

INTEREST ARBITRATION
OPINION AND AWARD

VILLAGE OF ARLINGTON HEIGHTS

AAA CASE 51 390 0112 90 B

and

ISLRB NO. S-MA-88-89

STEVEN BRIGGS, ARBITRATOR

ARLINGTON HEIGHTS FIREFIGHTERS
ASSOCIATION, LOCAL 3105, INTER-
NATIONAL ASSOCIATION OF FIRE-
FIGHTERS



APPEARANCES:

FOR THE UNION

Joel A. D'Alba, Esq.
Asher, Gittler, Greenfield, Cohen & D'Alba, Ltd
Two North La Salle Street
Chicago, Illinois 60602

FOR THE EMPLOYER

R. Theodore Clark, Esq.
Seyfarth, Shaw, Fairweather & Geraldson
55 East Monroe Street
Chicago, Illinois 60603-5803

TABLE OF CONTENTS

BACKGROUND	1
RELEVANT STATUTORY CRITERIA	3
ALTERNATIVE IMPASSE RESOLUTION PROCEDURE	5
STIPULATED INTEREST ARBITRATION ISSUES	9
List of Economic Issues	9
List of Non-Economic Issues	9
PRELIMINARY DISCUSSION	11
Bargaining Table Delays	11
The Nature of Interest Arbitration	12
Internal Comparability	12
The External Comparables	14
Table 1: Comparable Communities Selected By Union And Comparison Data For Its Selection Criteria.	15
Table 2: Additional Comparable Communities Proposed By Village And Comparison Data For Union's Selection Criteria	16
Table 3: Communities Comparable To Arlington Heights	18

THE ECONOMIC ISSUES

Issue No. 1:	<u>Salaries</u>	19
Table 4:	Top Step Salary Rankings of Arlington Heights Firefighters Within The Comparables Pool.	23
Table 5:	1991-1992 Increases (%) For Comparable Communities With Ratified Agreements.	25
Issue No. 2:	<u>Lieutenant Salary Adjustment</u>	26
Issue No. 3:	<u>Firefighter II(P) (Paramedic) Salary Adjustment</u>	29
Issue No. 4:	<u>Step Increments</u>	30
Issue No. 5:	<u>Retroactivity of Wages, Including Overtime Hours</u>	33
Issue No. 6:	<u>Sick Leave</u>	36
Issue No. 7:	<u>Overtime Pay (Article VIII, Section 5)</u>	36
Issue No. 8:	<u>Pay for EMT-A and EMT-P Training (Article XVII(A) Section 7)</u>	40
Issue No. 9:	<u>Cost of Medical Treatment (Article XVII(A), Section 9)</u>	43
Issue No. 10:	<u>Comprehensive Medical Program (Article XVII, Section 1)</u>	44
	Table 6: Medical Insurance Plan Data	48
Issue No. 11:	<u>Life Insurance</u>	50
Issue No. 12:	<u>Dental Insurance</u>	51
Issue No. 13:	<u>Tuition Reimbursement and Educational Incentives</u>	51
Issue No. 14:	<u>Disability Pay</u>	51
Issue No. 15:	<u>Longevity Pay</u>	55
Issue No. 16:	<u>Stipends for Paramedics Who Are Qualified to Serve as Engineers and Vice-Versa; Stipends for Lieutenants Who Are Qualified to Serve as Paramedics</u>	57
Issue No. 17:	<u>Holiday Pay</u>	59
	Table 7: Scheduled Annual Time Off Across Pool of Comparable Communities	61

ECONOMIC ISSUES (CONTINUED)

Issue No. 18: Uniform Allowances 63
Issue No. 19: Duration of Agreement 64
Issue No. 20: Legislative Cost Increases 66

THE NON-ECONOMIC ISSUES

Issue No. 1: Fair Share 70
Issue No. 2: Duty of Fair Representation 72
Issue No. 3: Management Rights 73
Issue No. 4: Grievance and Arbitration Procedure (Binding vs. Advisory Arbitration) 76
Issue No. 5: Normal Work Day and Work Week (Article VIII, Section 2) 77
Issue No. 6: Changes in Normal Work Day, Normal Work Week or Normal Work Cycle (Article VIII, Section 4) 79
Issue No. 7: Hirebacks For 24-Hour Personnel (Article VIII, Section 5) 80
Issue Nos. 8, 9 & 10: Duty Trades, Scheduling of Hanson Days, and Vacation Scheduling for 24-Hour Personnel 86
Issue No. 11: Station and Shift Bidding 90
Issue No. 12: Promotions 94
Issue No. 13: Entire Agreement (Zipper Clause) 98
Issue No. 14: Employee Discipline 98
Issue No. 15: Smoking/No Smoking 104

AWARDS ON THE ISSUES 106

INTEREST ARBITRATION
OPINION AND AWARD

In the Interest Arbitration

between

VILLAGE OF ARLINGTON HEIGHTS

AAA CASE 51 390 0112 90 B

and

ARLINGTON HEIGHTS FIREFIGHTERS
ASSOCIATION, LOCAL 3105, INTER-
NATIONAL ASSOCIATION OF FIRE-
FIGHTERS

Hearings Held

Radisson Inn
75 W. Algonquin Road
Arlington Heights, IL

Appearances

For the Union:

July 17, 18, 1990
August 13, 22, 24, 1990
September 14, 19, 1990
October 11, 27, 1990

Joel A. D'Alba, Esq.
Asher, Gittler, Greenfield, Cohen & D'Alba, Ltd.
Two North La Salle Street
Chicago, Illinois 60602

Arbitrator

For the Village:

Steven Briggs
3612 N. Hackett Ave.
Milwaukee, WI 53211

R. Theodore Clark, Jr., Esq.
Seyfarth, Shaw, Fairweather & Geraldson
55 East Monroe Street
Chicago, Illinois 60603-5803

BACKGROUND

The Village of Arlington Heights, Illinois (the Village), operates a Fire Department (the Department) with four fire stations, a Fire Academy, and a Fire Prevention Bureau. Firefighters, Paramedics, Engineers, and Lieutenants employed in the Department are represented for collective bargaining purposes by the Arlington Heights Firefighters Association, Local 3105, IAFF (the Union).

The Union became certified as exclusive bargaining representative in the early part of 1988. Negotiations for an initial collective bargaining agreement commenced in April of that year. After 49 bargaining sessions and the assistance of a Federal mediator, the parties still had not reached complete agreement. Their intense efforts at settlement were not entirely fruitless, however, as they did reach a meeting of the minds and subsequent written agreement on the following economic issues:

1. Salary increases for the 1988-1989 and 1989-1990 fiscal years.
2. One Hanson day (day off) every nine shifts (from one every ten shifts); elimination of the one floating holiday.
3. Additional paid vacation time off (one additional 24-hour shift off after 24 years of service for 24-hour personnel; up to three additional days off for 8-hour personnel).
4. Complete new issue of uniforms and shoes for the 1990-1991 fiscal year at Village expense; increase annual uniform allowance from \$200 to \$250.
5. Tuition Reimbursement
6. Linen service at Village expense.
7. One month continued medical coverage under Village's Comprehensive Medical Program for each 15 days of unused sick leave at time of retirement (up from one month for each 20 days ...)
8. Double time for 8-hour personnel if assigned to work on day observed by Village as a holiday (up from time and one-half).
9. Five percent hourly pay differential for Lieutenant assigned to serve in acting capacity as Captain.

The parties reached agreement on several non-economic issues as well, including an Alternative Impasse Resolution Procedure pursuant to § 1614 (p) of the Illinois Public Labor Relations Act. There were still, however, numerous economic issues and non-economic issues on which the parties were not able to reach a settlement. When an impasse was declared as a result, the Union served upon the Village a timely Demand for Compulsory Interest Arbitration and filed a copy thereof with the Illinois State Labor Relations Board (the Board).

Pursuant to the parties' Alternative Impasse Resolution Procedure the undersigned was notified of his selection as Arbitrator by an April 25, 1990, letter from the Chicago Region of the American Arbitration Association. Nine separate hearing dates in 1990 were scheduled by mutual agreement between the parties and the Arbitrator (July 17 and 18; August 13, 22, and 24; September 14 and 19; October 11 and 27). All of the hearings were transcribed (1921 pages total), and the parties submitted a total of approximately 230 exhibits. Both parties submitted timely Posthearing Briefs (298 pages total) and corrections thereto. The Briefs were exchanged between the parties themselves prior to December 17, 1990. Throughout the months of November and December, 1990, both parties submitted various documents updating the record. On January 2, 1991, the Union submitted four separate letters, portions of which also updated the record. Other portions of those letters addressed various arguments raised in the Village's and/or the Union's Posthearing Briefs. In a letter dated January 8, 1991, the Village objected to acceptance into the record of the Union's January 2 letters, arguing that they constituted a Reply Brief and noting from the transcript that the parties had agreed not to file Reply Briefs. The Arbitrator on January 11, 1991, notified both parties (1) that the record was as of that date entirely closed, and (2) that any portion of the Union's January 2, 1991, letters which constituted a reply to information and arguments in the Village's Posthearing Brief would be excluded from the record.

RELEVANT STATUTORY CRITERIA

Pursuant to the parties' Alternative Impasse Resolution Procedure, the factors to be considered by the Arbitrator in deciding this case are contained in Section 14(h) of the Illinois Public Labor Relations Act. The Section provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement,

and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, if applicable:

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

ALTERNATIVE IMPASSE RESOLUTION PROCEDURE

Relevant portions of the parties' negotiated Alternative Impasse Resolution Procedure are quoted below:

Section 1. Authority for Agreement. The parties agree that the statutory authority for this Agreement is § 1614(p) of the Act. The parties intend the provisions of this Agreement to represent and constitute an agreement to submit the parties' unresolved disputes concerning the wages, hours, terms and conditions of employment of the employees represented by the Union to an alternative form of impasse resolution, the provisions of which are set forth herein.

Section 2. Selection of Arbitrator and Naming of Panel.

(b) Arbitrator Selection Process.

(ii) . . . The parties agree that the arbitration proceedings shall be heard by a single,

neutral arbitrator. Each party waives the right to a three member panel of arbitrators as provided in the Act;

(c) Issues in Dispute and Final Offers. Within seven (7) calendar days of the service of a demand that the arbitrator selection process commence, the representatives of the parties shall meet and develop a written list of those issues that remain in dispute. The representatives shall prepare a Stipulation of Issues in Dispute for each party to then execute and for submission at the beginning of the arbitration hearing. The parties agree that only those issues listed in the Stipulation shall be submitted to the arbitrator for decision and award.

It is further agreed that:

(i) Each party retains the right to object to any issue on the grounds that the same constitutes a non-mandatory subject of bargaining and/or is an issue on which the arbitrator has no authority to issue an award; provided, however, that each party agrees that it will notify the other of any issue not later than the first negotiation meeting at which the issue is substantively discussed. Should any disputes arise as to whether a subject is a mandatory subject of bargaining, the parties agree to cooperate in obtaining a

prompt resolution of the dispute by the Board pursuant to the Act and the Rules and Regulations of the Board [Section 1200.140(b)]. Either party may file a petition with the Board's General Counsel for a declaratory ruling after receiving such notice from either party that it regards a particular issue a non-mandatory subject of bargaining.

- (ii) Not less than seven (7) calendar days prior to the date when the first day the arbitration hearings are scheduled to commence, the representatives of the parties shall simultaneously exchange in person their respective written final offers as to each issue in dispute as shown on the Stipulation of Issues in Dispute. The foregoing shall not preclude the parties from mutually agreeing to modify final offers or from mutually agreeing to resolve any or all the issues identified as being in dispute through further collective bargaining.

(d) Authority and Jurisdiction of Arbitrator.

The parties agree that the neutral arbitrator shall not function as a mediator unless mutually agreed by the Village and the Union. The arbitrator selected and appointed to resolve any disputes that

may exist in these negotiations shall have the express authority and jurisdiction to award increases or decreases in wages and all other forms of compensation retroactive to May 1, 1988, notwithstanding any delay in the arbitrator selection process that may have occurred or any other modification of the impasse procedure described in the Act and the Rules and Regulations of the Board as a result of this Agreement. Each party expressly waives and agrees not to assert any defense, right or claim that the arbitrator lacks the jurisdiction and authority to make such a retroactive award of increased or decreased wages or other forms of compensation.

(e) Discretion and Judgment of Arbitrator. The parties do not intend by this Agreement to predetermine or stipulate whether any award of increased or decreased wages or other forms of compensation should in fact be retroactive to May 1, 1988, but rather intend to insure that the arbitrator has the jurisdiction and authority to so award retroactive increases and decreases to that date should he in his discretion and judgment believe such an award is appropriate.

Section 4. Remaining Provisions of § 1614. Except as expressly provided in this Agreement, the parties agree that the provisions of § 1614 of the Act and the Rules and Regulations of the

Board shall govern the resolution of any bargaining impasses and any arbitration proceedings that may occur. To the extent there is any conflict between the provisions of this Agreement and § 1614 and/or the Rules and Regulations of the Board, it is the parties' express intent that the provisions of this Agreement shall prevail.

STIPULATED LIST OF INTEREST ARBITRATION ISSUES

Economic Issues

1. Firefighter salaries for all categories [i.e., Firefighter I, Firefighter II (Engineer), Firefighter II(P) (Paramedic), and Fire Lieutenant] for the 1990-1991 fiscal year and beyond.
2. Fire Lieutenant salary adjustment, if any, and, if adopted, the effective date.
3. Firefighter II (Paramedic) salary adjustment, if any, and, if adopted, the effective date.
4. Step Increments (Article XI, Section 2).
5. Retroactivity of wages, including overtime hours.
6. Sick leave (resolved by the parties).
7. Overtime pay (Article VIII, Section 5).
8. Pay for EMT-A and EMT-B training [Article XVII(A), Section 7.
9. Cost of medical treatment [Article XVII(A), Section 9]
10. Comprehensive medical program (Article XII, Section 1, bracketed language only.
11. Life insurance (The Union takes the position that this issue is resolved).
12. Dental insurance (resolved by the parties).
13. Tuition reimbursement and educational incentives (resolved by the parties).
14. Disability pay.
15. Longevity pay.

16. Stipends for Paramedics who are qualified to serve as Engineers and vice-versa; stipends for Lieutenants who are qualified to serve as Paramedics.
17. Holiday pay.
18. Uniform allowances (The Village takes the position that this issue is resolved).
19. Duration of Agreement.

Non-Economic Issues

1. Fair share.
2. Union's duty of fair representation.
3. Management rights.
4. Grievance and arbitration procedure (Binding versus advisory arbitration).
5. Normal work day and work week (Article VIII, Section 2).
6. Changes in normal workday, normal work week or normal work cycle (Article VIII, Section 4). (resolved by the parties).
7. Hirebacks for 24-hour personnel (Article VIII, Section 5).
8. Duty trades (Article VIII, Section 8).
9. Scheduling of Hanson days (Article VIII, Section 9).
10. Vacation scheduling for 24-hour personnel (Article IX, Section 5).
11. Station and shift bidding.
12. Promotions.
13. Entire Agreement (zipper clause).
14. Discipline (includes related bracketed language issues in Article VI -- Grievance and Arbitration Procedure; Article VII -- No Strike-No Lockout; and Article XVII(A), Section 3 -- Emergency Medical Services; and Article XIV, Section 5 -- Drug Testing).
15. Smoking/no smoking.

Remaining Issues

1. Legislated cost increases (The village takes the position that it is an economic issue and the Union takes the position that it is a noneconomic issue. The parties have agreed to let the interest arbitrator determine whether it is an economic or a noneconomic issue.

PRELIMINARY DISCUSSION

General Observations

Bargaining Table Delays. By the time of the first interest arbitration hearing in this matter, which took place on July 17, 1990, the parties had been bargaining for over two years. Understandably, their respective frustration levels were extremely high. Each party felt the other was to blame for the protracted nature of the negotiations, and the record is replete with related accusatory references. The Arbitrator assigns no fault to one party or the other for fact that their bargaining activity took so long. Public sector labor negotiations are multi-lateral and imprecise. And in initial contracts such as the one at dispute here, the bargainers' self-images and principles become inextricably interwoven into the issues and the process. Moreover, the passing of each day brings with it a change in the negotiations context. Issues similar to those on the bargaining table become resolved in other communities. A new government report on the Consumer Price Index is issued. A government agency issues a decision in a case connected with one or more of the issues being bargained. The result of all of these influences is the passage of time, and a corresponding delay in the bargaining process.

The record in this case has not convinced me that either of the parties intentionally and inappropriately caused delays in the negotiations. As noted earlier in this report, the parties settled several economic issues on their own, prior to the inception of these interest arbitration proceedings. I am convinced that they bargained in good faith throughout their attempts to settle the remaining issues.

Accordingly, the parties' respective allegations about intentional and inappropriate delays in the negotiations process have not influenced my decision on any of the issues submitted to me.

The Nature of Interest Arbitration. Interest arbitration is artificial. It is a substitute for the real thing --- a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decision what the parties would have agreed to had they been able to settle the issues themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations¹ and to shape the interest arbitration award accordingly.

It is important to recognize the nature of such a task. It is simply educated guesswork, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified.

Internal Comparability

In determining public sector wages, hours and conditions of employment through voluntary collective bargaining the parties typically consider how those issues have been resolved in other bargaining relationships within their own community. The only other group of union-represented employees in the Village of Arlington Heights is composed of all sworn full-time peace officers in the Police Department.² They are represented by the Fraternal Order of Police (FOP), Arlington Heights Lodge No. 80, and the Illinois FOP Labor Council.

¹. Those factors are included in Section 14(h) of the Illinois Public Labor Relations Act, and referred to earlier in this Opinion as "RELEVANT STATUTORY CRITERIA."

The Village and the FOP first began bargaining with each other in June, 1987, and reached their first Agreement in October of that year. The Agreement covered fiscal years 1987-1988, 1988-1989, and 1989-1990. Negotiations for a successor Agreement began in late January, 1990, and culminated in late June, 1990. The successor Agreement was executed on August 6, 1990, and remains in effect through April 30, 1993.

In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a particular public sector jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called "me too" clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want.

Bearing all of this in mind, and emphasizing again the "educated guess" nature of interest arbitration, I am very reluctant to grant to the Union in this case an arbitrated outcome which would take Arlington Heights Firefighters beyond what the FOP gained through voluntary collective bargaining. The 1990-1993 Agreement reached by the Village and the FOP was hammered out by professional negotiators in consultation with their respective bargaining teams. Both parties to those negotiations were obviously "well-acquainted with the equities involved"³ Thus, it is appropriate to

² The Police bargaining unit excludes all sworn peace officers in the rank of sergeant and above, any employees excluded from the definition of "peace officer" as defined in Section 3(k) of the Illinois Public Labor Relations Act, and all other managerial, supervisory, confidential and professional employees as defined by the Act, as amended.

³ See City of Wausau and Wausau Professional Police Association, WERC Decision No. 23554 (1987), decided by an arbitrator held in high esteem by the Arbitrator in the

use the 1990-1993 FOP Agreement, and its predecessor where applicable, as a guideline in this case.

Conclusions reached in the foregoing paragraphs do not mean that the FOP contracts are insurmountable barriers to the Union here. Indeed, there may be compelling reasons to depart from them on certain issues. And it is important to note that negotiations outcomes from but one internal comparable do not constitute a pattern of settlements (see Footnote 3) In general, however, I am unwilling to depart in this case from the outcome of free collective bargaining between the Village and the FOP absent clear and convincing evidence of the need for an inequity adjustment.

The External Comparables

The Union used three criteria in selecting what it considers to be comparable municipalities: (1) population, as determined by the U.S. Bureau of the Census, sales tax revenue, as recorded by the Illinois State Department of Revenue, and equalized assessed valuation, as record in county records. It took the 88 communities within a 15-mile radius of Arlington heights and evaluated them on the basis of these three criteria. On each criterion the Union included in its comparables pool those communities within a range of plus or minus 50 percent of the Arlington Heights figure. Using this procedure the Union selected as its proposed comparables the eight jurisdictions listed in Table 1:

instant case. I duly note, however, that in Wausau there was an entire pattern of internal comparables generated by negotiations across sixteen bargaining units in the City of Wausau and Marathon County, both considered the same employer. In the instant case there is only one internal comparable.

