

# 67

VOLUNTARY LABOR ARBITRATION

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IN THE MATTER OF THE ARBITRATION

BETWEEN

VILLAGE OF WESTERN SPRINGS  
("Village" or "Employer" or  
"Department")

AND

TEAMSTERS LOCAL NO. 714,  
AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS  
("Union")

Arb. No. 91/095

Direct Selection of the Parties

INTEREST ARBITRATION

(Issue of whether the parties' first Collective Bargaining Agreement should include any provision with respect to fair share, and if so, what form it should take).

OPINION AND AWARD

Before: Elliott H. Goldstein, Arbitrator

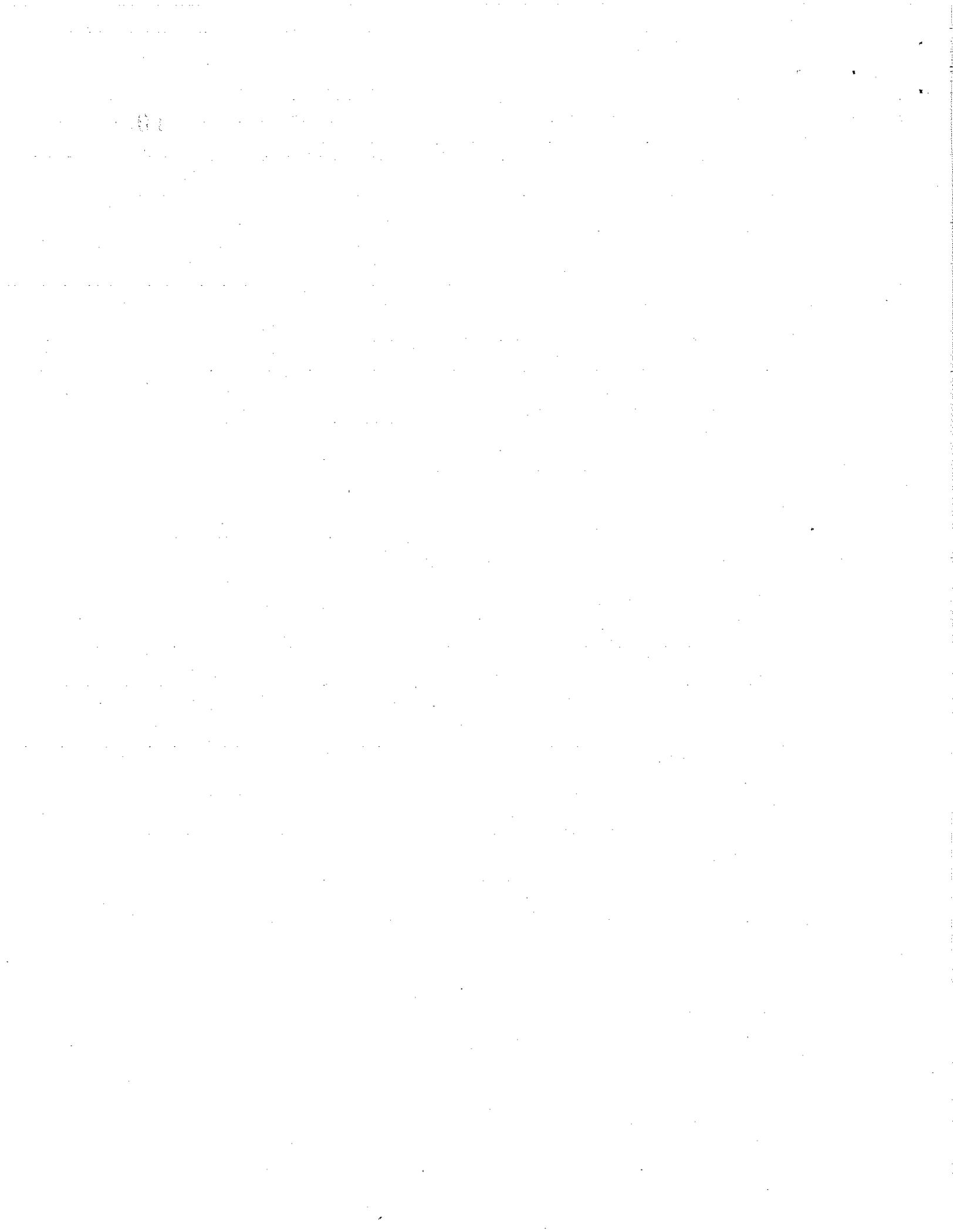
Appearances:

