors of Section 14(h), an arbitrator’s fundamental task is to approximate the agreement that the parties would have negotiated if the collective bargaining process had been successful. See, e.g., *City of Chicago and Fraternal Order of Police, Lodge 7*, at 20, 32 (Briggs, 2002); *City of Granite City and AFSCME Local 1347*, Case No. S-MA-92-189 at 4 (Feuille, 1993); *Will County Board and AFSCME Council 31*, at 49-50 (Nathan, 1988); and *Village of Franklin Park and Fraternal Order of Police Lodge 47*, Case No. S-MA-92-113 at 9 (Perkovich, 1993). The Village states that what these decisions illustrate is that arbitration can never construct a better deal for the parties than they can obtain for themselves.

The Village maintains that as a threshold matter, and prior to any analysis of the

Section 14(h) factors, the Union must present “compelling evidence” that demonstrates: (1) that the old system or procedure has not worked as anticipated when originally agreed to; or (2) that the existing system or procedure has created operational hardships for the Village (or equitable or due process problems for the Union); and (3) that the party seeking to maintain the *status quo* has unreasonably resisted attempts at the bargaining table to address these problems. *Will County Board and AFSCME Council 31*, at 52 (Nathan, 1988) (emphasis added). See also, *Lombard and Lombard Professional Fire-Fighters Ass’n*, Case No. S-MA-97-200 at 38 (Briggs, 1999) (rejecting a change to the *status quo* where the evidence did not establish a “compelling need” to alter the *status quo* change); and *Calumet City and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-99-128 at 24 (Briggs, 2000).

The Village argues that it is obvious from the bargaining history between the Parties and the unprecedented nature of the proposal of the Union that this new unearned time off benefit is something that the Union could never have bargained for and received at the negotiating table. The Village noted that it stated repeatedly at the table that it was not interested in pioneering this “breakthrough benefit” and practically begged the Union to make a fair wage proposal that did not include this additional, costly benefit. The Village states that the Union did not demonstrate at the hearing, and, indeed, cannot demonstrate, any need for this additional time off benefit. Accordingly, the Village asserts that the Undersigned Arbitrator should not bestow upon the Union what they could have never bargained for themselves.

With respect to comparable communities, the Village states that it is in agreement with the Union on the following comparable external communities under Section

14(h)(4) of the Act: Des Plaines, Palatine, Arlington Heights, Elk Grove Village, Mount Prospect, and Schaumburg. The Village seeks to include Elgin as a comparable, while the Union has added several more communities which the Village deems inapplicable. The Village relies upon an exhaustive comparison of these communities with the goal of showing that under Section 14(h) of the Act, the position of the Union is not sustainable. The Village asserts that no other community has this type of wage benefit under like circumstances. See, pages 11–19 of the post-hearing brief of the Village and related exhibits; and *City of Blue Island and Blue Island Professional Firefighters Association, Local 3547, IAFF*, No. S-MA-01-190 at 33 (Hill, 2002).

The Village also notes that some arbitrators take “internal comparables,” meaning other departments within the same municipality, into consideration. See, *e.g.*, *Village of Hazel Crest and IAFF Local 4087*, Case S-MA-09-271 (Cox, 2010). However, the Village notes that the police contract of the Village was negotiated prior to the recession and that arbitrators have held that internal comparables should not be utilized when they involve comparisons of pre-recession settlements and awards. See, *e.g.*, *North Maine Fire Protection District and North Maine Fire Fighters Local 2224, IAFF*, Arb. Ref. 08 385, at 8-14, 16 (Benn, 2009). The Village states that it must be noted that the economic climate in which the Village police officers’ contract was negotiated was far different from the climate the Village faces today. Specifically, due to the recession and the Village police officers’ unwillingness to make any other concessions, the Village was forced to lay off four (4) Village police officers effective December 31, 2009. The Village sought to renegotiate the 4% wage increases, but the Village police officers’ union refused. (Tr. at p. 152).

The Village notes that in contrast, the Village Firefighters were able to avoid layoffs by agreeing to postpone, but not forgo, their 2010 wage increase from January 1, 2010 to December 31, 2010. (Tr. at pp. 150, 152). The Village also points out that the Parties never agreed to use the Village Police officer's contract as an internal comparable. The Village notes that the Union's own witness admitted at the hearing that the Village police raises are not relied upon during negotiations, stating that the Parties have "never come to an agreement" to consider the Village police officers' wage increases when negotiating increases for Village Firefighters and that it is only something the Firefighters themselves "look at when we're trying to judge what we should ask for." The Village asserts that the Parties have always bargained independently of the Village police officers and have not looked to the police union as a comparable during negotiations. (Tr. at p. 8).

The Village asserts, however, that it has looked to other employee groups, specifically to its non-union employees, when determining what proposals to make to the Union and what the overall compensation package for bargaining unit members should be. (Tr. at pp. 232-23). During the recession, other departments of the Village also took major concessions. (Tr. at pp. 232-33). The Village contends that department directors received no salary increases for two years and other non-union employees received no increases for one year. (Tr. at pp. 232-33). Additionally, the Village points out that the public works union of the Village agreed to a "true freeze," forgoing their increases and wage steps, and gave up half of their "call duty pay". (Tr. at pp. 232-33). The Village urges the Undersigned Arbitrator to consider these "massive concessions" offered by other employee groups when deciding which final offer to choose.

The Village states that consistent with prior contracts, the offer of the Village keeps the Village Firefighters' wages at or near the top of the market as indicated in the following chart:

**Top Base Salaries under the proposal of the Village, 2012-2014**

	2012	2013	2014
<b>Hoffman Estates</b>	<b>\$88,924</b>	<b>\$90,925</b>	<b>\$92,971</b>
Arlington Heights	\$86,197	\$88,800	\$91,482
Schaumburg <sup>2</sup>	\$85,945	\$87,664	N/A
Palatine	\$85,855	\$87,577	N/A
Elk Grove Village	\$87,732	N/A	N/A
Des Plaines	\$87,494	N/A	N/A
Mount Prospect	\$87,372	N/A	N/A
Elgin	<i>Currently Negotiating</i>	<i>Currently Negotiating</i>	<i>Currently Negotiating</i>
<b>Rank</b>	<b>1/7</b>	<b>1/4</b>	<b>1/2</b>

As shown above, for 2012, the Village will have the highest ranking top base salary of \$88,924. (Village Exhibit No. 4). The Village asserts that this amount is nearly \$2,000 more than the average top base salary. For 2013, the Village Firefighters will again have the highest ranking top base salary of \$90,925. (Village Exhibit No. 5). The same goes for 2014, where the top base Firefighter/Paramedics will earn \$92,971. (Village Exhibit No. 6).

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<sup>2</sup> These amounts incorporate the 2% salary increases that Arbitrator Feuille awarded in his recent interest arbitration decision.

Accordingly, the Village maintains that its offer is not only competitive with the comparables, it is significantly better than all of them. The Village notes that its offer is also consistent with other economic indices typically used to evaluate wage trends in the labor market, such as the Village's average annual increase of 2% is higher than the August 2012 Consumer Price Index ("CPI"). By comparison, it is the position of the Village that the wage offer of the Union of 2.5%, (3%), 2.5% is simply out of line with the comparable labor market.

The Village argues that in an attempt to rebut the clear fact that the Village is and will continue to be at the top of the market on wages, the Union presented a number of elaborate spreadsheets in support of its wage offer. (Union Exhibit No. 7). The Village notes that most of the "analysis" in these spreadsheets does not address wages but addresses non-wage items like overtime hours, years to top base salary, total hours worked, vacation hours, overtime pay, holiday pay, and longevity. The Village avers that none of these items are in dispute and none of them should be considered by the Undersigned Arbitrator in selecting a wage proposal. See, *Village of Schaumburg* at 38-50 (Feuille, 2012) (wherein the arbitrator compared only top base pay between external comparables on disputed wages issue). The Village avers that the attempt of the Union to include these non-wage items in a discussion of wages serves only to deflect from the truth that the proposal of the Village maintains its position at the top of the wage scale amongst the comparables.<sup>3</sup>

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<sup>3</sup> The Village asserts that the Union's spreadsheets contained a number of errors, including outdated and inaccurate information (Tr. at pp. 69-72). The Union's attorney indicated that the Union would provide updated and corrected spreadsheets but, to date, those corrected spreadsheets have not been received by the Village and/or its counsel.

