

VILLAGE OF WILMETTE, IL	)	
	)	Marvin Hill
Employer,	)	Arbitrator
	)	
and	)	Interest Arbitration on Three
	)	Unresolved Economic Issues and
SEIU LOCAL 73 (Firefighters Unit)	)	One Unresolved Non-Economic Issue
	)	
Union	)	Hearing Dates: April 16 & 17, 2015
	)	1304 Lake Street, Wilmette, Illinois

**Appearances:**

For the Village:	R. Theodore Clark, Jr. Clark Baird Smith, LLP 6133 N. River Road Rosemont, IL 60018 847-378-770
For the Union:	Joel A. D'Alba Asher Gittler & D'Alba, LTD 200 West Jackson Blvd, Ste 1900 Chicago, IL 60606 312-263-1500

**PRELIMINARY STATEMENT**

Pursuant to the parties' alternative impasse resolution procedure and the provisions of Section 14 of the Illinois Public Labor Relations Act ("IPLRA"), the parties selected the undersigned Arbitrator to decide three unresolved economic issues and one unresolved non-economic issues. A hearing was held before the Arbitrator in Wilmette, Illinois on April 16-17, 2015. Pursuant to the provisions of their alternative impasse resolution procedure, the parties have waived the provisions of Section 14 of the IPLRA with respect to a three-member panel and have mutually agreed that this case will be solely heard and decided by the neutral arbitrator. A transcript of the testimony given at the hearing was made and reference to the transcript will be designated as (R. \_\_\_\_). According to the Union, "two major breakthroughs that change wage and benefits characterize two of the Employer's final offers and have serious impacts on internal comparability." (*Brief for the Union* at 1).

## **I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION**

### **A. ISSUES RESOLVED PRIOR TO AND DURING THE INTEREST ARBITRATION HEARING**

Pursuant to the provisions of the Alternative Impasses Resolution Procedure, the parties on April 3, 2015, entered into a Stipulation of Issues in Dispute (JX 1), which listed five (5) unresolved economic issues and one non-economic issue. Since the parties disagreed as to whether wages, two-tier wages for new hires, and the advanced technician firefighter certification stipend, should be one economic issue or three separate economic issues for purposes of the Arbitrator's decision and award, the parties submitted this issue to the undersigned Arbitrator for decision. In a decision issued on April 9, 2015, I ruled that "two-tier wage structures and traditional wage schedules are two separate issues (at least in this case where the Employer is making a first-time proposal)" (JX 2 at 3)(Attached to this Award as "Appendix A"). At the same time I ruled that the wages and the advanced technician firefighter certification stipend should be one issue for purposes of the decision and award.

Following the issuance of the above ruling, the parties exchanged final offers on the following four unresolved economic issues (JX 4 – Union's Final Offers; JX 5 –Village's Final Offers):

1. Wages and Advanced Technician Firefighter Stipend;
2. Two-Tier Salary Schedule for Firefighters and Firefighter/Paramedics Hired on or after May 1, 2015;
3. Supplemental Retirement Program;
4. Uniform Allowance.

The parties also exchanged final offers on the one unresolved non-economic issue, i.e., Drug and Alcohol Testing.

Since the parties' final offers on the wages and advanced technician firefighter stipend issues were essentially identical, these two economic issues were removed from the arbitral agenda. As a result, the only remaining issues to be resolved in this interest arbitration proceeding are the three unresolved economic issues (two-tier salary schedule, supplemental retirement program, and firefighter/paramedic uniform allowance), and one non-economic issue (drug and alcohol testing).

### **B. THE COMPARABLES**

The parties agreed to use the eight (8) communities that were used for external comparability purposes in the 2004 Steven Briggs' interest arbitration case. Those eight communities are (VX 1): Evanston; Glenview; Highland Park; Lake Forest; Northbrook; Park Ridge; Skokie; and Winnetka. All eight jurisdictions have collective bargaining agreements covering firefighter and firefighter/paramedics.

The population of Wilmette is 27,087 (VX 3). Among the agreed-upon comparables, six (6) are larger (Evanston, Skokie, Glenview, Park Ridge, Northbrook, and Highland Park); only Lake Forest and Winnetka are smaller (VX 3). In terms of fiscal years, only Glenview has a fiscal year that commences on January 1st like Wilmette's fiscal year does.

All of the agreed-to comparable communities are so-called "Northshore communities" as that term is generally understood in and around Chicago.

However, in terms of relative affluence as measured by per capita income, per capita EAV, and per capita sales tax revenue, Wilmette's overall position is nowhere near the top. It ranks third in per capital income, fifth in per capita EAV, and eighth in per capita sales tax revenue (VX 2). Thus, in terms of the averages for these three primary economic demographic indicia for the eight external comparables, Wilmette is somewhat higher than the average for per capita income, somewhat lower than the average per capita EAV, and substantially below the average per capita sales tax revenue (VX 2).

The Village has a bargaining relationship with one internal comparable: the police union.<sup>1</sup> Reference is also made to the unrepresented employees in this proceeding. Generally, what happens with unrepresented employees is of little relevance in an interest proceeding. Accord: City of Wheaton, IL & Wheaton Firefighters Union, IAFF Local 3706 (Fletcher, 2014) ("Consistent with his long-standing approach to interest arbitration, the Arbitrator does not consider the City's unrepresented employees in the instant analysis." *Id.* at 16).

### **C. BARGAINING THAT PRECEDED INTEREST ARBITRATION**

As outlined by Counsel for the Administration in its lengthy *Brief*, on October 21, 2013, the Union presented its one and only *on the record* proposal (VX 30A; R. 115). This proposal provided for wage increases for fiscal years 2014 (2.5%), 2015 (2.5%), and 2016 (3%), an increase in the Firefighter III certification stipend, an increase in the annual uniform allowance to \$600, and adding grandparent and grandchild to the funeral leave provisions (VX 30A).

On November 13, 2013, the Village responded to the Union's proposals, as well as advanced several Village proposals (VX 30B). This "total package proposal" consisted of the following elements (VX 30B):

Salary increases of 2.25% effective 1/1/14, 2.0% effective 1/1/15, and 2.0% effective 1/1/15

A two-tier salary schedule applicable to employees hired on or after January 1, 2014, based on the same 10 step two-tier salary schedule set forth in the Village's police contract;

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<sup>1</sup> This Arbitrator agrees with the view of Chicago Arbitrator Elliott Goldstein, as explained in *County of Macoupin & PBLC, S-MA-09-065* (Goldstein, 2012), that the real value of internal comparability, as least in terms of the heightened attention that the factor has been given in the years since the Great Recession began (commencing in 2008), is the extent to which the employer's treatment of its other bargaining units tends to support or undermine any appeals of the employer for austerity.

Elimination of the pay table for Emergency Vehicle Coordinator, a position that has been vacant since 2011 (R. 251);

Increase the Firefighter III certification stipend to a set dollar amount (\$1,750) and eliminate increasing the stipend annually by the same percentage increase as the across the board salary increase;

Either maintain the status quo with respect to the uniform allowance at \$450 or implement a quartermaster system whereby the Village would provide all required uniform and equipment items at no cost to the employee;

Agreed to the Union's proposal to add grandparent and grandchild to the funeral leave provisions;

Proposed virtually verbatim the same drug and alcohol testing provisions, including random testing, that were in the Village's police collective bargaining agreement.

The next on-the-record proposal was the Village's package proposal dated June 19, 2014, which is summarized as follows (VX 30C):

Increase salaries by 2.5% effective 1/1/14, 2.5% effective 1/1/15, and 2.25% effective 1/1/15;

Adopt a tier-two salary schedule for employees hired on or after January 1, 2014 "similar to the two-tier salary schedule in the police collective bargaining agreement, but with the salary at 20 years equaling the 20-year salary for employees hired before January 1, 2014;

Increase the Firefighter III certification stipend to a set dollar amount (\$1,750) and eliminate increasing the stipend annually by the same percentage increase as the across the board salary increase;

Establish a two-tier benefit schedule for the payment of unused sick leave at retirement that reduced the percentage paid with 20, 25, and 30 years of service for employees hired on or after 1/1/16; the Village noted that this was a new issue and was intended to respond to a possible bond rating downgrade due to the Village's unfunded liabilities, including "payments for unused sick leave at retirement." The Village also noted that it was proposing a 1/1/16 effective date "so that the Village can propose the same provision in its 2015 negotiations with the police bargaining unit." Finally, the Village stated that it would also revise Village "personnel policies covering its unrepresented employees to contain the same provision."

Maintain the *status quo* on the uniform allowance;

Accept the Union's proposal to add grandchild and grandchild to the funeral leave provisions;

Revise the drug and alcohol testing section of the parties' contract to mirror the police collective bargaining agreement, including the random testing provisions.

In an effort to stimulate negotiations and perhaps reach an accord on unresolved issues prior to the scheduled interest arbitration hearing, on April 10, 2015, the Village made one final on-the-record package settlement proposal, which included the following modifications to the Village's 6/19/14 package proposal (VX 30D):

The salary proposal differed "from the June 19, 2014 Village proposal in that the Firefighter/Paramedic salaries in Appendix A-1 have been adjusted upwards to exactly match the salaries in the Police Union contract, and "the new two-tier salary at 8.5 years and thereafter will equal tier-1 salaries for the same years of service;"

Re-proposed what it had previously proposed with respect to the Firefighter III certification stipend;

Re-proposed the same two-tier sick leave buyback schedule for employees hired on or after January 1, 2016. In this 4/10/15 package proposal the Village noted that while its "bond rating was not downgraded, the Village very much believes the magnitude of its unfunded liability for its supplemental retirement program is an issue that must be addressed;"

Maintained the *status quo* on the uniform allowance at \$450;

Continued to propose that the fire contract contain essentially the same drug and alcohol testing provisions, including random testing, that are set forth in the police contract.

At all times the Village indicated that it "would be willing to discuss the proposal "early next week and to respond to any questions that the Union may have." Management also maintained that the package proposal was "not being submitted on a 'take [it] or leave it' basis" and that the Village was "willing to entertain serious counterproposals" (VX 30D, cover memo).

Of course, an accord was never reached and, accordingly, the present arbitration was commenced.

#### **D. STATUTORY CRITERIA**

Although the dispute arose under the parties' Alternative Impasse Resolution Procedure, which provides for interest arbitration of unresolved issues, the parties have stipulated that the Arbitrator is to resolve this dispute based upon the factors of Section 14(h) of the Illinois Public Labor Relations Act, Ill.Rev.Stat, Ch. 48. § 614(h). Section 14(g) of the Act sets forth eight (8) criteria to be considered by an arbitrator:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) 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 costs 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.

Section 14(h) requires only that the Arbitrator apply the above factors “as applicable.” The listing of the eight separate factors does not necessarily mean that all eight factors are relevant or controlling. See, the decision of Arbitrator Edwin Benn in *Village of Barrington & IL FOP Labor Council*, S-MA-13-167 (2015) and *The Village of Lansing & FOP Labor Council*, S-MA-12-214 (2014)(discussed *supra* regarding the “as applicable” language).<sup>2</sup>

The Act’s general charge to an arbitrator is that Section 14 impasse procedures should “afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes” involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, “other factors,” in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue. One Arbitrator, considering the statutory criteria, had this to say on the issue:

These eight factors guide arbitration for both economic and non-economic issues, but nowhere does the Act tell the parties or the Arbitrator which factor is most important and which least important. Nor does the Act give weight to the factors. For each impasse issue the Arbitrator decides which factors are important and how to weight them. A significant – perhaps the most significant – consideration in deciding an issue is the weight to be given to each of these criteria.

The Arbitrator has considerable leeway in choosing the factors upon which to base an award, picking those deemed controlling while still giving attention to the others. The eighth criterion “other factors” deserves separate mention. It frees the Arbitrator from confinement to the other seven, allowing special consideration of a factor that may be important for a particular issue even if the Act does not specifically mention this special factor,

*City of Granit City & Granit City Firefighters Association, Local 253 IAFF*, Case No S-MA-93-196 (Edelman, 1994)(denying random drug testing).

To this same end, the Union submits that pursuant to Section 14 of the Act, 5 ILCS 315/14 and the Rules of the Illinois Labor Relations Board, Section 1230.90(Kianipoor), Conduct of the Interest Arbitration Hearing, the Arbitrator shall not consider an issue for purpose of the arbitration panel’s award, “[w]henver one party has objected in good faith to the presence of an

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<sup>2</sup> Significantly, writing in 2014, Arbitrator Benn concluded that “external comparability is not, in my opinion, an ‘applicable’ factor for these cases,” and declared that “I am still not of the opinion that the economy has sufficiently recovered from the Great Recession to allow external comparability to again drive these cases like it did before the Great Recession. While the recovery is progressing, we are not yet on solid ground. \* \* \* And to the extent there is ‘moderate’ recovery, the immediate impact on the public sector entities is yet to be demonstrated, in fact.” *Village of Lansing* at 13-14.

issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain . . .” (*Brief for the Union* at 4).<sup>3</sup>

## II. ISSUES FOR RESOLUTION

As noted, *supra*, four economic issues were originally submitted for resolution:

1. Wages and Advanced Technician Firefighter Stipend (withdrawn);<sup>4</sup>
2. Two-Tier Salary Schedule for Firefighters and Firefighter/Paramedics Hired on or after May 1, 2015;
3. Supplemental Retirement Program;
4. Uniform Allowance.

One non-economic issue is submitted for resolution:

Drug and Alcohol Testing.

Because the final offer provisions of the Act only apply to economic issues and because drug and alcohol testing is a non-economic issue, I am not statutorily required to accept one of the final offers made by the parties. Rather, I am permitted to fashion a position different from those offered by the parties. Accord: *Village of Barrington & IL FOP Labor Council*, S-MA-13-167 (Benn, 2015).

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<sup>3</sup> In its *Brief* the Union has asserted that the Village is without authority to pursue three issues: (1) the two-tier wage system that provides that the hourly wage payment to an employee hired as an Emergency Vehicle Coordinator on or after May 1, 2015, for work performed as a firefighter/paramedic be paid at the applicable hourly rate for the firefighter/paramedic classification. In the Union’s view, “under this proposal the employee would have two different hourly wage rates.” (2) The final offer concerning the supplemental retirement program has a proposal that the Employer will revise its personnel policies for unrepresented employees to contain the same two-tier cut back it seeks in this interest arbitration. According to the Union, if the Employer’s final offer is granted, the award would include this provision for economic benefits for employees outside of the bargaining unit represented by the Union. That matter is a non-mandatory subject of bargaining. Finally, (3) the Union asserts that the Employer’s proposal to unilaterally and without bargaining with the Union change the cut-off levels for the determination of a positive drug test. I have asked for a Reply Brief from the Administration, and a response from the Union, addressing these arguments. On August 3, 2015, the parties responded by filing supplemental *Reply Briefs*. These considerations by the Union will be addressed in the text of this opinion.

<sup>4</sup> In Union Counsel’s words:

The only difference in the two offers lies in the last paragraph of the Employer’s salary offer concerning retroactivity and the application of the wage increase provisions to employees who resign from the Department with two or more years of service after January 1, 2014, and prior to the date of the award issued by Arbitrator Hill. That paragraph also provides, consistent with federal law, that all overtime hours paid during the period of retroactivity shall be recalculated based upon the wage increases ordered by the Arbitrator. **Obviously, the Union has no objection to the Arbitrator adopting the employer’s final offer on wages given the symmetry of them.** This proposal is consistent with this language on retroactivity in Section 10.3 of the current collective bargaining agreement between the parties. In fact, with the exception of the dates, the language is virtually identical, referring to Section 10.3 of the 2008-2010 collective bargaining agreement. Village Exh. 28. (*Brief for the Union* at 8; emphasis mine).

### III. DISCUSSION

As I pointed out in numerous interest arbitration decisions, arbitrators and advocates are unsure (my theory) whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result." See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion*, in *Arbitration – 1976, Proceedings of the 29<sup>th</sup> Annual Meeting, national Academy of Arbitrators* (B.D. Dennis & G.C. Somers, eds) 159, 186 (BNA Books, 1976).

**A review of case law and the relevant literature indicates that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices.** Recently, one Arbitrator/Mediator traced the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947)(McCoy, Chmn), stated the principle this way:

Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . **[T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.**

See, *City of Galena, IL*, Case S-MA-09-164 (Callaway, 2010)(emphasis mine).

In *Tampa Transit Lines*, 3 LA (BNA) 194, 196 (Hepburn, 1946), cited by Arbitrator Nathan (*Will County, infra* at 51), the Chairman ruled:

An Arbitrator cannot often justify an award involving the imposition of entirely novel relationships or responsibilities. These must come as a result of collective bargaining or through legislation. In rare cases I concede it would be appropriate for an arbitrator to make an award entirely unique in an industry and area, as where conditions shock one's sense of equity and decency.

Similarly, Chicago Arbitrator Harvey Nathan, in the often-quoted decision *Will County Board & Sheriff of Will County and AFSCME Council 31, Local 2961* (hereinafter "*Will County*"), Case S-MA-88-9 (1988)(Nathan, Chairman), declared that the award must be a natural extension where the parties were at impasse:

Interest arbitration, as collective bargaining itself, is essentially a legislative not a judicial function. We must consider the parties' circumstances at the time of impasse, evaluate

the evidence in light of the statutory criteria, and develop a resolution the parties themselves might have achieved had they assessed the factors in the same unadorned light as the arbitration panel.