On Behalf of the Employer:

R. Theodore Clark, Jr., Attorney  
William J. Rypkema, Chief of Police  
Ingrid S. Velkme, Assistant to the Village Manager

On Behalf of the Union:

Joel S. Hymen, Attorney  
Michael A. Vendafreddo, Business Agent



## I. INTRODUCTION

The hearing in this case was held on Tuesday, September 17, 1991, in a Conference Room at the Offices of Seyfarth, Shaw, Fairweather and Geraldson, Suite 4200, 55 East Monroe, Chicago, Illinois 60603-5803, commencing at 9:00 A.M. before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. At the hearing the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. A 75-page formal transcript of the hearing was made. Each party filed a post-hearing brief, both of which were received on October 18, 1991, whereupon the hearing was declared closed. Both parties stipulated at the hearing as to this Arbitrator's jurisdiction and authority to hear this case and to issue a final and binding decision in this matter, and, where relevant, to apply the standards set out under the Illinois Public Relations Labor Act, Chapter 48, Par. 1601 et. seq., Ill.Rev.Stat., and particular Chapter 48, Par. 1614(h) are applicable for determination of this non-economic issue.

## II. STATEMENT OF THE ISSUE

At the hearing of the instant case, the parties stipulated that the sole issue before me is, as I phrased it at hearing:

"Should there be fair share in the Contract,  
and if so, what form should it take?"

The parties agreed, as noted above, that since fair share is

a non-economic issue, I have the authority under the applicable standards to award the Village's final offer, the Union's final offer or "something in-between", that is, that I can devise a contractual provision which varies from the parties' final contract offers. Accordingly, I have considered that, on this issue, my jurisdiction is based on "conventional interest arbitration" whereby the arbitrator formulates the provision based on a review of the evidence, but not exclusively the last offer of the parties.

### III. THE PARTIES' FINAL OFFERS

The Union's final offer with respect to fair share 1/ is as follows:

Employees under job classifications listed in Article I, Section 1, are not required to join the Union as a condition of employment but such employees shall, during the term of this Agreement, pay a service fee in an amount not to exceed ninety percent (90%) of the Union dues for one (1) Union employee per month for the purpose of administering the provisions of this Agreement. The Union shall certify such amount and otherwise comply with Chapter 48, Section 1606 of the Illinois Revised Statutes in regard to this.

Non-members who object to this fair share fee based upon bona fide religious tenets of teachings shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed

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1/ The dues authorization form used by the parties provides a form of union security in that it is irrevocable for a period of one year or the expiration date of the contract, whichever is shorter, and further provides for a very brief window period for revocation, i.e., between the 60th and 75th day prior to the expiration of the one-year period or the contract expiration date, whichever occurs sooner. (Jt. Ex. 4).

upon by the employee and the Union. If the affected non-member and the Union are unable to reach agreement on the organization, the organization shall be selected by the affected non-member from an approved list of charitable organizations established by the Illinois State Labor Board and the payment shall be made to said organization. (Jt. Ex. 2)

The indemnification language in the Union's final offer has been omitted, based on the parties' stipulation at the hearing.

The parties also stipulated that if the Arbitrator awards fair share in any form, the fair share language will be inserted in the parties' contract as a new Section 2 of Article III, and the existing Sections 2, 3 and 4 will be renumbered. In addition, the renumbered indemnification section would be revised to reference both Sections 1 and 2 of Article III, thereby extending the indemnification provisions to both dues checkoff and fair share. On the other hand, if I accept the Village's position and reject fair share, Article III will remain as presently worded, as I understand what the parties agreed to at hearing.

