

ILRB

#170

APR 20 1998

INTEREST ARBITRATION
OPINION AND AWARD

ILRB

#170

In the Matter of Interest Arbitration

between

VILLAGE OF SKOKIE

and

INTERNATIONAL ASSOCIATION
OF FIREFIGHTERS, LOCAL #3033

(AAA Case No. 51 390 00278 96)

S-MA-96-151

Hearings Held

November 15, 1996
January 13, 1997
February 27, 1997
March 11, 1997
April 16, 1997
June 10, 1997

Appearances

For the Union:

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Arbitrator

Steven Briggs

For the Employer:

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BACKGROUND

The Village of Skokie (the Village) operates a Fire Department (the Department) which employs 86 firefighters and 15 fire lieutenants, all of whom are represented as a unit by the International Association of Firefighters, Local #3033 (the Union). The Village and the Union have had a formal collective bargaining relationship with each other since 1987. During the parties' negotiations for a successor to their 1995-1996 Agreement, they failed to reach agreement on matters concerning the selection process for promotion to the lieutenant position. That issue is now before the undersigned interest arbitrator for resolution.¹

Interest arbitration proceedings were conducted at the Skokie Village Hall on November 15, 1996, and on January 13, February 27, March 11, April 16 and June 10, 1997. At the hearings both parties were afforded full opportunity to present evidence and argument in support of their respective positions. The hearings were transcribed, and the parties' timely posthearing briefs were exchanged through the Arbitrator on December 20, 1997. The parties continued to forward various submissions to the Arbitrator after that date, with the latest one being received from the Union on March 26, 1998.

RELEVANT STATUTORY CRITERIA

Section 14(h) of the Illinois Public Labor Relations Act² (IPLRA) provides:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

¹ The parties also failed to reach agreement concerning an issue involving Workers Compensation (i.e., the so-called "Winnetka Ordinance" issue). They initially introduced that issue into these proceedings along with the promotion issue. As a result of the Illinois State General Assembly's override of Governor James Edgar's veto of S.B. 294, however, the "Winnetka Ordinance" issue was seemingly rendered moot. The parties therefore mutually agreed that it was no longer before the undersigned for resolution and did not address it in their posthearing briefs. But circumstances changed again. In an April 2, 1998 letter to the undersigned, with a copy to Opposing Counsel, Village Counsel Ted Clark asked that I retain jurisdiction regarding the "Winnetka Ordinance" issue due to a pending action from the Village of Northbrook. As of this writing no response has been received from Union Counsel.

² 5 ILCS 315/14.

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

THE STATUS QUO

The current promotional process for fire lieutenants begins with the issuance of a written memorandum to all firefighters advising them of the date a written examination will be conducted. A relatively recent example is quoted here:

TO: All Firefighters

FROM: James C. Aydt, Secretary, Skokie Board of Fire & Police Commissioners

DATE: June 1, 1994

SUBJECT: FIRE LIEUTENANT PROMOTIONAL EXAMINATION - 1994

The Skokie Board of Fire and Police Commissioners hereby announces that it will conduct a promotional written examination for the rank of Fire Lieutenant tentatively scheduled for Saturday, July 16, 1994. The examination will be held in the west cafeteria of Niles North High School at 10:00 a.m. and will last approximately three hours. Actual date and time will be confirmed later this week.

All Firefighters who have completed two years of service in the rank of Firefighter by July 16, 1994 will be eligible to participate in this examination. Application blanks can be picked up from Deputy Chief Agosti and must be returned to Deputy Chief Agosti by 1700 hours Thursday, June 30.

The examination will consist of the following components:

1. A written examination consisting of multiple choice questions will be given on July 16, 1994. The attached reading list is in effect for this examination.³ Books and materials are available in our station libraries. A review of the written examination is

³ The reading list contained the following nine items: (1) Alan V. Brunacini, *Fire Command* (National Fire Protection Association, 1985); (2) Harold Richman, *Truck Company Fireground Operations* (National Fire Protection Association, 1986); (3) Harold Richman, *Engine Company Fireground Operations* (National Fire Protection Association, 1986); (4) Vincent Dunn, *Collapse of Burning Buildings: A Guide to Fireground Safety* (Fire Engineering, 1988); (5) *Fire Department Company Officer* (IFSTA, 1989); (6) *Private Fire Protection and Detection* (No Publisher Listed, 1979); (7) Skokie Fire Department Rules and Regulations; (8) Skokie Fire Department Standard Operating Procedures; and (9) Agreement Between the Village of Skokie and Skokie Firefighters Local 3033 International Association of Firefighters (IAFF), 1993-1995.

tentatively scheduled for Monday, July 18. Time and location will be confirmed later this week.

2. Candidates who score 70% or above on the written examination will participate in a group promotability performance evaluation consisting of job related questions and attributes.
3. Those candidates scoring 70% or above on the written examination will also participate in an assessment center consisting of job related exercises to be held the week of August 1. Dates will be confirmed depending on numbers passing written exam.
4. The following weights will be assigned to the three portions of the examination process: written examination - 30%; Departmental promotional potential rating - 20%; and an assessment center - 50%. These scores, plus seniority credits, shall be combined to determine an initial ranking on the promotional eligibility list.
5. After the initial eligibility list is posted, candidates have five (5) days to request military points.
6. The final list will be posted after it is approved by the Board of Fire and Police Commissioners, and the date of the eligibility list shall be the date of the written exam and shall expire two (2) years from that date.⁴
7. When a vacancy in the position of Fire Lieutenant is requested to be filled, the top five (5) candidates on the eligibility list will participate in an Oral Interview with the board of Fire and Police Commissioners. In determining who will be promoted, the Board will consider 50% of the candidate's score from the eligibility list, 45% of the weighted average of combined individual Commissioner's rating for the Board's oral interview, plus up to a maximum of five points, to be determined by the Chief.

⁴ According to Mr. Aydt's testimony, the current practice is to consider the eligibility list valid for two years from the date it was posted.

The written examination is prepared and administered by Merit Employment Assessment Services (MEAS). The examination formulated by MEAS is unique to the Village of Skokie, in that it reflects operational procedures used by the Skokie Fire Department. MEAS issues each applicant a number, which is also recorded on that applicant's scoring sheet. During the subsequent review session applicants are given their respective score sheets and the source material for each question. They are allowed to challenge any of the questions/answers by filing a "Candidate Appeal Form." Such appeals are reviewed by MEAS, and adjustments are made to candidate scores as appropriate. The testing and review processes are entirely administered by MEAS; management representatives from the Skokie Fire Department are precluded from attending either.

Once the appeal process has been completed MEAS provides the Village with the applicant numbers and adjusted test scores. Village officials then prepare a list reflecting those data, so applicants can determine whether they passed the test with a requisite 70% or better score. The Fire Chief then receives information which enables him to identify by name each applicant who passed the test.

The next step in the promotion process involves the Station Commander, Assistant Shift Commander, and a Company Officer selected by the candidate. These three individuals attempt to reach a consensus as to the promotability of the candidate. Once these promotability potential evaluations have been completed for each candidate, the candidates have an opportunity to discuss their evaluation scores with their respective Shift Commanders.

The promotion process continues with an "assessment center" evaluation conducted by Resource Management Associates. Candidates are invited to attend a one-hour orientation session prior to their participation in the assessment center, so that they can learn what to expect during the evaluation. The structure of the assessment center evaluation is determined jointly by a representative of Resource Management Associates and the Fire Chief. A typical agenda might include: (1) a group problem-solving exercise; (2) a tactical exercise; (3) a company officer meeting exercise; and (4) a community presentation exercise. Once all candidates have completed the assessment center, Resource Management Associates provides the Village with the candidates' evaluation scores.