If the process is to work, "it must not yield substantially different results than could be obtained by the parties through bargaining." Accordingly, interest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. *Will County Board and Sheriff of Will County v. AFSCME Council 31, Local 2961* 49-50 (Nathan, Chair, 1988), quoting *Arizona Public Service*, 63 LA (BNA) 1189, 1196 (H. Platt, Chmn. 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

Arbitrator Nathan went on to declare:

In the present case the Employer seeks to make substantial changes in the language of the Agreement. While it is true that the Employer argues that the changes it seeks are merely a clarification of the old Agreement and give rise to a system no different than what the law allows, it remains nonetheless that [the] old Agreement contains a substantially different system for the resolution of grievances. 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. . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (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 employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

**In a manner of speaking arbitration can never construct a better deal for the parties than they can obtain for themselves. It is not so much that arbitrators are so devoid of wisdom, but that what is right for particular parties in a particular**

**relationship becomes such, or is self-defining, as a result of the collective bargaining process. There are no perfect collective bargaining agreements but the ones which the parties themselves carve out are going to be a lot closer to what is best for them than those imposed by an outsider.**

*Sheriff of Will County* at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II*, at 17 n.16, and at 19. See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

**Chicago Arbitrator Elliott Goldstein had it right and said it best: “Interest arbitrators are essentially obligated to replicate the results of arm’s-length bargaining between the parties, and to do no more.” *Metropolitan Alliance of Police, Chapter 471, FMCS 091103-0042-A* (2009).**<sup>5</sup>

There is no question that arbitrators, operating under the mandates of the state interest statutes, apply the same focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one’s own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.<sup>6</sup> Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

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<sup>5</sup> See also, *City of East St. Louis & East St. Louis Firefighters Local No. 23*, S-MA-87-25 (Traynor, 1987), where the Arbitrator, back in 1987, recognized the task of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor’s words:

Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

*Id.* at 11.

Management advocate and author R. Theodore Clark has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. R. Theodore Clark, Jr., *Interest Arbitration: Can The Public Sector Afford It? Developing Limitations on the Process II. A Management Perspective*, in *Arbitration Issues for the 1980s, Proceedings of the 34<sup>th</sup> Annual Meeting, National Academy of Arbitrators* (J.D. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator’s suggestion that interest neutrals “must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike.” *Id.* Accord: *Des Moines Transit Co. v. Amalgamated Ass’n of Am. Div.*, 441, 38 LA (BNA) 666 (1962)(Flagler, Arb.) (“It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table.” *Id.* at 671.

<sup>6</sup> In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

**A. ECONOMIC ISSUE NO. 1: TWO-TIER WAGES FOR NEW HIRES**

**1. The Village's Final Offer**

The Village's final offer on two-tier wages for new hires is to add the following new paragraphs following the end of Section 10.1 (Salaries) to read as follows (JX 5):

Notwithstanding anything to the contrary in this Agreement, effective May 1, 2015, a new two-tier salary schedule shall be implemented for employees hired on or after May 1, 2015. The salary schedule for firefighters and firefighter/paramedics hired on or after May 1, 2015 is attached as Appendix A-2. Since Appendix A-2 sets forth four (4) longevity steps after 8.5 years, 10 years, 15 years, and 20 years, respectively, these longevity steps are in lieu of the provisions of Section 10.2 (Longevity Pay), provided, however, these longevity step increases will become effective on the employee's employment anniversary date, and, provided further, in the event an employee quits and is rehired after a break in employment of longer than six (6) months, the employee's anniversary date, for purposes of eligibility for this benefit, will be the start of the most recent employment date.

Other than as provided in the foregoing paragraph, employees hired on or after May 1, 2015, shall be eligible to receive all of the other economic benefits set forth in this Agreement, including the Advanced Technician Firefighter certification stipend (Section 10.3). In addition, if the Villages hires an Emergency Vehicle Coordinator on or after May 1, 2015, pursuant to the provisions of Section 7 (k) of the FLSA, when the Emergency Vehicle Coordinator is working overtime as a firefighter/paramedic (including training) and not performing the duties of the Emergency Vehicle Coordinator, his overtime rate shall be based on the applicable hourly rate for the firefighter/paramedic classification rather the applicable hourly rate for the Emergency Vehicle Coordinator classification.

As a *quid pro quo* for this new two-tier salary schedule, Management submits that no bargaining-unit employee shall be subject to being laid off for economic reasons for the period through December 31, 2016.

**2. The Union's Final Offer**

The Union's final offer on a two-tier salary schedule for new hires is "*status quo*," i.e., "The Union opposes the Employer's proposal for a two-tier wage system for new hires" (JX 5).

**3. Position of the Administration**

**In support of its final offer for a two-tier salary provision, the Administration advances the following arguments:**

**THE ARBITRATOR SHOULD AWARD THE VILLAGE'S FINAL OFFER FOR AT LEAST FIVE COMPELLING REASONS**

**Assuming, Contrary to the Village's Firm Position, the Threshold Considerations for Consideration of the Village's Final Offer Are Applicable, the Village Has Clearly Met those Threshold Considerations**

In *City of Park Ridge and Illinois FOP Labor Council* (Hill, 2011), this Arbitrator quoted approvingly from Arbitrator Nathan's decision in *Sheriff of Will County & AFSCME Council 31, Local 2961*, S-MA-88-9 (1988), concerning the applicable standards in cases where one party is seeking to change the status quo (reprinted supra).

**At the outset, the Village firmly believes that this so-called "extra burden" is not applicable in this case. Thus, the Village "is not seeking to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits . . .)" *Id.* The Village's final offer involves "decreasing existing benefits," i.e., the establishment of a new lower two tier salary schedule. In this regard, it is important to emphasize the very modest nature of the Village's final offer. For example, in terms of the effect on 30-year career earnings, the Village's final offer does not result in a change of the Village's ranking among the external comparables, it remains at third behind only Glenview and Northbrook. And, in terms the salary at 20 years, the two-tier salary is the highest, yes, the highest, of all the external comparables (*Brief* at 18).**

But even assuming, *arguendo*, there is some "extra burden," the Village has more than met that "extra burden." Although the first of the three elements set forth in Mr. Nathan's award is not applicable, the maintenance of the existing salary schedule will create "operational hardships for the employer. That is because all the Village's other newly hired employees – both represented and unrepresented – are already covered by a two-tier salary-schedule. If the Village's final offer for a two tier salary schedule is not awarded, it would create a humongous "operational hardship" for the Village (*Brief* at 18-19).

As for the third requirement, i.e., "the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems," the record in this case establishes beyond any doubt that the Union has resisted the Village's "attempts at the bargaining table to address" the two tier salary issue. Thus, the Village earnestly sought to negotiate with the Union over a two tier salary schedule, something that was already in place for the Village's unrepresented employees and its police officers represented by the Teamsters Union. The Village's first two-tier salary proposal was modeled after the two-tier salary schedule in the police collective bargaining agreement (VX 30B; Tr. 116). In an effort to engage the Union on this issue, the Village submitted two further two-tier salary schedule proposals, each of which was more favorable to the Firefighters Union than what the Village had successfully negotiated with its Police Union. The Union, however, refused to present another on-the-record proposal. In fact, it spurned the Village's June 10, 2015 offer to meet prior to the scheduled start of the interest arbitration in order to permit the Union to ask any questions it might have with respect to the Village's June 10, 2015 package proposal.

Faced with this adamant refusal to engage in negotiations over this issue, the Village had no alternative but to submit this issue to interest arbitration (*Brief for the Employer* at 19).

**Accordingly, Management asserts that even if the so-called “extra burden” is applicable in this proceeding, contrary to the Village’s firm position, it has clearly been met in this case. *Id.***

**Since the IAFF Bargaining Unit is the “Lone Holdout” on a Two-Tier Salary Schedule, Internal Comparability Unquestionably Supports the Award of the Village’s Final Offer**

It is the Village’s position that it is the Union that has the burden of proving that there are compelling reasons why newly-hired IAFF bargaining-unit employees should not be covered by a two-tier salary schedule when ALL of the Village’s other employees, whether represented or not, are covered by two-tier salary schedules (*Brief* at 20). In addition to the unrepresented employees, the most recent collective bargaining agreement for this unit of represented employees specifically includes a new two-tier “salary schedule applicable to employees hired on or after 1/1/13” (VX 32, at 22). This new-tier two salary schedule contains ten (10) steps, with the salary at the last step, i.e., Step 10, is significantly lower than the last step of the tier-one salary schedule. Unlike the two-tier salary schedule set forth in the Village’s final offer, the police union two-tier salary schedule is not integrated.

Accordingly, the existence of two-tier salary schedules for ALL of the Village’s other employees, both represented and unrepresented, provides compelling support for the acceptance of the Village’s final offer. In analogous cases involving other wage/benefit issues where there is a “lone holdout,” as in this case, interest arbitrators have awarded employer final offers that will bring the “lone holdout” into the fold. See, *City of New Berlin*, 114 LA (BNA) 1704, 1711 (Dichter, 2000)(holding that the Lone Holdout Rule trumps any *quid pro quo* requirement). In Management’s view, the “lone holdout rule” should be applicable as this case is even clearer because the Village did offer a *quid pro quo* (a contractual guarantee that no member of the bargaining unit will be subject to being laid off for economic reasons during the term of the parties’ three year contract that runs through December 31, 2016)(*Brief* at 22). Given the uncertainty about what is going to happen with respect to Springfield (where the newly-elected governor and the Illinois legislature is “warring”), this is a particularly significant *quid pro quo*, especially for the employees with the least seniority such as newly-hired tier two employees (*Brief* at 22).

Further illustrating the reasonableness of the Village’s final offer, the record unequivocally establishes there has been longstanding pattern of settlements between the Village’s police and fire bargaining units (documented in Village Exhibit 35). Moreover, in the instant case it is the Union that “is attempting to break the pattern settlement” with respect to the establishment of a two-tier salary schedule. While the Village has reaped savings from the two-tier salary provisions applicable to the Village’s unrepresented employees since 2011, and from its police bargaining unit since 2013, assuming the Village’s final offer is awarded, it will only begin to realize savings with respect firefighters who are hired on or after May 1, 2015 (*Brief* at 23).

**External Comparability Data, Especially When Coupled with the Union's Career Earnings Exhibits, Strongly Supports the Village's Final Offer**

Management contends that of the eight (8) external comparables, three (3) have two-tier salary schedules: Northbrook (brokered by Arbitrator Nielsen), Park Ridge, and Winnetka (*Brief* at 23).<sup>7</sup> The Northbrook, Park Ridge and Winnetka two-tier salary schedules are all integrated, i.e., after five years in Northbrook and after eight years in Park Ridge and Winnetka. Significantly, in all three (3) comparables that have two-tier salary schedules, their tier-one salary schedules provide that an employee reaches the top step after only three and one half to four years, which is only six months to a year less than the 4.5 years that it takes a tier one Wilmette firefighter/paramedic to reach top step. With the exception of Lake Forest, in all the remaining comparables it takes longer, ranging from five years in Skokie to seven years in Evanston. This would suggest that the introduction of two-tier salary schedules is an effort to stretch out the time it takes to reach top step (*Brief* at 25).

While neither Evanston nor Glenview currently have two-tier salary schedules, in both Evanston and Glenview it takes seven and six years, respectively, to reach the top step, which is only six months and 18 months, respectively, longer than it will take a tier-two Wilmette firefighter/paramedic to reach the top step based on the Village's final offer. *Id.*

Also noteworthy, and as Union witness Harrington testified, the total earnings over a 30-year career based on the 2014 salaries for Wilmette tier-two firefighters/paramedics based on the Village's final offer would be higher than six of eight agreed to external comparables (*Brief* at 25; R. 26):

But even if the Skokie and Park Ridge 30-year career earnings are increased to take in account potential salary increases for the last eight months of 2014, Wilmette's ranking as third out of the nine comparables will not change.

Thus, Union Exhibit 6 (UX 6), as revised, includes the adjusted 30-year career earnings for both Park Ridge and Skokie, results in the following rankings for the agreed-upon external comparables:

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<sup>7</sup> Although not a two tier salary like those in Northbrook, Park Ridge, and Winnetka, Evanston added a new starting step that is 10% below the old starting step and extended by one year the time it takes to get to the top step for firefighters and paramedics hired after January 1, 2012 (VX 4, Evanston CBA, at p. 27).

MUNICIPALITY	30-YEAR CAREER EARNINGS
Northbrook Tier 1	\$2,906,208
Northbrook Tier 2	\$2,869,758
Glenview	\$2,816,006
Wilmette Tier 1	\$2,765,637
Wilmette Tier 2	\$2,703,393
Winnetka Tier 1	\$2,667,401
Highland Park	\$2,659,411
Skokie	\$2,655,971
Winnetka Tier 2	\$2,625,808
Park Ridge Tier 1	\$2,604,399
Evanston	\$2,589,949
Park Ridge Tier 2	\$2,539,493
Lake Forest	\$2,534,815

(Brief at 26)

The foregoing chart based on Union Exhibit 6 and modified to reflect additional salary increases for both Park Ridge and Skokie, provides compelling evidence of the overall reasonableness of the Village's final offer (*Brief at 27*).

The Administration also submits that it is also relevant to note that while the Wilmette tier-two starting salary as of January 1, 2014 is significantly less than the tier-one starting salary, the Wilmette tier-two starting salary still compares quite favorably with the starting salaries for the external comparables, as the following chart demonstrates (VX 37):

JURISDICTION	FIREFIGHTER/PARAMEDIC STARTING SALARY
Glenview	\$69,643
Skokie	66,714
Highland Park	66,649
WILMETTE (TIER II)	64,063
Winnetka (tier II)	63,942
Lake Forest	62,425
Northbrook (tier II)	62,246
Park Ridge (tier II)	60,514
Evanston <sup>8</sup>	56,547
AVERAGE STARTING SALARY EXCLUDING WILMETTE	\$63,658

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<sup>8</sup> The Evanston starting salary is taken directly from the Evanston contract for a newly hired paramedic as of January 1, 2014 (VX 4, Evanston CBA, Appendix B, at p. 116). As noted on the record, the acronym NHP stands for newly hired paramedic (Tr. 131).

(Brief at 28)

Thus, Wilmette's tier-two starting salary as of January 1, 2014 of \$64,063 is higher than the starting salaries as of the same date in Evanston, Lake Forest, Northbrook, Park Ridge and Winnetka (R. 134). Also, the Wilmette tier-two starting salary is higher than both the median and average starting salary. Finally, the Wilmette tier-two starting salary is higher than the tier-two starting salaries for the three other external comparables that have tier-two salary schedules. In the Administration's view, this information directly refutes any argument that the Union may make that the Village may encounter difficulty hiring new firefighter/paramedics. Also relevant in this regard is the fact that the Village's current firefighter eligibility list contains the names of 136 eligible candidates (VX 8; R. 104). The Village's attorney accurately observed that the Village has "no difficulty whatsoever in terms of attracting large numbers of qualified applicants, far more than the Village will ever need" (R. 104)(*Brief at 28-29*).

At twenty (20) years of service, i.e., the number of years of service needed to be eligible for a pension, both tier-one and tier-two firefighter/paramedics, are the highest paid of all the comparables. Thus, as of January 1, 2014, the date on which actual salary information was available for all the comparables, the following are annual salaries for firefighter/paramedics (VX 41)(*Brief at 29*):

JURISDICTION	TOP STEP SALARY (INCLUDES PARAMEDIC STIPEND IF SEPARATE FROM SALARY AND LONGEVITY PAY, IF ANY )
WILMETTE	\$95,170
Glenview	95,118
Northbrook	92,449
Highland Park	92,018
Skokie	90,307
Evanston	88,246
Winnetka	87,295
Lake Forest	86,951
Park Ridge	85,219
AVERAGE EXCLUDING WILMETTE	\$89,700

(Brief at 30)

**The Administration points out that Wilmette's 20-year salary is not only the highest, but it is \$5,470 higher than the average for eight comparables. This overwhelmingly demonstrates that the Village's two-tier salary final offer will not cause any real monetary hardships for firefighter/paramedics who are hired after May 1, 2015. To the contrary, they will remain among the highest paid firefighter/paramedics.**

Finally, in terms of the maximum pensionable salary at 20 years of service, Wilmette's maximum is \$96,923, which is second only to Glenview's at \$97,496. And, it is \$6,686 higher

than the average maximum pensionable compensation at 20 years of service for the eight comparables.<sup>9</sup> As the Village's attorney observed, pensionable compensation is "important because ... [that] is what the Village has to take into account and its actuaries take into account in computing the Village's unfunded pension liability" (*Brief* at 30; R. 144).

**The Historically Low Cost of Living Data Strongly Supports Acceptance of the Village's Final Offer**

Noting that the tier-two salary schedule based on the Village's final offer will only be applicable to firefighter/paramedics newly hired on or after May 1, 2015, the Administration submits that those newly-hired firefighters will be the recipients of the same across-the-board salary schedule percentage increases that firefighter/paramedics who were hired prior to May 1, 2015, i.e., 2.5% effective May 1, 2014, 2.5% effective May 1, 2015, and 2.25% effective May 1, 2016. Cost-of-living projections favors the Administration's offer (*Brief* at 31-32).

**The Overall Compensation that Tier-Two Firefighter/Paramedics Will Receive Unquestionably Supports Acceptance of the Village's Final Offer for a Two-Tier Salary Schedule**

Management asserts that while newly-hired firefighters will be paid on the basis of the new two-tier salary schedule, they will be eligible to receive all the economic fringe benefits that tier one firefighters receive, benefits that are clearly superior to those provided by the external comparables (*Brief* at 33-35). Such benefits include:

**Health Insurance.** For single and family coverage Wilmette firefighter/paramedics pay only 5% and approximately 13%, respectively. Among the comparables, only in Highland Park do employees pay such a modest amount towards health insurance coverage (VX 61). For the remaining seven comparables, employees pay from 10% to 18% for single coverage and from 10% to 18% for family coverage (VX 61). The overall superiority of the Wilmette health insurance benefit is made even clearer when Wilmette's annual \$720 contribution to each employee's flexible benefit plan is taken into consideration (VX 52; Tr. 174-75). Among the eight comparables, only three have a similar benefit, i.e., \$500 in Evanston and Winnetka and \$150 in Lake Forest (VX 52).

**Tuition Reimbursement.** A maximum of six bargaining unit employees per year are eligible for a tuition reimbursement of up to "\$2,250 in a fiscal year" (JX 1, Section 10.4, at p. 18). Since 2003 the Village has paid fire bargaining unit members a total of \$53,333.82 for tuition reimbursement (VX 62). And, between 2011 and 2015, of the 29 Village employees who received a tuition reimbursement, 21 were fire department employees, 18 of whom were bargaining unit members (VX 62; R. 203-05).