**TABLE 1
COMPARABLE COMMUNITIES SELECTED BY UNION
AND COMPARISON DATA FOR ITS SELECTION CRITERIA**

<u>Community</u>	<u>Population</u>	<u>Assessed Value</u>	<u>Income From Sales Tax</u>
Des Plaines	55,374	\$852,925,572	\$7,484,951
Elgin	69,618	\$569,954,997	\$6,212,100
Elk Grove	33,205	\$906,166,907	\$7,671,841
Elmhurst	44,276	\$610,583,973	\$7,237,235
Lombard	38,006	\$656,479,634	\$6,797,668
Mount Prospect	52,634	\$590,778,708	\$5,475,198
Northbrook	33,206	\$700,562,028	\$4,909,081
Skokie	60,278	\$828,819,774	\$7,503,622
Arlington Heights	66,116	\$941,968,890	\$9,556,100

Source: Union Exhibit 7

At the hearings the Village stipulated that each of the eight comparable communities selected by the Union is comparable to Arlington Heights. However, the Village would add seven additional jurisdictions to the pool of comparables. Four of the seven are contiguous to Arlington Heights; the other three are closer than at least three of the Union's proposed group (i.e., Elmhurst, Lombard and Elgin). The Village argues that its seven proposed comparables should be adopted on the basis of geographic proximity alone. The additional comparable communities suggested by the Village are listed in Table 2:

**TABLE 2
 ADDITIONAL COMPARABLE COMMUNITIES PROPOSED BY VILLAGE
 AND COMPARISON DATA FOR UNION'S SELECTION CRITERIA**

<u>Community</u>	<u>Population</u>	<u>Assessed Value</u>	<u>Income From Sales Tax</u>
Buffalo Grove	33,337	\$439,327,880	\$2,316,641
Hoffman Estates	44,761	\$399,293,881	\$2,965,699
Paletine	34,262	\$389,467,229	\$3,079,413
Park Ridge	38,704	\$429,928,853	\$2,710,983
Rolling Meadows	21,861	\$396,248,683	\$6,192,565
Schaumburg	64,042	\$1,318,194,079	\$15,058,709
Wheeling	26,276	\$398,691,536	\$2,825,956

Source: Village Exhibit 8; Union Exhibits 4, 5 & 6.

In addition to the geographical criterion, the Village argues that the communities in Table 2 are comparable to Arlington Heights on the basis of per capita assessed value. It notes that per capita assessed value for the Union's proposed comparables ranged from \$8,187 (Elgin) to \$27,290 (Elk Grove Village) and that per capita assessed value for the additional communities proposed by the Village falls well within that range (\$8,921 - \$20,553).

The Village also argues that several of its proposed comparables are, along with itself, members of the Mutual Aid Box Alarm System (MABAS) Division I, thereby underscoring their administrative/operational connection with each other. The Village also notes that its proposed comparables are all included, along with itself, in Region 3 of the Cook County Regional Governmental Salary and Fringe Benefit Survey. According to the Village, this fact suggests that they all function within the same labor market.

The Union would exclude Schaumburg due to its high sales tax revenue. It also feels that Buffalo Grove, Park Ridge, Rolling Meadows, Wheeling, Hoffman Estates and Palatine are too small on at least one of the three selection dimensions it used to define its own comparables list.

After stipulating that it agreed with the Union's proposed comparable communities and adding to that list its seven suggested comparables, the Village relied upon "Preliminary 1990 Census data" to justify its conclusion that Northbrook no longer meets the population test for comparability as set forth by the Union. However, the Arbitrator notes from Village Exhibit 2-A that the "preliminary" 1990 U.S. Census figures are "incomplete and, generally, are expected to be higher when the final 1990 numbers are published ..." Besides, some of the communities proposed by the Village do not meet the Union's population test criterion either (e.g., Rolling Meadows).

Since at one point both parties to this dispute agreed that the Union's proposed comparables were appropriate, and since the Village's subsequent argument to exclude Northbrook is based upon incomplete, preliminary 1990 Census figures, the Arbitrator accepts the eight communities listed in Table 1 for comparison purposes. The population, assessed valuation and sales tax criteria used by the Union are traditional measures of size and financial strength, and the Union's cutoff figure (plus or minus 50% of the Arlington Heights figure on each dimension) is within the bounds of reasonableness.

But as the Village correctly notes, the Union's comparables group excludes some of the communities contiguous to Arlington Heights, namely, Buffalo Grove, Palatine, Rolling Meadows and Wheeling. And the remaining communities proposed by the Village (Park Ridge, Schaumburg and Rolling Estates) are within the 15-mile radius used by the Union as a geographical limitation. The Union would discount the significance of geographical proximity in this case, arguing that the Village's residency rule allows its employees to reside well beyond the towns proposed by the

Village. Be that as it may, the Arbitrator is convinced that geographical proximity is the best descriptor of the relevant labor market for a community like Arlington Heights. The Village competes with other communities for its employees. The closer those communities to the Village itself, the more likely are persons residing in them to be willing to work in Arlington Heights; conversely, the closer they are the more likely people living in Arlington Heights will be willing to travel to them for work. Moreover, the communities might differ from Arlington Heights on the dimensions of population, assessed value and/or sales tax, but as long as they contain primary employment opportunities (i.e., those with a reasonable wage/benefit and promotional opportunity package) they do indeed compete with Arlington Heights for employees.

On balance, the criteria advanced by both parties in support of their proposed comparable communities are reasonable. Geographical proximity is a well-established measure of comparability in interest arbitration, as are population, assessed value and sales tax. The Arbitrator therefore adopts for comparability purposes the communities proposed by both parties:

**TABLE 3
COMMUNITIES COMPARABLE TO ARLINGTON HEIGHTS**

Buffalo Grove
Des Plaines
Elgin
Elk Grove Village
Elmhurst
Hoffman Estates
Lombard
Mt. Prospect
Northbrook
Palatine
Park Ridge
Rolling Meadows
Schaumburg
Skokie
Wheeling

THE ECONOMIC ISSUES

Pursuant to Section 14(g) of the Illinois Public Labor Relations Act, the Arbitrator's authority in deciding economic issues is limited to adoption of the last offer of settlement which more nearly complies with the applicable statutory factors.

ECONOMIC ISSUE NO. 1

Salaries

The fiscal year for the Village begins May 1 and ends April 30. As earlier noted, the parties have agreed to salary increases for fiscal years 1988-1989 and 1989-1990. For 1988-1989 they arrived at a figure of 4% across-the-board, plus the addition of a new Step "G" at 2 1/2% above the previous highest step, effective November 1, 1988. The agreed-upon salary increase for fiscal 1989-1990 was also 4%, plus an additional 2 1/2% added to Step G on November 1, 1989. These negotiated figures exactly parallel the 1988-1989/1989-1990 salary increases negotiated between the Village and the FOP.

Village Final Offer. The Village's final offer on salaries for all categories [Firefighter I, Firefighter II (Engineer), Firefighter II(P) (Paramedic), and Fire Lieutenant] is as follows:

Effective May 1, 1990, increase salaries for all categories 4%.

Effective November 1, 1990, increase salaries for all categories 1%.

Effective May 1, 1991, increase salaries for all categories 5%.

Effective May 1, 1992, increase salaries for all categories 5%.

Union Final Offer. The Union's final offer on salaries for all categories is listed below:

May 1, 1990 - Increase by 4.0 percent.

November 1, 1990 - Increase by 2.5 percent.

May 1, 1991 - Increase by 5.5 percent.

Discussion. The Village notes that its salary offer exactly duplicates that negotiated by the FOP, and that salary increases for the two groups have been identical since 1979. Thus, the Village argues, the well-established parity between these two work units should not be disturbed by the arbitration process ⁴. The Village also believes that its salary offer maintains Firefighters at at least the same position relative to the external comparables that they enjoyed in 1989-1990, a year for which their salaries were agreed upon through free collective bargaining.

With regard to the Consumer Price Index (CPI), the Village believes the CPI-W (All Urban Wage Earners and Clerical Employees) should be used for cost-of-living purposes, and that it should be considered for the last full calendar year prior to the commencement of negotiations. That time makes sense, the Village argues, because its budget is developed administratively during January and early February, with budget hearings adopted by the Village Board sometime in the second or third week of April, prior to the commencement of the fiscal year on May 1. The Village also notes that fixing CPI consideration to the calendar year prior to the April 30 termination date of the Agreement would not give either party a reason to delay negotiations in anticipation of a CPI increase or decrease during the period of the delay. Using either the CPI-U or the CPI-W, the Village asserts, still reflects favorably on its salary offer when one considers that the vast majority of the bargaining unit will receive a total salary increase of 5.75% ⁵

⁴ The salary parity between Firefighters and Police bargaining units in Arlington Heights for fiscal 1988-1989 and 1989-1990 is the outcome of their respective negotiations with the Village. Salary parity prior to those years is the result of unilateral decision-making by the Village, since the Firefighters had no bargaining relationship with the Village prior to 1988-1989.

⁵ The Village reasoned that all bargaining unit members at Step G would receive the last half of the 2 1/2% adjustment the parties agreed would be effective November 1,

The Union argues that its salary offer more closely approximates the April, 1989, through April, 1990 CPI-U and CPI-W index increases (5.55% and 5.59% respectively). According to the Union's figures, for fiscal year 1989-1990 Firefighters at Step G need an additional \$1921 in order to keep up with inflationary pressures measured in April, 1990. The Union notes that its salary offer would provide an additional \$1851 for that period, while the Village's offer would result in a mere \$1578 total increase. Moreover, the Union adds, the 1989 wage increases negotiated by the parties fell short of the CPI-U for that year (5.6%). It believes that the CPI-U is the appropriate index, because it measures a broader group of the population (and, hence, wider consumption patterns) than does the CPI-W.

The Arbitrator is convinced from the record that the Village's salary offer is the more appropriate, for several reasons. First, the salary increases negotiated by the parties themselves for the 1988-1989 and 1989-1990 were arrived at through free collective bargaining. Obviously, then, they reflect increases that both parties deemed appropriate. Those increases are exactly the same as the ones negotiated between the Village and the FOP for Arlington Heights Police Officers, suggesting that the Union in this case felt comfortable with the wage levels of firefighters vis-a-vis those of police officers. Nothing in the record has convinced me of the need to alter that longstanding salary relationship⁶. Indeed, granting the firefighters percentage increases higher than those negotiated by the FOP would quite likely instill in the latter the motivation to redress the balance during future negotiations. This produces a whipsaw effect,

1989. Thus, to compute the effective percentage amount actually received during the 1990-1991 fiscal year, one would add 1.25% attributable to the November 1, 1990, Step G adjustment to the 4% increase effective May 1, 1990, and .5% of the 1% adjustment effective November 1, 1990.

⁶ The negotiated parity between Arlington Heights Firefighters and Police Officers for fiscal years 1988-1989 and 1989-1990 was given infinitely more weight than the earlier parity established unilaterally by the Village.

wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability of the bargaining process.

Second, the Village's salary offer for fiscal 1989-1990 is the more reasonable when juxtaposed against either measure of the cost-of-living (i.e., the CPI-W or the CPI-U). According to the Village, for fiscal 1990-1991 bargaining unit members at Step G would receive the last half of the 2 1.2% November 1, 1989, adjustment (i.e., May, 1990 through October, 1990), the first half of the 1% November 1, 1990 adjustment (i.e., November, 1990 through April, 1991), and the 4% increase effective May 1, 1990. The total effective percentage increase is 5.75%. Moreover, the Arbitrator notes from Village Exhibit 14 that approximately 83% of the bargaining unit is at Step G currently. It is also important to recognize that no matter what the ultimate mix of the parties' respective final offers the Arbitrator selects for inclusion in their contract, Arlington Heights Firefighters will receive more in monetary benefits than reflected in salary increases alone. When benefit costs are added, the percentage increase in total package cost is undoubtedly higher than cost-of-living increases as measured by the CPI-U or the CPI-W.

A third factor supporting adoption of the Village's salary offer concerns its record of attracting and retaining employees in the fire protection service. If wages were too low in relation to comparable jurisdictions, the Village of Arlington Heights would likely have experienced past difficulty in recruiting qualified applicants and encouraging those hired to stay. According to Village Exhibit 28, nearly 20% (15 out of 82) of the firefighters in the bargaining unit left full-time positions with other fire departments to join the the Arlington Heights Fire Department. Village Exhibit 27 makes it abundantly clear that the Village enjoys an application rate well beyond what it needs to fill its few vacancies. And Village Exhibit 30 shows that once hired, Arlington Heights Firefighters do not voluntarily leave the Village's employ. For the

ten years between 1980 and 1990, for example, there were only two voluntary quits: one to take a fire chief position in another community and one to start his own business. Overall, these statistics support the conclusion that the employment package received by Arlington Heights Firefighters (i.e., their wages, hours and working conditions) has been generally competitive with those offered in comparable jurisdictions. Catch-up is not warranted.

To ensure that adoption of the Village's final salary offer would not cause its Firefighters to lose ground in the comparables pool, the Arbitrator compared their 1989-1990 rankings at the top step for each occupational category [Firefighter I, Firefighter II (Engineer), Firefighter II(P) (Paramedic), and Fire Lieutenant] with what their rankings would be under both the Village and the Union final offers. The results of that comparison are contained in Table 4:

TABLE 4
TOP STEP SALARY RANKINGS OF ARLINGTON HEIGHTS
FIREFIGHTERS WITHIN THE COMPARABLES POOL

<u>Fiscal Year</u>	<u>FF. I</u>	<u>FF. II (Engineer)</u>	<u>FF. II (P) (Paramedic)</u>	<u>Lieutenant</u>
1989-1990 (negotiated)	8/16	2/16	3/16	11/16
1990-1991 (Village F.O.)	6/16	2/16	3/16	10/16
1990-1991 (Union F.O.)	5/16	2/16	3/16	9/16

Source: Union Exhibits 13, 15, 17 & 19; Village Revised Exhibits 34, 37, 41 & 44.

The table reveals that Arlington Heights Firefighters would not fall behind in the rankings under the Village's salary offer. In fact, for the Firefighter I and Lieutenant categories they actually experience gains. Moreover, it appears from the

Table that the Union had the same occupational categories in mind when it contemplated improvements in the rankings. That fact enhances the Arbitrator's conclusion that the Village's final salary offer is reasonably close to what the parties would have arrived at had the 1990-1991 salary increases been negotiated.

Fifth, the Village's salary offer for 1990-1991 (5.04%) is reasonable when viewed in strict percentage terms. The average salary increase among the comparables for the Firefighter I classification or its equivalent is 5.01%.⁷ For Engineers it is 5.00%; for Paramedics it is 4.99%; and the relevant figure for Lieutenants is 5.29%.⁸

For fiscal year 1991-1992, the parties' salary offers are relatively close to each other. The Village proposes a 5% across-the-board increase, while the Union's offer is a 5.5% salary increase. At the close of this record, six of the comparable jurisdictions had fixed salary increases for 1991-1992. Table 5 has been constructed for comparison purposes:

⁷ This average and those given for Engineers, Paramedics and Lieutenants in subsequent sentences was adapted from Village Exhibit 45. Its components include the appropriate updated figures from the Rolling Meadows, Schaumburg, Skokie and Wheeling collective bargaining agreements, all of which were not yet settled when the Village constructed its Exhibit 45.

⁸ This figure is skewed upward due to the 8.29% salary increase awarded to Lieutenants in Buffalo Grove. In that jurisdiction Lieutenants are excluded from the bargaining unit. Removing them as a component of the comparables' average reduces the average to 5.08%.

TABLE 5
1991-1992 INCREASES (%) FOR COMPARABLE
COMMUNITIES WITH RATIFIED AGREEMENTS

<u>Community</u>	<u>Firefighter</u>	<u>Engineer</u>	<u>Paramedic</u>	<u>Lieutenant</u>
Des Plaines	5.3	5.0	4.9	n/a
Hoffman Estates	4.5	4.5	4.3	4.5
Rolling Meadows	5.0	5.0	5.0	5.0
Schaumburg	5.0*	--	--	5.0*
Skokie	5.0	5.0	5.0	5.0
Wheeling	5.5	5.5	5.5	5.5
Average	5.05	5.0	4.9	5.0
A.H. Village Offer	5.0	5.0	5.0	5.0
A.H. Union Offer	5.5	5.5	5.5	5.5

* Salary schedule lists increments for Firefighter category only, in gradations according to length of time in the classification.

Source: Applicable collective bargaining agreements.

It is clear from Table 5 that the salary offer of the Village more closely approximates the settlement pattern established for 1991-1992 than does the salary offer of the Union. It is difficult to estimate the salary settlements which will appear across the remaining nine comparable communities. It is true that the settlement pattern highlighted in Table 5 is limited to just over a third of the comparables pool. At the very least, however, it can be said that adoption of the Village's final offer will not materially jeopardize the position Arlington Heights Firefighters have enjoyed among their counterparts across the comparable communities.

The Village includes in its salary offer an increase for fiscal year 1992-1993 of 5% across all categories. The Union's salary offer does not include an increase for that period, since it proposes the Agreement should expire at the end of fiscal 1991-1992. Discussion of the parties' final offers on duration of the Agreement is left to a subsequent section of this Report. The reasonableness of the Village's 1992-1993 salary offer will be evaluated in that section.

ECONOMIC ISSUE NO. 2

Lieutenant Salary Adjustment

Village Final Offer. The Village's final offer on this issue is that there be no additional salary adjustment for fire lieutenants.

Union Final Offer. The Union's final offer is quoted below:

Fire lieutenant salaries to be adjusted effective May 1, 1990, by advancing all lieutenants from pay grade 25 to pay grade 26.

Discussion. The Union's final offer would provide Fire Lieutenants with an additional 5% salary increase above and beyond the increases awarded under Economic Issue No. 1. According to the Union, there has been a historical wage relationship for about nine years between Police Sergeants and Fire Lieutenants. It points to the respective job descriptions for these two positions (Union Exhibit 113) to argue that both include supervisory and specialized work. It was not until November 20, 1989, the Union argues, that the Village advanced Police Sergeants to salary level 26 and left Fire Lieutenants at salary level 25. Moreover, the Union points out, an independent salary study (Yarger & Associates) commissioned by the Village itself in 1985 recommended placement of Police Sergeants and Fire Lieutenants on exactly the same salary level. Finally, the Union argues that Fire Lieutenants in Arlington Heights are not paid at

rates competitive with those received by their counterparts in comparable jurisdictions.

The Village believes there was substantial and compelling reason for moving Police Sergeants to salary level 26 and leaving Fire Lieutenants at salary level 25. According to Personnel Director Ferrel, the supervisory responsibilities of the former increased significantly in the late 1980's. For example, since Police Sergeants are not included in the bargaining unit, they must respond to grievances. They are, in effect, the first level of management in the Police Department. Ferrel testified that there were no corresponding changes in Fire Lieutenants' duties. The Village also feels its offer on this issue would maintain the relationship among the comparables that the parties themselves negotiated for fiscal 1989-1990. Furthermore, the Village adds, Fire Lieutenants in Arlington Heights are already the beneficiaries of an agreed to new benefit --- premium pay when serving in acting capacity as a shift commander.

In view of the longstanding parity between Arlington Heights Police Sergeants and Fire Lieutenants on this issue, the Arbitrator looks to the Village for compelling reason to change it. The essence of Personnel Director Ferrel's testimony was that since 1985 Police Sergeants stopped writing tickets and began serving in more of a supervisory capacity than they had previously. He also testified that the duties of a Fire Lieutenant have not changed since that time. Thorough review of the current job descriptions for both classifications (Union Exhibit 113), however, suggests that the two jobs are still quite similar. Both Police Sergeants and Fire Lieutenants direct the work of others, command a facility on an assigned shift, use initiative and seasoned judgment, train others, prepare reports, and inspect personnel reporting to them.

The Arbitrator also notes that Personnel Director Ferrel was unsure about many of the exact duties of Fire Lieutenants and Police Sergeants. The record does not indicate that he has ever held either position. It therefore seems that the job

descriptions themselves deserve more weight than his testimony on any points where the two might be in conflict with each other.

Another consideration favoring the Union's final offer on this issue is the so-called "Yarger Study," wherein an independent consultant hired by the Village concluded that Police Sergeants and Fire Lieutenants should be paid at the same level. It is true that the study was conducted prior to the alleged changes in Police Sergeant duties, but as noted above, I am not convinced that those duties changed all that substantially between 1985 and 1990. The significant responsibility level difference between Police Sergeants and Fire Lieutenants seems to be that the former are not in a bargaining unit and the latter are not. On balance, the record has not convinced me that there is now enough of a difference between the two jobs to justify interruption of the longstanding pay parity between them.

Moreover, the Arbitrator notes from Table 4 that Arlington Heights Fire Lieutenants are paid at the low end of the range among the comparables. For 1989-1990 they were eleventh out of sixteen. While it is true that the Union agreed during negotiations to the 1989-1990 salary, it should be remembered that the Union did so knowing it still had the possibility of attaining for Fire Lieutenants a May 1, 1990, adjustment to pay level 26. Finally, the premium pay they will receive when acting as a shift commander is designed to compensate them for the higher responsibility level associated with that position. The only way they can earn that premium is by performing duties not ordinarily performed by Fire Lieutenants. Accordingly, the Arbitrator is not persuaded by that negotiated premium that Fire Lieutenants have already been the beneficiary of sufficient economic benefits.

On balance, the Arbitrator concludes from the record that the Union's final offer on a salary adjustment for Fire Lieutenants is the more reasonable. It is more reflective of the historical parity between Police Sergeants and Fire Lieutenants, and I find no compelling reason to alter that relationship through the arbitration process.

