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Before

Harvey A. Nathan

Chairman

In the Matter of the Interest Arbitration

between

VILLAGE OF GURNEE, ILLINOIS

and

GURNEE FIREFIGHTERS UNION,
IAFF LOCAL # 3598

Joseph J. Stevens
Village Selected Arbitrator

J. Dale Berry
Union Selected Arbitrator

ISLRB Case No. S-MA-12-185

Hearing Held: February 25, 2013
April 9, 2013
June 3, 2013
July 30, 2013

For the Employer: Joseph J. Stevens,
Peggy J. Osterman,
Schuyler, Roche & Crisham

For the Union: J. Dale Berry,
Andrew B. Epstein (on the Brief)
Cornfield and Feldman

INTEREST ARBITRATION AWARD

I. INTRODUCTION

A. Background

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act." The parties are Village of Gurnee ("Village" or "Employer") and Gurnee Firefighters Union, IAFF Local # 3598.("Union")[1] The bargaining unit is defined as:

> "*** All Firefighter/Paramedics and Fire Lieutenants that are full-time civil service employees employed by the Village of Gurnee, Gurnee Fire Department ***" [2]

The parties have previously negotiated five collective bargaining agreements ("Agreements").[3] All were three year Agreements except for the last one which was a one year Agreement. This last Agreement occurred in

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[1] The Village of Gurnee covers 13.65 square miles and has a population in excess of 31,000. It is located in Lake County, just west of Waukegan. The Gurnee Fire Department also services the adjacent Warren-Waukegan Fire Protection District. The District covers 15.6 square miles and has a population of 22,500. There are two fire stations.

[2] Excluded are Fire Captains, Fire Marshals, Fire Chief and Deputy Chiefs, administrative officers and other employees employed by the Village. There are 43 employees in the bargaining unit. All bargaining unit employees are certified paramedics. The Village has four other bargaining units: Illinois Fraternal Order of Police Labor Council, 47 employees, International Union of Operating Engineers - Public Works Unit, 25 employees, International Union of Operating Engineers - Administrative Unit, 22 employees, Illinois Council of Police - Sergeants, 5 employees. All numbers are as of January 1, 2013.

[3] 1999-2002, 2002-2005, 2005-2008, 2008-2011, 2011-2012.

order to avoid a deadlock and the interest arbitration that would result therefrom. The expired 2011 Agreement was ratified in July, 2011. Less than five months later the parties were back at the bargaining table.[4]

Bargaining commenced for a new Agreement on February 27, 2012. By the fourth session, April 24, 2012, the parties reached agreement on six contested items: Military Leave, Family and Medical Leave Act, Voluntary Employee Assistance under Drug and Alcohol Program, Discipline under that Program, Dental Insurance, and a Pre-Tax Flexible Compensation Plan. At the next bargaining session, on May 15, 2012, the parties agreed upon: Health and Medical Insurance, Modified Work Assignment in cases of sickness or injury, Hours of Work relating to Platoon Duty Shift, Vacation Leave, Paid Holidays, Sick Leave Buy Back, 40 Hour Schedule, and Training Coordinator.[5]

On May 15th the parties deadlocked on all other issues. A meeting with a Federal Mediator on June 11th was unsuccessful and the Union filed for arbitration. Informal meetings continued and on November 14th the parties agreed upon a list of nine comparable communities.[6] The parties disagree on

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[4] In effect, except for the five months mentioned above, the parties have been in collective bargaining for three years.

[5] See Joint Exhibit 2, the list of tentative agreements.

[6] This was a new group for the parties and was agreed to after a lot of give and take. However, beyond the list itself there was very little agreement as to the statistics for each community. The parties do not agree on the revenue or assets of each "comparable," and in a few cases, population. The discrepancies result from using different sources, or from different methods used in computing the

some details such as size of the communities and the number of bargaining unit employees. The arbitrator accepts the Village's employee numbers because they were gathered in April, 2013, from the Fire Chiefs or Deputy Fire Chiefs directly.

The list is as follows:[7]

	County	Population	Department Employees
Highland Park	Lake	29,763	45
Niles	Cook	29,803	43
Northbrook	Cook	37,170	60
Wheeling	Cook	37,648	47
Buffalo Grove	Cook	41,496	60
Hoffman Estates	Cook	51,895	86
Crystal Lake	McHenry	52,000	57
Libertyville	Lake	53,000	36
Mount Prospect	Cook	54,167	60
Averages		**42,994**	**55**
Gurnee	Lake	53,799	43

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sources that are agreed upon. The result is that while measurement of salaries can be compared, the justification for each schedule is speculative. Thus, we can determine who pays more or less than Gurnee, but cannot determine whether Gurnee's rate is justifiable compared to the revenue, other expenditures and net worth.

