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INTEREST ARBITRATION
OPINION AND AWARD

FEB 27 1998

S-MA-96-218

In the Matter of Interest Arbitration
between
VILLAGE OF SCHAUMBURG
and
SCHAUMBURG PROFESSIONAL
FIREFIGHTERS ASSOCIATION

Hearings Held

May 16, 1997
June 4 & 27, 1997
August 14, 1997

Schaumburg Village Hall
1010 Schaumburg Court
Schaumburg, IL 60193

Appearances

For the Union:

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Arbitrator

Steven Briggs

For the Employer:

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BACKGROUND

The Village of Schaumburg (the Village) is located in Cook County, Illinois. It has a population of 73,800.¹ The Village operates a Fire Department (the Department) which dispatches firefighters from four stations. In September, 1994 the Department was upgraded from ISO Class IV to ISO Class II, a significant accomplishment. In a bargaining unit represented by the Schaumburg Professional Firefighters Association, the Department employs 23 lieutenants and 107 firefighters. Approximately half (n = 57) of the firefighters are paramedics who are paid a stipend for such service. The parties' first collective bargaining agreement became effective in 1987.

When negotiations between the parties for a successor to their 1993-1996 collective bargaining agreement were unsuccessful, the Union requested mediation prior to May 1, 1996.² The Village advised the Federal Mediation and Conciliation Service (FMCS) in an August 29, 1996 letter that a dispute existed and requested that a mediator be assigned. Mediation did not result in a settlement. The Union invoked interest arbitration on November 8, 1996. From a list provided by the FMCS the parties mutually selected Steven Briggs as the Arbitrator.

Interest arbitration proceedings were conducted at the Schaumburg Village Hall on May 16, June 4 and 27, and August 14, 1997. At the hearings both parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issues. The hearings were transcribed, and the parties exchanged timely posthearing briefs through the Arbitrator on November 21, 1997. The parties continued to forward various submissions to the Arbitrator after that date, with the latest one being received from the Union on February 4, 1998.

RELEVANT STATUTORY CRITERIA

Section 14(h) of the Illinois Public Labor Relations Act³ (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,

¹ *Community Profiles* (Illinois Department of Commerce and Community Affairs), 1996.

² According to the parties' Alternative Impasse Resolution Agreement, filing of such a demand prior to May 1, 1996 is deemed as proper and timely, and as confirmation of the Arbitrator's authority to make a retroactive award of increased or decreased wages and/or other forms of compensation to that date.

³ 5 ILCS 315/14.

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 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 ISSUES

Economic Issues

- No. 1 Pay Raises for Firefighters⁴
- No. 2 Pay Raises for Fire Lieutenants⁵
- No. 3 Pay Raises for Fire Lieutenants - Removal of Step Plan
- No. 4 Retroactivity
- No. 5 Paramedic Pay
- No. 6 Acting Out of Classification Pay
- Nos. 7 - 9 Specialty Pay - Field Training Officer; Specialty Pay - Paramedic Evaluator/Preceptor; Specialty Pay - Fire Prevention Inspector⁶
- No. 10 Holiday Pay
- No. 11 Personal Days
- No. 12 Sick Leave Incentive
- No. 13 Funeral Leave
- No. 14 Witness Leave
- No. 15 Minimum Staffing
- No. 16 Quartermaster Maintenance Allowance for Shift Employees

⁴ This issue was subsequently resolved when the parties agreed to implement the Village's final offer. As a result, firefighter salaries will be increased across-the-board by 3.6% effective May 1, 1996, 3.6% effective May 1, 1997, and 3.5% effective May 1, 1998.

⁵ The parties have agreed to implement the Village's final offer on this issue as well. Fire lieutenant salaries will be increased by 3.6% effective May 1, 1996, 3.6% effective May 1, 1997, and 3.5% effective May 1, 1998.

⁶ The Village asserts that all three specialty pay items should be treated as one economic issue rather than three, as proposed by the Union.

- No. 17 Quartermaster Maintenance Allowance for 40-Hour Employees⁷
- No. 18 Work Cycle for Shift Employees
- No. 19 Compensatory Time
- No. 20 Severance Pay
- No. 21 Promotions - Fire Lieutenants
- No. 22 Paramedic Trainee
- No. 23 Term of Agreement⁸

Non-Economic Issues

- No. 1 Seniority/Shift Assignments
- No. 2 Seniority/Company Assignments
- No. 3 Vacation Scheduling
- No. 4 Physical Fitness
- No. 5 Family and Medical Leave Act
- No. 6 Americans With Disabilities Act
- No. 7 Drug and Alcohol Testing
- No. 8 Grievance Procedure (Wording of Step 3)

⁷The Village argues that both Quartermaster items should be treated together as one issue.

⁸Both parties' final offers provide for a term of three years, from May 1, 1996 through April 30, 1999.

THE COMPARABLES

Village Position

The Village believes that the following jurisdictions constitute the appropriate comparables pool:

Arlington Heights
Des Plaines
Elgin
Elk Grove Village
Hanover Park (a.k.a., Ontarioville F.P.D.)
Hoffman Estates
Mt. Prospect
Palatine
Streamwood

Union Position

The Union's proposed comparability grouping is listed below:

Arlington Heights
Des Plaines
Elgin
Elk Grove Village
Hoffman Estates
Mt. Prospect
Rolling Meadows

Discussion

The parties are in agreement that Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hoffman Estates and Mt. Prospect are communities comparable to Schaumburg. The Village proposes the addition of Palatine, Hanover Park and Streamwood to that list; the Union objects to their inclusion. The Union proposes the addition of Rolling Meadows; the Village believes it should not be included.

Table 1 on the following page has been constructed to juxtapose the proposed comparables against each other. The first grouping (Arlington Heights through Mt. Prospect) contains the stipulated comparables. The Union's argument that Rolling Meadows should also be considered comparable is not persuasive. First and foremost, in comparison to Schaumburg and the stipulated comparables it is just

too small. Comparison of Rolling Meadows to Schaumburg is not realistic for that reason, despite their geographic proximity.

TABLE 1
PROPOSED COMPARABLE COMMUNITIES

<u>Community</u>	<u>Population</u>	<u>Staffing</u>
Arlington Heights	73,460	93
Des Plaines	53,223	96
Elgin	74,010	104
Elk Grove Village	33,429	94
Hoffman Estates	46,561	82
Mt. Prospect	53,170	66
Rolling Meadows	22,591	44
Hanover Park	32,895	23*
Palatine	39,253	91
Streamwood	31,197	40*
Schaumburg	68,586	148

* Plus some volunteer firefighters
Sources: Union Exhibit 20, Village Exhibit 5

Turning to the Village's additional proposed comparables, the Table indicates that Hanover Park and Streamwood are also quite small in comparison to Schaumburg and the stipulated comparables. Each has a full-time firefighter complement dwarfed by that of Schaumburg, and in contrast to all of the stipulated comparables, each is staffed in part by volunteers.⁹ For those reasons, the Arbitrator rejects Streamwood and Hanover Park as comparables.

Palatine's population is greater than that of Elk Grove Village, one of the stipulated comparables. Its full-time staff of firefighters (n = 91) fits within the range reflected across the stipulated comparables as well. Palatine is also just north of Schaumburg, underscoring its comparability on the local labor market criterion. The Union's objection to the inclusion of Palatine in the comparables pool is that its firefighters are not unionized. Despite that fact, Palatine still competes with Schaumburg to attract and retain firefighters. The employment package it offers is therefore likely to be competitive with that offered in Schaumburg. For all of those reasons, the Arbitrator accepts Palatine into the comparability pool.

⁹ Hanover Park has 29 volunteer firefighters; Streamwood has 15.

On the basis of the foregoing analysis the Arbitrator adopts the following jurisdictions for comparison purposes: Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hoffman Estates, Mt. Prospect, and Palatine.

ECONOMIC ISSUES

Economic Issue No. 1 - Pay Raises for Firefighters

As noted, this issue has been resolved between the parties themselves.

Economic Issue No. 2 - Pay Raises for Fire Lieutenants

This issue has also been resolved by the parties.

Economic Issue No. 3 - Pay Raises for Fire Lieutenants (Removal of Step Plan)¹⁰

Union Final Offer. The Union proposes the addition of the following sentence to the fire lieutenants' step pay plan:

Upon the promotion from firefighter or firefighter/paramedic, in any of the fiscal years of this contract, to lieutenant the employee will be paid at the rate of the lieutenant's rank commensurate with that employee's time in grade at the time of promotion.

The Union asserts that its proposal eliminates the problem that occurs when firefighters with less than five years of service are promoted to lieutenant and receive very small percentage increases under the current step system. For example, the Union notes, a four-year firefighter promoted to lieutenant would receive a pay increase of only \$254, and a three-year fighter would receive only \$540 upon promotion --- an increase of only one percent. The Union believes that such increases are inappropriately small, especially in view of the fact that when three and four-year firefighters work as acting lieutenants they receive an additional 7.5 percent above their normal rate of pay.

¹⁰ At the outset of these proceedings the Village took the position that this issue should be included with the pay raise issue for firefighters and fire lieutenants. Since the parties were able to settle those two issues, the Village does not now object to the Arbitrator deciding this issue on its own.

Village Final Offer. The Village's offer retains the step schedule that has been in existence for fire lieutenants since the parties' first collective bargaining agreement in 1987. Thus, the Village argues, it seeks merely to continue what the parties have voluntarily agreed to in the past. Under the current step schedule a firefighter promoted to lieutenant is placed at the step of the lieutenant's salary schedule that will provide a higher salary than that received just prior to the promotion. From that point, the lieutenant would advance to a higher step on the schedule every year until the top step was reached.

The Village believes the Union's final offer represents a dramatic departure from the status quo, pointing out that its adoption would result in salary increases of nearly 21 percent for a firefighter at Step 3 of the salary schedule who was promoted to lieutenant.

Discussion. Both parties raise valid points with regard to their respective positions. After review of them both in detail, however, the Arbitrator has decided to adopt the Village's final offer on this issue. First, it is an extension of the system the parties themselves included in their first contract and have retained in subsequent agreements for about ten years. The Arbitrator is very reluctant to endorse the Union's quantum departure from that voluntarily adopted system. Second, selecting the Union's offer on this issue would represent a marked deviation from the system in place for the Schaumburg Police Department and the Fire Command unit. If that pattern of internal consistency is to be broken, the parties themselves should be the ones to do it. The external comparables also support adoption of the Village's offer on this issue. Review of the applicable collective bargaining agreements reveals that none of those which include fire lieutenants provide that firefighters upon promotion would be placed at a step on the lieutenant's schedule in accordance with their years of service as a firefighter. Moreover, the external comparables generally do not provide promotion increases of such magnitude as those which would be realized were the Union's final offer to be accepted here. The sole exception is Elgin, where a step-three firefighter promoted to lieutenant after December, 1995 would realize an increase of 25 percent. That isolated example is not sufficient to justify adoption of the Union's final offer in its entirety.

There is quite likely another way to fix the low increase problem cited by the Union as justification for its final offer on this issue. Perhaps the parties can explore various approaches to that end during the next round of negotiations. In any event, the Arbitrator has concluded it would not be appropriate to adopt the Union's broad-brush approach here.

The Village's final offer on this issue is adopted.

