INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

before

John C. FLETCHER, Chairman & Neutral Arbitrator
Gerald SPRECHER, Village Appointed Arbitrator
Joe DIFATTA, Union Appointed Arbitrator

Village of Downers Grove and Downers Grove Professional Firefighters, Local 3234, IAFF, S-MA-94-246, John Fletcher, 12/06/94

in the matter of the arbitration	)	
	)	
between	)	
	)	
DOWNERS GROVE PROFESSIONAL FIREFIGHTERS	)	**Case No. S-MA-94-246**
ASSOCIATION, LOCAL NO. 3234, IAFF	)	
	)	
and	)	
	)	
THE VILLAGE OF DOWNERS GROVE, ILLINOIS	)	

OPINION AND AWARD

of the

ARBITRATION PANEL

This matter came to be heard in the offices of the Village of Downers Grove ("Village") on August 5, 1994. The Village was represented by:

FRANCZEK SULLIVAN MANN CREMENT HEIN RELIAS, P.C.
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The Downers Grove Firefighters Association, Local No. 3234, IAFF ("Union") was represented by:

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A transcript of the proceedings was made and counsel for the parities filed post-hearing briefs, that were exchanged on October 31, 1994, causing the record to be closed on that date.

BACKGROUND

In June 1989, Union filed a petition with the Illinois State Labor Relations Board ("ISLRB") seeking to represent full-time fire fighting personnel and paramedics employed by the Village of Downers

Grove. Protracted litigation ensued before ISLRB and in the Courts,[1] with Union, in late 1991, being recognized as the sole and exclusive bargaining representative of "full-time Firefighters, Fire Engineers, Fire Lieutenants, Paramedics, Fire Captains and the Director of Emergency Medical Services." During the second half of the "litigation period," the summer of 1991 through January 1993, the parties engaged in negotiations and mediation over the terms of their initial collective bargaining agreement ("CBA"). In January 1993, a tentative agreement was reached on all except two issues, Captains' salaries and Fair Share. Interest arbitration[2] resolved those issues during the Summer of 1993.

While the CBA was being negotiated, which provided that certain provisions be made retroactive to May 1, 1991 with an expiration date of April 30, 1995, dramatic changes occurred in the personnel composition of the bargaining unit. Prior to unionization the Department operated with 33 full-time Firefighters, who were assigned to work four 11-hour shifts, Monday through Saturday. The remaining hours, Mondays through Saturdays and 24

[1] On February 5, 1992, the Clerk of the Illinois Supreme Court advised Counsel for Village that its appeal petition was denied, thus ending the litigation.

[2] Village of Downers Grove and Downers Grove Fire Fighters Association, Local 3234, S-MA-93-92. Opinion on Arbitrability issued June 4, 1993, Opinion on Merits issued September 15, 1993.

hours on Sundays, were covered by overtime call-backs of regular Firefighters and utilization of paid-on-call (volunteer) Firefighters, who worked the 13-hour night periods and 24-hour Sunday shifts. Paramedics in the Department were civilian employees, were not hired by the Police and Fire Commission ("Commission"), and were not covered by formal commissioning. With the implementation of the CBA, by agreement of the parties, a more traditional fire fighting and paramedic staffing pattern was adopted. Personnel were assigned 24 hours on duty with 48 hours off duty. Paramedics were now commissioned. These changes resulted in the bargaining unit being expanded from 44 to 78 full-time employees.

From June 1989, when Union instituted its representation efforts, until the parties reached agreement in 1993, bargaining unit employees did not receive a wage increase. As a result of negotiations, however, a 5.5% wage increase was made retroactive to May 1, 1991. A second increase of 5%, was retroactive to May 1, 1992. Additionally, Captains and Engineers received a $1,000.00 stipend added to their base pay. Finally, effective May 1, 1993, at the same time the 24/48 shift changes were placed into operation, employees with the exception of Captains received wage increases averaging 22%. Captains wages were set in an arbitration award at $48,000.00 with an added $500.00 stipend.[3]

The CBA contained a reopener for the last year of its term, May 1, 1994 through April 30, 1995. The reopener language, Article XLVII, Section 1, provided:

> **Section 1 - Duration and Notice** - This Agreement and each of its provisions shall be effective upon ratification or on the dates set forth in APPENDIX J and shall continue in full force and effect until the other notifies in writing by November 1 prior to the anniversary date of this contract that it desires to modify and or amend this Agreement. During the 1994-1995 contract year, the Union may request to reopen negotiations on salaries and on one other item.

THE PARTIES REOPENERS

The Reopener of the Union

[3] id.

Pursuant to this Article XLVI, Section 1, Union, on April 12, 1994, served Village with its reopener proposal reading:

UNION PROPOSAL TO AMEND THE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND DOWNERS GROVE PROFESSIONAL FIREFIGHTERS UNION, LOCAL NO. 3234
MAY 1, 1991 THROUGH APRIL 30, 1995

ARTICLE XXIX

WAGES

Effective May 1, 1994, employees shall be paid in accordance with Appendix E-1 attached hereto and incorporated herein.

Employees with a starting salary which is less than the starting salary established in the first year will receive an adjustment to the minimum of the salary range for their position or rank.

Employees will be paid as follows:

May 1, 1994 - April 30, 1995

	CAPTAIN		LIEUTENANT		ENGINEER	FIREFIGHTER PARAMEDIC	FIREFIGHTER
Start	$55,000	$48,000	$44,000	$32,000	$30,500		
1	$55,000	$48,000	$44,000	$35,400	$33,500		
2	$55,000	$48,000	$44,000	$37,400	$35,500		
3	$55,000	$48,000	$44,000	$39,400	$37,500		
4	$55,000	$48,000	$44,000	$41,400	$39.500		
5	$55,000	$48,000	$44,000	$43,000	$41,500		

Employees shall receive step increases on the anniversary of their day of hire with the village.