[7] Some of numbers for population may be estimates. The parties disagree as to most of the numbers used in this entire case making the arbitrator's determination of certain facts considerably more difficult than they should have been.

However, the number of fire employees in proportion to population shows that Gurnee's department is much smaller than the comparable departments in terms of the average number of employees relative to population. Gurnee has 43 fire employee against an average of 55.[8] In the comparables the average proportion of fire employees to population (average population divided by average number of employees) is 782 people for each fire fighter. In Gurnee the ratio is one fire employee per 1,251 people. In terms of actual work, the average number of calls to the comparable fire departments was 5086. In Gurnee there were 5421 calls. In other words, among the comparable communities, the average fire employee (55) handled 92 calls in a year (based upon the last recorded year). In Gurnee the 43 fire employees handled 126 calls each. That is almost 3 calls per employee. Among the comparable employees the number is 1.6 calls per employee, or nearly half of the number of calls answered per employee in Gurnee.[9]

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[8] As of the hearing dates, of the 43 employees only 13 have less than 10 years' seniority.

[9] Bear in mind that "calls" is a term of art referring to any type of request for services, and does not relate to only fire calls and rescue calls. Nonetheless, a fire employee on duty must be prepared at all times he/she is on duty. In assessing just "fire calls", the average among the comparables was 90 a year. In Gurnee the annual number was 127. This is an average of 1.6 fire calls per employee in the comparables against 3 per Gurnee employee. In other words, Gurnee's fire unit is 22% smaller than the average comparability unit but responds per employee to twice as many calls. The Village questions the Union's numbers on the "calls" in Gurnee. However, the numbers the arbitrator is using refers only to the calls and not the actions taken in response. The use of these numbers here is to compare the same "calls" experienced in

The parties had great difficulty in reaching common ground regarding revenues and expenses for the comparables as well as Gurnee. Part of the reason was that the Village uses eight different funds to compute revenue and liabilities. The Union asserts that most of these funds are irrelevant to operating a fire department. The result is that under the Union's analysis Gurnee is slightly ahead of the average while the Village computes that it is substantially below average in per capita revenue.[10] It is the arbitrator's opinion that the discrete accounts from which the public safety departments are funded are more relevant for the issues in this case. In any event, Gurnee is not a municipality faced with financial problems. Indeed, the tax revenue generated from the Gurnee Mills mall is a factor not present in the comparable communities.

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the comparable communities. The numbers consistently show that the Gurnee Fire Department gets significantly more calls than the comparable communities.

[10] This difference in approach skews the entire discussion of ability to pay. The Employer argued that its method was the way it has always computed its finances. The Union contends that its method is the standard used in collective bargaining for public safety units. The Union explained that the fire bargaining units in the comparables are represented by the same national union and in many cases by the same counsel. Neither party presented authoritative evidence that one method was more appropriate than the other. On the other hand, the Employer's failure to rebut the Union's representation that its method was common among all local fire departments provides some measure of persuasion for the arbitrator. The Village's argument that its deposit of more money in its General Fund than other communities, and that this skews the comparisons, is not persuasive. The Village's allocation of funds is its choice, and the arbitrator assumes it had good reason for doing so. Regardless of these technicalities there is no "ability to pay" argument in this case.

Gurnee has a Moody's rating of *Aa1*.[11] It is the arbitrator's opinion that ability to pay is not a controlling factor in this case.[12] What is more relevant is the workload of the bargaining unit employees, their duties, their income relative to that of similarly situated employees in the comparable units, and other benefits.[13]

B. Salary and Salary Structure Comparisons

The parties' prior Agreement, from May 1, 2008 to April 30, 2011, provided a seven step salary scale. In the final year, 2010-2011, Firefighter/Paramedics started at $59,221 and the salary increased 5% per year so that after 7 years these employees would top out at $83,331. (In their 6th

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[11] Moody's report stated, "Assignment and Affirmation of the *Aa1* rating reflects the village's sizeable tax base favorably located in Lake County (GO rated *Aaa*) with a vibrant commercial sector as well as a substantial recreational/entertainment presence; strong financial operations benefitting from the financial flexibility afforded by home-rule status; and extremely favorable debt profile with minimal direct obligations and rapid principal amortization."

