Interest Arbitration

Village of Skokie, Employer and Fraternal Order of Police, Skokie Lodge No. 68, Union	ISLRB S-MA-93-181 Arbitrator's File 94-169 Herbert M. Berman, Arbitrator R. Theodore Clark, Jr., Attorney for Employer Gary L. Bailey, Attorney for Union December 8, 1995

Opinion and Award

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Opinion and Award

I. The Issues

In accordance with the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq. (hereinafter the "Act"), a hearing was held in Skokie on March 13, 1995 to resolve seven economic issues and one non-economic issue. Both parties have submitted post-hearing briefs.

At the start of the hearing, the parties stipulated that the following issues were in dispute (Joint Exhibit 3):[1] (1) Salaries; (2) retroactivity of salary increases; (3) longevity pay; (4) specialty pay; (5) medical and dental insurance; (6) medical insurance reopener; (7) sick leave/emergency leave; and (8) discipline. The first seven issues are economic issues, the eighth a non-economic issue.

[1]In the remainder of this Opinion, I shall cite joint exhibits as "JX ____," Union exhibits as "UX ____, " and Employer exhibits as "EX ____." I shall cite the transcript as "Tr. ____."

The final offers are summarized below:

Economic Issues

1. Wages

	5/1/94	5/1/95	5/1/96
Union Offer:	4.5%	4%	4%
Employer Offer:	3.5%	3.25%*	3%*

(Adjustments to "median" if necessary after six months)

2. Longevity (divisible in monthly amounts)

Union Offer: $700 at 8 years; $1000 at 15 years; $1300 at 20 years; $1600 at 25 years.

Employer Offer: $300 at 5 years; $360 at 10 years; $420 at 15 years; $480 at 20 years; $540 at 25 years; $600 at 30 years.

3. Retroactivity

Union Offer: On all hours paid for those still on payroll or retired.

Employer Offer: Only for salary (excluding overtime) for those still on payroll or retired.

4. Medical and Dental Insurance

Union Offer: No change. 12% single/12% family premium contributions.

Employer Offer: 13.5% single and family upon issuance of award and 15% for both on 5/1/96.

5. Medical Insurance Reopener

Union Offer: None.

Employer Offer: Reopen and bargain if insurance costs increase more than 15%.

6. Sick Leave/Emergency Leave

Union Offer: No change.

Employer Offer: Change in method of accruing leave; use of leave by employees; accumulation of sick-leave days.

7. Specialty Pay

Union Offer: $500, $600 or $1200 for specialty assignments.

Employer Offer: No specialty pay.

Non-Economic Issue

8. Disciplinary Appeal Procedure

Union Offer: Employee option of grievance procedure or Fire and Police Commission.

Employer Offer: No Change (Fire and Police Commission).

II. Applicable Statutory Standards

Section 14(g) of the Act provides that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) of the Act sets out eight factors to be used in evaluating economic proposals:

(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.

The critical factors in economic interest arbitration are set out in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."[2] The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of major significance.

III. Background

The Village of Skokie, a "home-rule unit under the 1970 Illinois Constitution" (UX 3), is located in Cook County, Illinois, 16 miles northwest of downtown Chicago (UX 3). It is bordered by Chicago, Evanston, Lincolnwood, Morton Grove, Niles, Wilmette and Glenview (UX 3). As of fiscal year 1994,[3] its population was 59,432; its residents enjoyed a per capita income of $20,595 (UX 3). Skokie is a significant commercial and industrial center, and is home to such major firms as

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[2]Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," Tim Bornstein & Ann Gosline, eds. *Labor and Employment Arbitration* (New York: Matthew Bender, 1991), Vol. III, ch. 63, §63.03[2], at 7.

[3]The fiscal year is May through April.

G.D. Searle and Fel-Pro (UX 3).[4] Within its borders is Old Orchard Shopping Center, one of the country's oldest and still most vibrant regional shopping centers. Skokie's neighbors and the cities and villages considered comparable to Skokie are also vibrant and affluent—some far more affluent than Skokie. Indeed, many of the residents of these towns and villages enjoy incomes among the highest in the United States.

As of January 1995, the bargaining unit consisted of 83 police officers (Tr. 111) who were compensated on the basis of a seven-step salary schedule (A through F+) (UX 2: 1991-94 Agreement, Art. XII, §1). Effective May 1, 1992, annual salaries ranged from $32,045 at Step A to $41,921 at Step F+ (UX 2). Eighteen police officers were eligible for step increases in FY 1994-95. Assuming no turnover, 24 police officers will be eligible for step increases in FY 1995-96 and 27 in FY 1996-97 (EX 7).

The Union and Village have enjoyed a "relatively productive" bargaining relationship since 1986 (Tr. 103). Since negotiating their first contract in 1986, the parties have reached agreement on three contracts and one contract

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[4]The ten largest employers in Skokie as of December 1993, in descending order ranging from 2000 to 450 employees, were Fel-Pro, Inc., G.D. Searle & Company, Rush North Shore Medical Center, U.S. Robotics, Rand McNally and Company, Anixter Brothers, Village of Skokie, Niles Township High School District #219, Cook County Courthouse (Dist. #2) and Klein Tools. The latest available business census in 1987 shows that Skokie ranked tenth in the state of Illinois in wholesale trade ($3.3 billion); ninth in selected services ($472.4 million); and twelfth in retail sales ($731.8 million) (UX 3). Only Chicago, Schaumburg, and Oak Brook ranked higher than Skokie in all three categories (UX 3).

reopener without having to resort to interest arbitration (Tr. 103; EX 15-18).

The parties have agreed that police departments in the following municipalities are comparable to the Skokie Police Department:

Arlington Heights
Des Plaines
Elk Grove
Elmhurst
Evanston
Glenview
Highland Park
Lincolnwood
Morton Grove
Mt. Prospect
Niles
Northbrook
Oak Park
Park Ridge
Wheeling
Wilmette

For the reader's convenience I have reprinted three charts comparing Skokie to its comparable municipalities in various ways. Chart 1 (EX 2) compares population, equalized assessed valuation (EAV) and FY 1993 sales taxes. Chart 2 (EX 3) compares EAV per capita and sales tax per capita. Chart 3 (EX 4) compares 1994 estimated average family income and 1993 average home value. I shall also make appropriate wage and benefit comparisons throughout this opinion.

Chart 1
Population, Assessed Valuation and Sales Tax Data for Comparable Communities

Jurisdiction	Population	EAV (Latest)	FY93 Sales Tax
Arlington Hts	75,460	$1,525,000,000	$ 9,725,000
Des Plaines	53,414	1,195,280,201	7,000,000
Elk Grove Vil	33,429	1,311,287,703	7,546,640
Elmhurst	42,029	837,004,795	3,200,000
Evanston	73,233	1,017,945,267	6,329,250
Glenview	38,079	1,003,855,000	4,250,000
Highland Park	30,575	993,557,207	5,855,240
Lincolnwood	11,365	372,248,607	3,900,000
Morton Grove	22,376	441,564,117	5,077,368
Mt Prospect	53,168	922,830,000	5,850,000
Niles	23,384	728,993,703	11,782,397
Northbrook	32,308	982,165,704	6,351,700
Oak Park	55,000	600,406,064	7,900,000
Park Ridge	37,600	680,275,055	2,855,400
Skokie	**59,432**	**1,254,011,000**	**11,294,960**
Wheeling	29,911	613,943,315	4,235,000
Wilmette	26,690	663,489,537	2,225,000
Mean w/o Skokie	39,876	868,115,392	5,880,187
Rank: high to low	3/17	3/17	2/17

Chart 2
Per Capita Assessed Valuation and Sales Tax Data for Comparable Communities

Jurisdiction	EAV Per Capita	Sales Tax Per Capita
Arlington Heights	$22,864	$128.88
Des Plaines	13,628	131.05
Elk Grove Village	39,226	225.75
Elmhurst	19,915	76.00
Evanston	22,346	86.43
Glenview	30,531	111.61
Highland Park	43,394	191.51
Lincolnwood	27,154	343.16
Morton Grove	20,206	226.91
Mount Prospect	20,345	110.03
Niles	25,683	503.87
Northbrook	38,100	196.60
Oak Park	10,916	144.00
Park Ridge	21,838	75.94
Skokie	**20,595**	**190.05**
Wheeling	18,491	141.59

Wilmette	38,924	83.36
Mean w/o Skokie	25,848	173.54
Rank: high to low	11/17	7/17

Chart 3
Demographic Data for Comparable Jurisdictions

Jurisdiction	1994 Estimated Average Family Income	1993 Average Home Value
Arlington Heights	$ 67,546	$194,767
Des Plaines	55,129	159,792
Elk Grove Village	64,239	165,194
Elmhurst	65,220	167,561
Evanston	54,025	254,259
Glenview	78,445	278,440
Highland Park	101,597	358,837
Lincolnwood	75,411	285,239
Morton Grove	62,669	173,737
Mount Prospect	61,084	182,145
Niles	49,513	190,436
Northbrook	102,656	296,763
Oak Park	51,653	191,094
Park Ridge	69,601	231,600
Skokie	**54,411**	**181,642**
Wheeling	52,284	159,623
Wilmette	95,409	353,588
Mean w/o Skokie	69,155	227,692
Rank: high to low	13/17	12/17

IV. Resolution of Issues

A. Salaries for Fiscal Years 1994, 1995 and 1996

1. The Employer's Final Offer

The Village's final offer on salaries is to revise Article XII, Section I, to provide across-the-board salary increases of 3.5% effective May 1, 1994, 3.25% effective May 1, 1995, and 3.0% effective May 1, 1996, as well as equity adjustments effective November 1, 1995 and/or November 1, 1996, if necessary to place the top step (Step F+) police officer salary at the median (i.e., 9th place on the list of seventeen comparable communities, including Skokie) of the top step police officer salaries as of November 1, 1995 or November 1, 1996, as applicable, for the 16 municipalities that the parties have historically used for comparability purposes.

Accordingly, the Village's final offer is to revise Article I, Section 1, to read as follows:

Section 1. Salaries. Effective May 1, 1994, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$16.677	$34,688
B	17.522	36,446
C	18.409	38,290
D	19.309	40,162
E	20.293	42,209
F	21.263	44,227
F+	21.817	45,379

Effective May 1, 1995, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$17.219	$35,815
B	18.091	37,630
C	19.007	39,534
D	19.936	41,467
E	20.952	43,581
F	21.954	45,664
F+	22.526	46,854

If the top step (Step F+) police officer salary of $46,854 as set forth above is not at least at the median of the top step November 1, 1995 salaries for the seventeen communities (including Skokie) that the parties have historically used for comparability purposes, effective November 1, 1995, there shall be an across-the-board equity adjustment (i.e., applied to all steps) in a percentage amount that will place the top step (Step F+) Skokie police officer salary as of November 1, 1995, at the median of the top step November 1, 1995 salaries for the seventeen communities (including Skokie) that the parties have historically used for comparability purposes (i.e., $1 higher than the top step salary for the comparable community which is 10th on the list of comparables).

Effective May 1, 1996, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$17.735	$36,889
B	18.634	38,759
C	19.577	40,720

D	20.534	42,711
E	21.581	44,888
F	22.613	47,034
F+	23.202	48,260

In the event there was an equity adjustment effective November 1, 1995, as provided above, in lieu of the salaries set forth immediately above, effective May 1, 1996, there shall be an across-the-board salary adjustment of 3.0% to the salaries that were effective November 1, 1995, as a result of said equity adjustment.

If the top step (Step F+) police officer salary for the 1996-97 fiscal year is not at least at the median of the top step November 1, 1996 salaries for the seventeen communities (including Skokie) that the parties have historically used for comparability purposes, effective November 1, 1996, there shall be an across-the-board equity adjustment (i.e., applied to all steps) in a percentage amount that will place the top step (Step F+) Skokie police officer salary as of November 1, 1996, at the median of the top step November 1, 1996 salaries for the seventeen communities (including Skokie) that the parties have historically used for comparability purposes (i.e., $1 higher than the top step salary for the comparable community which is 10th on the list of comparables).

2. The Union's Final Offer

Article XII
Salaries and Other Compensation

Section 1. Salaries. Effective May 1, 1994, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$16.838	$35,023 (4.5%)
B	17.692	36,799 (4.5%)
C	18.586	38,660 (4.5%)
D	19.495	40,550 (4.5%)
E	20.489	42,617 (4.5%)
F	21.468	44,654 (4.5%)
F+	22.027	45,817 (4.5%)

Effective May 1, 1995, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$17.512	$36,424 (4.0%)
B	18.400	38,271 (4.0%)
C	19.330	40,206 (4.0%)

D	20.275	42,172 (4.0%)
E	21.309	44,322 (4.0%)
F	22.327	46,440 (4.0%)
F+	22.909	47,650 (4.0%)

Effective May 1, 1996, employees covered by this Agreement shall be paid on the basis of the following:

Step	Hourly	Annual
A	$18.212	$37,881 (4.0%)
B	19.136	39,802 (4.0%)
C	20.103	41,814 (4.0%)
D	21.086	43,859 (4.0%)
E	22.161	46,095 (4.0%)
F	23.220	48,298 (4.0%)
F+	23.825	49,556 (4.0%)

3. External Comparability

Each party presented data on the salaries of Skokie police officers and police officers in the comparable police departments. This data does not match at all points. For example, the Village listed "maximum actual and projected top step police officer base salary in effect during calendar year 1994" (EX 30). The Union listed "top salary at 20 years of service" with and without longevity increases (Un. Brief, 8, 11-12).

The Employer has presented substantial information on comparability, as noted in the following four charts (Charts 1-4).