The Village's final offer with respect to fair share as articulated both at the hearing and in the Village's Brief, at p. 7, is that the contract "remain as previously ratified by the employees", i. e., that the contract not contain any fair share provision whatever for this initial collective bargaining agreement.

#### IV. CONTENTIONS OF THE PARTIES

##### A. The Union

The Union contends that the inclusion of a fair share clause in a labor agreement is justified by the State of Illinois' vital policy interest in promoting labor peace and eliminating free riders. It stresses that its proposed fair share clause (Jt. Ex. 2) does not require any individual bargaining unit member to become a member of this or any other Union. The fair share provision proposed by it, however, does require that individuals who receive benefits of Union representation pay their "fair share" of the cost of that representation, including negotiating and administering the labor contract (Jt. Ex. 1). It also argues that it has presented substantial evidence that all unit members have benefitted by this first labor contract, certainly economically, at least, and that individuals should not be allowed to be "free riders," that is, they should not get the benefits wholly without cost.

The Union also stresses that the United State Supreme Court, the lower federal courts, the Illinois State legislature when it created the legislation permitting "fair share" provisions, and the Illinois State Labor Relations Board in its administrative decisions interpreting the Act, all have found a significant governmental interest in maintaining labor peace and eliminating "free riders" such as those individuals who have not authorized checkoff of Union dues in the instant case. See Abood v. Detroit Board of Education, 431 U.S. 209 (1987).

The reasoning of the statutory and case law precedent supporting fair share clauses and decrying "free riders" is quite clear and of great relevance to the instant proceedings, the Union strongly argues. It reminds me that in exchange for the exclusive representative certification, it is required to fairly represent all employees in the bargaining unit, both for negotiation of all the terms and conditions of the contract, and in administering the contract, up to and including representing non-members in grievances and in arbitration cases. In carrying out these duties, a Union must fairly represent all members of the bargaining unit, not just Union members or those who voluntarily agree to pay dues. Such representation costs money.

Under these circumstances, it is the recognized public policy under both the National Labor Relations Act and the Illinois Public Labor Relations Act, in the Union's view, that a contract provision requiring "fair share" or a service charge arrangement for those who do not voluntarily agree to pay dues fairly distributes the cost of the negotiating and administering activities of the Union among all those who benefit and counteracts the incentive that employees may otherwise have to become "free riders". To achieve the "fair share" clause is traditionally a focus of Union bargaining, it emphasizes, for the very reasons articulated by the United States Supreme Court in Abood.

The Union also strongly suggests that I should give controlling weight to the Union's evidence on comparability data. It contends that, as in any case involving interest arbitration,

comparability plays a special role. The fact that this is not an economic issue does not change that basic truth, it avers. In fact, the Union suggests that comparability is indeed often the most important factor in the usual interest arbitration case, even where the issues are non-economic. Accurate comparabilities are the traditional yardstick of looking at what others are getting in labor contracts and that, in turn, is of crucial significance in determining the reasonableness of each party's respective offers, the Union strenuously maintains.

In this case, the Union also asserts, the comparability data it presented overwhelmingly supports the inclusion of a fair share clause in the labor contract between the Village and it. The Union maintains that it introduced into evidence ten labor agreements as Union Group Exhibit 2 and an additional 13 labor agreements as Union Group Exhibit 3 for the Arbitrator's consideration as the universe of comparables. In all of the communities which were represented by the labor agreements introduced into evidence by the Union, there exists a fair share provision virtually identical to the Union's offer in this case, I am told. That is strong proof that "fair share" is the norm in the western suburbs, it argues.

Further, the Union stresses that all communities used as comparables have populations of less than 20,000 and are located directly to the north, south, east or west of the Village. Moreover, all of the labor agreements cover police bargaining units of similar size, which perform services similar to those performed by the Department's police officers. Moreover, of the

10 labor agreements contained in Union Group Exhibit 2, four of these agreements represent initial labor agreements between public employers and their exclusive bargaining representatives, I am reminded. That in itself rebuts the primary Employer argument that first contracts do not typically contain fair share, it asserts.

The Union also emphasizes that the Village completely failed to introduce any comparables into evidence on the record adduced in this case, which is even stronger evidence that the Union's last offer on this point merely reflects the customary provision for comparable communities.

