



INTEREST ARBITRATION
OPINION AND AWARD

VILLAGE OF WESTCHESTER

and

ISLRB # S-MA-90-167
FMCS #90-24311

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL,
LODGE NO. 21

Hearing Held

Appearances

March 13, 1991

For the Employer:

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Westchester, Illinois

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Arbitrator

For the Association:

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BACKGROUND

The Village of Westchester (the Employer) is a Chicago suburb having a population of approximately 17,000. It has a council/manager form of government, with the Village Manager serving as Chief Administrative Officer. The Village's Police Department employs 23 Patrol Officers, all of whom are represented for collective bargaining

purposes by the Illinois Fraternal Order of Police Labor Council (the Union).

The parties were not able through free collective bargaining to reach agreement on all of the terms of their May 1, 1990, through April 30, 1992, collective bargaining agreement. Accordingly, and pursuant to Section 14 of the Illinois Public Labor Relations Act (the Act), § 1614, Ch. 48, Ill. Rev. Stat., they mutually selected Steven Briggs to conduct an interest arbitration hearing and issue a final and binding award on the outstanding issues. The hearing was conducted on March 13, 1991, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issues. The hearing was transcribed, and both parties filed timely Posthearing Briefs. The record was declared closed on April 21, 1991.

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.

STIPULATIONS OF THE PARTIES

At the hearing the parties entered into the following stipulations:

(1) These proceedings are governed by Section 14 of the Illinois Public Labor Relations Act (§ 1614, Ch. 48, Ill. Rev. Stat.);

(2) The Arbitrator has jurisdiction over the subject matter and the parties; ¹

(3) The parties waive their right to a three-member tripartite panel of arbitrators as provided in § 14 of the Act, and agree to proceed with a single, neutral Arbitrator;

(4) The unresolved bargaining subjects which the parties are submitting to the Arbitrator for decision are as follows:

¹ The Village initially questioned whether the use of auxiliary officers is a mandatory subject of bargaining. By stipulating to the Arbitrator's authority over the "subject matter," the Village did not waive its position that the subject of auxiliary officers was non-mandatory. The Village also placed this same condition on items (4) and (5) of the stipulations.

- Wages for the first and second years of the labor agreement;

- The agreement language governing payment of premium costs for dependent medical and health insurance coverage;

- The agreement language governing drug and alcohol testing of employees;

- The agreement language governing the use of auxiliary employees.

(5) The issues concerning wages for each year of the agreement and insurance are economic in nature, and the issues concerning drug and alcohol testing and auxiliary employees are non-economic in nature.

(6) As to those issues which are economic in nature, § 14 of the Act mandates the Arbitrator select either the final offer of the Union or the final offer of the Employer with respect to each issue in making his Award.

(7) With regard to the non-economic issues, the Arbitrator has the statutory authority to select the Union's final offer, the Employer's final offer, or to fashion language which the Arbitrator believes is appropriate.

(8) The Arbitrator has the express authority and jurisdiction to issue an Award providing for increases in wages and other forms of compensation retroactively to May 1, 1990, pursuant to § 14 of the Act and the Rules and Regulations of the Illinois State Labor Relations Board.

(9) The parties have reached agreement concerning the following items, and ask the Arbitrator to include them as part of his Award: ²

(a) Term of Agreement: Two years (May 1, 1990, through April 30, 1992);

(b) Uniform Allowance: Modify Section 6.5 by increasing the uniform allowance of "\$400 per year" to "\$500 per year." The 1990 uniform allowance shall be paid within 30 days of the date on which the Village receives the Award of the Interest Arbitrator.

(c) Vacation Selection. There shall be set forth in a department administrative procedure, not a change in the contract, that two sergeants not covered by the collective bargaining agreement shall be permitted to schedule vacation at the same time, which has the result of opening up more vacation time for patrolmen to get their vacation selections.

(d) Hours of Work and Overtime: Amend Section 7.3, Overtime, to read as follows:

"Section 7.3. Overtime Pay. Officers covered by the terms of this Agreement shall be paid overtime, at the rate of time and one-half (1-1/2) their regular hourly rate of pay, for all hours worked in excess of an eight (8) hour day and/or forty (40) hour workweek. For purposes of calculating overtime, all compensated hours shall be counted. Overtime shall be computed on the basis of fifteen-minute segments, using FLSA rounding rules."

(e) Court Pay: Amend Section 7.5, Court Pay, by adding the following: "The

² The parties instructed the Arbitrator not to issue any "findings" concerning these agreed upon items. The only purpose for including them in the Award is to avoid any potential confusion and/or disputes regarding them after the Award has been issued.

minimum three (3) hours pay shall apply to each court call an officer makes in any given day, while on his off-duty time."

(f) Labor-Management Conferences:

Add the following to Section 8.3, Attendance: "All on-duty time spent in Labor-Management Conferences shall be counted toward calculation of overtime payment."

