



In The Matter of the Arbitration Between )  
 )  
Maywood Firefighters, )  
Service Employees International Union, Local 1 )  
 )  
and )  
 )  
Village of Maywood )  
 )  
ISLRB No. S-MA-95-167 )

**OPINION AND AWARD**

The hearings in the above captioned matter were held on September 8 and 11, and November 10 and 15, 1995, at Maywood Village Hall in Maywood, Illinois, before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Mr. Kenneth Munz, its Union Representative and Mr. Richard Reimer, its attorney. The Employer was represented by Mr. Stanley Hill, its attorney. The hearing was held pursuant to Section 14 of the Illinois Public Employees Labor Relations Act (IPLRA). Although Section 14(b) provides for each party to select one delegate to a three-member arbitration panel, the parties waived their rights to delegates and stipulated that I decide the outstanding issues as sole arbitrator.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. A verbatim record of the hearing was maintained and a transcript was produced. Both parties filed post-hearing briefs.

**The Issues**

- The following issues are before me for resolution:
- minimum manning;
  - residency;
  - wages;
  - health insurance;
  - holidays; and
  - retroactivity.

The Village objected to the issue of residency and I ruled that the matter was properly before me in light of Section 14(i)'s express preservation of historical bargaining rights.

### The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors:

- (1) The lawful authority of the parties.
- (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 with other employers 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.

As I have stated elsewhere,<sup>1</sup> interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of their value in making such a determination.

---

<sup>1</sup> Malin, *Public Employees' Right to Strike: Law and Reality*, 26 U. MICH. J. L. REF. 313, 333 (1993).

Some of the statutory factors do not require much discussion. There is no contention that any of the final offers submitted by either party is beyond the lawful authority of the employer. I will consider any stipulations which may be relevant in connection with the particular issue or issues to which they may be relevant. Although neither party placed the increases in the Consumer Price Index in evidence, I take arbitral notice that, according to the United States Department of Labor, Bureau of Labor Statistics, the CPI for metropolitan Chicago increased 3.0 percent in 1994 and 2.2 percent in 1995<sup>2</sup>. Neither party reported any changes in circumstances during the pendency of these proceedings. Among the other factors traditionally considered are the parties' prior bargaining history and the two prior interest arbitration awards which determined certain terms of the two prior collective bargaining agreements.

The Union has offered the following as comparable communities: Bellwood, Broadview, Hillside, Melrose Park, River Forest, and Westchester. The Village does not contest these. These communities were used as the relevant comparables in the two prior interest arbitrations between the parties (Jt. Exs. 4 and 5) and together with the Employer, comprise the members of Battalion 7 of the municipal Mutual Aide Pact (MAP). I accept them as the comparable communities to be used in this proceeding. However, in utilizing these comparables, it is important to recognize that each of these communities is in better overall financial condition than the Employer and that the Employer, by far, has the highest incidence of structural fires among all Battalion 7 members.

#### The Village's Ability to Pay

Much of the evidence, and much of the dispute, has focused on the financial condition of the Village of Maywood. Because the Village's ability to pay is a key factor in most of the issues in dispute, I shall focus on it first. Then, I will turn to each issue in dispute.

The most detailed testimony concerning the Village's financial condition came from Bill Morris, senior vice president of Doherty, Dawkins, and an expert on municipal finance. Mr. Morris testified that over the past thirty

<sup>2</sup> I note that Arbitrator Aaron Wolff took similar arbitral notice of the change in the CPI in the arbitration which resolved certain terms of the immediately preceding collective bargaining agreement. Jt. Ex. 5 at 17. I obtained my data from a BLS release available on the Internet at <http://stats.bls.gov/blshome.html>.

years, the Village's population has remained stable between 26,000 and 27,000. However, the composition of that population has changed. According to Mr. Morris, Maywood's population went from 84 percent white in 1950 to 84 percent African American in 1990. In addition to "white flight," the Village experienced panic real estate peddling, increased unemployment, the loss of major retailers and the perception (and perhaps the reality) of increased crime (11/15/95 Tr. 34-38).

According to Mr. Morris, Maywood got into fiscal trouble in the 1980s because it was not increasing real estate taxes (11/15/95 Tr. 116). To meet the legal requirement of a balanced budget, the Village was borrowing from other funds, such as water and pension funds, to meet current operating expenses. Unfortunately, costs exceeded revenues and the Village exhausted its ability to borrow. In late 1991, the Village tried to issue \$900,000 in notes, but the note sale failed because the market judged the Village to be too poor of a credit risk (11/15/95 Tr. 51-54). Mr. Morris characterized Maywood as a "junk bond." (11/15/95 Tr. 32).

To remedy the Village's financial problems, the Illinois Developmental Finance Authority (IDFA) intervened. IDFA is a state agency that was created to issue industrial revenue bonds, but whose powers have expanded to include actions to remedy financially distressed communities (11/15/95 Tr. 81). At the time of the intervention, Maywood was running an accumulated deficit in excess of \$2.6 million.

An October 5, 1992, memorandum from then Finance Director Robert Broznowski (Un. Ex. 42) recommended increasing the Village's property tax levy by 20 percent, an increase that Mr. Broznowski equated to an 8 percent overall increase in property tax bills. He also recommended eliminating one sergeant and seven patrol officers in the Police Department, eliminating crossing guard service and the marshalls program, reducing firefighter manning by six to twelve people, and saving at least \$100,000 with cuts in public works. Mr. Morris testified that he recommended closing one fire station, but that the Village did not follow that recommendation (11/15/95 Tr. 115). He further testified that the Village did not follow Mr. Broznowski's recommendation of a 20 percent tax increase. Mr. Morris was unable to say whether the Village followed Mr. Broznowski's other recommendations (11/15/95 Tr. 112-14).

IDFA restructured the Village's indebtedness. The restructured debt totaled \$12.5 million (11/15/95 Tr. 154). To ensure that bondholders will be paid, IDFA intercepts payments from the State of Illinois to the Village and uses them to pay the bondholders (11/15/95 Tr. 32-33). IDFA has

the power to call the loan and force the Village into bankruptcy (11/15/95 Tr. 157).

Under the restructuring, the Village was allowed to carry forward its \$2.6 million deficit (11/15/95 Tr. 24). Mr. Morris conceded that in fiscal years 1994 and 1995, the Village had a balanced budget and even reduced the deficit by \$27,517 (11/15/95 Tr. 57-59, 123). However, he refused to state that the Village is in better financial shape now than in 1991, preferring to phrase it as, "The Village is in no worse financial shape." (11/15/95 Tr. 123). He chided the Village for not raising property taxes by 5 percent each year (11/15/95 Tr. 45-56). He observed that the IDFA loan payments are structured; initial payments were \$700,000 but the payment will increase by \$200,000 in 1996 and by \$700,000 in 1997. Thereafter, it will level off at \$1.1 million (11/15/95 Tr. 60-63).