ECONOMIC ISSUE NO. 3

Firefighter II (P) (Paramedic) Salary Adjustment

Village Final Offer. The Village believes there is no justification for a special adjustment in Paramedic salaries. Its final offer is quoted here:

In view of the salary adjustments already agreed to for the 1987-1988 and 1988-1989 fiscal years and the salary adjustments provided for Fire Fighter Paramedics under issue no. 1, . . . the Village's final offer is that there be no additional salary adjustment for Fire Fighter Paramedics.

Union Final Offer. The Union's final offer on this issue is as follows:

Fire Fighters II (P) (Paramedic) salaries to be adjusted by increasing from pay grade 23(a) to 24.

Discussion. The Union notes that Paramedics have an ongoing commitment to treat life threatening medical emergencies, and that they function independently when doing so. It also relies on the Yarger Study recommendation to advance Paramedics to salary grade 24, arguing that doing so would be in the best interest of harmonious internal wage relationships.

The Village argues that its salary offer (already adopted by the Arbitrator) would maintain Arlington Heights Paramedics in third place among the comparable communities. Moreover, the Village notes, the salary differential between top step firefighters and top step paramedics in Arlington Heights (i.e., the Paramedic stipend) is 39% higher than the average paramedic stipend across the comparables pool. The comparable figure for 1990-1991 is 41%.

The Arbitrator is not convinced from the record that a salary adjustment for Paramedics is justified. Clearly, Arlington Heights Paramedic salaries fare very well when compared against those being paid in comparable communities. And even if an adjustment were appropriate, one of the magnitude sought by the Union would be

beyond the bounds of reasonableness. The Union's final offer would increase the Paramedic stipend for 1990-1991 by \$963, a leap of over 34%.

The Union's point about the Yarger Study is well-taken. Of course, as the Village correctly points out, the Study contained only recommendations. Its results were not binding on the Village. And when considered against the backdrop of Paramedic salaries in comparable communities, the Yarger study recommendations are not sufficient to convince me of the need for a salary adjustment in Arlington Heights.

It is always difficult to evaluate internal consistency vs. external comparison when making salary adjustments. The result of allowing first one, then the other to be controlling would be a continuously rising salary spiral. In the instant case it is obvious from the record that the Village is paying a competitive salary to its Paramedics. In fact, it is more than competitive --- they are near the top of the heap. In view of that, and since the record has not convinced me that they are significantly underpaid within the Village's internal salary structure, I find that the Village's final offer on this issue is the more reasonable.

ECONOMIC ISSUE NO. 4

Step Increments (Article XI, Section 2)

Village Final Offer. The Village final offer on Step Increments is quoted below:

Advancement from the Probationary Step to Step A may be granted after six (6) months. Advancement from Step A to Step B, from Step B to Step C, from Step C to Step D, and from Step D to Step E shall be at six (6) month intervals; advancement from Step E to Step F and from Step F to Step G shall be after one year at Step E and Step F, respectively. To be eligible for step advancement the employee must meet departmental standards during the prior evaluation period. If a non-probationary employee alleges that he has been arbitrarily and unreasonably denied a step advancement, such employee may file a grievance in accordance with the grievance and arbitration procedure set forth in this Agreement.

Union Final Offer. The Union's final offer on the issue of Step Increases is quoted here:

Advancement from the Probationary Step to Step A shall occur upon six months of employment. Advancement from Step A to Step B shall be upon successful completion of the probationary period. Advancement from Step B to Step C, from Step C to Step D, and from Step D to Step E shall be at six month intervals; advancement from Step E or higher to the next higher step shall be at yearly intervals. To be eligible for step advancement beyond Step A, the employee must meet departmental standards during the prior evaluation period, provided that if an employee is denied a step increase based on a performance evaluation, such evaluation shall be subject to the grievance procedure in Article VI.

Discussion. The parties' offers on this issue are similar to each other with regard to the time employees spend at the various steps. Both call for salary increases at six month intervals for Step A to Step E and annually for Step F and Step G. But the Union's final offer calls for automatic advancement from the probationary rate to Step A "upon six months of employment." The Employer's final offer indicates that advancement to Step A "may" be granted after six months at the probationary step. According to the uncontroverted testimony of Personnel Director Ferrel, the final offer of the Village reflects the Village's "present practice." Nothing in the record has convinced me of the need to deviate from this practice. Besides, the probationary period is generally the biggest test for employees. It makes little sense to advance them from that step to the next automatically, while at the same time making subsequent step advancement contingent upon acceptable performance in the prior evaluation period.

A second difference between the parties' final offers on step increments concerns the reasons for which an employee may grieve over denial of a step increase at the contractually specified time. Under the Village's final offer the grievance must be based upon an allegation that the denial was arbitrary and unreasonable. The Union believes these standards are too narrow. The Arbitrator disagrees. Under the "arbitrary and unreasonable" umbrella the Union could question the reasons for which

the step increment was denied (i.e., allege the denial was arbitrary). If those reasons were not found to be related to safe, orderly and/or efficient operation of the Department, they would likely be declared arbitrary. The Union could also question whether the Department's evaluation of the employee against those standards was accurate (i.e., did the Department reach reasonable conclusions about the employee?). In my view, therefore, the "arbitrary and unreasonable" language included in the Village's final offer gives the Union broad latitude to question through the grievance procedure any step increment denial.

There is another reason for favoring the Village's final offer on this issue. It is the management of the Fire Department, not the employees or the Union, that is responsible for ensuring that its important mission is fulfilled. In my view granting an automatic step increase from the probationary period would take from management one of the incentives it can use (and has historically used) to help shape employee behavior. To the extent that the management of any organization loses its ability to motivate employees to perform appropriately, its ability to fulfill its mission is eroded. Moreover, the Arbitrator notes that there is no evidence in this record to suggest that Department management has ever abused its authority in this regard.

Nor am I convinced from a review of collective bargaining agreements among the comparable jurisdictions that there is compelling need to deviate from the Department's present practice of evaluating whether a probationary employee is qualified to move to Step A. None of those agreements provide for automatic advancement from the probationary step.

In fact, when compared against the probationary period clauses in those collective bargaining agreements, the Village's final offer seems very favorable to employees. Probationary employees in the Arlington Heights Fire Department have now, and will continue to have under the Village's final offer, the shortest possible

period among the comparables. Some of them have probationary periods as long as 24 months, and 12-month probationary periods are not uncommon.

The Arbitrator has concluded from the foregoing analysis that the Village's final offer on step increases is the more reasonable.

ECONOMIC ISSUE NO. 5

Retroactivity of Wages, Including Overtime Hours

Village Final Offer. Here is the Village's final offer on this issue:

Retroactivity -- The salary increases effective 5/1/88, 11/1/88, 5/1/89, 11/1/89, 5/1/90, and 11/1/90 (if necessary) shall be retroactive for employees still on the active payroll when this Agreement is ratified by both parties based on all straight time hours worked by such employees during the period of time in question, including any hours of paid leave, provided that any employee who was eligible for retirement and retired after May 1, 1987, but before the date this Agreement was ratified shall also be eligible to receive retroactive pay based on all straight time hours worked by any such employee, including any hours of paid leave, between May 1, 1987 and the date of retirement.

Union Final Offer. The Union's final offer on retroactivity is as follows:

Firefighters' Salaries for All Categories to be increased as follows:

Effective May 1, 1988 - increase by 4 percent.

Effective November 1, 1988 - add G step to the pay schedule for employees with 4-1/2 years of service as of November 1, 1988. This step (G) to receive 2.5 per cent more in annual salary than F. step.

Effective May 1, 1989 - increase by 4 per cent; November 1, 1989 G step employees increase by 2.5 percent.

With the permission of the Village, the Union notified the Arbitrator in a letter dated November 21, 1990, of the following amendment to its final offer on retroactivity:

Point 5 of the economic issues is amended by providing that employees who were eligible for retirement and retired after May 1, 1987 but before the date of ratification of the collective bargaining agreement are to receive retroactive wages including overtime recalculated at the rate of time and one-half for all overtime hours worked between May 1, 1987 and the date of their retirement. The overtime hours are to be calculated on the basis of the overtime system in effect at the time the hours were worked.

Discussion. The parties agree on the dates to which the various salary increases should be retroactive. Their only disagreement on the retroactivity issue is whether retroactive salary payments should be made for straight time only, as the Village proposes, or should include overtime hours as well -- the Union's proposal.

The Village believes retroactivity payments should not include overtime because, in its view, the Union is responsible for the lengthy and intense negotiations. There were 49 bargaining sessions over a protracted 27-month period. The Village asserts that the Union was unduly insistent on contractual detail, and cites in support of its assertion the fact that for just the issues agreed upon prior to interest arbitration the language covers 95 pages, not including the parties' 11-page Alternative Impasse Resolution Procedure. Moreover, the Village argues, adoption of the Union's final offer on retroactivity would require going back and recomputing each and every overtime hour worked by firefighters between May 1, 1988, and the date of this Award.

The Union argues that overtime hours are an integral component of wage policy, and that denial of its request for overtime recalculation will essentially reward the Employer and punish bargaining unit members for negotiations delays. It also notes that overtime hours were included in the retroactivity increases for Elgin, Lombard and Skokie.

My general view about assigning the blame for bargaining table delays to one party and not the other has already been discussed in this report. Let me turn now to the specifics of this case. The parties' respective advocates are seasoned negotiators. Both of them have sound reputations in the labor/management arena. While their personal styles may differ, I am not convinced from the record before me that either of the advocates (or either party, for that matter) is personally responsible for the protracted nature of these negotiations. It takes two to tango. In this case it seems to have been a marathon dance. Both parties have contributed to its length and

complexity, and I am unable to determine from the vast array of information before me whether one or the other took the lead.

The comparable jurisdictions are mixed on this issue. Elgin, Skokie and Lombard included overtime hours in their respective retroactivity increases. Overtime hours were also included in the Arlington Heights FOP retroactivity payments. In contrast, Wheeling and the Wheeling Firefighters agreed that their retroactive wage increases would not include overtime hours. An even more restrictive result was reached in Hoffman Estates, where the IAFF agreed that retroactivity would be computed on the basis of 75% of the straight-time hourly wage difference. These last two examples involved retroactivity going back roughly two years.

As noted, the record has not convinced me that the Union is exclusively responsible for the bargaining table delays in this case. Thus, I am not willing to decide the retroactivity issue against it simply due to the fact that the parties spent over two years at the bargaining table. Using that kind of reasoning for denying overtime retroactivity would punish the Union and bargaining unit members for something I am not convinced they did either intentionally or irresponsibly.

For fiscal years 1988-1989 and 1989-1990 the parties themselves have already established the value of Firefighters' labor on a straight-time basis; the Arbitrator has established it for subsequent periods. And comparison of the parties' respective offers on overtime pay (Economic Issue No. 7) reveals the parties' agreement that an overtime hour is worth one and-one-half times a straight-time hour. The premium is added for overtime work because it takes extra effort. The presumption is that an employee is probably tired from having just worked his normal straight-time hours and would probably like to go home.

The Firefighters who would receive the benefit of recalculated overtime payments have already worked those overtime hours. They were paid at 1 1/2 times their straight-time rate for such work. But now the parties have agreed (or the

Arbitrator has decreed) that the work they performed on a straight time basis is worth more than what they were paid for it. That is, they were paid at an outdated rate. It therefore seems reasonable to conclude that the rates at which they were paid for their overtime work were also outdated. Those Firefighters who worked overtime during the relevant period should be paid at the appropriate rate --- one and one-half times the newly established straight-time rates. The Arbitrator therefore favors adoption of the Union's final offer on the issue of retroactivity.

ECONOMIC ISSUE NO. 6

Sick Leave. This issue was resolved by the parties themselves.

ECONOMIC ISSUE NO. 7

Overtime Pay (Article VIII, Section 5)

Both parties modified their original final offers on the overtime pay issue and notified the Arbitrator on November 21, 1990, of their mutual agreement to do so. The final offers quoted here have been revised appropriately.

Village Final Offer. The Village's final offer on overtime pay is quoted below:

Section 5. Overtime Pay. Employees assigned to 24-hour shifts shall be paid one and one-half times their regular hourly rate of pay for all hours worked in excess of 204 hours in their 27-day work cycle or in excess of 24 hours in a work day. Employees assigned to 8-hour days shall be paid one and one-half times their regular hourly rate of pay for all hours worked in excess of 160 hours in their 28-day cycle or in excess of 8 hours in work day.

An employee's regular hourly rate of pay shall be based upon a 49.8 hour work week for 24-hour shift personnel and a 40 hour work week for 8-hour personnel and shall be determined by dividing the employee's annual salary by 2598 for 24-hour shift personnel and by 2080 for 8-hour personnel.

In accordance with the policy and practice in effect prior to the effective date of this Agreement, the provisions of this section shall not be applicable to special details (e.g., race track and fire academy) which are compensated at an hourly rate established by the Village.

Union Final Offer. The Union's final offer on overtime pay is as follows:

An employee's regular hourly rate of pay shall be calculated by dividing the employee's annual salary by the total number of hours said employee is scheduled to work in that year. All hours of work shall be considered as consecutive unless there is a 12-hour period in which the employee is off duty.

Employees assigned to 24-hour shifts shall be paid 1 and 1/2 times their regular hourly rate of pay for all hours worked:

- 1) In excess of 204 hours in their 27-day work cycle,
- 2) in excess of 24 hours in a work day,
- 3) in excess of 8 hours when employee is performing non-fire suppression duty overtime (e.g., training division, fire prevention bureau, medical physicals, etc.).

Employees regularly assigned to 8-hour days shall be paid 1 and 1/2 times their regular hourly rate of pay for all hours worked:

- 1) in excess of 160 hours in their 28-day cycle;
- 2) in excess of 8 hours in a work day.

Discussion. The Village maintains that its final offer on this issue would "continue the present overtime pay practices," while the Union's would "dramatically change how detail work offered by the Fire Department, primarily at the Fire Academy, is compensated." (Village Posthearing Brief, p. 71). The Union claims that the "Village's proposal to change the overtime system is an attempt to break a long standing practice of paying time and one-half the straight time hourly wage rate as premium pay for all hours worked outside the normal work shifts." (Union Posthearing Brief, p. 20).

These conflicting arguments call into question the exact nature of the current overtime pay practice. As it stands now, a 24-hour employee who gets off shift and goes

directly to Fire Academy detail is not paid on an overtime basis; under the Union's final offer he would be entitled to 1 1/2 times his straight time rate because 12 hours had not elapsed between the time he went off shift from the station and the time he reported to the Fire Academy. Current overtime pay policy also provides 1 1/2 times the straight time rate for a 24-hour employee held over, hired back or called back. According to the Village, the distinction between such work and, say, the Fire Academy detail is that the latter is voluntary and the former can be mandatory.

Deputy Chief Kramer presented extensive testimony about the Fire Academy. The accuracy of his testimony is beyond question. Kramer has been involved with the Fire Academy since its first class in 1972, and has worked there in all ranks from Instructor to Director. He has been involved in program design and delivery. According to Kramer, the Arlington Heights Fire Academy is somewhat of a Mecca for firefighters across the State of Illinois. Over 100 fire departments in Illinois send their people to Arlington Heights for training. The Fire Academy offers several programs, including the State certified firefighter course, an apparatus engineer certification program, a high-rise rescue program, and a vehicle rescue program. Kramer explained that 90% of the Academy's instructors are Arlington Heights Fire Department employees and all Academy instructors are paid \$16 per hour regardless of their respective ranks. He noted that since 1972 all instructors at the Academy have received a uniform amount per hour. Kramer also opined that the Union's final offer would so dramatically increase the cost of running the Academy (i.e., an increase of about \$8.50 per hour per instructor) that it would just about put it out of business. He supported that speculation by suggesting that other departments would reconsider sending personnel to Arlington Heights for training because there would be less expensive training programs available at the University of Illinois and the Oak Lawn Fire Department.

In contrast to the Union's final offer here, none of the comparable jurisdictions have an overtime pay policy providing that employees must be paid at time and one-half for voluntary special detail assignments begun within 12 hours of the employee completing a 24-hour shift. The internal comparability factor is also supportive of the Village's overtime pay position. That is, the Arlington Heights Police Department pays its employees at a set hourly rate for detail assignments.

But the Union also argues that due to the parties' agreement to schedule every 9th shift as an unpaid day off (Hanson day), as opposed to the former scheduling of every 10th shift for such purpose, Arlington Heights firefighters now work fewer hours each month and therefore have a reduced capacity to earn overtime pay. And it notes that the current practice yields for firefighters a minimum of 12 hours' overtime pay more than they would receive under the Village's final offer.⁹

The Arbitrator does not agree with the Union's assessment of the Village's final offer. As noted, both parties submitted revised final offers on this issue as permitted by their negotiated Alternative Impasse Resolution Procedure. And the revision to the Village's final offer was significant. Its original final offer did not provide overtime pay for hours worked in excess of 24 hours in a work day (for 24-hour employees) or in excess of 8 hours in a work day (for 8-hour employees). That offer did indeed depart from the current practice. But the Village's revised final offer on overtime pay seems quite consistent with the current practice.

With regard to the Fire Academy detail, it is now and has always been voluntary. There is no evidence that the Department has ever had difficulty attracting its employees to volunteer for such duty, even though it has been paid at a fixed rate (i.e.,

⁹ Currently, all hours worked after each normal shift and before the start of another (with the exception of special details) are paid at the 1 1/2 rate, so that employees do receive overtime pay for some hours even before they have worked 204 hours in a 27-day cycle. The Union argues that the Village offer would deprive employees of 1 1/2 pay for overtime hours worked between 192 and 204 within the 27-day cycle.

not 1 1/2 of the person's straight time rate). Thus, there does not appear to be compelling need to change the current practice.

On balance, the record has persuaded me that the Village's final offer on this issue more closely approximates the current overtime pay practice in Arlington Heights. It is also supported by both the internal and external comparables. Moreover, the Union's arguments have not convinced me of a compelling need to depart from the current practice of paying a flat rate for special detail assignments. Nor am I convinced from the Union's arguments that the Village's final offer on this issue is illegal.

ECONOMIC ISSUE NO. 8

Pay for EMT-A and EMT-P Training (Article XVII (A), Section 7)

Paramedics in the State of Illinois are require to obtain and maintain State certification. The Village contracts with Northwest Community Hospital to send a representative to an Arlington Heights fire station and provide recertification training to paramedics. Those attending such training during their normal duty hours are paid for the time; those attending during off-duty hours are not. The only aspect of this issue still in dispute is whether paramedics should be paid for time spent in recertification training during off-duty hours. Thus, the Village's final offer implies inclusion of paragraphs one and three of the Union's final offer (i.e., they are already agreed upon).

Village Final Offer. The Village's final offer is quoted below:

In accordance with the current practice, the Department shall provide paramedics annually with a reasonable opportunity to obtain the continuing education hours needed for recertification during their regularly scheduled hours of work. If despite the provisions of this Article time is spent outside an employee's regularly scheduled hours

(sic) work to obtain/maintain EMT-A or EMT-P status, such time shall not be considered compensable time for any purpose.

Union Final Offer. Here is the Union's final offer on this issue:

Section 7. Arrangements for EMT-A and EMT-P Training. The Village shall made (sic) appropriate arrangements for employees to undertake the necessary courses of study, practical experience, and other prerequisites to obtaining and/or maintaining certification, including paying the direct cost for the training in accordance with the present practice, except as provided in Section 2 above concerning retraining.

In accordance with current practice, the Department shall provide paramedics annually with a reasonable opportunity to obtain the continuing education hours needed for recertification during their regularly scheduled hours of work. If despite the provisions of this Article time is spent outside of an employee's regularly scheduled hours of work to obtain/maintain EMT-A or EMT-P status, such time shall be considered compensable time for any purpose.

Employees may be temporarily assigned to a 40 hour work week in order to be trained as an EMT-A or EMT-P, provided such assignment shall not reduce the employee's base salary.

Discussion. The Village's May 1, 1986, Personnel Rules and Regulations provide for time and one-half pay for fire personnel required to attend special training in order to maintain necessary certification. However, Deputy Chief Kramer testified that the policy changed when later in 1986 the Village upgraded its paramedics from salary range 23 to salary range 23A. That upgrade increased paramedics' pay by 2 1/2%, and the Village maintains it was done in part to compensate them for no longer being paid at the time and one-half rate for recertification training done off duty. Thus, since sometime late in 1986 or so the practice has been parallel to the Village's final offer here. Moreover, it does not appear from the record that the Village has taken advantage of the situation. That is, it has taken reasonable measures to assure that paramedics do not often have to obtain recertification training on their own time¹⁰.

¹⁰ Even Union President Joe Clarke testified to that effect.

In fact, Kramer testified that concomitant with the 2 1/2% upgrade the Village intensified its efforts in that regard.

Furthermore, I do not agree with the Union in its legal assessment of the Village's final offer. According to the Union, the training time is not covered by the exception in Department of Labor regulations (29 D.F.R. § 553.226) because the paramedic certification is required by the Village. As noted earlier, however, paramedic certification and recertification is also required by the State of Illinois. Quoting from the applicable United States Department of Labor Regulations,

§ 553.226 Training Time.