(g) Drug Testing: [NOTE: This is a partially agreed item only. The new labor contract will include the employee alcohol and drug testing policy in the form attached hereto and marked as Exhibit 1 (except for (i) and (ii) below). The new language shall replace Section 11.8, Drug and Alcohol Testing, in the current collective bargaining agreement.]

The two subjects open as to drug and alcohol testing which are subject to this interest arbitration are:

(i) Whether the Village has the right to require an employee to submit to random drug testing four times per year (Note: At the hearing, the Village modified its position from four to two random tests per year;

(ii) Whether the blood alcohol concentration shall be .05, as proposed by the Village.

(h) Physical Exam: Add the following language to Section 11.3, Physical Exam:

"Results of an employee physical examination will not be submitted to any representative of the Village, unless the medical finding is that the employee is medically unable to perform his job, in which event, the information from the physician will be submitted directly to the Village Manager and to no other representative of the Village."

THE COMPARABLE COMMUNITIES

Employer Position

The Employer argues that the five neighboring municipalities of Bellwood, Berkeley, Broadview, Hillside, and Maywood should be adopted as comparable communities. These communities, along with the Village of Westchester, make up Network 17 (Net 17), a group of communities on the same police radio network who back up each other on emergency calls. The Employer notes that the group of Net 17 communities is nearly identical to the "Battalion 7" communities adopted as comparables in two previous Village of Westchester Fire Department interest arbitration proceedings.³ The Employer also points out that it did not select its proposed comparables out of self-interest. Table 1 on the following page presents the Employer's suggested comparable communities and selected statistics often used for comparison purposes:

³ Village of Westchester and Illinois Firefighters Alliance, Council 1, ISLRB No. S-MA-89-83 (Berman), September 22, 1989; in a currently pending 1991 Village of Westchester Firefighters' interest arbitration the parties stipulated before Arbitrator Sinclair Kossoff that Battalion 7 municipalities constituted the appropriate comparables pool.

TABLE 1

EMPLOYER'S SUGGESTED COMPARABLE JURISDICTIONS

<u>Jurisdiction</u>	<u>1990 Pop.</u>	<u>Median Home Value</u>	<u>Per Capita Income</u>	<u>No. of Officer</u>
Bellwood	20,102	\$58,000	\$7,763	41
Berkeley	5,467	\$64,400	\$9,709	15
Broadview	8,617	\$57,300	\$8,826	32
Hillside	8,279	\$65,100	\$9,678	29
Maywood	28,000	\$44,800	\$6,496	64
Westchester	17,309	\$71,500	\$10,694	35

Source: Village Exhibit 10; Union Exhibit 1

Union Comparables

The Union proposes a comparables list which consists of fourteen municipalities geographically proximate to Westchester. They are listed in Table 2 on the following page:

TABLE 2

UNION'S SUGGESTED COMPARABLE JURISDICTIONS

<u>Jurisdiction</u>	<u>1990 Pop.</u>	<u>Median Home Value</u>	<u>Per Capita Income</u>	<u>No. of Officer</u>
Elmhurst	42,029	\$74,200	\$10,340	62
Maywood	27,139	\$44,800	\$6,496	59
Villa Park	22,253	\$66,000	\$8,896	35
Bellwood	20,241	\$58,000	\$7,763	41
Brookfield	18,876	\$63,000	\$9,011	28
Alsip	18,227	\$63,500	\$8,741	38
Forest Park	14,918	\$52,100	\$9,994	34
Norridge	14,459	\$77,500	\$9,290	31
River Forest	11,669	\$111,600	\$14,155	29
Riverside	8,774	\$88,600	\$12,279	19
Broadview	8,713	\$57,300	\$8,826	32
Hillside	7,672	\$65,100	\$9,678	25
North Riverside	6,005	\$64,800	\$9,506	19
Countryside	5,716	\$72,100	\$10,406	21
Westchester	17,309	\$71,500	\$10,694	35

Source: Union Exhibit 1

The Union argues that it is more appropriate to consider the above communities than it is to limit comparison to the communities next door to Westchester. Moreover, it asserts that population, median home value, per capita income, and the number of police officers in their respective departments are appropriate criteria for comparison purposes.

Discussion

Selection of a realistic grouping of comparable communities is one of the most difficult aspects of public sector interest arbitration. As noted by Counsel for the Union during the arbitration hearing:

. . . (the Employer advocate) and I, and I assume the Arbitrator, could stop these proceedings and spend the next week debating how you arrive at what is a true comparable, and my guess is at the end of that week we would not have an agreement on (that). . . (Tr-45).

