

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration)	ISLRB No. S-MA-93-231
between)	
VILLAGE OF ELK GROVE VILLAGE)	HARVEY A. NATHAN, Chairman
and)	
VILLAGE OF ELK GROVE VILLAGE)	ROBERT C. LONG, Employer Delegate
FIREFIGHTERS ASSOCIATION LOCAL 3398,)	
INTERNATIONAL ASSOCIATION OF)	THADDEUS POPIELEWSKI, Union Delegate
FIREFIGHTERS, AFL-CIO, CLC)	

Hearing Held: August 20, 1993
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O P I N I O N A N D A W A R D

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	4
A. Description of the Proceedings	4
B. Description of the Parties	5
C. Description of the Department	6
II. STATUTORY REQUIREMENTS	9
III. BARGAINING HISTORY	11
IV. FINANCIAL CONSIDERATIONS	18
V. COST OF LIVING AND ECONOMIC CONSIDERATIONS	20
VI. COMPARABILITY	22
A. Internal Comparability	22
B. External Comparability	29
VII. DISCUSSION OF THE ISSUES	41
A. Economic Issues	41
1. Firefighter Salaries - 1993-94	41
2. Firefighter Salaries - 1994-95	44
3. Firefighter Salaries - 1995-96	46
4. Lieutenant Salaries - 1993-94	48
(a) Equity Increases	48
(b) General and Merit Increases	48
5. Lieutenant Salaries - 1994-95	59
(a) Equity Increases	59
(b) Merit Increases	59
6. Lieutenant Salaries - 1995-96	63
7. Longevity Pay - Firefighters	65
8. Longevity Pay - Lieutenants	67
9. Paramedic Stipends	69
10. Fire Apparatus Engineer Pay	70
11. Out of Classification Pay	71
12. Call Back Pay	75
13. Overtime Pay for Firefighters	76
14. Overtime Pay for Lieutenants	79
15. FLSA Overtime	83
16. Kelly Days	84
17. Computation for Hourly Rate of Pay	86
18. Minimum Staffing	89
19. Medical and Dental Insurance	93
20. Sick Leave	99
21. Sick Leave for Outside Employment	102
22. On-the-Job Injury	105
23. Maternity Leave	110

24. Paid Leave for Union President	112
25. Uniform Allowance	113
26. Safety Committee Pay	116
27. Training Costs	118
28. Duration and Term of Agreement	121
29. Retroactivity	122
B. Non-Economic Issues	
1. Dues Checkoff	123
2. Paychecks	125
3. Hiring	128
4. Discipline and Discharge	131
(a) Management Rights	131
(b) Grievability of Discipline and Discharge	133
5. Definition of Grievance	142
6. Limitations on Authority of Arbitrator	143
7. Grievances Concerning Merit Pay for Lieutenants	145
8. Waiver of Rights to Sue	149
9. Hours of Work	151
10. Job Duties	156
11. Duties of Lieutenants	158
12. Duty Trades	162
13. Shift and Station Bidding	164
14. Physical Fitness Examinations	167
15. Physical Fitness	170
16. Notice of Fire Training	173
17. Rules and Regulations	179
18. Insurance Coverage	182
19. Terms of Insurance Policies to Govern	183
20. Guarantee of Terms	187
VIII. DISSENT	189
VIII. AWARD	191

I. INTRODUCTION

A. Description of the Proceedings

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board, hereinafter referred to as the "Board." The parties are the Village of Elk Grove Village, hereinafter referred to as the "Village", and the Village of Elk Grove Village Firefighters Association, Local 3398 of the International Association of Firefighters, hereinafter referred to as the "Union." The panel of arbitrators consists of the chairman, Harvey A. Nathan, a professional arbitrator selected under the auspices of the Board, Robert C. Long, a partner in the law firm representing the Village, and Thaddeus Popielewski, a full-time firefighter and President of the Union.

The chairman was notified of his appointment on June 8, 1993.¹ A preliminary meeting was held with the parties on July 6, 1993. Thereafter hearings were held on the eleven dates listed above. On November 29, 1993, the chairman issued a Ruling on Economic Issues, defining those issues. On December 29th he issued an Additional Ruling on Economic Issues, clarifying the scope of some of the issues.² The parties submitted their final offers on December

¹ Official notification from the Board came later and was dated June 25, 1993.

² The parties briefed their positions for these Rulings.

10, 1993, and the final day of hearing addressed the parties' responses to the respective final offers.³ Briefs were exchanged on March 16, 1994, although the parties continued to submit additional information to the panel after the briefs were filed. A draft of this Opinion was submitted to the parties on August 29, 1994. The parties held an executive session on September 20, 1994, during which their representatives made additional presentations.

B. Description of the Parties

The Village is located northwest of the City of Chicago. It lies mostly in Cook County but some acreage on the south is within DuPage County. Its boundaries are O'Hare International Airport on the east, Thorndale Avenue on the south, Plum Grove Road on the west, and the Northwest Tollway on the north. It shares common borders with the communities (clockwise from the north) of: Rolling Meadows, Mt. Prospect, Des Plaines, Bensenville, Wood Dale, Itasca and Schaumburg. The Village has a residential population of approximately 33,000, and with regard to this population the Village is a fairly typical bedroom community. However, what distinguishes the Village from other similarly sized communities is the presence of the largest industrial park in the nation. The park, which is adjacent to O'Hare Airport, contains almost 3000 companies and makes the Village the second largest community in Illinois in terms of manufacturing firms (after Chicago).

³ A number of issues were resolved on this last day of hearing in response to the final offers.

According to the Village, the presence of the park triples the size of the daytime population, to more than 90,000, and adds about 50% to the evening population (to 50,000).

The Village is a home rule community with a Village Manager, a President and a board of trustees. It is self-insured. The Fire Department is headed by a "Fire Chief" who reports to the Village Manager. The Department's annual budget is submitted by the Fire Chief as a proposal. It is reviewed and finalized by the Village Manager and sent to the board of trustees for final approval. The board may amend the proposed budget before voting its approval. The Village is an employer within the meaning of Section 3 (o) of the Act.

The Union is a labor organization pursuant to Section 3 (i) of the Act. It represents a bargaining unit of 87 employees: 18 lieutenants and 69 firefighters.⁴ Approximately 7 lieutenants and 29 firefighters are certified paramedics. To a limited extent, the paramedics are also under the jurisdiction of the Illinois Department of Public Health.

C. Description of the Department

The Department is the 10th largest fire department in the state. It has an authorized complement of 94 sworn personnel: the chief, 2 deputy chiefs, 1 assistant chief, 3 captains, 18 lieutenants and 69 firefighters. There are also about 11 civilian, non-bargaining unit, employees, including a training coordinator

⁴ The term "employees" as used in this decision refers only to bargaining unit employees, unless otherwise indicated.

and a fire inspector. The Department has a hazardous material unit and a water rescue unit. The Village has created a Board of Police and Fire Commissioners (hereinafter "Commissioners" or "Commission"). Pursuant to its rules and regulations the Commission hires and fires sworn personnel (other than the chief, deputy chiefs, assistant chief and the captains). The Commission is also in charge of major discipline, which is a suspension of more than five days.⁵ Promotions are largely controlled by examinations sponsored by the Commission, although the Chief's personal evaluation plays a lesser role.

The Chief, deputy chiefs and the assistant chief work a 40 hour week: 9:00 to 5:00, Monday through Friday. The remaining sworn personnel work 24 hour shifts, one day on and two days off.⁶ Thus, each of the three shifts has one captain, 6 lieutenants and 23 firefighters.⁷ However, because each employee is scheduled for about 20 days off per year, a typical day has staffing of one captain, 5 lieutenants and 19 firefighters.⁸

⁵ Suspensions of up to five days may be issued by the Chief but are appealable to the Commission. Reprimands are processed through the chain of command and do not involve the Commission.

⁶ These employees are considered to be on active duty between 8:00 a.m. and 5:00 p.m. After 5:00 p.m. they remain at their stations but are considered to be on call, and in this capacity respond to emergencies.

⁷ The shift assignments are made annually by the Chief. Station assignments are made by the respective captains.

⁸ There are approximately 122 shifts for each 24/48 employee in each calendar year. In addition to the 20 days off, employees may be off from work due to sickness or for other unscheduled reasons. If the staffing of the four stations falls below 22, the shift commander will hold over or hire back the necessary staff.

services.¹⁰ In most situations the Department will respond to such calls with an ambulance staffed with two paramedics and a truck or engine. In the event of a fire call, an engine with its company responds. The company officer rides with the driver and at the scene assumes command of the incident. Shift commanders respond to all structural fires in their own Department vehicle, but do not necessarily assume command of the incident.

II. STATUTORY REQUIREMENTS

The applicable provisions of Section 14 of the Act are as follows:

(g) At or before the conclusion of the hearing ***, the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days of the conclusion of the hearing, or such further additional periods to which the parties may agree shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic offer the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and orders as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

(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 wage rates

¹⁰ The Department's emergency medical services division takes up the second largest portion of the budget.

The sworn personnel are organized into 5 companies: 4 engine companies and a truck company. The companies are located at four stations. Each station has an engine company, which consists of one fire engine and an ambulance.⁹ Five to 7 employees are assigned to each engine company, two of whom are paramedics. The truck company is assigned to the main fire station along with an engine company. The main station is also the location for the captains who act as the shift commanders. Lieutenants serve as company officers. In the absence of a captain, a lieutenant will serve as an acting shift commander. Likewise, when a lieutenant is not available, a firefighter will serve as an acting lieutenant and company officer.

In the absence of emergency calls, the daily routine for employees consists of apparatus checks, maintenance and repairs, housekeeping, routine paperwork, training and drills.

The Department is a member of Division 1 of the Mutual Aid Box Alarm System ("MABAS"), an organization of fire departments which automatically respond to each others' emergency needs. The Department is also responsible for emergencies in the Ned Brown Forest Preserve, which adjoins the Village, and the Village is part of a team available for large scale emergencies at O'Hare Airport.

Most emergency calls are for paramedic or ambulance

⁹ Two of the stations share an ambulance. It is located during daytime hours at one station and is then moved to the other station for evenings and weekends.

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 the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

(i) *** In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following matters: i) residency requirements; ii) the type of equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance

agreements to other units of government; and v) the criterion to which force, including deadly force, can be used; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit facts upon which the decision may be based, as set forth in subsection (h).

III. BARGAINING HISTORY

The Village has two bargaining units. A unit of police officers was recognized shortly after the effective date of the Act, on January 1, 1986. That unit includes all full-time sworn peace officers below the rank of sergeant, and is represented by Fraternal Order of Police Labor Council/ Elk Grove Village Lodge No. 35 (hereinafter "FOP"). For salary purposes there is one classification, that of police officer. The Village's first collective bargaining agreement with the FOP went into effect on January 1, 1987. The second agreement ran from May 1, 1991, through April 30, 1994. In neither instance did collective bargaining require the use of an impasse neutral.¹¹

The Firefighters are the second bargaining unit. Unlike with the FOP unit, the parties here have had an arduous history. The Union filed a representation petition on September 20, 1991, seeking to represent a unit of all full-time, sworn lieutenants, lieutenant/paramedics, firefighters and firefighter/paramedics.

¹¹ The terms and conditions of employment for police officers will be more fully discussed later in this opinion.

The Village objected to the petition because it believed that lieutenants are supervisors within the meaning of the Act. A representation hearing was held and, on December 11, 1991, a Hearing Officer for the Board issued a 68 page decision in which he concluded that lieutenants were not statutory supervisors. The Village filed exceptions to the Hearing Officer's Recommended Decision and on February 27, 1992, the Board rejected the exceptions, adopted the Hearing Officer's Decision and directed that a representation election be held. The election was conducted on March 6, 1992, and the Union was successful by a vote of 59 to 19. Thereafter the Village filed objections to the results of the election primarily because the lieutenants were permitted to vote. On May 29, 1992, the Board dismissed the objections and the unit was certified on June 25, 1992. On July 23, 1992, the Village filed a Petition for Review of the Board's order certifying the Union for the unit in question. The gist of the appeal was that lieutenants are supervisors.

On May 3, 1993, the Appellate Court of Illinois, Second District, rejected the Village's appeal and affirmed the Board's order certifying the Union as the exclusive representative of the bargaining unit. (Village of Elk Grove Village v. Illinois State Labor Relations Board and Elk Grove Village Fire Fighters Association, Local No. 3398, _____ Ill. App. 3d _____ (1993).)

In the meantime there was parallel litigation regarding unfair labor practices alleged against the Village. Between the election, held on March 6, 1992, and the certification dated June 25, 1992,

Village employees were scheduled for a pay raise. The Village's fiscal year begins May 1st, and the Village had a practice of granting salary increases, if any, as of that date. On May 1, 1992, all Village employees, except those in the Firefighter bargaining unit, received a 4% across the board increase. Lieutenants were covered by the Village's merit pay plan which, for 1992, was scheduled for 0 to 6%. No merit increases were given to the lieutenants. Additionally, the Village modified its health insurance program and increased employees' co-payments. This was not applied to the Firefighters.

Sometime after May 1, 1992, the Union filed unfair labor practice charges against the Village for treating the employees it represented differently from other Village employees. A Complaint issued on August 2, 1992, and a hearing was held. On April 2, 1993, the Hearing Officer found that the Village violated Section 10(a)(1) of the Act, sustaining some charges and rejecting another. Both parties filed exceptions and, on October 20, 1993, the Board issued its written opinion sustaining in part and rejecting in part the Hearing Officers's Decision. The Board found that the Village violated the Act by modifying its wage and benefit policies while a question of representation was pending. The Village was ordered to retroactively pay the salary increases pursuant to its standing practice, with interest. It was not ordered to begin collecting the increased insurance co-payments, however.¹²

¹² At the outset of this arbitration hearing the Board had not yet ruled on the charges and some of the early exhibits were based upon wages in effect as of May 1, 1991. The Village has now

During the summer and early fall of 1992 both the Petition for Review and the unfair labor practice case were pending. As a result, no negotiations occurred until November 19, 1992, when the parties held their first bargaining session. Thereafter the parties had several bargaining sessions during the months of January through April, 1993. Although it was agreed in November that the parties would exchange comprehensive proposals in January, the Union did not make any economic proposals for some time. On February 5, 1993, the Village filed an unfair labor practice charge against the Union for its failure to provide a complete proposal.¹³

In April, 1993, the Union requested interest arbitration. It did so although most of the issues brought to the table by both sides were not resolved. According to the Union, it could not risk that bargaining would continue into another fiscal year, commencing May 1st. If that occurred any arbitration thereafter held would exclude the present fiscal year from consideration.¹⁴

Bargaining continued thereafter with the assistance of a

paid the back wages and the documentary evidence has been corrected.

¹³ The Board issued a Complaint on this charge on January 14, 1994, alleging that the Union violated Section 10(b)(4) of the Act by refusing to bargain in good faith.

¹⁴ Section 14(j) of the Act provides, in part, "Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this Act, the foregoing limitation shall be inapplicable and such awarded increases may be retroactive to the commencement of the fiscal year ***."

federal mediator. In all, the parties had 23 or 24 sessions.¹⁵

According to the Village, at the outset of the arbitration hearing there were 43 economic and 33 non-economic issues. On October 27, 1993, the Village submitted a list of 42 economic and 27 non-economic issues. The Union offered a list of 47 outstanding issues on November 12th, but several on the list had multiple parts. On November 22nd the Union submitted a revised list of issues, cross-referencing the Village's issues. At this time it became apparent that the parties had differences as to the identification of the issues. What was construed by the Village as one issue was, in some cases, seen by the Union as several issues. In a few cases, what was seen as several distinct issues by the Village were joined together by the Union as one issue. In any event, including the sub-parts, the Union's November 22nd list contained 90 identifiable issues.

The parties agreed to the exchange of final offers on economic issues at the conclusion of the presentation of their direct cases. Thereafter the parties would present evidence in response to their respective final offers. First, however, a determination had to be made as to what were the economic issues. Although the parties agreed to the designation of most of the economic issues, they did

¹⁵ The Union argued that it had to actually begin the arbitration hearing because the Union could not afford more bargaining sessions when it appeared that arbitration would be inevitable anyway.

not agree as to some.¹⁶ Nor did they agree as to the scope of some of the issues which were clearly economic, e.g. whether salary should be considered year by year or as a single issue.¹⁷ The parties briefed the items in dispute and on November 29, 1993, the Chairman issued a Ruling on Economic Issues.¹⁸

The parties exchanged their final offers on December 13th and the hearing reconvened on December 16th. Although the parties used this occasion to resolve several of the outstanding issues, they also engaged in considerable discussion about two subjects of the final offers. The Union bifurcated the issue of worker's compensation into an economic and a non-economic issue. The Village argued that there was nothing in negotiations to support this, that this was not a proper subject for bargaining, and that if it were it was an economic issue. The Village also objected to the Union's separation of factors relating to its proposals for

¹⁶ Section 14(g) of the Act provides that at or before the conclusion of the hearing the arbitration panel shall identify the economic issues and shall direct the parties to submit final offers. The section also provides that "(t)he determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive."

¹⁷ The issues which the parties could not define were whether salaries for firefighters and for lieutenants should be considered on a year by year basis or as a multi-year package, and whether longevity pay should be treated separately for firefighters and for lieutenants. The subject matter of the disputed economic issues were: number and certification of paramedics, employee assistance program, insurance for retirees, insurance while on disability, minimum manning, legal counsel during depositions and training.

¹⁸ Even here there were difficulties because in briefing their arguments it became clear that the parties were sometimes addressing different issues albeit under the same title.

lieutenants' salaries into three separate issues: base pay, merit pay, and equity adjustments. Inasmuch as each year was a separate issue and longevity pay was yet another issue, this meant that under the Union's scheme there would be ten separate issues for lieutenants' pay. Although each party argued that the other's final offers on these items were defective because of their structure, both parties objected that any change in the final offers be allowed. At the direction of the Chairman, the parties briefed their arguments. On December 28, 1993, the Chairman issued an Additional Ruling on Economic Issues. He determined that worker's compensation coverage was a proper subject for collective bargaining and that it was an economic issue. The Union's two proposals would therefore be considered as one economic proposal. With regard to lieutenants's salaries, the Chairman concluded that any changes he directed in this area were not changes in final offers because he had not had an opportunity to rule on the scope of this issue in the first place. There could be no "final offers" on an issue which had not yet been defined by the panel. The Chairman, acting for the panel, then decided that base salaries and merit pay were one issue, and that equity adjustments, because of unique considerations in this case, were a separate issue (just as longevity pay was a separate issue). The parties were directed to submit final offers on these newly defined issues.

IV. FINANCIAL CONSIDERATIONS

The Village of Elk Grove Village is financially well run. It has increasing sales and property tax bases, and its revenues for the general fund exceed its budgeted expenditures. In particular, the Fire Department spends less than its budgeted allocation of the general fund. The Village has had a Moody's bond rating of Aa since 1985.

According to the Comprehensive Annual Financial Report for the year ending April 30, 1992, the Village augmented its sales tax revenue as a result of a one-half per cent increase in the tax rate, effective September 1, 1991.¹⁹ During this same year, the Village issued 602 building permits for \$37 million in construction. The EAV for property within the Village increased to \$1.177 billion from \$1.132 billion. The total Village tax rate per \$100 of EAV increased from \$.51 to .60, with the levy for the general fund going from \$.27 to .30.²⁰ General revenues were as follows:

Property taxes	\$7,240,565	30.5%
Municipal sales tax	7,734,478	32.6
Other taxes	1,958,974	8.3
Licenses and permits	1,020,843	4.3
Intergovernmental	3,362,521	14.2
Charges for services	135,933	.6
Fines and forfeits	734,015	3.1

¹⁹ 85% of the sales tax revenue is generated by the industrial park. Additionally, the Village had a new shopping center under construction, scheduled to open in 1993, which was projected to yield an additional \$1 million in sales tax revenue.

²⁰ The general fund rate had been \$.29 in 1989 and .35 in 1988. Likewise, the total Village tax rate had been \$.52 in 1989 and .54 in 1988. Thus, after two years of declines the tax rate increased in 1992.

Interest earned	893,694	3.8
Miscellaneous	630,021	2.6
Total	\$23,711,044	100 %

Expenditures for the year ending 4/30/92 were \$24,348,877. Expenditures for public safety were \$10,468,731, 42.9 % of the total and an increase of \$1,208,154 over the prior year. The actual expenses of operating the Fire Department were \$4,881,749 which was \$365,853 less than what was budgeted. The general fund balance at the end of the year was \$11,262,000, up from \$10,900,000 in the prior year. This was equal to 62.2% of the total expenditures for the general fund. Interest income from just the general fund balance was \$718,486.

According to the Comprehensive Annual Financial Report for the year ending June 30, 1993, revenue increased by 13.5%. This was largely due to municipal sales tax of one-half per cent. This was the first full year that this tax was in effect. It accounted for \$2,738,587, an increase of \$1,846,433 in total sales tax revenue, more than half of the total increase in revenue for the year.²¹

Revenues for Y/E 1993 may be listed as follows:

Property taxes	\$8,310,599	30.8%
Municipal sales tax	9,580,911	35.6
Other taxes	1,928,029	7.2
Licenses & Permits	1,435,617	5.3
Intergovernmental	3,635,671	13.5
Charges for Services	262,693	1.0
Fines & Forfeits	770,509	2.9
Interest Earned	593,282	2.2
Miscellaneous	396,581	1.5
TOTAL	\$26,921,492	100.00 %

²¹ The Annual Report notes that this increase occurred during an otherwise weak economic year. As the economy improves, sales tax receipts should increase.

In the year ending April 30, 1993, the Village had an increase in its EAV of \$134 million, bringing the total to \$1.31 billion. The tax rate resumed its decrease, going from \$.60 per \$100 of EAV to .53. The levy for the general fund decreased from \$.30 to .27. However, the general fund balance increased further, to \$11,865,870, which the Village reported as equal to 65% of the year's total expenditures for that fund.

Expenditures for public safety in 1992-93 were \$10,394,176, a small decrease from the prior year. The actual expenses for operating the Fire Department were \$4,802,626 which was \$257,397 less than what was budgeted, and \$79,123 less than was spent in the prior year.²²

V. COST OF LIVING AND ECONOMIC CONSIDERATIONS

The parties submitted several documents reflecting economic indicators and wage settlement patterns. Generally speaking, inflation, as measured by the Consumer Price Index ("CPI"), has been as low as ever in recent times, certainly as low as parties in public sector collective bargaining under the Act have experienced. In 1993, the CPI increased between 2.6 and 2.8%, depending on whether one looked at the All Urban Consumer or Wage Earner Index, and whether one focussed on the national statistics

²² However, as a result of the retroactive 4% salary increases that were paid to the bargaining unit for this year, although not received until the next year, these amounts are misleading. Nonetheless, the Village continued to maintain a positive fund balance.

or just the greater Chicago-Northwest Indiana area. And, notwithstanding recent inflation fears due to the perception of an overheating economy, economists have been consistently revising downward their inflation predictions. Thus, in the September, 1993, issue of "Blue Chip Economic Indicators," a consensus of economists predicted an inflation rate of 3.2% for 1994. However, six months later, a survey appearing in the same publication forecast 2.8% inflation for 1994, with a 3.2% rate for 1995.

Not surprisingly, collective bargaining patterns have likewise been low. According to the Bureau of Labor Statistics, contract increases for all service industries increased 3.7% in 1992. The rate for all industries in 1993 was 3%. In August, 1993, the Monthly Labor Review published an "employment cost index" which stated that the overall increase in costs for state and local government service workers was 3.9%. The increase in wages only was 3.1%. An even more precise indicator was published in the March 22, 1994, issue of BNA's Daily Labor Report. Its statistics showed that the average wage increase for all state and local employees under contracts covering 1,000 or more employees was about 2.1%. The average increase for protective service employees was 1.7%. This includes contracts with no increases or where the increases were given in an earlier year and not in the current year. Focussing on only those contracts where some increases were provided, the average was 2.9%.²³

²³ This represents a decrease from a similar survey published in August, 1993, where the increase in those contracts where increases appeared was 4.3%

VI. COMPARABILITY

A. Internal Comparability

Comparability is significant in interest arbitration cases because it provides a framework against which the proposals at issue may be measured. The appropriateness of individual proposals sometimes can be best gauged by examining what other parties or other units within the employer's jurisdiction have accepted. Of course no two units are alike, just as no two municipalities are the same. Therefore a comparison with an isolated group, or a small or non-representative assembly of bargaining units, is not particularly helpful. There is no reason why a limited few agreements should influence the case in question simply because these other contracts came first. It is only when the comparison group is both similar in significant characteristics and numerous enough to be statistically meaningful that comparability can be a useful and powerful tool in establishing the appropriateness of one proposal over another. This reasoning is somewhat less applicable with internal comparability because there are less units to compare with. On the other hand, the need for a large enough sample to overcome the exigencies of individual cases is not as pressing with internal comparability because the employer is the same and therefore there are built-in analogies.

Internal comparability is the measurement of the terms and conditions of employment of one bargaining unit with others of the same employer. It is significant because of the inherent similarities when the employer is the same. The important question

of whether the municipality has a community of interests with the comparison employer is obviated. Moreover, ability to pay and other economic considerations, as well as local community features and practices are self-evident or have been resolved. However, internal comparability can be a two-edged sword. On the one hand the employer seeks uniformity among its different bargaining units. It does not want one unit to play off of another. The employer wants consistency among its employee groups, not competition for a costlier contract. It rightfully wants some structure in its wage and benefit plan for its employees as a whole, and not have pay packages running every which way without regard to skills or perceived levels of importance within the overall community. Additionally, the employer may lose credibility if it bargains a contract for wages and benefits at one level only to agree to a more costly package with another group.

Unions, on the other hand, do not want to be bound by the agreements negotiated by other labor organizations representing other types of employees. The unions argue that there can be no good faith negotiations when the employer presents a package justified mostly on the basis of its acceptance by other employee groups. In some cases the employer's so-called "pattern" is self-serving. It settles with its weakest bargaining units first and then argues that the other units must accept the "pattern" it has established. Moreover, there may have been special needs and considerations which led one unit to settle for certain terms which are not as applicable to the unit in question. Internal

comparability should not be used as a straightjacket which inhibits the consideration of the separate needs of particular units.

The conflict regarding the appropriateness of internal comparability takes on an even greater meaning when the units being compared are police and fire. They are the two uniformed and sworn units within most communities. The skills are not identical but are certainly comparable. They are both exceedingly dangerous jobs requiring a combination of great common sense, physical prowess and a commitment to public service which at times places one's own safety and well-being at risk. In many cases, parity between these groups can become an end in itself. At other times parity, or the appearance of parity, can overwhelm consideration of separate needs and separate bargaining histories. Perhaps a classic example of this was displayed in a 1990 interest arbitration case between Village of Arlington Heights and Arlington Heights Firefighters Association, Local 3105 IAFF (ISLRB No. S-MA-88-89). In that case arbitrator Steven Briggs approached this problem as follows (slip opinion, p. 12, et seq.):

In determining public sector wages, hours and conditions of employment through voluntary collective bargaining the parties typically consider how those issues have been resolved in other bargaining relationships within their own community. The only other group of union-represented employees in the Village of Arlington Heights is composed of all sworn full-time officers in the Police Department. (fn omitted) ***

In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a particular public sector

jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called "me-too clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want.

*** I am very reluctant to grant to the Union in this case an arbitrated outcome which would take Arlington Heights Firefighters beyond what the FOP gained through voluntary collective bargaining. The 1990-1993 Agreement reached by the Village and the FOP was hammered out by professional negotiators in consultation with their respective bargaining teams. Both parties to those negotiations were obviously "well-acquainted with the equities involved." (fn omitted) Thus, it is appropriate to use the 1990-1993 FOP Agreement, and its predecessor where applicable, as a guideline in this case.

Conclusions reached in the foregoing paragraphs do not mean that the FOP contracts are insurmountable barriers to the Union here. Indeed, there may be compelling reasons to depart from them on certain issues. And it is important to note that negotiations outcomes from but one internal comparable do not constitute a pattern of settlements ***. In general, however, I am unwilling to depart in this case from the outcome of free collective bargaining between the Village and the FOP absent clear and convincing evidence of the need for an inequity adjustment.²⁴

²⁴ Cf. City of Springfield and Policemen's Benevolent and Protective Association, Unit No. 5, ISLRB No. S-MA-89-74 (Benn, 1989) where the arbitrator spoke favorably about maintaining an established internal wage structure and implied that parity with the Firefighters was a valid consideration. ("With respect to the Union's argument *** that consistent with current academic opinion, parity is not a valid consideration, we find that assertion unpersuasive." Slip Opinion at p. 26, fn 25)

With respect to internal comparability, the present case is similar to that of Arlington Heights because the police and fire departments have the only two organized bargaining units, and the FOP preceded the Firefighters into collective bargaining. Likewise, fire lieutenants were compared to police sergeants, as is the case here, even though the sergeants are not included in the police bargaining unit in Arlington Heights, as is the case here. So, too, while the Union seeks to compare lieutenants with the police sergeants, it also objects to a litmus test approach, particularly with regard to non-economic issues.

As covered above, the Police negotiated a 4% increase for both the 1992-93 and 1993-94 fiscal years, and, as also discussed above, the Village has paid the Firefighters 4% for 1992-93. The Village is seeking to continue what it concludes is the tandem relationship between Police and Firefighter salaries. It has offered the Firefighters 4% for 1993-94 and internal comparability is certainly one of its key arguments.²⁵ While a 4% increase for Firefighters would put them below the top step for Police, the Village suggests that this has been the historical pattern.²⁶

²⁵ The Police have not negotiated an agreement beyond 1993-94 and internal comparability is less of a factor for the second and third years of the Agreement in question.

²⁶ The Village points out that in most of its external comparable jurisdictions, police are paid more than firefighters, and in several cases, significantly more. According to the Village, in all but one of these jurisdictions firefighters were not given larger increases than police. The Village also cites a decision by Arbitrator Neil Gundermann in Village of Skokie where he found that in most jurisdictions police have a higher maximum than firefighters.