(2) Attendance outside regular working hours at specialized or follow-up training, which is required for certification of a governmental jurisdiction by law of a higher level of government (e.g., where a State or county law imposes a training obligation on city employees), does not constitute compensable hours of work.

(3) Time spent in the training described in .. (2) above is not compensable, even if all or part of the costs of the training is borne by the employer.

Of course, the proper interpretation of the Fair Labor Standards Act is not the primary function of the Arbitrator here. I am obliged, however, to consider the lawful authority of the Employer in determining which of the parties' final offers is the more appropriate. In my view adoption of the Village's final offer on this issue would not require the Village to exceed its lawful authority.

Finally, the Union argues that some of the comparable jurisdictions provide payment at the time and one-half rate for special training or mandatory training. It cites as examples Des Plaines, Lombard, Northbrook, Hoffman Estates, Park Ridge and Wheeling. But there is no evidence in the record that the six jurisdictions noted above implemented a salary upgrade for paramedics similar to that instituted by the Village of Arlington Heights in 1986. Moreover, there is not sufficient evidence in the record to reflect the volume of off-duty hours paramedics in those jurisdictions spend in

recertification training as compared to the amount of off-duty time spent by Arlington Heights paramedics in the same activity. Accordingly, I am not convinced by the limited evidence from the comparables that there is compelling reason to depart from the Village's current practice.

ECONOMIC ISSUE NO. 9

Cost of Medical Treatment (Article XVII [A], Section 9)

The parties have already reached agreement on the bulk of this Section. The only issue yet in dispute concerns providing emergency care or life support services to a patient suspected of having, or diagnosed as having, a dangerous exposure to hazardous materials, a communicable disease, or a serious infectious disease. The parties' disagreement concerns payment of related expenses not covered by the employee's medical insurance in connection with his or his dependents' exposure to such patients.

Village Final Offer. The final offer of the Village on this issue is quoted below:

Coverage for the costs and expenses for treatment need as a result of such exposure shall be in accordance with either Worker's Compensation or the medical plan selected by the employee pursuant to Article XII, Section 1, whichever is applicable.

Union Final Offer. Here is the Union's final offer:

Coverage for the costs and expenses for treatment need as a result of such exposure shall be in accordance with either Worker's Compensation or the medical plan selected by the employee pursuant to Article XII, Section 1, whichever is applicable. The Village shall assume all costs and expenses normally borne by the employee under the employee's medical insurance plan for any treatment to the employee or dependent needed as a result of such exposure.

Discussion. The Village's final offer on this issue is fashioned after the related clause in the Skokie contract and similar to the one appearing in the Elgin Agreement. The Union's final offer is similar to the Northbrook firefighter

Agreement. None of the other firefighter collective bargaining agreements across the comparables pool mention this issue.

The Union's concern over this issue is understandable. As it suggests in its Posthearing Brief, Paramedics at an accident scene have no way of knowing if victims are carrying communicable diseases. At worst, a Paramedic could be exposed to the blood of an HIV-Positive victim and ultimately contract AIDS. The impact of that fatal disease upon the Paramedic himself, and upon his spouse and family, is frightening to say the least.

Given the paucity of data from the comparable communities on this issue, however, the Arbitrator would have to break new ground in order to find for the Union. To be sure, the Union's concerns about potential problems in this important area are valid, but there is no evidence in this record to convince me that it is appropriate to break through interest arbitration an almost universal pattern across the comparable communities. Then too, the Village's final offer parallels current practice in Arlington Heights, and absent compelling circumstances any departure from that practice should be made by the parties themselves at the bargaining table.

ECONOMIC ISSUE NO. 10

Comprehensive Medical Program (Article XVII, Section 1)

Union Final Offer. The Union's final offer on this issue is quoted below:

Comprehensive Medical Program. - No change in current system.

Village Final Offer. The Village submitted the following final offer on this issue:

Section 1. Comprehensive Medical Program. The comprehensive medical program (including two or more HMO alternatives selected by the Village) in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village reserves the right to change insurance carriers, HMO's, benefit levels, or to self-insure as it deems appropriate, as long as the new basic coverage and basic benefits are substantially similar to

those which predated this Agreement, provided that during the term of this Agreement the deductibles and co-insurance features shall not be changed absent mutual agreement by both parties. Employees may elect single or dependent coverage in one of the health plans offered by the Village during the enrollment period established by the Village. During the term of this Agreement, the Village will contribute 100% of the designated premium cost of participation in the plan for both single and family coverage; provided that the maximum amount that the Village shall pay towards the cost shall be \$140.00 per month for employee coverage and \$325.00 per month for family coverage. For participation in one of the HMO's, the Village will make a contribution equal to 100% of the premium rates of the plan, subject to the foregoing maximums, toward the premiums of the HMO. If the premium for the HMO is greater than the premium designated for the Village plan, employees will be required to pay the difference.

By submitting written notice to the Village Personnel director within two (2) weeks after the parties receive Arbitrator Briggs' interest arbitration award, the Union may, at its sole discretion, opt to substitute the following provisions with respect to the Comprehensive Medical Program in lieu of the foregoing provisions:

Except as provided below, the comprehensive medical program (including two or more HMO alternatives selected by the Village) in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village reserves the right to change insurance carriers, HMO's, benefit levels, or to self-insure as it deems appropriate, as long as the new basic coverage and basic benefits are substantially similar to those which predated this Agreement. Employees may elect appropriate coverage in one of the health plans offered by the Village during the enrollment period established by the Village. Until April 30, 1991, the Village will contribute (1) 100% of the designated premium cost of participation in the plan for both single and family coverage, or (2) an amount equal to 100% of the premium rates of the Village's plan toward the premiums of the HMO (if the premium for the HMO is greater than the premium designated for the Village plan, employees will be required to pay the difference).

Effective May 1, 1991, the following changes shall be implemented:

1. The deductibles shall be increased to \$150/\$450 (\$200/\$600 effective May 1, 1992);
2. Each employee covered by the Village's comprehensive medical program or an HMO shall pay \$8.00 per month through payroll deduction and the Village shall contribute the remaining cost for participation in the Village's plan or an HMO for both single and family coverage; provided that the amount the Village contributes for participation in an HMO shall not exceed the amount the Village contributes for coverage under the Village's plan. If the premium for the HMO is greater

than the combined amount contributed by an employee and the Village for coverage under the Village's plan, the employee shall pay the difference through payroll deduction.

3. A Preferred Provider Option (PPO) dental plan shall be provided with the Village paying the entire cost for single coverage. The employee shall have the option of obtaining dependent or family coverage by paying the applicable monthly premium through payroll deduction.
4. A Section 125 Plan shall be established to permit employees to tax shelter the amounts that they contribute toward the cost of the insurance coverage.

Discussion. The Village notes that the dollar caps in its final offer match the current medical insurance premium amounts for both employee and family coverage. It also feels its final offer gives the Union a lot of latitude in that at its sole discretion the Union can elect an alternative medical insurance arrangement. The Village adds that the first option available to the Union is nearly identical to language at one time tentatively agreed to by the parties themselves. When that tentative agreement was reached, the Village notes, the parties were just not able to agree on the dollar cap amounts. The dollar caps in the Village's final offer are higher than those proposed in its last offer to the Union.

The Union felt that the Village's final offer on this issue was not valid under Sections 10 (a) (4) and (1) of the Illinois Public Labor Relations Act, and it so alleged in an Unfair Labor Practice Charge filed with the Illinois State Labor Relations Board. The Board dismissed the charge (Case No. S-CA-91-7).¹¹ The Arbitrator has also concluded from review of the Village's final offer and the negotiations background behind it that

¹¹ The Board's Executive Director found that the Village was willing to participate in the interest arbitration process and that the cap it proposed in its final offer on a comprehensive medical program was not an attempt to negate, or a refusal to abide by, prior agreements, since the offer allowed the Arbitrator to select the proposal as a package, leaving all other prior agreements in place. The Board did note in its decision, however, that the Union is not prohibited from advancing to the Arbitrator its arguments on the permissibility of the Village's proposal.

it is a valid final offer. I am limited to selection of either the Union's or the Village's final offer on this issue in its entirety. If I select the latter, the Union has sole discretion to opt for one or the other of the two options provided in it. Moreover, if the Union were to choose the first option, the resulting contract language would exactly duplicate what the parties tentatively agreed to when they were at the bargaining table. The only difference would be the dollar cap amounts, on which the parties never agreed anyway.

It is true that the second option embodied in the Village's final offer was never discussed formally between the parties when they were at the bargaining table. The Union argues that, "at no time during negotiations did the parties discuss changes in deductibles and coinsurance features." (Union Posthearing Brief, p. 31). But if the Village's final offer were selected on this issue, the Union could exercise the first option and there would, in fact, be no change in either of those dimensions of the medical insurance plan.

For this particular issue, the internal comparability consideration is strained. Arlington Heights Police Officers have a medical plan like the second option in the Village's final offer. However, if the undersigned were to select that offer it is still possible that the Union could adopt the first option within it. Thus no matter which of the parties prevails on this issue, the Firefighters might have a medical plan not at all comparable to the one in effect for the FOP unit.

Data from the external comparables pool is much more useful, as reflected in Table 6 on the following page:

**TABLE 6
MEDICAL INSURANCE PLAN DATA
ARLINGTON HEIGHTS AND COMPARABLE COMMUNITIES**

<u>Community</u>	<u>Employer Paid?</u>	<u>\$ Cap?</u>	<u>Deductibles</u>
Buffalo Grove	yes	n/a	\$150/300
Des Plaines	yes	no	\$100/300
Elgin	yes	no	\$200/600
Elk Grove Village	yes	no	\$200/600
Elmhurst	yes	no	\$200/400
Hoffman Estates	yes	no	\$150/450
Lombard	no	no	\$100/300
Mt. Prospect	no	yes	\$100/300
Northbrook	yes	no	\$200/400
Palatine	yes	n/a	\$100/300
Park Ridge	no	no	\$150/450
Rolling Meadows	yes	no	\$200/400
Schaumburg	no	no	\$100/300
Skokie	no	no***	\$100/300
Wheeling	yes	no	\$100/300
A/H Village Offer	yes	yes	\$100/300*
A/H Union Offer	yes	no	\$100/300

Source: Village Exhibits 55, 56; Union Exhibit 44; Collective Bargaining Agreements.

* = or \$150/450 effective May 1, 1991, and \$200/600, effective May 1, 1992, depending on which of the two options the Union selected under the Village's two-option offer.

*** = Employer pays 88% of premium.

It is clearly evident from Table 6 that the external comparables do not support the Village's proposed move to dollar caps on its contribution to medical insurance premiums. The Arbitrator notes that the caps in the Village's offer (\$140 for employee coverage and \$325 for employee/dependent coverage) would not result in employee contributions as long as the current premium remains constant. But if and when the premium were to rise, employees would either have to begin paying a portion of the medical insurance premiums or negotiate an increase in the caps. Either way, the change from the status quo would be significant.

Consideration of comprehensive medical plans is one of the most complex tasks interest arbitrators face. Besides such characteristics as deductibles, joint contributions, and HMO options, comprehensive medical plans have levels and ranges of coverage, dollar caps on payment for certain maladies, and a host of additional differences, many of which are not reflected in the record before me. Given that complexity, and since the comparables do not provide compelling support for the Village's proposed change of the status quo, the Arbitrator has determined that the Union's final offer on this issue is the more reasonable. This conclusion is reached in full appreciation for the fact that the Village's health care costs have risen dramatically over the past decade (Village Exhibit 54 is illustrative). But such costs have undoubtedly risen for comparable jurisdictions as well, and the overwhelming majority of them have not placed dollar caps on their premium contributions.

ECONOMIC ISSUE NO. 11

Life Insurance

The parties essentially are in agreement on this issue. The only difference between them is the phrase, "Subject to a \$50,000 maximum" in the Village's final offer. Without that phrase, the Life Insurance provision reads, "The Village will provide during the term of this Agreement, at no cost to the employee, term life insurance in the amount of the employee's annual salary."

The Village does not dispute the fact that the life insurance language initialed by the parties during negotiations does not include any language with respect to a \$50,000 cap. According to the Village's chief negotiator, it was not until just prior to the inception of the interest arbitration proceedings that the Village realized the language it initialed did not track the Village policy of providing life insurance only up to a maximum of \$50,000. The Village feels its tentative agreement with the Union implicitly included the \$50,000 cap, and notes that there is no evidence in the record to suggest that the parties in reaching that agreement did anything other than incorporate Village term life insurance policy into the IAFF Agreement. Moreover, the Village adds, evidence from the comparable jurisdictions overwhelmingly supports the inclusion of a cap on the life insurance benefit.

The Union argues that the Village's proposed \$50,000 cap was never discussed during the bargaining which led to the parties' agreement on life insurance. Essentially, then, the Union feels the life insurance issue has been resolved.

Discussion. Within the grand array of issues disputed here, life insurance is minor indeed. No employee in the bargaining unit has a salary exceeding the cap proposed by the Village, so adoption of the Union's position would not result in any incremental cost to the Village during the term of the Agreement. Moreover, I am not convinced from the record that when they reached tentative agreement on the life

insurance issue both parties understood that they were merely adopting the Village's general life insurance posture. For those two reasons, and to maintain the integrity of the bargain reached by the parties during negotiations, the Arbitrator adopts the Union's position on the life insurance issue. That is, I conclude that the issue has been resolved by the parties themselves and, accordingly, I have no jurisdiction over it.

ECONOMIC ISSUE NO. 12

Dental Insurance

The Union has withdrawn its proposal on dental insurance; the Village's final offer on dental insurance is contained in its final offer on the comprehensive medical program. Having already rejected the Village's final offer on that issue, the Arbitrator finds no need to discuss the dental insurance issue.

ECONOMIC ISSUE NO. 13

Tuition Reimbursement and Educational Incentives

This issue has been resolved between the parties themselves.

ECONOMIC ISSUE NO. 14

Disability Pay

Village Final Offer. The Village's final offer on Disability Pay is quoted below:

Section 5. Disability Benefits. Employees who are injured on the job and who are eligible for Worker's Compensation will receive the following supplemental disability benefits:

1. For the first year from the date of injury, an employee will receive 85% of gross wages rather than the 66-2/3% of gross wages as provided by law, i.e., in addition to the 66 2/3% provided by law, the Village will add an additional

18-1/3% of gross wages to make a total of 85% of gross wages. For the second year from the date of the injury, an employee will receive 66-2/3% of gross wages as provided by law.

2. If an employee suffers a serious on-the-job injury which requires hospitalization, the employee will receive 100% of gross wages (which includes the 66-2/3% provided by law) for up to one month for each full week that the employee is hospitalized.
3. Notwithstanding any other provision in this Agreement, no sick leave, vacation will be accrued or earned while on disability leave and no vacation or holidays will be accrued or earned while on disability leave for any period of time which extends beyond six (6) months.
4. Notwithstanding the above, if the injury occurs as a result of a voluntary recreational/athletic activity, no supplemental disability benefit will be paid by the Village, even if such injury, contrary to any position that the Village might take, is ultimately held to be covered by Worker's Compensation.
5. Notwithstanding the above, the Village will not pay a supplemental disability benefit under either subsection (1) or (2) above if the employee is receiving Worker's Compensation payments as a result of secondary employment which equal or exceed the 75% of gross wages under subsection (1) or the 100% of net wages under subsection (2).

Union Final Offer. The Union's final offer on the issue of disability pay is quoted in its entirety below:

No change in current system, statutory benefits are to be unchanged by the collective bargaining agreement.

Discussion. The Union asserts that the Village's proposal to change statutory benefits constitutes a non-mandatory subject of bargaining, citing in support of its assertion an August 17, 1990, Declaratory Ruling from the Illinois State Labor Relations Board. In that Ruling the Board's General Counsel did indeed agree that the Village's final offer "does not involve a mandatory subject of bargaining (Joint Exhibit 9, p. 4). The Board at that time declined to rule on the Village's argument that under the parties'

own Alternative Impasse Resolution Procedure the Union had waived its right to object to the issue on the grounds it was a non-mandatory subject of bargaining. According to the Board, "Whether any party has waived a claim that a matter - by virtue of the parties' agreement - is non-negotiable, I leave to the arbitrator." (Joint Exhibit 9, p. 3, emphasis in original).¹²

The parties' Alternative Impasse Resolution Procedure is quoted again in pertinent part here:

(i) Each party retains the right to object to any issue on the grounds that the same constitutes a non-mandatory subject of bargaining and/or is an issue on which the arbitrator has no authority to issue an award; provided, however, that each party agrees that it will notify the other of any issue not later than the first negotiation meeting at which the issue is substantively discussed. Should any disputes arise as to whether a subject is a mandatory subject of bargaining, the parties agree to cooperate in obtaining a prompt resolution of the dispute by the Board pursuant to the Act and the Rules and Regulations of the Board [Section 1200.140(b)]. Either party may file a petition with the Board's General Counsel for a declaratory ruling after receiving such notice from either party that it regards a particular issue a non-mandatory subject of bargaining.

Did the Union under the above procedure waive its right to object to the Village's final offer on disability pay? According to the chief negotiator for the Village, the Union failed to notify the Village of its "non-mandatory" objection to the subject of disability pay per the terms of the Alternative Impasse Resolution Procedure. That is, no such notification was received during or prior to the first negotiation session at which the issue was substantively discussed. The Union did not present any evidence

¹² In a subsequent "Order Holding Case In Abeyance," accepted into this record as Joint Exhibit 12 in mid-November, 1990, the Board's Executive Director agreed with the General Counsel, indicating that interpretation of the parties' Alternative Impasse Resolution Procedure was beyond the scope of the Board's primary focus of inquiry. The General Counsel also noted that the Charging Party (i.e., the Union) did not dispute the Respondent's factual assertions that disability pay (as well as fair representation, advisory grievance arbitration, a management rights clause, and legislative cost increases) was fully discussed during negotiations and at no time prior to the filing of its request for a Declaratory Ruling did the Union object to such discussions as non-mandatory subjects of bargaining.

before me that, in fact, it had served the Village with the required notification, nor did it present any such evidence to the Illinois State Labor Relations Board in support of its request for a Declaratory Ruling (see Footnote 12). Accordingly, and in harmony with the parties' own Alternative Impasse Resolution Procedure, the Arbitrator concludes that the Union waived its right to argue that the Village's final offer on disability pay constitutes a non-mandatory subject of bargaining.

In its final offer the Village proposes sweeping changes to the status quo. The Village argues that in doing so it is merely trying to differentiate between someone who falls out of bed and suffers an IOD (injured on duty) injury and someone who is injured at the fire ground or while responding to a paramedic call. Also of concern to the Village is the current policy of paying 100% of salary in all cases when common sense suggests there is a disincentive under such circumstances for the employee to return to work. The Village also notes its final offer is fully supported by internal comparison with the FOP Agreement.

The Village freely admits that the comparability data support the Union's position on this issue. Indeed, the overwhelming majority of the comparable communities provide disability benefits in line with the Disability of Injuries In Line of Duty Act, Ill. Rev. Stat. ch. 70, § 91. The Village's final offer would provide disability benefits less favorable to employees than those provided by the Statute, most notably, only 85% of gross wages the first year as opposed to 100%. The Village's concern about the potential for malingering while receiving 100% benefits is legitimate; however, there is no evidence in the record before me that malingering has proven to be a significant problem among Firefighters. Neither is there any evidence that Firefighters injured by falling out of bed or in voluntary recreational activities constitute a significant portion of disability benefits paid in the past. These facts,

coupled with the external comparability data, have persuaded me that the Union's position on the disability pay issue is the more reasonable.¹³

ECONOMIC ISSUE NO. 15

Longevity Pay

Village Final Offer. The Village's final offer concerning longevity pay is set forth below:

Section 3. Longevity Pay Employees on the active payroll with continuous unbroken service with the Village in a position covered by this Agreement shall receive annual longevity pay in accordance with the following schedule:

<u>Years</u>	<u>90-91</u>	<u>91-92</u>	<u>92-93</u>
5 years but less than 10	\$400	\$450	\$450
10 years but less than 15	500	550	550
15 years but less than 20	600	650	650
20 years or more	700	750	750

Longevity pay will be paid in accordance with past practice. Accordingly, longevity pay is paid during the first week of November each year. An employee who first becomes eligible for longevity pay in any category (e.g., five years but less than 10 years, 10 years but less than 15 years, etc.) shall be paid a pro rata amount based on the number of months and days worked from his/her anniversary date to November 1. Example: An employee who completes five years employment on May 1, 1991, will receive \$200 longevity pay during the first week of November 1991 (i.e., 50% of \$400).

¹³ Having concluded that the Village's final offer on disability pay is rejected on its merits, there is no need for the purposes of this proceeding to reach conclusions as to its legality.