Complicating the selection of appropriate comparables in the instant case is a rather lean record on the subject. Essentially, the Union says: "The Employer wants the Arbitrator to look just next door; we think the Arbitrator should look up and down the block." It is clearly appropriate to look next door, provided those communities are similar to Westchester on dimensions beyond simple geographic proximity. It is also advisable to look beyond Westchester's immediate neighbors, so long as their distance from there does not place them in a different local labor market.

But the Union did not specify the criteria it used to select its comparables. It provided no information as to why communities closer to Westchester than, say, Norridge to the North or Countryside to the South were not included. The Arbitrator is therefore in no position to evaluate with certainty the appropriateness of many of the Union's suggested comparable communities.

With the exception of Berkeley, the communities proposed by the Employer as comparable here have been used in two firefighter

interest arbitration cases involving the Village of Westchester. The Union agrees that Bellwood, Broadview, Hillside and Maywood are appropriate comparables but does not include Berkeley in its list. In terms of 1990 population, Berkeley is very small compared to Westchester (5,467 to 17,309). Its police department employs only 15 officers, whereas the Westchester Police Department has approximately 35. The Arbitrator agrees with the Union that Berkeley is not appropriate for comparison purposes. It is simply too small to be able to compete effectively with Westchester in the local labor market.

North Riverside is nearly as small as Berkeley (1990 pop. 6,005; 19 police officers). While it too was adopted as a comparable in the two previously mentioned firefighter cases, its police department seems too small as compared to those of Westchester, Bellwood, Broadview, Hillside and Maywood.

Based upon the foregoing analysis and consideration of all the parties' arguments on the comparability issue, the Arbitrator has adopted the following comparables pool:

Bellwood
Broadview
Hillside
Maywood

THE SALARY ISSUE

Village Final Offer

The Employer's final offer on salary is quoted below:

May 1, 1990: \$1400 per year salary
increase--all steps.

May 1, 1991: \$1400 per year salary
increase--all steps.

Union Final Offer

Here is Union's final offer on this issue;

During the term of the agreement, all bargaining unit employees shall receive:

Year 1: May 1, 1989 through April 30, 1990

A five and one-half percent (5 1/2%) increase in wages for all bargaining unit members, retroactively effective to May 1, 1990.

Year 2: May 1, 1991 through April 30, 1992

A five and one-half percent (5 1/2%) increase in wages for all bargaining unit members, effective May 1, 1991.

Employer Position

The Employer argues that Westchester has a "limited-to-moderate" ability to pay wages and benefits to its police officers, since it has none of the "big four" income generating factors (industrial base, shopping center, corporate or regional headquarters, or well-to-do residential areas). Thus, the Employer notes, even keeping its wages and benefits near the mid-range in its suggested comparables pool

requires a greater financial effort than that expended by the other municipalities in that group.

The Employer also feels its flat dollar offer is not significantly different from a percentage increase because the vast majority of Westchester police officers are at the top of the rate range; thus, the difference between \$1400 and 4%, even at the top, is less than \$2.00 per pay period. According to the Employer, "... the comparable communities are giving somewhere between four and one-half and five percent in 1990 and 1991 and the Village's offer of \$1400 (equal to four percent) is slightly below (that)." It also must be noted, the Employer argues, that the last contract provided six percent for 1988 and six percent for 1989, giving Westchester police officers at least a three percent "catch up" vis-a-vis officers in other Net 17 communities.

The Employer also feels that other cost increase items (e.g., medical insurance, uniform allowance, court pay and overtime) should be considered when evaluating the respective merit of the parties' salary offers. The total percentage package increase would then be 12.3% (8% salary; 3% uniform; 4% medical insurance contribution).

The Village also feels that since it is the only jurisdiction among the comparables with longevity pay, and since the vast majority of Westchester police officers (i.e., 19 out of 23) receive longevity, it is proper to compare their salaries (including longevity) to the top pay (with no longevity) being received by police officers in comparable communities.

Union Position

The Union notes that while Westchester ranks toward the top of the comparables pool in per capita income and housing costs, its salaries lag behind those paid to police officers in neighboring jurisdictions. The Union also points to the parties' practice of negotiating percentage increases for police officers and asserts that the Employer's flat dollar offer will compress the salary schedule and reduce the meaning and value of years of service. Finally, the Union believes that in salary comparisons great care must be taken to take into account the effective date of increases. For example, there is a great deal of difference between, say, 1991 increases of five percent each in two jurisdictions when one is effective January 1 and the other on June 1.

Discussion

The Village acknowledges that "comparable communities are giving somewhere between four and one-half and five percent in 1990 and 1991." ⁴ In point of fact, the upper end of the salary increase range across the comparables for like periods is 5.8% (see Table 3). Thus, the Village's \$1400 (i.e., about 4%) salary offer rests near the bottom of the range while the Union's 5 1/2% offer is near the top. Neither offer seems unreasonable on this single measure.

Table 3 on the following page presents a more historical picture:

⁴ Village Posthearing Brief, p. 12.