Chart 1
Maximum Actual Salary and Projected Top Step Police Officer Base Salary in Effect During Calendar 1994 for All Comparable Jurisdictions (Exclusive of Longevity) (EX 30)

Rank	Maximum	Jurisdiction
1	$47,147	Northbrook
2	47,081	Highland Park
3	46,442	Glenview
4	46,178	Niles

5	46,092	Mt. Prospect
6	46,081	Lincolnwood
7	**45,379**	**Skokie** (Emp. Offer)
8	45,328	Wheeling
9	45,211	Park Ridge
10	45,058	Arlington Heights
11	44,815	Elmhurst
12	44,444	Des Plaines
13	44,344	Wilmette
14	44,174	Elk Grove Village
15	44,095	Morton Grove
16	43,716	Oak Park
17	41,171	Evanston
Mean (w/o Skokie)	**45,124**	

Chart 2
Summary of Police Officer Annual Salary
Adjustments for Comparable Jurisdictions
1990-1994 Exclusive of Longevity (EX 31)

Juris	1990	1991	1992	1993	1994
Arlington Heights	5.00%	5.00%	5.00%	3.00%	3.00%
Des Plaines	5.00	5.35	3.65	4.00	2.00
Elk Grove Village	7.70	5.00	4.00	4.00	4.00
Elmhurst	4.75	4.75	5.00	5.00	3.75
Evanston	4.75	5.30	4.50	0.00	4.00
Glenview	5.50	5.00	4.00	4.00	4.00
Highland Park	4.50	4.50	3.50	8.00	3.00
Lincolnwd	5.00	4.00	4.00	4.00	4.50
Morton Grove	4.50	5.00	5.00	3.00	3.00
Mount Prospect	5.00	5.00	5.00	6.50	3.40
Niles	5.00	5.00	4.50	3.50	5.00
N'Brook	3.35	4.00	5.00	4.75	5.00
Oak Park	4.85	6.25	4.00	3.75	4.25
Park Ridge	5.00	5.50	5.50	4.00	3.00
Skokie	**4.00**	**6.30**	**4.80**	**4.60**	**3.50**
Wheeling	5.00	5.00	5.00	3.50	3.50
Wilmette	5.00	5.00	3.50	3.50	4.65
Mean w/o Skokie	4.99	4.98	4.45	4.03	3.75

The five-year mean for each municipality may also be of some interest:

Chart 3

Jurisdiction	Five-Year Mean
Arlington Heights	4.2
Des Plaines	4.0
Elk Grove Village	4.94
Elmhurst	4.65
Evanston	3.71
Glenview	4.5
Highland Park	4.7
Lincolnwood	4.3
Morton Grove	4.1
Mount Prospect	4.98
Niles	3.6
Northbrook	4.42
Oak Park	4.62
Park Ridge	4.6
Skokie	**4.64**
Wheeling	4.4
Wilmette	4.33
Mean of Means without Skokie	4.38

The Employer also produced data showing the "five year police officer base salary increase for comparable jurisdictions" from 1990 though 1994 (EX 32):

Chart 4

Rank	Jurisdiction	Percent Change
1	Mount Prospect	27.48
2	Elk Grove Village	27.21
3	Highland Park	25.73
4	Elmhurst	25.51
5	**Skokie**	**25.43**
6	Oak Park	25.31
7	Niles	25.21
8	Park Ridge	25.19
9	Glenview	24.61
10	Northbrook	24.13
11	Wheeling	24.01
12	Wilmette	23.59
13	Lincolnwood	23.43
14	Arlington Heights	22.81

15	Morton Grove	22.23
16	Des Plaines	21.63
17	Evanston	19.88
	Average w/o Skokie	24.25

4. Positions of the Parties

(a) The Union

1. Citing my decision in *City of Peru,* S-MA-93-153 (3/21/95), the Union argues that, while the "parties have 'split' the components of the officers' base salaries into two separate and distinct issues," it "is virtually impossible to discuss base salaries...without examining both wages and longevity simultaneously" (Un. Brief, 5-6). This is true, even though I "may rule differently on wages than on longevity" (Un. Brief, 6). The Union notes that when wages alone are considered its offer places Skokie seventh among the seventeen comparable jurisdictions and the Village offer places Skokie eighth among the seventeen comparable jurisdictions (Un. Brief, 8). When, however, the longevity offers are factored into the earnings equation, the Union offer puts Skokie in sixth place and the Employer offer puts Skokie in twelfth place (Un. Brief, 8). Thus, the Union suggests, the "Village's promotion of the median as an appropriate and fair resolution for wages...is a sham" (Un. Brief, 9).

2. Even though the Union proposal on wages and longevity would place Skokie in sixth place, which is "certainly higher than the Village's supposed preference for median status, it represents only one higher place in the rankings than the spot the Village proposes for 1994 (7th)" (Un. Brief, 10).

The Union also notes that the difference between seventh place, which the "parties agree is appropriate for 1994," and sixth place in terms of wages plus longevity "is only $215" (Un. Brief, 12). Thus, the Union maintains, the Union's offer on wages and longevity is fairer and more reasonable, "both in terms of general ranking among the comparables and in terms of the dollar differences among the communities being compared" (Un. Brief, 12).

3. Should I should adopt the Union's proposals on wages and longevity, Skokie would rank sixth among the comparable jurisdictions (Un. Brief, 12). Should I adopt the Union's longevity proposal and the Employer's wage proposal, Skokie would rank ninth among the comparables in combined wage and longevity earnings in "top salary at 20 years of service" for 1994 (Un. Brief, 13). While ninth place is the median among the seventeen comparable communities, the Union "disagrees with this result" because "the parties have never bargained or agreed that 'median' is an appropriate spot..." (Un. Brief, 14). To the contrary, the Union suggests, "the Village and the Union have indicated that 7th place in the rankings is appropriate and fair for 1994" (Un. Brief, 14). And "thus, the Union disagrees with the reduction of two steps in the rankings for 1995 and 1996, and the sudden implementation of the 'median' milepost as some sort of final resting point which might be used in the future by the Village to determine all wage increases" (Un. Brief, 14). Since, in any event, some of the comparable communities will be negotiating new

contracts in November 1995 and November 1996, "a precise determination over the median will not be achieved." The "parties will end up with a distorted median and...will not have achieved a satisfactory result from this interest arbitration" (Un. Brief, 14).

4. The "process suggested by the Village provides for uncertainty during the term of the agreement," but the Union proposal permits "all the officers and all the Village officials [to] know precisely the salary levels for the bargaining unit throughout the duration of the agreement" (Un. Brief, 15). In addition, by "creating an 'automatic' process for the determination of wages," the Village offer would eliminate one of the benefits of collective bargaining, the officers' "input in fashioning their [own] terms and conditions of employment" (Un. Brief, 15).

5. Adoption of the Village wage offer and the Union longevity offer would at least put Skokie "'in the middle' of the comparables," but adoption of the Village wage and longevity offers would "send Skokie reeling towards the bottom of the pack" (Un. Brief, 15). Although adoption of the Village's longevity offer and the Union's wage offer would raise Skokie from ninth to eighth in the ranking, it would be "unappealing and unfair" because it would leave in place an antiquated inadequate longevity scale that has not been increased since its inception more than 20 years ago (Un. Brief, 15-17).

6. In addition, because of the Village's "blatant whip-sawing" tactics of pitting police officers against fire-fighters in different interest arbitration cases, it is inappropriate to compare Skokie police officers to Skokie firefighters (Un. Brief, 17). As "the Village is litigating this issue for the second time and steadfastly refuses to budge an inch from the 1970's levels that still exist today," the "only way" police officers and firefighters will "gain an increase in longevity is through arbitration (Un. Brief, 17). Analyzing "other seniority benefits," arbitrator Goldstein "denied the firefighters more longevity because Skokie fire-fighters were ranked third among their comparables" (Un. Brief, 18). Police officers are near the average in other seniority-based benefits, but fourteenth in longevity amounts (Un. Brief, 18).

7. In the final analysis, the Union's final offer on wages and longevity, rather than the Village's offer, is more closely matched to the comparables (Un. Brief, 19). The "Village's own pronouncement that 7th and 9th place are rea-sonable" is inconsistent with the fact that adoption of the Village offer would place police officers in 12th place (Un. Brief, 19). Adoption of the Union offer "to rest Skokie in 6th place is more...acceptable" (Un. Brief, 20).

(b) The Employer

1. The Village's 3.5%, 3.25% and 3% offer is "clearly more reasonable" than the Union's 4.5%, 4% and 4% offer because it "tracks precisely the across-the-board adjustment

negotiated with the fire fighter bargaining unit for the 1994-95 fiscal year, as well as the $3^{1}/_{2}$% salary adjustment for the Village's unrepresented employees" (Emp. Brief, 11). Parity between police officers and fire fighters is important (Emp. Brief, 11). In "four of the last seven fiscal years, the May 1 salary adjustments have been exactly the same"; in "the other three fiscal years, two of which were affected by fire fighter arbitration awards, the differences ranged from 15/100th of one percent to 7/10th of one percent" (Emp. Brief, 11-12). See *Village of Arlington Heights & Arlington Heights Fire Fighters Association, Local 3105* (Briggs 1991), on the importance of internal comparability.

2. External comparability data supports the Village's salary offer. Citing *City of DeKalb & IAFF Local 1236* (Goldstein 1988), the Village argues that the "starting point" is "what the parties themselves believed was reasonable and appropriate in prior negotiations" (Emp. Brief, 13). In 1988-1991, Skokie police officers stood as follows in relationship to the 16 comparable communities:

> Maximum top step base salary of $34,528 for 1988-89 ranked 8 out of 17 and $5 higher than median.
>
> Maximum top step base salary $36,183 for 1989-90 ranked 9 out of 17.
>
> Maximum top step base salary of $37,630 for 1990-91 ranked 13 out of 17.

In 1991, the parties negotiated a 5% across-the-board wage increase effective May 1, 1992, which moved Skokie police officers to the 12th position among comparable departments (Emp. Brief, 13). In addition, "the parties agreed to an

equity adjustment of 1.2357% effective November 1, 1991," which returned Skokie to the median of the 17 jurisdictions (Emp. Brief, 14).

3. Skokie kept its median position in 1992 with a top step base salary of $41,921 (Emp. Brief, 14). In reopener negotiations for 1993-94, the parties agreed on an across-the-board increase of 3.5%, which equaled the fire fighters' May 1, 1993 raise, plus an equity adjustment of 1.05% effective November 1, 1993 (Emp. Brief, 14). The equity adjustment was designed to place the top step base salary at about the median of the 17 comparable jurisdictions (Emp. Brief, 14). As a result of these increases, Skokie ranked "eighth out of the 17 comparable communities with a top step F+ base salary of $43,844" (Emp. Brief, 15).

4. The bargaining history demonstrates that the parties have "agreed to salary adjustments which result in the top step base salary for Skokie police officers being at or about the median of the 17 agreed-to comparables" (Emp. Brief, 15).

5. The Employer's May 1, 1994 offer of a 3.5% salary adjustment as well as the Union 4.5% salary adjustment would put the top Skokie police officer base salary seventh out of the seventeen comparable communities (Emp. Brief, 15). However, the Employer's offer is "closer to the median that the parties have...agreed is appropriate" (Emp. Brief, 16). Adoption of the Union's final offer would mean that the top step base salary for 1994-95 would be 1.34% higher than the median top-step base salary of $45,211 (Emp. Brief, 16).

6. The same conclusion is reached when the offers for the second and third years of the proposed contract are compared (Emp. Brief, 16). The Employer's offer for the second and third years provides "an equity adjustment effective November 1 if...needed...to maintain the...F+ base salary at the median..." (Emp. Brief, 16). However, the Union's offer "is an admitted 'shot in the dark' in terms of what might occur in terms of salary adjustments for the other agreed-to comparables..." (Emp. Brief, 16). The Union admitted that it was "taking a chance" that it might fall to eleventh place in the rankings, but the "Village's final offer will guarantee no slippage beneath the median" (Emp. Brief, 17).

7. The Union's other arguments "amount to nothing more than red herrings" (Emp. Brief, 17). The Union's suggestion that the possibility of a mid-year equity adjustment is a "waiver of bargaining" ignores the fact that any contractual provision "specifying how a given term or condition of employment is to be dealt with during the term of the agreement necessarily constitutes a waiver of any right to bargain over that issue during the term of the agreement" (Emp. Brief, 17). First, the "escalator clause" proposed by the Employer is a "mandatory subject of bargaining" (Emp. Brief, 17). See *Village of Arlington Heights & Arlington Heights Firefighters, Local 3105, IAFF,* 6 PERI ¶2052 (ISLRB 1990). Second, the Union's contention that the equity adjustment would invite grievance arbitration is unconvincing; the "offer is clear, specific and directly based on

methodology" the parties have used (Emp. Brief, 18). Finally, the Union's argument that the issue "'comes down to self-determination'" is beside the point; the "ability to self-determine the salary went by the boards when the parties were unable to reach agreement..." (Emp. Brief, 18).

8. "CPI data strongly support acceptance of the Village's final salary offer" (Emp. Brief, 18). While divided, "one group of interest arbitrators are of the opinion that the parties' final salary offers should be judged against the increases or projected increases in the CPI for the period of time to be covered by the Arbitrator's award" (Emp. Brief, 19). See *United States Postal Service*, DLR No. 249 (12-27-84 Kerr). Other arbitrators have judged "the parties' final offers on the basis of the rate of increase in the Consumer Price Index during the last year of the parties' most recent collective bargaining agreement" (Emp. Brief, 22-3). See *Village of Skokie & IAFF*, ISLRB S-MA-89-123 (Goldstein 1990) (EX 39). For the first 11 months of the 1994-94 fiscal year, the CPI-U U.S. went up 2.71% and the CPI-U Chicago went up 3.18% (Emp. Brief, 19-20). Projecting the increase for the 12-month period on the basis of the first 11 months would result in an increase of 3% in the CPI-U United States and 3.5% in the CPI-U Chicago (Emp. Brief, 20). The Village's final offer of 3.5% is reasonable, especially since the Village has offered to pick up 88% of the cost of health insurance and the cost of replacing uniforms (Emp. Brief, 20). Cost-of-living projections for

1995-96 and 1996-97 also support the Village's salary offer (Emp. Brief, 21). See Blue Chip Economic Indicators of February 10, 1995, which made the following projections (Emp. Brief, 22):

Forecaster	1995	1996
Blue Chip Consensus	3.2%	3.6%
Congressional B.O.	3.1%	3.4%
Clinton Admin.	3.1%	3.2%

The rate of increase in the All-Cities CPI-U between May 1993 and May 1994 was 2.3% and the rate of increase in Chicago CPI-U for the same period was 1.3%, both less than the Employer's offer of 3.5% (Emp. Brief, 23).

9. The "ease in attracting qualified applicants and the virtually non-existent voluntary turnover rate strongly supports acceptance of the Village's final offer" (Emp. Brief, 24). See Monroe Berkowitz, "Arbitration of Public-Sector Interest Disputes: Economics, Politics, and Equity," Dennis & Somers, eds., *Arbitration—1976,* PROCEEDINGS OF THE TWENTY-NINTH ANNUAL MEETING, NATIONAL ACADEMY OF ARBITRATORS (Washington, D.C.: BNA Books, 1976), at 172.