Consequently, according to the Union, the record evidence shows that all of the communities which were in fact comparable, where labor agreements exist, contain fair share clauses similar to the one proposed in the instant case. Thus, the statutory criterion relative to comparability clearly favors inclusion of the Union's fair share clause into this current labor agreement.

Last, and perhaps most important, the Union insists that the fair share issue is one of philosophy in Western Springs, as Company attorney Clark clearly stated. Consequently, this kind of contractual provision can only be attained by the Union through arbitration, rather than direct bargaining and mutual exchanges of concessions or benefits, as some arbitrators suggest should normally be the basis for its inclusion in the collective bargain. See especially City of Urbana, ISLRB No. M-90-214, FMCS File No. 90-00955. (Arb. Barbara W. Doering, May 2, 1991) and Village of Bartlett (Kossoff, 1990) (fair share offers given to

the Union, based on the two arbitrators' conclusions that in these cases the offers were more reasonable than the Employers' offers, based either on the conclusion the municipality's resistance to fair share made give-and-take bargaining impossible or a finding that policy against "free riders" and for fair share provisions is paramount).

Accordingly, for all these reasons, the Union's last offer should be adopted in its entirety, the Union argues.

B. The Village

The Village contends, on the other hand, that the Union has not demonstrated at all the need for fair share in the parties' first collective bargaining agreement. As the Village interprets the evidence, the record shows that the only justification advanced by Union representative Vendafreddo, the sole witness for the Union, was that fair share would, in effect, improve the labor-management relationship because "the Union is dedicated to not only negotiate contracts but to help better labor relations between Management and the officers themselves." According to the Employer, while Business Agent Vendafreddo speculated that there might be disharmony among the ranks, a fact never proved, no evidence at all was presented by the Union of a disproportionate financial burden on the 10 members who voluntarily pay Union dues

and carry the costs of negotiating and implementing the contract in this 13-person bargaining unit. 2/

There was thus no persuasive evidence presented, argues the Village , that the stability of the bargaining unit would be adversely affected, based on proven conflict in the ranks. Contra, Village of Bartlett, supra, where adverse implications to the unit was inferred by the mere presence of "free riders." 3/ The Employer strongly disagrees with the reasoning of the Bartlett award, and says that the overwhelming majority of arbitrators require specific proof of disharmony or financial need for fair share fees for economic stability.

I am reminded by the Village that the Union at no time asserted that it had to have fair share in order to assure its financial well-being, which is concededly a recognized basis for granting fair share. Management emphasized that absent any proof of need, the benefit the Union was seeking here should be realized from mutual concessions bargaining rather than arbitration, that is that it should be traded for a similarly valid concession desired by the Village during bargaining for the next contract.

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2/ Of the three officers who have not signed dues deduction authorization forms, two officers, Bruno Kalan and Paul Messina, have been members of the department for more than 20 years, the police chief, William J. Rypkema, testified.

3/ The Village argues that Arbitrator Kossoff in Bartlett was simply incorrect in making that assumption without a factual predicate. Compare Peoria County and Council 31, AFSCME and AFSCME Local 2661 (Sinicropi, 1986) (financial instability must be proved, as a matter of fact).

Management thus emphasizes over and over again that there was never identified on this record any quid pro quo for the Union's bid for fair share, as commonly recognized by several well-respected arbitrators 4/ as one clear basis available for the Union's attaining this clause from an employer who might indeed perceive no advantage to it in the inclusion of such a clause in a first contract. The record shows the Union never moved from the initial proposal or offered to trade other items for its inclusion in the contract, the Employer avers.

The Employer also suggests that I should not give controlling weight to the Union's comparability data in this specific case. At the outset, the Village stressed to me that the Union's exhibits specifically excluded three jurisdictions with the same general population and in the same general geographic vicinity as the Village. The Employer argues the omission fatally skewed the data. In these three municipalities, they either had no fair share or had "grandfathered" fair share provisions, I am told by the Village. Thus, to Management, the Union presented data that is suspect when it introduced the contracts of 23 jurisdictions which provided for full fair share, and also took the data out of context, suggests the Employer.