Per the Chief's earlier-posted memorandum, the following weights are attached to the initial evaluation mechanisms:

Written Examination	30%
Promotability Potential Evaluation	20%
Assessment Center	50%

Based upon the above weights and the candidates' scores on each evaluation dimension, the Village develops a preliminary eligibility list and posts it. Candidates receive seniority points as well, which affect their respective placement on the list. In addition, they have ten days within which to submit military points as provided by State statute. Once such military points have been added, the eligibility list is considered complete. It is posted and remains in effect for two years from the date of the posting.

The next phase in the promotion process is initiated when a fire lieutenant vacancy is declared by the Fire Chief, who so advises the Board of Fire and Police Commissioners (BFPC).⁵ The BFPC then schedules interviews with the top five candidates on the eligibility list.⁶ Prior to the interviews taking place, the BFPC meets with the Fire Chief, whereupon he provides them with a written summary of what he perceives as the positive and negative characteristics of each candidate. The Chief does not advise the BFPC as to which of the candidates he would like to see promoted, however. At the same meeting the Fire Chief also submits to the BFPC a sealed envelope containing his assignment of from zero to five points for each candidate. The envelope is not opened until a later step in the process.

In preparation for the interviews each of the five Commissioners receives a copy of each candidate's personnel records for the preceding five years. One of the Commissioners is given a particular candidate's entire personnel file as well. Outside of the Fire Chief's presence the BFPC interviews each candidate separately for approximately one-half hour. The Commissioner who has been given the candidate's entire personnel file leads the interview, although other Commissioners are permitted to ask questions. The same battery of core questions, agreed upon in advance by the BFPC, is asked of each candidate.

Each Commissioner ranks each candidate independently. Once all interviews have been completed each candidate's average point total from the Commissioners' rankings is calculated and placed on a summary sheet. The sealed envelopes submitted by the Fire Chief are then opened, and the "Chief's points" are added to the sheet. At that juncture in the process, BFPC Secretary James Aydt enters the room and submits the points each candidate earned from the eligibility list. The average BFPC points, the Chief's points, and 50% of the eligibility list points are then added together, and the candidate with the highest point total is offered the promotion.

⁵ The Skokie Board of Fire and Police Commissioners has five members, most of whom have served in that capacity for a decade or more.

⁶ If more than one vacancy is declared, more candidates are scheduled for interviews. For example, the top six candidates from the list are interviewed if there are two lieutenant vacancies declared, the top seven if there are three vacancies, etc.

THE COMPARABLE JURISDICTIONS

Village Position

The Village asserts that the Arbitrator has no authority to determine the comparable jurisdiction pool because the comparables issue was one of those initially presented by the Union during the parties' 1996 negotiations. In its own May 2, 1996 counterproposals, the Village asserts, it noted that its "response to the Union's proposed comparables remains as stated in the Village's proposal of 3/1/96." On May 28, 1996 the parties adopted a Memorandum of Agreement (MOU) which set forth the terms of their 1996-1999 Agreement. The Village points to its first paragraph, which states in part that the MOU was "in full and complete agreement on all issues in negotiations" between the parties. Moreover, the Village argues, paragraph 7 of the MOU specifically identified but two unresolved issues for this interest arbitration proceeding: (1) worker's compensation (i.e., the Winnetka ordinance issue), and (2) the promotion process. The Village notes as well that the jurisdictions the Union is advancing as comparable in the present case were not identified until the first day of the interest arbitration proceeding. The Village therefore asserts that since the parties treated the comparability factor as a separate issue during negotiations, since it was dropped at the time the MOU was executed, and since the jurisdictions the Union now proposes for interest arbitration comparables were not shared with the Village at the bargaining table, the comparability issue is not properly before the Arbitrator now.

Should the Arbitrator determine that the comparability issue is appropriately included this interest arbitration forum, the Village asserts that he should adopt the same 15 jurisdictions the parties have relied upon since their first collective bargaining agreement in 1987. Those jurisdictions were used by the parties in subsequent reopener negotiations as well, and they were adopted in the resulting interest arbitration proceeding by Arbitrator Elliott Goldstein.

In a more recent interest arbitration proceeding before Arbitrator Neil Gundermann, Union Counsel J. Dale Berry attempted to revise the comparables list. Gundermann rejected that attempt and adopted the same 15 jurisdictions previously used by the parties themselves. Thus, the Village contends, the Arbitrator in the present case should embrace that list as well.

The Village also underscores the fact that the same comparability pool has been used in all prior negotiations between it and the Fraternal Order of Police (FOP).⁷ Thus, the Village argues, that pool should be retained in these proceedings. The

⁷The sole exception is Lincolnwood, which the Village and the FOP voluntarily added to the list. Since Lincolnwood has no paid full-time firefighters, however, it has not been used as a comparable community in negotiations between the Village and the IAFF.

jurisdictions included in that grouping are listed below:

Arlington Heights
Des Plaines
Elk Grove Village
Elmhurst
Evanston
Glenview
Highland Park
Morton Grove
Mount Prospect
Niles
Northbrook
Oak Park
Park Ridge
Wheeling
Wilmette

Union Position

The Union believes that the promotion issue might be unique to Skokie, in that it arose due to the general sentiment across the bargaining unit that the process used by the Village is fundamentally unfair. Thus, the Union asserts, the parties' dispute with regard to external comparables is relatively peripheral. Moreover, since the promotion issue is non-economic, the Union argues that the Arbitrator should not place much emphasis on the comparability pool. Those arguments notwithstanding, the Union asserts that it is time to alter the grouping of communities historically used by the parties.

First, while former Union Counsel Joel D'Alba stipulated to the historical comparability pool in a previous interest arbitration before Arbitrator Goldstein, that stipulation was very specifically crafted ". . . for the purpose of (that) arbitration." Second, though Arbitrator Gundermann adopted the same historical comparables grouping, he opined that "Comparables are not etched in stone; they can be changed when there is a valid reason for doing so."⁸ The Union notes that the comparables pool was a major issue in the interest arbitration scheduled before Arbitrator George Fleischli involving the contract to be effective May 1, 1995, but it was deferred when the parties reached agreement on a one-year contract. Since then, the Union argues, the Village has steadfastly refused to entertain meaningful

⁸ *Village of Skokie and Skokie Firefighters Local 3033, International Association of Fire Fighters (IAFF)*, at 13.

discussion toward updating the comparability list.

Turning to its methodology for identifying comparable jurisdictions, the Union relies on employment application data to support its argument that the 15-mile radius embraced by the Village is not a realistic estimate of the local labor market's boundary. The Union notes, for example, that fully one-half of all applicants live outside that radius. And there were more applicants from Schaumburg, Elgin and Oak Lawn (three communities not in the historical grouping) than there were from Highland Park and Wilmette (two communities in the historical pool which the Union seeks to exclude here). The Union argues as well that the proximity of Skokie to the Edens Expressway and the work schedule of firefighters (24 on; 48 off) lessen the significance of geographic proximity for the purposes of selecting comparable jurisdictions in this proceeding.

The Union further asserts that its approach to selecting comparable communities is systematic and unbiased. As described by Mr. Dan Shanks, the Union's statistician, the Union considered 23 categories of information and used a selection criterion of $\pm 25\%$ of the relevant Skokie figure for each one except population.⁹ The Union believes that the categories it used are standard measures of financial resources and demographic characteristics that have been used by arbitrators in determining comparability. Furthermore, the Union argues that since there is a sufficient number of unionized comparable communities, those without collective bargaining agreements should be excluded.

The Union's proposed comparables pool is listed below:

Evanston
Arlington Heights
Des Plaines
Mount Prospect
Oak Lawn
Downers Grove
Schaumburg
Oak Park
Elk Grove Village
Northbrook
Elmhurst
Hoffman Estates
Elgin
Waukegan

⁹ The cutoff criterion the Union used for population was $\pm 50\%$.

