

*Rec'd  
9/2/90*

In the Matter of the Arbitration) FMCS File No. 90-03589  
 Between )  
 ) Interest Arbitration  
 VILLAGE of BARTLETT )  
 )  
 and )  
 )  
 COUNTY, MUNICIPAL EMPLOYEES', )  
 SUPERVISORS' AND FOREMEN'S )  
 UNION LOCAL 1001, affiliated )  
 with LABORERS INTERNATIONAL )  
 UNION OF NORTH AMERICA, AFL-CIO )

Appearances

For the Union

Mr. Stanley E. Kravit, Labor Relations Consultant

For the Employer

Mr. John T. Weise of Seyfarth, Shaw, Fairweather & Geraldson,  
 Attorney at Law  
 Ms. Valerie L. Salmons, Village Administrator

FINDINGS, OPINIONS, and ORDER

Nature of the Case

The Union is the certified exclusive bargaining representative of a unit of police officers employed by the Village of Bartlett ("the Village" or "the Employer") in the State of Illinois. The first collective bargaining agreement between the parties was entered into in 1987, and was effective until October 31, 1989. The Village's fiscal year begins on May 1, and historically annual wage increases for all employees have been effective as of that date. Contractual wage increases have also been made effective as of that date.

The parties began negotiations for a new collective bargaining agreement ("Agreement" or "contract") on September 22, 1989, on which date they entered into an Alternate Impasse Resolution Procedure Agreement and a Procedural Agreement. Negotiations continued, with the aid of mediation, until February 2, 1990, during which period a number of items were agreed to. However, the parties were unable to agree on various economic and non-economic bargaining issues, which they submitted to interest

arbitration pursuant to their alternate impasse resolution procedure agreement. That agreement provided for the selection of a single neutral arbitrator from a panel provided by the Federal Mediation and Conciliation Service and the waiver of the right to a three-member arbitration panel in accordance with the terms of the Illinois Public Labor Relations Act ("the Act"). The undersigned arbitrator was selected by the parties to arbitrate the present dispute in accordance with their impasse resolution agreement.

Hearing was held in Elgin, Illinois, on March 22, and 27, 1990. Evidence was presented regarding the following economic issues in dispute: wages, including across the board and merit increases for the two years of the new contract; holidays; paid vacation; sick leave conversion; longevity; and improvements. Evidence was also given concerning the following non-economic issues: dues checkoff, fair share, definition of grievance, grievance procedure, vacation scheduling, and disciplinary meetings. On the second day of hearing the Union withdrew the "improvements" issue from arbitration.

Following the conclusion of the hearing, both parties filed briefs with the arbitrator in support of their respective positions. They agreed in writing to extend the time for the arbitrator to render his opinion and award in this case. Each of the issues will now be discussed beginning with the wage issue.

#### Salary Increases - Section 12.1

A preliminary issue to be decided is whether the across the board wage proposal and the merit wage increase proposal should be treated as a single issue as desired by the Employer or separate issues as requested by the Union. The current Agreement treats across the board salary increases and merit increases in the same article, but in different sections of the article. On that basis the two provisions may be viewed as separate. Further the merit increases given to employees are determined independently of their general across the board increases. There is no reason why the Village would not be able to give employees its proposed wage increase and the Union's merit increase plan or vice versa. For these reasons the salary increase and merit increase proposals must be considered separate issues in the case.

On the other hand, however, the dollar or percentage amount of each side's offer cannot be determined on the basis of the salary increase alone since every police officer will receive under both parties' proposals a merit increase effective May 1 of each contract year in addition to a salary increase. The only exception would be in the unlikely event that a police officer received an unsatisfactory rating in his evaluation, in which

case he or she would get no merit increase. One police officer received an unsatisfactory rating during the term of the first contract between the parties. This occurred in 1987, and in the following two years that officer received evaluations, respectively, of Satisfactory and Satisfactory +. No other police officer has received an unsatisfactory evaluation since 1987. Salary and merit increases shall be treated as separate issues for purposes of this arbitration. Nevertheless in determining the amount of each side's wage proposal they shall be considered together.

The Union's final offer on the wage issue was a salary increase of \$2,250 effective May 1, 1990, and a second salary increase in the same amount effective May 1, 1991. The Village's final offer was a \$1,500 salary increase on each of these dates. In addition, each side's final offer calls for a merit increase effective May 1 of each year ranging from 3% to 6%, depending on whether the rating was Satisfactory, Satisfactory +, Good, Good +, or Outstanding. The Union's merit plan differs from the Village's, however, primarily in that it applies only to present bargaining unit employees and those hired prior to May 2, 1991. Those hired after May 1, 1991, would be subject to a combination step and merit plan. The step plan provides for an entry level salary of \$27,630, with yearly 5% increments on the officer's anniversary date of hire, assuming a satisfactory rating that year, topping out at \$37,025 after six years. In addition, officers hired after May 1, 1991, would receive a 1% performance bonus (not added to base salary) and one additional day of vacation for any year in which they received a rating of excellent. After attaining the top step, the officer rated excellent would receive a 2% performance bonus plus two additional days of vacation.

The Act requires the arbitrator to consider eight statutory criteria in choosing between the parties' final offers. One of the most important of the criteria is the following:

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.

In order to apply the criterion of comparability it is necessary to determine which communities are comparable to Bartlett.

The Union and the Village each submitted a list of communities purporting to be comparable to Bartlett. The Union's

list consisted of 16 communities in Cook and Du Page follows: Arlington Heights, Barrington, Bartlett, Buf Des Plaines, Elgin, Elk Grove Village, Hanover Park, Estates, Mount Prospect, Palatine, Park Ridge, Rolling Roselle, Schaumburg, and Streamwood.

The Village's list of comparable communities is the following 12 jurisdictions in addition to Bartlett: Bensenville, Bloomingdale, Carol Stream, Carpentersville, Glen Ellyn, Hanover Park, Roselle, St. Charles, Streamwood Chicago, and Wood Dale.<sup>1</sup>

The following table summarizes data in the record showing how Bartlett compares with the other 12 communities in respect to population and other significant areas of comparison. The three communities common to both parties' lists are shown in bold face type.

<u>MUNICIP.</u>	<u>POPUL.</u>	<u>NO. POLICE OFFIC.</u>	<u>% RESID. ASSESSED VALUAT.</u>	<u>ASSESS. VALUAT. / PERS.</u>	<u>PER CAPITA INCOME</u>	<u>PER CAP. SALES TAX. INC.</u>
Bartlett	17,240	18	97.00%	\$9,118	\$12,368	\$34
Bensenville	16,263	24	40.7	17,705	13,023	184
Bloomingdale	14,480	25	68.8	15,842	13,955	276
Carol Stream	26,620	33	61.1	10,363	12,419	87
Carpentersville	25,870	25	78.2	5,005	9,469	48

<sup>1</sup>Based on Village Exhibits 17 and 18, which compared Bartlett's offer respectively with the average minimum and maximum salaries of the municipalities in Region 3 and Region 4 of the Cook County Survey, the Union indicates in its brief that the Village accepts those municipalities as comparable communities. See Union brief at page 18. This would not appear to be a fair assumption. The exhibits were used in aid of one of the Village's arguments in the case, but at no time did the Village spokesman or any Village witness state that the communities comprising Region 3 or Region 4 were considered comparable communities within the meaning of that statutory term. The communities listed in Village Exhibit 9 were the only ones offered by the Village as comparable. That is also the Village's position in its brief. See Village brief, page 9.

Darien	18,230	20	87.7	11,608	15,119	60
Glen Ellyn	24,930	22	84.4	12,820	17,682	76
Hanover Park	31,630	26	92.1	5,911	11,014	47
Roselle	20,520	25	80.1	9,801	14,498	54
St. Charles	20,740	29	66.5	15,251	13,689	230
Streamwood	26,480	27		6,632	10,575	75
West Chicago	15,320	14	41.6	10,511	10,713	83
Wood Dale	11,590	23	56.2	16,902	14,725	147

I believe that the Village's list of comparable communities is a fair one. All of the communities are located in the same general area. Bartlett, although falling in parts of three counties, is primarily in Northern Du Page County. Seven of the municipalities (Bensenville, Bloomingdale, Carol Stream, Hanover Park, Roselle, West Chicago, and Wood Dale) selected by the Village as comparable are located in Northern Du Page County. Two (Darien and Glen Ellyn) are in Southern Du Page County. Streamwood, although in Cook County, is situated very close to Bartlett and is also on the Union's list of comparable communities.