This is so, Management emphasized, because the Union's comparability data is admittedly limited to contracts on file with the Illinois State Labor Relations Board. It does not show

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4/ See County of Peoria, supra; Village of Arlington Heights and Local 31051, I.A.F.F. (Steven Briggs, 1991).

whether in fact the contracts were first collective bargaining agreements, or merely the first agreement filed with the Board. Without that evidence being in the record, the Employer contends, it is not possible to say whether the first contracts for a substantial majority of the jurisdictions included or did not include a provision for full fair share. Further, without knowledge of the specific content and context of each bargain, and the exchanges made for inclusion of the fair share clause in each municipality, the data is essentially worthless, the Village maintains.

Finally as to the comparability issue, the Employer strongly contended that comparability data itself is not nearly as relevant on non-economic issues like fair share as it is on economic questions, like wages or overall benefits. The statutory criterion for use of comparability exists, it acknowledges, but its logic does not really apply to non-economic issues, where comparisons of non-financial conditions at different Employers is likely not a factor in job selection or retention.

Turning to the Union's claim that public policy requires me to adopt "fair share" to prevent "free riders," the Employer asserts that the entire free rider argument is predicated on the erroneous notion that the duty to represent everyone in the unit ("exclusive representation") requires mandated payment for these services by unit members who choose not to voluntarily do so. That is not the law, the Employer insists. It is merely a permissible option when negotiated between the Parties.

According to the Employer, the benefits of exclusive representation to the Union more than outweigh the cost of "free riders." Moreover, there is no clear public policy to require compulsory payments to the Union from any employee where this condition was not in place at time of hire. By making the "fair share" provision an option to be negotiated, rather than mandating it in all labor contracts, both Congress and the Illinois Legislature, in enacting the NLRA and IPLRA, opted for give and take bargaining, with exchange of quid pro quo, for this particular provision rather than mandatory fair share in every contract. There is thus no vital state interest that a fair share provision be included in every labor agreement negotiated in Illinois, as the Union seems to argue, the Employer concludes.

Consequently, the Employer argues that I should accept its last offer, that is that no fair share provision at all should be mandated by me in this initial labor agreement, and that the provisions of the contract remain as they are. This would preserve the status quo and make it the Union's own obligation to trade particular terms or benefits in exchange for what it desires on that particular topic, when bargaining is next scheduled. The Employer urges that changes in status quo should always be bargained by the parties and this Arbitrator should have no trouble with that principle, since I have accepted it on at least two occasions, albeit in different circumstances.

Based on the foregoing, there should be no fair share clause in the contract, the Employer contends and I should accept the Village's final offer that there should be no change in the current covenants of this initial labor agreement.

V. DISCUSSION AND FINDINGS

Part of the difficulty in this case is attributable to the fact that this is a single issue interest arbitration dealing with the important but clearly non-economic issue of whether the initial contract between the Union and the Village should or should not contain a fair share clause. As a matter of "general principle," I agree with the analysis of Arbitrator Steven Briggs noted in Village of Arlington Heights and Arlington Heights Firefighters Association, Local 3105 (1991), a precedent award relied on to a substantial degree by the Employer. In that award, Arbitrator Briggs stated that, "... [i]nterest arbitrators are reluctant to award fair share in the first contract." Id. at p. 71. Arbitrator Briggs explained:

"... In such early stages of organization, members of the bargaining unit may not yet have had an opportunity to see what kind of a job the union will do for them. They may not yet have had sufficient evidence upon which to decide that union membership is worth the cost." Id.

However, in the particular case, and in light of both the facts and the applicable statutory criteria, I find a fair share agreement should be included in the Agreement, but that a grandfather provision applying to any officers in the bargaining unit who were employed at the effective date of the current contract, are not members of the Union and do not make any contribution through a fair share fee, also be included in the fair share provision. My reasons are as follows.

The Village contends it is not equitable, fair or democratic for an individual to pay for something for which he has not voted, and does not desire, especially when the fair share fee

requirement did not exist at time of hire for any of its current employees. This is a philosophical position and certainly not a bargainable issue between the parties, I conclude from the proofs presented.