Economic Issue No. 4 - Retroactivity

Village Final Offer. The Village proposes the following provision on this issue:

Employees covered by this Agreement who are still on the active payroll as of the beginning of the next payroll period immediately following issuance of Arbitrator Briggs' award shall receive a retroactive payment, which shall be based on the difference between the salary they received between May 1, 1996 and the beginning of said payroll period and the salary they would have received during the same period of time based on the salary schedules awarded for firefighters and lieutenants; provided, however, that any employee who dies or retires, including disability retirement, after May 1, 1996, but before this Agreement was ratified by both parties, shall also be eligible to receive retroactive pay based on the difference between the salary they received between May 1, 1996, and the date of death or retirement.

The Village notes that its offer tracks verbatim what the parties negotiated for their 1993-1996 agreement, with the obvious exception of the dates specified. Union witness Levin testified that implementation of the provision did not foster any grievances over retroactivity. Thus, the Village argues, its final offer on this issue should be adopted.

Union Final Offer. Here is the Union's final offer on retroactivity:

The increases in salaries for both firefighters and lieutenants and the increases in the paramedic stipend shall be retroactive to the effective date specified herein for employees still on the active payroll on the effective date of this Agreement, provided that any employee who retired after May 1, 1996 or after May 1, 1997 but before the effective date of this Agreement shall also be eligible to receive retroactive pay based on the hours worked between May 1, 1996 and the date of the Agreement. The retroactive payments will be based upon salary increases effective on May 1, 1996 and May 1, 1997. Payment shall be made on an hour-for-hour basis for all regular hours, including working out of classification hours, actually worked since May 1, 1996 as well as for all hours of paid leave and vacation, holiday pay or overtime hours between May 1, 1996 and the effective date of this Agreement.

The Union notes that the Village's final offer does not contemplate retroactive payments for paid time off, overtime, and other economic benefits based upon the hourly wage rate.¹¹ Furthermore, the Union argues, arbitration opinions and internal comparability data show the Village's offer on this issue to be unreasonable. External comparability data also support adoption of the Union's offer, it asserts.

Discussion. Absent compelling circumstances, the Arbitrator is generally reluctant to adopt contract language which departs from a contractual model formerly developed and agreed upon by the parties themselves. The foregoing discussion on the salary scale placement issue for newly-promoted lieutenants is illustrative. But the retroactivity issue involves circumstances which compel acceptance of the Union's final offer.

The concept of retroactivity in interest arbitration connotes placing employees in the same economic position they would have enjoyed had salary increases been implemented at the actual time of their "effective dates." Thus, had the 3.6% salary increase effective May 1, 1996 been implemented on that date, firefighters who worked overtime in that month would have received overtime pay based upon the higher rate. The same may be said for various forms of paid time off. The Village's final offer would strip firefighters and fire lieutenants of that incremental pay, essentially providing less than full retroactivity.

The above conclusion falls squarely within the bulk of published arbitral thought on this issue.¹² It also makes sense when considered against the backdrop of the parties' own negotiated language on overtime. In Article VII, Section 3 of their 1993-1996 collective bargaining agreement they embraced the concept that overtime hours are worth one and one-half times as much as regular, straight-time hours. If the straight-time rate is increased retroactive to May 1, 1996, the amount firefighters received for overtime hours worked should be adjusted now to reflect the new figure. Paying the new rate for straight time and the old one for overtime seems repugnant to the parties' meeting of the minds under Article VII, Section 3.

The Arbitrator accepts the Union's final offer on retroactivity.

¹¹ The Union acknowledged during the interest arbitration proceedings that if its holiday pay offer is accepted, holiday pay is not to be covered by any award on retroactivity (Union Brief, p. 14).

¹² See Village of Schaumburg, ISLRB Case No. S-MA-93-155 (Fleischli, 1994); Village of Arlington Heights, ISLRB Case No. S-MA-88-59 (Briggs, 1991); Village of Skokie, ISLRB Case No. S-MA-92-179 (Gundermann, 1993); and Elk Grove Village, ISLRB Case No. S-MA-96-86 (Kohn, 1997).

Economic Issue No. 5 - Paramedic Pay

Village Final Offer. The Village proposes to increase the paramedic stipend by 3.6% effective May 1, 1996, 3.6% effective May 1, 1997, and 3.5% effective May 1, 1998. Its final offer would result in the first paragraph of Article VIII, Section 4 being revised to read as follows:

Effective 5/1/96, \$2,636
Effective 5/1/97, \$2,731
Effective 5/1/98, \$2,827

The Village points out that in their last collective bargaining agreement the parties agreed to set forth the specific dollar amounts for the paramedic stipend. The Village believes that continuing to do so is important because it allows the parties to bargain over those amounts each time they are at the negotiations table. It opposes the inclusion of any language which would cause the paramedic stipend to rise automatically by the percentage amount of any salary increase.

Union Final Offer. The Union's final offer includes the indexing of all future paramedic increases on the basis of the percent salary increases received by firefighters. It notes that the current agreement provides for paramedic stipend increases "at the same percentage rate as the salary increases set forth in Section 1 above." The Union's final offer would remove the dollar amounts specified in Section 1, however. The Union notes that the current agreement was the first to add an indexing provision, and argues that it should not be removed without compelling reason.

Discussion. Both parties' final offers change the status quo on this issue, and neither party has presented sufficient reason to do so. The Village's offer would remove the indexing provision, which the parties jointly adopted when they negotiated their 1993-1996 agreement. That change seems significant, particularly since the negotiated indexing provision is so new. Moreover, there is no evidence in the record to demonstrate that the provision has caused the parties any problems -- administrative or otherwise. The Arbitrator is therefore reluctant to remove it through these proceedings.

The Union's final offer would change the current paramedic stipend provision too, but not so significantly. It would simply remove the specified dollar amounts and effective dates. Those data follow naturally from the current indexing provision, so their removal is more an administrative change than one of substance. Adoption of the Union's final offer, then, would modify the status quo only slightly. It would not, as the Village argues, deprive the parties of the opportunity to negotiate the

stipend each time they bargain toward a successor agreement. Under the Union's offer the parties would still be free to bargain over that issue as part of their salary negotiations. In the alternative, the Village is always free to propose that the two issues be considered separately again, as was the case in agreements negotiated prior to the one (i.e., 1993-1996) which set the current status quo. For all of the foregoing reasons the Arbitrator adopts the Union's final offer on the paramedic stipend issue.

Economic Issue No. 6 - Acting Out of Classification Pay

Village Final Offer. The Village proposes to retain the essence of the current Article VIII, Section 3 "without any substantive change."¹³ Its final offer is quoted here:

An employee who is assigned by the Village to the duties of a higher rated classification for more than four hours shall be paid an additional seven and one-half percent (7.5%) above his regular straight-time hourly rate of pay for all hours worked in said higher rated classification.

The Village notes that its final offer maintains the status quo. In contrast, the Village argues, the Union's proposal would result in out of classification pay ranging from more than double to nearly quadruple the amount currently earned by firefighters acting as lieutenants, depending upon the salary step occupied. It argues as well that acting lieutenants do not perform the full scope of lieutenant duties, that the internal comparability criterion does not support the Union's proposal, and that the external comparables don't either.

Union Final Offer. The Union proposes to insert the following paragraph in place of the current Out of Classification Pay provision (Article VIII, Section 3):

Effective May 1, 1996, an employee who is assigned by the Village to the duties of a higher rated classification for more than four hours shall be paid at the rate of a lieutenant's rank commensurate with the designated employee's grade for all hours worked in said higher rated classification.

The Union notes that each day, on the average, there are 2.5 firefighters working out of classification as lieutenants. It believes that its final offer provides a suitable

¹³ Village's brief, p. 36.

reward for employees required on a daily basis to perform lieutenant duties and to shoulder lieutenant responsibilities. The Union acknowledges that none of the external or internal collective bargaining agreements provide for direct movement to the same step on a higher rank's salary schedule, as does its final offer. However, the Union argues, Schaumburg firefighters have been burdened with the daily duties of acting lieutenants.

Discussion. Adoption of the Union's final offer on this issue would not only implement a radical departure from the negotiated status quo, but it would also create a contract provision unique among the external and internal comparables. The Union's offer contemplates paying a firefighter acting as a lieutenant at the same step on the lieutenants' salary schedule that he or she occupies on the firefighters' salary schedule. Such movement would result in very large salary differentials, as shown in Table 2:

TABLE 2

OUT OF CLASSIFICATION PAY UNDER UNION'S FINAL OFFER

<u>Step</u>	<u>Firefighter*</u>	<u>Lieutenant*</u>	<u>Increase</u>
1	\$32,984	\$41,851	26.9%
2	\$37,426	\$45,694	22.1%
3	\$41,271	\$49,892	20.1%
4	\$45,419	\$53,968	18.8%
5	\$50,095	\$57,980	15.7%

* Salary as of May 1, 1997

Source = The parties' final offers. (Note: the Union's final offer sets forth \$30,732 as the Step 1 firefighter salary effective May 1, 1997. That figure is the same as the May 1, 1996 salary, and is obviously in error. The Table therefore contains the higher figure (\$32,984) contained in the Village's final offer.)

The Arbitrator is not persuaded by Union's argument that the above increases are justified. Even though Schaumburg firefighters may serve as acting lieutenants very often, it is clear from the record that they are not called upon to perform the full range of lieutenant duties. For example, an acting lieutenant does not generally prepare written performance evaluations, does not attend command staff meetings

on a regular basis, and does not complete monthly training reports. Moreover, the Union's final offer circumvents the well-recognized principle of compensation that time in grade allows an incumbent to gain experience performing its duties. The parties obviously placed a value on that experience when they agreed on the stepwise progression embodied in both the firefighter and lieutenant salary schedules. Moving a Step 5 firefighter to Step 5 on the lieutenant's salary scale during temporary out of classification assignments would compensate that firefighter as if he or she had garnered four years' experience as a lieutenant. The Arbitrator does not believe such compensation is appropriate.

For all of the foregoing reasons the Arbitrator adopts the Village's final offer on the Out of Classification issue.

Economic Issues No. 7, 8 and 9 - Specialty Pay

Union Final Offer. The Union proposes to amend Article VIII (Salaries and Other Compensation) by adding the following new sections:

Section 5. Specialty Pay/FTO. Effective May 1, 1997, an employee assigned to be an FTO shall receive an additional stipend of \$100.00 per month.

Field Training Officer: Company officers shall be compensated as Field Training Officers when a candidate for the position of firefighter is assigned to his respective company for the duration of that candidate's probation.

Section 6. Specialty Pay/Paramedic Evaluator-Preceptor. Effective May 1, 1997, any employee assigned to be a paramedic evaluator-preceptor shall receive a stipend of \$100.00 per month.

The paramedics who are assigned as evaluators for probationary paramedics shall be compensated as Paramedic Evaluators for the duration of their assignment.

Section 7. Fire Prevention Inspector. Effective May 1, 1997, any employee assigned to be a fire prevention inspector shall receive a stipend of \$100.00 per month.

Firefighters and lieutenants shall be compensated as Fire Prevention Inspectors for the duration of their assignment in the Fire Prevention Bureau.

The Union believes the internal comparables (Fraternal Order of Police [FOP] and Metropolitan Alliance of Police [MAP] agreements)¹⁴ support adoption of its offer, as the police contract provides a specialty pay provisions for field training officers. In the Union's opinion, its proposals for Field Training Officer and Paramedic Evaluator-Preceptor pay are comparable to the police field training officer pay provision in that all three specialty assignments require the supervision and mentoring of persons in training. The Union feels that since FTO's and paramedic evaluators provide training and evaluation of employees, and since the Village has already agreed to compensate police officers who do the same, the former two special assignments deserve the same stipend as that received by police FTO's — \$1,200 per year in \$100 monthly payments.

