

BEFORE
ROBERT W. McALLISTER
ARBITRATOR

In the Matter of the Arbitration)	Case No. S-MA-13-034
)	
between)	
)	
VILLAGE OF HAZEL CREST)	
)	
and)	
)	
HAZEL CREST PROFESSIONAL)	
FIREFIGHTERS ASSOCIATION)	
Local 4087, IAFF)	

APPEARANCES:

For the Village:	Julie E. Diemer, Attorney The Del Galdo Law Group, LLC
For the Union:	Lisa B. Moss, Attorney Carmell Charone Widmer Moss & Barr
DATE OF HEARING:	July 15, 2013
PLACE OF HEARING:	Hazel Crest, Illinois

I. FACTS

The parties in this interest arbitration are the Village of Hazel Crest, Illinois, and the Hazel Crest Professional Firefighters Association, Local 4087, IAFF. These parties are operating under terms and conditions of a collective bargaining agreement (CBA) effective May 1, 2009, to April 30, 2012. (Un. Ex. 1, Tab 3) The parties reached impasse over the terms of a successor agreement. They mutually selected this arbitrator to serve in this proceeding. The parties waived the tripartite arbitration panel provided for in Section 14 of the Illinois Labor Relations Act (Act) and agreed the undersigned would be the sole arbitrator. The Village is a home rule unit of government with a mayor serving as the Chief Administrative Officer.

The Department management consists of a Fire Chief and a Deputy Fire Chief. The bargaining unit consists of fifteen (15) employees, of which three (3) are lieutenants and twelve (12) firefighters/paramedics. All fifteen lieutenants and firefighters maintain paramedic licensure.

The interest arbitration hearing was conducted on July 15, 2013, during which time both parties were afforded full opportunity to present documentary evidence, witness testimony, and argument in support of their respective positions on the issue. The hearing was transcribed, and the parties were permitted to file post-hearing briefs thereafter.

II. RELEVANT STATUTORY CRITERIA

Section 14(g) of the Illinois Public Labor Relations Act (the “Act”) provides in pertinent part:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly

complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable facts prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer price for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time insurance and pensions, medical and hospital benefits, the continuity and stability of employment and all other benefits received.
- (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.

Note: The Act does not require that all the above factors/criteria be applied to each unresolved issue, only where it is deemed applicable. Moreover, the Act does not specify the weight to be assigned to the Section 14(h) factor. Rather, that analysis and decision is the responsibility of the arbitrator.

III. STIPULATIONS

The parties have entered into the following stipulations:

1. The parties have waived the tripartite panel.
2. The arbitrator will incorporate into the Award tentative agreements previously reached.
3. The duration of the CBA is May 1, 2012, through April 30, 2015.
4. The wages awarded shall be retroactive to May 1, 2012.
5. The Village is not claiming an inability to pay within the meaning of Section 14 of the Act.
6. Dustin Dunigan, Matthew Grady, Andre Hall, Robert Klenk, Kevin Sears, Nick Smith and Carl Wexelberg were members of Local 4087 employed by the Village and each of these employees left the employment of the Village during the pendency of the 2009-2012 Agreement.
7. From 2009 through the present, no bargaining unit members have been disciplined.
8. In accordance with Arbitrator Cox's Interest Arbitration Award of March 10, 2010, the comparable communities are Blue Island, Chicago Ridge, Country Club Hills, Homewood, Markham and Midlothian. (Tabs 1-6)

Note: At the July 15 hearing, both parties respectively withdrew proposals and/or reached agreement. Item IV reflects the remaining impasse issues.

IV. IMPASSE ISSUES

Union Proposal

Article V

Hours of Work and Overtime

Section 5.1

Regular Workday

(B) The annual average weekly hours shall normally be 52.9 hours per week with annual hours of 2,760 per year. The average weekly hours shall be accomplished by

the Village providing each employee regularly scheduled to work twenty-four (24) hour shifts with every eighteenth (18th) duty shift schedules off (without loss of pay) as a “Kelly Day”. Employees shall have the ability to trade their Kelly Day between members of the same shift or move them to an open day within that cycle. Effective January 1, 2014, the annual average weekly hours shall normally be 52.0 hours per week with annual hours of 2,713 per year. The average weekly hours shall be accomplished by the Village providing each employee regularly scheduled to work twenty-four (24) hour shifts with every fourteenth (14th) duty shifts-scheduled off (without loss of pay) per year as a “Kelly Day”. Employees shall have the ability to trade their Kelly Day between members of the same shift or move them to an open day within that cycle. The trading or moving of Kelly Days shall be requested at least ~~seven (7)~~ three (3) days in advance and shall not create overtime. All requests shall be made in writing and forwarded to the Fire Chief or designee for approval. Such trades shall not be unreasonably denied.

