

ILLINOIS STATE LABOR RELATIONS BOARD
INTEREST ARBITRATION

IN THE MATTER OF THE ARBITRATION

ISLRB No. S-MA-95-11

BETWEEN

Arb. No. 94/127

VILLAGE OF ELK GROVE VILLAGE
("Village" or "Employer")

Elliott H. Goldstein,
Chairman

- AND -

James Baird,
Employer Delegate

METROPOLITAN ALLIANCE OF POLICE,
ELK GROVE VILLAGE POLICE CHAPTER
NO. 141
("Chapter," "MAP" or "Union")

Joseph R. Mazzone,
Union Delegate

Hearings Held:

November 23, 1994
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OPINION AND AWARD

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I. THE IPLRA STATUTORY CRITERIA

The Illinois Public Labor Relations Act (IPLRA; 5 ILCS §315/1 et. seq.) (hereinafter the "Act") requires that the interest arbitration decision in this matter shall be based upon the following eight factors:

- (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.

II. THE ISSUES

There are seven outstanding issues for resolution by the Panel. Divided into non-economic and economic issues, they are as follows:

Non-Economic Issues

1. Legislated Cost Mandates (the Village is the moving party) (Jt. Ex. 1, p. 2).
2. No Solicitation (the Village is the moving party) (Jt. Ex. 1, p. 2).
3. Duration (the Village is the moving party) (Jt. Ex. 1, p. 2).

Economic Issues

4. Hours of Work and Overtime, Section 4 Overtime Pay (the Chapter is the moving party) (Jt. Ex. 1, p. 2).
5. Wages, Including Any Claim for Retroactive Pay -- the parties agree that wages for each year of the contract are to be considered one overall issue, and not to be divided into separate issues (the Chapter is the moving party) (Jt. Ex. 1, p. 2).
6. Longevity (the Chapter is the moving party) (Jt. Ex. 1, p. 2).
7. Health Insurance (the Chapter is the moving party) (Jt. Ex. 1, p. 2).

III. PROCEDURAL HISTORY OF THE CASE AND FACTUAL BACKGROUND

On May 11, 1994, the Metropolitan Alliance of Police ("MAP") won an election held pursuant to the Illinois Public Labor Relations Act ("Act") by the Illinois State Labor Relations Board ("ISLRB"), for the representation rights for the approximately 79 police officers of the Village of Elk Grove Village ("Village") who had formerly been represented by Lodge No. 35 of the Fraternal Order of Police ("FOP"). As a result of the election, MAP was selected as the bargaining agent by the vote of the relevant employee group, and bargaining between this Union representing the bargaining unit employees commenced on or about June 1, 1994, the evidence indicates.

It also should be noted that one major issue in this case -- and one the parties have requested should demand the Neutral's "best thinking" -- is whether this bargaining between MAP and the Village, and the interest arbitration which finally resulted from impasse on seven issues, should be considered as the first or initial bargaining between the parties, as the Union insists (since this is the first bargaining with MAP rather than the repudiated FOP Lodge), or whether the bargaining history and prior contracts and ancillary agreements between the Village of Elk Grove Village and FOP Lodge 35 should be considered as an integral part of the circumstances to be considered in the current negotiating relationship between MAP and the Village. For example, for such issues as "historical" external comparability, and the Village's "historical" list of comparable communities, bargaining history is

critical. The determination of what particular proposals by either party should be deemed maintenance of the status quo or "breakthrough" items is very much dependent on the issue under discussion. The same is true as to whether there is any agreed-upon historical parity or "in tandem" relationship with the firefighters unit working for the Village, especially as regards pay parity and health insurance costs.

It is also to be noted that this is the first interest arbitration to be conducted under the Act involving this specific bargaining unit, although there was an extremely lengthy and hard-fought dispute which went to interest arbitration between the Elk Grove Village firefighters and the Village over their first contract, which literally took years to resolve, and which resulted in a 192 page decision by Arbitrator Harvey Nathan, issued October 1, 1994 (Village of Elk Grove Village and IAFF Local No. 3398, ISLRB No. S-MA-93-231), which has potential impact on this case in several respects, as will be developed below.

The record evidence also discloses that, although substantial progress was made through direct bargaining, and the parties have stipulated that these additional items upon which the parties have reached agreement between themselves shall be incorporated into the labor agreement which results from the subject interest arbitration award, a significant number of important issues remained at impasse at the time the parties agreed to interest arbitration on or about August 15, 1994. Pursuant to the requirements of the Act, the parties invoked interest arbitration on the seven issues set out

above, and those yet unresolved issues were submitted to the Neutral Arbitrator for resolution.

This Arbitrator was selected by the parties to act as the Neutral Panel Chair, and the other delegates to the tripartite arbitration panel are the respective attorneys for the Village and MAP, James Baird and Joseph R. Mazzone. In conjunction with the opening of the hearing, the parties presented a pre-hearing stipulation into the record, Jt. Ex. 1, which mandated such matters as the above-noted makeup of the interest arbitration panel, the provision for a transcript by a court reporter, and the manner in which the parties would proceed concerning those issues upon which each was the "moving party," as noted in Section II of this Opinion and Award.

In addition, the parties agreed to Stipulation No. 4 as follows:

4. The parties agree to mutually exchange final offers on the outstanding issues described in the following paragraph of this Stipulation, with such final offers exchanged at the Village of Elk Grove Village's Village Hall at 12:00 noon on Friday, November 18, 1994. Once exchanged, neither side may alter its final offer without the written approval of the other party.

(Jt. Ex. 1; emphasis added).

This Stipulation was executed by counsel for both parties prior to the beginning of the hearing (Jt. Ex.1, p. 3), the record shows.

At the start of the arbitration hearing on November 23, 1994, the parties submitted their respective revised lists of final best offers on the seven remaining issues, as some progress in bargaining had apparently occurred from the time of the Neutral's

selection to the initial day of hearing on other, no longer relevant disagreements. The Union or "Chapter" final offers on wages and medical insurance contribution rates were strongly objected to by the Village. These are as follows:

ARTICLE XVI

WAGES AND OTHER COMPENSATION

FINAL POSITION 11-16-94 Section 16.1 Wage Schedule

Employees shall be compensated in accordance with the following wage schedule attached to this Agreement as Appendix "A" and longevity in accordance with the schedule attached as Appendix "B".

(C. Ex. 1, p. 37)

FINAL POSITION
EFFECTIVE 5-1-95

APPENDIX "A" 1

SALARY SCHEDULE

PATROLMAN	5-1-95 thru 4-30-96 10.25%	5-1-96 thru 4-30-97 4.75%
Step 1	33,323	34,906
Step 2	35,462	37,146
Step 3	37,602	39,388
Step 4	39,740	41,627
Step 5	41,878	43,868
Step 6	44,005	46,095
Step 7	46,829	49,053

(C. Ex. 1, p. 49)

FINAL POSITION
EFFECTIVE 5-1-94

APPENDIX "A" 2

SALARY SCHEDULE

PATROLMAN	5-1-94 thru 4-30-95 5.25%	5-1-95 thru 4-30-96 5.0%	5-1-96 thru 4-30-97 4.75%
Step 1	31,812	33,402	34,989
Step 2	33,854	35,546	37,235
Step 3	35,897	37,691	39,482
Step 4	37,937	39,834	41,726
Step 5	39,979	41,978	43,972
Step 6	42,009	44,110	46,205
Step 7	44,705	46,940	49,170

(C. Ex. 1, p. 50)

FINAL POSITION 11-16-94 Section 15.2 Cost of Medical and Life Insurance

Effective upon execution of this Agreement and for the term of this Agreement, all employees covered by this Agreement shall make contributions for single and family medical and dental coverage for the fiscal years 1994-1995 and 1995-1996 and 1996-1997 equal to those set forth in Appendix "C", attached hereto and made part hereof. The Village shall repay those contributions for medical insurance overpaid during the fiscal year 1994-1995 within thirty (30) days of the execution of this Agreement.

The Village shall maintain the current level of benefits during the term of this Agreement. At no time during the term of this Agreement will bargaining unit employees be required to pay more for insurance than any other Village Employee.

(C. Ex. 1, p. 35)

APPENDIX "C"

MEDICAL INSURANCE CONTRIBUTION RATES
FROM 5-1-94 THROUGH 4-30-97

VILLAGE PLAN		Total Mo. Premium	Village 90% share	Employee 10% share	Employee Bi-Weekly
	MEDICAL				
	EMPL ONLY	\$216.93/mo	\$195.24/mo	\$21.69/mo	\$10.85
	EMPL+1 DEP	455.56/mo	410.00/mo	45.56/mo	\$22.78
	EMPL2+ DEP	495.66/mo	446.09/mo	49.57/mo	\$24.79
	DENTAL				
	EMPL ONLY	32.06/mo	28.85/mo	3.21/mo	\$ 1.61
	EMPL+1 DEP	67.31/mo	60.58/mo	6.73/mo	\$ 3.37
	EMPL2+ DEP	84.39/mo	75.95/mo	8.44/mo	\$ 4.22
H.M.O	MEDICAL				
	EMPL ONLY	164.17/mo	147.75/mo	16.42/mo	\$ 8.21
	EMPL+1 DEP	316.49/mo	284.84/mo	31.65/mo	\$15.83
	EMPL2+ DEP	487.48/mo	438.73/mo	48.75/mo	\$24.38
COMMON. DENTAL PLAN	DENTAL				
	EMPL ONLY	17.76/mo	15.98/mo	1.78/mo	\$.89
	EMPL+1 DEP	33.00/mo	29.70/mo	3.30/mo	\$ 1.65
	EMPL2+ DEP	49.20/mo	44.28/mo	4.92/mo	\$ 2.46

(C. Ex. 1, p. 52)

The basis for the Village's objection to the proffered Chapter offers as to wages is that the offers present, on their face, alternative options, and not final offers as contemplated by the Act or Jt. Ex. 1, Stipulation No. 4, as set out above. The Village therefore presented a motion on the second day of hearing, February 23, 1995, wherein it requested that I grant summary judgment to it as to the wage proposals.

The Village, the record shows, also demanded a similar ruling from the Neutral for summary judgment on the medical insurance costs and contribution rates. It specifically argued that the Chapter's offer on that issue violated the Act, and namely Section 14(h)(6) thereof, because there was an improper and illegal demand for effective retroactivity for medical insurance contributions for Fiscal Year 1994, despite that section of the Act's proscription against such an award during an "insulated" one year period after a budget year has begun without the start of an interest arbitration proceeding, which is the case here for FY 1994 (May 1, 1993 through April 30, 1994) because of the above-noted ISLRB-conducted election on May 11, 1994, and the change in certified unions from the prior incumbent, Lodge 35 of the FOP, to Chapter 141 of MAP.

These arguments and contentions are described in greater detail under Section IV of this Award.

The Union responded by indicating that its offer by way of wages was, in reality, only Appendix A-1, and that Appendix A-2 was presented merely by way of illustration as to how the Chapter came

up with its final and best offer for Fiscal Years 1995-96 and 1996-97. The Union also suggested that all compensation benefits, including wages and health cost contribution (which it believed are not part of compensation and Section 14(h)(6), could be awarded by the Neutral from May 1, 1995 forward. Finally, on February 24, 1994, the Union "clarified" its demands as to all the economic issues by stating that its offers were predicated on a willingness for the Neutral to fashion an award with a start point for each economic benefit of May 1, 1995.

The Union arguments on these points are described in greater detail in Section IV of this Award.

The Neutral Arbitrator ruled at the hearing that the Village's motion for summary judgment on wages and medical insurance contributions would be ruled upon as a threshold matter in this Opinion and Award. The Neutral also believes that the issue of the role of prior bargaining history between the Village and Lodge 35, FOP, and whether or not the current contract is an "initial one or successor Agreement to the Village-FOP contracts" is similarly critical to many of the issues before me, if not all of them, and similarly will treat that issue as a separate, threshold matter of determination to be resolved in Section IV, immediately below, before any resolution of the remaining issues in dispute, on the merits.

It is important to note that pursuant to the Act, and the desires of the parties, the Neutral Panel Member is required to select one and only one of the parties' last best offers on the

four economic issues in dispute (with wages to be considered one overall issue), but that the three non-economic issues may be resolved by "conventional" interest arbitration, that is, the Panel is free to fashion a resolution of each of its own design.

Finally, it should be noted that the parties submitted numerous and lengthy exhibits in support of their positions and the Neutral studied the record (a written transcript was taken) and these exhibits with great care and deliberation.

IV. THE THRESHOLD ISSUES

A.

THE DISPUTE OVER WHETHER THIS INTEREST ARBITRATION INVOLVES AN INITIAL CONTRACT OR A SUCCESSOR CONTRACT AND THE ROLE OF PRIOR AGREEMENTS AND BARGAINING HISTORY

1. The Village's Position

The following is a summary of the Village's position on the critical issue of the role of its prior agreements with FOP Lodge 35 and its rationale in support of its position that this interest arbitration, for all purposes relevant to the dispute issues, must be considered to involve a successor contract to the Village/FOP earlier labor agreements.

2. Background Information

The Employer in this matter has been in a formal bargaining relationship with its police officers since 1986, shortly after the amendments to the Act extended collective bargaining rights to protective service personnel, the Village emphasizes. Initially, prior to the current Union representing the police officers in the

Village, the Fraternal Order of Police ("FOP") was the certified collective bargaining agent for this exact unit, the Village points out. The FOP negotiated two contracts with the Village. The first was an initial labor agreement between the Village and the FOP for the years 1987-1991, with a wage reopener in 1990, the record evidence reveals.

There are approximately 79 police officers below the rank of sergeant who are included in the collective bargaining agreement, the record shows. In addition, there are various sergeants, lieutenants, commanders and deputy chiefs in the chain of command ultimately reporting to the Chief of Police within the department who are excluded from the bargaining unit as supervisors. The individual employees currently represented by MAP have essentially not changed, according to the Village's agreement. Hence, the Village feels that it would be inequitable to treat these employees as never having been represented by a Union or having reaped the benefits of three sets of negotiations where a broad range of benefits was negotiated for the unit employees by the FOP -- with significant trade-offs by the Village and members of the unit made to obtain this whole range of agreements or benefits.

The record reveals that this last FOP-Village agreement was a second contract between the FOP and the Village, and there also had been negotiations for a wage reopener in the last year of the first contract, which in fact occurred in 1991, the Village asserts. Indeed, the Village, through Human Resources Officer Richard S. Olson, presented extensive testimony that all three negotiations

between the FOP and the Village were at arm's length and were "good, hard negotiations." Essentially, the Village asserts that a party to such negotiations, which it identifies as the bargaining unit employees who work as non-supervisory police officers for the Village, as noted above, cannot negate previous negotiations history by merely changing the identity of its bargaining representative. The basic contours and parameters for the wages, hours and terms and conditions of employment in this bargaining unit have been worked out in two contracts and a wage reopener, and this is absolutely not a "initial contract," as the Union would have the Neutral believe, the Village thus concludes.

Management presented several additional arguments which bear directly on the question of whether what is involved in the case is initial contract negotiation or a successor contract, where bargaining history and a pattern of relationships define the overall parameters of the current negotiations. For example, as Management sees it, in the 1991 "predecessor" agreement between it and the FOP, there was utilized by the parties a list of "historical comparables" which apparently were developed in the 1990 negotiations over that contract's wage reopener. The Employer asserts the 1991 negotiations were deadlocked for a time and "almost" went to interest arbitration but was settled, using these exact comparables, at the "eleventh and one-half hour."

These "historic" comparables were thus established by the FOP and the Village, as well as the internal comparability with the other group of Village employees represented by a union, the

firefighters bargaining unit, the Village argues, because the firefighter employees were used as an "in tandem" employee grouping since at least 1991. The now-established external and internal comparables are required to be used by the Neutral in assessing all economic offers, the Village thus insists.

3. The Union's Position

The Union on the other hand responds to the claims of Management that this arbitration involves only a "successor" contract by emphasizing that it believes that much of the extensive testimony presented by Employer witnesses Baird and Olson on this record, as well as the voluminous documentary exhibits proffered by the Village, are totally irrelevant to the issue actually and properly before the Neutral Chair. Specifically, the Union urges that the Village resisted the selection of this Union, MAP, as the representative of the bargaining unit police officers because of unknown, but clearly improper, reasons.

The Union also emphasizes that the Employer's entire course of conduct since spring, 1994, reflects the fact that its preference all along was dealing with the FOP, who did not in fact vigorously press negotiation demands and who appeared to be willing to accept substandard or disadvantageous provisions, especially on critical economic matters such as health insurance and wages, the Union avers. Since the members of the bargaining unit rejected the FOP in the ISLRB-conducted election on May 11, 1994, the previous negotiations' history between the FOP and the Village is simply

irrelevant to the current negotiations, according to MAP's basic position in this case.

Therefore, as to many of the issues where the Village self-servingly demands regarding maintenance of the "status quo," there simply is no such status quo available to be preserved, once the transition to the new bargaining representative occurred, the Union directly asserts. Essentially, MAP, as the current incumbent, is contending that the FOP failed to represent the police officers in this unit fully and fairly in all three prior negotiations since 1986. That fact voids all prior commitments and bargaining history, MAP insists. Moreover, the FOP's "gag rule" applied from 1986 forward in all bargaining or negotiations and prevented bargaining unit employees from being fully informed on negotiating agreements or bargaining strategies, such as the use of alleged "historical comparables" in 1990 or 1991, according to MAP. Hence, nothing that was done before by the FOP and the Village as regards the earlier negotiations should be regarded as precedent for the current negotiations, which are indeed and should be considered the "first contract" as regards analysis of "breakthroughs or bargaining history" evidence. When the incumbent Union is voted out and a new Union is certified, what occurred before that point in time, should not exist or be considered relevant, MAP reiterates.

Additionally, although Management has emphasized the substantial majorities of bargaining unit employees voting for the earlier contracts for each of the three ratifications of FOP

negotiated agreements, two contracts and a wage reopener, it is the position of MAP that this record clearly shows that the vote in each instance was "razor thin" when the percentage of officers who voted to ratify is compared to all members of the bargaining unit. Also, the record reveals that proper notice of when and what was being voted upon in at least the last two ratification votes was never made, so that the percentage actually voting (60% of the unit, approximately) should not be surprising. A majority of 56% or so of the total unit, rather than valid votes cast, is not such a mandate as to tie this unit to a repudiated Union's negotiations history, especially when, on May 11, 1994, the FOP bargaining certification as representative was overwhelmingly repudiated by those same voters in an Illinois State Labor Relations Board (ISLRB) election (see Jt. Exs. 6-7).

The Union accordingly calls upon me to reject the implications of the Employer's line of argument, namely, that a switch of bargaining representative cannot negate previous negotiations history. Management's position is not consistent with the provisions of the statute, logic, or the particular factual circumstances as they exist in this specific case, the Union says. The changing of the identity of the collective bargaining representative here reflected a note of absolute repudiation of improper representation -- representation that cannot bind the bargaining unit in the future on basic items to be negotiated under the rights granted under the Act itself, the Union strenuously argues.

For example, the Neutral is told that the "co-pay and cap" provisions of the health insurance agreed to in 1991 were substantially worse than existing external police comparables then, and made it virtually certain that employees would suffer should premiums increase or the costs rise, the Union claims. That overpayment is not consistent with the current Union's proposals, but MAP is trying to bring the benefits provided in line with the comparative communities, MAP argues.

Also, the contributions of employees for insurance are the highest, or at least one of the highest, among any proper set of comparables, the Union insists, not just the comparables it used for this arbitration. To use the FOP 1991 contract, an incredibly bad labor agreement, as the "status quo" does away with the effective option of the bargaining unit members to replace a union that does not do its job with a new representative who can then go on to better the conditions for the entire bargaining unit.

Thus, the Union opposes adopting any of the critical aspects of the prior negotiating history, such as historical comparables, the prior health insurance contribution percentage for bargaining unit employees, and perhaps the parity or internal relationship with the firefighters -- although that alleged comparability is much less clear given the fact that there is only a single contract between the Village and the firefighters, and that resulted from an interest arbitration which occurred after the predecessor FOP contract with the Village had expired and MAP had become the certified bargaining agent, the Union points out.