Despite the best efforts of the Union to camouflage it as a cost savings for the Village, the Village asserts that the proposal of the Union of adding 72 hours of unearned time off – labeled “Time Due Bank” – beginning in year two represents the costliest portion of their proposal. The Village maintains that the assertion of the Union that awarding Time Due Bank does not cost the Village anything is nothing short of ludicrous. According to the Village, because Village Firefighters will have the option not to use their Time Due Bank and cash it out at the end of the year (and a majority of them do under the current program of earned Time Due Bank) the cost of awarding Time Due Bank in lieu of and on top of wages can be easily quantified. As the discussion below illustrates, these costs are quite significant. The Village points out that in Union Exhibit No. 10, the Union costs out its 72 hours "Time Due Bank" proposal at \$62,901 for year two of the contract and \$64,473 for year three of the contract. (Union Exhibit No. 10, at p. 32). The Village argues that these figures are grossly misleading because they do not include all 72 hours. Rather, the Union only counts 30% of the hours (22), based on the erroneous assumption that only 30% of the Time Due Bank awarded will end up actually being “cashed out.”<sup>4</sup> (Tr. at p. 103). The Village notes that to calculate the true cost of this benefit, all 72 hours should be multiplied by the hourly rate of \$33.86 for year two, and \$34.71 for year three. The Village notes that this amounts to \$2,437.92 and \$2,499.12, respectively, rather than the \$731 and \$750 figures as detailed in Union Exhibit No. 10. The Village points out that \$2,437.92 multiplied by 86 Firefighters equals

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<sup>4</sup> Whether the Time Due Bank is cashed out or used is irrelevant, there is always a cost to the Village. This is because when a Firefighter uses this Time Due Bank, the Village has to pay someone (usually at time and a half) to fill the vacancy. The current earned Time Due Bank overtime program in place can sometimes provide a savings because the Time Due is taken in lieu of paying cash for earned overtime. With the new Time Due Bank program being offered by the Union, it will always be a cost to the Village just like vacation time.

\$209,661.12, more than three times as much as the \$62,901 the Union cites as the cost of awarding “Time Due Bank” in lieu of wages in year two. Because the value of the benefit for a Village Firefighter at top base salary is \$2,437.92, the Village asserts that this is equivalent to close to a 3% wage increase in year two under the proposal of the Union. The Village states that as for year three, \$2,499.12 multiplied by 86 Firefighters equals \$214,924.3, again, much greater than the \$64,473 projected by the Union.<sup>5</sup> (Village Exhibit No. 9). The Village argues that the proposal by the Union is deceptive to all including the public who must pay the cost.

With respect to the proposal of the Union of a “time bank”, the Village asserts that currently, when Village Firefighters work overtime, they have the option of being paid at the rate of time-and-a-half for their overtime or depositing a limited number of their earned overtime hours (also earned at time-and-a-half) into a “Time Due Bank”. This was a new concept placed in the current contract. Under this provision, the Village states that the firefighters may then use any of their banked “Time Due Bank” as time off with any “Time Due Bank” left in their bank at the end of the year being paid out by the Village in accordance with federal and state wage and hour laws. The proposal of the Village maintains this *status quo*. Conversely, the Village states that the “breakthrough proposal” of the Union seeks to add 72 unearned hours of “Time Due Bank” into a separate “Time Due Bank” bank at the beginning of the year for every firefighter to use as if it was earned overtime, or to be paid out if unused. The Village notes that the Union proposes to call this the “Time Due Bank” and to re-name the existing earned overtime program the “Overtime Bank”. (Tr. at pp. 110-11). In addition, the Village states that the

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<sup>5</sup> Additionally, neither of these calculations takes into account the cost of paying another Firefighter – most likely at the overtime rate – to cover the shift in their absence.

Union also seeks to increase the number of Village Firefighters able to use “Time Due Bank” and “Overtime Time Due Bank” during any given shift, with one slot apparently being “reserved” for the use of this unearned Time Due Bank.

The Village asserts that the Union has failed to show a compelling need for this breakthrough benefit. The Village argues that despite the weak attempt of the Union to characterize its proposal to the contrary, the evidence shows that what is being proposed by the Union is an entirely new breakthrough benefit. The Village states that the Union tries to skirt around this issue by labeling it a “new application of an existing benefit”. (Tr. at p. 85).

The Village acknowledges that it is true that the concept of the “Time Due Bank” is not new. However, the Village submits that what the Union is proposing is, in their attorney’s own words, an entirely “new “Time Due Bank” of unearned time off that in no way resembles or is an extension of the existing Time Due Bank program. (Tr. at p. 199). The Village notes that counsel for the Union testified no less than six times that what they are proposing is a “separate bank”. (Tr. at pp. 81, 110-111, 198-200).

The Village argues that the differences between the current “Time Due Bank” program and what the Union is proposing are glaring. First, the most obvious difference between the existing “Time Due Bank” program and what the Union is proposing is that “Time Due Bank” under the proposal of the Union would be unearned. The Village notes that 72 hours of paid time off would simply be awarded to every Village firefighter rather than being earned and banked at the option of the Village Firefighter. The Village asserts that the attorney for the Union admitted this at the hearing when he stated that “the idea of trading wages for comp time [due] is a new proposal.” (Tr. at p. 210). The Village also

points out that the “Time Due Bank” would be placed into an entirely separate bank from the current earned “Time Due Bank”, paid out under a different schedule, and able to be carried over to the next year. (Tr. at pp. 81-82, 110-111, 198-200; Joint Exhibit No. 3A). The Village contends that there would be an additional “Time Due Bank” slot (four instead of three) available for the Village Firefighters to use on a given day, with that fourth slot reserved for use with the new “Time Due Bank”. (Joint Exhibit No. 3A).

The Village maintains that plainly what the Union is proposing is an entirely new benefit that is not afforded to the Village Firefighters under the most recent contract. The Village states that because the proposal of the Union constitutes a significant departure from the *status quo*, the Union must demonstrate a “compelling need” for the implementation of this benefit. See, *Southern Illinois University*, Case No. S-MA-10-340 (Arb. Meyers, 2012) and *Wood Dale Fire Protection District and IAFF Local 3594*, Case No. S-MA-07-260 (Winton, 2008). The Village asserts that the Union offered not one shred of evidence to show that the old system of offering competitive wage increases has not worked. The Village notes that the Union could do not so because Hoffman Estates ranks consistently at or near the top of comparable communities. The Village states that the Union failed to demonstrate that the existing system has created due process problems for the Union (or operational hardships for the Village). Instead, the Village contends that the proffered justification of the Union, (i.e., cost savings for the Village) is completely unrelated to the above factors. See, *DeWitt County Sheriff*, Case No. S-MA-11-055 (Reynolds, 2012) (citing *Will County*, Case No. S-MA-88-9 (Nathan, 1998)). The Village further notes that since its inception, the use of the “Time Due Bank” bank has by no means been universal. The Village states that as of September 30, 2012, thirty-five (35)

Village Firefighters (i.e., over a third of the bargaining unit) had not banked a single hour of overtime in the “Time Due Bank” in 2012. (Village Exhibit No. 13). The Village states that the vast majority of overtime worked has been paid out in cash to Firefighters, and not deposited into a “Time Due Bank”. The Village submits that the number of overtime hours paid out immediately in cash equaled \$5,770.80, whereas the number of overtime hours deposited into “Time Due Bank” only totaled \$2,628.39 (Village Exhibit No. 13). The Village points out that as of September 30, 2012, only three Village Firefighters had 72 hours of Time Due Bank in their banks. This is the maximum amount allowed under the prior contract. The Village submits that if anything, these statistics support decreasing this benefit, rather than adding an additional “Time Due Bank”, as the Union has proposed.<sup>6</sup> Finally, the Village notes that no other comparable community, proposed or agreed, has this benefit as proposed by the Union. While it is true that other comparables have “Time Due Bank”, the Village states that none of them award firefighters unearned Time Due Bank in lieu of or on top of their wages. (Tr. at pp. 84, 210).