### **Minimum Manning**

Union's Final Offer: Retain existing language, "Due to the nature of the Fire Service and the consideration which must be given for the safety of the personnel, there is a necessity for a minimum manning requirement of eight (8) bargaining unit firefighters per shift including any probationary firefighters."<sup>3</sup>

Village's Final Offer: The Village proposes that the provisions of Article 12 regarding minimum manning be modified to a minimum manning requirement of seven (7) bargaining unit firefighters per shift.

Background: The parties stipulated that the current Maywood Fire Department consists of thirty-six firefighters (commonly referred to as "blue shirts"), six line officers, and the Chief (9/8/95 Tr. 175). They further stipulated that reducing minimum manning from eight to seven would save a little over \$63,000 (9/8/95 Tr. 173). Lieutenant Michael Dravo testified that usually there are eight blue shirts and one or two officers on duty (9/8/95 Tr. 182).

Firefighters work twenty-four hour shifts. The thirty-six blue shirts are divided among three shifts, such that each firefighter works twenty-four hours on, followed by forty-eight hours off. In addition, firefighters are off every ninth work day, known as a Kelly day, to avoid having to pay them overtime under the Fair Labor Standards Act. The Department schedules firefighters' Kelly days,

<sup>3</sup> For purposes of brevity, I have not reproduced the language setting forth exceptions contained in Section 12(a). They are incorporated by reference.

vacations, compensatory time, and holidays in such a way to provide for nine blue shirts scheduled each day. This gives a cushion of one blue shirt per day which ensures that the Department does not drop below the eight man minimum. A blue shirt may be allowed to use compensatory time on such a day but, if another firefighter is sick or otherwise unable to work, he is subject to recall if necessary to avoid dropping below the eight-man minimum and to avoid paying overtime.

Firefighter John Kadagin, a member of the Union bargaining team, testified that minimum manning first appeared in the contract in 1972, with a seven-man minimum. From 1978 until 1980, the contract called for a minimum of eight men. In 1980, it was increased to ten. In 1986, it returned to eight, with the current exceptions where it may go down to seven (9/8/95 Tr. 198). The parties stipulated that in the prior two arbitrations, the Village sought to eliminate minimum manning entirely, (9/8/95 Tr. 184), and each time the arbitrator retained the existing language of eight (9/8/95 Tr. 202).

Lt. Dravo testified that when a still alarm, *i.e.*, a report of a fire, comes in, eight Maywood firefighters and one or two officers respond on three pieces of equipment. They are joined by a four-man crew (typically three firefighters and one officer) on one piece of equipment from another Battalion 7 community. If, upon arrival at the scene, they find a structural fire and need to pump water onto it, they go to a box alarm. This automatically sends another piece of equipment with four men from another Battalion 7 community to the scene and one more piece of equipment with four men to cover the Maywood fire station (9/8/95 Tr. 140-42, 187-88).

Firefighter Kadagin testified that the Department runs the following equipment from its two stations. From the north station, it runs engine 507, with an officer, engineer and back step man; ladder truck 502 with a driver and assistant driver; and rescue squad 525, utilizing the back step man off 507 and assistant driver off 502. Out of the south station, it runs engine 506 with an officer, if one is on duty that day at the south station, engineer and back step man; and ambulance 500 with a driver and an assistant (9/8/95 Tr. 206-07).

Firefighter Kadagin testified that the shift commander works from the north station. If both a captain and a lieutenant are on duty, the captain works from the north station and the lieutenant from the south. If the captain is off duty, the lieutenant serves as shift commander in the north station and the senior blue shirt in the south station serves as an acting officer. Firefighter Kadagin opined that if minimum manning dropped to seven, the lost man would

have to come from the truck because on days that there is no officer at the south station, there would be only one man on the back step of the engine. The man on the back step puts on his equipment en route to the fire and is ready to enter the building upon arrival at the scene (9/8/95 Tr. 209).

Firefighter Kadagin testified that the first couple of minutes in a fire are critical to saving lives (9/8/95 Tr. 216). According to Firefighter Kadagin, when a still alarm comes in, if there are eight blue shirts and two officers on duty, the ambulance assistant would ride the back step of engine 506, providing two firefighters on the back step putting on their equipment en route so that they are prepared to enter the building upon arrival. Another back step man would be doing the same on engine 507 (9/8/95 Tr. 210).

Assuming that engine 507 arrived first, the captain would enter the building to assess the situation and determine the plan of attack. The back step man would pull the hoses off the back of the engine and the engineer would hook the lines up to the hydrant. The back step man would flake the hose line to avoid kinks and then enter the building. He would be joined by one of the back step men from engine 506. The other would flake 506's lines. The lieutenant would enter the building and assume interior command, while the captain would come outside to assume overall command of the scene (9/8/95 Tr. 210-13).

When water begins to flow, the two firefighters from the truck, joined by the ambulance driver will knock out windows and makes holes in the roof to ventilate the fire. If people are trapped inside, they will immediately put on their equipment and enter the building to perform a rescue. The back step men follow as soon as water is flowing to hit the fire with water (9/8/95 Tr. 213-15). All of this occurs before the MAP crew arrives. The entire process takes one to three minutes to get water on the fire (9/8/95 Tr. 213).

When Maywood gets a call to respond to another MAP community, assuming the response is to come from the north station, the captain, engineer, back step man, and rider from the truck respond on engine 507. If that were followed by a still alarm in Maywood, engine 506 would respond with the lieutenant, engineer, back step man and ambulance assistant. The ambulance driver would respond in the ambulance. A crew from another MAP community would also respond. Firefighter Kadagin opined that if minimum manning were reduced to seven, on days that the lieutenant was not in the south station, the engine would be responding with two firefighters, one to set up the hoses and one to enter the building, a situation which would seriously jeopardize public safety (9/8/95 Tr. 217-222). On cross-examination, however, he conceded that the minimum has fluctuated over

the years and the Department has gotten the job done with seven (9/8/95 Tr. 250-51).

EMS Coordinator David Krefft testified that when ambulance 500 answers a call from the south station, it takes two men away from fire suppression. When there is a motor vehicle accident, rescue squad 525 also responds from the north station, thereby taking two additional firefighters (9/8/95 Tr. 297-99). During 1993, the firefighters responded to 2,727 ambulance or rescue calls. In August 1994 the Village began subcontracting with Metro Ambulance. During the first eleven months of the subcontract, the firefighters responded to 1,198 calls (9/8/95 Tr. 293, 301-02, 315, Un. Exs. 11, 13).<sup>4</sup>

Trustee Alfonza McKinnor testified that the Village contracted with Metro Ambulance Service in response to concerns raised by the other MAP communities that they were handling too many Maywood ambulance calls. According to Trustee McKinnor, the other communities threatened to drop Maywood from Battalion 7 (9/11/95 Tr. 444, 449). Trustee Gary Woll testified similarly (9/11/95 Tr. 496).