Union Final Offer. The Union's final offer on the issue of longevity pay is quoted verbatim here:

Longevity pay - effective May 1, 1990 employees to be

5 years service increase	\$300
10 years service increase	\$500
15 years service increase	\$750
20 years service increase	\$1000

Discussion. The Union explained during the arbitration hearings that its final offer on this issue is not intended to call for an increase by the amounts indicated over and above the present longevity payments; rather, it was meant to display what the Union feels are the longevity payments appropriate when considering those in comparable jurisdictions. According to the Union, comparable jurisdictions are substantially more generous with regard to longevity pay. The Union also argues that the sole internal comparable should not be persuasive on this issue, because there is not now nor has there ever been a parity relationship between the salaries of police officers and firefighters in Arlington Heights.

The Village's final offer retains the historical structure of the longevity payment schedule in that it embodies a \$100 differential between the various longevity gradations. Clearly, the Union's final offer significantly alters the former structure by seemingly loading up the high end with longevity dollars. It freezes longevity pay at the 5-year level and provides a 40% increase at the 20-year level.

Contrary to the Union's argument, the Arbitrator is persuaded by an internal comparability assessment that the Village's final offer on this issue is the more reasonable. The Union's final offer not only departs from the longevity pay structure contained in the Arlington Heights/FOP Agreement, it also departs from the longevity

pay policy in place for all other Arlington Heights employees. The Union has not convinced me that there is compelling reason to make such a change.

Review of longevity amounts provided across the external comparables pool also reveals that the Village's offer is the more reasonable. At least five of the fifteen comparable communities do not provide longevity pay at all.¹⁴ And for 1990-1991 the Village final offer includes longevity payments higher than those in Buffalo Grove, Skokie and Wheeling, and exactly the same as those in Mt Prospect. Thus, the longevity pay incorporated into the Village's final offer is equal to or greater than that provided to firefighters in nine out of the fifteen comparable communities. The remaining communities either have benefit packages which offset their longevity pay differential as compared to Arlington Heights (e.g., Des Plaines offers less vacation at the various length-of-service gradations), lower salaries (e.g., Elmhurst top step Firefighters receive \$1582 less than Arlington Heights top step Firefighters), or a longevity pay schedule not as comprehensive or accelerated as the one in the Village's final offer here.

On balance, the weight of the evidence in the record favors adoption of the Village's final offer on the longevity pay issue.

ECONOMIC ISSUE NO. 16

Stipends For Paramedics Who Are Qualified To Serve As Engineers And Vice-Versa: Stipends For Lieutenants Who Are Qualified To Serve As Paramedics.

Village Final Offer. The Village does not propose any change to the status quo with regard to this issue. There are currently no such stipends for Arlington Heights firefighters.

Union Final Offer. Here is the Union's final offer on the stipends issue:

¹⁴ Elgin, Elk Grove Village, Hoffman Estates, Lombard, and Rolling Meadows.

Stipends for paramedics qualified as engineers.

Effective May 1, 1990:

(a) Add \$250 to annual salary;

(b) Stipends for lieutenants qualified to serve as paramedics - \$250.00 to annual salary

(c) Stipends for engineers qualified to serve as paramedic. (sic)

Discussion. The Union believes that its final offer on stipends for Paramedics and Engineers is justified by the compelling testimony of Deputy Chief Kramer himself. Kramer testified as to the importance of Engineer training, and illustrated by way of example the life threatening injuries that can result when someone not qualified as an Engineer operates a pumper. The Union also believes that a stipend is justified for Paramedics who are qualified as Engineers, even though Paramedics are already paid at a higher rate. That higher rate, argues the Union, is based upon the special skills they have as Paramedics, not upon those they had to demonstrate to obtain Engineer certification. The Union also notes that Lieutenants qualified as Paramedics are not rewarded through their salaries for the extra duties they perform as Paramedics.

Under the enabling interest arbitration Statute, the Arbitrator is empowered only to adopt for economic issues the final offer of one party or the other. The Statute grants no authority which would allow an interest arbitrator to alter the final offer adopted. In the instant case the Union's final offer is ambiguous and confusing. It specifies a \$250 stipend for paramedics qualified as engineers, and a \$250 stipend for lieutenants qualified to serve as paramedics, but does not specify the stipend for engineers qualified as paramedics. The spot where that stipend should have been inserted in the Union's final offer is blank. Accordingly, the final offer itself is incomplete and confusing.

As to the external comparability criterion, none of the comparable communities except Mt. Prospect provides a stipend to paramedics also qualified to serve as engineers. The same is true with regard to stipends for engineers qualified to serve as paramedics. The Union's demand for a stipend for lieutenants also qualified as paramedics has mild support among the comparables, but not to the extent that there is compelling reason for changing the status quo at Arlington Heights.

Overall, I am convinced from the record that the Village's final offer on the stipends issue is the more reasonable. It is consistent with the status quo and with the position on stipends taken by the overwhelming majority of the fifteen communities in the pool of comparables established for the purposes of this proceeding.

ECONOMIC ISSUE NO. 17

Holiday Pay

Village Final Offer. The final offer of the Village on holiday pay is set forth below:

Since the Village in the past agreed to provide additional Hanson Days (a/k/a "Kelly Days") in lieu of holidays, the Village's final offer on this issue is to retain the status quo, i.e., no additional pay for 24-hour personnel who work on a holiday over and above what they receive as part of regular salary.

Union Final Offer. The Union's final offer on holiday pay is quoted as follows:

Effective May 1, 1990 all employees shall receive eight hours straight time pay for the following holidays recognized by the employer: New Year's Day, President's Day, Memorial Day and Independence Day.

Effective May 1, 1991 all employees shall receive eight hours straight time pay for the following additional holidays (total of eight holidays) recognized by the Village: Labor Day, Veteran's Day, Thanksgiving Day, Christmas Day.

Discussion. The Union argues that its final offer on this issue will give Arlington Heights Firefighters modest movement toward holiday pay packages that have been well-developed in comparable jurisdictions and granted to other Arlington Heights employees. Village employees receive twelve paid holidays per year, with the exception of Police Officers who, in lieu of holidays receive twelve eight-hour paid days off per calendar year. Furthermore, the Union argues, the workweek for Firefighters is 49.8 hours on the average, compared to the 40-hour workweek enjoyed by Police Officers and other Village employees. That means that Arlington Heights Firefighters work at least 500 hours per year more than other Village employees. The Union also argues that all but four of its proposed comparable communities provide holiday pay packages.

The Village believes the Union's final offer must be evaluated in two basic ways: (1) in the broad context of the total time off received by Arlington Heights Firefighters as compared to firefighters in comparable communities; and (2) against the comparability data with specific regard to holiday pay.

Table 7 on the following page illustrates the total time off received by firefighters across the comparable jurisdictions:

TABLE 7
SCHEDULED ANNUAL TIME OFF ACROSS
POOL OF COMPARABLE COMMUNITIES

<u>Community</u>	<u>Work Reduction Hours</u>	<u>Holiday Hours</u>	<u>Personal Hours</u>	<u>Total Hours</u>
Buffalo Grove	216	72	0	288
Des Plaines	144	120	0	264
Elgin	0	72	72	144
Elk Grove Village	0	96	0	96
Elmhurst	216	0	0	216
Hoffman Estates	288	0	0	288
Lombard	96	0	0	96
Mt. Prospect	312	0	0	312
Northbrook	120	192	0	312
Palatine	120	120	24	264
Park Ridge	0	0	0	0*
Rolling Meadows	0	168	0	168
Schaumburg	312	0	0	312
Skokie	120	72	0	192
Wheeling	72	144	0	216
Average**	134	70	6	211
Arlington Heights	312	0	0	312

Source: Village Exhibit 66; Northbrook Agreement

* - Park Ridge categorizes all time off as "Leave Time," which varies with seniority.

** - Rounded to nearest decimal.

It is abundantly clear from Table 7 that Arlington Heights Firefighters have the benefit of more time off than do firefighters in just about all of the comparable jurisdictions. Only Schaumburg and Mt. Prospect provide a total of 312 hours to match the amount provided by the Village final offer. When vacation time is also taken into consideration, the results are quite similar. According to the Village's calculation (Village Posthearing Brief, p. 122), the average across the comparables pool is 472 hours, as compared to the 552 hours provided in Arlington Heights.¹⁵

Even juxtaposing Arlington Heights against comparable communities on the holiday pay dimension alone, the Arbitrator finds insufficient justification for adopting the Union's final offer. Ten of the comparable jurisdictions do not provide holiday pay for Firefighters. Most of the remaining communities which do provide holiday pay do not offer nearly as much scheduled time off as does the Village here.

With regard to internal comparability, it is extremely difficult to draw a parallel between 24-hour Firefighters and other employees. The Union notes that other Village employees get twelve holidays off without loss of pay, and that Police Officers in the Village receive twelve days off per calendar year in lieu of holidays. It must be recognized, however, that those holiday benefits result in a total of 96 hours off; in contrast, Firefighters in Arlington Heights receive a total of 312 work reduction hours per year (i.e., Hanson days). Moreover, the effect of the work reduction days is an increase in the effective hourly rate of pay for Firefighters, thereby increasing their overtime rate. The compensatory time off Police Officers receive in lieu of holidays does not result in an increase in their hourly rate.

¹⁵ Vacation time varies according to seniority in all of the comparable communities. The Village used a hypothetical firefighter with 15 years' seniority for its calculation, since the average seniority for Arlington Heights Firefighters is close to 15 years (see Village Exhibit 15).

Finally, and with regard to the Union's argument that Firefighters work about 500 hours per year more than do other Village employees, the nature of their respective work schedules is more significant than the actual hours themselves. Firefighters have a good deal of time while on shift to relax, engage in recreational activities, and even sleep. Employees on 8-hour shifts are not allowed to do so. The Arbitrator fully understands that there are occasions when a 24-hour Firefighter actually performs work for the entire period. But the record suggests that the overwhelming majority of Arlington Heights Firefighters still prefer 24-hour shifts to five 8-hour shifts per week.

In view of the foregoing, the Arbitrator is not persuaded that there is justification to adopt the Union's final offer on this issue.

ECONOMIC ISSUE NO. 18

Uniform Allowances

Union Final Offer. The Union's final on uniform allowances is set forth below:

Effective May 1, 1992 all employees will receive uniform allowance of \$425.

Village Final Offer. The Village's final offer on this issue is quoted verbatim as follows:

The Village takes the position that this issue is resolved. If the Arbitrator determines that this issue has not been resolved, the Village final offer is as follows:

Effective for the 1991-1992 and 1992-1993 fiscal years, increase the uniform allotment to \$300 and \$325, respectively.

Discussion. Joint Exhibit 5 in this case contains all of the items on which the parties reached agreement and initialed prior to the start of these interest arbitration proceedings. The Section entitled "Uniforms and Equipment" (Article XIV, Section 10) was initialed on May 11, 1989. It is over four pages long, obviously representing the culmination of very intense bargaining by both parties.

As mentioned in my ruling on the Life Insurance issue (Economic Issue No. 11), I am deeply concerned about maintaining the integrity of prior agreements reached between the parties themselves. Both parties initialed their bargained language on the uniform allowance issue. If I were to consider an alteration to that language now, as the Union proposes by virtue of its final offer, I would be undermining the worth of their mutual agreement and discounting the value of the bargaining process itself. I therefore find, consistent with statutory criterion No. 8 ("other factors"), that I have no jurisdiction on this issue.

ECONOMIC ISSUE NO. 19

Duration of Agreement

Union Final Offer. The Union proposes that the Agreement have a termination date of April 30, 1992.

Village Final Offer. The final offer of the Village provides for a termination date of April 30, 1993.

Discussion. The parties have agreed upon the bulk of the language on this issue; the only difference remaining between them is the Agreement's expiration date. The Village believes that in view of the long and arduous negotiations between the parties already, common sense dictates adoption of its final offer. With regard to internal comparability, the Village notes that both of the FOP contracts have had 3-year terms. The current FOP Agreement is set to expire on April 30, 1993, consistent with the

Village's final offer. Externally, of the twelve jurisdictions having collective bargaining agreements with firefighters, eight of them have 3-year terms. Moreover, six of those eight contain no reopeners.

The Union believes that in view of the current volatility in the world oil market, there is good reason to believe that the rate of inflation for fiscal 1992-1993 might be as high as it was during the mid-seventies, also a period characterized by an oil crisis. At best, the Union asserts, economic projections for that period are uncertain. The Union argues that adding a third year to the collective bargaining agreement locks the parties in, preventing them, except by mutual agreement, from amending it until 1993.

Clearly, the 1992-1993 economy is uncertain --- even more so than it was at the time the Union's Posthearing Brief was drafted. But the Arbitrator feels strongly that adopting the Union's final offer on this issue would be a disservice to both parties. The frustration they both felt from having endured 49 bargaining sessions was quite evident during the interest arbitration hearings. In my fourteen years of arbitration experience I have never seen an employer-union relationship more in need of stability than this one. If I were to adopt the Union's final offer on this issue, the Agreement would expire about fourteen months from the date of this Award. That would mean the parties should come to the bargaining table in just a year, or even sooner, to begin talks for its successor. That is just too soon, given the time, effort and money they have both expended in constructing what will become upon receipt of this Award their current collective bargaining agreement.

Moreover, I note from the record that the Arlington Heights FOP contract expires with the end of fiscal 1992-1993 and provides a 5% salary increase for the third year. A nearly identical third-year increase is contained in the Hoffman Estates and Rolling Meadows firefighter Agreements, both of which expire on April 30, 1993. The Village's salary offer here, which has already been adopted by me, also provides for a 5% across-the-board increase. Admittedly, all of those figures merely represent the

respective parties' best guess as to what will be a competitive salary increase in fiscal 1992-1993. They might have guessed low; they might have guessed high. Only time will tell. In my view, however, the uncertainty associated with those increases is more than outweighed by the longer term stability that a three-year agreement will undoubtedly bring to the parties in the instant case. The Village's final offer on the Agreement's duration is therefore adopted.

ECONOMIC ISSUE NO. 20

Legislative Cost Increases

Village Final Offer. The Village's final offer on this issue is quoted as follows:

LEGISLATIVE COST INCREASES

Should the Illinois General Assembly enact legislation benefitting employees or immediate families of employees covered by this Agreement, where the effect is to increase costs in the Fire Department's budget by more than ten percent (10%) per annum over those which exist at the time this Agreement is executed, such increased costs shall be charged against the base wages of the employees covered by this Agreement at the time they are incurred. The Village may thereafter deduct from base wages provided in this Agreement the amount of such increased costs, provided that the Village shall first meet with the Union officers and discuss any proposals which the Union may offer as an alternative to deductions from wages. "Legislation benefitting employees or immediate families of employees" includes but is not limited to pensions or other retirement benefits, workers compensation or other disability programs, sick leave, holidays, other paid leaves, uniform or clothing allowances, training, certification or educational incentive compensation.

Union Final Offer. The Union argues that this issue is non-economic. Its final offer is quoted below:

The union proposes that this non-economic issue not be adopted by the arbitrator, as proposed by the employer.

Discussion. The parties have asked the Arbitrator to resolve their dispute over whether this issue is economic or non-economic. Since it has a potential impact on wages, I concur with the Village that it is an economic issue.

The Union believes the Village's final offer on this issue is extremely unfair to Arlington Heights Firefighters for several reasons. First, no other employees in Arlington Heights, including Police Officers, are burdened with such a policy. Second, only two of the comparable jurisdictions have agreed to include it in their collective bargaining agreements. Finally, the Union asserts that the benefits discussed in the Village offer are benefits over which Arlington Heights Firefighters did not bargain or have any influence in obtaining.

The Village feels its final offer on this issue is quite modest, noting that it would have no effect on Firefighter wages until legislated cost increases had a financial impact on the Village of 10% of the Fire Department's budget. That percentage is equivalent to approximately \$435,668 for the 1990-1991 fiscal year. The Village also asserts that its legislative cost increase proposal is "not something wholly unheard of in the Illinois Public Sector" (Posthearing Brief, p. 140). Finally, the Village acknowledges the lack of such a provision in its Agreement with the FOP, but notes that Illinois firefighters have already obtained through the legislative process what they were not able to gain at the bargaining table. ¹⁶

The Arbitrator agrees with the Union on this issue. First, both parties take risks whenever they sign a collective bargaining agreement. The main risks have to do with the fact that times may change during its term, and that those changes have an impact

¹⁶ The example given by the Village is S.B. 1704, passed during the last session of the Illinois General Assembly. The Bill provides that "[a] fireman who is elected state officer of a statewide organization that is a representative of municipal firemen in Illinois shall be granted leave by the municipality, without loss of pay or benefits and without being required to make up lost time, for hours devoted to performing the fireman's responsibility as an elected state officer of the statewide labor organization."

on the desirability of what has been negotiated. Thus, if the cost-of-living rises dramatically, unions locked into negotiated wage schedules without cost-of-living escalator clauses suffer the consequences. As noted earlier in this report, the Arbitrator has adopted the Village's final offer on the Agreement's duration, thereby extending such risks. In my view, the Village's legislative cost increase position gives it a distinct advantage --- the elimination of one type of risk normally associated with signing a collective bargaining agreement.

The Village is quite correct in its argument that the IAFF itself can affect legislated benefits which might enhance Illinois firefighters' work lives. But Illinois municipalities have the same opportunity to influence legislation. Thus, for a legislative cost increase clause to be balanced, it should probably discuss a wage increase for bargaining unit members, should a legislative cost decrease occur.

In any event, there is no such policy in place for Arlington Heights Firefighters currently, and the Village has not persuaded me of compelling need to depart from that circumstance. Certainly, the external comparables do not justify making such a change. I therefore adopt the position of the Union on this issue.

THE NON-ECONOMIC ISSUES

Pursuant to Section 14(g) of the Illinois Public Labor Relations Act, the Arbitrator's authority on non-economic issues is not limited to selection of the final offer of one party or the other. From the Statute, "The findings, opinions and order as to all other issues (i.e., non-economic issues) shall be based upon the applicable factors prescribed in subsection (h)."

Before beginning a discussion of the non-economic issues separately, the Arbitrator will address the Union's general claim with regard to (1) duty of fair representation, (2) management rights, and (3) the grievance procedure. The Union

led an unfair labor practice charge alleging that the Village's insistence to impasse on these non-mandatory issues constitutes a violation of the Illinois Public Labor Relations Act. The Village asserts that the Union waived its right to make such a challenge when it did not object to these issues as being non-mandatory during the first bargaining session at which they were raised. As authority for its position, the Village cites the parties' own negotiated Alternative Impasse Resolution Procedure. The undersigned has already discussed the waiver issue earlier in this Report (see Economic Issue No. 14; Footnote 12).

The Union argues strenuously in its Posthearing Brief that its failure to make such a challenge during the bargaining process did not constitute a waiver of its right to do so, citing the position taken by the Illinois State Labor Relations Board that such waivers should not be lightly presumed.¹⁷ The Arbitrator agrees with the Board.

In this case, however, it is clear from the record that the Union did indeed waive its right to raise a "non-mandatory" objection to the Village's final offer on the fair share, management rights and grievance procedure issues. It did so by failing to notify the Village of its objection "not later than the first negotiation meeting" at which the issues were substantively discussed. That notification deadline was agreed to by both parties in their Alternative Impasse Resolution Procedure. The deadline is clearly expressed. Moreover, the Union has not claimed that it did make timely notification. It has not claimed that the three issues were never substantively discussed. And it has not offered another reasonable interpretation of the Alternative Impasse Resolution Procedure which would favor its position on the waiver question.

¹⁷ Village of Oak Park, 3 PERI ¶2023 (1987), affd., Oak Park vs. Illinois State Labor Relations Board, 168 Ill. App. 3d 7, 522 N.E.2d 161 (1988).

NON-ECONOMIC ISSUE NO. 1

Fair Share

Union Final Offer. The Union's final offer on fair share is quoted here:

Fair Share: Bargaining unit employees who are not members of the Union shall, commencing thirty days after the effective date of this Agreement or thirty (30) days after their employment or thirty (30) days after they cease to be members or authorize dues deductions, whichever is later, pay as a condition of employment a fair share fee to the Union for collective bargaining and contract administration services rendered by the Union as the representative of the bargaining unit, provided that such fair share fee does not exceed the amount of union dues and assessments charged to Union members. Such fair share fees shall be deducted from the earnings of non-members and remitted to the Union in the same manner and intervals as Union dues are deducted. The Union shall periodically submit to the Village a list of employees covered by this Agreement who are not members of the Union and an affidavit which specifies the amount of the fair share fee. The amount of the fair share fee shall not include any contributions related to the election of or support of any candidate for political office or for any member only benefit.

The Union agrees to comply with the requirements set forth in Chicago Teachers Union vs. Hudson, 106 U.S. 1066 (1986) with respect to the constitutional rights of fair share fee payors, including giving timely notice of the fee and an explanation of the basis therefor, an audited breakdown of the major categories of expenses, placing any disputed amounts in escrow pending resolution of any objections, and advising the fair share fee payors of the dispute resolution procedure for such objections. The parties agree that all such objections shall be consolidated for purposes of adjudication and the procedures and offices of the Illinois State Labor Relations Board shall be utilized for dispute resolution.