10. "Other collective bargaining settlements and economic data strongly support acceptance of the Village's final offer" (Emp. Brief, 26). Compounded, the Employer's salary offer provides for a 10.1% increase over the three-year term of the contract, which is substantially more than the average of increases provided for in recently negotiated contracts throughout the country (Emp. Brief, 26-7). "There is a definite downward trend," which is also reflected in police

officers' salaries in the comparable communities (Emp. Brief, 27). In 1991, the average salary increase in the comparable communities was 4.98%; by 1994 the average had dropped to 3.75% (Emp. Brief, 27).

11. The "interests and welfare of the public strongly support acceptance of the Village's final salary offer" (Emp. Brief, 28). While the "Village is not making a pure inability to pay argument," the "fact that a public employer 'has the ability to pay an increase does not mean that the [Village] ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure'" (Emp. Brief, 28-9, citing *City of Gresham & IAFF Local 1062* (Clark 1984)).

12. The Employer is opposed to extending the agreed-upon retroactivity of salary increases to overtime hours between May 1, 1994 and the date of this award because of "the additional administrative burden of having to compute retroactivity on overtime hours" (Emp. Brief, 32). The "Village also expressed an interest in having matters resolved earlier...so [as not to have] the kind of administrative problems and burdens...placed on the Village" as a result of having to compute and pay overtime hours retroactively (Emp. Brief, 32).

5. Discussion and Findings

(a) The Median as Benchmark; Comparability

The Employer maintains that the parties have reached an understanding that police officers' wages should be fixed at about the median of the 17 comparable jurisdictions. The

Union argues that the parties have never agreed, explicitly or implicitly, that the median is an appropriate benchmark.

Since at least 1988 the parties have tacitly agreed on two basic propositions: (1) it is appropriate to compare the earnings of Skokie's police officers to the earnings of police officers in the agreed-on comparable jurisdictions; and (2) Skokie police officers' pay should remain as close as possible to the median among these jurisdictions.

Through their bargaining, the parties have generally contrived to keep the earnings of police officers close to the 17-city median from 1988 through 1994, raising wages when they fell below the median (see EX 22-30). It was not a coincidence that wages have always seemed to hover about this median. That, it would seem, was the plan. When Skokie fell far below median in the final year of the 1988-91 contract, the parties agreed on a 5% wage increase and an "equity adjustment" of 1.2357% effective November 1, 1991. The "Equity Adjustment" Section of Article XII, the "Salaries and Other Compensation" article of the 1991-94 contract provided:

> The foregoing salary increase effective November 1, 1991, is an equity adjustment designed to bring the salaries paid to Skokie police officers into a more competitive position vis-a-vis the salaries paid to police officers for 16 other communities which the parties have historically used for salary comparability purposes.

Exclusive of longevity increases, the equity adjustment of November 1, 1991 returned Skokie to the median of the 17 comparable communities (see EX 25). In 1992 and 1993 Skokie maintained the median position, at least with respect to the

top step. In salary-reopener negotiations for FY 1993-94, the parties agreed on an across-the-board raise of 3.5% effective May 1, 1993 plus a 1.05% equity adjustment, effective November 1, 1993. As shown by a letter dated November 5, 1993 from the Employer's chief negotiator to the Union's chief negotiator, this equity adjustment was intended to put top-step base pay at about the median of the 17 comparable jurisdictions (EX 19):

> This is to confirm the tentative agreement reached by the parties with respect to the reopener negotiations. Two copies of a Memorandum of Understanding setting forth the mutually agreed to terms are enclosed.
>
> The equity adjustment...effective November 1, 1993, as discussed by the parties during the negotiations, is specifically designed to put the top step Skokie police officer's salary at step F+ at approximately the median for the sixteen other jurisdictions used for comparability purposes. The 1.05% equity adjustment agreed to by the parties will put the top step F+ Skokie police officer's salary as of November 1, 1993, at $43,844, which would move Skokie from 11 out of 17 to either 8 or 9 out of 17 depending on the Park Ridge settlement. If the Park Ridge settlement is 3.87% or less, Skokie will rank 8 out of 17; if the Park Ridge settlement is more than 3.87%, Skokie will be 9 out of 17.

In the end, Skokie ranked 8th of 17 with respect to the F+ base salary, exclusive of longevity, at $43,844 (EX 28).

(b) Cost of Living

Cost of living favors the Employer's wage proposal. For the first 11 months of FY 1994-95, the CPI-U United States increased 2.71% and the CPI-U Chicago increased 3.18%. For the 12-month period ending August 1995, the CPI-U U.S. City Average went up 2.6% and the CPI-W 2.5%; for the same period,

the CPI-U for the Chicago metropolitan area went up 2.7% and the CPI-W 2.5%.[5]

In recent years, inflation, as measured by regional and CPI-U indexes, has generally increased at an annual rate of 2.5% to 3%. While I do not adopt the Employer's suggestion to predict the rate of inflation for the next two or three years, the Employer's wage proposal would seem closer to the current and recent rate of inflation. The Employer's wage offer would yield a compound wage increase of 10.07% or an average of 3.36% per year. Over the three-year term of the contract, the Union's wage offer would yield a compound wage increase of 13.03% or an average of 4.34% a year, an average substantially higher than recent cost-of-living increases.

(c) The Employer's Formula for Adjustments to Median

The Employer has proposed to make "adjustments to median" should changes in the wage scale of the agreed-on comparable jurisdictions place Skokie below the median of these jurisdictions during the term of the contract. Perhaps the "automatic increases" proposed by the Employer are "destabilizing," but only to the benefit of employees. At worst, wages will remain stable. At best, employees will get a raise.

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[5]"For the 12-month period ended in August 1995, the CPI-U U.S. City Average increased 2.6%. For the same 12-month period, the CPI-W increased 2.5%.... [F]or the 12-month period ended in August 1995, the CPI-U and CPI-W for the Chicago metropolitan area increased by 2.7% and 2.5%, respectively." (See R. Theodore Clark, Jr. to Herbert M. Berman, 9/13/95.) For the 12-month period ending September 1995, the "Employment Cost Index" rose 2.7% (See R. Theodore Clark, Jr. to Herbert M. Berman, 11/17/95, with attachments thereto).

If adopted, the Employer's proposal would automatically achieve what the parties have worked to achieve: An equitable ranking of Skokie police officers relative to police officers in comparable jurisdictions. I would agree with the Union that the method proposed is imperfect. When comparable communities enter into new salary arrangements in 1995 and 1996, the median may change, and exact placement at the median at any point in time may be unattainable. But the formula proposed by the Employer is a reasonable way to maintain parity.

The Union's contention that the Employer's offer would "effectively remove wages from collective bargaining" is accurate but its implications are somewhat misleading. Absent a mid-term wage reopener, wages are "removed from bargaining" during the term of every labor contract. At the conclusion of this contract, wages and all the other terms of employment, including the formula proposed by the Employer, will be subject to renegotiation.

I favor the Employer's final offer on wages. But there's a catch. The Employer's offer is fair and reasonable in a particular context—in the context of the Union's longevity offer.

B. Longevity

1. The Final Offers

(a) The Union

Article XII, Section 3

Employees on the active payroll with the Village in a position covered by this Agreement and any

employee who retired after May 1, 1994, shall receive monthly longevity pay in accordance with the following schedule, retroactive to May 1, 1994:

Years of Seniority	Monthly Amount
8 years but less than 15 years	$58.33
15 years but less than 20 years	$83.33
20 years but less than 25 years	$108.33
25 years or more	$133.33

(b) The Employer

The Employer proposes no change in Article XII, Section 3 (Longevity Pay). Article XII, Section 3 provides as follows:

Employees on the active payroll with the Village in a position covered by this Agreement shall receive monthly longevity pay in accordance with the following schedule:

Years of Seniority	Monthly Amount
5 years but less than 10 years	$25
10 years but less than 15 years	30
15 years but less than 20 years	35
20 years but less than 25 years	40
25 years but less than 30 years	45
30 years or more	50

2. Discussion and Findings

(a) Wages and Longevity Should Be Considered Together

In *City of Peru, supra,* at page 19, I wrote:

> Both wages and longevity pay represent cash out of pocket for the City and cash in pocket for police officers. For the purpose of analysis, I can separate the salary and longevity offers, but I realize that in the context of a time-step wage schedule, wages and longevity pay are indivisible; they represent different forms of direct remuneration. I therefore agree with the Union that "[b]ase salaries and longevity go hand in hand in establishing pay rates within a given police bargaining unit. To consider one without examining the other is a virtual guarantee of a distorted view of employee pay...."

This principle warrants elaboration. Consistent with an arbitrator's obligation to consider "the overall compensation presently received by the employees" (§14(h)(6) of the Act), I shall consider wages and longevity pay together and adopt the proposals that would place Skokie police officers at or near the median among the 17 comparable jurisdictions. Once this comparison is made, the conclusion to be reached seems evident. The Village's wage offer coupled with the Union's longevity offer would place Skokie police officers with 20 years of service in ninth place, the exact median, among the 17 comparable jurisdictions. If median is an appropriate benchmark for wages, it would seem an equally appropriate benchmark for total cash earnings, particularly since cash earnings are the product of wages and longevity benefits. Even as wages rise, total cash earnings can be held steady by stabilizing longevity benefits. It would thus seem appropriate, and consistent with Section 14(h)(6) of the Act, to consider longevity benefits as part of total cash earnings.

(b) The Immobility of Longevity Benefits Versus a "Radically New" Breakthrough

Each party's arguments on longevity are the converse of the other. The Union emphasizes the Employer's "stubborn" disinclination "to budge an inch on a simple economic term for over twenty years" (Un. Brief, 17). The Employer cited *City of DeKalb* (Goldstein 1988), for the proposition that "any 'breakthroughs' or changes in the status quo should be bargained for and negotiated at the bargaining table" and that to "give either party a 'breakthrough' is contrary to

the statutory scheme and undercuts the parties' own efforts, in a rather direct contravention of the bargaining and negotiation process itself" (Emp. Brief, 33-4).

There is something to be said for each argument. In *City of Markham,* S-MA-95-63 (Berman 1995), at page 34, I cited *Will County Board,* S-MA-__-__ (Nathan 1988) for this principle:

> In the present case, the Employer seeks to make substantial changes in the language of the Agreement. ... The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change.

Clearly, as arbitrator Nathan implies, an arbitrator should be circumspect when looking at a radically new proposal, but if such a proposal is consistent with the standards set forth in the Act and if "interest arbitration is to have its own independent integrity, the arbitrator must be able to operate from a position of flexibility (even though, of course, he or she is constrained by the parties' final offers)." *City of Rock Island & FOP,* S-MA-93-119 (Eglit 1995), at 57.

As arbitrator Howard Eglit also noted (Eglit, 57-8):

> [An arbitrator] cannot start (and finish)...with the proposition that the proposal calling for the least change from the status quo is the proposal that <u>invariably</u> must be adopted. For if he or she did inflexibly pursue such a philosophy, interest arbitration as a useful device would be gutted: the resistant party could always confidently low-ball its offer, knowing that it would be adopted by the

> arbitrator in the name of his or her "least change" philosophy.

Although, as arbitrator Eglit has also suggested, "interest arbitration ought not to be used as an end-run around good faith bargaining" (Eglit, at 57), I do not believe the Act flatly and absolutely precludes an arbitrator from adopting a consistently rejected proposal—whether the rejected proposal has encompassed new or enhanced benefits or, for that matter, introduced formulas designed to maintain comparability. To deny longevity increases because such increases had never been agreed to before would seem comparable to denying wage increases of a particular magnitude for the same reason. Although bargaining history is a relevant consideration, an arbitrator is not compelled to deny, let us say, a 5% raise solely because there had been no 5% raises in the past.

To some degree, the bargaining history referred to by both parties for different reasons is a reflection of comparability. If police officers' wages have consistently hovered about the median of a group of admittedly comparable municipalities, one might reasonably conclude (as I have) that the parties had aimed for the median, tailoring wage adjustments to that purpose. However, bargaining history, even if consistent with established standards of comparability, remains only an aid to understanding; it is not dispositive. Things change. Substantial increases (or decreases) in the wages of comparable employees in comparable jurisdictions or in the circumstances of the employees under

review may require an arbitrator to adopt a wage package unlike anything negotiated before.

It is not critical that the longevity scale has not changed for many years. Had other jurisdictions maintained the status quo, Skokie police officers would have no reasonable cause for complaint. But it is significant that many other comparable jurisdictions have improved this benefit, leaving Skokie near the bottom of the pack.[6]

(c) The Proposed Breakthrough Is Not Inappropriate

Because the change sought is merely a change in the level of benefits, not in the structure, design or nature of

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[6]By letter dated December 5, 1995, counsel for the Union advised me that the Village of Skokie and IAFF had signed a memorandum of agreement which, among other things, provided for no improvement in firefighters' longevity pay (See Clark to Berman, 11/17/95). This fact should now be taken into consideration, but it is not dispositive. I note that in *Village of Skokie and Firefighters Local 3033* (Goldstein 1990), arbitrator Elliott Goldstein pointed out that even though firefighters' longevity pay had not increased since 1970, the Union by seeking higher levels of longevity pay was not "attempting to obtain now what it could not obtain through bargaining at the initial negotiations" (Goldstein, at 67). The Union was "demanding a substantial change in the status quo," but "longevity pay [was] not a new concept between the parties and...the Union [was] demanding [only an] increase in a...long-term benefit" (Goldstein, at 68). For that reason, arbitrator Goldstein declined to base his decision to deny higher longevity pay solely because he was reluctant to change the status quo. "What is really at issue," arbitrator Goldstein found, was "whether the Union proved its claim that the comparability data compel the adoption of its proposal" (Goldstein, at 69). Finding that with respect to combined salary and longevity pay Skokie ranked third among comparable fire departments, arbitrator Goldstein found that "at least as to that aspect of overall compensation, the combining of base salary and longevity pay, comparables clearly favor the Employer" (Goldstein, at 69). In short, arbitrator Goldstein compared the combined wages and longevity pay of Skokie firefighters to firefighters in comparable departments. Similarly, I find the comparison to comparable employees in comparable municipalities more compelling than the fact that a particular benefit in the fire and police departments has not changed over the years. If the Skokie Fire Department's longevity pay was determined primarily on the basis of intermunicipal comparisons, it seems inappropriate to deny a hike in benefits for police officers on the basis of an intramunicipal comparison.

the longevity plan, the presumed breakthrough is not necessarily inappropriate as "too radical." Indeed, the Employer's salary proposal, which I have adopted, is more revolutionary—more of a breakthrough—than the Union's longevity proposal. For the first time, salaries will automatically be contingent on salaries paid to police officers in comparable jurisdictions.