TABLE 3

1988-1991 SALARY INCREASES (%)

<u>Jurisdiction</u>	<u>5/88</u>	<u>5/89</u>	<u>5/90</u>	<u>5/91</u>	<u>Total</u>
Bellwood	4.0	3.5	5.8	5.5	18.8
Broadview	5.0	4.0	5.0	4.75	17.5
Hillside	5.0	4.3	4.3	4.5*	18.1
Maywood	4.0	3.0	5.0	5.5	17.5
Westchester	6.0	6.0	4.1**	3.92**	20.0

* = Village estimate.

** = Village offer; Comparable figures for Union offer are 5.5% for each year.

Source: Village Exhibit 21.

It is clear from the Table that police officers in the Village of Westchester did quite well through free collective bargaining for their May, 1988 and May, 1989 salary increases (6% each year). According to the Village, "this means that Westchester police officers accomplished at least three percent 'catch up' in the last contract, which is a degree of catch-up almost unheard of in one contract." ⁵ The term "catch-up" has a very specific meaning in the collective bargaining arena. Essentially, it implies that over some extended period of time the wages for employees in a particular bargaining unit have fallen behind those negotiated across the industry generally and, accordingly, a higher than industry-average wage increase is appropriate one a one-time-basis to permit those employees a chance to "catch up." In other words, "catch-up" wage increases are designed

⁵ Village Posthearing Brief, p. 13.

to remedy past inequity. The fact that a group benefitted from "catch-up" increases in the past does not justify a lower than average wage increase for them now or in the future. Indeed, doing so would only create the need at some future date for another "catch-up" wage increase. The Arbitrator is therefore not persuaded by the Employer's "catch-up" argument that a wage increase lower than the average across comparable jurisdictions is appropriate now for Westchester police officers.

I am also not convinced from the record that a flat dollar increase (\$1400) is appropriate for police officers. It is true that the Village has unilaterally granted an identical increase to its non-represented clerical, public works, supervisory and management personnel. But there is no evidence in the record of a historical flat dollar increase parity between employees in those groups and Westchester police officers. Rather, the parties to this dispute have consistently negotiated percentage increases for police officers. Unlike flat dollar amounts, percentage increases maintain the salary differential across occupational categories. And, since there is no evidence in the record to justify diluting the historical differential established through free collective bargaining for Westchester police officers as compared to other occupational groups, the Arbitrator is reluctant to adopt a flat dollar increase as proposed by the Village. Moreover, a percentage increase rewards longer service employees for that service; a flat dollar increase does not. The parties to this dispute have employed the former principle by negotiating percentage increases exclusively, and nothing in the record has persuaded me of a compelling need to alter that pattern.

But is the Union's 5 1/2% proposed increase for each year of the Agreement simply too high? The record has convinced me that it is not. First, it is not out of line with increases recorded for like periods across the comparables pool. For 1991, both Bellwood and Maywood have granted their police officers a 5 1/2% increase. For 1990, Bellwood paid a 5.8% increase, and Broadview and Maywood paid a 5% for that year. The Union's offer in this case would keep Westchester police officers at the top of the salary range across the comparables, but that is appropriate. Those officers got to that point due to relatively robust "catch-up" increases in previous years. It is not appropriate now to let them fall behind again.

A second consideration in determining whether a 5 1/2% increase for each year of the Agreement is excessive is the Village's "limited ability to pay" argument. The Arbitrator has evaluated that argument carefully, but finds it non-persuasive. Residents of Westchester enjoy a higher per capita income than do their neighbors in any of the comparable communities. Their median home value is significantly higher as well. Other factors which support the conclusion that Westchester is a financially healthy community are as follows: (1) its General Fund balance at the end of 1990 was almost 24% higher than the comparable figure for 1989; (2) there were substantial increases in its revenue sources from 1986 to 1990;⁶ (3) its asset/liability ratio for 1990 was 2.11, meaning that it could pay off all of its debts (including long-term debt) 2.11 times without

⁶ Sales Tax increased 19.4%; property tax increased 64.8%; state income tax revenue increased 50.5%; and police protection tax increased 45.9%.

borrowing; and (4) from 1986 through 1990 while the General Fund increased over 50%, Village expenditures increased only about 38%.⁷

Consideration of the cost-of-living also supports adoption of the Union's salary offer. Village of Westchester police officers received their last salary increase in May, 1989. From that time through January, 1991, the CPI-W (Chicago) has increased 11 index points (a little over 9%). The Union's suggested 5 1/2% increase for the first year of the Agreement therefore seems justifiable. The impact of the cost-of-living over the second year of the Agreement is not known at the time of this writing.

On balance, and after complete consideration of the relevant statutory factors, the Arbitrator concludes that the Union's final offer on the salary offer is the more appropriate.

