



INTEREST ARBITRATION

VILLAGE OF MAYWOOD,

Employer

and

ILLINOIS FIREFIGHTERS ALLIANCE

Union

ISLRB No. M-90-195
FMCS File No. 90-23986

Barbara W. Doering
Arbitrator

February 28, 1991

Opinion and Award

APPEARANCES

For the Union: Lawrence A. Poltrock, Attorney
Ray Guilfoyle, President IFFA
John Molinaro, Union Steward, Shift 1

For the Village: Joseph W. Tully, Attorney
Terrence A. Hilliard, Attorney
Dennis C. Hoffman, Fire Chief
Charles J. Orlebeke, Professor (Expert Witness)
Ken Massa, Village Manager

PROCEDURE

The undersigned, impartial arbitrator, Barbara W. Doering, was selected through the procedures of the FMCS and was first notified of appointment on September 19, 1990. A hearing was convened November 7, 1990 in Maywood, Illinois. The parties were to continue to attempt to narrow the issues in the interim -- and in fact were still doing so at the 9 a.m. start of the hearing on November 7th. At 7 p.m. the hearing was continued for a second day in order to conclude the testimony. It was agreed that, in addition of completion of the testimony (two Village witnesses and Union rebuttal), the parties would return with any additional evidence or clarifications as might be useful in further analysis of the dispute. The arbitrator also agreed to study the exhibits and record made to this point, in order that an executive session might follow on conclusion of the further testimony. The hearing was reconvened on November 12, 1990. The testimony was completed and an executive session was held.

The record was held open for receipt of amended final offers (if any) and briefs, with an agreement that the parties inform the arbitrator within a few weeks of the schedule for further submissions. Amended final offers were mailed on December 14th and briefs were post-marked December 21st. Due to Christmas mails and addresses over the holiday, briefs were not actually received by the arbitrator until January 2, 1991. After studying the briefs the arbitrator requested an executive session which was held January 29, 1991 and which was followed by further amendment in final offers, the last of which was received by telephone February 26, 1991.

FINAL OFFERS

Final offers address only unresolved issues and are premised on inclusion of: (1) all provisions of the current collective bargaining agreement where neither party has proposed change and which are not before the Arbitrator; and (2) all items previously agreed during the 1989-92 contract negotiations between the parties which are not at issue in interest arbitration.

1. WAGE ISSUE -

The prior contract expired 4/30/89. The parties agree that it should be succeeded by a 3 year contract, and they agree as to the wages in the third year of the 3 year contract, from 5/1/91 to 4/30/92. They agree as to the 2nd year wages starting on 11/1/90, but disagree as to retroactivity versus signing bonus (or an amount of retroactivity equal to the amount generated by the offered signing bonus) for the 18 month period from 5/1/89 to 11/1/90. The salary schedule used during negotiations, and upon which the dispute centers is:

	Old Contr.	1st Yr Col.	2nd Yr. Col.	3rd Yr. Col
Start	\$22,691.51	\$22,691.51	\$22,691.51	\$22,691.51
1 YR	28,159.67	29,567.65	30,750.35	31,980.37
2 YRS	29,456.62	30,929.45	32,166.62	33,453.29
3 YRS	30,989.44	32,538.91	33,840.46	35,194.08
4 YRS	33,050.91	34,703.45	37,132.69	39,360.65

VILLAGE FINAL OFFER: \$1800 signing bonus or retroactivity in an amount costing the same as \$1800 per man (and back-pay to reflect 11/1/90 placement on Year 2 Column.)

FIRE FIGHTER FINAL OFFER: Inclusion and retroactive placement on Year One Column effective 10/1/89, the Year 2 Column effective 8/1/90 with back-pay to reflect the difference. This would yield close to \$2400 per man on top step and be in the \$1800 - \$2000 range for the 7 of 33 firefighters on lower steps.

DIFFERENCE IN THE COST: For the 33 firefighters, retroactivity sought by the Union costs out at \$75,521 compared to \$59,400 in the Village's \$1800 per man offer.