Comparability data supports the Union's longevity proposal and the Employer's wage proposal. Under the peculiar circumstances of this case, both "breakthroughs" are appropriate. Economic considerations are paramount.

(d) The Appropriate "Frame of Reference"

In *Village of Skokie & Skokie Firefighters Local 3033,* ISLRB S-MA-89-123 (Goldstein 1990) (EX 39), arbitrator Elliott Goldstein made a point that warrants review. Noting that "the relatively high base salary rank differential offsets the low amount of longevity pay in the Village, when the cities considered comparable to the Employer who also pay longevity are scrutinized," arbitrator Goldstein declined to limit the "frame of reference" to wages and longevity pay (EX 39, at 70):

> [A]s the Employer persuasively argued, a more appropriate frame of reference would be to consider longevity pay along with the other major seniority-based benefit provided by all of the comparable jurisdictions, i.e., vacation pay."

As arbitrator Goldstein pointed out, "paid time off is also money in a very real sense" (Goldstein, EX 39, at 71). Skokie police officers receive about 3 to 6 more days of

vacation than the average of the comparable jurisdictions at 20, 25 and 30 years of service (Emp. Brief, 36). The Employer notes that when the value of the six "additional vacation days" is taken into account Skokie police officers' earnings (salary + longevity + vacation days) at the "top salary" step would place them in seventh place among the seventeen comparable jurisdictions (Emp. Brief, 38). Were vacation benefits in dispute or had some bargaining nexus between low-cost longevity benefits and high-cost vacation benefits been established, the Employer's argument might well carry the day. Even so, the comparisons made by the Employer would not necessarily justify rejection of the Union's longevity proposal, especially since I have adopted the Employer's wage proposal. In short, the relatively generous vacation benefits enjoyed by Skokie police officers do not warrant rejection of the Union's longevity proposal.

Taking "overall compensation," including "paid time off," into consideration, I adopt the Employer's final offer on salary and the Union's final offer on longevity.

C. Retroactivity

1. The Final Offers

(a) The Union's Final Offer

> Section 1. Salaries. Employees covered by this Agreement who are still on the active payroll as of the beginning of the payroll period immediately following the issuance of the arbitrator's award shall receive a retroactive payment which shall be based on the difference between the salary they received between May 1, 1994 and the beginning of said payroll period and the salary they would have received during the same period of time based upon

the foregoing salary schedule for all hours paid during this time period, provided that any employee who retired after May 1, 1994, but before the issuance of the arbitrator's award shall also be eligible for retroactive pay based on hours paid after May 1, 1994.

(b) The Employer's Final Offer

Employees covered by this Agreement who are still on the active payroll the beginning of the next payroll period immediately following the effective date of Arbitrator Berman's interest arbitration award shall receive a retroactive payment, provided that any employee who retired on or after May 1, 1994 shall also be eligible to receive retroactive pay based on the hours worked between May 1, 1994 and the date of retirement. Said retroactive payment shall be made at a rate reflective of the difference between the salaries in effect immediately prior to the effective date of Arbitrator Berman's interest arbitration award and the new salaries effective May 1, 1994 and May 1, 1995, respectively. Payment shall be on an hour for hour basis for all regular hours actually worked on or after May 1, 1994, including all hours of paid leave between May 1, 1994 and the first payroll period following the effective date of Arbitrator Berman's interest arbitration award. For the purpose of application of this retroactivity provision, no increased adjustments shall be made for any overtime hours worked between May 1, 1994 and the first payroll period following the effective date of Arbitrator Berman's interest arbitration award.

2. Positions of the Parties

(a) The Union

1. This is the first interest arbitration between the parties and the first time the parties have not "agreed to full retroactivity on all hours paid for members of the bargaining unit (and those who retired during the pendency of negotiations) during their collective bargaining relationship" (Un. Brief, 20).

2. In prior interest arbitration awards involving the Village of Skokie and its firefighters, arbitrators Gundermann and Goldstein "rejected the Village's arguments" in support of non-retroactivity and "upheld the parties' past practice of...full retroactivity on all hours paid" (Un. Brief, 20-1).

3. Even though this "dispute has to do with money," it "is not an economic issue" (Un. Brief, 21). It is meant to serve "notice to the bargaining unit that they risk losses by going to arbitration and, more realistically, that the Arbitrator after awarding the Union with this victorious issue may feel compelled to balance the scale with awarding the Village a victory on a remaining issue or two" (Un. Brief, 21).

4. Since May 1, 1994, police officers have served the community with the understanding, as in the past, that their compensation would be adjusted when the new contract was determined" (Un. Brief, 22). The "Village's sudden and unannounced desire to change this practice is unfounded and unwarranted" (Un. Brief, 22).

(b) The Employer

1. The Employer's offer denies retroactivity on overtime hours worked, not on straight-time hours worked or paid leave, between May 1, 1994 and the effective date of the Arbitrator's award (Emp. Brief, 32). The Employer's concern "is the additional administrative burden of having to compute retroactivity on overtime hours, especially in a situation

where...it will span two fiscal years" (Emp. Brief, 32). The Village would also be required to reissue W-2's for calendar year 1994 (Emp. Brief, 32).

2. In prior years the parties have agreed to full retroactivity but the agreements "did not span all of one fiscal year and part of another..." (Emp. Brief, 32, n. 10).

3. Discussion and Findings

Counsel for the Employer explained why the Employer opposed retroactivity for overtime wages (Tr. 198-99):

> We do have a new computer. It went in on January 1. Theoretically, quote, unquote, it is supposed to do all kinds of marvelous things. My experience with computers in other jurisdictions and particularly going back more than a year on a retroactive basis, in terms of overtime, it is fine in theory. It doesn't work that well in practice. There is a fair amount of additional work that has to go into it. In fact, I [recall] Gary [Bailey] wanting to pore over all the records in another jurisdiction where the parties spent literally several months trying to figure out whether the retro on the overtime was accurately computed.

I appreciate the Employer's concern. But I must balance the Employer's inconvenience against employees' loss of income, a loss of income for which they are not solely responsible. On this scale, the employees' interests have greater weight.

In four prior decisions under the Act, I adopted union proposals requesting wage and benefit retroactivity.[7] Two of

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[7]See *City of Springfield & IAFF, Local 37*, S-MA-18 (1987); *Village of Lombard & IAFF, Local 3009*, S-MA-87-73 (1988); *Village of Westchester & Illinois Firefighters Alliance, Council 1*, S-MA-89-83 (1989); and *City of Rock Island & IAFF, Local 26*, S-MA-91-64 (1992).

these decisions outline the principles I generally consider pertinent to the issue of retroactivity.

In *Village of Lombard,* I wrote at pages 27-28:

> Historically, salaries have been effective at the start of the Employer's fiscal year. The current agreement was signed on December 19, 1986 and went into effect the next day. Salaries, however, were made retroactive to June 1, 1986. Absent a compelling countervailing consideration—a consideration not made apparent here—it would be inappropriate to ignore this precedent. The parties have established a practice—a practice I am compelled to respect—of making new salaries effective at the start of the fiscal year. The delays inherent in interest arbitration are the mutual responsibility of the parties, not solely the responsibility of the Union. The Union should not solely bear the burden of delay. I would respect a practice of granting wage increases upon contract ratification. Similarly, I shall respect the practice of retroactive wage increases.

In *Village of Westchester,* I noted at pages 10-11:

> Parties who negotiate beyond the expiration date of their agreement may agree or not agree that wages will be retroactive to the date of the expired agreement. Where, as here, parties subject to statutory impasse procedures have reached impasse on retroactivity, an arbitrator must make a decision on the basis of the factors set out in the Act....
>
> Routine or automatic retroactivity may frustrate the timely settlement of an agreement. If employees are guaranteed retroactive wages, the Union may have little incentive to settle before the contract expires. On the other hand, since...strikes are forbidden, the employer may also have little incentive to settle before the contract expires. The evidence did not establish that the Union's decision to reject the Employer's offer on wage increases was not motivated by the legitimate economic interests of its members or that the Union was primarily responsible for the protracted negotiations. In the absence of contrary evidence on comparability or evidence that the Union had either delayed negotiations or negotiated in bad faith, there is little, if any, reason to deny retroactivity.

In this case, application of these principles warrants adoption of the Union's final offer on retroactivity.

D. Specialty Pay

1. The Final Offers

(a) The Union's Final Offer

> Section 4. Specialty Pay. Employees on the active payroll of the Village in a position covered by this Agreement shall receive an annual specialty pay stipend, on the first non-payroll week in December of each year, if they were assigned in the following positions during the past year:

Specialty Position	Annual Stipend
Tactical Intervention Unit	$ 500
Evidence Technician	600
Field Training Officer	600
Firearms Instructor	600
Crime Prevention Officer	600
Detective	1200

> An employee shall receive only one stipend per year; if the employee is eligible for more than one stipend, the Village shall pay the employee the largest stipend for which the employee is eligible.

(b) The Employer's Final Offer

> The Village's final offer on specialty pay is to maintain the status quo with respect to specialty pay, i.e., that there be no specialty pay for any of the duties and responsibilities that police officers in Skokie have historically performed.

2. Positions of the Parties

(a) The Union

1. Skokie police officers are not paid more for performing specialized duties, but about one-half of the comparable communities provide specialty pay. The proposal is not "revolutionary" and "Skokie officers find themselves behind their counterparts once again in terms of remuneration

because there is no specialty pay in the police department" (Un. Brief, 35).

2. Specialty pay does not preclude management from deciding who serves in specialty assignments nor dictate training requirements for specialty positions (Un. Brief, 35). It is "merely...a form of compensation, reflecting the value and worth of an officer who has had advanced training and education" (Un. Brief, 35).

3. Each specialized classification does additional work. Detectives "perform the all-important investigative work on criminal activity" and "assist in every aspect of police work" (Un. Brief, 36). Field Training Officers train new recruits; "their observations and recommendations directly impact the development of new police officers and the safety of the entire police force" (Un. Brief, 36). Firearms Instructors "are responsible for firearm training"; "their ability to train others to handle their firearm is a proven talent that cannot be overlooked or undervalued" (Un. Brief, 36). Tactical Officers "perform perhaps the most hazardous duty [in] the department" (Un. Brief, 36). "They...handle hostage situations and other volatile incidents that require a show of force to preserve and protect the community," but "they are paid the same as the officer who is covering crowd control at the same scene, despite the difference in the risks they face" (Un. Brief, 36-7). Evidence Technicians "are required to undergo extensive training to be able to process crime scenes and collect evidence so as not to contaminate

any materials"; "constant education is necessary to keep up with new developments in the scientific fields." They have "little room for error" (Un. Brief, 37). Crime Prevention Officers "are quickly becoming an important position in the fight against crime" by explaining to the public "how to identify and prevent crime" (Un. Brief, 37). They can help make "the department...more pro-active instead of just reactive" (Un. Brief, 37).

4. Police work "is becoming highly specialized and we, as citizens, rely on police officers to perform a wider variety of tasks..." (Un. Brief, 37). As an officer's knowledge increases, "his value and worth to the department and the community increase" (Un. Brief, 37).

5. While both the Village and Union proposals "exceed the cost-of-living during the period of time in dispute," the offers made by both parties "have little bearing on the cost-of-living" (Un. Brief, 38). The parties have concentrated on comparability (Un. Brief, 38).

6. The Union's proposal does not "threaten the welfare of the public" (Un. Brief, 38). The Village is in sound financial condition and it can afford "any of the proposals offered by either party without causing any major impact upon the Village budget or the purses of the taxpayers" (Un. Brief, 38). The Village has a strong industrial base and its sales tax revenues are growing.

(b) The Employer

1. In Skokie, "'police officers are generalists and not specialists, although they may have particular assignments from time to time'" (Emp. Brief, 43, citing Tr. 163). The Department "has not had any difficulty in attracting a sufficient number of volunteers" for specialized assignments (Emp. Brief, 43). All specialized training takes place during non-duty hours for which overtime is paid, and the Village covers all the expenses of training (Emp. Brief, 43). Generally, the Village respects an officer's request to "be relieved of an assignment" (Emp. Brief, 43).

2. The Department "collectively encompasses a large bundle of skills, duties, and responsibilities" (Emp. Brief, 43). The Department generally "tries to rotate police officers over a period of time among the various assignments and does not necessarily want 'somebody spending all of his or her time in one particular area or assignment' (Tr. 165)" (Emp. Brief, 44). Adoption of the Union's proposal would bring about a "radically different approach to police work" (Emp. Brief, 44). "Morale problems...might arise if someone were reassigned from an assignment to which specialty pay is attached to an assignment which does not provide any additional compensation" (Emp. Brief, 44).

3. External comparability data supports the Village's final offer (Emp. Brief, 44). Eight of the sixteen comparable jurisdictions "do not provide specialty pay for any of the six areas targeted by the Union's final offer" (Emp.

Brief, 45). None provides specialty pay for all six assignments covered by the Union's offer; one, Morton Grove, provides specialty pay for five of the six assignments (Emp. Brief, 45). One comparable jurisdiction, Des Plaines, provides for specialty pay in four of the six categories (Emp. Brief, 45). Two, Elmhurst and Mt. Prospect, have specialty pay in two of the six categories; the remaining four, Glenview, Northbrook, Wheeling and Wilmette, provide specialty pay only in the category of field training officer (Emp. Brief, 45). Thus, "there are only 17 instances out of a possible 96 overall where comparable jurisdictions pay specialty pay" (Emp. Brief, 45).

4. There has been little change in the comparability data since the parties agreed in 1991 not to provide specialty pay, and "it necessarily follows that the comparability data does not support acceptance of the Union's final offer" (Emp. Brief, 46). Since 1991, none of the eight jurisdictions that did not provide any specialty pay has "negotiated or instituted specialty pay in any of the six areas in question" (Emp. Brief, 46).

5. The Union's offer on specialty pay is unreasonable. It would cost an additional $29,400 or "slightly more than a 1% increase in salary" (Emp. Brief, 47).