**Vacation.** Over a 25 year career, Wilmette firefighter/paramedics receive a total of 218 24-hour days of paid vacation, which is more than Evanston (208), Highland Park (207), Northbrook (211), and Winnetka (205). Only Glenview (233) and Skokie (266) are higher. And, in terms of Skokie, the number is inflated because two of the days are in lieu of holidays. If 50 days were deducted from Skokie's 266, it would result in 216 days of paid vacation, two less than Wilmette's 218 days.

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<sup>9</sup> The primary reason why Wilmette's pensionable salary is so much above the average is due to the Advanced Technician Firefighter stipend, something that all Wilmette firefighter/paramedics receive after two or three years, but something that is not matched any other comparable, as Village Exhibit 42 demonstrates.

Total Paid Time Off. Village Exhibit 64 which shows the total paid off for all comparables for employees with 5, 10, 15, 20, and 25 years of service, respectively. As the Village's attorney observed, "Wilmette is in the middle of the pack; some higher, some lower" (R. 207-08)(Brief at 34).

**The Village's Finances and the Interest and the Welfare of the Public  
Support Acceptance of the Village's Final Offer for a Two-Tier Salary  
Schedule**

Section 14(h) (3) of the Illinois Public Labor Relations Act (IPLRA) provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in interest arbitration proceedings. 5 ILCS 315/14 (h) (3). While the Village is not making an inability-to-pay argument, both the Village's financial situation and the welfare of the public that it serves need to be considered. (*Brief* at 35, citing *Village of Skokie and IAFF Local 3033* (Hill, 2007)("While the Administration has not entered an inability-to-pay argument, overall financial obligations of a package must be taken into account in rendering an award." *Id.* at 14).

To this end the Administration maintains that its finances were severely impacted by the Great Recession and the ever-increasing amounts that the Village has to pay for employee pensions and health insurance is clear beyond doubt from the record in this case. While the Village's finances have stabilized, it is largely attributable to the significant belt tightening that the Village did during the economic downturn, a belt tightening that has, for all intents and purposes, remained in place, as well as the actions Counsel summarized above that the Village has taken to increase revenues. (*Brief* at 35-36). It is the Village's position that to require the Village to maintain the same salary schedule for employees hired on or after May 1, 2015 when all the Village's other newly-hired employees are being paid pursuant to two-tier salary schedules is not in the public interest, especially when the two-tier salaries that the Village's final offer provides will result in newly-hired tier-two fire union employees being in the upper echelon among the comparables.

Finally, the fact that a significant portion of the Village's revenues is dependent on the receipt of state-shared revenues and its ability as a home rule community to raise property taxes, the dire straits of the State of Illinois' finances strongly supports being conservative in terms of salary structures and other economic fringe benefits. The Village's legitimate concerns about possible actions in Springfield that will adversely affect Village revenues underscores its need to find ways to reasonably and responsibly reduce compensation costs wherever appropriate. The Village submits that its two-tier final offer is a reasonable and responsible method of modestly reducing compensation costs. Suffice it to say, but the Village is not satisfied that there will be any public benefit from continuing to pay newly-hired employees more than the very reasonable and fully competitive salaries that are set forth in the Village's two-tier salary schedule (*Brief* at 36-37).

**THE UNION'S ARGUMENTS AGAINST ADDING A TIER-TWO SALARY SCHEDULE ARE NOT SUPPORTED BY CREDIBLE EVIDENCE**

**Contrary to the Union's Contention, the Village's Experience with a Two-Tier Salary Schedule in its Police Department Demonstrates that an Integrated Two-Tier Salary Schedule Will Not Create Morale Problems**

The Village's final offer provides for an integrated two-tier salary schedule, meaning that at the 8.5 year mark employees in both tiers will be paid exactly the same salary. In other words, at the 8.5 year mark there is no gap between tier-one and tier-two salaries. No bargaining-unit employee *with the same seniority date* will be paid different salaries. By definition, tier-one employees will have greater seniority than any tier-two employees. Moreover, assuming no changes are made to the basic structure of the two-tier salary schedules other than COLAs, in 8.5 years the tier-two salary schedules will, in effect, morph into one salary schedule covering all bargaining unit employees regardless of whether they were hired before or after May 1, 2015.

**Contrary to the Union's Contention, There Is No Credible Evidence that the Other Comparables that Have Two-Tier Salary Schedules Provided a Substantial *Quid Pro Quo***

During the hearing the Union argued that in Northbrook, Park Ridge, and Winnetka the employer provided a *quid pro quo* in order to obtain a two-tier salary schedule (R. 306). However, there is absolutely no credible evidence to back up that assertion.

The Union's evidence with respect to so-called *quid pro quos* for the two tiers in Northbrook, Park Ridge, and Wilmette was presented through the hearsay testimony of Union witness Harrington. There is simply no credible evidence to support the Union's *quid pro quo* arguments for the three jurisdictions in question. In the Employer's view, none of the suggested *quid pro quos* in Northbrook, Park Ridge, and Winnetka even comes close to the concrete and specifically identified *quid pro quo* that the Village has offered in this case (*Brief* at 40).

**Contrary to the Union's Contention, an Award of the Village's Final Offer of a More Favorable Two-Tier Salary Structure than the Police Department's Two-Tier Salary Schedule Will Not Create Any Major Obstacles in the Next Round of Negotiations with the Police Bargaining Unit**

The Village submits that its two-tier salary offer is more favorable to firefighter/paramedics than the police two-tier salary schedule is to police.<sup>10</sup> According to the

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<sup>10</sup> According to the Union's computations, which the Village does not dispute, the difference in 30-year career earnings between police tier one and tier two salaries is \$107,036 versus the difference in 30-year career earnings between fire tier one and tier salaries based on the Village's final offer is \$62,243 (UX 9). Since the Village's final offer to the fire union is substantially more favorable to the fire bargaining unit, that fact only highlights the overall reasonableness of the Village's final offer. For the Union to suggest otherwise constitutes a rather perverse argument that the Arbitrator should see through and reject.

Village, in the final analysis, the Union's solicitous concerns about problems that the Village would allegedly face in its negotiations with the Police Union if the Village's final offer were awarded are simply not germane to the resolution of this issue (*Brief* at 41).

At the same time, if the Arbitrator were to award the Union's final offer and reject the Village's final offer for a two-tier salary schedule, it would unquestionably complicate the Village's next round of negotiations with the police union, something the Arbitrator appeared to fully understand (*Brief* at 41-42; R. 275).

**Since the Village Will Be Saving Approximately Three Times the Amount that Arguably Will Not be Contributed to the Fire Pension Plan under the Two-Tier Salary Schedule, the Union's Contention that the Funding of the Pension Plan Will be Adversely Affected is a "Red Herring"**

The Village candidly acknowledges that the purpose of the two-tier salary schedule is to reduce the cost of salaries for a newly-hired firefighter/paramedic over what the cost would be based on the tier-one salary schedule (*Brief* at 42). To this end, based on Union Exhibits 6 and 8, the savings over the first 8.5 years of employment would be between \$62,244 (UX 6) and \$68,005 (UX 8), a range that the Village accepts for the purpose of this case.<sup>11</sup> The Union then argues that because the employee is being paid less than a tier-one employee, the employee's contribution to the pension fund during the employee's first 8.5 years of employment will be less than what it would have been if the employee had been paid on the basis of the tier one salary schedule. It then asserts that the combined amount that the employee and the Village will not be contributing to the pension fund comes to \$22,440 (UX 8; R. 28). While that may be true, it is beside the point. The amount that the Village is required to contribute is based on what the employee's pension will be at the time of retirement, not on what the employee is paid during his first 8.5 years of employment. In any event, it is very much the Village's position that the savings from implementation of the new tier-two salary schedule will modestly offset its ever increasing annual contributions for pensions and health insurance. The fact remains that the Village's savings are approximately three times that amount that the Union estimates the pension will not be receiving over the same 8.5 years for each newly-hired tier-two employee (*Brief* at 43).

**Any Arguments that the Union May Make Concerning the May 1,2015 Effective Date of the Village's Final Offer for a Two-Tier Salary Schedule Should Be Rejected by the Arbitrator**

The Village asserts that any time you have an effective date for a two-tier wage or benefit, some employees will be in tier-one and some will be in tier-two. That is inherent in establishing a two-tier wage or benefit. Two essential points need to be made with respect the anticipated Union argument.

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<sup>11</sup> While the Union's calculation of the savings in Union Exhibit 6 is based on a 30 year career, the actual savings occur between the date of employment and the date a newly hired tier two employee reaches the 8.5 year step. That's because at 8.5 years the salaries received by a tier one employee and a tier employee are exactly the same.

First, all three of the Village's on the record proposals called for an effective date of January 1, 2014 for its two-tier salary schedule proposal (VX 30A, 30B, and 30C). In its final offer, the Village modified the effective date to May 1, 2015 (JX 4). This benefited any new bargaining-unit employees who were hired between January 1, 2014 and May 1, 2015, but it also meant that the savings that the Village expected from implementation of a two-tier salary schedule would be delayed by 16 months.

Second, all the Village's other employees—both represented and unrepresented—have been subject to a two-tier salary schedule for several years. Thus, unrepresented employees who have been hired since January 1, 2011 are being paid in accordance with the two-tier salary schedule covering them and police officers who have been hired since January 1, 2013, are being paid in accordance with the negotiated two tier salary schedule covering them. In this context, the major delay in the implementation of the two-tier salary schedule for newly-hired firefighters has benefited the fire union, but it has been to the detriment of the Village. Thus, if any party has been adversely affected by the May 1, 2015 effective date, it is the Village.

#### 4. Position of the Union

In support of its argument that its final offer (STATUS QUO) should be selected with respect to the Administration's request for a two-tier wage schedule for new hires, the Union makes the following arguments:

##### **The Village's Offer of a Two-Tier Wage Scheduled for New Hires Violates the Fair Labor Standards Act and Should be Rejected**

According to the Union, the Administration's two-tier wage proposal creates a new two-tier salary level for the position of Emergency Vehicle Coordinator (*Brief* at 9). Appendix A of its final offer has a new pay schedule for this position. This offer is not permitted under FLSA in Section 7(g) relied upon by the Village for its proposal (*Brief* at 10). The Union points out that the EVC position has two primary duties with the employee working as a firefighter/paramedic on regularly scheduled duty days, and as an Emergency Vehicle Coordinator (mechanic on fire apparatus) on regularly-scheduled days off. Under the applicable DOL rules, when an employee works two jobs for the same employer, the hourly rates for both jobs do not have to be identical, but the hours are combined for purpose of meeting the overtime threshold requirement. In the Union's words:

In the case of the EVC, the hours worked during this double job in a tour of duty exceed the overtime threshold, and overtime payment is required. The employee actually has an hourly rate to perform duties as the Emergency Vehicle Coordinator and a separate hourly rate to perform the duties as a firefighter/paramedic. This arrangement is not unusual in the fire service for employees who work for the same employer in other jobs in addition to their firefighter/paramedic duties. Here, the Village's two-tier proposal, which includes the EVC offer, assumes that a firefighter/paramedic will perform both jobs.

The question that arises is what overtime rate should be used when the employee's hours of work covered by the overtime threshold number. Section 7(g), not 7 (K), of the Act allows for the employer and the employee to agree before the performance of the work to the hourly rate for the EVC position and hence the EVC hours worked by the employee in excess of the maximum number of hours in the tour of duty. A Section 7(g) agreement allows for an employee such as the Emergency Vehicle Coordinator to be paid at two different hourly rates, provided that the agreement is reached as to what the hourly rate shall be for the EVC job. The firefighter/paramedic job rate is established by the collective bargaining agreement.

To be lawful, the agreement for the hourly rate between [the] employee and the employer must be voluntary according to the regulations, and under the case law may not be compelled by an interest arbitrator or by the provisions of a collective bargaining agreement. \* \* \* **The Employer's final offer does not provide for the overtime rate to be established when the employee is working overtime as an Emergency Vehicle Coordinator, but only when the employee is working as a firefighter/paramedic. Most important to the infirmity of this final offer is the absence of a voluntary agreement as to the overtime rate to be used.**

(*Brief* at 10-11; emphasis mine)

Bottom line, the Administration is seeking a waiver of a statutory right to require a voluntary agreement for the applicable overtime rates under 7(g) and such an action has been determined to be a permissive subject of bargaining by the General Counsel of the Illinois Labor Relations Board in *Village of Elk Grove Village Firefighter Association Local 3398*, Case No. S-DR-97-03 )1077)(*Brief* at 12). In the Union's view the Administration's entire two-tier proposal should fail because a portion of it would be a violation of FLSA. *Id.*

### **The Employer Seeks a Radical Breakthrough with a Two-Tier Wage Proposal**

According to the Union, two-tier wage structures have been universally rejected by Illinois Interest Arbitrators as "breakthrough" issues that have long been opposed by labor unions for the divisiveness they would cause among the employees and unwanted tensions in collective bargaining negotiations. Citing the decision by Arbitrator Harvey Nathan in *Will County*, supra, the Union asserts that even a "good idea" proposed by one party or the other is insufficient to change the *status quo* (*Brief* at 13). In Management's opinion, "numerous other arbitrators have adopted the test in *Will County* and have rejected two-tier salary systems (*Brief* at 13-14).

In support of the *status quo*, the Union points out that employees hired after May 1, 2015, will be paid much less than those employees hired before May 1, 2015, in the same job classification – firefighter/paramedic (*Brief* at 14). The Union notes that the starting salary as of 2015 is \$70,386, but for new employees after May 1, 2015, the starting salary is \$4,721 less and at Step 7 (5.5 years) the difference is \$10,455, which is the highest yearly difference in the steps in the two-tier offer. The total difference in salary numbers over the 8.5 years of service, assuming no salary increases over that period of time, is \$65,877 (*Brief* at 14, Table 1). Adding in salary increases for future annual wage increases would increase the differential. The

“merging point for second-tier salaries is 8.5 years of service; after that point the tier-one employee and the tier two employees will be at the same annual salary of \$89,401 (*Brief* at 15-16).

Also noted by the Union is this: **There is a substantial impact on the pension fund based upon the contributions made by employees at 9.455% and by the Employer at 23.52% of the employee’s salary.** Because the total salary difference for the tier-one and tier-two salaries will be \$65,878, the pension fund will receive \$21,722.76/employee less than it would have had had the salaries been at the same level for an employee at each step (See, *Brief* at 16-17, Table 3 & 4). In the Union’s words:

The negative impact on the pension arises because the pension fund will have to pay pension annuity to tier-one and tier-two firefighters based on the same salary levels used to calculate the pensions at the end of the employee’s careers. For the Wilmette pension fund, firefighters are paid on the basis of the salary of the last payroll period prior to the employee retiring. An employee retiring on a tier-one salary will have paid into the pension fund more money than the employee retiring on a two-tier salary but both will receive the same pension annuities. That has an adverse impact on the pension fund and clearly is not fair. \* \* \* This is clearly adverse to the public interest and welfare and constitutes a sufficient reason why this final offer should be rejected under the Section 14(h)(3) factor the arbitrator is to consider.<sup>12</sup>

(*Brief* at 16)

**The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet Those Costs Favors the Union’s Final Offer**

Insisting that two-tier pay schedules discriminate between new employees and those who are already on the payroll, and lead to “internal divisions among the employees and cause disharmony, the Union cites cases that it asserts stand for the proposition that arbitrators have rejected such two-tier provisions in interest proceedings (*Brief* at 17, citing *Village of Gurnee & Gurnee Firefighters Union, Local 3598*, Case S-MA-12-185 (Nathan, 2014); *Palos Heights & IAFF Local 4254*, Case S-MA-12-120 (Nielsen, 2012); and *Village of Steamwood & Metropolitan Alliance of Police, Chapter 216*, FMCS 131025-02661-6 (Myers, 2014)). According to the Union, a two-tier system would require it to negotiate for two different groups,

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<sup>12</sup> Of course the Administration responds that the fact that a newly-hired employee pays less into the pension fund benefits the new employee, even though his pension will not be affected one iota. In Counsel’s words: “Since the Village’s actuaries determine the amount of the Village’s required annual contribution, the fact that newly-hired firefighter/paramedics are being paid on the basis of the two-tier salary schedule will necessarily be factored into that determination.” (*Brief for the Employer* at 43 n.45). Clearly, what the firefighter/paramedic earns in his or her first 8.5 years of employment does not come into play in determining the employee’s pension at retirement, a fact that the Union acknowledged. Also, both tier-one and tier-two employees would be contributing exactly the same percentage of their salary to the fire pension fund, 9.455% (*Brief* at 43 n.46). In the Administration’s view: “In any event, it is very much the Village’s position that the savings from implementation of the new two-tier salary schedule will modestly offset its ever-increasing annual contributions for pensions and health insurance.” (*Brief* at 43).

specifically with respect to cost of living increases (otherwise the gap would increase)(*Brief* at 18).

To this end the Union disputes the Administration's claim that there are no problems in the police department resulting from their two-tier system. In the Union's opinion "this issue [Brainman's testimony] should be discounted based upon the complete absence of any personal interaction with police officers on a daily basis or use of a survey of the police officers hired after the two-tier system took effect." (*Brief* at 19). The Union also disputes that any argument concerning an "inequitable situation" that would be created if the Administration's final offer were not awarded. Any alleged disparity would be distinguished on the grounds that the firefighter/paramedics are represented and enjoy the benefits and protections of that representation (*Brief* at 20).

With respect to any ability to pay considerations, the Union asserts there is no credible issue regarding the financial health of the Village, as indicated by the increase in the Employer's General Fund balance (\$6.6 million as of February 2015)(*Brief* at 21-23; UX 13, 14 & 15).

