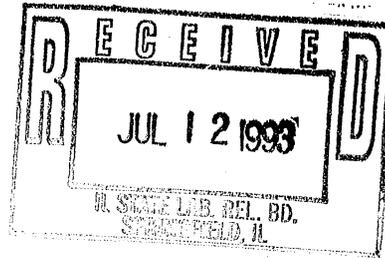


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In the Matter of an Arbitration
between
THE VILLAGE OF SKOKIE
and
SKOKIE FIREFIGHTERS LOCAL 3033,
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS (IAFF)
* * * * *



Interest Arbitration
CASE No. S-MA-92-179

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Interest Arbitration

Appearances:

- Mr. R. Theodore Clark, Jr., Attorney, of Seyfarth, Shaw, Fairweather & Geraldson; representing the Village.
- Mr. J. Dale Berry, Attorney, of Cornfield and Feldman; representing the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

Date of Award: July 6, 1993.

ARBITRATION AWARD

The Village of Skokie, Illinois, hereinafter referred to as the Village, and Local #3033, International Association of Fire Fighters, hereinafter referred to as the Union, reached an impasse regarding the terms and conditions to be included in the successor collective bargaining agreement to the agreement which expired at 11:59 p.m. on April 30, 1992. Pursuant to the provisions of the parties' negotiated Alternative Impasse Resolution Procedures, the parties selected the undersigned to serve as the arbitrator to hear and determine the issues in dispute. A hearing was conducted at the Village Hall in Skokie, Illinois on December 10, 16, and 17, 1992, and January 26, 27, and February 19, 1993. Subsequent to the hearing, the parties filed amended final offers. A

transcript of the proceedings was taken and the parties filed post-hearing briefs on May 7, 1993.

BACKGROUND:

The Village employs 119 sworn personnel in its Fire Department of which 103 are members of the bargaining unit represented by the Union. The bargaining unit consists of 17 lieutenants, 3 of whom are assigned to the Fire Prevention Bureau, and 86 firefighters. Eight of the lieutenants and 36 firefighters are certified paramedics. With the exception of the three lieutenants assigned to the Fire Prevention Bureau, who work an 8-hour day, 40-hour week, the employees work 24-hour shifts. The Village maintains three shifts with 34 employees assigned to one shift and 33 employees assigned to each of the remaining two shifts. The Department's practice is to maintain a minimum staffing level of 28 employees, 27 firefighters and one duty chief.

The Village maintains three fire stations designated as Stations 16, 17 and 18. Station 16 is the headquarters station where the Chief and Deputy Chiefs work. At Station 16 is located an engine, truck and ambulance; at Station 17 an engine and a rescue truck; and at Station 18 an engine, a truck, a squad and an ambulance.

Bargaining History

The parties' first collective bargaining agreement covered fiscal years 1986-87 and 1987-88. The second agreement covered fiscal years 1988-89, 1989-90, and 1990-91 and contained a limited reopener for 1989-90 fiscal year relating to salaries, longevity pay and the dollar amount of the EMT-P (paramedic) stipend.

The parties reached an impasse over the terms of the reopener and proceeded to arbitration before Arbitrator Elliott H. Goldstein who issued an award dated March 2, 1990. In that award the arbitrator awarded the salary schedule proposed by the Union as well as the Union's proposal regarding retroactivity. He awarded the longevity pay as proposed by the Village as well as the EMT-P stipend proposed by the Village. Prior to the instant proceedings the Goldstein award was the only time the parties reached an impasse in bargaining requiring the assistance of an arbitrator.

The Village also has a collective bargaining relationship with the Fraternal Order of Police, Skokie Lodge No. 68. The relationship between the salaries paid to members of the FOP and the Union is an issue in the instant dispute which will be addressed in the body of this award.

FINAL OFFERS OF THE PARTIES:

There are six economic issues and two non-economic issues in dispute. The economic issues include: (1) salaries (2) term of agreement (3) retroactivity (4) Fire Prevention Bureau lieutenant pay differential (5) EMT-P (paramedic) stipend (6) acting pay.

The non-economic issues include the Union's right to file a grievance; and the deletion of the exclusion of discipline from the scope of the grievance and arbitration procedure and the deletion of the just cause standard from the Management Rights article of the agreement.

ECONOMIC ISSUES

1. Salaries

Union's Final Offer:

Effective May 1, 1992 - 4.8%

Effective November 1, 1992 - 1.14%

Effective May 1, 1993 - 3.5%

Village's Final Offer:

Effective May 1, 1992 - 4.2%

Effective May 1, 1993 - 3.5%

Effective May 1, 1994 - a reopener for salaries only

2. Term of Agreement

Union's Final Offer:

The Union proposes an agreement of two years' duration.

Village's Final Offer:

The Village proposes an agreement of three years' duration with a reopener for salaries only for the third year.

3. Retroactivity

Union's Position:

Union proposes retroactivity to May 1, 1992.

Village's Final Offer:

That the salary increase be retroactive to May 1, 1992, "on an hour-for-hour basis for all regular hours actually worked and all hours of paid leave between May 1, 1992, and the first payroll period following the effective date of the arbitration award," with the understanding that "no increased adjustments shall be made for any non-FSLA overtime hours worked between May 1, 1992, and the first payroll period following the effective date of the interest arbitration award."

4. Fire Prevention Bureau Lieutenant Pay Differential

Village's Final Offer:

That the 1% differential received by Lieutenants assigned to the Fire Prevention Bureau be eliminated.

Union's Final Offer:

That the existing 1% differential be eliminated effective November 1, 1992, contingent upon the Union's final offer regarding the General Wage Increase if awarded. In the alternative, if the Union's General Wage increase is not awarded, Lieutenants assigned to the Fire Prevention Bureau would continue to receive an additional 1% in pay above the salaries paid to regular Lieutenants.

5. EMT-P (paramedic) Stipend

Union's Final Offer:

Increase EMT-P stipend to \$2100 effective May 1, 1993.

Village's Final Offer:

Increase EMT-P stipend to \$1650 effective May 1, 1992, and to \$1750 effective May 1, 1994.

6. Acting Pay

Union's Final Offer:

Compensate employees who work and perform the duties of a higher classification for a minimum of 12 hours a premium of 5% over the employee's regular rate of pay for all hours worked in the higher classification.

Village's Final Offer:

Retain status quo by retaining the current language contained in Article XII, Section 22.

NON-ECONOMIC ISSUES

1. Union's Right to File a Grievance

Union's Final Offer:

Modify Section 1 of Article XIII to provide:

"Section 1. Definition. A 'grievance' is defined as a dispute or difference of opinion raised by an employee or the Union against the Village involving the meaning, application or an alleged violation of an express

provision of this Agreement. No settlement of a grievance filed by an individual employee without Union representation shall be inconsistent with the terms of this agreement."

Village's Final Offer:

Retain the language currently contained in Article XIII, Section 1.

2. Discipline

Union's Final Offer:

Delete the language of Article XII, Section 3 and substitute language granting an employe the option of challenging disciplinary action either through the grievance arbitration procedure with the Union's approval or through the Municipal Code and the rules of the Village's Police and Fire Commission.

Village's Final Offer:

Retain the current language contained in Article XII, Section 3. Delete the wording "to discipline, suspend and discharge employees for just cause" from the wording of Article XVIII.

STATUTORY CRITERIA:

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

External Comparables

The parties are in disagreement regarding the selection of comparable communities. The Village urges the arbitrator to utilize the same 15 communities considered to be comparables by the parties in their previous negotiations and in the only other interest arbitration case in which the parties were involved. The Village's comparables include the following: Arlington Heights, Des Plaines, Elk Grove Village, Elmhurst, Evanston, Glenview, Highland Park, Morton Grove, Mt. Prospect, Niles, Northbrook, Oak Park, Park Ridge, Wheeling and Wilmette.

The Union proposes reducing the number of comparables to 10 deleting from the previously used comparables Elk Grove Village, Elmhurst, Highland Park, Northbrook, Park Ridge and Wheeling. The

Union also proposes the inclusion of Schaumburg in its proposed comparables.

Union's Position:

While the Union concedes that in the prior interest arbitration its representative agreed to the comparables being proposed by the Village, it is emphasized by the Union that in agreeing to the previous comparables it was doing so for the purpose of that arbitration only. The Union did not agree that the comparables proposed by the Village during those proceedings would always be the comparable group utilized by the parties.

A review of the comparables proposed by the Village establishes that a number of the comparables are smaller than the Village. Indeed, of the 16 comparables proposed by the Village, only five have populations and department sizes similar to the Village. Of the remaining 11 comparables, all but two are approximately half the size of the Village.

It is further noted by the Union that it is inherently more difficult to obtain data for 16 communities than it is for 10, especially where a number of the communities are not organized. Information regarding the unorganized departments requires a review of a number of documents including personnel policies and ordinances.

In contrast to the comparables proposed by the Village, the comparables proposed by the Union include six communities which are of similar size to the Village. Seven of the Union's comparables engage in collective bargaining and the number of smaller communities has been reduced from ten and four.

There is a considerable amount of arbitral authority that would challenge the Village's contention that the universe of comparables should be fixed and immutable. The Village invokes the values of predictability and certainty in support of retaining its proposed comparables. However, as Arbitrator Benn noted in City of Springfield and Policemen's Benevolent and Protective Association Unit No. 5, Case No. S-MA-89-74, the uncertainty involved in the arbitration process serves as an incentive for the parties to mutually resolve their disputes.

The Union contends that Schaumburg should be incorporated into the comparable grouping as it meets the generally accepted criteria for being considered a comparable. It has similar population, is located in geographic proximity, and has a collective bargaining agreement. The latter criteria is relied upon by some arbitrators as being significant. See Sioux County Board of Supervisors, 87 LA 522.

Geographically, Schaumburg is only two miles beyond the 15-mile perimeter the Village asserts should be the primary geographic determinant. Schaumburg differs from the Village with respect to the EAV and the amount of sales tax collected as a result of having one of the largest shopping malls in the country located within its boundaries. In Village of Lombard and Local 3009 IAFF, ISLRB No. S-MA-87-73, Arbitrator Berman adopted a standard of plus or minus 25% as criterion for determining "similar" populations and size of departments.

Highland Park, Northbrook, Park Ridge, Wheeling, Elk Grove Village and Elmhurst have been deleted from the Union's group of

comparables on the basis of population, financial comparability, or the lack of a collective bargaining agreement covering the relevant time frame.

While recognizing there is no compelling formula which would produce a "correct answer," the Union submits that adoption of its proposed comparable grouping will lead to a more open-minded approach which is likely to produce a more representative and well-balanced sampling in the future.

Village's Position:

It is emphasized by the Village that the arbitrator need not address the issue of comparables in the abstract. This is because in the prior negotiations between the parties and in the prior interest arbitration proceedings the parties used the same comparables which the Village is proposing in the instant case. Moreover, in the negotiations that preceded interest arbitration, the Union presented comparability data based on the same 15 comparable jurisdictions that the parties uniformly used in prior negotiations.

According to the Village, the Union's grouping of comparables was never presented to the Village during the negotiations which preceded the interest arbitration. It wasn't until the very day of the hearing that the Village knew of the grouping of jurisdictions the Union would be using.

Interest arbitrators have recognized that where there is a dispute over which employers should be used for comparability purposes, the past practice of the parties is highly relevant. Referring to this body of precedent, Elkouri and Elkouri noted

that an arbitrator "should give the greatest weight to those comparisons which the parties themselves had considered significant in free collective bargaining, especially in the recent past." Elkouri and Elkouri, How Arbitration Works, (4th Ed. 1985) at 811.

Given the parties' past bargaining history and agreement on the use of 15 comparables in three prior negotiations and in the only other interest arbitration case between the parties, it is respectfully submitted that the arbitrator should not alter the grouping of comparables based on the Union's post hoc submission of a new grouping of comparables designed to make the Union look better in terms of where the Village stood vis-a-vis the Union's selected comparables.