As to Fire Prevention Inspectors, the Union underscores the importance of their duties in inspecting fire protection systems, sprinkler systems, and new developments for fire safety. The Union notes as well that three of the external comparables (Des Plaines, Arlington Heights and Hoffman Estates) provide specialty pay of one sort or another, and argues that the FTO's, Paramedic Evaluator-Preceptors and Fire Prevention Inspectors in Schaumburg deserve it also.

Finally, the Union asserts that the three specialty pay provisions it proposes should be treated as three separate economic issues in these interest arbitration proceedings.

Village Final Offer. The Village's final offer on this issue is to maintain the status quo of providing no specialty pay for FTO's, Paramedic Evaluator-Preceptors and Fire Prevention Inspectors. Furthermore, the Village argues that all three of the Union's specialty pay proposals should be treated as one single issue by the Arbitrator.

The Village believes that the Union's division of the specialty pay issue into three separate ones contributes to what has been termed the "narcotic effect" of interest arbitration. That is, minute fractionalization of issues in such proceedings might induce the parties to rely too much on interest arbitration and too little on voluntary collective bargaining between themselves.

When viewed as one issue, the Village asserts, there is no justification for granting the Union's specialty pay proposal. In support of that argument the Village notes that none of the external comparables provide specialty pay for fire lieutenants who oversee probationary firefighter training, none provide specialty pay for paramedic evaluators-preceptors, and only one (Arlington Heights) pays extra for fire prevention inspectors.

¹⁴ For 1993-1996 Schaumburg rank-and-file police officers were represented by the FOP; for 1996-1999 they are represented by MAP.

Discussion. Interest arbitration is supposed to be risky. It is supposed to be a last resort, only relied upon for resolution of future terms disputes when the parties themselves have exhausted all reasonable efforts to settle them at the bargaining table. Presumably for that reason, the Illinois legislature established an interest arbitration procedure which limits arbitral authority with respect to economic issues. We are authorized by statute only to adopt the final offer of one party or the other. If a general issue is divided into several parts, with each emerging into the interest arbitration arena separately, the arbitrator in effect has the ability to construct a contractual provision piece by piece. That is not the intent of final offer interest arbitration.

In the present case the Union's division of the specialty pay issue into three separate ones seems tortured. Essentially, the Union argues with respect to all three categories that those providing such services should be paid extra for them. The thrust of the Village's argument is that persons who perform the duties enveloped in the Union's proposals are already compensated appropriately. These general arguments apply to all three specialty pay categories advanced by the Union; thus, the outcome of the parties' dispute on each is quite likely to be identical. The Arbitrator concludes from that circumstance and from the fundamental purpose of interest arbitration, as highlighted in the foregoing paragraph, that the parties' specialty pay dispute should be considered one economic issue.

Table 3 on the following page has been constructed to reflect the contractual specialty pay arrangements across comparable jurisdictions.¹⁵ It is abundantly clear from the Table that there is virtually no support for the Union's specialty pay proposals in those municipalities. The Arbitrator notes that paramedic evaluators in Des Plaines receive \$550.00 for each training period, and that firefighters assigned as inspectors and as driver engineers receive enhanced pay packages as well. But those isolated examples are not reflective of the norm across the comparability grouping.

Moreover, there is little evidence in the record to suggest that the assignments included in the Union's specialty pay proposal have changed over the years. Union President Cocklan testified that fire lieutenants have been providing field training for new firefighters since he had been with the department -- i.e., for 24 years. The longevity of paramedic evaluator/preceptor duties in Schaumburg is equally impressive. The Arbitrator recognizes that documentation for paramedic training is more extensive now than it has been historically, but that fact alone does not justify a stipend of \$100 per month. Overall, the Union has not presented sufficient evidence to justify a change in such a well established status quo.

¹⁵ One exception is Palatine, where firefighters are not represented by a union for collective bargaining purposes.

TABLE 3
SPECIALTY PAY IN COMPARABLE JURISDICTIONS

<u>Community</u>	<u>Field T.O.</u>	<u>Paramedic E/P</u>	<u>F.P. Inspector</u>
Arlington Heights	no	no	no
Des Plaines	no	yes	no
Elgin	no	no	no
Elk Grove Village	no	no	no
Hoffman Estates	no	no	no
Mt. Prospect	no	no	no
Palatine	no	no	no
Schaumburg			
Village Offer	no	no	no
Union Offer	yes	yes	yes

Source: Collective bargaining agreements; the parties' briefs.

Turning to fire prevention inspectors, the evidence in the record suggests that the one fire lieutenant and two firefighters assigned to the Fire Prevention Bureau currently receive the economic fringe benefit package afforded to other 40-hour employees. Although they work approximately 20% less hours than do 24-hour shift personnel, fire prevention inspectors receive holidays, holiday pay, personal days, and overtime on the basis of 2080 hours instead of 2604. The Union's proposal for incremental compensation does not seem justified under those circumstances.

The Arbitrator has considered the Union's argument with regard to the Schaumburg police unit, and notes that police field training officers receive specialty pay in the exact same amount sought by the Union here. But the Union did not draw any further parallel between those police officers' training duties and the duties of field training officers in the Schaumburg fire service. Without such information the Arbitrator is not sufficiently informed to determine whether the latter should be brought into parity with the former.

On balance, the evidence in the record does not support adoption of the Union's

final offer on the specialty pay issue. The Village's final offer, which retains the status quo, is the more acceptable.

Economic Issue No. 10 - Holiday Pay

Union Final Offer. The Union proposes amending Article X, Section 1A of the agreement by the addition of the following provision:

Section 1A - Designation of Holidays. The following days shall be observed as holidays without loss of pay for employees assigned to 24-hour shifts:

- | | | |
|------|--|--|
| 1(a) | New Year's Day
Memorial Day
Independence Day
Easter | Labor Day
Thanksgiving Day
Christmas Day |
| 1(b) | New Year's Eve
Martin Luther King Day
Day after Thanksgiving | Veteran's Day
Christmas Eve
Good Friday |

Employees assigned to 24-hour shifts and who are on duty for any holiday listed in Section 1(a) will be credited with one (1) hour of pay for each hour worked. Employees assigned to 24-hour shifts and who are on duty for any holiday listed in Section 1(b) will be credited with .50 hours of pay for each hour worked. A holiday for the purposes of this Section shall be the 24-hour period commencing at 0000 on the calendar recognized as the traditional holiday.

The Union notes that its proposal has nothing to do with time off; rather, it is limited to paying employees additional money for working on holidays recognized by the Village. The Union points out as well that other Village employees, including police officers, dispatchers, community service officers and public works employees receive extra pay for working on holidays. The police officers receive 12 hours' additional pay or 12 hours of compensatory time off (CTO) for working on any of the 13 holidays. If their regular day off coincides with a holiday, they are credited with 8 hours' pay or 8 hours of CTO. In contrast, the Firefighters' Union does not seek payment for employees who do not work on holidays. It does not seek time and one-half pay for working on holidays either. It simply calls for one hour's pay for each hour worked on designated "Group 1(a)" holidays and one half-

hour of pay for each hour worked on "Group 1(b)" holidays. Moreover, under the Union's proposal employees would receive holiday pay only for those hours of a shift which actually occur on the holiday. And, the Union emphasizes, 40-hour employees in the Fire Department who work on holidays are paid double time for such work. Fire command and police command officers also receive holiday pay. The Union believes that such internal comparable data demonstrate "without a doubt" that its holiday pay proposal would not disrupt internal bargaining relationships in the Village. It notes that 24-hour firefighters are the only employees in the Village who do not receive holiday pay; thus, the Union argues, its proposal does not reflect a breakthrough.

The Union also argues that Arbitrator Archer's award involving these same parties does not support the Village's assertion that the Union traded holidays for "A" days. Archer denied the Union's grievance alleging that "A" days are paid leave and should be included as hours worked for overtime pay purposes. He stated specifically that "A days are not paid leave."

The Village benefits from having work reduction (i.e., "A") days, since they reduce its overtime liability. It is able to allocate such days to work cycles throughout the year. Without this system, employees would be working approximately 242 hours per month. Under FLSA regulations for a 28-day cycle, the employees are entitled to overtime for all hours after 212. Thus, work reduction days represent a significant overtime savings per month for the Village.

The Union asserts also that in 1982 the firefighters association (it did not yet have exclusive bargaining rights) did not ask for 12 "Kelly" days in exchange for their 11 holidays. The holidays were simply eliminated when the "Kelly" days were created. There is no indication in Arbitrator Archer's opinion that the firefighters traded holiday pay for the receipt of "Kelly" days or relinquished any claim to receiving holiday pay.

Over the last two rounds of negotiations, the Union notes, holiday pay has been increasingly granted across the external comparables. Both Hoffman Estates and Des Plaines have added such provisions in the six year period 1990-1996. In 1997 the Village of Arlington Heights added it. Thus, the Union argues, its proposal on holiday pay is supported by the external comparables.

The Union believes that the Village's refusal to grant the holiday pay benefit to fire department employees is yet another example of the unreasonable way it handled negotiations with this bargaining unit. The modest cost of granting the proposal (\$156,734 annually) is small indeed when compared to the Village's 1996 surplus of \$28 million.

Finally, the Union asserts, the Village's "compelling need" argument is outweighed by both the internal and external comparables, the need for equity, and the appropriateness of rewarding Schaumburg firefighters for good work.¹⁶

Village Position. The Village's final offer is to maintain the status quo of no holiday pay for 24-hour shift personnel. That status quo originated when the Association in 1992 urged the Village to trade A days for holidays. Then, during the 1986 negotiations for the parties' first formal collective bargaining agreement they agreed to add a 13th A day. Significantly, the Village notes, that first contract did not contain a holiday pay provision.

In reopener negotiations for the 1989-1990 fiscal year the Union sought some holiday pay and personal days, among other things. The parties ultimately agreed to a 4% salary increase, consistent with what had been negotiated for the police. The Union then dropped its holiday pay and personal days proposals. Then in the negotiations leading to the parties' last collective bargaining agreement (May 1, 1993 through April 30, 1996) the number of A days was increased from 13 to 13.5 by scheduling one A day every ninth shift. Once again, the parties did not agree to include holiday pay. The Village therefore contends that the parties themselves have established a trade-off relationship between A days and holidays, and that the Arbitrator should not disturb it.

The Village also argues that there is no justification for the Union's holiday pay proposal because it would result in a 2.5% increase in compensation. Coupled with the already agreed upon salary increase of 3.6%, the Village feels that the overall increase (i.e., > 6%) would be excessive. That is especially true, notes the Village, given the fact that Schaumburg firefighters are among the highest paid across the external comparables.

The fire command collective bargaining agreement, which the Village believes is the only relevant internal comparable, does not provide holiday pay for work on designated holidays. These two employee groups are the only ones in the Village who work 24-hour shifts. And, the Village points out, the salary increases agreed to for firefighters and fire lieutenants parallel those negotiated for the Fire Command Association for both 1996-1997 and 1997-1998. Adoption of the Union's final offer on holiday pay would create a gigantic disparity between these two groups of similarly situated employees, the Village argues.

The Village notes as well that the only Village employees who receive additional

¹⁶ In support of this last point, the Union cites the Department's achievement of the coveted ISO 2 insurance class rating and the fact that according to recent survey results 99% of the surveyed Schaumburg residents rated the Department as excellent.

holiday pay are those scheduled to work forty hours per week. In the case of police officers, holiday pay has been part of their collective bargaining agreement for more than a decade. In contrast, the voluntarily adopted firefighter/fire lieutenant collective bargaining agreements between 1986 and 1996 have not contained such a provision. In other words, the parties have agreed from day one that 40-hour personnel were entitled to receive additional pay for working on holidays and 24-hour personnel were not.