[12] As of April,2012, the General Fund went from about $21,626,000 to $22,685,000, a 9.5% increase. Contributions to the Fire Pension Fund decreased during that time period. However, to put this in perspective one must consider that the Village took a hit during the recession in the years just prior to 2012. Since 2009 the Village eliminated 19 positions Village-wide (out of an approximate total of 208) and the Fire Department froze certain capital expenditures. Additionally, the Village needed to increase certain fees for services.

[13] As previously stated, all fire department employees in Gurnee are required to be licensed paramedics. Paramedical work is a significant part of the work performed by Gurnee's fire fighters. Effective in 2010 fire employees were paid .5% additional salary upon securing their paramedic certification.

year Lieutenants would top out at $99,304). Additionally, all employees receive the .05% stipend for paramedic certification upon renewal of the paramedic license. There is also longevity pay at the end of each calendar year following an employee's 8th anniversary.[14] The longevity begins at $100 and increases to $1,200 following an employee's 20th anniversary. The parties agree that this computes out to be $84,998 for Firefighter/Paramedics. The average top base pay for Firefighter/Paramedics in the comparable communities for 2011 is shown to be $85,745, less than 1% above the Gurnee unit's amount. Gurnee was 7th of the 10 communities. As will be discussed below, under both proposals Gurnee would move up a notch to 6th place in 2012.[15] According to the Union's exhibits, Gurnee would rise substantially in rank among the comparables for 2013, even considering that at the time the exhibits were received there were three unsettled comparable units.[16] The exhibits also show that as now structured lifetime earnings in Gurnee are less than the average for the

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[14] New employees are not paid the paramedic bonus. That comes when a paramedic license is renewed.

[15] At the time of the presentation of this data at the hearing Niles had not yet reached an agreement for 2012. The placement of Gurnee was actually 6 of 9. Inasmuch as Niles was already ahead of Gurnee it is likely that Niles would continue to be ahead of Gurnee which would then keep it at 7 out of 10.

[16] Another consideration is that with some of the comparables it takes longer to reach the top than in Gurnee while in others it takes less time.

comparables. The differences, however, are relatively small.[17]

With regard to the Village's wage proposal, it seeks to add an 8th step in the progression before employees would reach the top of the schedule. The new step would be at the beginning of an employee's career. The new step would be 5% lower than the present base. It would affect career earnings for new employees. Among the comparables , Niles has a 10 year step progression and Libertyville has 8. The other seven communities have less that the 8 steps proposed by the Village.

C. Statutory Standards

Section 14(h) of the Act provides that the arbitrator shall base his findings, opinions and order upon the following factors, as applicable:

> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
>
> (4) Comparison of the wages, hours and conditions of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of

[17] According to the Union, by 2014 the Gurnee unit would be near the top of the comparables for lifetime earnings. The evidence does not take into consideration, however, that the Union's computation for that year did not consider the four unsettled communities within the comparability group. On the other hand, were the Village's proposal establishing a new step 5% lower than the previous structure, lifetime earnings would be decreased for new employees and, eventually, for the department as a whole.

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, holiday and other excused time, insurance and pensions, medical and hospitalization benefits, and 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 and 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 private employment.

II. THE ISSUES

Upon the completion of the parties' presentation of their cases-in-chief, after the second day of hearing, it became apparent that the parties could not agree to the specification of the issues in dispute. The arbitrator ordered the parties to submit to him a written statement of position as to what each believed to be the issues in dispute. Upon receipt and consideration of these statements of position, and a review of the transcript of proceedings, the arbitrator issued

a "Determination of Issues in Dispute."

The decision as to the issues was as follows:[18]

1. Term
2. Wages
3. Progression
4. Paramedic re-certification
5. Longevity
6. Union business

A. Term

Village: 4 Years, May 1, 2012 through April 30, 2016

Union: Three years - modify Section 22.1 to provide new term effective May 1, 2012 through April 30, 2015, as described in "Attachment 1".[19]

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[18] During the final two sessions of the hearing the parties agreed that they were in accord regarding Paramedic Recertification Pay. The language of the expired Agreement which shall carry over to the new Agreement is as follows:

Section 6.4 Paramedic Recertification Pay

An employee who has recertified as an EMT-P in accordance with the requirements of the Illinois Department of Public Health while employed as a member of the Gurnee Fire Department shall receive paramedic recertification pay in the amount of 0.5%. Effective May 1, 2010, an eligible employee's base salary step will be adjusted accordingly.