Bellwood Fire Chief David Stelter testified that if Maywood were unable to respond to Bellwood's calls for assistance, he would advise the Maywood Chief that Maywood was in breach of its MAP obligations. He would continue to respond to Maywood calls for assistance for a time. If, however, Maywood's inability to reciprocate persisted, he would raise the issue with his mayor and with the other members of MAP (9/8/95 Tr. 27-30).

Chief Stelter testified that going below a minimum manning of eight firefighters would not raise an issue for Bellwood, as long as Maywood was able to meet its MAP obligation of responding to mutual aid calls with four firefighters (9/8/95 Tr. 32). He opined that the maximum proper manning, given Maywood's equipment, would be eight firefighters at the south station and six at the north station (9/8/95 Tr. 34). Bellwood, however, does not have a minimum manning provision in its firefighter collective bargaining agreement (9/8/95 Tr. 35, 39). The absence of any such provision pre-dates 1985, the effective date of the IPLRA firefighter provisions (9/8/95 Tr. 42).

Broadview Fire Chief John Tierney testified that, in his opinion, if Maywood dropped below an eight-man minimum, it could not meet its obligations to respond to MAP communities with four firefighters (9/8/95 Tr. 50). On cross-examination, he conceded that the expired Maywood

<sup>4</sup> The figures do not include responses to mutual aid calls.

firefighter contract provided for exceptions to the eight-man minimum and that such exceptions did not alter Maywood's obligation to respond to MAP calls with four firefighters (9/8/95 Tr. 52-54). Chief Tierney testified that the Broadview firefighter contract does not specify a minimum (9/8/95 Tr. 54-59), but indicated that Broadview was not organized until after 1985 (9/8/95 Tr. 60). He further indicated that by policy, the Broadview minimum is seven firefighters for one fire station (9/8/95 Tr. 62-63). He stated that he usually staffs more than seven per shift but at times only has seven (9/8/95 Tr. 66-67).

Maywood Fire Captain Dennis Miller<sup>5</sup> testified that at one time the minimum manning was set at twelve firefighters per shift. It has since been reduced to eight (9/8/95 Tr. 74). He acknowledged existing contractual exceptions that allow a seven firefighter minimum and opined that the Department cannot handle fires effectively under those circumstances (9/8/95 Tr. 79). Captain Miller, a shift commander, observed that in the past year he has not dropped to seven firefighters on his shift (9/8/95 Tr. 80). Lt. Dravo testified that reaching the seven man minimum averages fifteen times per year (9/8/95 Tr. 180).

Fire Captain Kevin Conway also testified that dropping below the eight man minimum on a regular basis would be detrimental to the department (9/8/95 Tr. 83). Lieutenant Dravo conceded that at times, under the expired contract, he has fought fires with minimum manning at seven blue shirts. When asked if it was unreasonable to do it, he replied (9/8/95 Tr. 161): "I have to do it. I also have a button on my dashboard that allows me to call for outside help when I'm in that situation."

Fire Chief Dennis Hoffman described operating with seven men as (11/10/95 Tr. 185), "It gets the equipment there, let's say that. That's just about it." He also stated that a reduction in minimum manning could have a negative effect on the Village's rating from the Insurance Service Organization (11/10/95 Tr. 266). He added, however, that a reduction in minimum manning would increase scheduling flexibility (11/15/95 Tr. 9).

Union President John Molinaro testified that typically on weekends and holidays there are eight blue shirts working. On other days there may be nine working (11/10/95 Tr. 167). He testified that on his shift, under existing contract provisions, the manning drops to seven an average

5 Although Captains Miller and Conway and Lieutenant Dravo are members of management, in the past they sued the Village when they were demoted. The lawsuit was settled with the officers restored to their ranks.

of three hours per week (11/10/95 Tr. 155). He conceded that as long as Village ordinance sets overall staffing for the Fire Department at 36 blue shirts, reducing the minimum manning to seven would not have much impact (11/10/95 Tr. 167-69). He indicated that the 1995 Village budget called for 36 blue shirts and that the fire chief advised him that he had budgeted for 36 blue shirts in 1996 (11/10/95 Tr. 16-19).

Maywood Trustee Lonzia Casteel testified that the Village is seeking to reduce the minimum manning provision to seven for financial reasons. He contrasted the Village's position in the instant proceeding with its positions in the two prior arbitrations where the Village sought to eliminate minimum manning entirely (9/11/95 Tr. 364). Trustee Woll testified that he supports the eight man minimum as a safety matter, but added that he is the only trustee who does (9/11/95 Tr. 469-70).

When asked his opinion on minimum manning, Mr. Morris initially responded that he had none, "because if I had my way, they would close one fire station and begin to balance the budget." (11/15/95 Tr. 64). Subsequently, he stated, "You should try to get rid of anything that would eventually have a negative impact, and if they had to cut one firefighter to balance the budget, they should have that right." (11/15/95 Tr. 64).

Positions of the Parties: The Village argues that minimum manning should be reduced to seven. It maintains that reduction to seven will not affect safety adversely, because the Village may rely on the other members of Battalion 7 for support. Furthermore, the reduction will save the village desperately needed funds.

The Union argues that minimum manning be kept at eight, observing that the arbitrators in the two prior interest arbitrations agreed with its position. The Union contends that reducing the minimum to seven will jeopardize the Village's MAP, and have a negative impact on safety. Furthermore, the Union contends, as long as the Fire Department is at its full staff of 36 blue shirts, the existing minimum manning requirement does not cost the Village extra money in overtime because of the scheduling of nine men to work per shift.

Discussion: My starting point in evaluating the competing offers is that the current minimum manning provision has been in the contract since 1986, and has been upheld in two prior interest arbitrations between the parties. In her 1991 award, Arbitrator Doering wrote (Jt. Ex. 4 at 11):

[T]he Minimum Manning provision is of heightened importance to the Union in hard times, and the evidence shows that it is not set at an artificially high level. It does not increase the cost of the package (although, if eliminated, it could contribute to reduction of cost). Under the circumstances the arbitrator finds that , . . . , the Union position on retention of current language . . . should be accepted.

In his 1993 interest arbitration award, Arbitrator Wolff, in awarding the Union's final offer of retaining minimum manning at eight, stated (Jt. Ex. 5 at 20), "Unless a union agrees to relinquish its bargained contract rights in minimum manning in the collective bargaining process, an arbitrator . . . ought not to strip away such provision unless the employer has clearly demonstrated under the applicable factors that the provision has little, if any, redeeming aspect other than to make work for some employees."