Discussion. The Arbitrator is persuaded by the parties' own bargaining history that adoption of the Union's proposal in these proceedings would represent a quantum leap from the status quo. First, it is clear from the record that A days were adopted for firefighters and fire lieutenants in 1982 at the Association's request. According to Arbitrator Edward Archer's 1991 award involving these same parties, the Association received those work reduction days as a trade-off for "holidays or holiday pay." With the advent of the formal collective bargaining process in 1986 the parties added another A day but did not negotiate any holiday pay provision for 24-hour employees. In reopener negotiations the Union unsuccessfully attempted to obtain some holiday pay. And the following agreement (1993-1996) did not contain a holiday pay provision either. The Arbitrator therefore concludes that over the past fifteen years or so the Village and its firefighters have mutually agreed to exclude holiday pay from the compensation package of 24-hour employees. And significantly, for ten of those years the firefighters have been in a formal collective bargaining relationship with the Village. They have apparently sought holiday pay only once at the bargaining table, and even that time did not bargain the issue to impasse. These facts suggest quite strongly that the overall compensation package must have been acceptable to the Union without a holiday pay provision. At this late juncture in the parties' bargaining history, then, it does not seem appropriate to add through arbitration a provision which has not been a subject of significant dispute between the parties in the past.

Turning to the internal comparables, the Arbitrator recognizes that many Village employees receive additional pay for working on holidays. But it is important to recognize that all such employees are scheduled to work forty hours per week.¹⁷ That distinction has apparently been significant to the parties as well, for as noted above 24-hour employees have never received incremental compensation for working on holidays. They currently receive 13.5 A days for which they are paid but do not work. The status quo relationship between the compensation packages of 24-hour and 40-hour employees in the Village of Schaumburg was established many years ago and it has not changed since. Furthermore, it has survived the voluntary collective bargaining arena a few times since its implementation. Upsetting that relationship through third-party fiat does not seem appropriate.

¹⁷ Most work eight hours per day, five days per week. Some work four ten-hour days.

There is some support for the Union's final offer among the external comparables, as illustrated by Table 4:

TABLE 4
HOLIDAY PAY IN COMPARABLE JURISDICTIONS

<u>Community</u>	<u>Holiday Pay</u>	<u>No. of Holidays</u>	<u>Additional Pay</u>
Arlington Heights	yes	2, 4, 6*	n/a
Des Plaines	yes	10.5	4 hrs. straight time per holiday
Elgin	yes	8	straight time for hours worked
Elk Grove Village	yes	7	straight time for hours worked
Hoffman Estates	yes	4	6 hrs. straight time per holiday
Mt. Prospect	yes	7	27 hrs. straight time for each holiday worked; 15 for those not worked
Palatine	no	n/a	n/a
Schaumburg			
Village Offer	no	n/a	n/a
Union Offer	yes	13	straight time for hours worked on 1(a) holidays; 1/2 time for hours worked on 1(b) holidays

* 1996-1997, 1997-1998, and 1998-1999, respectively.

Sources: Collective bargaining agreements; Village Exhibit 56; Union Exhibit 4; Union's December 15, 1997 submission.

Even though six of the seven comparable communities provide some sort of incremental pay for 24-hour firefighters who work on designated holidays, it is clear

from Table 4 that the Union's offer here would place Schaumburg firefighters and fire lieutenants at the top of the heap with respect to holiday pay. They would receive an additional hour's pay for each hour worked on the seven holidays designated as "1(a)" and additional half-time pay for hours worked on each of the six "1(b)" holidays. Thus, the Union's proposal does not merely take a step in what it considers the right direction, it advances Schaumburg firefighters and fire lieutenants from the very back to the very front of the parade. Such a giant stride forward would not likely occur in free collective bargaining even if the Village were to agree in principle that a holiday pay provision is appropriate for its 24-hour fire service employees. Accordingly, the Arbitrator is not inclined to adopt it.

The magnitude of the Union's proposal is highlighted by its cost to the Village. According to Village Exhibit 57, which appears to have been reasonably constructed, the Union's holiday pay offer is the equivalent of about a 2.5 percent increase in overall compensation. That amount seems inordinately large in view of the 3.6 percent increase the parties have adopted for the bulk of the contract's duration.

The Village of Schaumburg has not claimed an inability to pay in this case. It is in sound financial condition and could well afford to absorb the cost of the Union's holiday proposal. But that is not the standard upon which this issue should be decided. My first consideration is toward what the parties themselves would have negotiated had they not resorted to this interest arbitration procedure. As noted earlier, I do not believe that even if the Village had agreed to a holiday pay provision it would have come even close to what the Union has advanced as its final offer. Furthermore, neither the internal comparables nor the external comparability pool support a holiday pay provision so far removed from the status quo. For all of these reasons the Village's final offer on this issue is adopted.

Economic Issue No. 11 - Personal Days

Union Final Offer. The Union's final offer is quoted below:

Beginning May 1, 1997, employees who are assigned to 24-hour shifts shall receive an additional day off with pay, scheduled by seniority at the time of his furlough selection for 1997, and continuing to be scheduled in this method for all succeeding years.

The Union notes that police officers receive two personal days off per year, and that other Village employees who work 40-hour schedules receive 48 hours of personal time, in addition to holidays and vacation time. In contrast, the Union asserts, firefighters on 24-hour shifts work more hours per week than such employees but

receive no personal days off. Excluding vacations, 24-hour firefighters are scheduled to work about 2,595 hours per year (2912 hours minus the 13.5 A days), while police officers are scheduled for 2,080. The Union argues that the difference between these two -- about 500 hours per year -- certainly justifies its proposal for but one personal day. The Union also notes that among the external comparables Des Plaines and Mount Prospect firefighters receive personal days, and that Elgin firefighters recently were awarded an increase in the number of Kelly days through interest arbitration. Thus, the Union argues, both the internal and external comparables justify adoption of its final offer on this issue.

Village Final Offer. The Village's final offer is to maintain the status quo of no personal days for 24-hour shift personnel. It notes that these employees have never had such a benefit in Schaumburg, and that the 24-hour personnel represented by the Command Association do not have it either. Thus, the Village asserts, the internal comparability evidence for similarly situated employees (i.e., 24-hour shift personnel) supports its final offer.

The Village also points to the parties' own bargaining history, noting that in over a decade of voluntary negotiations spanning three separate contracts the parties have recognized the distinction between 24-hour and 40-hour employees. The former do not receive personal days; the latter do. Since the circumstances giving rise to that relationship have not changed, the Village maintains, the Arbitrator should not disturb it.

The Village asserts as well that the external comparables do not support adoption of the Union's final offer.

Discussion. It is true that adoption of the Union's final offer would break new ground in the parties' bargaining relationship. It does not appear from the record that they have spent a great deal of time in prior rounds of bargaining discussing this issue. Clearly, they have never agreed to provide 24-hour personnel with personal days off. Again, it is important to recognize that the parties themselves have defined a significant distinction between 24-hour and 40-hour employees. In over ten years of formal negotiations they have never once embraced the notion of personal days for the former group, while they have consistently done so for the latter. That consistent pattern should not be broken in interest arbitration unless there is compelling reason to do so.

Turning to the external comparables, four of the seven (Arlington Heights, Elgin, Elk Grove Village and Hoffman Estates) do not provide 24-hour employees with personal days off. The remaining three (Des Plaines, Mt. Prospect and Palatine) do

offer personal days, but two of them are encumbered with limitations. In Des Plaines, firefighters accrue one personal day after 13 years of service and two after 20 years of service. That provision differs significantly from the Union's final offer here, which would grant one personal day to each and every firefighter and fire lieutenant. And in Palatine, firefighters must work an entire year without having an accident in order to qualify for a personal day.

Another way to view the parties' respective proposals on this issue is to examine the total amount of scheduled time off across the comparable jurisdictions. Table 5 has been constructed for that purpose:

TABLE 5
SCHEDULED TIME OFF (HOURS) ACROSS THE COMPARABILITY POOL
(As of May, 1996)

<u>Community</u>	<u>Work Reduction</u>	<u>Holiday</u>	<u>Personal</u>	<u>Total</u>
Arlington Heights	324	0	0	324
Des Plaines	144	120	24	288
Elgin	244	0	0	244
Elk Grove Village	0	208	0	208
Hoffman Estates	288	0	0	288
Mt. Prospect	324	0	48	372
Palatine	144	144	24	324
Avg. Excl. Schaumburg	210	67	14	292
Schaumburg	324	0	0	324

Source: Collective bargaining agreements; Village Exhibit 63.

As can be seen from the Table, even though Schaumburg 24-hour shift personnel do not currently have the benefit of any personal days off, their total scheduled time off places them only behind Mt. Prospect on that dimension.

The Union argues that work reduction hours do not constitute paid time off; rather, the Union asserts, they are simply days on which employees do not work. Be that as it may, the fact remains that were it not for the 13.5 A days enjoyed by Schaumburg

24-hour firefighters, they would be working 13.5 additional days per year without a corresponding pay increase. It is true that they might receive holiday pay or some other benefit instead, but their overall bundle of time off with pay is very competitive with that received by their counterparts in comparable jurisdictions.

For all of the foregoing reasons the Arbitrator sees no compelling reason to depart from the parties' longstanding status quo on this issue. The Village's final offer is therefore adopted.

Economic Issue No. 12 - Sick Leave Incentive

The parties have reached a tentative agreement on this issue.

Economic Issue No. 13 - Funeral Leave

Union Final Offer. The Union proposes the addition of the word "grandchild" to the definition of "immediate family" currently appearing in Article XII, Section 4(a) of the collective bargaining agreement. It notes that the police command agreement and police rank-and-file agreement include grandchildren in their respective definitions. The fact that firefighters work 24-hour shifts should not matter on this issue, the Union asserts, because the status quo already provides that 24-hour employees get leave without loss of pay, not to exceed two days, in case of the death of a "parent, brother, sister, child, spouse, grandparent or great grandparent." Furthermore, the Union notes, the death of a grandchild living in the employee's household or dependent upon the employee's care would qualify the employee for such leave under Section 4(b), but if neither of those two conditions were met, the employee would not qualify.

Besides arguing that the Village's position on this issue exhibits callous disregard for the critical needs of families during times of bereavement and denies a benefit that has been given to other Village employees, the Union asserts that the external comparables do not support the Village's position either. The Union points to Arlington Heights, Elk Grove Village, and Hoffman Estates in support of that assertion.¹⁸

¹⁸The Union also claimed in its Posthearing Brief at p. 37 that grandchildren are included in Mt. Prospect's definition of "immediate family" for funeral leave purposes. That assertion conflicts with information contained in Village Exhibit 63, which shows that Mt. Prospect does not include grandchildren in its definition of "immediate family." The information provided in the written agreement between the Mt. Prospect Firefighters' Wage Committee and the Village of Mt. Prospect does not resolve this conflict, for it does not address funeral leave at all.

Village Final Offer. The Village's final offer is to retain the present Article XII (Leaves of Absence), Section 4 with no changes. It points to the first three collective bargaining agreements between the parties, reached voluntarily, and notes that none of them included "grandchild" in their respective definitions of "immediate family." The Village notes in addition that neither its contract with the Fire Command Association nor the Personnel Manual covering unrepresented employees includes "grandchild" for that purpose. While the FOP and MAP contracts covering police command officers and rank-and-file police officers, respectively, both provide funeral leave for "grandchildren, the Village notes, neither includes "great grandparent" in the definition of "immediate family" as does the present firefighter/fire lieutenant contract.