The Union argues strenuously that it did not waive its right to contest the historical comparables. It asserts that the Village carries gamesmanship to absurdity by arguing that because the comparability issue is not listed as an item in dispute in the parties' May 28, 1996 MOU it cannot be considered by the Arbitrator in these proceedings. The focus of that memorandum was the parties' resolution of numerous contractual issues. Since the Union has not and is not proposing a contract term defining the comparable communities, it believes that the content of the MOU should not preclude the Arbitrator from evaluating the parties' respective positions with regard to the comparability pool.

Discussion

The Arbitrator's Jurisdiction. It is true that the parties' May 28, 1996 MOU set forth but two issues for interest arbitration. That portion of the MOU is quoted below:

7. Submission of Two Unresolved Issues to Interest Arbitration -
The parties agree to submit to interest arbitration pursuant to Article XII, Section 8, and Appendix A the following two issues:
 - (1) The Village's proposals concerning Workers Compensation (Village's proposal entitled "Responsibility for Medical and Hospital Expenses for Injuries Incurred in Line of Duty;" to delete Article XII, Section 9 (Disability Pay); and to delete any references to Worker's Compensation in the contract; and
 - (2) The Union's proposals concerning promotions.

It is also true that the MOU began with the phrase, "In full and complete agreement on all issues in negotiations . . . the parties hereby agree as follows: . . .," whereupon it identified several issues as being resolved. That language falls well short of convincing the Arbitrator that in drafting the MOU the parties mutually intended to exclude the comparability question from the scope of these proceedings. The composition of a pool of comparable communities is routinely considered in interest arbitration. It is one of the statutory criteria interest arbitrators are obliged to review. A responsible interest arbitrator would not omit that factor from the scope of his or her inquiry without an absolutely clear instruction from both parties that they have agreed to a list of comparable jurisdictions. No such instruction is present in this case. Rather, the Village relies on the rather vague first sentence of

the MOU as the primary basis for its argument that the undersigned Arbitrator has no jurisdiction to consider the comparability question.

Given the non-economic and somewhat unique nature of the promotion issue to Skokie, the comparability factor will not likely be a significant contributor to the outcome of this case anyway. But the fact remains that the Arbitrator is legally bound to consider it.

The Comparability Pool. The parties' historical agreement on a set of fifteen comparable jurisdictions is very persuasive. Beginning in 1987, with the negotiations for their first collective bargaining agreement, they agreed to the grouping the Village believes should be used again here. Talks during the third-year reopener of that first agreement ultimately led to interest arbitration before Arbitrator Goldstein, and again the parties mutually embraced the same fifteen jurisdictions as comparables. The same set of comparables was adopted by Arbitrator Neil Gundermann in a subsequent interest arbitration proceeding, over the Union's objection. In the face of such longstanding and consistent use of the same comparability grouping, the undersigned Arbitrator is very reluctant to modify it. The grouping arose out of a voluntary agreement between the parties themselves. Over the years they have become accustomed to making comparisons between themselves and those jurisdictions. They have undoubtedly each developed a notion of equity calibrated by associating terms and conditions of work in Skokie with those across the historical comparables pool. Altering the playing field now might disturb the stability associated with those long-term relationships and the equity perceptions they have generated.

It is important to note as well that the Village of Skokie and the FOP have used essentially the same comparables pool for their negotiations as that advanced by the Village here. Changing the comparability grouping historically used by the parties to this proceeding could very likely have an impact on the FOP's future willingness to maintain that historical pool --- even though it might continue to be a very valid benchmark for comparison purposes. Thus, a modification of the historical comparability grouping at issue here could disturb the stability of the Village's bargaining relationship with the FOP. It could also create a perceived equity imbalance between the IAFF and the FOP.

Probably the most significant reservation in the Arbitrator's mind regarding the Union's proposed change to the historical comparables pool is the absence of compelling evidence to support it. The Union has not shown, for example, that the current grouping is somehow inappropriate. Rather, it simply argues that it is time to modify it. That argument has not convinced the Arbitrator to do so.

Finally, the methodology used by the Union to select its proposed comparables seems overly mechanistic. As I have already noted in a prior proceeding wherein the same approach was used:

The Union's method appears statistically dazzling at first blush. It begins with a large universe of communities, then whittles away at it in step-wise fashion, settling ultimately on a six-member comparability pool. The Union's method seemingly weighs its 40 criteria equally, which emphasizes one of the attendant problems of statistical analysis: it attempts to attach weights to complex phenomena whose respective influence on real world situations cannot be precisely calibrated. For example, how much more or how much less an element of comparability is commercial EAV as opposed to industrial EAV, or is sales tax *vis-a-vis* family income? The Union's statistical exploration assumes initially that all of these measures are exactly equal as shapers of comparability. The Union's methodology also inordinately emphasizes EAV through reliance on nine measures of that construct, each considered a separate criterion in its copious data base.¹⁰

Though the Union in the present case employed a modified version of the procedure used in the case referenced above, it suffers from the same weaknesses. Its inclusion of the entire Chicago metropolitan area as potential comparables is also questionable. Numerous interest arbitrators in Illinois and elsewhere have underscored the importance of confining the selection of comparable jurisdictions to those within a fairly limited radius of the focal community --- especially in metropolitan areas containing numerous potentially similar municipalities.

Overall, the Arbitrator is not convinced from the record that there is sufficient reason to depart from the comparability pool developed by the parties themselves and relied upon in their negotiations and arbitration proceedings for more than a decade. The comparability grouping advanced by the Village is therefore adopted.

¹⁰ *Village of Elmhurst and Elmhurst Professional Firefighters Association, IAFF Local 3451*, at 8.

THE PROMOTION ISSUE

Union Position

The Union seeks to change the status quo on this issue. Its revised final offer is quoted below:

ARTICLE ____ PROMOTIONS

Section 1. General. Promotion to the rank of Lieutenant shall be conducted in accordance with the provisions of the Municipal Code, 65 ILCS 5/10-2.1-10-15, the provisions of this Article, which are intended to supplement the discretionary authority provided under the Municipal Code and the Rules and Regulations of the Board of Fire and Police Commissioners to the extent they do not conflict with the Municipal Code or the provisions of this Article.

Section 2. Rating Factors and Weights. Candidates for promotion to the rank of Lieutenant shall be rated on the basis of ascertained merit and seniority in service and examination, which criteria shall be determined based upon the following factors and weights:

- | | | | |
|----|--|---|-----|
| 1. | Examination - written | = | 40% |
| | Commissioners - oral interview
(The Chief may give from 0 to 5
points to each candidate
participating in the oral
interview) | = | 15% |
| 2. | Ascertained Merit in Service: | | |
| | • Assessment Center | = | 10% |
| | • Departmental promotability
evaluations | = | 10% |
| | • Professional Achievements | = | 10% |
| | • Chief's Points | = | 5% |
| 3. | Seniority
(One point shall be awarded for
each of continuous year to a
maximum of 10 points) | = | 10% |

The oral examination and departmental evaluations shall be awarded based upon job-related criteria and the tests shall be administered and candidates shall be scored prior to the administration of the written examination. Employees shall be informed of the criteria that will be utilized in determining the ratings for the oral examination and administration of the tests. Study guides and reference materials shall be made available on an equal basis to all employees who desire to take the test at least 30 days prior to the date the written test is administered.

Section 3. Professional Achievements. Candidates shall be awarded points to a maximum of ten (10), for professional achievements based upon the following list. This list shall be subject to updating at a labor/management meeting prior to the examination. When there is a logical progression in terms of certification and/or degrees, points shall only be awarded for the highest certification and/or degree achieved.

College Education

Bachelor's Degree in Fire Science or Fire Management	6 points
Associate's Degree in Fire Science or Fire Management	3 points
Bachelor's Degree in any other field	3 points
Certificate of Applied Science: Fire Science	1 -1/2 pts.
Associate's Degree in any other field	1-1/2 pts.