Arbitrator Wolff's observation is consistent with the general view that has developed in interest arbitration in Illinois. Arbitrators are reluctant to grant one party's unilateral request to modify existing contractual provisions. See Sonneborn, *Police and Fire Interest Arbitration in Illinois, Ill. Pub. Employee Rel. Rep.*, Spring 1990 at 1, 5. Generally, the parties' long-standing prior agreements are a far better gauge of what the parties would have agreed to if their process had not broken down than are one party's unilateral demands for change.

It is against the background of prior agreements and arbitration awards that I turn to the evidence and arguments in the instant proceeding. Two points are clear from the record. First, Arbitrator Wolff characterized concerns that reduced manning could jeopardize the Village's participation in the MAP as speculative (Jt. Ex. 5 at 27). The record in the instant proceeding is even weaker in this regard. Chief Stelter testified that minimum manning was irrelevant as long as Maywood responds to MAP calls with four men and one piece of equipment. Chief Tierney initially opined that dropping to seven could impede Maywood's ability to respond to MAP calls but, on cross-examination, conceded that Maywood currently drops to seven at various times and remains obligated to respond to MAP calls with four firefighters. On this record, I cannot credit the Union's contention that dropping to seven would jeopardize the Village's membership in the MAP.

Second, the record is clear that dropping to seven would have a significant effect on safety, both to the firefighters and to the public. Every witness with fire suppression experience testified to this effect. I can discount the testimony of members of the bargaining unit

because of their obvious interest in the outcome of this proceeding. I also can discount the testimony of the line officers in light of their own litigation against the Village and possible bias. However, it is impossible to discount the testimony of Chief Hoffman, and Chief Hoffman's testimony corroborates the others. I find it particularly significant that Chief Hoffman characterized operating with seven men as doing no more than allowing him to get the equipment to a fire. From a safety point of view, despite considerable prompting from Mr. Hill, Chief Hoffman could not defend reducing minimum manning below its current level.

The minimum manning issue simply comes down to a matter of money. In this regard, it is not clear how the Village intends to save money by reducing the minimum. At some points there was an indication that reducing the minimum would allow the Village to reduce its force by three blue shirts, thereby saving approximately \$63,000. The Village, however, budgeted for 36 blue shirts in 1995 and Chief Hoffman's budget for 1996 included 36 blue shirts. In keeping with this, at times in the proceeding, the Village indicated its primary savings would come from reduced overtime. However, the Village never quantified the amount of overtime that it attributes to having to meet the eight man minimum. The record indicates that in the course of regular scheduling, overtime is avoided by allowing no more than three blue shirts to be on vacation or holidays on any day. Most overtime from having to ensure that eight men are on duty results when the department has dropped below its authorized strength of 36 blue shirts. The Village can avoid overtime by filling vacancies quickly.

Most importantly, the Village's need to save money is no greater than it has been over the past ten years that the eight man minimum has been in effect. In 1992, at the height of the Village's financial crisis, the Village's finance director recommended reducing one sergeant and seven patrol officers in the Police Department and six to twelve firefighters. The Village's outside expert recommended closing one fire station. The Village followed none of these recommendations and there is no evidence that it reduced any uniformed personnel.

Mr. Morris testified that the Village's finances are no worse off than they were in 1991. The record indicates that they are better off, although marginally so. In 1991, the Village was losing money and was unable to float notes. It has successfully floated a bond issue, albeit with IDFA assistance, and it has operated with a balanced budget and has reduced its overall deficit by a small amount. Clearly, the Village is not out of the woods financially, but, to the extent that its condition has changed, the change has been for the better. Moreover, a major contributor to its failure to make more significant improvements was its

failure to increase property taxes in 1994. Under these circumstances, the Village cannot justify modifying a contractual right that the Union has enjoyed for ten years. Accordingly, I select the Union's final offer.

### **Residency**

Village's Final Offer: Retain existing language which provides, "Members of the Union who were employed prior to August 15, 1975, shall not be required to establish residency within the Village of Maywood as a condition of continued employment."

Union's Final Offer: The Union proposes to change this provision to read, "Members of the bargaining unit shall have the right to reside anywhere within a twenty (20) mile radius of the Village of Maywood."

Background: Bellwood Chief Stelter testified that residency has no bearing on how he runs his department. He does not rely on firefighters living in town to fight fires. Instead, he relies on the firefighters who actually are on duty (9/8/95 Tr. 33). Broadview Chief Tierney also opined that residency is not necessary for efficient fire fighting because of the MAP (9/8/95 Tr. 50).

Captain Miller testified that he and two or three other Maywood firefighters do not live within the Village limits. He opined that where he resides has no effect on his effectiveness as a firefighter (9/8/95 Tr. 75).

Captain Conway testified similarly to Captain Miller (9/8/95 Tr. 83, 86). He indicated that, as a shift commander, he did not consider the amount of time a firefighter called back would need to arrive at the scene to be crucial. He explained that he relies primarily on the MAP communities to respond when he goes to a higher alarm. Maywood firefighters on callback are used to provide relief for those who arrived earlier at the scene (9/8/95 Tr. 101-02). Lt. Dravo similarly opined that residency does not affect the efficiency of the department or public safety (9/8/95 Tr. 143).

Chief Hoffman also testified that removing the residency requirement would not affect the Department's ability to fight fires (11/10/95 Tr. 244). He explained that the first five minutes are critical for saving lives and that off duty firefighters called back and even MAP crews will not arrive during that time frame. He depends on the crew on duty to arrive in time to rescue people (11/10/95 Tr. 271-72).

Firefighter Kadagin testified to surveying the log book for 1994 and recording all call back time worked (9/8/95 Tr.

194-95). The result of his research showed that firefighters worked 134 hours of call back in 1994 (Un. Ex. 5). Firefighter Kadagin opined that a firefighter's residence is irrelevant to whether he will be able to assist in a rescue when called back. Even if he lives across the street from the station, he will not make it in time (9/8/95 Tr. 263).

Harold Sanger, a Northbrook firefighter, testified that he worked for the Village for four years, but left in April 1982 because of the residency requirement (9/8/95 Tr. 108). Firefighter Kadagin testified to contacting thirteen former Maywood firefighters who left because of the residency requirement (9/8/95 Tr. 190-91, Un. Ex. 6).

Michael Baker, a former Maywood firefighter and former member of the Union's bargaining team, testified that he left the Department because of the residency requirement. Currently, he works as a firefighter for the City of Naperville (11/10/95 Tr. 36-37).

Union President Molinaro testified that, among Battalion 7 members, Bellwood and Melrose Park have residency requirements while Broadview requires its firefighters to live within a ten mile radius of the community (11/10/95 Tr. 80). Chief Hoffman testified similarly, although he indicated that he understood that Westchester may also have a residency requirement (11/10/95 Tr. 179-80).