The Village believes that employees covered by this Award could attend a grandchild's funeral without loss of pay by exercising a duty trade or using vacation time. It argues as well that with a work reduction day every ninth shift and a work schedule of 24 hours on and 48 hours off, firefighters and fire lieutenants would more likely than not be able to attend a grandchild's funeral without missing work.

Discussion. The Village has already agreed voluntarily to include grandchildren in its definition of "immediate family" for funeral leave purposes in two of its collective bargaining agreements (the MAP rank-and-file police contract and the FOP police command contract). It already provides up to two days' funeral leave for a 24-hour firefighter and fire lieutenant whose brother, sister, child, spouse, grandparent or great grandparent dies. Thus, the 24-hour nature of their work schedules is obviously not a deterrent to granting them funeral leave.

Moreover, the addition of "grandchild" to the list would not be likely to increase the Village's liability very much. The chances of an employee's grandchild passing away are significantly lower than those of the employee losing a grandparent, great grandparent, brother, sister or spouse, all of whom would be much older than his or her grandchild.

There is mixed support across the external comparables for the Union's final offer on this issue as well.

It seems reasonable to conclude from the above discussion that the parties themselves might very likely have reached agreement on this issue at the bargaining table, had they not felt compelled to resort to interest arbitration. The Union's final offer is not far astray from the status quo either. For all of the foregoing reasons, the Arbitrator therefore adopts it.

Economic Issue No. 14 - Witness Leave

The parties have reached a tentative agreement on this issue.

Economic Issue No. 15 - Minimum Staffing

The Union has withdrawn its final offer on this issue.

Economic Issues No. 16 and 17 - Quartermaster Maintenance Allowance.

Village Final Offer. The Village's final offer is quoted here:

Section 4. Quartermaster System and Maintenance Allowance. The quartermaster system with respect to the provision of uniforms and related equipment shall continue for the term of this Agreement. Effective May 1, 1996, the Village shall provide each firefighter with an annual maintenance allowance of \$375 (pro rated for employees employed less than 12 full months). Effective May 1, 1997, said allowance shall be increased to \$400; effective May 1, 1998, said allowance shall be increased to \$425. Said allowance shall be paid on the first payday in June of each year.

The Village believes the Quartermaster Maintenance Allowance question as it applies to 24-hour and 40-hour employees should be treated as a single issue. The reasons it advances for that position are the same as those it raised with regard to the specialty pay question (see p. 16 of this Opinion). Accordingly, they will not be repeated here.

As for the merits of its position, the Village notes that while the Union's final offer not only includes dollar amounts for the maintenance allowance, it also would require that the Village "continue to provide the same quantity and substantially the same type of clothing and equipment as is currently provided to each employee covered by (this) Agreement." The Village feels that such a provision would unduly restrict it from making appropriate changes to the quantity and type of equipment it provides. Thus, the Village argues, the Arbitrator has no jurisdiction to award the Union's final offer on this issue because doing so is prohibited by Section 14(i) of the IPLRA:

In the case of firefighter, and fire department or fire district paramedic matters, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following matters: . . . ii) The type of equipment (other than uniforms and firefighter turnout gear) issued or used . . . ; provided, however, nothing herein shall preclude an arbitration decision regarding equipment levels if such a decision is based on a finding that the equipment considerations in a specific work assignment involve a serious risk to the safety of a firefighter beyond that which is inherent in the normal performance of firefighter duties. . . .

The Union presented no evidence to suggest that its final offer addresses itself to the above safety-related exception. Thus, the Village asserts, since the Union's final offer would lock in concrete the type of equipment used during the three-year term of the contract, the Arbitrator has no jurisdiction to rule on this issue.

Assuming for the sake of argument that the Arbitrator asserts jurisdiction, the Village believes its final offer should be adopted. First, it notes that the Union did not advance any evidence to support the insertion of a provision governing the type and quantity of clothing and equipment provided under the quartermaster system. Moreover, such a provision would be repugnant to Article XVII (Rights of Village), which confirms the Village's right to "determine the type and kind of uniforms and equipment to be used." The Village also points out that the Union's final offer disturbs the longstanding negotiated policy of paying all bargaining unit employees the same maintenance allowance. The Village notes in addition that the external comparables support acceptance of its final offer on this issue.

Union Final Offer. The Union's final offer separates the quartermaster question into two separate issues -- one for 24-hour shift employees and one for 40-hour employees. The Union believes that 40-hour employees must meet a higher personal appearance test, as they are primarily fire inspectors and must visit public and private buildings within the jurisdiction of the fire service. Their uniforms consist of white shirts, dress slacks, black socks and black shoes. They must be dry-cleaned on a regular basis. The Union argues that the Village's proposal does not address that element of the quartermaster system as it applies to 40-hour employees. Thus, the Union asserts, giving 40-hour employees the same allowance as 24-hour employees does not satisfy the need for daily and regular dry cleaning, which is more expensive than simple laundering.

The Union's final offer for 24-hour shift employees (Economic Issue No. 16) states:

Article XV, Section 4 shall be amended by adding a second paragraphs follows: Effective with the ratification of this Agreement, the Village will continue to provide the same quantity and substantially the same type of clothing and equipment as is currently provided to each employee covered by this Agreement. Effective May 1, 1996, as an ongoing measure to maintain clothing and equipment in a safe and effective state of performance, the Village will provide each employee assigned to a fire company an annual maintenance allowance of \$400.00.

The Union notes that its offer for shift employees would cause the Village to pay exactly the same amount to each firefighter over the three-year term of the Agreement (i.e., \$1200) as it would under its own offer. The Union argues, however, that its final offer is closer to the current fire command maintenance allowance of \$425 effective May 1, 1996 and \$450 effective May 1, 1997. The Union asserts that the fire command internal comparable is relevant because the uniforms for battalion chiefs, captains, lieutenants and firefighters engaged in shift work are similar, except that firefighters' and fire lieutenants' uniforms are more likely to become soiled from being exposed to the elements at a fire scene.

The Union's final offer regarding the quartermaster maintenance allowance for 40-hour employees is quoted below:

Article XV, Section 4 shall be amended by removing the second and third sentences of the first paragraph and replacing them with the following: Effective May 1, 1996, firefighters and lieutenants who are assigned to a 40-hour work week schedule, i.e. Fire Prevention Inspectors and Training Division Coordinators, shall be provided with an annual maintenance allowance of \$550 (pro rated for employees whose assignment to Fire Prevention Inspector is less than twelve (12) full months).

As explained in a preceding paragraph, the Union believes that 40-hour employees incur greater uniform cleaning expenses than do shift employees, thereby justifying a higher maintenance allowance.

Discussion. Before addressing the merits of the parties' respective arguments on the quartermaster maintenance allowance issue, it is necessary to determine the procedural question regarding whether 24-hour shift employees and 40-hour employees should be lumped into a single or separate issues. The Village

believes they should be addressed as one issue; the Union asserts that due to differences in the uniform and equipment needs of the two employee groups they should be treated separately. The parties' arguments in that regard have caused the Arbitrator to wonder how the matter is treated across the comparables. Have employers and unions in those municipalities treated both sets of employees under the same contract provision, or have they dealt with them separately? Table 6 sheds light on that question:

TABLE 6
UNIFORM PURCHASE/MAINTENANCE SYSTEMS
FOR 24-HOUR AND 40-HOUR EMPLOYEES
IN THE COMPARABLE JURISDICTIONS

<u>Community</u>	<u>Qtrmstr. System</u>	<u>Mtce. Allow.</u>	<u>Separate Clauses</u>
Arlington Heights	yes	\$100/yr	no
Des Plaines	no	\$550 - 24 hr* \$600 - 40 hr*	yes
Elgin	yes	\$200/yr	no
Elk Grove Village	yes	none	no
Hoffman Estates	yes	\$100/yr	no
Mt. Prospect	no	\$450/yr*	no
Palatine	yes	none	no
Schaumburg			
Village Offer	yes	\$375, \$400, \$425	no
Union Offer	yes	\$400 - 24 hr \$550 - 40 hr	yes

* No maintenance allowance. Money provided for uniform purchases.
Sources: Collective bargaining agreements; Village Exhibit 66.

As is readily evident from the Table, in only one of the comparable jurisdictions (Des Plaines) have the parties seen the need to treat 24-hour and 40-hour employees differently as regards uniforms. And even there, the negotiated uniform purchase differential is only fifty dollars per year. The Arbitrator concludes from these data

that separating the quartermaster maintenance allowance into two separate issues for the purpose of this proceeding is not appropriate. The parties in the vast majority of comparable jurisdictions have obviously not done so; accordingly, it seems artificial and tortured to do so here.

Table 6 also reveals that Schaumburg 24-hour and 40-hour employees are well-treated already as to the uniform issue. Their uniforms are provided free of charge through a quartermaster system, and they still receive what appears to be a generous annual maintenance allowance. Indeed, the next highest maintenance allowance under quartermaster systems found among the comparability pool is in Elgin (\$200/yr), and even at its very lowest level (\$375) the Village's final offer is a great deal higher. There is simply no support among the external comparables for acceptance of the Union's final offer.

The Union's proposed insertion of a sentence guaranteeing "the same quantity and substantially the same type of clothing and equipment as is currently provided" also does not appear to be justified. First, there is no evidence in the record to suggest that the Village has in the past attempted to cut either the quantity or quality of the uniforms it provides to members of the fire service bargaining unit. Second, the addition of such language might foster frivolous grievances. For example, an employee who prefers a raglan sleeve or box pleat in shirts could grieve over the fact that a new-issue shirt did not have them, claiming that it was not "substantially the same type" of shirt as the old ones.

The Union also argues that one of the internal comparables --- the fire command unit --- supports adoption of its final offer. The Union is correct in part, at least to the extent its offer covers 24-hour personnel. The maintenance allowance in the fire command unit is \$425 effective May 1, 1996 and \$450 effective May 1, 1997. Those figures are closer to the Union's proposed \$400 for each year than they are to the Village's proposed \$375 and \$400. But it is important to note that the Village's offer would raise the maintenance allowance to \$425 effective May 1, 1998, thereby providing some catch-up. Even more significantly, however, the overwhelming bulk of the external comparables provide strong support for adoption of the Village's final offer on this issue.

The Arbitrator concludes largely from the external comparability data that the Village's final offer on the quartermaster maintenance allowance issue is the more appropriate. Accordingly, there is little need to address the Village's argument concerning the jurisdictional aspect of this issue. Suffice it to say that the Arbitrator interpreted the Union's final offer within the context of its arguments concerning uniforms. That is, I did not regard the Union's offer as being directed toward any type of equipment beyond "uniforms and firefighter turnout gear" per the scope of the IPLRA. Hence, I did not find the Village's jurisdictional argument to be

persuasive.

The final offer of the Village on this issue is adopted.

Economic Issue No. 18 - Work Cycle for Shift Employees

Village Final Offer. The Village's final offer would add the following as a new second paragraph to Article VII, Section 2 (Normal Work Cycle):

Effective as soon as practicable after the issuance of Arbitrator Briggs' award, the normal work cycle shall be changed to 27 days, with one "A" day (one 24-hour shift off) being scheduled off during each 27-day work cycle.

In the negotiations for the parties' 1993-1996 collective bargaining agreement, the discussions over hours of work and "A" days continued until the very end. The Village asserts that when agreement was reached during mediation to increase the number of "A" days from 13 to 13.5, the Village had wanted to make that increase contingent upon changing the work cycle to 27 days so the Village would not incur any overtime pay liability as a result of a firefighter working on a regularly scheduled shift. The Union did not agree, reportedly because it was "very late in the day" and it "would not entertain it at that juncture . . ."¹⁹ The Village dropped its demand but put the Union on notice that the 27-day work cycle would be an issue in the next round of negotiations.