As the table above reflects, these 10 communities have populations of approximately the same size. Except for Hanover Park, the difference in population between Bartlett and the other communities is in every case less than 10,000 and with respect to half of the communities less than 5,000. Hanover Park has approximately 14,000 more residents than Bartlett, but the fact that it is on the respective lists of comparable communities of both parties should remove any question as to whether it is a proper jurisdiction for comparison. All ten of the communities have relatively small police forces, as does Bartlett. The communities are also similar in their socio-economic character, with per capita incomes in the middle to upper middle class range.

The remaining two communities, St. Charles, a Fox River Valley community, and Carpentersville, a far northwest village, are located in Kane County. They are similar to Bartlett in population and the sizes of their police force. The per capita income of St. Charles is somewhat higher than Bartlett's, and of Carpentersville, a few thousand dollars lower. Both communities appear on the Union's expanded list of 23 (24 with Bartlett) comparable communities (Union Exhibit 22). I shall accept them as comparable communities with the other 10 municipalities on the Village's list.

The Union originally presented a list (Union Exhibit 7) of 15 communities, not including Bartlett, which it used for comparison with the salaries of Bartlett police officers. As previously noted, three of the communities also appear on the Union's list of comparable communities: Hanover Park, Roselle, and Streamwood. From the Union's own testimony, three of the remaining 12 communities are clearly not comparable. Thus Officer Jack Howard testified, "I can understand Bartlett's never going to be able to afford . . . a Schaumburg or Mt. Prospect, we understand that." (Tr. 635) He also acknowledged that Bartlett was not comparable to Arlington Heights (Tr. 636).

Elgin, another municipality on the Union's list, employs 80 police officers and has a population of approximately 70,000. It is not comparable to Bartlett. Elk Grove Village, also on the Union's list, has a police force more than three times the size of Bartlett, with 63 officers. In addition, it is a very different type of community from Bartlett. It borders O'Hare airport and, unlike Bartlett, has a very heavy commercial and industrial base. In contrast to Bartlett, which has an equalized assessed valuation of \$9,118 per person, Elk Grove Village has an assessed valuation per capita of \$27,289.<sup>2</sup> The assessed valuation per person is substantially larger than that of any community on the Village's list of comparable communities. Des Plaines' population of 55,000--three times the size of Bartlett--takes that municipality outside the range of comparability with Bartlett. The record contains no evidence regarding the percentage of residential assessed valuations, the per capita income, or per capita sales tax income of Des Plaines.

In sum, I have found that six communities on the Union's list of 15 comparable municipalities are clearly not comparable to Bartlett. Of the remaining nine communities, three overlap with the Village's list. Four of the other six have police forces more than twice the size of Bartlett's: Buffalo Grove, 39 officers; Hoffman Estates, 46 officers; Palatine, 44; and Park Ridge, 37. As between the two lists of comparable communities, I find that the Village's list as a whole is clearly more comparable to Bartlett than the Union's. In addition, I find that, considered as a whole, the group of communities on the Employer's list is appropriate for comparison with Bartlett for

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<sup>2</sup>The \$27,289 figure was obtained by dividing the total equalized assessed valuation of \$907,090,783, by the village's population of 33,240. The valuation and population numbers appear in Village Exhibit 38.

purposes of the Act.<sup>3</sup>

No two communities are carbon copies of each other. Nor are wages set in a strictly scientific manner so that, all things being equal, two communities could reasonably be expected to arrive at the identical wage or salary rate for a particular kind of job. Nevertheless experience has shown that communities which are located close to each other geographically and are similar in demographics--such as size of population and income per capita-- and in available resources--for example, property and sales tax income--will tend to pay wages more similar to each other for a particular kind of job than communities geographically distant, with dissimilar demographics, and significantly greater or lesser resources. Clearly the municipalities on the Village's list of comparable communities meet these criteria for comparability much better than do those on the Union's.

The Union takes the position that "economic criteria related to revenue are only relevant to an ability to pay argument" and that because the Village made no such claim in the negotiations for the new agreement the arbitrator may not consider such criteria in determining which communities are comparable. I cannot accept that position. The fact that the Village did not claim inability to pay does not mean that it was willing to pay anything demanded of it or that it can fairly be expected to do so. The comparison of wages, hours, and conditions of employment with those in comparable communities and financial ability are separate statutory criteria. Whether or not an employer pleads inability to pay, the statute requires the arbitration panel to make a comparison of wages and other terms with those in comparable communities. It is difficult to imagine how one can avoid revenue considerations in determining whether particular communities are comparable.

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<sup>3</sup>I have calculated the average minimum and maximum salaries of the nine communities on the Union's list remaining after the six clearly non-comparable ones are excluded. The average minimum salary comes to \$24,519, and the average maximum, \$33,735. The minimum figure is a few hundred dollars higher, and the maximum a few hundred dollars lower than the respective average minimum and maximum salaries (\$24,135 starting and \$34,083 top) of the communities on the Village's list of comparable jurisdictions.

For example, in County of LeSueur, 85-2 ARB 8401 (Mario F. Bognanno, 1985), the arbitrator had to determine whether the counties selected by the employer or those chosen by the union were more comparable to LeSueur County. Financial ability to pay was not a consideration in the case. Five of the seven criteria relied on by the arbitrator in making his decision were revenue related: assessed value, assessed value per person, taxes levied, taxes levied per person, and mill rate. The other two criteria relied on were population and population per square mile.

In the present case the Village may never have pleaded poverty in the negotiations. The failure to make such a claim, however, was not tantamount to telling the Union that it was willing to be compared to Arlington Heights or Schaumburg in terms of what was a fair contract. The Union's own witness belied any such contention.

The Village and the Union offers will now be compared to the salaries of the comparison group of communities. In order to do that it is necessary to determine what percentage to use for a merit increase. In 1989--the most recent evaluation year--15 police officers were evaluated (Village Exh. 25). Six of them received a Good + rating; 3, a Good rating; 5, a Satisfactory +; and 1, a Satisfactory. None of the officers received a lower rating than the previous year, except for the officer who was rated Satisfactory, and he resigned from the force in around December, 1989. Under the Village proposal, a Good + evaluation entitles an officer to a merit increase of between 4.5 and 5.0 %. A Good rating brings with it a merit increase of between 4.0 and 4.5%. A Satisfactory + rating carries a merit increase of between 3.5 and 4.00. A Satisfactory evaluation warrants a 3.0 to 3.5% merit increase. The prior year, 1988, 9 of 13 officers rated received a Satisfactory + rating or higher (6 of the 9 received a Good or Good +).

The record of past evaluations strongly indicates that 4% is a more realistic expectation than 3% for yearly merit increases as a result of performance evaluations. In fact the Union spokesman himself acknowledged this in his testimony (Tr. 198). This arbitrator shall use a 4% figure in calculating the value of merit increases under the Village offer. The arbitrator has computed how each of the police officers presently employed by the Village would fare under the Village and Union last offers respectively during the term of a new two year Agreement. This includes longevity increases of \$3,000 and \$1,500 respectively effective 5-1-91 to officers Correll and Perry. The information appears in the following table:

<u>NAME</u>	<u>SENIOR. DATE</u>	<u>CURR. SALARY</u>	<u>5-1-90 SALARY VILL. OFFER</u>	<u>5-1-91 SALARY VILL. OFFER</u>	<u>5-1-90 SALARY UNION OFFER</u>	<u>5-1-91 SALARY UNION OFFER</u>	<u>% INC. VILL. and UNION</u>
Correll	4-20-70	\$30,326	\$36,099	\$39,103	\$36,879	\$40,694	29-34
Perry	5-25-79	31,928	36,265	39,276	37,045	40,866	23-28
Hayes	11-1-81	31,699	34,526	37,467	35,307	39,059	18-23
Howard	6-25-82	31,574	34,397	37,332	35,177	38,924	18-23
Ortiz	6-1-83	30,076	32,839	35,713	33,619	37,303	19-24
Knight	9-6-83	30,118	32,883	35,758	33,663	37,349	19-24
Coventry	1-31-84	29,120	31,845	34,679	32,625	36,270	19-25
Mich	2-10-84	27,164	29,811	32,563	30,591	34,154	20-26
Williams	2-11-85	27,352	30,006	32,766	30,786	34,357	20-26
Almeida	10-2-87	24,211	26,739	29,369	27,519	30,960	21-28
Moy	2-16-88	23,836	26,349	28,963	27,129	30,555	22-28
McNulty	10-2-88	23,212	25,700	28,288	26,480	29,880	22-29
Vergin	4-5-89	22,630	25,095	27,659	25,875	29,250	22-29
Hooker	8-24-89	22,630	25,095	27,657	25,875	29,250	22-29
Rogers	8-24-89	22,630	25,095	27,657	25,875	29,250	22-29
Vasser	1-4-90	22,630	25,095	27,657	25,875	29,250	22-29
Stickling	11-21-89	25,896	28,492	31,192	29,272	32,783	20-27