The Employer's posture on all seven issues of this case can only be explained by its anti-union animus against MAP, the Union also urges. It further explains that by its refusal to grant retroactivity in pay raises, the Employer has shown what is at bottom in this case. For the Employer to urge that the Union could not present Appendix A-2 as a way to make the Arbitrator aware of how overbearing the Village has been, is just another example of how Management has skewed the facts, and played with or manipulated figures, in an attempt to avoid a fair assessment of each of the four economic issues to be resolved in this case.

The Union also emphasizes that the three "non-economic issues" (duration it characterizes as actually an economic issue), where the Village is the moving party, all show that the Village is willing to attempt a change in the status quo when it meets their convenience. For example, for Management to offer only a wage reopener in fiscal year May 1, 1997 to April 30, 1998 and then to not implement any of the tentatively agreed proposals affecting employees, as well as to refuse retroactivity in the first year of the contract (May 1, 1994 through April 30, 1995) reveals that Management is the party that is pressing for improper "breakthroughs" in this proceeding. After all, the Union asserts, both the internal comparables and external comparable communities, as the data exists on this record, routinely grant three year contracts for police officers -- and only four years when there are unique or peculiar circumstances which do not exist in the current case.

It is therefore clear to MAP that Management wishes to go outside the status quo for "no solicitation," but also wishes to upset the status quo on wage retroactivity (it had been granted to the FOP) and in its demand for an unprecedented "legislative mandates" provision simply to punish the employees for their selection of an effective collective bargaining representative.

4. Discussion

As to the status in the instant arbitration as regards whether prior bargaining history with a "repudiated Union" replaced in a representation election conducted by ISLRB may be offered as evidence and relied upon by either party, as well as the closely related issue as to whether the current contract negotiations (for which this interest arbitration merely serves as part of the negotiations process) is a "first or initial contract," or is to be considered a successor contract to those negotiated between the FOP and the Village since 1986, I realize that the precise issue is one of "first impression" under the Act. As each party at various times also suggested to me, the resolution of this issue has genuine significance in assessing the rest of the outstanding issues in this case. It really makes a difference on the merits in arbitration cases, whether a first contract or a third contract is actually what is being negotiated (or presented for resolution of some issues in this interest arbitration forum). As the Panel Chair recognized several years ago in City of DeKalb, supra:

"[i]nterest arbitration ... is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria." (p. 8).

Accordingly, the Chairman further observes that:

"Going beyond negotiations to catch up or give either party a breakthrough is contrary to the statutory scheme and undercuts the parties' own efforts, in rather direct contravention of the collective bargaining and negotiations process itself." Id. at p. 8.

Moreover, the Chairman explained in City of Highland Park (February 7, 1995) that:

"[i]nterest arbitration is at its core a conservative mechanism of dispute resolution."

Interest arbitration is intended to resolve an immediate impasse "but not to usurp the parties' traditional bargaining relationship." (p. 9).

Additionally, as the Chairman reminded the parties in Kendall County (November 28, 1994, Case Nos. S-MA-92-216 and S-MA-92-116):

"Interest arbitration is not supposed to revolutionize the parties' collective bargaining relationship; the most dramatic changes are best accomplished through face-to-face negotiations." (p. 13).

Against these general considerations, the precise issue before me is how much the selection of a new Union is, under the statute, permitted to change what went before when there has been formal bargaining with a different Union under the statute from 1986. Moreover, as Arbitrator Nathan indicated in the case between the firefighters and this Village issued October 1, 1994, supra, at pp. 68 and 69, the concept of "breakthroughs" and a preservation of the status quo as a significant fact of life under the Act most clearly is applicable after an initial contract between the parties, for, in a real sense, "every negotiated item in a first contract is a breakthrough."

Consequently, I cannot avoid deciding the issue of the status of negotiating history and the prior contractual agreements between Lodge 35 and the Village. Unlike City of Elgin and MAP Unit 54 (Steven Briggs, Arb., issued June 27, 1995), for example, another case where MAP through the election route succeeded a prior incumbent Union, but where the parties agreed upon wage retroactivity and proceeded on the basis that MAP was negotiating a "successor" contract, cited to me by the Village, the Chapter here will not agree it is not entitled to a "completely new deal."

I also understand that, as Arbitrator Nathan explained in Will County Board and Sheriff of Will County (August 17, 1988):

"If the [arbitration] process is to work, 'it must not yield substantially different results than could be obtained by the parties through bargaining.'

"Accordingly, interest arbitration is essentially a conservative process. While obviously, value judgments are inherent, the Neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme that is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow for the peculiar circumstances these particular parties have developed for themselves. To do anything less would be to inhibit collective bargaining."

Id. at pp. 49-50 (citing Arb. H. Platt, Arizona Public Service Co., 63 LA 1189, 1196 (1974)). See also Arbitrator Nathan's discussion on this point in Village of Elk Grove Village and IAFF, Local 3398, ISLRB No. S-MA-93-231 (October 1, 1994), supra, at pp. 67-68, as referenced at several points above.

For the reasons stated above, interest arbitrators generally are careful to look at bargaining history and what exactly the

status quo is as they assess each proposed issue presented to them by the parties, especially the economic ones. Here, however, the Union has pressed several significant arguments as to why it should be free from the bargaining history of a rejected predecessor union. What it has not been able to do, however, is to show why the interests of the Employer, who clearly is an equal "party in interest" in the interest arbitration at hand, should be subordinated or subrogated as regards "breakthroughs" or the question of whether this is a successor contract, even if the prior bargaining representative has been rejected by bargaining unit members in a representation vote conducted by the ISLRB.

Additionally, although the Union has made strong arguments that the FOP was "less than vigorous" in its representation of the rank and file police officers of the Village, Employer witness Olson presented substantial evidence, I note, that, at least from the Village's point of view, indicates that there was genuine, "good hard bargaining" between the FOP and the Village. Certainly, there was uncontradicted evidence that there were "exchanges and concessions" made in the prior negotiations, deals "cut" which did at least on some points clearly benefit the police officers; and trade-offs such as the giving up of advisory arbitration and the merit system payment program which were valued items to the Village. These exchanges and conditions of employment cannot, en toto, be put aside as non-existent or expunged from the record, despite the change in Unions, I rule, without serious detriment to

the Village that is nowhere required under this particular Act, I find.

The Neutral has carefully evaluated all the arguments made by the parties with respect to the impact on the current bargaining of the change in Unions, and has considered the various criteria established by the Act as to how to select the final, best and most reasonable offer for disputed issues presented in interest arbitration. Ultimately, it seems to me that, absent proof of fraud or misfeasance on the part of the prior Union in its bargaining for this bargaining unit, and I do not believe any of the proofs of the Chapter, taken in absolutely the best light for MAP, rise to that level, I must find for the Village that one of the most important factors is the history of what went before, i.e., past practice and bargaining history. The history may not mean much if it is predicated upon relationships that antedated the establishing of any bargaining relationship. That is not to say, however, that past understandings and contracts that existed before the change in Unions cannot be influential and persuasive. In that regard, I will consider the prior bargaining history and earlier contracts and for these purposes find what is at issue is a successor contract. I so rule.

B. THE MOTION FOR SUMMARY JUDGMENT

1. The Village's Position

As noted above, the Village argues that the Panel should direct an award in its favor with respect to the issue of wages and health insurance contribution because the Union in its proposals

violated both the Act and Stipulation No. 4 to Jt. Ex. 1. Citing numerous authorities, including several decisions by this Neutral, the Village claims that alternative offers go against the basic theory of the Act, that is, that the final offer exchange process will only work if the actual offers presented are unequivocal and clear in both their terms and scope. According to Management, the purpose of this type of final offer exchange process was explained very well by Arbitrator Barbara Doering in County of Lake and Illinois FOP Labor Council, ISLRB Case No. S-MA-02-19 (June 9, 1993) at 3 n.*:

The essence of a final offer process is that, when "final" offers are made, each side knows each issue will be resolved in accordance with one final offer or the other with no further opportunity for compromise -- at least no further opportunity for compromise short of a voluntary agreement to do so. The fact that there will be no later chance to soften a position, nor any opportunity for the arbitrator to opt for middle ground, is supposed to exert great pressure on both sides to put forward their very best offer -- including any final compromises they might have been willing to make -- in order that their position be deemed the more reasonable of the two in conjunction with statutory criteria. It would defeat the purpose of the process to allow later chances to revise offers or re-define issues.

This concept of the final offer process is based not only on the Stipulations of the parties but also on the statute itself, the Employer submits. In Village of Westchester and Illinois FOP Labor Council Lodge No. 21, ISLRB Case No. S-MA-90-167 (Supplemental Decision, August 30, 1991), at 12, Arbitrator Steven Briggs said:

Section 14(o)(2) [of the Act] requires the parties to submit "final" offers of settlement. It does not say "almost final", "nearly final", or "pre-final". The term "final" means just that. FINAL.

By definition, an alternative offer of settlement is not a "final offer" within the meaning of the Act, for it relieves the offering party of the necessity of making the hard choice as to what his final offer will be by shifting that decision to the arbitrator. The Panel, however, is not statutorily empowered to make final offers; its authority is limited to choosing between them, I am told.

The Village further emphasizes that, both as to Chapter Exhibits 4D and 4E and Appendix A-1 and A-2, when asked about the impact and effect of all these exhibits concerning the wage issue, the Chapter first acknowledged that it was withdrawing its earlier proposal A-2 in favor of C. Exs. 4D and 4E. Later, the Union's position changed and it was indicated for the Chapter that, "We're amending it". Later still, MAP attempted to offer a "modified" version of the Chapter's final position, wherein all of the economic issues such as longevity, wages, overtime and medical insurance would be effective May 1, 1995 and would withdraw the previous position. The Village argues that an offer cannot be modified or withdrawn unless it has first been made. The admission by MAP that there was a change is both telling and fatal, Management therefore argues.

The parties in this case expressly and deliberately included in their stipulations the provision that final offers, once exchanged, could not be changed or amended without written approval of the other party, the Village strongly maintains. Thus, it is its position that the wage offer of the Union is fatally defective

and an award in its favor should be issued solely on that basis, without regard to the merits.

For many of the same reasons, plus several additional points of argument, the Village argues that the Panel is required to direct an award in its favor on the issue of insurance retroactivity. For example, the Village notes that while conceding that wages are covered by the retroactivity bar contained in Section 14(j) of the Act, as the Employer views the record, the Chapter takes a different position with respect to employee contributions to the cost of Village-provided health coverage, contending that the Panel does have the statutory authority to grant a reduction in contribution levels that is retroactive to May 1, 1994.

Specifically, the Chapter proposes to reduce the contribution rate from a dollar amount currently equal to 15% of the premium cost of dependent coverage to a set percentage of 10% of premium cost retroactive to May 1, 1994, with the Village being required to refund to the officers the difference between contributions actually paid and those required by the award. The amount of such "refund", which according to the Chapter's proposal is to be made "within thirty (30) days of the execution of this agreement", will total \$14,013.00, or approximately \$177.00 per bargaining unit member, the Employer argues. This "refund" is the dollar equivalent of a .045% across-the-board wage increase.

The statute, however, does not allow the Panel to order such a retroactive "refund", according to the Village. That is because

Section 14(j) of the Act does not limit the statute's retroactivity prohibitions to "wages" only. Rather, this Section uses the much broader term "rates of compensation".

The Village goes on to argue that when the statute uses the term "rates of compensation", therefore it must mean any form of compensation that has a measurable rate or amount. Certainly, this applies to insurance premium contribution rates. This is particularly true in light of the impact of insurance contributions on real wages, the Employer opines, citing the Neutral's award in City of Highland Park and IAFF, Local 822, ISLRB Case No. S-MA-94-227 (February 7, 1995), p. 22, where I stated that "[h]ealth insurance today is a substantial and valuable benefit, in light of rising health care costs and increasingly restrictive cost containment efforts of group plans."

Clearly, according to Management, as described above, insurance contribution rates, like wage rates, are part of "rates of compensation" as that phrase is used in the Act. Like wage rates, insurance contribution rates are thus affected by the retroactivity bar in Section 14(j). Accordingly, the Panel has no jurisdiction or authority to award changes in insurance contribution rates retroactive to May 1, 1994, as the Chapter proposes. Because the effective date of the change in insurance contribution rates is an integral part of the Chapter's proposal, and because the Chapter cannot now modify its final offer on insurance to make it legally awardable, there is no viable Chapter offer on insurance and the Panel must, perforce, choose the

Village's offer on wages and health insurance solely based on the procedural gaffs of MAP, the Employer urges.

2. The Union's Position

As regards the Employer's motion to direct an award on both the wage and health insurance issues, the Union stresses that there is no express provision in the Act itself, including Section 14(j), referring in any way to such a draconian penalty or remedy for breach on the final offer or a proposal for retroactivity, even if the Union had in fact intended to make such alternative offers. It makes no sense to demand that sort of remedy under the factual circumstances of this case, the Union therefore asserts.

Much more important, however, both the wage and health insurance proposals by the Union were clearly proper and did not violate any provision of the Act, including Section 14(h)(6) or 14(j), which prohibits only the granting of retroactivity for "rates of compensation" that might be effective before the start of the fiscal year "next commencing after the date of the arbitration award," under the circumstances where mediation or interest arbitration have not begun in a particular fiscal year because of a representation election occurring during that fiscal or budget year.

According to the Union's logic, rates of compensation do not affect health insurance payments by the Employer, since such rates of compensation obviously deal with rates of pay or wages, and not "other benefits being supplied." Hence, even if there was a potential retroactive aspect to the health insurance offer (which

will be developed below), which the Union denies, Section 14(j) does not apply and the Arbitrator would be free, if the Neutral desired, to award rebates or negotiated reductions in payment for that time period on an excessive overall contribution from individual employees, as is the fact under the current health insurance required "co-pay premium" contribution for the police officers of this Village.

Management cannot refute that argument, but, at any rate, the Union, to avoid being sidetracked on false issues, it suggests, made it clear at the arbitration that its demands on all economic items would result in prospective or a "starting point" payment of May 1, 1995. This covers all its economic offers, that is, longevity, hours of work and overtime, wages, and health insurance, the Union stressed. Consequently, the whole issue of "retroactivity" is a strawman and should be brushed aside without further analysis or the unnecessary expending of legal time on the "motion," the Union urges.

Finally, as to the question of the "wage offer," the Union notes that it did admittedly present two appendices: A-1 and A-2. As quoted above, these appendices do show how the pay increases demanded by the Union would affect actual wages for police officers under the salary scale, both under the two years when wages may be increased under the Union proposal, but also under the three years that is the appropriate duration of this contract, as per the Union's offer. It is patently obvious that the Union was using Appendix A-2 as a mere illustration of the actual fairness and the

precise effect of its wage proposal, according to MAP. It knew the Neutral could not award wages increases contrary to law. It never demanded that the Neutral act to violate the law, but proffered Appendix A-2 to prove its point as to the reasonableness of its final and best offer, the Union directly argues. The motion for directed award should be denied.

3. Discussion

Turning to the second threshold issue, I note that just as I firmly believe what is involved in this case is not a "initial contract" because of the happenstance of the change in bargaining representative, I also hold that the presentation of Appendices A-1 and A-2 cannot require me to issue a directed award on wages to Management, even in light of a later "Amendment," i.e., Chapter Exs. 4D and 4E, as the Village so strongly pressed in its motions at the arbitration hearing.

First, as the Union has noted, it did make clear at least by the hearing on February 23, 1995, that all economic benefits would begin no earlier than May 1, 1995. Once that was clarified, if such clarification was necessary, all issues with regard to "retroactivity" and the wage proposals, as well as the longevity and hours of work and overtime issues, could not be affected by the restrictions spelled out in Sections 14(h)(6) and (j) of the Act, I rule. Whether rates of compensation involve merely wages or all other economic benefits, too, a clear bone of contention between the parties, if my authority to award increases in compensation actually begins during the time the Act permits, which is the case

at least after C. Exs. 4D and 4E were entered into the record, then a directed verdict remedy such as demanded by Management is unnecessary, I find.

I understand the detailed and carefully crafted argument by the Village that "final offers must be final," citing several well-respected arbitrators who have firmly ruled on this point. I also understand the need in the usual situation to maintain the clarity and finality of such last and best offers for the system to work in any sensible way at all. However, the potential policy reasons for that clarity in making parties stick to final offers -- and the stipulation agreed to by these parties to make sure that would happen, Jt. Ex. 1, Stipulation No. 4 -- does not require a remedy of a directed "verdict," for what I believe is an obvious fact that Management has chosen to de-emphasize in its extensive arguments on this point: despite its rhetoric, it is obvious that the Union gave up on the alternative offers and retroactivity when it was "called on" by Management for violating the terms of both the Act and Jt. Ex. 1, the parties' stipulations.

Simply put, as I indicated almost immediately at hearing, I believe that a "final award," to be effective and reasonable, must demand of me and the rest of the Panel actions which are legal and appropriate under the statute. Appendix A-2, which is the primary cause for the motion by Management under consideration, if seriously presented as an offer placed on the table, rather than as a mere illustration of the effect of Appendix A-1, would require such an illegal act on its face. As counsel for the Union clearly

indicated at the time, he was proffering that "offer" at the behest of the bargaining unit, as an alternative to show the logic and reasoning for the offer that could legally be analyzed and granted, if appropriate and more reasonable than the Employer's counter proposal. That is the way I take what happened at hearing.

Whether counsel for the Union at that moment meant Appendix A-2 to be exclusively an illustration of Appendix A-1 or whether my response caused him to quickly move in that direction I believe is largely irrelevant to the resolution of this particular issue. What was agreed to in the stipulations between the parties (Jt. Ex. 1), and required by the statute, is a final offer that represents the best and most reasonable assessment of each party as to what the Neutral must look to here. There can be no modifications by the Panel, as in "conventional" interest arbitration for non-economic contract proposals in this case.

On this issue, despite what I believe may originally have been an error by the Chapter, there is no basis for a conclusion that the "options" offered the Panel and/or "alternative" Appendices for wages, and the effective demand for retroactivity on the health insurance contribution proposal, if the Village's reading of Sections 14(j) and 14(h)(6) of the Act are correct, may not be fully consistent with the scheme or purposes of the Act. This is a different situation from the one Arbitrator Doering suggested existed in County of Lake, supra. There is a real basis for concluding that Appendix A-2 was an illustration for the logic of a 10.25% increase in one year represented by Appendix A-1. Given

that fact, I will not grant a "gotcha" to resolve the core of this dispute.

Moreover, there was really no proof of harm suffered by the Village, even as regards the issue of health insurance payments, at least as regards the point in time when the Union stated that all benefits demanded by it would begin or commence May 1, 1995. Since clearly that precluded the portion of the Union health insurance proposal requesting a rebate or retroactive payment for a negotiated reduction in employee contributions to the health insurance program, even if Management is correct that the health insurance proposal would come under total compensation, and thus "rates of compensation" provided for in Section 14(h)(6), no harm can be shown by Management that would in any way justify a directed award on these critical points. Without such evidence, it is logical to reason that the record permits the Neutral to juxtapose the respective final and most reasonable offers on wages and health insurance in a manner fully consistent with the Act, whether as read by the Village or this Union. Under these facts, I deny Management's preliminary motions on the points under discussion.

In addition, the Employer did not refute the Union's contention that Management, too, used the FY 1994-1995 to fashion its wage proposal for May 1, 1995 through April 30, 1996. It is to be remembered that the Employer proffered its \$1,000.00 one-time only bonus, plus the 7.64% increase effective May 1, 1995, based on internal comparability (the firefighters' wage increase under the Nathan award) and the gap in pay that would result if FY 1994-1995

was not used in computations of wage increases at all. Thus, the parties are not so far apart in technique, at least, and Management clearly informed the Neutral of its use of the realities of the mandated year to grant monetary awards by way of illustration as to the reasonableness of its offer, too.