[19] *Attachment 1 reads as follows:*
Section 22.1 Duration of Agreement

This Agreement shall be effective as of May 1, 2012 and shall remain in full force and effect until April 30, 2015. It shall automatically renewed from year to year thereafter unless either of the parties shall notify the other in writing at least one hundred twenty (120) days prior to the anniversary date that it desires to terminate or amend and modify the Agreement. In the event such notice is given,

Discussion

Although the arbitrator recognizes that the selection of the Union's three year proposal for the Agreement's length would leave no more than a year before bargaining commences again, the arbitrator's decision is that the shorter Agreement is better in these changing times.

The arbitrator recognizes that the other Gurnee bargaining units have agreed to the longer term, as have several of the comparable fire departments. In this case, however, there is an enigma in the determination of the term. The Village's proposed four year term comes with a four year proposal for wages. The Union's three year proposed term carries with it a three year wage proposal. If the arbitrator selects the four year term he would either have to choose the Village's four year wage offer or the Union's three year plan. If the Union's three year wage schedule were selected there would be no wage change at all in the fourth year. The difficulty for the arbitrator is that the Village's wage proposal is entirely unacceptable. As will be discussed below, the Employer's wage proposal consists, in part, of an opaque formula based upon future cost - of-living (CPU-I) calculations and the average top salary among the comparable communities. The proposal also provides for a modified formula if there is a comparable unit where their contract has expired and there is no base salary to

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negotiations shall begin no later than ninety (90) days prior to the anniversary date.

be factored into the formula. In short, neither the parties nor the arbitrator can know what the wages will be for the final two years of the four year Agreement.

The Employer's four year wage proposal is no more than a "crap shoot". Under these circumstances the arbitrator must weigh the benefits of a four year Agreement against the denial of any wage increase at all in the fourth year based upon the Union's three year wage proposal. The arbitrator finds that in the absence of any evidence that other parties have forfeited wage increases in the final year of the contract in exchange for a longer contract, and considering the basic inequity of a four year contract with no new provision for new wages in the fourth year, the arbitrator finds that the three year term is appropriate at this time.

2. Wages

Employer

2a) Wages - Firefighter Paramedic

Effective on the following dates, increase each step of the Firefighter Paramedic base salary steps as shown in Article 6.1, as follows:

May 1, 2012:	2.11%
May 1, 2013:	2.75%
May 1, 2014:	Formula [CPI-U (minimum 1%/maximum 3%) + Market Adjustment]
May 1, 2015:	Formula [CPI-U (minimum 1%/maximum 3% + Market Adjustment]

Effective May 1, 2014 and May 1, 2015, base salary steps adjustments shall be determined by a 2-step formula, as described below. The formula maybe re-negotiated in the successor collective bargaining agreement; should the parties utilize interest arbitration to obtain the successor collective bargaining

agreement, any change to the formula shall not be deemed to be a breakthrough issue.

Formula

Step 1: CPI-U Adjustment:

Effective May 1, 2014, and May 1, 2015, the base salary steps shall be adjusted by the annual average percentage change for the 12-month period ending the respective calendar year of the Chicago-Gary-Kenosha Metropolitan Statistical Area Consumer Price Index - All Urban Consumers [CPI-U], All Items, Not Seasonably Adjusted, Base Period 1982-1984=100. The CPI-U adjustment is limited to a minimum 1% and maximum 3%. For purposes of the formula, the base salary steps, as adjusted to include the CPI-U increase, shall be entitled, the "pre-market adjustment base salary steps,"
Step 2: Market Adjustment:

Step 2: Market Adjustment:

The pre-market adjustment base salary steps for Firefighter Paramedics, may be adjusted to an amount necessary to place the top base salary of Firefighter Paramedics, together with the Paramedic Recertification Pay, as provided in Article 6.4, at or above the average top base salary for Firefighter Paramedics among the comparable communities of: Buffalo Grove, Crystal, Highland Park, Hoffman Estates, Libertyville, Mount Prospect, Niles, Northbrook, and Wheeling.