Because of a dearth of salary data submitted into the record concerning comparable communities, only a limited amount of comparison may be performed. For example, all but two of the comparable jurisdictions have police forces covered by a collective bargaining agreement. The exceptions are Roselle and Bensenville. Yet none of the other agreements were introduced into evidence, except the one for Streamwood. The only wage information given concerning the other jurisdictions were the minimum and maximum salaries of police officers, whether wages were paid pursuant to a merit system or a step plan, and the number of years to reach maximum rate under each step plan. Information has also been provided to show where the Bartlett force stands in comparison with the other forces as to minimum

and maximum salaries. No distribution was provided as to where the officers fall on the pay scale for any community other than Bartlett. Nor, except for Streamwood, is there any information concerning the step increases.

Village Exhibit 15 shows that Bartlett is No. 10 among 13 comparable communities with a starting salary of \$22,630:

<u>MUNICIPALITY</u>	<u>STARTING SALARY</u>
1. Streamwood	\$27,106
2. Carpentersville	25,932
3. Glen Ellyn	25,313
4. Roselle	24,991
5. Carol Stream	24,703
6. Hanover Park	24,294
7. Wood Dale	23,896
8. Bloomingdale	23,431
9. St. Charles	23,281
10. Bartlett	22,630
11. Darien	22,498
12. West Chicago	22,179
13. Bensenville	22,000

The average starting salary of the group, excluding Bartlett, is \$24,135. Bartlett, at a starting salary of \$22,630, is 7% below the average.

As the table above shows, an employee who earned \$22,630 under the old contract will be earning \$27,657 as of May 1, 1991, under the Village offer--an increase of 22%. Without salary data concerning the other communities it is not possible to state with certainty what dollar or percentage increase in salary officers on their police forces who were are now at the starting salary shown on Village Exhibit 15 will be earning as of May 1, 1991. The most uncertainty exists in respect to jurisdictions on a step plan. For example, because of the step plan at Streamwood, an employee at a starting salary of \$27,106.30 as of January 1, 1990, moves to \$30,022.46 on January 1, 1991--an increase of 10.76%.

Three jurisdictions shown on Village Exhibit 15 with higher starting salaries than Bartlett, however--Carol Stream, Wood Dale, and Bloomingdale--have merit plans rather than a step progression. The cost of living increase the past year has been between 4-1/2 and 5%. Village Exhibit 34, summarizing other interest arbitration wage awards for police units, shows that, with one exception, they have not exceeded 7%. Many were below 7%, 5% or less being the most common increase awarded. The merit increase in 1989 at Carol Stream was 4%. If we assume even a 5%

increase in 1990 and 1991, Carol Stream officers now earning that jurisdiction's starting salary of \$24,703 would, effective May 1, 1991, be earning \$27,235, an amount less than Bartlett officers now being paid the Village's starting rate will, in the normal course, be earning effective May, 1991.

As for Wood Dale and Bloomingdale, officers now earning Bartlett's starting rate would be making more than their counterparts at those two communities even if the latter received merit increases of 7% each year in 1990 and 1991. I think that there is little doubt that the Village's offer would close the gap between its least senior police officers and officers with similar lengths of service at most of the other comparable communities and that the salaries of these Bartlett officers would probably surpass those of two or three additional communities than is presently the case.

The Union's offer, on the other hand, would bring officers presently earning the starting salary at Bartlett to \$29,250 as of May 1, 1991, or \$773 behind the rate for employees with comparable service at Streamwood. Streamwood presently has the highest starting rate--\$1,174 ahead of the No. 2 community. If the Union's offer were adopted by the arbitrator, then, effective May 1, 1981, Bartlett would probably become the second highest paying community for officers within the group of comparable communities who are now at the starting rate of pay in their respective communities.

Village Exhibit 16 shows Bartlett's standing as next to last with regard to top police officer salaries among the 13 comparable municipalities:

<u>MUNICIPALITY</u>	<u>TOP SALARY</u>
1. St. Charles	\$35,540
2. Roselle	35,166
3. Darien	35,141
4. Carol Stream	35,121
5. Bloomingdale	34,678
6. Streamwood	34,609
7. West Chicago	34,132
8. Glen Ellyn	34,027
9. Carpentersville	33,216
10. Wood Dale	32,876
11. Bensenville	32,600
12. Bartlett	31,928
13. Hanover Park	31,886

The Village offer very substantially improves the salaries of its highest paid and most senior employees whether considered singly or as a group. As the table above of Bartlett officers' salaries reflects, longevity increases have been included in tabulating the Village offer since longevity pay becomes a part of an officer's salary and is not merely a bonus.<sup>4</sup> In addition it is a cost to the Employer the same as any other salary cost. Further it is available to all employees who remain with the Village at least ten years. No good reason presents itself why longevity should not be included with all other salary money received by the bargaining unit in assessing the Village's salary offer.

As of May 1, 1991, two police officers, in the normal course, will be earning over \$39,000 in regular salary, and a third just short of that figure. The Union argues in its brief that Streamwood is an especially appropriate community for comparison purposes. Four of the nine police officers at Bartlett with five or more years of service will, as of May 1, 1991, be earning more than 36,339, the top salary on the Streamwood schedule for 1991. Two additional officers will be earning less than two percent below that figure. The average salary for all nine officers with five or more years of seniority is expected to be \$36,073--less than \$300 below the top Streamwood contract rate for 1991.

Currently the average salary of the nine most senior officers at Bartlett is \$29,929. The current average top police officer salary for the 12 comparable communities, as calculated from the figures in Village Exhibit 16, is \$34,083. Bartlett's average is therefore 14% below the average of the other comparable municipalities.

Unlike the starting salary for police officers, where prediction of future earnings is difficult without knowing the pay plan for each jurisdiction and the amount of the increase in progressing from one step to the next, there are no step increases to be concerned with where the top salary is involved. In fact it is not uncommon under a municipal pay plan for the parties to agree to a bonus payment, not added to the base rate, for employees who have topped out on the pay plan, although that is far from a universal practice.

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<sup>4</sup>In constructing the table of salaries, the longevity amount was added after calculating the regular salary and merit increases, but that was not intended to indicate that it may not be added before salary and merit increases are computed.

If we assume an increase of 5% per year in the average top police officer salary among the 12 jurisdictions in the comparison group, the average top salary increases to \$37,576 as of 1981. That is \$1,503 above the expected average salary in May, 1991, of \$36,073 of the nine officers on the Bartlett force with five or more years of seniority. Consequently, as of May 1, 1991, the difference between the Bartlett average and the comparable jurisdictions' average for top salaries will be reduced from \$4,154 or 14% to \$1,503 or 4%--a substantial amount of "catch up."

It should be noted that the comparison in the foregoing paragraph is not exactly a juxtaposition of equals since only the highest salary has been taken for each of the other communities while the highest salary and eight lower salaries have been averaged together for Bartlett. The comparison is therefore somewhat unfair to Bartlett. Nevertheless since police officers will earn the top salary within six years at at least nine other communities within the comparison group, it was thought appropriate to average the salaries of the nine most senior Bartlett police officers, all of whom will have six or more years of service as of May, 1991. However, if only the \$31,928 figure for Bartlett is used as Bartlett's current top salary, it would, under the Village's proposal, move from No. 12 on the present list of 13 comparable communities to No. 1 as of May 1, 1991 (from \$31,928 to \$39,276). If longevity pay is not included in the calculation, the top pay at Bartlett would, in the normal course, be \$37,716, a figure still higher than the \$37,576 top salary average of the comparable communities expected to be in effect as of the same date.