Non-members who object to fair share fees based on bona fide religious teachings or tenets shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed between the employee and the Union, or selected by the employee from the list of such organizations maintained by the Illinois State Labor Relations Board in the event of disagreement.

Village Final Offer. The Village's final offer on fair share is set forth below:

The Village's final offer is that the parties' first collective bargaining (sic) not include any provision with respect to fair share.

Discussion. Only five of the twelve comparable jurisdictions with collective bargaining agreements have fair share clauses, and as the Village points out, two of those five have grandfather clauses. Essentially, then, only two of the comparable jurisdictions require all non-members to pay a fair share fee.

Generally speaking, interest arbitrators are reluctant to award a fair share clause in the first contract.¹⁸ In such early stages of organization, members of the bargaining unit may not yet have had an opportunity to see what kind of a job the union will do for them. They may not yet have had sufficient evidence upon which to decide that union membership is worth the cost.

Another arbitral consideration on the fair share issue is whether the union has demonstrated the need for one.¹⁹ In the instant case only four of the 82 bargaining unit members have chosen not to join the Union. I am thus not persuaded that the Union has a compelling financial need for a fair share clause or that its economic security would be jeopardized without one.

Finally, and as the Union correctly notes, the Arlington Heights FOP contract contains a fair share clause. In negotiations for its first labor agreement with the Village, the FOP also proposed a fair share clause. That proposal was rejected by the Village. It was not until negotiations for its second agreement with the FOP that the Village agreed to the fair share concept, and even then it was conditioned upon the resulting fair share clause containing a grandfather provision.

¹⁸ This Arbitrator has taken that position in earlier cases. (see, for example, Montello Council of Auxiliary Personnel and Montello School District, WERC Decision No. 19955A (1983)).

¹⁹ See, for example, the Award of Arbitrator Anthony Sinicropi in Peoria County (1986). In that Illinois case, Sinicropi stated: "...the Union should be required to produce some evidence that it is required for the financial stability for which the Union argues."

Based upon all of the foregoing reasoning the Arbitrator has concluded that the Village's position on the fair share issue is the more reasonable. I am fully in support of the fair share principle, but like most interest arbitrators, I am reluctant to force it upon an unwilling employer for its first formal collective bargaining agreement with the union seeking it.²⁰

NON-ECONOMIC ISSUE NO. 2

Duty of Fair Representation

Village Final Offer. The Village's final offer on this issue is as follows:

Section 2. Union's Duty of Fair Representation. The Union agrees to fulfill its duty to fairly represent all employees in the bargaining unit. The Union agrees to indemnify, defend and hold the employer harmless against any claim, demand, suit or liability (monetary or otherwise) and for all legal costs arising from any action taken or not taken by the Union with respect to its duty of fair representation.

Union Final Offer. Here is the Union's final offer on this issue:

The union opposes the employer's request for indemnification.

Discussion. As the Union correctly argues, there is no need to include language in the collective bargaining agreement guaranteeing bargaining unit members a right to fair representation. That right is already provided by statute. The Union also points to the fact that there is little support across the comparable jurisdictions for the inclusion of a clause indemnifying the employer of any liability with respect to fair share actions.

²⁰ I do not agree with the Arbitrator in Village of Bartlett (1990), an interest arbitration case cited by the Union in the instant case, that the Village's position on the fair share issue is "outside the mainstream of this country's legal traditions..."

The Village's concern over potential liability with regard to duty of fair representation allegations is understandable. However, there is not sufficient support across the comparable jurisdictions for inclusion of the language proposed by the Village here. Only three of the communities with collective bargaining agreements have such clauses (Buffalo Grove, Lombard and Rolling Meadows), and two of those (Rolling Meadows and Lombard) do not contain an employer indemnification clause such as that sought by the Village here. Even the current agreement between the Village and the FOP does not contain an indemnification clause, though it does contain language acknowledging that the FOP agrees to fulfill its duty to fairly represent all employees in the bargaining unit.

Overall, I am not convinced from the record before me that adoption of the Village's final offer on this issue would be appropriate.

NON-ECONOMIC ISSUE NO. 3

Management Rights

Village Final Offer. Here is the Village's final offer on management rights:

Except as specifically modified by any and all other articles of this Agreement, the Union recognizes the exclusive right of the Village to make and implement decisions with respect to the operation and management of its operations in all respects. Such rights include but are not limited to the following: to plan, direct, control and determine all the operations and services of the Village; to supervise and direct the working forces; to establish the qualifications for employment and to employ employees; to schedule and assign work; to establish work and productivity standards and, from time to time, to change those standards; to assign overtime; to determine the methods, means, organization and number of personnel by which operations are conducted; to determine whether services are provided by employees covered by this Agreement or by other employees or persons not covered by this Agreement; to make, alter and enforce reasonable rules, regulations, orders and policies (provided that the making, altering, and enforcing of rules, regulations, orders, and policies that relate to non-mandatory subjects of bargaining shall not be subject to the grievance and arbitration procedure set forth in this Agreement); to evaluate

employees; to change or eliminate existing methods, equipment or facilities; and to carry out the mission of the Village; provided, however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement.

Union Final Offer. The final offer of the Union on the issue of management rights is quoted below:

Except as specifically modified by any and all other articles of this Agreement, the Union recognizes the exclusive right of the Village to make and implement decisions with respect to the operation and management of its operations in all respects. Such rights include but are not limited to the following: to plan, direct, control and determine all the operations and services of the Village; to supervise and direct the working forces; to establish the qualifications for employment and to employ employees; to schedule and assign work; to establish work and productivity standards; to assign overtime; to determine the methods, means, organization and number of personnel by which operations are conducted; to make, alter and enforce reasonable rules, regulations, orders and policies; to evaluate employees; to discipline, suspend and discharge employees for just cause; to change or eliminate existing methods, equipment or facilities; and to carry out the mission of the Village; provided, however, that the exercise of any of the above rights shall not conflict with any of the express written provisions of this Agreement.

Discussion. During the bargaining process, both parties considered other positions on this element of the management rights clause. I do not consider those positions binding, or even persuasive in this interest arbitration proceeding. Indeed, were interest arbitrators to be significantly influenced by the parties' earlier positions at the bargaining table, the effect might be to chill meaningful bargaining between them in the future.

There are but four differences between the parties' respective offers on this issue. First, the Union's final offer imposes the concept of "just cause" for discipline on the Village; the Village's final offer does not mention employee discipline at all. The Union's insistence on "just cause" for discipline is entirely in line with prevailing arbitral thought. The disciplinary element of this case is further complicated, though, by the fact that the parties' grievance procedure is another issue in this proceeding.

For now, suffice it to say that the "just cause" provision in the Union's final offer on the management rights issue is reasonable. The impact of that language on the grievance procedure will be discussed later in this Report.

Another significant difference in the parties' final offers on management rights concerns the Village's position that the rules it might establish which relate to non-mandatory subjects of bargaining would not be subject to the grievance and arbitration procedure. As the Union correctly argues, such language would prevent the Union from using the grievance procedure to protect the bargaining unit against the imposition of unreasonable rules.

It is well-established in labor-management circles that employers have the right to establish reasonable work rules. The Union's final offer clearly acknowledges that right, as it does for other important management rights as well. The Arbitrator is not persuaded by the Village's arguments of the need to exclude from the grievance process the rules it might establish which relate to non-mandatory subjects of bargaining. If the Village wishes to make rules affecting bargaining unit employees, such rules should be subject to the doctrine of reasonableness, and subject to review and protest by the employees' certified representative.

A third difference between the parties' respective final offers on this issue concerns the Village's right to establish work and productivity standards. While both offers acknowledge such a right, the Village's offer specifies a right to change them from time to time as well. Frankly, even under the Union's offer the Village would probably have the right to amend such standards in appropriate ways at reasonable intervals.

The fourth difference between the parties' offers relates to the Village's wish to confirm what it believes should be its unilateral right to determine whether certain work should be done by bargaining unit members or by others. The impact of such language could have a significant impact on the bargaining unit, and the undersigned

is not willing to insert it into the parties' Agreement without compelling justification from the Village that it is necessary. The record does not contain such justification.

On balance, I am inclined to adopt the Union's final offer. It is not unreasonably narrow, nor does it represent a deviation from the management rights clauses I have seen in numerous public sector collective bargaining agreements. Moreover, it does not differ materially from management rights clauses found in the bulk of the comparable jurisdictions.

I do not accept the Union's final offer verbatim, however. To prevent any potential future disputes as to whether the Village has a right to change work and productivity standards from time to time, the following phrase will be added to the Union's final offer, "and, from time to time, to change those standards;" immediately after the phrase, "to establish work and productivity standards."

NON-ECONOMIC ISSUE NO. 4

Grievance and Arbitration Procedure (Binding vs. Advisory Arbitration)

The parties' differences on the grievance process are not limited to whether it provides for binding or advisory arbitration. They also differ on the issue of employee discipline and whether it should be subject to arbitration at all. That issue will be discussed later in this Report.

Village Final Offer. The Village proposes as its final offer on the issue of arbitration that the last sentence of Article VI, Section 6, should read as follows:

Any decision or award of the Arbitrator rendered within the limitations of this Section shall not be final and binding, but rather shall be advisory only.

Union Final Offer. The Union's final offer proposes the following language for insertion as the last sentence of Article VI, Section 6:

Any decision or award of the arbitrator rendered within the limitations of this Section 4 (sic) shall be final and binding.

Discussion. There is simply no support across the comparable jurisdictions for advisory arbitration. Only one of them, Elk Grove Village, has a collective bargaining agreement containing an advisory arbitration clause. And, as the Union correctly points out, the collective bargaining agreement between the Village and the FOP has a binding arbitration clause.

Even the Village admits it is not diametrically opposed to binding arbitration on matters of labor agreement interpretation. The real significance of the parties' dispute about the authority (or lack thereof) to be granted to their grievance arbitrators is related to the scope of the grievance and arbitration procedure itself, specifically, whether it should include matters of employee discipline. As noted, that issue will be discussed in a subsequent section of this Report.

Given the overwhelming support across comparable jurisdictions for binding arbitration, the Arbitrator adopts the Union's final offer on this issue, with a slight modification. The language to be included in the parties' Agreement as the last sentence of Article VI, Section 6, shall read as follows:

Any decision or award of the arbitrator rendered within the limitations of this Section 6 shall be final and binding.

The above language simply corrects the error in the Union's final offer, which characterizes the arbitration clause as being "Section 4." In fact, it is Section 6.

NON-ECONOMIC ISSUE NO. 3

Normal Work Day and Work Week (Article VIII, Section 2)

Village Final Offer. The final offer of the Village on this issue is quoted here:

Section 2. Normal Work Day and Work Week. The normal work day and work week for employees assigned to 24-hour shifts shall

be 24 consecutive hours of work (one shift) followed by 48 consecutive hours off (two shifts). Such 24-hour shifts shall start and end at 7:00 a.m. or 8:00 a.m. In lieu of holidays and to reduce the average work week, every ninth (9th) shift shall normally be scheduled off (i.e., Hanson days).

The normal work day and work week for employees assigned to 8-hour shifts shall be 40 hours based on five 8-hour shifts, Monday through Friday, excluding any unpaid lunch period that may be scheduled. Such 8-hour shifts shall start at 8:00 a.m. and end at 5:00 p.m.

Union Final Offer. Here is the Union's final offer on this issue:

The normal work day and work week for employees assigned to 24-hour shifts shall be 24 consecutive hours of work (one shift) followed by 48 consecutive hours off (two shifts). Twenty-four shifts shall start and end at 8:00 a.m. To reduce the average work week, every ninth (9th) shift shall normally be scheduled off (i.e., Hanson days), effective on May 1, 1990.

The normal work day and work week for employees assigned to 8-hour shifts shall be 40 hours based on five 8-hour shifts, Monday through Friday. Eight hour shifts shall start at 8:00 A.M. and end at 5:00 P.M.

Discussion. One of the differences between the parties' final offers on this issue centers around the starting time for 24-hour employees. They are used to a reporting time of 8:00 a.m., as that has been the practice there for a number of years. The Village final offer builds in automatic flexibility, so that the Village could change the starting time to 7:00 a.m. at will. The Union convincingly argues that a 7:00 starting time would disrupt the employees' personal lives and the work routine at the fire stations. A 7:00 a.m. starting time also means a 7:00 quitting time, so that Firefighters would come off shift an hour earlier than has been the practice.

None of the collective bargaining agreements across comparable jurisdictions contain a clause providing for two starting times. It is true that seven of those agreements do not mention a specific starting time for such personnel. However, given the longstanding practice in Arlington Heights of an 8:00 starting time for 24-hour employees, it seems reasonable to adopt the Union's position on that element of

Article VIII, Section 2. Moreover, there is no indication in the record of a compelling reason in the foreseeable future to change to a 7:00 starting time.

Another difference in the parties' final offers on this issue is their respective language introducing the Hanson days sentence (i.e., first paragraph, last sentence). The Village proposes the phrase, "In lieu of holidays and to reduce the average work week."; the Union would omit the first four words from that phrase. The Union in its Posthearing Brief (p. 61) expressed objection to the phrase "In lieu of holidays," because it implies the Union somehow has given up its claim for holiday pay. Since the Arbitrator has already decided the holiday pay issue (Economic Issue No. 17) in favor of adopting the Village's final offer, that Union argument is no longer relevant. In addition, the record has persuaded me that the historical increase in Hanson days granted by the Village has been accompanied by a corresponding reduction in the number of paid holidays for 24-hour employees in the Fire Department. It therefore seems reasonable to include the Village's suggested introductory phrase to the Hanson days language.

The remaining difference between the parties on this issue centers on the unpaid lunch period for 8-hour per day, 40-hour per week employees. Since the parties do not dispute the fact that an unpaid lunch period is not currently a part of the 8-hour work day for such employees, the Arbitrator adopts the Village's language on that element of the Normal Work Day and Work Week issue.

NON-ECONOMIC ISSUE NO. 6

Changes In Normal Work Day and Work Week (Article VIII, Section 4)

This issue has been resolved between the parties themselves.

NON-ECONOMIC ISSUE NO. 7

Hirebacks For 24-Hour Personnel (Article VIII, Section 5)

Village Final Offer. The final offer of the Village on this issue is quoted below:

Section 6. Distribution of Hirebacks. At least forty-five minutes prior to the end of each 24-hour shift, an employee designated by the Union whose name has previously been provided to the Village shall provide the Shift Commander or his designee for the oncoming whift with a written list of firefighters, firefighters/paramedics, firefighters/engineers, and lieutenants who are qualified and available for hireback. If the Village determines that it is necessary to hire back in any classification, employees shall be hired back by classification in the order in which they appear on the written list provided to the Shift Commander or his designee. The Village shall not be obligated to any employee who the Shift Commandedr or his designee was unable to contact and in such situations the Shift Commander or his designee shall have the right to hireback the next person on the list. The Village retains the right to hire back additional employees in any classification after the Shift Commander or his designee has contacted or attempted to contact all of the employees in the applicable classification on the list. If no written list is provided to the oncoming Shift Commander or his designee, the Village has the right to hire back employees in any order that the Village deems appropriate.

Nothing in this Agreement shall require the Village to interrupt work in progress at the end of an employee's normally scheduled shift (e.g., an ambulance run), provided that such a holdover does not affect that employee's position on the hireback list. If any employee establishes that he has not received his appropriate share of hireback opportunities in accordance with the procedure set forth herein, such employee shall have the first preference to future hireback opportunities he is properly qualified to perform until the mistake has been corrected.

An employee who works a hireback on what would otherwise be his Hanson day shall only be eligible to receive overtime pay at time and one half his regular hourly rate of pay for those hours of work, if any, that are in excess of 204 in the employee's 27 day work cycle; hireback hours on a Hanson day which are not in excess of 204 shall be paid at the employee's regular straight time hourly rate of pay.

Absent emergency circumstances, employees shall not be scheduled to work more than 48 consecutive hours.

Union Final Offer. The Union's final offer on hirebacks for 24-hour employees is set forth here:

Hirebacks for 24-Hour Personnel. Except in emergency circumstances where it is not feasible to use the hireback procedure set forth in this section, the opportunity to work hirebacks shall be in accordance with the procedures established in this section. Nothing in this Agreement shall require the Village to interrupt work in progress at the end of an employee's normally scheduled shift (e.g., an ambulance run), provided that such a holdover does not affect that employee's position on the hireback roster. If any employee establishes that he has not received his appropriate share of hireback opportunities in accordance with the procedure set forth herein, such employee shall have first preference to future hireback opportunities he is properly qualified to perform until the mistake has been corrected.

Only bargaining unit personnel may work overtime in bargaining unit positions. A lieutenant may work overtime for the following positions: Acting shift commander, lieutenant, paramedic (if certified), engineer (if certified), and firefighter. A paramedic may work overtime for the following positions: Acting lieutenant, paramedic, engineer (if certified), and firefighter. An engineer may work overtime for the following positions: Acting lieutenant, paramedic (if certified), engineer, and firefighter. A firefighter may work overtime for the following positions: Acting lieutenant, paramedic (if certified), engineer (if certified), and firefighter.

A hireback roster shall be established based on seniority for all hirebacks expected to be for (12) hours of duration or longer. Selection of employees for such hirebacks shall first come from the preceding shift if the need for the hireback is known prior to the end of the preceding shift, provided that employees on a Hanson day on the shift where the need for the hireback occurs may be contacted first and offered the opportunity to work the hireback without affecting his position on the hireback roster. The opportunity to work a hireback on an employee's Hanson day shall be equitable (sic) distributed among employees assigned to the same Hanson day slot on the affected shift, provided they are properly qualified for the hireback opportunity. Notwithstanding any other provision in this Agreement, an employee who works a hireback on what would otherwise be his Hanson day shall only be eligible to receive overtime pay at time and one-half his regular hourly rate of pay for those hours of work, if any, that are in excess of 204 in the employee's 27 day work cycle; hireback hours on a Hanson day which are not in excess of 204 shall be paid at the employee's regular straight time hourly rate of pay.

Employees who are not on duty due to vacation, Hanson, duty trade, sick leave, I.O.D. or school when it is their turn for overtime shall be passed over. Their name shall remain in its current position on the roster. Employees who are on extended sick leave or extended I.O.D. will only be passed over once; the next time their name comes up in rotation, the employee loses that chance for overtime.

Employees who are not scheduled to work on their next duty day due to vacation, Hanson, duty trade, school, scheduled sick leave, or scheduled I.O.D. shall be offered the opportunity for overtime. If the

employee refuses the overtime, his name shall be passed over on the roster.

Absent emergency circumstances, employees shall not be scheduled to work more than 48 consecutive hours.

Once an employee has been given the opportunity to work a hireback of 12 hours duration or longer and he turns it down, he shall not be given the opportunity to work such a hireback until his name comes up in rotation.

If all employees on an appropriate roster turn down the overtime, the employee who was first in rotation shall have mandatory overtime assigned to him. This employee may contact other off-duty employees to seek a replacement.

An updated hireback list for each shift shall be posted in each fire station and shall be maintained by the shift commander or acting shift commander. When the annual shift changes occur, the hireback roster for each shift shall be reconstituted and the position of employees on the new roster shall be based on their relative position on the old roster.

Discussion. The Union believes that its hireback offer parallels the existing policy, except for a modification designed to encourage employees who are ill to refrain from reporting to work merely for hireback eligibility. The Union also feels it is necessary to limit hireback assignments to bargaining unit personnel, implying that due to the attractiveness of working 24 hours at time-and-one-half (the rate in most situations), supervisors might be inclined to take hireback opportunities themselves. The Union strenuously objects to the provision in the Village final offer requiring the senior employee to designate those eligible, qualified and available for hireback. It feels that assignment of employees and distribution of employees are management functions. Current policy, the Union notes, designates a Shift Commander to handle overtime designations, and there is no evidence of a compelling need to change that procedure.

The Village does not wish to be encumbered with the detailed hireback procedures specified in the Union's final offer. The Village final offer would leave to the Union

(1) the rotational sequence to be used, (2) the circumstances

under which an employee would retain his spot on the list, (3) a limit on the length of a hireback; and (4) when an employee loses his spot on the hireback list. The Village asserts that its final offer does not surrender the management prerogatives to determine who is qualified for a hireback, decide whether there is a need for a hireback, or contact employees for hireback purposes. Rather, the Village argues, it simply relieves management of the additional amount of paperwork the Union's cumbersome hireback procedure would entail.

Ideally, the parties' respective interests on this issue can be blended together. There are certain concepts contained in both of their final offers: (1) the Village should not be required to interrupt work in progress at the end of a shift; (2) an employee who does not receive a hireback opportunity to which he is entitled shall have first preference to future hireback opportunity; (3) the means by which an employee should be compensated if hired back on what would otherwise be his Hanson day; and (4) no employee will be scheduled to work more than 48 consecutive hours absent emergency circumstances. In addition, both parties are appropriately concerned that only qualified employees are hired back, both prefer that the Union determine the rotational order and specify certain parameters for call back eligibility.