### **The External Comparables do not Support the Village's Two-Tier Salary Proposal**

According to the Union, only a minority of the external comparables (Park Ridge, Winnetka & Northbrook) have created two-tier pay plans (and the terms of those plans are summarized in Union Exh. 9)(*Brief* at 25). The total difference between the Wilmette two-tier proposal and tier-two employees over the course of their careers is \$63,800. Park Ridge is \$64,906, Northbrook \$36,450, and Winnetka \$41,592.00 (*Brief* at 26, Table 5). For each of these two-tier arrangements among the external comparables, the Union asserts *quid pro quos* were offered and accepted by the parties during the course of collective bargaining (*Brief* at 26). **In the Union's opinion: "Arbitrators have continuously held that breakthroughs of this kind must be accomplished by collective bargaining and not implemented by the Arbitrator"** (*Brief* at 27, citing St. Clair County (Corrections), S-MA-12-080 (Nielsen, 2013); Village of Gurnee, IL & Gurnee Firefighters Union, IAFF Local 3598, S-MA-12-185 (Nathan, 2014); City of Wheaton & Wheaton Firefighters Union Local 3706, S-MA-12-278 (Fletcher, 2014) and Village of Streamwood & Metropolitan Alliance of Police Chapter No. 216, Streamwood Police Officers, FMCS Case No. 131025002661-6 (Myers, 2014); City of Waukegan, Case No. S-MA-00-141 (Hill, 2001)).<sup>13</sup> Moreover, in the three bench-mark jurisdictions cited (Northbrook, Winnetka, and Park Ridge), and the Wilmette Police, there were significant *quid pro quos* involved (*Brief* at 27-29). In the Union's world, the Administration's no layoff proposal is an insignificant *quid pro quo* (*Brief* at 29-30).

### **The Administration's No Layoff Proposal is an Insignificant Quid Pro Quo**

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<sup>13</sup> In an effort to get a handle on the thinking of arbitrators facing final offers that contained a two-tier salary or insurance provision, I have downloaded every case cited by Counsel for the Administration and the Union. The cases will be discussed later in the opinion. Significantly, as of this writing (July 31, 2015) I cannot locate one case where an outside arbitrator in an Illinois interest proceeding awarded a two-tier salary scale.

Asserting the Village's no layoff proposal is an insignificant *quid pro quo*, the Union points out that this proposal was only made when final offers were exchanged and was not part of any prior offer dealing with a two-tier wage provisions (*Brief* at 29). As a result, there could not have been any significant deliberation or discussion about the language of the proposal. *Id.* Also, the Administration was not contemplating any layoffs (*Brief* at 30) and, thus, a subsequent promise not to layoff is meaningless. Citing *Palos Heights Fire Protection District*, S-MA-12-398 (Neilsen, 2013), the Union argues that failure to disclose one's proposals until arbitration undercuts the showing of need, and completely prevents any funding that reasonable efforts were made to secure the changes through bargaining (*Brief* at 31).

### **Pay Parity is Not Reestablished by the Employer's Final Offer**

The Union asserts that a second major breakthrough is sought by the Employer by not following the pay parity pattern that it has established over the years between the police and fire unions (*Brief* at 31). There is no point at which the police salaries on each tier are equal or merge (*Brief* at 32). In the instant case the two-tier system in the Police Department continues for 30 years, but a firefighter/paramedic on the second tier under the Employer's proposal would move to the first tier after 8.5 years. *Id.* In short, the two-tier police officers will experience a larger loss of income than the two-tier firefighter/paramedics by an amount of \$38,793, the difference between \$107,036 (the total earnings of a tier one police officer over 30 years relative to a tier-one officer) and \$65,877 (total earnings difference of a tier-one firefighter/paramedic) (*Brief* at 32; Table 6). Police officers on tier-two see a substantially more stunted career compared to a tier-one firefighter/paramedic on two-tier of the Village's proposal compared to a tier-one firefighter/paramedic (Table 6). Whatever offer is awarded, the Village will likely discuss wage structures with the police union (*Brief* at 34). In the Union's words: "With either awarding the Union offer or the Employer offer, the Arbitration award will create differences that could leads to attempts to modify the tiers." (*Brief* at 35). Moreover, the absence of any evidence regarding how the two-tier system operates for the Village's non-represented employees weakens the Employer's argument that internal pay parity justifies awarding the Employer's two-tier pay proposal (*Brief* at 35-36).

Finally, the Union submits that the record in this case shows the absence of serious discussion and deliberations and significant compromises to reach agreement on a breakthrough item such as the two-tier salary structure (*Brief* at 38). As put by Union Counsel: "The record in this case simply shows the absence of serious discussion on this issue, and there was not even discussion at the bargaining table on the lay-off prohibition bar because that was first stated in the Village's final offer. So the most logical answer to the non-union employee questioning Mr. Braiman on why two-tier might remain for that group is that the Village did not offer enough to induce the fire union to agree to the two-tier system." (*Brief* at 38-39).

### **5. Analysis and Award**

As indicated and discussed *supra*, under the Administration's two-tier salary proposal, over a period of time there will be differences in salaries, but they will "meet up" at 8.5 years of service. The salary difference for a 30-year career employee (one person) will be approximately \$63,800. (R. 21). By Mr. Pat Harrington: "I was trying to avoid any assumptions of what

COLA increases would be in the future and just use the 2014 scale starting pay step one, step two, through step none, and then eight and a half all added up for a career's worth of pay all in a 2014 snapshot. So that's where one employee total [\$63,800] comes up with at that pay scale." (R. 23). Also indicated *supra*, under the Administration's two-tier proposal, the pension fund will receive \$22,440 less per newly-hired employee than it would if the employee was at tier one (R. 28). "The operating assumption for the pay increases from July of 2015 to January of 2023 are 2.25% COLA increases in each year." (R. 28). Harrington: "But for purposes of putting money into the pension system, these employees on tier two will be contributing substantially less into the pension system with respect to their salaries for the first eight and a half years of service." (R. 31). "So the bare minimum number of dollars lost to the pension funds over this eight and a half year period is 22,000 and it doesn't include the investment potential of that money." (R. 32).

\* \* \* \*

While I believe the Administration advanced a reasonable final offer to what it believes is a prudent response to the national and local economic and state political environment (noting the mess in Springfield), a review of arbitration awards in Illinois clearly favors the Union's *status quo* position. **Indeed, I cannot find one award<sup>14</sup> in the State of Illinois where an interest arbitrator granted a two-tier salary structure, even as modest as that proposed by the Administration (where new employees will catch up after 8.5 years). This posture is not unexpected, given the nature of interest arbitration.<sup>15</sup>**

To this end Arbitrator Ed Benn said it best in *Village of Barrington & IL FOP*, S-MA-13-167 (2015) in describing the interest arbitration process:

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<sup>14</sup> As this opinion was going to press, I discovered a decision reported by Wisconsin Arbitrator (and Marquette Law Professor) Jay Grenig, *City of Elgin, IL & LAFF 439*, Case S-MA-13-101 (2013). With little analysis, he awarded a two-tier health insurance proposal and a retiree health insurance proposal, reasoning that the other bargaining units agreed to a similar provision. There were approximately 20 unresolved issues in that case, so a decision with detailed reasoning and analysis is understandable. I view *City of Elgin* as an aberration in Illinois.

One other case, offered by the Administration, is *Village of Winnetka & MAP Chapter #54* (Nielsen, 2012), which, by all accounts, is a stipulated award. I reach this conclusion based on Arbitrator Nielsen's views as outlined above and reading the *Winnetka* decision.

<sup>15</sup> In addition to the decisions discussed in this opinion, the reader is advised to see *Arbitration 2014: The Test of Time, Proceedings of the Sixty Seventh Annual Meeting, National Academy of Arbitrators* (BNA Books, 2015) (edited by Block, et al), especially Chapter 15, *Interest Arbitration in Hard Times*. Noteworthy is a paper/comment by Arbitrator Mary Jo Schiavoni, titled *Recent Trends in Interest Arbitration*. *Id.* at 388-390. She argues: "Generally speaking, interest arbitrators are a conservative group, extremely reluctant to make groundbreaking law through the issuance of their interest arbitration awards."

At that same meeting Arbitrator Harvey Nathan, discussing a two-tier wage proposal, observed:

Well, the employer wanted a two-tier system, to have all new employees getting a lower salary, starting salary. So in a few years, you would have experienced firefighters side by side, one of them making substantially more than the others. Not only does this present a problem with morale but it presents a problem for the union the future. On which group of employees is the union going to focus when they bargain for new wages? I gave the employer a little break and I awarded a new starting step that was below the current salary step. It was lower by five percent. *Id.* at 394-384.

My approach as set forth in *Lansing* [*Village of Lansing & IL FOP Labor Council*, S-MA-12-214 (Benn, 2014)] and the awards cited in that matter shall therefore continue for this case:

From my perspective, because Section 14(h) provides that I look at “. . . the following factors, as applicable . . .” [emphasis in original], as far as I am concerned, we are just not yet there for the return of external comparability – where the experiences in one municipality can literally dictate the result in another municipality – as an “applicable factor” for these cases. For now, I continue as I have in the recent past. External comparability is not, in my opinion, an “applicable” factor for these cases.

\* \* \*

Therefore, at the present time for this arbitrator, the more “applicable” factors that determine economic issues such as wages are cost of living as measured by the Consumer Price Index (“CPI”), internal comparability and overall compensation presently received.

Third, my overall goal in deciding these cases is to provide a road map and stability to parties so that they know going into these often lengthy and costly proceedings what they will most likely receive from the process and therefore avoid the interest arbitration process altogether and chart their own fates through give and take at the bargaining table. *Lansing, supra* at 16.

. . . As the parties tip-toe through the aftermath of the Great Recession, the wild-card external comparability factor is best kept out of the picture. The parties know what the cost of living is and what the economic projections show; they know what has happened or is going to happen internally in their communities; and they know the overall impact of the various wage and benefit offers on the bargaining units at issue and on other employees employed by the community. And they also know that the interest arbitrator (if doing the job correctly by consistently following his or her own prior decisions to provide stability) is not going to award a breakthrough or change the status quo either through establishing a new benefit or reducing an existing one unless there is a showing that the existing system is broken – which is a heavy burden to meet. And that means that through prior awards of the interest arbitrator, the arbitrator has effectively drawn a circle – an outer boundary – within which the parties can navigate and negotiate and if there are any major changes outside of that boundary, *the parties* will have to bargain and trade for those changes because an interest arbitrator is not going to give those changes to them.

(*Benn* at 6-7)

Significantly, Arbitrator Benn held that a dispute over a non-economic issue “that does not have an underlying problem – much less a broken condition – and therefore does not need to be fixed by an interest arbitrator.” (*Benn* at 32-33).

In *Lansing* at 17, cited by Arbitrator Benn in the above award, he articulated what I believe is the better focus of most interest neutrals in Illinois:

**The parties are best suited to determine their fates through negotiations focusing on what is going on as the economy impacts conditions in their communities. At present, what goes on everywhere else – even in communities “comparable” to their own – should be of lesser concern.**

Following what I believe is the better rule is *City of Wheaton, IL & Wheaton Firefighters Union, IAFF Local 3706* (Fletcher, 2014). In that case Arbitrator John C. Fletcher outlined the principle followed by a majority of interest arbitrators:

This Arbitrator has made clear his position on multiple occasions that the party seeking to depart from the status quo must show more than that change is a "good idea." The moving party must show that the current conditions are "broken" some how. See, *Village of Romeoville and MAP, S-MA-1064* (Fletcher, 2010); *Illinois Secretary of State and ILFOPLC, S-MA-12-134* (Fletcher, 2014 at 25. This threshold burden is integral to the overall scheme of interest arbitration which is, first of all, to avoid supplanting the traditional collective bargaining process. *Village of Western Springs and MAP, FMCS Case No. 10-02482-A* (Fletcher, 2011) at 10- 11 ("[This] Arbitrator has stated on numerous prior occasions, it is worth mentioning that interest arbitration in general is intended to achieve resolution to immediate and bona fide impasse, but not to usurp, or be exercised in place of, traditional bargaining. . . [The] function of interest arbitration, as opposed to . . . grievance arbitration, [is] actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of collective bargaining."). Because the Union failed to show that the current language is "broken," the Arbitrator will not reach the issue of whether, or to what extent, the Union's proposed changes to the language would burden the City.

*Id.* at 19-20.

Later, in that same decision, Arbitrator Fletcher wrote:

The Arbitrator again points out that interest arbitration is essentially a conservative process. Where the employees rank in any particular benefit among the comparables, both internal and external, is immaterial as a general rule. Absent a demonstrated need for some degree of "catch up" with the comparable group, the Arbitrator's focus should be on ensuring that the employees keep pace with the group. Put another way, the focus is not so much on the current value of the benefits that others in the comparable communities receive as it is on whether that value has changed. The record in this case does not suggest that the uniform allowances received by any of the comparables increased or will increase during the period covered by this Agreement.

*Id.* at 23.

Closer to Wilmette, and specifically the two-tier salary proposal of the Administration, Arbitrator Fletcher rejected a proposed two-tier proposal for severance pay, even though it was agreed to by the City's other unionized employees. His reasoning is particularly instructive in the resolution of Wilmette:

[T]he Arbitrator does not believe that the City is entitled to an award of its proposal to create a new severance system simply because doing so would be prudent. The Union is correct in its assertion that the City bears the burden to prove that the change is necessary. The lack of any hard financial data precludes a finding that a reduction in the City's future liabilities as to this unit under this Agreement is in fact necessary. In the face of this absence of proof, comparability factors really do not come into play.

The fact that the City's other unionized employees agreed to the changes that the City proposes here is not enough to tilt the balance in the City's favor. Those employees and their unions were free to do so, as this Union is. This Arbitrator can only assume that in doing so, the other unions took stock of the risks that Arbitrator McAlpin rightly pointed out. The key fact is that the other unions agreed to the change in severance and the creation of two-tiered systems in arms-length negotiations.

*Id.* at 49-50.

Accordingly, Arbitrator Fletcher left the issue for future negotiations, declaring "He will not impose a reduction in the benefit or a two-tier benefit system here." *Id.* at 50. Accord: *City*

of *Peoria & PPBA*, Case S-MA-13-144 (Perkovich, 2015)(applying breakthrough analysis to employer's offer to revise parties' step movement provision, noting that "interest arbitration is a conservative process and thus breakthroughs are generally avoided); *Village of Gurnee & Gurnee Firefighters Union, IAFF Local 3598* (Nathan, 2015)("overwhelming weight of arbitral authority is that this scheme [two-tier salary schedule] would disrupt the organized working force and pit one group of employees against the other. It would pit 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." *Id.* at 22, citing *Village of Niles*, S-MA-08-219 (Nathan, 2010)); *Village of Streamwood & Metropolitan Alliance of Police*, FMCS Case 131025-026616-6 (Meyers, 2014)(rejecting employer's change in salary structure, stating: "The Village is seeking significant changes to the salary structure that will have a measurable impact upon the employees within the bargaining unit, especially new hires who may feel the effect of those changes throughout long careers with the Department. Many arbitrators have rules that such changes out to be the result of negotiated agreement between the parties, rather than imposed from the outside by means of an interest arbitrator." Arbitrator finds "the evidentiary record does not support a finding that these proposed changes are reasonable, needed, or sufficiently counterbalanced by an appropriate *quid pro quo*. *Id.* at 17-18); *Village of Waukegan, IL & Firefighters Local 473*, S-MA-00-141 (Hill, 2001)(rejecting two-tier health insurance provision, but noting that "the Administration's concern with rising health costs must be addressed by the Union. As indicated, if the Firefighters are reluctant to implement a two-tier system, as the FOP and other unions at Waukegan, they can make the changes applicable to the entire unit and set the stage for the other unions. *Id.* at 81); *Village of Niles, IL & IBT Local 726*, S-MA-02-257 & S-MA-01-228 (Hill, 2003)(holding that a co-pay is a major change from the past which requires "serious deliberation by the parties." *Id.* at 49)).

Similarly, in *St. Clair County & IL FOP Labor Council*, S-MA-12-080 (Nielsen, 2013), Arbitrator Daniel Nielsen rejected the Employer's proposal for a two-tier wage structure involving longevity. Arbitrator Nielsen observed that the evidence that the system was "broken" was that correctional officers in St. Clair County make approximately more than correctional officers in Missouri, and that two of the four Illinois comparables have step systems more akin to the County's two-tier proposal than to the *status quo*. In rejecting the Employer's proposal, the Arbitrator reasoned:

As Arbitrator Benn and many others have noted [*City of Chicago & FOP Lodge No. 7* (Benn, 2010)], simply putting forth a "good idea" is not a sufficient basis for changing the status quo, particularly with something as fundamental as introducing a two-tier compensation system. Arbitrator Nathan long ago articulated the foundation for the showing needed to support a major alteration of the status quo in his Will County Sheriff's Award [*Will County Board and Sheriff of Will County*, Case S-MA-88-09 (Nathan, 1988)]. The proponent of the change must prove that:

- 1) The old system or procedure has not worked as anticipated when originally agreed to;
- 2) The existing system, or procedure, has created operational hardships for the employer or equitable or due process problems for the union; and

- 3) The party seeking to maintain the status quo has resisted attempts top bargain over the change (i.e, refused a quid pro quo)..

*Nielsen* at 23.

Finding that the existing step system worked in exactly the way it was intended to work, Arbitrator Nielsen ruled for the Union (*status quo*).

Noteworthy, in 2013 Arbitrator Nielsen reported a case, *Palos Heights Fire Protection District & Palos Heights Professional Firefighters Union, Local 4254*, Case S-MA-12-389 (2013), where the Administration requested a two-tier wage structure paying roughly ten percent less than current employees through their first five years, 5% less in their sixth year, and parity in the 7th year. The District explained its proposal as a modest step to address fiscal difficulties. The Union characterized it as “groundbreaking, unsupported and unwarranted,” *Nielson* at 16. In rejecting the Employer’s proposal, Arbitrator Nielson, like other arbitrators who were faced with a two-tier proposal, focused on the statute and the overall function of an interest Arbitrator:

This proposal has no support under any of the statutory criteria. The current wages for the bargaining unit are not out of line with the wages paid to other firefighters in area communities. Even if they were, the more plausible answer would be to propose smaller increases, or no increases, to the wage schedule for current employees. That would have a more immediate effect, a larger effect, and a more permanent effect, without the divisiveness of a two-tiered system. The District has not done that. Its general wage proposal raises wages for the unit by 7% over three years, as compared with 8% for the Union’s proposal.