Under the Union proposal, six of the nine most senior Bartlett police officers would, in the normal course, be earning higher salaries commencing May, 1991, than the top rate for 1991 on the Streamwood salary schedule. A seventh officer would be less than a hundred dollars below the Streamwood top salary. The average for the nine Bartlett officers would be more than a thousand dollars above the Streamwood ceiling and also higher than the expected average in 1991 for top salaried officers among the 12 comparable communities.

I believe that the statutory factor of comparability favors the Village's rather than the Union's final offer on wages. The Village's offer would move the bargaining unit up significantly both at the lower end and the upper end of the salary range. I share the opinion of Professor Charles J. Morris as expressed in Pan Am World Services, 93 LA 348, 352 (1989), in an interest arbitration award:

[I]nterest arbitration can be a useful adjunct to collective bargaining, but it has severe limitations when it is viewed as a substitute for collective

bargaining. Accordingly, the interest arbitrator should endeavor, whenever reasonably possible, to achieve a result which the parties themselves would likely have achieved had they exhausted the normal collective bargaining process. That is my goal in this proceeding.

This was also the view of Clark Kerr in Pacific Glass & Electric Co., 7 LA 528, 534 (1947), quoted favorably in Elkouri and Elkouri, How Arbitration Works, Third Ed. (1973), p. 747: "Arbitration of primary disputes over the terms of a new contract is a substitute for successful bargaining, and the 'pattern' or 'package' indicates what might have evolved from successful bargaining had the parties acted like others similarly situated." Arbitrator Kerr also noted that this approach not only "reduces the risks of parties entering wage arbitration," but also "should encourage their own free settlement."

The Act itself shows a preference for collective bargaining over the imposed decision of an arbitration panel as a method of resolving bargaining impasses. Thus Section 14 (f) provides, "At any time before the rendering of an award the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks." The legislature hardly would have permitted the removal of a case from the arbitration process back to the bargaining table unless it was of the opinion that that was a preferable way of resolving disputes regarding contract terms.

If an arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through the collective bargaining process, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. The temptation, and political pressures, will be very great to try one's luck again in arbitration in hopes of getting a better deal than is likely available at the bargaining table. This undermines the collective bargaining process which is the cornerstone of our national and state labor relations policies.

At the top salary level, the Union seeks an award from the arbitrator which would bring Bartlett from next to last to number one among comparable communities. At the bottom level, the Union's last offer would raise Bartlett from number ten among 13 comparable communities to number two. This would be accomplished by salary increases averaging approximately 24% over two years, not including longevity, for the nine most senior police officers and 28% for the eight least senior officers.

It is most unlikely that the Union--or any bargaining

unit similarly situated--would be able to achieve such large increases, and to improve its relative position with respect to comparable communities so dramatically, from one contract to the next, in the free collective bargaining process. The 1987 collective bargaining agreement between the parties contained a wage settlement nowhere near what the Union is presently demanding despite the fact that at that time also the salaries of the Village police officers were low in comparison with those of officers in comparable communities. In addition, there is no evidence than during the past several years, when inflation has averaged 5% or less annually, any other bargaining agent of police officers in the state has negotiated such substantial percentage increases in salaries, or improved its relative standing for salary levels to the extent that the Union now seeks, over a two year contract. Nor has any arbitrator awarded salary increases of the magnitude requested by the Union for a two year period in any interest arbitration for police officers held since the Act became law.

The Village's police officers are, as a matter of fairness, entitled to substantial wage increases because they lag behind comparable communities to a significant degree. The Village's last offer addresses this problem. It would increase the salaries of the nine most senior officers over a two year period by approximately 19%, not including longevity increases. The eight least senior employees would receive wage increases of more than 21% over two years. These are substantial increases.

The increases, moreover, would raise the Village's relative standing among the group of comparable communities at both the lower and upper ends of the salary range by several notches. At the upper level it will bring Bartlett above Streamwood and raise it from 14% below the average top rate for the 12 other comparable communities to 4% below them. This, as noted above, is a comparison of the average of the top rate at Bartlett plus eight lower rates with only the top rates at the other communities. Bartlett's three or four most senior officers will, effective May 1, 1981, be among the highest paid officers of the entire group of comparable communities.

Bartlett's least senior officers will, through raises in excess of 21% over two years, probably move up in the comparison group from tenth to about seventh. This is a respectable improvement for a single two year contract period. The Village correctly observes in its brief that Bartlett's low starting salaries in comparison with other similar communities evolved over a period of years. It is unrealistic to expect total correction of this problem in a single contract period. All that can be reasonably expected is significant progress, and the Village offer accomplishes that.

The Union rightly is concerned about turnover among new

police officers. It attributes this to low salaries. The Village offer should help alleviate turnover caused by dissatisfaction with low salaries. The eight officers with the lowest seniority will, in the normal course, each receive a salary increase in excess of five thousand dollars by May, 1981. In view of the fact that the officers were not deterred from accepting employment at Bartlett at its current salary levels, the substantial improvement in salary terms should contribute to their remaining with the Village.

I have considered the statutory factors of comparison with other employees in comparable communities, financial ability of the Village to meet its costs, and other criteria, as discussed above, normally taken into account in determining wages and other terms of employment in interest arbitration. For the reasons stated, they lead me to conclude that the Village's final wage offer should be adopted rather than the Union's. The Village's offer is also favored by the cost of living factor. In recent years the cost of living index has not risen above five percent on an annual basis. The Village's offer substantially exceeds that figure in each year of the contract.

The Village offer is consistent with the interests and welfare of the public. The new salaries of the more senior officers should bring them well in line with the salaries of senior officers on the police forces of comparable communities by May, 1981. The less senior employees will, in the normal course, receive substantial increases in their salaries. These increases should help establish or maintain good morale on the police force. The importance of good morale among the men and women charged with helping to protect the lives and property of the community is self evident. On the other hand, the increases are not so high as to deprive the municipality of necessary funds for other governmental purposes, although, as the Union points out in its brief, the Union final offer also would probably not prevent the Village from meeting any of its other priorities.

I have also considered the overall compensation received by the work force, in wages and fringe benefits, and the additional statutory criteria, and find nothing in them which would cause me to change my conclusion that the Village's final offer on wages should be adopted.

#### Merit Increases - Section 12.2

As stated above, it is possible to adopt the across the board salary increase of one party and the merit increase plan of the other party. However, the salary offers cannot be evaluated without considering both kinds of increases together. This is clear from the Union's own brief. The Union was the proponent of treating the two issues separately. Nevertheless throughout the

section of its brief dealing with Section 12.1, Salary Increases (pages 3-35), it repeatedly included the merit increase figure. This supports the conclusion that the parties' salary offers cannot be appraised without considering merit and salary together.

The Union's final offer on Section 12.2 includes the creation of a step pay plan for officers hired after May 1, 1991, with an entry rate of \$27,630. Officers who received a satisfactory rating would advance to the next step on their anniversary date. The plan tops out at step 6 at a salary of \$37,025. There would be only three ratings possible under the plan: Satisfactory, Unsatisfactory, and Excellent. An officer receiving an evaluation of excellent would be entitled to a 1% performance bonus and one additional day of vacation until he or she reaches maximum rate, at which time the officer would receive a 2% bonus and two additional days of vacation for an excellent rating.

The Union correctly gives the prevailing view among arbitrators when it states, "Last-best offer panels and neutrals seem reluctant to innovate or change systems except where strong justification can be presented." Most arbitrators are of the opinion that contract changes of a fundamental nature on so important an issue as salary structure should be left to the parties themselves in free collective bargaining. I believe that, absent strong and clear evidence in justification, it would be especially inappropriate to order the institution of a step pay plan for a police force, such as the present one, where a step plan previously existed but was changed by the administration because of dissatisfaction with it.

The respective Village and Union plans represent divergent philosophical views concerning the structure and rationale of a pay system. Merit is taken into account to some degree in the Union's step plan in that an officer cannot move to the next step if he gets less than a satisfactory rating in his evaluation, but it is not stressed nearly to the degree as in the Village's merit increase system. There is something to be said for both parties' approaches, but they represent fundamentally different concepts concerning a critical term of employment. I believe that so basic a dispute should be resolved by the parties through collective bargaining and not by fiat through arbitration.