Employees at or beyond the end of their salary range during the 1994-95 contract year are eligible for a performance bonus of $1500.00. This bonus will not be added to the employee's base salary.

An employee is not eligible for a market adjustment or bonus unless an overall rating for "Meets Expectations" on the Employee Appraisal Form attached hereto as APPENDIX F. Appraisals will occur on or about November 1 of each year for the purpose of determining whether overall performance "Meets Expectations" and whether an employee shall receive his market adjustment or bonus.

ARTICLE XXXI

HOURS OF WORK AND OVERTIME

Section 1 - Transitional Provision - Delete

Section 6 - Kelly Days

The Union proposes seven (7) Kelly Days resulting in a work week of 53 hours and an annual salary based on 2744 hours.

The parties will negotiate the appropriate changes to current Sections 3-6 of this Article if the number of Kelly days is accepted.

The Counter Proposal of the Village

The Village's Counter Proposal, dated May 11, 1994, provided:

The Village proposes the following salary increases:

1. Increase each salary listed in the salary schedule in Article XXIX of the contract by 4.00% effective May 1, 1994;

2. On November 1, 1994, the above salaries will be increased by 1.6% (market adjustment);

3. The "Lieutenant" column will be reworded "Lieutenant/Captain";

4. Employees at or beyond the end of their salary range during the 1994-95 contract year are eligible for a performance bonus of up to 2% effective May 1, 1994. The bonus will not be added to the employee's base salary.

Negotiation and Mediation Efforts

The parties engaged in just two bargaining sessions and one mediation session, after which Union invoked interest arbitration under Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315 ("Act"). In spite of the fact that only minimal effort was exerted in direct collective bargaining and in mediation, the Chairman of the Arbitration Panel did not believe that it would be beneficial to remand the dispute to the parties for further negotiations.

Stipulations of the Parties

At the outset of the arbitration hearing the parties stipulated that seven communities, Des Plaines, Elmhurst, Hoffman Estates, Lombard, Mount Prospect, Oak Park and Park Ridge are communities comparable to Village within the meaning of Section 14(h) of the Act[4] Village, however, contends that in addition to the seven communities it acknowledged were comparable, Palatine and Wheaton should also be included, as these communities reflect many similar demographics to Downers Grove.

[4] Village's post-hearing brief (p.6) states that 6 comparable communities were stipulated to, omitting Lombard from the listing. For purposes of this arbitration the seven stipulated communities (Tr.10) will be the comparable communities used, it being apparent upon review of this entire record that the inclusion of Palatine and Wheaton, even if they are actually "more comparable" as argued by Village, their inclusion would have little or no impact upon various rankings. As will be shown below Villages proposal on maximum Firefighter salaries would place Downers Grove Firefighters eight out of eight. If Palatine and Wheaton are included in the factoring as comparable communities, the bottom ranking would not change, Village's offer would place them ten out of ten. Accordingly, there is no compelling basis to expand the comparable communities beyond those that the parties have agreed upon.

THE PARTIES LAST OFFERS OF SETTLEMENT

The Union's Last Offer of Settlement

The Union's Last Offer of Settlement, made at the August 5th hearing requested:

UNION FINAL PROPOSAL FOR INTEREST ARBITRATION
TO AMEND THE AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND DOWNERS GROVE
PROFESSIONAL FIREFIGHTERS UNION, LOCAL NO. 3234
EFFECTIVE MAY 1, 1991 THROUGH APRIL 30, 1995

ARTICLE XXIX

WAGES

Effective May 1, 1994, employees shall be paid in accordance with Appendix E-1 attached hereto and incorporated herein.

Employees with a starting salary which is less than the starting salary established in the first year will receive an adjustment to the minimum of the salary range for their positions or rank.

Employees will be paid as follows:

May 1, 1994 - April 30, 1994

	Firefighter		Firefighter/ Paramedic		Engineer	Lieutenant	Captain
Start	$30,500	$32,000	$44,000	$46,000	$54,000		
1 yr.	$33,500	$35,400			$47,000		
2 yrs.	$35,500	$37,400			$48,000		
3 yrs.	$37,500	$39,400					
4 yrs.	$39,500	$41,400					
5 yrs.	$41,500	$43,400					

All employees shall receive step increases on the anniversary of their date of hire with the village, except Lieutenants shall receive step increases on the anniversary date of their promotion into the Lieutenant classification.

Employees at or beyond the end of their salary range during the 1994-1995 contract year are eligible for a performance bonus of $1250. The bonus will not be added to the employee's base salary.

An employee is not eligible for a bonus unless he receives an overall rating for "Meets Expectations" on the Employee Appraisal Form attached hereto as Appendix F. Appraisals will occur on or about November 1 of each year for the purpose of advising employees of their performance during the first six months of the fiscal year. Final appraisals will occur on or about April 15 of each year for the purpose of determining whether overall performance "Meets Expectations" and whether an employee will receive his bonus.

ARTICLE XXXI

HOURS OF WORK AND OVERTIME

Section 1 - Normal Hours of Duty. Employees covered by the terms of this Agreement who work within the Fire Department shall be assigned to duty shifts (normal hours of duty).

The regular hour of duty (tour of duty) for employees shall be twenty-four (24) consecutive hours of duty, starting at 7:00 a.m.

The regular tour of duty shall be followed by forty-eight (48) consecutive hours off duty. A Kelly Day (i.e., what would otherwise be a 24 hour duty day) shall be scheduled off every eighteen (18) duty days, thereby reducing the normal workweek to an average of 52.88 hours.