The Village strongly urges the Undersigned Arbitrator to note that the flawed statistics of the Union cannot be relied on by the Arbitrator, and therefore cannot be the basis for adopting the proposal of the Union. The Village states that the most obvious flaw in the analysis of the Union is that it is attempting to calculate savings over a 25-year period based on a contract proposal that would only be valid through 2014.

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<sup>6</sup> Even assuming, *arguendo*, one was to accept the Union’s position that their proposal is an expansion of an existing program, rather than an entirely new benefit, the usage statistics for the existing “Time Due Bank” would also support decreasing, not increasing, the amount of “Time Due Bank”. Actual use of the existing program by the Firefighters is limited, with most preferring to be paid in cash, a trend that would no doubt continue if the Village was compelled to offer yet another “Time Due Bank”. And, again, because this is unearned time off, a cost to the Village is incurred whether the Firefighter uses the “Time Due Bank” or gets paid out, with that cost being greater if the Firefighters actually use the “Time Due Bank” because of the Village having to pay another Firefighter (at the overtime rate) to cover the shift.

According to the Village, the calculations of the Union are based on the erroneous assumption that all terms and conditions of the proposed contract will remain unchanged over the next 25 years. The Village notes that this is flawed thinking given that contract changes, pension law changes, and other unforeseen circumstances will almost certainly alter, and quite possibly eliminate, any alleged long-term savings for the Village. For instance, the Village notes that in the next contract, the Parties could agree to provide an equity adjustment to the Village Firefighters' wages to recover the 0% that they took in year two of this proposed contract. If that happens, every penny of the alleged savings under the proposal of the Union would be immediately eliminated. The Village argues that to make the bold prediction that awarding "Time Due Bank" in lieu of wages in one year of one contract would result in a \$3 million savings over 25 years, when so many relevant variables are likely to change during this time period, is irresponsible and incredible. The Village maintains that a close look at the Union Exhibit No. 13 further exposes the holes in the analysis of the Union. The Village submits that Pages 17-19 of Union Exhibit No. 13 are where the key erroneous assumptions begin, and are simply carried over into successive calculations, "poisoning" the numbers of the Union.

The Village notes that the Union lists the exact same retirement salary of \$93,925 for every single Village Firefighter, which the Village states is ludicrous because the Firefighters are all at different points in their careers, and therefore, will be retiring at different times with different salaries. The only retirement salaries that can be calculated with any certainty are those that belong to Village Firefighters who retire under this 2012-2014 contract. The Village charges that the Union conveniently ignores this fact and assumes a pension payout of \$69,971 for every firefighter in the current bargaining

unit. The Village notes that the Union then multiplies that amount by the firefighters' "actuarial years" (another assumption based on retirement age and life expectancy, two more unknowns), to come to the erroneous conclusion that the Village will pay out a total of \$98,589,762 in pension benefits for the current group of Village Firefighters under the proposal of the Union. (Union Exhibit No. 13, p. 38). The Village maintains that the Union then compares this to the calculated pension costs under the Village proposal of \$99,567,782 (using the same erroneous assumptions) to come to another flawed conclusion that the proposal of the Union saves \$978,020 in long-term pension costs over the proposal of the Village. (Union Exhibit No. 13, p. 39).

The Village points out that, in addition, on pages 40-41 of Union Exhibit No. 13, the Union attempts to quantify cost savings based on another assumption of COLAs (cost of living adjustments) totaling 3%. The Village points out that the Union uses the erroneous assumption that every single firefighter will retire with the same pension payout of \$69,971, with the added flawed assumption that every single firefighter will retire at age 50 and live until age 75. In actuality, the Village notes that many Village firefighters will retire well after age 50, thereby shortening the number of years of payouts. The Village states that the Union then costs out the proposals of the Parties taking into account the 3% COLAs and finds that, over 25 years, the proposal of the Union will save \$23,979 per retired Village Firefighter. (Union Exhibit No. 13, p. 40). The Village points out that the Union then multiplies this incorrect calculation by eighty-six (86) Village Firefighters to erroneously conclude that a total savings of \$2,062,207 would be realized over the proposal of the Village.

The Village maintains that the Union's "grand total" savings of \$3,065,165 is based upon erroneous assumptions including the inclusion of the so-called "actuarial savings" of \$978,020 with the "COLA savings" of \$2,062,207. However, the Village maintains that these two numbers cannot be added together because the COLA savings figure actually encompasses the actuarial savings figure. The actuarial savings figure is not an additional savings as the Union claims. The Village points out that the actuarial savings figure examines the long-term pension costs associated with a given retirement salary and that all the COLA savings figure does is to take that given retirement salary and then factor in a 3% COLA to the actuarial calculation. The Village avers that the more accurate characterization of the findings of the Union is that the \$978,020 figure is the total savings assuming no COLAs, and the \$2,062,207 figure is the total savings assuming a 3% COLA. Thus, the Village points out that even if the Union correctly calculated this long-term savings (and it clearly did not) it should total \$2,062,207 with a 3% COLA, and not \$3,065,165.

The Village asserts that another egregious flaw in the analysis of the Union is that none of their future savings amounts are discounted for "present value". Because the Union's claimed savings of \$3,065,165 (actually in point of fact a claimed savings of \$2,062,207) is spread out over 25 years, the Village states that it would be improper to measure it by the value of today's dollar. The Village argues that it is a basic principle of accounting that because of inflation and CPI growth, the value of a dollar 5, 10, 15, 20, and 25 years from now will be far less than it is today. For this reason, the \$3,065,165 (or the \$2,062,207) figure must be discounted. Assuming a 3% inflation rate, the Village states that the present values of these figures are closer to \$1,463,940 and \$984,922

respectively.<sup>7</sup>

The Village maintains that given the reality that the vast majority of Village Firefighters will not be retiring during this current contract (and many of them not for decades); the savings projection by the Union must be significantly decreased. The Village asserts that the more years that a Village Firefighter has until retirement, the more likely that they will eventually recover the 0% they received in year two of this contract, and as soon as that occurs, the calculated pension savings of the Union for that Firefighter disappears. In order for the Village to realize the savings that the Union attempts to show in Union Exhibit No. 13, the Village contends that every single Village Firefighter would have to retire at the end of this contract. Because the vast majority of the eighty-six (86) Village Firefighters will not be retiring in 2014, the Village notes that the vast majority of the projected savings by the Union goes out the window.