2. EMT PAY ISSUE --

The parties agree that fire fighters assigned to the ambulance as EMTs be paid an additional \$10/day for such duty. The parties disagree as to whether such pay should be limited to a maximum annual expenditure of \$7,300 (figured on the basis of two individuals receiving such pay per day). The Village normally operates one ambulance, but may get a backup ambulance which might be brought into service on a more regular basis.

VILLAGE FINAL OFFER: \$10/day/man for days worked on ambulance, with an annual "cap" of \$7300.00, effective 11/1/90.

FIRE FIGHTER FINAL OFFER: \$10/day/man for days assigned to any ambulance duty, effective 11/1/90. No annual limit on expenditure.

3. MINIMUM MANNING ISSUE --

The parties had a minimum manning provision in their contract at the time of passage of the Illinois Statute covering collective bargaining, and, under the Statute, subjects already in contracts were grandfathered, as mandatory subjects of negotiations. The current (predecessor) contract calls for minimum manning of 8 bargaining unit fire fighters per shift, with certain limited exceptions. The Village contends that it needs greater discretion in deploying personnel and that the matter should be handled in policy rather than as a contractual guarantee. The Fire Fighters strongly disagree, contending that the significant number of ambulance and rescue squad calls, plus the utilization of fire fighters in Acting Officer status already put strains on adequacy of manpower under the 8 per shift provision and that this should not be changed or removed from the contract.

VILLAGE FINAL OFFER: Delete any reference to Minimum Manning from the Contract.

FIRE FIGHTER FINAL OFFER: Retain the provision on Minimum Manning in its current form in the contract.

4. ACTING OFFICER PAY ISSUE --

The Union notes that bargaining unit members are frequently called upon to fill-in as "Acting Officers" and argues that when this happens -- and it apparently happens 75% of the time in one of the two stations -- the individual should receive the difference between Fire Fighter and Lieutenant pay, which the Union computes to be roughly equal to 2 hours at overtime rate (\$40/day). The Village argues that assignment is voluntary and the individual obtains valuable on-the-job training towards promotion. The Union contends that there is no positive enhancement of promotional opportunity since Acting Officer experience is not a factor or even known to those deciding upon promotions. On the other hand, fire fighters tend to fear that refusal would indeed become a matter of record and could negatively affect promotional opportunity.

VILLAGE FINAL OFFER: 6 hours of "comp time" for each day a firefighter serves as an acting officer, effective 11/1/90.

FIRE FIGHTER FINAL OFFER: Pay in the amount of 2 hours at overtime rate over and above regular pay for hours worked for any day in which a fire fighter is assigned as an Acting Officer, effective 11/1/90.

5. DRUG TESTING [NON-ECONOMIC] ISSUE --

The Village has introduced a "random" drug testing policy with the police and with other employees of the Village and wants to do likewise in the Fire Department. The Village notes that Firefighters are the only Village employees not covered under the "policemen's policy." The Fire Fighter contract currently includes a drug testing policy based upon "probable cause."

VILLAGE FINAL OFFER: Modify the contract to substitute drug testing policy as per the police agreement for the current provision.

FIRE FIGHTER FINAL OFFER: Continue current "probable cause" policy -- no change in the contract provision as it currently appears.

CRITERIA

Section 14(g) of the Illinois Public Labor Relations Act provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) sets forth eight factors to be utilized in evaluating economic proposals. Of particular relevance to the parties arguments in this dispute are:

- (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) ...

Also listed are: private sector comparisons [4 B]; cost of living concerns[5]; overall compensation including time off, insurance, pensions, etc.[6]; changes in any of the relevant factors during the pendency of proceedings [7]; and other factors normally considered in determination of wages, hours and conditions of employment through collective bargaining and various impasse procedures related to it [8].

DISCUSSION & FINDINGS

THE WAGE ISSUE:

This dispute is probably different from any other in the fact that the Parties have agreed with respect to the second 18 months of the 3 year contract, and the wage question to be resolved by the arbitrator is to fix the effective salaries for the first 18 months. Although the Union would prefer that the judgment be made without reference to agreed upon increases at the end of the contract, the Village insists that the whole 3 year term must be considered inasmuch as a great deal of money is already committed by agreement and the 2nd and 3rd year wage-rates have relevance in comparisons both vis-a-vis the police and vis-a-vis comparison communities.