DEPENDENT MEDICAL INSURANCE

Village Final Offer

The final offer of the Village on this issue is quoted here in its entirety:

Amend Section 6.3, Insurance, to provide that the Village shall pay for the entire insurance program, both single and family coverage, from July 1, 1990 through June 30, 1991. Effective July 1, 1991, the City shall

⁷ The Arbitrator notes that 1990 was not quite as strong a year financially for the Village as were previous years up to and including 1986. Sales tax for 1990 was down 6%, for example. But since 1989 appears to have been a boom year for the Village, it is more realistic to consider its financial performance over the longer 5-year period between 1986 and 1990.

continue to pay the entire single insurance premium. Any increase in the dependent portion on or after July 1, 1991 shall be shared on a 50/50 City/employee basis, with a maximum employee contribution of \$20 per month.

Union Final Offer

The Union proposes no change in the current language on this issue. The current language reads as follows:

Section 6.3. Insurance:

(a) The level of benefits provided for in the group health and hospital insurance policy, including the eligibility requirements established by the Village, in effect on the date this Agreement is executed shall be maintained for the term of this Agreement, with the premium cost of providing said level of benefits for patrol officers and their dependents being paid by the Village; provided, however, that the Village maintains the right to change insurance carriers or otherwise provide for coverage as long as the level of benefits remains substantially the same. As an exception to the foregoing, as soon as possible after the signing of this Agreement, certain medical insurance plan changes will become effective for all employees and covered dependents as follows: (1) there shall be a lifetime major medical maximum payment of one million dollars (\$1,000,000) per person (employee and covered dependent) which shall be computed by total claims paid for each individual both prior to and after the effective

date of this Agreement; and (2) a cost care package will be placed into effect (mandatory second surgical opinion for certain elective surgery; pre-admission hospital review, etc.). The Village will retain its present dental plan for patrol officers and agrees to pay one-half of the premiums for dependent coverage for dental insurance during the term of this Agreement. The Village will maintain the life insurance coverage for all patrol officers at \$15,000 per officer.

(b) Six months prior to the termination date of this Agreement, the Village will study the availability of alternate group medical insurance programs which provide substantially similar benefits at substantially similar costs, including particularly the availability of a group medical insurance program which has a major medical maximum in excess of \$1 million. After making this investigation, the Village will meet with the Lodge and present the results of its investigation sufficiently in time for preparation for the negotiation of a new collective bargaining agreement. The intent of this paragraph is that the parties will jointly work in an effort to find a group medical insurance program, at a reasonable cost level, which has a major medical cap in excess of \$1 million.

Employer Position

The Village notes that it faces staggering group medical insurance premium increases. Since the current medical insurance

plan provides superb coverage, the Village prefers not to change it; rather, the Village argues, the cost increases will be better met by requiring employees to pay a portion of the cost. The Village also notes a trend toward employee co-payment of medical insurance premiums, as reflected across comparable communities. Moreover, the Village argues, Westchester police officers would pay only a maximum of \$20 per month for dependent coverage, and even that would not commence until after July 1, 1991.

Union Position

The Union points out that the difference between its salary offer and that of the Village is roughly \$485 per year for all but four of the police officers. Thus, if the Union's salary offer were adopted by the Arbitrator, requiring officers to pay \$20 per month for dependent medical insurance coverage would usurp about half of their annual pay increase. Moreover, the Union notes that the Village's 1990 insurance costs were \$72,000 less than they were in 1989, and there is only a "prediction" that they will rise for 1991.

Discussion

There is certainly no question that skyrocketing medical insurance costs have put pressure on public sector employers to seek cost-sharing provisions from unions at the bargaining table. But under the circumstances of this case I find no compelling reason to change the status quo as proposed by the Village.

First, there is no evidence in the record that the Village has sought co-payments from any other of its employees. It did not make

such a demand of any if its non-represented employees, nor did it do so of its firefighters in the only complete interest arbitration proceeding included in this record (Union Exhibit 18; Village Exhibit 8) 8

Second, as a result of previous compromises agreed to by the Union, the current \$1,000,000 major medical cap has reduced the Employer's medical insurance costs. And there is no hard evidence in the record that medical insurance costs for Westchester police officers will increase for 1991. Indeed, Village Manager John Crois spoke of "projections" in his estimate of insurance cost increases for 1991. Until those projections become reality, there is no way to determine the reasonableness of the Village's demand.

Finally, evidence from the comparables pool is mixed. Half of them require a co-payment from their police officers for dependent medical insurance coverage; the other half do not (see Table 4).

TABLE 4

EMPLOYEE CO-PAYMENTS FOR MEDICAL INSURANCE

<u>Jurisdiction</u>	<u>Employee Coverage</u>	<u>Dependent Coverage</u>
Bellwood	None	None
Broadview	None	None
Hillside	None	\$20/Month
Maywood	15% of Prem.	15% of Prem.