Based on these rulings, it is unnecessary for me to resolve the question of whether "rates of compensation" fall within the rubric of Section 14(h)(6) of the Act. Concerns of stability and predictability resulting from the arbitration process mandate that, on this record, Appendix A-1 be considered the final offer as to wages, and, as to all four economic items presented by the Union, the starting or commencement point must be viewed as May 1, 1995 in the assessment and reasonableness and appropriateness of each specific offer. The Employer's motions for the Panel to hold otherwise are rejected on that basis, the Neutral rules.

V. COMPARABILITY

Before proceeding to a discussion of the merits of each of the economic and non-economic issues in dispute, a discussion of the appropriate comparables is clearly in order. However, because Arbitrator Nathan discussed the theory of comparability so fully in his Interest Arbitration Award between this Village and another Union, Local 3398, IAFF, V. Ex. 2, and, so as to avoid unnecessary redundancy, I refer the parties to Nathan's extremely detailed and cogent analysis of the proper use of external and internal comparability as factors in assessing the parties' (economic and

non-economic offers), as explicitly mandated by Section 14(h)(4) of the Act. Nathan's Award, supra, ISLRB No. S-MA-93-231 (October 1, 1994).

This award, Village Ex. 2 in the current case, details the considerations that make comparability so significant in interest arbitration cases. After giving the history of the utilization of internal and external comparables by several interest arbitrators interpreting the Act, including this Neutral, and/or after also stressing the importance of both internal and external market comparisons to determine which party's position is more worthy, Nathan concludes that both parts of comparability are so important because they provide at least some rational framework, in the sense economists take into account, against which the proposals at issue, as presented by the parties, may be measured. As Arbitrator Nathan states "[t]he appropriateness of individual proposals sometimes can be best gauged by examining what other parties or other units within the employer's jurisdiction have accepted," id at p. 22.

Nathan also notes in the Elk Grove Village and IAFF Local 3398 Interest Arbitration Award, supra, at p. 29, fn. 31, that in at least one earlier case, I have concluded that external comparability is "the most significant of the factors to be considered by [an interest] Arbitration Panel." See City of Dekalb and Dekalb Professional Firefighters Association, Local 1236, ISLRB No. S-MA-87-26 (Goldstein, 1988). Frankly, I am not all that certain that I would make such a broad pronouncement today, as the now substantial line of interest arbitration decisions have come

down, applying all the statutory factors provided for in Section 14 of the Act, quoted above, in a manner often dictated, as Nathan indicates, by the peculiar and unique circumstances of each specific case.

Still, I do note that, in the abstract, the appropriateness of one economic offer, at least, over another, as presented by the parties in an interest arbitration, is often not apparent without, as Nathan said, "some measure of the market place." Village of Elk Grove Village and IAFF LOCAL 3398, ISLRB No. S-MA-93-231 (Nathan, Arb., Oct. 1, 1994) at p. 29. It also should be emphasized that, despite the commonness of "cherry picking" by parties to interest arbitrations (see my discussion of that practice in Kendall County and Illinois Fraternal Order of Police Labor Council, ISLRB Nos. S-MA-92-216 and S-MA-92-161 (1994) at pp. 10-12), external comparables are indeed not a "pick and choose situation." Unquestionably, the information supplied on this issue by the Employer in the current case, in its development of its line of argument that MAP could not logically explain its choice of external comparables, and that its information, in turn, was more current and better documented, has a direct bearing on the outcome of this case, at least on the four economic issues, if I accept Management's contentions.

By contrast, the Union did not refute the Employer's assessment that what the Union did in selecting comparables was to pick and choose, or "cherrypick", except to simply deny that charge, essentially, and present certain rationales concerning

geographic proximity to Elk Grove, size of police force, assessed value of property, and sales tax revenue, that the Village was able to demonstrate should have resulted in not fifteen, but perhaps as many as sixty communities being eligible as potential comparables. Consequently, I cannot accept the Chapter's argument that it had the right to present Chapter Ex. 3, its list of external comparables, because "those are the ones [the Union] saw fit to use." Instead, for external comparables to be properly employed, some consistency in comparison should be made based on logical or fair standards in order to serve as a more exact guide in reaching the most realistic result pursuant to the intent of the Act.

Aside from these general observations, I adopt the reasoning and analysis of Arbitrator Nathan as constituting the proper guide as to an assessment of the selection of external and internal comparables, as he detailed in Village of Elk Grove Village and IAFF Local 3398, supra, at pp, 22-41.

A. EXTERNAL COMPARABILITY

1. The Union's Position

The crux of the parties' dispute on external comparability goes to the proper identification of those communities (employing units) with similar relevant features against which the parties at issue can fairly have their offers compared, the Chapter recognizes. The communities listed by the Chapter as being comparable to Elk Grove Village are the following:

Addison
Arlington Heights
Buffalo Grove
DesPlaines
Elgin
Elmhurst
Glenview
Hoffman Estates
Mt. Prospect
Niles
Rolling Meadows
Schaumburg
Wheeling

(See C. Ex. 3)

The Chapter contends that because of geographic proximity; sales tax revenue; assessed valuation; and size of the department as measured by the number of total officers (supervisory and non-supervisory) within the department, the above 13 communities must be considered comparable to Elk Grove Village in the sense required by Section 14(h)(4)(a) of the Act. There is at least some indication from the testimony on the record, also, that the additional factor of population range was also used by the Union in formulating its list of comparables, I note.

The Union further contends that the 13 communities noted above form an appropriate cluster for a fair and accurate analysis of the actual labor market for Elk Grove Village police officer employees. During the course of the hearing, the Union presented several exhibits making comparisons among the communities in its comparability group, not only as to where Elk Grove stood regarding the specific items at issue, but also as to such fundamentals as size and financial health, and whether these other communities had larger daytime populations than the permanent Village or City

population, as is the case with Elk Grove Village. According to the Union, its group of comparables includes some communities with high assessed home values and sales tax revenue, as well as some less affluent communities, too. Elk Grove Village stood "right up among the top" communities in its list of comparables, by each measure, according to the Union exhibits.

Based on these and other demographic and economic measures, the Union asserts that Elk Grove Village is at the highest range of its "comparables" as regards resources and ability to pay appropriate benefits.

The Union further argues that the Village is certainly indistinguishable from the 13 comparables it has selected, as regards the resources and ability to pay benefits. It contends that the Village, for our purposes, should be compared to this above-noted cluster of comparables on overall comparability and also on the specifics for each economic issue presented. It also argues that the Village has never developed with the agreement of MAP a pool of comparables that were "historically used." It certainly stresses that whatever was done with the former Union, the FOP, as regards external comparables is inapplicable to this Chapter as the now certified bargaining representative. MAP also stresses that there was no prior interest arbitration to the current one involving the parties, or even the Village and the FOP, as regards external comparability.

In support of its position that the comparables contained in C. Ex. 3, and set out above, should be used for any fair look at

external market comparisons, the Union notes that its comparables parallel reasonably with the Village itself on the basis of number of sworn officers, geographic proximity, and overall population, especially when the peculiar or unique factor of the very substantial increase in daytime population as opposed to permanent or "nighttime" residence in this Village is considered. There is simply nothing that would suggest that the Village's historical or computer-generated multiple lists of comparables (at one point adding to over 30 communities) in fact are a better reflection of external comparability than that presented by the Union, MAP directly argues. Thus, the external comparisons on all salient points favor the Union.

2. The Village's Position

The Employer, on the other hand, has identified 20 communities it asserts were historically used by it and the representatives of the bargaining unit during both the 1991 and 1995 negotiations.

These are:

Addison
Arlington Heights
Bartlett
Carol Stream
DesPlaines
Downers Grove
Elmhurst
Glendale Heights
Hoffman Estates
Lombard
Lisle
Mt. Prospect
Niles
Palatine
Rolling Meadows
Streamwood
Villa Park
Westmont

Wheeling
Wheaton

(V. Ex. 38)

Of these, Management submits, all fit within the 15-mile radius that constitutes the Village's area residency requirement (V. Ex. 41). Moreover, V. Ex. 39 is a document exchanged between the parties in the prior bargaining relationship across the bargaining table in 1991, which contains a list of the above-noted comparable communities, including their base rates of pay, with the FOP's then-desired wage increase and the Village's then-latest wage proposal entered on the exhibit to indicated where each proposal stood relative to these other "comparable" communities. V. Ex. 40 is a similar document with more updated information relative to base pay which was presented to the FOP later in the bargaining process (on August 27, 1991). These exhibits, as well as the testimony of Employer Human Resources Officer Olson made clear that the representatives of this bargaining unit, the "real" party at interest here, and the Village, clearly had a defined comparability pool that should bind the current parties in this interest arbitration.

Perhaps more important, the Village argues, Employer witness Olson also testified that not only did these above-mentioned documents then provide the basis for discussion and eventual wage agreement between the FOP and the Village, but that the same list of comparables has been used in the current negotiations between MAP and the Village in the current bargaining begun in June, 1994. It is also noteworthy that the current parties proceeded, with

these comparables as a point of comparison, to reach several significant tentative agreements on economic and non-economic items, aside from the seven issues facing the Arbitration Panel. This use of the comparables set out immediately above in the current negotiations between MAP and the Village should be given great weight in the resolution of the appropriate comparability groupings, the Village claims.

The Panel Chairman is also reminded of my acceptance of the importance of historic comparables when I stated in Village of Skokie and IAFF (March 2, 1990), that:

Factors considered significant in determining comparability are geographic proximity, occupational similarity, employer similarity, and the comparisons the parties have used in past negotiations. (emphasis added).

Hence, argues Management, in this regard, it seems that the comparables proffered by the Village as opposed to those MAP is seeking to use, is merited on the evidence in the record, and the "historical" comparables should be utilized for the above reasons.

The Village in its arguments on the point of external comparability went well beyond emphasizing its historical comparables, set out immediately above, I also note. It presented very extensive testimony, and numerous written exhibits, to portray its basic argument that MAP has impermissibly "cherry-picked" the list of comparables the Chapter presented at this arbitration, as above-discussed. For example, for purposes of illustrating the arbitrariness of the Chapter's proposed comparables, the Village at the hearing claimed it applied the Chapter's "basic criteria" and extended them "to their logical conclusion", which essentially was

an exercise in reducing the Union's line of argument and selection of comparables to the absurd, the Neutral believes.

In addition, the Employer took the geographical distance used by the Chapter and created a list of 61 communities that it asserts were within the Chapter's "geographic bounds that fulfilled the Chapter's population range."

Extending the Chapter's reasoning a step further, the Employer proffered into evidence Village Ex. 44A, which purports to show the correct number of sworn personnel within the range established by the Chapter's "selected comparables." Applying what it believed to be that actual range to the number of sworn officers below the rank of sergeant, which mirrors the makeup of the Chapter's bargaining unit, the Village took that difference on the high and low end of Elk Grove Village's number of sworn personnel, that is, a difference of 44 was officers added on each end of the range. The Village then compiled a list of 17 communities that "shook out" from the previous list of 61 communities that met the criteria of geography, population, and now the "actual range" for the number of sworn police officers below the rank of sergeant in each of the potentially available comparable communities. This list is found at V. Ex. 44D, I note.

Applying the Chapter's factor of sales tax revenue, the Village went on to find similar ranges for that factor and thus add more communities to the potential comparability pool. It also used the factor of equalized assessed valuation per capita, a better measure than just overall EAV, it suggested, to all the above

communities, and also to the original communities deemed to be comparable by the Chapter, as set out above. As a result, a second and completely different list of 17 communities allegedly was created "on an equal and objective basis", to add to the Chapter's list of comparables and the Village's "historical comparability list."

3. Discussion

The Neutral has carefully evaluated the arguments made by both parties with respect to the external comparability question, and has considered the various criteria established by the statute as well as the numerous citations to authority contained in both briefs.

I find the appropriate external universe for comparing the parties' final offers consists of both the Union's list of comparables (C. Ex. 3) and the "historical comparable pool," V. Ex. 38, with the additional factor to be remembered, namely, that the relative standing in either universe, Union or Employer, should be used over time, as well as the current standing in a particular comparison group for a specific issue, and not dealt with outside or isolated from the bargained relationships which have come before. In other words, if, since 1986, Elk Grove has stood in the middle of the pack as regards wages, for example, that relative standing must be considered, along with the external market comparables. To do otherwise would be to treat the prior contracts and formal bargaining relationship of the Village with the prior Union, FOP Lodge 35, as a nullity, and essentially to accept the

Chapter's contention that the interest arbitration occurring now is for an initial contract, which I have already indicated I believe I cannot reasonably do.

As will be developed below, I thus agree with the Village's view that the process of bilateral wage and benefit establishment via collective bargaining over a period of seven years or longer is relevant and must be considered. It also represents sufficient time to have determined where arm's-length collective bargaining had placed this community as compared to any other group of communities. Three separate sets of bargaining negotiations over wage rates have been held, I note, albeit these were with the FOP as the incumbent Union, and not the current incumbent, the MAP Chapter, which is the moving party on the economic issues, at least, in this interest arbitration, I of course recognize.

Considering all the relevant factors, it also appears to this writer that Management is generally correct on the question of the proper way to use comparables in this particular and in many ways unique case. What has gone before must mean something not only as regards the "historical" comparables used for negotiations for the bargaining unit employees, but also as regards the additional issue of where, in relative terms, the earlier bargaining had placed Elk Grove Village on a whole range of issues bargained for in the past among the external market comparisons. To do anything else would give undue advantage to MAP as the new incumbent Union; additionally, such a result is nowhere mandated by any provision of the Act I could find.

A careful balancing of interests, however, should not result in all of the comparables formerly used being the ones solely available for MAP's use in this current case. I believe these historical comparables were never agreed to by MAP, as a sole basis for market comparisons. But those items that have been subject to earlier bargaining must still be considered, as to relative placement or standing, if and when they occur regarding the seven outstanding issues. In this age of bargaining, to assert, as MAP does, that it can start fresh and disregard prior formal bargaining, including the accepted relationship of the Village (to the external comparables), is not convincing. Thus, if, in the future, conditions change, or factors not in existence now would permit the Chapter to move up or prevail on an issue relative to other communities, then at that time the movement will occur.

There is, however, ample time to establish a meaningful history of bargained relationship, I find. The precise definition of a comparability pool is not as important now as it may be in other situations where the interest arbitration has been called into play, where the situation really is an initial contract. Moreover, except for the selection of MAP rather than the FOP, there has been no showing of any relevant changed circumstances on this record, as regards comparables. The single fact of a change in Union representation cannot recreate the entire process, as I have indicated above, and that critical conclusion obviously shapes many of the determinations that are to follow, I specifically note.

VI. ECONOMIC ISSUES

A. WAGES

The parties in their Stipulation provided concerning wages and any claim for retroactive pay that: "Wages for each year of the contract are to be considered one overall issue, and not to be divided into separate issues" (Jt. Ex. 1, p. 2, no. 5).

1. The Parties' Final Offers

a. The Village's Position

The Village proposes that the following wage provision be adopted by the Panel:

Wages. The Village proposes to increase the salary schedule for bargaining unit employees on an across-the-board basis in the amounts stated below:

- (1) Effective May 1, 1995: 7.64% plus a one-time compensation payment of \$1,000
- (2) Effective May 1, 1996: 3.5%
- (3) Effective May 1, 1997: Wage Reopener

It is noted by the Village that the Chapter's characterization of the Village's final offer, contained in Exhibit C. Ex. 4A is incorrect because it does not include the one-time compensation payment of \$1,000 to each unit member, which is part and parcel of the Village's last proposal on wages. The more critical question is not how the bonus affects the current offers and not how it affects the long range pay structure itself. The Employer contends that the offer is rational and equitable, and that it addresses the peculiar situation of the switch in Unions with the unintended

result that Section 14(j) of the Act prevented any raise in FY 1994-95.

b. The Chapter's Position

The Chapter proposes that the following wage proposal be adopted by the Panel:

FINAL POSITION

APPENDIX "A" 1

EFFECTIVE 5-1-95

SALARY SCHEDULE

PATROLMAN	5-1-95 thru	5-1-96 thru
	4-30-96 10.25%	4-30-97 4.75%
Step 1	33,323	34,906
Step 2	35,462	37,146
Step 3	37,602	39,388
Step 4	39,740	41,627
Step 5	41,878	43,868
Step 6	44,005	46,095
Step 7	46,829	49,053

(C. Ex. 1, p. 49).

There is no change in the existing pay as proposed by the Chapter. Consequently, their wage proposal is simply 10.25% for 5/1/95 and 4.75% for 5/1/96 or 15% for the three-year period from May 1, 1994 actually 15.49% when compounding is taken into effect), if Appendix

A-2 would be granted, and not used as an illustration of how the 10.25% figure for May 1, 1995 was arrived at.¹

2. The Parties' Respective Positions on Wages

a. The Village's Position

It is the position of the Village that its final proposal on wages is the more reasonable and consistent with all applicable statutory criteria and should be selected by the Neutral Arbitrator. While technically only affecting fiscal years 1995-96 and 1996-97 (with the Village proposing a wage reopener for fiscal year 1997-98), clearly the Village's offer was crafted to take into consideration that Village police officers received no increase in pay in fiscal year 1994-95. The Panel is presented with the straightforward question whether the Village's wage proposal totaling 11.04% (7.64% plus 3.75% -- not taking into consideration the effect of compounding) is more or less reasonable than the Chapter's proposal of 15% (again, not taking into consideration the effect of compounding which will further widen the difference). Stated another way, if interest arbitration procedures are intended to produce decisions which approximate the outcome of free collective bargaining, the Employer asserts it is more reasonable to believe that good-faith bargaining between the parties would give rise to an average increase over these three years of 3.68%, rather than a 5% per year.

¹ The police officers' top step, Step 7, paid \$42,475 in 1993 (V. Ex. 3, Appendix C). The increase from \$42,475 to \$49,053, as proposed by the Chapter, is 15.49%.

To buttress this claim, the Village contends that it is logical to reason that although it makes no claim of financial inability to pay, the Village has more appropriately assessed the "interest and welfare of the public" factor in presenting its wage offer. The Village emphasizes that MAP has made no claim of increased productivity or changed circumstances (other than its election to replace FOP as the bargaining agent) which might support some sort of "equity" increase above and beyond that which would be expected to be negotiated between the parties.

The Village further argues that, on the other hand, it offered compelling evidence into the record that such an increase is totally unnecessary to recruit or retain qualified officers. On that point, the Village presented Village Exhibit 33, which shows that, in terms of recruitment, the last time the Village had an opening in the police officer position, namely, in June, 1993, 523 persons applied for only one available position; 308 individuals took the written exam; and 48 were certified on the eligibility list. Other data presented as to applications and retention of police officers offer strong and compelling evidence, as the Village sees it, that its wage and benefit package is more than sufficient to attract highly-qualified candidates.

The Neutral is reminded that on the issue of "interest or welfare of the public," I have already ruled in City of Highland Park and Highland Park Firefighters Association, Local 822 (1995, at pp. 23-24):

In fact, the more probative public interest here is the City's payment of wages sufficient to attract and retain competent fire fighting personnel.

Hence, the Employer contends its offer fully meets that criterion.

The Village also argues that, on the standard of external comparability, its offer would place the police officers comfortably within the middle of range of compensation paid by comparable communities within the 18-mile residency limit. The Union's offer would certainly satisfy these requirements, but leave less money for other civic uses. Thus, the factor of the interest and welfare of the public favors the Village's offer, the Village submits.

The Village also asserts that the factor of internal comparability strongly supports the Village's wage position.

Clearly, the Village's proposal of a 7.64% wage increase for 1995 (an average of 3.82% per year for fiscal years 1993 and 1994) is far more reasonable than the Union's 10.25% request (an average of 5.125% per year) when compared to the increases granted to the Village's non-union, non-supervisory general employees, according to the Village. Even more compelling, however, is the comparison between the Village's two primary unionized groups,² its police officers and firefighters.