Both parties have made significant moves in their wage positions (as well as in other issues) during the pendency of these proceedings. The Union started from the premise that retroactivity should always be a part of wage settlements -- as it was in the Village negotiations with the police, and as it has been included in other arbitration awards. The Village takes the position that there is nothing sacred about retroactivity and what is involved here is simply a matter of money and fixing a fair three year wage

package for the Firefighters in the context of comparable wage-levels and very strained Village finances. The arbitrator made it clear that she also views retroactivity as a matter of money in the context of this dispute, and the Parties revised their positions in the context of concerns expressed by the arbitrator. At this point, as a distributive mechanism, the Village has no objection to having its lump sum translated into a retroactive amount of equal cost -- that is, retroactivity which would average out to \$1800 per man. The retroactivity the Union now seeks averages out to \$2289 per man, or about \$500 more per man than the Village is offering.

14 (h)(3)- Ability to Pay:

The Village's "ability to pay" has been a major consideration. The Village offered expert testimony as to its very serious fiscal plight. Of the comparison communities, Maywood has the lowest equalized assessed valuation, the lowest per capita income, and the highest municipal tax-rate (cf. Table 1 p. 7). Professor Orlebeke testified that further tax increase would definitely be imprudent (in that it might discourage further investment in the community) and that the prospect for borrowing is bleak. He expressed particular concern about the short-fall in tax collections which is much more severe even than in other communities with problems. The Firefighters recognize that the financial picture is bleak, but contend that the Village has attempted to make Firefighters bear a greater share of the burden than other Village employees -- notably the police -- who have been given raises in the same period for which the Village seeks to restrict retroactivity of Firefighter increases. The Union further argues that previously budgeted amounts and certain offers made during negotiations demonstrate that the Village claims as to "ability to pay" are to some extent tactical.

In its brief, the Union suggested the 3% and 5% budgeted for 1989 and 1990 Fire Department raises could be funded and should serve as a benchmark. From the Village point of view the whole 3 year package must be funded and it calls for 18% by the third year. The columns under consideration are not a 3%-5% arrangement, but rather a 5%-7%-6% array. Further, the Village contends that its offer does not demand greater sacrifice from the Firefighters than from the police or other Village employees.

14 (h)(4)- Comparisons:

As to external comparisons, Professor Orlebeke noted that the third year salaries would make Maywood Firefighters the best paid among comparison communities. The Firefighters, for their part, collected information as to fire and ambulance calls in the comparison communities. (cf. Table 2 p. 7). This information shows a volume of calls per firefighter significantly higher in Maywood, and the Firefighters contend that in view of the volume of work it is appropriate that Maywood Firefighters be the salary leaders.

Comparative information in terms of current final offers is shown on the 3rd Table (p. 7). For purposes of the comparison the Village offer of \$1800 per man is put in as 1st year retro from 10/1/89 with a \$55 per man signing bonus applied to second year salary. Both offers are slightly below '89 salary levels in comparable communities. The Village offer remains behind all but Broadview in 1990, whereas the Firefighter offer essentially catches up. For 1991, the agreed upon figure of \$39,360 will likely restore the leadership position which existed in 1988.

Police Comparisons:

This comparison has special relevance in that fiscal problems, which may indeed be greater in this community than comparison communities, would have equal impact on police employed in the same community, and in hard times it is reasonable that the burden of holding the line be equally shared among those drawing on the same scarce resources. Moreover, there is a historical basis for a close relationship between fire and police salaries. Whether that is right or proper, it is simply historical fact. The Union argues that it is also historical fact that contract to contract comparisons be made without regard to the different expiration dates. The change in contract expiration dates, however, appears to be very recent, starting only in the current contract period and having its first potential impact in these negotiations. Eight months is 2/3 of a year and has a very significant impact on level of earnings. (cf Table 2 & 3 p. 8). The arbitrator is not persuaded it can be entirely ignored.