I recognize that the Act removes from police officers the right to strike, and that this legislative diminution of bargaining power is entitled to some weight in evaluating the parties' competing proposals. Had the Village's opposition to a step plan been unique, I would seriously consider adopting a step plan in my award. It is not unique, however. Although probably a majority of jurisdictions have some kind of a step pay plan for

their police officers, many do not, including four communities (counting Bartlett) within the comparison group who have merit pay systems. Under these circumstances, I believe, an arbitrator should not impose on the Village a step plan to which it is professionally and philosophically opposed. The Village total wage offer provides substantial salary increases to the bargaining unit, and the matter of a pay plan should be left to negotiations between the parties.

Accordingly I adopt the Village's final offer in respect to Section 12.2, Merit Increases. The Village has stated that its merit offer includes the right to grieve merit ratings through final and binding arbitration. The Village also agreed that an officer rated less than satisfactory would be entitled to a reevaluation after 60 days. Finally, the Village agreed that merit increases would be calculated after the across the board increase, thereby adding to the value of the merit raise.

#### Longevity - Section 12.3 (New)

The Union offer provides that an officer with 10 years of continuous service shall receive a one time 5% raise on his or her tenth anniversary date; and that an officer with fifteen years of continuous service, an additional one time 5% salary increase on that individual's fifteenth anniversary date.

The Village proposal calls for police officers to receive \$1,500 in longevity pay after 10 years and an additional \$1,500 (or a total of \$3,000 in longevity pay) after 15 years.

On May 4, 1988, the Village promulgated an Administrative Policy which stated as follows:

#### POLICY STATEMENT

The Village of Bartlett offers longevity pay for non-union employees who have been in continuous service of the Village for periods over ten years.

#### PROCEDURES

1. Employees who have been in continuous service of Village of Bartlett for the period of ten years shall receive a one time five percent increase in pay, at the time of their ten year anniversary.
2. Employees who have been in continuous service of the Village of Bartlett for the period of fifteen years shall receive another one time five percent increase in pay, at the time of their fifteen year anniversary.

3. Longevity pay becomes effective on the employee's anniversary date and must be approved by both the Village Administrator and Finance Director.

Ten of the other twelve municipalities in the comparison group do not provide longevity pay for their police officers. Carpentersville provides a \$40 bonus per year for up to 17 years, with the money not attaching to salary. Darien pays its officers a 3% increase in salary in their 11th, 15th, and 19th years of service, with the pay becoming a permanent part of the employee's salary.

The Union argues that the longevity benefit was granted to non-Union employees during the term of the first collective bargaining agreement, and is an example of favoring non-Union employees over Union employees. The Union urges that there is no reason why the longevity plan for bargaining unit employees should be less than for the rest of the Village employees, especially since police sergeants and police lieutenants are covered by the administrative longevity policy. The Union remarks that the "Village was unable to offer any rationale as to why it has not offered a longevity plan as good as that enjoyed by the rest of the employees."

The Village contends that there "is no reason to adopt the Union's proposal for percentage longevity pay . . . because this amount automatically increases without contract negotiation." Noting that 11 of the 13 comparable communities, including Bartlett, presently have no longevity for police officers; and that only one of the two exceptions has longevity pay which attaches to salary, the Village argues that "it seems inappropriate to institute a longevity pay plan for Bartlett police officers which, on a percentage basis, is on an escalator and goes up every year, as salaries go up, even without contract negotiation." The Village further asserts that it is paying such substantial amounts in salary and merit increases that its longevity proposal is more than reasonable.

The fact that 10 of the other 12 comparable communities do not provide longevity pay to their police officers would be important evidence in the Village's favor if it had not made a longevity proposal of its own, and especially if non-Union employees did not receive longevity pay. The Village has made a longevity offer, however, and the issue is not whether to award longevity pay to the police officers but the nature of the longevity benefit.

I believe that it would probably be a source of resentment should the longevity pay plan for police officers be significantly inferior to that of the non-Union Village employees, particularly, as the Union points out, when police

sergeants and lieutenants receive the standard longevity benefit established on May 4, 1988. Village Administrator Valerie Salmons was asked at the arbitration hearing why the Village was not making the same longevity proposal to the bargaining unit as is in effect for non-bargaining unit employees. She answered, "I don't think we have any particular reason for that." She then went on to say that the Village has different benefits for the Union and that the Union proposal was "just about comparable to the rest of the employees."

Take just the example of Officer Hayes, who is due to attain eligibility for longevity pay in November, 1991. With a salary of over \$39,000, he would receive \$450 less in longevity pay under the Village's proposal than the Union's. The same would apply to the other officers as they became eligible for a first or a second longevity increase. This in all probability will create disgruntlement on the part of the police officers as they view non-Union employees getting a greater amount of money than they for exactly the same accomplishment, namely, completing 10 or 15 years of service to the Village.

The statutory criterion of the "interests and welfare of the public" favors the Union on this account since the ill will created by the perceived disparate treatment is likely to lower the morale of the officers and could affect the level of their performance. There is no indication that the Village would be unable financially to meet the cost of the same plan for bargaining unit police officers as for other Village employees, including ranking police officers.

It is true that the value of the longevity pay increase will escalate with each percentage increase received by the police officers, but this is also true of the non-bargaining unit employees. I have considered all of the statutory criteria as applied to the longevity proposals and adopt the Union's proposal on this issue over that of the Employer's.

#### Holidays - Section 8.1

The current contract provides 11 paid holidays. However, by a side letter the parties agreed that effective January 1, 1989, each police officer would receive one additional personal day during the calendar year, which would not be made a part of the Agreement. The side letter stated that "the subject of an additional personal day must be renegotiated for any future collective bargaining agreement."

The Union proposes to maintain the second floating holiday, for a total of 12 holidays, by specifying it in the contract.

The Village proposes that effective January 1, 1991, an additional day off, known as a safe driving day, be provided to every officer who does not have a chargeable accident the prior calendar year. In addition, the Village offers to observe Police Memorial Day beginning in May, 1991, by permitting the two most senior police officers who earned a safe driving day for 1990 to travel to Springfield at the Village's expense for observance of the occasion.

In support of its position, the Union points to the fact that all other Village employees observe 12 paid holidays, including two personal days off. The Union further argues that there was no evidence of a safe driving requirement as a condition of eligibility for a floating holiday at any other municipality and that continuation of the benefit is a reasonable expectation of the bargaining unit.

The Village contends that the Village Police Department is interested in driver safety for obvious reasons, including the promotion of safe driving by officers engaged in high speed vehicle pursuits. It points to the fact that it has a formal accident review board which evaluates all automobile accidents and which would assure that an officer would not lose his safe driving day off where he or she was not at fault in the accident. The Village asserts that "it makes good employment sense to condition the additional day off on safe driving and that this proposal, coupled with the Police Memorial Day observance, should be accepted by the Arbitrator."

Seven of the twelve other jurisdictions have twelve paid holidays or more (three having more), and there is no indication in the record that any of them has a safe driving requirement as a condition of eligibility for one of the holidays. The Village offer must thus be viewed as innovative. Elkouri and Elkouri, How Arbitration Works, Third Ed. (1973), p. 761, states the prevailing view among arbitrators concerning such a proposal: "It is clear, however, that arbitrators will require a party seeking a novel change to justify it by strong evidence establishing its reasonableness and soundness. . . . Arbitrators generally agree that demands for unusual types of contract provisions should be negotiated."

The arbitrator is not convinced by the Village's argument that a safe driving day will prevent high speed chase accidents. It is doubtful that an extra day off will be more of a deterrent to negligent driving during a chase than the risk of serious injury or worse. The effect of a negligent accident on one's evaluation and merit raise is an additional deterrent to reckless driving.

The statutory criterion of comparison with comparable communities clearly favors the Union's side since the majority of

communities have 12 paid holidays and none of them has a driving requirement for any holiday. There is no content that the Village cannot afford a twelfth paid holiday, and, in event, the total cost of the benefit probably will be substantially the same under either proposal since the record does not show a history of an inordinate number of chargeable accidents involving Village police officers. In addition, as a practical matter, the Village offer represents a reduction in benefits since in 1989 police officers received 12 paid holidays, whether part of the contract or not. Having considered all of the statutory criteria, I find that, on balance, they favor the Union's position on the holiday issue. The arbitrator therefore adopts the Union proposal on holidays.