Arbitrator Nathan, as mentioned, in 1994 awarded Village firefighters an increase of 3.25% in 1994 and 4% in 1995. This is exactly the same as the Village's proposal of 7.64% for 1995, when

² The Maintenance Department has just recently been organized, it appears from the record.

applied to any particular step on the wage schedule, the Village points out. The Union's proposal of 10.25% for 1995 on the other hand would grant to that Union a two-year wage increase which is 2.61% greater than that received over the same period by the Village's firefighters. There is absolutely nothing in the record to justify such a disparity in increased wages between these two groups, the Village maintains.

The Village introduced evidence concerning the alleged historical relationship of police and firefighter wage rates, beginning with the year 1979, when both police and firefighter personnel were paid on the basis of merit, the record reveals. In 1986, when the Village's police officers established their wages through the collective bargaining process, police officers' top pay exceeded that of firefighters by approximately \$500. In 1987, after the police officers completed their first-even collective bargaining contract, the top pay for a police officer was reduced from \$33,972 to \$32,471 as a trade-off for elimination of the merit system (V. Ex. 50B). With the advent of a formal step pay plan, with its built-in longevity feature, the top pay of police officers continued to advance more rapidly than the top pay of firefighters, but it was not until completion of the 1991 negotiations that a police officer's top pay exceeded that of a firefighter (\$39,270 to \$39,144, or a \$126 difference) (V. Ex. 50B). The difference of \$130 in top pay was maintained in 1992 and in 1993. Significantly, this \$130 differential was maintained in 1993 by Arbitrator Nathan in his firefighter award, the Village states.

Under the Village's proposal, the Panel is told, in 1995 the top pay of a police officer will be \$45,720. This would amount to \$250 more for police over the top pay of firefighters, which according to the Nathan arbitration is \$45,463. In contrast, if the Chapter's proposal is selected, the top pay of a police officer in 1995 will become \$46,829. This will result in a \$1,366 differential between the top pay of a Village firefighters, and the top pay of a Village police officer. There is no evidence in the record to support such a dramatic change in the relationship of police and firefighter pay, which has remained relatively stable over the past several years, the Employer argues.

If the Panel grants the Chapter's wage request, it would not only encourage use of the arbitration process for police, but it would also totally disrupt the moderating effect of Arbitrator Nathan's award involving the Village's firefighters, according to Management. Indeed, the specter of competing arbitration awards, with one maintaining a relatively stable relationship between Village police and firefighters, and the other dramatically increasing that differential, can only have the effect of locking the Village into competing interest arbitration proceedings for the next several years, it opines.

I am cited to Arbitrator Briggs by the Village, in defense of its posture on internal comparability, when Briggs pointed out in Village of Arlington Heights and IAFF (January 29, 1991):

Indeed, granting the firefighters percentage increases higher than those negotiated by the FOP would likely instill in the latter the motivation to redress the balance during future negotiations. This produces a

whipsaw effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability of the bargaining process.

While the Village does not assert that any lock step relationship has or should exist between police officer and firefighter top pay, it emphasized that the range of that relative relationship must be maintained if there is to be any stability of the parties' bargaining relationships. This is particularly true where the Union has tendered no evidence justifying a disparity of police and firefighter top pay which, under the Chapter's proposal, will increase in excess of \$1,000. The Employer directs the attention of the Neutral to another colleague, Arbitrator Berman who pointed out in City of Aurora and Association of Professional Police Officers (January 13, 1993), at p. 12:

... Internal comparability is a factor that must be considered, especially since the Union produced no countervailing rebuttal evidence.

Thus, to the Village, it has been demonstrated that internal comparability alone dictates that the Chapter's offer be rejected as not reasonable or equitable as compared to what Management has put on the table.

The Village also asserts that the Chapter's wage proposal is way out of line when compared to wage increases granted by external comparable communities, as touched upon at several points above. Additionally, it is the argument of the Village that its wage proposal is more in tune with the outcome which good faith collective bargaining would be expected to produce -- an element

always given at least lip service by interest arbitrators, it points out.

In other words, the range at the middle of the salary structures on several charts and tables presented by the Village into the record at the arbitration hearing is shown to be wide enough and the Employer proposal is rich enough, that its proposal will not impact upon the Village's standing among the comparable communities, under either the Union or Management constructed basic comparability cluster, Management submits.

On the other hand, the Union proposal, 15% over 2 years, clearly will move the Village from the mid-point to the very top in pay over only the two year period covered by the Union's wage demands, the Employer stresses. Moreover, Management submits that the Union's proposal, both with regard to actual dollars offered and percentage or rate increases, also is beyond the raises being given by any of the comparables except for one or two of the ones on C. Ex. 3, quoted above, "cherry picked" to suit the Union's purposes. Perhaps equally significant, the Union proposal of 15% in increased wages over two years by far outstrips the cost-of-living increases, no matter which consumer index is used for a standard of comparison, and that is another statutory guideline this Panel is obligated to consider.

Consequently, Management suggests that the percentage increases demanded by the Union ranged outside cost-of-living increases, the external comparable pool when the historical position of the Village is properly considered, and the percentage

of raises, whether dollar-to-dollar or by percentage comparison for any of the relevant comparison years contained in all the voluminous exhibits placed in evidence in this case. When coupled with the Village's rank or percentile for each of the years 1987 through 1993 amongst all the communities offered by either side as potential comparables, the Union's offer is clearly outside the trend that collective bargaining has created for the police officers in this unit, and would constitute an unjustified "breakthrough," Management concludes.

b. The Union's Position

The Union, on the other hand, believes the wage increase it proposes for the last two years of the agreement for which pay increases can be granted is appropriate, because the employees in this bargaining unit have not received any pay increase from May 1, 1994 through April 30, 1995, and that fact is solely the result of Management's action to punish the bargaining unit employees for preferring MAP rather than the FOP as the certified bargaining representative, the Chapter maintains. And even though the Village and the FOP may have historically bargained for small increases, the Chapter suggests, the list of MAP comparables, C. Ex. 3, quoted above shows the Village in the middle or below middle position as to both base pay and top pay for police officers.

There is no appropriate theoretical or practical reason for this, other than the poor job the former Union did in representing the bargaining unit employees and the gaps in wages between the Village and the proper external comparables is so great that it is

difficult to find any explanation that can be identified other than a sweetheart deal this current Union should not be married to. While the Employer might favor a return to those days, the bargaining requirements of the Act, and the status MAP has achieved through legal means require that the relativism the Village advocates for it among the comparables that it allowed to remain in the middle of the pack or below the average -- be rejected by the Neutral, especially when the financial resources of this Village are considered, MAP comments.

Moreover, most of the Village's calculations with regard to wage rate comparisons, whether dollar-to-dollar comparisons or percentage comparisons, unfairly include the \$1,000 "bonus payment" to each covered officer, which is not a permanent increase, that element of the wage package should be disregarded. Instead, MAP suggests that a fair analysis of the Village's final offer totals reveals that the permanent increase to base salary under Management's final offer for its so-called three year term is only 11.4%, which would be carried through an officer's career in the Village of Elk Grove Village. The consistent use by this Management of the bonus device to inflate the percentage increase is both unfair and misstates -- or overstates -- the real raise put on the table by this Employer, the Chapter thus stresses.

The Chapter also argues that its position for a total wage package of 15% over three years cannot be deemed unreasonable, when the top pay in other departments on both the historical comparable pool and the Chapter's comparable list is properly considered.

Police officers for the Village of Elk Grove Village at top pay, that is \$49,053.00 used in the Chapter's proposal above, compared very favorably with towns such as Hoffman Estates and Mount Prospect, which are in close geographic proximity and near the same size as regards permanent resident population, to that of Elk Grove Village. Accordingly, the wage demands are not an improper or excessive "breakthrough," the Union insists, but a proper and reasonable proposal for an initial contract. MAP is not trying to "break the bank," but only to obtain for its members what is proper, fair and equitable, the Union insists. When the factor of external comparables and the inadequacy of the earlier representation is properly considered by the Neutral observer, the pay increases demanded by the Chapter are not excessive. What is proposed is merely "catch-up," the Chapter argues. See the Neutral's award in County of Cook and Sheriff of Cook County and IBT No. 714, ISLRB Case No. L-MA-95-001 (December 8, 1995) at pp. 31-44.

c. Discussion

After careful consideration, I find the Employer's final and best offer on wages to be the more reasonable and fully consistent with the applicable statutory criteria, as set forth above. First, using the Chapter's own comparables, the data submitted by the Chapter at the hearing (U. Ex. 4F) reveal the following percentage increases for 1994 and 1995 in top base pay:

Community	Fiscal Year 1994	Fiscal Year 1995
Addison	3%	3%
Arlington Heights	3%	4%
Buffalo Grove	3%	--
DesPlaines	2%	--
Elgin	3%	3% ³
Elmhurst	3.75%	--
Glenview	4%	--
Hoffman Estates	5.6% ⁴	--
Mount Prospect	3.4%	--
Niles	5%	--
Rolling Meadows	3.85%	4.25%
Schaumburg	3%	3.25%
Wheeling	3.5%	--

(See V. Ex. 51: compare 1993, 1994 and 1995 top base salary).

Of the Union's thirteen selected comparison communities, only two (Hoffman Estates and Niles) granted wage increases for 1994 in excess of 4.25%, I note. Moreover, the average 1994 percentage increase was 3.5% and the median increase was 3.5%, the record evidence shows. For 1995, only one of these communities (Rolling Meadows) granted a wage increase in excess of 4% and that was only 4.25%, a careful reading of the record also discloses. The average 1995 wage increase for the Union's selected communities who have

³ Elgin's increase in top base pay for police for 1996 is also 3%, according to the Employer. See City of Elgin and MAP Unit #54 (Steven Briggs, June 25, 1995).

⁴ The Union agreed, in exchange for this rather large wage increase, to a new two-tier wage system, which will result in a lower top base pay for Hoffman Estates police officers in the years to come.

settled for 1995 is 3.5%, according to my analysis. The data⁵ thus does not support the Chapter's proposal of 5+% per year, unless there is a "plus" element like a proven need for catch-up, I hold. See my recent decision in County of Cook and Sheriff of Cook County, supra. This data on percentage of increases in wages among MAP's comparables for the two or three years previous to FY 1995-96 does, however, seem to support the Village's proposed annual percentage increase of 3.68%, I specifically note.

The percentage increase granted by the Village's 20 historical comparables reveals a similar trend, I believe. Those communities and their top base pay increase are as follows:

Community	1994 Percentage Increase	1995 Percentage Increase	1996 Percentage Increase
Addison	3.0%	3.0%	
Arlington Heights	3.0%	4.0%	
Bartlett	4.2%	2.5%	2.5%
Carol Stream	--	--	--
DesPlaines	2.0%	--	--
Downers Grove	--	--	--
Elmhurst	3.75%	--	--
Glendale Heights	5.0%	3.5%	--
Hoffman Estates	5.6%	--	--
Lisle	2.5%	--	--
Lombard	4.0%	5.0%	4.0%
Mount Prospect	3.4%	--	--

⁵ Olson testified that the Village's wage and benefit data came from a variety of sources, including the Northwest Municipal Conference's wage and benefit survey and negotiated contracts, and that such data was updated by personal telephone calls.

Niles	5.0%	--	--
Palatine	4.0%	3.5%	--
Rolling Meadows	3.85%	4.25%	--
Streamwood	4.25%	--	--
Villa Park	3.9%	4.0%	4.0%
Westmont	4.0%	--	--
Wheaton	4.0%	4.0%	--
Wheeling	3.5%	--	--

In 1994, the average increase for these historically used comparable communities is 3.83% and the median increase is 3.9%. For 1995, the average increase of these communities is 3.75% and the median increase is 4%. Clearly, the Village's proposed average annual increase of 3.68% is much closer than the Chapter's proposed average annual increase of 5+% per year, and demonstrates the reasonable nature of the Village's wage proposal in really unrefuted fashion, as the Neutral sees it.

The only Chapter exhibits concerning starting pay for patrolmen are Chapter Exhibits 4D and 4E. Chapter 4E (for 1995) is not particularly helpful, however, as it simply lists the Chapter's comparable communities without any wage information present. Chapter Exhibit 4D lists starting pay for police departments for 1994 and 1995. The utility of this document, however, is rendered less useful because it only contains wage information from Arlington Heights, Niles, Rolling Meadows and Schaumburg.⁶

⁶ For what its worth, this Chapter exhibit shows the Elk Grove Village starting pay as proposed by the Village to be less than Arlington Heights and Niles, but more than Rolling Meadows and
(continued...)

Significantly, the Chapter's and the Village's proposals, according to Chapter Exhibit 4D, result in an \$80.00 differential, which is hardly significant. The real significance of the Chapter's wage proposal is on the top base rate of pay, and this is where the Panel's analysis should focus, I find.

Chapter Exhibit 4G lists the top pay for patrolmen for the 1995-1996 period. This exhibit is of marginal utility to the Panel, as it only lists pay for three communities, Arlington Heights, Rolling Meadows and Schaumburg. Clearly, the Panel's decision cannot be based on wage information from only three communities. It is significant to note, however, that the percentage wage increase of these communities was, respectively, 4.25% and 3.25% (C. Ex. 4G). This averages out to an increase of 3.8%, which is virtually the same as the Village's average increase of 3.68% per year, compared to the Chapter's average increase of 5.12% per year.

Consequently, the comparison with external comparables presented by both parties clearly favors the Village's final offer, when the percent of increases for the last three years is scrutinized. In this case, I believe the comparison of relevant comparables has not been affected by the use of percentage comparisons, rather than dollar-to-dollar analysis for all pay raises in the Union's comparables, or the "historical pool comparables," for the last three or four fiscal years.

⁶(...continued)
Schaumburg. In other words, the Union's only exhibit on starting pay shows Elk Grove Village to be right in the middle.

I understand that the Union has strongly suggested that percentage increase comparisons are irrelevant and unfair, and that a better method of looking at comparability would be to analyze the actual dollar amounts being granted for every increase among the comparable jurisdictions, or, at minimum, to look at the top base pay of the Village and the Union's comparable 13 communities, without regard to percentage or dollar-to-dollar analysis for the last three or four years for the increases in pay received. At least one arbitration panel has held that dollar-to-dollar comparisons are most appropriate when considering comparables (City of Springfield and Policemen's Benefit and Protective Assn., Unit No. 5, ISLRB No. S-MA-89-74 (1990, Benn, Neutral Arbitrator, especially at footnote 23)). However, I particularly find the percentage comparisons are not entirely irrelevant under the particular circumstances of this case.

This is so because most of the key comparables are in the same general range of pay as Elk Grove Village. Where the dollar-for-dollar comparison is most telling is in the area of internal comparables, where the range of pay may make percentage increase evaluations a faulty or distorted basis for meaningful comparisons. Comparisons must be predicated upon objective and accurate evaluations or analysis of wage levels; this record has demonstrated that the ranges in the external market comparison communities are sufficiently close so that Management's tables and other exhibits may be used to rate the comparative size of pay

increases over the last three years, based on both percentage and actual dollars being granted.

This is thus not the same situation as Kendall County and Kendall County Sheriff's Department and Illinois Fraternal Order of Police Labor Council, decided by the Neutral on November 28, 1994, supra, at p. 15, where percentage increases range widely for the external comparables and there was insufficient data to permit dollar-to-dollar comparisons. As Management has suggested in the current case, the average increase for the historically used comparable communities for 1994, for example, was 3.83% and the median increases was 3.9%. Thus, the percentage comparison favors the Village, regardless of which universe of comparables is being utilized, with regard to percentage raises for the times most relevant to my assessment of the particular wage offers, I rule.

"Internal comparability," the comparison between the Police Department employees of this Village and its firefighters (neither party presented data as to the other newly organized group, the Operating Engineers in Maintenance) clearly favors the Village proposal, I also rule. The primary reason for that conclusion stems from the historical pattern of Police-Firefighter salary increase parity established through free collective bargaining, by the Village and this bargaining unit, between 1986 and 1991, and the interest arbitration by Arbitrator Nathan in Village of Elk Grove Village and IAFF Local 3398, supra.

The Village introduced convincing evidence concerning the historical relationship of Police and Firefighter wage rates, beginning with the year 1979, when both Police and Firefighter personnel were paid on the basis of merit, I find. For example, in 1986, when the Village's Police Officers established their wages through the collective bargaining process, Police Officers' top pay exceeded that of firefighters by approximately \$500.00. In 1987, after the Police Officers completed their first-ever collective bargaining contract, the top pay for a police officer was reduced from \$33,972.00 to \$32,471.00, as a trade-off for elimination of the merit system (V. Ex. 50B). With the advent of a formal step pay plan, the top pay of Police Officers continued to advance more rapidly than the top pay of firefighters, but it was not until completion of the 1991 negotiations that a police officer's top pay again exceeded that of a firefighter (\$39,270.00 to \$39,144.00 or a \$126.00 difference) (V. Ex. 50B). The difference of \$130.00 in top pay was maintained in 1992 and in 1993. Significantly, this \$130.00 differential was maintained in 1993 by Arbitrator Nathan in his firefighter award, supra, as has been mentioned at several points above.

Now, the Union demands a departure from the bargained pattern, I note, based on the change in representation to MAP. Under the Village's proposal, in 1995, the top pay of a police officer will be \$45,720.00. This would amount to \$250.00 more for police over the top pay of firefighters, which, according to the Nathan arbitration, is \$45,463.00. By contrast, if the Chapter's proposal

is selected, the top pay of a police officer in 1996 will be \$46,829. This will result in a \$1,376.00 differential between the top pay of a Village firefighter and the top pay of a Village police officer.

Frankly, under these specific circumstances, the advisability of maintaining the historical negotiated salary increase parity between the Village of Elk Grove Village Police and Firefighter units has been demonstrated by Management in really quite convincing terms, I rule. First, and as already noted herein, interest arbitration awards should approximate the outcome of free collective bargaining. Second, if the Panel grants MAP's wage request, it would not only encourage use of the arbitration process for police, but it would also totally disrupt the effect of Arbitrator Nathan's Award involving the Village's firefighters and create a specter of competing arbitration awards.

Because any such an award by me would seem to be far beyond what I believe the parties would actually have negotiated at arms-length, the Chapter's proposal constitutes what I believe to be a clear "breakthrough," without any concessions being offered in exchange, or any proof such a negotiated increase would achieve any of the goals of Management or would fit in the mandated statutory criteria of Section 14(h) of the Act, set out above. I find nothing to support such an increase (certainly not in the CPI, either, as will be developed below), other than the Union's need or desire to show it can do better than the repudiated FOP Lodge.

Notwithstanding the obvious pressure such a situation creates on the newly selected Union, the Neutral cannot respond to that sort of reality under the terms of the statute. For the system to work, the required modes of analysis must be evenhandedly applied, despite the "politics" of either party, I rule.

I am not saying that there cannot be situations where such a dramatic change in the relationship of police and firefighter pay, which has remained relatively stable over the last several years, might not be appropriate. However, the Union in those circumstances must show compelling reason to deviate from that pattern, to offset the reasonably anticipated effect of putting the Village into competing interest arbitration proceedings for the next several years. Emphasis on the change from FOP to MAP is not enough to supply this compelling reason, I must find under these facts. The Village and its police officers have negotiated at arms length since 1986, and there is no evidence in the record to suggest that either has suffered inordinately as a result, with regard to the specific issue of wages.

I understand that the rank and file police officers feel very differently, and certainly believe the above statement is absolutely not true with regard to health insurance, as well as wages. However, the ill feelings and bitterness of these officers cannot constitute evidence that the "tandem pay relationship" or historical parity with the Village's firefighters does not exist, even though both the Village and the current Union deny its existence. What is reflected by the actual facts presented on this

record is the strongest sort of internal comparability evidence, and it all favors Management's wage proposal.