Section 2- Kelly Day Trades. Kelly days may be traded between employees, provided such trades are between members of the same shift. Kelly Day trades shall not result in payment of overtime. Kelly Day trades are subject to approval by the Fire Chief or his designee, which approval will not be unreasonably denied.

Section 3 - Work Period. The work period of each employee for the purpose of the Fair Labor Standards Act (FLSA) is an established regular reoccurring period of twenty-seven (27) consecutive days. For FLSA purposes, each employee's work cycle shall be established so that the employee's Kelly Day (i.e., every 18th shift) starts at 7:00 p.m. on the 27th day of his work cycle and ends at 7:00 p.m. on the first day of the succeeding work cycle.

The amounts set forth in the salary schedule represent a fixed annual amount to be received for straight time pay for 2,750 hours including regular tours of duty and paid leave.

Section 4 - FLSA Overtime. The Employer reserves the right to utilize all or any part of the 7K exemption for hours worked and overtime paid in accordance with the most current FLSA rulings and practices. However, where a specific term of this Agreement conflicts with the FLSA, the Agreement shall control.

Section 5 - Overtime Hours. An employee working any hours on duty in addition to the regular hours as defined in this Article shall be compensated for those overtime hours a the rate of one and one-half times ($1^1/_2$) his regular straight time hourly rate. The straight time hourly rate shall be calculated by dividing the annual salary by the scheduled annual hours (2,750).

The Village's Last Offer of Settlement

The Villages Last Offer of Settlement, made at the August 5th hearing provided:

THE VILLAGE OF DOWNERS GROVE'S FINAL OFFER

ARTICLE XXIX

Wages

Effective May 1, 1994, employees will be paid in accordance with the schedule set forth below as Schedule A; effective November 1, 1994, their salaries will be adjusted as also set forth in Schedule A.

Employees will be paid as follows:

SCHEDULE A

Fire Fighter or Fire Fighter/Engineer Salary Schedule

	Current FY 1993-94 Salary Schedule	May 1, 1994 Salary Schedule With 2.0% Increase	November 1, 1994 Salary Schedule With 1.6% Increase
Start	$26,750	$27,285	$27,722
1	28,100	28,662	29,121
2	29,450	30.039	30,520
3	30,800	31,416	31,919
4	32,150	32,793	33,813
5	33,500	34,170	34,717
6	34,850	35,547	36,616
Maximum	36,200	36,924	37,515

SCHEDULE B

Fire Fighter/Paramedic or Paramedic/Engineer Salary Schedule

	Current FY 1993-94 Salary Schedule	May 1, 1994 Salary Schedule With 2.0% Increase	November 1, 1994 Salary Schedule With 1.6% Increase
Start	$28,250	$28,815	$29,276
1	29,625	30,218	30,701
2	31,000	31,620	32,126
3	32,375	33,023	33,551
4	33,750	34,425	34,976
5	35,125	35,828	36,401
6	36,500	37,230	37,826
Maximum	37,875	38,633	39,251

SCHEDULE C

Captain/Lieutenant Salary Schedule

	Current FY 1993-94 Salary Schedule	May 1, 1994 Salary Schedule With 2.0% Increase	November 1, 1994 Salary Schedule With 1.6% Increase
Maximum	$41,370	$42,197	$42,873

Step increases will continue to be paid in accordance with the Village Pay Plan; they will be paid at the beginning of the fiscal year.

Employees at or beyond the end of their range during the 1994-1995 contract year, including Captains, are eligible for a performance bonus of up to $1,250 effective May 1, 1994.

An employee is not eligible for a market adjustment or bonus unless he receives an overall rating for "Meets Expectations" on the Employee Appraisal Form Attached hereto as APPENDIX F. Appraisals will occur on or about November 1 of each year for the purpose of advising employees of their performance during the first six months of the fiscal year. Final appraisals will occur on or about April 15 of each year for the purpose of determining whether overall performance "Meets Expectations" and whether an employee shall receive his market adjustment or bonus.

THE POSITION OF THE PARTIES

The Position of the Union

Union argues that, by the terms of the reopener provision of the CBA, Article XLVII, Section 1, it is entitled to reopen negotiations on salaries and on one other item during the 1994-1995 contract year. Union contends that this language does not limit the "one other item" to a single Section of the Agreement, as argued by Village for the first time at the arbitration hearing. The "one other item" it chose to reopen is the number of Kelly Days[5] provided in Article XXXI. When the number of Kelly Days are changed, other Sections of Article XXXI are impacted. Thus, to be workable, accommodating modifications to these Sections is required, Union argues.

Union notes that when the salaries paid Downers Grove fire fighting personnel are weighed against the seven communities that the parties have stipulated are appropriate comparables, as well as being weighed with the other applicable statutory criteria provided in the Act, its wage proposal is the one to be awarded. It stresses that it is undisputed that the employees covered by this arbitration are the lowest paid when compared to equivalent employees in comparable communities. And the adoption of its salary proposal would still place bargaining unit employees well below average minimum/maximum 1994-95 wages in comparable ranks in these communities, it says. Internal comparisons with the Village's police bargaining unit[6] also favors Union's proposal, it is argued. Noting that Union's offer for starting Firefighter pay is $2500.00 less than that which a Patrol Officer is now paid.

Further, Union takes the position that the final wage proposal is a package which must be adopted in total, and not by rank.

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[5] Kelly Days are actually called "FLSA Days" in the CBA, Article XXXI, HOURS OF WORK AND OVERTIME, Section 6.

[6] Union notes that Village and Lodge 73, FOP are engaged in negotiations at the present time, and any increases secured will place Firefighters further behind in achieving parity.