However, not all Village employees received a 4% increase in salary for 1993-94. While the salary totals for all employees increased only 3.83% for 1993-94 (the Village refers to this as the weighted average), some categories of employees received 5% while others got increases as low as 3.4%.²⁷

Historically, police officers and sergeants were paid more than firefighters and fire lieutenants. In 1978 Hay Associates evaluated each of the Village employee classifications. With regard to Police and Fire, the former were given higher ratings.²⁸ While the ratings have varied slightly since then, the general spread remains. Likewise, police officers and sergeants have had higher salary rates than firefighters and lieutenants. The differences, however, have not always been consistent.

In 1981 police officers were paid a starting rate of \$18,809, compared to \$18,760 for firefighters. The maximum was \$27,380 and \$27,309, respectively. The percentage difference remained close to the same until 1987, when the rates were reduced for Police (from 1986), but kept the same for Fire. In that year and the next two, Fire employees were paid higher rates than Police. In 1990, Police received a substantial increase in salaries and the starting

²⁷ For example, nineteen senior clerks received 5% as did several other clerical employees and a few blue collar classifications. Two auto service workers got 5.1%. Only a few of these classifications are in the salary range of Firefighters. On the other hand, the five auto mechanics, the housing and the fire inspector each got 3.4 or 3.5% increases. They are all in the range of Firefighters. One classification, that of utility systems operator, did not get any increase.

²⁸ Firefighter received 237 rating points, Police Officer 277 points, Fire Lieutenant 307 points, and Police Sergeant 331 points.

rates for officers went from \$22,859 to \$27,000, while the starting rates for firefighters went from \$24,624 to \$25,855. Maximum salaries were not as far apart, although the firefighters retained their lead. In 1990, the maximum salary for police officers was \$37,400, while that for firefighters was \$37,368. In 1991 and 1992, the top salaries for police officers was slightly higher than for firefighters.²⁹

The history with police sergeants and fire lieutenants is similar. In 1979, the minimum rate for sergeants was \$19,303, and for fire lieutenants it was \$18,777. The maximums were \$26,115 and \$25,404, respectively. The difference was 3%. By 1985 the difference in both minimum and maximum salaries was 5%. In 1991-92 it continued at 5%, with the minimum and maximums for police sergeants at \$33,132/\$46,619, while those for fire lieutenants were \$31,463 and \$44,270. In 1992-93 the spread at the maximum salary was \$48,955 (Police) vs. \$46,041 (Fire), or 6%.³⁰

B. External Comparability

It has been suggested that external comparability is the most significant of the factors to be considered by the arbitration

²⁹ The Village points out that for fiscal year 5/1/92 through 4/30/93 total earnings for Fire employees was higher than for their Police counterparts because of the greater availability of overtime in the Fire Department.

³⁰ The Union has presented exhibits showing average salaries as a group, but because of the striking differences in group size and seniority, these offer little guidance.

panel.³¹ The appropriateness of one offer over another is often not apparent without some measurement of the marketplace. The addition or deletion of terms and or practices, or the precise increase in remuneration, can often be best determined by analyzing the collective wisdom of a variety of other employers and unions in reaching their agreements.³²

Every case has its own facts but the determination of the appropriate result can be gauged by the struggles of those with similar characteristics and circumstances.³³ The selection and maturation of an appropriate external comparability group is

³¹ Laner and Manning, "Interest Arbitration: A New Terminal Impasse Procedure for Illinois Public Sector Employees," 60 Chicago-Kent L. Rev. 839 (1984). The article's conclusion on this point was cited with approval by Arbitrator Elliott Goldstein in City of DeKalb and Dekalb Professional Firefighters Association, Local 1236, ISLRB No. S-MA-87-26. Goldstein discounted the argument made by unions that such reliance discourages the implementation of new and innovative provisions, as well the argument by management that comparability leads to a domino effect of victory for unions.

³² While individual proposals may be inappropriate on their face because of poor draftsmanship, obvious conflicts with other sections of the agreement, a marked variation in bargaining history or employment practices, an apparent inability to pay, or simply apparent operational problems, the worth or importance of particular proposals may not be measurable in terms other than their presence or absence in other bargaining agreements. Of course, the value of such measurement increases in significance in proportion to the similarity of the comparison group with the unit in question.

³³ For example, the operation of most suburban fire departments (but not necessarily in Elk Grove because of its unique features) in communities of similar size, geography, demographics and economy are more or less the same. It is therefore most appropriate to examine whether certain practices are followed in the other fire departments. If none or few of them operate in a way in which a particular proposal would require, the party seeking the different way has the burden of justifying why its unit should be different from those which are so similar to it.

somewhat akin to the development of a "common law" of collective bargaining. It is a slow, evolving process wherein the critical question is the identification of those communities (employing units) with similar relevant features against which the parties at issue can be compared. While the ideal situation is for the parties to mutually agree upon a list of communities which they agree are representative of the characteristics of their own situation, the more common tendency is for each party to select bargaining agreements which contain the terms and conditions to their respective liking and then argue that these are the parties which are similar and should be in the comparability group. If these "selected" communities also happen to be of similar size and with some geographic proximity, so much the better. If not, the parties will identify some characteristic which the selected units do have in common, and argue from that that the group is good for comparison purposes based on that characteristic. The parties lose sight of the point that the similarities must be with meaningful factors. Otherwise a group can be crafted for any purpose.³⁴

Generally speaking, population of the community, size of the bargaining unit, geographic proximity and similarity of revenue and its sources are the features most often accepted.³⁵ Some

³⁴ To use an absurd example to illustrate the point, a group of fire departments would not be appropriate for comparability purposes merely because they all used yellow fire apparatus and not red ones.

³⁵ See Village of Lombard and Lombard Professional Fire Fighters Local 3009 (Berman); Village of Skokie and Skokie Firefighters Local 3033, ISLRB No. S-MA-89-123 (Goldstein); Village of Mokena and Metropolitan Alliance of Police, Chapter 72, ISLRB

arbitrators emphasize geography because the marketplace concept is essential to comparability. A professional firefighter is less apt to move downstate, even for an increase in earnings, than take a position in a nearby community where the only question is the daily commute.³⁶ Nonetheless, arbitrators can never lose sight of features which make certain communities unique. In the case of Elk Grove, the presence of the very large industrial park with a population well in excess of the permanent village population and fire risks more typical of large urban areas, diminishes the importance of residential population. Elk Grove is not just another bedroom suburb. This must be kept in mind when viewing comparability data. The Village argues that other communities have larger daytime populations, and this is certainly true with towns near Elk Grove which have large shopping centers. However, Elk Grove is somewhat unique because of the demands of the country's largest industrial park.³⁷ The fairest way to accommodate this

No. S-MA-93-74 (Perkovich).

³⁶ This was the conclusion reached by Steven Briggs in Village of Arlington Heights and Arlington Heights Firefighter Association, Local 3105, ISLRB No. S-MA-88-89. See also, Elliott Goldstein's Award in City of DeKalb, supra., where he was critical of a uniquely tailored list of 5 university towns located throughout the state as against a list of 22 communities within the geographic area. But see, City of Peoria and Peoria Fire Fighters Local 544, ISLRB No. S-MA-92-067, where Peter Feuille accepted a group of "downstate" (i.e. away from Chicago) cities located throughout Illinois.

³⁷ Fire Chief MacArthur testified that in addition to an increased day population of between 60,000 and 65,000 people, the complex has companies with evening and weekend shifts. The Chief testified that the industrial park requires not only ambulance and fire protection services, but also inspectional services and, to some extent, public safety and education.

situation is to give preference to the size of the department over that of the local population.

Prior to the commencement of the hearing, the parties exchanged respective lists of comparable communities. At the opening of the hearing, the Union described its list as encompassing "not only contiguous fire departments, but also fire departments that are of substantial size, diversity and complexity." (Tr. 14) It provided no other explanation as to the bases for selecting the 13 communities on its list.³⁸ During the course of the hearing, the Union presented a number of exhibits making comparisons among the communities in its comparability group, not only as to where Elk Grove stood regarding the specific items at issue, but as to fundamentals, such as size and financial health. However, as the Union composed the features which went into making up its list it apparently determined that two of the communities on its list did not fit the criteria now being supplied as the justifications for the list.³⁹ Thus, in its brief, the Union eliminated two of the communities and added two others. The two eliminated were among the five which also appeared on the Village's list. The Village strenuously objects to the Union's post hearing

³⁸ Early in the Union's presentation, during the time it was introducing comparability exhibits and exhibits reflecting the Village's financial health, the arbitrator requested the Union to supply "a chart or some other explanation as to what the factors were which went into the selection" of the Union's comparability list. (Tr 125). That explanation was not made until it appeared in the Union's brief.

³⁹ According to the Union's brief, it was aware of the factors it was using to compose its group. It just did not disclose them until now.

alteration of its comparability group. The Village argues that some of its arguments address the Union's comparability group and the Union's last minute switch complicates its analysis and is akin to regressive bargaining. The Village is particularly concerned because the two communities eliminated were among the five that were mutually agreed upon. However, the two communities the Union now seeks to add to its group are also communities which appear on the Employer's list.

The Union's attempt to change its comparison group diminishes the integrity of the comparability arguments it made throughout the hearing. Certainly the Union should have been aware of the characteristics of the communities it used for comparison purposes, even if it did not share those criteria with the panel until the filing of its brief. The change that it seeks at this juncture makes it appear as if its list was gathered according to the features of the respective bargaining agreements and not the features of the communities themselves. When a party puts forth a comparability group it says that the communities in that group share so many features with the community in question that the terms and conditions of its contract should be comparable to those of the group. If particular communities in that group subsequently settle for terms and conditions less than what the instant party is seeking, that party must live with those results no less than if the members of the group obtain enviable terms and benefits. On the other hand, these proceedings have been long and arduous. The numerous issues outstanding have changed just as the parties'

positions have changed. The time expended to reach this first agreement spans several years. It is very possible that the Union's list was first prepared at a time when the complexion of this case was different and where some of the comparable features in the initial group were more pertinent than they are now. Thus, the Union's late move, while largely unacceptable, will be tolerated by the panel to the extent that the panel will simply add the two new communities to the Union's group without removing any of the names from the original list. Although it may be frustrating for the Employer, the action in this case is harmless because all of the communities in question (the two eliminated and the two added) are also on the Employer's list.⁴⁰

The Union's initial list included the following: Arlington Heights, Bensenville, DesPlaines, Elgin, Hoffman Estates, Mount Prospect, Northbrook, Oak Park, Park Ridge, Rolling Meadows, Schaumburg, Skokie, Wheeling. The amended list now includes Elmhurst and Lombard. (The Union seeks to eliminate Park Ridge and Wheeling.) According to the Union's brief, these towns were selected on the basis of population, including daytime population, proximity, sales tax revenue, and equalized assessed valuation, Proximity was gauged within a 15 mile radius, while the other factors were on the basis of plus or minus 25% of the amounts for

⁴⁰ The Union has not sought to substitute a new set of comparability exhibits and the panel is therefore limited to some degree in measuring the two new communities for all of the features the Union wants to be considered. On the other hand, because these communities are also in the Village's group, the panel need only look to the Village's exhibits for some of the needed information.

Elk Grove.⁴¹ As for proximity, most of the Union's communities are very close to Elk Grove. Arlington Heights, Bensenville, Mount Prospect, Rolling Meadows, and Schaumburg abut Elk Grove. Park Ridge is on the other side of O'Hare Field. Hoffman Estates is immediately west of Schaumburg, and Wheeling is just east of Arlington Heights. Elmhurst is immediately south of Bensenville. Northbrook, Skokie, Oak Park, Lombard and Elgin are further away. Some of the other data, as relied upon by the Union is as follows:

	*	**	***	****
	Res. Pop.	EAV	Sales Tax	Dept size
Arl. Hts.	74,000	\$15.15	\$8.84	90
Bensenvil.	17,000	3.25	1.33	23
DesPlain.	52,000	10.5	6.36	91
Elgin	75,000	6.92	5.75	91
ELK GROVE	33,000	11.32	6.34	94
Elmhurst	41,000	6.81	6.55	36 x
Hoff. Est.	46,000	5.41	3.37	74
Lombard	39,000	6.14	6.90	46 xx
Mt. Prosp.	53,000	7.76	5.75	69
Northbrk.	32,000	9.51	5.70	53
Oak Park	53,000	5.53	2.72	85
Park Rid.	35,000	5.65	2.5	47
Roll. Mdws.	22,000	4.82	3.75	41
Schaumburg	68,000	17.29	16.27	132 xxx
Skokie	59,000	10.59	7.59	112
Wheeling	30,000	5.14	2.71	41

* The Union did not offer evidence on daytime population.

** Expressed in terms of \$100 millions

*** Expressed in terms of \$1 millions

**** Total sworn personnel

x Elmhurst employs 12 personnel supplied by an outside contractor and has 30 paid on call employees

xx Lombard has 16 paid on call employees

xxx There was some testimony that Schaumburg has recently hired an additional 14 employees.

⁴¹ The 15 mile radius is justified as being the parameter for the Village's residency rule, as contained in its Personnel Rules and Regulations, for sworn employees hired prior to 1984. All of the communities on the list are within the 15 mile radius. The Union did not explain why it used the 25% +/- measurement. Indeed, many of the towns do not meet this criterion for some of the indicia and thus a question remains why the Union used them at all.

Except for proximity, and even with the variance of +/- 25%, none of the criteria applies to all of the communities on the Union's list. Only Arlington Heights fits squarely within all of the parameters the Union set. Des Plaines and Skokie appear to be very close to meeting all of the criteria. Elgin is reasonably close. The other towns appear to be much too small, either financially or physically, or both, except for Schaumburg which is more than 25% larger than Elk Grove in every category. On the other hand, the close proximity of some of these communities with Elk Grove, and their interrelationship through MABAS cannot be ignored.

The Village has submitted a list of 10 communities which have as their common denominator that they are all home rule jurisdictions, that they are located within 10 miles of Elk Grove, that all of the employees are unionized, and that they are all +/- 50% of the population of Elk Grove. The list is as follows:

	<u>Population</u>
Bensenville	17,000 *
Buffalo Grove	36,000
Elmhurst	41,000 *
Hoffman Estates	46,000 *
Lombard	39,000 *
Park Ridge	35,000 *
Rolling Meadows	22,000 *
Streamwood	31,000
Villa Park	22,000
Wheeling	30,000 *

* On the Union's list, as amended

The Village argues that its 10 mile cut-off is more reasonable than the Union's 15. It argues that the 15 miles was designed to

artificially capture Elgin, Skokie, Northbrook and Oak Park. The Village suggests that there are other communities within the 15 miles which are not on the Union's list, but it does specify any. Indeed, there is no evidence that there are any other fire departments within a 15 mile radius which are within the Union's parameters for size and revenue. The Village also protests the Union's reliance on hypothetical daytime populations unsupported by any documentation. On the other hand, it presents no support for its 50% +/- formula. The panel finds that that range is too great, especially when the Village acknowledges that it has such a large daytime population.⁴²

The Village "would urge that financial condition is not a good criterion for determining the inclusion or exclusion of any jurisdiction for comparability purposes in this case." Village brf, p. 18. Although it is not clear why the Village is taking this position, particularly when it acknowledges that such information "is often cited by arbitrators in terms of establishing the group of comparables" (Id), we infer that the Village takes this position because ability to pay is not an issue in this case. The Village seems to argue that because none of the cited communities are having financial problems, reliance on economic data is a hollow criterion. However, when presenting its list at the hearing, the Village supported its selection with data on median family income, average home value, and Moody's general

⁴² The Village suggests that Bensenville, Schaumburg and Hoffman Estates also have large daytime populations. The panel accepts this representation.

obligation bond ratings.

A majority of the panel disagrees with the Village's approach. Revenue and tax base are important criteria because they are reflections of the true identity of a community. In this case, for example, the tax base for Elk Grove is disproportionate to its permanent population and reflects the large development of industrial and commercial property. To describe Elk Grove or to compose a comparability group without taking these properties into consideration would be inaccurate, if not misleading. Generally speaking, the Union's criteria, late in coming as they were, are more specific and more discrete than the Village's. The difference between 10 and 15 miles is negligible, and it is more important to throw a net wide enough to catch communities with similar features than to be concerned about an additional 15 minutes of driving time. It is simply too difficult to rationalize that an area in northwest Cook County within a radius of 15 miles describes a community materially different from that within a 10 mile radius.

The appropriate comparability group for this case must first include those communities which both parties have listed. These include Bensenville, Elmhurst, Hoffman Estates, Lombard, Park Ridge, Rolling Meadows and Wheeling.⁴³ Streamwood and Villa Park are rejected as having too few indicia comparable with those of Elk

⁴³ The chairman would not have included Bensenville, Park Ridge, Rolling Meadows and Wheeling on this list but for their citation by both parties. They are simply too small. While the inclusion of Bensenville and Rolling Meadows is arguable because of their close proximity to Elk Grove, the inclusion of Wheeling and Park Ridge is a stretch.

Grove. Buffalo Grove, appearing on the Village's list, is included because it has many of the characteristics relied upon by the Union.⁴⁴ While it is a little smaller than some of the other units, it is at least as large as some others mutually agreed to. From the Union's list, Arlington Heights, Des Plaines, Elgin, Mount Prospect, and Skokie clearly should be included. Oak Park must be rejected. It is in a different area of the county. It has a decidedly smaller tax base with a fossilized economic base. It has no industry and, as a bedroom community, has a daytime population which is probably lower than the permanent population. Northbrook is a close question because of its separate location and generally smaller features. However, its tax base indicates that it has a significantly larger daytime population. It will therefore be included. Schaumburg, also a close case because of its common border and interrelationship with Elk Grove, is simply too big for comparison purposes. In all critical areas it is about 50% larger than Elk Grove. While it might be included on proximity alone, where the parties already have so many other comparable communities, the inclusion of Schaumburg is unnecessary and would distort the analysis.⁴⁵ Thus, the list of comparables is as follows:

⁴⁴ Buffalo Grove has an EAV of \$951 million, sales tax revenue of \$2.94 million and a department of 53 with no outside contract or paid on call employees.

⁴⁵ It may seem anomalous that Bensenville is included and Schaumburg is not, but this is because the Union included the former while the Village did not include the latter.

Arlington Heights
Bensenville
Buffalo Grove
Des Plaines
Elgin
Elmhurst
Hoffman Estates
Lombard
Mount Prospect
Northbrook
Park Ridge
Rolling Meadows
Skokie
Wheeling

VII. DISCUSSION OF THE ISSUES

A. Economic Issues

1. Firefighter Salaries - 1993-1994

As mentioned above, bargaining in this case began some considerable time prior to the years in question in this case. A lot of time was consumed by the parties' litigation, and, as part of the process, the time limits for impasse procedures for the 1992-93 fiscal year came and went. As discussed above, the Village did not pay employees in this unit the 4% wage increase given to other Village employees. After proceedings before the Board, the Village was ordered to do so. Subsequently, the parties were able to agree upon the 4% salary increase, and the employees were paid this increase retroactive to May 1, 1992. The scale for

firefighters for 1992-93, the year preceding the first year at issue in this case is as follows:⁴⁶

<u>Start</u>	<u>After 1 Yr</u>	<u>After 2 Yrs</u>	<u>After 3 Yrs</u>	<u>After 4 Yrs</u>	<u>After 5 Yrs</u>
\$27,965	30,512	33,063	35,611	38,159	40,710

This represents 4% less than the starting rate for police officers, 5% more than police officers after five years, but, because the Police have an extra step, \$131, or 3/10ths of 1%, less than Police at the top step.⁴⁷

Elk Grove ranked sixth among the comparables in 1992-93 for maximum salary. The list is as follows:

1. Mt. Prospect	\$41,646	9. Arlington Hts	\$40,451
2. Rolling Meadows	41,464	10. Park Ridge	40,050
3. Des Plaines	41,212	11. Wheeling	39,555
4. Skokie	41,207	12. Buffalo Grove	39,228
5. Elgin	40,900	13. Elmhurst	38,182
6. ELK GROVE VILLAGE	40,710	14. Lombard	37,781
7. Northbrook	40,680	⁴⁸ 15. Bensenville	36,154
8. Hoffman Estates	40,555		

Average without Elk Grove	\$39,933
Difference from average	\$777
Difference in per cent	2%

⁴⁶ Twenty Firefighters, or about 30%, were hired after May 1, 1988 and are therefore still eligible for step increases.

⁴⁷ In other words, it takes Police 6 years to earn what Firefighters earn after 5. Additionally, about more than one-third of the Firefighters are Paramedics and receive a \$2000 stipend for that certification, and the opportunity for overtime for this unit is greater than for Police.

⁴⁸ The Village lists the rate for Bensenville as \$37,154. However, this is for a Firefighter III. The Firefighter II classification is more appropriate.

The Union argues that these figures are misleading because the Elk Grove firefighters have a longer workweek (56 hours) than most of the comparable communities.⁴⁹ On an hourly basis, the Union argues, Elk Grove is much lower in rank. Also, the Union notes that in terms of historical rank, its people have lost ground over the last several years. However, the Village points out that its salary does not include the stipend for paramedics, which is not true with some of the comparables.

The Union proposes a 5% increase, and the Village a 4% increase, on all steps, effective May 1, 1993. The Police contract provides for a 4% increase.

Increases among the comparables are known in all but two of the communities, Arlington Heights and Hoffman Estates.⁵⁰ The

⁴⁹ The average workweek for each comparable is as follows:

Arlington Hts	49.8	Lombard	52.88*
Bensenville	56	Mt. Prospect	50
Buffalo Grove	53	Northbrook	53.85
Des Plaines	53	Park Ridge	52
Elgin	52.77	Rolling Mead	50
ELK GROVE	56	Skokie	52.88
Elmhurst	51.85*	Wheeling	54.6
Hoffman Est	56	AVERAGE	52.76

* Effective 1993

⁵⁰ The Union states in its brief that Hoffman Estates Firefighters received a 6% increase, moving them to \$43,134, which would be the third highest top salary. The Village states that Hoffman Estates has not settled. The Village states that Arlington Heights will settle for 3% because the Police settled for this and there is precedent based on the prior award of Steven Briggs for this linkage. The Union strongly objects to the Village's

remainder are ranked as follows:

1. Mt. Prospect	\$43,592	4.68%	8. ELK GROVE [V]	\$42,338	4%
2. Elgin	43,145	5%	9. Wheeling	40,939	3.5%
3. Des Plaines	42,860	4%	10. Buffalo Grove	40,405	3%
4. ELK GROVE [U]	42,745	5%	11. Park Ridge ⁵¹	40,050	0%
5. Rolling Mead.	42,708	3%	12. Elmhurst	39,900	4.5%
6. Skokie	42,649	3.5%	13. Lombard	39,292	4%
7. Northbrook	42,612	4.75%	14. Bensenville	38,640	4%
Average without Elk Grove			\$41,400	3.66%	

Considering all of the factors, it seems very clear that the Village's final offer is the more appropriate. The first consideration, although not the sole determinative, is that the Police received a 4% increase. To award 5% at this juncture without some compelling need would unnecessarily disrupt the Village's labor relations. Of course, 5% should be awarded if there were factors requiring it. There are none. We know that the CPI for the year in question was below 4% by anyone's measure, that the average increase among the comparables was below 4% and that the 4% will not significantly affect the unit's ranking.⁵² While

argument. Given this disagreement and in the absence of any documentation to support the Hoffman Estate's contract, we will not consider Hoffman Estates or Arlington Heights for this calculation.

⁵¹ The record does not disclose what were the elements of the bargain which lead the Park Ridge union to accept a salary freeze.

⁵² Maintaining a precise salary rank among the comparables is not a very persuasive argument. From year to year ranks will move up and down and the mix of who is high up and who is not will change. Rank becomes significant when there is a significant change over the life of the contract or where there has been a large change over several years.

it is true that the Village can easily pay the 5%, the ability to pay, or not, should not be controlling when there are other factors which favor one proposal over the other. On the other hand, it is a statutory factor, and must be considered. Where the other factors are balanced, ability to pay may be determinative. That is not the case with this first issue.

2. Firefighter Salaries - 1994-1995

For the second year of the contract, the year now in progress, the Union proposes a 4% increase for all steps. The Village proposes a 3.25% increase. Among the comparables, only seven of the jurisdictions have settled. They rank as follows:

1. Northbrook	\$ 44,743	5 %	
2. Elgin	44,439	3%	(effective 12/24/93)
3. Rolling Meadows	44,352	3.85 %	
4. Skokie	44,121	3.5%	
5. ELK GROVE [UN]	44,031	4 %	
6. Des Plaines	43,718	2 %	
7. ELK GROVE [VILL]	43,714	3.25 %	
8. Wheeling	42,372	3.5 %	
9. Elmhurst	41,396	3.75 %	

While this sampling is really too small to draw any firm conclusions, it should be noted that the average among the other towns is 3.51 %. While four of the increases are smaller than for the prior year, two are larger. One of the decreases (in rate of increase) is in Elgin where the employees received a large increase in the prior year and where the new rate goes into effect more than four months before that of Elk Grove Village. Most of the economic

data supplied by the parties supports the Village's position, but the panel takes official note that after the close of the hearing there have been increases in interest rates controlled by the Federal Reserve System. Inflation, now running at 3% or less is expected to increase. Moreover, the Village's proposal is apt to cause some additional slippage in rank if the non-reporting communities settle for increases which are in line with the present settlement rates. Additionally, the Village continues to have the ability to pay the larger increase. The final factor is that the Village has determined to increase merit pay employees (non-represented) by 3.5%.⁵³

Despite the presence of several factors which militate against the Village's proposal, in the final analysis it is more appropriate than the Union's. There is simply too little in the record to justify a 4% increase for 1994-95. While the panel believes that the Village's 3.25% is a little on the low side, and that 3.5% would have been a more appropriate proposal, the panel simply cannot accept the Union's 4%.

⁵³ The Village also argues that another factor to be considered is the low turnover and the abundance of applicants for new positions in the Fire Department. The panel rejects this argument. There are always many more applicants for public safety positions than are needed. Undoubtedly, the Village would continue to get a large number of applicants even if it cut its pay package. In a pure marketplace environment most employers have the advantage. There are simply more people wanting jobs, particularly attractive jobs such as that of a firefighter, than there are positions to fill. But our economy is not a pure marketplace and unions assist employees in seeking the fair value of their labor based on factors other than how cheaply others may be willing to work.

3. Firefighter Salaries - 1995-1996

Salary increases for the third year of this contract take on a different perspective. There is little evidence as to what is happening in the comparable departments and a lot of the economic information is inconclusive. While there is a lot of data on what to expect in 1994, the predictions for 1995 are much more tenuous.

The Union has proposed a 4% increase for all steps while the Village has proposed a 3.25% increase. Only Rolling Meadows, with a 4.25% increase, and Elgin, with a 3% increase, have settled for 1995-96. There is also no internal comparability. After careful consideration of all of the factors required by the statute, the panel believes that the Union's proposal is more appropriate than the Village's. Among the special considerations in reaching this result we note the following:

1. The consensus among economists is that the economy will continue to expand in 1995 and inflation should be greater than in 1994.
2. Another increase of 3.25% is apt to make the total increase over three years measurably lower than what most of the comparable departments will get.
3. There is no question that the Village has the ability to pay the Union's proposed 4% increase.
4. The 4% increase is more in line with what the employees have received over the past several years when considered together with the 4% and 3.25% increases for the first two years of this contract.

Finally, it should be noted that with regard to the salary increases for the three year period, the panel has also considered

the other increases in the package of benefits, particularly health care benefits, which are part of this award. The panel considers the three year salary package to be a modest one for this group of employees. However, the panel has taken this into account when considering some of the other issues before it.

4. Lieutenant Salaries - 1993-1994

(a) Equity Increases

(b) General and Merit Increases

The parties' final offers for lieutenant salaries present some unusual circumstances. As reviewed above (see text preceding fn 20), the parties could not agree whether the different components of the lieutenants' salary (actually the Union's proposals for their salary increases) were to be considered as one issue or more than one issue. Presently, the lieutenants are under the Village's merit pay plan which awards the individual lieutenants salary increases, if any, within a range established by the Village. The particular adjustments are within the discretion of the Fire Chief. The merit pay plan has changed from time to time over the years and the Union claims that certain inequities have arisen in the past. During the hearing, the Union addressed its proposals for the merit plan, for a general wage increase for the lieutenants and for equity adjustments. For its part, the Village proposed to maintain the merit pay plan and has proposed the range of increases to be available in each of the three years of the contract. After considerable discussion, briefs and a formal ruling, the chairman, acting for the panel, determined that the subject of wage increases encompassed general increases and merit pay in whatever combination, year by year, that the parties might propose. However, the considerations for equity adjustments were separate and that this constituted a distinct issue for each year. Accordingly, the ruling was that for each of the three years the parties could propose salary increases, either in the form of merit

pay or general pay increases, or both, and that they could also propose equity adjustments.

For 1993-94, the Village has proposed an increase in the pay range for lieutenants and a range for merit increases. For 1993-94 the Union proposes equity increases, general salary increases and a merit pay range. The Union stated at the hearing that it wanted the equity increases to be put in place first and then for the general and merit pay increases to be added. However, because the Union's general and merit increases take the equity adjustments into consideration, and to a certain extent are dovetailed with them, they must be shown together, albeit that the Award shall treat them separately.⁵⁶ Because of the complexity of the proposals, an exact recitation is necessary.

Village Final Offer

Union Final Offer

<p><u>Lieutenants' Merit Pay for the 1993-94 Fiscal Year.</u> Effective May 1, 1993, the pay range minimum and pay range maximum for fire lieutenants shall be increased by four percent (4%). Accordingly, effective May 1, 1993, the pay range minimum for fire lieutenants shall be \$44,455 and the pay range maximum shall be \$47,883. Each lieutenant's base salary shall be adjusted based on the Village's evaluation of his performance, subject to the following guidelines:</p>	<p>: <u>Equity Wage Adjustments 1993 - Lieutenants</u> : Effective 5/1/93 lieutenants' salaries shall be increased in the following manner: All lieutenants with an annual salary at or below \$41,101 on 5/1/91 (the "C" group) shall receive an increase in annual salary of \$1,250 to \$43,995. : Effective 5/1/93 lieutenants' salaries shall be increased in</p>
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⁵⁶ Ostensibly, the equity proposals are designed to offset the errors the Union claims resulted from the operation of past merit systems. The general wage and merit plan proposals are then supposed to be based on the internal and external comparables. However, there are elements in the Union's discussion of the issues which imply that the equity proposals also consider what the Union believes to be an unacceptable standing of the Elk Grove lieutenants among the comparables.