I further note that interest arbitration awards should not create unrest in what prior to their issuance was a well-established comparison relationship between police and firefighter bargaining units in a particular municipality. Arbitrator Nathan used the police wage structure as a linchpin in his determination as to wages in the firefighter award, discussed above. As Arbitrator Briggs noted in an interest arbitration proceeding involving firefighters in the Village of Arlington Heights, supra:

In general, interest arbitrators attempt to avoid rendering awards which would likely result in the creation of orbits of coercive comparison between and among bargaining units within a particular public sector jurisdiction. This is especially true regarding firefighter and police units, which notoriously attempt to attain parity with each other. The so-called "me too" clause, automatically granting one such unit what the other might get in subsequent negotiations with the employer, is probably more common in firefighter and police collective bargaining agreements than in those from any other area of public sector employment. Even without such clauses, it is a safe bet that whatever one gets, the other will probably want.

* * * *

... Indeed, granting the firefighters percentage increases higher than negotiated by the FOP would quite likely instill the latter the motivation to redress the balance during future negotiations. This produces a whipsaw effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table. Such circumstances do not enhance the stability at the bargaining table. (Village of Arlington Heights and Arlington Heights Fire Fighters Association, Local 3105, IAFF (January 29, 1991)).

For much the same reasoning, see the Neutral's discussion in City of DeKalb and DeKalb Professional Firefighters Association, supra, at pp. 26-27.

Additionally, each party has had recourse to cost of living data to justify its offer and discredit the other party's. As I have acknowledged, while cost-of-living does not "exclusively control an interest arbitration ... it is certainly one factor in any fair assessment of a final offer." Kendall County and Sheriff's Department (Goldstein, November 28, 1994, p. 19 (emphasis an original)). During the course of this hearing, the Village submitted CPI data (V. Exs. 65A-68B and 7A-71C). The Neutral has also considered the CPI data that has become available since the conclusion of the hearing, pursuant to Section 14(h)(7) of the Act. The rate of increase for the CPI for fiscal year 1993-1994, as shown on V. Ex. 65B, was 2.29%. At the time of the hearing, the only fiscal year 1994-1995 CPI data available was through the month of February, 1995. V. Ex. 66A contains such information and, based upon the previous months' experience, predicted as CPI increase of 3.05% for the fiscal year. Actual CPI data, available by the briefing stage of this proceeding established that the CPI-U actually increased by 3.19% from May, 1994 to May, 1995. Finally, the projected rate of increase for fiscal year 1995-1996, based upon fiscal year 1994-1995, would be 3.19% also. Thus, the rate of increase for fiscal years 1994-1997, based upon the actual rate of increase for fiscal years 1994-1995 and 1995-1996, and the

projected rate of increase for fiscal year 1996-1997, would be 8.67%.

All this is by way of saying that while this Neutral does not believe cost-of-living can exclusively control an interest arbitration, it is certainly one factor in any fair assessment of a final offer. I note the Village's final offer (set forth in detail in V. Ex. 31) would result in all police officers receiving an increase in their base pay of 0% for fiscal year 1994-1995, 7.64% for fiscal year 1995-1996, and 3.5% for fiscal year 1996-1997, for a total of 11.05% (without compounding) and without consideration of the one-time \$1,000.00 bonus. The Chapter's final salary offer, on the other hand (set forth in detail in V. Ex. 30, U. Ex. 2), would result in a base pay increase of 0 percent for fiscal year 1994-1995, 10.25% for fiscal year 1995-1996, and 4.75% for fiscal year 1996-1997, for a total of 15% (without compounding).

Clearly, then, the Village's final salary offer is closer to both the actual and the projected cost-of-living increases, as summarized in V. Exs. 67A and B, and all other elements or criteria of the Act.

There is one area where the Village's offer is troublesome as regards wages, I recognize. The Village has presented, for the last year of its contract, a wage reopener rather than an actual wage offer, in concrete terms. The Union directly argues that such an offer really amounts to Management's obtaining a four year contract, with the first year reflecting no pay increase because of

the provisions of Section 14(j) of the Act, and the last year presenting no specific wage commitment from Management; only, in effect, the promise of another interest arbitration. However, the Neutral has determined that there is some historic precedent for a wage reopener, since the FOP/Village contract which ran from 1987 to 1991 contained such a provision which ran from 1987 to 1991 contained such a provision for 1990.

More important, the fact that the Village's wage proposal contains a reopener, and may constitute a burden on the Chapter because of that fact, is at this point not relevant, because of my specific ruling on the duration of the labor contract which results, if adopted, from my Award. Most important, the fact that this element of Management's proposal is not perhaps as equitable to the rank-and-file employees as a defined pay raise cannot offset all the positive elements of the offer, as set out above, particularly against the backdrop of the Village's strong emphasis on the importance of salary increase parity between the firefighter and police units, I find.

On the basis of the foregoing analysis, the Neutral Arbitrator has decided that the Village's final offer on the salary issue more closely adheres to the statutory criteria than does the Union's final offer on that issue, and the Award will reflect that determination.

B. LONGEVITY

1. The Parties' Final Offers

a. The Village's Position

The Village proposes that the Agreement be amended, effective May 1, 1996, by providing the following longevity payments:

After Completion of 10 Years of Service --	\$150
After Completion of 16 Years of Service --	\$250
After Completion of 20 or More Years of Service --	\$350

b. The Chapter's Position

The Chapter proposes that the following longevity proposal be adopted by the Panel:

All officers covered by this Agreement shall receive lump sum longevity payments as set forth in this Appendix on December 1 of each year this Agreement is in effect.

Longevity Pay

10 to 14 years	-- \$350
15 to 19 years service	-- \$500
20 to 24 years service	-- \$750
Over 24 years of service	-- \$1,000

2. The Parties' Positions on Longevity

a. The Village's Position

Longevity is a "breakthrough" issue, according to the Village's argument. It also stresses that, to this point, the Village's police officers have been unable to convince the Village to adopt for them a longevity plan. It is also the position of the Employer that the Chapter has offered no quid pro quo for its longevity proposal, and therefore should not be permitted to obtain the highest reasonable longevity benefits possible, at least among

these comparables, the very first time the benefits appears in the labor contract as a negotiated term.

Moreover, the Chapter's longevity proposal, in fiscal year 1995-96, will cost \$17,000, the Village contends. This is the equivalent of a 0.54% across-the-board wage increase (V. Ex. 30), the Village submits. This is a huge, expensive new benefit the Chapter seeks from the Arbitration Panel -- and for free (that is, without any quid pro quo whatsoever), Management reiterates.

The Union's longevity proposal, as mentioned earlier, must be considered within the framework of the entire negotiations process, according to Management. The parties have already agreed upon a holiday improvement (\$27,313), time and one-half for working on a holiday (\$7,849), a new and unprecedented payment for attending court on off-duty time (\$56,510), and a minor uniform adjustment (\$628). This totals \$92,300, or the equivalent of a 2.94% across-the-board increase (V. Ex. 32). When the Village's economic proposal (\$318,855) (V. Ex. 31) is added to that, the total is \$411,155 or 12.94%. It is on top of this amount that the Chapter seeks to have the Panel award this new longevity benefit of \$17,000, or an additional 0.54%, the Village contends. Clearly, the Union seeks a new benefit through the arbitration process which it could not obtain at the bargaining table -- and could not reasonably be expected to obtain through collective bargaining within the context of the other benefits already granted to it, according to Management.

Rather than completely stonewalling the Chapter on the issue of longevity, the Village in its final proposal has agreed to the longevity concept for the first time between these parties, but has suggested that the concept be phased in at a modest dollar amount and "back-ended" to fiscal year 1996-97, Management argues. The total cost of the Village's longevity proposal is \$10,000, or the equivalent of a 0.32% wage rate increase, it also reminds the Panel. When coupled with the Village's 3.5% wage proposal for FY 1996-97, the effect is to grant bargaining unit members an overall wage increase valued at 3.82%, for that fiscal year, a very nice settlement amount as reflected by the Village's exhibits (V. Ex. 30, for example), the Employer concludes.

b. The Union's Position

The Union argues that nine of its thirteen comparables (See C. Ex. 3) already pay their police officers longevity benefits. Of the Village's 20 municipalities contained in its "historical" comparability pool, V. Ex. 38, ten of those communities also award longevity benefits to their police employees, the Chapter asserts. Moreover, as a result of even a cursory analysis of V. Ex. 53, 50% of all the communities listed by the Village in this omnibus comparability chart now grant longevity benefits, and 70% of the municipalities on the Union's list of comparables grant that same benefit, the record evidence demonstrates.

Accordingly, and especially considering all of the evidence on comparability submitted into this record that at least references longevity as a common place for police officers throughout the

greater Chicago area, it is clear that the longevity benefit is a common benefit awarded in law enforcement employment, the Union submits. The only remaining analysis should be the amount of these longevity benefits. The Union notes that not only is the Employer's proposal for a longevity benefit, in dollar amounts, at the very low end of the spectrum if the Arbitration Panel adopts the Village's proposal, but, if the Panel actually selects the Village's final position on longevity, that benefit only becomes effective in the second year of Management's proposed contract. Employees should be entitled to a great deal more, especially in light of what this Employer has done to take away the protections of a fair labor agreement over the course of the years.

The Union thus emphasizes that, when the "free" year from May 1, 1994 through April 30, 1995, is factored into the equation, the longevity offer by Management is absolutely unreasonable under these specific circumstances. Given the facts of this case, the offer of the Chapter on longevity should be accepted as the more reasonable proposal.

Finally, the Union stresses that the average initial longevity benefit offered by eight of the 13 Union comparables is in the amount of \$500.00. The average time which an officer must be on the payroll to receive the longevity benefit is 7.4 years. The average top longevity benefit is \$1,032.00 and is received by covered officers after 20 years of service. Management's offer on every one of these points is substantially below the average among the comparables, the Union maintains. Hence, the external

comparability factor, as well as the peculiar circumstance of two competing offers as to the acceptance of the longevity principle, with the Employer delayed for two years, effectively, require that the Union's offer be found to be most reasonable, it urges.

c. Discussion

The Village's final offer is based on the fact that, although it makes no claim of financial inability to pay, the "interest and welfare of the public" factor compels adoption of its longevity proposal, as well as the "richness" of the overall package it has offered, relatively speaking. Moreover, the factors of internal comparability and external comparability strongly support the Village's longevity position, the Village notes. I find that I agree with these last few arguments, at least, and given these facts, rule that the Village's final offer is the more reasonable one.

First, I find that Village employees not represented by a labor union receive no longevity payments. I have ruled in other cases that this sort of internal comparability usually cannot have controlling influence on the terms of employment for unionized employees. Still, the lack of longevity payments is admissible at least as background for the assessment of the granting of a new category of benefits to the bargaining unit, although more proof should then be needed for the further necessary determination of what level and amount of benefit is reasonable under the specific facts. Furthermore, the firefighter Union's longevity proposal sought for rank-and-file firefighters was totally rejected by

Arbitrator Nathan in his arbitration award, supra, notwithstanding the fact that its longevity proposal was more modest than the proposal sought here by the Chapter.⁷ That fact obviously has much greater significance in my evaluation of both proposals, I note.

The Chapter here does not seek to "phase in" longevity amounts or to wait until future years for an enrichment of the schedule, comparatively speaking, and has requested the Panel out of the box to grant an additional \$750 to employees with 20-24 years of service and \$1,000 to those with over 24 years of service.

While not binding on the Panel, Arbitrator Nathan's comments on this proposal relative to the Village firefighters' longevity request have equal applicability to this case, I believe. Nathan stated:

[I]n effect, longevity increases are really equity adjustments inasmuch as it is rarely shown that the productivity of the older employees justifies the additional increase based on length of service. No case for equity adjustments has been made in this record for firefighters. Additionally, under the Union's proposal a considerable percentage of the firefighters would be eligible for some longevity pay. This includes employees

⁷ The Fire Fighters proposed that the following longevity schedule be adopted:

1993-94 (1st year)	--	\$150 with 10 years of service
		\$200 with 15 years of service
		\$200 with over 20 years of service
1994-95 (2nd year)	--	\$250 with 10 years of service
		\$300 with 15 years of service
		\$400 with over 20 years of service
1995-96 (3rd year)	--	\$400 with 10 years of service
		\$500 with 16 years of service
		\$650 with over 20 years of service

(V. Ex. 9, p. 65)

with as little as 10 years service. The effect of this proposal would be to increase the salaries for a large majority of the bargaining unit. This is not justified by the record. Salaries have been set in accordance with the proper standards. The Union's proposal looks too much like just another increase in salaries.

(V. Ex. 9, p. 66)⁸

There is no question that the longevity "pattern" established by the Panel in this case will provide a guidepost to the next round of Village and IAFF negotiations, the Neutral realizes. In order to avoid creating a seriously inequitable situation between the Village's police employees and firefighters, the Chapter's proposal must be rejected, if I accept the parity argument of the Village. In this regard, it is important that the longevity proposal here submitted by the Village exceeds the first year proposal sought by the firefighters Union and rejected by Arbitrator Nathan. The Village's more modest longevity proposal effective the second year does represent a "phasing in" of a new benefit, and the Employer states that is in recognition of the economic need and common practice of that type of phasing in such a new benefit. I find from my independent analysis that the Union's offer would effectively not reserve anything for the future

⁸ Arbitrator Nathan granted the Union's longevity proposals for lieutenants in large part because these were the "officers who the Village has relied upon for so many years as its front-line supervisors and who have made no many contributions to the administration of the department" and because the Union's proposal would not "interfere with internal comparability now that the Village has inaugurated its management enhancement program and [police] sergeants will be getting \$500 bonuses" (V. Ex. 9, p. 67). Obviously, these considerations do not apply to the non-supervisory patrol officers represented by the Chapter, the Employer has asserted.

as regards contractual negotiations between these parties. - What is even more important is that its "value" in the market place can be identified by the external comparability standards.

Four of the thirteen communities asserted by the Union to be comparable to the Village provide no longevity benefit, the record shows. They are: Addison, Elgin, Elmhurst and Hoffman Estates. While Wheeling recognizes longevity, it is simply in the form of a payment of \$600 after the 12th year of service, according to the evidence. There is no other longevity pay schedule for that community (C. Ex. 5A and 5B). When the list of external comparable communities is expanded to include those historically used by the FOP and Village at the bargaining table, as well as those communities meeting all of the essential characteristics of the communities advanced by the Chapter as comparable, a similar picture emerges. Thus, of the 32 Chicago suburban communities falling within one of these three criteria, fully 12 of them provide no longevity payments to their employees (V. Ex. 53).⁹

However, even if the Union's comparables are used, the Chapter has proposed a longevity schedule which would place it among the very top of those departments receiving longevity payments, I find. For example, of the communities proposed by the Chapter as comparable, only three (DesPlaines, Niles and Schaumburg) provide payments in excess of \$1,000 at the top end of the longevity scale.

⁹ Communities providing no longevity payments are: Addison, Bartlett, Bensenville, Carol Stream, Downers Grove, Elgin, Elmhurst, Franklin Park, Glendale Heights, Hoffman Estates, Lisle, Lombard, St. Charles, Streamwood and Wheaton.

Consequently, if the Chapter's longevity proposal were to be selected by the Panel, Elk Grove Village police officers would go from having no longevity whatsoever to immediate longevity payments which would be the 5th highest of the 14 carefully selected comparables submitted by the Chapter. That same \$1,000 top longevity step, which compared to the larger list of 32 communities, would place Elk Grove Village officers 7th highest of these 32 at the top step of the longevity schedule. Moreover, only one comparable, Schaumburg, actually grants an additional longevity step after 24 years of service (V. Ex. 53).¹⁰

A telling critical aspect of my conclusions on the relative reasonableness of the two longevity offers is that, under either proposal, what has been achieved is a breakthrough, and, as stated earlier, the breakthrough has not been negotiated in exchange for some similar concession by the Union, at least as the evidence on the record stands. Because the interest arbitration process is in lieu of bargaining, and should not result in a benefit bearing no relationship to what could realistically be anticipated from direct negotiations, as explained at several points above, the Village's proposal for a modest schedule of longevity pay in this first appearance of the benefit in the contract between the parties stems more reasonable especially when the Employer has tied together the longevity and several other negotiated benefits set out above, and

¹⁰ It is noted that even at the 20-year level, the Chapter's proposal is quite rich, as Elk Grove Village officers would jump over their counterparts in Buffalo Grove, Mount Prospect and Wheeling (C. Ex. 5A and 5B).

already tentatively agreed upon before the Neutral Arbitrator. When considered in tandem with these other economic enhancements, the Village's offer on longevity is more reasonable, I hold.

The Village's offer is therefore adopted by the Neutral and will be included in the Award below.

C. HEALTH INSURANCE

1. The Parties' Final Offers

a. The Village's Position

The Village in its final proposal included the introductory language in Section 15.2, Coverage, which has been mutually agreed between the parties (see C. Ex. 1, p. 2). The issue in dispute between the parties concerning Section 5.2, cost of Medical, Dental and Life Insurance, and the Village proposal is as follows:

Effective for the term of this Agreement, the Village will contribute eighty-five percent (85%) of the designated premium cost of participation in the Village plan (including dental plan) for both single and family coverage, and the employee shall contribute fifteen percent (15%) of the cost for the program and coverage selected.

The Village's insurance plan will not be materially changed during the term of this Agreement. At no time during the term of this Agreement will bargaining unit employees be required to pay more for insurance than any other non-union Village employee.

b. The Chapter's Position

The Chapter proposes that the following language be included in the parties' collective bargaining agreement:

Section 5.2. Cost of Medical and Life Insurance.

Effective upon execution of this Agreement and for the term of this Agreement, all employees covered by this Agreement shall make contributions for single and family medical and dental coverage for the fiscal years 1994-95

and 1995-96 and 1996-97 equal to those set forth in Appendix "C", attached hereto and made part hereof. The Village shall repay these contributions for medical insurance overpaid during the fiscal year 1994-95 within thirty (30) days of the execution of this Agreement.

The Village shall maintain the current level of benefits during the term of this Agreement. At no time during the term of this Agreement will bargaining unit employees be required to pay more for insurance than any other Village employee.

APPENDIX "C"

MEDICAL INSURANCE CONTRIBUTION RATES
FROM 5-1-94 THROUGH 4-30-97

VILLAGE PLAN		Total Mo. Premium	Village 90% share	Employee 10% share	Employee Bi-Weekly
	MEDICAL				
	EMPL ONLY	\$216.93/mo	\$195.24/mo	\$21.69/mo	\$10.85
	EMPL+1 DEP	455.56/mo	410.00/mo	45.56/mo	\$22.78
	EMPL2+ DEP	495.66/mo	446.09/mo	49.57/mo	\$24.79
	DENTAL				
	EMPL ONLY	32.06/mo	28.85/mo	3.21/mo	\$ 1.61
	EMPL+1 DEP	67.31/mo	60.58/mo	6.73/mo	\$ 3.37
	EMPL2+ DEP	84.39/mo	75.95/mo	8.44/mo	\$ 4.22
H.M.O	MEDICAL				
	EMPL ONLY	164.17/mo	147.75/mo	16.42/mo	\$ 8.21
	EMPL+1 DEP	316.49/mo	284.84/mo	31.65/mo	\$15.83
	EMPL2+ DEP	487.48/mo	438.73/mo	48.75/mo	\$24.38

COMMON. DENTAL PLAN	DENTAL				
	EMPL ONLY	17.76/mo	15.98/mo	1.78/mo	\$.89
	EMPL+1 DEP	33.00/mo	29.70/mo	3.30/mo	\$ 1.65
	EMPL2+ DEP	49.20/mo	44.28/mo	4.92/mo	\$ 2.46

(C. Ex. 1, p. 52)

2. The Parties' Positions

a. The Village's Position

Before the Panel considers the merits of these respective positions, argues the Village, the differences between them and between the current contract's insurance article should be noted. There are essentially five major differences between the Village's and Chapter's proposals on insurance. These differences are as follows:

1. The Chapter seeks to change employee premium contributions from a percentage of the total premium to a fixed dollar amount;
2. The Chapter seeks to reduce the amount of employee premiums from the current 15% to a flat dollar amount equal to 10% of premium costs the first year;
3. The Chapter seeks to lock-in employee premium payments at the 2994 fixed dollar amount for the life of the Agreement;
4. The Chapter seeks to have the Village "repay" to employees contributions for medical insurance allegedly overpaid by employees during fiscal year 1994-95; and
5. The Chapter seeks to limit the amount bargaining unit employees will pay for insurance to no more than that amount paid by "any other Village employee", as compared to the Village's limitation that bargaining unit

employees would pay no more than any other "non-union" Village employee.