The Union expressed a legitimate concern about the possibility of firefighters who are ill coming to work anyway in order to avoid loss of call back opportunity. Its wish to specify that only bargaining unit members are eligible for call back assignments is based on an unsupported allegation that supervisors might somehow take for themselves hireback opportunities rightfully belonging to unit members. The record simply does not contain any specific evidence that supervisors have acted in such self-interest.

The remaining difference between the parties' final offers on this issue focuses on creation and administration of the hireback list itself. The Village does not wish to perform those functions under the Union's final offer because they would involve

what it believes is an inordinate amount of paperwork. In general, however, such functions are performed by management. Across the fifteen comparable jurisdictions, for example, in only two (Schaumburg and Hoffman Estates) do the labor organizations have those responsibilities. It therefore seems appropriate that the management of the Arlington Heights Fire Department continue to perform them as well.

One aspect of the Union's final offer seems confusing. It provides that employees on a Hanson day on the shift where the need for the hire back occurs "may be contacted first and offered the opportunity to work the hireback ..." (emphasis supplied). In the very next sentence, however, the offer requires that hire back opportunities be distributed equitably among such persons. The undersigned can envision a variety of circumstances where what is essentially the option to hire back employees on a Hanson day could be exercised. The Department might think that equity was served in doing so; the Union might not. To complicate matters even further, at another place in the Union's final offer it is stated that "Employees who are not on duty due to ... Hanson ... when it is their turn for overtime shall be passed over." Which is it? They "may" be contacted first, even before those on the shift about to end? They "shall be passed over?" And what does it mean to be "passed over?"

Based upon the foregoing considerations, and attempting to avoid an unduly cumbersome procedure, the Arbitrator has adopted the following language on the hire back issue:

Section 6. Distribution of Hirebacks. Except in emergency circumstances where it is not feasible to use the hireback procedure set forth herein, the opportunity to work hirebacks shall be in accordance with the following procedures.

The Shift Commander or his designee shall prepare, maintain, and post in each fire station a current seniority-based roster of firefighters, firefighters/paramedics, firefighters/engineers, and lieutenants who are qualified and available for hireback. If the Village determines that it is necessary to hire back in any classification, employees shall be hired back by classification in the order in which

they appear on the written roster. The Village shall not be obligated to hire back any employee whom the Shift Commander or his designee was unable to contact and in such situations the Shift Commander or his designee shall have the right to hireback the next person on the list. The Village retains the right to hire back additional employees in any classification after the Shift Commander or his designee has contacted or attempted to contact all of the employees in the applicable classification on the list.

Selection of employees for hireback opportunity shall first come from the preceding shift if the need for the hireback is known before the shift ends. Such employees shall not be offered another hireback opportunity again until their name comes up in rotation.

If hireback opportunity still exists after the above employees in appropriate classifications have been consulted, appropriately classified employees on a Hanson day on the shift where the need for the hireback occurs shall be contacted next in seniority order and offered the hireback opportunity. Such employees shall not lose their position in the rotation for refusing the hireback opportunity.

An employee who works a hireback on what would otherwise be his Hanson day shall only be eligible to receive overtime pay at time and one half his regular hourly rate of pay for those hours of work, if any, that are in excess of 204 in the employee's 27 day work cycle; hireback hours on a Hanson day which are not in excess of 204 shall be paid at the employee's regular straight time hourly rate of pay.

Employees who are not on duty due to vacation, duty trade, sick leave, I.O.D. or school when it is their turn for hireback opportunity shall be passed over without losing their place on the hireback roster. Employees on extended sick leave or extended I.O.D. shall be passed over once; if they are still on such status the next time their name comes up in rotation, they shall lose that hireback opportunity.

Nothing in this Agreement shall require the Village to interrupt work in progress at the end of an employee's normally scheduled shift (e.g., an ambulance run), provided that such a holdover does not affect that employee's position on the hireback list. If any employee establishes that he has not received his appropriate share of hireback opportunities in accordance with the procedure set forth herein, such employee shall have first preference to future hireback opportunities he is properly qualified to perform until the mistake has been corrected.

Absent emergency circumstances, employees shall not be scheduled to work more than 48 consecutive hours.

NON-ECONOMIC ISSUES. NO. 8, NO. 9 and NO. 10

Duty Trades, Scheduling of Hanson Days, and Vacation Scheduling for 24-Hour Personnel.

The parties agreed upon but did not initial language covering each of these three issues.

Village Final Offer. The Village's final offer with respect to these three issues is that each shall be "in accordance with the Fire Department's policies and procedures in effect prior to the effective date of this Agreement.

Union Final Offer. The Union's final offer on these issues is to incorporate into the Agreement the language tentatively agreed to (but not initialed) by the parties.

Discussion. Clearly, both parties can live with the terms and conditions embodied in their tentative agreement on these issues. From the Village's perspective, however, the Union had not yet prior to these proceedings offered enough of a trade-off for the Village to initial the draft language. The Village in its mind ties resolution of these three issues to achievement of its position on overtime, promotion, and station and shift bidding. The overtime issue has already been decided, as have the issues of promotion and station and shift bidding. It is important to note for the record that all three of these issues (i.e., overtime, promotion and station and shift bidding) were decided upon their own respective merit, without regard to the Village's suggestion of what the proper trade-off should be with respect to non-economic issues 8, 9 and 10.²¹

Since the parties themselves drafted the tentative agreement language on non-economic issues 8, 9 and 10, and since the basis for the Village's only remaining objection to that language no longer exists for the most part, the Arbitrator adopts the

²¹ This Report presents the economic issues and non-economic issues by group, in serial numerical order. That order is not necessarily the order in which the issues were decided.

parties' own tentative agreement on duty trades, scheduling of Hanson days, and vacation scheduling for 24-hour personnel. That language, as contained in Joint Exhibit 4, is quoted below:

(ARTICLE VIII - HOURS OF WORK AND OVERTIME)

Section 8. Duty Trades. Employees shall be permitted not more than six (6) completed duty trades between employees of equal qualifications (i.e., paramedic for paramedic, engineer for engineer, officer for officer, etc.) each calendar year provided the request for a duty trade is submitted to the employee's Shift Commander or acting Shift Commander at least one duty day in advance and the employee standing by has not worked the immediately preceding 48 consecutive hours. Only the Shift Commander, or Deputy Chief if the Shift Commander is absent, may approve or deny duty trades. Requests made with less than one duty day advance notice shall be for emergency or unforeseen circumstances and may be denied by the Shift Commander (Deputy Chief if the Shift Commander is absent) if:

- (a) there is good reason to believe the circumstances are not for emergency or unforeseen circumstances;
- (b) the employee standing by does not have equal qualifications or abilities;
- (c) the employee standing by has worked 48 consecutive hours immediately preceding the requested trade; or
- (d) the requesting employee has had six (6) completed duty trades during the year.

A duty trade which is a "flip-flop" (i.e., the employees trade adjoining duty day shifts) shall be counted as a completed duty trade only for the employee requesting the "flip-flop." Duty trades for military leave or education and/or training shall not count for purposes of calculating the number of duty trades an employee takes, provided that with respect to education and/or training the Village has approved such education and/or training in advance. Likewise, duty trades of eight (8) hours or less shall not be counted for purposes of such calculations. Duty trades of eight hours or less shall not be used for the purpose of secondary employment, with the understanding that an early relief of two (2) hours or less shall not be subject to this limitation on the use of a duty trade. A total of twelve (12) duty trades in the aggregate per calendar year (accumulative to a maximum of 24 if 12 are not used in a calendar year) for Union officers/delegates for the purpose of attending union conventions/seminars and union regional meetings shall not be counted for purposes of calculating the number of duty trades for the

Union officers/delegates making the trades but shall be counted for the employees with whom the trades are made.

In addition to (a) through (d) above, requests with less than one duty day's notice may be denied by the Shift Commander (Deputy Chief if the Shift Commander is absent) for other bona fide reasons which are not arbitrary or unreasonable.

In the event such a duty trade request is denied by the Shift Commander, the specific reason(s) for denial, if requested by the employee, shall be given to the employee in writing. The employee may immediately appeal such denial up through the chain of command.

Section 9. Scheduling of Hanson Days. On or before October 15, the Shift Captain shall identify the nine (9) Hanson Day slots, including the sequence of slots that are available for selection, for each of the twenty-seven (27) calendar day scheduling cycles (work reduction days for FLSA purposes) for the following calendar year, together with the available positions (i.e., firefighter, paramedic, engineer, and/or officer) and the number of positions per slot. Officer and engineer positions ordinarily shall alternate from one Hanson day to the next Hanson Day (i.e., in a given Hanson Day slot one position shall be allocated to an officer and in the next Hanson Day slot a position shall be allocated to an engineer). Effective for the 1990 calendar year and thereafter, the floating Holiday shall be converted to a Hanson Day (i.e., a work reduction day for FLSA purposes) and shall be selected as provided in this Section.

Prior to November 1, each employee shall submit to the Shift Captain who will be in charge of the duty shift on which the employee has been assigned for the next calendar year a written list which specifically identifies the employee's Hanson Day slot selections in order of preference for each slot which contains his position. If an employee fails to provide the appropriate Shift Captain with his list of Hanson Day slots in order of preference by November 1, the employee shall be deemed to have waived his right to participate in the selection process and the appropriate Shift Captain shall assign the employee to an available Hanson Day slot for his position after all other employees who submitted lists have been placed in Hanson Day slots for their position based on seniority as set forth below.

On or after November 1, the Shift Captain shall place the employees assigned to his duty shift for the following calendar year into Hanson Day slots appropriate for their position starting with the employee in the middle of the seniority list for said shift and thereafter alternating between the next employee with more seniority and the next employee with less seniority. The seniority list for the shift shall be based on departmental seniority as defined in Article V, Section 1, rather than time served on that particular shift. If there is an even number of employees on the seniority list for the duty shift in question, of the two employees in the middle of the list, the Shift Captain shall start with the more senior of the two. In placing each employee in a Hanson Day slot appropriate for his position, the Shift Captain shall use the employee's

highest available preference when it is that employee's turn to be placed into a Hanson Day slot.

For purposes of scheduling and selecting Hanson Day slots, if the twenty-seven (27) day scheduling cycle carries over from one calendar year to the next, that cycle shall be considered as part of the preceding year.

If an employee is promoted, or transferred to another shift at a time other than the annual shift realignment, the employee will be placed in the available Hanson Day slot appropriate to his position for the balance of the year.

(ARTICLE IX - VACATIONS)

Section 5. Vacation Scheduling for 24-Hour Employees.

Vacation picks shall be made between November 1 and December 15 for the following calendar year and the selection process shall commence promptly on the Shift Captain's first duty day on or after November 1. If the employee fails to make his pick within twenty-four hours after being notified that it is his turn to pick, the employee shall be bypassed until all remaining employees have made their vacation picks. A total of three (3) 24-hour employees, including excluded supervisory employees, will be allowed to be on vacation per duty day, provided that not more than two (2) lieutenants or one (1) lieutenant and one (1) excluded supervisory employee, two (2) engineers, or three (3) paramedics may be off on vacation and/or a Hanson day per duty day.

Vacation picks shall be selected by shift on the basis of departmental seniority. Employees shall have the right to select up to all of their vacation days. There shall be no limit of the number of 24-hour splits in making vacation picks. Supervisory employees excluded from the bargaining unit who are assigned to 24-hour shifts shall be included in this vacation selection process. Employees who do not select all of their earned vacation days may schedule them at a later date in accordance with current practice and subject to the provisions set forth above.

If an employee retires, is placed on disability retirement, is promoted, is transferred to eight (8) hour shifts, or is otherwise terminated after the employee has made his vacation selection, the vacation days thus opened up shall be made available for selection by employees on the affected shift on the basis of inverse departmental seniority. An employee who has selected vacated vacation days shall not again be eligible to select vacated vacation days for the balance of that vacation year.

Once both vacation and Hanson Days picks have been made, an employee may request to trade any such pick for another such pick as long as it results in not more than two (2) lieutenants or one (1) lieutenant and one (1) excluded supervisory employee, two (2) engineers, or three (3) paramedics being scheduled off on vacation

and/or a Hanson day per duty day. Such requests shall not be arbitrarily or unreasonably denied. While any such approved trades shall be considered duty trades for purposes of FLSA, they shall not be considered duty trades for purposes of Section 8 of Article VIII.

NON-ECONOMIC ISSUE NO. 11

Station and Shift Bidding

Village Final Offer. Here is the Village's final offer on the issue of station and shift bidding:

Station and Shift Bidding. Prior to making station and shift assignments for the following year, an employee may submit a written request to his shift captain setting forth his preference for a given station and/or shift, together with the reasons for making the request. While any such requests shall be considered by the shift captains and the Fire Chief, the final right to make station and shift assignments shall be retained by the Fire Chief in order to insure that the overall needs of the Fire Department are met.

Union Final Offer. The Union's final offer on station and shift bidding is set forth as follows:

Station and Shift Bidding Assignment.

On or before September 15, 1990, the Fire Department shall post, in each fire station and the Fire Prevention Bureau, the procedures and schedule to be used for the selection of shift and station assignments.

A. **Shift Assignments:** Shift selections shall be made based on departmental seniority, provided that in order to accommodate employees who have specialized skills and are performing such skills to meet the operational needs of the Department, the Fire Department retains the right to, before any seniority selections are made, assign up to 10 percent of the employees, regardless of seniority, to various shifts with the understanding that the employee must voluntarily consent to the assignment. The Fire Department retains the right to determine the number of job classifications per shift, i.e., lieutenants, paramedics, engineers, and firefighters.

In order to create a reasonable seniority balance between the shifts, the Fire Department may divide employees into as many as three seniority brackets for the purpose of making shift selections. The Fire Department may determine the number of job classifications for each seniority bracket.

B. Station Assignments: The Fire Department shall determine and identify the number and types of job classifications which are available at each fire station.

Before employees begin to choose a station the Fire Department shall have the opportunity to assign no more than 3 employees per shift to various stations, provided that such assignments are not made for capricious or punitive reasons. The remainder of the station assignments shall be selected by employees based on departmental seniority.

Annual Transfers. Company assignments which become vacant during the calendar year due to promotions, retirements, resignations, terminations, deaths, transfers to and from the Fire Prevention Bureau, or the creation of new company assignments, shall be temporarily filled at the discretion of the Fire Department.

Annually, each employee shall be given the opportunity to declare his current assignment as being available for transfer. After all employees have been given the opportunity to make a declaration, the Fire Department shall post, in each fire station and the Fire Prevention Bureau, a list which identifies all company assignments available for selection. The list shall include all company assignments temporarily filled by the Fire Department, and all assignments declared available by the employees who currently hold them. The list shall specify the shift number, station number, and company assignment for each vacancy.

Employees who temporarily occupy an assignment or who declare their positions as available, shall be allowed to select their preferred assignment based on departmental seniority. Before the preferences of an employee are considered, the Fire Department shall have the opportunity to assign 10 percent (rounded to the nearest whole number) of the eligibles to company assignments; provided that such assignments are not made for capricious or punitive reasons.

Discussion. The Union characterizes its final offer on this issue as an attempt to eliminate the arbitrary transfer of employees and the assignment of stations and shifts without written policies or reasons. Essentially, the Union wishes to eliminate what it considers to be favoritism in these processes. It believes that its final offer also addresses the Village's desire to have an appropriate mix of experience and specialized skills at each station and on each shift because of its provision that the employer may assign ten percent of the eligibles before employee preferences are submitted and

without regard to seniority. The Union also feels its provision for as many as three seniority brackets for shift selection purposes would ensure that no one fire house became seniority heavy.

The Village argues that adoption of the Union's final offer would result in a dramatic and substantial change in how these assignments are made. Historically, prior to making shift assignments, the Deputy Chief assimilates information from the shift commanders as to whether anyone on their respective shifts wants to trade/change shifts. The Deputy Chief and Fire Chief then make shift assignments with a view toward balancing several factors. There must be an appropriate number of lieutenants, paramedics, engineers and firefighters on each shift. There must also be an appropriate complement of those trained to perform in various specialty positions (e.g., scuba divers, hazardous material personnel, fire investigators, etc.). Relative seniority must also remain balanced in order to avoid subsequent manpower voids due to vacation scheduling. The Village feels it is important to rotate shift commanders and some lieutenants periodically (every two years) for what appear to be legitimate reasons (cross-familiarization with equipment and personnel, for example). Once assigned, the shift commanders submit to the Deputy Chief their recommendations as to station assignments for personnel assigned to their respective shifts.

The legitimacy of the Village's concern about an appropriate balance of classifications, skills, and experience levels across the various shifts and stations is beyond question. Moreover, in spite of the Union's allegations about previous abuses, the system seems to be working reasonably well as it stands. Deputy Chief Kramer testified that over the years he has been involved with making station and shift assignments for 24-hour personnel only one firefighter has registered a complaint. And the one case the Union used to illustrate the alleged insensitivity of the Department with respect to employee assignment preferences was not persuasive. That

is, the two employees who allegedly could not tolerate each other ultimately requested to be assigned to the same station and shift.

On the other hand, the Union's concern about the way in which the Department has used its discretionary authority in making shift and station assignments is definitely real to the Union. Sometimes unfairness or arbitrariness is perceived because those involved have not gotten much information about the reasoning behind a decision that affects them. From that perspective, the Union's point of view here is equally legitimate. However, and as stated with regard to several of the issues in this proceeding, the party wishing to change the status quo must present compelling reasons to do so. The record before me does not contain sufficient compelling reason for adopting the Union's final offer on this issue.

That does not mean, however, that the Arbitrator endorses free reign for the Department in making station and shift assignments. Such assignments should not be arbitrary or discriminatory; that is, they should be based upon sound organizational considerations. To confirm the Village's commitment to doing so, the Arbitrator has adopted the following language, a variation of the Village's final offer on this issue:

Station and Shift Bidding. Prior to the making of station and shift assignments for the following year, an employee may submit a written request to his shift captain setting forth his preference for a given station and/or shift, together with the reasons for making the request. While any such requests shall be considered by the shift captains and the Fire Chief, the final right to make station and shift assignments shall be retained by the Fire Chief in order to insure that the overall needs of the Fire Department are met. Such assignments shall not be arbitrary or discriminatory.

NON-ECONOMIC ISSUE NO. 12

Promotions

Village Final Offer. The final offer of the Village on promotions is as follows:

Section _____ Promotions. With respect to promotions to the rank of lieutenant, the Village agrees that all examinations shall be competitive and that it will do the following:

1. Post prior to the written examination the components and weight to be given to each component;
2. Post a reading list of the study materials for the written examination at least three months in advance of the date of the written examination;
3. Have the written examination graded by the Board of Fire and Police Commissioners and its confidential designee(s); and
4. Advise employees who have taken the examination, upon request, of their score for each component after the composite scores of those who make the promotion eligibility list have been posted, provided that answers to questions, the individual ratings given during an oral interview, etc., shall be deemed strictly confidential and shall not be made available to either the employee or the Fire Department.

The Board of Fire and Police Commissioners retains the sole right to determine the components and the weight to be given to each component and the exercise of such right shall not be subject to the grievance and arbitration procedure set forth in this Agreement.

Union Final Offer. The final offer of the Union on the issue of promotions to lieutenant is identical to that of the Village, except for the addition of the following paragraph between paragraph No. 4 above and the last paragraph of the Village's final offer:

5. All evaluations of employees by supervisory personnel of the Village shall be completed on evaluation forms requiring the supervisory employees to objectively evaluate employees in the areas of job performance, reliability, and experience.

Discussion. The final offer of the Village would continue the status quo with regard to the process used to select employees for promotion to lieutenant positions. Applicants for promotion must first take a written examination, on which they must achieve a score of 70 or better to pass. Those passing the examination are interviewed by the Board of Fire and Police Commissioners and evaluated by the Department as well. The written examination is the most influential in the process, receiving 50% of the total weight; the interview is weighted at 25%, as is the Departmental evaluation. This three-part selection process is used for all promotions in both the Fire and Police Departments, and has been for several years. The parties' dispute here concerns the nature of the Departmental evaluation.

Both the Fire and Police Departments use the paired-comparison method for differentiating among applicants for promotion. Under this system, each applicant is compared with each other applicant, one at a time, by several different evaluators independently. The evaluators complete this process without knowing the results of the written examination and interview. Each evaluator assigns points to each applicant in each of the dyadic comparisons. The Village explained the point system as follows:

Since the departmental evaluation is limited to a range of 30 points (i.e., no applicant can be given a score of less than 70 nor higher than 100), the maximum number of points that any applicant can receive if he/she is picked as the best in all of the paired comparisons by all raters is then divided by 30 to come up with a percentage factor for each point that an applicant receives as a result of the paired comparison evaluation process. For example, if there were nine raters and 11 applicants, ... the maximum score that any one applicant could get would be 90. This means that the percentage factor would be .33 (i.e., 30 divided by 90 = .333). This percentage factor would then be multiplied times the total number of times that each applicant was picked as the best of a paired comparison. If, for example, an applicant was picked 45 times, that 45 would be multiplied times .33 for total of 15 which, in turn, would be added to the minimum score of 70 to provide a final score of 85 for the department evaluation.