On the matter of Kelly Days, Union argues that presently the Village ranks at the bottom of the comparable communities. Furthermore, increasing the number of Kelly Days from 1 to 6.76, as the final offer seeks, merely would move the Village from seventh out of the eight communities, to sixth, just one place higher.

Union contends that it is difficult for it to ascertain exactly what the final offer of the Village is, in that remarks of Counsel and testimony of witnesses conflict in several material aspects. Union is opposed to a single salary schedule for Captains and Lieutenants, as proposed by Village because, one; the duties are different, it claims, and, two; the proposal freezes Captains salaries at $48,000.00 as set in the previous arbitration. This would leave Captains $6,100.00 below the lowest 1994-95 Captain salary paid in the comparable communities, Union notes.

Lieutenants, too, would be an average of $4,853.00 below Lieutenants in other communities, under Village's proposal, Union indicates. Union also opposes Village's request that the rank of Engineer be combined with

Firefighters. With regard to Engineer salaries, Union states that only one of the comparable communities, Des Plaines, has Engineers and Village's proposal would pay the Downer's Grove Engineer $8,528.00 less than Des Plains Engineers are paid effective, November 1, 1994.

Village's proposal on Paramedics would rank them sixth out of seven, with the data used in the ranking of three of the comparable communities based on 1992-93 figures. Similar arguments are advanced by Union with regard to Firefighters, both as to minimum and maximum salaries, as well as the shortened wage progression schedule it is seeking.

With regard to step increases being implemented on anniversary dates, as opposed to the start of the fiscal year, Union notes that Management's sole argument is based on an existing Village practice. Further Union questions the fairness of the administration of the program, noting that it is possible for certain employees to have considerably more time as an employee than their step increases would indicate, giving examples of one employee with three and a half years at Step 2 and another with six and a half years at Step 5. Further, Union states all of the comparable communities base step increases on anniversary dates.

Union argues that its proposal is justified when considerations of overall compensation and stability of employment are taken into account. Contending that Downers Grove fire fighting personnel receive less than the average number of holidays, less than the average number of sick days, less than the average amount of life insurance and that personnel are leaving Village employment to accept employment with other communities.

Union, in noting that Village concedes that its fire fighting employees are underpaid, argues that Management's position that it should not be required to catch-up all at once is without merit. Union suggests that Village's argument is "patently circuitous" and that the historical relationship of the parties, including six years of litigation, does not indicate that short of interest arbitration, the Union would achieve proper pay.

The Position of the Village

The Village argues that the scope of Union's reopener exceeds that authorized by Article XLVII. Union was privileged to reopen on salaries and "one other item." Union's proposal to reopen on Kelly Days is not one other item but actually three items. In addition to increasing the number of Kelly Days which changes the number of days an employee works during the year, Union wants to change the manner in which overtime is computed, and change the work cycle. The Village characterizes Union's "one other item" Kelly Day proposal as actually a multiple-choice request, as such it exceeds the scope of the reopener, and, therefore, should be rejected for that reason.

The Village acknowledges that its fire fighting personnel are paid less than those in comparable communities. However, it argues that this case cannot be decided by a pure mechanical application of the statutory criterion of external comparability. Village states that Union is asking the Arbitration Panel to issue the "most costly award in the history of the Illinois State Labor Relations Act." It notes that this is a reopener and points out that traditionally arbitrators regard reopeners as being limited to changes that have occurred since the parties last bargained the contract.

The Village also points out that arbitrators functioning under the Act are reluctant to "immediately correct long-standing inequities that have gradually built up over a significant period of time," and that it is "unrealistic to expect total correction … over a single contract period." All that should be expected is "significant progress." Noting that Union's proposal seeks salary increases in excess of 20% in one year, and additional 9% impact as the cost of increasing the number of Kelly Days, it suggests that the final offer dwarfs the final offers made by any Union in the history of the Act.

Village references the "astronomical cost increase" resulting from the reorganization of it Fire Department and stresses that the evidence in this case cries out for the Arbitrator to "safeguard the interest of the public." Because of the unique facts involved and Village's good faith attempts to raise employee

salaries, it is urged that the Village's wage offer should be granted and that the Union's "one other issue" be rejected.

Village argues that before reorganization Captain's duties were different from those now required. Village says that Captains now perform the same duties as Lieutenants, noting that their job descriptions are the same. The situation is the same with the sole Engineer in the Department. Union, like it does with Captains, argues that the Engineer should be paid more for what they did in the past. With regard to Lieutenants, the Village notes that half of the Lieutenants were promoted less than a year ago. Individual Lieutenants overall percentage increases between their 1992-93 salaries and Union's proposed 1994-95 salaries are staggering, as much as 71 percent, Village points out.

Village argues that its proposals on Firefighters would also provide substantial increases, submitting a chart showing that between 1992-93 and 1994-95 Firefighters wages would have been increased from a low of 8.9% to a high of 46.3%, with those in between these numbers receiving increases of 13.6%, 14.0%, 19.6, 20,7, 23.9%, 24.8%, 24.9%, 26.8% 32.2%, 34.5%, 34.9, 40.5, 40.9%, 41.2%, 44.8%, and 45.6%,. Thus the Villages offer of a 7.08% increase for 1994-1995, coupled with the "huge raise of the previous year" indicates that it is serious in its efforts to raise salaries of members of the bargaining unit.

On the matter of combining the rank of Engineer with that of Firefighter, Village contends that Engineer is a redundant classification, and simply not needed. With regard to combining Captains and Lieutenants, the Village indicates that the Captain's and Lieutenants job descriptions are now the same and that upon reorganization of the Department it began utilizing Battalion Commanders as management supervisors. It notes that the highest paid Battalion Commander earns $46,787.00 and that the three Captains would earn considerably more under Union's proposal.