The District argues that the Arbitrator’s task is to adopt the more reasonable of the proposals before him, and that is true as far as it goes. But the arbitrator must approach that task with an eye to his role in the overall bargaining process. The arbitrator is a last resort, not a first resort, and is an arbitrator is to make basic changes in contract provisions, it must be because there is a genuine problem and the parties have exhausted their voluntary options for addressing this problem. Otherwise, parties have no reason to actually bargain with one another over difficult issues.

*Nielsen* at 16-17.

\* \* \*

Broadly speaking, the party proposing a significant change to the existing structure or language of a contract has a burden of proving that the change is needed due to unforeseen problems with the existing structure or language, that the changes proposed will address the actual problem without undue harm to the other party to the contract, and that reasonable efforts have been made to secure the change in bargaining. Failure to disclose one’s proposals until arbitration undercuts the showing of need, and completely prevents any finding that reasonable efforts were made to secure the changes through bargaining. In practical terms, it turns a heavy burden into an almost insurmountable burden.

*Neilsen* at 18-10 (footnotes omitted).

Significantly, Arbitrator Nielsen cited the absence of bargaining over a two-tier proposal by the parties. According to the Arbitrator: “There was never any contemplation of a two-tier wage system, much less any bargaining over the notion. There is no evidence that such a proposal ever surfaced in prior bargains. It comes before the Arbitrator at roughly the same time as it comes to the Union for the first time.” *Id.* at 18. Interestingly, he denied the Union’s

motion demanding that the District be barred from presenting its proposals for the first time in the arbitration proceeding, reasoning that “the Arbitrator has no such authority.” *Id.* at 18 n.8.

**Later in the opinion Arbitrator Nielsen declared that “a two-tier wage schedule is the epitome of a breakthrough proposal. It is a dramatic departure from the past. It creates a new and lesser class of employees. It has no support in the comparables, and no precedent that I am aware of in arbitration. Arbitration is not intended to be an innovative process, and if the parties wish to plow entirely new ground, they should, if at all possible, do so voluntarily.” *Id.* 19.**

Chicago Arbitrator Robert Perkovich, in *City of LaSalle, IL & IL FOP Labor Council, S-MA-12-216* (2013), was similarly faced with a two-tier longevity proposal by the Employer. In rejecting a two-tier proposal, Mr. Perkovich cited the historic and strong opposition by unions to two-tier provisions. His words and reasoning are noteworthy:

The reason I do so [reject a two-tier longevity proposal attached to a wage offer] is because I must reject that portion of the Employer’s final offer that includes the component of instituting a different longevity pay schedule for patrol officers hired after May 1, 2013. Quite frankly, one need only look to the historic and strong opposition by labor unions generally to treating newly hired employees differently than those hired before them to conclude that this is a “breakthrough” and I so find. Thus, the burden is on the Employer that before its breakthrough offer can be accepted in arbitration, rather than at the bargaining table, the Employer must establish that the status quo has not worked as anticipated, that the status quo has created operational hardships or equitable or due process problems, and that the Union has resisted attempts to bargain over the change. A review of the record evidence indicates that no such evidence was put into the record by the Employer and therefore that portion of its final offer is rejected. Rather, it merely asserts that the change it seeks to the parties’ longevity schedule is not a “major change.” With this assertion I cannot agree. First, as noted above, labor unions have long objected to such pay plans and second, as the Union points out, the existing longevity pay schedule has been in the collective bargaining agreement for some time.

*Perkovich* at 5.

**A note on the Union’s argument regarding the inadequacy of the Administration’s *quid pro quo* offer (no layoffs during the term of the collective bargaining agreement) for a two-tier salary structure is warranted.**

Often, the absence of a *quid pro quo* will decide the outcome of a party’s final offer. *See, e.g.,* the discussion of Arbitrator John Fletcher in *City of Wheaton, supra*, where he commented: “Indeed, this Arbitrator and numerous other arbitrators have noted that it is not their duty to award one-sided benefits to either party. In this case, the Union has offered no *quid pro quo* for increasing the number of Kelly Days it seeks for its members, for the first time through arbitration.” *Fletcher* at 40. Whether any *quid pro quo* is required in a case where the bargaining unit loses nothing is unclear. To the contrary, arguably the unit that has agreed to a two-tier salary structure is in a better position for increased wages in the future since the Administration, though money saved during the operative period, will be more solvent than otherwise would be the case. And in the instant case, as a *quid pro quo*, the Administration had pledged not to lay off any firefighter/paramedic during the contractual period. My point is this: I’m unsure whether the Union is “playing fair” when it insists on a *quid pro quo* for agreeing to a provision that has no negative economic effect on the bargaining unit. I get the fact that as a

general principle it is against two-tier contractual provisions and presumptively there will be divisiveness in the bargaining unit, although this too is problematic. While there are legitimate reasons why the firefighter/paramedics are opposed to any two-tier salary structure (as opposed to the police unit),<sup>16</sup> I am unsure whether it is appropriate to insist on a *quid pro quo* for agreeing to a two-tier salary structure which arguably benefits the present members of the bargaining unit in the future.

**Finally, a brief response to the Union's jurisdictional argument regarding accepting the Village's two-tier final offer is addressed.**

The Village, in response to the Union's jurisdictional argument, asserts that this argument is "much ado about nothing" for at least three compelling reasons (*Reply Brief* at 2). First, the EVC position has not been filled by a bargaining-unit employee since 2011 and it is very likely, if ever, that it will be filled by a bargaining-unit employee. *Id.* To this end the work formally performed by the EVC is now being performed by public works employees and by outside contractors for larger repairs. Thus, the evidence record indicates that this position will not be filled in the foreseeable future (R. 252). *Id.* As a result, the Village submits that any issue raised by the Union with respect to the EVC position is "moot," especially since the parties' new collective bargaining agreement will expire in less than 17 months. *Id.* at 3. Second, and contrary to the Union's contentions, the Village is not seeking to change the previously-agreed contract language with respect to the EVC position. Thus, the Village's final two-tier salary offer includes the same language in Section 10.1 that was in the parties' most recent collective bargaining agreement. Significantly, the only additional language in the Village's final offer is the prefatory statement ". . . if the Village hires an EVC on or after May 1, 2015," immediately following the lead phrase "in addition." *Id.* In the Employer's words: "In short, a fair reading of the Union's final offer is that it implicitly includes the same language that the Village's final offer includes with respect to the Emergency Vehicle Coordinator position, albeit the Union did not propose a two-tier salary schedule. Enough said." *Id.* at 5. Finally, the Village notes that neither party's final offer includes salary grades. Regardless of what salary grade the position of EVC may have been placed in years ago, the salary for the position is set by the parties'

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<sup>16</sup> I have been arbitrating cases since 1977 and I have always maintained that there is no such thing as a "pro choice" firefighter/paramedic. Because of their unique working schedule of 24 on/48 off (usually), they develop a "second family" at the station and unlike any other labor organization (police, teachers, streets & sanitation) they will protect the unborn firefighter/paramedic in the womb. This is a fact of life generally unknown to those not in this business and perhaps not understood by the public, but it is a constant in this business. It is difficult, if not impossible, for a firefighter/paramedic union to agree to a two-tier salary or insurance provision. As stated by firefighter/paramedic Weglarz: "I think it would create tension among the two groups. We do everything together here. We eat dinner together; we sleep together. And we live together for 24 hours every third day. So I think obviously at some point it would create some type of animosity towards each other." (R. 50).

To this end, in *Arbitration 2014: The Test of Time, Proceedings of the Sixty Seventh Annual Meeting, National Academy of Arbitrators* (BNA Books, 2015)(edited by Block, et al), Chapter 15, *Interest Arbitration in Hard Times*, Labor Advocate J. Dale Berry observed:

Uniformly, any client I represent has never agreed to a two-tier wage structure. \* \* \* Firefighters are a different breed. They're not really like other public employees and particularly police officers. They have the same attitude towards their guys coming on the job as they would have toward leaving a fellow fire fighter in a fire. They do not leave people behind and they are very emotionally committed to that. *Id.* at 404.

collective bargaining agreement, not the salary grade in the Village's Pay and Classification Plan. *Id.* Moreover, in the Employer's view, "the Union misstates the applicable law. Under the FLSA, a different wage rate can be used for overtime purposes where an employee is performing two different jobs for the same employer." *Id.* at 6. Under the FLSA the Village's final offer is a perfectly legal provision. *Id.*

I hold that Management advances the better argument regarding the rate of pay for the EVC position, which provides for a different rate of pay when he or she is "working as a firefighter/paramedic," specifically that "overtime rate shall be based on the applicable hourly rate for the firefighter/paramedic classification rather than the applicable hourly rate for the Emergency Vehicle Coordinator classification." The Village has carried the day with respect to its contention that different hourly rates for overtime computation purposes can be reached via the collective bargaining agreement process. (See, *Brief for the Union* at 7-8, distinguishing the *Elk Grove Village* declaratory ruling). The infirmity cited by the Union does not preclude selection of the Village's final offer .

### **Where does this analysis leave the parties?**

I understand the Administration's motivation for a two-tier salary structure especially after it negotiated a two-tier provision (although not the same provision) with the police. Its two-tier position is more than reasonable, and similar to increased co-pays and deductibles in the health insurance world, may portend the wave of the future. Either way, with or without the provision, the Employer will have an interesting discussion with the police during the next round of negotiations. Given that this is the first time the two-tier proposal was tendered to the firefighter/paramedics, consistent with the overwhelming weight of arbitral authority (Benn, Nielsen, Perkovich, Fletcher, Goldstein, Nathan, and Hill), *at this time* the better course is to pass on imposing a two-tier structure on the parties through interest arbitration. <sup>17</sup> **The fact that no Illinois arbitrator has ever imposed a two-tier salary structure on the parties (at least I cannot find one published decision (with any analysis) where an arbitrator made such an award) is really telling, if not dispositive, in this proceeding.** At the same time this must be said: If the Union is to maintain its stance regarding two-tier salary and insurance and sick-leave buy back/supplemental retirement proposals in the future, which is their right under the statute, it cannot expect continued advancements in salary and benefits under a model of collective bargaining that may no longer be operative, given the economic realities of bargaining in Illinois. Strict adherence to internal and external bench-mark jurisdictions (dispositive in many cases) may indeed dissipate and be a thing of the past (To this end, see the discussion of Arbitrator Ed Benn in *Village of Lansing & IL FOP Labor Council*, S-MA-12-214 (2014) at 14-15 n.24 regarding the use of *external* bench-mark jurisdictions after the Great Recession). Again, the

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<sup>17</sup> For the record, in a recent case in Iowa (2015), where the District offered the Union 4.5%, or 1.5% more than the comparables warranted, in return for a two-tier health insurance plan that was more generous than that in most comparables, and the Union accepted the additional 1.5% but took the District to arbitration on the insurance provision, I awarded the Employer's final offer. A party should not be allowed to "cherry pick" the other party's final offer, taking the "quid" but rejecting the "pro quo," and compel arbitration on the theory there is nothing to lose. Why the Employer allowed the Union to do this was unclear from the record (unless, of course, the Union did exactly what the Employer wanted, given the neutral would pick up on the Union's play).

firefighter/paramedics have every right under the statute to refuse a two-tier salary provision, even a modest one that equalizes after 8.5 years. However, in so doing it must face the reality that future reference to what the police are receiving, who did agree to such a system, will become that much more difficult, if not totally irrelevant. The Administration has engaged in various strategies to combat the effects of the recession of 2008 (otherwise known as the “Great Recession”, coined (I believe) by Arbitrator Benn), including reducing the overall head count and freezing Department head’s salaries in 2009-2010, deferring capital improvements, and even increasing the property tax by 3.5%/year (R. 209-211; VX 66 & 67). A two-tier plan for non-union employees was introduced in 2011; for police, in 2013. The Union is encouraged to take judicial-type notice of the economic realities facing all cities in Illinois (including declining tax bases (EAV), as experienced by the Village)(R. 211; VX 68 & 69). The so-called well-to-do “Northshore suburbs” are not immune.

For the above reasons the Union’s *status quo* position is awarded.

## **ECONOMIC ISSUE 2 -- SUPPLEMENTAL RETIREMENT PROGRAM – Section 10.7**

### **A. THE PARTIES’ FINAL OFFERS**

#### **1. The Village’s Final Offer**

The Village’s final offer on this issue is to add the following new paragraph at the end of Section 10.7:

Notwithstanding the foregoing, effective January 1, 2016, the schedule for employees hired on or after January 1, 2016 shall be as follows:

<u>Years of Service</u>	<u>Number of Hours Paid</u>
20	22.5% of unused hours up to max. of 1,150 hours
25	25% of unused hours up to max. of 1,400 hours
30	30% of unused hours up to max. of 1,400 hours

The Village will also revise its personnel policies covering its unrepresented employees to contain the same provision effective January 1, 2016.

#### **2. The Union’s Final Offer**

The Union’s final offer on this issue is to maintain the *status quo* on this issue. Significantly, the Union also objects to the late addition of the Employer’s proposal to these collective bargaining negotiations (*Brief* at 39).

#### **3. Position of the Administration**

**In support of its final offer, the Administration advances the following arguments:**

Currently, Village employees, including the employees in the fire bargaining unit, who terminate or retire with at least 20 years of service receive a payment into their Section 105 account based on the number of hours of unused sick leave at time of termination or retirement based on the following formula:

Years of Service	Percentage of Unused Sick Leave Paid	Maximum Number of Unused Sick Leave Hours Eligible for Payment	Maximum Unused Sick Leave Hours Paid
20 years	45%	1,150	517.5
25 years	50%	1,400	700
30 years	60%	1,400	840

(Brief at 47)

The Village's final offer on this issue would retain the *status quo* for employees hired before January 1, 2016, but it would reduce by half the percentage of unused sick leave hours that are paid at retirement or termination for employees hired on or after January 1, 2016. Thus, the Village's final offer would result in the following benefit for employees hired on or after January 1, 2016:

Years of Service	Percentage of Unused Sick Leave Paid	Maximum Number of Unused Sick Leave Hours Eligible for Payment	Maximum Unused Sick Leave Hours Paid
20 years	22.5%	1,150	258.75
25 years	25%	1,400	350
30 years	30%	1,400	420

(Brief at 47)

The reason for the January 1, 2016, effective date is to permit the Village to negotiate the same change in the upcoming negotiations for the successor police collective bargaining agreement for the agreement that runs through December 31, 2015. And, in order to maintain Village-wide uniformity on this benefit, the Village's final offer provides that the same change will be applicable to the Village's unrepresented employees as of January 1, 2016, i.e., the same percentage reductions would be applicable to the Village's unrepresented employees who are hired on or after January 1, 2016.<sup>18</sup>

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<sup>18</sup> The Union's objection to this element in the Village's final offer should be rejected by the Arbitrator. The Village knows of no reason, legal or otherwise, why the Village cannot contractually agree to make the same change for its unrepresented employees. If the Village had promised at the hearing that the Village would make the same change for its unrepresented employees if the Arbitrator awarded the Village's final offer, the Union undoubtedly would have argued that such a promise not binding and that the Union would be without a remedy if the Village did not honor its promise. By contractualizing its promise, the Union would have the right to grieve if the Village didn't honor its contractual commitment and credibly advance as remedy that the Village should be enjoined from implementing the two-tier sick leave buyback schedule. In any event, it is no skin off the Union's nose.

**THE VILLAGE'S FINAL OFFER TO REDUCE THE SICK-LEAVE BUYBACK BENEFIT AT RETIREMENT OR TERMINATION FOR BARGAINING-UNIT EMPLOYEES HIRED ON OR AFTER JANUARY 1, 2016 SHOULD BE AWARDED BY THE ARBITRATOR**

**In support of its proposal, the Administration makes the following points:**

Among the many financial challenges facing the Village of Wilmette is its unfunded liability for unused sick leave at retirement. Village-wide, as of January 1, 2013, that unfunded liability "increased to \$2,214,267" (R. 157; VX 49)(*Brief* at 48).

Management points out that currently, the following three (3) groups of Village employees have separate Section 105 plans to provide this buyback of unused sick leave at retirement:

1. Police Union Employees
2. Fire Union Employees
3. Non-Union Employees

Of the 187 active Village participants in the plan, 34 are Fire Union employees and 32 are Police Union employees (*Brief* at 49).

An employee's payout vests "upon completion of the 20 years of service, regardless of the employee's age." The resulting amount that is put in an employee's Section 105 at retirement "can be used to pay for retiree health care benefits," with any amount unused at death passing "to the retiree's spouse and dependents." For the five most recent IAFF bargaining unit retirees, the initial balance credited to each upon retirement ranged from \$18,378.34 to \$38,405.30, and averaged \$32,114.29 (VX 50).

**Since the Method of Calculating the Benefit Gives Firefighters an Enhanced Benefit, It Supports the Village's Final Offer to Reduce the Benefit for Newly-Hired Employees**

Due to non-discrimination regulations, the hourly rate used to calculate the benefit is "the highest union hourly rate," which is the police union hourly rate since it is calculated using a divisor of 2,080, as opposed using the Fire Union divisor of 2,600. Using the police hourly rate means that the value of the fire benefit is 25% higher than it would be if the fire hourly rate was used.

The advantage that the Fire Union has is further compounded by the fact that firefighters can accumulate 144 hours of sick leave per year, whereas police can only accumulate 96 hours of sick leave per year (R. 162). As the Village's attorney stated at the hearing (Tr. 162-63):

That means that they [firefighters] get to the maximum benefit [sooner] and have more flex, if you will, in terms of [the] use of sick leave and still being able to cash out this benefit than other village employees because they are accumulating

it at a higher rate and then it's paid out a rate that's not based on their salary, but [at] a rate that's based on the police salary.