The Union's argument that reducing the number of comparables would result in a more manageable level of data is not persuasive. During the negotiations which preceded the interest arbitration there was no contention advanced by the Union that using 15 comparables presented any problem. The only suggestion made by the Union was to substitute Elgin and Schaumburg for Northbrook and Wheeling, as the latter communities had not as of that time reached settlements.

Although the Union proposed the exclusion of Elk Grove Village, it meets any reasonable requirement with respect to comparability of size of department and geography. There is also no basis for excluding jurisdictions which the Union proposes to exclude considering the bargaining history.

Clearly Schaumburg should not be added to the comparables as its financial resources far exceed those of the Village. It has more than \$5,000 per capita EAV than does the Village, and has sales tax revenue of \$281.47 per capita compared to the Village's \$121.20. In selecting Schaumburg the Union selected the highest paying jurisdiction. Based on population the Union could have selected Cicero and Waukegan, which are within the plus or minus 25% of population and are as close to the Village as Schaumburg.

To accept the Union's invitation to change the list of comparables would create chaos in subsequent negotiations in terms of the comparability issue and would constitute an open invitation to both parties to try to secure partisan advantage by selecting comparables that tend to favor each side's position on the issues in dispute. The arbitrator should not sanction such a result.

DISCUSSION:

The Illinois Public Relations Act lists among the criteria an arbitration panel is to base its findings on, a comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally, "In public employment in comparable communities." The statute offers no guidance as to the definition of what constitutes "comparable communities."

In City of Springfield and Policemen's Benevolent Protective Association Unit No. 5, supra, Arbitrator Benn concluded: "The statute does not define 'comparables' -- but purposely so."

Arbitrator Benn stated:

"This built in uncertainty of outcome thus serves as an incentive for the parties to mutually resolve their own disputes as the collective bargaining process intended."

The lack of definition of the comparables may very well reflect the intent of the legislature to insert into the arbitration process the "uncertainty" noted by Arbitrator Benn. There is an equally compelling alternative view of why the legislature did not define comparables: the legislature recognized that when parties engage in collective bargaining, both in the public and private sector, they establish their own comparables. In its wisdom the legislature elected not to interfere with the bargaining process by imposing a definition of comparables on the parties.

Bargaining history establishes that the parties here reached an agreement as to what constitutes comparable communities in the negotiation of three prior agreements and in an interest arbitration. Comparables are not etched in stone; they can be changed when there is a valid reason for doing so. However, an integral part of bargaining is the establishment of comparables. If after bargaining the issue of comparables the parties reach an impasse, it may be necessary for the arbitrator to determine comparables. However, the arbitrator should not disturb the comparables used by the parties until they have bargained and reached an impasse on the subject. In this case there appears to have been no bargaining over the comparables. According to the testimony, during the bargaining which led up to the arbitration the Union presented the Village data based on the previously established comparables.

While uncertainty may be a catalyst to voluntary settlements, the parties have a right to expect some predictability from the arbitration process. The decision to proceed to arbitration rather than reach a voluntary settlement should be based on something other than a "crapshoot." Presumably when the parties reach an impasse and proceed to arbitration a factor considered is what is being done in comparable communities and the possibility, if not likelihood, that the arbitrator will follow the mandate of the statute and look to the comparable communities for guidance. The parties should be looking to the same comparables, or at least be aware of their differences.

The Union raises a number of arguments in support of its proposed comparables. However, where there was not significant bargaining over the issue of comparables, the undersigned is reluctant to change in this proceedings the comparables the parties have traditionally relied upon in both bargaining and the previous interest arbitration.

Based on the above discussion, the undersigned concludes the comparables proposed by the Village are to be preferred in this proceeding.

Economic Issues

1. Salaries

Union's Final Offer:

Effective May 1, 1992 - 4.8%
Effective November 1, 1992 - 1.14%
Effective May 1, 1993 - 3.5%

Effective May 1, 1992, employees covered by this Agreement shall be paid on the basis of the following:

| <u>Fire Fighters</u> | | <u>Lieutenants</u> | |
|----------------------|---------------|--------------------|---------------|
| <u>Step</u> | <u>Annual</u> | <u>Step</u> | <u>Annual</u> |
| A | 31,582 | A | 36,115 |
| B | 33,617 | B | 37,928 |
| C | 34,869 | C | 39,816 |
| D | 36,605 | D | 41,821 |
| E | 38,457 | E | 43,899 |
| F | 40,385 | F | 46,088 |
| F+ | 41,404 | F+ | 47,222 |

Effective November 1, 1992, employees covered by this Agreement shall be paid on the basis of the following:

| <u>Fire Fighters</u> | | <u>Lieutenants</u> | |
|----------------------|---------------|--------------------|---------------|
| <u>Step</u> | <u>Annual</u> | <u>Step</u> | <u>Annual</u> |
| A | 31,942 | A | 36,527 |
| B | 34,000 | B | 38,360 |
| C | 35,267 | C | 40,270 |
| D | 37,022 | D | 42,298 |
| E | 38,895 | E | 44,399 |
| F | 40,845 | F | 46,613 |
| F+ | 41,876 | F+ | 47,760 |

Effective May 1, 1993, employees covered by this Agreement shall be paid on the basis of the following:

| <u>Fire Fighters</u> | | <u>Lieutenants</u> | |
|----------------------|---------------|--------------------|---------------|
| <u>Step</u> | <u>Annual</u> | <u>Step</u> | <u>Annual</u> |
| A | 33,060 | A | 37,805 |
| B | 35,190 | B | 39,703 |
| C | 36,501 | C | 41,679 |
| D | 38,318 | D | 43,778 |
| E | 40,257 | E | 45,953 |
| F | 42,275 | F | 48,245 |
| F+ | 43,342 | F+ | 49,432 |

Village's Final Offer:

Effective May 1, 1992 - 4.2%
 Effective May 1, 1993 - 3.5%
 Effective May 1, 1994 - a reopener for salaries only.

Effective May 1, 1992, employees covered by this Agreement shall be paid on the basis of the following:

| <u>Fire Fighters</u> | | <u>Lieutenants</u> | |
|----------------------|---------------|--------------------|---------------|
| <u>Step</u> | <u>Annual</u> | <u>Step</u> | <u>Annual</u> |
| A | 31,432 | A | 35,943 |
| B | 33,009 | B | 37,747 |
| C | 34,703 | C | 39,627 |
| D | 36,431 | D | 41,622 |
| E | 38,274 | E | 43,690 |
| F | 40,193 | F | 45,869 |
| F+ | 41,207 | F+ | 46,998 |

Effective May 1, 1993, employees covered by this Agreement shall be paid on the basis of the following:

| <u>Fire Fighters</u> | | <u>Lieutenants</u> | |
|----------------------|---------------|--------------------|---------------|
| <u>Step</u> | <u>Annual</u> | <u>Step</u> | <u>Annual</u> |
| A | 32,532 | A | 37,201 |
| B | 34,164 | B | 39,068 |
| C | 35,918 | C | 41,014 |
| D | 37,706 | D | 43,079 |
| E | 39,614 | E | 45,219 |
| F | 41,600 | F | 47,474 |
| F+ | 42,649 | F+ | 48,643 |

Union's Position:

It is emphasized by the Union that the Village is in good financial condition. Total revenues for 1992 increased over 1991 by 15.1%. The general fund balance increased by \$274,654 during fiscal 1992. The police and fire pension funds have a funding level of 120% and 105% respectively. Unemployment in the Village is 3.5%, and the total value of real property located within the Village increased by 2.13% between 1991 and 1992. A flyer enclosed with utility bills sent to home owners was entitled, **"No Property Tax Increase On Next Year's Bills!"** The flyer further stated: "Skokie homeowners continue to pay considerably less in municipal taxes and other direct municipal payments than their counterparts in most other area suburbs." Thus, ability to pay is not a factor in this dispute.

The salaries paid to the Village's firefighters and police have been very close over at least the last 15 years. The percentage increases granted to firefighters and police have been identical since 1981, with the notable exception for the years 1988, 1989 and 1991. The variances in 1988 and 1989 were only temporary. The variance for 1991 relates to a wage increase of 1.37% granted police effective November 1, 1991. This increase

was in addition to a 5% increase granted police May 1, 1991, which paralleled the 5% already in effect for firefighters. The 1.37% increase granted police on November 1, 1991, as well as the 4.8% increase granted police effective May 1, 1992, are at the root of the current wage dispute between the parties.

The evidence establishes that between 1975 and 1992, firefighters and police have maintained a close relationship at the maximum salary. The average difference for the period 1976 through 1990 was only \$46 at the maximums.

Arbitrator Goldstein's award issued in connection with a reopener in the 1987-1990 contract produced a result that effectively established dollar for dollar parity between police and fire in the Village. Arbitrator Goldstein's award defined the wage settlement for the 1989-1990 fiscal year. Prior to the reopener the Village and the police had negotiated a new agreement. As a result of that agreement a significant disparity was created between police and fire salaries starting November 1, 1988. Effective May 1, 1988, firefighters were granted a 4.4% increase which raised the top step to \$34,125. Police were granted a 4.25% increase which resulted in a top step of \$34,152. However, police were also granted a 1.1% increase effective November 1, 1988, which raised the top step to \$34,736, a difference of \$611. The second year of the police agreement, 1989-1990 fiscal year provided a 3.5% increase effective May 1, and a 1.25% increase effective November 1. In arbitration the Union's final proposal called for a 4.2% increase effective May 1, 1989, and a 1.75% increase effective November 1, 1989. The effect

of the increase, awarded by the arbitrator, resulted in only a \$3 difference at the maximum salary.

The Village may argue that the arbitrator's rationale for rejecting the Village's offer was the Village's proposal to grant increases of differing amounts to the steps in the salary schedule. The arbitrator also stated in his discussion a broader concern that the Village's proposal represented a "substantial change in the status quo." Arbitrator Goldstein stated:

"It is a deviation from the prior pattern and philosophy of across the board payment for compensatory increases to both police and fire. It appears that this should only be done as a result of direct bargaining between the parties."

The Union asserts that the value of historical relations is widely recognized. In How Arbitration Works, Elkouri & Elkouri 4th Ed. 1985, the authors write at page 816:

"Arbitrators are sometimes reluctant to eliminate historical differentials or those which initially were established by collective bargaining. This reflects a hesitancy to disturb a stabilized situation except on compelling grounds."

Initiatives launched by employers to break historical wage parity between firefighters and police have spawned many impasses, some of which have been the subject of several reported decisions. In such cases, arbitrators have generally issued awards maintaining parity absent compelling evidence to do otherwise. See City of Southgate, 54 LA 901 (Rommel, 1970); City of Auburn, 53 LA 361, (Gillingham, 1969); City of Edwardsville, Illinois and IAFF Local 1700, (Larney, 1986). In each of these cases, efforts by the employer to significantly deviate from historical wage parity relationships were rejected by the arbitrators and awards

were issued that either re-established or maintained the historic wage parity.

The Village's proposal attacks salary parity that existed as of May 1, 1991, at two levels. First, the police were granted a 4.8% general wage increase effective May 1, 1992. The Village's enhanced final offer falls short of this figure by .5%. Second, the Village has proposed no increase for firefighters effective November 1, 1992, to match the 1.3% increase granted police. The Village's rationale for the disparity is that this increase cannot be extended to firefighters because it was an agreed "equity adjustment" to improve the police standing in relation to external police comparables. Such argument is not persuasive as the general increase granted to police of 4.8% exceeds the general increase offered to firefighters.

According to the Union, the need to grant police an "equity adjustment" in order to improve their standing among other comparable police departments is not a sufficiently compelling reason to justify disrupting the historical parity that the Village proposes.

While maintaining the historical wage relationship with police officers internally, the Union's wage proposal will also raise the Village's firefighters' overall compensation toward the median level of compensation paid to firefighters employed in externally comparable communities. The Union's proposed wage increase will move the maximum salary of the Village's firefighters to number 2 ahead of Mt. Prospect and behind Schaumburg within the Union's proposed comparable grouping.