3. Discussion and Findings

Comparability data does not support the Union's proposal. As the Employer pointed out, none of the comparable jurisdictions offered specialty pay in all six of the classi-

fications proposed by the Union. One offered specialty pay in four classifications, two offered specialty pay in two classifications, and eight offered no specialty pay at all (EX 65). Nor did the evidence suggest any other reason to provide specialty pay to officers in particular classifications. The Union did not contest the Employer's assertion that its policy was to establish and maintain a versatile and efficient police department by cross-training officers and switching them among assignments, and no evidence was produced to show that this policy was unreasonable or unfair.

One might agree that it is better to have highly trained specialists than generalists with broader but more shallow experience. To the contrary, however, one might agree that cross-training, especially in a relatively small police force, is more flexible, economical and efficient, resulting in better career opportunities for officers and better service to the public. In the absence of pertinent evidence consistent with Section 14(h) standards, an arbitrator should pause before making this basic policy decision. As matters stand, I do not consider it my responsibility to determine the nature and function of the police force—how best to serve the welfare of the public. Had the evidence established that the Village had set up distinct, specialized jobs and that there was limited cross-training, I might be sympathetic to the argument that specialists are entitled to more pay. Specialty pay, however, would likely create pressure to establish permanent, specialized positions—pressure to

change the very character of the police department. I shall refrain from making a decision that intrudes upon such basic policy matters.

I adopt the Employer's final offer on specialty pay.

E. Medical and Dental Insurance

1. The Final Offers

(a) The Union's Final Offer

The Union proposes to maintain the language set forth in Article XIII, Sections 1 and 2 of the 1991-94 Agreement, as follows:

> Section 1. Comprehensive Medical Program. The comprehensive medical program and dental insurance program as set forth in Article XIII, Sections 1 and 2 of the parties' 1988-91 collective bargaining agreement shall remain in effect through April 30, 1992.
>
> Effective May 1, 1992, the comprehensive medical insurance program (including HMO's) and dental insurance program that were implemented on June 1, 1990 for the Village's unrepresented employees shall be implemented for the employees covered by this Agreement and shall be continued during the remainder of the term of this Agreement; provided, however, the Village retains the right to change insurance carriers, HMO's, benefit levels, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially similar to those which predated this Agreement. Employees may elect single or family coverage in one of the health plans offered by the Village during the enrollment period established by the Village. The employee shall pay 12% of the premium or cost for single or family coverage, whichever is applicable, for the plan selected and said amount shall be deducted from the employee's paycheck.
>
> Section 2. Dental Insurance Program. The dental insurance program in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village retains the right to change insurance carriers or benefit levels or to self-insure as it deems appropriate,

> so long as the new basic coverage and basic benefits are substantially similar to those which predated this Agreement. An employee who elects to participate in the Village's insurance program during the registration period established by the Village shall pay 12% of the premium or cost for single or family coverage, whichever is applicable, and said amount shall be deducted from the employee's paycheck.

Article XIII, Sections 1 and 2 of the 1988-91 Agreement covering "comprehensive medical program" and "dental insurance program" is identical to Article XIII, Sections 1 and 2 of the 1991-94 Agreement with one exception. The first paragraph of Section 1 found in the 1991-94 Agreement is not found in the 1988-91 Agreement.

(b) The Employer's Final Offer

> Section 1. Comprehensive Medical Program. The comprehensive medical program (including HMO's) in effect on the effective date of Arbitrator Berman's award shall be continued during the term of this Agreement; provided, however, the Village retains the right to change insurance carriers, HMO's, benefit levels, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially similar to those which predated this Agreement. Employees may elect single or family coverage in one of the health plans offered by the Village during the enrollment period established by the Village. Effective the first full month following the effective date of Arbitrator Berman's award, the employee shall pay 13 1/2% (15% effective May 1, 1996) of the premium or cost for single or family coverage, whichever is applicable, for the plan selected and said amount shall be deducted from the employee's paycheck. Notwithstanding the foregoing, employees shall not be required to pay a higher percentage of the premium or cost than the unrepresented employees of the Police Department or the other unrepresented employees of the Village.
>
> Section 2. Dental Insurance Program. The dental insurance program in effect when this Agreement is ratified shall be continued during the term of this Agreement; provided, however, the Village retains

> the right to change insurance carriers or benefit levels or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially similar to those which predated this Agreement. Effective the first full month following the effective date of Arbitrator Berman's award, an employee who elects to participate in the Village's insurance program during the registration period established by the Village shall pay 13 1/2% (15% effective May 1, 1996) of the premium or cost for single or family coverage, whichever is applicable, and said amount shall be deducted from the employee's paycheck. Notwithstanding the foregoing, employees shall not be required to pay a higher percentage of the premium or cost than the unrepresented employees of the Police Department or the other unrepresented employees of the Village.

2. Positions of the Parties

(a) The Union

1. "Police officers in Skokie pay a larger share of health insurance premiums for family coverage than any of the officers in comparable communities" (UX 8) (Un. Brief, 23). "At $80 each month, Skokie police officers give back almost $1000 to the Village each year to maintain health insurance coverage for their families" (Un. Brief, 23). Officers in six communities pay nothing for family coverage; only three communities charge more than $50 per month for family coverage (Un. Brief, 23). Officers in eight communities pay nothing for employee coverage (Un. Brief, 23). The "comparables clearly do not support the Village's offer" (Un. Brief, 23).

2. The Employer did not produce evidence showing that costs have risen (Un. Brief, 24). The Employer is seeking "another opportunity (just like retroactivity)...to reduce its costs" (Un. Brief, 24). The "Village seeks an increase,

despite the fact that the comparables do not support such an increase and despite the fact that the current language already provides for **automatic increases** [emphasis in original] should the Village's costs increase" (Un. Brief, 24).

3. By reopening negotiations for employee contributions without reopening wage or longevity negotiations, "the Village is hoping to back the Union against the wall with no room to maneuver in such negotiations" (Un. Brief, 25).

4. Article XVII, Section 7 of the Agreement permits interest arbitration to resolve impasses reached after expiration of the Agreement. As the "Village undoubtedly believes," the "**parties cannot proceed to interest arbitration for any mid-term bargaining impasse**" [emphasis in original] (Un. Brief, 25). Thus, an impasse during the term of the agreement on employee contributions could be resolved only by "the Village's unilateral implementation of its last offer," a "malicious fate" to which the arbitrator "cannot sentence the bargaining unit" (Un. Brief, 25).

(b) The Employer

1. The Village "has a uniform Village-wide group hospitalization and major medical insurance program for which the Village pays 88% of the cost for both medical and dental coverage for both employee **and** family coverage" [emphasis in original] (Emp. Brief, 49). Although the Village seeks to increase employee contributions from 12% to 15%, its offer would foreclose contributions greater than those paid by unrepresented employees (Emp. Brief, 49). The Village will

also be seeking the same increase in contributions in upcoming fire fighter negotiations (Emp. Brief, 49-50).

2. Despite "the dramatic trend" in greater employee medical insurance contributions, a "trend which the Arbitrator can surely take arbitral notice of," the "employee contribution rate in Skokie has not increased since the parties' first collective bargaining agreement" [underlining in original] (Emp. Brief, 50).

3. Although "employees for most of the Village's comparables pay less for medical insurance coverage," the Village's contribution covers medical and dental insurance (Emp. Brief, 50). Employees in 11 of the 16 comparable communities pay more for family dental coverage than Skokie police officers do at present or under the Employer's final offer (Emp. Brief, 50-1).

3. Discussion and Findings

Two exhibits produced by the parties on comparability, Union exhibit 8 and Employer exhibit 68, are relevant. These exhibits are combined into the following table:

	Amount Employees Pay Per Month	
Jurisdiction	**Single**	**Family**
Arlington Heights	10%*	5% (per Emp) 10% (per Un)**
Des Plaines	-0-	-0-
Elk Grove Village	15%***	15%***
Elmhurst	$17.00 (per Emp) $8.45/5% (per Un)	$21.00 (per Emp) $21.46/5% (per Un)
Evanston	13.5% (per Emp) $27.00 (per Un)	10% (per Emp) $49.00 (per Un)
Glenview	-0-	-0-
Highland Park	-0-	-0-
Lincolnwood	10%	10%
Morton Grove	10%	10%

Mount Prospect	$13.00 (per Emp) $14.00 (per Un)	$39.00 (per Emp) $40.00 (per Un)
Niles	-0-	-0-
Northbrook	-0-	$25.00 (per Emp) $20.00 (per Un)
Oak Park	$15 - $30 (per Emp) $29.50 (per Un)	$46 - $72 (per Emp) $72.00 (per Un)
Park Ridge	$18.00 (per Emp) -0- (per Un)	$60.00 (per Emp) - 0 - (per Un)
Skokie	**12% or $28.24**	**12% or $80.00**
Niles	-0-	-0-
Wheeling	-0-	-0-
Wilmette	-0-	12.25% (per Emp) 20% or $55 (per Un)

* Not to exceed $25
** Not to exceed $50
*** Not to exceed 15% of 1992 premium amount

The comparability data does not justify an increase in employee contributions. Notwithstanding some discrepancies in the information provided, the data is clear enough to show that Skokie has one of the highest contribution rates, whether expressed in terms of dollars or percentages. Police officers in at least eight of the comparable communities contribute nothing toward the cost of employee-only coverage; officers in at least six communities contribute nothing toward the cost of family coverage. In short, the evidence on comparability does not justify an increase in employee contributions.

Unlike many of the comparable communities, Skokie provides dental insurance to police officers at relatively low cost (see EX 69). However, without evidence on the cost of medical insurance both with and without dental coverage and the value of dental coverage for Skokie police officers, I cannot make an informed decision concerning this benefit or make intelligent comparisons to the comparable communities.

As the Employer suggests, there is probably a "substantial trend toward more employee sharing of the cost of insurance over the last nine years." I cannot, however, justify increasing employee contributions on the basis of a trend, however significant it may appear, without the benefit of statistical analysis.

I adopt the Union's final offer on medical and dental insurance.

F. The Medical Insurance Reopener

1. The Final Offers

(a) The Employer's Final Offer

> If the cost of the Village's Comprehensive Medical Program increases 15% or more for either the May 1, 1995 to April 30, 1996 fiscal year or the May 1, 1996 to April 30, 1997 fiscal year over the prior year's cost, the Village may notify the Union in writing of its decision to renegotiate the Comprehensive Medical Program by March 15 of the applicable fiscal year in question. In the event notice is given, the parties shall immediately commence negotiations over the terms of Section 1 of Article XIII of this Agreement.

(b) The Union's Final Offer

The Union proposes that there be no reopener with respect to medical insurance.

2. Discussion and Findings

This issue begins and ends in equity. The Employer maintains that should "medical costs sky-rocket" because of a "bad claims experience," it has a "legitimate interest in having that issue addressed in the context of a reopener" (Emp. Brief, 52-3). The Union argues that the proposed reopener is unfair. First, since wages and longevity benefits

cannot be reopened, the Union would have no bargaining leverage (Un. Brief, 25). Second, the proposed reopener would permit the Employer to increase employee contributions unilaterally if the parties reached impasse (Un. Brief, 25).

I am sympathetic to both arguments, but the Union's argument must ultimately prevail. Insurance costs can "skyrocket," but the suggested reopener, if adopted, would put the Union in the position of a supplicant. Without being able to trade off other benefits or invoke interest arbitration, the Union would have little bargaining leverage. Despite the Employer's reasonableness and good faith, the proposed single-issue reopener is inequitable; if adopted, it would distort the normal bargaining relationship.

I adopt the Union's final offer on the medical insurance reopener.

G. Sick Leave/Emergency Leave

1. The Employer's Final Offer

The Village proposes to delete Sections 1 through 5 of Article XIV, retitle Article XIV "Disability Benefits" and revise Section 1 of Article IX to read as follows:

> Section 1. Sick Leave. (a) Sick Leave Accrual. Effective January 1, 1996, employees shall earn 8 hours of sick leave for each completed month of Village employment. Employees beginning employment from the 1st through the 15th day of the month will be credited 8 hours of sick leave for that month of service. Employees beginning the 16th through the end of the end of the month will be credited with 4 hours of sick leave for that month of service but must wait until the following month to be eligible for sick leave pay. Unused sick leave may be accumulated from year to year up to a maximum of 960 hours.

(b) Use of Sick Leave. Sick leave may be used only for an employee's maternity, illness, injury and doctor's appointments, or for serious illness, or for serious illness or injury in the employee's immediate family. "Immediate family" for this purpose is defined as the employee's spouse, children, parents, mother-in-law, father-in-law, brothers, sisters, and grandparents. In case of serious illness in the immediately family which necessitates the employee's presence, up to 24 hours of sick leave shall be approved by the Police Chief or his designee. An additional 16 hours may be approved by the Village Manager, such approval not to be arbitrarily and unreasonably denied; if approved, such additional hours shall be charged to emergency leave, if available, or sick leave if the employee does not have any emergency leave.

In the event an employee is unable to work due to illness, he must inform his supervisor prior to the start of the scheduled work day. Failure to inform the supervisor each day of absence, or at agreed intervals in the case of an extended illness, will result in loss of pay. Employees will comply with such reporting rules as may be established by the Police Chief.

In order to receive pay for a sick leave day that occurs immediately before or immediately after any other regularly scheduled paid day off the employee must establish proof of sickness to the reasonable satisfaction of the Police Chief or his designee.

(c) Sick Leave Bonus Days. Effective January 1, 1996, employees shall be eligible for sick leave bonus time to be taken during the current calendar year based on how many sick leave days and emergency leave days that the employee used during the preceding calendar year in accordance with the following:

No. of Sick Leave/Emergency Leave Days Used as of 12/31	No. of Sick Leave Bonus Days/Hours
None	3 days (24 hrs.)
1-4 days	2 days (16 hrs.)
5-8 days	1 day (8 hrs.)
9 or more	None

Use of sick leave for either the employee's own use or for the employee's family and use of emergency leave for either the employee's family and use of emergency leave for either the employee's own use or for the employee's family will count in determining eligibility for sick leave bonus days.

(d) Miscellaneous. The Village retains the right to take corrective steps to deal with abuse of sick leave or if an employee has prolonged and/or frequent and regular absences which hinder the carrying out of their responsibilities. Such corrective steps may include medical consultations, informal or formal disciplinary action, including dismissal.