The Village believes that with one "A" day every nine shifts, as is the parties' current arrangement, there is no justification for having to pay any additional Fair Labor Standards Act (FLSA) overtime. The Village notes that under the FLSA a firefighter's entitlement to overtime depends upon the number of hours worked within the defined work cycle. For firefighters, that cycle can vary from seven days to a maximum of 28 days. The threshold for overtime pay ranges from 53 hours for a 7-day work cycle to 212 hours for a 28-day cycle. For a 27-day work cycle the overtime pay threshold is 204 hours.

The Village notes that reducing the work cycle from 28 to 27 days would mean an occurrence of one "A" day every work cycle. Thus, a firefighter who worked all eight shifts in the new cycle would work a total of 192 hours and, therefore, would not be eligible for overtime pay as part of regularly scheduled shifts. Maintaining the current 28-day cycle causes the Village to incur FLSA overtime liability when an

¹⁹ Quoted from the testimony of Village Counsel R. Theodore Clark (Tr. 435).

employee works a ninth shift in the cycle.²⁰

The Village argues that Schaumburg firefighters and fire lieutenants are treated as favorably as their counterparts in any of the comparable jurisdictions in terms of work reduction days. It notes as well that the whole concept of work reduction days is to reduce a municipality's FLSA overtime liability. Thus, the Village asserts, it makes no sense to retain the 28-day work cycle.

The Village feels that its final offer on this issue is further justified by the fact that it would not be retroactive to May 1, 1996. If selected, it would not be implemented until the issuance of the Arbitrator's award.

Union Final Offer. The Union's final offer on this issue would retain the status quo. It notes that the 28-day work cycle has been in effect for the past 24 years in the Schaumburg fire service. It has been maintained by the parties over the terms of three collective bargaining agreements. The Union points out as well that the Village's offer fails to modify the references to a 28-day work cycle found in the second and third sentences of the existing paragraph of Article VII (Hours of Work and Overtime), Section 2 and the overtime eligibility requirements of Section 3. Such inconsistency, the Union argues, is reason enough to deny the Village's attempt at such a breakthrough.

The Union also argues that acceptance of the Village's final offer would result in a loss of 12 overtime hours for shift employees. This would occur, the Union posits, because under a 27-day cycle the FLSA overtime pay threshold is 204 hours, but for employees who work eight 24-hour duty days in a cycle the current contract provides an overtime threshold of 192 hours.

The Village's quid pro quo argument regarding the last round of negotiations is bogus, the Union asserts. It argues that the addition of one-half an "A" day (from 13 to 13.5) hardly compensates for the loss of 12 overtime hours in each cycle when employees are scheduled to work only eight 24-hour duty days.

Discussion. The Union's position with regard to maintaining the status quo is very strong. For over two decades 24-hour shift employees in the Schaumburg Fire Department have worked a 28-day cycle. The parties have re-

²⁰ In a 28-day cycle, two of the three shifts work eight shifts and have one shift scheduled as an "A" day; the remaining shift works nine shifts and has one shift scheduled as an "A" day. Employees in this latter group qualify for FLSA overtime pay because their total time worked would be considered 216 hours --- four hours over the 212-hour FLSA threshold for employees on a 28-day work cycle.

embraced that work cycle over three different rounds of formal collective bargaining, and the Village's argument concerning the avoidance of a relatively small amount of FLSA overtime liability does not seem compelling. It has apparently lived with that liability for some time now, and there is no evidence that it has been inordinately burdensome.

The Village's quid pro pro argument is not very persuasive either. While the parties agreed in good faith during their last round of bargaining to increase the number of "A" days from 13 to 13.5, they did not agree to reduce the 28-day work cycle to 27 days. The Village attempted to gain the Union's acceptance of such a provision, but the Union did not grant it. Thus, the Village voluntarily agreed to retain the 28-day work cycle. It notified the Union that it would raise the issue again in subsequent bargaining, but such notification and the bargaining table discussions which led to it do not constitute a quid pro quo in the ordinary meaning of the term.

The Arbitrator has reviewed the relevant labor agreements from comparable jurisdictions. The most common work cycle among them for 24-hour employees appears to be 28 days, though there are isolated examples of shorter ones (Arlington Heights - 27 days; Hoffman Estates - 26 days). On balance, there is insufficient justification from the comparability pool to support adoption of the Village's final offer on this issue.

The Union's final offer on the "Work Cycle for Shift Employees" issue is hereby adopted.

Economic Issue No. 19 - Compensatory Time

Village Final Offer. The Village proposes a revision to the current Article VII, Section 7, by the addition of the following new paragraph:

Effective the first pay period following issuance of Arbitrator Briggs' award, employees may not elect to be granted compensatory time in lieu of pay for work beyond their normally scheduled hours of work but rather shall be paid for such time at their applicable hourly rate for such work. Employees who have earned but unused compensatory time as of the first pay period following issuance of Arbitrator Briggs' award shall be retained and used and/or paid in accordance with the provisions of the first paragraph of this Section.

The Village seeks by its final offer to pay employees at their applicable hourly rate for any hours worked beyond their normally scheduled hours, rather than allow the accumulation of compensatory time off. Schaumburg firefighters and fire lieutenants have enough time off already, the Village argues, so there is no need for any more. Besides, the Village notes, it is administratively more feasible to pay for the extra hours worked than it is to find a way to schedule it as time off later.

The Village readily admits that compensatory time off provisions are not unusual in firefighter contracts; however, it asserts, there is not the same need for it in Schaumburg as there is in other jurisdictions because of the duty trade flexibility, the number of "A" days, and the liberal vacation plan available to Schaumburg firefighters and fire lieutenants.

Union Final Offer. The Union's final offer is to maintain the status quo on this issue. It notes that the compensatory time off provision has been in the parties' collective bargaining agreements since 1986 and is a major feature of their negotiated overtime provisions. The Union further asserts that many employees, such as senior ones at the maximum pay levels, may desire more time away from work to be with their families or to pursue other interests in anticipation of retirement. Thus, the Union opines, this important benefit should not be removed from the contract without thorough discussion at the bargaining table.

The Union notes additionally that none of the contracts in comparable communities contain a provision barring the accumulation of compensatory time off. As for the internal comparables, the Union underscores the fact that Village policy provides compensatory time off for all employees, the police collective bargaining agreement provides for it as an option to pay, and so does the police command unit contract. Thus, the Union argues, there is no justification for adopting the Village's final offer on this issue.

Discussion. The Union's position is strong on this issue. Compensatory time off is an important matter for firefighters, many of whom have taken advantage of the 24 on/48 off lifestyle to develop extracurricular interests. The ability to accumulate compensatory time off quite likely enhances their ability to do so. Such an important benefit should not be tossed away in interest arbitration simply because an employer thinks employees have adequate time off already and it would be easier to administer a pay system for the extra hours worked.

The internal comparables support adoption of the Union's final offer as well. The Village has seen fit to retain a compensatory time off provision for its police

officers, for its police command officers, and for all of its other employees. Absent compelling justification there is no reason to take such a provision away from its firefighters and fire lieutenants.

The Union's final offer is adopted on this issue.

Economic Issue No. 20 - Severance Pay

This issue has been resolved, as the Village withdrew its final offer at the May 16, 1997 interest arbitration hearing.

Economic Issue No. 21 - Promotions

Union Final Offer. The Union's final offer on this issue would amend Article VIII (Salaries and Other Compensation) with the addition of the following new Section:

Section 6. When the cumulative assigned hours of work by any employee or number of employees in a position or rank senior to that which is normally held by such employee or employees has exceeded 1300 in a fiscal year, excluding assignments as result of any duty related illness, injury or temporary occupational disability, the Fire Chief will promote a firefighter to the rank of lieutenant from the current eligibility list as posted by the Board of Police and Fire Commissioners of Schaumburg, within a 30 day period of surpassing the accumulation of 1300 hours of work in higher rated classifications.

The Union is disturbed by the fact that acting lieutenants do not receive any additional training. It is only after they are formally promoted that they receive training in management, tactics and strategy, and principles of fire prevention. Thus, the Union asserts, the high number of firefighters acting out of rank may be inadequately trained.

The Union also believes it is inappropriate for the Village to use firefighters as acting lieutenants excessively because they are receiving salaries only 7.5 percent above their normal rate of pay. Instead of hiring back officers to replace officers, the department relies on firefighters to act out of grade. Such individuals have all of the responsibilities of officers, but lack the proper training. The Union believes its proposal would protect the interests and welfare of the public by assuring that only the best trained employees work in the position of lieutenant.

Village Final Offer. The Village's final offer is to maintain the status quo on this issue. It notes that the Union did not present any external comparability data to support its final offer, and that a review of contracts across the comparable unionized jurisdictions does not uncover any such language. Thus, the Village argues, the Union's final offer should be rejected on that basis alone.

The Village also asserts that the determination of whether a lieutenant's position should be filled by a firefighter acting out of classification is a function of management. It notes as well the lack of any evidence in the record to suggest that problems have arisen as a result of firefighters serving as acting company officers.

Discussion. The Union did not identify a single comparable jurisdiction which promotes firefighters to lieutenant automatically upon the completion of a certain number of hours in an acting capacity. The Arbitrator has reviewed the relevant collective bargaining agreements, and concludes that there is absolutely no support among the comparables for the Union's final offer on this issue.

The Union's concern for the public interest is noted, and the Arbitrator places great weight on that statutory criterion. However, there is no evidence in the record before me to suggest that the current way of administering promotions has been repugnant to the public interest.

The parties have lived with the current system for a number of years, and the Union has had several opportunities at the bargaining table to modify it. There is no indication in the arbitration record that the status quo has caused a great deal of strife between the parties. If it does become problematical, the Village and the Union can and should work it out through free collective bargaining. An interest arbitrator should not abandon or modify a longstanding way of doing things absent compelling evidence that such action is necessary. There is no such evidence in the record here.

The Village's final offer on this issue is adopted.

Economic Issue No. 22 - Paramedic Trainee

Union Final Offer. The Union's final offer amends Article XVI (Miscellaneous) by adding the following provision as Section 9:

Probationary firefighters completing their pre-certification internship will be assigned to an ambulance company staffed by two (2) certified firefighter/paramedics until the internship is finalized.

The Union believes that its proposal will provide the best possible training opportunities because it maximizes the exposure of probationary paramedics to certified, experienced paramedics. Accordingly, the Union asserts, adoption of its final offer would be in the public interest.

According to Fire Lieutenant Bob Levin, the current probationary paramedics are not receiving the best possible training opportunities because they are not observing on a daily basis the routine and complex emergency service calls handled by certified paramedics. Paramedic trainees are now occasionally assigned to a fire company, thereby precluding them from being dispatched with the ambulance to basic life support calls. Levin testified that the lack of such exposure creates a very real problem because the trainees miss out on valuable experiences necessary to a well-rounded paramedic training experience.

The Union notes that the department's general policy is to have provisional paramedics ride in the ambulance on any day the department's minimum staffing standards have been met. Thus, since the provisional paramedic is assigned to the ambulance a majority of the time anyway, the cost impact of the Union's final offer would be minimal.

The Fire Chief acknowledged that when an ambulance is being dispatched to an advanced life support service call and the engine company is being diverted to a fire, the provisional paramedic would go to the fire. Thus, the trainee would lose the chance of participating in that ambulance run. The Union argues that such lost experiential opportunities would delay the time required for the trainee to progress from provisional to permanent status.