The Village's stature is diminished due to its longevity plan which is relatively modest. Based on the Union's final offer, the maximum base salary plus longevity at the 15-year level would be \$42,300. This would place the Village fourth within a grouping of ten comparable communities.

Another compensation factor which diminishes the Village's standing is the fact that the firefighters pay 12% of the premium cost for single and family coverage for health insurance coverage. This is the highest level of contribution among comparable communities. Firefighters enrolled in the Village's basic indemnity plan would pay \$789 a year in premiums for this coverage for 1992. Additionally, there is relatively high deductible in effect which results in relatively high out-of-pocket expenses.

The evidence also establishes that the maximum F+ step rate for a five-year firefighter is \$14.15, which places the Village below the average of the Union's comparables and ranks the Village 7 out of 11.

Union Exhibit 92(A) examines the Village's firefighter in relation to three factors: Annual Cash Payment, Annual Cash Payments Excluding Maximum Salary, and Hourly Rates. If the Union's final offer is accepted it will result in the Village's firefighters being \$947 below the average of the 10 comparable communities. If the Village's final offer is awarded the firefighters will fall to \$1,578 below the average and will then place 10 out of 11. Under the Union's final offer the firefighters will be 21 cents per hour short of the average, and

under the Village's final offer firefighters will be 47 cents per hour below the average.

A final factor which should tip the scales in favor of the Union's position is the willingness of the Union to eliminate the 1% differential paid to fire lieutenants assigned to the Fire Prevention Bureau. While conceding this does not amount to a great deal of money, it is emphasized by the Union that it is significant to the three lieutenants and must be significant to the Village as it was a proposal advanced by the Village.

It is contended by the Union that the Village has greatly exaggerated the costs and operational impact of the agreement to increase the Kelly days for shift personnel. There is no question the change will increase the hourly rate and increase the amount of time off for members of the bargaining unit by 42 hours per man. The real cost of granting additional time off must be measured in terms of the probability of triggering additional hirebacks or hiring of new employes. The Village asserts the Kelly day proposal will require the employment of 1.79 full time firefighters. The Village may choose to do this but it will not be required by adoption of the Kelly days. There is presently a cushion of seven employes above the minimum manning table of 27. The additional Kelly days require a cushion of six, and therefore can be handled by the existing complement of personnel. Additionally, the scheduling of the Kelly days can be done to alleviate pressure for time off during prime vacation periods. The Kelly days were also implemented in a manner that would eliminate FSLA overtime which the Village would have otherwise incurred.

The Village cannot use the Kelly day agreement as a means of breaking the historical relationship between the salaries received by firefighters and police. The Kelly day proposal stands alone and there was no quid pro quo for eliminating the historical wage parity with police.

Village's Position:

It is the Village's position that the external comparability data clearly supports acceptance of its final salary offer. The starting point in judging what is reasonable in terms of the comparability data, as many arbitrators have acknowledged, is what the parties themselves believed was reasonable and appropriate in prior negotiations. Thus, it is necessary to be considered where the Village stood in relationship to the universe of comparables in terms of the top step firefighter salaries as a result of the parties' last negotiations.

For the 1990-91 fiscal year, the first year of the last contract voluntarily negotiated by the parties, the Village's maximum top step salary was \$37,627, which was fourth out of the 16 historic comparables. Knowing what the parties agreed was appropriate in terms of the relationship between the Village top step firefighter salary vis-a-vis the top step firefighter salaries for the other 15 comparable jurisdictions at the time the parties last negotiated establishes a reference point against which the reasonableness of the final offers should be judged.

Under the Village's final offer, the top step F+ firefighter salary during calendar year 1992 would be \$41,207, which would place the Village third out of the 16 comparables and only \$5

below the number two jurisdiction. The Village's final offer would result in its position in terms of the top salary being improved over the Village's position vis-a-vis the same comparable jurisdictions when the parties were last at the bargaining table.

In contrast, the Union's final offer of a 4.8% increase effective May 1, 1992, and a further increase of 1.14% effective November 1, 1992, would mean the top salary for a firefighter would be \$41,984 as of November 1, which would catapult the top salary to the very top of the 16 communities and would be nearly \$300 ahead of Mt. Prospect. Such a dramatic change in the Village's relative ranking demonstrates the unreasonableness of the Union's final salary offer.

Based on the known salary adjustments for the 1993-94 fiscal year and where the Village stands for the 1992-93 fiscal year, it is apparent that the Village will retain its ranking of third out of 16 comparable jurisdictions in terms of the maximum top step firefighter salary. Of the five jurisdictions for which salary data is available for 1993-94 fiscal year, the Village's relative ranking based on the Village's salary offer would remain unchanged. Glenview is the next closest of the comparables and in order for that jurisdiction to match the Village's maximum salary step it would have to grant an increase of 4.67% and the other jurisdictions would have to grant even larger increases.

The Village's final offer of a 4.2% base salary increase is clearly reasonable when considered vis-a-vis the comparables. While the average increase for comparable jurisdictions that settled for 1992 prior to January 1, 1992 was 4.536%, the average

increase established since January 1, 1992, is 4.123%. Of the six jurisdictions that established fire salaries since January 1, 1992, four of the six have increased base salaries by an amount less than what the Village's final offer provides. The Union stated that one of the "two main considerations" supporting its salary offer was its assertion that the Village's "proposal is substantially below . . . the percentage salary wage increases that have been granted within the comparable grouping." Whatever validity this assertion may have had based on the Village's pre-hearing salary offer, it is totally without foundation based on the Village's post-hearing final offer of 4.2%.

The Village contends that the CPI data strongly support acceptance of its final offer. Among the criteria the arbitrator is to consider is, "The average consumer prices for goods and services, commonly known as the cost of living."

Interest arbitrators are divided with respect to the appropriate measurement period for applying the cost of living criterion. In United States Postal Service, DLR No. 249, D-1, an interest arbitration involving "half a million people--the largest number ever covered by an arbitration in the history of the United States," Chairman Clark Kerr noted that in making his wage award he "looked at prospects for cost of living increases" and, in this regard, he considered "some well-respected and publicly issued projections" in determining what inflation factor should be used in [his] calculations. Based on Kerr's award the relevant period for CPI purposes would be May 1, 1992 through April 30, 1994, i.e., the 1992-93 and 1993-94 fiscal years.

While CPI data is obviously not available for the entire period, it is presently available for the first 11 months of the 1992-93 fiscal year. From April, 1992 to March, 1993 the CPI-U for the United States increase 2.939%, and for Chicago 3.076%. Fiscal year 1992-93 is projected to be 3.2% for the United States and 3.3% for Chicago.

The statute directs the arbitrator to consider, "Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings"; consequently it is appropriate and proper for the arbitrator to consider the most recent CPI data in considering which of the two final offers is the most reasonable. Additionally, it is the consensus that the CPI will rise by 3.2% for 1993 according to the Blue Chip Economic Indicator of November 10, 1992.

The second approach used by interest arbitrators in applying the cost-of-living criterion is to judge the parties' final offers on the basis of the rate of increase in the CPI during the last year of the parties' most recent collective bargaining agreement. This is the approach used by Arbitrator Goldstein in his award involving the parties. If this approach is applied the Village's final offer for the 1992-93 fiscal year it is from 1% to 1 1/2% higher than the CPI-U the last year of the parties' contract.

An additional argument is advanced by the Village that it has had no difficulty is either recruiting employes or retaining employes in the Fire Department. The ability of the employer to recruit and retain employes is a factor frequently considered by arbitrators in assessing the final offers of the parties.

Another criterion to be applied by the arbitrator is:

"The interest and welfare of the public and the financial ability of the unit of government to meet those costs."

This Village is not making an ability-to-pay argument in this case. In City of Gresham and IAFF Local 1062, (September 5, 1984) Arbitrator Edward Clark noted that the fact that a public employer "has the ability to pay an increase does not mean that the [City] ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure," noting further that a public employer "exists for the service and benefit of its residents and not for the benefit of its employees." Acceptance of the Union's final offer would be contrary to "the interest and welfare of the public."

Throughout the presentation of its case at the hearing, the Union asserted that its first year salary offer was designed to grant salary increases to firefighters that were comparable to the salary increases granted to police officers under the Village's contract with the FOP. The Union's final offer of 4.8% effective May 1, 1992, is to match the 4.8% increase for police effective May 1, 1992, and the Union's final offer of 1.12% increase effective November 1, 1992, is intended to provide firefighters with an increase relatively comparable to the 1.2375 increase which police officers received effective November 1, 1991. What the Union fails to acknowledge, however, is that there are compelling reasons for the equity adjustments which the Village agreed to provide police officers effective November 1, 1991, that are not applicable to firefighters.

By the time the Village and FOP returned to the bargaining table in 1991, the evidence established that the top step for the Village's police officers had slipped from 8 out of 17 in 1988, to 9 out of 17 in 1989, and by 1991 had slipped to 14 out of 17 among the comparable jurisdictions. The F+ step for police officers had fallen \$400 below the median of the comparables and it has been the Village's position to compensate its employees at the median of the comparables. In order to address this issue the Village and FOP agreed to an "equity adjustment" effective November 1, 1991, to address this issue.

The Village's firefighters stand vis-a-vis the same group of comparables has not and will not be changed as a result of the Village's final salary offer, i.e., third out of 16 comparables as of May 1, 1992. Thus, there is no justification for granting the Village's firefighters an additional salary increase that is solely and exclusively based on what the Village had to do in its last negotiations with the FOP in order to bring the top step police officer up to the median.

Significantly, the fact that police officers would receive somewhat higher salaries than firefighters based on the Village's last offer is the prevailing practice among the comparable jurisdictions. Thus, for the 1990-91 fiscal year, 13 of the 15 jurisdictions paid police more than fire. For the 1992-93 fiscal year police will continue to be paid more in 13 of the 15 jurisdictions. Even more significantly, the average police maximum salary for 1992-93 of \$41,803 is \$1,642 higher than the average fire maximum salary of \$40,161. This represents a

differential of 4.1%. Stated in either dollars or percentages, the Village's last offer has a police differential of less than half the differential in other comparable jurisdictions.

The Village contends that Arbitrator Goldstein, by accepting the Union's final offer in the last interest arbitration, was not driven by any conscious intent to establish parity with the police. He specifically stated in his decision:

"I do not need to decide the troublesome issue of the appropriateness of 'parity' between police and fire in this specific dispute."

Arbitrator Goldstein selected the Union's final offer for one reason only--because the Village's final offer proposed to change the salary structure so as to provide lesser increases at the lower steps and larger increases at the top steps which the Arbitrator concluded "should only be done at the bargaining table."

Additionally, the arbitrator stated in his award "[t]he total compensation package, as the Employer asserts, maintains the 'essential symmetry' between the two employee bargaining groups. Internal comparability weighs with the Employer."

The Village asserts that on an overall cost of economic package basis, the Village's final offer will maintain overall parity between police and fire. It is appropriate to factor into the overall compensation paramedic pay and the additional Kelly days. It is not justified or warranted to give the Union's total compensation data any more weight in this proceedings than the parties have in prior voluntary negotiations, especially since there is no evidence that since 1990 there have been significant

increases in economic fringe benefits among the comparable jurisdictions.

According to the Village, a major flaw in one of the Union's primary total compensation exhibits is the assumption that such benefits as vacation result in additional cash compensation to firefighters. Yet, as acknowledged by a Union witness, when a firefighter is off on vacation in the Village or one of the comparable jurisdictions, the firefighter doesn't receive additional pay.

In response to the Union's effort to break compensation down into a rate based on hours worked over the course of a year, the Village submitted extensive comparability data that listed what each of the comparable jurisdictions provides in terms of vacation, Kelly days, holidays, and other forms of paid time off at five-year intervals. For the top step firefighter with 15 years of service the evidence establishes that the Village's hourly rate of \$17.34, obtained by dividing top step salary by total hours worked, is second only to Mt. Prospect and substantially above the average for all 16 jurisdictions.