My conclusion is based on the statements during bargaining of Attorney Clark, which the Village suggests in its brief have much to do with the fact that the municipality is white-collar and professional in population and conservative in its politics. See Village Ex. 2. As to that argument, the comparability evidence submitted by the Union clearly has direct relevance, since communities similar in geographic location, size of population and number of police officers all have the provision this municipality rejects as a matter of ingrained "philosophy."

In that context, the comparables do have importance, even though I agree with the Employer that they do not define the conditions of the relevant job market, in the sense that wages or benefits do. The reliance on philosophy by the Village to justify its refusal to agree to fair share, to the degree done here, results in the Employer's position, as I read Chief Negotiator Clark's testimony, that fair share could only be won in arbitration for this first contract.

This posture is far less understandable where it is already the norm in the comparison municipalities, in my view, although I do acknowledge that the factors of the closeness of the representation election vote (7 for and 4 against the Union) and the fact that is the first contract helps to explain the Village's position, to a degree.

I accept on these facts the Union argument that it could hardly trade other concessions or offer other proposals for the fair share clause based on the Village's statement across the table that the provision would not happen for an initial contract. I understand the Union wants the clause for its own self-interest and held fast to its demand, without waiver or movement. Its desire for all beneficiaries to pay for representation is rational, at least from its point of view. The Employer's philosophy in opposition to that is logical, too.

Although adopting any fair share for employees may cause some individuals to pay out more money from their paychecks, the amounts are not an expense for the Village to be concerned with in the sense it is responsible for the payment. Why would the Village therefore go to the expense of participating in this interest arbitration? Obviously, because of the philosophy involved, or perhaps, in the alternative, because it believes it is morally obligated to protect senior employees (see footnote 2) from sanction, when these employees, as a matter of conscience, are at present so strongly against this Union, as the evidence on the record at least suggests.

At least a substantial part of the reasoning of Arbitrator Briggs in Arlington Heights, I note, is predicated on quite different circumstances. It was Brigg's feeling that individual employees in that Village might be won over by the Union and it merely needed time to convinced them of the worthwhile nature of Union representation. Therefore, Briggs said that, after experience with the benefits of Union representation, individuals

might become ready, voluntarily through membership, to pay the costs of representation or at least be more accepting of the "fair share" obligation to pay for Union representation as a proven benefit with regard to better hours, wages or working conditions.

Under these particular set of facts, however, I believe there is no basis for me following Briggs' justification or intuition or assumptions as to future behavior. The governing rule here is that both sides believed the likelihood that the issue could be resolved with the passage of time so farfetched that each was willing to spend their resources to arbitrate this single point now. That is a major difference from the Arlington Heights case.

It is also clear from Arbitrator Briggs' award that he relied in a specific dispute before him in Arlington Heights on the comparison of comparable jurisdictions with regard to the presence or absence of fair share provisions in neighboring labor contracts which was much less favorable to the Union than it is in the instant case. According to Briggs, only five of the 12 jurisdictions compared with Arlington Heights in that case had fair share clauses and two of those five had grandfather clauses. Essentially, then, Briggs found that only three of the comparable jurisdictions in Arlington Heights required all non-members to pay a fair share.

The case before me stands on a substantially different footing with regard to comparability evidence. As is noted in my discussion immediately above, the overwhelming number of

jurisdictions used by the Union in this case as a comparison with the Village of Western Springs have fair share agreements requiring all employees to pay a fair share fee. Although I also note that there was one jurisdiction where no fair share clause existed and two others which contained grandfather provisions, it is apparent to me from the evidence adduced that the overwhelming number of municipalities used as the basis for comparison by the Union did indeed have full fair share provisions. Moreover, as the Union argued, the Employer presented no comparable jurisdiction evidence of its own. That evidence has relevance not just to the issue of the reasonableness of the philosophic aspects of the dispute, but also as to the more general issue of the reasonableness of each side's offer. I so find.