(a) No lieutenant can receive an annual salary below the minimum of the range nor above the maximum of the range as set forth above. : the following manner: All lieutenants with an annual salary at or below \$43,103 but above \$41,101 on 5/1/91 (the "B" Group) shall receive an increase in annual salary to \$46,077.

(b) Effective May 1, 1993, individual lieutenants are eligible to receive merit increases ranging from 0% to 5.5%. : Effective 5/1/93 all lieutenants with an annual salary at or below \$44,270 and above \$43,103 on 5/1/91 (the "A" Group) shall receive an increase in annual salary to \$46,791.

(c) All lieutenants shall be paid a salary that is at least 5% higher than the top step salary of firefighters. :
: Wage Increase 1993 - Lieutenants
: Effective 5/1/93 lieutenants' salaries in Groups A, B, and C shall be increased by 3 percent.
: Lieutenant Merit Pay
: Effective 5/1/93 lieutenants may be awarded a merit pay adjustment not to exceed two percent.

The parties presented a considerable amount of data regarding the salary status of lieutenants. After the recent payment of the 1992-93 increases, the range for lieutenants was a minimum of \$41,101 to a maximum of \$46,041. A diagram of lieutenant salaries is as follows:

	<u>Yrs in Rank</u>	<u>'91 Eval</u>	<u>91-92 Sal</u>	<u>92-93 Sal</u>	<u>Increase</u>	<u>% Inc</u>
Miller	6	4.54	\$44,270	\$46,041	\$1,771	4%
Goostree	6	4.65	44,270	46,041	1,771	4%
Goss	17	4.43	44,269	46,041	1,772	4%
Denna	12	4.46	44,268	46,041	1,773	4%
Langland	22	4.30	44,170	46,041	1,871	4.2%
Gauss	18	4.45	44,134	46,041	1,907	4.32%
Rohrer	14	4.38	43,988	46,041	2,053	4.67%

Hanko	11	4.21	43,706	45,577	1,871	4.28%
Casterton	11	4.44	43,103	45,189	2,086	4.84%
Hood	22	4.34	42,675	44,638	1,963	4.6%
Hohman	20	4.09	42,061	43,786	1,725	4.1%
Guglielmo	0	new	41,101	42,746	1,645	4%
Kopinski	2	4.16	41,101	42,803	1,702	4.14%
Forde	3	4.30	41,101	42,946	1,845	4.45%
Keyworth	3	4.33	41,101	42,983	1,882	4.57%
Morony	3	4.38	41,101	43,033	1,932	4.7%
Pilington	3	4.39	41,101	43,045	1,944	4.72%
Banot	3	4.30	41,101	42,934	1,833	4.45%

As can be gleaned from this table, except at the bottom, there is no correlation between salary level and seniority. In and of itself this is not surprising. A true merit system will necessarily have a range of salaries based on past performance without regard to years of service. What is a little unusual here is the disparity between some very senior lieutenants and two at the six year mark. It would seem that even with minimal increases officers with 20 years of experience should be earning a base salary higher than employees who have been in this rank for only a few years. However, contrary to the Union's argument, the increases for 1992-93 are closely correlated with the evaluations.⁵⁷

⁵⁷ The Union complains more about the inequities of past years, but this cannot be seen from the most recent salary increases. The past inequities, as cited by the Union, include a system whereby there had to be at least a \$100 difference between each lieutenant and a process whereby the date of a promotion could skew a salary

The employees at the top of the scale, of course, did not receive increases proportional to their evaluations because they are at the top of the rate range for the classification. The increase necessary to bring them to the top will usually be less than their high evaluations would seem to dictate. Employees already at the top will get only the minimum 4% increase which maintains their top salary positions. However, at the other end, the increases were in line with the evaluations. Thus, Hohman with a 4.09 rating got a 4.1% increase. Hanko with a 4.2 rating, got a 4.28% rating. Ford and Banot with 4.3 each got 4.45% increases. With only Kopinski as a minor exception (off by 15/100 of 1%), the percentage increases correlate with the evaluation scores.

Historically, the lieutenants were paid a little less than their counterparts in the Police Department, the sergeants. The job evaluation system used by the Village for many years gave the sergeants more rating points than the lieutenants. The Village suggests that the disparity in salaries was in line with the job rating system.⁵⁸ The Union takes an opposite position.

In 1991-92 the sergeants' salaries ranged from \$40,840 for a newly appointed sergeant to \$46,619 for a veteran. The average

because of prorations. This resulted in some anomalies where lieutenants promoted after others earned more than the former. However, a snapshot approach of past inequities is somewhat irrelevant if the system is now operating and the range among the lieutenants is not too broad. That some officers will earn more money in a lifetime than others is inevitable under any system. The errors of the past systems have been corrected and the critical tests address the present and the future.

⁵⁸ See discussion at fn 30, and supporting text.

salary was \$43,311. The range for lieutenants that year was \$41,101 to \$44,270, with an average of \$42,795. While there was only a difference of \$516, or 1.2%, the average years in rank for lieutenants was almost 11-1/2 years compared with 5 years for the sergeants.⁵⁹ While the four junior sergeants were paid about the same as the bottom of the lieutenant's scale, the difference at the top was \$2,349, or 5.3%. In 1992-93, the average increase was 4.87% for the sergeants. The average for lieutenants was 4.33%. The lowest paid sergeant was paid \$42,883. The bottom of the lieutenants' range was \$42,746. At the top, the highest paid sergeant was paid \$48,927. The top for lieutenants was \$46,041, a 6.27% difference. In other words, the disparity increased from 5.3% to 6.3%.

In 1993-94, average increase for sergeants was 3.6%. The bottom salary was \$44,602 and the top was \$50,913. The Village's proposal would increase the minimum and maximum for lieutenants to \$44,455 and \$47,883, or 4%. At the top, the difference with the sergeants' range would be \$3,030, or 6.33%, a small increase in the difference between the two positions over the prior year. While salaries below the top might vary under the Village's merit pay plan, no lieutenant would be paid less than \$44,455 which is very close to the bottom of the range for sergeants. On the other hand,

⁵⁹ The Village would suggest that average years is irrelevant because the merit system is not based on years of service. Nonetheless, where most of the sergeants are at the bottom of their range because of inexperience and most of the lieutenants are above the midpoint based on long years of service, the \$516 difference does not present an accurate picture.

no lieutenant can be paid above the range, so that the minimum difference for top lieutenants compared with their sergeant counterparts would be \$3,030.⁶⁰

Comparability data for 1992-93 for sergeants vs. lieutenants was available for 13 of the 15 comparable communities. According to this data, the maximum salary for police sergeants was the same or close to the same as for fire lieutenants in Arlington Heights, Des Plaines, Northbrook, Park Ridge, Rolling Meadows and Wheeling. In Bensenville, Elgin, Hoffman Estates, Mount Prospect, and, to a lesser extent, Skokie, sergeants are paid significantly more than lieutenants. In several of these communities, lieutenants are unrepresented. The complete list for maximum base for lieutenants is as follows:⁶¹

⁶⁰ The Village continues to point out, as it did with firefighters, that the opportunity for lieutenants to work overtime is greater than it is for sergeants, and that with overtime earnings factored in, lieutenants make more than sergeants. While the panel considers this useful information, it is not critical. The hours of work for the Fire Department are very different than for the Police Department. At a minimum a comparison using overtime should be based on an hourly rate. Beyond this, however, it should be remembered that overtime pay is not a gift. Employees work for the money.

⁶¹ The parties disagree as to the salaries for lieutenants in several jurisdictions. The Village's chart comes from collective bargaining agreements and "interview data." The Union's chart is taken from the Regional Government Salary and Benefit Survey. While the Survey itself might be wrong, the numbers can at least be checked. The Union cannot verify the Village's "interview data." The panel will use Union Exhibit 50a, and Village Exhibit 66 for Buffalo Grove and Elmhurst.

1. Wheeling	\$50,192	8. Elgin	\$47,472
2. Rolling Meadows *	49,647	9. Skokie	46,998
3. Arlington Hts	49,164	10. Lombard	46,893
4. Park Ridge	49,033	11. ELK GROVE	46,041
5. Des Plaines	49,009	12. Hoffman Est	45,580
6. Northbrook	48,752	13. Buffalo Gr *	45,537
7. Mount Prospect	48,082	14. Elmhurst	45,395
		15. Bensenville	43,847

Average without Elk Grove \$47,542 * Unrepresented

The Union's combination equity adjustment and salary/merit proposal would radically change the ratios. Under the Union proposal, lieutenants would be placed in three groups based on their base salaries for the 1991-1992 fiscal year. Those at the bottom (\$41,101) would be paid \$43,995 (3.04%) for 1993-1994. This would include 7 lieutenants. Those paid more than the minimum but less than \$43,103, 3 lieutenants, would move to \$46,077, increases of \$4,016, \$3,402 and \$2,974, respectively. These range from 9.54% to 6.9%. The lieutenants paid more than \$43,103, 8 in number, would be increased to \$46,791. These amounts range from \$3085 (7.06%) for Hanco to \$2521 (5.69%) for Miller and Goostree. However, these increases and their respective percentages are very misleading because they are offset by the increases paid for 1992-93. Because all lieutenants received increases of between 4% and 4.84%, what appear to be huge percentage increases must be viewed in terms of the offset effected by the 1992-93 salaries. Thus, under these equity adjustments, the lieutenants at the top in 1992-93, 7 of them at \$46,041, would be paid an additional \$750, or

1.63%.⁶² The 7 employees at the bottom, Group "A," moving to \$43,995, would have actual equity increases of between \$1249 (2.92%) for Guglielmo to \$950 (2.2%) (Pilkington). The three employees in Group "B," with the sharpest increases under the equity adjustment, would actually receive smaller amounts. Casterton, Hood and Hohman would receive equity adjustments of \$888 (1.97%), \$1439 (3.22%) and \$2291 (5.23%), respectively.

The second and third parts of the Union's wage proposal for 1993-94 consists of 3% increases across the board for the three groups and discretionary merit pay adjustments of up to 2%.

The following diagram shows the effect of these increases.⁶³

	<u>1992-93 Sal</u>	<u>93-94 w/Equ</u>	<u>93-94 w/3%</u>	<u>93-94 w/2%</u>	<u>Village</u> <u>4%</u>
Miller	\$46,041	\$46,791	\$48,195	\$49,159	\$47,882
Goostree	46,041	46,791	48,195	49,159	47,882
Goss	46,041	46,791	48,195	49,159	47,882
Denna	46,041	46,791	48,195	49,159	47,882
Langland	46,041	46,791	48,195	49,159	47,882
Gauss	46,041	46,791	48,195	49,159	47,882
Rohrer	46,041	46,791	48,195	49,159	47,882
Hanko	45,577	46,791	48,195	49,159	47,400
Casterton	45,189	46,077	47,459	48,408	46,997
Hood	44,638	46,077	47,459	48,408	46,424
Hohman	43,786	46,077	47,459	48,408	45,537
Guglielmo	42,746	43,995	45,315	46,221	44,456
Kopinski	42,803	43,995	45,315	46,221	44,512
Forde	42,946	43,995	45,315	46,221	44,664
Keyworth	42,983	43,995	45,315	46,221	44,702

⁶² The increase for Hanko would be slightly higher because he is the only Group "C" lieutenant who did not move to the top of the scale in 1992-93.

⁶³ This table does not conform with the computations contained in Village Exhibit 128. The arbitration panel's table simply takes the Union's final offer and creates the A, B, and C groups at \$46,791, 46,077 and 43,995 and then factors in 3% and 2%, and shows these figures against the 1992-93 amounts as stated in Village Exhibit 137.

Morony	43,033	43,995	45,315	46,221	44,754
Pilkington	43,045	43,995	45,315	46,221	44,767
Banot	42,934	43,995	45,315	46,221	44,651

Of course, the Village's proposal is stated in terms of its merit system, and the actual proposal would guarantee that the minimum and maximum would increase by 4%. This means that those at the top can get no more than 4% and those at the bottom can get no less than 4%. Those in between can get up to 5.5% as long as they do not exceed the maximum, provided that this does not keep them below the minimum. However, the Village in the past has not given merit increases much above the basic formula. In 1992 the average increase above 4% was .43% for those not at the top.⁶⁴ Thus, to be more accurate the above diagram of the Village's proposal might be augmented by .43% for each lieutenant not at the top. The proposal also provides that the lowest paid lieutenant will be 5% higher than the highest paid firefighter. The Village's proposal at 4% would do that. The lowest paid lieutenant at \$44,456 would be 5% higher than the top firefighter rate at \$42,338.

Consideration of lieutenants' salaries has taken longer and has required the examination of more detailed data than any of the other economic issues. In addition to the facts discussed above, the panel has reviewed the evaluations and salary increases of the past several years, the position descriptions and the briefs in the representation case. The panel is aware of the many

⁶⁴ This ranges from an additional \$196 for Hanco down to an additional \$184 for Guglielmo.

responsibilities required of fire lieutenants and the importance of their role in the administration of the mission of the Department. The panel has seen the deterioration of the relative salary status over a long period of time (at least as compared with most of the comparables). While it is true that the economic environment is the same for lieutenants as it is for firefighters, generally speaking the firefighters' salaries have been more competitive than that of the lieutenants. We conclude that the Village's offer of 4% with some leeway for merit increases is too low under all of the circumstances of this case. The additional amounts available under the merit system have not shown to be much of anything in the past. In all likelihood, the lieutenants would not as a group realize much more than the 4%. In that regard, we also discount the merit portion of the Union's proposal. The final 2% for merit increases is not apt to yield any more than the merit system has yielded under the Village's sole discretion. Although we do not agree with much of the Union's reasoning for the equity increases, we find them necessary nonetheless. While these increases are perhaps more than the panel chairman might award for (just) Group B, the proposal as a whole is supported by the evidence and the statutory factors. Because the panel believes the merit increases are necessary, it should also select the Union's general and merit system increase of 3% and 2%, respectively. As stated above, we have given little weight to the 2%, believing that it will not amount to much of anything. Thus, as we see it, the real effect of the Union's salary proposal is a

flat 3% over the equity increases. This is more appropriate than the Village's 4%. In conclusion, the panel selects the Union's proposals for both salary and equity issues for 1993-94.⁶⁵

5. Lieutenant Salaries - 1994-1995

(a) Equity Increases

(b) Merit Increases

The Village's proposal for lieutenant salaries for 1994-95 is structured in terms of its merit pay plan. But there are significant differences in its terms. The percentage increase for the minimum and the maximum of the range is either 3.25% or whatever percentage is adopted by the Village for other merit plan employees, whichever is higher. The Village retains the provision that the minimum salary will be at least 5% more than the highest paid firefighter. The Union's proposal has two parts, which will be considered separately. The first part is the equity increases which are based upon a combination of the Union's first year equity, general and merit increases. Thus, the Union proposes that lieutenants in the "C" Group at or below \$46,220 shall receive a \$1,250 increase. The "B" Group employees at or below \$48,403 shall receive \$1,250. The lieutenants in the "A" Group at or below

⁶⁵ The effect of this selection is to give an additional \$313 over the Village's 4% proposal to the 7 officers at the top (with a little more for Hanko who now moves to the top), an average of \$1140 for the 3 officers in Group B, and varying amounts for the lieutenants in Group C, ranging from \$548 to \$859. These amounts are not so out of line as to cause any internal problems for the Village.

\$49,158 shall receive an annual increase of \$750.⁶⁶ The second part of the Union's salary proposal is for merit pay, but under a different approach. The Union's proposal reads as follows:

Effective 5/1/94, lieutenants shall be awarded a merit pay adjustment on their annual salaries. The merit range shall be 0 to 5.5 percent. Employees who receive an average annual evaluation of 4.0, "exceeds standards," from their immediate supervisor shall receive a merit increase of 3.75 percent. Employees may also be given an additional merit increase of 1.75 percent on the basis of an evaluation by the fire chief. Employees whose annual average evaluation on a numeric standard "meets standards" shall receive a merit increase of 2.75 percent.⁶⁷

Addressing the Union's equity proposal first, the effect of the proposal would be to grant the "A," "B," and "C" employees 1.56%, 2.63% and 2.76% increases, respectively, before the application of the merit system.⁶⁸ There is no justification in the record for these payments. The panel was convinced that the lieutenants needed additional pay in the first year of the contract. Those additional sums have become part of the base pay for lieutenants and the effect will remain with the employees for

⁶⁶ The proposal is worded in terms of "at or below." It is unlikely that any officer will be earning the "at" amount because it presumes that the employee would receive the full 2% merit increase. The panel has reached a contrary presumption and does not anticipate many increases under the Chief's discretionary 2% merit provision. We interpret the Union's proposal to mean that the \$1250, \$1250 and \$750 will be applied to whatever the salary of each officer is depending on whether he was in the A,B or C Groups in the first year of the contract.

⁶⁷ At the hearing the Union agreed that the 1.75% was completely discretionary on the Chief's part.

⁶⁸ These percentages may actually be a little lower for those employees, if any, who benefit from merit increases under the 2% formula for the prior year. The percentages used here are based on an assumption, perhaps artificial, that employees will not get additional merit increases.

some time to come. To grant lieutenants additional equity adjustments in the amounts proposed is simply not supported by the record.⁶⁹ This proposal is therefore denied.

Consideration of the parties' merit pay proposals for 1994-95 involves a new set of factors. The Village's proposal was for a 3.25% increase in range, "or the same percentage that is adopted by the Village for other Village merit plan employees for the 1994-95 fiscal year, whichever is higher." In fact, the Village has adopted a new merit system and suggests, correctly, that the language of its proposal would make it applicable to the fire lieutenants. The Village's new Merit Pay Plan, adopted as Ordinance 2362, effective April 26, 1994, has at least two facets applicable to this case.⁷⁰ First, the new plan provides for a general merit increase from 0 to 3.5% based upon satisfactory performance. An so employee evaluated by his department head would normally receive a 3.5% increase. Second, there is additional merit pay for exceptional employees up to 2.5%. (These additional

⁶⁹ The sums authorized by the Village's new Management Enhancement Program, applicable to police sergeants, is not substantial enough to alter these conclusions. While the amounts granted to the sergeants obviously increase the spread between top pay in each classification, the gap was significantly diminished as a result of the increases in 1993-94.

⁷⁰ The panel is relying on the text of the ordinance, the consent agenda for the Village Board meeting of April 26, 1994, and the affidavit of Richard Olson, dated June 21, 1994. At this time the panel admits into evidence Union Exhibits 108A and 108B, and Village Exhibits 135, 136 and 137. (The panel notes the provisions of Section 14(h)(7) of the Act which permits the introduction of evidence of changes in the facts and circumstances during the pendency of the proceedings.)

sums would come from a departmental "2% pool.")⁷¹

Basically, the differences between the two proposals are that under the Union's proposal an employee "meeting standards" would be entitled to a 2.5% increase, an employee "exceeding standards" would get a 3.75% increase, and an employee doing exceptional work may, at the discretion of the Chief, receive up to an additional 1.75% increase. The Village's proposal is for 0 to 3.5%, with 3.5% given to employees who are "at least satisfactory." An additional 2.5% may be awarded to exceptional employees at the discretion of the Chief. While it was not clear at the hearing or from the briefs whether "meeting standards" is the same as "satisfactory," the parties agreed during executive session that the concepts are the same.

One of the Union's major complaints about the old system was that it was subjectively applied by the Chief. Indeed, the record indicates that although the Chief had oversight authority regarding employee evaluations and took them into consideration in deciding on merit increases, he considered a range of factors beyond the evaluations. These other considerations may have appeared to some

⁷¹ Additionally, the Village Manager has the discretion to authorize up to an additional 1.5% range movement for employees with range movements of 0 to 3%. This latter provision is designed for newer employees to allow them to move up in the range of their positions faster. Although this discretionary range movement is included in the description of the new plan it does not appear that it would apply to fire lieutenants who are not in the situation of having range movements of 0 to 3%. Nor does it appear to be applicable to police sergeants. For the purposes of this case, we assume that the new plan consists of a 3.5% increase for satisfactory performance and up to 2.5% for exceptional performance.

as being without objective standards and thus gave rise to some complaints among the lieutenants. The Union's proposal was designed to add some objectivity to the merit pay system and give credence to the evaluations. However, the Village's new plan seems to address the Union's concerns. Under the old plan, salaries were adjusted based on performance without any clearly defined guidelines as to what an employee had to do to get at least the range increase. The new plan, as explained by Village Personnel Officer Richard Olson, establishes a standard of "average" performance for a rate increase of 3.5%. Considering also, the known increases among the comparables (see the discussion under Issue 2, above), the low rise in the CPI, as well as the first year salary increases, the panel finds that the Village's second year salary proposal for lieutenants to be the more appropriate.

6. Lieutenant Salaries - 1995-1996

The Union's salary proposal for 1995-96 consists of a merit increase only, as does the Village's. Both proposals track their formulas from the prior year. Indeed, the language of the two proposals are identical to those for 1994-95. That is, the Union is seeking merit increases of 2.75% for employees who meet standards, 3.75% for employees who exceed standards, and an additional discretionary 1.75% on the basis of an evaluation by the Fire Chief. The Village offers 3.25% or the same percentage that is adopted by the Village for other merit plan employees, whichever is higher, subject to the limitation of the range

increase (3.25%) and provided that all lieutenants will be paid at least 5% more than the top step firefighter salary.

The major difference between this Village proposal and that of the prior year is that we knew what the alternative Village system was for 1994-95. There is no information on what alternative plan, if any, will exist in 1995-96. Indeed, although the panel assumes that the merit plan, in whatever percentage is appropriate, will be applied under the same standards as Olson explained the operation of the new 1994-95 plan, that assurance is not part of the Village's proposal. If the Village abandons the plan it adopted for 1994-95, the same problems with an absence of standards may occur. Thus the panel is faced with a proposal which asks for 2.5% for standard performance and 3.75% for above standard performance (with an additional discretionary range of 0 to 1.75%) as against a proposal of 3.25% or some unknown, and without any assurance of objective enforcement.

Seen in this light, the Union's proposal is certainly the more attractive.⁷² Indeed, the Union's proposal may actually be less costly than the Village's because the floor is 2.5% as against the Village's 3.25%. (Based on the documentation in the record, less than satisfactory performance by lieutenants would be most unusual.) Accordingly, the Union's proposal for lieutenant salaries for 1995-96 is accepted.

⁷² The Village argues that the effect of the Union's proposal is to remove salary increases from the Chief and to give it to the fire captains, who do the actual evaluations. However, the Chief reviews all evaluations and can establish the standards to be applied by the captains.

7. Longevity Pay - Firefighters

The dispute on this issue could not be more clear. The Union has proposed the institution of longevity pay while the Village has proposed that no longevity pay provision be included in the contract. No other Village employee, represented or non-represented, receives longevity pay. The parties agreed that longevity pay for firefighters for the three years of the contract are one issue. The Union's proposal is as follows:

<u>1993-94</u>	<u>1994-95</u>	<u>1995-96</u>
\$150 with 10 yrs of serv.	\$250 with 10 years	\$400 with 10 yrs
\$200 with 15 yrs of serv.	\$300 with 15 years	\$500 with 15 yrs
\$200 with over 20 years	\$400 with over 20 yrs	\$650 with 20+ yrs

About half of the comparable jurisdictions have some longevity pay. The table of the comparables is as follows:

	<u>5 years</u>	<u>10 years</u>	<u>15 years</u>	<u>20 years</u>	<u>20+ yrs</u>
Arlington Hts	\$450	\$550	\$650	\$750	\$750
Bensenville	0	0	0	0	0
Buffalo Grove	200	200	200	500	500
Des Plaines	0	849	1656	2548	2548
Elgin	0	0	0	0	0
Elmhurst	0	0	0	0	0
Hoffman Estates	0	0	0	0	0
Lombard	0	0	0	0	0
Mount Prospect	400	400	600	700	700
Northbrook	180	660	960	1200	1200
Park Ridge	0	600	700	800	800
Rolling Meadows	0	0	0	0	0
Skokie	300	360	420	480	540-600
Wheeling	0	0	500	500	500

Half of the 8 communities which pay longevity already pay their firefighters more than Elk Grove. Except for Park Ridge, those communities which pay less than Elk Grove also pay modest

longevity (less than the Union's demand in this case). Except with regard to Arlington Heights (whose 1993-94 increases, if any, are not in the record), granting or denying longevity to Elk Grove firefighters will not affect their competitive position.

The Union's argument in favor of longevity is based on its presence in many communities in the area and that the amounts are small and the cost to the Village would be modest.⁷³ The usual argument in favor of longevity is that the older employees have long since exhausted step increases and the periodic cost of living adjustments which come in most cases with each new contract are insufficient. In effect, longevity increases are really equity adjustments inasmuch as it is rarely shown that the productivity of the older employees justifies the additional increase based on length of service. No case for equity adjustments has been in this record for firefighters. Additionally, under the Union's proposal a considerable percentage of the firefighters would be eligible for some longevity pay. This includes employees with as little as ten years' service. The effect of this proposal would be to increase the salaries for a large majority of the bargaining unit. This is not justified by the record. The salaries have been set in accordance with the proper standards. The Union's proposal looks too much like just another increase in salaries.

⁷³ According to the Union, the number of employees who would be eligible for longevity are as follows:

	<u>10-15 years</u>	<u>16-20 years</u>	<u>over 20 years</u>
1993-94	14	16	29
1994-95	7	21	31
1994-95	6	18	39

8. Longevity Pay - Lieutenants

The Union makes the same proposal for lieutenants as it made for firefighters. Its arguments are also the same. However, unlike with the firefighters, the arguments are appealing when applied to the lieutenants. Thus, we have already found that lieutenants are underpaid and we have provided for salary increases in accordance with the Union's proposals in 2 of the 3 years of this contract. However, the panel denied the second year of equity increases in large measure because the amounts proposed were too high under the circumstances. The Union's longevity proposal for lieutenants better addresses the Union's equity arguments. Moreover, these are the officers who the Village has relied upon for so many years as its front line supervisors and who have made so many contributions to the administration of the department. Finally, this proposal should not interfere with internal comparability now that the Village has inaugurated its Management Enhancement Program and sergeants will be getting \$500 bonuses.

The Village makes several arguments against longevity pay. Citing Elliott Goldstein's award in City of DeKalb, S-MA-87-26 (1988), it argues that interest arbitration should not be the vehicle for "break throughs," that is, new provisions which could not be obtained at the bargaining table. The chairman agrees with this general principle to the extent that such breakthroughs should not be a matter of course.⁷⁴ The party seeking the change has the

⁷⁴ As was stated in Will County Board and Sheriff of Will County, (Nathan, 1988, pp.49-50), "Nor is it [the arbitrator's] function to embark upon new ground and create some innovative

burden of showing not only a clear justification for the proposal but also that it was unable, despite repeated attempts, to obtain relief at the bargaining table. It is insufficient, contrary to the suggestions of our brother Goldstein, to simply say that interest arbitration is designed to maintain the status quo. Were it so, the party saying no would hold all the cards. Interest arbitration seeks to balance the need to resolve deadlocks without discouraging the bargaining process. Sharp changes should not come easily, but the process must be open for some change. However, the Goldstein principle is not applicable in this case for another reason. In City of DeKalb the parties had a bargaining history. The issues before Goldstein did not involve the parties' first contract, as is the case here. In the present case where the contract to be written is the parties' first contract, in a sense everything is a breakthrough. Finally, even under the test enunciated in Will County, we find that the Union has carried its burden of proof in that it has shown a real need for the proposal as against the Village's refusal to agree to any equity adjustments for lieutenants despite its admitted need to change its old merit systems. We select the Union's proposal.

procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. Anything else would inhibit collective bargaining."

9. Paramedic Stipends

Paramedic services have absolutely transformed the nature of fire departments. Particularly in residential communities, they are the most frequent type of service performed by fire employees. Even in a community such as Elk Grove Village, with its heavy concentration of manufacturing and commercial facilities, emergency medical services are the most common type of response by the Department. In 1992, the Department responded to 4045 incidents of all kinds. Of these, 2375 were emergency medical service activities, an increase of 7.8% over 1991.⁷⁵ Fire incidents decreased 9.5% from 253 to 229, and of these, only 103 were structural fires.⁷⁶ Despite the frequency of emergency medical responses, the Village has only 36 certified paramedics.⁷⁷ There are some plans for increasing this number, but it does not appear that this is more than just a plan at this time. On the other hand, the Union claims that paramedics are performing a disproportionate amount of the work of the Department, and there is evidence that some paramedics have sought to leave this classification, although the Village has not experienced any problems filling the slots.

⁷⁵ However, 1991 showed a decrease in EMS calls from 1991. The number of EMS calls between 1988 and 1991 averaged 2248. At the same time, fire calls have been steadily decreasing. The average number of fire calls during the same period was 269

⁷⁶ The remaining responses of all types were hazardous conditions, vehicle, rubbish and other fires, smoke investigations and false alarms.

⁷⁷ It was increased from 30 to 36 in 1990.

Paramedics currently receive a \$2,000 annual stipend. During negotiations, the Village agreed to apply this to the paramedics base salary for overtime computation purposes. The parties respective proposals for paramedic compensation are:

	<u>1993-1994</u>	<u>1994-1995</u>	<u>1995-1996</u>
Village	\$2,075	\$2,150	\$2,225
Union	2,200	2,300	2,400

Obviously, the parties agree that the stipend should be increased. The problem with the Union's proposal is that it represents a 20% increase for the three years of the contract. Moreover, the contract term is nearly half over, and while \$400 cannot be considered a "windfall," it is disproportionate to the needs of the situation. While it is true that the Village is currently on the low side among the comparables, it is the panel's conclusion that the Village's proposal will bring the unit more into line than that of the Union.