Union President Molinaro estimated that 90 percent of the Maywood firefighters with school age children send them to private schools (11/10/95 Tr. 85). He indicated that all the public elementary schools in Maywood reportedly fall below state averages on standardized tests and that the public high school reportedly is one of the few suburban schools that does not meet state goals (11/10/95 Tr. 80-84). Tuition at area private schools ranges from \$1,200 to \$5,600 per child per year (Un. Ex. 36).

Chief Hoffman testified that his daughter attends the public high school. Out of concern with crime, he takes her to school and picks her up every day (11/10/95 Tr. 233-34). In elementary school, his daughter attended a private school (11/10/95 Tr. 238).

Union President Molinaro testified that the Village has a higher crime rate and greater problems with gangs, drugs and prostitution than neighboring communities. He indicated that he is concerned for his family's safety particularly on nights when he is on duty (11/10/95 Tr. 91-97).

Trustee Casteel testified that the Village insists that its employees maintain residency because they are among the

higher earning residents. In Trustee Casteel's view, the residency requirement helps keep higher income individuals in the Village (9/11/95 Tr. 355).

Trustee Woll testified that if the residency requirement was eliminated for firefighters, the Village would have to do the same for the other employees. In his view, residency signifies a commitment to the community (9/11/95 Tr. 466). He opined that the Village has a good supply of housing in safe neighborhoods. He conceded that the public schools are not very good, but contended that the affordability of housing makes up for that (9/11/95 Tr. 467).

Mr. Morris testified that in a blue collar working class community such as Maywood, the firefighters are among the community's best citizens and it is in the community's interests to require them to reside there. He further testified that, because the Fire Department is predominantly white, removing the residency requirement would appear to sanction continued white flight (11/15/95 Tr. 69-73).

Positions of the Parties: The Union contends that the residency requirement is irrelevant to safety. Primary reliance is placed on the firefighters already on duty to respond to fires and on the other MAP departments to assist whenever an alarm is elevated. The Union observes that every firefighter who testified, including Chief Hoffman, agreed that eliminating the residency requirement would not have an adverse effect on the ability to fight fires.

The Union contends that the alleged link between residency and availability for call back is not supported by the evidence in the record. Moreover, in the Union's view, call backs are very infrequent. Furthermore, the Union claims, the residency requirement depresses the morale of the department. It results in high turnover and impedes the Village's ability to attract new hires. It also has a negative impact on working conditions by forcing employees to live in high crime areas with poor schools.

The Village contends that allowing firefighters to reside outside the Village while requiring all other employees to reside within the Village would not be fair. It contends that residency is important to quick response time, including response time for call backs. It observes that the Union's proposal would allow firefighters to live as far away as East Chicago, Indiana, and Highland Park, Illinois.

The Village maintains that surrounding communities also have residency requirements. In the case of Maywood, the residency requirement helps the Village preserve its middle

class. Eliminating the requirement, according to the Village, would contribute to white flight.

Discussion: The residency issue is comparable to the minimum manning issue. In each issue, one party is seeking unilaterally to change a long-standing contractual term. With respect to minimum manning, the Village sought to change a ten-year contractual term. With respect to residency, the Union is seeking to change a twenty-year contractual term. As with minimum manning, the advocate of the change bears a heavy burden of justifying the proposed change. As with minimum manning, I find that the burden has not been met.

It is clear that residency has very little to do with the Village's ability to fight fires. Every witness, including Chief Hoffman, testified to this effect. However, Maywood is not the only community which requires residency. At least two other Battalion 7 communities do so and a third requires firefighters to live within ten miles of the municipality.

The problems of crime and poor schools are not confined to the firefighters. I agree with Trustee Woll, that if residency is eliminated for the firefighters, the Village will come under tremendous pressure to eliminate it for the rest of its workforce.

The village feels very strongly that those who earn their money from the Village should live within the Village. It regards the residency requirement as necessary to preserve its middle class. Although the Union disputes this, the differences are as much philosophical as they are empirical.

Residency was an issue in the prior interest arbitration. It appears that, at that time, the Union was seeking to allow members of the bargaining unit to live in any Battalion 7 community. See Jt. Ex. 5 at 57. Arbitrator Wolff concluded that the Union "has not made a case for changing the residency requirements which have been in place for about 18 years." Jt. Ex. 5 at 59-60..

The Union has not shown that anything has changed significantly in the less than three years since Arbitrator Wolff rendered his award.<sup>6</sup> However, the Union seeks to alter the residency requirement more radically than it did before Arbitrator Wolff. I agree with Arbitrator Wolff, that the Union has not made a case for changing a twenty-

---

<sup>6</sup> If anything, the record suggests that Maywood may be a more desirable place in which to live because it has begun to get its fiscal house in order.

year contractual provision. I select the village's final offer.

### **Wages**

Village's Final Offer: Across the board increases of 3 percent in each of the three years of the new contract.

Union's Final Offer: Across the board increases of 3 percent the first year and 4 percent in each of the last two years of the contract.

Background: Trustee Casteel defended the Village's offer as comparable to the wage increases granted the police. According to Trustee Casteel, the police received increases of 4 percent, 3 percent and 2 percent, for a total of 9 percent over three years. The Village's wage offer would give the firefighters a 9 percent raise over two and one-half years (9/11/95 Tr. 372).

Trustee Woll testified that firefighters received no wage increase in 1992. He indicated that all other employees were also subject to a wage freeze at that time, except for employees who were in the middle of the terms of collective bargaining agreements (9/11/95 Tr. 498-99).

Union President Molinaro testified to internal wage comparisons that he drafted. He compared the Maywood firefighters to the police and found that police received increases of 3 percent in 1992, 4 percent in 1993, 3 percent in 1994, and 2 percent in 1995; while firefighters had a wage freeze in 1992, and increases of 2 percent in 1993, 4 percent in 1994, and agreed to 3 percent for 1995. Thus, according to Mr. Molinaro, over the four-year period, police increases totaled 12 percent, while firefighter increases totaled 9 percent. Union President Molinaro also calculated that the public works employees collective bargaining agreement, which runs through 1997, provides for increases totalling approximately 17 percent (9/11/95 Tr. 588-93, Un. Exs. 23, 24).