However, I also recognize that there is no clear evidence as to when each of the fair share provisions came into the contract in the comparable jurisdictions. Moreover, there is certainly no evidence presented on this record as to the factual context and the precise nature of the bargain which caused the inclusion of a fair share provision in a specific municipality, that is, what caused the deal. Put simply, I do not know what was traded off by way of concession to obtain that particular contract clause.

Also significant is the fact that this is clearly a non-economic issue, and my own feeling is I agree with the Employer that comparability as a general basis for assessing reasonableness is not nearly as important for non-economic issues as it clearly is when the economic basis of the contract is being determined. After all, when economic terms are being compared

with similar or comparable communities, what is being analyzed is the overall labor market and potential relevant pay for comparable work. People make choices as to where to work on those sorts of comparisons. When non-economic questions are involved, the issue is not only harder to quantify, but also it is much more difficult to analyze in the sense that a reasonable judgment is or is not possible as to whether comparative shopping for jobs is ever done on a labor contract's particular provisions that do not plainly affect pay.

Having so said, I must add that comparability is a major recognized standard for determining a contract term or a series of contract terms under the Illinois Public Labor Relations Act. I cannot discount wholly the fact that the comparability data favors the Union, even recognizing the defects in this evidence, as pointed out by the Village. On the overall issue of reasonableness of the two offers, that is important to me. Proof of comparability thus clearly favors the Union under the actual proofs presented, but other factors must be considered, too. I so find.

Certainly a focus of the Employer's argument in this case is its position that the benefit of fair share should only be realized from bargaining rather than arbitration, as noted at several points above. As did Arbitrator Briggs, the Employer relies on the reasoning of Arbitrator Anthony Sinicropi in County of Peoria and American Federation of State, County and Municipal Employees Council 31 (1986) for a clear articulation of that principle. See also Arbitrator George R. Fleischli's discussion of a general requirement for identifying a quid pro quo offered

in negotiations as a basis for changing the status quo, on an issue unrelated to fair share, in City of Park Ridge and Local 2967, International Association of Firefighters (1990).

Like Arbitrators Sinicropi and Fleischli, I have in at least two earlier cases supported the position that changes in the status quo ("breakthroughs") should normally not be granted in interest arbitration and should require, minimally, proof of an offer in bargaining to exchange specific concessions or proof of a readiness to exchange something of value for the acceptance of, in this case, a fair share proposal, to induce an arm's length bargain prior to arbitration. See City of DeKalb and Local 1236, International Association of Firefighters (1988) and Village of Skokie and Local 3033, International Association of Firefighters (1990).

In my view, there are at least two basic factors which distinguish this particular case from the general line of arbitration decisions, including mine, demanding strong proof of give and take in negotiations before an interest arbitrator will grant a breakthrough item. The role of an interest arbitrator is to give the parties what they should have gotten in negotiations, I believe, and to otherwise not disturb the status quo, but the presence of both factors about to be discussed causes me to decide that some form of fair share should be included in this first contract and to accept the Union argument to that degree.

First, I believe after careful review that there is a substantial inconsistency between the Employer's current reliance on the general principle that the Union failed to prove it

offered a quid pro quo during negotiations to induce the Village to agree to its proposal and the equally detailed and clear evidence give by Employer Witness and Chief Negotiator R. Theodore Clark that he told the Union consistently throughout bargaining, if not in words then by his actions, that the matter of Village resistance to fair share for this initial contract was philosophically based and not capable of alteration through the give and take of negotiations. The "firm but fair" posture of the Employer prevented genuine bargaining with a Union also intent on not moving one inch, I conclude. In other words, neither side proved to me they were willing to accommodate the other or to move at all on this "hang-up" issue, despite its non-economic basis. This is the essence of a philosophical impasse.

Second, the fact that both sides were willing to go to interest arbitration over a single issue, especially a non-economic one, convinces me that the parties have demonstrated both that bargaining will not solve the issue now, and that the parties desire an answer from the Arbitrator, rather than a statement that I do not grant breakthroughs as a matter of general principle. Those factors, when coupled with the circumstances which distinguish this case from Village of Arlington Heights, including the conclusions I have reached that the three individuals in the current case who do not desire to pay a fair share fee at present likely will not be sold in the future by observation of what this Union can do for them, suggests to me that the Employer's offer to change nothing on

fair share is less reasonable than the Union's demand on this point that a fair share provision be put in the contract. I so hold.