The average salary figure shall be calculated based upon the top salary plus any paramedic stipends for Firefighter Paramedics in the nine (9) comparable communities as of May 1, 2014 and May 1, 2015, respectively.
For purposes of computing the average salary, if a collective bargaining agreement for a comparable community has expired and does not include a top base salary for any of the following years, then the most recent top base salary from the collective bargaining agreement shall be increased as follows for each year in which there is no current collective bargaining agreement:

2012:	2.11%
2013:	2.75%
2014:	CPI-U (minimum of 1%/maximum of 3%)
2015	CPI-U (minimum of 1%/maximum of 3%)

2b) Wages - Fire Lieutenant

The Fire Lieutenant base salary steps as shown in Article 6.1 is based on maintaining an 18% differential between the top step of the Firefighter Paramedic annual base and the top step of the Fire Lieutenant annual base salary scale.[20]

Union

Modify annual pay scales described in §6.1 to provide salary increase as follows:

1. Effective 5/1/2012 increase each step of the applicable 2011/2012 Firefighter/Paramedic pay scale by +2.25%

Fire Lieutenants – effective 5/1/12 increase each step of the Fire Lieutenant pay scale by 1.08% to reduce the rank differential between Steps A through F of the Fire Lieutenant pay scale and Steps D through H of the Firefighter/Paramedic pay scale from 19.167% to 18%.

2. Effective 5/1/2013 increase Steps B-H of the Fire/Paramedic and each step of Fire Lieutenants pay scales by 2.75% and set Step A of the Firefighter/Paramedic scale at $58,675.

3.Effective 5/1/2014 increase each step of the Firefighter/Paramedic and Fire Lieutenants pay scale by +2.75%.

All as described in Attachment 2.[21]

Discussion

As referred to above, the arbitrator selected a three year term of agreement, rather than the Village's proposed four year term. To some degree the decision for the three year term was influenced by the arbitrator's strong

[20] Article 6.1 are the charts setting forth the actual dollar amounts per step for each year and for each classification (Firefighter/Paramedic and Lieutenant).

[21] Attachment 2 is a carryover of the traditional wage schedule showing the new amounts at each step.

rejection of the Village's wage proposal. Although there are many factors favoring a four year term, if that had been selected the Union's wage proposal would have covered only three years of the four year term. Pursuant to that proposal there would not have been a salary increase in the fourth year. That result clearly was not the intention of anyone.

The arbitrator rejects the Village's proposed four year wage increases because the final two years were to be based on a confusing formula, the results of which were unknowable at the time of negotiations, at the time of the preparation of the Award, and at any reasonable time after this Award would go into effect. To begin with, scheduling a wage increase based upon an unknown factor such as the CPI-U is arbitrary. The Employer has not provided any evidence that the cost of living for high middle income employees such as Gurnee fire fighters is at all applicable to a broad-based statistical survey. Gurnee fire fighters are too narrow a slice of the public to have their wages determined by a formula covering millions of people. To do so is, as mentioned above, is simply a shake of the dice. Additionally, in times of recession and/or inflation, the range of 1% to 3% is too narrow even if the CPI-U was an acceptable calculation for 45 employees. The arbitrator also believes that the U.S. economy is now too complex to be measured by traditional supply and demand formulas. In the last recession unemployment went up in numbers not seen in the lifetimes of most of us. However, prices on many every day items, such as gasoline, processed

food, and taxes also went up.[22]

The second major area of difficulty with the Village wage proposal is the adjustment of Gurnee wages, including paramedic recertification pay, "at or above" the average of the "top base salary", of the nine comparable fire departments. One problem is that the settlement of wage adjustments may have to be delayed until all numbers for the comparables are in. The Village's proposal implies that if one or more of the comparable units has not settled ("if a collective bargaining agreement for a comparable community has expired and does not include a too base salary for any of the following years, *then the most recent top base salary from the collective agreement shall be increased* [emphasis added]...") in accordance with the formula for 2.11% or 2.75% as used in the prior years. This is confusing and appears to be good fire wood for an endless stream of grievances. The unsettled comparable units are more apt to be the ones with higher wages, thus reducing the average for the comparables as a whole, There is no basis to assume that the unsettled units will reach an accord based on the artificial 2.11% or 2.75%. It might be a better idea to simply hold off on the unsettled comparable units, pay the Gurnee employees based on the formula relative to the units that have settled and then adjust the salaries when

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[22] Indeed, in its argument the Village said that it had to raise fees. While home prices probably went down, this is not an appropriate gauge for such a small unit as exists in this case.

the additional number come in.[23]

In summary, the Village's wage proposal is unacceptable because:

1. It is too complex and confusing and likely to be fodder for costly grievances.

2. The formulas provide no statistically viable relationship to the needs of the parties on the wage issue.

3. There was no evidence that this type of formula has been successfully used to the satisfaction of other parties.[24]

4. The introduction of a new formula at the arbitration level was inconsistent with bargaining history and may be considered as regressive bargaining.