Source: Village Exhibit 24

⁸ Award of Arbitrator Berman dated September 22, 1989; see Note 3 for complete citation.

On balance, and in consideration of the fact that no other Westchester employees pay a portion of their dependent medical insurance premiums, adoption of the Village's final offer on this issue is not justified. The Village is attempting to alter the status quo through interest arbitration. It must therefore provide compelling reasons to do so. A mere projected premium increase in the aftermath of no increase for two years, along with the factors discussed in the foregoing three paragraphs, does not meet this "compelling justification" test.

ALCOHOL AND DRUG TESTING

There are two subjects under this general rubric which have been submitted to the undersigned for a decision: (1) whether testing should be random; and (2) the blood alcohol content to constitute failure of the test. The current negotiated language on this general issue is quoted in its entirety below:

Section 11.8. Drug and Alcohol Testing. In the event the Village adopts a drug/alcohol testing policy, this policy will only cover situations where the Village has reasonable suspicion for testing an officer and will not involve any random testing. Before the Village implements any testing policy under this Section, it will give the Lodge 30 days advance notice and a full opportunity to negotiate.

Village Final Offer

Here is the final offer of the Village on this issue:

- a. The Village has the right to require random drug tests two times per year.
- b. The blood alcohol content set forth in the policy shall be .05.
- c. See details under Exhibit 1

Union Final Offer

The Union proposes the following provision on drug and alcohol testing:

- a. Employees required to submit to urinalysis and/or other appropriate tests where there are reasonable suspicions to believe the employee is in violation of the parties' drug/alcohol policy.
- b. The blood alcohol content set forth in the policy shall be .08. The Union's final offer also includes the following sentence:

(note: the foregoing standard shall not preclude the Village from attempting to show that test results between .01 and .08 demonstrate that the officer was under the influence, but the Village shall bear the burden of proof in such cases.)

Village Position

The Village notes that both the Federal Government and the State of Illinois are imposing a blood alcohol content of .04 for those wishing to retain commercial drivers' licenses. Also, the Union in the

pending Westchester firefighters' interest arbitration is proposing that .05 be adopted as the appropriate blood alcohol content. The Village argues here that those who may be called upon to engage in high speed auto chases and handle weapons should not be subject to a more relaxed standard.

The Village feels that drug testing on a random basis twice per year is legal, reasonable, and will deter illegal drug use and encourage self-referral. Besides, the Village adds, the disciplinary steps already agreed upon by the parties are so non-punitive that random testing should be adopted. Overall, the Village argues that there is no measure more effective than random testing for preventing illegal drug usage.

Union Position

In a 1989 Westchester Firefighters' interest arbitration,⁹ the Village proposed that the reasonable suspicion standard be adopted for drug testing. Arbitrator Berman adopted the Village's proposal, adding that testing should be reasonable, "... in that it should not be random and without reasonable suspicion ...". Also, the Union notes, the current language in the police Agreement acknowledges the parties' wish for a drug/alcohol policy which will cover situations "... where the Village has reasonable suspicion for testing an officer and will not involve random testing."

⁹ *Ibid.*

The Union also points out that since the above language was agreed upon, there have been no known cases where the Police Department has learned an officer is using drugs, has been accused of using drugs, was suspected of using drugs, or even suspected of associating with persons known to use drugs. Thus, the Union argues, there is no evidence to justify the adoption of random testing now.

The Union agrees that a blood alcohol content more stringent than that applied to motor vehicle operators generally (i.e., .10) is appropriate for on-duty police officers. It argues, however, that no one really knows the exact blood alcohol content at which an officer is irrefutably impaired. Thus, the Union feels its offer is the more reasonable as it still permits the Village to question the sobriety even of an officer whose blood alcohol content is less than .08. Under the Village's own offer, the Union notes, an officer could be impaired by alcohol consumption but if his blood alcohol content were not at least .05, nothing could be done about it.

Discussion

The parties bargained language in their previous Agreement which specifically prohibited random testing. Their intent was clear. Both of them agreed that "reasonable suspicion" was an essential prerequisite to drug or alcohol testing. If the Village now wishes to depart from that status quo through interest arbitration it must present compelling reason to do so.

This record does not support adoption of the Village's offer. First, there is no evidence that either drug or alcohol abuse are

currently causing the Westchester Police Department any problem whatsoever. Second, in its pending interest arbitration with the firefighters, the Village took the position that drug testing should be based upon reasonable suspicion. And finally, the Village did not argue here that other comparable jurisdictions have instituted random drug testing in their police departments.