Section 5.2 Overtime Compensation

(B) Overtime Rate. All overtime work shall be compensated at the rate of one and one-half (1 ½) times the employee’s regular straight time hourly rate. The employee’s regular straight time rate shall be calculated by dividing the employee’s annual salary by 2,760 hours (effective January 1, 2014, by 2,713 hours). Overtime shall be rounded to the nearest quarter hour. For example: following work beginning on the hour, if the employee works until :07 after the hour, the employee would not receive additional compensation beyond the hour. If the employee works :08 after the hour, the employee shall receive 15:00 minutes of overtime plus the hour. This method of rounding shall be utilized in all overtime situations.

Village Proposal

Article V

Hours of Work and Overtime

Section 5.1

Regular Work Day

(A) The standard shift for employees shall be three ~~(3)~~ ten (10) hour days (0700-1700) followed by three ~~(3)~~ fourteen (14) hour nights (1700-00700) followed by three ~~(3)~~ consecutive days off on a twenty-seven (27) days cycle. ~~twenty-four (24) hours on duty beginning at 0700 hours, followed by forty-eight (48) hours off duty. Duty assignments during such shifts shall be scheduled by the Fire Chief with no assigned duty time normally commencing at 1600 hours, subject to the Chief's directing duties to be performed after 1600 hours. The foregoing hours are subject to modification by the Fire Chief upon sixty (60) days advance written notice within the parameters of 0600 hours to 0800 hours. Any such change will be accompanied by a corresponding change in the normal starting time for non-assigned duty time (e.g. if shift start is changed to 0800, the non-assigned duty time starting at 1700).~~

(B) A bargaining unit member shall normally work two hundred and four (204) hours in a twenty-seven (27) days cycle. ~~The annual average weekly hours shall normally be 52.9 hours per week with annual hours totaling of 2,760 per year. The average hours per twenty-seven (27) day cycle weekly hours shall be accomplished by the Village providing each employee twenty-four (24) hours of Kelly Time (without loss of pay) every other cycle, regularly scheduled to work twenty four (24) hour shifts with every eighteenth (18) on duty shift scheduled off (without loss of pay) as a "Kelly Day".~~ Employees shall have the ability to trade their Kelly Day between members of the same shift or move them to an open day ~~within that cycle.~~ However, non-probationary

bargaining unit members may only trade with non-probationary bargaining unit members and probationary bargaining unit members may only trade with probationary bargaining unit members. The trading or moving of Kelly Days shall be requested at least three (3) ~~seven (7) days~~ in advance and shall not create overtime. All requests shall be made in writing and forwarded to the Fire Chief or designee for approval. Such trades shall not be unreasonably denied.

Section 5.2 Overtime Compensation

(A) Definition. All hours worked in excess of the two hundred and four (204) in a twenty-seven (27) day work cycle shall be considered overtime. ~~Work assigned in excess of the regular twenty four (24) hours on, followed by forty eight (48) hours off schedule, shall be considered as overtime.~~ All overtime for reimbursement or compensatory time off must be pre-approved by the supervisor or Fire Chief.

(B) Overtime Rate. All overtime work shall be compensation at the rate of one and one-half (1 ½) times the employee's regular straight-time hourly rate. The employee's regular straight time rate shall be calculated by dividing the employee's annual salary by 2,760 hours (effective January 1, 2014, by 2,713 hours). Overtime shall be rounded to the nearest quarter hour. For example: following work beginning on the hour, if the employee works until :07 after the hour, the employee would not receive additional compensation beyond the hour. If the employee works :08 after the hour, the employee shall receive 15:00 minutes of overtime plus the hour. This method of rounding shall be utilized in all overtime situations.

Section 5.3

Employees may exchange shifts subject to the Chief's discretionary approval, which discretion shall not be abused. However, probationary bargaining unit members may not exchange shifts with non-probationary bargaining unit members and vice-versa.