5. The time delay inherent the use of the proposed formula covering all of the comparables would, in the arbitrator's opinion, would be a detriment to the parties bargaining relationship.

The acceptance of the same or similar formulas by the other Gurnee bargaining units is not persuasive because there was insufficient evidence as to the needs of these other units, their bargaining history, and how they relate to

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[23] During negotiations the Employer specifically refused that idea.

[24] While similar formulas were used with other Gurnee units, those formulas were more favorable to those employee units.

their comparables (or if they have any comparables.)

With regard to the five Lieutenants the slight diminution of their financial relationship to the Firefighter/Paramedics, as provided in the Union's proposal, the arbitrator finds that such an approach is reasonable. Because Firefighter/Paramedic and Lieutenant rates are based upon a fixed percentage and not single number, as wages go up for the Firefighter/Paramedics the spread with Lieutenants becomes larger in whole numbers. At some point that spread can become unreasonable.

Finally, as reviewed above, there is no ability to pay issue in this case. At the risk of being redundant, Gurnee is holding its own financially. The employees at issue perform statistically more work that many other comparables and the Union's proposal of 2.25%/2.75%/2.75%, while a little high for the second year, is clearly more acceptable than the Employer's final offer.

3. Progression

Proposals

Employer

For all employees hired after the date the Interest Arbitration Award is issued, increase salary progression (as shown in Article 6.1) by 1 year, by adding an additional base salary step below Step A of the Firefighter Paramedic and Fire Lieutenant base salary steps.

Union

Maintain status quo as to the current eight (8) step (A-H) seven (7) years to max pay scale except effective May 1, 2013 modify Step A (new hire/probationary) by reducing the amount to $58,675.

Employer

The Village's proposal adds a new starting rate step at the bottom of the schedule. It is set at 5% below the level of Step A, the level previous identified as the starting rate. As with all steps, the new starting rate step is for a 12 month period. The Village notes that all other of its employees, bargaining unit or not, will have an additional one-year step. It also points out that two of the comparable communities have added steps to their pay schedules.

The Village aptly points out that its current starting rate is disproportionately high compared to the starting rate for the comparables, although the rates at other levels of the pay scale are in line with the comparables. It argues that on the face of the facts the starting pay must be adjusted. Additionally, the Village's new starting rate would not go into effect until the date of the arbitrator's award.

Union

The Union's proposal is to modify the entry step, Step A of the pay scale, by 3%, effective May 1, 2013. The May 1, 2012, Step A rate would be set at $61,764. It would be reduced to $58,675 a year later on May 1, 2013, a decrease of 3%. Thereafter, there would be no further decreases in the value of the steps. The 2013 decrease for Step A would carry over to 2014. That is, the May 1, 2014, rate would be increased at the same percentage rate as all of the

other step increases.[25]

The Union argues that presently the Gurnee Firefighter/Paramedics are in an "unfair" situation because it takes them longer to reach the top of the salary schedule compared with the average for the comparables (even including Niles which has a ten year schedule). And, according to the Union, after Gurnee employees top out they are still lower than what they should (all other things considered). The Union argues strenuously that the Village's proposal creates a two-tiered wage structure because it will take new employees longer to reach the top, and this will also impact the selection of Lieutenants.[26] The Union argues that the disparity in wage rates among employees working side by side will exacerbate discord within the bargaining unit , and may lead to grievances.[27]

Discussion

The theoretical dilemma for the arbitrator in public safety cases is how to maintain the substantial salaries in these bargaining units without overwhelming

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[25] Step A annual pay effective May 1, 2012 - $61,764; May 1, 2013 - $58,675; May 1, 2014 - $60,289.

[26] The Union, citing a comment made by the arbitrator during the hearing that with the new length of the Buffalo Grove salary schedule the present employees there "may not be risking very much," argues that the arbitrator recognized the new Buffalo Grove schedule to be, in effect, a two-tiered schedule.