10. Fire Apparatus Engineer Pay

Fire apparatus engineers are specialists and are certified by the state. They operate the fire trucks and are responsible for regulating water pressure. Presently, engineers do not receive special pay for performing the functions of their job. The Union is proposing a \$250 stipend for engineers. The Village proposes that no stipend be paid. Only five of the 14 comparable fire departments pay a special rate for engineers.

The Union characterizes its proposal as a small token in recognition of the operation of sophisticated pumping equipment.

In effect, the Union suggests a reward for the engineer certification. Other than that this would be a nice thing to have, the panel is unsure of what need is being served by singling out engineers among those employees engaged in fire suppression. The Union has simply not produced any evidence which would justify paying a special rate for employees who perform the function of engineer. The Village's proposal on this issue is selected.

11. Out of Classification Pay

The Union proposes that employees serving in a higher classification in an acting capacity be paid 5% above their regular hourly rate. The Village opposes any provision for acting out pay. Instead, it points to current Village policy, applicable to all employees of the Village, under which a department head can request a temporary assignment when a position is to be vacant for 30 days. When the Village Manager approves, the employee working out of classification is paid 5% extra over his/her regular pay. Although both systems provide for the extra 5% pay, they are very different in operation. The Union proposal and the Village policy are as follows:

Union Proposal

A firefighter or a firefighter/ paramedic who is assigned to serve in an acting capacity as a Lieutenant for (8) or more consecutive hours, and a Lieutenant who is assigned to serve in acting capacity as a Captain for eight (8) or more consecutive hours, shall be paid five percent (5%) above the regular hour rate of pay for all hours worked in such acting capacity.

Village Policy

If a department finds that one of its authorized supervisory positions is to be vacant and will not be filled for more than 30 calendar days, and there is no other employee in a position whose job description would require him to fill in for the vacant position, the Department Head may request authorization from the Village Manager to fill the vacant supervisory position on a temporary basis ***. An employee who is temporarily appointed to a vacant supervisory position shall be compensated at a rate of pay 5% higher ***.⁷⁸

The Village objects to the manner in which the Union's proposal was made. According to the Village, no proposal was made on this issue at all until very late in negotiations and only after the parties had agreed to a hireback provision. After that was done, the Union proposed the out of classification proposal which in effect makes the hireback provision, which already has the effect of overtime compensation, much more costly than the Village had intended. The Union acknowledges the lateness of its proposal, but argues that it was appropriate because it did not want acting out of classification at all, but when the Village said that they needed this and it was one of the purposes behind the hireback provision, the Union found it was necessary to provide for extra compensation.⁷⁹

⁷⁸ The policy also provides, among other things, that the temporary appointment may be terminated at any time and that for Police and Fire it may not last more than 6 months.

⁷⁹ The hireback section of the tentative agreement states, "*** where there is a need for a hireback, employees will be hired back from an integrated seniority list of all employees by shift *** subject to the following:

- a) If there are less than 4 officers on duty, a lieutenant will be hired back to fill the fourth officer position bypassing, if necessary, firefighters on the list.
- b) If there are 6 officers on duty, a firefighter will be

The comparables have a wide variety of provisions. They may be summarized as follows:

Arlington Heights	5% premium paid for acting in a higher classification for 8 or more hours.
Bensenville	May be assigned without additional compensation.
Buffalo Grove	Acting lieutenants receive \$24 for each 24 hour shift.
Des Plaines	Acting out of classification for 24 hour shift is paid at rate of acting position.
Elgin	Acting lieutenants and acting captains for 10 hour periods are paid hourly rate of acting position.
Elmhurst	Acting captains paid 75% of captain's rate.
Hoffman Estates	Employees paid at rate of higher category.
Lombard	Paid additional \$1.75 an hour after 8 hours.
Mount Prospect	No provision
Northbrook	No provision
Park Ridge	Acting lieutenants paid \$40 per shift for 4 hours or more in acting capacity.
Rolling Meadows	Additional 7% for full shift as acting lieutenant.

hired back bypassing, if necessary, lieutenants on the list.

c) Any such employee who is passed over will remain on the eligible list for the next hireback opportunity.

An employee who is not available for a hireback because he is on a scheduled day off *** will receive a pass. *** An employee may not stack more than two such passes. If there are no [or an insufficient number of] volunteers, employees may be ordered back on the basis of reverse seniority ***. An employee may be held over to continue work in progress ***. ***

Skokie Employer may assign work in acting capacity without additional compensation provided that assignments do not significantly increase over levels prior to 1988.

Wheeling Acting lieutenants receive from 1 to 3 hours of overtime pay on scale from 2 to 24 hours.

There is no question that the comparables strongly support some additional compensation for acting in a higher classification. It is also clear that the Village's present policy falls short of the mark. It provides discretionary upgrades which may be cancelled at any time in cases where a position will be vacant for 30 days. Moreover, the Chief testified that in his several years as department head he could only recall two occasions when the Village policy was used in the Fire Department. Additionally, there was some evidence that employees may be rotated in the acting position which would nullify the need for use of the Village's policy. On the other hand, the parties' newly negotiated hireback provision will provide additional compensation in the form of overtime pay. The new section sets minimum standards for staffing and provides for an orderly rotation of opportunities. That the parties negotiated the hireback provision also demonstrates that they are capable of addressing issues of this type at the bargaining table. That consideration also discourages the panel from selecting the Union's proposal. After careful consideration, the panel decides against the Union's proposal for this, the party's first, contract.

12. Call Back Pay

The Union proposes the following:

Employees called back to work outside their normal hours of work, i.e., hours not continuous to their normal shift or on 2 days not regularly scheduled, shall be paid their applicable rate of pay for all hours worked outside their normal shift, with a minimum of two (2) hours' pay.

The Village proposes that the contract contain no provision for call back pay.

Call back pay is a guarantee to employees that if they need to return to work (as opposed to being held over or called in early), they will be at least guaranteed two hours' work or pay. The provision is extremely common in private sector agreements and is considered a trade for the inconvenience of having to report to work during personal time. This type of provision also appears frequently in the contracts of the comparable fire departments. It is one of the rare occasions when every one of the comparables has some provision for call back pay. Additionally, the Village's contract with the Police union (FOP), at Article X, Section 6, contains a minimum pay call back clause.

The Village argues that the Union has not shown a need for this provision, that is, it has not shown that management has abused the call back of employees so that they need the two hour protection. In this regard the Village is substantially correct. In most circumstances it is not enough to simply show, without more, that everyone has a particular benefit, and so why not us. However, in this instance, the benefit in question is so common

that it almost raises the question of why management has not shown the provision was not needed. Under these circumstances, particularly where there is internal comparability, the issue must be awarded to the Union.

13. Overtime Pay for Firefighters

Firefighters in Elk Grove Village are paid overtime in accordance with the Fair Labor Standards Act ("FLSA"). As 24 hour shift employees, their overtime work cycle is computed on the basis of 28 day months. Under the FLSA, they are paid at the rate of time and one-half for hours in excess of 212 actually worked during the 28 day cycle. Thus, under current policy, if an employee misses a day of work during a cycle and later makes up that day within the same cycle, no overtime is paid. If the employee misses a day of work in one cycle and make it up during another cycle so that more than 212 hours are worked during the second cycle, overtime is paid for the excess hours worked during that second cycle. This is true even if the day missed was a result of a holiday, vacation, or other approved time off. So, too, hours worked as a result of holdovers or callbacks are not compensated at overtime rates unless and until the total hours worked during the cycle exceed 212.

Both parties propose changes in this basic FLSA approach. The Village's proposal is similar in format to the one negotiated with the Police. It provides an FLSA calculation but with the additional element that hours missed due to vacations and holidays, but not for other paid leaves of absence shall be counted as hours

worked for overtime compensation purposes.⁸⁰ The Union's proposal is that all hours worked outside an employee's regularly scheduled shift shall be paid at the rate of time and one-half. The parties agree that almost all of the comparables have provisions in their contracts similar to that proposed by the Union.⁸¹

The Village argues that its proposal represents a major change in the way that overtime is computed and that as a result firefighters will receive a significant increase in overtime pay. According to the Village, because there are so many callbacks and additional shifts worked by firefighters even under the old system considerable overtime is paid. According to the Village, during a period from April, 1992, through April, 1993, firefighters worked a total of 10,199 additional hours. Of these, 3,949 were straight-time and 6,250 were paid at time and one-half. According to the Village, if vacation and holiday time were calculated as time worked a substantial portion of the straight-time hours in this calculation would have also been paid at overtime rates. However, under the Union's proposal, all of the 3,949 hours would have been paid at overtime rates. According to the Village, and the Union

⁸⁰ There are other technical features to the Village's proposal but they are not critical to the discussion of the issue, and neither party discusses them in support of their respective arguments.

⁸¹ The Village argues that the Union's proposal was unartfully drafted and that it might be interpreted as requiring the payment of overtime rates for time off due to vacations and holidays. The panel understands that the Union is proposing that holidays and vacation time are not to be paid at the rate of time and one-half, but only counted toward the computation of time worked before overtime rates take effect.

does not dispute this, the cost of the Union's proposal would add more than 1% to the cost of salaries and benefits in the first year of the contract. The Village argues that although most of the comparables have the system urged by the Union, it would represent such a radical departure that if it is ever to be implemented, it should not come in the first year of the first contract.

The Union's argument is straightforward. Almost all of the comparable fire departments have this system. There is no reason why a department of the size of Elk Grove Village should be singled out and treated differently from others in the area. Employees have a set schedule for work. Additional work is an intrusion in their private lives. If they are to give up their own time they should be rewarded for it. Time and one-half is the traditional system for extra work performed. This is nothing new. It should be the standard in the Village as well.

There is much that is appealing in the Union's argument. After all, why bother with comparables at all if they are just ignored when the overwhelming consensus goes the other way? The problem in this case is that the proposals must be viewed in context. In this case there are two dozen economic issues. As a result of this award the payment for firefighting services in this community will be radically changed. This is not to say that the change is not deserved, and may have been long in coming. However, the effect of the total package must also be considered. Here, the Union wants the absolute top of the line overtime provision in the first year of the first contract, a year which has already come and

gone. The panel must be sensitive to a windfall effect. There must be some balance applied to the package as a whole. Indeed, despite the Village's argument in the introduction of its brief that the panel should not seek compromise and balance, it is simply improper for the panel to view any proposal outside the context of the remainder of the issues. Under these circumstances, where the Union seeks such a major change in the first year of the first contract, and considering the economic impact of changes mandated in this decision, the arbitration panel awards the Village's proposal.

14. Overtime Pay for Lieutenants

The Union's proposal for overtime pay for lieutenants is identical to that for firefighters. All hours worked outside of regularly scheduled hours shall be paid at overtime rates. Vacation time and holidays shall be counted as time worked. The Village, however, has a different proposal for lieutenants. It seeks to exempt lieutenants from FLSA overtime except "when they are called back to duty outside of their regularly hours to respond to an emergency or to satisfy minimum manpower requirements as established by the Fire Department."

The Village argues that it wants to exempt lieutenants from the same overtime provisions applicable to firefighters because the lieutenants are exempt from overtime under the FLSA. The Village represents, through its counsel, that as a result of an audit by the U.S. Department of Labor, it was determined that lieutenants are supervisors within the meaning of the FLSA, and

are therefore exempt from the overtime protections provided by that statute. According to the Village, lieutenants would still receive a substantial amount of overtime pay under its proposal. From April, 1992, through April, 1993, lieutenants worked a total of 5,107 additional hours, of which 2,636 were paid at time and one-half.

The Union argues that there is absolutely no basis to exempt lieutenants from the FLSA. The parties spent a great deal of time and effort litigating before the State Labor Board whether these employees were supervisors. It was finally determined by the Appellate Court that they were not. The Village will simply not give up the ghost, and it seeks to treat lieutenants differently notwithstanding state labor law. The Union places great emphasis on the fact that where lieutenants are included in the comparable bargaining units they receive overtime pay just as the firefighters in those departments do. Moreover, the Union argues, the Village's proposal is even at odds with its own personnel policy. According to the Union, Section 7.8, of the Policy provides overtime pay at the rate of time and one-half for employees who work beyond their established workday. The Policy exempts certain designated managers from overtime, but fire lieutenants are not listed. However, Section 7.8 goes on to state that front line supervisors, of which fire lieutenants are included in the section, will not be eligible for overtime compensation at a rate of time and one-half except:

"1. When the needs of the department are such that the first line supervisor must work additional days and/or hours because of inadequate supervisory manpower.

"2. When emergency situations develop which require their supervision. (Emergency situations for purposes of this item, shall be defined by the first line supervisor's department head)."

While this language is similar to the conditions for overtime for lieutenants under the Village's proposal, the Village's proposal refers back to FLSA overtime, which is not paid until after an employee has worked 212 hours in a cycle. The Village policy pays for all qualifying overtime which is outside an employee's regular schedule. Thus, under the policy, a lieutenant called back to meet a manpower requirement will be paid overtime regardless of whether he missed any work during that cycle. Under the Village's proposal overtime pay would not be accrued until the lieutenant worked 212 hours in the cycle regardless of the reasons he was called back.

For the most part, the panel agrees that lieutenants should not be singled out and denied overtime in the manner granted to firefighters. As to the applicability of FLSA overtime, although the federal government may determine that lieutenants are not supervisors under the FLSA, and the panel draws no conclusion in this regard, the issue is whether they should be protected under the labor agreement. Under the labor agreement, lieutenants are not supervisors. They may direct firefighters in the performance of their work, but they do not possess the traditional indicia which distinguish labor relations supervisors from FLSA

supervisors.⁸² The panel is clearly troubled by the Village's proposal.

The dilemma with the Union's proposal is that is the same proposal which was rejected for firefighters. It is troubling to contemplate that lieutenants might receive overtime pay in situations where firefighters are not eligible. Yet, to accept the Union's proposal would do no more than replicate the same disparity between two groups of employees which is the basis for faulting the Village's proposal in the first place. Thus, under the Union's proposal lieutenants would be paid overtime for all hours worked outside of a regular schedule. A firefighter would not get overtime until he/she accrued 212 hours. Under the Village's proposal, a firefighter could earn overtime after accumulating 212 hours in a 28 day cycle, but a lieutenant working the same hours would not necessarily earn any premium pay.

The panel's mandate is to select the more appropriate of the two proposals even in situations where neither proposal would have drafted by the panel had it the power to do so. On balance, we believe it is better to leave lieutenant overtime for another day than to provide the disparity which would result from the Union's proposal. In this regard, we are persuaded by the Village's evidence that past practice has afforded lieutenants at least some overtime opportunities. But to select the Union's proposal would so tip the scales in the opposite direction that the panel believes that some other accommodation should be developed. At least for

⁸² The tests under the two statutes are very different.

now, this is a matter for the bargaining table. If the Union is unable to bargain any system of reasonable overtime for lieutenants, or if the experience under the new language results in little or no overtime for lieutenants, then the Union can return to this forum and make its case. Accordingly, we feel constrained to select the Village's proposal.

15. FLSA Overtime

In addition to the rate of pay for overtime, as discussed in the last two issues above, the Union proposes language in the contract which, it suggests, will make overtime under FLSA standards subject to the contract's grievance procedure. The Union's proposal reads:

F.L.S.A. overtime pay shall be paid for hours actually worked in excess of the maximum hours allowed by the provisions of the Fair Labor Standards Act for the assigned cycle.

The Village proposes that no such provision be included in the agreement. It argues that an alleged violation of a statute ought to be determined by the courts, and it cites a U.S. Supreme Court case in which the Court stated that "FLSA rights are best protected in a judicial rather than in an arbitral forum." Ballentine v. Arkansas-Best Freight System, 450 U.S. 728, 101 S. Ct. 1437, 1447 (1981).

The Union argues that arbitrators can interpret the statute more efficiently and less expensively than can be done in court. There is no comparability support for the Union's proposal.

The panel is unclear as to why the Union needs this provision

at all. The only possible benefit would be if the Act were interpreted or changed so that a lower threshold than 212 hours in a cycle triggered its benefits. This is because the Union's proposal states that FLSA overtime shall be paid in accordance with that statute, and does not reference the 212 hour cycle. But the Village's proposal for the overtime rate contains several references to the FLSA, and it is clear that the Village intends to follow the FLSA. Even if it were not so, the Village could not pay overtime benefits under a standard less than what the Act provides. A collective bargaining agreement cannot undercut a federal statute. (Ballentine v. Arkansas-Best Freight, Id.) Certainly any alleged violation of the overtime provisions as this panel has awarded are subject to the grievance procedure. There is no special benefit flowing from a specific reference to FLSA beyond what has already been provided. Accordingly, the panel selects the Village's proposal.

16. Kelly Days

Employees who work 24 hours on and 48 hours off, as in the Elk Grove Village Fire Department, will work 2,912 hours in a year. This is the maximum number of hours which can be worked, and it means that during four of the 28 day cycles each year employees will work 240 hours. Most fire departments, at least in the comparability group, schedule less working hours per year by programming occasional days off into the schedule. These are known as "Kelly Days." Of the 14 comparable departments, 12 have conventional 24 hours on and 48 hours off schedules. The average

number of Kelly Days among the 12 is 7.7 per year, with the range from 0 to 10. Only Bensenville, like Elk Grove, has no Kelly Days. The Union proposes that there be 4 Kelly Days a year, one during each of the 10 day (240 hour) cycles. The Union acknowledges that this would reduce the number of overtime hour for each employee by 96. The Village proposes that there be no Kelly Days. While it acknowledges that this is contrary to the comparables, it suggests that Elk Grove employees already get days off for holidays which employees in other fire departments do not get. Thus, employees get 4.7 scheduled holidays each year and 4 floating holidays.⁸³ The Village argues that this total of 8.7 holidays is greater than the average Kelly Days among the comparables.⁸⁴ The Village argues that to give the employees another four days off would either necessitate the hiring of additional employees, with all of the fringe benefit costs that that entails, or would require the payment of additional overtime to employees who have to work during these additional days off.

We find this to be a very difficult issue. On the one hand, there is equity to the Union's argument in that the Elk Grove employees are working more hours in a year than the average. While

⁸³ There are 7 scheduled holidays each year. When an employee works a holiday he/she gets an extra day's pay. As to the 2/3 of the holidays which occur when an employee is off, the employees get an extra day off. This means that an employee will get an average of 4.7 extra days off each year.

⁸⁴ However, some of the comparable communities do get time off for holidays. If the holiday time off among the comparables was factored in, the average number of work reduction days would exceed the 8.7 holidays in Elk Grove Village.

Days.⁸⁵ When this is done without affecting the employee's base annual salary, the effect is to increase the cost of overtime. From the Union's point of view the tradeoff is that the employees have less scheduled hours and therefore lose overtime opportunities. They may be paid more on an hourly basis for overtime, but there will be less of it because the Kelly Days give them additional time off. As a practical matter, however, employees often work their Kelly Days because of staffing requirements and thus the existence of Kelly Days may simply be a means to increase income.⁸⁶

As their final offers, the parties have proposed that the computation of the hourly rate reflect their respective positions regarding the Kelly Days. The proposals are as follows:

Village

The straight-time hourly rate of pay shall be computed by dividing the employee's annual base wage by 2912 for employees assigned to 24 hour shifts, and by 2080 for 8-hour personnel

Union

An employee's regular rate of pay shall be based upon a 54.16 hour work week for 24-hour shift personnel and a 40-hour week for 8-hour personnel and shall be determined by dividing the employee's annual salary by 2826 for 24-hour shift personnel and by 2080 for 8-hour shift personnel.

⁸⁵ This is in contrast with, for example, holidays. When an employee is off for a holiday he/she may not work and may not lose any pay for the time off, but the time off has no effect on the annualized hourly rate for overtime computation purposes. With Kelly Days, the practice is often to reduce the total hours worked which then increases the hourly rate.

⁸⁶ This was one of the Village's underlying arguments against the creation of Kelly Days.

this means more overtime hours, and additional income, we are also mindful of the conservative overtime compensation formula we have also decided upon in this award. The problem with the Union's proposal is that it is simply too costly in the context of the facts of this case. While it is true that near the end of the hearing the Union offered to make its Kelly Day proposal prospective from the effective date of the contract, this is not part of their final offer. Moreover to initiate four Kelly Dyas at one time would be disruptive to scheduling and would result in a sharp cost increase for the Village. We are not suggesting that the Village's current system is the best. It is just that in the context of the take it or leave it arbitration system under the Act, we must find that the Union's proposal of 4 Kelly Days is out of balance and not appropriate at this time.

17. Computation for Hourly Rate of Pay

This issue relates to the rate of pay to be used for overtime calculation. Generally speaking, the hourly rate of pay reflects the total hours of regularly scheduled work divided into an employee's base salary. This is critical with firefighters because the one day on, two days off schedule normally gives rise to a lot of overtime, and the overtime is paid on the basis of the hourly rate. With firefighters, the total hours of regularly scheduled work is not always used to determine the hourly rate. This is where Kelly Days have special significance. With Kelly Days the practice is often to reduce the total number of hours used for establishing an hourly rate by the number hours accrued as Kelly

The parties argue that this provision should follow the award for Kelly Days. Thus, the Union points out that if it was successful with its Kelly Days proposal, then its proposal should prevail here as well. The Village suggests the same with regard to its proposal. However, in its brief, the Village has amended its final offer and suggests that it would be willing to accept the Union's measurement of the hourly rate if the panel accepted its Kelly Day proposal. Thus, under this new offer, employees would not have additional time off, but the rate for overtime purposes would be increased. The Village proposes that the rationale would be that the four floating holidays would be used to reduce the hours in the work year.

The effect of the Village's amended final offer is to convert the floating holidays into floating Kelly Days. What distinguishes Kelly Days from holidays is that one reduces annual schedule of hours of work. The other is simply time off. Of course, the problem here is that the Village is attempting to negotiate with the panel. The offer the Village makes here should have been made to the Union. It is inappropriate to propose a bargain with the arbitrators, i.e., if you accept our offer on one issue, we will concede on the other. While we believe that either party may concede on any issue at any time, even after an award has been delivered, it is inappropriate to make a conditional settlement of

an issue after final offers have been submitted.⁸⁷

We select the Union's final offer not because of the Village's concession, but because the offer makes sense on its own. There is no reason why hours of work to be used for establishing the hourly rate cannot be less than the actual hours for which each employee is scheduled. It simply increases the overtime rate. There is no reason why the floating holidays should not be considered as Kelly Days, albeit with another name.

Furthermore, and this is significant in our determination, inasmuch as we have denied the Union's proposed formula for when overtime is accrued, it is only appropriate that this be balanced with a higher hourly rate which selecting the Union's proposal on this issue would yield. Accordingly, we find the Union's proposal to be more appropriate.

18. Minimum Staffing

The Department has an Operating Directive, dated August 1, 1991, providing a "guideline" for daily staffing requirements based on personnel on-duty. The Directive states that there shall be 22 personnel on duty, and if less there shall be a "hireback," that 5 personnel and the captain may be scheduled off, and that 4 officers are required to be on duty. It provides a formula for which rank shall be hired back. It also provides staffing requirements for paramedics. Finally, it contains a table of the

⁸⁷ Section 14(j) of the Act provides, in part, "At any time the parties, by stipulation, may amend or modify an award of arbitration."

minimum staffing for each piece of apparatus at each station.

The Union proposes to make this Directive a provision of the contract, with one modification, that six personnel and the captain may be scheduled off at any one time. The Union argues that this is a safety proposal to assure that an adequate number of firefighters and officers are at the scene of a fire. It argues that a deviation from these requirements might place officers in jeopardy during fire suppression efforts. Further, it is in the public interest to require minimum staffing, because employees cannot suppress a fire until an adequate number of them are at the scene.

The Village argues that this a non-mandatory subject of bargaining and that the panel has no authority or jurisdiction to rule on this issue.⁸⁸ The Union's proposal requires that each shift have 22 personnel on duty, and it sets the framework for the ratio of officers to firefighters. According to the Village, the subject of minimum staffing has come up in two prior cases under the Act, and in both the arbitrators held that the proposals were not arbitrable.

Section 14(i) of the Act states, in part:

In the case of fire fighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following matters: i) residency requirements; ii) the type of

⁸⁸ The Village also makes a number of arguments on the merits of the proposal. However, as we have determined that this issue is not a mandatory subject for bargaining, we deem it inappropriate to review the Village's arguments on the merits.

equipment (other than uniforms and fire fighter turnout gear) issued or used; iii) the total number of employees employed by the department; iv) mutual aid and assistance agreements to other units of government; v) the criterion pursuant to which force, including deadly force can be used; provided however, nothing shall preclude an arbitration decision regarding equipment levels if such decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a fire fighter beyond that which is inherent in the normal performance of fire fighter duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

The Union argues that none of the Village's arguments about non-mandatory limitations apply because this is a safety issue. Clearly, it is not. The Union's proposal is directed toward minimum staffing, even to the extent of how many employees shall be assigned to each piece of equipment at each fire station. This proposal does not address equipment levels which, under certain circumstances of safety considerations, may be a mandatory subject for bargaining. The only reference to equipment is to how many employees shall be assigned to each. While it is true that how many employees are on duty at any one time indirectly affects the safety of those employees when called upon to suppress a fire, that argument can be made with any staffing proposal. If there are too few employees on duty, their safety may be in jeopardy. Nonetheless, the legislature determined that this was a decision for management, and a resolution could not be required. In other words, the Village may bargain over this subject, but if it is non-

mandatory, it cannot be required to submit the issue to a determination by an outside party. It is the Village's issue to do with as it wishes.

This subject has arisen twice before in proceedings under the Act. In City of Canton and Canton Fire Fighters Union, Local 1897, No. S-MA-90-142 (1991), Arbitration Chairman James M. O'Reilly was faced with a proposal which intended to contractualize the employer's practice of maintaining four employees on duty on each shift. The chairman found that this was tantamount to a proposal establishing the minimum number of employees employed by the department and was therefore inarbitrable. In City of Blue Island and Blue Island Professional Firefighters Association, No. S-MA-93-109 (1993), Arbitration Chairman Bruno Kozlowski, Sr., stated that the arbitration panel was without authority to rule on a proposal increasing minimum manning from 4 employees to 5 for each shift.

Inasmuch as any proposal regulating the minimum number of employees working at any one time establishes a floor for the total number of employees to be employed by the Village, such proposal is outside of our jurisdiction. The Village's proposal is therefore adopted because we have no jurisdiction to decide otherwise.

19. Cost of Medical and Dental Insurance

The Village operates a comprehensive medical and dental reimbursement program through a third party administrator. This self-insured program functions with flexible spending accounts authorized under Section 125 of the Internal Revenue Code.⁸⁹

Employees have their choice of a conventional indemnity (fee for service) plan or one of two HMOs. The Village pays 85% of the cost of the medical and dental plans, either single or with dependent coverage. It appears from the record that Elk Grove's is a top-of-the-line plan, although many of the plans offered by the comparable communities also have fine features.⁹⁰

The parties have already agreed to continue the Section 125 flex plan, and have also agreed to a provision which permits the Village to institute cost containment measures, provided that the group benefits will remain substantially the same. Among the cost containment options listed (without limitation) in the agreement

⁸⁹ Under a flexible spending account plan employees set aside predetermined amounts from their pre-tax earnings to be applied to one or more of the programs offered under the particular plan. In addition to medical benefits, the Village's plan allows for up to \$5,000 to be set aside for child care.

⁹⁰ It is not clear from the record what some of the cost contribution features of the current plan are. Village Exhibit 75, which was identified as the booklet describing the current Village indemnity plan has deductibles of \$300/\$900 and co-payments of 20% for the first \$2,000 and 10% for the second \$2,000, with out-of-pocket caps of \$900/\$2,700. The booklet is dated August, 1991. However, the Village's proposal which was described as a status quo proposal states "the co-insurance level shall continue to be 80%/20% on the first \$5,000." Apparently, what was described as the "current" Village plan is not now available to Fire Department employees. Additionally, other Village employees now have the option of selecting a PPO plan which offers greater benefits to employees at less cost.

are preferred provider options.⁹¹ There are substantial differences in the parties' respective proposals for other elements of their medical and dental insurance article. The key elements of the respective proposals are as follows:

Village Proposal

1. For the length of the Agreement, employees shall pay 15% of the designated program premium costs.
2. However, no employee shall be required to pay more than 15% more than was paid in the prior year for the same plan.
3. Co-payments shall continue in the 80/20 proportion for the first \$5,000.
4. Employees will not be required to pay more for insurance than any non-represented Village employee.

Union Proposal

1. For 1993-1994 the Village and the employees shall continue with their current rate of contribution for premium costs.
2. Effective May 1, 1994, employee contributions shall be limited to the amounts paid in fiscal year 1993-94. The Village shall pay the difference.
3. As soon as this new contract goes into effect, employees may choose the PPO program now being offered to other Village employees. The PPO shall have deductibles of \$300/900 and co-insurance of 80/20 for the first \$2,000 and 90/10 for the second \$2,000, with a cap of \$900 per employee.
4. For 1995-1996, employee contributions, deductibles and co-insurance payments shall be negotiated.

⁹¹ The parties have also agreed to the following language: "Should the Village elect to change providers or to add different types of plans for the purpose of cost effectiveness, it shall be the sole right of the Village to do so, provided notice is given to the Union and such changes are not made for arbitrary or discriminatory reasons, nor shall any change, modification or authorization result in the unreasonable unavailability of health care services for employees covered by this Agreement. *** "

Negotiations shall begin no later than March 2, 1995 and if impasse occurs the parties may use the procedures of Section 14 of the Act.

The Village acknowledges that other Village employees now have the PPO option. (See fn 91, above.) It suggests in its brief that "if the Arbitrator selects the Village's final offer on this issue, the Village will implement *** the PPO program in effect for the Village's other employees."⁹²

The features and costs of medical insurance in the comparable communities go every which way. However, it appears that employee contributions in Elk Grove are now among the highest. Two municipalities charge their employees more for single coverage and two charge more for family coverage, although one of these two does not charge its employees if they are in an HMO. A majority of the communities do not require their fire department employees to make any contributions for single or family coverage, although Rolling Meadows has a cost sharing feature if the increase in premiums exceeds 10%. At least six of the towns offer a PPO option.⁹³

The Village argues that internal comparability is a critical factor in considering this proposal. It cites several examples

⁹² The Village contract with the FOP does not refer to the PPO plan and it is not clear from the record that the Police employees have been offered this plan. The FOP contract specifically refers to 80/20 co-insurance for the first \$5,000, but it also has the provision allowing for the implementation of cost containment features. The FOP contract expired April 30, 1994.