DISCUSSION:

Arbitrators in interest disputes frequently consider not only external comparables, which the Illinois Public Labor Relations Act mandates be considered, but internal comparables as well. Internal comparables are considered for at least two purposes: first, to determine if there is a pattern of settlements between the employer and its bargaining units which may be applicable to the dispute before the arbitrator; and second, to determine if

there has been an historical pattern of settlements involving various bargaining units.

Generally, where internal comparables are considered for the purpose of determining if there is a pattern of settlements it involves a situation where agreements have been reached between the employer and a number of bargaining units and either the union or the employer is attempting to break the settlement pattern.

The Union relies upon the internal comparables in this case to establish the existence of an historical relationship between the maximum salaries received by police officers and firefighters. The evidence supports the Union's position that at least at the F+ step, the maximum salary step for police and fire, there has been an historical relationship. The gap between the maximum police salary and the maximum firefighter salary has widened on occasion and then been closed. The average difference between the respective maximum salaries was \$46 from 1976 through 1990.

Under the Village's final offer that difference will expand to \$714 effective May 1, 1992, as a result of the November 1, 1991, increase granted to police under the definition of an "equity adjustment." Under the Union's final offer the difference will be reduced to \$517 effective May 1, 1992, and to \$45 effective November 1, 1992, as a result of the Union's proposed increase on that date.

It is well settled in arbitral authority that where there is an historical relationship in salaries between bargaining units, or parity as it is frequently referred to, the party seeking to disturb that relationship has the burden of persuading the

arbitrator that there is good and sufficient reason for doing so. In the instant dispute the Village contends there is a compelling reason to alter parity based on the comparables for both police and fire.

As previously noted, there is a dispute between the parties regarding the appropriate comparables, and for the reasons previously stated, the undersigned accepts the comparables proposed by the Village.

The evidence establishes that within the comparables proposed by the Village, the Village is ranked 4th among the 15 comparables at the maximum salaries paid by the comparables to firefighters for 1990, and 3rd among 14 comparables for 1991. (Elk Grove Village was excluded on the basis there was an "assumed" 1992 increase based on settlement with the FOP.)

Village Exhibit 28 reflects the increases granted for fiscal year 1992-93 over fiscal year 1991-92 for firefighters. That exhibit establishes that the increases for fiscal year 1992-93 range from a low of 3.5% effective November 1, 1992 for Elmhurst, to a high of 4% plus an additional step of 5% effective July 1, 1992 for Oak Park. The Village's final offer of 4.2% effective May 1, 1992, is slightly below the increases granted by the comparable jurisdictions. However, the Union's final offer of 4.8% effective May 1, 1992, and an additional 1.14% effective November 1, 1992, exceeds the settlements in all of the comparables with the possible exception of Oak Park. The Union's final offer represents an annualized increase of 5.37%; however, the increase in salaries effective November 1, 1992, is 5.94%.

There is no discernible pattern established for the 1993-94 fiscal year with only 5 of the 15 comparables having agreements for that year. The parties have the same increase for the 1993-94 fiscal year, 3.5%, in their respective final offers.

Based on a review of the evidence it must be concluded that for both fiscal years 1992-93 and 1993-94 the Village will retain its relative position among the comparable jurisdictions under either the Union's final offer or the Village's final offer. Although the Village's final offer is not the highest settlement in terms of percentage, it more closely reflects the pattern of settlements among external comparables than does the Union's final offer. To this extent the external comparables favor the Village's final offer.

Support for the Village's "equity adjustment" granted to the FOP effective November 1, 1991, is found on Village Exhibit 32. That exhibit establishes that the maximum salary of a Village police officer for the 1990-91 fiscal year was \$37,630. Of the 15 comparable jurisdictions, 12 had higher maximum salaries than did the Village. In contrast, only three of the comparable jurisdictions had higher maximum salaries for firefighters than did the Village. Only Des Plaines, Elk Grove Village and Mount Prospect had higher firefighter maximum salaries.

Given the relative position of police vis-a-vis the comparables and firefighters vis-a-vis the comparables, the Village was confronted with a persuasive argument for a greater increase than might otherwise have been appropriate. The average maximum salary for police officers among the comparables was

\$38,162, whereas the maximum for the Village's police officers was \$37,630 or \$532 below the average. In contrast, the average maximum salary for firefighters among the comparables was \$36,497, whereas the maximum for the Village's firefighters was \$37,627 or \$1130 above the average.

Although the end result of the Goldstein award was to effectively maintain parity between police and fire salaries, as is noted by the Union, Arbitrator Goldstein did not base his decision on the issue of parity. He specifically stated at page 48 of his award, "Second, I do not need to decide the troublesome issue of the appropriateness of 'parity' between police and fire in this specific dispute." An analysis of his award establishes that he took the position that a major change in the structure of the salary schedule such as proposed by the Village should be accomplished through collective bargaining rather than through the arbitration process.

Although the Union couches the issue to be one of parity, the issue may be just as reasonably couched in terms of determining the appropriate rate of pay for police officers and firefighters. The evidence established that among the comparables, police officers have a higher maximum salary than do firefighters. In order to redress the maximum salary of the Village's police officers vis-s-vis the comparables, some form of increase in salary was necessary. The parties agreed to an equity adjustment.

The evidence in this case clearly supports the need of such an increase and therefore the Village had good and sufficient reason to grant the FOP an equity adjustment which did disturb the

historical relationship between the maximum salaries paid the Village's police officers and firefighters. The evidence does not support the need for such an equity adjustment to the firefighter maximum salary in order to bring that salary in line with the comparable jurisdictions.

Based on the evidence, it is the opinion of the undersigned that the external comparables favor the Village's final offer. The undersigned is further persuaded the evidence establishes the Village had good and sufficient reason to alter the historical relationship between the maximum salaries paid police officers and firefighters.

In this case it is not necessary to predict the cost of living as measured by the CPI for the fiscal year commencing May 1, 1992. It is already beyond that fiscal year and the cost of living as measured by the CPI was in the range of 3%. Thus, the final offer of the Village, while exceeding the cost of living, more closely reflects the increase in the CPI than does the Union's final offer.

The Village is not raising the issue of ability to pay in these proceedings, thus there is no need to address that issue.

After giving due consideration to the applicable factors contained in the The Illinois Public Labor Relations Act the undersigned renders the following

AWARD

That the salary schedule contained in the Village's final offer be incorporated into the collective bargaining agreement effective May 1, 1992.

2. Term of Agreement

Village's Final Offer:

A three-year agreement with a reopener limited to wages only. Article XXII to read as follows:

Section 1. Termination in 1995. This Agreement shall be effective as of the day after the contract is executed by both parties and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 1995. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least ninety (90) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than sixty (60) days prior to the anniversary date.

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives at least ten (10) days' written notice to the other party of its desire to terminate this Agreement, provided such termination date shall not be before the anniversary date set forth in the preceding paragraph. Even though this Agreement has terminated pursuant to the provisions of this Article, during the pendency of impasse arbitration proceedings, existing wages, hours, and other conditions of employment shall not be changed without the consent of the other but a party may so consent without prejudice to its rights or position in any such proceedings.

Section 2. Reopener on Wages for 1994-95. If either party gives the other party at least sixty (60) days' notice prior to May 1, 1994, that it desires to reopen this Agreement for the limited purpose of negotiating salaries (Article VI, Section 1), negotiations over salaries shall begin no later than forty-five (45) days prior to May 1, 1994.

Union's Final Offer:

Two-year agreement effective May 1, 1992, through April 30, 1994.

Village's Position:

The negotiations which preceded interest arbitration took place over a period of some seven months. In addition, there were

six days of hearing which concluded on February 19, 1993. Given the tremendous amount of time, energy and expense both parties have extended in this process, common sense dictates that the Village's final offer be accepted. Under the Village's final offer, the termination date would be April 30, 1995, less than two years from the date on which the parties will receive the arbitrator's award. If the Union's final offer is accepted, the parties will be back at the table in eight months dealing with the entire agreement.

The Village further asserts its final offer is supported by both internal and external comparables. The current FOP agreement is for three years with a wage reopener for the last year. In comparable jurisdictions, of the 10 which have collective bargaining agreements, seven specify a term of more than two years. Four of the jurisdictions have three-year agreements covering all issues including salary. Thus, both the internal and external comparables support the Village's final offer.

Union's Position:

Although the Union has proposed a two-year agreement, the Union defers "to the Arbitrator's wisdom on this item." However, the Union contends that if there is an item among the items in dispute which may be appropriately utilized as a balancing weight, it is the item of term.

DISCUSSION:

It is readily apparent that the parties expended considerable effort in the negotiations which preceded the instant proceedings as well as in the proceedings themselves. It has required

considerable time, great effort and has been costly to the parties. Given this background, as well as both the internal and external comparables, a three-year agreement is appropriate.

The Village's amended final offer provides for a reopener for salaries for the last year of the agreement. While this obviously limits the subjects for negotiations, it does provide the Union with the opportunity of addressing the issue of salaries for the last year of the agreement.

Therefore the undersigned renders the following

AWARD

The Village's final offer regarding the term of the agreement is awarded.

3. Retroactivity

Village's Final Offer:

"The increase in salaries and the paramedic stipend shall be retroactive to May 1, 1992, for employees still on the active payroll on the effective date of the interest arbitration award. Payment shall be on an hour for hour basis for all regular hours actually worked and all hours of paid leave between May 1, 1992, and the first payroll period following the effective date of the interest arbitration award. For the purpose of application of this retroactivity provision, no increased adjustments shall be made for any non-FSLA overtime hours worked between May 1, 1992, and the first payroll period following the effective date of the interest arbitration award. Any employee who retired after May 1, 1992, but before the effective date of the interest arbitration award shall also be eligible to receive retroactive compensation between May 1, 1992, and the date of retirement computed in accordance with the foregoing."

Union's Final Offer:

The Union proposes retroactivity to May 1, 1992, in accordance with existing contract language.

Village's Position:

According to the Village, the only difference between its proposal and that of the Union is that the Village is requesting that retroactivity not be applied to overtime hours. It is emphasized by the Village that under both final offers retroactivity would be for all regular hours of work, including all hours of paid leave between the last day of the old contract and the effective date of the interest arbitration award.

The Village submits there are two reasons why its position on retroactivity should be awarded by the arbitrator. First, assuming the Village's final offers on salaries and paramedic stipend are accepted, applying those increases to overtime hours would result in additional cost to the Village which can't be justified.

Second, the arbitrator can surely take arbitral notice of how administratively burdensome it would be to have to go back more than a year and compute retroactivity for overtime hours.

While the Village is aware of precedent supporting the award of retroactivity, including overtime hours, the Village submits that the foregoing reasons, in the context of this case, support the acceptance of the Village's final offer on retroactivity.

Union's Position:

The evidence establishes a clear pattern of settlements over the past 10 years providing for full retroactivity. In the prior interest arbitration the Village sought to alter this pattern. It was presented at the conclusion of the hearing and thus the record is barren of any evidence justifying this very significant change in the parties' practice.

Arbitrators who have rendered awards under the Act have been consistently very reluctant to alter an established practice of full retroactivity. Typically, these issues have been raised by management with respect to proposals to change the effective date, as the Village here also sought to do during negotiations and at the time of the hearing. In these circumstances arbitrators have rejected the employer's position absent a clear record showing justification. No such justification exists in this case.

It would appear that the Village is seeking to accomplish by a different means the same alteration of the established practice as to retroactivity that would have been accomplished if the June 1 date had been awarded. The fact the proposal focuses on overtime rates makes it even less palatable in that it would further diminish the value of the Kelly day agreement the parties reached.

DISCUSSION:

The issue of retroactivity is not a new issue between the parties, having been raised in the prior arbitration before Arbitrator Goldstein. According to the Goldstein decision, the Village argued against full retroactivity in that case on the basis that such retroactivity would grant the Union a larger increase than the increase granted the FOP. Although the Village does not advance a similar argument in this case, the Village does raise two arguments in support of its position that overtime should not be made retroactive: (1) It would be administratively burdensome and costly to the Village to have to compute the wage increase for overtime hours; and (2) applying the wage increase

retroactively to overtime would result in an additional cost to the Village which is not warranted.