The Village argues that by removing the erroneous assumption that every Village Firefighter will retire at the end of the proposed contract from the equation. According to the Village, the true cost “savings” to the Village can be more accurately calculated under the proposal of the Union. The Village points out that looking at the current roster of Village Firefighters, there are only seven (7) Firefighters who will be eligible for full retirement in 2014. i.e., DeTamble, Hartman, Hartwig, Hugel, Hynds, Kulovsek, and Tyrrell. (Union Exhibit No. 13, pp. 5-7). The Village states that assuming that all seven retire in 2014, a generous assumption, their long-term pension payouts under the respective proposals of the Union and the Village can be calculated. Using the method of the Union and numbers for the sake of consistency, here is a breakdown of their “total

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<sup>7</sup> <http://www.calculatorpro.com/calculator/present-value-calculator/>. Using 3% interest rate per period and 25 periods.

salary during pensionable years” under the proposal of the Union, taken from Union Exhibit No. 13, pp. 17-19:

Employee	Actuarial Years	Retirement Salary	Salary @ 75%	x Actuarial Years
DeTamble	23	\$93,295	\$69,971	\$1,609,343
Hartman	20	\$93,295	\$69,971	\$1,399,429
Hartwig	20	\$93,295	\$69,971	\$1,399,429
Hugel	18	\$93,295	\$69,971	\$1,259,486
Hynds	17	\$93,295	\$69,971	\$1,189,515
Kulovsek	20	\$93,295	\$69,971	\$1,399,429
Tyrrell	13	\$93,295	\$69,971	\$909,629

The Village states that below is the same breakdown under the proposal of the Village, taken from Union Exhibit No. 13, pp. 35-37:

Employee	Actuarial Years	Retirement Salary	Salary @ 75%	x Actuarial Years
DeTamble	23	\$94,221	\$70,666	\$1,625,308
Hartman	20	\$94,221	\$70,666	\$1,413,311
Hartwig	20	\$94,221	\$70,666	\$1,413,311
Hugel	18	\$94,221	\$70,666	\$1,271,980
Hynds	17	\$94,221	\$70,666	\$1,201,315
Kulovsek	20	\$94,221	\$70,666	\$1,413,311
Tyrrell	13	\$94,221	\$70,666	\$918,652

Under the proposal of the Union, the Village states that the total pension cost for these seven retirees will be \$9,166,260. Under the proposal of the Village, the total cost will be \$9,257,188. The Village argues that this difference amounts to a whopping \$90,928 spread out over 23 years, which has a present value of \$46,072.<sup>8</sup> The Village contends that this is a far cry from the \$3 million savings erroneously projected by the Union.<sup>9</sup>

The Village further points out that even assuming the “Time Due Bank” proposal of the Union saves the Village money in the long run, any savings generated is

<sup>8</sup> <http://www.calculatorpro.com/calculator/present-value-calculator/>. Using 3% interest rate per period and 23 periods.

<sup>9</sup> Even if the Arbitrator were to accept the Union’s calculations as accurate, \$3 million over 25 years amounts to less than 1% of the overall projected pension costs—\$332,697,465. (U. Ex. 13, p. 43). Even this amount is too insignificant to warrant such a drastic change from the status quo.

significantly outweighed by other negative consequences that would result from the proposal of the Union. First, the Village points out that the use of “Time Due Bank” is an inconvenience to the Department. Under the program as it stands, a Village Firefighter can elect to use his Time Due Bank essentially whenever and however he wants. In fact, a Village Firefighter is only “encouraged” to notify his shift commander two hours in advance of his scheduled shift, which places an administrative strain on the Department because it has to quickly find a replacement for the firefighter. The Village points out that this often results in a replacement firefighter working overtime, which immediately adds an additional cost to the Village.

Secondly, as discussed above, the Village notes that the lack of transparency that the proposal of the Union brings is unfair to Village taxpayers as the cost of awarding “Time Due Bank” in lieu of and on top of wages to firefighters is significant, and the Village has an obligation to fully disclose to its citizens the compensation it awards to its firefighters. See 5 ILCS 120/7.3(a). If the proposal of the Union is adopted, the Village maintains that the costs of the “Time Due Bank” will not be included in the Firefighters salaries, giving the public a “false sense” of their true compensation. Even if the Village attempted to convey such information to the public, it would likely fall on deaf ears because most laypersons do not have sufficient background knowledge to fully comprehend the value of this added benefit.

Finally, if the proposal of the Union is adopted, the Village avers that it would significantly burden the Village in future contracts in addition to the current one. The Village argues that the Union is seeking a “breakthrough benefit” that, if adopted, would place an incredible strain on the Village going forward, both financially and

administratively. The Village emphasizes that the Union is seeking to add unearned “Time Due Bank” for each and every Village Firefighter for year two of the contract (with no wage increase), and for year three in addition to a 2.5% wage increase. The Village presumes that this will hold for every other year going forward until negotiated out of a future contract.

The Village points out that even though no other community (comparable or otherwise) has this “Time Due Bank” bank benefit, if this benefit is awarded in this contract during the next round of contract negotiations, the benefit will no longer be seen as a “breakthrough”. The Village would have to show a compelling need to eliminate it as it would become part of the *status quo*. See, *Village of Arlington Heights and Arlington Heights Firefighters Ass’n*, Case No. S-MA-88-89 at 44 (Briggs, 1991) (declining to “break new ground” in interest arbitration on the basis that, “absent compelling circumstances,” departures from the *status quo* “should be made by the parties . . . at the bargaining table”). The Village stresses that the Union is trying to disguise the proposal as something awarded in lieu of wages for one year of the contract, but in actuality, it is forcing a costly benefit upon the Village that will have the effect of being awarded on top of wage increases for years to come.

#### **VOLUNTARY SEPARATION PLAN (VSP)**

With regard to the VSP, the Village first contends that this item was previously dropped by the Union and is not properly before the Arbitrator. In the alternative, the Village proposes to maintain the *status quo* by not offering this benefit. In the prior contract between the Parties, the Village provided a VSP as a one-time benefit offered to Village Firefighters on a limited time basis during the recession. The Village states that

the one-time offer has long since expired. The Village avers that the Union has shown no justification for adding this breakthrough benefit in the successor contract.

The Village notes that in the prior contract between the Parties, the Village agreed to offer a VSP to Village firefighters who met certain qualifications during one year of the contract as a one-time benefit. The VSP was only available for a limited time, which has long since expired. The Union seeks to permanently add this benefit in the successor contract while the Village seeks the *status quo* of not offering a VSP. The Village argues that the Union previously dropped its proposal on the VSP during negotiations, but raised it again during the hearing. It is the position of the Village that it is not properly before the Undersigned Arbitrator. In the alternative, if the Arbitrator deems that it is an issue to be resolved, the Village argues that the Union should not prevail.

The Village states that on September 22, 2011, the Union provided its first proposal to the Village. (Tr. at p. 219). This proposal included a proposal on the VSP. According to the Village, after its initial proposal, the Union did not include the VSP in any proposal made to the Village prior to entering mediation in January 2012. (Tr. at pp. 219, 248-49). The Village notes that on January 31, 2012, the Parties participated in their first mediation session with FMCS mediator Charles Evans. (Tr. at p. 248). At this session, the Union issued a complete “on-the-record” package proposal on what its attorney stated were “all open items.” (Village Exhibit No. Ex. 14; Tr. at pp. 248-49). The proposal of the Union did not include anything regarding the VSP. Based on the proposal of the Union prior to mediation and on the Union’s January 31, 2012 package proposal on “all open items,” the Village reasonably believed that the Union had dropped the VSP. (Tr. at p. 249). The Village states that it has maintained its position that it

believed that the Union dropped the VSP issue throughout these proceedings. (See attached correspondence to the Undersigned Arbitrator dated June 15, 2012 and July 27, 2012 - Attachments No. 1 and No. 2, respectively).

The Village maintains that at no time since the initial VSP proposal of the Union on September 22, 2011 (which the Village rejected) has the Village acknowledged that the VSP remains an open and disputed issue. See also, *Harlem Federation of Teachers, Local 540*, 18 PERI ¶1159, 2002 WL 34677004 (IL ELRB 2002). Similar to the *Harlem* decision, the Village argues that the failure of the Union to include the VSP in its January 31, 2012 proposal acted as a waiver of the proposal. The Village points out that the Union also failed to include the VSP in any of its other package proposals between September 2011 and March 2012, but even if it had, the failure of the Union to include it in its January 31, 2012 On-the-Record Complete Package Proposal on all open items is fatal under *Harlem*.