The above proposals show the Union seeks to reduce the average weekly hours from 52.9 hours per week to 52 hours per week effective January 1 2014. Correspondingly, the Union proposal would reduce the hours per year from 2760 to 2513. The Union proposes to achieve the average weekly hours' reduction to 52 hours by requiring the Village to provide each employee regularly scheduled to work twenty-four (24) hour shifts with every fourteenth (14) duty shift scheduled off (without loss of pay) per year as a Kelly Day. The expired labor agreement provided eighteen (18) Kelly Days.

Currently, employees have the ability to trade their Kelly Days or move them to an open shift within that cycle by requesting the trade or move at least seven (7) days in advance. The Union seeks to reduce the request period to three (3) days.

The Village's proposal dealing with Section 5.1(A) would completely redefine the regular workday for all bargaining unit employees. Currently and since the parties' initial labor contract, members of the bargaining unit work twenty-four (24) hours, followed by forty-eight (48) hours off, rotating in three shifts, Red, Black, and Gold.

Under the Village's proposal, bargaining unit employees would be required to work three (3) ten (10) hour days from 0700 hours to 1700 hours followed by three (3)

fourteen (14) hour nights from 1700 hours to 0700 hours followed by three (3) consecutive days off, all on a twenty-seven (27) day cycle.

Charles W. Jackson, the Village's Fire Chief since May 2002, testified that under the Village's proposal to amend the language of Section 5.1, the Department would still have three (3) platoons. Asked why the Village was seeking to change the work schedule, Jackson noted fire departments, mostly on the East Coast, use the 10/14 (hours) because the 10/14 "affords more continuity in my mind, for projects . . ." Jackson went on to explain, "With a 10/14, we would be able to extend those hours, meaning that if there's a project, that person would be able to work the later hours; also, that person would be in the next day to continue the project and the next day to continue the project. So it puts more continuity into it."

Chief Jackson stated, "There's some studies that show that a person's fatigue level on a 10/14 is less because in case they catch fires or it's been a rough day with the ambulance and that kind of thing, they're only working ten hours as compared to 48 hours – 24 hours."

Jackson explained Charles Rule authored one of the studies he reviewed. Jackson was unfamiliar with Rule's background. Jackson maintained the 10/14 system could reduce overtime because under the 24/48 system a firefighter calling off sick requires pay for twenty-four (24) hours of overtime whereas under the Village proposal you only pay ten (10) or fourteen (14) hours.¹

¹ Jackson acknowledged that each time a firefighter called in sick, an overtime replacement was not required. Jackson explained the staffing is five (5) firefighters/paramedics per shift or four (4) firefighters and one (1) lieutenant. Once the staffing level falls below four (4), the shift is augmented by one (1) at the overtime rate.

The Village's proposal to replace the existing 24/48-hour schedule to a 10/14 schedule is perplexing. Chief Jackson offered no testimony he had experience directing such a schedule or had any personal experience working in such a system. Essentially, his "experience" with a 10/14 schedule is derived from Internet research and papers/articles about the subject. The idea of trying to achieve that which is not obtainable through bargaining by using the normal grievance system is generally unsuccessful.

In the case of interest arbitration, this attempt to gain a 10/14 schedule is based on subjective, personal views and speculation. That approach is not a viable reason to address the Village's proposal seriously. The Village offered no evidence anything was wrong with the current 24/48 schedule. For such a radical change, one reasonably expects evidence that operational deficiencies were a byproduct of the 24/48 system. The absence of such evidence confirms this arbitrator's experience that Illinois firefighters are self-motivated and feel compelled to act in conformity with the highest standards. The Village arguments are not at all persuasive because no substance exists to consider adoption of the Village's proposal.

The Union proposes changes to Section 5.1(B) but not (A). In essence, the Union proposed reducing the average weekly hours from 52.9 hours a week to 52 hours a week. In conjunction with that proposal, the Union seeks to reduce the annual hours from 2760 to 2713. To accomplish this goal, the Union proposes each employee regularly scheduled to work twenty-four (24) hour shifts under the 24/48 system be scheduled off with pay every fourteenth (14) duty shift (Kelly Day). Under the expired contract, employees are scheduled off every eighteenth (18) duty shift.