Certifications granted by OFSM, FSI, ILFCA, ILFIA, NFA or obtained through an accredited college:

Fire Officer I (certified)	3 points
Fire Officer II (certified)	3 points
Paramedic	3 points
Fire Officer I (provisional)	2 points
Fire Fighter III	1 point
Fire Investigator	1 point
Fire Instructor II	1 point
Fire Instructor III	1 point
Fire Apparatus Engineer	1 point
Pediatric ALS Certification	1 point
Advanced Cardiac LS Certification	1 point
Pro-Hospital Trauma LS Certification	1 point
Basic Trauma LS Certification	1 point

Active Fire Department CPR Instructor	1 point
EMT-B	1 point
SCUBA Certification (PADI, NAUI, YMCA, Advanced Open Water or Equivalent) Active	
Department SCUBA Team Member	1/2 point
National Fire Academy Class	1 point
Active Department SCUBA Technician	1 point
Fire Attack and Suppression Techniques Certification	1/2 point

Special Rescue Group

One point will be awarded for each class requiring 24 or more hours (e.g., Rescue Specialist - Roadway Extrication; Confined Space; Trench I; Vertical I: Ropes and Rigging; Vertical II: High Angle, Smoke Divers; and Autoextrication Technician II).

Hazardous Materials Group

One point will be awarded for each class requiring 24 or more hours (e.g., Hazardous Materials First Responder Operations; HazMat Technician; HazMat Materials Incident Command; and Chemistry of Hazardous Materials).

Section 4. Posting. All scores from each section of the testing process shall be posted after the section has been scored.

Section 5. Service Requirements. The minimum service requirements to be eligible to take the examination shall be as follows: The employee must have five (5) years of continuous service as a sworn full-time firefighter for the Skokie Fire Department and certification by the Illinois State Fire Marshal's office as a Fire Fighter II.

Section 6. Order of Selection. The promotional list shall be established ranking candidates in the order of their total points awarded for the rating factors with the candidate with the highest point total ranking first. The order of selection from such list shall start with the candidate ranked first and shall thereafter proceed to the next highest ranked candidate as vacancies occur, unless the Fire Chief intervenes and in such event the following procedure shall apply:

The Fire Chief shall have the authority to file a petition with the Commission for seeking the appointment of the second or third ranked candidate if, in the judgment of the Chief, events have occurred (positive or negative) after the posting of the eligibility list indicating that one of such candidates is more qualified to fill the vacancy than the top ranked candidate. The petition shall specifically set forth the reasons for this judgment.

A copy of the petition shall be served on the higher ranked candidate(s) and the Union. Within 30 calendar days of receiving such petition, the Commission will commence a hearing on the petition unless such hearing is waived by the higher ranking candidate(s). The Commission shall hear and consider evidence from the Chief and affected parties in support of or in rebuttal to the petition. The hearing shall be transcribed in accordance with the Commission's rules and regulations. If at the conclusion of the hearing the Commission determines that the top ranked candidate is at least equally qualified, the top ranked candidate shall be promoted. If the Commission sustains the petition, it shall promptly issue a written decision setting forth its reasons for passing over any higher ranked candidate.

The Commission decision may be the subject of a grievance provided that it shall be the burden of the grievant to establish that the Commission's stated reasons for its actions are unreasonable, insubstantial or not supported by substantial evidence.

The Union argues that the promotion issue has been a problem for years. According to Union President Bruce Wimer, who last took the promotional examination in 1982, certain applicants had prior knowledge of the questions asked during the oral interview conducted by outside Fire Chiefs. In later negotiations for the 1990-1992 contract the Union raised the issue, but dropped it because of uncertainty as to whether it was a mandatory subject of bargaining. After the negotiability of the promotional issue became more clear, the Union presented its proposed changes in a May 9, 1995 bargaining session. Months of turbulent labor relations followed, resulting ultimately in the scheduling of an interest arbitration proceeding. On the brink of that proceeding the parties agreed to a one-year contract. Negotiations for its 1995-1996 successor included a renewed proposal from the Union regarding the promotions issue. The Village did not offer a counter proposal. Moreover, with these interest arbitration proceedings pending and over the Union's protests, the Village took steps to conduct promotional tests and

establish a new eligibility roster on the basis of the existing components and weights. Not one firefighter signed up to take the tests.

The Union's final offer modifies the weights, order of selection and procedures for conducting Lieutenant promotional examinations. It asserts that there is a critical need to do so, because Skokie firefighters have lost confidence in the current process.

The Union's offer also deletes the current requirement that firefighters be certified as Fire Officer I's in order to take the test. It sets forth the following three reasons for doing so:

- (1) Only six firefighters possess this qualification and would be eligible to participate in the examination. Of those six, three would most likely be unwilling to relocate to meet the residency requirements for fire officers.
- (2) Availability of courses necessary for certification as a Fire Officer I is limited. Moreover, since Lieutenants are contractually entitled to preference for all FO-I classes, the nine current Lieutenants who do not have that certification would likely clog firefighter access to the courses.
- (3) The certification requirement was a recent change in the procedure. It had nothing to do with the Department's September 1, 1995 elevation to the ISO 1 rating.

While the Union supports the concept of FO-I certification for Lieutenants, it notes that no one in the Department has been promoted to Lieutenant since the FO-I testing prerequisite was established. The Union notes as well that under its offer there is an incentive for firefighters to obtain the FO-I certification because points are garnered as a "professional achievement."

The Union also believes that the five-year service requirement under its offer is more realistic than the two-year requirement currently in existence. The first two or three years on the job are consumed with training, EMT certification and orientation to departmental practices. Moreover, it would be very unlikely that a firefighter with only two years' experience would have gained sufficient respect from fellow firefighters to enhance his or her performance as a lieutenant.

The Union believes that the weights attached to the various components of the promotional process should not be static. They should evolve over time,

depending upon the perceived fairness of the process. And, the Union notes, the BFPC has not been unresponsive to all initiatives to change the procedure. When the structured oral interview led to complaints that some applicants had obtained prior knowledge of the questions asked, it was replaced with the more formal assessment center. The Union believes there is a much more pressing need now to restructure the process and restore its credibility.

The Union advances the following mix of weights as an appropriate balance between objective and subjective factors, and argues that it will encourage participation of the broadest segment of the bargaining unit:

(1) The weight for the written test should be 40% as opposed to the current 30%, and it should not be reduced by half to determine the applicant's final ranking.

(2) The oral interview should be a component of the competitive examination. It should not be so heavily weighted at the end of the process, as is currently the case, by composing 50% of the determinants (including the Chief's 5 points) of the candidate's score for determining final rank on the eligibility list. This element of the process has been the source of considerable controversy. That has obviously been the case elsewhere, for in those jurisdictions where promotional processes have been negotiated the weight attached to oral interviews has been reduced. And in Evanston, Berwyn, Bloomingdale, Forest Park and Cicero unions are allowed to have an observer or advisor present. The Union's proposal here does not include such a provision, thereby leaving the BFPC and Chief to deliberate in private as they formulate their oral interview points.

(3) The Assessment Center portion of the process should be reduced from the current 20% weighting to 10%. This was done essentially to accommodate the additional 10% needed to increase the Commissioner's oral interview by 5% and to establish a 5% component for Chief points. The Union recognizes its 10% weighting is low compared to communities which use this selection tool, but believes that the Assessment Center results have not been very influential in Skokie historically. The Union also believes that this evaluation mechanism is a subjective component that conceivably can measure some important qualities in a Fire Officer.

(4) The Union proposes no change to the 10% weight currently attached to the Departmental Promotability Evaluation. It argues that while this criterion is subjective, it is consensus-based so as to

minimize the tendencies raters may have to highball or lowball candidates.

(5) The Union believes its new and objective "Professional Achievement" criterion should be included because it provides a self-directed incentive for firefighters to upgrade their skills and educational levels. If the Village does not like the point array for the various certifications/degrees, it can initiate dialogue toward revising them. Moreover, the Union believes that its proposal on professional achievements is an excellent step toward phasing in FO-I certification for Fire Lieutenants.