The Village states that the Union claims that it is only seeking a continuation of the VSP as an existing benefit. According to the Village, the characterization of the Union of the VSP as an “existing benefit,” however, is misleading. The Village states that the VSP was offered in 2011 as a result of a significant Village budget shortage. (Tr. at p. 232). The Village contemplated several different cost-cutting measures, including layoffs, for not only the Village Firefighters but for all Village employees. (Tr. at pp. 232-33). In fact, the VSP was specifically offered in lieu of conducting layoffs. (Tr. at pp. 231-32). According to the Village, the VSP was offered as a one-time benefit for this specific purpose, and seven Village Firefighters accepted it. (Tr. at p. 230). The Village notes that it has not replaced any of the Village Firefighters who accepted the VSP. (Tr. at p. 230).

It is also not currently contemplating offering the VSP to any other employees (Tr. at p. 233). Thus, the evidence is clear that the VSP was offered in response to a budget shortfall brought on by the recession. The Village argues that because the same conditions that led to its offering in 2011 no longer exist, any proposal to sustain the one-time benefit must be viewed as a breakthrough, for which the Union has failed to show a compelling need. See, *Village of Arlington Heights and Arlington Heights Firefighters Ass'n*, Case No. S-MA-88-89 at 44 (Briggs, 1991).

The Village states that as addressed in the "Time Due Bank" section, cost savings alone is not a sufficient justification for awarding a breakthrough benefit. The Village asserts that even if it were, however, the Union has failed to show that adopting the VSP would result in significant cost savings. Furthermore, the Village argues that no other comparable community has this benefit. (Joint Exhibit No. 4). The Village submits that these reasons support the adoption of the offer of the Village of maintaining the *status quo* of no VSP. Under the VSP that the Union is seeking to implement, the Village states that a participating Village Firefighter would receive three (3) years of family health insurance coverage, or the cash equivalent. (Tr. at pp. 214-15). This benefit would cost the Village approximately \$65,000 per Village Firefighter. (Tr. at p. 228). Additionally, the Village would also have to pay out accrued vacation and sick time to each Village Firefighter who elected to take the VSP. For the Village Firefighters who participated in the VSP in 2011, this amount equaled an average of \$25,000 per Village Firefighter. (Tr. at pp. 229-30). The Village states that assuming a similar amount for participating Village Firefighters going forward, the payout for each Village Firefighter increases to approximately \$90,000. This figure includes the VSP benefit and vacation/sick payout.

Unlike the previous VSP which was implemented specifically to reduce headcount, the Village asserts that the proposed VSP by the Union seeks to offer this option as a permanent benefit to any Village Firefighter over age 50 seeking to retire. Thus, for each Village Firefighter who takes the VSP, the Village will almost certainly have to hire and train a new Village Firefighter to maintain appropriate staffing levels. (Tr. at p. 250). The Village notes that training a new Village Firefighter can take 18-24 months. (Tr. at p. 252).

The Village points out that there are also significant start-up costs involved with hiring and training a new Village firefighter. From a pure cost standpoint, the Village states that it must pay for a basic firefighter operations program (\$3,500), paramedic class (\$6,500), vehicle machinery operations class (\$500), turnout gear (\$2,500), and uniforms (\$500). (Tr. at pp. 252-57). The Village submits that these expenses total \$13,500 per Village Firefighter.

In addition to these costs, however, the Fire Department must cover the new Firefighter's shift slot while he or she is participating in training. This often results in overtime being paid. According to the estimates of Deputy Chief Jeffrey Jorian, a new Village firefighter's training would cause him or her to miss about twenty-five (25) shift days. (Tr. at p. 257). The Village would have to pay other Village Firefighters to cover these shifts, often at overtime rates. Deputy Chief Jorian estimated this cost to the Village at approximately \$42,000. (Tr. at p. 257).

The Village notes that the current situation is far different than in 2010 when the VSP was offered by the Village. At that time, the Village was in the position to permit several Village Firefighters take the VSP without incurring the need to replace those

positions, and moreover, there were no replacement, training, and equipment costs realized. The Village maintains that such is no longer the case, and the Village would incur substantial costs to replace retiring Village Firefighters. Thus, the Village avers that offering an incentive for Village Firefighters to retire simply makes no sense.

The Village acknowledges that while it is true that the Village would reap some savings based on salary differential, this savings does not outweigh the costs of paying the VSP benefit and vacation/sick payout to a participating Village Firefighter, coupled with the costs of training a new firefighter in his place. The Village asserts that currently, the salary differential between top base pay and starting pay is approximately \$30,000. (Tr. at p. 251). As the new firefighter ascends the salary scale, this differential becomes less and less each year, until he or she reaches top base pay after seven years. (Joint Exhibit No. 1). Under the current salary schedule, this “salary differential” savings equals approximately \$130,000 spread out over seven years.

The Village argues that when this figure is compared to the costs of a firefighter taking the VSP (i.e., \$90,000), plus training (i.e., \$13,500), and shift coverage (i.e., \$42,000) for new Village Firefighters, the Village actually realizes a net loss of \$15,500 per Village Firefighter. The Village asserts that because no other comparable entities offer this benefit, the awarding of this benefit is not required for the Village to attract and retain qualified firefighters for the Village. The Village also notes that the VSP would negatively affect hiring needs and scheduling – two essential functions of management of the Fire Department. The Village reiterates that there is no compelling need to offer this benefit and the proposal of the Village of maintaining the *status quo* by not offering a VSP should be adopted.

**EXECUTIVE SESSION SUMMARY OF POSITIONS**

The Village maintains that the following two issues were presented for hearing to the Undersigned Arbitrator:

**1. Wages**

**Village's Final Offer**

2012	2013	2014
1.5%	2.25%	2.25%

**Union's Final Offer**

2012	2013	2014
2.5%	0% + 72 hours of "Time Due Bank"	2.5% +72 hours of "Time Due Bank"

**2. VSP**

**Village's Final Offer:** Status Quo (no VSP)

**Union's Final Offer:** Implement a VSP offering a benefit of three years of family health insurance coverage, or the cash equivalent (approximately \$65,000)

The Village reiterates that Section 14(h) of the Illinois Public Labor Relations Act ("Act") establishes the following eight factors pursuant to which the final offers of the Parties shall be evaluated:

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 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 sector or in private employment.

5 ILCS 315/14(h). When applying these Section 14(h) factors, the Village submits that an arbitrator's fundamental task is to approximate the agreement that the Parties would have negotiated if the collective bargaining process had been successful. See, *City of Chicago and Fraternal Order of Police, Lodge 7*, at 20, 32 (Briggs, 2002). The Village notes that the Act does not require that all of the factors be applied to each issue; instead, the arbitrator has the authority to determine which factors are applicable and to decide how the applicable factors should be weighted. See, *City of Granite City and AFSCME Local 1347*, Case No. S-MA-92-189 at 4 (Feuille, 1993). Thus, it is the position of the Village that arbitration should not construct a better deal for the Parties than they would have been able to obtain for themselves, compelling the Undersigned Arbitrator to select the final offer of the Village on both issues.

With respect to comparable communities, the Village notes that the Parties agree that the following are comparable external communities:

Des Plaines  
Palatine  
Arlington Heights  
Elk Grove Village  
Mount Prospect  
Schaumburg

The Village also asserts that Elgin is an external comparable. The Village states that it is undisputed that Elgin has been used as a comparable in the past by agreement of the Parties, and it was included in the Union's initial list of comparable communities and thereafter treated as an agreed comparable during negotiations (Tr. 134; V. Ex. 2). Likewise, the Village argues that Elgin has been used as a comparable by the Village with respect to its other employee groups, both represented (with the agreement of their unions) and non-represented employees. The Village maintains that Elgin is comparable to the Village of Hoffman Estates in a myriad of ways: (1) Elgin is adjacent to the Village, sharing common streets; (2) both communities are located in both Cook and Kane counties; (3) Elgin and the Village share a school district and library district; and (4) Elgin's per capita revenue amount is \$1,140, just below the Village's \$1,378 (Union Exh. No. 2).