⁹³ Most of the communities also offer dental coverage. While Elk Grove's employee contribution rate fares better among the comparables than its medical insurance rates, it is also true that its dental benefits are not as proportionately generous as its medical benefits.

where neutral arbitrators have selected proposals which were supported by internal comparability. It argues that the cost of employee medical coverage has been spiralling out of control and arbitrators, including the chairman in this case, have been sympathetic to proposals calling for employee contributions for medical benefits.⁹⁴ The Village argues that considering the premium features of the Village's plan, the current formula for employee contributions is fair. It considers the Union's proposal an attempt to turn back the clock. The Village also objects to that part of the Union's proposal calling for negotiations in the final year of the contract because it would mean a return to the bargaining table only a few months from now.

The Union sees its proposal as being both reasonable and modest. Thus, it points out that it calls for no change in the first year and seeks only to freeze the contribution rates for the second year. It argues that it is best to hold open the third year because of the possibility of a new federal law on the subject. The Union criticizes the Village proposal because there is no cap on employee contributions and no way for employees to have any control over the costs of the plan.

⁹⁴ The Village quotes from this neutral's award in the New London (Iowa) School District decision of February, 1985, wherein he cites studies published in the New England Journal of Medicine and the Journal of the American Medical Association showing that co-insurance and deductibles slow the rate of premium increases and that fully paid plans tend to encourage over-utilization. These studies showed that premium contributions were less effective as a cost containment measure because people want to use what they have paid for.

After considerable study, the panel has determined that the Union's proposal is the more appropriate. First, unlike with other issues, and contrary to the Village's arguments, there is no internal comparability here. Most Village employees now have access to a more economical PPO plan which is not available to Fire employees and which is not part of the Village's offer. It is true that the Village states in its brief that if its proposal is accepted, it will implement the PPO. However, this could have just as easily appeared in the Village's final offer. The Village's suggestion, while not an amendment to its final offer because it has and always did have the power to implement the PPO, nonetheless undercuts the integrity of its proposal and may not be binding on the Village. Furthermore, the FOP contract has already expired and so the Village cannot rely upon that unit for comparability. To the extent that the FOP contract overlapped this agreement, the Union's proposal accepts their status quo. Second, because the Fire Department employees are just part of the group which makes up the Village plan, they have little control over premium increases. Yet, they are tied to a percentage formula whose only cap is 15% for each year. Compounded over three years, these employees face more than a 50% increase in their contributions. They could go from the present \$975.72 to almost \$1485 a year. This, of course, would be on top of the \$1,000 they would have to pay on the first \$5,000 of medical bills. The Union's proposal would put more pressure on the Village to exercise control over costs. As a self-insurer, the Village is in a far better position

to exercise the types of oversight control and enforcement measures which can rein in abuses. Third, the cases cited by the Village in its brief are distinguishable. The employees in this case already pay for a portion of the costs of their coverage. No one is getting a free ride here. Every employee under the indemnity plan must pay several hundred dollars before he/she see any benefits.⁹⁵

⁹⁵ The panel's Employer designate has filed a vigorous dissent to the determination on this issue. That dissent is attached to this award and made a part hereof. However, we find that the dissent's arguments are misplaced for the following reasons:

(1) The Village charges the majority with ignoring internal comparability. However, unlike with many other benefits there is no consistency with regard to the plans offered by the Village. While the program proposed by the Village is similar to that of the Police, it is dissimilar to that which is offered to other Village employees. In this case where the Police contract has now expired, the Village's emphasis on internal comparability may be intended more to affect the Police negotiations than to achieve uniformity. Indeed, the panel was advised during the executive session that the PPO plan in existence at the time of the hearing has already been changed.

(2) The Employer designate suggests that the Union has achieved an unjustified "breakthrough" with this award. We suggest that it might better be seen as a "catch-up." These employees already pay more than comparable employees in other fire departments. The Village argues that the breakthrough destroys uniformity when the trend in interest arbitration is to establish uniformity. But it is the Village which has destroyed uniformity by offering to non-represented employees a PPO not previously available to the employees in this case.

(3) The Village's proposal (and the panel must accept the entire proposal on an all or nothing basis) allows the Village to adjust premiums without bargaining with the Union if the premiums paid by non-represented employees goes down. This is unacceptable because it undercuts the authority of the Union.

(4) The Village has tacitly acknowledged that its proposal was insufficient because it offered in its brief to extend the PPO to firefighters.

(5) The panel considered the health insurance proposal in the context of the entire economic package. In this case where

20. Sick Leave

The Village has a detailed sick leave policy in its Personnel Rules and Regulations. It provides, in part, (1) sick leave for non-service related disability accrued at the rate of 1 day each month up to (for firefighting personnel) 60 days, (2) that certification of disability may be required for absences of 3 days or more, (3) that sworn personnel must call in one-half hour before his/her shift, (4) that sick leave may be used for preventative treatment, (5) sick leave is not a right but a privilege.⁹⁶ The parties propose different sick leave provisions, each selecting some of the policy provisions and adding some different features.⁹⁷ In summary form, the parties proposals are as follows:⁹⁸

the firefighter salaries were kept down, where Kelly days were denied and where the employees work longer hours than in other comparable units, the Union's health benefit proposal was more reasonable.

⁹⁶ There are many other details contained in the Village's policy. They are not listed here because they are either inapplicable to this case or matters of form which are not addressed by either party.

⁹⁷ When the parties exchanged final offers, the Union had as a non-economic issue the question of coverage of worker's compensation for unit employees. The Village objected to what it called a bifurcation of the sick leave issue. (The Village had addressed worker's compensation in its sick leave proposal.) This dispute was addressed in the neutral arbitrator's Additional Ruling on Economic Issues. It was then determined that the applicability of worker's compensation was an economic issue, that the Union's proposal would be treated as such and separately from sick leave, and that that part of the Village's sick leave proposal addressing worker's compensation would be considered as a separate proposal as well.

⁹⁸ The parties have agreed to some of the language of this provision. This language is not repeated here and is not relevant or material to consideration of this issue.

Village Proposal

1. Sick leave is a benefit and not a right, and may not be converted, transferred or cashed in.
2. Abuse or misuse of sick leave will be grounds for disciplinary action.
3. Sick leave may be accrued up to 60 days (1440 hours).
4. Medical proof may be requested at any time.
5. Sick leave shall be used on an hour to hour basis.
6. Notice of absence shall be given one hour before the start of the shift.

Union Proposal

1. Sick leave is accrued up to 60 days for either 24 hour or 8 hour shift employees.
2. Notice of absence shall be given one-half hour before the start of the shift.
3. When calling in, an employee need only report that he/she is requesting sick leave and will be unable to report for duty.
4. Sick leave may be used for preventative treatment such as doctor's appointments.

The FOP contract has a provision similar to the Village's proposal. It differs in that it does not provide that medical proof may be required "at any time," nor that it is non-transferable. While the FOP contract provides for accrual at the rate of one day per month up to 120 days, a duty day for 24 hour Fire personnel is worth considerably more, even though only 60 may be accrued. Among the comparables, the 60 day accumulation is about the midpoint of the other contracts, but the accrual rate of one day per month the highest. Only a few departments accrue sick leave at this rate.

The Village argues that its proposal should be accepted because it is the same as the FOP's, and that internal comparability should be a critical factor absent evidence that the current system (which is similar to the FOP contract) has not worked. It argues that the Union's proposal that an employee only has to report his/her absence (without detail or proof) is not found in agreements for public safety collective bargaining agreements (and sounds more like a provision for a personal day). It argues that the right to require medical verification is standard practice and is what is in the comparables' agreements. Finally, the Village argues that its generous accumulation formula should weigh heavily in support of its proposal.

The Union argues that the one hour call-in requirement is a change in the practice, and that the Personnel Policy allows for a one-half hour call-in period, and that the Village has offered no justification for this change. The Union's proposal also tracks the Personnel Policy's provision for hourly usage of sick leave. Much of the Union's argument, however, is directed against the Village's provision that sick leave has no economic worth. According to the Union, this is designed to head off any proposals for sick leave buy-backs. Although the Union deleted its earlier proposal for such buy-backs, it suggests that this is not an uncommon feature in the comparable agreements, and may be proposed in the future. In any event, none of the comparables have such

strong anti-conversion language.”

The two proposals have more in common than not. Each also has features of questionable value, however. On balance, and in light of the comparables, we select the Union’s proposal. We are concerned that the language of the Village’s proposal has a built-in assumption that unit personnel misuse, or will misuse, sick leave. The language about discipline is gratuitous. Of course an employee who claims sick leave when there is no sickness is subject to discipline for dishonesty. That is basic to the right of supervision. But the language that medical evidence may be requested at any time is unnecessary, and is contrary to the internal and external comparables. If an employer has cause to believe that there is dishonesty, it has the right to require proof. But to place all employees under some sort of injunction without evidence for a need for such measures is inappropriate. So, too, the Village’s failure to provide sick leave for medical care, although implied in its hour-to-hour usage language, is a serious omission in light of the Village Policy which allows it. While employees should attempt to schedule appointments during off time, that is not always possible.

21. Sick Leave for Outside Employment

For at least ten years the Village has had a personnel policy which prohibits the payment of sick leave or health insurance benefits to employees whose disability is as a direct result of

” As the Union suggests, the great majority of comparable departments have some type of buy-back or sick leave incentive programs.

outside employment. This policy applies to all Village employees, including those covered by the FOP contract. The Village proposes to make this policy a part of the contract. Its proposal tracks the language of the policy exactly. The Union objects to this concept and proposes language which would specifically provide sick leave for employees who suffer a disability as a result of outside employment.

The Village argues that there is no reason why it should have to provide expensive benefits to employees who are injured while working for someone else. The Village asks why it is not more reasonable to seek benefits from the other employer. The expense should be the obligation of the other employer. The Union argues that the great majority of the comparables have no such restrictions in their agreements. A few provide that if an employee is injured when not doing work for the fire department, the employee must rebate to the primary employer (fire department) any other benefits received as a result of the injury. The Union also argues that there is no reason why injuries should be treated differently because of the circumstances. Under the Village's proposal if one firefighter employs another firefighter to do some work at the first firefighter's house, and if both are injured, the firefighter at whose house the injury occurred would be covered, but the other, who was employed to do the same work, would not get any benefits at all. (See our discussion of Issue 22, below.)

The Village argues strenuously that all it is seeking with this proposal is to maintain the status quo. It properly points

out that the Union, although it has support among other fire departments, has not shown where and how the current Village policy has been a problem. The Village correctly asserts that for there to be such a complete change in past practice, the party seeking the change should have some good justification for asking an arbitration panel to make the change. (See our discussion of Issue 22, below.)

The panel believes that the Village policy may be contrary to enlightened labor relations. It assumes some sort of proprietorship of the sick leave and health plans, and that the benefits are given to employees a matter of largesse. But another view is that the employees are entitled to the benefits because they have earned them. If they get sick, they are entitled to health insurance because that is part of the bargain in exchange for their work. Where and how they got sick is irrelevant. If the Village is concerned about abuses it might accept language which would create a subrogation arrangement for any income the firefighter receives from a third party as a result of the disability.

Nonetheless, this is a matter for the bargaining table. We feel constrained to stay with the status quo in the absence of any showing by the Union that the current plan has created any hardships or inequities. In the absence of compelling evidence requiring a change, we believe that the Union should continue its efforts at the bargaining table to work out language which is acceptable to both sides. Accordingly, we select the Village's

proposal.¹⁰⁰

22. On-the-Job Injury

The Union proposes that firefighters have access to the Illinois Worker's Compensation Act as a matter of contractual right.¹⁰¹ It proposes the following language:

Village employees who sustain on-the-job duty connected injuries are entitled to benefits under the Worker's Compensation Act. In order to receive these benefits, injured employees are required to report the injury within twenty-four (24) hours, or as soon thereafter as possible, to their immediate supervisor and file an injury report.

The Village proposes the following provision:

Paid sick leave will not be provided for an employee who suffers an occupational sickness, injury or disability as a direct result of outside employment. In addition, an employee is not eligible for any medical coverage under the Village Health Plan for any occupational sickness, injury or disability that occurs to him/her as a direct result of outside employment.

For many years the Village's Personnel Rules and Regulations have provided that all Village employees operate under and are subject to the Illinois Worker's Compensation Act. Likewise, the Village adopted by a Resolution setting forth detailed procedures for the reporting of injuries and the accrual of benefits. The Village does not deny that Fire Department employees are covered by the statute. In other words, the Village has chosen to cover all of its employees under Worker's Compensation rather than

¹⁰⁰ Contrast this conclusion with our discussion of Issue No. 24, On-the-Job Injury, where the Union sought to maintain the status quo and it was the Village which was attempting to undo what the evidence showed to be a working system.

¹⁰¹ See discussion at fn 97, above.

provide a separate statutory scheme for the recovery of benefits in the event of a disability arising out of and in the course of employment. The Union's proposal seeks to maintain the status quo. According to the Union, there is some likelihood that the Village will change its policy.¹⁰² Thus, the Union seeks only to provide by contract what has been the Village policy for several years.

Most of the contracts among the comparables do not provide any type of provision addressing worker's compensation. According to the Union, this is a proposal which addresses a particular need, unique to the Village, and therefore comparability is of less importance. Nonetheless, some departments do have provisions relating to worker's compensation. Lombard has a provision which grants employees up to one year of paid leave for on-the-job injuries, but the employees must rebate to the employer any temporary total disability payments received from worker's compensation insurance. The provision also contains the following statement: "The Village agrees to abide by the provisions of the Worker's Compensation Laws of the State, as they apply to the members of the bargaining unit."¹⁰³ Northbrook has a provision for the payment of full salary to a disabled employee but the employee

¹⁰² Although this concern was expressed by the Union several times during the hearing, at no time did the Village represent that the Union's fears were not justified.

¹⁰³ The contract section also provides that the grievance procedure is not intended to provide a second path of appeal of any decision of the Industrial Commission. It then provides, "It is the intention of the parties that an appeal through either the grievance procedure or the Illinois Industrial Commission is to be mutually exclusive."

must rebate insurance proceeds to the employer. Skokie has a schedule of benefits payable to an employee injured on-the-job which are coordinated with "Worker's Compensation payments." Wheeling and Arlington Heights have provisions specifying that employees disabled in the line of duty shall be entitled to statutory benefits.

The Village argues that the Union is seeking a benefit in a non-mandatory subject of bargaining. The Village relies on Winnetka v. Illinois Industrial Commission, 597 N.E. 2d 630 (1992). In that case the Village of Winnetka had an ordinance which granted fire department personnel certain benefits in the event of a disability in the line of duty. A disabled firefighter collected such benefits and also filed a claim under the Worker's Compensation Act. The Supreme Court held that a provision of the Pension Code, which provides that an employee eligible for temporary total benefits under a local ordinance cannot also seek worker's compensation benefits, nullified any claim for permanent partial disability benefits under Worker's Compensation. The Village reasons that because the Supreme Court has also held, in City of Decatur v. AFSCME, 522 N.E. 2d 1219 (1988), that the parties cannot be required to bargain over a subject matter specifically provided for in any other statute, and that the Illinois Public Labor Relations Act does not override such other statutes, the provision in the Pension Act relied upon in Winnetka overrides the duty to bargain over compensation for on-the-job injuries.

We first address the question of our jurisdiction to decide this issue. Section 1230(k) of the Board's Rules and Regulations reads as follows:

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue. However, except as provided in Sections 1230.90(1) and (m) of this Part, the arbitration panel may consider and render an award on any issue that has been declared by the Board, or by the General Counsel pursuant to 80 Ill. Adm. Code 1200.14(b), to be a subject over which the parties are required to bargain.

The issue of arbitrability of Worker's Compensation coverage was raised by the Village prior to the submission of final offers. The issue was ruled upon by the chairman without objection from the Village, and found to be a proper subject for these proceedings. Thereafter, the parties submitted final offers, at which time the Village also renewed its objection to the arbitrability of the issue. We find that the Village's objection is not "in good faith," as required by the Board's Rules and Regulations. The Village has made no attempt to bring this matter to the attention of the Board or its General Counsel at any time. It submitted the issue to the chairman for a preliminary ruling, without any objection to the panel's authority to rule on the question. Thereafter the chairman's ruling was discussed during the proceedings and the subject matter was addressed in the Village's brief. Furthermore, we note that a number of comparable jurisdictions have contract provisions addressing this subject matter, and there have apparently been no statutory problems with

this. Finally, we find that the Village's legal argument on the question is not a bonafide argument against what we see as a fundamental term and condition of employment. The application of City of Decatur to Village of Winnetka would have the effect of stopping all manner of terms and conditions of employment dead in their tracks at the bargaining table because so many statutes touch upon what are otherwise considered terms and conditions of employment.

The Union's desire to maintain the status quo in the face of the Village's refusal to commit itself to maintain coverage under the Worker's Compensation Act is a pretty strong argument in favor of the Union's proposal.¹⁰⁴ The Village has not offered any evidence that coverage under the Worker's Compensation Act has created any special problems or that there is a need to make this change in a long-standing practice. The Village's only argument of substance is on the non-mandatory nature of the proposal. We find that in applying City of Decatur to Village of Winnetka the Village reads the former case too broadly. Village of Winnetka merely provides that a disabled employee cannot have two bites of the apple, and between a specific local ordinance and the state Worker's Compensation Act, the Pension Act's limitation in favor of an existing local ordinance should be respected. This is so even though the benefits under the local ordinance were less extensive than the state statute. The Pension Act does not provide

¹⁰⁴ Compare this conclusion with our discussion of Issue No. 21, Sick Leave for Outside Employment, above.

for specific benefits in this situation. It does not require a municipality to have a local ordinance. It provides for a priority of benefits so that an injured employee cannot collect twice for the same injury. If the Union were proposing to alter that priority, we would agree with the Village's argument. But here the Village does not even have an alternate system for payment of on-the-job injuries. Indeed, we assume, without deciding, that Elk Grove was mindful of the limitations of the Pension Act and had this in mind when it made the policy decision to accept the Worker's Compensation Act rather than establish a separate benefit structure. The Union here is not seeking to interfere with the priorities set forth in the Pension Act. We interpret the two cases relied upon by the Village to mean that the Union may propose either a separate system for the payment of on-the-job injuries or that Worker's Compensation be followed, but cannot propose both. To have both would be counter to the Pension Act. On the facts of this present case, we select the Union's proposal.

23. Maternity Leave

The Union proposes that the contract contain a separate section providing special benefits to pregnant employees. The proposal contains a number of provisions granting distinct benefits to female employees before and after the birth of their children. Among them is the following: "The firefighter may elect to stay home with the new born infant or adopted infant, even though the firefighter has received a medical release to return to work. The firefighter may be allowed up to eight weeks of paid maternity

leave to be taken prior to or after delivery of a child at the option of the employee." Although there are provisions already agreed to for paternity leave, there is no question that the above-quoted benefit would not be available to male firefighters.

The Village's entire proposal is as follows:

"Absence from work for maternity reasons shall be handled in the same manner as any other absence due to illness or injury which qualifies for the sick leave benefit."

While there are many interesting aspects to the Union's proposal when read as a whole, the panel finds that the above-quoted language is probably unlawful, and for that reason alone, it must be rejected. The EEOC's Sex Discrimination Guidelines, 29 C.F.R. 1604.9 state, in part, "[I]t shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits." The agency's Policy Guide on Parental Leave, issued August 27, 1990, states, in part:

The Commission here reaffirms its positions that an employer may not establish different parental leave benefits for male and female employees. If an employer chooses to grant paid or unpaid leave to employees to allow for care and nurturing of a newborn child, the same leave benefits must be provided to male and female employees.

The Union's proposal as quoted above is not directed to any disability based on the pregnancy, the birth or the health of the newborn. It is not restricted to those situations where medical advice favors time off for the health of the mother or the child. Rather, it is simply a provision for additional time off, at the sole discretion of the female firefighter, and with pay. Under

these circumstances, the Union's proposal must be rejected.¹⁰⁵

24. Paid Leave for Union President

The Union proposes the following language:

Upon written request submitted to the Fire Chief, the union president and his designee shall be granted leave time for attendance at the biennial national convention of the IAFF (up to three duty days shall be provided), biennial state convention (up to three duty days shall be provided), the semi-annual meeting of the Eighth District of the IAFF (one duty day shall be provided).

While acknowledging that there is little, if any, support for this type of provision among the comparables, the Union argues that this proposal is beneficial to both parties because these conventions are educational. Employees learn about trends and new ideas in the business of fire fighting, as well as in labor relations. Educated union leadership is more sophisticated and can work better with management in reaching mutually acceptable solutions. Furthermore, the Union argues, management in Elk Grove has been able to attend seminars and labor relations training sessions during duty time. It is in the Village's interest as well as the Union's to allow the other side to become equally educated.

The Village points out that the Union's proposal asks for 5 days of paid leave for two employees to attend biennial conventions and one day for two employees to attend each semi-annual regional convention. This averages out to 9 paid days off each year. According to the Village, such a benefit on a "stand alone" basis

¹⁰⁵ See also, Schafer v. Board of Education of the School District of Pittsburgh, PA., 52 FEP Cases 1492 (3rd Cir. 1990).

is simply unheard of. Rather, the Village suggests, some of the comparables have provisions for the use of other leave time for such purposes. Moreover, the Village argues, the Village has cooperated with the Union on these matters by allowing its leadership to exchange days with other employees in order to have the time to attend these conventions.

Although the panel has no problem with the concept of time off for Union leaders to attend their conventions, that the entire cost of such time should be borne by the Village is a debateable practice. In the absence of comparability support, considering the cost of this benefit, and that this is the parties' first agreement, the panel accepts the Village's proposal on this issue.

25. Uniform Allowance

The current Village policy is for the Village to issue all equipment and wearing apparel, except for street shoes which are worn at the station. All other clothing and all protective equipment is supplied by the Village at no cost to the employees. The Union does not want to change the system. Rather, it has two discrete complaints. First, it complains that the inner wear, shirts and pants, are not flame resistant (cotton instead of polyester) and, second, it wants fabric instead of metal insignias.

Although the parties' expressed differences regarding uniforms is slight, they have chosen very different language to articulate their positions. The proposals are as follows:

Village Proposal

Employees who are required to wear and regularly and

continuously maintain prescribed items of uniform clothing and personal equipment shall be issued such clothing or equipment under the following circumstances:

1. The Fire Chief or his designee determines that an employee's clothing or equipment is damaged beyond repair through causes other than negligence of the employee; or
2. The Fire Chief or his designee determines than an employee's clothing or equipment is worn and in need of replacement because of ordinary wear and tear; or
3. The Fire Chief or his designee specify new or additional items of uniform clothing and personal equipment.

Employees shall be required to clean and maintain uniforms at their own expense, and will be responsible for the return of uniforms and equipment purchased with Village funds in good condition, less normal depreciation and destruction in the course of employment.

Union Proposal

It is the desire of the employer and the union to maintain the highest standards of safety and health. In order to eliminate accidents, death, injuries and illness in the fire service, protective devices, wearing apparel, except for dress uniforms, to properly protect fire fighters shall be provided by the employer at no cost to the employees and shall conform to N.F.P.A. standards and metal insignias shall be replaced by fabric insignia. These devices, apparel and equipment shall be inspected by the Joint Occupational Health and Safety Committee quarterly, to ensure proper maintenance.

The Union had scant evidence regarding the need to change any element of the uniform. There was testimony that one employee, many years ago and using different turnout gear, had a non-flame retardant shirt melt on him. The parties agree that the Department now provides top-of-the-line turnout gear. There was also no evidence that the metal uniform insignias have ever become so hot as to pose a risk to employees. On the contrary, the Chief testified that if the turnout gear was being worn properly, this

would never occur. It was also pointed out that the current uniform was approved not too long ago by the Uniform Committee, which is composed of bargaining unit personnel.

The Union is seeking a requirement that all clothing and protective devices comply with the standards set by the National Fire Protective Association. These are voluntary standards. However, they do provide that flame resistant inner clothing be worn. The Chief testified that they were rejected by the Uniform Committee because they were not as comfortable and did not have as acceptable an appearance as the current issue of clothing.

There are few, if any, comparable departments with such broadly worded uniform provisions as those proposed by the Union here. While a few do refer to the N.F.P.A., to OSHA standards or to fire retardant clothing, most provide little more than a dollar allowance or for the quartermaster system (as used here). Most give management considerable discretion in selecting appropriate uniforms and equipment.

There are several problems with the Union's proposal. Some of the precatory language, with references to the "highest standards of safety and health" provide too much grist for the grievance procedure. The language providing terms and conditions of employment should be specific. Second, the Union might have addressed their specific uniform demands without reference to some outside agency. The problem with a general reference to someone else's standards is that those standards may change during the life of the contract. Most parties are reluctant to give up discretion

to a third party unless it is required by statute. Third, the Union's proposal does not provide any duty of care on the part of the employees. While the Village's proposal seems a little "heavy" in this regard, it would seem that when there is a quartermaster system some level of employee responsibility should be stated. Finally, while the comparables do not particularly support the Village's proposal, they do not support the Union's either. On balance, the Village's proposal seems the more appropriate.

26. Safety Committee Pay

The parties have agreed to a provision calling for the creation of a Safety Committee which shall meet from time to time to discuss and investigate matters of safety involving the Department. The Committee shall be composed of two members appointed by the Fire Chief and two members designated by the Union President. The Union proposes that Safety Committee members be granted paid time off for inspection or investigation of safety and health problems in the Department. If a Committee member is off duty for any scheduled meetings, the member shall be paid time and one-half of his/her regular hourly rate in order to attend such meetings. The Village proposes that if a meeting is scheduled during a Committee member's working hours the member shall be released from duty without loss of pay.

The Union has already agreed that employees shall be permitted to attend labor-management meetings without loss of pay but that attendance at such meetings during non-working hours shall not be

paid. However, there is a practice of paying off-duty firefighters to attend committee meetings called by the Department. Also, the FOP has a provision in its contract that a grievant and one representative shall be paid for attendance at grievance meetings with management if the meetings are held during work time.

Most of the comparable departments do not have provisions for safety committees. Of the ones that do, several of them contain provisions for the release of employees from work without loss of pay to attend such meetings. No comparable department has a contractual provision providing payment for attendance at such meeting to an off-duty employee.

The Village argues that it is inappropriate to pay what are, in effect, Union representatives to attend the meetings of committees created by the bargaining agreement. The Union has as much interest in this committee as does the Village. It is not for the Village to underwrite the joint work of the parties. This is in contrast with meetings called by the Department for the Department's interest. Moreover, the Village's proposal tracks the same system as agreed to for the labor-management committee.

The Union argues that the safety committee is not a labor relations committee. Although the Union has a voice in the selection of the members, the purpose of the committee is the safety and health of all personnel who work in the Department. Thus, participation on the committee is a form of work and should be paid.

One of the problems with the Union's proposal is that it is

too broadly constructed. It provides that members on duty shall be given time off to investigate or inspect safety or health problems. This appears to be too general and open-ended, allowing for employees, at their discretion, to take time off to "investigate" real or imagined safety concerns. Inasmuch as fire fighting is an inherently dangerous profession, such general language invites abuse. We agree with the Union that a safety committee is in a different category from a labor-management committee where the Union's interests are at issue. A safety committee should be non-partisan. However, an issue such as this, where there is no support among the comparables, should be addressed at the bargaining table. It is certainly not necessary for a first contract. We select the Village's proposal.

27. Training Costs

The Village proposes a section of the contract which would require probationary employees to reimburse the Village for all training costs if the employee leaves employment "for any reason, before the end of the probationary period." The Union did not provide a counter proposal. Nor did it submit a final offer on this issue to the effect that it did not want such a provision in the contract at all. The Village contends that in the absence of any proposal, the Union cannot argue against the Village's proposal and therefore the panel must accept the Village's proposal.¹⁰⁶

¹⁰⁶ The Village does not argue that its proposal must be accepted as a matter of technical default without any other considerations. That is, the Village points out that at several junctures during these proceedings it went on record as supporting

In its brief, the Union argues that its failure to submit a proposal was deliberate because it not only believes that the Village's proposal is inappropriate, but also that it is improper as applying to a non-mandatory subject of bargaining, i.e. a pre-employment condition.¹⁰⁷ The parties and the panel did not discuss this circumstance during the hearing in this case. Nor has any decisional law or agency regulation been cited in support of either position regarding whether the panel must accept the Village's proposal by default under these circumstances. However, reference to the statute is of some assistance. The Act provides that the panel select the final offer of either party which best meets the standards set forth in the Act. Thus, if the Union's silence is construed as a proposal and the panel finds that the Village's proposal is less in line with the statutory standards than no provision at all, it may select no provision at all.

After much consideration, we rule that a refusal to make a proposal on an issue must be interpreted to mean that the party maintaining the silence intends for the contract to contain no provision on the issue. To rule otherwise opens up the possibility that an issue casually mentioned at some point in bargaining may then be held in abeyance only to resurface when final offers are

the proposal at issue. Therefore, the Union is not being taken by surprise and thus the Village argues, by implication, that the Union has chosen to default on this issue.

¹⁰⁷ The Union cites private sector case law to the effect that terms and conditions of employment for persons who have not yet been hired or have left the employer's employment, e.g. retirees, are non-mandatory subjects for bargaining. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971).

submitted. If final offers are just that, final, a party assuming there to be no issue would have no recourse when it determined not to propose a provision on that issue only to discover after final offers were exchanged that the other party had proposed an unworkable, inequitable benefit or procedure. Moreover, it appears to us that where the Act provides for standards of acceptance the panel must retain the option of rejecting a proposal as adverse to the Act's intent and against the public interest. Were we to rule otherwise, any proposal no matter how at odds it might be with the standards contained in the Act might well become part of the contract if submitted by the employer.¹⁰⁸ We find that this is clearly contrary to the intent of the statute.¹⁰⁹

We reject the Village's proposal. The Village has offered no evidentiary support for this proposal. On the contrary, the Village has maintained throughout that employee turnover is very slight. Thus, this proposal addresses a non-existent problem. Finally, the language of the proposal is too loosely constructed. It provides that a probationary employee who leaves employment for

¹⁰⁸ If proposed by the labor organization and accepted by default, the employer still has the rights of rejection as provided in the Act. No such rights exist for unions. Thus, as long as the provision were not unlawful, an employer proposal accepted by default would have to be part of the contract no matter how onerous, inappropriate or contrary to the public interest it might be.