In tandem with the Union's proposal to increase employees' paid time off (Kelly Days), it asks that overtime compensation under Section 5.2 be changed to reflect the reduction in annual hours from 2760 to 2713 annually. The Union also contends the "slight" increase in Kelly Days would help ameliorate the disparity of Local 4087's actual hourly wage when compared with external comparables. Un. Ex. 3, pages 28, 29, and 30 purport to show total compensation based on career wages, a holiday cash benefit, and a premium benefit. When this document was offered, the Union explained the average actual hourly wage is based on an employee's overall career average. The holiday cash benefit is the cash value of holidays, and the premium benefit is any other monies that the bargaining unit may be entitled to.

According to the Union, at the end of 2011, the actual hourly rate for Village firefighters was \$27.25, some \$3.00 an hour below the average of the six (6) comparables. The basis for this chart and its relevancy to the "actual contractual wages" is not fully explained.

The expired CBA at Appendix A states the firefighters/paramedic wage after six (6) years of service was \$68,029.95. Divided by 2760 hours, the top base hourly rate comes to \$24.65 for Hazel Crest, or one cent an hour more than the average of the comparables. At the end of 2012, the number changed slightly, but did not affect ranking. There were no actual numbers for the Country Club Hill's contract that expired on April 30, 2011. In 2013, Country Club Hills, Homewood and Midlothian, as well as the Village, had expired labor agreements. This factor alone raises questions about the statistical significance of Un. Ex. 3, pages 29, 30, and 31. Moreover, the question of subject matter is questionable. The most recent, relevant wage data to be reviewed are a

before and after hourly and annual wages study. The before is found in Appendix A of the expired CBA. (Un. Ex. 1, Tab 3) The after is what happened with wages internally and externally after April 30, 2012.

Nothing found in this record suggests the Village's relative ranking in the middle of the comparables would dramatically change by reason of internal or external comparables given the respective final proposals at issue in this interest arbitration.

If the Union's final wage offer is taken into account, Hazel Crest's top based hourly rate would be \$26.48 based on 2760 annual hours. But if the Union's Kelly Day proposal is considered, the top based hourly rate would be \$26.94, which indicates the Kelly Day proposal comes to \$0.46 an hour plus a very probable increase in overtime cost.

The Village points out that currently Firefighters rank six (6) out of seven (7) amongst the comparables for Kelly Days. The Village maintains that under the Union's proposal Hazel Crest would tie for fourth place out of seven. The Village maintains a natural consequence of reducing the weekly hours increases cost. The Village contends staffing would need to remain the same to provide the current level of services to citizens and overtime costs would increase by reason of the reduced hours.

Additionally, the Union contends both parties have proposed changes to Article 5.1, Hours of Work and Overtime, as well as Subsections (A) and (B). Accordingly, the Union insists this arbitrator must select between the competing economic proposals.

The Village's proposal is an all-encompassing effort to touch all bases necessary to initiate its unusual and divergent quest to institute a new scheduling plan termed 10/14. Analysis of the Village's proposal requires a finding there is no reasonable basis to

conclude the mention of “Kelly time” is intended to address the “Kelly Days” under the current 24/48 system. The Village did not propose to change the current annual hours from 2760. The Village did propose to change the regular workday to 204 hours in a 27-day cycle. Apparently, this was proposed to achieve the 27-day cycle of three days (10 hours), three nights (14 hours), three days off, totally nine shifts. This proposal is solely linked to the 10/14 schedule, not the 24/48 system.

If the 10/14 system were to be adopted (it will not), the Union’s proposal to reduce hours is linked solely to the current 24/48 hour system and cannot be viewed as an anticipatory counteroffer to the Village’s desire to completely alter the 24/48 hour schedule and replace it with an entirely new system. The respective proposals dealing with Article V are separate and distinguishable subjects. The Village’s proposal is essentially non-economic. It clearly represents an intent to substantively change how the Fire Department operates. There exists no probative evidence that would reasonably support the Union claim the Village’s proposal represents a competing economic proposal.

Essentially, the Village proposes to limit shift exchanges (Section 5.3) between Firefighters by taking away this right from probationary employees. The Village points to the testimony of Chief Jackson who said the reason for the proposal is:

. . . so the skill level or the skill set is the same, and we don’t have, basically, two probationary people working with each other for the purposes of familiarity with the Village, streets and addresses, those kind of things. We don’t have two young non-veteran firefighters for the Village of Hazel Crest potentially having to work together.