Under these specific facts, I therefore conclude that the general rule regarding interest arbitrators' reluctance to grant breakthroughs in arbitration, solely because such a grant directly undercuts the bargaining process, is simply inapplicable to these facts. Like Arbitrator Doering in City of Urbana, supra, I find that the philosophical basis of the Employer's resistance to fair share, when viewed in light of the entire bargaining history presented to me, obviated the need for the Union to bear any burden of proving it presented specific offers to compromise or some quid pro quo to induce the Village to agree to its proposal. Under these facts, the process of give and take could not work, but the issue would not go away, either. A "breakthrough" here is not the same as in most other areas, where philosophy does not preclude exchange of benefits or compromise. I so hold.

The Employer has of course argued that the Union presented no evidence that fair share is required for the financial stability of this Local or its ability to negotiate and administer the labor contract. As the Employer also correctly notes, the Union has also presented no proof that the lack of a fair share provision in this initial labor contract would directly cause disharmony or contention among the members of the bargaining unit. This gap in proof clearly is a factor militating against the Union's final offer.

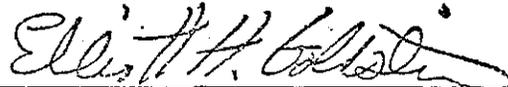
The case is indeed a close one. The comparability data on the record support the Union, but the precise circumstances in the comparable jurisdictions, including when each fair share provision was included in the several labor contracts used as a basis for comparison, are lacking. The claim by the Employer that no give and take bargaining occurred on the fair share provision is well-taken, but the Employer's own apparently unequivocal posture during negotiations that it would oppose any proposal for fair share in the first contract on philosophical grounds counteracts, in my view, the importance of that fact. Moreover, the Union failed to present convincing evidence that it needed a fair share provision for its financial stability or that the lack of such a clause would in fact result in actual disharmony among the bargaining unit employees.

Perhaps the most significant fact on this record, to me, is that the parties brought this single issue dispute to interest arbitration and underwent the expense and inconvenience of litigating a non-economic issue that in many bargaining relations is not considered of central importance. Simply put, in my view, this underscores the depth and difference in philosophy and the fact that, in this particular Village, fair share can only be won by the Union in arbitration, and not by bargaining across the table, but that the Employer has a respectable and logical position, too. I also note that the parties have specifically authorized me not just to accept one final offer from the Union or Employer, but, instead, to fashion from the evidence an appropriate award.

Ultimately I do not accept entirely the Union's offer on fair share, nor the Employer's proposal that none be included in the contract. I believe the most reasonable course is that a grandfather clause for employees working in this bargaining unit on the effective date of this contract, who do not desire to join the Union or opt voluntarily to pay a fair share fee, should be put in the contract along with fair share for all future hires, as most likely to give the parties what they should have agreed to or could have worked out by negotiation. I agree with Arbitrator Doering's analysis in City of Urbana, supra that the acceptance of fair share, in this case with a grandfather provision, does not mean that this issue cannot also be left to future bargaining in the sense discussed by her. In the meantime, this determination means there is a compromise put in effect which respects the Village's concern that it is unfair to require compulsory payments to a Union for an employee who came to work for this Village when the fair share fee was not on the horizon, and also gives the Union the shared costs of representation for new hires who do not choose voluntarily to become its members. The Union also gets the principle of fair share as a deterrent to free riders, for all new employees, and a clause on that point more nearly in line with comparable communities. I so hold.

VI. AWARD

I award and order as follows with respect to this non-economic issue: The fair share provision of the Union (Jt. Ex. 2) is adopted, except that a "grandfather" provision solely for those employees in the bargaining unit as of the effective date of the contract who do not desire voluntarily to become a member of the Union or to authorize a fair share fee is also ordered incorporated into this contract. It is so ordered.



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ELLIOTT H. GOLDSTEIN  
Arbitrator

Dated January 15, 1992