The Village's insurance proposal essentially mirrors the language of the existing contract except in two respects, it suggests. They are as follows:

1. The Village's proposal deletes the present ceiling above which the employee's share of premium costs cannot rise, by deleting the following contract language: "Provided, however, the maximum amount that the employee will be required to contribute will not be more than fifteen percent above the amount that employees were required to contribute for the coverage selected during the 1992-1993 fiscal year. If the premium cost for 1993-1994 is more than fifteen percent above the cost for 1991-1992, the Village will pay the amount that exceeds said fifteen percent increase."
2. As mentioned above, the Village seeks to limit the amount bargaining unit employees will pay for insurance to no more than that amount paid by any other "non-union" Village employee, as compared to the current limitation which limits increases to that paid by "any other Village employee".

As can be discerned from this summary, the Village argues that the Chapter seeks here to have the Panel award "dramatic changes in the parties' insurance article." These changes would be both in the amount employees would pay for insurance (their share would be reduced), and also the manner in which employees' contributions would be determined (at a fixed dollar amount, as opposed to a percentage contribution). Further, the Chapter seeks to gain from the Panel a guarantee that insurance costs for employees will not increase over the life of the Agreement and, consequently, any increase in insurance costs will be borne fully and completely by

the Village, as the Employer analyzes the two proposals.¹¹ Finally, the Chapter seeks "repayment" of employee contributions for medical insurance to the tune of approximately \$14,000 (the equivalent of a .045 across-the-board wage increase), the Village emphasizes.

Accordingly, according to the criteria called for in the statute, the Neutral must select the Village's final proposal, the Village maintains.¹² As indicated above, it feels that its insurance proposal must be selected, because it more closely comports with the statutory criteria under Section 14 of the Act. Consequently, it has the advantage as regards external and internal comparability; bargaining history; the interests and general welfare of the public; and the overall compensation of the bargaining unit police officers. The Village reiterates all of its prior arguments presented on its motion for directed award and in the section of this Award which discusses the parties' wage proposals.

The rationale of the Employer's position is founded on a number of grounds. It first argues that the external comparables

¹¹ The Village's proposal seeks to remove the insurance premium increase cap which changed in 1993 from the 1992 cap. The Village asserts, however, that its proposal is not a dramatic change, because the cap has never previously come close to coming into play and in fact no increase in insurance premium costs are even likely for 1996, according to Olson.

¹² The Village reiterated its argument that the Panel has no statutory authority to grant the Chapter's proposal, because such proposal has as one of its central components a provision for a monetary refund in violation of the Panel's authority under Section 14(j) of the Act.

uniformly disclose that the Union proposal is excessive and unreasonable. It also is argued that the current health insurance proposal by Management reflects, generally speaking, what was negotiated for this unit by FOP Lodge 35 with the Village in 1991, and, as such, constitutes the status quo. Therefore, the Chapter's proposal effectively is a demand for a "give back" by Management, without any reciprocal concessions by MAP. Moreover, the costs of health insurance for what is, in reality, truly a "Cadillac health plan" adopted by this Village must be shared in a manner consistent with the norms for police officers in the mid-1990s." Given these factors, the Employer argues that the "true facts" demonstrate the reasonableness of the Village's position. Consequently, not only are the resources not fairly assignable to this Union for its proposal, but the political and social temperament of the area would not accept it.

b. The Union's Position

The Union argues that it appears that the Village is claiming that since their medical insurance plans are so far above all others in the nature, type and extent of its' benefits the Officer's covered by this Agreement should pay a floating amount of contribution. If the converse is true and this Neutral Arbitrator is convinced that the plan offered by the Village of Elk Grove Village is no better and in some respects less desirable than those insurance plans offered by municipalities actually contained both in the Union's comparables and the Village's comparables, then it should hold true that the Officers of Elk Grove Village should pay

no more than the other comparable towns or maybe even less. Village Exhibit 62(c) clearly shows that this is no "Cadillac" of a plan, the Chapter stresses.

In the Village Exhibit 62(a) and (b) the Village sets forth comparable information concerning thirty communities. The Union would again parenthetically note that in some Exhibits thirty-three communities are used and in other thirty communities are used and in still others the "historical" unit is referred to. In this particular exhibit, the Village has chosen to use thirty-three municipalities. The source of the statistics provided in Village Exhibit 62(a) and (b) is the Northwest Municipal Survey. In Village Exhibit 62(a), comparisons are made between the current Elk Grove Village HMO Plan and the Union proposed HMO contributions rate. In the first column of Village Exhibit 62(a), it displays an "employee only" level of insurance. In this particular column, if the Arbitrator were to select the Village's position, the Village of Elk Grove would be paying more for single family coverage than twenty-six (26) out of the thirty (30) municipalities listed. Under the Union's proposal, the Village would still be receiving contribution for single coverage greater than twenty-one (21) out of the thirty (30) municipalities listed.

Village Ranking

26th out of 30

Union Ranking

21st out of 30

In the second column of Village Exhibit 62(a) and (b), the Village is attempting to mislead the Interest Arbitrator to show how reasonable their contribution rate for employee plus one level

is since twenty-four (24) out of the thirty (30) municipalities listed by the Village do not offer this third tier therefore allowing the Village to portray itself as much more competitive than it really is. To show adequate comparables the first and third columns ought to be used, that is, employee only and employee with family. But nevertheless using the second column with employee plus one, the rankings are as follows:

<u>Village Proposal</u>	<u>Union Proposal</u>
11th out of 30	6th out of 30

Using the third columns we find that based on the figures for employee 2+ dependents the rankings would be as follows:

<u>Village Proposal</u>	<u>Union Proposal</u>
21st out of 30	11th out of 30

In Union Exhibit 62(b), the comparables concern themselves with an indemnity plan rather than the HMO program referred to in Village Exhibit 62(a). In Union Exhibit 62(b), the same thirty (30) municipalities are utilized by the Village and for single family coverage the Village proposal and the Union proposal provide for rankings as follows:

<u>Village Proposal</u>	<u>Union Proposal</u>
28th out of 30	26th out of 30

Remembering the argument that twenty-four (24) of these thirty (30) municipalities do not offer an employee plus one dependent coverage, thereby distorting the value of the column's ranking, nevertheless, the Village and Union proposals provide for ranking as follows:

Village Proposal

20th out of 30

Union Proposal

11th out of 30

An employee seeking coverage for the employee 2+ dependents would provide for the following rankings pursuant to the Village and Union final offers:

Village Proposal

26th out of 30

Union Proposal

14th out of 30

The analysis of the above exhibits supports the contention that under the Village's proposal Elk Grove Village would be the highest contributing rates for medical coverage under the Union comparables and would be in the upper 1/3 to upper 1/5 of all towns listed in the Village's comparables. It should be argued that the Village should not be allowed to create an environment in which its employees are contributing more for medical insurance than most other employees in similar towns. Conversely, the Union should not be allowed to create an environment in which the employees covered by this Agreement contribute far less than the mainstream of employees in the police field.

The Village spends a great deal of time discussing its costs, savings features and enhancements as set forth in Village Exhibit 63. Most of these cost saving features, however, if analyzed, demonstrate that it is the Village, not the police officers, who are actually saving money. For example, one of the items listed as a cost saving feature is a deductible increase. This deductible increase might serve the purpose of saving the money on the total premium, but it certainly cost each unit member more in out-of-

pocket expenses, MAP argues. Most of the features and enhancements concern a stricter review of benefits, second opinions, audits, disallowance of certain benefits, and these are the types of things that again might be enhancements and cost saving features to the Village, but certainly have a negative economic impact on the members, the Union also contends.

The Union's medical insurance benefits are reviewed accurately at C. Ex. 7(c). This exhibit sets forth a comparison of the dental employee contributions and optical employee contributions for the thirteen municipalities listed by the Union as appropriate comparables. Without going into detail and without regurgitating these exhibits, the Union states, it argues that its Exhibit 7(c) concerns itself with the dental and optical, Exhibit 7(d) concerns itself with lifetime maximum benefit and maximum out-of-pocket, Exhibit 7(e) with emergency care benefit and deductible, Exhibit 7(f) with annual physicals and newborn coverage, Exhibit 7(g) with hospital daily room rates; and Chapter Exhibit 7(h) with prescription plans and the coverage, from a fair evaluation of these documents, it is quite apparent that the Village's current medical insurance benefits are not better or worse than the mainstream package offered by other municipalities. All of the benefits compared illustrate this basic truth, the Union insists.

To be specific in Village Exhibit 56(j) and (k), testified to by Employer witness Olson, the Village sets forth the current contributions made by non-union employees; the Village's police proposal; and the firefighters' health insurance contributions in

the Village of Elk Grove Village. It specifically refers to the 1994-95 monthly health care plan premium rates and the appropriate contributions therefore based upon certain contributions. For example, in the highlighted red firefighters column, this fifteen percent (15%) share, pursuant to Arbitrator Nathan's award, was "frozen" at the 1992 rate. That rate is the subject of a reopener between the Village and the firefighter's union this year, the record discloses.

Under the "Village Plan," and the "HMO Plan," the contribution for an "employee plus 2" is nearly identical, that being \$69.64 per month. The Union argues this fact perhaps demonstrates an "internal" comparable, but the external comparables provided by both the Village and the Union clearly show that this amount is far in excess of what is the norm for a Village of this size and for the type of medical plan provided. In addition, the Union argues that it therefore cannot follow that the medical benefits are so far above those offered by other comparable municipalities. After all, says the Union, the employee contributions ought to follow "the same route," that is, that the costs to the employees be reasonable and "cost-contained," too.

In this particular case, the benefits offered by the Village are clearly mainstream and in some cases below normal, according to MAP. Therefore, the contributions ought to be mainstream and the internal comparable should be given little weight and the external comparables ought to be given great weight in making this determination, the Union urges.

Several other matters which need to be emphasized concern themselves with the Firefighter's position concerning medical contributions as it related to the Award of Arbitrator Nathan and the history between the parties in this instant case, not the Nathan award in a totally different unit of employees. The firefighters, pursuant to Award by Arbitrator Nathan, were awarded a "frozen contribution" rate based upon 1993 premiums. Those rates have remained in force up to and until those parties have negotiated a settlement or arbitrated the reopener on medical contribution. The negotiations are currently under way.

The historical relationship between the Police Department and the Village also shows that, on all previous contracts, a cap was placed on the amount of the increase from year to year. In the first contract, there was a ten percent (10%) cap, that is, the contribution could increase no more than ten percent (10%) over what it was in the previous year, according to MAP. In the second contract, that cap was fifteen percent (15%) of any contribution. The contribution thus could not increase more than fifteen percent (15%) over what the contribution was for the previous year.

The current proposal of the Village is that there is to be no cap, that is, that the contribution rate would simply be fifteen percent (15%) of whatever the medical premium was. This poses a serious problem and question to the Union for a number of reasons. First, the cost of medical insurance, that is the total premium, is totally within the control of the Village, and the overriding uncontrollable factor for the employees in the unit is how those

premiums will be set for this self-insured municipality. Second, the Union recognizes that an argument could be made that, since everyone is affected by the medical insurance plan, the Village would not harm all employees to make a few suffer.

However, the problem in Elk Grove village is that everyone, all employees, pay too much, for health insurance, and if the Union in this case must take the lead in the fight for more reasonable contribution, then so be it, the Union points out.

Finally, the Union has argued that there is no "past practice" or status quo on this issue, since it never negotiated the horrendously bad deal the former Union agreed to in 1990.

The Union believes it thus has presented a convincing argument, supported by evidence, and by the internal and external comparables. Consequently, its final positions on these issues ought to be adopted.

The Union strongly urges the Interest Arbitrator to adopt the Union's final position on medical contributions.

c. Discussion

The Union's proposed insurance change will add \$14,000 to the value of the wage package. In light of the other wage and benefit provisions either agreed between the parties or offered by the village, there is no justification for the expenditure of these additional funds when compared to cost of living figures or to the Village's recruitment and retention experience rates, the Village has asserted. The Union, of course, disagrees. Finally, the Village asserts that the interests of the public are better served

by having this money available for other Village pursuits, and, as noted earlier, asserts that the political and social temperament of the Village is not postured to accept a Union "roll-back" or give-way on health insurance. On that last point, the Neutral does not really have the luxury of commenting, as I read Section 14(h). I analyze these cases on the basis of equity and economics and not politics, I note.

However, I believe that the factor of internal comparability alone requires selection of the Village's Insurance Proposal, as the Village believes. Prior to 1994, I note, the Village had always provided insurance benefits to all Village employees on an equal basis. All of the Village's various insurance options were made equally available to union and non-union employees alike, and on the same terms and conditions, including the same dollar amount of employee contributions.¹³

Not surprisingly, Employer witness Olson explained that the Village seeks to have the same insurance program available for all employees in order to save costs and ease the burdens of administering this benefit. Olson also said, without refutation, that he has been in the "lead position" with respect to the administration of health care benefits provided by the Village since 1985. If the Chapter's proposal is granted, the Village will have two different sets of health care benefits to administer, Olson pointed out. Moreover, such an award would likely provide

¹³ Olson testified that employees have contributed toward their insurance premium costs for many years, with the amount of employee contribution dependent upon the type of coverage selected.

precedent for yet a third type of health insurance benefit(s) applicable to the Village's fire service employees.¹⁴

Arbitrators have uniformly recognized the need for uniformity in the administration of health insurance benefits. Arbitrator Fleischli in Village of Schaumburg and FOP (September 15, 1994), perhaps stated it best when he explained:

In the case of benefits like health insurance, internal comparisons can be particularly important because of the practical need to establish uniformity in the largest pool for reasons of fairness and to hold down overall costs.

Id. at p. 36.

Arbitrator Feuille's analysis in City of Peoria and IAFF (September 11, 1992), is also illustrative. In that dispute, the City was "moving in the direction of bringing all of its employees under the new health insurance plan," while the fire union wanted a separate plan and program for its employees. Concerning the weight to be given to the factor of internal comparability, Arbitrator Feuille was of the view that:

... the health insurance issue in dispute here is a City-wide issue, in that the City is trying to continue to maintain City-wide uniformity in its health insurance plan whereby all employees will receive the same medical and dental benefits and also make contributions according

¹⁴ Arbitrator Nathan in his arbitration award froze fire fighter employee contributions for fiscal year 1994-95 and remanded the matter to the parties for further bargaining. During such negotiations, the Village can be expected to maintain its position that all insurance benefits for all Village employees should be uniform. If the Panel here grants a change to the Chapter, then any subsequent interest arbitrator would have precedent to do likewise for employees covered by the fire fighter union contract, thus causing no end of administrative difficulties for the Village as it tries to administer several separate and distinct health insurance programs.

to the same contribution formula. In other words, health insurance is not an issue that is somehow unique to this City bargaining unit. Instead, it is most usefully addressed from a City-wide perspective.

Accordingly, the Panel believes that the internal comparability evidence deserves considerable weight. Unlike some other labor-management issues, this health insurance issue is the type of issue where comparisons with other City employees are imminently appropriate and useful. In this instance, other City employee's constitute healthy appropriate comparison groups within the meaning of Section 14(h) of the Act. This internal evidence provides much stronger support for the City's offer than for the Union's offer.

Id. at pp. 31-32.

I expressed a similar view in Kendall County and Sheriff's Department and FOP (November 28, 1994, at p. 24) ("internal comparables have much greater importance on benefits like health insurance than on percentage of wage increases, to be granted, I specifically hold").

Arbitrator Nathan's award applicable to the Village's firefighters provides no support for the Chapter's proposal, I further believe. In his award, Arbitrator Nathan simply froze employee premium contributions at the 1993-94 level, extended the PPO plan being offered to all other Village employees to the firefighters unit personnel, and provided for renegotiation of the insurance issue for fiscal year 1995-96. At no time did Arbitrator Nathan sanction movement from a percentage premium payment formula to a fixed dollar formula for employees, freeze employee contributions for a period of two years or greater, or provide any sort of rebate to employees of insurance premiums previously collected from them.

In fact, the primary basis for Arbitrator Nathan's rejection of the Village's proposal pertaining to its fire personnel appears to be the Village's failure to include in its insurance offer to Village firefighters the new PPO option offered to other Village employees. Significantly, that new PPO option has already been provided to the police officer employees involved in this matter, as the Village has suggested.

Not only would the Chapter's proposal substantially add to the Village's administrative costs associated with its insurance program, I recognize, but it would reduce police insurance contributions well below those paid by all other Village personnel, including fire personnel, the record shows. Going to the internal factors directly, it appears that Village Exhibit 58A sets out that firefighter monthly premiums for the Village plan were frozen at the 1993 level of \$34.89 per month and for the HMO plan \$27.94 per month. In contrast, if the Chapter's proposal is granted, police officers covered by the Agreement will contribute \$23.91 per month as their share of the Village plan and \$18.13 per month as their share of the HMO plan. The difference would be approximately \$10 per month cost advantage for a Village police officer over a Village firefighter at both the Village plan and HMO plan levels. Moreover, under the Chapter's proposal in the current case, the police officers contribution rate would be frozen for each of the next three years, thereby presumably widening the gap between

insurance payments made by Village police officers and Village firefighters.¹⁵

Additionally, the record evidence shows that, if the Chapter's insurance proposal is granted by the Panel, Village police officers in 1995 at the participation level of employee with two-plus dependents, will pay \$57.96 per month for the Village plan and \$53.67 per month for the employee's share (V. Ex. 58A). This is in contrast to the \$81.31 paid per month by Village firefighters in 1994 under the Nathan arbitration award and \$81.47 paid by such employees under the Nathan award in 1994 for the HMO plan at that level.

Thus, if the Chapter's proposal is granted, it will allow police officers in 1995 to pay \$23.85 per month less than Village firefighters paid in 1994 for the Village plan at the employee with two-plus dependents and \$27.80 per month less in 1995 than the Village firefighters paid in 1994 for the same coverage under the Village's HMO plan pursuant to Nathan's arbitration award. This would create an inequity in two units that I believe have stood in historical parity, thus directly violating what Arbitrator Briggs cogently warned against in Village of Arlington heights and IAFF Local 3105 (January 29, 1991), quoted above, as regards not issuing wards that essentially inherently create conflict and a "whipsaw

¹⁵ While it is noted that the Nathan award had the effect of allowing Village fire fighters to pay \$3.46 per month less for the Village plan under the employee-only option and \$5.70 per month less for the employee's share of the Village plan for employees with two-plus dependents, it is further noted that this difference may be "made-up" in the course of the parties' negotiation of insurance for the fiscal 1994-95.

effect, wherein the two employee groups are constantly jockeying back and forth to outdo each other at the bargaining table."

Such a result should not easily be countenanced by this Arbitration Panel, unless there are genuinely convincing reasons for the acceptance of a party's proposal that has that predictable effect, which I do not find to be the case here. My reasons follow.

Turning to the factor of external comparability, the neutral notes this factor further compels selection of the Village's insurance proposal, as I read this record. The Chapter argued at the hearing that the Village's medical insurance benefits were "right in the mainstream. There is nothing special about it". The Union's objection to the plan, as summarized above, is that it did not provide better benefits or lock in for the employees a fixed dollar amount for their contributions for the duration of the contract.

The Union's attempt to reduce both the percentage and actual dollar amount of insurance premiums paid by unit members for the duration of this contract is a change in the status quo, supported by any external comparability data submitted at the hearing, since no market comparable reflects such a reduction. All of the exhibits tendered by the Chapter pertaining to medical insurance benefits list employee annual dollar contribution rates, I also note, not the formula utilized to determine that dollar amount. Stated another way, there is absolutely no evidence in the record that any of the communities deemed comparable by the union

determine insurance benefit levels by virtue of a fixed dollar number rather than on a percentage basis, as now exists at the Village.