COMPARISONS AMONG COMMUNITIES IN BATTALION 7
(fr. exhibits provided by parties)

1. MAYWOOD	BELLWOOD	W.CHESTER	RIVER F.	BROADVIEW	MELROSE P.	HILLSIDE
Pop 27,300	21,400	16,970	11,390	8,830	20,940	7,640
Ev1 3,368	5,388	9,588	11,185	14,541	14,962	16,806
TxR 6.289	4.891	1.689	3.209	2.446	1.518	1.915
Inc 9,807	10,729	16,964	21,522	12,485	11,798	14,840

Maywood already has tax-rate reflective of its very low equalized assessed valuation per capita [shown as Ev1]. Only Bellwood begins to approach the economic problems faced by Maywood. Both communities have relatively low wealth per capita. Melrose Park has relatively low income per capita, but has the advantage of valuable assests within the community, as does Broadview.

2. MAYWOOD	BELLWOOD	W.CHESTER	RIVER F.	BROADVIEW	MELROSE P.	HILLSIDE
Ff 34	20	20	20	30	75	20
cls 3682	1467	1181	670	1190	2259	1200
c/f 108	73	59	34	40	30	60
v15 10	11*	10	12*	11	10	10*

The above table shows the number of firefighters, total calls as reported by the Union, calls per firefighter based on that, and vacation days at 15 years. Asterisk means additional day(s) thereafter. The volume of work (c/f) in Maywood is substantially the highest and is not offset by greater vacation.

3. MAYWOOD	BELLWOOD	W.CHESTER	RIVER F.	BROADVIEW	MELROSE P.	HILLSIDE
88 33.0	32.3	32.6	na	32.8	32.0	32.9
89 V 34.0	[35.3]	34.5	35.5	34.1	34.9	34.3
F 34.0						
90 V 36.0	[36.6]	(36.5)	36.9	35.8	36.7	na
F 36.5						
91 39.4	[38.5]	na	na	na	na	na

Top step salary (May-May, with brackets for extrapolated figures). Village signing bonus is in 1st yr. retro fr. 10/1/89 and \$55 bonus applied to 2nd yr.

COMPARISONS WITH POLICE SALARIES IN MAYWOOD
(fr. exhibits provided by parties)

Looking at internal comparisons with the Police Department, the following table shows top step salary since 1986. The Police had a 3.5 year contract, May-May for the first 3 years, and May -December for 1989. Their current contract is a calendar year contract through December 1992.

4.	86	87	88	[89]	[90]	[91]	[92]
Police	30,121	31,326	32,579	33,556	[35,234]	[37,171]	[39,216]
Fire	30,266	31,628	33,050				

The Union argues that based upon historical differences in contract expiration, the contractual rates should simply be compared without extrapolation for time periods involved. The Village insists that such a comparison ignores reality of pay level and is not a fair comparison.

The comparison the Union urges with its offer would look like:

5.	86	87	88	[89]	[90]	[91]	[92]
Police	30,121	31,326	32,579	33,556	[35,234]	[37,171]	[39,216]
Fire	30,266	31,628	33,050	34,014	36,536	39,360	

The comparison the Village urges with its offer would look like:

6.	86	87	88	89	90	91	92
Police	30,121	31,326	32,579	(34,412)	(35,880)	(37,853)	(39,216+)
Fire	30,266	31,628	33,050	34,014	35,972	39,360	

The Village contends that despite retroactivity of the Police agreement, the Village offer to the Firefighters more than makes up the difference over the three year period, and it is not asking greater sacrifice on the part of Firefighters than it has on the part of Police.

The Union contends that Police were not asked to forego May '89 and January '90 increases, and that the Union offer comes closer to contractual rate parity which has always existed.

The Village notes that Police are locked in for 8 months beyond the Firefighter contract expiration in May 1991. Not only will the Firefighters actually collect more by the end of their contract (even under the Village offer), they will have the opportunity to negotiate further increase for the 8 month period before expiration of the Police agreement.