(6) The Union's final offer weights seniority to a maximum of 10%, with one point being assigned to each year's service up to a maximum of 10. It believes seniority is an objective criterion and a reasonable surrogate for work experience. Moreover, the Union argues that the current practice of assigning only 4 points (1 for each year of service, to a maximum of 4 years) essentially removes seniority from the equation since practically all candidates for promotion have more than four years of service.

The Union also argues that the sequence of administering test components should be changed. Its final offer places the oral and departmental evaluation components of the test prior to the written examination. In this way, the Union argues, evaluators would not be aware of written test scores when they assign their points to the candidates. As clarified during the arbitration hearing, the Union's final offer would still place the Assessment Center evaluation after the written examination, to minimize its cost.

The Union's final offer would also include the promotion process in the collective bargaining agreement, a prospect opposed by the Village. The Union argues that since it is a mandatory subject of bargaining of vital interest to firefighters, the mechanism for promotion to fire lieutenant should be a part of the parties' contract.

The Union's prehearing offer required that candidates on the eligibility list be selected in rank order, unless there was "just cause" to bypass them. In response to the Village's argument that the phrase "just cause" would introduce a disciplinary concept into the deliberations, the Union revised its offer to include a procedure whereby the Chief could petition the Commission for an exception to the rank order selection if he felt the top-ranked candidate was not the best qualified for the vacancy. The procedure affords the higher-ranked candidate notice of such action and an opportunity to respond. And, should the Commission grant the Chief's

petition, the higher-ranked candidate could appeal through the grievance process.

The Union also believes the BFPC oral interview is far less equitable than other elements of the current process. Once the eligibility list is posted there are no structural safeguards covering the method by which the Commissioners and the Chief apply the oral interview rating. It is secret and devoid of any due process. The Chief briefs the Commissioners before they interview the candidates. Having the process more open would allow unsuccessful candidates to better understand the reasons for which they were bypassed.

The Union argues in addition that a lack of contractual procedures across the comparables concerning the promotion process should not diminish the importance of its final offer. It cites in support of that argument a passage from another interest arbitration award concerning the way in which firefighters could appeal disciplinary action taken against them:

The Arbitrator recognizes that there is little support from the external comparables for adopting the Union's position on this issue. Only 20% of the comparable communities permit employees to choose between arbitration or a hearing before their respective Fire and Police Commissions. However, the fundamental equity and fairness considerations woven into this issue have caused the undersigned to give controlling weight to the 'other factors' statutory criterion.¹¹

The Union relies on all of the foregoing arguments in urging the Arbitrator to accept its final offer on the promotion issue.

Village Position

The Village's final offer retains the status quo on the promotional process issue. It believes that adopting the Union's final offer would provide it with a "break through" not arrived at by the parties themselves through the bargaining process.

The Village also notes that the Union has provided no *quid pro quo* for its offer. It cites two prior interest arbitration awards in support of its argument that such a trade-off would likely have been made at the bargaining table.¹²

¹¹ *Village of Arlington Heights*, ISLRB Case No. S-MA-88-59 (Briggs, 1991).

¹² *City of Park Ridge and Local 2967, International Association of Fire Fighters* (Fleischli, 1990); *School District of River Falls*, WERC Decision No. 26296-A (Gundermann, 1990).

The Village argues as well that the same promotional process used to fill fire lieutenant vacancies is used to fill vacancies for all other promotable ranks in the Fire Department and for all promotable ranks in the Police Department. Adopting the sweeping changes proposed by the Union would, the Village believes, create a process fundamentally different in a multitude of significant respects from that used elsewhere within the Skokie protective services. The Village strenuously argues that the Union has not shown compelling reason for making such changes either.

Turning to the external comparables, the Village argues that the overwhelming majority do not have any substantive provisions governing promotion to the fire lieutenant position. Of the twelve comparable jurisdictions with collective bargaining agreements, only three deal to any significant extent with both the procedural and substantive aspects of the promotional process (Evanston, Oak Park and Wheeling). The contractual language found in the Arlington Heights, Highland Park, Morton Grove and Northbrook agreements merely (1) conform that promotions remain solely within the authority of the Boards of Fire and Police Commissioners (Elk Grove Village and Morton Grove), or (2) that the language deals only with certain procedural aspects of the process (Arlington Heights and Highland Park).

The Village believes that there are many ambiguities in the Union's final offer as well. It notes, for example, that the Union's final offer is vague as to when the Assessment Center evaluation would occur. It is also unclear concerning whether the Chief's points would be awarded prior to the written examination. Since they do not constitute a "test," presumably they could be awarded after the written examination. Another example cited by the Village concerns the length of time an eligibility list is to be posted. Under the BFPC's current Rules and Regulations the list is posted for a period of two years from its initial posting date. Section 1 of the Union's final offer provides that the Commission's Rules and Regulations shall only be in effect "to the extent they do not conflict with the Municipal Code or the provisions of this Article." While the other provisions of the Union's final offer do not speak to the length of the posting period, the Illinois Municipal Code specifies a three-year period. The Village has changed that posting period to two years, through its home rule authority. The Union's intent in drafting Section 1 of its proposal might be interpreted to require a three-year posting period.

The Union's position regarding Fire Officer I certification is also problematical to the Village, which notes that the FO-I prerequisite already has contractual status as a result of negotiations leading to the parties' 1995-1996 agreement. Article XII, Section 25 of that agreement (Fire Officer Certification Training) specifies the conditions governing the attendance of bargaining unit members at classes or schools to obtain FO-I or II or Fire Instructor I or II as "currently established as a

prerequisite for promotion by the Skokie Board of Fire and Police Commissioners." That language was retained as part of the parties' 1996-1999 contract as well. Moreover, that training provision was bargained by the parties based on the existence of the FO-I provisional certification prerequisite.

The Village also assails the requirement in the Union's final offer that firefighters merely be certified as Firefighter II's to be eligible for promotion. That requirement is meaningless, the Village claims, because in Skokie every firefighter is certified as a Fire Fighter II upon completion of the Fire Academy. The Village summarized its position on FO-I certification as follows:

Since the Fire Officer I provisional certification prerequisite was officially adopted by the BFPC in 1993, contractually recognized in the 1995-1996 collective bargaining agreement, and is clearly job-related to the position of fire lieutenant, it would be a distinct step backwards to eliminate this prerequisite as the Union has proposed, especially given Chief Eaves' testimony as to how important he feels about this established prerequisite.¹³

The Village also maintains that the Union's requirement for a minimum of five years' seniority with the Skokie Fire Department would unreasonably exclude other qualified candidates. That requirement would be especially unfair to firefighters relatively new to Skokie, but who may have many years of fire fighting experience with other municipalities. The Village adds that there is no support among the comparables for the Union's proposal on this dimension of the promotion process.

With regard to the sequence of predictor administration,¹⁴ the Village believes it would be unreasonable and costly to require that the written examination be given last. In 13 of the 15 comparable communities, it notes, the written examination is the first evaluative component administered. Doing so narrows the field of applicants, because they must achieve a minimum score of 70 to advance to the next level in the promotional process. And the Village emphasizes the fact that the Union did not seek to change the cut off score.

Under the Union's final offer, the Village believes, every firefighter who met the eligibility requirements would have to be given a promotability potential evaluation, be sent to the Assessment Center, and be given an oral interview by the

¹³ Village posthearing brief, p. 45.

¹⁴ The term "predictor" is used here in the same sense it is used in the recruitment and selection literature. Essentially, each element of the selection/promotion process should be designed to predict future performance as a fire lieutenant. That is true whether the predictor is a written test, a certification requirement, an oral interview, or some other estimate.

BFPC. Doing so would require a great deal of additional time and would result in a more costly promotional process.