With regard to the parties' dispute over blood alcohol content, the record supports adoption of the Village's offer. First, the Arbitrator was influenced by the fact that the State of Illinois and the U.S. Government have adopted a standard of .04 with regard to commercial vehicle drivers. The performance requirements of police officers are certainly no less stringent. They are at times compelled to engage in high-speed driving, to use appropriate force in stressful, intense interaction with suspects, and to apply good judgement in the use of firearms. Adoption of a .05 blood alcohol limit does not, therefore, seem unduly stringent.

Another reflection of the reasonableness of using .05 is the position taken by the Illinois Firefighters Alliance Council 1 in the Westchester firefighters' interest arbitration currently pending before Arbitrator Sinclair Kossoff. That Union agreed to language nearly identical to the Village's offer in the instant case. While the Union here is certainly not bound by what the firefighters' Union sees as reasonable, the firefighters' agreement with the Village does suggest that .05 is not an inappropriate standard.

The Union here argues that its position on blood alcohol content is more flexible than that of the Village, because it would essentially still permit the investigation and subsequent discipline of officers who

had a blood alcohol content of less than .08. The implication is that under the Village's offer those whose blood alcohol content was less than .05 would be immune from such treatment. The Arbitrator has the authority under the Statute, however, to fashion a provision which would incorporate such flexibility, still using the Village's proposed .05 blood alcohol content. Since the Village has not expressed the need for a provision explicitly permitting investigation and possible discipline of those officers found to have less than a .05 blood alcohol content, though, the Arbitrator will not write one into the Agreement.

Overall, the Arbitrator is convinced from the record that random drug/alcohol testing is not appropriate, and that the proper blood alcohol content to be included in the parties' Agreement is .05.

AUXILIARY POLICE

Village Final Offer

The Village proposes no final offer on this issue.

Union Final Offer

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

Add a new Section 11.15 to Article XI, "General Provisions" of the current labor agreement, to read as follows:

§ 11.15 Auxiliary Officers: The Village retains the right to form and utilize a trained auxiliary police force, provided that:

(1) Such auxiliary officers shall only be used consistent with the provisions of the Illinois Revised Statutes; and

(2) Such auxiliary officers shall not be used to replace full time sworn police officers or bargaining unit positions or be used in any manner to reduce overtime and extra work opportunities of full-time sworn police officers; and

(3) The use of such auxiliary officers shall not result in the layoff of, or the failure to fill a vacancy in the position of, any full-time sworn police officer.

Village Position

The Village feels that the auxiliary police issue is not a mandatory subject of bargaining since it touches on staffing levels. Besides, the Village notes, the Union never presented a proposal on this issue at the bargaining table. And the Village points to Ill. Rev. Stat., ch. 24, § 3-6-5 to underscore its position that there is no need for the Union's proposed language. That statutory provision is quoted in pertinent part below:

Such auxiliary policemen shall not supplement members of the regular police department of any municipality in the performance of their assigned and normal duties ... except to aid or direct traffic

Finally, the Village notes that in 1990 and 1991 it has used but one auxiliary police officer who volunteered his services, without pay. He helped direct parade traffic on the Fourth of July, helped direct traffic in the park for girls' softball, and went to one 10 kilometer run. The Village does not feel it violated the Statute by using him in such capacities, and does not feel it is appropriate for the Arbitrator to add an auxiliary police clause to the parties' Agreement.

Union Position

The Union feels the auxiliary police clause it seeks is a mandatory subject of bargaining. It notes that the issue was repeatedly raised in bargaining through union security and safety discussions.

The Union also believes its proposal would serve to promote safe working conditions by ensuring that untrained auxiliary officers do not perform important police work. It would also quell the fears of income and benefit loss which it feels the use of an auxiliary force has caused in the bargaining unit. Furthermore, the Union argues that the use of even but one auxiliary officer can serve to erode the bargaining unit, depending upon the duties to which he/she is assigned. The Union also notes that an Agreement provision on this issue would allow it to grieve future instances of alleged misuse by the Village, rather than pursue injunctive relief and protracted litigation through the Courts.

Discussion

After the parties' Posthearing Briefs were filed in this case, the Illinois State Labor Relations Board made a Declaratory Ruling on the question of whether the Union's proposal on auxiliary police is a mandatory subject of bargaining. The thrust of the General Counsel's Ruling is quoted below:

In conclusion, I find as follows. With respect to the Union's proposal, I find that subparagraph (1) is a mandatory subject of collective bargaining only to the extent that it concerns the Employer's right to limit the use of auxiliary officers to perform police work, and to the extent that it concerns matters which vitally affect bargaining unit members, as detailed above. To the extent that it concerns terms and conditions of employment for the non-unit auxiliary police, it is non-mandatory. Subparagraphs (2) and (3) represent the Union's attempt to prevent the erosion of bargaining unit work and are a mandatory subject of collective bargaining.¹⁰

As the Union's final offer on auxiliary officers does not appear to address the terms and conditions of employment for non-unit auxiliary police, it is a mandatory subject of bargaining in its entirety and the Arbitrator has the statutory authority to consider it.