It is undoubtedly true that computing the new salaries for overtime worked from May 1, 1992, until this award is made effective would place an administrative burden on the Village. However, such burden is not sufficient reason to deny full retroactivity, including retroactivity for overtime hours worked, where the parties have an established practice of granting full retroactivity.

Arbitrator Goldstein in his decision reached the following conclusion at page 78:

"Historically, salaries have been effective at the start of the Employer's fiscal year for both the police officer and firefighter unit, as I read the record evidence."

He went on to state:

"Therefore, it is clear that the past practice is to grant retroactivity as the Union demands, or at least that the parties are both well understood the start and half-way point of the fiscal year is when raises normally come."

Based on the Goldstein decision, it is apparent that the parties have an established past practice of granting retroactivity without restriction.

The Village concedes there is arbitral precedent for granting full retroactivity, including overtime hours. The undersigned concurs with the Village's conclusion regarding arbitral precedent and, therefore, cannot accept that the burden of applying the new salary to overtime hours is a sufficiently compelling reason not to make the new salary retroactive to overtime hours worked between May 1, 1992, and the date this award is implemented.

Certainly applying the new salary retroactively to the overtime hours will result in a greater cost to the Village than if the new salary was not applied to the overtime hours. However, it does not represent a windfall to the firefighters; if the parties had reached a voluntary settlement prior to the expiration of the previous agreement the new salaries would have been applicable to overtime hours worked after May 1, 1992. The alternative, not to award retroactivity for overtime hours worked, would diminish the value of a salary increase for those firefighters who worked overtime during the period from May 1, 1992, until this award is implemented.

The undersigned can find no compelling reason under the facts of this case for not making the new salary retroactive to overtime hours worked from May 1, 1992, to the effective date of this award.

For the above reasons, the undersigned renders the following

AWARD

That the Union's final offer regarding retroactivity is awarded and therefore the new contract is retroactive to May 1, 1992, without the exception proposed by the Village.

4. Fire Prevention Bureau Lieutenant Pay Differential

Village's Final Offer:

Eliminate the 1% premium differential paid to lieutenants in the Fire Prevention Bureau.

Union's Final Offer:

Eliminate the 1% premium differential paid to lieutenants in the Fire Prevention Bureau if the Union's final offer regarding salaries is awarded.

Village's Position:

It is the Village's position that the 1% premium pay differential paid to lieutenants assigned to the Fire Prevention Bureau is not warranted. These lieutenants work an 8-hour day, 40-hour week, Monday through Friday, and are off on holidays. This is in contrast to the other lieutenants in the Department who work 24-hour shifts, work weekends and holidays. The Village contends that the work schedule of lieutenants working in the Fire Prevention Bureau is sufficient inducement to encourage employes to take those positions. Thus, there is no need for the 1% premium currently being paid to the lieutenants in the Fire Prevention Bureau.

The Village contends that the Union's conditional acceptance of the Village's final offer regarding the elimination of the differential in return for the awarding the Union's final offer relating to salaries is an illegal position for the Union to adopt and thus cannot be accepted by the arbitrator. Thus, the arbitrator cannot condition his award in this matter based on his award relating to the issue of salaries.

Union's Position:

While the Union recognizes that the Village's final offer regarding the elimination of the 1% differential paid to lieutenants assigned to the Fire Prevention Bureau involves only three employes, it is emphasized by the Union that the issue is

important to those three employes and to the Village, as the Village made the proposal to eliminate the differential. The Union would be willing to accept the Village's final offer regarding the elimination of the differential if the Union's final offer regarding salaries is awarded.

DISCUSSION:

Although the Union conditions its acceptance of the elimination of the differential received by lieutenants assigned to the Fire Prevention Bureau on the awarding of the Union's final offer relating to wages, in the opinion of the undersigned this issue should rise or fall on its own merits.

The work schedule of lieutenants assigned to the Fire Prevention Bureau is generally preferred to the work schedule of other lieutenants in the Department. The lieutenants assigned to the Fire Prevention Bureau work a 40-hour week, 8-hour day, Monday through Friday and do not work on holidays. There is really no persuasive rationale for granting them an additional 1% premium over what is paid to other lieutenants. There is insufficient evidence in the record to justify the continuation of the premium.

While it may be true that Fire Prevention Bureau personnel have more public contact than other firefighters, presumably employes who are inclined toward public contact would be assigned to the Bureau. Additionally, lieutenants assigned to the Fire Prevention Bureau are not regularly engaged in firefighting and exposed to the hazards of firefighting as are their counterparts assigned to fire companies.

Based on the above facts and discussion thereon the undersigned renders the following

AWARD

That the Village's final offer be awarded and that the 1% differential paid to lieutenants assigned to the Fire Prevention Bureau be eliminated.

5. Paramedic Stipend

Union's Final Offer:

Increase paramedic stipend to \$2,100 per year effective May 1, 1993.

Village's Final Offer:

"Effective May 1, 1992, a fire fighter who was certified and functioning as an EMT-P shall receive a stipend of \$1,650 per fiscal year (pro rata if less than a year). Effective May 1, 1994, a fire fighter who was certified and functioning as an EMT-P shall receive a stipend of \$1,750 per fiscal year (pro rata if less than a year).

Union's Position:

Firefighter paramedics work hard under increasingly hazardous conditions to provide high quality service to the Village's citizens. Additionally, the industrial activity in the Village generates a substantial number of calls involving industrial injuries or exposure to hazardous chemicals. Firefighter paramedics are also confronted with increasing exposure to Aids, new strains of tuberculosis and hepatitis B. These increased risks require increasingly complex procedures and training.

The work load of the paramedics, based on the number of runs divided by the number of paramedics, is equal to or greater than

the work load of other paramedics who are paid significantly more than the Village's paramedics.

The Village may argue that the addition of a third ambulance will decrease the work load of the individual paramedic, however the Union disputes this noting that a third ambulance may reduce the load of the individual paramedic, but it will add to the time paramedics are assigned to ambulances. The real relief for paramedics is to be rotated off ambulances and assigned to engine companies. The addition of a third ambulance will reduce these rotations substantially.

The Village's exhibits support the Union's final offer. It must also be noted that the Arlington Heights' paramedic pay for 1992 is \$3,085, however that rate of pay is based on a percentage of 7.6% above the maximum firefighter base salary and therefore increases as the maximum salary increases. Oak Park compensates its paramedics on a 5.5% rate above the firefighters' top salary and .5% for each re-certification after two years to a maximum of 2%.

The Village's proposal increases the paramedic pay to \$1,650 in 1992 and to \$1,750 in 1994. The Village is already at the low end in paramedic pay, regardless of which group of comparables is considered, and the Village's paramedics will continue to be below the average because paramedic pay is increasing either as a result of being tied to the maximum salary which increases annually or because of market forces.

The Union's proposal moves the paramedics' pay close to the median or average of paramedics for the comparables. This was the

same rationale advanced by the Village for granting an equity adjustment to police, i.e., to bring police to the median of the comparables.

The Village will undoubtedly argue that the aggregate value of its Kelly day agreement and paramedic proposal represents a balance between the police and fire package, and to award the Union's paramedic pay proposal would upset the balance on a package basis. This concept of parity between the police and fire ignores the fact there are particular aspects of each group's wages and conditions of employment which are not shared in common and are most readily resolved through external comparables. Although Arbitrator Goldstein apparently adopted the Village's concept, this concept ignores the external equities and ignores the difficulty in placing values on various elements of police and fire compensation.

The Union also argues that its proposed increase in paramedic pay would become effective in 1993, giving the Village an additional year of savings before bringing the pay to the median of the comparables. It is further noted by the Union that it has agreed to freeze the paramedic pay of the eight lieutenant/paramedics at \$1,150.

Village's Position:

As Arbitrator Goldstein noted in City of DeKalb, the arbitrator "must presume that in the past the parties reached an agreement in good faith and considered all the factors they believed pertinent." Since the parties agreed that it was reasonable to set the annual EMT-P stipend for the 1990-1991 and

1991-1992 fiscal years at \$1,150, the Village's final offer to increase the annual EMT-P stipend by 43.5% to \$1,650 effective May 1, 1992, and by an additional 6% to \$1,750, effective May 1, 1994, is clearly more reasonable than the Union's final offer to nearly double the stipend effective May 1, 1993.

This issue must be resolved on the basis of looking at what the total top step annual salary of a Village firefighter/paramedic would be and how that compares with the top step annual salaries for firefighter/paramedics working for comparable jurisdictions. Based on the Village's final salary and paramedic stipend the Village will rank 4th among the comparables at the top step for firefighter/paramedic.

Even when viewed from the narrow perspective of the salary difference between a top step firefighter and a top step paramedic, the Village's final offer is still clearly more reasonable. In 1990, when the parties were last in negotiations, the stipend was set at \$1,150 which put the Village ahead of only one other comparable. Under the Village's final offer it will move ahead of Highland Park and Morton Grove.

It is further noted by the Village that the Union made no proposal to increase the paramedic stipend in 1990 and did not do so in its initial proposal in the negotiations which resulted in the current impasse. A proposal regarding the paramedic stipend wasn't introduced until two months after the initial proposal was made.

The Village also challenges the Union's assertion that paramedics are doing more than they used to and that paramedics

are making more runs than paramedics employed by comparable jurisdictions. The testimony of a Union witness established that paramedics aren't doing anything more than they were doing at the time the last contract was voluntarily settled. The amount of time required to become certified has remained substantially unchanged since 1987. While the Union introduced evidence that the Village ranks 3rd out of 11 comparable jurisdictions with an average of 105.02 runs per paramedic for 1991, the total number of runs was greater in both 1987 and 1989. Relevant in this regard is Arbitrator Goldstein's award in 1990 in which he rejected the Union's final offer on paramedic stipend even though he noted that in 1988 the Village "had the highest number of emergency medical calls among the comparables."

DISCUSSION:

The evidence establishes that the median stipend for a paramedic, utilizing the comparable jurisdictions proposed by the Village, is \$2,100 per year for calendar year 1992. (Village Ex. 52) At least two of the comparables, which have tied the paramedic stipend to the maximum firefighter salary by using a percentage of the maximum firefighter salary to arrive at the paramedic stipend (Arlington Heights and Oak Park), will receive annual increases as the maximum salary for firefighter is increased.

Under the Village's final offer the paramedic stipend will increase to \$1,650 effective May 1, 1992, and to \$1,750 effective May 1, 1994. Assuming, arguendo, none of the comparable jurisdictions increased the paramedic stipend during 1993 and

1994, the Village's stipend paid to paramedics would be \$450 below the median in 1992 and \$350 below the median in 1994. If, as the Village asserts, its objective is to be at least at the median, it falls far short of obtaining that objective under its final offer.

Under the Union's final offer, \$2,100 effective May 1, 1993, the Village will be at the median stipend paid paramedics for calendar year 1992. As the stipend under the Union's final offer is a fixed dollar amount it will not increase as the maximum salary of firefighters increases. The stipend received by the Village's paramedics will remain at the median only if there are no increases in the paramedic stipends paid by the comparable jurisdictions.

It is argued by the Village that one must look not only at the stipend received by paramedics but also at the maximum salary received by firefighter/paramedics. In the opinion of the undersigned, such argument is not totally persuasive because the functions performed by paramedics are in addition to functions performed by firefighters. There is a value placed on that function which is expressed in dollars per year--the stipend. If a jurisdiction compensates its firefighters at a higher level than other jurisdictions and then uses that higher level to reduce the paramedic stipend, the jurisdiction is essentially having paramedics subsidize the higher firefighter salaries. The net result is to offset the compensation paid to paramedics and distribute the monies to all firefighters.

Additionally, there may very well be a reluctance on the part of paramedics to continue in that capacity if the differential

between the maximum salary received by a firefighter/paramedic and a firefighter is significantly reduced or fails to reflect the value of the function accorded it by comparable jurisdictions.