Union President Molinaro also compiled comparative wage data for the Battalion 7 communities. His compilation (Un. Ex. 25) shows that after the 3 percent increase that the parties have agreed to for 1995, the Village ranks fifth out of the seven communities. According to Mr. Molinaro, after the Union's proposed 4 percent raise for 1996, the Village would rank fourth with a salary slightly below the average, and after the Union's proposed 4 percent raise in 1997, the Village would rank fourth with a salary \$200 above the mean (9/11/95 Tr. 593-99).<sup>7</sup>

<sup>7</sup> The Union's computations are based on the highest level of pay and do not account for paramedic, longevity,

On cross-examination, Union President Molinaro stated that he assumed that if the Village's offer of 3 percent raises each year were selected, Maywood would remain fifth out of the seven communities in salary (9/11/95 Tr. 601). He further testified as follows (11/10/95 Tr. 140-41):

Q. And the salary you get from the Village of Maywood is higher than the national norm?

A. According to this [referring to Un. Ex. 25], yes.

Q. And it's comparable for surrounding communities?

A. It's close, yes.

Q. In Battalion 7, right?

A. Yes.

Q. And in the mutual aid protection group, right? I mean, mutual aid group.

A. Well, it depends on how big the mutual aid wants to be presented, but in Battalion 7 it's comparable.

Q. And the Village's offer is comparable, is it not?

A. Yes, it is.

On the third day of hearing, the Union sought to amend its final offer by reducing its second year proposal to 3.5 percent. The Village objected and I denied the Union's request. Union President Molinaro calculated the difference between the Union's proposed amended final offer and the Village's final offer on wages. He found that the additional one-half percent increase in the second year would cost the Village an additional \$7740.92 and that the additional one percent increase in the third year would cost an additional \$15,731.90 (Un. Ex. 30). Mr. Molinaro indicated that because the Union was not allowed to amend its final offer, the additional cost of the second year would double and the additional cost of the third year would increase slightly because of the compounding effect of the extra half percent in year two. The Union did not submit any revised cost calculations.

---

engineer, or educational incentive pay. The Union made various assumptions in projecting salary increases for the other communities. The Village did not contest these assumptions.

Mr. Morris testified that any increase would be fiscally irresponsible (11/15/95 Tr. 43-44, 55-56). He characterized raises agreed to by the Village and the union representing public works employees similarly (11/15/95 Tr. 127).

Positions of the Parties: The Union argues that its position is supported by internal comparability and external comparability. The Union urges that from 1992 through 1995, police received raises totalling 12 percent, while firefighters' raises totalled only 9 percent. From 1993 through 1997, public works employee raises will total between 27.83 percent and 28.49 percent.

The Union maintains that external comparisons support its demand for 4 percent raises in the final two years of the contract. The Union argues (Un. Brief at 18):

The Union is not seeking to be the highest paid Fire Department in Battalion 7, although its workload certainly justifies it. Rather, the Union has accepted the fact that it will never be the highest paid and probably never even be above average in pay. All the Union is seeking to do is maintain its position as third lowest and not lose any more ground to other Departments in the upcoming years.

The Village argues that it is still experiencing severe financial distress. The Village maintains that any pay raise will cause severe problems. Therefore, it argues, the raise which will cause the fewest problems should be selected. The village maintains that it is treating its firefighters fairly by providing them with 3 percent raises at a time when the best fiscal judgment would provide for a three year wage freeze.

Discussion: The statutory factors most important as the wage issue developed are comparability, ability to pay, and overall compensation. I do not find the Union's internal comparisons to be particularly helpful. During the hearing both sides claimed that comparisons to the police raises supported their positions. Village witnesses testified that the total of 9 percent offered to the Union was comparable to the total of 9 percent received by the police in their last three-year contract. On the other hand, the Union compares raises over a four year period and finds its raises deficient. The point is clear. The internal comparisons are subject to manipulation depending on which time frame one chooses to use for comparison.

The external comparisons are more helpful. Both parties' offers result in salaries that are within a reasonable range of comparability for Battalion 7 communities. Indeed, Union President Molinaro admitted as

much in his testimony. The key difference is that under the Union's final offer, in the final two years of the contract, Maywood moves from being the third lowest paid department in Battalion 7 to fourth place, whereas under the Village's offer, it stays in third place. Under the Union's offer, Maywood overtakes Bellwood, but the difference between the two communities under either proposal is quite modest.

The Village's ability to pay defense is quite weak. It is true that, although improved, the Village's finances remain troubled. There is no disputing the on-going \$2.6 million deficit or the upcoming increases in payments that will have to be made to IDFA. The Village, however, has added to its own troubles. It has granted raises to other employees despite its financial adviser's admonitions not to do so. It has failed to raise property taxes despite its financial adviser's urgings to do so. Under these circumstances, were the Village offering salaries that were not comparable to surrounding communities, it could not justify its position based on ability to pay.

However, the Village's offer is comparable to surrounding communities. Moreover, as discussed below, there is a large disparity regarding comparability between the Village's offers on holidays and health insurance and the offers made by the Union. The Village's ability to pay defense will not overcome this disparity and I will select the Union's final offers on holidays and health insurance. Thus, in addition to salary increases, the bargaining unit members will receive very tangible economic improvements in holidays and health insurance. Although I consider the salary issue to be very close, in light of the Village's continuing fiscal problems, the overall compensation that I will be awarding, and the marginal differences in comparability between the two offers, I find that the Village's final offer more closely comports with the statutory factors.

### **Health Insurance**

Village's Final Offer: Retain existing provision for the Village to pay 80 percent of premiums and employees to pay 20 percent.

Union's Final Offer: Change the existing provisions so that the Village pays 85 percent of premiums and the employees pay 15 percent.

Background: Firefighter Alfred Molinaro testified for the Union concerning health insurance. He maintained that police and public works employees only pay 15 percent of their insurance premiums and that the police insurance is more expensive for the Village (9/8/95 Tr. 539-47). The

documents he assembled (Un. Exs. 19-21) reflect the following:

1994 monthly premiums:

Combined Counties Police Association: \$674.40 family coverage; \$305.84 single coverage

Blue Cross-Blue Shield PPO: \$653.60 family coverage; \$229.58 single coverage

HMO Illinois: \$641.57 family coverage; \$225.30 single coverage

1995 monthly premiums:

Combined Counties Police Association: \$674.40 family coverage; \$305.84 single coverage

Blue Cross-Blue Shield PPO: \$684.66 family coverage; \$240.54 single coverage

HMO Illinois: \$671.97 family coverage; \$236.03 single coverage

Firefighter Molinaro also compiled data concerning health insurance among other Battalion 7 members (9/11/95 Tr. 547-53). His survey reflects (Un. Ex. 22):

Hillside - \$20 per month for family coverage  
 Westchester - \$53 per month for family coverage  
 River Forest - 15 percent of premium for family coverage  
 Bellwood - employees make no contribution  
 Broadview - employees make no contribution  
 Melrose Park - employees make no contribution.

Firefighter Molinaro conceded, however, that he did not know what specific coverage the other communities provide, whether it includes vision and dental, and what the cost to those communities is (9/11/95 Tr. 554-55).