[27] Based on the premise that the new starting wage step creates a two-tiered salary structure the Union goes on to discuss how arbitrators uniformly frown upon such systems. (See, for example, "Two-Tier Wage Discrimination and the Duty of Fair Representation," 98 Harv. L. Rev., 631 (1985).)

the employer's budget as a whole. In Illinois, the arbitrator is limited to the final offers of the parties; a kind of all-or-nothing approach. In this case the arbitrator had this in mind when he divided wages into three issues, wages, progression and longevity. Thus, the wage schedule salary is distinct from progression and from longevity as an issue, although they are obviously related to one another.

In this case there is a question as to whether or not the Village's proposal is for a two-tiered schedule for employees doing the same work but in accordance with a different pay scale. If it were, the overwhelming weight of arbitral authority is that this scheme would disrupt the organized working force and pit one group of employees against the other. It would put the Union into a dilemma because in future negotiations it would have to decide which group, or tier, would get more money. It would cause the Union to side with some of the employees against the other group. The Employer, on the other hand, would want to put its money offer where it could go further, *e.g.* the new tier. See, The Village of Niles, S-MA-08-219 (Nathan, 2010).

The arbitrator finds that the Village is not proposing a two-tier bargaining unit when it seeks to put new employees hired after the issuance of the Award in a new step on the same schedule as all other Firefighter/Paramedics. The change to the wage schedule is minimal. It merely adds a new first step at the beginning of the schedule at the same rate of differentiation as the prior Step A had to the Step B. All employees, regardless of date of hire, will eventually end

at the same place, albeit one year later. There is no separate workforce because after the year of hire the employees will be on the same schedule. Once, of course, they reach the top, they all have the same pay, subject to minimal longevity pay. Given that only about 25% of the existing workforce is below the cap, and only three employees have less than five year's seniority, there will not be any "friction" between the new employees and the small portion ot he bargaining unit of the bargaining unit not yet at the top of the scale.

There is no second tier. Except for employees hired the same year, no two employee have the same lifetime earnings. Every time there is a wage increase and there are new employees, a differentiation, not a second tier, has been created. Each time there is a new wage increase, theoretically there is an increased lifetime wage possibility. At any time an older employee might grouse about how much longer he had to work in order to be paid as much as the younger employees are now being paid.

The new step will be called "Start" and will appear on the new schedule just before Step A on the Firefighter/Paramedic Pay Scale commencing May 1, 2013. It will then be reduced by 5% from the 2013 Step A. This new rate will be carried over to May 1, 2014, by reducing the May 1,2014 Step A by 5%.

The computation of the entering Lieutenants' pay will follow the same procedure. A new Step below Step "L-A" will be created and this be called Step "L-Start." and be placed under the L-A Step commencing May 1, 2013. This will

then be reduced by 5%. This new rate will be carried over to May 1, 2014, by reducing the May 1, 2014 Step L-A by 5%.

4. Paramedic Recertification

The parties agreed that the contract provision for Paramedic Recertification shall be maintained without change.

5. Longevity Pay

Union

> The Union proposes that the contract provision for Longevity Pay shall be maintained without change.

Employer

The Employer proposes the following:

> Employees hired after the date the Interest Arbitration Award is issued shall not be eligible for longevity pay.

The Village is seeking the elimination of longevity pay for all new hires. It states that this change was part of employee commitments by the four other bargaining units in Gurnee in exchange for the "automatic wage escalation" to which the Village agreed to. The Village also argues that there is support for no longevity pay for fire protection employees in the comparable communities. It specifies that neither Crystal Lake nor Libertyville pay any longevity bonus. It argues that the structure of it new wage plan maintains these employees at or above the average pay rate for comparable communities because it grants

employees a 5% across the board increase for their first eight years and the CPI-U adjustment of between 1% and 3%.

The Village argues that in "uncertain economic times" this approach to wage increases "provide taxpayers with objective criteria upon which wage increases can be judged."

Discussion

If the Village in its argument is referring to the wage package the arbitrator rejected earlier in this award, the arbitrator is unable to discern how either employees or taxpayers would be satisfied that wage increases are fair and are in sinc with economic times. As discussed above, the CPI-U is a crude mechanism for adjusting wages. The other adjustment based upon the average of comparables are flawed because no accurate reading can be made until all new agreements in the comparable communities have been concluded.