DISCUSSION

The Salary Reopener

The Act is quite specific in the license Arbitration Panels possess in resolving economic issues, such as the salary reopener and the Kelly Day increase involved in this arbitration. The Arbitration Panel is obligated by the Act to adopt the last offer of settlement that more nearly complies with the applicable factors prescribed in Article 14(h). Specifically the Act requires that the "arbitration panel … base its findings, opinions and order upon the [eight] factors, as applicable," that have been prescribed in subsection (h). Village acknowledges that its Firefighters, Paramedics, and Fire Officers, are paid wages that are below those paid personnel in the service of the comparable communities. It notes, though, that its Last Offer of Settlement, coupled with the changes occurring in the first CBA makes significant progress toward eliminating inequities. Further, it indicates that it is not suggesting that Downers Grove does not have the financial ability to meet the costs. Village has stressed, however, that this case had ought not be decided on a pure mechanical application of the criterion of external comparability. Instead, Village suggests that concepts such as:

I. it may not be feasible to immediately correct long-standing inequities that have gradually built up over a significant period of time;

II. it is unrealistic to expect total correction in a single contract period, all that can be expected is significant progress;

III. if an arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through the collective bargaining process, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining;

IV. the Union is asking the Arbitrator to issue the most costly award in the history of the Act;

V. the Arbitrator had ought to take into account the staggering costs associated with the change to traditional firefighter scheduling; and that,

VI. this is a reopener and that the parties will be back at the bargaining table in less than a year

be embraced, and that its wage proposal be accepted by the Arbitration Panel.

For the Arbitration Panel to apply as controlling in this case, a combination of the six notions listed above and award the wage proposal of Village, it would be necessary for the Panel to, conclude that criteria (4) and (6) of Section 14(h) of the Act, are not, in this case, appropriate "applicable factors." The Panel would then proceed to make its award basically on just one element, criterion (8), concluding that this was the primary "applicable factor," which would trump any of the other factors. The Panel is not persuaded that this would be an appropriate application of the Statute. The Panel is charged, under Section 14(g) to:

> … adopt the last offer of settlement which, in the opinion of the arbitration panel, <u>more nearly complies with the applicable factors prescribed in subsection (h)</u>.
>
> (Underlining added.)

What Village is actually asking is that the Panel <u>ignore several specific factors and decide the case on a single generalized factor</u>, criterion (8). Criterion (8) interjects into the process, factors "normally or traditionally taken into consideration in the determination of wages," etc. The Panel does not believe that such generally stated factors should be able to "trump" the more specific factors provided in criteria (4) and (6). This is what would occur if Village's suggestions are followed.

Furthermore, for any factors to be given weight, there must be something in the record for the Panel to consider. It is not enough to simply restate notions expressed by other Arbitration Panels, and then ask this Panel to embrace as fundamental, arguments contained within these expressions without first furnishing adequate supporting documentation to support such arguments. Evidence supporting these notions, evidence applicable to this matter, must be submitted for examination by the Panel if it is expected that the notions be embraced. Anything less is a disservice to the process, and most certainly would be at odds with the obligation placed upon the Panel by the Legislature to adopt the last offer which more nearly complies with applicable factors. The Panel is obligated to make its determinations on the

basis of the evidence the parties place before it, as that evidence relates to the factors of Section 14(h). If evidence is missing, the Panel had ought not guess about the result.

For example look at "I" above, which was extracted from Village's Brief (p.22). Village has offered no evidence as to why "it may not be feasible to immediately correct long-standing inequities" that exist between its fire fighting personnel and that of comparable communities. Simply because it was a factor in awarding the employer's final offer in Rock Island County Board and the Rock Island States Attorney v. The International Union of Operating Engineers, Local 150, ISLRB, No. S-MA-93-10, without any supporting evidence, is insufficient to persuade this Panel that it is appropriate to do the same here.

And with regard to "II" above, the key words would be "significant progress." "Significant progress" is relative. There is no question that Downers Grove fire fighting personnel made significant progress in wage improvements over and above that received prior to unionization. Further, substantial increases were made in the 1993-94 contract year, increases averaged 22 percent, according to the data furnished by both parties. But is significant progress being made in comparison with fire fighting wages now being paid in comparable communities? Is significant progress being made in comparison with wages paid other Public Service employees in Downers Grove? These are two factors that the Panel is obligated to explore under criteria (4) and (6) of Section 14(h). Most of the evidence submitted by the parties in this record pertains to criteria (4) and (6). The factors in criteria (4) and (6), along with that in (5) COLA, another factor on which the Panel has some evidence, is the evidence that must be the basis for our Award, even though some may consider it as being mechanically applied.

The concept contained within Point "III" above, was rejected by the Arbitration Panel in Village of Lombard and Lombard Policeman's Benevolent and Protective Association, Local No. 89, S-MA-89-153. In that case it was observed:

> The Panel has examined all of the items and authorities directed to our attention by both parties, and considered carefully their articulation, concerning the