Chief Jackson’s desire to change the shift exchange provisions of Section 5.3 is lacking in basic foundation. It is based solely on the Chief’s personal viewpoint without

the introduction of any factual situations involving probationary firefighters that would reasonably lead one to conclude the Village and Department operations were disadvantaged or adversely impacted by the inexperience of probationary employees working together by reason of a shift exchange.

Article VIII Wages

The Village's final offer is:

Effective May 1, 2012	1.5%
Effective May 1, 2013	1.5%
Effective May 1, 2014	2.0%

The Union's final offer is:

Effective May 1, 2012	2.0%
Effective May 1, 2013	2.5%
Effective May 1, 2014	2.75%

The Village points out its final offer on wages for 2012 is identical to the Clerks and lower than the police officers (2.0%). Public Works was 0%.

In 2013, the Village states its wage offer is identical to the Clerks and Public Works and lower than police officers (2.0%).

In 2014, the Village states its wage offer is higher than that of the Public Works. The Village notes the police officers and Clerks' contract expired in 2014.

The Village asserts the Firefighters Union contends there has never been parity between the police and fire unit. The Village stresses the difference between the other bargaining units and the firefighters is that the other bargaining units and non-represented employees have contributed 12% of their health insurance premium while the firefighters only contribute 10% of the premium.

Just as the Union attempted to argue external comparables based on data available from only three (3) of the six (6) agreed upon comparables, the Village, likewise, attempts to justify its final offer on the incomplete data available.

The economy is not recovering as quickly as one would hope. Job creation, or the lack at a level that reduces unemployment at a reasonable level, continues to be a drag on the economy and, especially the middle class. We are simply not at a point where ambitious attempts to make substantial advances in wages based on external comparability makes economic sense. To be sure, losing ground is to be avoided, especially when a village is not claiming inability to pay.

The Village attempts to justify its approach to the Firefighters by claiming, in effect, they are not cooperating with attempts to have them agree with cost containment by shouldering a higher percentage of the cost.

In his 2010 Award, Arbitrator James Cox explained, “Without any percentage change in contributions firefighters would be paying more dollars at the 10% of premium contribution level because of premium increases.”

Un. Ex. 4, Tab 14, shows that for Hazel Crest in 2013 the average monthly single cost was \$55.74 and the average family cost was \$160.77. Excluding Markham (no data), the five remaining comparable monthly average was single \$69.43 and family \$188.32.

This exhibit serves to confirm Arbitrator Cox’s conclusion in 2010 that firefighter counterparts (comparables) “have been contributing a much greater percentage of premiums than the 15% sought by the Village here.”

Referring to this arbitrator's award in *Morton Grove* in which I termed the Employer's proposal to increase the hospitalization cost to firefighters a "breakthrough", the Union argues Hazel Crest has not met its burden to demonstrate a proven need to increase the amount collected from the bargaining unit for health care.

The Morton Grove arbitration dealing with health insurance did, in fact, represent an employer proposal on health insurance that was a breakthrough particularly because the Village's family coverage proposal would require its officers to pay more for coverage than any other comparable community.

In the instant case, the opposite applies. In the Cox decision, he stated:

It is certainly not unreasonable that Hazel Crest Firefighters pay similar percentages of insurance costs as their counterparts in comparable municipalities. Even were there an increase to 15%, Hazel Crest Firefighters would still be contributing at lower percentages than those in agreed upon comparables. I am aware that maintaining the current 10% contribution percentage would only exacerbate the comparability problem and increase the dollar spread between what Firefighters contribute in Hazel Crest and what their counterparts pay in comparable Villages with the higher employee contribution percentages. As we have seen, there is no question that Firefighters in other comparable Units do pay substantially greater percentages of the Health Insurance Premium than the 10% share in Hazel Crest and a catch up adjustment is imperative.

In the end, Arbitrator Cox adopted the Union's final proposal to maintain the status quo because the Village's final offer required the Firefighters to pay a retroactive lump sum for coverage back to 2009. Cox opined that in such circumstances, the large dollar adjustment should be phased in more gradually than proposed.