Sick leave may not be used for absence due to a work-related injury for which compensation is provided under the Worker's Compensation Act. If an employee's illness or injury exceeds the amount of available sick leave, the employee may elect to use earned but unused paid time off, or request to be placed on leave without pay.

(e) Emergency Leave. Employees who were employed prior to December 31, 1995, and who had accumulated emergency leave as of December 31, 1995, will retain such emergency leave but no additional emergency leave shall be earned after December 31, 1995. Such employees who still have accumulated and unused emergency leave may use such leave for the same reasons, and subject to the same conditions, as set forth herein for sick leave as long as there is a reasonable likelihood that the employee will return to work; provided, however, that the first 24 hours must be charged to sick leave before emergency leave may be used. Emergency leave shall not be used and shall not be granted for injuries or illness resulting from gainful employment, including gainful self-employment, in any other business, position or occupation.

(f) Transition Provision. The sick leave (Article IX, Section 1) and emergency leave (Article XIV, Sections 1-5) provisions of the parties' 1991-94 collective bargaining agreement shall continue in effect through December 31, 1995.

2. The Union's Final Offer

The Union proposes to maintain the language set forth in Article IX, Section 1 (Sick Leave) and Article XIV, Sections 1-5 (Emergency Leave) of the 1991-94 Agreement.

Article IX, Section 1 of the 1991-94 Agreement provides:

> Article IX
> Leaves of Absence
>
> Section 1. Sick Leave. Effective January 1, 1989 and January 1 on succeeding years, each employee shall be advanced 9 sick leave days for use during the calendar year and said days shall not be accumulative. Sick leave may be used for illness, injury, maternity, doctor's appointments, or for serious illness or injury in the employee's immediate family. Immediate family shall be defined as the employee's spouse, children, parents, mother-in-law, father-in-law, brothers, sisters, and grandparents. In case of serious illness in the immediate family, up to three days of sick leave may be approved by the Police Chief or his designee. An additional two days may be approved by the Village Manager. Effective January 1, 1989, employees shall not be paid for the first day of each sick leave occurrence beginning with the fourth such occurrence in the calendar year; provided, however, employees may use earned but unused vacation days/holidays/compensatory time for the first day of each sick leave occurrence beginning with the fourth such occurrence in the calendar year.
>
> In the event an employee is unable to work due to illness, he must inform his supervisor prior to the start of the scheduled work day. Failure to inform the supervisor each day of absence, or agreed intervals in the case of extended illness, will result in loss of pay. Employees will comply with such reporting rules as may be established by the Police Chief.
>
> The Village retains the right to take corrective steps to deal with abuse of sick leave or if an employee has prolonged and/or frequent and regular absences which hinder the carrying out of their responsibilities. Such corrective steps may include medical consultations, informal or formal disciplinary action, including dismissal.

Sick leave, if available, must be used for the first three working days of an employee's absence due to illness, sickness or injury. Emergency leave may only be used commencing with the fourth consecutive working day an employee is absent due to sickness, illness or injury.

Article XIV, Sections 1 through 5, provide:

Article XIV
Emergency Leave and Disability Benefits

Section 1. Definition and Method of Accrual. Commencing the first day for illness involving in-patient hospitalization or out-patient surgery and fourth day for illness involving home confinement, employees shall be placed on paid emergency leave status provided they have sufficient accrual in accordance with the following schedule based on years of seniority:

Years of Seniority	Emergency Leave Days Earned
Less than one year	0
1 - 2 years	10
3 years	20
4 years	30
5 years	40
6 years	50
7 years	65
8 years	80
9 years	95
10 years	110
11 - 16 years	150
17 - 20 years	200
Over 20 years	260

Emergency leave may also be used for off the job injury or disability or quarantine due to a contagious disease. Emergency leave may not be arbitrarily and unreasonably denied. Emergency leave shall not be granted for personal reasons, or for routinely scheduled medical, dental or optical appointments. Such absences may be charged to compensatory time.

Section 2. Emergency Leave Days. Emergency leave days used shall be deducted from the maximum accrual based on the employee's years of service.

Section 3. Emergency Leave. The Department Head may grant emergency leave taking into consideration length of service of the employee; past performance

of duties; previous use of emergency leave; attendance; ability of the operating unit to absorb work of the employee without the addition of new personnel; and such other factors as will give equitable consideration to the interest of the employee and grant additional emergency leave to a maximum of one year.

Section 4. Emergency Leave. The Department Head may deny the emergency leave or pay to an employee for unexcused absences for excessive intermittent or excessive regular absences because of illness or physical inability to perform the assigned duties of his position.

Section 5. Emergency Leave. Emergency leave shall not be granted for injuries or illness resulting from employment in any other business, position, or occupation.

3. Relevant Background Information

Prior to negotiations in 1986 leading to the parties' first collective bargaining agreement, the Employer instituted a sick-leave policy that allotted each employee 12 sick days per year, accumulative to 120 days (Tr. 176-77). Acceding to the Union's request, the Employer agreed in 1986 to reinstate its prior policy on emergency leave; the parties also agreed that police officers would get six non-accumulating sick leave days per year (Tr. 177-78). The sick-leave language of the 1986-88 agreement (EX 15) provided as follows:

Article IX
Leaves of Absence

Section 1. Sick Leave. Effective January 1, 1987 and January 1 on succeeding years, each employee shall be advanced 6 sick leave days for use during the calendar year and said days shall not be accumulative. Sick leave may be used for illness, injury, maternity, doctor's appointments, or for serious illness or injury in the employee's immediate family. Immediate family shall be defined

> as the employee's spouse, children, parents, mother-in-law, father-in-law, brothers, sisters, and grandparents. In case of serious illness in the immediate family, up to 3 days of sick leave may be approved by the Police Chief or his designee. An additional 2 days may be approved by the Village Manager.
>
> In the event an employee is unable to work due to illness, he must inform his supervisor prior to the start of the scheduled work day. Failure to inform the supervisor each day of absence, or agreed intervals in the case of an extended illness, or agreed intervals in the case of an extended illness, will result in loss of pay. Employees will comply with such reporting rules as may be established by the Police Chief.
>
> The Village retains the right to take corrective steps to deal with abuse of sick leave or if an employee has prolonged and/or frequent and regular absences which hinder the carrying out of their responsibilities. Such corrective steps may include medical consultations, informal or formal disciplinary action, including dismissal.
>
> Sick leave, if available, must be used for the first 3 working days of an employee's absence due to illness, sickness or injury. Emergency leave may only be used commencing with the fourth consecutive working day an employee is absent due to sickness, illness or injury.

In 1988 the parties settled on nine sick days a year, but agreed that, starting with an employee's fourth sick-leave occurrence each year, he/she would not be paid for the first day (Tr. 178; EX 16, Art. IX, § 1). In 1994, the Union initially proposed to increase the number of non-accumulating sick days to twelve and to eliminate the waiver of payment for the first day of any sick-leave occurrence (EX 75). The Village countered by suggesting that it either revert to "emergency leave as originally negotiated by the parties" or the sick-leave program "the Village provides for all other Village employees" (Tr. 179).

4. Positions of the Parties

(a) The Employer

1. Although the Union argues that it seeks to maintain the status quo, "it was the Union's insistence on changing the status quo...that brought about the Village's proposal" (Emp. Brief, 57). The Village's offer would accomplish its "stated purpose" of reinstating "the sick leave program in effect immediately prior to the effective date of the parties' first collective bargaining agreement" (Emp. Brief, 57).

2. The Village offer would "grandfather all emergency leave that police officers had heretofore accrued" and they "would continue to have the right to use grandfathered emergency leave for the same purposes that it has been used in the past" (Emp. Brief, 57-8).

3. The Village's offer would provide to police officers the "uniform Village-wide policy...applicable to the fire fighter bargaining unit" (Emp. Brief, 58).

4. External comparisons support the Village's offer (Emp. Brief, 58). Eleven comparable communities provide 12 sick days per year, with accumulations ranging from 60 days to no limit (Emp. Brief, 58). Only Lincolnwood and Morton Grove have provisions "remotely comparable" to those contained in the prior collective bargaining agreement with respect to sick leave/emergency leave (Emp. Brief, 58).

(b) The Union

1. To "impose a new plan that has not been the subject [of] mutual discussions, compromises and agreement would be horrible" (Un. Brief, 26).

2. The Employer's offer "makes several changes to the status quo" (Un. Brief, 26):

(1) A change from non-accumulation to accumulation.
(2) An increase in sick days from 9 up front to one at end of month.
(3) An elimination of sick occurrences.
(4) A requirement that "serious family illness" necessitate presence of employee.
(5) A change making "additional" serious family illness leave emergency leave.
(6) A requirement of proof of illness if illness is day before or after an off-day.
(7) An addition of sick leave bonus days.
(8) A requirement that emergency leave is grandfathered only for current employees.

3. The Employer asserts that it proposed to "radically change the sick leave/emergency leave provision" as a response to the Union's proposal (Un. Brief, 27). Since the Union's current proposal is to "retain the status quo," there "is no reason" to adopt the Employer's offer (Un. Brief, 28).

4. The Employer has "little evidence and/or argument" in support of "such a radical change...in a major benefit" (Un. Brief, 28). Although police officers in comparable communities may accumulate sick leave, Skokie police officers are comfortable not accumulating sick leave, if emergency leave "can support any off-duty illnesses or injuries" (Un. Brief, 28). Systems in comparable communities do not reflect the articulated interests of this bargaining unit (Un. Brief, 28).

5. In fact, there aren't many similarities among the comparable communities (Un. Brief, 28). Traditionally, sick leave varies widely among jurisdictions (Un. Brief, 28). Each community "has different concerns and interests with regard to this benefit" (Un. Brief, 28). It is "best to leave major changes in this benefit to the negotiators" (Un. Brief, 28).

5. Discussion and Findings

Sick leave and emergency leave are economic benefits and thus subject to scrutiny under Section 14(h). However, it is not only difficult to make comparisons among different sick leave plans, it is difficult to calculate the cost of sick leave plans. Unlike wages, which are fixed (even though the employee complement may change), sick leave is a contingent benefit, as well as a contingent cost, dependent on utilization. Although a prudent employer may establish a line item in its budget for sick leave or even set up a sick-leave sinking fund, all projected cost calculations are a statistical artifact. In effect, sick leave is a form of employer self-insurance, and its precise cost is a function of experience. For these reasons, the usually significant factor of comparability is of somewhat diminished significance.

To cite one illustration of the difficulty of making comparisons, the Arlington Heights plan is similar to the Employer's proposal in that it offers 12 days of sick leave per year, accumulating to 240 days. However, in many other ways, the Arlington Heights plan is different from the Employer's proposal. It does not (1) accrue sick leave for a

partial month; (2) it does not define "immediate family"; (3) it does not limit leave in the event of illness in the immediate family to any particular period of time or require that the employee's presence be "necessary"; (4) it is silent with respect to "emergency leave"; (5) it is silent about whether notice is required by an employee absent because of extended illness; (6) it does not require an employee absent the day before or after a day off to "establish proof of sickness"; and (7) it contains no provision on "sick leave bonus days."

There are a variety of sick leave programs in the comparable communities similar in outline—similar in the number of sick days and accumulated sick days—but dissimilar in significant detail. Respecting the wisdom that God (and the devil) dwells in the details, I must pay more than passing attention to the details. The details make comparisons among sick-leave plans problematic.

Emergency leave is the obvious irritant, the detail deviling the Employer. In return for phasing out emergency leave, the Employer has offered to increase the number of annual sick days from 9 (all available at the beginning of the calendar year) to 12 (one day of leave accumulated at the end of each month) and permit sick-leave accumulation. The Employer has also proposed to "clean up" sick leave by eliminating "sick occurrences"; by requiring employees to show "necessity" for being with an ill relative; by requiring time off for "additional" family illness to be taken as emergency

leave; by requiring proof of illness if the day of leave is the day before or after an off-day; and by adding sick leave bonus days. In short, the proposed changes are many and substantial.

Without substantial justification for the many complex changes proposed in the *status quo,* I am reluctant to adopt the Employer's proposal. Although, as noted, many of the comparable police departments provide 12 days of sick leave and sick-leave accumulation of at least 120 days, more generous benefits than Skokie police officers now enjoy, the price Skokie police officers would be asked to pay for similarly generous benefits does not seem comparable to those contained in the sick-leave plans of comparable police departments.

On reflection, I think it best to let the parties themselves work out radical and complex changes in their medical-leave plan. Each part of the Employer's proposed plan would seem subject to review and discussion. Each part is potentially subject to tradeoff, concession or compromise, actions beyond the authority of an arbitrator, who must accept or reject a final offer in its entirety.

In *City of Springfield & IAFF Local 37,* S-MA-18 (Berman 1987), I noted at page 38 that "without economic or operational justification, it is inappropriate to take away employees' benefits." I have not yet been persuaded to modify that general principle. The party proposing a change has the burden of justification. As arbitrator Harvey Nathan wrote in

Will County Board, supra (Nathan 1988), cited in *City of Markham & Teamsters, Local 726,* S-MA-95-63 (Berman 1995), at 34:

> In the present case, the Employer seeks to make substantial changes in the language of the Agreement. While it is true that the Employer argues that the changes it seeks are merely a clarification of the old Agreement and give rise to a system no different than what the law allows, it remains nonetheless that [the] old Agreement contains a substantially different system for the resolution of grievances. The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party seeking the change.

In this case, not all the changes sought are "entirely new"; most are related to benefits contained in the 1991-94 agreement. However, changes in emergency leave and leave-qualification procedures are different enough from the "product of previous negotiations" to require that the onus be placed on the Employer, "the party seeking the change." The Employer did not meet this burden.

I adopt the Union's final offer on sick leave/emergency leave.

H. Employee Discipline (Non-Economic)

The term "grievance" is defined as follows in Article V, Section 1 of the 1991-94 Agreement:

> A "grievance" is defined as a dispute or difference of opinion raised by an employee against the Village involving an alleged violation of an express provision of this Agreement except that any dispute or difference of opinion concerning a matter or issue subject to the jurisdiction of the Skokie Police and Fire Commission shall not be considered a grievance under this Agreement.

Article XV of the 1991-94 Agreement, Management Rights, recognizes the "exclusive right of the Village" "to discipline, suspend and discharge employees for just cause (probationary employees without cause)."

Traditionally, disciplinary actions, including discharges, contested by employees have been resolved by the Village's Fire and Police Commission in accordance with the Illinois Municipal Code.