Paid Vacations - Section 9.1

The present Agreement provides that employees shall receive vacation with pay, as of their anniversary date of continuous service each year, in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Vacation</u>
1st through 5th	2 weeks
6th through 10th	3 weeks
11th or more	4 weeks

The Union proposes adding five weeks of vacation after 20 years of service. The Village proposes no change.

Of the 13 comparable communities, including Bartlett, only four provide for a fifth week of vacation. The Village relies primarily on this consideration in arguing that there is no justification for increasing vacation benefits. The Union acknowledges the accuracy of the Village's comparability data, but asserts that six other communities covered in the Cook County Bureau of Administration 34th Semi-Annual Regional Governmental Salary & Fringe Benefit Survey provide a fifth week of vacation. Broadening the scope of the comparison, however, would also require the counting of many more communities which do not provide a fifth week of vacation. The percentage of communities providing such a benefit is therefore not increased by including the additional municipalities named by the Union. Moreover, the Union's additions include communities which the Union's own witness acknowledged were not comparable, namely, Arlington Heights and Schaumburg.

The Union states in its brief that the principal reason for the request for a fifth week "was to provide an incentive for Bartlett officers to remain with the Village." As the Union itself recognized, however, only one officer would qualify

this benefit during the term of the contract. That officer will, in the normal course, be the second highest paid officer, earning in excess of \$39,000 annually as of May 1, 1991. He would not appear to need an incentive in the form of a fifth week of vacation.

I have considered all of the statutory factors and conclude that the Village's last offer concerning paid vacations should be adopted.

Sick Leave Payout - Section 10.4 (New)

Originally the Union proposed the following language:

On an annual basis, to convert six unused sick leave days to vacation at a two for one ratio, up to three additional vacation days per year.

The Village proposed the following provision:

An employee who at the beginning of calendar year 1991 has accrued 60 or more days of sick leave may elect payment at 50% at the end of calendar year 1991 of all sick leave days accrued and unused during 1991 in excess of six sick leave days. For example, an eligible employee who used no sick days during 1991 shall bank six sick leave days and shall be eligible to receive payment for the remaining six sick leave days accrued but not used during 1991 at 50% pay (three days' pay).

Near the conclusion of the hearing, during the exchange of final offers, the Union agreed to the Village's proposal in its entirety, except that it substituted 30 days of accrual for the Village's proposal of 60 days.

In support of its final offer on this issue the Union argues that the Village's proposal would take too long to provide any monetary benefits for most employees in the bargaining unit, even assuming that an officer used only three sick days per year. The Union urges that there appears to be no greater cost to the Village of one plan over another and that the Union's plan should be adopted "in order to give real value to as many members of the Unit as possible within the time frame of the next contract."

The Village contends that the 60 day accrual is important because an employee should be required to have a bank of sick leave in the event of serious illness. To permit employees to draw down their sick leave bank to 30 days merely to get cash is short-sighted, the Village urges, and defeats the purpose of sick leave, namely, to provide a bank for employees

for that day in the future when sick leave is truly needed.

I am of the opinion that the Village's proposal is more consistent with the remainder of Article X, Sick Leave, and with the accepted purpose of that benefit. Section 10.1 expressly states that "Sick leave with pay is a privilege to be used for the employee's own personal illness or personal disability, . . . and . . . not . . . for . . . any other purpose." Unfortunately as employees grow older they not infrequently are struck with illnesses that incapacitate them for long periods of time which may exceed 30 working days. Sixty days is not an unreasonable accumulation period. The parties recognized this fact by providing in Section 10.2 for accrual of up to 120 days of sick leave. I believe that permitting employees to cash out their sick leave days so that they remain with only 30 days of accrual exposes them to too great a risk of not having sufficient days available should serious illness strike. That would not be in the best interests of the employees, the Employer, or the public.

I find that the statutory criteria--including the criterion of reasonableness, which I believe to be encompassed within Section 14 (h) (8) of the Act--favor the Village's proposal over that of the Union's on the sick leave payout issue and adopt the Village's proposal regarding that benefit.

I turn now to the non-economic issues. Unlike with regard to economic issues where the Act requires the arbitration panel to "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)," non-economic issues must "be based upon" the same factors, but the arbitration panel is not limited to adopting either party's last offer of settlement.

### Checkoff - Section 3.3

Section 3.3 of the current agreement, containing the heading Dues Check-Off, provides that upon receipt of a signed authorization from an employee, the Village will, for the duration of the Agreement, deduct from the employee's pay, uniform Union dues. The Union must notify the Village of the amount of the dues. The section also provides for cancellation of the checkoff as follows: "In the event an employee desires to cancel the dues check-off authorization, the employee must provide written notification to the Village and the Union."

The Union proposal would change the pertinent language to read as follows:

In the event an employee desires to cancel the check-off authorization, the employee must provide written notification to the Village and the Union during the fifteen (15) day period prior to the expiration of this Agreement.

The Village proposal provides as follows:

In the event an employee desires to cancel the dues check-off authorization, the employee must provide written notification to the Village and the Union; provided, however, that an employee who has signed a dues check-off authorization may not cancel this authorization for a period of one year, or as of the termination date of this collective bargaining agreement, whichever date occurs sooner.

According to the Union both parties proposed changing the language of the present Agreement in recognition of the fact that current language would permit revocation of the checkoff authorization at any time. Its own proposal, the Union states, "is consistent with the Act," and a "15 day window period provides for orderly administration" of the Agreement. In view of the number of new officers who will be hired, either as replacements or to meet the increasing needs of the Village, the Union declares, its proposal should be accepted.

Valerie Salmons, Village Administrator, expressed disagreement with the Union proposal because it does not permit an employee to revoke his or her checkoff authorization on an annual basis. She stated that she thinks it important to allow an officer to change his mind after a year.

Had the parties not negotiated in their first Agreement the right of revocation at any time, I would be more inclined toward the Union proposal. To go from the right of instant revocation to a single opportunity during the 15 days prior to the expiration of the Agreement appears to be too radical a change. I am also of the opinion that there is ample precedent in this country for permitting employees the right of revocation of a dues checkoff authorization once a year, namely, in Section 302 of the National Labor Relations Act, which prohibits making a checkoff assignment irrevocable for a period of more than one year, or beyond the termination date of the contract, whichever occurs sooner. The federal act, of course, does not apply to employees of public employers, but it seems to me a much fairer provision than what the Union is proposing.

The Village proposal, after all, would not permit a Union member who properly revokes his dues deduction authorization to stop paying dues, but would merely allow the employee to pay dues directly instead of by checkoff. Further, the Illinois Act, in Section 6 (f), permits a written

authorization for checkoff to remain in effect "until revoked in writing in the same manner or until the termination date of an applicable collective bargaining agreement." I am not aware of any official interpretation of the language "until revoked in writing in the same manner."

I adopt the Employer's checkoff proposal.

Fair Share - Section 3.4 (New)

The Union proposes the following fair share provision:

Members of the Union shall be required, as a condition of employment, 30 days after the later of the execution of this Agreement or their hire date, to pay a fair share of the cost of the collective bargaining process and contract administration and pursuing matters affecting wages, hours and other conditions of employment.

It is further agreed that 30 days after the later of the execution of this Agreement or the employee's date of hire, the Village shall deduct from each paycheck of employees who are not members of the Union an amount as certified by the financial secretary of the Union and shall remit deductions to the Union at the same time that the dues check-off is remitted.

It is understood that the amount of deduction from said non-member bargaining unit employees will not exceed the regular monthly Union dues and represents the employee's fair share cost of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and other conditions of employment.

Nothing in this Agreement shall be inconsistent with Section 6 (g) of the Illinois Public Labor Relations Act in protecting the right of non-association of employees based upon the bona fide religious tenets or teachings of a church or other religious body of which such employees are members.