Chief Hoffman testified that in Bellwood, Broadview, Hillside and Melrose Park, the employer pays 100 percent of health insurance premiums. He indicated, however, that those communities have stronger commercial or industrial tax bases than Maywood (11/10/95 Tr. 200-03).

Union President Molinaro testified that the having the firefighters contribute 15 percent instead of 20 percent of the premiums would cost the Village an additional \$13,491. He based this calculation on the assumption that each employee would elect family coverage (11/10/95 Tr. 68-69). Mr. Morris objected to the Union's proposal because it

"means there is more money out of the Village treasury, which isn't there." (11/15/95 Tr. 76).

Trustee Casteel conceded that the police pay 15 percent of their insurance premiums, while the Village is seeking to keep the firefighters at 20 percent. He defended the Village's offer as restoring internal equity because for a considerable period of time, the firefighters had paid a flat rate of \$20.80 per month, which worked out to considerably less than 15 percent (9/11/95 Tr. 377).

Acting Village Manager Keith Bennett testified that he researched the Village's insurance records and determined that in 1986 firefighters were paying a flat \$10.20 per pay period toward insurance premiums. According to Mr. Bennett, the single coverage monthly premium was \$132.50, and the firefighters' contribution represented 16.7 percent of the premium. By 1992, the premium had risen to \$204.65 per month and the firefighters' \$10.20 per pay period amounted to 10.8 percent. According to Mr. Bennett, the other Village employees were paying 20 percent of the premiums. This included the police until the police switched to the Combined Counties Police Association health insurance plan, when their contribution was reduced to 15 percent and public works employees until their most recent collective bargaining agreement which reduced their contributions to 15 percent (11/15/95 Tr. 96-101).

Union President Molinaro testified that the Village's police contract, which ran from January 1, 1986 through December 31, 1989, provided for patrolmen to pay 15 percent of their medical insurance which equalled \$10.20 per pay period. The successor agreement provided that police would pay 15 percent of medical insurance premiums, but did not mention a dollar amount. Mr. Molinaro further testified that the firefighter agreement which ran for two years from May 1, 1987 provided for firefighters to pay a flat medical insurance premium of \$10.20 per pay period. This provision was continued in the successor agreement which ran through 1991. According to Union President Molinaro, the Village never proposed to change the insurance premium contribution from a flat dollar amount to a percentage until it proposed a 20 percent contribution which was adopted by Arbitrator Wolff in his award in 1993 (11/15/95 Tr. 166-70).

Positions of the Parties: The Union argues that the employees' health insurance contributions should be reduced to 15 percent because the current 20 percent is out of line with what firefighters in other Battalion 7 communities pay and with what the public works employees and police officers pay in Maywood. The Village argues for retaining the current 20 percent contribution because it cannot afford to absorb more of the cost. The Village further argues that public works employees earn less money than firefighters,

thereby justifying their 15 percent contribution. Furthermore, according to the Village, having the firefighters pay 20 percent remedies the disparity which existed previously where firefighters were paying a flat \$10.20 per pay period while other employees were paying 15 or 20 percent of the premiums.

Discussion: Considerations of comparability clearly support the Union's position to reduce the employee health insurance contribution to 15 percent. Although the comparison to other Battalion 7 communities is limited by the absence of information concerning the specific coverage that is provided, the disparities between those communities and Maywood is so great, it cannot be ignored. In Bellwood, Broadview, and Melrose Park, the firefighters make no contribution to health insurance premiums. In Hillside they pay only \$20.00 per month<sup>8</sup> and in Westchester, they pay only \$53.00 per month. Only River Forest, where firefighters pay 15 percent of the monthly premiums, comes close to Maywood's 20 percent. River Forest firefighters, however, also are the highest paid in Battalion 7, earning approximately \$1,800.00 more per year at the top rate than do Maywood firefighters. See Un. Ex. 25.

The internal comparisons are also quite significant. Police officers have paid 15 percent since 1986. Public works employees have paid 15 percent since at least 1992. See Un. Exs. 2 and 3. Thus, the Village appears to have agreed to a 15 percent contribution with every organized bargaining unit except the firefighters.

The Village's primary defense is that it cannot afford to pay 85 percent of the firefighters' insurance premiums. As indicated in my discussion of wages, the Village's ability to pay defense is quite weak when applied to areas where the Village's offer is considerably below comparable groups of employees. The Village itself is in part responsible for its financial position by failing to follow the recommendations of its own financial advisers. With respect to health insurance premiums, the Village essentially is asking the firefighters to bear a larger share of the Village's financial woes than it has asked of its other unions.

The Village seeks to justify the disparity as recouping a prior disparity whereby the firefighters paid only \$10.20 per pay period while other employees were paying 15 percent of the total premiums. I do not find this argument

8 Chief Hoffman testified that Hillside firefighters make no contribution. For purposes of this decision, I have used the Union's figure of a monthly contribution of \$20.00, which is more favorable to the Village's position.

persuasive. Union President Molinaro's testimony is undisputed that, prior to 1992, the Village never sought to renegotiate the insurance premium provision of the firefighters' contract. Thus, as with the Village's claim that it cannot afford to pay the extra 5 percent of the premium, the equity concern raised by the Village is, in significant part, of its own making.<sup>9</sup>

I have considered Arbitrator Wolff's award which adopted the Village's offer of a 20 percent employee contribution. The key issue posed to Arbitrator Wolff was whether to continue with a flat dollar amount (the \$10.20 per pay period that the firefighters were then paying) or move to a percentage contribution (the 20 percent that the Village was offering). He relied on the fact that other Village employees were paying a percentage and that firefighters in River Forest were paying a percentage of premium costs. Furthermore, in selecting the Village's offer, Arbitrator Wolff observed that all Village employees were paying 20 percent except for police officers and further observed that the Village planned to negotiate for a 20 percent contribution from police officers.

The circumstances have changed considerably since Arbitrator Wolff's award. The choice presented to me is not between a flat dollar amount and a percentage of the premium, but rather is between two different percentages. Furthermore, not only did the Village not negotiate a 20 percent contribution into the police contract, it negotiated two successive contracts with the public works employees providing for 15 percent contributions. After weighing all of the statutory factors with respect to health insurance, I select the Union's final offer.

### **Holidays**

Village's Final Offer: Retain the existing provision for three work days per year of compensatory time off in lieu of paid holidays.

Union's Final Offer: Increase the holiday provision to four work days of compensatory time off per year.