1. The Final Offers

(a) The Union's Final Offer

Discipline and Discharge

The Village agrees that non-probationary employees may be disciplined and discharged only for just cause. Where the Police Chief or his designee believes just cause exists to institute disciplinary action against any such employee he shall have the option to impose or seek the following penalties:

a) oral reprimand
b) written reprimand
c) suspension
d) demotion
e) discharge

If the Police Chief or his designee decides to discipline or institute disciplinary action against any such employee, the following procedures shall apply:

1. Police Chief's Authority to Discipline and to Suspend Pending Investigation and/or Hearing

(a) The Police Chief or his designee shall have the disciplinary authority:

(1) To reprimand or suspend employees without pay as a disciplinary measure up to a maximum of 5 duty days in accordance with 65 ILCS 5/10-2.1-17 and the rules and regulations of the Skokie Fire and Police Commission effective May 1, 1994. Such

disciplinary action shall be deemed final, subject only to an appeal of such discipline in accordance with the provisions of this Article.

(2) To file charges against employees seeking the penalties of a suspension without pay of more than 5 duty days up to 30 calendar days, demotion or discharge.

(b) The Police Chief or his designee shall also have the authority to suspend an employee with or without pay pending investigation and/or pending a hearing regardless of which hearing option may be selected by the employee. If the employee is suspended without pay, nothing herein shall be construed to waive an employee's rights under the Supreme Court's decision in Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

(c) If the Police Chief or his designee decides to discipline an employee or to initiate discipline of an employee, he or his designee shall serve written notice of the charges and disciplinary penalty or proposed disciplinary penalty upon the employee involved. The following provisions shall be applicable when disciplinary action is taken or instituted by the Police Chief or his designee:

(1) If the employee elects to have the disciplinary action heard by the Board of Fire and Police Commissioners, the employee's appeal shall be governed by 65 ILCS 5/10-2.1-17 and the rules and regulations of the Skokie Board of Fire and Police Commissioners, effective May 1, 1994.

(2) If the employee elects to file a grievance as to the disciplinary action, the grievance shall be processed in accordance with Article V of the Agreement, except that it shall be filed at Step 4 of the procedure. Once the employee notifies the Village of his decision to have the appeal heard through the grievance and arbitration procedure, the decision of the Police Chief or his designee with respect to the disciplinary action shall be deemed final, subject to the review of said decision through the grievance and arbitration procedure.

2. Irrevocable Election of Appeal Procedure. Upon receipt of the notice, the employee may elect to appeal the disciplinary action (excluding oral reprimands under either option and both oral and written reprimands under the Board of Fire and Police Commissioners option) either to the Village of Skokie Fire and Police Commissioners ("Board of Fire and Police Commissioners") or through the grievance and arbitration procedure set forth in Article V of this Agreement. The employee shall notify the Village of his election in writing within 10 calendar days of receiving the Police Chief's written notice of discipline. It is agreed that the option to appeal either to the Board of Fire and Police Commissioners or through the grievance and arbitration procedure are mutually exclusive and that no relief shall be available under the grievance and arbitration procedure with respect to any matter which, at the employee's option, is appealed to the Board of Fire and Police Commissioners, and that no relief shall be available under the Board of Fire and Police Commissioners' appeal process with respect to any matter, which at the employee's option, is appealed to the grievance and arbitration procedure set forth in Article V of this Agreement.

3. Board of Fire and Police Commissioners Option. If the employee notifies the Village of his decision to have the appeal heard before the Board of Fire and Police Commissioners, the procedures set forth in 65 ILCS 5/10-2.1-17 shall be applicable except as modified in this Article. Where the Police Chief believes there is just cause to demote or discharge an employee, he shall not file formal charges with the Board of Fire and Police Commissioners until the employee has notified the Village in writing of his irrevocable option to have the appeal heard before the Board of Fire and Police Commissioners within the 10 calendar day period specified above. If the Board of Fire and Police Commissioners determines there is or is not just cause for discipline, it retains the disciplinary and remedial authority, whichever is applicable, set forth in its rules and regulations effective May 1, 1994, and 65 ILCS 5/10-2.1-17.

4. Grievance and Arbitration Option. If the employee notifies the Village of his decision to

have the appeal heard through the grievance and arbitration procedure, the grievance shall be filed at Step 4. Any appeal to the grievance and arbitration procedure shall be signed by a representative of the Union and shall also contain a signed statement from the affected employee waiving any and all rights he may have to appeal the discipline to the Board of Fire and Police Commissioners. Any disciplinary grievance filed without the required signed waiver shall not be arbitrable and the arbitrator shall be without jurisdiction to consider or rule upon it. If the arbitrator determines that the disciplinary action is not supported by just cause the arbitrator shall have the authority to rescind or modify the action and order that the employee be made whole for any losses incurred as a result of disciplinary action, or portion thereof, that is not sustained by the arbitrator.

5. Finality of Decision and Judicial Review. The decision of an arbitrator or the Board of Fire and Police Commissioners, whichever is applicable, with respect to any such disciplinary action shall be final and binding on the employee, the Union, and the Village, subject only to an appeal in accordance with the provisions of Illinois law applicable to the option elected, i.e.:

   a) Board of Fire and Police Commissioners option: Any appeal of a Board of Fire and Police Commissioners decision shall be in accordance with the provisions of the Administrative Review Act as provided by the Board of Fire and Police Commissioners Act, 65 ILCS 5/10-2.1-17.

   b) Arbitration option; Any appeal of an arbitrator's award shall be in accordance with the provisions of the Uniform Arbitration Act as provided by Section 8 of the IPLRA, 5 ILCS 315/8.

Pursuant to Article VII, Section 6, of the Illinois Constitution of 1970 and Section 15 of the IPLRA, the foregoing provisions with respect to discipline and the appeal and review of discipline shall be in lieu of, and shall expressly supersede and preempt, any provisions that might otherwise be applicable under either 65 ILCS 5/10-2.1-17, or the Rules and

Regulations of the Village of Skokie Board of Fire and Police Commissioners.

(b) The Employer's Final Offer

It is the Village's position that the Arbitrator has no jurisdiction to issue an award on this issue since the Illinois Municipal Code specifically sets forth the exclusive procedure for dealing with discipline and discharge where there is, as there is in the Village of Skokie, a Board of Fire and Police Commissioners.

2. Positions of the Parties

(a) The Union

1. *City of Decatur v. AFSCME,* ____ Ill.2d ____, 4 PERI ¶4016 (1988), is controlling. In *City of Decatur,* the Illinois Supreme Court sustained the decision of the Illinois State Labor Relations Board (the "Board") that the employer had committed an unfair labor practice under the Illinois State Labor Relations Act (the "Act") by declining to bargain with the union about the union's proposal to permit firefighters to grieve discipline. See also *Village of Franklin Park,* S-CA-91-51, 8 PERI ¶2039 (ISLRB 1992), enf'd ____ Ill.App.3d _____, 10 PERI ¶4004 (4th Dist. 1994); *Board of Trustees of the University of Illinois (Chicago) v. IELRB,* ____ Ill.App.3d ____, 9 PERI ¶4011 (App. Ct. 1993); *Health Employees of Metropolitan Chicago v. County of Cook,* ____ Ill.App.3d ____, 9 PERI ¶4002 (1st Dist. 1992). Regardless of *Parisi and* arbitrator Fleischli's award in *City of Schaumburg,* "the Arbitrator should review the total caselaw and decide this issue" (Un. Brief, 34).

2. In *Village of Skokie & Local 3033, IAFF,* S-MA-92-179 (Gundermann 1993), arbitrator Neil Gundermann made "discharge

and discipline subject to either the grievance and arbitration procedure or the Fire and Police Commission..." (Gundermann, 79). With minor changes unique to police matters, the language "sought by the Union for inclusion into the police contract is taken from the firefighters' contract" (Un. Brief, 34). In this area, parity should be maintained (Un. Brief, 34).

(b) The Employer

Noting that Section 14(h)(1) of the Act requires an arbitrator to consider "'[t]he lawful authority of the employer,'" the Employer points out that *Parisi v. Jenkins,* 236 Ill.App.3d 42, 603 N.E.2d 566 (1st Dist. 1992), "rejected the argument that a termination provision in a collective bargaining agreement 'was a proper subject of bargaining under the Illinois Public Labor Relations Act'" (Emp. Brief, 64). In *Parisi,* the court held that "the statutory authority of the Board of Fire and Police Commissioners 'to determine cause for dismissal supersedes the termination' provision in the collective bargaining agreement'" (Emp. Brief, 64). See also *Village of Schaumburg & Lodge 71, Illinois FOP Council,* S-MA-93-155 (Fleischli 1994) (EX 79); *Board of Education of Rockford School District No. 205 v. IELRB,* 165 Ill.2d 80, 649 N.E.2d 369 (1995).

3. Discussion and Findings

(a) Legal Analysis

In *City of Markham (Police Department) & Teamsters Local 726,* S-MA-95-63 (Berman 1995), I dealt with arbitral

review of discipline from a somewhat different perspective. The City of Markham asked me to delete any reference to just-cause discipline, suspension and discharge contained in the prior labor contract and to remove from the labor contract the following language developed by arbitrator George Larney in a 1989 interest-arbitration award:

> An employee disciplined by the Chief shall have the option of appealing such disciplinary action either before the City of Markham Fire and Police Commission or through the grievance procedure set forth in Article VII of this Agreement. Such election must be made in writing within seven days of the imposition of the discipline. If the employee elects to appeal the discipline through the contractual grievance procedure, he shall voluntarily sign and present to the City an express waiver of his right to appeal the matter before the Fire and Police Commission at the time his grievance is filed.

The Employer also proposed to add the following sentence to the definition-of-a-grievance section of the labor contract: "It is expressly agreed that the jurisdiction of the Board of Fire and Police Commissioners to discipline or otherwise exercise its statutory powers shall not be considered a grievance."

The union proposed to retain arbitral review of discipline and discharge, but to replace the two-track option with a two-step ladder: Step 1—the Commission; Step 2—grievance and arbitration. Under the union's proposal, the Commission issues a decision consistent with the "statutory standard" of "cause," but the disciplined employee may appeal the Commission's decision to arbitration under a "just cause" standard. I adopted the Union's final offer.

In *Markham,* I reviewed *City of Decatur* and *Parisi.* They are also critical to resolution of this dispute.

(b) The Watershed Decisions: City of Decatur, Parisi and Rockford District 205

(i) City of Decatur

In *City of Decatur,* AFSCME represented a unit of civil service employees. By referendum, Decatur, a home-rule unit, established a civil service commission and adopted the civil service provisions of Article 10, Division 1 of the Illinois Municipal Code. Article 10(1) provides that a civil service employee cannot be discharged or suspended for 30 days or more without "an opportunity to be heard in his own defense" before a civil service commission. Civil service employees suspended for more than five days or within six months after a previous suspension are also entitled to a hearing before the civil service commission.

Arguing that the Municipal Code gave its Civil Service Commission exclusive jurisdiction to adjudicate complaints by civil service employees that they were improperly disciplined, the City of Decatur declined to bargain over the union's proposal to "submit disciplinary grievances to arbitration." AFSCME filed an unfair labor practice charge with the Illinois State Labor Relations Board alleging unlawful refusal to bargain. Adopting the hearing officer's recommended decision and order, the Board held that the City of Decatur had unlawfully refused to bargain with the union. The appellate court reversed, and the Illinois Supreme Court reversed the decision of the appellate court.

Section 7 of the Act requires an employer to bargain over "wages, hours and other conditions of employment, not specifically provided for in any other law." Declining to "frustrate the declared policy of the State" to provide "public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment...," the Supreme Court construed the "accommodation provision of section 7" broadly (4 PERI ¶4016, XII-66):

> As the language of section 7 indicates, the mere existence of a statute on a subject does not, without more, remove that subject from the scope of the bargaining duty. For example, one type of statute that would not relieve an employer of the duty to bargain over an otherwise mandatory subject of bargaining would be a provision establishing a minimum level of benefit, such as a minimum wage law or minimum salary law. In that case, wages would remain a mandatory subject of bargaining, and the employees' bargaining representative would be free to insist on a level higher—but not lower—than that required by law.

A critical, even dispositive factor, the Court found, was the "nature of the other law" alleged to have been violated. The Court held that the civil service system described in the Municipal Code was "an optional scheme and not one imposed by the State on any municipal body"; therefore, the City could "unilaterally alter or amend" it (4 PERI ¶4016, XII-66). The court also pointed out that Section 8 of the Act required all collective bargaining agreements to contain a "grievance resolution procedure...provid[ing] for final and binding arbitration of disputes..." and that the

"union's proposal concerns a well-recognized and familiar means for resolving labor disputes..." (4 PERI ¶4016, XII-66). Thus, the court held, at 4 PERI ¶4016, XII-66-7):

> Given the purpose of the Act, the nature of that part of the civil service system at issue here, and the legislature's express preference for arbitration as a method for resolving disputes during the life of a labor contract, unless mutually agreed otherwise, we conclude that the State Board was correct in ordering the city to bargain over the union's proposal. In these circumstances, we construe the union's proposal as pertaining to a matter not specifically provided for or in violation of another law, and as supplementing, implementing, or relating to the provisions of the civil service scheme adopted by the city. We do not believe that the legislature would have intended that the civil service system it made available, as an optional matter, to municipalities in the Municipal Code would eliminate the duty to bargain over the union's proposal here.

(ii) *Parisi v. City of Worth*

In *Parisi v. City of Worth,* the Illinois Appellate Court for the First District invalidated a provision of a labor contract that called for the discharge of a police officer unable to return to full and unrestricted duty within 365 days of a non-work-related injury. The court held that this provision was inconsistent with the Police Board's statutory authority to determine cause for dismissal. Citing *Weisenritter v. Board of Fire and Police Commissioners of the City of Burbank,* 67 Ill.App.3d 799, 24 Ill.Dec. 424, 385 N.E.2d 366 (1978), the court noted that "Illinois statutory law provides that a member of a police department may be removed or discharged only for cause, upon written charges and after an opportunity to be heard at a fair and impartial hearing, conducted by the Board of Fire and Police

Commissioners" (*Parisi,* 9 PERI 4001, at XII-3). The court went on to hold, at 9 PERI 4001, XII-4, that the "Police Board's statutory power to determine cause for dismissal and terminate an employee cannot be abrogated by a collective bargaining agreement." The City of Worth was not a home-rule unit of government.