According to the Village, there is a presumption, as noted by Arbitrator Goldstein in his decision in the City of DeKalb, that the arbitrator "must presume that in the past the parties reached an agreement in good faith and considered all the factors they believed pertinent." Arbitrator Goldstein's statement in DeKalb can hardly be applicable in the instant case when in the prior arbitration between these parties regarding the paramedic stipend he concluded that the merits supported the Union's position but he did not award in favor of the Union for other reasons. In the previous interest arbitration the Union sought to increase the paramedic stipend. In that arbitration Arbitrator Goldstein accepted the Village's proposal stating at page 76 of his award, "Sometimes, inequities must be left to future bargaining." He also stated at page 76: "If this were the only issue on the table, I would find for the Union." It is difficult to conclude, as the Village suggests, that the parties reached a good faith agreement and considered all of the factors when the paramedic stipend was established considering the statement of Arbitrator Goldstein.

The "future bargaining" referred to by Arbitrator Goldstein has arrived. Apparently the paramedic stipend gained in significance as the paramedic stipend increased in the comparable jurisdictions resulting in an increasing deviation between the median stipend and the stipend paid by the Village.

Both parties reach different conclusions regarding the work load of the Village's paramedics and the complexity of the job. Based on the evidence, it is the judgment of the undersigned that the job has not materially changed, either in terms of work load or complexity, over the last number of years. Indeed, the evidence suggests the work load was heavier in prior years. There is also nothing in the record to suggest that the paramedics employed by the Village are performing in a different manner than other paramedics are performing which would warrant a lower stipend for the Village's paramedics than that received by paramedics in the comparable jurisdictions.

Clearly, increasing the paramedic stipend from \$1,150 to \$2,100 represents a substantial increase, as noted by the Village-- almost a doubling of the stipend. However, where the increase brings the paramedic stipend to the median among the comparable jurisdictions, the undersigned is of the opinion that such an increase is justified.

For the above stated reasons the undersigned renders the following

AWARD

That the Union's final offer regarding the paramedic stipend is awarded; the paramedic stipend will be \$2,100 annually effective May 1, 1993.

6. Acting Pay

Union's Final Offer:

The Union's final offer is as follows:

"Employees assigned to work and perform the duties of a higher rank shall receive a premium of 5% in additional pay over their regular rate of pay for all hours worked in such capacity provided the employee is assigned to such duties for a minimum of 12 hours of the shift."

Village's Final Offer:

The Village's final offer "with respect to acting pay is to maintain the status quo and, accordingly, retain Section 22 of Article XII without change."

Union's Position:

The Union contends that the overwhelming pattern within the comparable communities is to pay additional compensation when lower rank employes perform the duties of a higher rank. Even if the Village's comparables are accepted, a majority of the comparables provide compensation when an employe is acting in a higher rank. It is emphasized by the Union that it is seeking only \$18.84 per shift when a firefighter is acting as a lieutenant. Additionally, the increase wouldn't become effective until May 1, 1993.

Although the Village attempted to diminish the duties performed when a firefighter is acting as lieutenant, whenever an employe is assigned to act in a higher rank the employe is responsible for performing the duties of the higher rank. The Department even has a rule relating to "Officer in Charge," or acting officer, which provides: ". . . exercises the same authority and has the same responsibility as his commanding officer, subject to higher authority." Additionally, being in

charge of a company is the function that carries the most responsibility and requires the greatest expertise.

The acting officer performs more than custodial functions, preparing various reports relating to fire calls and structural fires. Acting officers are afforded the same authority as regular officers with respect to using their discretion and judgment when responding to alarms in situations where there could be extenuating circumstances.

The Union recognizes that its proposal on acting pay represents an effort to establish compensation for a practice which is not presently recognized. However, absent any willingness on the part of the Village to deal with this issue, and in view of the final offer strictures of the Act, the Union's proposal represents a reasonable starting place within the context of this proceeding to address the firefighter's equitable interest.

Village's Position:

The Village notes that bargaining history is particularly relevant in dealing with this issue as it was resolved in the first negotiations between the parties. During those negotiations, the Village made it known to the Union that the Village wished to continue the practice of having firefighters or lieutenants assigned in acting capacity from time to time. The Village pointed out that its first priority in making assignments to serve in an acting capacity was to those employes on the current eligibility list in order to acquaint them with the duties and responsibilities of the higher rank "so that they would be

more prepared and better trained if and when they were promoted to that position." The Union expressed concern that the Village would utilize acting assignments on a more frequent basis if the Union agreed to the Village's proposal.

In order to address this concern the parties agreed to language currently contained in Section 22 of Article XII which limits the Village's ability to make acting assignments if the assignments exceed, in any significant way, the frequency of acting assignments made prior to January 1, 1988. The last sentence provides:

"If an arbitrator finds that the Village has violated this Section, the arbitrator shall have the authority to determine the appropriate remedy."

This protects the concerns expressed by the Union in the first bargaining between the parties.

During all subsequent negotiations which have occurred between the parties, the Union has not raised the issue of acting pay. Its initial proposals leading to the instant proceedings contain no reference to acting pay. It wasn't until two months after the initial proposal was presented that the issue of acting pay was raised by the Union.

Although the Union claims that there has been an increase in acting assignments, the evidence does not support such a conclusion. The evidence indicates that assignments as acting lieutenants has decreased between 1990 and 1992. The number of times in which bargaining unit employes have been assigned to serve in acting capacity as lieutenants or captains decreased from 817 times for calendar year 1990, to 686 times for calendar 1992.

It is also claimed by the Village that there is internal comparability data which supports its position. Higher ranking personnel who are not in the bargaining unit are assigned to acting positions for which they receive no additional compensation. Similarly, the FOP agreement does not provide for acting pay.

The Village further notes that the higher salaries received by the Village's firefighters more than adequately compensate firefighters for the occasions when they are assigned to serve in an acting capacity. The Village contends its firefighters have been, and will continue to be, well paid vis-a-vis the comparable jurisdictions.

The Union's proposal amounts to an increase of approximately \$140 per firefighter, and when consideration is given to the fact that firefighters will be receiving, under the Village's final salary offer, over \$1,000 more than the average of the comparables, there is no justification for acting pay as proposed by the Union. Additionally, in several of those jurisdictions which do pay acting pay, it is limited to when the employe is in charge of the entire station, not a company. When a firefighter is acting as a lieutenant there will be another officer, either a lieutenant or captain, who will be on duty at the same time.

DISCUSSION:

Bargaining history regarding acting pay establishes that the issue was addressed in the parties' initial negotiations. At that time the Village expressed the desire to continue the previous practice of assigning firefighters to lieutenant positions and

lieutenants to captain positions in an acting capacity without additional compensation. The Union expressed concern that without some limitation the Village could abuse the procedure. The parties agreed to a *quid pro quo*; the Village could continue its practice of making acting assignments without compensation but agreed to limit the frequency of such assignments so that they did not exceed in any significant way the acting assignments made prior to 1988. The issue of acting pay was not raised again until two months after the Union submitted its initial proposal for the agreement currently in dispute.

Certainly the Union is not bound in perpetuity to its original agreement relating to acting pay; the Union has the right to propose changes in acting pay. The Union argues that it is proposing changes in the acting pay provision based, at least in part, on the fact that a number of the comparable jurisdictions have some form of acting pay.

A review of the evidence indicates that there are a number of forms of acting pay. One jurisdiction pays a daily rate when a firefighter is acting as a lieutenant. Another jurisdiction pays an hourly rate when a firefighter is serving as an acting lieutenant. Another jurisdiction pays a percentage of the difference between a lieutenant's salary and a captain's salary when the lieutenant is acting as a captain. Another jurisdiction compensates a firefighter acting as a lieutenant overtime hours based on the number of hours the firefighter serves as an acting lieutenant. Another jurisdiction pays a firefighter acting as a lieutenant at Step 4 of the lieutenants' salary schedule. Some of

the jurisdictions require a firefighter acting as a lieutenant to be in sole charge of the station before receiving acting pay. Some of the comparable jurisdictions do not provide for any form of acting pay.

It is readily apparent that there are a number of forms of acting pay, however, none of the comparable jurisdictions compensate firefighters when serving in an acting capacity in the precise manner proposed by the Union. In Morton Grove and Highland Park, where firefighters are paid a percentage over their regular salary when acting as a lieutenant, they must be in charge of the station in order to receive the acting pay.

Given the wide diversity among the comparables in addressing the issue of acting pay, and the lack of any comparable addressing the issue in the precise manner as proposed by the Union, it is the opinion of the undersigned that this matter should be left to the parties for further negotiations. The fact that this issue had not been raised in previous negotiations and was raised late in the negotiations which preceded these proceedings suggests there is no great urgency in resolving this issue.

Although the Village asserts there are internal comparables which support its position, including non-bargaining unit personnel in the Fire Department and the FOP contract, the undersigned is not persuaded those comparables are controlling. The command staff of the Fire Department is subject to the rules and regulations unilaterally promulgated by the Village, therefore the command staff has no alternative but to comply with the rules and regulations. Police have a different organizational structure

and do not function in the same manner as do firefighters. Police officers frequently act alone whereas firefighters act as a team with the lieutenant leading the efforts of the fire company.

Based on the above discussion and having given due consideration to the statutory guidelines, the undersigned renders the following

AWARD

That the Village's final offer is awarded and no change is made in Article XII, Section 22.

Non-Economic Issues

1. Union's Right to File Grievances

Union's Final Offer:

Modify Article XIII, Section 1 to read as follows:

"Section 1. Definition. A 'grievance' is defined as a dispute or difference of opinion raised by an employee of the Union against the Village involving the meaning, application or an alleged violation of an express provision of this Agreement. No settlement of a grievance filed by an individual employee without Union representation shall be inconsistent with the terms of this Agreement."

Village's Final Offer:

Retain Article XIII, Section 1 without modification.

Union's Position:

In legal terms, the effect of the existing language is to deny the Union "standing" to enforce the terms and conditions of the contract. The Village has recognized the Union is the exclusive bargaining representative for firefighters and lieutenants. Yet, under the existing language the Union has no

standing to file a grievance to enforce the terms and conditions of the contract it has negotiated and executed.

Section 16 of the Act expressly authorizes that "suits for violation of agreements . . . may be brought by the parties to such agreements in the circuit court . . ." (Emphasis added.) This provision of the Act parallels Section 301 of the Federal Labor-Management Relations Act. Questions concerning the interplay between organizational interests of the parties to the contract and their effect on individual rights of employes covered by the contracts have been the focus of some of the major landmark decisions in labor law. Textile Workers v. Lincoln Mills, 353 U.S. 448, 40 LRRM 2113; Smith v. Evening News Association, 371 U.S. 195, 51 LRRM 2646. The standing of a union to enforce the terms of the contract to which it is a party is a given in these cases.

In the Village, if a contract violation occurs and the individual employe is indifferent, fearful or perhaps opportunistic, the President of the Union must cajole and persuade the employe to file a grievance. The fact the Union has in the main been able to surmount this hurdle organizationally is beside the point. It is a burden that serves no apparent interest other than perhaps a Village calculation that the language may on occasion result in a situation where a contract violation is not challenged by the filing of a grievance.

A second reason for not retaining the previously negotiated language is that it insinuates that the Union's only legitimate interest is in filing grievances "concerning alleged violations of

Union rights or privileges." This turns the hierarchy of contract values upside down and elevates the peripheral and incidental to primacy.

Village's Position:

During the first negotiations between the parties the Union "did propose that the Union would have the right to file a grievance with respect to any matter the Union felt violated the collective bargaining agreement even if it only involved one employee and that employee did not want to file a grievance on his behalf." In response to the Union's position, the Village repeatedly expressed the belief that a grievance shouldn't be processed if the employee who was allegedly adversely affected did not want to file a grievance. The parties proceeded to negotiate contract language which met the needs and interests of both parties. In response to the Union's concern that an employe might be unwilling to file a grievance, the Village proposed, and the Union agreed, to contract language that gave the employe the authority to authorize the Union to file and process a grievance on the employe's behalf.