The Union had at least three (3) years to digest the impact of Arbitrator Cox's reasoning. The Hazel Crest Firefighters Union has managed to protect its members to the

point one can say they have proven their members have been protected from cost increases of health insurance better than the internal unions and external comparables, especially including the Village's sworn police officers. The Union has not shown why the Firefighter successes in limiting the monthly deductions for health insurance cannot be the subject of comparison. In terms of comparison, the Union's attempt to deflect that undertaking, clinging to the hope the Village's proposal could reasonably be seen as a breakthrough is not persuasive given the Cox Award and the fact its monthly premium deductions are the lowest for external and internal comparables.

The Union argues adoption of the Village's proposal to increase health care cost from 10% to 15% would represent an undue hardship and asserts that, if the Village's proposal was enacted, any wage increase gained by it would be significantly undercut by the increase in premium deductions.

Un. Ex. 3, page 9 indicates the top base salary effective May 1, 2011, is \$68,030. Un. Ex. 3, page 10 sets the top base salary for the first year of the labor agreement with a 2% wage increase at \$69,391. The Union's second year proposal is for a 2.5% increase, bringing the top base salary to \$71,125. The Union's third year proposal is for a 2.75%, brings the top base salary of \$73,081. Those gross increases annualized are:

1 st year	\$1,361.00
2 nd year	1,734.00
3 rd year	1,956.00

Total 3 year increase \$5,051.00

Un. Ex. 3, Tab 11 establishes that in terms of cost, the monthly PPO Plan in network has a higher premium than an HMO Plan. Un. Ex. 4, Tab 13 shows an average monthly plan cost for the comparables, excluding Blue Island, is \$188.32. Hazel Crest

anticipates a year 2013 increase of 9% plus for renewal of the present coverage. Rounding this projection to 10%, the Village, in effect, is predicting a renewal cost of over \$16 for a family plan, bringing the monthly cost to \$176 or more. In other words, the Village's proposal to increase the family monthly cost would mean a firefighter with that coverage would pay approximately \$264 a month. When this additional cost is weighed against the Union wage proposal, one cannot reasonably conclude the Village proposal would result in undue hardship or significantly undercut the Union's wage proposal by reason of the increased monthly premium deductions. It is stressed the effective date of the increase is proposed to be the date of this Award. Thus, there is no retroactivity involved. The reality is the increased costs will begin on or about May 1, 2014, not before. Accordingly, the Firefighters will have had the benefit of increased wages for two (2) full years before the increased medical cost could become effective.

The Village, as indicated, proposes the first two (2) years of the contract should consist of two (2) 1.5% increases followed by a 2.0% increase effective May 1, 2014. As explained, the Village appears to argue the sworn police officers received greater increases than its final proposal to the Firefighters because the police contribute more towards health insurance than the Firefighters. To be sure, a yearly sum of about \$1,000 cannot be dismissed. But compared with dollar results of the Village's wage proposal coupled with its 15% proposal for health coverage, the firefighters could then reasonably claim they faced hardship, to a degree.

In terms of the Consumer Price Index (CPIU) for Chicago-Gary-Kenosha, the Village maintains that over the three (3) year duration of the contract, the CPIU is projected to be 5.05%. The CPIU is less than the Village and Union's final wage

proposals for the first two (2) years of the contract. The third year of the contract is another matter covering the unreported period of May 1, 2014, to April 30, 2015.

The record establishes that historically the parties have not followed strict parity over the years between the Firefighters and police units. If the Village believes this supports its efforts to infer wage increases for the Clerks and Public Works supports its proposal for 1.5% wage increases for the first two years of the contract that argument is not persuasive. Strict parity is not necessary to establish the police and Firefighters units have more in common than a comparison with Clerks and Public Works. In Illinois, both the police and fire units are recognized as key factors in public safety requiring rigorous training and high performance standards. These factors alone distinguish the police and fire units from Clerks, Public Works, and non-represented employees. The Village's desire to impose the wage settlements reached with the Clerks and Public Works on the Firefighters is unreasonable because one cannot rationally conclude there is any similarity between the Firefighters and those other units whereas common sense requires a finding the fire and police units should be viewed similarly. This relationship plus the very serious issues presented by the health insurance proposals will substantively impact the forthcoming Award.