The Village opposes any fair share provision on the ground that it "is not agreeable to require compulsory payments to the Union from any employee, particularly since such a condition was not in place at time of hire." According to the unchallenged testimony of Village Administrator Valerie Salmons, the Union informed the Village that 100% of the officers have joined the Union. That being the case, the Village contends, it checkoff proposal, which makes a dues checkoff irrevocable for

period of a year, gives the Union all of the protection it desires, since it is unlikely that a newly hired rookie police officer will refuse to join the Union when all of the senior officers belong. The Village also finds it odd that despite the presence of a dues checkoff provision in the current Agreement, no dues checkoff authorizations have been submitted to the Employer. Finally, the Village urges that awarding a fair share provision will unduly complicate the job of the Village Administrator in selling the award to the Village Board of Trustees in view of the Board's strong opposition to such a provision.

The Union asserts that fair share provisions are well established in law and practice in virtually every public jurisdiction in the country where bargaining occurs. Justification for the provision, the Union urges, lies in its obligation to represent every member of the bargaining unit fairly, whether a member of the Union or not, and in the unfairness of permitting some members of the unit to get a "free ride." The Union analogizes the fair share situation to the citizens of a governmental jurisdiction, who may not approve every use to which tax money is put, but nevertheless are not given a choice of whether or not to pay property tax. "In short," the Union declares, "no one gets a free ride in the matter of paying essential costs of government and, by analogy, no employee should in the matter of the essential costs of contract negotiation and administration."

To this arbitrator the principle of fair share is in line with the longstanding doctrine of quantum meruit (as much as he deserved) or unjust enrichment in contract law. Under this doctrine an individual can be forced by the law to pay for a benefit received even though he did not request the benefit. For example, if a physician sees an injured and unconscious pedestrian and furnishes medical services valued at \$1,000 in the belief that the injured pedestrian will be willing to pay for them on regaining consciousness, and the injured person refuses to pay, the physician's right to recover if he sues for the thousand dollars is clear. Farnsworth, Contracts (1981), p. 101. Similarly, if a carpenter, having been called by Smith to make repairs, makes an honest mistake and repairs Jones' house instead while Jones, aware of the mistake, makes no protest, the carpenter will be allowed to recover in restitution from Jones for unjust enrichment. Id.

Recovery, however, "is denied for benefits officiously conferred so that a party will not have to pay for something forced upon him against his will." Farnsworth gives the example of a carpenter who sees a house vacant and in need of repairs and makes repairs that would cost \$1,000 in the belief that the owner will be willing to pay for them on his return. If the owner refuses to pay and the carpenter sues, the "carpenter will lose

on the ground that he made the repairs officiously--that he was not justified by the circumstances in doing so. Were the law otherwise, an unreasonable vigilance would be required of property owners in fending off underemployed artisans." Id. at pages 100-101.

Recovery is also denied for services performed gratuitously. "In general, if one's life or property is imperiled by impending disaster and another renders assistance in the emergency, the law presumes, in accordance with the mores of society, that the services were intended to be gratuitous." However, "the presumption does not apply if the person rendering the services does so in a professional or business capacity, as in the case of a physician or a hospital." Id. at 102-103. Farnsworth notes "an excellent discussion" of this area of the law, known generally as the law of restitution, in Wade, Restitution for Benefits Conferred without Request, Vand. L. Rev. 1183 (1966), "where the following helpful summary is given at page 1212: 'One who, without intent to act gratuitously, confers a measurable benefit upon another, is entitled to restitution, if he affords the other an opportunity to decline the benefit or else has a reasonable excuse for failing to do so. If the other refuses to receive the benefit, he is not required to make restitution unless the actor justifiably performs for the other a duty imposed upon him by law.'" Quoted at Id., page 100, note 20.

The arbitrator has gone into the law of restitution at some length not because that doctrine is the governing rule of law in this case. The governing rule rather is the Illinois Public Labor Relations Act, which leaves the matter to negotiations between the parties or to determination by interest arbitration. The law of restitution and unjust enrichment has been drawn upon to show that it is those who would oppose making individuals who receive lawfully rendered services pay for them that are outside the mainstream of this country's legal traditions and should have the burden of establishing the impropriety of requiring such payment.

If paying for Union services also entailed joining the Union, this arbitrator would not award a fair share provision. Nobody should be required to join an organization against his will. The legislature was very careful, however, not to require anyone to join a union against his or her will. The only requirement is that one pay his or her proportionate share of the costs of the collective bargaining process of which the individual is a beneficiary. The law even goes so far as to permit those with religious scruples against paying money to a union to make the payment to a charity instead.

As discussed in greater detail below, the United States Supreme Court has granted further protection to fair share payers

by permitting them to object to the use of their payments for purposes other than collective bargaining and contract administration and to block the collection from them of an amount greater than the individual's proportionate share of the union's costs limited strictly to these purposes and none other. The law has thus carefully removed any valid philosophical or religious objections one might reasonably have to making a fair share payment and placed the issue in a restitutional context. This arbitrator has no problem with requiring an employee to pay for services received under these circumstances.

A fair share payment pursuant to the Act meets all of the requirements under the general rule stated above for awarding restitution. A union which renders collective bargaining and representational services does not do so gratuitously. Rather it does so professionally and in a business capacity after having been designated by the bargaining unit employees, through a secret election or other legally recognized means, as the exclusive representative of the employees. The union also confers a measurable benefit upon the employees. The benefit is normally in the form of higher wages, better terms of employment, a formal grievance procedure, and assurance that should any employee be harmed in his or her employment status by arbitrary or unreasonable employer action, the employee will have an advocate to defend his or her interests and help protect his or her job rights. The union, once chosen by majority action of the employees, does not afford the individual employee an opportunity to decline the benefit. But the union has a reasonable excuse for failing to do so, namely, that, by law, the union must provide fair and equal representation to all bargaining unit employees, whether a member of the union or not. Representation furnished and benefits conferred upon all employees within the group by the union are done so pursuant to a duty imposed upon the union by law. In the foregoing manner the right of a union to enforce payments from employees of their proportionate share of the cost of the collective bargaining process may be analogized to the right under the law to receive restitution for services rendered.

An applicable statutory criterion governing the fair share issue is that of comparison with other communities. Ten of the other communities in the comparison group are unionized. Of them five have a fair share provision in their collective bargaining agreement and five do not. This factor therefore does not favor one side over the other. The Employer would want to also include Bartlett in the comparison, which presently has no fair share provision, and argues that the comparison criterion favors its position that there should be no fair share clause in the contract. I think, however, that it is fairer to consider the other communities by themselves in comparing Bartlett to them. However, even under the Employer's approach, a 6 to 5 ratio is very close and should not by itself determine whether or

not to have a fair share provision in the Agreement.

Financial cost to the Village is not a consideration with fair share. The "lawful authority of the employer" criterion favors neither side since having or not having a fair share clause in the contract is equally lawful. The interests and welfare of the public factor, I think, favors the inclusion of fair share. Officers will likely resent their fellow employees who reap the benefits of the contract and the Union's representation of the bargaining unit but nevertheless do not share in the costs of the collective bargaining process. This could reasonably affect the esprit de corps to the detriment of the interests and welfare of the public. The general standard of reasonableness also favors the inclusion of a fair share provision in view of the tradition of the law that one who lawfully bestows a measurable benefit upon another is entitled to payment for his efforts. Further, the statute has provided safeguards to avoid offending anyone's philosophical or religious principles in respect to being required to join or support an organization to which he is opposed. I have considered all of the applicable statutory criteria, and I find that they favor the inclusion of a fair share provision in the Agreement.

I have difficulties, however, with the particular fair share clause proposed by the Union. The first paragraph of the Union proposal is most unusual in that it exacts a fair share payment from Union members. Dues are designed for that purpose, and the Union should be limited to dues or assessment collection from Union members who are not seriously in arrears. Of course, if a Union member fails to make dues payments, he may be expelled from the Union. The Union may then apply the fair share provisions of the Agreement to the employee as a nonmember. So long as he is a member, however, his payments should be exacted in the form of dues. It is also fair, I think, to apply the fair share provisions to members who are seriously in arrears. They are no more entitled to unjust enrichment than nonmembers.

The Union proposal is objectionable also because it fails to provide the safeguards for fair share agreements required by the Supreme Court in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986). Hudson requires that unions operating under a fair share agreement provide three basic procedural safeguards: (1) the communication to nonunion employees of financial information identifying the union's expenditures for collective bargaining and contract administration and the opportunity to object to the use of their fees for activities unrelated to these purposes; (2) establishment of a procedure, such as an escrow arrangement, to prevent the union from improperly using objectors' fees; and (3) providing objectors with a means to challenge the union's calculation of the portion of its expenditures spent on activities germane to collective bargaining and contract

administration before an impartial decision maker and to obtain a prompt determination of their objections.