The parties also agreed to contract language protecting the Union in the event an employe decided not to file a grievance by providing that such decision would not set a precedent or be interpreted as a past practice binding upon the Union in future instances involving similar facts and circumstances.

Additionally, language was incorporated into the agreement which grants the Union the right to file grievances in its own name in those areas which are exclusively Union issues.

This language was retained without change in the second collective bargaining agreement and did not become an issue in the instant dispute until nearly two months after the Union submitted its initial proposals.

In view of the uncontroverted evidence with respect to the balanced resolution reached during the first negotiations; the fact that the parties agreed to the verbatim language in the second negotiations; and the fact that despite presenting more than a dozen non-economic issues at the outset of negotiations in 1992 the Union's proposed language regarding this issue wasn't submitted until two months after negotiations began, it is respectfully submitted that the "other factors" cited by Arbitrator George Roumell in his City of Chicago decision fully support maintaining without change the compromise language originally agreed to by the parties in 1988.

The Village further asserts it is clear from the record evidence that the Union has been able to obtain the requisite authorization to file grievances in those situations in which the Union believes grievances should be processed. The Union was unable to cite a single example of where the Union felt a grievance should be filed when in fact a grievance wasn't filed because of the failure of an employe to sign off on the grievance. Consistent with the Union's acknowledgment that there has been no retaliation against an employe who has filed a grievance, the Union concedes that two of the Union members who negotiated the first agreement have been promoted to positions outside of the bargaining unit. The Union concedes that one of the two employes

had taken the lead role in processing grievances during his tenure as Union President.

DISCUSSION:

The definition of a grievance in the parties' agreement is somewhat unusual in that the Union cannot file a grievance on behalf of an employe unless the employe authorizes, in writing, the Union to file and process a grievance. Despite this rather unique requirement, there is nothing in the record to support the conclusion that this has proven a hindrance to the Union in filing and processing grievances. The Union was unable to cite a single example where a grievance was not filed and processed where there was an alleged contract violation.

The Union concedes that it has "organizationally" overcome any impediment to the filing and processing of a grievance. Thus, the Union's request to modify the definition of a grievance is a matter of form over substance. The existing language has not interfered with the Union's ability to enforce the terms of the collective bargaining agreement. Employes have apparently not been deterred by fear of retaliation, indifference or opportunism from pursuing their rights under the agreement.

Considering the fact the present language has not served as an impediment to the Union enforcing the terms of the collective bargaining agreement, the undersigned can find no compelling reason at this time to change the language contained in Article XIII, Section 1.

Based on the above facts and discussion thereon, the undersigned renders the following

AWARD

That the Village's final offer retaining the existing language of Article XIII, Section 1 without modification is awarded.

2. Discipline

Union proposes to delete exclusion of discipline from the scope of the grievance and arbitration procedure, and the Village proposes to delete reference to "just cause" from the management rights article.

Union's Final Offer:

Delete the current language of Article XII, Section 3 and substitute the following language:

"The Employer agrees that employees may be disciplined and discharged only for just cause. Where the Employer believes just cause exists to institute disciplinary action, it shall have the option to assess the following penalties:

- a) Oral reprimand
- b) Written Reprimand
- c) Suspension
- d) Discharge

If the Employer decides to initiate discipline against any employee, the following procedures shall apply:

1) The Employer shall serve written notice of the charges and proposed penalty upon the employee involved.

2) Upon receipt of the notice, the employee may elect to appeal the proposed disciplinary action either to the Board of Fire & Police Commissioners (Board) or subject to approval by the Union, through the grievance/arbitration procedure. The employee shall notify the Employer of his election in writing within ten (10) calendar days of receiving notice of the Employer's notice of proposed disciplinary action.

3) Board of Commissioners Option. If the employee notifies the Employer of a desire to have the charges heard before the Board, the Employer may proceed with

the proposed disciplinary action in accordance with the procedures set forth in Chapter 24, Section 10-2. 1-17, subject to the employee's rights to appeal and hearing described therein. The Employer shall not file any formal charges with the Board or implement any suspension before the employee has had an opportunity to exercise his election of remedies within the ten (10) day period. The time period may be extended beyond ten (10) days by the mutual agreement of the parties.

4) Grievance/Arbitration Option. The Union may file a grievance as to a proposed disciplinary action (excluding oral reprimands) against an employee in accordance with Article XIII of this agreement, except that the grievance shall be filed at Step 4.

5) If the employee elects the Board option, the Employer may formally implement and the employee may contest, the charges in accordance with the provisions of Chapter 24 Ill. Rev. Stat. Sec. 10-2.1-17. If the employee does not elect the Board option and the Union decides to file a grievance, the grievance shall be arbitrated unless a settlement of the grievance acceptable to the employee, Employer and Union is reached. Pending the resolution of any grievance, the Employer may suspend an employee with pay or for a maximum of thirty (30) days without pay or with the approval of the Arbitrator, for a longer period provided that if the charges are not sustained, the employee shall be made whole for all wages and benefits lost.

6) If the grievance is sustained by an Arbitrator, the Employer shall be bound by the Arbitrator's decision and shall not file charges as to the incident with the Board of Commissioners. If the Arbitrator finds just cause for the discipline or discharge, the Employer (i.e. the Fire Chief) may immediately implement the penalty sustained by the Arbitrator. The employee shall be bound by the Arbitrator's decision and shall not have any further right to contest such charges and penalty before the Board. Any appeal of an Arbitrator's award shall be in accordance with the provisions of the Uniform Arbitration Act as provided by Section 8 of the IPLRA, Ch. 48 Ill. Rev. Stat. Sec. 1608."

Village's Final Offer:

Retain the language contained in Article XII, Section 3. Delete the phrase "to discipline, suspend and discharge employees for just cause" from Article XVIII.

Union's Position:

It is the Union's position that the Village may not renew Article XII, Section 3 as part of the new contract without agreement from the Union to do so. Section 8 of the Act provides that the scope of the grievance arbitration procedure covers all employe disputes concerning the administration and interpretation of the agreement unless mutually agreed otherwise.

Section 8 of the Act is rather unique among collective bargaining laws. It requires agreement as to a substantive term of a contract, namely a grievance procedure providing for final and binding arbitration. Section 8 reflects the judgment of the General Assembly that an employe who is aggrieved of an action by an employer relating to the terms and conditions of employment should be able to seek resolution of the grievance through the contract grievance arbitration procedure. Binding arbitration of grievance disputes is a favored procedure. In Illinois this favored policy has been made mandatory ". . . unless mutually agreed otherwise."

The limitation on the scope of the grievance procedure inherent in Article XII, Section 3 lapsed with the expiration of the 1990-1992 contract. The second paragraph of Article XX, parallels Section 14(1) of the Act which provides:

"During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other party but a party may so consent without prejudice to his rights or position under this Act."

The limitation on the scope of the grievance procedure contained in Article XII, Section 3 cannot be a "condition of employment"

without contravening the requirements of Section 8 that such limitations be "mutually agreed." The Union has not agreed and therefore the Village has no authority to re-impose this language upon them as a condition of employment under the terms of the new contract.

In Will County Board and Sheriff of Will County and AFSCME Local 2961, Arbitrator Harvey Nathan described the mandatory force of Section 8 as follows:

"As we interpret Section 8 of IPLRA, unless there is some exclusion mandated by law, or the parties otherwise mutually agree, the agreement must contain a grievance and arbitration procedure covering all disputes concerning its administration or interpretation."

Nathan further concluded from his interpretation of Section 8 that it was therefore:

". . . not necessary to argue the statutory criteria of Section 14(h) on the scope of the grievance procedure. Limitations on jurisdiction must arise as a result of other laws and not on the basis of Section 14(h) criteria."

Arbitrator Ed Benn, in City of Springfield and Police Benevolent and Protective Association Unit No. 5, makes this point crystal clear. Apparently the city of Springfield made a similar contention to Arbitrator Benn as does the Village here.

Arbitrator Benn's response was as follows:

"It was in the context of the employer's **desired change away** from the statutory requirement for arbitration to a civil service type system in contravention of the statute that Arbitrator Nathan referred to the standard that 'in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking change.' Id. at 50. That analysis is not applicable where, as here the statute requires the change.

In this context the fact that the Union could point to no specific problems with their present system is immaterial. While ordinarily the inability of the party seeking to make the change to demonstrate need for the proposed change carries great weight, the statutory requirement for inclusion of arbitration supersedes that kind of consideration. Similarly, the parties' arguments concerning the standards utilized by arbitrators and the civil service commission and review of same, fairness of the hearing procedures, potential biases or lack thereof of commission members; authority of the commission and an arbitrator and similar contentions are likewise insufficient. The statute requires arbitration 'for disputes concerning the administration or interpretation of the agreement', or, as Arbitrator Nathan stated in Will County supra at 56, arbitration 'covering all disputes. . .'. The agreement must therefore have such a procedure."

Arbitrators have consistently rejected efforts to limit the scope of the grievance procedure to matters outside the jurisdiction of fire and police boards. In addition to the awards of Arbitrators Nathan and Benn, Arbitrators Briggs, Doering and Larney have addressed the issue.

In Arlington Heights the dispute involved a first contract and the union was the moving party to include just cause for discipline language in the management rights clause. Management's position was not to mention it at all. Arbitrator Briggs accepted the union's position concluding that "the Union's insistence on just cause for discipline is entirely in line with prevailing arbitral thought."

Arbitrator Briggs concluded that inserting just cause in the contract was a matter in which "fundamental equity and fairness considerations . . ." were predominant.

The Union asserts the prevalence within comparable communities should not be a controlling factor on this issue. Nevertheless, among all the communities proposed as comparables

with contracts, 4 of these 11 jurisdictions have contracts recognizing the right of employes to grieve discipline through grievance arbitration.

The most common approach to grieving disciplinary action is the option approach or two track approach. An employe faced with disciplinary action is given the option of appealing through the statutory Fire and Police Commission procedure or waiving that, and, if the Union approves the arbitration of the grievance, proceeding along the grievance arbitration track. In order to implement this approach, it is necessary to grant contractually to the Chief or some other appropriate Village official other than the Fire and Police Commissioners the authority to suspend in excess of five days and to discharge.

Disciplinary matters will inevitably become intertwined with contractual interpretation questions which can be best resolved by providing for a grievance arbitration path which can resolve such disputes in a single forum.

During negotiations when the issue of scope of the grievance procedure was raised, the Village was willing to conceptually discuss the issue, but it made clear that it would not under any circumstances alter its position that Article XII, Section 3 would be part of a new contract. Under these circumstances it was not feasible to invest energy in discussing specific contract language. It is submitted that a better course of action is to adopt the Union's position as to the right to grieve disciplinary matters under the grievance arbitration procedure, but remand the question to the parties pursuant to the arbitrator's authority

under Section 14(f) to negotiate specific language to implement this right. This was the approach taken by both Arbitrators Doering and Benn in the Oak Park and Springfield cases, respectively.

Village's Position:

Contrary to the Union's assertion, the IPLRA does not require that the parties' collective bargaining agreement cover discipline with the attendant right to grieve discipline through the grievance and arbitration procedure. The Union bases its contention on Section 8 of the Act which provides that the agreement, unless the parties agree otherwise, must "provide for final and binding arbitration of disputes concerning the administration and interpretation of the agreement . . ."

It is axiomatic that a grievance procedure which specifically defines a grievance, like the parties' agreement does, ". . . as a dispute or difference of opinion . . . involving the meaning, application or an alleged violation of an express provision of this agreement," extends only to a dispute or difference of opinion involving something that is expressly covered by the parties' agreement. If something is not covered, it is not grievable and cannot be taken to arbitration. See Croom v. City of DeKalb, 389 N.E.2d 647 (2d Dist. 1989).

Directly relevant to the issue in the instant case the Illinois Educational Labor Relations Board in University of Illinois at Chicago, 8 PERI Para. 1014 (IELRB Opinion and Order December 26, 1991) stated:

". . . Our Act does not require that particular wages, hours, or terms and conditions of employment be included in a collective bargaining agreement in order that disputes about these matters become subject to the grievance and arbitration process mandated by Section 10(c). For example, the parties cannot be required to include a discipline and discharge provision in their contract."