Village Final Offer. The Village wishes to maintain the status quo on this issue, meaning that the Agreement would not contain a specific requirement concerning paramedic trainees and ambulance assignments. The Village notes that in order to become certified as a paramedic in the State of Illinois a firefighter must first take the necessary classes and pass the written examination, after which he or she must complete a three-month probationary period. Part of the probationary period involves ambulance assignments where the trainee works as a paramedic along with paramedics who are fully certified. The Village explains that when staffing needs do not allow probationary paramedics to be assigned to ambulances, they are assigned to fire companies. In such instances the probationary paramedics

attend paramedic calls with the engine company, not with the ambulance.

In situations where paramedic calls do not appear that they will involve advanced life support services, only an ambulance is dispatched. Thus, the Village asserts, if a paramedic trainee assigned to an engine company missed the opportunity to accompany the ambulance to such a call, the training experience lost would not be significant.

The Village argues as well that there is no evidence to support the Union's assertion that the current practice results in less than completely qualified paramedics. Furthermore, the Village claims, the Union's final offer is nothing more than a thinly veiled attempt to require the Village to hire back firefighters to meet the staffing requirements created by preventing it from assigning probationary paramedics to engine companies.

The Village also notes that every witness who testified on this issue acknowledged that the way in which the Schaumburg Fire Department qualifies paramedics to become certified complies with all State of Illinois and Northwest Community Hospital EMS System requirements. Furthermore, Fire Chief Lacey's survey of all other participants in the Northwest Community Hospital EMS System confirmed that those departments were handling the paramedic internship period in the same way as does the Schaumburg Fire Department. The Village also asserts that there is no support among the external comparables for adoption of the Union's final offer on this issue.

Discussion. There is no evidence in the record to support the Union's suggestion that paramedics under the current probationary system in Schaumburg receive less than adequate training. Likewise, the record contains no evidence to suggest that the Schaumburg Fire Department is not in complete compliance with all State of Illinois and Northwest Community Hospital EMS System requirements. A review of the relevant collective bargaining agreements from comparable communities has not identified a single one which includes a provision such as that sought by the Union here. For all of those reasons, the Arbitrator concludes that the current system is not harmful to the public interest, as the Union suggests.

The Village's final offer on the Paramedic Trainee issue is adopted.

Economic Issue No. 23 - Term of Agreement

Inasmuch as the parties' final offers both provide for a three-year term through April 30, 1999, the Arbitrator will not address this issue.

NON-ECONOMIC ISSUES

Non-Economic Issues No. 1 - Seniority/Shift Assignments and 2 - Seniority/Company Assignments

The parties' positions with regard to the above issues do not vary markedly from one to the other. Accordingly, both issues will be discussed together here.

Union Final Offers. The Union's final offer on Shift Assignments proposes the following new language as Section 8 of Article VI (Seniority, Layoff and Recall):

Employees shall be allowed to select their shift assignment, on the basis of seniority by date of hire, then ranked placement on their respective list of eligibility for hire. The process for requesting transfers of shifts shall follow the protocol as set forth within:

1. Subsequent to all assignments made after January 1 and before January 5 of the first contract year after ratification, upon a request for transfer, that shift assignment from which the request originated will be considered "open." Only those "open" positions will be considered available for a shift transfer.
2. By June 30 of each succeeding calendar year, all requests for shift assignment must be submitted in writing to the Fire Chief.
3. Upon availability of a requested shift, each employee who has requested a transfer of shift, shall be notified in writing by September 30 of that year, that his request will be either; (sic) granted, or denied with the pertinent explanation. A shift manpower assignment list will be provided to the Association upon the completion of shift assignment notification. Transfer will occur after January 1 and before January 5 of the following year.

4. Notwithstanding the foregoing provisions of this section, in situations involving the need to fill any manpower position, the Fire Chief, or his designee, retains the right to assign any employee to any shift on a temporary basis if he determines that such a temporary assignment is necessary or appropriate in a specific instance. The assignment of employees shall not be used as a punitive action.

The Union's final offer on Company assignments amends Article VI by adding a new Section 9. It is quoted below:

Employees shall be allowed to select their company assignment or department division assignment, on the basis of seniority by date of hire, then ranked placement on their respective list of eligibility for hire. The process for requesting such assignments shall follow the protocol as set forth within:

1. Upon ratification of this agreement the Fire Chief shall prepare and post the qualifications for company assignments. The Fire Chief retains the sole right to determine and change from time to time qualifications and numbers of employees for all assignments under this section.
2. Subsequent to all assignments made after January 1 and before January 5 of the first contract year after ratification, upon a request for a specific assignment, that assignment from which the request originated will be considered "open." Only the Open positions will be considered available for a company assignment transfer.
3. By June 30 of each calendar year, all requests for assignment must be submitted in writing to the Fire Chief.
4. Upon availability of a requested assignment, each employee who has requested a transfer of assignment, shall be notified in writing by September 30 of that year, that his request will be either; (sic) granted, or denied with the pertinent explanation. A company assignment roster will be provided to the Association upon the completion

of assignment notification. Assignments will be filled after January 12 and before January 5 of the following year.

5. Notwithstanding the foregoing provisions of this section, in situations involving the need to fill any manpower position, the Fire Chief, or his designee, retains the right to assign any employee to any company on a temporary basis if he determines that such temporary assignment is necessary or appropriate in a specific instance. The assignment of employees shall not be used as a punitive action.
6. Fire apparatus of similar purpose shall not be arbitrarily located.

The Union asserts that these issues are within the Arbitrator's jurisdiction to decide. Principally, the Union argues that its final offer does not impair the Village's statutory mission to provide emergency services. In its subsection 4, the Union notes, the final offer expressly retains the Fire Chief's right to assign any employee to any shift on a temporary basis if he determines that such assignment is necessary or appropriate. It also notes that its final offer does not challenge the employer's right to set the number of employees to be assigned to each shift. The Union therefore argues that its final offer meets the tests set forth by the Illinois State Labor Relations Board in Village of Arlington Heights.²¹

The Union believes the adoption of its proposal would protect bargaining unit members from widespread annual changes in shift assignments. According to the unrebutted testimony of Firefighter Huey L. Adams, deputy chiefs told him in a February, 1997 meeting of an imminent change in assignment procedures whereby employees would be assigned to new positions each year thereafter. Adams testified as well that he has always worked on the same shift in his twenty plus years of service, and that doing so has been his preference. The Union believes that changes in work teams and fire company assignments would be unsettling to employees, and argues that the Village has offered no testimony to support the unilateral changes it wants to make.

The Union cites Chief Lacey's testimony as well, wherein he stated that in the event of another re-balancing of shifts similar to the one caused by the opening of Station 4 in 1992, he would ask employees to list their first, second and third choices. He acknowledged that there would be another realignment of employees in 1998. He acknowledged as well that the Union's final offer retains his right to post company

²¹ 6 PERI ¶2052 (IL.SLRB G.C. 1992).

assignments and decide the qualifications for such assignments as the specific training requirements for trucks and ladders, hazardous material, handling above and below ground rescue, and technical rescue specialties.

The Fire Chief further acknowledged that the right to make temporary assignments outlined in the Union's final offer is consistent with his current rights. The Union assured the Chief that a temporary assignment could be made under its final offer to fill a position vacated for three months or longer by an injured employee.

The Union argues that the compelling reasons for granting its proposal are the likelihood that the Chief will implement annual shift changes system wide. Because the Chief allowed employees to exercise their preferences when he implemented the 1992 reassignments, the Union believes its seniority proposals do not constitute a dramatic change from the way he has chosen to operate in the past. Thus, the Union argues, its proposal does not remove authority from the Fire Chief, it simply assures that shift and company assignments will not be made on an arbitrary or discriminatory basis.

The Union also points to the external comparables in support of its offer on these issues. It notes that station and shift assignment provisions appear in the collective bargaining contracts of Arlington Heights, Elk Grove Village, and Hoffman Estates. And in Hoffman Estates, the Union emphasizes, seniority is used for assignment to fire companies and apparatus.

Village Final Offer. The Village asserts that these two issues are not mandatory subjects of bargaining. From its understanding of the Union's final offers, the Chief could make shift and Company assignments for the first year after ratification on whatever basis he deemed appropriate. From that point forward, however, he would be prohibited from assigning any firefighter or fire lieutenant to another shift or company on a permanent basis in the absence of voluntary agreement. Over time, this would necessarily result in imbalances that the Chief would have no authority to rebalance on a permanent basis. That such proposals are not mandatory subjects of bargaining is clear from the ISLRB General Counsel's Declaratory Ruling in Village of Evergreen Park.²²

Because the Union's final offers would lock shift and company assignments in concrete after the first year following ratification, they do not provide the Village with appropriate discretion to meet the legitimate interests identified by the ISLRB in Evergreen Park. Nor do their provisions granting the Chief the right to make temporary assignments ameliorate the negotiability of the Union's final offers — especially given the Union's refusal to define how long a temporary assignment

²² 12 PERI ¶2036 (July 22, 1996).

could last.

Assuming for the sake of argument that the Arbitrator deems the Union's final offers on shift and company assignments to be mandatory subjects of bargaining, the Village argues that external comparability data dictate their rejection. It notes that Des Plaines, Elgin and Mt. Prospect have no provision in their collective bargaining agreements with regard to shift assignment. While Arlington Heights and Elk Grove Village have such provisions, they specifically provide that the fire department has the final right to make shift assignments so long as they are not arbitrary, discriminatory or capricious. Only in Hoffman Estates, the Village argues, is there a contract provision that appears to freeze firefighter shift assignments absent a request to change shifts. Moreover, the Village notes, Hoffman Estates is the only comparable jurisdiction which has a clause in its firefighter contract regarding company assignments.

The Village also believes there is no compelling reason for making the changes embodied in the Union's final offers on shift and company assignments. And if a change is in order, the Village argues, it should not be so radical as that proposed by the Union. Rather, it should be more akin to the contract language in Arlington Heights and Elk Grove Village, where firefighters and fire lieutenants can submit shift and station assignment requests and the fire chiefs make shift and station determinations based upon the operational needs of the departments, provided that such determinations are not arbitrary or capricious.

Discussion. Both parties have asked the Arbitrator to determine whether the shift and company assignment issues are mandatory subjects of bargaining. Put another way, neither has asserted in these proceedings that the Arbitrator has no authority to do so. And the parties have provided no indication that these matters are currently pending before the ISLRB. Accordingly, the negotiability --- and hence, the arbitrability --- of the shift and company assignment issues will be considered here.

According to guidelines set forth by the ISLRB General Counsel in Evergreen Park,²³ a union proposal concerning shift assignments on the basis of seniority is integrally and closely related to employee wages, hours and terms and conditions of employment. However, she explained, "a proposal concerning shift assignment must also accommodate an employer's legitimate interests in fulfilling its governmental mission." That balancing test will be used here to determine whether the Union's shift and company assignment final offers are mandatory subjects of bargaining.

²³ Supra.

It is imperative in the fire service to have an appropriate mix of experience on a particular shift and company assignment roster. First, the more experienced fire lieutenants and firefighters provide training for those not so experienced --- by example at the very least. Rookie firefighters need such guidance not only to develop expertise themselves, but also for their own personal safety. Second, it is in the public interest to have experienced persons assigned to each shift and company. Without such representation, an entire shift might be composed of newly-minted firefighters. While such persons are adequately trained when they emerge from the fire academy, they lack on-the-job experience so valuable to the public safety.