The court explicitly overruled "defendants' claim that the termination provision was a proper subject of bargaining under the Illinois Public Labor Relations Act" (*Parisi,* 9 PERI 4001, at XII-4). The court rejected "defendants' characterization of the provision as '365 day condition of employment,'" stating that a "provision which summarily defines cause for discharge is not a 'condition of employment' under the meaning of the statute" (*Parisi,* 9 PERI 4001, at XII-4). The court held that a contract clause narrowly defining "cause for termination" "constitute[d] a matter specifically provided for in, and directly in conflict with section 10-2.1-17" of the Illinois Municipal Code (*Parisi,* 9 PERI 4001, at XII-4). For some unexplained reason, as I have noted, "although the court reached back to *Weisenritter,* a pre-Labor Relations Act case, it ignored *Decatur v. ISLRB*" (*City of Markham,* S-MA-95-63 [Berman 1995], at 29).

(iii) Rockford District 205

Rockford District 205 v. IELRB warrants consideration, even though it arose under the Illinois Educational Labor Relations Act ("IELRA"). In *Rockford,* an arbitrator, interpreting just-cause language contained in a labor contract,

directed the school board to rescind a remedial notice it had issued on a teacher. Ultimately, the Illinois Supreme Court vacated this award, holding that Section 10(b) of the IELRA "permits a provision in a collective bargaining agreement to supplement a statute pertaining to wages, hours or other conditions of employment," but "it does not allow such supplementary language to be 'in violation of, or inconsistent with, or in conflict with' the School Code."[8] The court stated:

> [I]mplementation of the "just cause" provision in arbitration is inconsistent and conflicts with the mandates established pursuant to section 24-12 of the School Code. As noted, section 24-12 recognizes the school board's dismissal authority under section 10-22.4 and prescribes the process for dismissal. We agree with the appellate court that to allow an arbitrator to decide whether a school board acted with just cause in issuing a "notice to remedy" against a tenured teacher is inconsistent and conflicts with the School Code, which grants the power of dismissal to the school board. As an integral part of the School Code's dismissal process, the District is given the authority to issue a "notice to remedy" when it determines that causes for dismissal are nevertheless remediable. The "just cause" provision challenges that authority and provides a duplicate method for ultimately challenging the process for dismissal. As a result, the grievance arbitration proceeding which relies on the "just cause" provision to contest a "notice to remedy" is prohibited by the dictates of section 10(b) of the Act.

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[8]Under Section 10(b) of the Illinois Educational Labor Relations Act, any provision of a collective bargaining agreement "in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly of Illinois" is invalid. Section 10-22.4 of the School Code gives a school board the power, among others, to "dismiss any teacher who fails to complete a 1-year remediation with a 'satisfactory' or better rating and to dismiss any teacher whenever, in its opinion, he is not qualified to teach" and Section 24-12 of the School Code establishes a procedure providing for dismissal of a teacher upon service of written charges and a hearing before a disinterested hearing officer.

(iv) Reconciliation of the Critical Decisions

Two threads seem to run through these decisions.

First, if the result of a grievance arbitration on any given issue is, or might be, in conflict with a decision reached by the public employer or civil service commission under its explicit and exclusive statutory authority, arbitration is foreclosed. Under the School Code, for example, a school board has the exclusive statutory power to issue a notice to remedy, and this authority is not subject to review by an arbitrator. Similarly, a non-home rule community that adopts a civil service commission is bound by the provisions for discipline and dismissal proceedings contained in the Municipal Code; it has no discretion to carve out any exception to the Code. On the other hand, as pointed out in *City of Decatur,* the civil service system is "an optional scheme" in a home-rule municipality; the municipality may unilaterally alter it.[9] A home-rule municipality "could...eliminate...features of a civil service system" inconsistent with the terms of a collective bargaining agreement; it is not foreclosed from exercising its discretion to substitute contractually based arbitration procedures for ordinance-based hearing procedures. It has only to change its ordinance.

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[9]The Board has suggested that the "civil service laws" on point in *Parisi* amounted to an "optional scheme." See also *AFSCME, Council 31 v. County of Cook,* ____ Ill.2d ____, 8 PERI ¶4006 (1992).

Second, as held in *Parisi,* a labor contract that contains a provision requiring an employee's "summary dismissal" is not a "condition of employment." Section 7 provides that a law that "pertains, in part, to a matter affecting the wages, hours and other conditions of employment...shall not be construed as limiting the duty 'to bargain collectively' and to enter into collective bargaining agreements containing clauses which either supplement, implement, or relate to the effect of such provisions in other laws." A contract clause that does not pertain to wages, hours and other conditions of employment must give way to a statute that does pertain to wages, hours and other conditions of employment. The summary dismissal clause under attack in *Parisi* was arbitrary and thus not a condition of employment within the meaning of Section 7.

[a] Teamsters Local 726 & City of Markham

In my Markham award, I relied in part on the analysis of Administrative Law Judge William Waechter in *Teamsters Local 726 & City of Markham,* S-CA-94-9 (1994), aff'd 11 PERI ¶2019 (1995). In *City of Markham,* the Board, adopting Judge Waechter's recommendations, held that the City of Markham had unlawfully refused to bargain by suing to enjoin Local 726 from enforcing an arbitration award reinstating a discharged police officer. The City, a non-home-rule jurisdiction, maintained that its Board of Fire and Police Commissioners had exclusive statutory authority to determine whether a

police officer had been properly discharged. The Board disagreed. Judge Waechter's analysis of *City of Decatur* and *Parisi* is instructive (11 PERI ¶2019, at X-107):

> In *City of Decatur*, the Illinois Supreme Court held that municipalities are required to bargain with their employees' exclusive representative concerning a union's proposal to have discipline issues resolved through the contractual grievance procedure, culminating in binding arbitration, regardless of the fact that the employer's civil service commission had jurisdiction over disciplinary matters. In contrast, *Parisi* held that a collective bargaining agreement requiring the termination of any police officer who is unable to return to active duty within one year after commencing disability leave was not enforceable because the employer, a non-home rule municipality, did not have the power to negotiate and agree to a provision abrogating its Board of Fire and Police Commissioners' authority. Indeed, in addressing the employer's authority to negotiate and agree to the provision requiring the termination of the officers on disability leave, the appellate court simply concluded that the particular agreement did not involve a "condition of employment" within the meaning of the Act because the clause "summarily" defined cause for discharge. *Parisi v. Jenkins*, 236 Ill.App.3d 42. More importantly, the *Parisi* court never held, let alone even discussed, that non-home rule municipalities lacked the authority to negotiate and agree to arbitrate discipline issues. Based on the following considerations, I find that the Illinois Supreme Court's decision in *City of Decatur* is controlling in this case, and *Parisi* did not permit the City to ignore the court's clear holding under *City of Decatur*.

Judge Waechter considered it immaterial that the City of Decatur was a home-rule municipality but that the Village of Worth in the *Parisi* case was not a home-rule municipality (11 PERI ¶2019, n. 13, at X-112):

> The fact that the employer in *City of Decatur* was a home rule municipality was irrelevant to the court's holding. Even though, in *City of Decatur*, the court specifically noted that the employer's status as a home rule municipality allowed it to alter or amend any of its civil service system's

terms, the employer's home rule status was not conclusive to the holding. Indeed the court's reference to the employer's home rule status in *City of Decatur* was stated only as a collateral factor and was not the determinative consideration to its holding in *City of Decatur*. I believe that if the court intended to base its holding on the fact that the employer was a home rule municipality, it would have clearly said so. This conclusion is supported by the court's own synopsis of its holding which made no reference to the employer's home rule status, stating that it did

> ...not believe that the legislature would have intended that the civil service system it made available, as an optional matter, to municipalities...would eliminate the duty to bargain over the union's proposal [concerning arbitration of discipline issues].

Judge Waechter suggested (11 PERI ¶2019, at X-107)—

> The statute which allowed the City to adopt its Board of Fire and Police Commissioners, the civil service system at issue in this case, is no different than the civil service system at issue in *City of Decatur,* since both civil service laws involve "an optional scheme" which was not imposed on either municipality. Accordingly, because the City's civil service system involved an optional scheme and because of the express public policy preferring arbitration as a method for resolving disputes during the term of the parties' contract, the City had the authority to enter into a contract with Local 726 that included grievance and arbitration procedures involving discipline issues.

[b] Conclusion

A just-cause discipline and discharge provision culminating in arbitration is neither summary nor arbitrary; it is a "condition of employment." The Village of Skokie, a home-rule unit, may supplement or amend its ordinances to accommodate just-cause language and the arbitral determination of just cause.[10]

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[10]I realize that *City of Decatur, Parisi* and *Rockford District 205* are a source of uncertainty for municipal employers and municipal unions. At

[c] Appropriateness of the Union's Proposal

Having resolved the threshold issue of lawfulness, I must still decide whether the just-cause language proposed by the Union is appropriate. The onus, of course, is "on the party seeking the change." *Will County Board, supra* (Nathan 1988), at 50.

Arbitrator Gundermann's reasoning in *Village of Skokie & Local 3033, IAFF,* S-MA-92-179 (Gundermann 1993), warrants consideration, even though he was asked to reject arbitral consideration of just-cause discipline and I have been asked to permit arbitral consideration of just-cause discipline.

In *Village of Skokie & Local 3033, IAFF,* the Village proposed to "delete reference to 'just cause' from the management rights article" and the union proposed to "delete exclusion of discipline from the scope of the grievance and arbitration procedure" (Gundermann, 63). The union proposed a two-track disciplinary option: a disciplined firefighter could proceed before the Board of Commissioners or through the grievance procedure, which culminated in binding arbitration.

Arbitrator Gundermann rejected the Village's proposal and remanded the issue of discipline to the parties with instructions to draft "language which implements the concept that discharge and discipline is subject to either the

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this point, municipalities may all too easily find themselves in a "damned if they do, damned if they don't" posture.

grievance and arbitration procedure, subject to concurrence by the Union, or the Fire and Police Commission" (Gundermann, 78).

Arbitrator Gundermann's logic is instructive (Gundermann, 76-7):

> It is difficult to conceive of a concept more fundamental to a collective bargaining relationship than that of just cause.
>
> * * *
>
> The Village offered scant rationale for its proposed deletion of just cause from the agreement, other than its implicit intent to preserve the Fire and Police Commission's jurisdiction over discipline. While this may be a laudatory objective from the Village's perspective, the elimination of the just cause standard from the collective bargaining agreement is not in the words of Arbitrator Briggs, "in line with prevailing arbitral thought." This arbitrator can find no basis for deleting the concept of just cause from the collective bargaining agreement.
>
> The undersigned recognizes that by retaining the just cause standard in the agreement it becomes subject to the grievance and arbitration procedure "unless mutually agreed otherwise." Under the existing language of Article XII, Section 3 those matters under the jurisdiction of the Fire and Police Commission, including discharge and discipline, are excluded from the grievance and arbitration procedure contained in the agreement. This effectively bars contractual enforcement of the just cause standard.
>
> It is the opinion of the undersigned, and of other arbitrators, that the just cause standard should be enforceable under the contractual grievance and arbitration procedure. At a very minimum an employee should be afforded the option of exercising his contractual rights to the grievance and arbitration procedure or his statutory right to a hearing before the Fire and Police Commission.

Ultimately, as proposed by the Union, the City of Skokie and the Union agreed on a two-track option disciplinary procedure.

In making a determination on a non-economic issue, I am not constrained by the factors set out in Section 14(h) of the Act. As arbitrator Harvey Nathan noted in *Will County Board & Sheriff of Will County, supra* (Nathan 1988), at 48:

> Under the arbitration scheme of [the Act], only economic issues require the arbitration panel to select the final offer of the parties. Non-economic issues are left to traditional arbitration where the neutral has the power to select or reject the parties' proposal or fashion one of his or her own.

The Act "encourages the parties to resolve non-economic issues on their own," and "a failure to do so will result in the imposition of what the neutral 'believes to be just and equitable language' which may or may not be palatable to the parties" [footnotes omitted] (Nathan, 48).

Internal comparisons notwithstanding, no evidence concerning external comparisons (assuming the relevance of such evidence) was produced. The evidence did not show how many, if any, comparable police departments had a two-step option procedure similar to the one proposed here by the Union. Nevertheless, as arbitrator Gundermann wrote, "it is difficult to conceive of a concept more fundamental to a collective bargaining relationship than that of just cause" (Gundermann, 76). As arbitrator Gundermann went on to suggest, unless an employee has at least the option of exercising "his contractual rights to the grievance and arbitration procedure" (Gundermann, 77), just cause is

illusory; it will always be a right in name only, a goal fading into the distance. With no method of enforcement, a so-called "right" is meaningless—a legal nullity. Finally, it seems well settled that "the elimination of the just cause standard from the collective bargaining agreement is not, in the words of Arbitrator Briggs, 'in line with prevailing arbitral thought'" (Gundermann, 76).[11]

I adopt the Union's final offer on discipline.

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[11]I am not unaware of the history of civil service reform in the United States, and its rise in the late nineteenth century as a response to the political spoils system. In recent years, it has been suggested, public personnel systems have developed "rigor mortis." See James Perry, Ed., *Handbook of Public Administration* (San Francisco/London: Jossey-Bass Publishers, 1989), 360-61. I have neither the scholarly background nor the authority (or evidence) to criticize civil service systems in general or civil service commissions in particular. I note only that I am aware of a growing "trend" in favor of the arbitration of police and fire fighter discipline. See *City of Markham & Teamsters 726, supra,* at 37. This trend is recent and encompasses a relatively small number of Illinois municipalities.

V. Summary of Awards

Issue 1: I adopt the Employer's final offer on salaries.

Issue 2: (Resolved by the Parties)

Issue 3: I adopt the Union's final offer on retroactivity.

Issue 4: I adopt the Union's final offer on longevity pay.

Issue 5: I adopt the Employer's final offer on specialty pay.

Issue 6: I adopt the Union's final offer on medical and dental insurance.

Issue 7: I adopt the Union's final offer on the medical insurance reopener.

Issue 8: I adopt the Union's final offer on medical leave/emergency leave.

Issue 9: I adopt the Union's final offer on discipline.

The provisions of the Agreement previously agreed to by the parties together with the final offers adopted in this Award shall constitute the parties' full agreement.

Herbert M. Berman
Arbitrator

December 8, 1995