The Village believes as well that the Union's revised final offer on Professional Achievements is arbitrary and for the most part unrelated to the position of fire lieutenant. That position is an important front line supervisory position. Skokie fire lieutenants are company officers with the responsibility of supervising the firefighters assigned to their companies. Many of the items in the Union's Professional Achievements component are unrelated to the performance of that important task.

The Village supports its claim that the Union's Professional Achievements component is arbitrary by noting that obtaining a Fire Officer I provisional certification awards a candidate only two points. To obtain that certification a firefighter must complete five classes, all of which are clearly related to the duties and responsibilities of the fire lieutenant position. In contrast, for each special rescue or hazardous material course completed, a candidate would receive one full point, even though such classes are not directly related to the duties and responsibilities of being a fire lieutenant.

Turning to the matter of seniority, the Village argues that the Village's final offer assigns it too much weight. In all other promotable ranks within the Fire and Police Departments a candidate can earn one point for each year of service --- up to a maximum of four. Under the Union's offer, the number of seniority points would more than double --- one point for up to ten years seniority.

The Village also believes that the Union's final offer arguably eliminates military points. Under the BFPC's current Rules and Regulations, candidates for promotion may elect once in their careers to use veteran preference points during a promotional examination. The Village notes that such an important policy issue should not be resolved in interest arbitration when it was not even the subject of any evidence in the interest arbitration proceeding.

The Union's proposal for a two-step appeal process if the Chief decides to bypass the top-ranking candidate on the eligibility list is cumbersome and unnecessary, the Village argues. Under the current process, the top five candidates on the eligibility list move to Phase II. During that Phase their final ranking is based on 50% of the points they achieved on the eligibility list, up to 45 points awarded by the BFPC, and up to 5 points awarded by the Chief. That is the first input the Chief and the BFPC have in the process. In the vast majority of comparables, the BFPC and the fire chief are involved in both the evaluative process used to establish the eligibility list (Phase I in Skokie) and the process to select the candidate from a specified number of candidates at the top of the eligibility list (e.g., a "rule of three). The Union's final

offer would dramatically change the existing procedure and would, in effect, provide that the rather restricted input of the BFPC and the Chief would occur in the Phase I process to establish the eligibility list. Thereafter, promotions would be in rank order unless the Chief were willing to run the gauntlet of two separate litigated proceedings --- one before the BFPC and the other before a grievance arbitrator. Not one of the comparable municipalities has such a cumbersome, two-step appeal process if a candidate is selected out of rank order. The Rule of Three is what is specified in the Illinois Municipal Code and it is the norm across the comparables historically used by the parties. Eleven out of the fifteen specify the rule of three; of the remaining four, only one (Wheeling) specifies selection based upon rank order.

The Village defends the propriety of the status quo with the following points:

- (1) There is no credible evidence that the Fire Chief unduly sways the five members of the BFPC in their evaluation of the candidates. When prior to the oral interviews he presents the Commission with his oral and written evaluations of each candidate, he identifies strengths and weaknesses but does not state his preference as to who he would like to see promoted. And the envelope containing the Chief's points (0 - 5) is not opened until after the Commissioners' points have been averaged and placed on the summary sheet.
- (2) The oral interview process is fairly administered, and there is no evidence to the contrary. There is not one iota of evidence that any of the promotional decisions made by the Skokie BFPC have been motivated by politics, patronage, and/or favoritism.
- (3) The alleged problems with the promotional process alluded to by Union President Wimer in his testimony have either been remedied or proven invalid. For example, the allegation that in the early 1980's certain candidates had prior knowledge of the questions to be asked by a panel of fire chiefs was heard by the BFPC. It determined that the allegation was without merit, and that determination was upheld in a Circuit Court review. Since then there have been no complaints of that nature.

On the basis of the foregoing arguments the Village urges the Arbitrator to accept its final offer on the promotion process issue, retaining a status quo which works effectively.

Discussion

There are at least three elements of fairness in any promotional process: (1) the structure of the process itself; (2) the identity of the decision-makers; and (3) the perceptions of those being evaluated. The third of these factors is extremely important, for it can overshadow the first two. For example, while a promotion process may contain steps which appear quite sound from an equity perspective, and while the decision-makers involved may make every attempt to be fair and unbiased, if candidates being evaluated in the process still feel that it is fundamentally unfair the entire process can be affected.

In the present case the Arbitrator has concluded from the record that the Rules and Regulations adopted by the Skokie BFPC and used to evaluate candidates for promotion to the rank of fire lieutenant seem reasonable on their face. They contain many elements purportedly structured to minimize bias and subjectivity. The use of MEAS to design and administer the written examination is but one example of the extent to which the BFPC has tried to establish a fair promotion process. The Commission's reliance on numerous selection criteria is another indication of its attempt to embrace the notion of equity and apply it to fire lieutenant promotions.

Moreover, the individuals in Skokie who administer the promotion process and who have certain authority for providing input into the evaluation of candidates seem from the record to be honorable persons who go about that task with a great deal of integrity. Particularly noteworthy in that regard were Fire Chief James Eaves, Personnel Director James Aydt, and BFPC Commissioner Edward Egloff. All three of these men came across in their testimony as credible, dedicated public servants driven by integrity of the highest order.

But the same may be said of the Skokie firefighters who, as part of the Union's leadership, brought this case forward to arbitration. Union President Bruce Wimer and Director of Data Resources Mark Shinler have obviously devoted a great deal of time to studying the process used for evaluating fire lieutenant candidates in Skokie. Both men appeared to be sincerely dedicated to improving that process, and both testified that firefighters have no confidence in it. As Wimer noted in his testimony, the last lieutenant promotional exam given in the Skokie Fire Department was in the Fall of 1994. The resulting eligibility list expired in Fall, 1996 and the Village posted a notice for a new test in December, 1996. Of the utmost significance to the outcome of this proceeding, not one firefighter signed up to take the test. It was canceled on January 17, 1997 --- the very date it was to have been administered. As reflected by these proceedings, promotion to fire lieutenant is an extremely important element of the firefighter career. It brings with it additional income, responsibility and challenge. The fact that no firefighters were willing to

participate in the 1996 promotional process speaks volumes about their lack of confidence in its fairness.

The Village believed that the above-described circumstance was more the result of Union institutional pressure on bargaining unit members to boycott the test than it was of firefighter discomfort with the process. It filed an Unfair Labor Practice with the Illinois State Labor Relations Board as a result. The Board dismissed the charge in its written decision of March 19, 1998.¹⁵ The Arbitrator has read that decision and believes it to be sound. Accordingly, I conclude that Skokie firefighters are extremely disenchanted with the current promotional process --- so much so that in late 1996 and early 1997 they were willing to forego the opportunity to be considered for promotion to the rank of fire lieutenant.

On the basis of the foregoing analysis the Arbitrator concludes that there is compelling reason to modify the status quo. No matter how fair the Village may think the current promotional process is, it remains ineffective if no one is willing to submit to it. Adopting the Village's position in its entirety would not resolve the problem. That is not to say that unions should prevail in interest arbitration simply by orchestrating a "problem" and suggesting to an arbitrator that the "problem" constitutes compelling reason to amend the status quo. On the contrary, such a veiled attempt to manipulate the interest arbitration process would surely be uncovered through testimony. In the present case, however, not one Skokie firefighter testified that he or she believed the current process is fair.

The Arbitrator understands that candidates for promotion in the Skokie Police Department and for promotion to other-than-lieutenant positions in the Skokie Fire Department are evaluated on the basis of the same promotional process the Village touts in these proceedings. I recognize as well the merits of maintaining a consistency in evaluation procedures across the internal units of relatively large organizations such as the Village of Skokie. But the fact remains that there is a serious problem in the IAFF unit that needs to be fixed. The Union has attempted to do so across the bargaining table, but those attempts have been fruitless. It is now appropriate to address the problem in the interest arbitration forum.