Article VI Sick Leave

Union's Proposal

Sick leave with pay in excess of two (2) consecutive sick ~~shift~~ days shall be allowed only after presenting a written statement by a physician certifying that the employee's condition prevented the employee from reporting to work and the employee's

ability to return to work if requested by the Chief. ~~A physician certification may be required for absences of less than two (2) shift days, at the discretion of the Chief.~~

Village Proposal

Sick leave with pay in excess of two (2) consecutive ~~sick shift~~ sick days shall be allowed only after presenting a written statement by a physician certifying that the employee's condition prevented the employee from reporting to work and the employee's ability to return to work if requested by the Chief. A physician certification may be required for absences of less than two (2) shift days, at the discretion of the Chief as set forth in Section 6.9.

It is noted that at the hearing the Village withdrew its proposal for Section 6.9 to completely revise the language dealing with the abuse of sick leave. The Village withdrew that proposal, returning to the status quo, including the admonition, "Abuse of sick leave may result in dismissal of the employee." Clearly, Section 6.9 anticipates discipline may be imposed if a firefighter abuses his/her sick leave entitlement. Section 6.4 of the expired CBA states in relative part:

A physician certification may be required for absences of less than two (2) shift days, at the discretion of the Chief.

The Union notes there were substantial increases to out-of-pocket expenses beginning in 2012. The Union contends there is no demonstrated need for this requirement. The Union argues this requirement is out of sync with the external comparables showing only one (1) other employer who requires such certification. Moreover, the Union states this requirement is not imposed upon police officers.

The Village states the record shows it withdrew its proposal on Section 6.4. That proposal would have mandated sick leave with pay would be only allowed if the

employee presented a physician's statement certifying his/her condition "prevented the employee from reporting to work . . ." The Village contends its withdrawal of Section 6.4 logically means its "housekeeping" reference to Section 6.9 was also meant to be withdrawn.

This record offers no evidence Firefighter unit members have suffered economic loss as a result of the discretionary action of the Fire Chief under the expired language of Section 6.4. As of the time the parties submitted their respective briefs, this arbitrator found no probative evidence the Fire Chief had abused his discretionary right to require firefighters to provide a physician's certification for an absence of less than two (2) days.

By letter of April 15, 2014, the arbitrator was informed by the Union that under Section 14(h) of the Act, it wanted me to consider new information. Specifically, the Union submitted a memo from Fire Chief Jackson addressed to All Bargaining Unit Personnel dated April 11, 2014. The text is as follows:

Pursuant to Section 6.4 of the collective bargaining agreement between Local 4087 and the Village, please be advised that I am invoking my discretion that sick leave pay for one shift day shall be allowed only after presenting a written statement by a physician certifying that the employee's condition prevented the employee from reporting to work and the employee's ability to return to work. Please consider this my official request that you present a physician's note for any sick leave absence of one shift day or more.

This offer will take effect 5/6/14 and remain in effect until further notice.

The Village's response was received on April 22, 2014. It states in pertinent part:

Regarding the Memo, the Village contends no violation of [sic] the CBA or the Act has occurred. Nevertheless, in the interest of labor-management relations and to bring the

arbitration to a conclusion, the Memo will be rescinded by the Village. I will forward a copy to you and Ms. Moss.

The Village's view of Chief Jackson's April 11, 2014, memo is benign. The expired CBA still in effect states: "A physician certification may be required for absences of less than two (2) shift days, at the discretion of the Chief." (Emphasis added)

Chief Jackson states he was invoking his discretion that sick leave pay for one shift shall only be allowed after presenting "a written statement by a physician . . ."

The words "a written statement" are lifted from the first sentence of Section 6.4 dealing with sick leave with pay in excess of two (2) consecutive shifts. The current language of Section 6.4 dealing with absences of less than two (2) days requires a "physician certification at the "discretion of the Chief."

After "invoking" his discretion to require a written statement by a physician for a one (1) shift absence, Chief Jackson's memo went on to explain the physician's written statement must certify ". . . that the employee's condition prevented the employee from reporting to work and the employee's ability to return to work."

The above quoted language is directly taken from the expired CBA at 6.4, first paragraph, dealing with absences in excess of two (2) days.

The Chief's April 11, 2014, memo improperly invokes discretion not in his power. The discretion set forth in the currently effective language of Section 6.4 deals directly and only with the Chief's discretion to require a physician's certification for absences of two (2) shift days or less. This discretion did not provide the Chief with the power to change the language of Section 6.4 and unilaterally change the contractual subject from absences of less than two (2) shift days to one (1) shift day regardless of the

circumstances. This is not a reasonable exercise of discretion because discretion is now ruled out and every absence of one (1) shift day requires a physician's statement.