The Village submits that these facts underscore the reasonableness of the Village's final offer on this issue.

**When the Value of the Additional Unique Post-Retirement Health Insurance Benefit that Wilmette Firefighters Receive Is Taken into Account, the Resulting Overall Benefit that Newly-Hired Firefighters Will Receive Based on the Village's Final Offer Stacks Up Very Competitively with the External Comparables**

In considering the overall reasonableness of the Village's final offer, it is also important to take into account one other retiree health insurance benefit that is not provided to any other Village employee or by any of the external comparables. Thus, the Village is totally unique in providing retired firefighters with an annual benefit of \$3,600 "to offset the cost of medical insurance coverage with one of the current health care plans offered by the Village of Wilmette" (VX 53; R. 176)(*Brief* at 50). And, upon the death of the firefighter retiree, "... an eligible spouse shall receive the same benefit as received by the pensioner for a period no longer than ten (10) years, provided that benefit ceases when "the spouse is eligible for coverage under Medicare" (VX 53, Section 3.9, at p. 4). The funds for this unique benefit are paid from a tax that the Village levies on insurance companies that are located outside of Illinois (R. 177).

Based on the Village's final offer, the following chart compares the overall retirement benefits that Wilmette firefighters hired on or after January 1, 2016 will receive with the overall retirement benefits provided by all the comparables:

JURISDICTION	RETIREMENT BENEFIT AT 20 YEARS	RETIREMENT BENEFIT AT 25 YEARS	RETIREMENT BENEFIT AT 30 YEARS
Evanston	500 hours of pay	500 hours of pay	500 hours of pay
Glenview	273 hours	273 hours	273 hours
Highland Park			
Lake Forest <sup>19</sup>	384 hours of pay	384 hours of pay	384 hours of pay
Northbrook			
Park Ridge <sup>20</sup>	1,001.25 hours of pay	1,001.25 hours of pay	1001.25 hours of pay
Skokie	180 hours of pay	180 hours of pay	180 hours of pay
WILMETTE	258.75 hours of pay placed into Section 105 plan, plus \$3,600 annually to offset cost of health insurance	350 hours of pay placed into Section 105 plan, plus \$3,600 annually to offset cost of health insurance	420 hours of pay placed into Section 105 plan, plus \$3,600 annually to offset cost of health insurance
Winnetka	504 hours of pay	504 hours of pay	504 hours of pay

(Brief at 51)

Management points out that the maximum retirement benefit that Wilmette firefighters hired on or after January 1, 2016, will receive based on the Village's final offer is better than the maximum retirement benefit provided by any of the comparables with the possible exception of Park Ridge. In making this statement, the Village has factored in the value of the \$3,600 that is provided annually to retirees to offset the cost of health insurance. Based on the 20-year salary that will be in effect on January 1, 2016 of \$99,744, the hourly rate of pay will be \$38.36 (i.e., \$99,744 divided by 2,600 hours = \$38.36). Accordingly, the \$3,600 that Wilmette retirees receive to offset the cost of health insurance is equal to nearly 94 hours of pay. Since this is a benefit that Wilmette retirees receive annually, the case can easily be made that the Wilmette retirement benefit is better than all of the comparables, including Park Ridge (Brief at 52).

Management asserts it is also important to emphasize that at least one of the external comparables—Winnetka—has recently implemented a two-tier sick leave buyback program. And, as already noted above, the new two-tier sick leave buyback provisions in Winnetka flowed from Arbitrator Nielsen's interest arbitration award involving the Winnetka police bargaining unit. The following is a comparison of the Winnetka sick leave buyback benefit in the prior contract and the new provisions in the current contract for employees hired before December 1, 2012 and a reduced benefit for employees hired on or after December 1, 2012:

PURSUANT TO THE PRIOR CONTRACT	HIRED BEFORE 4/1/12	HIRED ON OR AFTER 4/1/12
Employees with less than 20 years of seniority paid for 50% of all unused sick leave in excess 240 hours up to a max of	Employees with less than 20 years of seniority paid for 50% for all unused that are in excess of two hundred forty (240) hours and up to the greater of the number of unused	Upon termination of employment in good standing, paid for 30% of unused sick leave hours in excess of four

<sup>19</sup> Upon separation in good standing, an employee with a minimum of 953 hours of unused sick leave is paid for 40% of said hours up to a maximum of 960 hours.

<sup>20</sup> At retirement, Park Ridge pays retirees 100% of unused sick leave in excess of 1,335 hours up to maximum of 2,336.25 hours. The 1,001.25 hours shown in the chart assumes a retiree had the maximum of 2,336.25 hours of unused sick leave at retirement.

<p>2,160 hours.</p> <p>Employees with 20 years or more of seniority paid for 50% of all unused sick leave hours up to a max of 2,160 hours</p>	<p>sick leave hours as of December 31, 2011 or 900 hours</p> <p>Employees with 20 or more years of seniority paid for 50% of all unused sick leave hours as of the date of termination up to the greater of the number of unused sick leave hours as of December 31, 2011 or 900 hours</p> <p>All unused sick leave hours as of the date of termination that are above the greater of the number of unused sick leave hours as of December 31, 2011 or 900 hours paid at 30% up to a maximum of 2,160</p>	<p>hundred eighty (480) hours up to a maximum of 2,160</p>
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(Brief at 53)

Significantly, the reduced payback for unused sick leave in Winnetka affects both employees hired before April 1, 2012 and employees hired on or after April 1, 2012. Thus, for employees hired before April 1, 2012, the benefit formula that was set forth in the prior Winnetka/IAFF contract was reduced from a maximum of 960 hours to a maximum of 708 hours for employees with less than 20 years of seniority and from 1,080 to 798 hours for employees with 20 or more years of seniority. And, for employees hired on or after April 1, 2015, the maximum number of unused sick leave hours that can be paid, regardless of years of service is limited to a maximum of 504 hours.

**Accordingly, in view of the Village's extremely large unfunded liability for its Section 105 plans, the Village submits that its final offer on the supplemental retirement benefit should be awarded by the Arbitrator.**

**4. Position of the Union**

**In support of its *status quo* final offer, the Union advances the following arguments:**

**The Employer's Proposal is a Drastic Two-Tier Benefit Not Supported by the Comparables**

The Union asserts that the current benefit, proposed by the Employer in a prior arbitration, was awarded by Arbitrator Briggs, effective January 1, 2002 (VX 25). The Wilmette contract provides for the deposit of money on a pretax basis into a medical savings account that shall "be available for the purposes specified in the Village's medical saving account plan documents, including but not necessarily limited to payment for continued coverage under the Village's group hospitalization and medical insurance program and for unreimbursed medical expense approved by the IRS for a medical savings account." (Brief at 39-40).

The Union maintains that the Administration's plan is to cut by two-thirds the current benefit for employees hired after January 1, 2016 (Brief at 40). This impact will cause the same kind of morale problems for post January 1, 2016 employees and pre-January 1, 2016 employees as will the two-tier wage proposal, except that the actual monetary harm in retiree benefits will

occur after 20 years of service (*Brief* at 40). In Counsel's words: "Those retiring on a tier-one retirement benefit will have a good medical account to fund retiree medical health expenses. The next group will not (*Brief* at 40; Table 7).

Also, in the Union's view, the current system does not show any sick leave abuse, and the current benefit has worked well as an incentive to conserve sick leave so that it can be effectively used at the time of retirement to pay for post-employment health care. (*Brief* at 41). In the Union's opinion, "there is no significant problem that warrants a major breakthrough, and as argued below the Village's bond statement does not advocate or recommend a change in this benefit." (*Brief* at 42).

### **The External Comparables Do Not Support the Village's Final Offer**

Addressing the external bench-mark jurisdictions, the Union argues that the median benefit is almost three times the maximum possible benefit obtainable under the Employer's final offer and is also significantly higher than the current Wilmette contractual benefit, which the Union wants to maintain (*Brief* at 42). Here, the Union points out that only one comparable, Winnetka, has a two-tier benefit for a supplemental retirement plan (*Brief* at 43).

### **The Internal Comparables Do Not Support the Village's Proposal**

In the Union's view, "there is no internal comparable support for the Employer's significant cutback in this benefit." (*Brief* at 43). According to the Union, if the undersigned Arbitrator were to award the Employer's final offer, "it would then be obligated to unilaterally revise its personnel policies for employees not represented by the Union in this case." *Id.* The Union maintains that "the use of this interest arbitration by order of the Arbitrator beyond the bargaining unit is a non-mandatory subject of bargaining and is an additional reason why this proposal should be rejected." (*Brief* at 43-44). The Union thus asserts that "the Employer's offer is impermissible as it seeks to have this arbitrator establish working conditions for unrepresented employees, something that is outside the scope of interest arbitration" (*Brief* at 44). The complete absence of internal comparables does not help Management's case (*Brief* at 46, citing *Village of Niles, IL*, Case Nos. S-MA-02-257 & S-MA-01-228 (Hill, 2003)(rejecting Employer's proposal to require firefighter/paramedics to pay health insurance co-payments, reasoning that Management had not exercised its right to impose cost sharing from non-unionized employees).

Moreover, the Union asserts that this proposal should be rejected for having been made late in the collective bargaining process (*Brief* at 47). In the Union's opinion, "there was not sufficient good faith, hard bargaining and serious deliberation by the parties over the issue." *Id.*

### **High Bond Ratings Do Not Support the Radical Proposal to Cut the Supplemental Retirement Benefit**

In support of its *status quo* position, the Union maintains that an examination of the official bond statements does not support a claim for a downgrade (*Brief* at 48; UX 13, 14 & 15). In the Union's view, there is no indication of any drop in the bond rating in 2009, 2010, 2013 and 2014 (*Brief* at 48, citing UX 15 (A summary analysis issued by Moody's Investment Service

on November 7, 2014, for the November 12, 2014 General Obligation Bond)). Given the stability of the bond rating and the lack of any statement of concern for the sick leave liability, the Employer's claim that cutting these programs in half for new employees is not supported by the recorded evidence. According to the Union, "if this had been of any significance, it would have been in the public statement issued at the time the bonds were marketed. No such statement appeared, and the Employer's reasons for the proposal should be discredited by this evidence." (*Brief* at 49).

## 5. Analysis and Award

With respect to the Union's argument that I lack jurisdiction to award the Village's final offer because the Administration does not have the legal right to include a provision whereby the Village commits to making the same change for unrepresented employees, Management counters that, unlike the situation in *Village of Skokie*, Case No. S-MA-07 (Hill, 2007), that it clearly has the lawful authority to commit to changes in its personnel policies in order to make the same change for its unrepresented employees (*Reply Brief for the Employer* at 9). In Counsel's words:

Moreover, the Village knows of no reason, legal or otherwise, why the Village cannot contractually agree to make the same changes for its unrepresented employees. If the Village had promised at the hearing, but did not propose in its final offer, that it would make the same change for its unrepresented employees, the Union undoubtedly would have argued that such a promise is not binding and that the Union would be without a remedy if the Village did not honor its promise. By contractualizing its promise, the Union would have the right to grieve if the Village didn't honor its contractual commitment and credibly advance as [a] remedy that the Village should be enjoined from implementing the two-tier sick leave buyback schedule. In any event, it is no skin off the Union's nose.

*Reply Brief for the Union* at 9.

Again, Management advances the better case. I see no jurisdictional infirmity in the Village promising to effect a change for the unrepresented employees if its final offer were accepted. To this end I agree with Management that had the Village not done this, it would subject itself to the contention that there is no guarantee that the Administration would take such an action. To use the Administration's words, this, too, is "much ado about nothing."<sup>21</sup>

Addressing the merits, the purpose of the 105 Plan is to pay for medical expenses at retirement (R. 175-176).<sup>22</sup>

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<sup>21</sup> Cf: *Much Ado About Nothing* (a recent film retelling William Shakespeare's comedy about two pairs of lovers with different takes on romance and a way with words).

<sup>22</sup> [By Mr. Ted Clark]: "The fire department is in a unique situation in the sense that in the state of Illinois there is something known as a foreign fire tax. That's a tax on insurance companies that re not incorporated in the State of Illinois and each jurisdiction gets whatever the statutory percentage amount is of those premises. It goes into a foreign fire tax fund and there is a board established to determine how those funds will be used.

In Wilmette, these funds are used to fund a retiree health benefit. And if you go to page 2 of this document it shows that the base monthly benefit shall be \$300. And then if you go to section 3.7, a retired or disabled firefighter will be eligible for the monthly benefit after reaching the minimum age of 50 years.

If yet another Arbitrator is required to voice an opinion on the role of an interest arbitrator in a case like Wilmette, Mr. Ray McAlpin, in *City of Centralia & IL FOP Labor Council*, Case No. S-MA-09-076 (2010), reasoned as follows when denying an employer's final offer that required a two-tiered residency provision (26 miles from the center of the city for grandfathered employees, and 7 miles from the Center of the city for newly-hired employees):

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the parties. The Illinois legislature determined that it would be the best interest of the citizens of the State of Illinois to substitute compulsory interest arbitration for a potential strike involving security officers.

\* \* \*

In addition to the above, the City is proposing a two-tier system where at least currently the vast majority of the Police Department would have the most relaxed residency area and only new employees would be obligated to utilize the much smaller residency area. This may not cause any problems initially, but this Arbitrator has had personal experience with an extremely large bargaining unit in a major city wherein it had a two-tier residency system and eventually and down the road this makes for a very divisive situation, particularly when those required to utilize the much smaller residency area become the majority or close to the majority in the bargaining unit. Collective bargaining in the public sector is difficult enough without adding this emotional item to the mix.

Because it is the Employer that wants to deviate from the *status quo*, as noted above, that party must prove that there is a need for change and that the proposed language meets the identified need without posing an undue hardship on the other party or has provided a *quid pro quo*. The Employer bears the burden of proof, and it is an extra burden of proof because of the significant change in the collective bargaining relationship.

McAlpin at 11-14.

For all the reasons involving my award with respect to a two-tier salary proposal, at this time the better course is to award the *status quo* regarding the Administration's two-tiered proposal. In addition to what I wrote above, I believe the parties did not engage in any serious bargaining over this provision, apparently tendered in the last stages of bargaining.<sup>23</sup> Aside

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And then finally if you go to section 3.9 you can see that a spousal benefit can receive the \$300 benefit for a period not longer than ten years, but under no circumstances would it – well, it would cease at the time the spouse is eligible for Medicare, which is also true of the retiree.

So they have a very unique benefit. They have got the supplemental sick leave buyback program at retirement, the 105 plan, plus this." (R. 176-177).

[By Mr. D'Alba]: So this benefit that you are referring to on page 2 of 3.0, 3.1, is not funded by taxpayer dollars contributed from the citizens of Wilmette, correct?

[By Mr. Clark]: Well, it depends on how you define taxes. I mean, it's levied by the Village on the foreign insurance companies collective; I think the state collects it. (R. 177).

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An exchange with firefighter/paramedic Jason Weglarz and Mr. D'Alba makes the point:

Q: [By Mr. D'Alba]: Were you in collective bargaining negotiations on June 19, 2014?

A. [By Mr. Weglarz]: Yes, sir.

from the lack of external and internal comparability, under such an evidence record (or lack thereof) it would be a serious mistake to deviate from the present language.

### **ECONOMIC ISSUE 3 – UNIFORM ALLOWANCE – SECTION 16.12**

#### **A. THE PARTIES' FINAL OFFERS**

##### **1. The Village's Final Offer**

The Village's final offer on the uniform allowance issue "is to maintain the *status quo* with respect to Section 16.12 (Uniform Allowance)" (JX 4).

##### **2. The Union's Final Offer**

The Union's final offer on the uniform allowance issue is to revise the Section 16.12 to add the following underlined language:

Uniform Allowance. All newly-hired employees shall be provided with necessary uniforms and other equipment. The Village will allot \$500 effective January 1, 2015, and \$550 January 1, 2016, for each employee for the respective calendar year for the purchase and reimbursement of uniform clothing as approved by the Fire Chief or the Fire Chief's designee, provided that said uniform allowance shall be prorated for employees who are employed less than a full calendar year. For new employees, the allowance shall be prorated by one-half (1/2) if the employee is hired after more than one-half (1/2) of the calendar year has passed. Turnout gear will be replaced on an as-needed basis by the Village at no cost to the employee

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Q. \* \* \* Prior to that date was this supplemental retirement program an issue in the collective bargaining negotiations?

A. There was no on the record discussion about a supplemental retirement program prior to this date. (R. 38-39).

Firefighter/paramedic Weglarz also discussed the Administration two-tier salary proposal:

Q. When you were aware of the Village's proposal for a tier-two, what was you reacting during the on-the-record discussion?

A. When we found out about the tier-two proposal?

Q. Yes, sir.

A. We were completely surprised by it.

Q. Why is that?

A. Because in our previous contracts we had a lot of thank you notes for how basically easy it was to negotiate with us and we – the morale here has been pretty high. And so our initial offer was basically status quo with a few minor changes and we thought that our offer reflected that we have a good working environment here. (R. 48).

\* \* \*

We basically – our understanding of this two-tier system was that it would create divisiveness in the sense that it would make negotiations in the future more difficult.

You have a tier one and a tier two pay grade and there is a gap there because the two systems, between the two pay grades, and if we both receive the same COLAs in the future that gap would continue to increase.

Now, we felt that if the Village wanted to maintain that gap they would have to offer us separate cost of living increases or cost of living adjustments. Thereby we would have to negotiate for two separate groups of employees. (R. 50).

and shall not be considered part of the uniform allowance provided herein. In the event of a uniform change directed by the Village or the Fire Chief, the Village shall pay for the initial issue of all uniform items being changed.