Moreover, the Union during the hearing admitted that several communities (such as Elmhurst) calculate insurance payments on a percentage basis. The Chapter further acknowledged that its employee contribution rate for single coverage, or \$10.83 per month for 1995, would place it considerably below the employee payments made in the year 1993 for such communities as Rolling Meadows (\$19.50 per month), Mt. Prospect (\$14.00 per month), Hoffman Estates (\$12.50 per month), and Arlington Heights (\$11.98 per month) (C. Ex. 7A and 7B).

The Village tendered voluminous data concerning premium amounts paid by employees in the 32 area communities deemed comparable either by the Chapter, the Village as historical comparables, or included as potential comparables under the Chapter's criteria, extended to its logical conclusion. This data reveals beyond any purview of doubt that the contribution levels paid by Village peace officers for insurance are well below those paid by police officers in many other communities. Consider the following information pertaining to these communities when compared to the Village proposal and the Chapter proposal: HMO (employee-only level) -- average employee share excluding Elk Grove Village, \$378 per month, Village proposal at the same level, \$328 per month, and Union proposal at the same level, \$218 per month. For an employee plus one dependent, HMO coverage, the average employee

premium paid by these 32 communities is \$943; the Village proposal would require an employee payment of \$629 per month, whereas the Chapter's proposal would require an employee payment of \$420 per month -- or less than half the average paid by the comparable communities.

Moreover, at the employee with family HMO coverage, the average employee contribution per month is \$949; the Village proposal would require payments of \$967 per month, whereas the Chapter's proposal would require payments of \$644 per month -- a dramatic reduction from the average amounts paid by employees in these 32 area communities.

A similar pattern is revealed when considering traditional plan coverage. Thus, at the employee-only level, the average employee share is \$378, whereas the Village's proposed plan would be \$448 without the impact of Section 125 Flex Plan protection. That number would become \$314 when the 30 percent savings of the Section 125 Flex Plan was added to the equation.¹⁶ The Chapter's proposal, on the other hand, would propose a fixed employee contribution of \$299 without the effect of the Section 125 Flex Plan, or \$209 when the effect of the Section 125 Flex Plan was taken into consideration. Again, this would compare to the average payment of \$378 for employees in the 32 area jurisdictions.

At the employee plus-one dependent level, the average per month payment for employees in the 32 communities is \$943; the

¹⁶ Significantly, only four of these 32 area communities (Arlington Heights, Elmhurst, Glendale Heights and Palatine) offer a Section 125 Flex Plan benefit to their employees.

Village's proposed plan is \$941 (without the impact of the Section 125 Flex Plan); the Union's proposal level of employee contributions for 1995 would be \$628, fully \$300+ less in 1995 than the average amount paid in the 32 comparable communities in 1993.

At the employee with family level, the average paid by police officers in other communities is \$949, as compared to that proposed by the Village of \$1,044 per month, which is the equivalent of \$730 per month when the Section 125 Flex Plan is taken into consideration. In contrast, the Chapter's proposal of \$696 is fully \$250 less for 1995 than the average payments made by employees in these other comparable communities for 1993. When the effect of the Section 125 Flex Plan is taken into consideration with the Chapter's proposal, employees represented by it would only pay \$489 per month, or approximately half of that paid by their counterparts in the other 32 communities.

Having already agreed to cost sharing, the Union should not be permitted to take advantage of the change in Union representation to take back what was negotiated under the prior contract for specific concessions by Management, the Employer strongly submits. Because the Arbitrator does not have the luxury of fashioning a remedy but rather must elect only one party's position, I feel compelled to agree and adopt the Employer's position on this issue. Notwithstanding what I believe is a selection of too broad a universe of comparables by Management, as summarized immediately above, for the analysis of comparative payments of premium contributions in the relevant geographic area, I also believe the

Union has clearly "cherry picked" on its comparables, too. More important, I find the testimony of Employer witness Olson credible that the options available to Village employees makes this a "Cadillac plan." Therefore, I am not convinced that either party is comparing apples to apples as regards Health benefits. Most important, though, I see no evidence of a proposal for reciprocal concessions by MAP to obtain a change in the status quo. It is not enough to show this is the issue that caused the FOP to be turned out, I specifically hold.

I understand that the Union is strongly contending that the removal of the "caps" on the increases in premium to which each individual police officer would be responsible is a significant "breakthrough" for the Village, and therefore, the concept of "status quo" should make its own offer the more reasonable. Clearly, the prior contract reflects an arm's-length agreement for such caps, created as part of the deal through the negotiation process. However, that is the only "breakthrough" in the Employer's proposal on this critical issue of health insurance, I note, while the Union is essentially demanding at least three "breakthroughs" to bring its contributions in line with what it perceives are the applicable comparables on its 13 community list.

I also specifically agree with the Employer that the external comparability data, as well as the more critical internal comparability in this unique circumstance, support Management's position on the maintenance of the 15% contribution and other aspects of the hospitalization contribution by the individual

police officer employees. The fact of the removal of the "cap" on increases in premiums to be paid by the police officers thus cannot outweigh all the significant breakthroughs the Union is demanding, when the equation of reasonableness is the statutory mandate, I reluctantly conclude.

However, I strongly believe the parties still need to bargain the issue when the contract expires, and of course after the firefighters negotiations on health insurance contributions. That is one primary reason that I will accept the Chapter's proposal on the duration of the contract, and not that of the Village, as will be developed in more detail below in the section on duration.

Ultimately, however, I rule that the Chapter has not established its case on health insurance contributions, based on external comparability, to significantly lower employee premium payments. This is especially so when the effect of the Section 125 Flex Plan is taken into consideration, I note. I realize the employees do not like the Flex Plan, or at least do not choose to weigh its virtues in the way the Village does. However, this flexible spending plan reduces an employee's taxable income by about 30 percent of the amount that is deducted, the record shows, consequently reducing dramatically the employee's actual cost of insurance payments. This is a benefit enjoyed by Elk Grove Village police officers which is not available to any of the 32 area communities, save four of them, the record also indicates.

Moreover, the effect of the Section 125 Flex Plan would be to reduce the Chapter's proposed employee monthly contribution rate

from 10 percent to an effective rate of seven percent, I also note. This would place a Village police officer's monthly contribution rate at approximately 60 percent of that paid by the officer's counterpart in the 32 area communities described in Village Exhibit 62A and 62B. Consequently, there is no record basis to support the Chapter's insurance proposal, in the sense that would be required under the Act for me to accept the Union's proposal, i.e., as being clearly the more reasonable under the standards of Section 14(h).

Consideration of the other statutory factors does not alter this determination. Public interest favors a reasonable cost sharing scheme, in order to mitigate the spiraling increase in health insurance costs. The Employer's ability to pay the full cost of the premiums, or to have a 10 or 15 percent contributions by each bargaining unit employee, is not at issue here, and favors neither offer. The Employer's offer, otherwise favored by the comparability and public interest considerations, is not disfavored when considered in light of the cost-of-living or the employees' overall compensation. The Union contends that because the prior union was so inept, the bargain it struck should not continue nor should the bargaining unit employees be required to share in the cost of premium increases, without any cap whatsoever. However, I am adopting the Employer's demand as to insurance because the Union has demanded too great a change in circumstances from the 1991 negotiations for insurance payments, without proposing concessions as a "carrot", and I cannot modify the offer in any detail as regards the economic proposals, under this statute.

Thus, on balance, I have to find that the "breakthroughs" are primarily contained in the demands of the Union, and that the Employer's overall offer, even with the deletion of the cap limitation on future increases in premiums, is still the most reasonable, final offer, especially in light of the bargaining history and the prior contract's terms. I so rule. Because the internal factors show that the Village is justified in presenting the proposal on health insurance contributions, and because the external market forces are not persuasively in the Union's favor, and in fact there is no evidence among the comparables of similar Management "give backs" on health insurance costs -- and because I have found that the present health benefits offered are indeed a "Cadillac plan," at least in the manner it is presently administered, the Village proposal on this issue must be accepted, and will be included in the award below.

D. OVERTIME PAY

1. The Parties' Final Offers

a. The Village's Offer

The Village proposes that the following language be added to the appropriate section of the contract:

Employees will be paid one and one-half (1-1/2) times their regular hourly rate of pay: (1) for all hours worked beyond one hundred sixty (160) which may occur in the designated twenty-eight (28) day departmental work schedule as required by the Fair Labor Standards Act; or (2) as provided in Section 7.

For the purposes of this Article, "hours worked" shall include all hours worked and paid at straight time rates, and non-worked hours paid for vacations, holidays, workers' compensation and funeral attendance leave.

b. The Chapter's Offer

The Chapter proposes that the following language be adopted by the Panel for inclusion in the applicable section thereof:

Employees will be paid one and one-half (1-1/2) times their regular hourly rate of pay for all hours worked in excess of eight (8) on a departmental work day.

For the purposes of this Article "hours worked" shall include all hours worked and paid, at straight time rates, and non-worked hours paid, including, but not limited to, vacations, holidays, worker's compensation, jury duty, sick leave and funeral attendance leave.

2. The Parties' Positions on Overtime Pay

a. The Chapter's Position

The Chapter believes that its proposal for all hours worked in excessive of eight hours on a departmental work day to be paid at the premium time and one-half rate is fair and much more consistent with external comparables, even if the Village's own Exhibits on that issue are used as a basis for comparison. When the Union's more equitable and logical comparables are used, the Union's last offer on this issue is fully supported and must be awarded by this Neutral, it urges.

The Union also points out that what is at issue is quite narrow in scope, and the parties have already made tentative agreements on many of the multifaceted questions normally involved in compensatory and overtime compensation calculations. V. Ex. 54, which contains 33 different communities, shows that more than fifty percent of these market comparables pay overtime in excess of eight hours in a work day, the Chapter is seeking an eight hour normal

work shift that would include the existing lunch period provisions, with time and one-half to be paid for all work time performed in excess of eight hours in any one work day.

The Union acknowledges that Management, by its proposal for all hours worked at time and one-half over one hundred and sixty hours in a 28 day departmental work schedule, as granted to this bargaining unit is in effect the same amount of premium pay for overtime worked in most situations. The Union contends, however, that its proposal is more reasonable for two specific reasons. First, the Union points out that under the current system, and the one that the Village demands be retained by its proposal on overtime pay, an officer who is entitled to receive the time and one-half premium must wait until the end of the 28 day pay cycle, thereby "being deprived of the privilege of receiving [the earned] money on a timely basis." The Union suggests that there is no real reason to make an Officer wait one month before being paid for overtime hours already worked, except for the cash flow convenience of Management.

The second distinction between its proposal and that of Management, to the Union, concerns itself with the definition of "hours worked." The Union indicates that its proposal seeks to expand the definition of "hours worked" for purposes of the calculation of overtime to include not only the currently included periods of vacation, holidays, times when an Officer is off work but being paid workers compensation, and funeral attendance, but that, additionally, the Chapter proposal would also include jury

duty and sick leave in the expanded definition of "hours worked." Management, on the other hand, seeks to maintain through its proposal its current practice of not paying overtime except after the threshold of 160 hours in the 28 day departmental work schedule is reached, putting aside any paid hours used for sick leave by the individual officer. It is the Union's position that the definition of "hours worked" ought to include all hours for which the Officer is paid straight times of pay, and that equity and the practice of the majority of market comparables fully support it in that contention.

The Union also notes that the basic thrust of the Management argument as to overtime pay is the Employer's claim that there are issues concerning abuse or an over use of sick pay at present in the Village's Police Officer Unit. Management maintains, the Union points out, that one control of the pattern of abuse is through the definition of "hours worked" for overtime pay that excludes paid sick time and, further, that the current practice thereby acts to some extent as a damper on the sick leave abuse issue. The Union strongly counters, however, that concerns over abusive sick leave are properly handled through the disciplinary process. Consequently, the Employer's contentions on this issue should not be considered in any way credible or persuasive, according to the Chapter's logic.

b. The Village's Position

The Village believes that its proposal for all hours actually worked at time and one-half over 160 hours in a 28 day departmental work schedule, with the negotiated "extra" inclusion of hours worked in non-worked hours paid for vacations, holidays, workers' compensation and funeral attendance leave, is fair and fully consistent with the parties' practice, the prior contract negotiated between it and the FOP, the internal comparables, and the external communities as reflected by its own exhibits, all of which support the Village's last offer on this issue.

The Village indicates that its proposal is in fact the method by which employees are currently compensated for overtime. From Management's point of view, there is no reason for a change in policy that will cost the Village additional taxpayer dollars. The Village argues that the Union's proposal indicates inclusion of hours not actually worked beyond those earlier negotiated on the part of the police officers in this bargaining unit to be counted toward overtime at the rate of time and one-half, without any evidence that reciprocal concessions have been offered in trade for that additional economic "plum" or any persuasive that there is any need for such a modification or "breakthrough." The Village also states that its current policy is authorized under the Fair Labor Standards Act, and it desires to continue that policy which is in accordance with the law and the current practice.

The Village also emphasizes that the Chapter's proposal would do away with the 28-day standard for determining overtime pay,

while at the same time taking away one possible discouragement for the abuse of sick leave by individual police officers.

In sum, the Village argues that because of the other overtime provisions already agreed between the parties, in practical effect the Chapter's proposal will do to things: (1) it will cost the Village more money (\$17,900.00) the first year and an additional \$850.00 the second year -- for a total of \$18,750.00, which is equivalent to a 0.59% across-the-board wage increase) (V. Ex. 30); and (2) it will remove the existing incentive for employees not to abuse sick leave, as explained in more detail above.

When the faulty logic of that position is coupled with the fact that the Chapter has demanded this as what is truly a "breakthrough" new benefit, on top of the Village's court time concession, a enrichment in compensation calculations as regards police officer work scheduling already tentatively agreed to, the Employer argues that the Union position on its demands with regard to this issue would amount to an increase in Management's payroll obligations inconsistent with and not required by any of the statutory criteria normally considered by Interest Arbitrators.

c. Discussion

In analyzing the Parties' position on this issue, the neutral notes that Management's proposal does already reflect certain enrichments to the method by which bargaining unit employees are currently compensated for overtime. Thus, under the May 1, 1991 contract, overtime was still paid for all hours worked beyond 160 in a 28-day work schedule, but the definition of hours worked

presented in what was then Section 4 to Article 10 included by definition "all hours paid, except sick leave time and court time." In the current negotiations, the employee's representative, and the Village granted, yet additional improvements in the overtime provision.

Thus, in Section 16.7, court time, the Village agreed to improve the court-time benefit by paying employees time and one-half for all hours worked while attending court on their off-duty period. While also agreeing to the following new court attendance benefit: "In addition, each officer covered by this Agreement shall receive as additional court time pay the payment of one (1) hour of straight-time compensation at the affected officer's straight-time hourly rate of pay for each day in which the affected officer appears in court in off-duty time." (V. Ex. 4, last page; emphasis added). The cost of this benefit, as calculated by Management, is \$56,510.00, or the equivalent of a 1.8% across-the-board wage increase.

Moreover, Management asserts that another overtime improvement in the currently tentatively agreed to provisions is that the definition of "hours worked" is to now include workers compensation and funeral attendance leave. As a result, the only aspect of time paid but not worked which is not counted toward the 160-hour overtime threshold is sick leave, and that was excluded to address a sick leave attendance problem which has been continuing at the Village involving bargain unit members since the first contract was negotiated in 1987, the Employer directly contends.

To Management, the prior practice as regards the complex area of work scheduling and overtime compensation has been dealt in some detail through the direct negotiations between the parties in 1991 (when the unit employees were represented by the FOP) and the current negotiations between the Village and MAP. While the parties presented the overtime pay issue in the narrow terms quoted above, Management argues that the overtime pay rates cannot be treated separately. The overall pay increases already granted as regards overtime pay, which reflects a substantial enrichment in that area for the bargaining unit employees, must be considered together.

It is inescapably clear, I find, as the Union has suggested, that Management is right that what has been granted is indeed inseparable and interdependent, but the last piece of the proposal puzzle should not be considered in isolation, either. Thus, the relationship of all the monies granted for changes in methods of calculation of overtime compensation, as well as additional situations where overtime will be paid, cannot be divorced from the overtime pay proposal actually on the table, and must be considered in weighing the fairness and reasonableness of each final proposal.

The Neutral certainly agrees, as a matter of general principle, with the logic of the Employer's broad analysis. However, the Neutral also notes that, as the Chapter has suggested, even considering V. Exs. 30 and 54, the majority of comparable external market communities pay overtime in the manner currently proposed by this Union. While it is certainly true that Management

is paying overtime in conformity with the law, it simply is not true, as the Neutral sees it, that the critical non-economic basis for continuing this methodology is Management's retention of a damper on sick leave abuse outside the potential for use of the disciplinary avenue to achieve that identical result. Nothing in the evidence presented by the Village convinces the Neutral that the more normal and effective device for dealing with sick leave abuse is to directly investigate the problem on an individual basis and then handle it where appropriate with clear cut and fair-handed discipline. To claim that it is necessary to have an overboard alternative avenue through a control of overtime pay when sick leave has been used within the 28-day departmental work schedule may be an accurate reflection of what is currently done, but does not convince me that that particular strategy is either fair or appropriate under these specific circumstances.

What remains is the Management argument that it is granted "enough" in the overtime compensation area already during the negotiations for this current contract, especially in light of what had gone before in the 1991 negotiations for the contract with the FOP, and there is no real or convincing basis for the Panel to choose to grant another pay increase in the overtime area, especially when no comparable concession has been offered by this Union. On the other hand, the Union stresses that the allegation that what is currently discourages abusive sick leave is an improper strawman, and also that the external comparables fully support it in its contentions that this is an area where an

increase in remuneration is appropriate and not a "significant breakthrough."

The Neutral Arbitrator has considered the arguments of both sides with respect to this issue very carefully. One comment seems obvious. While either of the concepts regarding overtime payment are widely accepted in the public sector and in the comparable communities, this is not the initial point of bargaining on this topic between these parties. It seems to be not too drastic a jump to go from the position of non-payment of overtime when sick leave has been used by a police officer in the particular time frame under consideration, when all the other inclusions of non-worked paid time already in effect or now agreed to through negotiations is considered. To grant payment for overtime on a daily basis rather than on the 28-day departmental work schedule basis seems to me to be a minor part of that package that has already been agreed to, and fully consistent with either party's external comparables, at least in the majority of cases.

Essentially, the Chapter's proposal is deemed more equitable and reasonable, and appears to meet the legal overtime requirements and also the statutory criteria. For these reasons, the Union's position on overtime pay is accepted, and will be included as part of the Award in this case.

VII. NON-ECONOMIC ISSUES

A. LEGISLATED COST MANDATES

1. The Parties' Final Offers

a. The Village's Offer

The Village proposed the following language be added to the contract:

Should the Illinois General Assembly enact legislation benefitting officers or immediate families of officers covered by this Agreement, where the effect is to increase costs to the Village beyond those which exist at the time this Agreement is executed, such increased costs shall be charged against the time they are incurred. The Village may thereafter deduct from wages or benefits provided in this Agreement the amount of such increased costs. Legislation benefitting officers or immediate families of officers includes, but is not limited to, pensions or other retirement benefits, workers' compensation or disability programs, sick leave, holidays, other paid leaves, uniforms or clothing allowances, training, certification or educational incentive compensation.

b. The Chapter's Position

The Chapter has tendered no proposal on this issue.