FURTHER COMPARISONS WITH POLICE

Final offers in the Firefighter Contract Dispute generate the following effective salaries and costs:

Retro 1st -2nd yr.	1st yr top	2nd yr top	3rd yr top	18 mos cost	Avg. per man (bonus)
Oct.-Nov.	34,014 2.92%	35,972* 5.76%	39,360 9.42%	\$59,405	\$1800
Oct.-Aug.	34,014 2.92%	36,526 7.39%	39,360 7.76%	\$75,521	\$2289

* Village offer cast in terms of 1st year retro back to Oct. '89 plus \$55 2nd yr bonus.

Percentage increase per year can be compared to Police increases:

Police	5.0%	5.5%	5.5%
VL Offer	2.9%	5.8%	9.4%
FF Offer	2.9%	7.4%	7.8%

Cumulative increases (adding each year to the next) show:

Police	5.0%	10.5%	16.0%
VL Offer	2.9%	8.7%	18.1%
FF Offer	2.9%	10.3%	18.1%

Both offers include a sacrifice in the first year. Both now include a percentage increase in the 2nd year at least equal to the increase given police, although the Firefighter offer goes beyond that recouping the first year difference at this point, whereas the Village offer relies upon the final year as offset.

From the predecessor police contract, requested by the arbitrator, it appears that there is historical basis for a small disparity in pay favoring firefighters.(cf. Table 1 p. 8). The arbitrator has no idea what the basis for the disparity under previous contracts was. It started as \$145 in 1986 and grew to \$471 by May 1989 when the half year increase for police, moving them to calendar year expiration, went into effect. That half year increase erased the difference and put police \$211 ahead -- although it was expected that firefighters would have re-negotiated and concluded a new contract in the interim. For calendar year 1990, if the Firefighter contract went into effect in November with no retroactivity, the police would net an additional \$1503 take-home pay advantage, or a total of \$1714 from the prior year up to 1/1/91 (when police reach their comparable 2nd year column). The current Village offer of \$1800 clearly addresses the disparity and at the same time provides a comparable 2nd year percentage increase (cf. Tables p. 9). The Firefighter offer (\$2399 at top step), although closer to external 2nd year comparables, would give firefighters almost \$700 more than police by the end of the second year. The 8 month advantage for firefighters in reaching 3rd year (agreed upon) salaries, and much higher effective percentage 3rd year increase, instead of offsetting first year disparity would be in addition thereto.

RULING:

Both offers fall within a range of reasonableness in comparison with other communities in Battalion 7. In view of the very real financial problems faced by this community, internal comparisons have special relevance. The Village offer includes a 2nd year effective increase comparable to the 2nd year police increase. The reduced 1st year increase is more than off-set by the level of 3rd year agreed upon wages and the 8 month advantage. Under all the criteria for consideration, the arbitrator is of the opinion that the Village offer should be accepted. I so rule.

OTHER ISSUES:

These issues to some extent impact upon each other and are impacted by the level

of wage settlement.

The Minimum Manning Issue could have economic impact, and certainly has special importance to the Union since it is "grandfathered" in. Had the Union wage position been ordered, one might conclude that the sacrifice required of the Village to meet that offer should "buy" the Village the concession it seeks in removing Minimum Manning from the contract. The arbitrator recognizes that there may be significant hardship imposed on the Village even in funding the Final Offer it has on the table, but the Minimum Manning provision is of heightened importance to the Union in hard times, and the evidence shows that it is not set at an artificially high level. It does not increase the cost of the package (although, if eliminated, it could contribute to reduction of cost). Under the circumstances, the arbitrator finds that, of the two offers, the Union position on retention of current language on Minimum Manning is the more consistent with all the criteria and should be accepted.