The Village notes that the Union seeks to include Crystal Lake, Lombard, Glenview, Buffalo Grove, and Downers Grove as additional external comparables. While these proposed communities may share some attributes with the Village, it is undisputed that they have not historically been treated as comparables by the Parties during negotiations. Generally, the Village states that arbitrators give great weight to past comparables. See, e.g., *Village of Morton Grove and IAFF Local 2178* (Briggs, 2012) *Village of Schaumburg and IAFF Local 4092* (Hill, 2007), at 17, n.13. At the end of the day, however, regardless of which external comparables the Undersigned

Arbitrator considers to, the Village avers that one thing is clear: Hoffman Estates fire fighters are among the highest paid firefighters in any of these communities.

**A. Wages**

The Village’s offer would maintain its position among the top communities in the agreed and Village comparables, a position that the Hoffman Estates firefighters have held for decades.

**Top Base Salaries under the Village’s Proposal, 2012-2014**

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Hoffman Estates	\$88,924	\$90,925	\$92,971
Arlington Heights	\$86,197	\$88,800	\$91,482
Schaumburg	\$85,945	\$87,664	N/A
Palatine	\$85,855	\$87,577	N/A
Elk Grove	\$87,732	N/A	N/A
Village			
Des Plaines	\$87,494	N/A	N/A
Mount Prospect	\$87,372	\$89,538	\$91,487
Elgin	<i>Currently Negotiating</i>	<i>Currently Negotiating</i>	<i>Currently Negotiating</i>
<b>Rank</b>	<b>1/7</b>	<b>1/5</b>	<b>1/3</b>

The Union does not dispute that the firefighters of the Village are well-compensated, or that their overall compensation package is competitive with and indeed superior to even the Union’s proposed comparables of the Union. Yet, the Village asserts that the Union proposes wage increases in the first and third years (2.5%) that far outpace the comparables and CPI.

The Village argues that perhaps recognizing that its wage desires surpass the

levels justified by the external comparables, the Union proposes that instead of a wage increase in the second year, its members be given a breakthrough benefit i.e. new unearned "Time Due Bank" in lieu of an increase on their base salary. The Union claims that this "Time Due Bank" will actually save the Village money. While this may be a creative effort to provide hidden value to members in difficult economic times, the Village encourages the Arbitrator to be mindful that it is not his role to create new benefits or break new ground, especially where one Party vehemently disagrees.

As presented during the Executive Session, it is the position of the Village that the Time Due Bank proposal is flawed because:

1. It gives all employees the absolute right to take the benefit, which amounts to approximately 3% of pay, in cash. Thus, it is tantamount to a 3% wage increase because there is no guarantee that members will not take the cash.
2. This Time Due Bank benefit is an added cost no matter how you look at it. Unlike the current Time Due Bank benefit which is earned overtime that firefighters have chosen to convert into paid time off, this is simply additional unearned paid time off.
3. Employees who take paid time off will have to be replaced by other firefighters at overtime rates; thus actually increasing the cost of this new benefit of the Village.
4. As stewards of the assets of the people of Hoffman Estates, management cannot in good conscience "bank" on saving money by paying workers more and giving them more paid time off. The Village asks, would a bank or other private financier agree to this proposition?
5. In today's efforts of public funds being fully disclosed and transparent, this benefit is a hidden wage increase which would be perpetuated forever into the future and no doubt lead to future requests for more (more hours in the Bank and a "catch up" in wages).
6. The calculations of the Union are flawed for a number of reasons set forth fully in the Post-Hearing brief of the Village.
7. And, perhaps, most importantly, no other community has such an arrangement; thus imposing this breakthrough benefit would set a precedent for the state of Illinois.

The Village posits that unless the Union can demonstrate without a doubt that this arrangement will save the Village money, the Arbitrator should be reluctant to substitute his judgment for that of management, especially when it comes to matters of Village finance. The Village further states that this is especially true where, as the Union proposes here, every employee would have the absolute unilateral right to take the benefit in cash. Such matters are best left to the Parties to negotiate and decide.

The Village argues that while the Union has offered a variety of fatally flawed charts and rhetoric in support of its contention that its proposal will save the Village money, it has not, to the knowledge of the Village, had these claims evaluated by an actuary or other financial professional. As discussed with the Undersigned Arbitrator during the Executive Session, the Village had the actuary who performs the assessments for the firefighters' pension plan review the exhibits of the Union and opine on their validity. In a nutshell, the Village notes that he found the contention of the Union that the new Time Due Bank benefit would save the Village even a modest amount of money speculative at best, and the exhibits of the Union riddled with actuarial and accounting errors.

The Village maintains that there are other factors that weigh in favor of the offer of the Village as well. Interest arbitration was intended to serve as a substitute for a strike. The Village states that the Arbitrator should ask, "Would the Union strike over these issues? If so, would it prevail in a strike?" It is hard to contemplate workers who are the highest paid in the industry striking over wages, especially in these difficult economic times.

Finally, the Village would also offer, and the Arbitrator should consider that if the Union were truly serious about reducing pension costs, the flag it has been flying in support of its Time Due Bank proposal, the Union would draft, support, and/or lobby for pension reform legislation as it did when the current firefighter pension system was put in place. The Village opines that the key to solving firefighter pension issues does not lie with imposing this breakthrough benefit on the small Village of Hoffman Estates, but in committing to true pension reform through legislative action at the state level.

**B. Voluntary Separation Program (VSP)**

As noted above and in the Post-Hearing brief of the Village, it is the position of the Village that the VSP is not properly before the Arbitrator; thus, the Arbitrator lacks authority to decide this issue. The Village states that as indicated during the Executive Session, following its investigation, the Illinois Labor Relations Board issued an unfair labor practice complaint against the Union on January 10, 2013. That complaint alleges that the Union negotiated in bad faith. Specifically, the complaint alleges that Union reneged on its withdrawal of bargaining proposals and the matter is currently scheduled for a hearing on June 7, 2013.

Putting aside for a moment the fact that the VSP is not properly before the Arbitrator, if the Arbitrator determines that he has authority to decide this issue, he must accept the *status quo* final offer of the Village of not offering a VSP. The Village notes that the Union proposes making the VSP a permanent benefit. The Village states that the expired contract between the Parties provided:

The Village shall offer a Voluntary Separation Plan during 2011 that includes as a retirement incentive Village paid health insurance for three (3) years or the cash equivalent paid on a monthly basis and such other terms and conditions as determined by the Village in substantial conformance with Attachment J (Emphasis added).

The Village maintains that the uncontroverted testimony at hearing and the plain contract language supports the position of the Village that the VSP was a one-time retirement incentive offered during a financial crisis to reduce costs and staffing without having to layoff firefighters. Firefighters had a very limited window in which to elect to retire under this program. The Village has not offered this benefit to firefighters (or any other represented group) in any other year – either before or after 2011. Thus, it is the position of the Village that the Union must meet the heightened level of proof necessary for a breakthrough proposal, which it has not done.

Indeed, the Village asserts that the Union spent little time at the hearing or at the Executive Session discussing or presenting any evidence on the VSP. Likely the Union realizes that none of the proposed comparables (i.e. agreed, Union or Village) offers such a program, and that there is no current need for such a program. The Village, as it has repeatedly emphasized, is not in a position where it needs to reduce staffing. At this point, the Village argues that it would have to hire new firefighters, at great cost to train and equip, to replace any firefighters who chose to retire. Thus, the Village notes that incentivizing firefighters to retire would be both costly and nonsensical, and of no benefit to the Village. The offer of the Village maintains its firefighters among the highest paid in comparable communities.

The Village argues that given that its firefighters are among the highest paid; there is no reason to compel the Village to offer a first-of-its-kind unearned Time Due

Bank benefit. Arbitrators should not substitute their judgment for that of the Parties in such a radical and speculative way when there is no compelling need.