> proper role of impasse interest arbitration within the posture in which this dispute is being considered. We have noted with considerable interest comments in other arbitrations concerning among other things, catch-up demands, substitutes for arms length bargaining, what may or may not have developed if a strike or strike threat occurred or were available, the role of fact-finding, the continuation of historical relationships, the notion that interest arbitration must not yield a substantially different result that that which could be obtained by the parties through bargaining, etc. We question, though, if such considerations are truly appropriate under the Statue from which we draw our authority.
>
> For instance, explore the notion that impasse arbitration had ought not award either party a better deal than that which it could have expected to achieve through negotiations at the bargaining table. Without a crystal ball, who can tell with any degree of certainty what the expectations of either party were. Going in, both sides know that the final option available, if impasse occurs, is last best offer arbitration. The bargaining table, in most negotiating environments, is not the final available stop. Mediation, fact-finding, emergency boards, arbitration, strike, lockout, blue flu, discharge, bankruptcy, discontinuance of the enterprise, decertification, as well as legislative lobbying and court action, may also be viable pursuits for negotiating objectives.
>
> Moreover, and importantly, under the IPLRA, impasse arbitration, with its last best offer approach, is an essential ingredient of the labor relations process for Illinois security employees, peace officers and firefighters. The Act is designed to substitute self help and other traumatic alternatives, resources available in some other environment, (and also the threat of self help which may hang as a sword over the negotiating table), with a less disruptive procedure to produce a settlement. The concept that arbitrators should do no more than the parties would do themselves is patently circuitous since in fact the parties were not able through negotiations to do it themselves. Last best offer arbitration, under the Statute, is the self help alternative available to either party and must be viewed as an extension of the collective bargaining process.

With regard to the argument that Union is asking this Arbitration Panel to issue the most costly award in the history of the Act, Point "IV" above, this would not be a basis to reject Union's Final Offer of Settlement and adopt Village's, when the applicable factors provided in the Act dictated this conclusion. Further, this Arbitration Panel does not believe that any arbitration panel functioning under the Act is privileged to reject or adopt one party's proposal based on the cost ranking of that proposal in relationship to the cost rankings of other awards previously made under the Act.

On point "V" Village asks that recognition be given the staggering costs associated with the operational changes made in the Downers Grove Fire Department. The Arbitration Panel, acknowledges this result, but is also aware of the fact that substantial elements of these "staggering costs" resulted from changes in work schedules, elimination of "paid on call" volunteers, and the addition of more full-time

personnel. Staggering costs, however, go to criteria 3, of Section 14(h), "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." At the outset of the arbitration hearing, and repeated in Village's Brief, it was stated that the financial ability of the Village to meet the costs of the wage demands of Union was not an issue.

However, "Interest and welfare of the public" is another factor in criteria 3. It is obvious that somewhere, someplace, someone, made a determination that the interest and welfare of the public of Downers Grove would be well served to now accept a unionized full time Fire Department, working traditional fire fighting work schedules, rather than the non-traditional Department, staffed with substantial numbers of volunteers that was in place previously. The costs associated with these changes, most certainly contributed to the "staggering costs" the Village has incurred since unionization. A breakdown between the costs associated with the reorganization of the Department and those associated with the economic items and wage increases contained in the newly negotiated first CBA have not been provided the Panel.

Finally, with regard to point "VI," Village, pointing out that this is a reopener and the parties will be back at the bargaining table in less than a year, Union suggests that the historical bargaining relationship of the parties does not indicate anything other than another interest arbitration next year. It notes that it has been in ongoing litigation with the Village since 1989, when it first attempted to organize its fire fighting personnel.

The Arbitration Panel acknowledges some validity to Union's position on this point. However, that is not the basis of our rejection of Village's suggestion. For whatever the reason, the parties adopted an agreement with a wage reopener for 1994-95. When they adopted this reopener they knew full well that the Agreement expired on April 30, 1995. They also knew that they would be back at the bargaining table at that time. Yet their decision to provide the reopener was irrespective of this knowledge. The privilege of reopening on wages and one other item, granted by the language of the CBA, would seem to

be the significant consideration, not the fact that negotiations will be possible on a post-1995 Agreement within a year.

Application of the Parties Last Offer of Settlement on Wages to the Applicable Criteria

The final offers of the parties were examined against the wages paid in the seven comparable communities. The results of this examination disclose the following:

1. Firefighter minimum salaries

Union proposes a minimum Firefighter salary of $30,500.00, effective May 1, 1994. Village proposes a minimum salary of $27,722.00, effective November 1, 1994. The average minimum Firefighter salary for the comparable communities, based on 1994-95 wages, is $31,755.00. Both proposals would continue Downers Grove minimum Firefighter salaries below this average. What is significant though, is that Village's final offer would place minimum Firefighter salaries seventh out of the eight communities (the seven comparables plus Village) with two of the communities wages being based on 1992 and 1993 figures. Accordingly, it is the opinion of the Arbitration Panel that Union's last offer of settlement on minimum Firefighter salaries more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities. Village's offer in this regard would simply leave its Firefighter's too far behind salaries paid in comparable communities.

2. Firefighter maximum salaries

Union proposes a maximum Firefighter salary of $41,500.00. Village proposes a maximum salary of $37,515.00 effective November 1, 1994. Union's proposal would place Downers Grove Firefighters $1,724.00 below the average maximum 1994-95 salary paid in comparable communities. Villages proposal is $5,709 less than the average maximum 1994-95 wages of comparable communities and would rank it eighth out of the eight communities. Accordingly, it is the opinion of the Arbitration Panel that Union's last offer of settlement on maximum firefighter salaries more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable

communities. Village has not made a persuasive case supporting a conclusion that its top paid Firefighters should be paid approximately 15% less than their counterparts in comparable communities.

3 The reduction of Firefighter salary steps

Union's proposal to reduce the number of salary steps from seven to 5 is in harmony with the progression schedule of the comparable communities, where the average number of years it takes an employee to reach maximum pay is 4.64 years. Accordingly, it is the opinion of the Arbitration Panel that Union's last offer of settlement on the item more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities.

4. Paramedic minimum salary

Union proposes a minimum Paramedic salary of $32,000.00. Village proposes a November 1, 1994 minimum Paramedic salary of $29,276.00. The average minimum 1994-95 Paramedic Salary for the comparable communities is $34,043.00. Union's proposal is $2,043.00 below that average. Village's proposal would place Paramedic minimum salaries in sixth place out of the seven[7] communities, with three communities wages based on 1992 and 1993 figures. It is the opinion of the Arbitration Panel that Union's last offer of settlement on minimum salaries for Paramedics more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities.