*(Brief for the Union at 49)*

### **3. Position of the Village**

In support of its final offer (maintain the *status quo*), the Administration advances the following arguments:

**SINCE THE UNION HAS NOT PRESENTED ANY CREDIBLE EVIDENCE OF ANY DEMONSTRATED NEED TO INCREASE THE UNIFORM ALLOWANCE, THE ARBITRATOR SHOULD AWARD THE VILLAGE'S FINAL OFFER TO MAINTAIN THE STATUS QUO ON THIS ISSUE**

The Administration first points out that the Union's primary justification of its final offer on this issue is based on the fact that the Wilmette police contract provides a uniform allowance of \$600, something that the Union's attorney specifically mentioned at the outset of his presentation of the Union's case on this issue (R. 90).

While the police bargaining unit uniform allowance at \$600 is admittedly higher than the \$450 fire bargaining unit uniform allowance, the Village introduced exhibits showing "that the number and kind of uniform and equipment items that police use, have to use, in terms of using their uniform allowance, covers a broader spectrum of items and the total cost of which exceeds what the cost would be on the fire side for replacement of items, shirts, et cetera" (R. 191; VX 58-59). In response to questions from the Union's attorney, Mr. Clark stated that although the Village did not run a study, based on the information that he received from Village officials, "the range of items that police need to purchase from time to time and cost of those is overall greater than what the expense would be on the fire side" (R. 192-93).

The only other external comparable that provides a uniform allowance as opposed to having a quartermaster system is Northbrook (VX 60). The Northbrook uniform allowance is \$480, which is closer to the Village's final offer of \$450 than the Union's proposed increases to \$500 effective January 1, 2015 and to \$550 effective January 1, 2016.

The bargaining history prior to this interest arbitration proceeding also support acceptance of the Village's final offer (*Brief at 57-58*).

### **4. Position of the Union**

As noted (*supra*), the Union has proposed increasing the uniform allowance for bargaining-unit employees to \$550 annually. In the Union's view, "such an increase would close the significant gap between the Wilmette police officers uniform stipend and firefighter/paramedics" (*Brief at 50; VX 32*). Firefighters are required to dress in appropriate gear while on duty. For the 24-hours that firefighter/paramedics are on duty, they are required to wear Department-approved clothing. The Union's request for an increase in the amount of the

uniform allowance is simply so that the firefighter/paramedics may “keep up” with the more expensive uniform changes instituted by the Department (*Brief at 50*).

To this end the Union disputes the testimony of the Chief that the cost of uniforms has gone down by switching to the “less formal” style. Indeed, in the Union’s opinion “the opposite is actually true.” (*Brief at 50; R. 187*).

### **The Comparables in the Bench-Mark Jurisdictions Support a Raise in the Uniform Allowance**

According to the Union, examination of the comparables supports the Union’s proposal to increase Wilmette’s uniform allowance to \$500 and eventually \$550 (*Brief at 53*).

### **Internal Comparables Support Raising the Uniform Allowance**

Here, the firefighter/paramedics point out that the police officers receive a uniform allowance of \$600 annually (*Brief at 56; VX 32*). According to the Union, there is no conclusive evidence that police officers actually spend more annually on their uniforms and equipment than the firefighter/paramedics (*Brief at 56*).

## **5. Analysis and Award**

The Union has proposes to increase the uniform allowance, effective January 1, 2015, not 2014, by \$50, a modest amount, in each of the two years – that latter two years of the proposed contract (R. 90). Ironically, while rejecting the road the police union took regarding a two-tier salary provision, downplaying the problems this will cause the Employer in the next round of police negotiations, the Union seeks an increase in a benefit (uniform allowance) and compares itself to the police unit, which has a uniform allowance of \$600 (UX 23; UX 23A). Either the police contract is a comparable or it is not. Any reference to the Police Unit collective bargaining agreement by the Firefighters I find problematic.<sup>24</sup>

Most of the comparables have a quartermaster system (which provides all uniforms, protective clothing, *et cetera*, without cost to the employee; the Department would replace any items as long as they return worn or damaged equipment items and as long as it wasn’t lost through employee negligence; R. 196); Wilmette does not (R. 91; 194). The only other jurisdiction that has a uniform allowance is Northbrook at \$480 (R. 194). I note for the record that the \$600 police uniform allowance goes back to 2002 (VX 57) and since then, as the Village’s attorney noted, the Village and SEIU Local 73 have negotiated three separate collective bargaining agreements and the amount of the uniform allowance has remained at \$450 (R. 181)(*Brief for the Employer at 55-56*).

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<sup>24</sup> [By Mr. Clark]: “The point that we are making here is that the number and kind of uniform and equipment items that police use, have to use, in terms of using their uniform allowance, covers a broader spectrum of items and the total cost of which exceeds what the cost would be on the first side for replacement of items, shirts, *et cetera*.”

As indicated, I credit the Administration’s argument that the cost of what the police have to buy exceeds what the firefighters have to buy. (R. 191).

Significantly, the current \$450 uniform allowance specified in the fire union contract is also that same uniform allowance that is provided to the Village's non-bargaining unit fire lieutenants and exempt sworn command staff in the fire department (R. 185). Also, I credit Counsel's declaration that the range of items that police need to purchase from time to time and the cost of those items is greater than what the expense would be on the fire side (R. 192).<sup>25</sup>

The Administration's position (*status quo*) is awarded. The Union has fallen short of making a case that the parties should move off the *status quo*.

## **NON-ECONOMIC ISSUE 1 – DRUG AND ALCOHOL TESTING**

### **THE PARTIES' FINAL OFFERS**

#### **1. The Village's Final Offer**

**The Village's final offer is to revise Section 16.8 as follows:**

**Section 16.8. Drug and Alcohol Testing.** Effective the first full month after the issuance of Arbitrator Hill's opinion and award, the drug and alcohol testing policy in effect for the Fire Department shall be in accordance with Appendix C.

Appendix C reads as follows:

#### **APPENDIX C**

#### **DRUG AND ALCOHOL TESTING POLICY**

##### **Statement of Policy.**

It is the policy of the Village of Wilmette that the public has the absolute right to expect persons employed by the Village in its Fire Department will be free from the effects of drugs and alcohol. The Village, as the employer, has the right to expect its employees to report for work fit and able for duty and to set a positive example for the community. The purposes of this policy shall be achieved in such manner as not to cause undue hardship or embarrassment or to violate any established constitutional rights of the firefighters of the Fire Department.

##### **Prohibitions.**

Firefighters shall be prohibited from: (a) Consuming or possessing alcohol at any time during or just prior to the beginning of the work day or anywhere on any Village premises or job sites, including Village buildings, properties, vehicles and the firefighter's personal vehicle while engaged in Village business; (b) Failing to report to the employee's supervisor any known adverse side effect of medication or prescription drugs which the employee may be taking.

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<sup>25</sup> "The bottom line in terms of what I was told is that the need to purchase the different types and kinds and range of equipment items is greater than what it is on the fire side. That was the bottom line." (Clark: R. 193).

### Drug And Alcohol Testing Permitted.

#### (a) Reasonable Suspicion Testing.

Where the Village has reasonable suspicion based on personal observation or objective criteria to believe that: (a) a firefighter is under the influence of alcohol; or (b) has recently abused or is abusing proscribed drugs; or (c) has recently used or is using illegal drugs, the Village shall have the right to require the firefighter to submit to alcohol or drug testing as set forth in this Agreement. The foregoing shall not limit the right of the Village to conduct any tests it may deem appropriate for persons seeking employment as firefighters prior to their date of hire, or upon promotion to another position within the Department.

#### (b) Post-Incident Testing.

The Village shall have the right to require a firefighter to submit to alcohol and drug testing as set forth in this Agreement if a firefighter: (1) Was driving a motor vehicle on duty and was involved in a motor vehicle accident resulting in death or personal injury to any person, or damage to a Village vehicle or another vehicle that requires such vehicle to be towed from the scene or which results in property or vehicle damage estimated to be in excess of \$2,500.

Firefighters required to submit to testing under this paragraph must proceed directly to the test site as directed by their supervisor.

#### (c) Random Testing.

Firefighters are subject to unannounced random drug and alcohol testing during the course of their employment and while on duty, contingent upon the inclusion of all sworn members of the Department command in the random testing process. Under the random testing process, employees and command staff personnel shall be in the same pool for purposes of random selection from the pool, and each person in the pool will have an equal chance of being selected when a selection is conducted as provided herein.

Each person in the pool shall be assigned a permanent number, and selection of those to be tested shall be determined by a random drawing of the numbers conducted by an outside entity. There may be one random drawing per month with a maximum per drawing of 2 persons that may be selected for testing. Numbers shall be drawn in random fashion. Persons on vacation or other contractually recognized leave or time off who are selected in the random draw shall be returned to the pool and replacement numbers shall be drawn. If a firefighter's name is drawn for random testing and that firefighter's name has been previously been drawn during the preceding 365 days, that firefighter's name shall also be returned to the pool and a replacement number shall be drawn. Persons who are notified of their selection for testing must proceed directly to the test site. A Village vehicle will be provided for use to firefighters proceeding to the test site during their normal hours of work.

If the initial result of a test is positive, the person tested will remain at the facility until transportation is provided by the Department.

### Order To Submit To Testing.

Within forty-eight (48) hours of the time the firefighter is ordered to reasonable suspicion or post-incident testing as authorized by this Agreement, the Village shall provide the firefighter with a written notice setting forth the facts and inferences which form the basis of the order to test.

Refusal to submit to such test may subject the employee to discipline, but the firefighter's taking of the test shall not be construed as a waiver of any objection or rights that he or she may possess.

### Test To Be Conducted.

In conducting the testing authorized by this Agreement, the Village shall:

- (a) Use only a U.S. HHS certified clinical laboratory or hospital facility which is certified by the State of Illinois to perform drug and/or alcohol testing.
- (b) Ensure that said laboratory or other agent acting on behalf of the Village shall:
  - (1) Establish a chain of custody procedure for both the sample collection and testing that will ensure the integrity of the identity of each sample and test result.

- (2) Collect a sufficient sample of the same bodily fluid or material from a firefighter to allow for initial screening, a confirmatory test, and a sufficient amount to be set aside reserved for later testing if requested by the firefighter.
- (3) Collect samples in such a manner as to preserve the individual firefighter's right to privacy while insuring a high degree of security for the sample and its freedom from adulteration. Firefighters shall not be witnessed by anyone while submitting a sample except in circumstances where the laboratory or facility does not have a "clean room" for submitting samples or where there is reasonable suspicion that the firefighter may attempt to compromise the accuracy of the testing procedure.
- (4) Confirm any sample that tests positive in initial screening for drugs by testing the second portion of the same sample by gas chromatography/mass spectrometry (GC/MS) or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites.
- (5) Cut-off levels used to determine whether a sample shall be deemed to have tested positive during the initial and confirmatory screenings shall be consistent with those generally accepted in the scientific community as scientifically and technically reliable. Appendix A sets forth the cut-off levels which are used by the Village. The Village reserves the right to adopt new or different cut-off levels due to changes in technology, however the Village shall not make any change to the cut-off levels set forth in Appendix A without first providing thirty (30) days written notice to the Union of the nature of the change and the reason therefore. Nothing herein shall be deemed to preclude the Village from testing for different substances other than those listed in Appendix A on a case-by-case basis, provided that the generally known and accepted cut-off levels for such substances [will] be utilized.<sup>26</sup>
- (6) Provide the firefighter tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility of the firefighter's choosing, at the firefighter's own expense; provided the firefighter notifies the Village within seventy-two (72) hours of receiving the results of the test and that the firefighter shall be deemed responsible for insuring that said clinical laboratory, hospital and persons acting on their behalf shall follow proper chain of custody procedures to insure the integrity of the sample.
- (c) Require that the laboratory or hospital facility report to the Village that a blood or urine sample is positive only if both the initial screening and confirmation test are positive for a particular drug. The parties agree that should any information concerning such testing or the results thereof be obtained by the Village inconsistent with the understandings expressed here (e.g., billings for testing that reveal the nature or number of tests administered), the Village will not use such information in any manner or form adverse to the firefighter's interests.
- (d) Require that with regard to alcohol testing, for the purpose of determining whether the firefighter is under the influence of alcohol, test results showing an alcohol concentration of .050 or more based upon the grams of alcohol per 100 millimeters of blood be considered positive (note: the foregoing standard shall not preclude the Village from attempting to show that test results between .01 and .05 demonstrate that the firefighter was under the influence, but the Village shall bear the burden of proof in such cases).
- (e) Provide each firefighter tested with a copy of all information and reports received by the Village in connection with the testing and the results.
- (f) Insure that no firefighter is the subject of any adverse employment action except emergency temporary reassignment or relief of duty during the pendency of any testing procedure.

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The word "will" has been inserted since its omission was totally inadvertent.

Right To Contest.

If disciplinary action is not taken against any employee based in whole or in part upon the results of a drug or alcohol test, the Union and/or the firefighter, with or without the Union, shall have the right to file a grievance concerning any testing permitted by this Agreement, contesting the basis for the order to submit to the test, the right to test, the administration of the tests, the significance and accuracy of the test, or any other alleged violation of this Agreement. Such grievances shall be commenced at Step 2 of the grievance procedure. Further, if disciplinary action is taken against a firefighter based in part upon the results of a test, then the Union and/or the firefighter, with or without the Union, shall have the right to file a grievance as provided in Section 5.2 of this Agreement. Any evidence concerning test results which is obtained in violation of the standards contained in this article shall not be admissible in any arbitration proceeding involving the firefighter.

Voluntary Request For Assistance.

The Village shall take no adverse employment action against any firefighter who, prior to being ordered to submit to reasonable suspicion testing or random testing, or prior to an occurrence that results in a firefighter being subject to post-incident testing, voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem, other than the Village may require reassignment of the firefighter with pay if he is unfit for duty in his current assignment.

The foregoing is conditioned upon:

- (a) The firefighter agreeing to appropriate treatment as determined by the physician(s) involved;
- (b) The firefighter discontinues his use of illegal drugs or abuse of alcohol;
- (c) The firefighter completes the course of treatment prescribed, including an "after-care" group for a period of up to twelve (12) months;
- (d) The firefighter agrees to submit to random testing during hours of work during the period of "after-care."

Firefighters who do not agree to or act in accordance with the foregoing shall be subject discipline, up to and including discharge. This Article shall not be construed as an obligation on the part of the Village to retain a firefighter on active status throughout the period of rehabilitation if it is appropriately determined that the firefighter's current use of alcohol or drugs prevents such individual from performing the duties of a Firefighter or whose continuance on active status would constitute a direct threat to the property and safety of others. Such firefighter shall be afforded the opportunity, at his option, to use accumulated paid leave or take an unpaid leave of absence pending treatment.

As noted at the end of Appendix C that was attached to the Village's final offers, "The contract language for drug and alcohol testing is the same as the language in the police collective bargaining agreement with the exception that the incident based testing for shooting incidents involving the discharge of a firearm has been deleted as it only applies to police and not to fire" (JX 5).

2. **The Union's Final Offer**

The Union's final offer is "status quo," i.e., [t]he Union opposes the Employer's proposed change to the status quo." (*Brief for the Union* at 58; JX 5).

3. **Position of the Village**

**In support of its final offer, the Administration advances the following arguments:**

**RANDOM DRUG AND ALCOHOL TESTING FOR THE VILLAGE'S FIREFIGHTERS IS CLEARLY CONSTITUTIONAL**

While there may have been a lingering question concerning the constitutionality of random drug and alcohol testing for public safety employees years ago, the Supreme Court put to rest this issue in *National Treasury Employees Union v. Von Raab*, 489 U.S. 655 (1989)(*Brief* at 64). Significantly, the *Von Raab* decision has been specifically applied in the context of firefighters. For example, firefighters employed by the Department of the Navy are in a specifically designated sensitive position that is subject to random drug testing (VX 113J). The constitutionality of the Department of Navy's random drug testing policy was upheld by the United States Court of Appeals for the Federal Circuit in *Hadley v. Department of Navy*, 696 F.2d 982 (3d Cir. 1992). See also *Nunez v. Simms*, 341 F.3d 385 (5<sup>th</sup> Cir. 2003) (application of stricter standard for fire department employees in terms of drug testing was completely rational since firefighter positions involve high stakes and safety risks). **These decisions unquestionably support the conclusion that the Village's final offer on random drug/alcohol testing of firefighters is constitutional.**

**INTERNAL COMPARABILITY UNQUESTIONABLY SUPPORTS ACCEPTANCE OF THE VILLAGE'S FINAL OFFER ON RANDOM DRUG AND ALCOHOL TESTING**

Unlike the situation in the 2004 interest arbitration case before Arbitrator Briggs, the internal comparability evidence provides overwhelming support for the acceptance of Village's final offer that would add random drug and alcohol testing to the drug and alcohol testing article of the parties' collective bargaining agreement. Thus, in the instant case random drug and alcohol testing is currently in place for the following groups of Village employees:

All the sworn employees in the Wilmette Police Department represented by the Teamsters Union, as well as all the remaining non-bargaining unit sworn personnel in the Police Department

All public works employees who are required to have a Commercial Driver's License ("CDL") (VX 83; R. 237-38).

All sworn employees in the Wilmette Fire Department in the rank of Lieutenant and above, including the Fire Chief (VX 82; R. 236), which includes the fire chief, deputy fire chief, three duty chiefs, and six lieutenants (R. 236-37).

Overall, a total of 88 Village employees in 23 different job classifications in its fire, police and public works departments are subject to random drug and alcohol testing (VX 84; Tr. 239).

The number of Village employees who have been subject to random drug and alcohol testing has varied somewhat from year to year, ranging from 24 in 2012 to 45 in 2014 (VX 85).

The Village's position was aptly set forth by the Village's attorney (Tr. 239-40):

We are asking that the rank and file [fire] bargaining unit be subject to the same provisions that are applicable to the fire command staff, the entire police department and 33 employees in the Village's public works department.