The Arbitrator realizes that there is less than overwhelming support for adoption of the Union's final offer in its entirety across the external comparables. The Village correctly noted that of the twelve comparable jurisdictions with collective bargaining agreements, only three deal substantially with both the procedural and substantive aspects of the promotional process. But as suggested earlier in this Opinion and Award, the problem which drove the Union in this case to interest arbitration is unique to Skokie. At least, there is no evidence in the record before

¹⁵ *Village of Skokie and International Association of Firefighters, Local 3033, ISLRB Case No. S-CB-97-57.*

me that firefighters in any comparable jurisdiction were so disgusted with their promotion procedures that they refused to participate in them. Allowing the comparable jurisdictions to dictate the outcome of this case would be tantamount to ignoring the real problem in Skokie and engaging in a somewhat dispassionate statistical exercise. The inappropriateness of doing so should be obvious to union and management advocates alike.

The Arbitrator's willingness to amend the status quo in the Skokie Fire Department with regard to the lieutenant promotional process does not mean that the Union's final offer is reasonable in its entirety. It is not, for reasons which will be explained in the ensuing paragraphs. But there are elements of the Union's final offer which make sense, just as there are elements of the process currently in use which do also.

The parties have stipulated that the issue is non-economic, thereby avoiding for the Arbitrator the constraint of having to choose the final offer of one party or the other in its entirety. The following discussion, therefore, attempts to identify and address the elements of the current process which have seemingly caused Skokie firefighters to lose confidence in it.

Fire Officer I Certification. The Village currently requires that applicants for promotion to fire lieutenant be provisionally certified as a Fire Officer I. To obtain that certification a firefighter must take five, forty-hour courses. The total time commitment, then, is 200 hours. All of the courses are offered in the Village of Skokie itself, and the Village pays the tuition. Moreover, firefighters who otherwise would be on duty during the time the classes are offered are released from duty without loss of pay. It therefore appears that the Village has taken reasonable measures to ensure that interested firefighters have the time available to attend classes and do not have to forego pay from the Village in order to do so.

The testimony of Chief Eaves on this element of the promotion process was most persuasive. Eaves holds the Fire Officer III and Instructor IV certifications from the State Fire Marshal's office --- the highest available certifications in those two areas. He has been a member of the State Fire Marshal's Advisory Committee since 1991, and was involved in implementing National Fire Protection Association (NFPA) Standard No. 1021 into the "State Fire Marshal's Certification Process and Programs." NFPA 1021 defines a Fire Officer I as a person at the supervisory level who has met job performance standards related to human resource management, community awareness, organizational structure, communications skills, information management, planning, inspection, investigation, public education, emergency service delivery and safety. In the expert opinion of Chief Eaves, all of those areas are germane to the position of fire lieutenant, and they are covered in the courses leading to a provisional Fire Officer I certification.

The Written Test. The objectivity and validity¹⁶ of the written test itself has not been challenged by the Union --- apparently for good reason. Its design, administration and review by outside testing consultant MEAS appears to have been extremely well done. And unlike most other aspects of the fire lieutenant promotion process, both parties seem to agree that the written test is fair. It is therefore likely that increasing its weight would have a favorable impact on the extent to which Skokie firefighters might develop confidence in the entire promotion process. Moreover, of all the predictors used by the Village, the written test appears to have been the most scientifically designed. It is also probably the predictor for which firefighters are most informed concerning how to prepare. It certainly results in the most comprehensive, instructive feedback to them. For all of those reasons, the Arbitrator concludes that the weight assigned to the written test should be meaningfully increased --- from the current 15% (it starts in the eligibility list phase at 30%, but gets reduced by half in the BFPC phase) to 25%.

The placement of the written test in the sequence of predictors is also the subject of dispute here. Since it is such a well-respected predictor from the perspective of both the Village and the Union, it should retain its place as the gatekeeper to the other predictors. That is, it should continue to be given at the outset of the process and used as a screening-out device. Doing so also has the companion benefit of saving the Village the time and considerable expense of running through the other predictors candidates who do not pass the written test with the requisite 70% or better score. Similarly, administering the written test at the outset of the process would protect those candidates who do not pass it from unnecessarily suffering through any anxiety they may experience in connection with the other predictors (e.g., the oral BFPC interview, the Assessment Center, etc.)

Given firefighter mistrust as to the potential for management manipulation of the promotional process, the specific test scores of those who pass should not be revealed to management, the BFPC, or anyone but the candidate, until candidate scores from all other predictors have been established.

The Departmental Promotability Evaluation. The Union has not proposed any change to the content or weight of the promotability potential evaluation currently in use. It is weighted at 10% now (20% initially, but reduced by half when blended into the BFPC oral interview stage). The Arbitrator therefore sees no reason to depart from the 10% weight on this dimension of the promotional process.

¹⁶ That is, its content validity --- the relationship between the content of the test and the content of the fire lieutenant position.

Many of the Union's arguments against retention of the Fire Officer I provisional certification requirement are based upon speculation. It argues, for example, that only six firefighters have the certification now, and three of them would most likely be unwilling to relocate to meet the fire officer residency requirement. The record contains no testimony to support the latter claim, however. The Union also argues that current fire lieutenants who were grandfathered without the Fire Officer I certification would likely clog firefighter access to the courses. But that argument flies in the face of historical developments in the Skokie Fire Department. For example, Chief Eaves was apparently instrumental in orchestrating circumstances so that all of the courses necessary for the Fire Officer I provisional certification are offered within the Village of Skokie. If course availability becomes a problem in the future, it is reasonable to conclude that Department management would once again work toward resolving it.

Skokie firefighters have known since 1993 that provisional Fire Officer I certification is a requirement for taking the fire lieutenant exam. For a variety of reasons, some of which may be related to the parties' often troubled collective bargaining relationship, not many of them have completed the required courses. But that does not mean that the FO-I certification requirement is unreasonable. On the contrary, the Arbitrator is convinced from the record that (1) the content of the courses required is directly related to the position of fire lieutenant, (2) the Village has taken appropriate steps to ensure that firefighters have available time to complete the courses, (3) the courses are readily available to be taken, and (4) completion of the five required courses does not constitute an inordinate burden. The Arbitrator therefore concludes that the Fire Officer I provisional certification requirement should be retained as a prerequisite for taking the fire lieutenant promotion test.

Minimum Service. The Union's proposal for a five-year minimum service requirement does not seem related toward remedying an existing problem. Rather, it appears to be based upon the notion that a firefighter with only two years' experience in the Skokie Fire Department would not have built a track record sufficient to garner other firefighters' respect upon promotion to fire lieutenant. The Union did not cite any example of that circumstance in the past, however. Furthermore, review of the fifteen comparable communities reveals that seven of them contain a two-year service requirement (i.e., one year's service after completion of the probationary period) and six merely require completion of the probationary period to be eligible to test for promotion to fire lieutenant. The Arbitrator concludes from those data that the Union's speculation with regard to the service-respect ratio is unfounded. Accordingly, the two-year service requirement shall be retained.

The Assessment Center. The Union's final offer would reduce the weight assigned to this predictor from its current 25% (50% initially, then reduced by half at the BFPC oral interview stage) to a mere 10%. There is simply no support in the record for doing so. Assessment centers generally have been found to be very valid predictors of future performance in the jobs for which they were designed. In the present case, the Union even praised (though faintly) the BFPC for adopting the assessment center predictor and dropping the less-popular interview by a panel of fire chiefs. In fact, the principal reason the Union gave for reducing the weight attached to the assessment center was to assign higher weights to other predictors. The Arbitrator finds the need to do so as well, especially in view of the now increased weight attached to the written test. But a reduction of the assessment center weight to 10% is far too drastic. A weight of 20% seems more appropriate.