¹⁰⁹ However, we also find that the Union has not made a good faith objection to the Village's proposal on this subject. The objection was not raised prior to the brief and it appears to be specious because on its face the Village's proposal applies to "employees," albeit new employees. (See the discussion of arbitrability regarding the issue of worker's compensation coverage, above.)

any reason must reimburse the Village for all training (and clothing). The clause is not limited to those persons who leave voluntarily. It may be applied to persons unfairly dismissed and who have no right of appeal through the grievance procedure because of their probationary status. The provision does not specify what is covered by training costs. Undoubtedly there are a great many indirect costs which go into establishing and maintaining such a program. Is the dismissed person responsible for depreciation or for a share of the training personnel's salary and benefits? As written, such an interpretation is possible. The panel therefore decides that there should be no provision in the contract regarding training costs.

28. Duration and Term of Agreement

Although both parties agree that the contract should be three years in length, only the Village submitted language for duration which might be incorporated in the agreement. The Village proposed as follows:

Unless specifically provided otherwise herein (e.g. retroactivity of salaries and paramedic stipend), 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, 1996. It shall automatically be renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the April 30 anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date.

In the event that either party desires to terminate this Agreement, written notice must be given to the other party no less than ten (10) days prior to the desired termination date which shall not be before the

anniversary date set forth in the preceding paragraph.

As the Village points out, this language is similar, if not the same as, language contained in comparable collective bargaining agreements. We select the Village's proposal not as a matter of default but because the language appears more appropriate than no language at all.

29. Retroactivity

The Village submitted a proposal for retroactivity. The Union did not. The Village's language is as follows:

The increases in salaries for both firefighters and lieutenants and the increases in the paramedic stipend shall be retroactive to the effective dates specified herein for employees still on the active payroll on the effective date of this Agreement, provided that any employee who retired after May 1, 1993 but before the effective date of this Agreement shall also be eligible to receive retroactive pay based on the hours worked between May 1, 1993 and the date of retirement. Payment shall be made on an hour for hour basis for all regular hours actually worked since May 1, 1993, as well as all hours of paid leave and vacation, holiday pay or overtime worked between May 1, 1993, and the effective date of this Agreement. In calculating overtime, paid time off for vacations and holidays shall be counted as hours worked solely for the purpose of determining eligibility for overtime pay.¹¹⁰

Although the parties expressed agreement at the hearing as to retroactivity, the Village properly supplies contractual language formalizing the understanding. We select the Village proposal.

¹¹⁰ The Village points out that a conflict would occur if the panel selected the Union's proposals for overtime. In that event, the Village argues, it would withdraw its final offer on this issue of retroactivity. Without deciding whether the Village has the ability to withdraw a final offer, we note that the Village's proposals on overtime were selected by the panel and therefore there are no conflicts between the language of this provision and other sections of the Agreement.

B. Non-Economic Issues

1. Dues Checkoff

The parties have substantially agreed to the terms of a four paragraph provision for the checkoff and remittance of Union dues. The agreed upon terms provide that once a month the Village will deduct from employees' paychecks and remit to the Union an amount equal to the Union's monthly dues. Employees may voluntarily authorize the checkoff. There is no contractual requirement that they do so. Nor does the contract require Union membership, although it does contain a "fair share" requirement for the relevant costs of collective bargaining. Such fair share payments shall be deducted from the fee payors' earnings in the same manner as provided for the payment of dues by Union members.

The parties disagree as to when an employee may revoke the dues checkoff. The Village has proposed that a member may revoke the checkoff at any time upon 30 days' notice. The Union, as it has explained its proposal, wants that the revocation may only occur "prior to the expiration of the contract within thirty (30) days' written notice to the Village." The Village's 1991-1994 agreement with the FOP contains a provision allowing for the revocation of the "checkoff authorization *** at any time during a sixty (60) day period prior to the annual anniversary date of the contract, in each year of the contract."

The Village argues that under the Union's proposal an employee could not revoke a dues checkoff prior to April 1, 1996. But, the Village argues, under the Constitution an employee has an absolute

right to choose not to become a member of a labor organization or to remain a member. While the Village acknowledges that the non-member may still be required to pay a fair share fee, under the Union's proposal an employee who wants to quit membership would still have to pay dues until the end of the contract. This, the Village argues, would be unconstitutional.

The Union does not address the constitutionality argument. Rather, it argues that the proposal addresses only those employees who have voluntarily agreed to join the Union, and does not apply to fair share payors. The Union argues that the Village has already agreed to a broader provision in the expiring Police contract than it proposes here, and that the great majority of comparables have provisions which allow for checkoff revocation only towards the end of their respective agreements.

While the Village is certainly correct that no public employee may be required to join a labor organization, it has not shown sufficient authority for the argument that once such employee signs an agreement to allow for dues' deduction that employee may revoke that agreement at any time. Indeed, if the Village were correct in its argument then its proposal requiring 30 days' notice might also be unconstitutional. If the employee may be required to wait 30 days to exercise his constitutional rights, why not some longer period?

The Union's proposal does not require anyone to become or remain a member of the Union. What it does provide is that once an employee agrees to pay an amount equal to the Union's monthly

dues, he may be required to live up to that agreement. The key is that no employee will ever be required to sign the dues authorization in the first place.

The panel suggests, however, that the Union's proposed language is not altogether clear and that it might be interpreted to mean no more than what the Village is proposing. Inasmuch as this is not what the Union has intended, we find it appropriate to change the language. Additionally, we find it more appropriate, particularly for a first agreement, to allow the revocation to occur each year prior to the anniversary of the contract. In the spirit of the internal comparability upon which the Village has placed so much emphasis, we award the language which is in the FOP agreement. Accordingly, the new language should read as follows:

A Union member desiring to revoke the dues checkoff authorization may do so by written notice to the Village at any time during a sixty (60) day period prior to April 30th of each year during the life of the contract.

2. Paychecks

The Village has a long-standing policy of delivering paychecks to the main fire station on the Friday of the payweek, unless that Friday or the preceding Thursday is a holiday, in which case the paychecks are delivered the day before the holiday. The policy is for the checks to be delivered by the end of the business day (5:00 p.m.), although the practice has been for the checks to be delivered by mid-morning. In the past, the checks for fire personnel were delivered as a group and placed in a pile on a table.

The Union has proposed that the paychecks be delivered in sealed envelopes by 8:30 a.m. on Friday, or on the day before a holiday if either Thursday or Friday is a holiday. The Village has proposed that the contract contain no provision on this issue.¹¹¹

The Union argues that fire personnel end their workday at 8:00 a.m., and therefore they are required to return to the fire station on payday to retrieve their paychecks. It therefore wants the checks available shortly after the shift ends. It also wants the checks in sealed envelopes because the checks are now open for anyone at the station to see. While the pay rates are public information, the Union points out that deductions are personal and the details of the checks should not be a matter of public

¹¹¹ In its brief the Village makes a different proposal. It agrees to accept language which states that "Paychecks will be delivered in sealed envelopes to any bargaining unit employees who so request in writing." Although final offers on non-economic items are not binding on the panel, and the panel may construct its own language for a disputed non-economic issue, the panel believes that it is inappropriate for a party to change its final offer in its brief. After submission of final offers to the arbitration panel, any changes in substance should be a matter between the parties directly, and should not involve the arbitrators. It is permissible for the parties to resolve all or some of the issues between themselves at anytime prior to the issuance of an award, and, indeed, in keeping with the spirit of collective bargaining, they are encouraged to do so. However, the parties must be able to rely on the final offers made at the time agreed to or decided by the arbitration panel, and to be able to brief them accordingly. (The Village will recall its objection to the last minute change in the Union's list of comparable fire departments.) The integrity of the final offers is also lessened when the panel is given to believe that the final offers are not in fact final. Accordingly, we accept the Village's late change as simply an admission that its final offer on this issue is not appropriate.

information.¹¹² The Village, on the other hand, while admitting that paychecks may contain private information, argues that the present practice has been in effect for many years, and that it cannot have the checks distributed at the time the Union wants because they are prepared for distribution on the day they are distributed and the Village department responsible does not commence work until 9:00 a.m. Both parties acknowledge that there is no support among the comparables for this proposal. They also acknowledge that the better practice would be to have a direct deposit system. The Village states that it is now studying this idea.

There can be no question that spreading out paychecks on a table in unsealed envelopes is an archaic practice which should be changed. However, it should not be upon the written request of individual employees. The Union is the bargaining agent here, and an employment practice which turns on individual requests undercuts the Union's integrity. If the Union as the bargaining agent wants the the checks in sealed envelopes and the panel agrees with that proposal, individual requests are unnecessary.

On the other hand, the request to have checks available before the start of the regular business day would, in effect, require the Village to prepare paychecks a whole day in advance. Given the complexity of preparing individual paychecks for a unit of employees most of whom work a different number of hours each week,

¹¹² It is on this point that the Village accedes to the Union's arguments.

exception of employees employed by a subcontractor (pursuant to another section of the contract), shall be hired pursuant to the Fire and Police Commissioners Act.¹¹⁵ Its argument is basically that the Commission hires on the basis of merit without regard to political considerations or patronage.¹¹⁶ The Union also argues that the language of this statute may not permit the Village to delegate hiring of members of the Department to a third party.

The Village proposes that the contract contain no provision on this subject. It argues that the Union's proposal is a not too subtle attempt to limit the Fire Chief from performing any bargaining unit work under any circumstances because fire chiefs are not hired by commissions. The Village also notes that the Village now employs a civilian fire inspector and the Union's proposal would require that the position be filled pursuant to the procedures of the Commission. The Village also points out that there is no support among the comparables for this type of provision.

Although it would appear at first blush that the Union is attempting to maintain the status quo, that it is the Village which

¹¹⁵ The proposed language is: "All employees hired by the employer to perform bargaining unit work, with the exception of employees hired by a subcontractor pursuant to Section 19.10, shall be hired pursuant to the Fire and Police Commissioners Act."

¹¹⁶ The statute provides, Section 10-2.1-6, in relevant part, " All applicants for a position in either the fire or police department of the municipality shall *** be subject to an examination which shall be public, competitive, and open to all applicants, ***."

it is impractical and perhaps very inconvenient to have them prepared a day early. However, the real problem with the Union's proposal is that it solves nothing. The employees work on rotating shifts. On any payday, two shifts of employees have to return to the Village to pick up their checks. Checks distributed late on Friday are available for the next shift. Distribution in the early morning may be more convenient for one shift, but not for the next. We therefore award the following language:

Paychecks will be delivered in sealed envelopes addressed to individual employees and delivered to station 7 the Friday of the payweek or the day prior to a holiday falling on a Thursday or Friday of the payweek.

3. Hiring

Section 10-2.1-4 of the Fire and Police Commissioners Act (65 ILCS 5/10-2.1-4) provides that all officers and members of a fire department shall be hired by the (local) Fire and Police Commission.¹¹³ Elk Grove Village has had such a Commission for many years, and from all indications it has worked diligently, efficiently and successfully in the hiring of and in reviewing the discipline of members of the Village's fire department.¹¹⁴ The Union is proposing to contractually require that all employees hired by the Village to perform bargaining unit work, with the

¹¹³ The statute provides, in relevant part, "*** The board of fire and police commissioners shall appoint all officers and members of the fire and police departments of the municipality ***."

¹¹⁴ The Commission's continued relationship with the review of employee discipline is addressed in the next issue.

wants to introduce a new system, and that therefore the onus is on the Village to justify the change, as a practical matter the reverse is true. Thus, the Village has not indicated that it intends to implement a patronage system for new firefighters, nor does it appear that it has the authority to do so. Although the Union vigorously denies that it, its proposal may be seen as an attempt to change the standards for the fire inspector and to limit the Chief. The Union's proposal is simply not compelling because it has already agreed that the Village may subcontract certain bargaining unit work.¹¹⁷ While subcontracting is not permitted under the contract for fire suppression duties, if the Union is correct in its analysis of the Fire and Police Commissioners Act, the question is why this provision is needed in the first place? The answer may be that the Union is seeking to change the status

¹¹⁷ Section 19.10, as tentatively agreed to by the parties on August 18, 1993, is as follows:

Subcontracting. (a) No employee shall be laid off as a result of any decision by the Village to subcontract any work performed by employees covered by this Agreement.

(b) Notwithstanding the foregoing, basic fire suppression work shall not be subcontracted, provided that this provision shall not be applicable to any mutual aid agreements that the Village has or may have with other fire departments or if there is a violation of section 10.1 (No Strike).

(c) If the Village subcontracts non-fire suppression work performed by employees covered by this Agreement, no bargaining unit employee shall be directly supervised by non-sworn personnel as a result thereof.

of the fire inspector, and it has supplied no support for this proposal. The panel therefore accepts the Village's proposal that the contract not contain the Fire and Police Commission hiring provision.

4. Discipline and Discharge

(A) Management Rights

The subject of discipline and discharge has two issues. The first is whether the Management Rights Clause shall contain a reference to the "just cause" standard for discharge. The second addresses the grievance procedure and whether employees may grieve discipline and discharge.

The parties have already agreed to a comprehensive Management Rights clause, which will appear in Article VI of the contract. They disagree, however, as to whether the exclusive rights of the Village as listed in the article shall include a provision for discharge and discipline. The Union seeks the following language, relying primarily on the fact that all of the comparables including the Elk Grove Village - FOP agreement have similar language:¹¹⁸

[Except as specifically modified by any and all other articles of this Agreement, the Union recognizes the exclusive right of the Village to make and implement decisions with respect to the operation and management of its operations in all respects. Such rights include but are not limited to the following:]
*** to discipline, suspend and discharge employees for just cause ***. (emphasis added)

¹¹⁸ The bracketed language has already been agreed to.

The Village proposes that such language not be included in the Management Rights clause. Its argument against this language appears to be solely in support of its position that discipline and discharge should not be grievable. In arguing against grievability, the Village notes that the arbitration cases which favor the applicability of the grievance procedure to discipline cases rely on the parties' agreement of a just cause provision. Thus the absence of a just cause provision aids its position for excluding discipline and discharge from the grievance procedure. It makes no independent argument against just cause but only takes this position because of its intent to maintain the Police and Fire Commission's exclusive authority over the review of discipline.

As noted by the Union, the just cause standard for discipline and discharge has been accepted by all of the comparable communities. As stated by Arbitrator Briggs in Village of Arlington Heights, S-MA-88-89:

The just cause standard is one of the most well-accepted tenets of the union-management relationship [citing How Arbitration Works, Elkouri and Elkouri (1985), pp 652-654]. Indeed, many arbitrators assume that in our highly industrialized society the standard is an implicit part of any collective bargaining agreement whether it is written or not. And the expertise of labor arbitrators in interpreting such standards is also well-established.

The Village takes a variety of strong and well-argued positions against changing the disciplinary system from one which has been controlled by the Commission to one where the final appeal is to a jointly selected neutral arbitrator. Many of these

arguments deserve, and have been given, serious consideration. However, nothing the Village has argued cuts against the just cause principle itself. It is simply fundamental that employees represented by a bargaining agent should have the opportunity to challenge discipline on the basis of fairness and objectivity which are the cornerstones of just cause. If it now turns out that the presence of this term precludes the exclusion of discipline and discharge from the grievance procedure, the answer lies with the legislature. However, this panel cannot exclude so basic a concept as just cause simply because the Village has another agenda for the challenge of discipline cases. We accept the Union's proposal.

(B) Grievability of Discipline and Discharge

The Village proposes that the contract contain a section which confirms the authority of the Elk Grove Village Board of Fire and Police Commissioners to resolve challenges to discipline. The language it proposes is as follows:

The parties recognize that the Board of Fire and Police Commissioners of the Village of Elk Grove Village has certain statutory authority over employees covered by this Agreement. Nothing in this Agreement is intended in any way to replace or diminish the authority of the Board of Fire and Police Commission with respect to discipline. Accordingly, any dispute or difference of opinion concerning discipline which is subject to the jurisdiction of the Elk Grove Village Board of Fire and Police Commissioners shall not be considered a grievance under this Agreement.

The Union proposes a comprehensive provision for the alternative selection of the Commission or the grievance procedure as the method for resolving disputes over discipline.

It would allow grievances under the contractual procedure or appeals to the Commission, but not both. Employees would have to choose the forum at some time prior to a hearing before the Commission and in compliance with the filing timelines of the grievance procedure. The proposal also reconfirms the statutory authority of the Fire Chief to initiate discipline. The Union's proposal is as follows:

Section 1. Employee Rights. Employees shall have all rights as set forth in Chapter 24, Ill. Rev. Stat., Section 10-2, 1-17, to have their discipline cases reviewed by the Board of Fire and Police Commissioners. Employees shall have the alternative right to file grievances concerning discipline cases. The grievance procedure in Article IX and the hearing process by the Board of Fire and Police Commissioners are mutually exclusive and no relief shall be available under the grievance procedure for any action heard before the Board of Fire and Police Commissioners. Furthermore, the filing of a grievance involving employee discipline shall act as a specific waiver by the Union and the employee involved of the right to challenge the same matter before the Board of Fire and Police Commissioners and a form containing such waiver specific waiver shall be executed by the Union and the involved employee before a grievance may be filed under the grievance procedure. Employees initially seeking review by the Board of Fire and Police Commissioners may subsequently elect to file a grievance within the appropriate time limits specified in the grievance procedure, but only prior to any hearing before the Board. Employees so filing a grievance shall immediately withdraw their requests for a Board hearing and waive any and all rights to additional hearing(s) before the Board.

Discipline charges shall be filed with the Board of Fire and Police Commissioners and copies shall be sent to the Union.

A hearing before the Board of Fire and Police Commissioners, if any, shall be conducted under the applicable rules and regulations of the Commission and the applicable statute.

A hearing before an arbitrator selected under the procedures of this collective bargaining contract shall be conducted in the same manner as an arbitration proceeding provided by this collective bargaining agreement, except that in cases involving discharge of an employee the parties will make every reasonable attempt to expedite the process.

Section 2. Employer's Authority. The authority of the Fire Chief shall be governed by Chapter 24, Il. Rev. Stat., regardless of which forum the employee may select in which to contest the disciplinary action.

The Union's proposal is identical to the language proposed by the union in the Arlington Heights case as modified by Arbitrator Briggs. However, most of the comparable bargaining agreements require that all discipline and discharge be taken to the respective fire and police commissions, notwithstanding the just cause language in the management rights clauses. This is true with the Elk Grove Village FOP contract as well. On the other hand, several arbitrators, including the chairman in this case, who have been faced with the issue of the application of the contractual grievance procedure in discipline and discharge when there is a commission in place have held in favor of the application of the grievance procedure. The Union relies on the language of those other arbitration decisions.

The Union argues that the Village is seeking a waiver of the right to enforce the just cause provision through the grievance procedure. The Village wants to exclude the just cause language

from the grievance procedure and leave to the Commission all disputes regarding discipline. But, the Union argues, under Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations Board, 244 Ill App 3d 945 (1992), the employer cannot pursue to impasse a proposal that the union waive its access to the grievance procedure. Inasmuch as the arbitration language of the Act controlling the present case is the same as that of the statute involved in Board of Trustees, the Union argues that the language in the comparable contracts is now obsolete and cannot be cited as support for the Village's proposal.

The Village argues that the Act does not prohibit the parties from excluding certain provisions from the grievance procedure, and cites as an example the common provision limiting the rights of probationary employees. The Village argues strenuously that the language of the Act which provides that the contract "shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" does not mean that every matter covered by a collective bargaining agreement must be subject to the grievance and arbitration procedure.

There are two problems with the Village's argument. First, there is a difference between limiting certain rights for certain employees, and excluding certain provisions from the grievance procedure altogether. Thus, there is nothing inappropriate in

providing that probationary employees shall not be covered by the just cause provisions of the contract. Those employees may file a grievance, but their grievances could not rely on just cause. If the language of the agreement said that probationary employees could be discharged for any reason, at the sole discretion of the employer, those employees have not lost their standing to grieve. They simply would have no basis for relief in the case of discharge. There is a difference between jurisdiction and the merits of a dispute. A grievance may be filed alleging all sorts of violations of the contract. Whether there is merit to that grievance, whether the contract contains the protections the grievant claims were violated, is another story.¹¹⁹

In the present case the Village wants to remove discipline and discharge from the jurisdiction of the grievance procedure. This it cannot do. Parties may agree that discipline and discharge shall be under the domain of the fire and police commissions, but once they agree that just cause is part of the agreement, employees have an absolute right to grieve the absence of just cause in their respective disciplinary cases. A grievance procedure covering all sections of a contract is mandatory (subject to the exception

¹¹⁹ See, for example, the Village's proposal for grievances by lieutenants for the denial of a merit increase. (Issue No. 7, below.) Under this proposal, a lieutenant could grieve the denial of the merit increase. There is no restriction on the right to grieve. However, under the Village's proposal the standards are "arbitrary or capricious" conduct on the part of the employer in denying the merit increase. In other words, the Village has the right to determine the awarding of merit increases according to any standard it chooses as long as that standard or the decision interpreting that standard was not arbitrary or capricious.

discussed below). It is the substantive provisions of the contract which can be negotiated.

The Village argues that the Act does not provide that all disputes must be arbitrated. In terms of jurisdiction the Village is simply wrong. If it is in the contract, it can be grieved. The relief for the employer is to limit the particular rights or benefits it is concerned about in the first place. If the employer wants to exclude discipline cases it must negotiate limited rights for employees in such cases. This does not remove the right to grieve. It limits the likelihood of success for those employees.

This then brings us to the second problem with the Village's argument. The Village maintains that the proviso "unless mutually agreed otherwise" supports its argument that the grievance procedure can be modified. We disagree. The operative words here are "mutually agreed." Both parties must agree to the limitation. In this case the parties have been unable to agree. There is no "mutual" agreement. Rather, one party here is seeking to have its limitation imposed on the other party. But the Act does not allow this. The Act says that the parties may agree. It does not require them to agree. If they do not agree, then the matter can go no further. One party cannot make the limitation an issue in this case. The Act provides that the parties may agree to limit the grievance procedure. It does not require that they do so. Indeed, the use of the words "mutually agreed" does more to support the Union's argument than they do the Village's. The Village simply cannot take to impasse any proposal to limit the grievance

procedure to certain parts of the contract and not others. The language of the Act does not allow it.¹²⁰

Having found that the issue of discipline and discharge is an appropriate issue for the grievance procedure does not mean that the Union's proposal must be accepted. The particular terms of the language must still be hammered out. The Village raises a number of questions regarding the text of the Union's proposal.

It argues that to allow two avenues for the resolution of grievances encourages forum shopping and could give rise to conflicting lines of precedent. If two employees are disciplined for the same or similar conduct, and each follows a different resolution path, the Village might face conflicting resolution. The existence of two forums complicates the task of administration. Each forum might espouse different approaches to discipline and the recommendations of one might be rejected by the other. Moreover, the Union's proposal would allow an employee to switch forums at the last minute, as long as the hearing has not commenced.

Many of these objections were raised in the Arlington Heights case. In that case the arbitration panel (Briggs, Chairman) found that forum shopping would only occur if one procedure or the other were perceived by employees as more just, and if one of them were, its use should be encouraged. Additionally, the possibility of

¹²⁰ Accordingly, the Village's argument about evidence in support of the partisanship of the Commission, and a need for a change is irrelevant. The Union does not need to show a factual basis for the scope of the grievance procedure. That is theirs by statute. And once the issue of just cause is settled, the only issue is the procedure for discipline, not its coverage under the grievance procedure.

conflicting results is always possible with an ad hoc grievance procedure where different arbitrators are used in successive cases and no one is bound to follow the dictates of a predecessor. There is also no evidence that the problems feared by the Village have occurred in any of the jurisdictions where the grievance procedure sits alongside a fire and police commission.

There are, however, some small problems with the Union's proposal. One is that the right to switch from a Commission proceeding to a grievance at any time prior to a hearing has the potential for a waste of resources and unnecessary delay. A better procedure is for an employee to choose which forum is to be used at the very beginning. Once selected the employee cannot switch. We would therefore change the Union's proposed language permitting an employee to switch to a grievance at anytime prior to Commission's hearing so that an employee who seeks review from the Commission waives the right to file a grievance. This will operate in the same fashion as an employee who, in filing a grievance, waives the right to proceed before the Commission.

Second, we find that while the parties may agree to utilize the Commission, they cannot provide for the Commission's rules and regulations. The language that a hearing before the Commission shall be conducted under the Commission's rules is surplusage. Likewise, the language that a hearing before an arbitrator shall proceed in the same way as would any other arbitration is unnecessary and implies that other grievances might not follow this procedure. A grievance is a grievance, and there is no reason to

separately provide that a disciplinary grievance shall follow the terms of the grievance procedure. We would eliminate the last paragraph of Section 1 of the Union's proposal.

We award the following language:

Section 1. Employee Rights. Employees shall have all rights as set forth in Chapter 24, Ill. Rev. Stat., Section 10-2, 1-17, to have their discipline cases reviewed by the Board of Fire and Police Commissioners. Employees shall have the alternative right to file grievances concerning discipline cases. The grievance procedure in Article IX and the hearing process by the Board of Fire and Police Commissioners are mutually exclusive and no relief shall be available under the grievance procedure for any action heard before the Board of Fire and Police Commissioners. Furthermore, the filing of a grievance involving employee discipline shall act as a specific waiver by the Union and the employee involved of the right to challenge the same matter before the Board of Fire and Police Commissioners and a form containing such specific waiver shall be executed by the Union and the involved employee before a grievance may be filed under the grievance procedure. Employees initially seeking review by the Board of Fire and Police Commissioners may not subsequently elect to file a grievance under the grievance procedure. The election by an employee for review by the Board of Fire and Police Commissioners shall act as a waiver by the Union and the employee to proceed under the grievance procedure.

Discipline charges shall be filed with the Board of Fire and Police Commissioners and copies shall be sent to the Union.

Section 2. Employer's Authority. The authority of the Fire Chief shall be governed by Chapter 24, Ill. Rev. Stat., regardless of which forum the employee may select in which to contest the disciplinary action.

5. Definition of Grievance

The issue here is whether a grievance shall be limited to an alleged violation of an express written provision of the contract.

The Village proposes the following language:

Definition of a Grievance. A "grievance" is defined as a complaint arising under and during the term of this Agreement raised by an employee or the Union against the Village alleging that there has been a violation, misinterpretation or misapplication of an express written provision of this Agreement.

The Union proposes the same language, but without the word "express." According to the Union, the presence of this word prevents employees from grieving the many different employment practices and Village policies which have developed over the years. The Village argues that the Union could still cite past practices to give meaning to ambiguous contract language. But the Village believes that it is appropriate to exclude a direct challenge to policies or practices. There is almost no support among the comparables for a grievance procedure which allows an employee to grieve the alleged violation of a practice which itself is not part of the contract.

One of the reasons for a written collective bargaining contract is to memorialize the agreement the parties have reached regarding terms and conditions of employment. To allow for grievances of terms which are not expressly in the contract but are merely "understood" by the parties holds the potential for much mischief and misunderstanding. If there is a term or condition of employment which is important enough for the parties to be

concerned that it could be grieved, then it is important enough to have in the contract. Inasmuch as the parties have a right to have all of their agreements in the written contract, the absence of an "implied understanding" itself implies that there is no understanding. Finally, there is no support among the comparables for the grievance of provisions which are not expressly provided in the written document.¹²¹ The Village's proposal is selected.

6. Limitations on the Authority of an Arbitrator

The issue here is the twin of the last issue. In this instance the Village wants the description of a grievance arbitrator's authority to be limited to determining whether there has been a violation of a specific provision of the collective bargaining agreement. The Village does not want an arbitrator to have the authority to determine whether policies and practices which are not expressly made a part of the contract have been violated. The Union argues as it did with the issue of the definition of grievances: There are many policies and practices which have developed and for which it is impractical to put into the written contract, but that they are part of the collective bargaining agreement nonetheless.

¹²¹ Nor do we agree that the Village's proposal is an improper issue in impasse because it seeks to restrict the grievance procedure. Here, unlike the issue of discipline, the Village is not seeking to keep terms and conditions of employment as provided in the contract from the jurisdiction of the grievance procedure. Rather, the Village is attempting to limit the application of the grievance procedure to its terms, and not allow for policies and practices which are not written into the procedure to be covered.

The Village's proposal pretty much tracks the language contained in the comparable agreements. The Union has not provided any compelling reason why its contract should be so markedly different on this issue from those in the comparability group.

In light of the limitation on the definition of grievances, it is questionable whether this restriction on the authority of arbitrators is really necessary. If a grievance is limited to the express terms of the written agreement, it would seem to follow that the issue before a grievance arbitrator could only be whether a violation of that express term occurred. Inasmuch as the agreed upon language of this section already provides that an arbitrator is limited to only deciding the question raised in the grievance, and because only issues involving express terms can be raised in a grievance, the further limitation on the arbitrator would seem to be superfluous. It is difficult to understand how an arbitrator would be able to decide whether an implied provision of the contract was violated when the arbitrator is already limited to deciding only the issue raised in the grievance. The dilemma for the panel is that to accept the Village's proposal might imply a further limitation on the arbitrator's ability to read the contract as a whole, while the acceptance of the Union's proposal might be seen as license to determine implied terms and conditions and create a conflict with the definition of a grievance. We accept the Village's proposal but do so with the understanding that nothing contained in the language of this section is intended to

diminish arbitrators' traditional methods of analyzing the complete agreement of the parties in order to determine whether specific provisions of the written agreement have been violated. While we will not make this proviso an express term of the agreement, it becomes a part of the bargaining history and may be introduced by the parties in support of their respective arguments in any grievance case.¹²²

7. Grievances Concerning Merit Pay for Lieutenants

This issue concerns the standards to be applied in grievances involving merit pay increases for lieutenants. The Union wants a standard of just cause for the denial of merit increases. Its proposal is as follows:

Lieutenants shall have the right to file grievances to protest the denial of merit increases. The employer must demonstrate just cause to deny a merit increase to a lieutenant.