Acting Officer Pay and EMT Pay are both economic issues which could -- particularly in the case of Acting Officer Pay -- significantly increase the cost of the contract settlement. The Union, to its credit, has reduced its demands to be retroactive only to 11/1/90. In the case of EMT Pay the Village has agreed that \$10/day/man is appropriate. The Village, however, seeks to avoid potential impact in the event a second ambulance goes into service before the expiration of the contract. In this matter, the arbitrator agrees with the Union that there is nothing to distinguish the work of a second crew and the potential financial impact is not so great as to justify the cap the Village seeks. With respect to Acting Officer Pay, this is a new item upon which the Parties have not reached a basic agreement. The Village was willing to admit there is some merit to the equity arguments put forth by the Union in moving from rejection to a counter-proposal (in terms of comp time). The Parties, however, have not negotiated out an agreement acceptable to both in this matter. Under the circumstances, in view of the fact that the Parties will be in negotiations again in little over a year's time, and in view of the very strained Village finances, the arbitrator is of the opinion that the Village counter-proposal should be accepted as a starting place in

dealing with this issue. As to Union doubts about comp time actually being made available, the Village must simply demonstrate its good faith and find a way to do this within the Minimum Manning requirements.

The final issue is the Drug Testing Issue. In this matter the arbitrator finds the Village argument for change of the existing provision unpersuasive. A uniform policy with respect to all Village employees is perhaps convenient, but the same underlying considerations do not appear to be equally applicable to firefighters and police in the matter of potential drug use or even in the matter of appearances on this subject. Firefighters, unlike police, have no responsibility for attempting to control illegal drugs nor any particular reason to be in frequent contact with individuals involved with drugs. The policy in the Firefighter contract was the result of negotiations and exactly parallels the policy for Firefighters in the City of Chicago. There is no evidence that it has been the subject of dispute or has come up short in dealing with any particular situation.

RULINGS:

On the OTHER ISSUES, I find that the Union position should be accepted on Minimum Manning, EMT Pay, and Drug Testing, and the Village position should be accepted on Acting Officer Pay. I so rule.

AWARD

Final offers awarded below are premised on inclusion of: (1) all provisions of the current collective bargaining agreement where neither party has proposed change and which are not before the Arbitrator; and (2) all items previously agreed during the 1989-92 contract negotiations between the parties which are not at issue in interest arbitration.

Further, the Parties waived the tripartite nature of the procedure in the matter of final determination, and agreed that the Award with respect to outstanding unresolved issues be made solely by the Impartial Arbitrator. The following Award is therefore entered with respect to the five issues before me:

1. WAGE ISSUE -

VILLAGE FINAL OFFER: \$1800 signing bonus -- or retroactivity in an amount costing the same as \$1800 per man -- and back-pay to reflect 11/1/90 placement on Year 2 Column is adopted. The new pay scale shall be put into effect immediately. The Parties shall meet within 2 weeks to agree upon distributive arrangement, and retroactive/bonus sums shall be paid at the conclusion of the next full pay period following the Parties agreement on distribution.

2. EMT PAY ISSUE --

FIRE FIGHTER FINAL OFFER: \$10/day/man for days assigned to any ambulance duty, effective 11/1/90 with no annual limit on expenditure, is adopted. Retroactive pay shall be made along with retroactive/bonus wage pay.

3. MINIMUM MANNING ISSUE --

FIRE FIGHTER FINAL OFFER: Retain the provision on Minimum Manning in its current form in the contract is adopted.

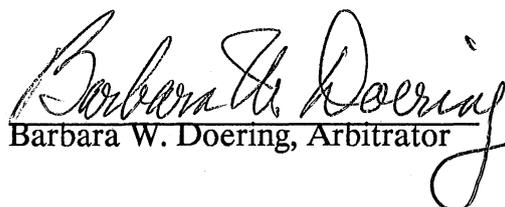
4. ACTING OFFICER PAY ISSUE --

VILLAGE FINAL OFFER: 6 hours of "comp time" for each day a firefighter serves as an acting officer, effective 11/1/90 is adopted with the understanding that the offer shall be implemented in good faith within the framework of the Minimum Manning provisions.

5. DRUG TESTING [NON-ECONOMIC] ISSUE --

FIRE FIGHTER FINAL OFFER: Continue current "probable cause" policy -- no change in the contract provision as it currently appears is adopted.

Submitted this 28th day of February, 1991.


Barbara W. Doering, Arbitrator