Since Section 8 of the IPLRA parallels Section 10(c) of the IELRA, it is clear that the same conclusion would follow under the IPLRA, i.e., that if a matter such as discipline and discharge is not covered by the parties' agreement, it is not subject to the grievance and arbitration procedure that is contained in said agreement.

The Village contends that the interest arbitration decisions on which the Union relies in asserting that the contract must, by law, cover discipline are easily distinguishable. In City of Springfield and County of Will both arbitrators ruled that arbitration must extend to all matters covered by the contract, however, both arbitrators held that disciplinary matters must be subject to the grievance and arbitration procedures because the issue of discipline was covered in the applicable collective bargaining agreement. In City of Springfield Arbitrator Benn noted:

"The parties have already adopted the concept of 'just cause' as the standard of review of disciplinary matters. See Article 14.1 (A) of the prior Agreement."

In County of Will, Arbitrator Nathan noted the collective bargaining agreement contained "the statement that 'disciplinary action may be imposed upon an employee only for just cause.'" This was a necessary predicate for his interpretation of Section 8 of the Act that the parties' "Agreement must contain a grievance

and arbitration procedure covering all disputes concerning its administration or interpretation."

While in Village of Arlington Heights Arbitrator Briggs accepted the union's proposal to give employes the option of appealing discipline to either the fire and police commissioners or to arbitration, there are distinguishing factors. First, the arbitrator was deciding unresolved issues for the very first contract. The parties had not voluntarily resolved the issue of discipline in prior negotiations. Second, in the Village of Arlington Heights the union's final offer on management rights had been accepted and included a provision requiring just cause as the appropriate criterion for employee discipline.

In Oak Park, Arbitrator Doering found that the parties had previously agreed to the management rights clause, that the employer had a contractual right to "discipline or discharge for just cause" and it was "appropriate that the 'just cause' standard agreed to in the contract . . . be susceptible to enforcement."

Although in the City of Markham Arbitrator Larney accepted the union's position that an employe disciplined should have the option of either the Fire and Police Commission or the grievance and arbitration procedure, he did so on the basis the city of Markham had agreed to handle disciplinary grievances through the contractual grievance and arbitration procedure with another bargaining unit. In this case just the opposite exists; the Village's only other collective bargaining, with the FOP, specifically provides "that any dispute or difference of opinion concerning a matter or issue subject to the jurisdiction of the

Skokie Police and Fire Commission shall not be considered a grievance under this Agreement."

In the instant case, the parties have not agreed to a provision providing that discipline shall be for just cause. Indeed, that is one of the issues to be decided by the Arbitrator with respect to the management rights issue and is directly related to this issue as well. This means that there is a fundamental difference between the posture in which this issue is being presented to this arbitrator and the posture in which the issue was presented in the other cited cases.

The Village asserts there are at least five compelling reasons why the arbitrator should not disturb the parties' voluntarily negotiated agreement concerning the forum for disciplinary appeals.

During the first negotiations between the parties the issue of how discipline would be handled was discussed and the parties reached an agreement and incorporated language into their agreement. The Union did not raise the issue in 1990 when the parties were bargaining. It was not until nearly two months after the negotiations for a successor agreement to the 1990-1992 began that the issue of discipline was raised.

The Union has not carried its burden of proving a compelling need to change the status quo. As the moving party in this issue and it was incumbent upon the Union to present evidence that the Commission is not neutral and/or does not have a sufficient level of expertise. The Union failed to present any such evidence.

The Union has not offered the Village a *quid pro quo*. This arbitrator ruled in School District of River Falls, WERC Decision No. 26296-A (July 20, 1990):

"Once it is determined which party is seeking to change the status quo, that party has the burden of establishing the requisite basis for the change and an offer of a *quid pro quo*."

The comparability data does not support the Union's proposal. As previously noted the internal comparable, the FOP agreement, supports the Village's position. Of the 15 jurisdictions the parties have used for comparability purpose, ten have negotiated agreements. Among those ten, six have contract provisions which permit employes to grieve discipline, and the other four provide that the terminal step for disciplinary appeals is the municipality's fire and police commission.

There are specific problems with the Union's "Combination Approach" whereby an employe who wishes to appeal a disciplinary decision to the Board of Fire and Police Commissioners would have a right to appeal the decision through the statutory administrative review procedure or through arbitration:

- "1. The unitary administrative review process which currently exists for appealing disciplinary decisions of the Board of Fire and Police Commissioners would be bifurcated.
2. It would encourage forum shopping with respect to the appeal of decisions issued by the Board of Fire and Police Commissioners.
3. If an employee is given the right to appeal a just cause decision of the Board of Fire and Police Commissioners to arbitration, it would result in a de novo hearing before the arbitrator which would, for all intents and purposes, double the Village's time, cost and expenses in administering discipline.

4. It would result in 'reverse double jeopardy.' i.e., an employee who loses before the Board of Fire and Police Commissioners would have the right to a de novo hearing before an arbitrator to contest the very same discipline which the Board of Fire and Police Commissioners has already determined there is just cause to administer. Just as an employee should not be tried twice on the same disciplinary charges when a decision favorable to the employee is rendered by one tribunal having jurisdiction over the matter, an employee should not have the right to a second hearing before a different tribunal when the first tribunal has already determined that there is cause for discipline."

There are also numerous other problems with the Union's proposal which would make the procedure, as proposed by the Union, unworkable. The Union's proposal would unduly inject the arbitrator into the Employer's disciplinary process. Under the Union's proposal, the maximum an employe could be suspended without the arbitrator's approval would be 30 days. Under the Union's proposal the employe would have 10 days to decide whether to appeal the matter to either the Fire and Police Commission or through the grievance and arbitration procedure. If the employe chooses the latter it goes to Step 4 which provides for a meeting with the Village Manager within 14 days and a decision by the Manager or his designee must be rendered within 10 days. If the matter is not resolved and proceeds to arbitration each party has 14 days after the panel is received to select an arbitrator, assuming either party doesn't exercise its right to strike the entire panel.

Before the entire procedure has been completed the Village would have to either recall the employe or put the employe on leave with pay pending the arbitration decision. The Union's

proposal is not only contrary to the role which an arbitrator plays in disciplinary matters in the United States, but it is totally unworkable as a practical matter.

DISCUSSION:

The threshold issue to be addressed is the Village's request to delete from Article XVIII, Management Rights, the language "to discipline, suspend and discharge employees for just cause." The Village's intent to remove this language is apparently in response to Arbitrator Nathan's interpretation of Section 8 of the Act. In Will County, Arbitrator Nathan concluded that Section 8 requires "the agreement must contain a grievance and arbitration procedure covering all disputes concerning its administration or interpretation."

It is persuasively argued by the Village that if there is no provision in the agreement covering a particular matter then that matter is not subject to the requirements of Section 8, and hence not subject to the grievance and arbitration procedure. Therefore, if reference to "just cause" is deleted from the agreement the issue of just cause is not subject to the grievance and arbitration procedure. It is further noted by the Village that its proposal to delete just cause from the agreement distinguishes this case from the cases cited by the Union. In the cases cited by the Union, just cause was incorporated into either the pre-existing contracts or the provisions to which the parties had already agreed where the first contract was in issue before the arbitrator. The Village emphasized that the issue of whether just cause should be part of the new agreement is in dispute here.

It is difficult to conceive of a concept more fundamental to a collective bargaining relationship than that of just cause. In Arlington Heights, Arbitrator Briggs concluded: "The Union's insistence on just cause for discipline is entirely in line with prevailing arbitral thought." He went on to say at page 75 of his decision, ". . . suffice it to say that the 'just cause' provision in the Union's final offer on the management rights issue is reasonable." The language the union in Arlington Heights proposed be included in the management rights provisions read, "to discipline, suspend and discharge employees for just cause,"-- identical to the language which the Village is seeking to delete from the agreement. Arbitrator Briggs went on to state at page 100 of his decision: "The just cause standard is one of the most well-accepted tenets of the union-management relationship." The undersigned shares Arbitrator Briggs' view of the just cause standard.

The Village offered scant rationale for its proposed deletion of just cause from the agreement, other than its implicit intent to preserve the Fire and Police Commission's jurisdiction over discipline. While this may be a laudatory objective from the Village's perspective, the elimination of the just cause standard from the collective bargaining agreement is not, in the words of Arbitrator Briggs, "in line with prevailing arbitral thought." This arbitrator can find no basis for deleting the concept of just cause from the collective bargaining agreement.

The undersigned recognizes that by retaining the just cause standard in the agreement it becomes subject to the grievance and

arbitration procedure "unless mutually agreed otherwise." Under the existing language of Article XII, Section 3 those matters under the jurisdiction of the Fire and Police Commission, including discharge and discipline, are excluded from the grievance and arbitration procedure contained in the agreement. This effectively bars contractual enforcement of the just cause standard.

It is the opinion of the undersigned, and of other arbitrators, that the just cause standard should be enforceable under the contractual grievance and arbitration procedure. At a very minimum an employe should be afforded the option of exercising his contractual rights to the grievance and arbitration procedure or his statutory right to a hearing before the Fire and Police Commission.

The Village raised a number of objections to this "two track" system which would permit an employe to elect either the grievance and arbitration procedure, subject to the Union's concurrence, or the Fire and Police Commission in matters of discipline. One such objection was the possibility of "forum shopping." Arbitrator Briggs rejected this argument stating:

"The only way such a result would occur would be if one procedure or the other were perceived by employes as more just. Clearly, if one of them were, it should be favored by employees and management alike."

Only the Union offered specific language regarding the inclusion of discharge and discipline under the grievance and arbitration procedure. This is understandable in light of the fact the Village proposed maintaining the status quo. In that the undersigned has concluded that discharge and discipline should be

subject to the grievance and arbitration procedure, if requested by the employe and concurred in by the Union, and the fact the Village made no language proposal in this regard, it must be concluded that bargaining has not run its course.

Although the Union made a specific contractual proposal to implement its final offer, there are procedural aspects of the Union's proposal which make its implementation in its present form untenable. Certainly the time lines contained in the Union's final offer would be difficult, at best, to comply with. Additionally, the Union seeks to limit the Village's authority to initiate discipline, a concept which the undersigned does not support. It makes no sense whatsoever for the Village to have to obtain permission from an arbitrator or anyone else to discipline an employe. Additionally, the language adopted to implement the two track system should clearly provide that the selection of either procedure, the grievance and arbitration procedure or the Fire and Police Commission, is mutually exclusive and the selection of one constitutes a waiver of the employe's right to pursue the matter in the other forum.

The parties are certainly capable of drafting language which implements the concept that discharge and discipline is subject to either the grievance and arbitration procedure, subject to concurrence by the Union, or the Fire and Police Commission. Additionally, the parties are competent to negotiate language which comports to the principles outlined above. In the event the parties are unable to draft such language, the undersigned will do so.

Therefore, the undersigned remands to the parties for further bargaining the language to be adopted to incorporate discharge and discipline into the grievance and arbitration procedure and the modification of Article XII, Section 3 to permit discharge and discipline to be submitted to the grievance and arbitration procedure or to the Fire and Police Commission. The parties will be given two weeks, or longer if they mutually agree, to negotiate the above referenced language. If the parties fail to negotiate such language, the undersigned will formulate the language.

It therefore follows from the above facts and discussion and after giving due consideration to the statutory criteria that the undersigned renders the following

AWARD

That the Union's final offer of having discharge and discipline subject to either the grievance and arbitration procedure or the Fire and Police Commission is awarded. The Village's final offer to delete reference "to discipline, suspend and discharge employees for just cause" contained in Article XVIII is denied and the language will remain in Article XVIII. Details as to the implementing language is remanded to the parties for a period of two weeks, or longer if mutually agreed. Absent agreement as to the implementing language, the undersigned will draft such language.


Neil M. Gundermann, Arbitrator

Dated this 6th day
of July, 1993 at
Madison, Wisconsin.