[7] Only six communities besides Downers Grove are used as comparables for Paramedic salaries, as one of the comparable communities, Elmhurst, contracts out its Paramedic services.

5, Paramedic maximum salary

Union proposes a maximum Paramedic salary of $43,400.00. Village proposes $38,633.00. Based on 1994-95 wages the average maximum salary in the comparable communities is $46,002.00. Union's proposal is $2,602.00 below that number. Village's proposal is $7,369.00 below this number. Further Village's proposal places its Paramedics seventh out of the seven communities. It is the opinion of the Arbitration Panel that Union's last offer of settlement for maximum Paramedic salaries more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities. Village has not made a case supporting a conclusion that its top paid Paramedics should be paid approximately 17% less than their counterparts in comparable communities.

6. Engineer salaries

Union proposes that the single Engineer employed by Village receive a 22% increase and be paid an annual salary of $44,000.00. Village proposes[8] that the employee be given a 3.6% increase and be paid an annual salary of $37,515.00 effective November 1, 1994 Des Plaines is the only comparable community that employs Engineers. A Des Plaines Engineer with six years of service is paid $46,043.00. The wage rate Union proposes is $2,043.00 less. Accordingly, it is the opinion of the Arbitration Panel that Union's last offer of settlement for Engineer wages more nearly complies with the applicable factors associated with a comparison of wages in public employment in the single comparable community.

7. Lieutenant salaries

Union proposes that minimum salaries of Lieutenants be set at $46,000.00, with a maxim salary of $48,000.00 in the 3rd year. Village proposes a single salary of $42,873.00, effective November 1, 1994.

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[8] What the Village proposal seeks is merging the Engineer into the Firefighter schedule. This result the Arbitration Panel is not inclined to approve on the evidence available. It may be that sometime the job will be eliminated, upon it becoming vacant through resignation, retirement, promotion, etc., or that negotiations or some future arbitration will eliminate the position. In the meantime, though, the position exists, and on basis of the evidence in this record, which is directed toward a salary reopener and Kelly Days, the Arbitration Panel is not persuaded that it should be eliminated. Accordingly, the comparisons are based on the individuals status as it relates to the

The average minimum salary of the comparable communities, based on 1994 wage rates is $47,193.00. The average maximum Lieutenant salaries, based on 1994 wage rates is $51,664.00. Unions minimum and maximum salary proposals would be $1,193.00 and $3,1664.00 below the minimum and maximum salaries of the comparable communities, while the Village's proposal would be $4,320.00 and $8,791.00 below comparable salaries. Further Village's proposal would place Lieutenants eighth out of eight communities. It is the opinion of the Arbitration Panel that Union's last offer of settlement on Lieutenant's salaries more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities.

8. Captain salaries

Union proposes a single salary for Captains, $54,000.00 per year. Village seeks to have Captains combined with Lieutenants, contending that Captains' duties are now more akin to that of Lieutenant, as the newly created classification of Battalion Chief has taken over the management duties of the Department. On the basis of the evidence available in this arbitration, the Panel is not persuaded that Captains and Lieutenants salary schedules should be combined, as proposed by Village in its Last Offer of Settlement. Only one of the comparable communities pays its Captains less than that proposed by Union in its last offer of settlement. And the salary figure for that community is a 1992 number. Under Village's proposal Captains would be $6,100.00 below the lowest salary for 1994-95 wages paid Captains in comparable communities. It is the opinion of the Arbitration Panel that Union's last offer of settlement on Captain's pay more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities.

9. Date of Step Increases

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only other community that has an Engineer classification.

Union has proposed that employees receive step increases on the anniversary date of employment, or in the case of Lieutenants on the anniversary date of promotion. Village proposes that the procedure now in place be retained. Firefighters employed by six of the seven comparable communities receive their step increases on the anniversary date of their employment. Providing increases on individual anniversary dates eliminates problems associated with increase entitlements, and would treat every Firefighter the same. For example, as explained by Village, in the application of the six month cut off, one Firefighter employed on October 30th would be eligible for a step increase while another employed on November 2nd would not. With today's computer technology, even a basic desk top unit with off-the-shelf software is capable of tracking 78 Fire Department personnel anniversary dates throughout the year and triggering pay changes and developing budget reports necessary to administer the program.

Village has not said that it opposes the change on the basis of cost, only that it would be out of harmony with Village's existing pay plan and would require constant recalculation of the employees rate, overtime, and pension contributions, which would be "individualized accounting for members of the bargaining unit." With today's sophisticated accounting technology the Panel does not find this argument persuasive. It is the opinion of the Arbitration Panel that Union's last offer of settlement, with respect to providing step increases on anniversary dates, more nearly complies with the applicable factors associated with a comparison of wages in public employment in comparable communities.

THE AWARD OF THE ARBITRATION PANEL ON WAGES

While the foregoing analysis centers on basically the factors of Section 14(h), comparability with fire fighting personnel in other communities, the Arbitration Panel has looked at other factors on which evidence has been offered as well. From this examination it was concluded that with one exception, Union's last offer of settlement more nearly complied with the factors prescribed by the Act.

The one exception, mentioned above, was criterion (5), Cost-of-Living. By any measure, the totality of Union's proposal exceeds COLA changes occurring in the recent past. If Downers Grove fire

fighting salary rates were in the vicinity of rates paid in other communities then COLA would be an important factor and a persuasive case could be made to limit 1994-95 increases to something akin to earnings losses caused by a rising cost-of-living.