2. The Parties' Positions on Legislated Cost Mandates

a. The Village's Position

The Village argues that when it enters into a collective bargaining agreement, it is able to compute its overall costs for the terms of the agreement, and that such computations are factored into the decisions it makes during the bargaining process. Thus, the Village argues, it should not be forced to provide additional economic benefits which might subsequently come to bargaining unit employees through unfunded legislative mandates.

b. The Chapter's Position

The Chapter notes that none of the comparable jurisdictions have adopted a similar "legislative mandates" provision in their police agreements, as Management has actually acknowledged at the hearing in this interest arbitration. Consequently, as Management indeed admitted, what is being requested as regards this issue is an unwarranted "breakthrough", without any proof of a quid pro quo or reciprocal concession for this particular non-economic provision. Moreover, MAP points out that with regard to the other two Village bargaining units, the internal comparables, there is also no provision dealing with "legislated cost mandates". Thus, from the Union's perspective, the Village's final offer on this point would unfairly force Elk Grove Village police officers to bargain over mandated benefits that employees in both external and internal comparable groups would get automatically.

c. Discussion

The Neutral agrees with the Union on this issue. There is simply no justification in the record to compel a change in the status quo, I hold. Not one of the external comparables has adopted language similar to or even generally along the outlines of what the Village seeks here, nor does such language appear in the Village's contract with the firefighters. If the Village wishes to make such an innovative departure from its police agreements of the past, especially in the context of the particular and unique circumstances of the current case, the preferable form for doing so is at the bargaining table, I find. As indicated, I feel that

particular provision must be tied to some concession, at minimum, to offset what would be, in my judgment, a provision of the contract whose many facets could, without the control of either party, lead to numerous contract disputes of genuinely significant import down the road.

Essentially, the Union's proposal is more equitable and reasonable, I hold. For these reasons, the Union's position is accepted.

B.

NO SOLICITATION

1. The Parties' Final Offers

a. The Village's Position

The Village proposes that the following language be added to the contract:

While the Village acknowledges that the Chapter may be conducting solicitation of Elk Grove Village residents, citizens or merchants and businesses, the Chapter agrees that none of its officers, agents or members will solicit any person or entity for contributions or donations on behalf of the Elk Grove Village Police Department or the Village of Elk Grove Village.

The Chapter agrees that the Village name, shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitation by bargaining unit employees may not be done on work time. Neither the Chapter nor the Metropolitan Alliance of Police, nor its agents or representatives, may use the words 'Elk Grove Village Police Department', 'Elk Grove Village Police', or 'Elk Grove Village' in any solicitation except if such words are included in a statement of the Chapter's full and complete name, 'Metropolitan Alliance of Police, Elk Grove Village Police Chapter No. 141'. The Chapter further agrees that any written or oral solicitation of Elk Grove Village residents, citizens or merchants and businesses will include the words: 'This solicitation is not made on behalf of, nor do receipts go to the benefit of, the Elk Grove Village Police Department or the Village of Elk Grove Village.'

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by the Chapter or the Metropolitan Alliance of Police directed to the general public, nor shall it limit the Village's or the Chapter's (or M>A.P.'s) right to make comments concerning solicitation.

b. The Chapter's Position

The Union tendered no final proposal on this language issue.

2. The Parties' Positions on No Solicitation

a. The Chapter's Position

The Chapter argues that there is no need to include language in the collective bargaining agreement prohibiting MAP from soliciting funds in the Village of Elk Grove Village or restricting it from doing what this Union has the lawful authority to do under the current situation. MAP emphasizes that its right to free speech is already provided under the United States Constitution, and the right to fairly represent the bargaining unit employees is provided by this statute, yet, Management seems to be punishing the bargaining unit employees for its selection of MAP as its collective bargaining representative by suddenly demanding the inclusion of a no solicitation clause never required of the FOP. The Union therefore characterizes the Employer's demands for a contractual provision inhibiting the Union's ability to solicit funds in the Village of Elk Grove Village as a drastic modification of the current status quo and an unnecessary and blatantly discriminatory and unfair "breakthrough".

The Union also points to the fact that there is little support across the comparable jurisdictions for the inclusion of a clause limiting solicitation of funds that is so broadly worded and over-

inclusive as the current proposal of this Employer. It is the Union's position that the first and third paragraphs of Management's proposal, as quoted above, essentially state the legal and moral rights and obligations of the Union and, consequently, are not in themselves objectionable, except that the Employer has never seen the need for a "no-solicitation" provision prior to the selection by the bargaining unit employees of MAP. The Chapter does "take great exception" to the provisions of Paragraph 2, especially to the limitations concerning its use of the word "Elk Grove Village" or "Elk Grove Police".

b. The Village's Position

The rationale of the Employer's position is founded on a number of grounds. It first argues that strong public policy concerns support of the adoption of the Village's proposal concerning solicitation, by which it means essentially that Employer witness Olson personally received numerous complaints from citizens and residents concerning Union solicitation of funds, as well as being the recipient of such solicitation himself. Olson, as well as the Chief of Police for Addison Illinois, Melvin Mack, described in great detail the problems and difficulties caused by such solicitation, Management argued. Indeed, Chief Mack described in great detail in his testimony the problems and difficulties with MAP's solicitation of citizens and residents which occurred in the Village of Addison, and the Employer anticipates similar difficulties and confusion caused by this Chapter's solicitation efforts, if permitted, the Village contends. To be specific, the

Employer points out that a major concern on its part is that its citizens and residents would be confused by the Union's solicitation techniques, and, similar to certain Addison residents, might erroneously come to believe that the Union's solicitation of funds was being conducted by or on behalf of this Village.

The Village also emphasizes that the Village of Addison and another Chapter of MAP have, in their collective bargaining agreement, a "no solicitation" provision that has been included as V. Ex. 18A in this record. Moreover, MAP and the Village of Villa Park actually negotiated a similar no solicitation clause and there is a similar side letter of agreement between MAP and the City of Morris. While not as broad, in certain respects, as the instant proposal, a no solicitation provision consistent with these no solicitation provisions already agreed to by MAP (V. Ex. 18A; 18B; and 18C) would be satisfactory in the event the Neutral decides that the full text of the Village's proposal is not appropriate at this time. Indeed, according to the Village, counsel for the Chapter has indicated that such provisions, while not relished by the Union are found to be acceptable if negotiated across the table between the parties or incorporated into the labor agreement by the decision of a neutral arbitrator.

c. Discussion

While the Union's vigorously presented arguments on its perceptions as to the underlying motivation of the Employer in pressing the extremely broad no solicitation provision set out above throughout negotiations and, literally through nearly two days of the five or six day interest arbitration in this case are interesting, the simple fact is that enough evidence was presented to convince this Arbitrator that the Employer had at least some legal or factually based considerations for demanding some sort of no solicitation provision. Similar provisions have been agreed to during arm-lengths negotiations by this Union, or have been incorporated by other interest arbitrators in labor contracts that involve MAP, I also note. The Management proposal is not inherently unfair or inequitable, in the sense a "no solicitation" demand automatically should be determined to be a benefit not to be granted, in its essence.

However, the Employer's particular proposal in this case is much too broad in scope and restrictive of the ability of proper representatives of MAP to solicit funds, as is its right under the United States Constitution and this statute, as the Union has so vigorously argued. The benefit to the Employer vis-a-vis the Union (not the members of the Union under these circumstances, I hold), if achieved, should be required to be as narrowly drafted as possible, so that, in effect, no one's rights of expressing him or herself, or the group's full right to associate, including asking for funds from the general public for such purposes, is encumbered

merely to prevent mistakes, errors or confusion on the part of the residents of this Village. On the other hand, Management has proved that there is a legitimate interest in having a rule that limits such confusion in a reasonable and appropriate way, I specifically hold.

On balance, I find that the provision negotiated between the Union and the Village of Addison adequately balances the relevant rights and interests, and I incorporate that provision as the no solicitation rule in the current contract, as follows:

While the Village acknowledges that the Chapter may be conducting solicitation of Village of Elk Grove Village merchants, residents or citizens, the Chapter agrees that none of its officers, agents or members will solicit any person or entity for contributions or donations on behalf of the Elk Grove Village Police Department or the Village.

The Chapter agrees that the Village name, shield or insignia, communications systems, supplies and materials will not be used for solicitation purposes. Solicitation by bargaining unit employees may not be done on work time. Neither the Chapter nor the Metropolitan Alliance of Police, nor its agents or representatives, may use the words 'Village of Elk Grove Village Police' in its name or describe itself as 'Village of Grove Village Police Chapter 141'.

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by the Chapter or the Metropolitan Alliance of Police directed to the general public, nor shall it limit the Village's right to make comments concerning solicitation.

The language set forth immediately above is adopted and shall be incorporated into the parties' collective bargaining agreement that shall be the result of this interest arbitration, upon proper adoption through ordinance by this Village.

C. Duration of the Agreement

According to the parties' stipulation, Jt. Ex. 1, the Village is the moving party on this issue, although the Chapter characterizes it as effectively an economic issue, while the Village claims that it is one of the three non-economic issues to be resolved by the Neutral, and therefore an issue that can be resolved by the Neutral fashioning as remedy in my discretion, rather than being forced to elect the final, best and most reasonable position of one party or the other. Because of the construction of the stipulations reflected in Jt. Ex. 1 by agreement of these parties, the Neutral holds, in this particular case, the duration of this agreement must be characterized as a non-economic issue, and that the right to fashion a remedy not fully reflecting either of the party's offers accordingly exists and will, for this specific occasion, be exercised.

1. The Parties' Final Offers

a. The Village's Position

The Village proposes that the following language be added to the contract as Article 24, Duration of Agreement:

This Agreement shall be effective on the day following signatures of both parties and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 1998. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing in at least one hundred twenty (120) days prior to the expiration date of this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. The provisions of this Agreement shall continue in effect so long as the parties are engaged in good faith negotiations or are exercising their impasse procedure rights under the Illinois Public Labor Relations Act.

b. The Chapter's Position

The Chapter proposes that the following language be adopted by the Panel on the Duration of Agreement issue:

This Agreement shall be effective as of _____, 19____, and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 1997. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the expiration date of this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. The provisions of this Agreement shall continue in effect so long as the parties are engaged in good faith negotiations or are exercising their impasse procedure rights under the Illinois Public Labor Relations Act.

2. The Position of the Parties

a. The Chapter's Position

The Chapter believes, and it has strongly argued, that all economic benefits could be made retroactive to May 1, 1994, by this Arbitrator, except for wages, for which the provisions of Sections 14(h) (6) and 14(j) of the Act apparently preclude retroactivity for a one-year insulated period, based on the Act's technicalities. As noted above, however, the Chapter points out that the Employer had the option of agreeing voluntary to retroactivity on wages, but obviously chose not to do so. More important, the Village also chose not to implement any other modifications in the current working conditions of the bargaining unit employees, including economic and non-economic changes that have been tentatively agreed to and, pursuant to the parties' stipulations, will in fact be incorporated into the collective bargaining agreement as soon as

the written Award is received, assuming the Award is not rejected by the Village's governing body pursuant to Section 14(n) of the Act. There was no reason for the delay in the implementation of the non-economic issues already agreed to by these parties, as Management has done in this case, and certainly Management never gave any logical basis whatsoever at the arbitration hearing for this course of conduct, the Neutral is reminded.

Furthermore, the nature of the open economic issues certainly do lend themselves to retroactive application, and Management's failure to do so is simply another reflection of the improper motives of Management and its blatant anti-Union animus, the Union contends. As an example, the Chapter cites medical insurance benefits, longevity, all the tentative agreements concerning overtime pay, and so on. The Chapter thus concludes that what Management has effectively asked for in this interest arbitration is a four-year contract, with the period from May 1, 1994 through April 30, 1995, essentially being "dead" for all purposes for the bargaining unit members.

No similar duration for a collective bargaining agreement is reflected in the internal or external comparables, the Chapter submits.

Accordingly, the Union urges that in analyzing the parties' positions on this issue, the Neutral Arbitrator should note that although Management claims what it has proposed is a three-year contract, in fact, what it presents as its final and fair option is a four-year agreement, the first year of which did not present any

economic or non-economic benefits or changes to the bargaining unit, and the last year of which provides for a wage reopener but binding terms and conditions on all other issues. Management's position is obviously unfair for several reasons, suggests the Union, but the primary one is that this term is simply too long under these unique and specific facts, especially in light of the wage reopener for fiscal year 1997-1998, which in fact would do little for the stability of the relationship between the bargaining unit officers and the Village -- as claimed by Management -- other than give the Village an additional unfair economic advantage beyond the requirements of Section 14(j) of the Act.

It is completely unfair for the Village to have the advantage of simply disregarding the fiscal year for May 1, 1994 through April 30, 1995 as being "non-existent," because a neutral arbitrator cannot under the Act award a retroactive wage benefit, argues the Union. It says that, as a result of a peculiar wrinkle in this Act (Section 14(j)), no wages can be granted for FY 1994-95, but Management attempts to use that circumstance to more than its full advantage when it proposes that, even though there has been no implementation of any modified or new terms of the labor agreement for the "frozen" year because of the statute.

I am also reminded that a wage reopener is included in this "3 year deal" that might require a second interest arbitration, without the possibility for negotiations or trade-offs or improvements under the broad range of potential benefits that ordinarily would be on the table for these rank and file police

officers. A three-year contract beginning May 1, 1994 is therefore the appropriate duration of this contract, the Chapter insists, and not the Village's offer of, in real terms, a four year contract with a final year being a reopener as to wages.

b. The Village's Position

The Village, on the other hand, emphasizes four basic factors as favoring its proposal that a three-year contract, with the terms of agreement from May 1, 1995 through April 30, 1998, be awarded by the Arbitration Panel. First, the Village emphasizes that external and internal comparability show both that three-year contracts are the standard or norm for both the external market comparison grouping and the internal comparables. Second, the internal and external comparables show that a wage reopener in the last year of a collective bargaining agreement for law enforcement officers is nothing unusual, and fully consistent with the patterns and practices of the Village of Elk Grove Village and its police officers, as reflected in the 1990 wage reopener for the initial contract between the FOP and the Village. Third, public policy considerations, the most important of which is the need for stability in this bargaining unit and a reduction in the possibility of "whip sawing" between the firefighters and the police officers demand a three year contract as reflected in Management's proposal, the Village submits.

Finally, there is a separate policy basis supporting the Village's position for a longer collective bargaining agreement in the instant case. Because the Panel's Award in fact was not

issued until mid-February, 1996, the actual duration of the agreement, as a practical matter, would under the Chapter's proposal, be approximately for only one year, with negotiations for a new contract likely commencing before even that year is completed. While the Village's proposal, if accepted, would also require bargaining during that one-year period, Management concedes, such bargaining would be limited to the single issue of wages. Consequently, the parties would have at least one full year more time to adjust to all of the other terms of their labor agreement before either side is required to make or respond to proposals to change it, the Employer points out. While it would be better to have no bargaining for at least a two-year period, if not for longer, it maintains, the Village stresses that it would certainly cause less instability to have bargaining over the single issue of wages than over all the contract matters which might be raised by the parties in 1997, if the Union's proposal is chosen by this Neutral.

c. Discussion

Although both parties seemingly have agreed that the contract should be three years in length, the Union would have the Arbitrator include the fiscal year 1994-1995 as one year of that contract term, while the Employer submits that the contract, as a practical matter and by statute, should begin on May 1, 1995 and run through April 30, 1998. The Union counters that Management's proposal, because of its inclusion of a wage reopener for fiscal year 1997-1998, is neither consistent with external comparables

among law enforcement officer bargaining units nor the equities of this specific situation, as the Chapter views the entire course of conduct of Management throughout the negotiations process in the current case. In essence, the Union claims that the Employer arguments regarding the need for stability in the bargaining relationship contain a gross misassessment of the actual situation at hand, and that a three-year contract that totally bridged fiscal year 1994-1995, for all purposes, and then presented a wage reopener for fiscal year 1997-1998, would actually destabilize the relationship between MAP and the Employer.

After much consideration, I rule that, historically, the police officers in this bargaining unit and this Employer have not maintained a practice of only three-year contracts. The initial contract between the FOP and this Village, for example, was a four-year contract with a wage reopener. Only the 1991 contract between the FOP and the Village had a term of three years, the record reveals. Consequently, there is some precedence for a wage reopener, based on the 1990 reopener provided for in the initial contract between the FOP and the Village. Whether these conclusions support the Union or the Employer for the issue at hand is clearly open to question, however, I also note.

After much consideration, I find that what is clearly a controlling consideration is my disagreement with Management that the kind of three-year contract it has proposed would in fact encourage stability in the bargaining relationship, as opposed to budgetary stability for the benefit of Management. I note that on

at least one major issue, health insurance, to grant Management its proposal on the duration of this contract seems to affirmatively act as a further destabilizing influence on what has already become an adversarial condition since the switchover from the FOP Lodge to this MAP Chapter. Arbitrator Nathan in his interest arbitration Award, supra between IAFF Local 3339 and this Village, specifically noted that the police officers and the Employer had an amicable relationship at that time. Since Nathan's Award, what has occurred between these parties has, as I noted above, made the health insurance contribution issue subject to potential "whipsaw bargaining," virtually no matter how this decision goes. However, to lock this Union into a no-cap contribution, at a level potentially different from the unit in which these employees stand in historical parity, but then also to leave a wage reopener for the last year of the term of the contract during a time when all other benefits, including the critical health insurance benefits, stand frozen, simply would pile on another point of frustration and dissatisfaction for these police officers, I specifically find.

I understand that Management is stressing the cost and destabilizing effects of opening up bargaining on all issues with only months of this interest arbitration decision. I also understand that as this process has evolved, one year of the term of the agreement proposed by the Union has essentially disappeared, no matter what my ruling on this point actually is. The argument for stability under these circumstances seems to overstate what the Act provides for standards of acceptance, and to go against the

Act's intent and against the public interest, despite the facial appeal of a limitation on bargaining and its attendant cost, under the totality of the circumstances of this unique case, I specifically find.

Consequently, the Neutral awards as follows with regard to the duration of this Agreement:

This agreement shall be effective as of May 1, 1995 and shall remain in full force and effect until 11:59 P.M. on the 30TH day of APRIL, 1997. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the expiration date of this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. The provisions of this Agreement shall continue in effect so long as the parties are engaged in good faith negotiations or are exercising their impasse procedure rights under the Illinois Public Labor Relations Act.

The language set forth immediately above is adopted and shall be incorporated into the parties' 1995-1007 Collective Bargaining Agreement.

VIII. AWARD

Based upon full consideration of the Award before this Panel, including the applicable statutory criteria and the evidence and argument submitted by the parties, the Neutral Arbitrator awards the following with respect to their 1995-1997 Collective Bargaining Agreement:

(1) Economic Issue No. 1: Hours of Work and Overtime. The Union's final offer is adopted.

(2) Economic Issue No. 2: Wages, Including Any Claim for Retroactive Pay. The Village's final offer is adopted.

(3) Economic Issue No. 3: Health Care Contribution. The Village's final offer is adopted.

(4) Economic Issue No. 4: Longevity. The Village's final offer is adopted.

(5) Non-Economic Issue No. 1: Legislated Cost Mandates. The Village's final offer is rejected.

(6) Non-Economic Issue No. 2: No Solicitation. The specific Award set forth in the applicable portion of this Opinion, incorporated herein as if fully rewritten, is adopted and shall be incorporated in the 1995-1997 labor contract.

(7) Non-Economic Issue No. 4: Duration. The specific Award set forth in the applicable portion of this Opinion, incorporated herein as if fully rewritten, shall be incorporated in the 1995-1997 Collective Bargaining Agreement and is hereby adopted.

(8) Additional items upon which the parties have reached agreement between themselves shall also be incorporated into their 1995-1997 Collective Bargaining Agreement.

In light of the foregoing analysis, the majority of the Arbitration Panel adopts all the specific awards set forth immediately above. In reaching this conclusion, the entire Arbitration Panel has considered all the pertinent statutory factors set out in Section 14(a) of the Act, including the parties' stipulations, external and internal comparability, the interest and welfare of the public and the financial ability of the unit of government to meet these costs, the overall compensation presently received by the employees, changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, and such other factors not confined to the foregoing, taken into consideration in the determination of wages, hours and conditions of employment in collective bargaining.



ELLIOTT H. GOLDSTEIN
Chair, Arbitration Panel

/s/ James Baird

JAMES BAIRD
Employer Delegate
Arbitration Panel

/s/ Joseph R. Mazzone

JOSEPH R. MAZZONE
Union Delegate
Arbitration Panel

Dated: February 28, 1996