Background: Firefighter Gene Washington testified to an analysis he performed comparing holidays received by Maywood firefighters with holidays and personal days received by police, public works employees and other employees. He

9 I also am not persuaded by the Village's justification that public works employees make significantly less than firefighters. Public works employees also make significantly less than police officers, yet police officers only pay 15 percent of their health insurance premiums.

explained that police and public works employees receive eight hours off with pay. Firefighters received twenty-four hours of compensatory time. Consequently, he multiplied the number of days off other employees received by eight and divided by twenty-four to compute an equivalent number of firefighter days off. His computations (Un. Ex. 16) reflect that police receive 5.33 equivalent days off per year, public works employees receive 4.7 days off per year, and other employees receive 3.33 days per year (9/11/95 Tr. 505-510). He conceded that his calculations did not account for thirteen Kelly days off per year that firefighters receive to avoid going into overtime under the Fair Labor Standards Act (9/11/95 Tr. 520, 524-25).

Firefighter Washington also compared holidays received by firefighters in other Battalion 7 communities (9/11/95 Tr. 510-13). His comparison (Un. Ex. 17) shows the following:

River Forest - 12 eight-hour paid holidays.  
 Melrose Park - 4 twenty-four hour days included in their base vacation.  
 Westchester - 9 eight-hour paid holidays and a 24-hour comp. day.  
 Bellwood - 10 eight-hour paid holidays.  
 Broadview - 9 eight hour paid holidays.  
 Hillside - 9 eight-hour paid holidays.

Chief Hoffman testified as follows concerning holidays (11/10/95 Tr. 192-93):

A. I gave an average [for the Battalion 7 communities]; and in my opinion, it is strictly what it is. Maywood's holiday pay for the firefighters is well below what the rest of them are getting.

Q. Oh, it's below?

A. Yes.

Q. I asked you if it was comparable.

A. No, it's not.

.....

Q. So the suggestion of the Union getting one extra holiday, that's not such a bad suggestion?

A. I have no problem with that, no.

Union President Molinaro maintained that an additional holiday would not cost the Village any money because holidays are days off without pay and are picked at the

beginning of the year, with no more than three firefighters allowed to be off on any day (11/10/95 Tr. 67-68). Mr. Morris testified that an extra holiday would not be cost-free (11/15/95 Tr. 75-76):

Whether it's actual cash or non-cash, any time a person is not working when they are expected to be working, there is a cost. You either bring somebody in or you make arrangements and I don't know how you quantify that.<sup>10</sup>

Positions of the Parties: The Village contends that it cannot afford to provide firefighters with an additional holiday. It relies on the tenuous state of its finances. The Union contends that providing an additional holiday will make the firefighters more comparable to police and public works employees and will bring Maywood firefighter holidays more in line with other Battalion 7 communities. The Union contends that present methods of scheduling firefighters protect against any overtime costs to the Village.

Discussion: Holidays were at issue in the prior interest arbitration. I agree with Arbitrator Wolff (Jt. Ex. 5 at 39) that, with respect to holidays, external comparisons are more relevant than comparison to other Village employees, due to the varied nature of the firefighters' schedules. There is no dispute that Maywood firefighters are considerably below the other Battalion 7 communities with respect to the treatment of holidays. In most other communities, firefighters receive extra holiday pay, and premium pay if they work on a holiday, rather than compensatory time off. Chief Hoffman testified that the Village's firefighters are way below other communities and stated that he had no problem with the Union's proposal.

The Village's sole defense is its claimed inability to pay. I find this defense to be even weaker with respect to holidays than with respect to health insurance premiums. The Village relies entirely on Mr. Morris' assertion that an extra holiday has to cost something. Although Mr. Morris' testimony has considerable intuitive appeal, Union President Molinaro's testimony that the Village's scheduling procedures protect it from incurring additional overtime costs from holidays is uncontested. For the Village to maintain an ability to pay defense, it is incumbent on the Village to specify how the additional holiday will cause overtime or other additional expenses by showing why the existing scheduling procedures cannot accommodate one more day of unpaid compensatory time per year for each blue shirt. The Village failed to do this. Accordingly, I select the Union's final offer.

<sup>10</sup> Mr. Morris reiterated his concerns at 11/15/95 Tr. 134-35.

## Retroactivity

Village's Final Offer: The contract shall be effective from the date of execution with no retroactive application.

Union's Final Offer: Full retroactivity to May 1, 1995, for any wage increase granted for the first year of the contract.

Background: Trustee Casteel defended the Village's position opposing retroactivity because of the delays experienced in reaching an agreement. He also cited the Village's financial condition as justifying a denial of retroactivity (9/11/95 Tr. 353). Trustee Woll characterized retroactivity as a minor issue for the Village (9/11/95 Tr. 471). Chief Hoffman testified that the Village opposes retroactivity because the revenue needed to fund it is not there (11/10/95 Tr. 237). Mr. Morris testified that because he believes any pay raise to be fiscally irresponsible, he believes that any raises granted should not be retroactive (11/15/95 Tr. 78).

Union President Molinaro maintained that the Village has budgeted for retroactive raises in its current budget (11/10/95 Tr. 70). Mr. Molinaro further testified that the Union and Village twice reached tentative agreements, only to have them rejected by the Village Trustees (11/15/95 Tr. 175-78).

Positions of the Parties: The Village contends that it does not have the money to pay for retroactive wage increases. It further argues that the arbitration proceeding is costing it additional expenditures which otherwise could have been used to fund retroactive raises.

The Union contends that the Village and Union agreed on the 3 percent raise for the first year of the contract. Accordingly, the Union urges, the Village cannot claim that it was unprepared to deal with a 3 percent raise. Furthermore, the Union argues, it has bargained in good faith and is in arbitration because the Village Trustees rejected tentative agreements which it had reached with the Village Manager.

Discussion: Trustee Woll testified that retroactivity was a minor issue for the Village. The Village's arguments for its position on this minor issue are not persuasive. It is undisputed that the Village budgeted for the agreed-on 3 percent raise for the first year of the contract. The only real ability to pay argument that the Village has rests on the additional costs of this proceeding.

The additional costs of the arbitration proceeding do not justify denial of retroactive raises. Accepting the village's argument would penalize the Union for exercising its statutory right to go to interest arbitration. Such a penalty should not be imposed where the Union twice reached tentative agreements with the Village, only to have them rejected by the Village Trustees. Accordingly, I select the Union's final offer.

#### A W A R D

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. Minimum Manning: The Union's final offer is awarded. The minimum manning provisions of the contract will remain unchanged.
2. Residency: The Village's final offer is awarded. The residency provision of the contract will remain unchanged.
3. Wages: The Village's final offer is awarded. Wages will increase 3 percent across the board in each year of the contract.
4. Health Insurance: The Union's final offer is awarded. Employees shall contribute 15 percent of the costs of health insurance and the Village shall pay the remaining 85 percent.
5. Holidays: The Union's final offer is awarded. Employees shall receive four work days of compensatory time off per year in lieu of paid holidays.
6. Retroactivity: The Union's final offer is awarded. The wage increase for the first year of the contract shall be fully retroactive to May 1, 1995.

Chicago, Illinois

February 27, 1996



Martin H. Malin, Arbitrator