The Village withdrew its Section 6.4 proposal. That proposal stated:

Sick leave with pay in excess of two (2) consecutive sick shift days shall be allowed only after presenting a written statement by a physician certifying that the employee's condition prevented the employee from reporting to work and the employee's ability to return to work if requested by the Chief. A physician certification may be required for absences of less than two (2) shift days, at the discretion of the Chief as set forth in Section 6.9.

Examination of the above quoted proposal shows the same language withdrawn by the Village dealing with absences of two (2) or more days has been adopted by the Chief and superimposed on all absences of one (1) shift day. To say the Chief's memo raises many serious questions is an understatement. His action conflicts with the bargaining process. The Chief's memo is not an exercise of his discretionary power to require a firefighter to submit a physician's certification. Rather, his action was an arbitrary exercise of managerial authority. His conduct offers no reason to conclude that, given a future opportunity, he will not repeat his arbitrary action.

Article XVIII

Life Insurance

Section 18.2

Survivors' Health Insurance

Union Proposal

The Village shall pay or insure a death benefit of \$50,000 ~~\$10,000~~ to the employee's designated beneficiary in the event of the employee's death provided that if any higher amount is provided to other bargaining units, such amount shall also be provided to firefighters. In the event an employee dies during the course of his employment with the Village, the Village shall pay medical insurance premiums for the

deceased employee's spouse, for up to six (6) months after the employee's death. After said time, the spouse may continue to participate in the Village group insurance plan as provided by law. The Village shall also pay to the employee's survivor a death benefit equal to the deceased employee's salary for one (1) month as well as compensation for the deceased employee's unused vacation days and accrued overtime.

Village Proposal

Status Quo

The Union argues the evidence shows the life insurance benefit of \$10,000 lags substantially behind the comparables. The Union maintains the cost of implementing this proposal is minimal for Hazel Crest, but the potential benefit of adopting the Union's proposal is immense given the high risk of being a firefighter. The Union recognizes police officers have the same benefit, but, once again, insists there is no internal parity between these units. As noted, the semantics of parity versus the reality of similarity cannot be ignored.

The parity the Union addresses is not limited to the police unit. The record shows all represented employees receive the same life insurance package. The idea that whether internal or external comparables some units could go off on their own and negotiate a life insurance package separate and distinct from the benefit offered by comparable communities, such as Blue Island, Chicago Ridge, etc., is a possibility, but not very practical. The same reasoning applies to Hazel Crest.

Considering all the applicable statutory criteria, the record as a whole, as well as the above analysis explaining the arbitrator's reasoning, the Award is as follows:

V. AWARD

1. The Union's proposal to reduce the weekly and annual hours and provide for fourteen (14) Kelly days is not adopted. The status quo will prevail.

2. The Village proposal to change the current standard shift of 24/48 and replace it with a new 10/14 shift system is not adopted. The status quo will prevail.

Both parties proposed to change the time by which to trade or move a Kelly day from seven ((7) days to three (3) days. This agreement is to be reflected in the new Collective Bargaining Agreement effective May 1, 2012.

3. The Village's proposal to change Section 5.2 is not adopted. The status quo will prevail.

4. The Village's proposal to exclude probationary employees from the exchange of shifts is not adopted. Each party proposed to reduce the advance notice from seven (7) days to three (3) days when requesting a shift change. With this exception, the status quo will prevail.

5. Wages: The Union's final offer is adopted as more reasonable. The wages for the Collective Bargaining Agreement effective May 1, 2012, are:

Effective May 1, 2012	2.0%
Effective May 1, 2013	2.5%
Effective May 1, 2014	2.75%

6. Article VI, Sick Leave: The Union's proposal to delete the last sentence of Section 6.4 requiring employees to submit a physician's certification for absences of less than two (2) shift days at the discretion of the Chief is adopted.

7. Article XVIII, Section 18.1 Hospitalization and Medical Insurance: The Village's proposal to increase the amount employees contribute from 10% of the

premium cost for the insurance plan in which the employees have enrolled to 15% of the premium cost is adopted effective the date of this Award.

8. Section 18.2, Life Insurance: The Union's proposal to increase the death benefit from \$10,000 to \$50,000 is not adopted. The status quo will prevail.

April 23, 2014


Robert W. McAllister
Arbitrator