If the Village's proposal for the cessation is based upon its wage plan, and that plan has been rejected, the Village has no argument supporting the taking a way of longevity. The internal comparable bargaining groups did not reject the Village's wage proposals and therefore they accepted the elimination of longevity. The Gurnee fire employees are not involved in that package and the Village has no legitimate argument of reduce the pay of its longest serving employees. Finally, the arbitrator has selected the Employer's proposal for a new starting rate. This provides the Employer with a new cost saving device.

The Union's proposal for no change in the Longevity language is selected.

6. Union Business Meetings

Union The Union proposes new language as follows:

Limitation on Union Activities During Working Hours

The Union, its members, agents or representatives will not engage in any Union activities of any kind during the normal business day of the employee, as defined in Section 5.2, except as authorized pursuant to the provisions of this Agreement.

1. Employees may engage in Union business at any time while on duty of directed to do so by the Fire Chief, Deputy Fire Chief or Battalion Chief or if approved by the Fire Chief, Deputy Fire Chief or Battalion Chief.

2. Employees may engage in Union business during stand at ready time as defined in Section 5.2.[28]

3. The Union may hold meetings at either fire station with advanced approval of the Fire Chief or his designee. Employees who are on duty and assigned to the fire station where the meeting is held may attend while on duty provided that the meeting occurs during stand at ready time and the on duty crew maintains all of their normal responsibilities. Employees who are on duty at other station(s) may attend by audio visual means provided any expenses that arise from such means are paid for by the Union or Foreign Fire Tax Board.

Employer

The Employer proposes that the contract provision for Normal Business Day be maintained without change.

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[28] "Stand at ready time" refers to that time an employee is at the fire station before and after regular business hours (8:00 a.m. to 5:00 p.m.) On Sundays and holidays stand at ready time begins at 9:00 a.m.

The Union argues that permitting Union business meetings to be held at fire stations outside of the normal business day does not create any undue burden on the Employer and would enhance the employees' interests better. Currently, the Union has its meetings in the evening at a local establishment where the members in attendance can debate issues and make decisions. But, one third of the bargaining unit is always in fire stations and unable to attend meetings and participate in making decisions. While the missing one-third gets a review of the meeting the next day, the decisions have already been made and the full voice of the membership has not been able to participate in the process.

The Union points out that the Fire Chief has allowed contract ratification meetings at a fire house. There is an understanding that if a fire or other call should occur during a meeting the employees on duty would immediately leave the meeting to respond to the call.[29] The Union also avers that if it were to use video technology employee density would be eliminated because the video equipment can be operated at the fire stations.[30] Additionally, the Union has offered to permit the Village to limit the length of the meetings and their frequency. The City of Highland Park, one of the comparable communities, presently has a similar union meeting practice.

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[29] According to the Union this has occurred and there was no disruption of operations.

[30] The Union emphasizes that all meetings would occur on "standby time" regardless of whether video equipment were used.

In its brief the Employer cited some skepticism voiced by the arbitrator at the hearing. It makes no other arguments in opposition to the proposal.

Discussion

The arbitrator is not convinced that the proposal for Union meetings to be held in fire stations is an appropriate change at this time. Although the arbitrator recognizes that standby time does not normally involve scheduled duties, he is also under the impression that this is not "free time." "Standby" is interpreted to mean that employees are still on duty and they must be prepared at any hour to respond with alacrity to a call for help. The arbitrator is not convinced that a union meeting can be segued into a timely and organized response to an emergency. In the arbitrator's experience union meetings can be emotional, tense, and even raucous at times.

Nor has the Union provided any evidence that a Gurnee fire station is large enough to accommodate as many as 35, or more, employees. Nor has there been evidence that with video equipment alone a suitable number of employees would not be in attendance. Finally, if Highland Park fire fighters enjoy the benefit here being sought, the Union should have produced a fire fighter from that city to explain how their system works. These questions should first discussed at the bargaining table. If there is no resolution there, that bargaining history can be brought to the arbitration venue.

The arbitrator selects the Employer's proposal of status quo.

AWARD

1. The Union's proposal for the Term of the Agreement is selected.

2. The Union's proposal for Wages is selected.

3. The Village's proposal for Progression is selected.

4. The issue of Paramedic Recertification was resolved as *status quo*.

5. The Union's proposal for Longevity Pay is selected.

6. The Village's proposal for Union Business Meetings is selected.

Respectfully submitted,

HARVEY A. NATHAN

January 20, 2014