The BFPC Interview. The Union's final offer reduces the weight attached to the BFPC interview from its current 45% (without the Chief's points) to only 15%. From the Union's perspective, this element of the process has been the source of considerable controversy, thereby justifying such a drastic reduction in its relative influence on the ultimate selection of those to be promoted. The Arbitrator has concluded from the record that there is no direct evidence any member of the Commission has been biased toward or against any particular candidate. But as noted earlier, the firefighters' perception of the process has caused them not to participate in it. Revising the weights associated with the various predictors by bolstering those which generate trust among candidates should remedy that problem. The mathematical effect of doing so has an obvious impact on the remaining predictors, however. The weights associated with them must be correspondingly reduced. For that reason, the Arbitrator concludes that the weight associated with the BFPC interview should be reduced from its current 45% to 35%.

The current practice of interviewing only the top five candidates in consideration of their total scores on the written test, Assessment Center, and Departmental Promotability Evaluation seems appropriate. Otherwise, the BFPC could be inordinately burdened with interviewing too many candidates. The Arbitrator therefore concludes that the current practice should be continued. Seniority credit¹⁷ and military points should be added as well, prior to the BFPC interviews, to determine who is eligible for entry to that stage of the overall process.

There is no reason for the BFPC or the Fire Chief to know the rank order of the top five candidates within that grouping, however. Indeed, such knowledge might inappropriately influence the outcome of the BFPC interviews and/or the assignment of the Chief's points.

¹⁷ The appropriate weight for this predictor is discussed on the next page.

The Chief's Points. Of all the evaluators who contribute to the fire lieutenant promotional process, the Fire Chief is undoubtedly among the most qualified to render opinions as to the promotability of the respective candidates. Under the current system he meets with the BFPC prior to their candidate interviews and reviews with them his opinions as to the strengths and weaknesses of each. The points he assigns to each candidate are reportedly placed in a sealed envelope which is not opened until all of the BFPC interviews have been completed. The perceived equity problem is apparently related to the secrecy associated with the process, in that the Chief engages in private dialogue with the BFPC prior to their candidate interviews. Both the Chief and Commissioner Egloff testified that the Chief does not reveal to the BFPC his opinion as to which candidate should receive the promotion. Each of those men was a credible witness, and the Arbitrator accepts their representations on that point for the truth of the matter. However, since the Chief submits a written statement to the BFPC, a copy of that statement should be given to each fire lieutenant candidate as well. Perhaps doing so will resolve some of the mystery associated with the Chief's role in the process.

As to the appropriate weight to be assigned to the Chief's input, the Arbitrator finds no reason in the record to diminish it. Accordingly, it shall remain at 5%.

Professional Achievements. The Union's proposal for a professional achievements component to the promotional process is creative. As correctly noted by the Village, however, several of its components have little direct relationship to performance as a fire lieutenant.¹⁸ That relationship is of great significance in the selection of a valid predictor, and if it is not established the predictor should not be used.

In addition, there are certain apparent inequities in the relative weights attached by the Union to the various components of its Professional Achievements criterion. The FO-I and FO-II certification points are illustrative. All firefighters upon graduating from the Fire Academy are automatically designated FO-II's, to which the Union attaches 3 professional achievement points. The FO-I certification requires additional study, as already noted, yet the Union's offer only assigns 3 professional achievement points for that accomplishment. If an FO-II certification is worth 3 points, an FO-I certification is worth considerably more.

On balance, the Arbitrator concludes that while the concept of a Professional Achievement criterion has merit, it deserves to be refined more than the version reflected in the Union's final offer.

¹⁸ The Pediatric ALS certification is but one example.

Seniority. Both parties seem to agree that seniority is a reasonable predictor of future performance as a fire lieutenant. The current system allows a maximum of 4% for it (i.e., one point for each year of service up to a maximum of four years). The Union seeks a weight of 10%, arguing that practically all candidates have more than four years' seniority anyway. In view of that statistic, a threshold of four years effectively prevents seniority from having any influence whatsoever on the outcome of the promotion process. A slight increase to a weight of 5% is therefore justified.

The Final Selection. The candidate who ultimately accumulates the most points after both phases of the promotion process currently gets the job. Thus, the Fire Chief has no authority to select from the top three, the top five, etc., as is commonly done in many jurisdictions. The Arbitrator sees no reason to depart from the status quo on this element of the promotion process, particularly in view of the Union's expressed apprehension concerning the Chief's input elsewhere. Besides, requiring that the top candidate be offered the promotion precludes the need for an appeal process, whether it be the rather cumbersome one proposed by the Union in its final offer or some other type.

The Arbitrator acknowledges that a lot can change between the time the eligibility list is posted and a fire lieutenant vacancy is announced. For example, a firefighter placed in a very high position on the list might display behavioral problems which prompt severe disciplinary action. But retaining the sequence of predictors in Skokie, with the BFPC interviews and the Chief's points being administered shortly after the vacancy is designated, still allows for timely consideration of those interviewed. That sequence is therefore retained.

Concluding Comments.

In rendering the following Award, the Arbitrator is very much aware of the fact that under ordinary circumstances at the bargaining table the Union might well have had to provide a quid pro quo in exchange for some of its elements. But the Arbitrator believes that there are elements of the Award which favor the Village as well. After all, both parties benefit from having a promotional process that firefighters believe is fair and are, therefore, willing to use.

The foregoing revisions to the status quo represent a "fine tuning" approach which appropriately addresses the Union's valid concerns. The fire lieutenant promotion process as it exists currently is broken. Firefighters have lost confidence in it and, as a result, have not submitted themselves to it in the recent past. That circumstance is not only damaging to their careers, but it is also a serious impediment to the growth and efficacy of the Skokie Fire Department. The following Award is intended to address both of those issues.

AWARD

Based upon complete and detailed study of the evidence and arguments presented by both parties, and in full consideration of the applicable statutory criteria, the Arbitrator directs the parties to draft a provision entitled "PROMOTIONS" for inclusion into their current collective bargaining agreement. Consistent with the foregoing discussion, that provision shall include the following principles and components, along with all other elements of the current fire lieutenant promotion process which remain unchanged:

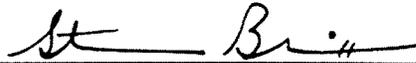
1. Provisional certification as a Fire Officer I shall be a prerequisite for taking the written test.
2. The ultimate weights to be attached to each predictor are as follows: written test - 25%; Promotability Potential Evaluation - 10%; Assessment Center - 20%; BFPC oral interview - 35%; Chief's points - 5% (i.e., a five-point maximum); and Seniority - 5% (a five-point maximum).
3. The written test shall be administered before any of the other predictors and only those candidates who pass it with a score of 70% or better shall be eligible for further consideration.
4. The eligibility list shall be continue to be formulated on the basis of the cumulative results of the written test, Promotability Potential Evaluation, Assessment Center, and seniority and military credits.
5. Candidate scores on the written test, Promotability Potential Evaluation, Assessment Center, and those assigned for seniority credit shall not be reduced by half prior to the BFPC phase of the process, as is the current practice.
6. In response to designated Fire Lieutenant vacancies, the BFPC shall continue to follow its current practice of selecting a minimum of five candidates to interview from the top of the eligibility list. Each candidate interviewed by the BFPC shall be provided with a copy of the Chief's written submission to the BFPC about him or her.
7. Neither the Fire Chief nor the BFPC shall be informed as to the ranking of the candidates within the "top five" grouping until after the BFPC oral interview scores have been recorded and the

Chief's points have been assigned.

8. The candidate who accumulates the highest number of points in accordance with the predictor weights specified in No. 2 above shall be offered the promotion to Fire Lieutenant. If there are two vacancies, the top two candidates shall be offered the promotions, etc.

The Arbitrator retains jurisdiction in this case for a period of ninety (90) calendar days from the date below to hear and decide (1) any dispute between the parties as to the application and/or interpretation of this Award; and (2) any dispute between the parties as to the "Winnetka Ordinance" workers compensation issue initially advanced by them for resolution in this proceeding.

Signed by me at Chicago, Illinois this 17th day of April, 1998.



Steven Briggs