For all the reasons stated above, the Village of Hoffman Estates requests that the Undersigned Arbitrator implement its offer in its entirety on the disputed wage issue and find that the VSP is not a viable issue to be resolved in this matter.

### **OPINION**

The instant interest arbitration involves two wage related issues regarding the Village of Hoffman Estates Firefighters, located in Illinois. The Parties submitted the following issue(s) to the Undersigned Arbitrator for resolution.

It is the position of the Union that there are two issues in dispute between the Parties: (1) Wages/"Time Due Bank" (Sections 21.1 and the Union-proposed Section 16.6-8 of the Collective Bargaining Agreement); and (2) the Voluntary Separation Plan (VSP) (Section 21.15 of the Collective Bargaining Agreement).

It is the position of the Village that the only issue in dispute relates solely to wages. Accordingly, the Village presents the issue as follows:

**Wages:** The Village is proposing the following yearly increases: 1.5%; 2.25%; 2.25% (6%). The Union is proposing the following yearly increases: 2.5%; 0.0%; 2.5% (5%). The wage proposal of the Union is contingent upon the Village agreeing to offer a breakthrough benefit by creating a new ""Time Due Bank" for each Firefighter and depositing 72 unearned hours of paid time off in that bank to be used or cashed out at the Firefighters' option (72 hours = 3% bringing the Union's proposal to 8% over three years).

**VSP:** The Village does not recognize this issue as one properly before the Arbitrator because the Union dropped this issue early on during negotiations. In the alternative, if the Arbitrator finds the issue properly before him, the Village is proposing to maintain the *status quo*, which does not include offering a VSP. The Union is proposing to implement a new VSP in this successor contract on the

same terms as the VSP that was previously offered as a one-time benefit during one year of the previous contract.

The Undersigned Arbitrator has carefully considered the testimony, other evidence, and arguments put forth by the Parties, and within the context of the Illinois statutory standards for interest arbitration for public employees. (5 ILCS 315/14). The Arbitrator has also considered the positions presented by the Parties during the Executive Session held on March 22, 2013.

Based on all relevant evidence and the respective arguments of the Parties on the two issues presented, the Undersigned Arbitrator must find that the position of the Union regarding the Time Due Bank in lieu of a wage increase must be accepted, provided the program proves over time to actually be a cost savings as proposed. The position of the Village on the one time, limited offer in 2011 of a Voluntary Separation Plan (VSP) must be accepted as the VSP has expired and there is no compelling reason to keep it in place. The Undersigned Arbitrator's findings, conclusions, and reasoning are set forth below.

### **WAGES/TIME DUE BANK**

With respect to wages and the Time Due Bank proposal, the Union asserts that the Village's offer on wages, over the Parties agreed three year term, is as follows: effective 1/1/12 - +1.5%; effective 1/1/13 - + 2.25%; effective 1/1/14 - +2.25%. The Union's last offer on wages is as follows: 1/1/12 - +2.5%; 1/1/13 - +0%/72 hours "time due bank"; 1/1/14 - +2.5% (Tr. at p. 8; Joint. Exhibit No. 3A). According to the Union, the aggregate base salary increases of the three year term is: Village - +6.0%; Union - +5.0%.

In lieu of a wage increase in the second year to the contract, the Union proposes

adding 72 hours of “time due bank” annually to a “Time Due Bank.” The Union argues that this benefit is an extension of the “time due bank/comp time procedure” that the Parties previously negotiated as the “Overtime Bank” in Section 16.6 of the expired 2009-11 Collective Bargaining Agreement. (Joint Exhibit No. 1, p. 24). However, the Union states that its proposal includes additional limitations that benefit the Village (and its taxpayers). The annual banked deposit of 72 hours “may be carried over, but if not cashed out by 12/31 of the year in which it is accrued it may not thereafter be cashed out.” (Joint Exhibit No. 3A, Section 16.6-8).

The central paragraph of the proposal of the Union on this issue provides:

Effective 1/1/13 or no later than 30 days from the issuance of the arbitrators award, the bargaining unit shall receive no wage increase in 2013, but shall receive 72 hours of “Time Due Bank” that shall be added annually into a “Time Due Bank.” The use of time due bank shall be as described for the “Overtime Bank” with the following exceptions: 1) “Time Due Bank” may be carried over, but if not cashed out by 12/31 of the year in which it is accrued it may not thereafter be cashed out; 2) one additional slot shall be established to be used for scheduling “Time Due Bank” off each shift day in addition to the slots allocated in Section 16.6-4; and (3) any use of “Time Due Bank” by Battalion Chiefs shall not affect the use or charge rate of Time Due Bank by Bargaining Unit personnel. 4) cash outs shall not exceed more than 25% per quarter except in the 4th quarter the remaining balance may be cashed out. (Joint Exhibit No. 3A, Section 16.6-8).

The Union points out that this proposal also protects the Village from the pyramiding effect ordinarily associated with “comp time” benefits by providing that if time due bank scheduling creates overtime (i.e. 1½ costs), the employee’s “Time Due Bank” is reduced hour for hour (i.e. 24 off = 36 hours withdrawal). The Union argues that this is the same formula provided by the existing “overtime/time due bank” of the Parties. (Joint Exhibit No. 3A, Section 16.6-6(c)).

The Union argues that this proposal is innovative and economical. The Undersigned Arbitrator must agree for two reasons. First, as the Union pointed out in Executive Session, that while 72 hours of time due bank has a value either as time off or as cash, is not added to the base and is therefore not compounded. (Emphasis added). The 2½% the Union proposes effective January 1, 2014 compounds only the 2½% effective January 1, 2012 for an aggregate increase of 5.0% — not the 6.0% provided under the offer of the Village and not the 8% suggested in some of the arguments of the Village, which treated the value of 72 hours of cash payment as equivalent to 3% added to the base.

The Arbitrator notes that the Village's case in chief on the three year wage increase issue centers on this argument. Specifically, that the Union's proposal will actually cost the Village more than the Village's own proposal. As seen above, however, the Arbitrator notes that such is not the case as the figures suggest otherwise when the compound factor is considered and answered. The Village provided an exhaustive study as to where the numbers lie and what they would mean for the bottom line for the Village and its taxpayers. However, the Undersigned Arbitrator is of the opinion that the Union has the more cost-effective proposal over time.

Secondly, it is also the opinion of the Arbitrator that the fact that the proposal of the Union is innovative should not necessarily be considered an indication of a lack of credibility. The Undersigned Arbitrator is in agreement with the Union that although the proposal of the Union is not a breakthrough item, but an extension of an existing benefit, even if the issue were analyzed under breakthrough principles, the Union should prevail. It is well-established that the two key elements of breakthrough analysis are: (1) whether

the party proposing the breakthrough has offered an adequate *quid pro quo*, and (2) whether the party resisting or opposing the breakthrough has offered an objection that is not reasonable.

The Union points out that Arbitrator Marvin Hill stated in *City Of Urbana and International Association of Fire Fighters, Local 1147*, S-MA-97-245 (Hill, 1998):

I am on record as noting that an interest arbitrator should not deny a party a benefit simply because no other comparable jurisdiction has adopted it. In such a case, however, the party that wants the benefit included in the collective bargaining agreement has a heavy burden to demonstrate that the opposing party is being unreasonable in rejecting the benefit desired by the proposing party. One indication of an unreasonable stance is where the proposing party offers an adequate *quid pro quo* and the opposing party, for no rational reason, continues [to] reject[t] it. *City of Urbana*, p. 19.

The Undersigned Arbitrator must concur.

By offering to take a zero raise in the second year of the Collective Bargaining Agreement, it is the opinion of the Undersigned Arbitrator that the Union has demonstrably offered a true and compelling *quid pro quo*.