The Village wants the right to grant or deny such increases subject to an "arbitrary and capricious" standard. Its proposal:

If a lieutenant alleges that the Village has arbitrarily and capriciously denied him a merit adjustment, he may file a grievance in accordance with the grievance and arbitration procedure set forth in Article IX of this Agreement.

¹²² In proceeding in this manner the panel intends to make the very point stated by the proviso itself, that other items, such as this award, may be viewed for the purpose of determining whether express language has been violated.

At the hearing the Union argued that its proposal was necessary because merit increases for lieutenants have been such a matter of contention in the past. For example, merit increases, according to the Union, were not always in line with the lieutenants' evaluations. Only if the Fire Chief has to justify his denial can the employees be assured that they will be treated fairly. The Union seeks only fairness and objectivity, and therefore the burden should be on the Fire Chief to justify the denial of a merit increase.

The Village argues that it is basic arbitration law that the burden of proof is on the employee who challenges the denial of a merit increase. Citing numerous published arbitration awards, the Village argues that merit increases are seen as a matter of managerial discretion, and not a matter of right, and that the burden should not be on the employer to justify its decision but on the challenger to show that the action was improper. Indeed, the Village argues, because the granting or denying of a merit increase is seen a management prerogative, the burden is not only on the challenger, but the grievant must show that the employer's action was arbitrary, discriminatory or capricious. As stated by Arbitrator Nathan Kayton in Koppers Co., Inc., 50 LA 296,298 (1968), " *** unless it is shown that management has been arbitrary or capricious, or has been motivated by discrimination or bias or some similarly improper purpose, decisions in this area are not overturned in arbitration cases."

The Village also argues that there are no provisions among the comparable contracts which support the Union's proposal. In fact, only a few contracts address this subject at all, and those which do are in line with the Village's proposal.¹²³ The Village argues that it is not attempting to restrict a lieutenant's access to the grievance procedure but it seeks only to retain management's right to award merit increases in its discretion.

The Village is correct in its citation of arbitration case law. However, the cited cases involve contracts where there was no contractual standard for review. The arbitrators recited the standard "arbitrary and capricious" test in the absence of express contrary standards. In this case, however, the Union wants to create a different standard because, it alleges, there has been an abuse of discretion by the Fire Chief. Indeed, it appears from the panel's perspective that few issues were as emotionally charged in this case as merit increases for lieutenants. However, the Union's evidence of an abuse of discretion was spotty at best. Most of the problems seemed to stem from a change in the system of granting such increases in the past followed by a failure to correct possible inequities arising under the past systems. There is no

¹²³ Wheeling provides that the denial of merit pay may be reversed in the grievance procure if there is "no reasonable basis for such denial." Arlington Heights provides that the denial of a step advancement may be challenged if it was "arbitrarily and unreasonably denied." Des Plaines provides that a grievance may be filed where the employee believes that the denial of an advancement "is arbitrary, capricious or constitutes an abuse of managerial discretion ***." Skokie's contract allows for grievances when a step advancement has been "arbitrarily and unreasonably denied ***."

evidence that merit increases are currently being determined on less than an objective basis. This does not mean that the panel would agree with each and every decision, but only that no recent decision appears to be unreasonable. Therefore, there is no demonstrated need for this contract to deviate from the usual and customary practice of allowing management some discretion in the granting of merit increase.

There are more fundamental reasons for denying the Union's proposal. Under the language already awarded for lieutenants salaries there exists an objective standard for granting a basic merit increase. Exceptional service is not necessary. All a lieutenant need do is the job he was hired to do in order to get the basic merit increase. Thus, a denial of an increase here would impliedly put some burden on the Village to show that the employee was less than satisfactory. While the test might be arbitrary or capricious, it would seem that a showing by the Union, as the moving party, of satisfactory performance of a lieutenant would be sufficient to shift the burden to the Village to justify its decision. Thus, the test must be seen in the context of other contractual language which provides objective standards for most of the merit increase.

The contract also provides for discretionary increases for exceptional performance (or in the final year an additional 1.75% at the discretion of the Fire Chief). Here, the intention of the parties, and of the panel in awarding this language, was to allow management discretion in awarding additional increases for a high

level of service. If the Village had the burden of proving at the outset that its denial was for just cause the sense of discretion which was intended by this provision would be destroyed. Accordingly, we select the Village's proposal on this issue.

8. Waiver of Rights to Sue

The parties have agreed that the contract will contain a prohibition of discrimination on the basis of union membership, age, sex, marital status, race creed, national origin, religion, disability or political affiliation in violation of state or federal law. In its final offer the Village proposed a limitation on employees who choose to file grievances alleging violations of the non-discrimination clause. The Village proposed that an employee who so grieved would waive the right to proceed in court or before an administrative agency to pursue relief for the same violation as alleged in the grievance. The Union has maintained that this would be an unlawful provision and proposes that the contract contain no restriction at all. In its brief the Village concedes that EEOC v. Board of Governors of State Colleges and Universities and University Professional of Illinois, 957 F.2d 424 (7th Cir. 1992), cert. denied 113 S. Ct. 218 (1992), prohibits such a limitation. In that case the Seventh Circuit held that a collective bargaining agreement may not prohibit access to statutory remedies as the price for access to the grievance procedure.

In its brief the Village makes two new, alternate, proposals. It suggests a provision which would prohibit the filing of a

grievance protesting an alleged violation of the non-discrimination provision. It suggests that the language would either have an express prohibition of access to the grievance procedure and make complaints of discrimination remediable through the appropriate court or agency, exclusively, or it would contain no express prohibition regarding the grievance procedure and make the civil remedies the exclusive avenues for relief.¹²⁴

The Union previously objected to the Village's original proposal on the basis that it was a non-mandatory subject for bargaining. Certainly that objection would apply to the Village's latest proposals. It would, as discussed previously, be an improper restriction on access to the grievance procedure. The Act simply does not allow for discrete terms and conditions of employment as stated in a valid collective bargaining agreement to be beyond the reach of the grievance procedure. The answer lies in negotiating terms and conditions which are acceptable and which each party can stand behind. Neither party can agree to a term or condition of employment on the one hand and prohibit a violation of that term or condition from being grieved on the other. Having agreed to a non-discrimination provision, the Village cannot

¹²⁴ The Village notified the Union of its change of position on this issue prior to the filing of briefs. The Union's counsel subsequently wrote to the panel chairman objecting to the Village's change of position on an issue after the submission of final offers. We have already spoken to the issue of new proposals after the submission of final offers, and that need not be repeated. See fn 111, above.

insulate itself from the statutory method for resolving disputes under that language.¹²⁵

We accept the Union's proposal on this issue.

9. Hours of Work

The parties disagree as to the descriptions for the normal workweek. While they agree that there should be separate provisions for both 24 hour and 8 hour shifts, the Village wants broad authority to change the normal work periods. The Union vigorously opposes allowing for such changes short of bargaining. The parties have agreed to the introductory paragraph for this Hours of Work article. It reads: "This Article is intended only as a basis for calculating overtime payments, and nothing in this Agreement shall be construed as a guarantee of hours of work per shift, per week, per work period, or any other period of time.

The respective proposals for the rest of the article are as follows:

Village

24-Hour Employees. The current normal workday for employees assigned to 24-hour shifts shall be 24 consecutive hours of work (1 shift) followed by 48 consecutive hours off (2 shifts). The current normal work period for employees assigned 24 hour shifts is 28 days.

8-Hour Employees. The current normal workday and work period for employees assigned to 8-hour shifts shall be 40 hours based on five 8-hour shifts, within a seven-day work period. Each 8-hour workday shall include an unpaid, off-duty 60-minute lunch break, subject to emergency work duties, the employee shall be allowed to take an off-duty lunch period, later in the day, work permitting.

¹²⁵ See our discussion in the text preceding fn 120, above.

Changes in Normal Work Period and Workday. The shifts, workdays and hours to which employees are assigned shall be stated on the 28-day Departmental work schedule. Should it be necessary in the interest of efficient operations to establish schedules departing from the current normal workday, work schedule, starting or ending times, work period or work hours, the Village will give at least one week's notice where practicable of such change to the individuals affected by such change.

Union

Platoon Duty Employees covered by the terms of this agreement shall be assigned to regular platoon duty shifts. The regular hours of duty shall be 24 consecutive hours on duty, starting at 0800 hours and ending the following 0800 hours. The on-duty tour of duty shall be followed by 48 consecutive off duty hours. No employee shall work other than platoon duty unless agreed upon by both the Union and the employer.

Eight-hour Shifts Employees required to work the 40 hours per week schedule, shall be assigned to a regular eight hour shift, Monday through Friday; the daily shift shall commence 0800 hours and end at 1600 hours. No 40-hour employee shall be required to work Saturday, Sunday or Holidays. All 40-hour employee work schedules shall provide for a 15 minute rest period during each one-half shift. The rest period shall be scheduled at the middle of each one-half shift whenever this is feasible. Further, 40-hour employees shall be granted a lunch period during each work schedule, and the lunch period shall be scheduled at the middle of each shift.

The Village argues that the first sentence of the Union's proposal is confusing because it implies that there will be no employees on 8 hour shifts, when that in fact is not what the parties agreed to. The Village is seeking flexibility to change the normal workday, work schedule and starting or ending times at its discretion "in the interest of efficient operations." It argues that several of the comparable departments have this right. In particular, Bensenville has the same language that the Village

is proposing here. Arlington Heights has similar language. The Rolling Meadows contract permits a deviation from the contractually established starting and ending times upon notice to the employees involved. Wheeling has a two hour range for the daily starting time and permits a change upon notice to the affected employees. Elmhurst has a one hour range for the starting time. Skokie's contract gives its department the right to change the shift starting time. The Village also notes that its contract with the FOP gives it considerable discretion in changing shift times.

By way of example, the Village cites testimony given at the hearing that it is currently working platoon shift firefighters in fire prevention and education duties. It wants the flexibility to establish 8 hour shifts for these employees. With regard to the proposals for 8 hours employees, the Village finds the limitations in the Union's proposal too restrictive. It objects to the 15 minute breaks, the paid lunch period and the prohibition against working weekends and holidays. Finally, the Village argues that the Union's proposal would effectively create a guarantee of hours which is in direct contradiction with the introductory paragraph.

The Union argues that the Village's proposal represents a major change from the way firefighters have worked since the inception of the department. According to the Union, almost all the comparables have starting and ending times listed in the contract. The Union argues that arbitrators do not favor the changing of past practice without some good and sufficient explanation. With regard to the issue of hours of duty, nothing

can be more basic to working conditions, the Union argues. The Village should not be allowed to change hours without bargaining the change with the Union.

We agree with the Village that the Union's opening language is unclear. It seems to be in conflict with the understanding that there are some employees who may work 8 hour shifts. That being so, we see no reason why the Village should not be able to hire or assign additional personnel on an 8 hour basis to supplement its fire prevention and education programs. Furthermore, absent a statutory requirement, there is no basis to contractually require that these employees have two 15 minute paid break periods. We leave this to the Village to determine. And, absent evidence bearing upon the need for a paid or unpaid lunch, we will leave this to the Village's discretion as well. Furthermore, because their hours are not part of a continuous cycle, some flexibility should be given to the Village in establishing starting and ending times.

On the other hand, there should be no doubt that traditional bargaining unit work of fire suppression and paramedic services are to be performed by employees working in a platoon system with 24 hours on and 48 hours off. It should be clear from the language of the contract that this long-standing practice will not be changed other than at the bargaining table. The Village's proposal is so broad it is subject to the argument that the 24/48 hour system would not be secure were that language to be adopted. The Village argues that as with most employers, it needs reasonable

flexibility in determining when the shifts start and end. The problem here is that a fire department is not like most employers. The work knows no time distinctions. It is continuous and not interrelated with other aspects of the Village life which must be coordinated. The work of a fire department operates independently on a never ending basis. And what distinguishes this work from other types of continuous public operations, such as with police, hospitals or power plants, is that the employees work 24 hour shifts. The employees live together and their work cycles are part of their lives. An employer's basic right to set hours must be muted when it comes to a fire department. Thus, the burden is on the employer not merely to suggest that it needs flexibility to change the normal shifts from 8:00 to some other hour, but to demonstrate that this change is necessary and the necessity overcomes the disruption it would cause in the employees' lives. Few terms and conditions of employment are more suited to the bargaining table than this one. We, therefore, award the following language:

Section 13.2 Normal Work Period and Workday

(a) 24-Hour Employees. The normal workday in a normal workweek shall be 24 consecutive hours of work (1 shift) followed by 48 consecutive hours off (2 shifts). The normal workday for 24 hour employees shall begin and end at 8:00 a.m.

(b) 8-Hour Employees. The normal workday and normal workweek shall be five consecutive days of 8 consecutive hours each, excluding any unpaid lunch period that may be scheduled.

10. Job Duties

The Union proposes a detailed provision setting forth the duties of employees and containing certain restrictions on non-essential work. The Village opposes any job description of this type. The Union's proposal is as follows:

The primary job duties of employees covered by this Agreement shall be (1) fire suppression, prevention, and extinguishment; (2) normal and routine maintenance of equipment, fire station and grounds, including removing snow from station walkways and areas of clearance from apparatus doors within a reasonable distance to provide clearance for Village plows to remove snow safely; (3) emergency medical services; and (4) hazardous materials incident to management. It is recognized that changes in the job duties and job functions will occur from time to time and that the Village may assign employees new or different job duties and job functions as long as they are reasonably related to those set forth above in (1) through (4). Job duties described in number (2) above shall normally be performed between the commencement of the tour of duty and 5:00 p.m., except for snow removal. Employees will not be required to perform nonemergency duties outside during extreme weather conditions. Employees covered by this Agreement will not be required to engage in snow plowing operations other than operations stated in No. 2 above and will not be required to deliver mail. The employer may not add additional non-firefighter related duties to the list of permitted duties in Sections 1 through 4 above, unless they are reasonably related to those set forth in Nos. 1 through 4 above.

Nothing herein shall interfere with the right of employees to volunteer, or the Village's right to ask for volunteers, to perform duties unrelated to the primary job duties set forth above, but the employee's refusal to volunteer to perform such unrelated duties shall not be cause for discipline.

The Union argues that its proposal is designed to do no more than provide that fire department employees only perform traditional duties. The Union is concerned that employees are sometimes required to serve as messengers and to remove snow in areas not near fire stations. The Union argues that these tasks put a fire company's response time at risk. According to the Union there is support among the comparables for its proposal.

The Village argues that there is no similar provision in the Police contract and police officers also perform extra duties. Among all of the comparables, the Village contends, only a few have provisions at all similar to that proposed here. According to the Village, the extra duties the Union wants to avoid have been performed by Fire employees for many years.

There are several reasons for denying the Union's proposal. First, it is drafted in such a manner that it could become a grievant's dream. It has too many features. It is repetitious and the provision for volunteers is opaque. But a more basic reason for denying any language is the Union's failure to show need. The Union suggests that firefighters are placed at risk when they are not all available to respond to an emergency. But the Union has offered no evidence that this has ever occurred. The extra work that Department employees perform is work they have performed for a long time. The Union has given the panel no basis to interfere with this practice. Finally, the support among the comparables is too weak to be of any aid to the Union. We adopt the Village's proposal of no provision on this issue.

11. Duties of Lieutenants

As discussed earlier in this Award, the parties have struggled mightily with the issue of whether lieutenants are supervisors within the meaning of the Act. Although the Board noted that the lieutenants did possess some indicia of supervisory authority, it was not substantial enough, or did not reach the level of supervisory authority as established by the statute. This Board determination was taken to the Appellate Court, which affirmed the Board. No Petition for Review was filed. Despite this history, the Village continues to maintain that lieutenants are supervisors with responsibilities over firefighters. The Village is concerned that involvement with the Union might compromise the integrity of the supervision. In effect, the Village fears that Union involvement creates a conflict of interests. It therefore proposes a comprehensive statement of the duties and authority of lieutenants coupled with a statement that their responsibilities as (non-statutory) supervisors will not be compromised by the lieutenant's Union affiliation. While acknowledging that there is no support for this proposal among any of the comparables, the Village reminds the panel of the chairman's oft-cited comment that despite the occasional "tyranny of the comparables," every case must be viewed in light of its own unique facts and

circumstances.¹²⁶

The Union argues that the Village on the one hand refuses to agree to a job description for firefighters, but then turns around and proposes one for lieutenants. The Union argues that the Village's purported fears are just a smokescreen to make an end run to re-establish lieutenants as supervisors. The Union also argues that this is a non-negotiable issue because the status of lieutenants not being supervisors is within the Board's jurisdiction and the panel cannot impose on the Union a legal decision contrary to that of the Board.

The Village's proposal is as follows:

The Union hereby acknowledges and agrees that those employees holding the rank of Lieutenant in the Elk Grove Village Fire Department have historically performed, and will continue to perform in the future, supervisory duties on behalf of the Village in their daily activities. It is further specifically agreed that:

A. Under no circumstances shall a Lieutenant discriminate either in favor of or against any bargaining unit employee because of his involvement or non-involvement in matters concerning the Union. Likewise, under no circumstances shall a Lieutenant refrain from, modify, amend, or otherwise interfere with the exercise of supervisory or managerial authority over employees in their command as may be required for the effective performance of duties as a Lieutenant or as may be directed by a superior officer. The foregoing

¹²⁶ The Village argues that its fears are not just fantasies. At the Board hearing on the issue of the authority of the lieutenants, several lieutenants denied in their testimony that they had any of the responsibilities which the Village insists are basic to their job functions. The Village is genuinely concerned that Union loyalty will result in an abdication of the traditional leadership features of the job.

shall not limit the right of a Lieutenant to file grievances or exercise other rights which may be contained in any collective bargaining agreement between the parties or as may be provided by the Illinois Public Labor Relations Act.

B. Lieutenants shall provide complete and accurate information and, if directed by the Village, testimony or evidence concerning persons under their command and direction without regard to their involvement or non-involvement in collective bargaining matters concerning the Union. The Union shall in no way discipline, discriminate against or otherwise interfere with a Lieutenant in carrying out his authority in supervision, command, direction or control over bargaining unit employees, or otherwise interfere with his carrying out of the lawful directives of the Chief or his designees. The foregoing shall not limit the right of the Union to file grievances or exercise other rights guaranteed by any collective bargaining agreement between the parties or as may be provided in the Illinois Public Labor Relations Act.¹²⁷

If the purpose of the Village's proposal is to sow the seeds for a new attempt to separate the lieutenants from the firefighters, this panel cannot be a part of that. The Village's

¹²⁷ The Village cites and quotes from a federal court decision involving the Village and the Union wherein the District Court stated that because lieutenants effectuate the very terms and conditions in which the Union has a direct interest, it would be very unlikely that there would not be a conflict of interest. In an action attacking the constitutionality of the Village's policy prohibiting captains and lieutenants from belonging to any union which had rank and file firefighters as members, the court stated, inter alia, "The Village cannot be told to wait and see whether any conflict develops in fact. The creation of a common union composed of rank and file firefighters and their superior officers poses a sufficiently serious threat of ineffective supervision based upon divided loyalties to warrant preventive action." Elk Grove Firefighters Local 2340 v. Willis, 400 F. Supp. 1097 (N.D. Ill. 1975), Appendix 23, aff'd, 539 F. 2d 712 (7th Cir. 1976) (unpublished order).

proposal contains a declaration that the lieutenants perform supervisory duties. While the panel acknowledges that lieutenants do supervise the work of firefighters in terms of directing, managing and overseeing their work, the Board has already determined that such work supervision is not tantamount to control over their status as employees. The problem with the Village's proposal is that it implies that such supervisory control over firefighters as employees exists. That is, the proposal assumes that lieutenants can affect the livelihood and employment status of firefighters and not simply direct their tasks.

However, if the purpose of the Village is not to resurrect the statutory issue, but only to assure that lieutenants, and the Union, will not forget that lieutenants owe their loyalty to the Department, then the provision is unnecessary. The Village already has the authority to control the performance of all of its employees under the Management Rights clause. The right to supervise is inherent, and the Village certainly does not need a contract provision reminding employees that they have to do the jobs they were hired to do. Lieutenants know, as do all employees, that they must do as they are told, and may grieve an order they deem in violation of the contract. Any employee, lieutenant or firefighter, who discriminates against another employee in the performance of their respective duties is subject to discipline. To craft a separate provision for lieutenants is wholly unwarranted. We accept the Union's proposal not to have a provision on this issue.

12. Duty Trades

The parties have agreed to continue the long-standing practice of allowing employees to exchange shifts provided that there is no interference with the operation of the Department. Their disagreement is as to how many days of advance notification must be given. The Village proposes 5 duty days because this is the practice in existence for many years and the Union offered no evidence that standard has caused problems for employees. The Union proposes one day's notice. It argues that although the agreed upon language permits the Chief, at his discretion, to agree to a duty trade with less than five days' notice for extenuating reasons, the Union has problems with the word "extenuating." In some cases employees simply could not give five duty days' notice, which could actually be more than two calendar weeks. The Union also argues that no comparable department has a requirement as stringent as the Village's.

Both parties make compelling arguments. On the one hand the Village is correct when it argues that the Union is seeking a change and, yet, has offered no evidence that a change is necessary, i.e., that the Chief has unfairly denied employees requested changes when there has been less than five days' notice. On the other hand, the Union argues that no other comparable requires such a long period, and the practice relied upon by the Village is not one which was agreed upon, but one which was imposed on them. While we agree with the Union that it should not be bound by a practice it never agreed to and over which employees had no

input or control, it is also true that the Union has not shown that the imposed restriction, regardless of its source, has caused any problems. Accordingly, in light of our intent to not change practices unless persuaded that a change is necessary, we agree to maintain the five day notice provision. However, in order to address the Union's fears about managerial discretion in the context of a contentious bargaining history, we shall provide that in exercising discretion, the Chief shall not be arbitrary or capricious in the exercise of his judgment. The awarded language shall read as follows:

Duty Trades In accordance with the Fair Labor Standards Act, an employee for his own convenience, may voluntarily have another bargaining unit employee in the same rank or position (i.e., firefighter for firefighter, paramedic for paramedic, and lieutenant or lieutenant/paramedic for lieutenant) substitute for him by performing all or part of the employee's work shift, provided the substitution is requested at least five (5) duty days in advance, does not interfere with the operation of the Fire Department (as determined by the Fire Chief), and is subject to approval by the Fire Chief or his designees, provided that the Fire Chief may, in his discretion, permit notice of less than five (5) duty days where there are extenuating circumstances, and provided further, the Fire Chief shall not exercise his discretion in an arbitrary or capricious manner. The hours worked by the substitute employee shall be excluded by the Village in the calculation of hours for which the substitute employee would otherwise be entitled to compensation, including overtime compensation. If a substitute employee works all or part of another employee's scheduled work shift in accordance with this Section, then the hours worked by the substitute employee shall be counted as hours worked by the employee who was originally scheduled to work that shift. [emphasis added]

13. Shift and Station Bidding

The Union has proposed a section which would create a bidding system for transfers from one shift to another. The proposal is designed to maintain a balance of classifications for each shift but with seniority to be the test where employees have the qualifications for the transfer. The proposal also contains a provision for semi-annual bidding for station assignments. The Union's proposal is as follows:

Each year prior to November 1st, employees shall be allowed to bid for transfer to another shift. These transfers shall be allowed only if shift staffing is maintained at the following levels: six lieutenants, ten fire apparatus engineers and twelve paramedics on each shift. These transfers shall be by seniority in rank. If the transfer does not effect maintenance of these levels or any level which currently exists below the stated minimums then the transfer shall be allowed. These transfers will be accomplished on or around the 1st of January in a manner which equalizes hours worked in the pay period.

On each shift, assignments to a station or positions will be open to bidding by seniority each year in January and June. The positions to be bid are those which are considered as minimum manned positions, pursuant to the Department's minimum manning policy. The employee must possess the qualifications, if any, for the position they wish to bid. This provision is not intended to obstruct in any way the temporary assignments necessary to provide minimum manning.

The Union argues that it is only fair that employees have some voice in the their assignments, particularly where the assignments are for 24 hour shifts, as well as what station they are assigned to. While early drafts of its proposal may not have been sensitive

enough to the need for a balance of qualifications, the final proposal would prevent a transfer where certain minimum staffing requirements were affected.

The Village opposes any provision on this subject as unnecessary and categorizes it as a response to a problem which does not exist. The Village argues that the Union has brought forth absolutely no evidence that management which now determines shift and location assignments has been unfair or arbitrary or unreasonable in any way. The Village also points out that there is scant comparability data in support of the Union's proposal. The Village also argues that a transfer provision which uses seniority as the criterion would necessarily create staffing imbalances and would insulate the most senior employees from any transfer and might result in all of the junior employees being located at the station perceived as being the least favorable.

We find neither proposal adequate or acceptable. On the one hand we do not agree with the Village that so basic a term and condition of employment as shift and location should not have any input from the affected employees. While giving the employees any voice would be a change, it must be remembered that this is a first agreement and that in the past the employees had no bargaining rights at all. Technically speaking, it can be argued that any alteration in the way the Village ran its department in the past is a change which must be negotiated. While this panel reiterates that changes should not be made frivolously and without evidence of problems with the current system, where the old system gave

employees no rights at all and no avenue to effectively challenge unilateral determinations, and where the issue is as basic as shift assignment, we find that the acknowledgement that employees did not have a voice in the selection of their shifts and locations to be an adequate representation for this issue. We note that these employees live together and work in paramilitary structure performing functions which place them at great personal risk. These employees should have some say in where they are assigned.

On the other hand, the Union's proposal is too cumbersome and can give rise to unseemly contests as employees position themselves according to seniority. While employees of course must have the qualifications to be placed in any open position under the Union's proposal, we still believe that management must have substantial say in how the balance shall be achieved. In the absence of evidence that management has abused its discretion, we are providing for input by employees with the final decision, based upon reason, to be with the Fire Chief and his captains.¹²⁸

The awarded language is as follows:

Shift and station assignments for all positions shall be made on an annual basis. Thirty (30) days prior to a date set by the Fire Chief for the annual assignment of positions, employees shall be given ten (10) days in which to submit bids for a given shift and/or station. The bid may include reasons for a change in shift and/or station, provided that such reasons shall be considered as confidential. The Fire Chief and/or his

¹²⁸ We note with approval similar reasoning adopted by Arbitrator Briggs in the Arlington Heights case. It might be noted further that in that case the employer did propose some language on this issue.

designees shall make the determination of shifts and assignments based upon the operational needs of the Department, provided that such determinations shall not be arbitrary or capricious. Where requested, the Fire Chief and/or his designees shall provide a written explanation to any employee as to the reasons why his/her request was not granted.

14. Physical Fitness Examinations

The parties agree that if there is a question regarding an employee's fitness for duty the employee may be sent to a medical professional for an examination. The Village also proposes that employees be subject to annual physical examinations. The Union proposes that an employee be permitted to submit his/her own medical verification, and if there is a disagreement the parties will select a neutral professional who will resolve the dispute. The Union also proposes that if the employee is not fit for duty he/she will be placed on sick leave or other "appropriate action" may be taken. The employee retains rights concerning statutory disability pensions.

In its brief, the Village again proposes a modification of its final offer and suggests that it would be willing to accept the first 3 paragraphs of the Union's proposal with one alteration. The first 3 paragraphs set forth the right to have an employee examined, that the examination would be at the Village's expense, the right of the employee to submit his/her own medical evidence and the right to a neutral third doctor in the event the employee's medical evidence as to fitness conflicts with of the Village's. The one area of disagreement is that the Union's proposal allows

for the determination of the neutral doctor to be subject to the grievance procedure. The Village suggests that the Union's proposal is taken directly from the Elmhurst Fire contract except that the Elmhurst contract prohibits an appeal of the neutral doctor's decision through the grievance procedure. The Village argues that the neutral doctor can serve as a de facto arbitrator and in that way the statutory prohibition of excluding any portion of the contract from the grievance procedure would be avoided.¹²⁹ The Village also proposes that the cost of the third party neutral doctor be shared by the parties.

The Village's suggestion that the neutral physician serve as an alternate form of arbitration is an interesting one, and certainly worthy of consideration by the parties. However, there would still be avoidance of the grievance procedure and the due process and procedural protections that arbitrators are especially equipped to provide. While it is true that access to the grievance procedure might seem to be a duplication of efforts, and that arbitrators are not medical professionals, the issues in the grievance procedure could well be more than just the physical fitness of the grievant. Arbitrators are called upon to render judgments in many technical areas beyond their normal training and experience, as are courts and as are juries. Arbitrators have the experience and in some cases the training to assess evidence and

¹²⁹ The Village points out that the Union's proposal for maternity leave, rejected by this panel, above, included provision for a third party doctor in the event of a dispute on the fitness of a pregnant firefighter. There was no reference in that proposal to the grievance procedure.

make judgments on the records presented to them. There is no reason why they cannot assess a medical record properly presented and explained. Although we do not exclude these matters from the grievance procedure, we provide no special authority in the language for access to the procedure. As a term and condition of the contract, it is subject to the grievance procedure as are all other sections. We do agree with the Village that the cost of the neutral physician should be shared by the parties.

Finally, the Village has offered no explanation as to why the Union's final paragraph, placing an employee on sick leave and protecting statutory disability rights should be excluded.

These appear to be reasonable, although perhaps unnecessary. We will grant these additional provisions in order to avoid any confusion should we exclude them without reason. Likewise, we will adopt the Village's proposal to require annual physical examinations. We also reject the Union's reference to "appropriate specialties or subspecialties" as redundant in light of the requirement that the physician be "qualified." The language adopted is therefore the Union's proposal with minor alterations and the additional provision for the sharing of the cost of the neutral physician. It should read as follows:

If there is any question concerning an employee's fitness for duty or fitness for return to duty following a layoff or leave of absence, the Village may require, at its expense, that the employee have an examination by a qualified and licensed physician or other appropriate medical professional selected by the Village. The Village may also require any or all employees to take a complete physical examination as often as once a year, with one

week's notice to the employee, at the expense of the Village.