In the 2004 Briggs' case, the only Village employees who were subject to random drug and alcohol testing were public works employees who were required to have a CDL. As Arbitrator Briggs noted in rejecting both parties' final offer on the drug and alcohol testing issue (VX 25, at p. cxcii):

[I]nternally, random drug/alcohol testing is limited in the Public Works unit to employees who are required to have a CDL.... Firefighters are not required to obtain such a license to operate firefighting apparatus. Wilmette police officers are generally not subject to random testing.

Since 2004, the Village's contract with its police bargaining unit has been changed to provide for random drug and alcohol testing. Thus, Section 18.3 (C) of the 2013-2015 of the Village's police collective bargaining agreement contains the following provisions with respect to random drug and alcohol testing:

(c) Random Testing.

Officers are subject to unannounced random drug and alcohol testing during the course of their employment and while on duty, contingent upon the inclusion of all sworn members of the Department command in the random testing process. Under the random testing process, employees and command staff personnel shall be in the same pool for purposes of random selection from the pool, and each person in the pool will have an equal chance of being selected when a selection is conducted as provided herein.

Each person in the pool shall be assigned a permanent number, and selection of those to be tested shall be determined by a random drawing of the numbers conducted by an outside entity. There may be one random drawing per month with a maximum per drawing of 2 persons that may be selected for testing. Numbers shall be drawn in random fashion. Persons on vacation or other contractually recognized leave or time off who are selected in the random draw shall be returned to the pool and replacement numbers shall be drawn. If a firefighter's name is drawn for random testing and that firefighter's name has been previously been drawn during the preceding 365 days, that firefighter's name shall also be returned to the pool and a replacement number shall be drawn.

Persons who are notified of their selection for testing must proceed directly to the test site. A Village vehicle will be provided for use to firefighters proceeding to the test site during their normal hours of work.

If the initial result of a test is positive, the person tested will remain at the facility until transportation is provided by the Department.

Thus, it is clear that internal comparability supports acceptance of the Village's final offer. Specifically, the Village's final offer on drug and alcohol testing "is a mirror image of the drug and alcohol testing policy that is in the police collective bargaining agreement" (R. 236). The only exception is the deletion of testing for fire arms incidents that is not applicable to fire

department personnel (R. 236). Thus, in all other respects the Village's final offer tracks verbatim the police collective bargaining agreement in terms of all the elements of the drug and alcohol policy (e.g., random testing, post-incident testing, the order to test, the right to contest, etc.) (R. 230). In view of this compelling internal comparability evidence, it is legitimate to ask what compelling evidence has the Union presented to support its position that its members should not be subject to random drug and alcohol testing. The Village submits that there is none.

**EXTERNAL COMPARABILITY DATA SUPPORTS ACCEPTANCE OF THE VILLAGE'S FINAL OFFER IN THAT AT LEAST THREE OF THE EXTERNAL COMPARABLES HAVE RANDOM DRUG AND ALCOHOL TESTING**

Unlike the situation in the 2004 Briggs when only Skokie had random drug/alcohol testing,<sup>27</sup> in 2015 it is significant that three of the mutually agreed to comparables—Lake Forest,<sup>28</sup> Skokie, and Winnetka—have random drug and alcohol testing for their firefighters (VX 87)(*Brief* at 69). In terms of Winnetka, Mr. Clark testified that he negotiated the random drug and alcohol testing provisions applicable to the firefighter bargaining unit with Union Attorney Robert Sugarman (R. 245). He noted that in order to secure the union's agreement to random drug and alcohol testing Winnetka had to agree that "management personnel would be subject to random testing like the firefighters," observing further that in this case "it's a little different. All those folks are already subject to random testing." (R. 245-46). This external comparability data, especially when coupled with the Village's contract with covering its police officers and the policy providing for random drug testing for all sworn fire department personnel in the rank of Lieutenant and above, including the Fire Chief, that provide for random drug and alcohol testing, unquestionably supports acceptance of the Village's final offer on this issue.

For all the reasons set forth above, the Village respectfully submits that it is more than appropriate to implement random drug/alcohol testing for this bargaining unit. In this regard, it should be noted that the Village is not seeking something it is unwilling to impose upon itself. In short, this Arbitrator should "do the right thing" and award the Village's final offer on random drug/alcohol testing.

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<sup>27</sup> Evanston permitted random testing but only "if the employee had a confirmed positive test" (UX 26).

<sup>28</sup> The Lake Forest drug and alcohol testing policy that is adopted by reference in Section 18.5 of the 2013-2016 Lake Forest/IAFF contract is attached as part of Union Exhibit 26. The Lake Forest policy provides the following with respect to random drug/alcohol testing:

All sworn personnel in the City's Fire Department and all sworn and non-sworn personnel in safety-sensitive positions in the City's Police Department will be included in the group from which the City's Director of Human Resources will randomly select employees to submit to alcohol and drug testing.

Lake Forest Administrative Directive 2-3, Section 5.1 (e), at 5.

By way of summary, as the Village's attorney stated at the outset of his presentation of the Village's case, "... with respect to the two-tier wage proposal and the random drug [and alcohol] testing the Village is seeking nothing other than what all other similarly situated Village employees are presently covered by" (R. 98). The Village submits that the relevant question posed to the Arbitrator, as the Village's attorney asked (R. 99):

[W]hy should this unit of employees be treated differently than the fire command staff, differently than the unrepresented employees, [and] differently than the police bargaining unit?

The unquestionably correct answer, fully supported by the facts and arguments set forth in this brief, is that there is no valid reason why the fire bargaining should be treated differently with respect to the establishment of a two tier salary schedule and the adoption of drug and alcohol testing policies that include random testing.

With respect to the retirement program, the Village submits that there is a compelling need to address the very large unfunded liability of the Village's Section 105 plans, something this Arbitrator did in his award in *City of DeKalb* with respect to retiree health insurance, especially since the reduced supplemental retirement program that will be applicable to firefighter/paramedics hired on or after January 1, 2016 will still be a very competitive benefit.<sup>29</sup>

Finally, maintenance of the *status quo* on the uniform allowance is fully warranted based on the record in this case. Whereas Fire Chief McGreal testified that the \$450 uniform allowance was sufficient, the Union presented no witnesses to testify otherwise. In short, there is simply no evidentiary support for awarding the Union's final offer on this issue, especially since the Union rejected the Village's willingness to establish a quartermaster system whereby all uniform items would be paid by the Village.

Accordingly, based on this specific evidence record, the interest arbitration precedent cited by the Village, and the arguments set forth in this post-hearing *Brief*, the Village respectfully requests that the Arbitrator award all of the Village's final offers (*Brief* at 71-72).

#### **4. Position of the Union**

**In support of its position (*status quo*), the Union advances the following arguments:**

##### **Arbitrators Have Repeatedly Denied Employer Requests for Random Drug Testing**

The Union asserts there is no problem in the fire department that would otherwise warrant changing the policy that was awarded by Arbitrator Steven Briggs in Village of *Wilmette & Local 73, SEIU*, Case S-MA-00-0088 (2004). The current policy – providing for alcohol or

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<sup>29</sup> Counsel for the Administration has me confused with another Arbitrator (Peter Meyers) who recently (2012) served as an interest neutral in *City of DeKalb & IL FOP Labor Council*, Case S-MA-10-366 (2012)(eliminating health insurance for retirees over a four-tier phase out period). A two-tier system for new and grandfathered employees was not on the table.

drug testing when requested by a supervisor or Management official if the employee is involved in an accident involving property damage in excess of \$500, or personal injury and where the employee appears, based on objective and reasonable criteria, to be impaired due to the use of alcohol or drugs – has well-served the Administration based on the evidence produced in this case (*Brief* at 59). According to the Union, the Village may exercise its authority to test an employee based on reasonable cause, and this should be sufficient to satisfy the Administration's concerns (*Brief* at 60, citing *City of Decatur*, S-MA-93-212 (Perkovich, 1994)(rejecting employer's request to alter the provisions of a drug testing clause and provide for random testing for police officers; Arbitrator notes that record was void of any evidence that the current provisions of the collective bargaining agreement were inadequate). The Union notes that the intervening collective bargaining agreements negotiated by the parties in Wilmette since the opinion issued by Arbitrator Briggs have not contained a random drug-testing provision. Citing the decision of Arbitrator Kossoff in *Village of Westchester*, FMCS 90-23906 (Kossoff, 1991), it is incumbent upon the Employer to demonstrate why prior collective bargaining agreements, especially the most recent one, were not adequate to protect the interests of the Employer (*Brief* at 61).

#### **The External Comparables Do Not Support Awarding of the Administration's Drug-Testing Final Offer**

In support of its final offer, the Union points out that only three (3) comparables allow for random drug testing – Skokie, Lake Forest, and Winnetka (*Brief* at 61). And since the 2004 interest arbitration decision, the only additional comparable that allows random drug testing is Lake Forest (*Brief* at 61, UX 25). According to the Union, “this evidence of external comparables indicates there is no significant rush by municipalities to engage in random drug testing of fire department personnel.” (*Brief* at 61).

#### **Internal Considerations Are Insufficient to Award the Administration's Final Offer**

While the Union recognizes that the Village has negotiated for random drug testing with its police officers, which occurred in 2004-2006 collective bargaining agreement, because this is a significant breakthrough item which has no substantial support to justify the undersigned Arbitrator ordering it (*Brief* at 61-62).

#### **The Village's Final Offer Is Not Complete and Proposes a Waiver of Bargaining**

The Union posts two major objections to the Administration's offer: (1) Appendix A (setting forth cut-off levels used by the Village) is not attached to its final offer, and the Union objects at this stage to allowing the Employer to add Appendix A to the offer because offers are to be considered final as of the date of their admission; (2) The Employer's offer eliminated any right for the Union to bargain about either changes in the cut-off levels or the addition of different substances to be tested if those substances are not listed in unapproved Appendix A. This would leave the Employer free to unilaterally implement any change it proposed, and the Administration would be relieved from either the burden of bargaining to the point of agreement or to the point of impasse ending in arbitration. In Union Counsel's words: “The significant problem in this proposal is the glaring omission of the right to engage in collective bargaining negotiations over such changes. \* \* \* Simply notifying the Union of a change in the cut-off levels and the reasons therefore would not subject the Village's process to negotiations or

impasse arbitration.” (*Brief* at 62-63, citing *City of Rockford*, Case No. S-MA-06-103 (Berman, 2008)(rejecting the employer’s health care proposal because of the unilateral rights reserved by Rockford in its offer to unilaterally change the health benefits)).

## 5. Analysis and Award

Again, the Union makes a jurisdictional argument regarding the Administration’s final offer containing cutoff levels. Similar to the other two proposals, the Union asserts that the Employer’s final offer involves a subject over which the parties are not required to bargain, thus blocking the Arbitrator from considering the issue (*Reply Brief of the Union* at 1, citing *Wheaton Firefighters Union Local 3706, LAFF*, Case No. S-CA-14-067 (2014)). The Administration, of course, rejects the Union’s challenge. In the words of Mr. Clark:

For the Union to complain about the lack of negotiations over the cutoff levels in the Village’s final offer on drug and alcohol testing is like the pot calling the kettle black. From day one the Village’s drug and alcohol testing proposal tracked the language in the Village’s police contract. Thus, the Village’s initial set of proposals and counterproposals included specific cutoff levels. Thus, subsection (b)(3) under the heading “Test to be Conducted” of the Village’s November 13, 2013, proposal included the following provision:

Cut-off levels used to determine whether a sample shall be deemed to have tested positive during the initial and confirmatory screenings shall be consistent with those generally accepted in the scientific community as scientifically and technically reliable. Appendix A sets forth the cut-off levels which are used by the Village. The Village reserves the right to adopt new or different cut-off levels due to changes in technology, however the Village shall not make any changes to the cut-off levels set forth in Appendix A without first providing thirty (30) days written notice to the Union of the nature of the change and the reason therefore. Nothing herein shall be deemed to preclude the Village from testing for different substances other than those listed in Appendix A on a case-by-case basis, provided that the generally known and accepted cut-off levels for such substances are utilized.

Appendix A to this Village proposal included very specific cut-off levels. See the last two pages of Village Exhibit 30B and Appendix A.

*Reply Brief of the Village* at 10.

As the Village points out in a footnote (*Reply Brief* at 10):

Apparently, Appendix A, although referred to in the Village’s final offer, was inadvertently omitted from the Village’s final offer. The final offer clearly mentions Appendix A and it also specifically states that with one minor exception tracks verbatim the drug and alcohol testing provisions in the Village’s contract with its police officers, to wit:

Note: The contract language for drug and alcohol testing is the same as the language in the police collective bargaining agreement with the exception that the incident based testing for shooting incidents involving the discharge of [a] firearm has been deleted as it only applies to police and not to fire.

The Village’s police contract includes the same language concerning cut-off levels, as well as Appendix A’s cut-off levels. See VX32, at past practice. 43-44 & Appendix A.

While the Village submitted subsequent offers on June 19, 2014, and April 10, 201 (both included exactly the same language on cut-off levels (VX 30C & 30D), at no time did the Union submit any counterproposals on drug and alcohol testing, let alone any proposals with respect to cut-off levels. The Village asserts that if the Union wanted to negotiate over the cutoff levels, it could have proposed different cutoff levels. In Management's words: "The Union, however, chose to stand pat on the status quo and refused to engage the Village in negotiations over drug and alcohol testing, including the applicable cutoff levels." (*Reply Brief* at 11).

In further support of the jurisdictional authority of the undersigned Arbitrator to consider the Village's final offer, the Administration points out that if the Village changed any cut-off levels and the Union believed they did not meet the "generally-accepted-in-the-scientific-community standard," it would have the right to file a grievance. Thus, the Administration's proposal is a mandatory subject of bargaining (*Reply Brief* at 11, citing *Policemen's Benevolent Labor Committee and City of Taylorville*, 31 PERI Para. 162 (ILBR General Counsel, 2012) (rejecting union's argument that employer's health insurance proposal that gave the employer the right to change benefit levels as long as the changes were 'within reason' was not a mandatory subject of bargaining; General Counsel reasons that the right to make changes 'within reason' provides a limit on the employer's discretion and consequently does not approach the type of broad waiver of bargaining rights found to be permissive subjects of bargaining) and *City of Danville (Police Department)*, ILRB Case S-DR-13-004 (2013)(holding that employer's health insurance proposal that gave it right to make health insurance changes as long as "the level of benefits as provided herein shall remain substantially similar" was a mandatory subject of bargaining, reasoning that "the Union has a benchmark with which it can determine whether or not any insurance changes proposed by the Employer results in benefit levels remaining substantially similar." *Id.* at 8).

Similar to my ruling regarding the Union's challenges in the two-tier salary schedule issue, and the two-tier supplemental retirement program, I hold that the Village's drug and alcohol testing final offer is within the Administration's legal authority to submit under applicable law. Fair is fair, and if the Union had a problem with the Village not appending Appendix A to its final offer (a unilateral mistake, to be sure), it should have notified the Administration of its error *prior to the hearing*.<sup>30</sup> I view this as comparable to an error in computation or a "scrivener's error." If I'm wrong on this, the Union has a basis for appeal.

With respect to the merits, I find no reason to discuss this issue at length. For purposes of this analysis, I refer the parties to my discussion *supra* on the issues of a two-tier salary structure and the two-tier sick leave provision/supplemental retirement program sought by the Administration. While I find merit in the Village's position regarding alcohol and drug testing, in short, I find no compelling reason why the *status quo* should be changed *at this time*. Clearly,

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<sup>30</sup> If a parallel is needed one is found in contract law regarding the law of mistake. As these lawyers well know, if a party to a deal is aware of a mistake made by the other side (a mistake in the terms of an offer, for example), it is not allowed to "jump on it" to the detriment of the other side. See, Hill & Sinicropi, *Remedies in Arbitration* (BNA Books, 1991)(Chapter 18, Remedies for Mistake).

the easy play would be to award it, citing the internal comparables (police and unrepresented personnel). However, the place to resolve this matter is clearly at the bargaining table.

Looking at Union Exhibit 20 (UX 29), it should be clear from this document that in terms of drug and alcohol testing there was no identifiable problem within the bargaining unit. While perhaps not dispositive of the issue, the absence of any identifiable problem favors the Union's case.

I find it significant that since 2004 the parties have had numerous chances to add random testing since the award of Arbitrator Steven Briggs, yet passed on the opportunity. Again, this issue is best reserved for bargaining. See, e.g., City of LaSalle, IL & IL FOP Labor Council, S-MA-12-216 (Perkovich, 2013)(refusing to award random drug testing proposal, reasoning that the record was "no help at all." Issue remanded to parties for bargaining. *Id.* at 6).<sup>31</sup>

\* \* \* \*

For the reasons noted above, and applying the statutory criteria, the following award is entered:

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<sup>31</sup> A recurring characteristic of this two-day hearing is the Administration's frustration with the Union's recalcitrance in responding to bargaining proposals. An exchange with Mr. Michael Braiman, Assistant Village Manager, makes the point:

Q. [By Mr. Clark]: What responsibilities, if any, did you have with respect to the negotiations with the firefighter bargaining unit that preceded this interest arbitration?

A. I am the lead negotiator for the Village.

Q. Did you present this proposal on November 13, 2015?

A. Yes I did.

Q. '13, I'm sorry.

A. Yes.

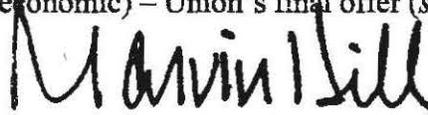
Q. What was the Union's response?

A. The Union refused to respond. The Union stonewalled us on every issue we presented. (R. 196-197).

**IV. AWARD**

1. Wages and Advanced Technician Firefighter Stipend (withdrawn);
2. Two-Tier Salary Schedule for Firefighters and Firefighter/Paramedics Hired on or after May 1, 2015 – Union's Final Offer (*status quo*);
3. Supplemental Retirement Program – Union's Final Offer (*status quo*);
4. Uniform Allowance – Employer's final offer (*status quo*).
5. Drug and Alcohol Testing (non-economic) – Union's final offer (*status quo*).

Dated this 21st day of September, 2015,  
At DeKalb, Illinois, 60115



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Marvin Hill  
Arbitrator