The Arbitrator must note, in contrast, that when the Arbitrator asked the attorney and the fire chief for the Village to explain why the proposal of the Union was unsound and why they were still opposed to it, there was no adequate response by the Village. (Tr. at p. 111), Indeed, the Arbitrator is certain that sensible and thoughtful taxpayers can appreciate the significance of the lesser costs associated with a “bonus” cash payout compared to a structural increase in base salary. The misplaced arguments of the Village on transparency and perception do not make sense when in fact the Union has the less costly wage proposal.

The Arbitrator must find that the proposal of the Union on wages/time due bank is fully supported by the applicable statutory criteria. Furthermore, the proposal of the Union is less costly to the Village than the proposal of the Village, which inarguably triggers all the relevant statutory criteria in favor of the proposal of the Union.

As the Union asserts, the wage/time due bank offer of the Union is supported by the following criteria: Section 14(h)(3), (4), (6), (7), and (8)(the other criteria being inapplicable), especially, in the view of the Arbitrator, Section 14(h)(3) of the Act which references: "The interests and welfare of the public and the financial ability of the unit of government to meet those costs."

There is one important *caveat*. Given the newness of the offer of the Union, the Arbitrator attaches the following condition on the acceptance of the proposal of the Union on the time due bank program. If, over a reasonable amount of time, the Village is able to show through verifiable and acceptable metrics that this is not in fact a cost savings measure, the program will have to be abolished going forward after 2013. It will not be precedent setting. Accordingly, the Arbitrator is of a mind to accept the suggested language of the Union for its proposal as follows to keep accountability at the forefront:

That the [72][48] hour time due bank contribution effective January 1, 2013 is a full "*quid pro quo*" for the 0% wage increase applied for the 2013 contract year and that such agreement is intended to ensure that the Union shall not prospectively use the fact of 0% in 2013 as a factor to support any claim for an equity adjustment or other base salary increase or other pensionable salary in any future negotiations.

If the Time Due Bank does not prove to be a cost saving effort, then it shall be dropped per the assurance and agreement of the Union. It is the very strong suggestion of the Undersigned Arbitrator that the Parties establish a review panel or committee with

accepted standards to assess the effectiveness of the time due bank on an objective basis. It is further suggested that the Parties retain a mutually acceptable and subject competent third party to chair the suggested "Time Due Bank Committee". In the view of the Undersigned Arbitrator, this is a fair and practical approach that respects and protects the concerns of the Village and its taxpayers.

### **VOLUNTARY SEPARATION PLAN (VSP)**

With regard to the Voluntary Separation Plan (VSP), the Village contends that this item was previously dropped by the Union and therefore is not properly before the Undersigned Arbitrator. The Union counters that it made various package proposals that focused on certain priority demands and excluded others. The Union further argues that some of these counter proposals proposed to drop the VSP if the Village accepted the priority proposals, which the Village ultimately rejected. Accordingly, the Union submits that it cannot be bound by the terms of a rejected package proposal to its own detriment.

The Union further argues that as a matter of law it is well-settled that any waiver of a right to bargain or to pursue a statutory right cannot be implied but must instead be established "clearly and unmistakably." See, *County of Cook v. Illinois Local Labor Relations Board*, 214 Ill.App.3d 979, 987 (1<sup>st</sup> Dist. 1991). The Union maintains that a valid waiver requires the "intentional relinquishment of a known right". *Village of Oak Park v. ILRB*, 168 Ill.App.3d 7, 20 (1<sup>st</sup> Dist. 1988), which was not given in the instant matter.

As to the waiver argument, the Undersigned Arbitrator must concur with the

Union. At issue here is the waiver to have a disputed item, namely the VSP, determined by an interest arbitrator pursuant to §14 of the Act. The Arbitrator does not see any clear evidence that the Union intentionally waived its right to have the VSP issue considered. In the back and forth of contract negotiations, parties universally have a number of issues at play and in process. Hence, the need for an unmistakable and clear waiver of any issue is required out of fairness to all Parties. Therefore, the Undersigned Arbitrator must find that the VSP is still an issue to be resolved under Section 14 of the IPLRA.

It is the position of the Village that the Undersigned Arbitrator should maintain the *status quo* by not offering the VSP as a permanent benefit. The Village argues that in the prior contract between the Parties, the Village provided a VSP as a one-time benefit offered to Village Firefighters on a limited time basis during the recession. The Village states that the one-time offer has long since expired. The Arbitrator notes that the expired contract between the Parties provided:

The Village shall offer a Voluntary Separation Plan during 2011 that includes as a retirement incentive Village paid health insurance for three (3) years or the cash equivalent paid on a monthly basis and such other terms and conditions as determined by the Village in substantial conformance with Attachment J.

The Union argues that the VSP is an appropriate and fiscally responsible program. The Union states that the position of the Village is that it agreed to the VSP in the previous negotiations because it had a desire to achieve attrition within the bargaining unit as individuals who retired under the VSP were not replaced. The Union notes that the Village now asserts with the VSP it would have to replace retirees with new hires, which could end up losing the Village money even though the new hires are paid at a substantially lower rate. The Union admits that while it is perhaps not as certain that the Village would save money from continuing the VSP (as it is certain that the Village

would save money from the “time due bank proposal”); the Union has the better of the argument on the VSP as well. The Union contends that savings from replacing a senior employee with a junior employee are definite, while overtime costs relied on by the Fire Department Chief are somewhat speculative, noting that, in Hoffman Estates, the difference between top base pay and bottom base pay is considerably greater than it is in other jurisdictions. It is the opinion of the Undersigned Arbitrator that the Union at best speculates the Village would probably save money from continuing the VSP, and would not lose a lot of money, if the VSP program should be continued.

The Undersigned Arbitrator is also of the opinion that the Village is correct when it asserts that the plain contract language supports the position of the Village that the VSP was a one-time retirement incentive offered. This was offered by the Village apparently as a reaction to the financial crisis and as an effort to reduce costs and staffing without having to layoff firefighters. The record evidence demonstrates that the Village Firefighters had a very limited window during which to elect to retire under this program, and, moreover, that the Village has not offered this benefit to firefighters (or any other represented group) in any other year – either before or after 2011. The Arbitrator must concur with the position of the Village that incentivizing firefighters to retire is both costly and incomprehensible given the need for public employees who serve in this vital role.

In addition, the Undersigned Arbitrator is persuaded by the fact that as the same conditions that led to offering the VSP in 2011 no longer exist, any proposal by the Union to sustain or continue the one-time benefit must be considered as a breakthrough proposal. Although the Union argues this point to the contrary, a breakthrough proposal

would require the Union to show a compelling need for the VSP. See, *Village of Arlington Heights and Arlington Heights Firefighters Ass'n*, Case No. S-MA-88-89 at 44 (Briggs, 1991).

Accordingly, the Arbitrator must concur with the Village that the Union failed to show a compelling need for imposing the VSP under current conditions. The Arbitrator must agree with the position of the Village that there is no clear cost savings, and there is the real possibility that the Village would lose money if the VSP were implemented as a permanent benefit. As it is clear from the record evidence that no other comparable community has this benefit for its firefighters, the Arbitrator must conclude that there is no compelling reason for continuing it.

AWARD

Based on all relevant evidence and the respective arguments of the Parties on the two issues presented, the Undersigned Arbitrator must find that the position of the Union regarding the Time Due Bank in lieu of a wage increase must be accepted, with the understanding that the program, will not continue in force overtime should it be proven by appropriate and verified metrics that it in fact does not present a cost savings to the Village. The position of the Village on the one time, limited offer in 2011 of a Voluntary Separation Plan (VSP) must be accepted and the VSP benefit will not be instituted on a permanent basis but is considered expired.

Lamont E. Stallworth, Ph.D.  
Labor Arbitrator

Signed this 8th day of May, 2013

City of Chicago  
County of Cook  
State of Illinois

Sworn to and subscribed before me this 8th day of May, 2013

LES/chg/cs