The Arbitrator rejects the Union's proposal, for at least three reasons. First, there is no evidence in the record that similar

¹⁰ Village of Westchester and Illinois Fraternal Order of Police Labor Council, Case No. S-DR-91-3, May 2, 1991.

provisions appear in police collective bargaining agreements across the comparable communities. Second, there is no specific evidence that the sole auxiliary officer in Westchester has performed duties which might threaten the integrity of the bargaining unit. And third, the Union's proposal would seemingly duplicate the protection the bargaining unit has already been afforded by Ill. Rev. Stat., ch. 24, § 3-6-5 (quoted previously).

AWARDS ON THE ISSUES

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

Salary - The final offer of the Union is adopted.

Cost of Dependent Medical Insurance - The final offer of the Union is adopted.

Drug and Alcohol Testing - There shall be no random testing. The standard for concluding that an officer is under the influence of alcohol shall be a blood alcohol content of .05. (See Exhibit A, attached, for specific language).

Auxiliary Officers - The final offer of the Union is rejected.

Signed by me at Chicago, Illinois, this 13th day of May, 1991.



Steven Briggs

EXHIBIT #A

EMPLOYEE ALCOHOL AND DRUG TESTING

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

Prohibitions. Officers shall be prohibited from:

- (a) Consuming or possessing alcohol at any time during or just prior to the beginning of the work day or anywhere on any Village premises or job sites, including Village buildings, properties, vehicles and the officer's personal vehicle while engaged in Village business;
- (b) Possessing, using, selling, purchasing or delivering any illegal drug at any time and at any place except as may be necessary in the performance of duty;
- (c) Failing to report to the employee's supervisor any known adverse side effects of medication or prescription drugs which the employee may be taking.

Drug and Alcohol Testing Permitted. In order to help provide a safe work environment and to protect the public by insuring that police officers have the physical stamina and emotional stability to perform their assigned duties, the Village may require employees to submit to urinalysis and/or other appropriate tests where there are reasonable suspicions to believe the employee is in violation of the prohibitions sets (sic) forth in (a), (b) and/or (c) above. Unlawful use of drugs shall be cause for discipline, including discharge.

Test To Be Conducted. In conducting the testing authorized by this Agreement, the Village shall:

- (a) Use only a clinical laboratory or hospital facility which is certified by the State of Illinois to perform drug and/or alcohol testing.
- (b) Establish a chain of custody procedure for both the sample collection and testing that will ensure the integrity of the identity of each sample and test result.
- (c) Collect a sufficient sample of the same bodily fluid or material from an officer to allow for an initial screening, a confirmatory test, and a sufficient amount to be set aside reserved for later testing if requested by the officer.
- (d) Collect samples in such a manner as to preserve the individual officer's right to privacy while insuring (sic) a high degree of security for the sample and its freedom for (sic) adulteration. Officers submitting a sample shall be observed by a member of the same sex to be designated by a supervisory officer.

(e) Confirm any sample that tests positive in initial screening for drugs by testing the second portion of the same sample by gas chromatography/mass spectrometry (GC/MS) or any equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites.

(f) Provide the officer tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility of the officer's choosing, at the officer's own expense; provided the officer notifies the Village within seventy-two hours of receiving the results of the test.

(g) Require that the laboratory or hospital facility report to the Village that the blood or urine sample is positive only if both the initial screening and confirmation test are positive on a particular drug. The parties agree that should any information concerning such testing or the results thereof be obtained by the Village inconsistent with the understandings expressed herein (e.g., billings for testing that reveal the nature or number of tests administered), the Village will not use such information in any manner or form adverse to the officer's interests.

(h) (This subsection was deleted by agreement between the parties)

(i) Provide each officer tested with a copy of all information and reports received by the Village in connection with the testing and the results.

(j) Require that with regard to alcohol testing, for the purpose of determining whether the officer is under the influence of alcohol, test results showing an alcohol concentration of .05 or more based upon the grams of alcohol per 100 millimeters of blood be considered positive.

Voluntary Requests For Assistance. The Village shall take no adverse employment action against any officer who voluntarily seeks treatment, counselling or other support for an alcohol or drug related problem, other than the Village may require reassignment of the officer with pay if he is unfit for duty in his current assignment. The foregoing is conditioned upon:

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

Officers who do not agree to or act in accordance with the foregoing shall be subject to discipline, up to and including discharge. This Article shall not be construed as an obligation on the part of the Village to retain an officer on active status throughout the period of

rehabilitation if it is appropriately determined that the officer's current use of alcohol or drugs prevents such individual from performing the duties of a police officer or whose continuance on active status would constitute a direct threat to the property and safety of others. Such officer shall be afforded the opportunity, at his option, to use accumulated paid leave or take an unpaid leave of absence pending treatment.