The Union feels the paired-comparison method of evaluating candidates for promotion leaves too much room for favoritism, citing the fact that no reasons are

provided by evaluators for their choices. It believes the system has a negative effect on employee morale. The union suggests adoption of a system whereby the evaluators specifically consider applicant job performance, reliability and experience.

No employee evaluation system is totally objective. One has not yet been designed that is totally fair. As long as people evaluate other people there will be elements of favoritism built into any evaluation system. At best, an evaluation system can only minimize the influence of imperfect human judgment. Having been personally involved in numerous promotion selection decisions using various methods, and having taught performance appraisal at the university level for over a decade, the Arbitrator is convinced that every evaluation system has its advantages and disadvantages.

The Union is quite correct in its criticism of the paired-comparison evaluation method, in that it does not offer guidelines to shape the evaluators' thinking. It does not anchor their evaluative perspective to specific dimensions of job performance, nor does it provide specific feedback to successful and unsuccessful candidates for promotion. Indeed, if it were the only method used to evaluate promotion applicants, the Arbitrator would not be likely to adopt it.

On the other hand, the paired-comparison technique has its advantages. The principal advantage is the orderly way in which it forces each evaluator to consider one applicant within the limited context of another. It therefore helps minimize the bias associated with overall or straight ranking techniques. Moreover, it suffers from fewer of the commonly cited appraisal errors associated with rating scales and interviews (halo effect, central tendency, etc.). And finally, every major published source on performance appraisal and selection includes the paired-comparison method as a commonly accepted technique for accomplishing those functions.

It is clear from the record that not all of the five or so evaluators in the Fire Department are intimately familiar with the day-to-day performance of all of the

candidates for promotion. I am convinced from the evidence, however, that the evaluators have had enough exposure to the candidates to enable them to make a valid overall assessment of their promotability.

Turning to the external comparables, there is little if any support for the Union's proposed departure from the status quo. The overwhelming majority of those communities with collective bargaining agreements did not even agree to include a clause on promotions.

Overall, I am convinced from a review of the evidence on this issue that the current system of evaluating applicants for promotion is fair. It includes several techniques for doing so (written test, interview & paired-comparison), and it employs several evaluators from both inside and outside the Department. The system is not without fault, but then again, no selection system is. I therefore find no compelling reason to adopt the Union's final offer, which would reflect a departure from the status quo.

NON-ECONOMIC ISSUE NO. 13

Entire Agreement

Village Final Offer. The Village final offer on this issue is quoted below.

This Agreement, upon ratification, supersedes all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties, and concludes collective bargaining for its term unless otherwise expressly provided herein.

The Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, including the impact of the Village's exercise of its rights as set forth herein on wages, hours or terms and conditions of employment. This paragraph does not waive the right to bargain over any subject or matter not referred to or covered in this Agreement which is a

mandatory subject of bargaining and concerning which the Village is considering changing during the term of this Agreement.

Union Final Offer. Here is the Union's final offer on this issue;

This Agreement, upon ratification, supersedes all prior practices and agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties, and concludes collective bargaining for its term unless otherwise expressly provided herein.

The Village and the Union, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, including the impact of the Village's exercise of its rights as set forth herein on wages, hours or terms and conditions of employment.

Discussion. The Village has graciously agreed, "in the spirit of compromise and to slightly reduce the Arbitrator's work load" to withdraw its objection to adoption of the Union's final offer on this issue (Village Posthearing Brief, p. 204). The Union's final offer is therefore adopted.

NON-ECONOMIC ISSUE NO. 14

Employee Discipline

Village Final Offer. The Village feels that all disciplinary issues involving bargaining unit employees should be handled in accordance with the provisions of Section 2.17 of the Illinois Municipal Code. That is, it feels employee discipline should continue to be reviewed by the Board of Fire and Police Commissioners as the final authority. In connection with that position, the Village proposes adding the following sentence to Article VI, Section 6 (Limitations on Authority of Arbitrator):

The Arbitrator shall have no authority to rule on any matter or dispute that is subject to the jurisdiction of the Arlington Heights Fire and Police Commission.

The Village's position on this issue also involves related language in Article VI, Section 1 (Grievance Definition), Article VII (No Strike-No Lockout), Article XVII (A), Section 3 (Emergency Medical Services), and Article XIV, Section 5 (Drug Testing).

Union Final Offer. The Union feels employees should have a choice as to whether their disciplinary cases are ultimately reviewed by the Fire and Police Commission or by an independent arbitrator. Its final offer is quoted below:

Section _____: Employee Rights: Employees shall have all rights as set forth in Chapter 24, Ill. Rev. Stat., Section 10-2, 1-17, to have their discipline cases reviewed by the Board of Fire and Police Commissioners. Employees shall also have the right to file grievances concerning discipline cases. The right to a hearing before the Board of Fire and Police Commissioners and the right to an arbitration hearing shall be mutually exclusive, and the selection of one forum shall operate to waive the right to a hearing in the other. Discipline charges shall be filed with the Board of Fire and Police Commissioners and copies shall be sent to the union. If the union refers a disciplinary grievance to arbitration, the employee shall execute an appropriate waiver of his right to seek review before the Board of Fire and Police Commissioners not more than twenty-one days after the Chief files disciplinary charges against the employee. The time limits for appeals to the Board of Fire and Police Commissioners shall be governed by statute, except that no proceeding before the Board shall commence until the employee has declared the forum in which the disciplinary action is to be contested.

A hearing before the Board of Fire and Police Commissioners shall be conducted under the applicable rules and regulations of the Commission and the applicable statute.

A hearing before an arbitrator selected under the procedures of this collective bargaining contract shall be conducted in the same manner as an arbitration proceeding provided by this collective bargaining contract. An arbitration hearing conducted under this section to contest disciplinary action shall be expedited and is to be completed, including the issuance of a decision by the arbitrator, within thirty (30) days of the union's referral of the disciplinary grievance to arbitration, unless the parties by mutual agreement waive this time limit.

Section _____ Employer's Authority. The authority of the Fire Chief to discipline employees shall be governed by Chapter 24, Ill. Rev. Stat. regardless of which forum the employee may select in which to contest the disciplinary action. except that the Chief may suspend an employee for a period of no more than twenty-one days after the filing of charges against the employee involving serious misconduct. If the union refers the disciplinary action to an arbitrator, and the employee executes an appropriate waiver of his right to seek review before the Board of Fire and Police Commissioners, the Chief in cases involving serious misconduct will have the authority to remove the employee from payroll status without seeking for review by the Board of Fire and Police Commissioners.

Discussion. The Union feels its final offer must be adopted in order to implement the provisions of the Illinois Public Labor Relations Act. It also argues that its final offer is consistent with a growing line of Illinois interest arbitration decisions.²² Moreover, the Union adds, giving employees a choice of forums would serve the interests of those employees who might have a personal preference to secure a private attorney and appear before the Fire and Police Commission while at the same time preserving the interests of those who might opt for Union representation in arbitration.²³

The Village asserts that the arbitration of employee disciplinary issues is not required by the Illinois Public Labor Relations Act. The Village also argued in its Posthearing Brief that the parties here "have not agreed to a provision providing that discipline shall be for just cause." (P. 209). The Arbitrator notes, however, that the Union's final offer on Management Rights has been already been adopted. It includes a provision requiring "just cause" as the appropriate criterion for employee discipline. The just cause standard is one of the most well-accepted tenets of the union-

²² The Union relied heavily on City of Springfield, Case No. S-MA-89-74 (1990), in which Arbitrator Edwin Benn ruled that Section 8 of the Labor Act required a choice between arbitration and the civil service system for police officers appealing disciplinary decisions.

²³ The Union cited considerable arbitral support for this argument: City of Markham, Illinois, Case No. S-MA-89-39; Village of Oak Park, ISLRB Case No. S-MA-88-26 (1988); Will County Board and Sheriff of Will County (1988).

management relationship.²⁴ Indeed, many arbitrators assume that in our highly industrialized society the standard is an implicit part of any collective bargaining agreement, whether it is written there or not. And the expertise of labor arbitrators in interpreting such standards is also well-established. In fact, even the U.S. Supreme Court has acknowledged that labor arbitrators have a special expertise in labor issues not even possessed by the Court itself.²⁵ The Union's proposal for the arbitration of disciplinary cases is neither unusual nor inappropriate; rather, it is well within the boundaries of commonly-accepted labor agreement provisions.

Another favorable aspect of the Union's final offer on this issue is that it gives employees a choice. Those having confidence in the fairness of the Board of Fire and Police Commissioners could opt for a hearing before it; those feeling more comfortable with an independent party---not appointed by anyone but mutually selected by the parties themselves---could choose arbitration. The Union's final offer is simply more democratic in that it gives employees some say in decisions that will have a significant effect on them.

The Arbitrator recognizes that there is little support from the external comparables for adopting the Union's position on this issue. Only twenty percent of the comparable communities permit employees to choose between arbitration or a hearing before their respective fire and police commissions.²⁶ However, the fundamental equity and fairness considerations woven into this issue have caused the undersigned to give controlling weight to the "other factors" statutory criterion. The obligation of employers to use the "just cause" standard in disciplinary matters, and the

²⁴ See How Arbitration Works, by Frank and Edna Asper Elkouri, for overwhelming support of this statement (Washington, D.C.: Bureau of National Affairs, 1985), pp. 652-654.

²⁵ United Steelworkers v. American Manufacturing Co., 80 S.Ct. 1343, 34 LA 561 (1960).

²⁶ Three out of the fifteen external comparables (Lombard, Northbrook and Park Ridge) provide for this option.

corresponding right of employees to have employer disciplinary decisions reviewed by a trained third-party neutral have been widely embraced by union and management negotiators alike. Indeed, even the Illinois Public Labor Relations Act at Section 8 recognizes the desirability of the arbitration process for resolving disputes over the administration of collective bargaining agreements. The Union here, and in its management rights final offer, was simply seeking for members of the bargaining unit a contractually guaranteed right to fair treatment. That objective is not unreasonable, nor is it out of line with the vast majority of collective bargaining agreements negotiated in both the public and private sectors.

The Village also argued that the Union's final offer would encourage "forum shopping," and that it might create inconsistent disciplinary outcomes. The Arbitrator disagrees. The only way such a result would occur would be if one procedure or the other were perceived by employees as more just. Clearly, if one of them were, it should be favored by employees and management alike. Moreover, there is no evidence that such problems have occurred in the three comparable communities (Lombard, Northbrook and Park Ridge) which do offer employees a choice between arbitration or a fire and police commission hearing.

As it is written, the Union's final offer creates a conflict between itself and the parties' negotiated grievance procedure. The Union's spokesperson acknowledged at the hearing that the time limits for processing a grievance "would have to be overridden and the Union would then coordinate with the employee within the 21-day period what the employee preferences were." (Tr-1640). The Arbitrator has attempted to resolve that potential conflict by the language below, which is hereby adopted:

Section _____: Employee Rights: Employees shall have all rights as set forth in Chapter 24, Ill. Rev. Stat., Section 10-2, 1-17, to have their discipline cases reviewed by the Board of Fire and Police Commissioners. Employees shall have the alternative right to file grievances concerning discipline cases. The grievance procedure in Article VI and the hearing process by the Board of Fire and Police

Commissioners are mutually exclusive and no relief shall be available under the grievance procedure for any action heard before the Board of Fire and Police Commissioners. Furthermore, the filing of a grievance involving employee discipline shall act as a specific waiver by the Union and the employee involved of the right to challenge the same matter before the Board of Fire and Police Commissioners and a form containing such specific waiver shall be executed by the Union and the involved employee before a grievance may be filed under the grievance procedure. Employees initially seeking review by the Board of Fire and Police Commissioners may subsequently elect to file a grievance within the appropriate time limits specified in the grievance procedure, but only prior to any hearing before the Board. Employees so filing a grievance shall immediately withdraw their requests for a Board hearing and waive any and all rights to additional hearing(s) before the Board.

Discipline charges shall be filed with the Board of Fire and Police Commissioners and copies shall be sent to the Union.

A hearing before the Board of Fire and Police Commissioners, if any, shall be conducted under the applicable rules and regulations of the Commission and the applicable statute.

A hearing before an arbitrator selected under the procedures of this collective bargaining contract shall be conducted in the same manner as an arbitration proceeding provided by this collective bargaining agreement, except that in cases involving discharge of an employee the parties will make every reasonable attempt to expedite the process.

Section _____ Employer's Authority. The authority of the Fire Chief to discipline employees shall be governed by Chapter 24, Ill. Rev. Stat. regardless of which forum the employee may select in which to contest the disciplinary action.

The above language also eliminates the Union's proposal to have an arbitrator's award "within 30 days of the union's referral of the disciplinary grievance to arbitration." It would be wonderful if arbitration could take place so quickly, but the Union's desire to accomplish that objective is unrealistic given the busy schedules of competent advocates and arbitrators.

The Union's wish to limit the authority of the Chief to suspensions of a prescribed length was not justified in the record before me. Perhaps there is a historical background which prompted the Union's position on that point; perhaps

there are other factors involved. Without more specific support for it, however, the Arbitrator finds no compelling reason to place such a limit on the Chief's authority.

NON-ECONOMIC ISSUE NO. 15

Smoking/No Smoking

Village Final Offer. The final offer of the Village on this issue is quoted below:

Section _____ No Smoking. Employees covered by this Agreement shall not smoke while on duty, provided that the employees who were smokers as of April 1, 1990, shall be permitted to smoke while on duty, but only on the apparatus floor or outdoors.

Union Final Offer. Here is the Union's final offer on this issue:

Smoking/Non-Smoking

Smoking by employees in fire stations shall be permitted upon the apparatus floor and in the day/recreation lounge at times that employees are not present for training. Smoking by employees shall be allowed outside the fire stations at any time.

Discussion. The respective rights of smokers and non-smokers have been the subject of widespread debate over the last decade. Both sides of the debate have made legitimate arguments. In the instant case the Union argues that the Village's final offer would force employees to smoke in the most uncomfortable portion of the fire house where environmental conditions are not conducive to creature comfort. The Union also notes that the Village's proposal bans all smoking for employees hired after April 1, 1990.

The Village notes the existence of an Arlington Heights ordinance acknowledging the fact that smoking is a form of air pollution and prohibiting smoking in "enclosed public places." It also points out that 80% of the bargaining unit

members do not smoke. The Village argues as well that certain of the comparable communities have made a "no smoking pledge" a condition of employment.

Nearly everyone, including the most impartial of arbitrators, has a strong personal opinion about the rights of smokers vs. those of non-smokers.²⁷ There are two facts about smoking which are not denied by persons on either side of the issue, however: (1) both active and passive smoking is harmful to human health; and (2) smoking is one of the most difficult of human habits to break. The Arbitrator is influenced by both of those facts, as well as by the fact that 80% of the bargaining unit does not smoke.

As the Union correctly notes, people who smoke do so to relax, and the stressful nature of a firefighter's job demands opportunity for relaxation. It is also important to recognize that fire suppression employees literally live at the fire house for 24-hours at a stretch. It is unrealistic to believe that a smoker could go that long without a cigarette, as the Village's final offer would require of those who started smoking after April 1, 1990. But non-smokers have to live there too.

The Arbitrator is convinced that there is a proper balance between the respective rights of these two groups. Recognizing that non-smokers in the bargaining unit outnumber smokers 4 to 1, the portion of the Village's offer restricting smoking to the apparatus room or outdoors seems reasonable. The Union's proposal to allow it in the day room/recreation lounge as well would not be fair to the majority. This conclusion is justified not on the basis of the non-smokers' mere comfort alone, but in recognition of the clear evidence in this record that second-hand smoking is harmful to human health. Finally, there is no evidence in the record to demonstrate that smoking on the apparatus floor would constitute a threat to the physical safety of those opting to do so.

²⁷ The personal position of the Arbitrator in this case, for example, is well-known. It is also wholly irrelevant to the outcome of this issue.

Based upon the foregoing analysis, the Arbitrator adopts the following language on this issue:

Section _____. Smoking. Employees covered by this Agreement shall be permitted to smoke while on duty, but only on the apparatus floor or outdoors.

AWARD

Based upon full consideration of the parties' respective arguments, the applicable statutory criteria, and the entire record before me, the Arbitrator awards the following:

ECONOMIC ISSUES

Economic Issue No. 1 - Salaries. The final offer of the Village is adopted.

Economic Issue No. 2 - Lieutenant Salary Adjustment. The final offer of the Union is adopted.

Economic Issue No. 3 - Firefighter II(P) (Paramedic) Salary Adjustment. The final offer of the Village is adopted.

Economic Issue No. 4 - Step Increments. The final offer of the Village is adopted.

Economic Issue No. 5 - Retroactivity of Wages, Including Overtime Hours. The final offer of the Union is adopted.

Economic Issue No. 6 - Sick Leave. This issue was resolved by the parties themselves. The Arbitrator has no jurisdiction over it.

Economic Issue No. 7 - Overtime Pay (Article VIII, Section 5). The final offer of the Village is adopted.

Economic Issue No. 8 - Pay for EMT-A and EMT-P Training (Article XVII(A), Section 7). The final offer of the Village is adopted.

Economic Issue No. 9 - Cost of Medical Treatment (Article XVII(A), Section 9). The final offer of the Village is adopted.

Economic Issue No. 10 - Comprehensive Medical Program (Article XVII, Section 1). The final offer of the Union is adopted.

Economic Issue No. 11 - Life Insurance. This issue was resolved by the parties themselves. The Arbitrator has no jurisdiction over it.

Economic Issue No. 12 - Dental Insurance. Due to the circumstances explained on page 51 of this Report, the Arbitrator has rejected the Village's final offer covering a dental insurance plan.

Economic Issue No. 13 - Tuition Reimbursement and Educational Incentives. This issue was resolved by the parties themselves. The Arbitrator has no jurisdiction over it.

Economic Issue No. 14 - Disability Pay. The final offer of the Union is adopted.

Economic Issue No. 15 - Longevity Pay. The final offer of the Village is adopted.

Economic Issue No. 16 - Stipends for Paramedics Who Are Qualified to Serve as Engineers and Vice-Versa; Stipends for Lieutenants Who Are Qualified to Serve as Paramedics. The final offer of the Village is adopted.

Economic Issue No. 17 - Holiday Pay. The final offer of the Village is adopted.

Economic Issue No. 18 - Uniform Allowances. This issue was resolved by the parties themselves. The Arbitrator has no jurisdiction over it.

Economic Issue No. 19 - Duration of Agreement. The final offer of the Village is adopted.

Economic Issue No. 20 - Legislative Cost Increases. The final offer of the Union is adopted.

NON-ECONOMIC ISSUES

Non-Economic Issue No. 1 - Fair Share. The final offer of the Village is adopted.

Non-Economic Issue No. 2 - Duty of Fair Representation. The final offer of the Union is adopted.

Non-Economic Issue No. 3 - Management Rights. An amended version of the Union's final offer is adopted, as explained on page 76 of this Report.

Non-Economic Issue No. 4 - Grievance and Arbitration Procedure (Binding vs. Advisory Arbitration). An amended version of the Union's final offer is adopted, as explained on page 77 of this Report.

Non-Economic Issue No. 5 - Normal Work Day and Work Week (Article VIII, Section 2). An amended blend of both parties' final offers on this issue is adopted, as explained on page 79 of this Report.

Non-Economic Issue No. 6 - Changes in Normal Work Day, Normal Work Week or Normal Work Cycle (Article VIII, Section 4). This issue was resolved by the parties themselves. The Arbitrator has no jurisdiction over it.

Non-Economic Issue No. 7 - Hirebacks for 24-Hour Personnel (Article VIII, Section 5). An amended blend of both parties' final offers on this issue is adopted. The exact language is set forth on pages 84 and 85 of this Report.

Non-Economic Issue Nos. 8, 9 and 10 - The final offer of the Union is adopted.

Non-Economic Issue No. 11 - Station and Shift Bidding. An amended version of the Village's final offer is adopted, as set forth on page 93 of this Report.

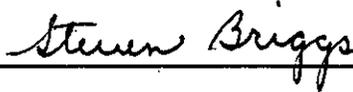
Non-Economic Issue No. 12 - Promotions. The final offer of the Village is adopted.

Non-Economic Issue No. 13 - Entire Agreement (Zipper Clause). The final offer of the Union is adopted.

Non-Economic Issue No. 14 - Employee Discipline. An amended version of the Union's final offer is adopted, as set forth on pages 102 and 103 of this Report.

Non-Economic Issue No. 15 - Smoking/No Smoking. An amended blend of both parties' final offers is adopted, as set forth on page 106 of this Report.

Signed by me at Chicago, Illinois, this 29th day of January, 1991.



Steven Briggs