All such examinations shall be in addition to any requirement that an employee provide at his/her own expense a statement from his/her doctor upon returning from sick leave or disability leave.

Where the Village directs the employee to be examined, the employee shall have the option at the employee's expense of being examined by a medical professional of his/her own choosing who is qualified and licensed. If there is a difference between the Village's medical professional and the employee's medical professional, and the Village does not accept the opinion of the employee's medical professional, the employee shall be directed to obtain the opinion of a third medical professional of equivalent qualification who shall be jointly selected by the Village's medical professional and the employee's medical professional. In such event, the decision of the third medical professional shall determine the employee's fitness for duty. The cost of the third medical professional shall be equally divided by the employee and the Village.

If it is determined that the employee is not fit for duty based upon the foregoing, the Village may place the employee on sick leave (or unpaid medical leave if the employee does not have any unused sick days) or take other appropriate action. Nothing herein shall be construed to alter or have any effect upon either the statutory rights or requirements concerning disability pensions.

15. Physical Fitness

The parties substantially agree as to the terms of a provision requiring that employees remain physically fit and that they participate in a physical fitness program with individualized goals. They disagree as to when the employee's participation in

the program should occur.¹³⁰ The Village proposes that the required training may occur at any time during a shift, although participation in the program may occur during "assigned time" (generally 8:00 a.m. to 5:00 p.m.) if all assigned duties have been completed and the employee receives permission from a supervisor in the rank of captain or above. It argues that the Union's proposal comes substantially from the Arlington Heights' contract except that contract allows the training to be conducted at any time during a shift.

The Union proposes that mandatory fitness programs be considered regularly scheduled duties which should be performed during the regular duty time (daytime). Interestingly, the Union relies on the Arlington Heights language although the Union's proposal goes beyond that of Arlington Heights. That department allows employees to participate in the mandatory training programs if their regular duties have been completed but states that such training normally occurs during a tour of duty. This is the Village's proposal, as amended in its brief. The Union's proposal reverses the emphasis and provides that such training "normally occur" during assigned time.

Neither party suggests cogent reasons for their respective proposals as to when the training should take place. Obviously,

¹³⁰ In its final offer, the Village proposed a more limited provision than the Union, albeit along the same basic lines. It also agreed to one of the Union's paragraphs which if placed after the Village's proposal would create some redundancies. In its brief to the arbitration panel the Village agrees to accept the Union's complete proposal with the exception of the proposal as to when the mandatory physical fitness training may occur.

the Union's intention is to maximize off-duty (on call) time during a shift. It therefore wants the mandatory training to be considered the same as any other type of mandatory training, which normally occurs during daytime hours. Management wants the flexibility to allow for such training to occur at any time during a shift. We agree that the Village's proposal is the more reasonable. Employees already have full assignments during the limited one-third of their shift which occurs during daytime. The nature of the training is individual and does not require equipment or activities which cannot be performed at other times during the shift when there are less demands on the employees' time. Inasmuch as both parties seem to like the Arlington Heights language, we will not change it for the purposes of the training times. The language should read as follows:

Physical Fitness. (a) The Village may establish a reasonable mandatory physical fitness program which, if established, will include individualized goals. No employee will be disciplined for failure to meet any goals that may be established, as long as the employee makes a good faith effort to meet any such goals. Before any new program is implemented, the Village shall review and discuss the program at a meeting of the Labor-Management Committee and such program will be based on individualized goals.

(b) An employee's participation in a mandatory physical fitness program shall normally occur during an employee's tour of duty. Employees shall not be prohibited from participating in a mandatory physical fitness program during assigned time if all regularly assigned duties, including training, have been completed and approval has been granted, in advance, by a non-bargaining unit supervisor, provided that approval shall not be arbitrarily and unreasonably denied.

Participation in voluntary physical fitness activities shall not occur during assigned time.

(c) The foregoing shall not be construed to either relieve an employee of the obligation to meet reasonable job-related physical fitness standards that may be established by the Village or interfere with the Village's right to terminate an employee who is unable to meet reasonable job-related physical fitness standards.

16. Notice of Fire Training

The parties agree that the contract should contain provisions for fire service training and priorities among employees for getting the training. Their proposals to this point are very similar. The differences are (1) that the Union is seeking payment for all times spent in training, including travel time, where the Village wants to provide only that employees shall not suffer any loss in pay in order to attend required training which is paid for by the Village, and (2) the Union wants a provision allowing an employee to leave an assignment for which he/she has received training. The proposals may be seen as follows:

Village

Fire service training opportunities which the Fire Department decided to offer to employees covered by this Agreement at its expense and at no loss of pay to the employee shall be posted on the main bulletin board in each station.

Union

Fire service training opportunities which the Fire Department decides to offer to employees covered by this Agreement shall be posted in each fire station. All bargaining unit members selected for such training shall be in pay status for the period of training and related travel.

Common Language

Within the time specified in the posting, any employee who wants to be considered for the training shall submit a written statement of interest through the chain of command to the Fire Chief or his designee. Such statement shall include any information requested on the posting. Eligibility and assignment of these training opportunities will be determined on the following three successive levels.

a) Continuing participation in an area of departmental activity (e.g., hazardous materials team, water rescue recovery, etc.).

b) Logical progression of skills training and/or certifications within an area of departmental activity. Example: An opportunity to take the Hazardous Materials Chemistry course would normally be limited to the Haz Mat Team who have already been certified as Hazardous Materials Technician.

c) Entry level training in any area of departmental activity.

If at any successive level, two or more employees are determined to have equal skill and ability for the training opportunity, seniority shall govern in the making of the selection, provided, however, where there are recurring conferences/workshops of a similar nature, seniority shall not be a factor where the most senior applicant(s) have already attended such a conference/workshop and there are other qualified less senior applicants who have not attended such a conference/workshop. Where no employee expresses an interest in a given training opportunity that the Fire Chief determines should be undertaken,

Village

Union

assignment among nonprobationary employees by rotation shall commence with the least senior qualified employee who would meet departmental needs.	: assignment shall be made on department needs and on the basis of reverse seniority.
	:
	:

Common Language

Nothing herein shall be construed to require the Village to offer the training even though it has been posted.

Village

Union

Where the Village pays the cost of:	Nothing herein shall be construed
an employee to attend fire service:	to require an employee to contin-
training opportunities, compensa-	ue to work in the departmental
tion, if any, shall be in accord-	: activity for which the employee
ance with policy in effect on	: was trained.
May 1, 1993.	:

The provisions of this paragraph :
shall not be applicable to train- :
ing opportunities which may be :
posted but which are not paid by :
the Village.

This issue has its own unique history. During the course of the hearing, the Village noted that the Union had not yet submitted any proposal on this subject, although it was recognized as an area of dispute between the parties. Prior to the submission of positions on the identification of economic issues, which came near the end of the hearing, the Village again remarked that the Union had yet to propose what it wanted on this issue. Thereafter, the parties briefed the identification of economic issues. The Union identified the subject of training opportunities as a non-economic issue, commenting that all that was involved was the distribution of training opportunities. The Village, in its brief, identified the issue as economic because training was a cost item. It was unable to argue substantively, however, because it did not know what it was responding to. Thereafter, relying on the Union's representations, the panel chairman ruled that the issue was non-economic in scope. He stated,

This issue relates to how training opportunities shall be divided or made available to bargaining unit employees. It does not require that the Village provide

additional training or to incur training costs not already budgeted. This is not an economic issue.

The Union's first offer on the issue was contained in its final proposal package. And it was at that time that the Union raised a question which is clearly economic in nature. That is, the Union is proposing that employees be paid for all training (as opposed to the Village's proposal that there be no loss in pay), and that travel time be included in the measurement of paid time expended for training. The Village objects to this proposal as raising economic items outside the scope of its representations and the chairman's ruling based thereon.

We find much merit in the Village's argument. The designation of economic and non-economic issues is of great importance in these proceedings because the designation determines whether the panel will accept the proposal exactly as written (economic issues), or whether it might modify the proposal (non-economic issues). Where there are complex issues which have several parts, such as with this issue of training, it is advantageous for a party seeking new benefits to have the issue categorized as non-economic so as not to jeopardize its entire proposal because of one feature. Were the Union permitted to follow the procedure it has used in this case, any non-economic issue could be turned into an economic one by appending a money or cost feature to the item in the final proposals. Thus, while our rejection of the Union's proposal is not based solely on this defective procedure, it has been a strong consideration.

The Union argues that its proposal that employees be in a pay status when traveling to training locations is based upon the travel time provisions of the U.S. Department of Labor's Wage and Hour Regulations.¹³¹ The Union states in its brief that "under certain circumstances" travel time is compensable under the Fair Labor Standards Act.¹³² The Union then argues that Elmhurst, Hoffman Estates and Wheeling, among the comparables, provide payment for training, and in the case of Wheeling, travel is specifically referenced. Northbrook treats training as overtime.

The last paragraph in the Union's proposal provides that an employee should not be locked into a position because of training. The Union argues that just because an employee has received some training in a particular task, the employee should not be required to always perform that job. In particular, the Union wants paramedics to be able to leave that assignment and given the opportunity to perform other jobs within the Department.

The Village's proposal would exempt travel time and training which was not required from pay status. It limits pay to those occasions when employees are required to attend the training which the Village will pay for (as opposed to training which is a basic requirement of the job but for which the employee is responsible) and at a time when the employee is scheduled to be on duty. While

¹³¹ The location of the training facility could be a considerable distance from the Village, and in some cases could require overnight stays.

¹³² The Union cites the Regulations but does not supply a copy for the panel's use.

there would be considerable overtime under the Village's proposal, because all training cannot be scheduled when an employee is otherwise on duty, the Village would have control over when the training is taken. The Village argues that the Union's proposal goes beyond the requirements of the Fair Labor Standards Act. According to the Village, hours in training spent by public employees is noncompensable when it is for certification for a job, which would in most cases not be paid for by the employer. In the Arlington Heights decision the arbitrator relied on these regulations in determining that paramedic certification or recertification did not constitute compensable hours of work. The Village also notes that most of the comparable fire departments do not provide pay provisions as generous as those provided by the Union's proposal.

With regard to the language differences in this proposal, the Village argues that the Union's proposal requires that involuntary training shall be required in strict reverse seniority. The Village's proposal allows for consideration of department needs as well as reverse seniority. The Village's proposal contains a "qualified employee" requirement which would avoid a claim for certain training by employees who have not completed requisite training preliminary to the training in question. Finally, the Village opposes the Union's proposal for release from duties notwithstanding specialized training. The Village argues that it is very expensive to provide some of this training, \$3500 in the

case of a paramedic, and an employee in whom the Village has such an investment should be required to work in that area.

We find that the Village's proposal as written best fulfills the criteria set forth in the Act. Training paid for by the Village is for the Village's benefit. While certainly the employees gain as well, where the Village is paying for the training, the Village ought to have the control requested in its proposal. With regard to the last paragraph of the Union's proposal, we agree that an employee should not be locked into a position forever particularly where the employee was required to undergo the training. On the other hand, we have already addressed the subject of shift and position transfers, and we think that provision will suffice for this first contract. Accordingly, we select the Village's proposal.

17. Rules and Regulations

The Union proposes a detailed section which would make Department rules and regulations a collaborative process and would give a grievance arbitrator the power to determine the rules where the parties themselves could not agree. The Village objects to such a provision in the contract. Without reciting the entire text of the language, the Union's proposal provides for the following:

- * Establish a joint committee of 6 members (3 from each side) who would meet every 60 days.

- * The committee would recommend changes by majority vote and if the Chief did not concur and a meeting with the Chief did not resolve the issue, it would be submitted to a grievance arbitrator for determination.

* New rules must be posted for 10 days before becoming effective, and where possible they will first be discussed with the committee.

* Rules shall be administered fairly and equitably and the alleged violation of any rule can be appealed through the grievance procedure.

The Union argues that this proposal is designed to ensure fairness in the creation and enforcement of rules. Merely because the Village is already required to promulgate only reasonable rules does not mean that these rules will be enforced fairly and reasonably. The proposal also establishes a system for input from a committee composed of equal numbers of employees and supervisors. The committee has no authority unless a majority questions a rule. Therefore the Union cannot control the process. The primary purpose of the committee is to establish avenues of communication between management and labor, not to impose rules upon the Department. While there are no comparable departments with a committee structure for rules, the Union argues that several comparable departments have provisions for the publication of rules before they are enforced.

The Village argues that the proposal is unnecessary because the Village can only promulgate reasonable rules under the Management Rights clause. The enforcement of any unreasonable rule may be grieved. The Village argues that not only do the comparables lend no support for the Union's proposal, several have clauses underscoring management's right to make and enforce rules. The Village argues that the Union's proposal is a solution in search of a problem. There has been no evidence that the

Village has created or enforced rules in an unreasonable manner. The Union seeks to disrupt a long-standing, and common, practice without any justification. The Village urges the panel to reject the Union's proposal in its entirety.

The Union's attempt to set some limits on the enforcement of rules and regulations is unnecessary. Not only does it have an avenue of appeal if the rule or regulation is itself unfair, but no discipline, including discipline for the violation of a rule or regulation can be other than for just cause. (See the discussion and award regarding Non-economic Issue 4, above.) What the Union is seeking with this proposal is to inject itself into a process which has traditionally been within management's purview. Many rules and regulations pertain to operational matters which are statutorily outside of the Union's jurisdiction in any event. On the other hand, there is some merit in publishing proposed rules before their implementation and obtaining input from affected employees. But these type of fine points in the operation of the Department are grist for the bargaining table. Absent some showing of a need for the outside neutral to step in and set the terms, the matter is best left to the parties to work out. The proposing party should understand that substantive changes in working conditions require more evidence other than an opinion that this would be a nice thing to have. The parties must be encouraged to work this out themselves. Resort to this forum is a last resort. Accordingly, we reject this proposal and support the Village's position of no provision on this issue.

18. Insurance Coverage

The parties have proposed similar language regarding the maintenance of insurance coverage. The primary difference in the language is the Union's proposal to maintain the coverage and benefits which pre-dated this contract and to maintain the deductibles and co-insurance features for the term of this contract. The Village states in its brief that it is willing to accept the Union's proposal. It states that in doing so its understanding is that the changes in coverage which became effective on May 1, 1992, as a result of the Board's decision in Elk Grove Village and IAFF Local 3398 shall continue to be the ones in effect for the length of the contract.

It is not clear from the Union's proposal whether it has accepted the recent changes made, or whether its reference to the period prior to the contract refers to the plan in effect at the time the Union won its representation election. Inasmuch as the Union complains in its brief about the 80/20 plan now in effect it may be that it wishes to restore a plan which was amended prior to the effective date of this contract. In order to clarify this matter, we shall change the language to read that the provisions regarding coverage and benefits shall be those in effect on May 1, 1993. It is intended that this refers to the new plan which is in effect at this time. The language of the contract should therefore read:

The comprehensive medical program in effect when this agreement is ratified shall be continued during the term of this agreement;

provided, however, the Village reserves the right to change insurance carriers, HMO's, and benefit levels as long as the coverage and benefits are substantially similar to those in effect on May 1, 1993, provided that during the term of this agreement the deductibles and co-insurance features shall not be changed absent mutual agreement of the parties.

The Village reserves the right to self-insure or utilize group insurance carriers as it deems appropriate. The Village will notify the Union of any changes in insurance, and upon request will discuss these changes prior to implementation and such changes will be subject to Section 15.5, below.¹³³

19. Terms of Insurance Policies to Govern

The Village has a proposal which would limit its liability should any insurance carrier or plan administrator fail to provide a benefit described in the contract. The proposal directs employees to look to the carrier or administrator for relief. It also proposes that any questions or disputes regarding terms and benefits not be subject to the grievance procedure, although in its brief the Village offers an alternative proposal which would delete the reference to the grievance and arbitration exclusion.¹³⁴ The Union opposes any limitation of liability for insurance in the contract. The wording of the Village's proposal is as follows:

¹³³ In its final proposal the Union referred to "Section 15.3, below." As the contract has expanded with new terms, we believe the correct reference is to Section 15.5, the provision for cost containment which was agreed to near the end of the hearing.

¹³⁴ The panel will not repeat its disapproval of the Village's frequent practice of modifying its final offer with a compromise offer to the panel. See text preceding fn 111, above.

The extent of coverage under the insurance policies (including HMO and self-insurance plans) referred to in this Agreement shall be governed by the terms and conditions set forth in said policies. Any questions or disputes concerning said insurance policies or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies and shall not be subject to the grievance procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s), to provide any benefit for which it has contracted or is obligated shall result in no liability to the Village, nor shall such failure be considered a breach by the Village of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) from any liability it may have to the Village, employee or beneficiary of any employee.

The Village argues that a good number of comparable departments have similar provisions in their contracts.

The panel's examination of the comparable references reveal as follows:

1. Arlington Heights' contract states that coverage shall be governed by the terms and conditions of the insurance policies. Questions of coverage shall be resolved in accordance with the policies and shall not be subject to the grievance procedure.
2. Bensenville has a provision which states that the extent of coverage shall be governed by the terms and conditions set forth in the policies or plans. Disputes concerning the policies or plans shall not be subject to the grievance procedure. Failure of a carrier or a plan administrator to fulfill its obligations shall not result in any obligations on the part of the village.
3. Buffalo Grove has the same provision as Arlington Heights.
4. Elgin has the same provision as Arlington Heights.
5. Elmhurst has a provision very similar to that of Arlington Heights and Buffalo Grove.

6. Hoffman Estates has a provision which limits the village's liability to payment of the premiums and coverage is governed by the terms of the policies. The failure of any carrier to provide any benefit shall not obligate the village but nothing in the provision is intended to relieve a carrier from any liability to the village or to the beneficiaries.

7. Lombard has a similar provision to that of Arlington Heights, Buffalo Grove, Elgin and Elmhurst.

8. Northbrook's contract limits the village's liability to the cost of the program. Benefits shall be in accordance with the policies.

9. Park Ridge has a simple provision which states that the contracts between the city and the carrier are the controlling documents, that the city may change carriers, and it names the present carrier.

10. Rolling Meadows' provision is very similar to that proposed by Elk Grove Village, except that the Rolling Meadows' contract provides for the city to designate a representative who will assist beneficiaries in pursuing their claims.

11. Skokie has the same provision as Elmhurst, Arlington Heights and Buffalo Grove.

Des Plaines, Mt. Prospect and Wheeling have no provisions on this subject.

As we have stated on several occasions, above, we agree with the Union that neither party can take to impasse an exclusion of any term or condition contained in this Agreement. Whatever other parties have done voluntarily can have no force and effect on a non-mandatory subject for bargaining. On the other hand, we agree with the argument that inasmuch as the Village does not directly control the administration of the insurance plans, it should not have to answer to alleged claims that the plans are being

administered incorrectly or unfairly. That is a matter between the beneficiary and the plan administrator, or carrier, as the case may be. The answer is not to exclude the plans from the grievance procedure but simply to provide that the plans themselves are not part of the contract, and any reference to the plans in the contract does not imply that they are a part of the agreement. If the plans are not part of the Agreement, the denial of a claim cannot be grieved. It is not the grievance procedure which is being limited, but the terms of the contract itself.

However, it is also true that the Village selects the carrier and/or administrator, and the Union has no voice in those selections. While the Village cannot be a guarantor for the integrity of the administrator/carrier, we think that the open-ended disclaimer of liability for the Village in the event of a failure to perform by the carriers or administrators under any circumstances is too broad. We can conceive of circumstances of fraud or malfeasance on the part of Village personnel which could result in the non-performance by the carriers or administrators. To insulate the Village from any liability, regardless of the circumstances, where the Village has the exclusive control in the selection of the third parties is unwarranted and the Village has provided no reason why this absolute disclaimer is necessary. We will not include this disclaimer in the final language of the provisions.

Additionally, because of this exclusive control, we find, in agreement with at least Rolling Meadows, that the Village has a

duty to assist beneficiaries in the administration of their claims. Thus, we favor the provisions found in some contracts which require the employer's assistance in processing claims.

Based upon the relevant indicia as provided in the Act, we find that the language of this provision should read as follows:

The extent of coverage under the insurance policies (including HMO and self-insured plans) referred to in this Agreement shall be governed by the terms and conditions set forth in said policies. No insurance policy (including HMO and self-insured plans) referred to in this Agreement shall be considered a part of this Agreement and any questions or disputes concerning said insurance policies or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies. The Village will designate representatives who will be available for consultation with claimants, and such representatives will assist claimants in processing claims which the Village agrees are well founded under the applicable policy or plan.

20. Guarantee of Terms

The Union proposes language which it describes as requiring speedy ratification and implementation of the contract by the Village, and which prohibits the Village from enacting any rule or ordinance which would frustrate any of the terms of the Agreement. The Village sees this proposal as useless and an archaic vehicle to insure the viability of the contract. According to the Village, such clauses are a throwback to the days before the Act when the enforceability of public sector labor agreements was in doubt.

Although the proposal is entitled "Guarantee of Terms," its terms indicate an intention to go much further than what the

Village describes. The thrust of the language appears to be a requirement that the Village quickly ratify the document and that in the future it do nothing to impede the enforcement of its terms. In this regard it seems to be a sort of zipper clause. Only Des Plaines and Hoffman Estates have anything remotely similar to what the Union is here proposing.

We find that this provision is unnecessary. The Village is entitled to whatever provisions are present in the law for ratification, or not. Indeed, the recitation of a ratification clause in this contract could not have the effect of superseding any legal rights the Village has in any event. On the other hand, the zipper clause aspects of the proposal are unnecessary because once this contract becomes effective it is enforceable on its own terms. If the Village promulgates rules or ordinances in conflict with the contract, barring some legal precedence which would have the effect of nullifying a zipper clause in any event, the contract's terms would prevail. Accordingly, we agree with the Village that the contract contain no "guarantee of terms."

VIII. DISSENT

ISLRB CASE NO. S-MA-93-231

Partial Dissent of the Employer Delegate

While I dissent generally from the award of the Panel on issues which were not awarded to the Employer in this case, I wish to dissent specifically to the Panel's Award on Economic Issue No. 19, the cost of medical and dental insurance. The Village has long had a cost-sharing policy whereby the Village pays 85% of the cost of employee medical and dental insurance, and the employee pays 15% of the cost. The Panel has not articulated any persuasive reason why the Union should be awarded a breath-through on this issue, a break-through that is not only out of step with the practice applicable to this bargaining unit, but also the practice applicable Village-wide. Freezing the employee's contributions for premiums for FY 1994-95 at FY 1993-94 levels unjustifiably shifts costs onto other employee groups and onto the Village.

The fact that the FOP agreement is up for renegotiation during the term of the contract being arbitrated here does not undermine the strength of the Employer's internal comparability argument, absent some demonstration that the Village and the FOP have in fact agreed to a change. This principle has not been used elsewhere in the Panel's Award to undermine the relevance of the Village's (and the Panel's) citation to the FOP agreement; indeed, if it were, internal comparability would become meaningless in the absence of collective bargaining agreements all expiring simultaneously.

The Panel's reference to a potential parade of horrors, if the worst-case scenario of 15% increases occurred each year (see p. 97) is misplaced; all but the May 1, 1995 increase in premiums is known, and the reality of premium increases over the life of the agreement will be substantially less than the hypothetical worst-case scenario described in the Panel's Opinion and Award.

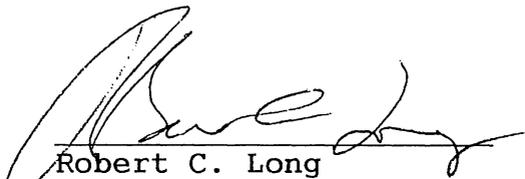
The Panel's reference to the employee's lack of control over premium increases is also misplaced. First, the Village offered a cap of a 15% increase each year in the employee's potential liability for cost increases; the Village is obligated under its proposal to absorb 100% (instead of 85%) of premium cost increases that exceed 15% per year. Second, these employees have as much control over future cost increases as any employee group in the Village, all of whom, prior to this Award, were treated alike. One might argue that these employees, given their medical training and involvement in the health care system through the Department's paramedic and EMS program, are in a better position than most to be intelligent users of their insurance program, and are therefore more likely to be able to influence the cost of future insurance protection.

The Panel's award on this issue is contrary to settlement and arbitration trends. The trend is in favor of uniform

treatment of employees in insurance cost sharing, and for more, not less, financial participation by employees in the cost of their health care. The Rolling Meadows contract referred to in the Opinion and Award (p. 95) now provides for much more substantial financial participation by firefighters, and increasing participation each year (the Panel was supplied with a copy of this new contract during the course of the proceedings).

The only argument advanced by the Union that bore any serious consideration in favor of a third-year reopener on insurance cost-sharing was the likelihood, at the time of negotiations and of the hearing in this matter, of some sort of national health insurance becoming effect well before contract expiration on April 30, 1996. That likelihood has in the meantime diminished radically. It is very unlikely that any sort of national health insurance will become effective long before these parties return to the table in early 1996 to renegotiate the entire contract. A reopener on health insurance that will require these parties to return to the table in a few months after their first contract is finalized is simply unjustified under the circumstances.

Respectfully submitted,



Robert C. Long
Employer Delegate
Dissenting in Part

VIII. A W A R D

A. Economic Issues

1. Firefighter Salaries - 1993-94	Village
2. Firefighter Salaries - 1994-95	Village
3. Firefighter Salaries - 1994-95	Union
4. Lieutenant Salaries - 1993-94	
(a) Equity Increases	Union
(b) General and Merit Increases	Union
5. Lieutenant Salaries - 1994-95	
(a) Equity Increases	Village
(b) Merit Increases	Village
6. Lieutenant Salaries - 1995-96	Union
7. Longevity Pay - Firefighters	Village
8. Longevity Pay - Lieutenants	Union
9. Paramedic Stipends	Village
10. Fire Apparatus Engineer Pay	Village
11. Out of Classification Pay	Village
12. Call Back Pay	Union
13. Overtime Pay for Firefighters	Village
14. Overtime Pay for Lieutenants	Village
15. FLSA Overtime	Village
16. Kelly Days	Village
17. Computation for Hourly Rate of Pay	Union
18. Minimum Manning	Village
19. Cost of Medical and Dental Insurance	Union
20. Sick Leave	Union

21. Sick Leave for Outside Employment	Village
22. Maternity Leave	Village
23. Paid Leave for Union President	Village
24. On-the-Job Injury	Union
25. Uniform Allowance	Village
26. Safety Committee Pay	Village
27. Training Costs	Union
28. Duration and Term of Agreement	Village
29. Retroactivity	Village

B. Non-Economic Issues

1. Dues Checkoff	New Language	p. 125
2. Paychecks	New Language	p. 128
3. Hiring		Village
4. Discipline and Discharge		
(a) Management Rights		Union
(b) Discipline and Discharge	New Lang.	p. 141
5. Definition of Grievance		Village
6. Authority of Arbitrator		Village
7. Grievance for Merit Pay		Village
8. Waiver of Right to Sue		Union
9. Hours of Work	New Language	p. 155
10. Job Duties		Village
11. Duties of Lieutenants		Union
12. Duty Trades	New Language	p. 163
13. Shift and Station Bids	New Language	p. 166
14. Physical Fitness Exams	New Language	p. 169

15. Physical Fitness	New Language	p. 172
16. Notice of Fire Training		Village
17. Rules and Regulations		Village
18. Insurance Coverage	New Language	p. 183
19. Terms of Ins. to Govern	New Language	p. 187
20. Guarantee of Terms		Village

Respectfully submitted,

HARVEY A. NATHAN
Chairman

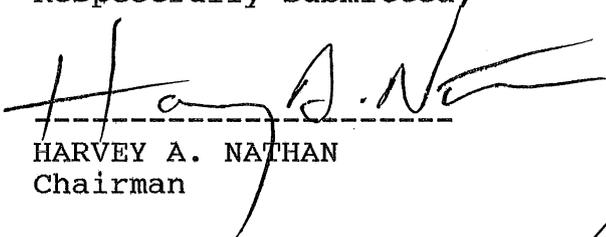
ROBERT C. LONG
Employer Designee
Concurring in Part

THADDEUS POPIELEWSKI
Union Designee
Concurring in Part

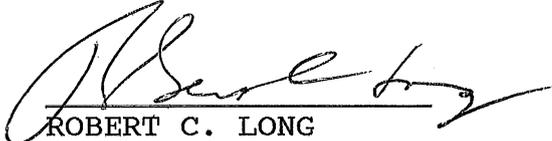
October 1, 1994

15. Physical Fitness	New Language	p. 172
16. Notice of Fire Training		Village
17. Rules and Regulations		Village
18. Insurance Coverage	New Language	p. 183
19. Terms of Ins. to Govern	New Language	p. 187
20. Guarantee of Terms		Village

Respectfully submitted,



HARVEY A. NATHAN
Chairman



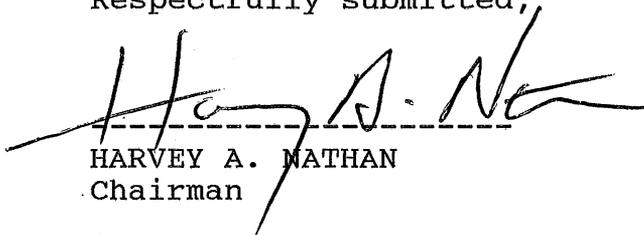
ROBERT C. LONG
Employer Designee
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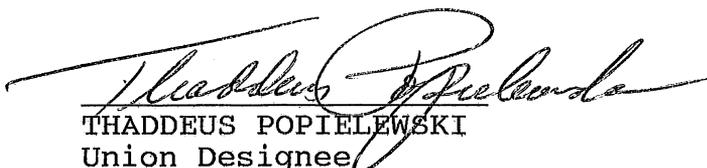
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Respectfully submitted,



HARVEY A. NATHAN
Chairman

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Concurring in Part



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October 1, 1994