The Act, though, directs the Arbitration Panel to compare "wages" with "wages" (Section 14(h)(4)) as well as considering COLA (Section 14(h)(5)). If the comparison of "wages" to "wages" dictates a finding that wage increases be awarded that substantially exceed COLA changes, it doesn't seem appropriate then to limit the increase to a COLA improvement, as that would nullify the "wages" to "wages" comparison.

Further, the brief bargaining history of the parties themselves, suggests that the situation is unique and cost-of-living changes were not a factor they were concerned with. The parties first agreement provided for increases averaging 35.1% compounded between May 1, 1991 and April 30, 1994, even though COLA changes during that period were a fraction of that figure. It is obvious that comparison of "wages" to "wages" dictated increases in that Agreement that substantially exceed COLA changes.

As noted, the prime factor considered was wage comparability with other fire fighting personnel in other communities. The preponderance of the evidence dealt with this factor, thus it was the preponderant factor considered. A second, but somewhat less important factor was wages paid Patrol Officers by Downers Grove. As noted above, most of the hard evidence in this record dealt with comparability with other communities. In this regard an observation from City of Decatur and International Association of Firefighters, Local 505 S-MA-29 seems appropriate:

> The statute does not require that all factors be addressed, but only those which are "applicable." Moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make the determination as to which factors bear most heavily in this particular dispute.

Accordingly this Arbitration Panel determines that the relationship of Downers Grove Fire Department wage rates with that of the stipulated comparable communities bears most heavily in this particular dispute. This factor dictates that the Last Offer of Settlement of the Union be adopted in total.

Article XXIX of the CBA is amended to include Union's Last Offer of Settlement, as shown on pages 4 and 5 of this Award.

The Arbitration Panel so awards.

The Issue of Kelly Days

Village is correct in its contentions that Union's proposal on Kelly Days exceeds the scope of the reopener. If the parties wanted to allow Union to reopen on a complete Article, which Union's proposal constructively encompasses, then it would have been quite simple to state this result. The Agreement does not state this result in Article XLVII, Section 1. The language used is not "one other Article" it is "one other item." While some dictionaries define "item" as "a separate article" the term "article" is not the same as "Article" as used in the CBA. For the Panel to now read "item" as "Article" it would be necessary to ignore the fact that when the parties compiled the several sections of its Agreement it used "Articles" to separate various subjects and chose not to use "article" in their reopener clause. It is also significant that the language of Article XLVII, Section 1 is "item" and not "issue." "Item" just seems to suggest something less encompassing than "issue."

Union has argued that if the number of Kelly days are increased, this requires changes in other areas of Article XXXI to accommodate the increase. The Arbitration Panel does not accept this argument as valid. For example Union suggests that adding 5.76 Kelly Days requires that the overtime divisor of 2,912 hours per year be reduced by 162 hours to 2,750. The 2,912 hours shown in the second and third paragraphs of Article XXXI, Section 3, covers regular tours of duty and paid leaves. The one Kelly Day (FLSA Day) now provided in the Agreement was included in the 2912 number. It does not follow from this contract provision that increasing the number of Kelly days and treating them as paid leave time, requires that this number of hours be lowered.

Accordingly, the Arbitration Panel will limit the Union's reopener to one other item, the number of Kelly Days. In comparing the number of Kelly Days to those provided by the other communities it is

noted that two, Des Plaines and Park Ridge have less than the 6.76 proposed by Union. The rest, however have more, with the average being 8.39. Accordingly, the Panel adopts the proposal of Union and awards a total of 6.76 Kelly days, effective May 1, 1994.

THE AWARD OF THE ARBITRATION PANEL ON KELLY DAYS

The Last Offer of Settlement of the Union seeking to increase Kelly Days from 1 to 6.76 is awarded. In all other respects it is denied because it would exceed the scope of the reopener authorized by the CBA.

Article XXXI, Section 6, is amended, effective May 1, 1994, to read:

> Section 6 - FLSA Days. Effective at the beginning of fiscal year 1994-1995, employees covered by this Agreement shall be entitled to 6.76 "FLSA Days" annually. Such days shall be scheduled at the beginning of the fiscal year and taken in FLSA cycles where the employees are scheduled to work two hundred and forty (240) hours. These cycles shall be set by the Fire Chief.

Because it is not expected that this Award will be finalized until after more than two-thirds of the current contract year (fiscal year) has elapsed, providing 78 members of the Department with 5.76 additional days off in the remaining four months of the contract, would be operationally burdensome and unduly expensive. Accordingly the Panel directs that for the remainder of Fiscal Year 1994-1995, attempts be made to provide as many Kelly Days as is operationally feasible in the remaining 240-hour work schedules, as contemplated by Article XXXI, Section 6. With regard to the those Kelly Days that cannot be assigned because of an insufficient number of 240-hour work schedules available during the remainder of Fiscal Year 1994-95, the Panel directs that if the parties cannot agree upon a method to select or assign such days that the employee be given an option of being paid for the days not scheduled during Fiscal Year 1994-95, at straight-time rates, or placing them in a special leave bank to be utilized as paid time off, at the 1994-95 rate, to be scheduled by agreement with the Fire Chief over the next twenty-four months, or a combination of pay for some days and leave bank for others.

The Arbitration Panel so awards.

A W A R D

1. The Union's Last Offer of Settlement on salaries is awarded.

2. The Union's Last Offer of Settlement to increase the number of Kelly Days to 6.76 is awarded. All other issues in the Last Offer of Settlement on Kelly Days are not awarded.

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John C. Fletcher, Chairman & Neutral Arbitrator

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Joe DiFatta, Union Appointed Arbitrator

_____
Gerald Sprecher, Village Appointed Arbitrator

December 6, 1994