The Village Administrative Manager testified that she expects to have difficulty in convincing the Village Board of Trustees to accept the fair share provision. I believe that incorporating the Hudson safeguards--which are constitutionally mandated under the First Amendment and applicable to all public employees--into the collective bargaining agreement itself will go a long way in removing any objection by the Board to the fair share provision. I think that it will also promote a belief among nonmembers that the money requested of them is a fair amount and, to that extent, minimize opposition to the provision.

I find that the following fair share provision shall be included in the new Agreement between the parties:

#### Fair Share

Any present employee who is not a member of the Union, and any employee hired on or after the effective date of this Agreement who does not become a member of the Union within 30 days after date of hire, shall, commencing 30 days after employment or the effective date of this Agreement, whichever is later, and as a condition of employment, pay to the Union each month, through payroll deduction, the employee's proportionate share of the costs of the collective bargaining process, contract administration, and pursuing matters affecting wages, hours and conditions of employment. The Union shall certify to the Village which employees are nonmembers and the amount constituting each nonmember employee's proportionate share (hereinafter "fair share"), which shall not exceed dues uniformly required of members.

Fair share deductions shall be made on the first Village payday of each month and shall be remitted to the Union within 21 days of the date the deduction is made. No deduction shall be made for any nonmember employee until the Union certifies to the Village that a notice has been given to that employee containing the following information: (a) a summary of the major categories of Union expenses, together with an explanation of the formula used for calculating the fair share fee; (b) a statement that the summary has been verified by an independent auditor applying generally accepted accounting principles; (c) a statement that a procedure exists whereby fair share payers may object to the amount of the fair share fee and have their objections determined within a reasonably prompt period by an impartial decisionmaker, and an explanation of the procedure; and (d) a

statement that there exists an escrow account into which contested payments will be placed while nonmembers' objections are pending.<sup>5</sup>

The Union shall have the sole responsibility for providing fair share notices to all nonmember employees. The Village shall have no responsibility concerning, and makes no representation regarding, the legal sufficiency or factual accuracy of the Union's fair share calculations, fair share amount, or fair share procedures, as described in the aforementioned notice.

Upon notification by the Union that any member employee is 60 days or more in arrears in his Union dues, the Village shall immediately begin to treat such employee in all respects as a fair share fee payer, subject to the provisions of the preceding paragraphs of this section, and shall continue to do so until notified by the Union that the employee is current in dues payments.

Should any nonmember employee subsequently become a member of the Union, the Union shall promptly notify the Village of such fact, and the Village shall cease to make fair share payroll deductions for such employee effective with the month in which the employee became a member.

Section 3.4, Indemnification, will have to be renumbered to make clear that it applies to the fair share provisions in addition to the other provisions of the article.

#### Vacation Scheduling - Section 9.3

The Village proposes to amend the vacation clause by adding the following sentence to Section 9.3:

An employee will not be scheduled for more than two weeks vacation June 1 through September 15, unless exception is made by management.

The Union has no proposal to change Section 9.3.

The Village explains its proposal as a means of assuring fairer distribution of prime time vacations so that senior employees will not be able to get the best vacation times, leaving new employees undesirable vacation slots. The Village states that shorter service police officers are more likely to have school age children.

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<sup>5</sup>The Hudson safeguards are not original with this arbitrator but also appear in the collective bargaining agreement between the City of Chicago and one of the unions it bargains with.

The Union opposes the proposal as a classic example of "fixing something that isn't broken." It argues that there is no proof in the record of any problem with vacation scheduling or any indication that the needs of the Village will not continue to be met under the present contract language. The Union urges that it would be inappropriate for the arbitrator to change the present system without some positive indication of need.

I accept the Union's argument. I think that there is merit to the maxim, "If it ain't broken, don't fix it." I shall also apply this maxim to some of the other contract issues. There simply is no evidence in the record of any problem with the existing arrangement, and I do not deem it appropriate to change existing contract language on the supposition that there may be a problem in the future.

#### Definition of Grievance - Section 5.1

The current definition of "grievance" in Section 5.1 of the Agreement is "a dispute or difference of opinion raised by an employee or the Union against the Village involving an alleged violation of an express provision of this Agreement . . . ." The Union proposes to add the words "or required condition of employment" to the definition. This would have the effect of broadening the kind of Village action which may be grieved and is strongly opposed by the Village. In the alternative, the Union proposes to amend the management rights clause by adding the following sentence, "The Village will not exercise its reserved authority under this Article in a manner that is arbitrary, discriminatory or capricious."

No grievance has been filed to date with the Village which has reached the Village Administrator's level, Step 3. There was no evidence presented of any Village action pursuant to a non-contractual policy, rule or regulation which has created a problem for any member of the bargaining unit. No substantial basis for believing that a problem will arise if the present language is retained has been shown. This, like the Employer's proposal for Section 9.3, is fixing something which shows no sign of being broken. I do not think that an arbitrator should take it upon himself to change contract language without any evidence that the existing language is creating a problem or is likely to do so in the future. On this record I have no basis for adopting either of the Union's alternative proposals under Section 5.1.

#### Grievance Procedure - Section 5.2

With regard to Section 5.2, the Union proposes to substitute the word "or" for "and" in lines 6 and 9 of Step 2 of the grievance procedure. According to the Union the purpose of its proposed change is to make the Step 2 language consistent

with the agreed upon changed language of the introductory paragraph of Section 5.2. The Union argues that the change in the introductory paragraph now makes it possible for either the Union or the employee to grieve and its proffered change will make it possible for either to appeal.

I express no opinion as to whether the agreed upon change to the introductory paragraph of Section 5.2 accomplishes what the Union says it does. I find, however, that no evidence has been adduced showing that a problem exists which needs correcting, or is likely to develop, in respect to Section 5.2. I think that this should be a minimum requirement for an arbitrator to significantly change previously negotiated contract language in an interest arbitration proceeding.

### Disciplinary Meetings - Section 15.3

The Village proposal regarding disciplinary meetings represents a change from the prior contract and is verbatim the language proffered by the Union in its September 2, and October 4, 1989, bargaining proposals. Subsequently the Union proposed additional changes pertaining to representation of an officer during an investigatory meeting and interrogation. No evidence was presented regarding what the present interrogation procedures are with respect to police officers. Nor was evidence adduced of problems which have arisen in administering interrogation or discipline of officers under the present system. The present record presents no basis for adopting the Union's proposal. I adopt the Village's proposal, which was originally a Union proposal but later superseded, and which provides as follows:

Disciplinary Meetings. Employees and the Union shall be given prior written notice of disciplinary suspensions and/or termination. The Union may request a meeting with the Chief of Police to discuss the proposed suspension or termination prior to instituting discipline or an appeal to the Fire and Police Commission.

### AWARD and ORDER

The arbitrator awards and orders as follows with respect to the economic issues:

1. The Village's proposal regarding Section 12.1, Salary Increases, is adopted.
2. The Village's proposal regarding Section 12.2, Merit Increases, is adopted.

3. The Union's proposal regarding longevity pay is adopted.

4. The Union's proposal regarding Section 8.1, Holidays, is adopted.

5. The Village's proposal regarding Section 9.1, Paid Vacations, is adopted.

6. The Village's proposal regarding sick leave payout is adopted.

The arbitrator awards and orders as follows with respect to the non-economic issues:

7. The fair share provision set forth at pages 31-32 of the opinion accompanying the award and order is adopted.

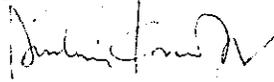
8. The Employer's dues checkoff language is adopted.

9. The Employer's proposal regarding Section 15.3, Disciplinary Meetings, as set forth at page 33 of the opinion, is adopted.

10. The Union's proposals regarding Article V, Grievance Procedure, Sections 5.1 and 5.2 are not adopted.

11. The Village's proposal to amend Section 9.3, Vacation Scheduling, is not adopted.

Respectfully submitted,



Sinclair Kossoff  
Arbitrator

Chicago, Illinois  
August 27, 1990