In the Arbitrator's view, the Union's proposals on shift and company assignments would severely compromise the Chief's ability to ensure that a proper mix of experience would be characteristic of each shift and company assignment roster. The seniority-based right embodied in those proposals might well result in the more popular shift and company assignments being filled exclusively by high seniority (i.e., the more experienced) firefighters and fire lieutenants. Conversely, the less desirable assignments would likely be filled exclusively by less senior, less experienced persons. While the Union's offers do provide that the Chief can fill assignments at his own discretion on a temporary basis, the offers themselves do not define "temporary." Thus, the organizational chaos that might result from adoption of the Union's proposals could easily infringe on the Chief's ability to staff shifts and companies on a stable basis. Stability is an important part of managing any organization efficiently and effectively, and it is an important consideration here.

The Union argues, however, that its final offers on these issues constitute an exception to the general guidelines set forth in Evergreen Park, citing an earlier declaratory ruling involving the Village of Arlington Heights.²⁴ But a review of the latter ruling reveals that the union proposal deemed to be a mandatory subject of bargaining by the ISLRB differed from those advanced by the Union here in a very significant respect. In Arlington Heights the union proposal for bidding on shift and station assignments on a seniority basis expressly retained for the Employer "the right to assign a number of employees to shifts based upon its assessment of employee skills and without regard to seniority." The Union in the present case has submitted no evidence to suggest that the union proposal in Arlington Heights afforded the employer only a temporary fix to remedy experience allocation imbalances, as do its own final offers. Accordingly, the Arbitrator concludes that the Union's final offers on shift and company assignments do not fall within the Arlington Heights exception noted in Evergreen Park.

For all of the foregoing reasons, the Arbitrator has determined that the Union's final offers on Non-Economic Issues No. 1 and 2 are not mandatory subjects of

²⁴ Supra.

bargaining. I therefore have no authority to address their merits.

Non-Economic Issue No. 3 - Vacation Scheduling

The parties have reached a tentative agreement on this issue.

Non-Economic Issue No. 4 - Physical Fitness

Union Final Offer. The Union proposes the addition of the following new section to Article XVI (Miscellaneous):

Section 10. Upon the ratification of this Agreement, the Village and the Association shall initiate Labor-Management meetings to specifically research, design, test and evaluate a physical fitness program which will include individualized goals for each employee. The mission of these meetings will be to cooperatively determine job-related physical fitness standards. Upon the positive and successful evaluation of the Firefighters Physical Fitness Program by the Labor-Management Committee, the Association shall ratify the standards and test as part of the SPFFA contract, delete paragraphs 1 and 2 of this Section and replace it with the language for or reference to the policy for the Firefighters Physical Fitness Program.

Should the joint efforts of the Labor-Management committee not result in a mutually agreed upon Firefighters Physical Fitness Program that includes the individual goals, standards, rewards and remedies for not meeting the standards of any testing procedure within a time frame of one (1) year from ratification of the SPFFA contract, then the entire Section 10 shall be stricken and considered null and void.

Any employee who demonstrates the ability to meet the job-related physical fitness standard shall be relieved of his obligation to participate in any department physical fitness program.

The Village agrees that upon the implementation of a job-related standards test, the Village has precluded any right to terminate any employee who meets or exceeds the standards based solely on that employee's age.

The Union notes that unlike the relevant provisions in the Arlington Heights and Elk Grove Village contracts, the Village's final offer would not protect from termination those employees who make a good faith effort to meet the individualized goals of its proposed mandatory fitness program. Thus, the Union argues, the Village's offer is too harsh.

The Union asserts as well that the Village's proposal is substantially different from the fitness program currently in use in the Schaumburg Police Department. That program provides economic incentives, including at least one day off if specified fitness standards are met. Moreover, the Union points out, nothing in the police physical fitness order provides for the termination of employees. Instead, the plan is based upon incentives for employees who achieve good and excellent ratings. The Union points to the fire command collective bargaining agreement as well, emphasizing that it makes absolutely no reference to physical fitness and, therefore, does not contain a designated right to terminate for failure to meet physical fitness standards.

The Union believes that joint efforts for a physical fitness program are necessary to create a credible program in which employees willingly participate. That approach has been used in Elgin and other municipalities, where physical fitness programs are discussed and created by joint labor-management committees.

The Union's final offer also seeks protection for senior employees who exceed the physical fitness standards and who want to continue working beyond age 63, the age threshold for police and fire employees under the Age Discrimination in Employment Act. No provision in that Act requires a governmental unit to terminate an employee in the fire service beyond age 63.

Village Final Offer. The Village proposes the addition of the following new Section 9 to Article XVI:

Section 9. Physical Fitness Program. The Village may establish a mandatory physical fitness program which, if established, will include individualized goals. Before any new program is implemented, the Village shall review and discuss the program at a meeting of the Labor-Management Committee.

The foregoing shall not be construed to either relieve an employee of his obligation to meet reasonable job-related physical fitness standards that may be established by the Village or interfere with the Village's right to terminate an employee who is unable to meet job-related physical fitness standards.

The Village notes that both parties have expressed an interest in maintaining an appropriate level of fitness for firefighters. It asserts that support for the individualized goals and mandatory nature of its physical fitness program mirror contract language found in Arlington Heights and Elk Grove Village. Furthermore, the Village argues, it is important to specify what happens if an employee is unable to meet reasonable job-related physical fitness standards.

The Village believes there are several problems with the Union's final offer on this issue: (1) the bargaining unit would have to ratify any program established by the Labor Management Committee; (2) the program established by the Labor Management Committee and ratified by the bargaining unit would be contractualized and subject to the grievance procedure; (3) it does not expressly provide that the Village could establish its own program if the Labor Management Committee fails to come up with a physical fitness program within the one year time frame; and (4) its last paragraph seemingly prohibits the adoption of a mandatory retirement age now clearly legal under legislation passed by both Congress and the Illinois General Assembly.

Discussion. This issue is an extremely important one, for it involves the safety of members of the bargaining unit. It relates to the public interest as well, because firefighters who are less than fit physically would have difficulty performing such tasks as dragging hoses, wielding axes, and carrying victims from burning buildings. The importance of this issue is magnified even more by the fact that firefighter job security is involved.

Having reviewed both parties' positions carefully, the Arbitrator has concluded that the Village's final offer is too harsh. It would permit the Village to design its own physical fitness program with no input from firefighters themselves. Input from the Union would only be permitted after the program itself had been designed. And even then, the Village's only obligation under its offer would be to "review and discuss" its physical fitness program with the Union. Such a procedure has no teeth. It could be abused by the Village to the extent that the very persons covered by the mandatory program might not have any real say in its design.

Moreover, the Village's final offer expressly grants the Village the right of the Union is adopted.3. Economic Issue No. 5 - Paramedic Pay. The final offer of the Union is adopted.4. Economic Issue essentially, the Village seeks the unilateral right to design its own physical fitness program, to merely "review and discuss" it with the Union, and to terminate employees who do not conform to it. Such a proposal seems largely one-sided, leaving the Union and its members in the unenviable position of having to comply with a physical fitness program designed unilaterally by persons who might not be covered by it themselves -- or be fired. It is doubtful that the

Union would ever agree to such an approach at the bargaining table.

The Union's final offer is not without its flaws either. For example, it does seem to prohibit the Village from exercising its legal rights under the Age Discrimination in Employment Act. That issue was not addressed to any great length by either party in these proceedings. Absent more information, the Arbitrator is unwilling to adopt a provision of such legal significance.

The Union's insistence that a physical fitness program should be ratified by the bargaining unit seems appropriate, inasmuch as bargaining unit members would be directly affected by its content. Moreover, the provision in the Union's final offer to include "language for or reference to the policy for the Firefighters Physical Fitness Program" in the collective bargaining agreement also seems reasonable. Unless the Village agreed to the Program's content, it would not be referenced in the contract; thus, the Village could easily prevent objectionable elements from being included.

This issue is too important to be determined unilaterally by either party. Both the Village and the Union have a vested interest in the physical fitness of firefighters and fire lieutenants. They each have a somewhat unique perspective as well. For example, a fire chief who has not recently endured the physical demands of being a firefighter would benefit greatly by input from current firefighters as to the level of fitness necessary for today's approach to fire suppression.

For all of the foregoing reasons, the Arbitrator adopts the Union's final offer on this issue, with the exception of its last paragraph. As noted, the legal questions embodied in that paragraph were not sufficiently addressed in these proceedings to justify its adoption.

Non-Economic Issue No. 5 - Family and Medical Leave Act

Village Final Offer. The Village's final offer on this issue is to add the following new Section 6 to Article XII (Leaves of Absence):

Section 6. Family and Medical Leave Act of 1993. The parties agree that the Village may take whatever reasonable steps are deemed to be needed to comply with the Family and Medical Leave Act of 1993.

The Village asserts that its offer merely confirms its right to do what is necessary to comply with the Act. In contrast, it argues, the Union's final offer would dictate how certain issues should be handled and dramatically restrict the Employer's limited flexibility in carrying out its obligations under the Act. The Village also

notes that it has been implementing the Act since 1993 and the Union has not identified any related problems which would justify adoption of its final offer.

The Village also believes that the internal comparability factor supports acceptance of its final offer, since the following collective bargaining agreements contain exactly the language it proposes here: (1) the Fire Command agreement; (2) the MAP contract covering rank-and-file police officers; and (3) the FOP contract covering police command officers.

Union Final Offer. The Union's final offer amends Article XVI (Miscellaneous) with the addition of the following new section:

Section 11. The Village shall comply with its obligations under the Family and Medical Leave Act. Eligible employees shall be entitled to family and medical leave for a period of up to twelve (12) work weeks during a twelve (12) month period for any of the following reasons:

- (1) for the birth of an employee's child and to care for the newborn child;
- (2) for the placement with the employee of a child for adoption or foster care;
- (3) to care for the employee's spouse, child or parent with a serious health condition;
- (4) due to a serious health condition which makes the employee unable to perform the duties of his or her job.

Such leave shall be without pay unless the Village or the employee determines to substitute accrued paid leave for which the employee is eligible, provided that the Village may not require an employee to substitute accrued compensatory time off or vacation time for unpaid leave. Employees shall not be compelled by the Village to use their vacation time or accrued time off or compensatory time in connection with a leave taken under this section. In the event that an employee has scheduled and paid for a vacation prior to becoming aware of the need for an FMLA leave and the employee is thereafter required to exhaust his/her accrued vacation in connection with said leave, the employee shall be granted an unpaid leave for the duration of the previously scheduled vacation, provided that the employee may elect to use and shall be paid for accrued compensatory time off. During any

leave taken under the Family and Medical Leave Act, the employee's group health insurance coverage shall be maintained and paid for by the Village as if the employee was working, and seniority shall continue to accrue.

An employee desiring to take leave under this section shall provide reasonable advance notice to the Village. Reasonable advance notice shall be no less than thirty (30) days where possible, and where advance notice cannot be provided, the employee shall provide notice within forty-eight (48) hours after the employee is able to do so. Except as may be specifically stated in this Agreement, employees shall take leave provided for as permitted by the provisions of the Family and Medical Leave Act. Employees shall have a right to return to the same position the employee held or to an equivalent position under the contract.

The Union believes the Village should be barred from compelling employees to use vacation time, accrued time off or compensatory time in connection with any leave taken under the Family and Medical Leave Act of 1993. While FMLA leave is generally unpaid, the Union notes, the Act permits employees to substitute paid medical or sick leave to care for a seriously ill family member only if the employer's leave plan allows paid leave to be used for that purpose. It also allows for paid vacation or personal leave to be substituted, at either the employee's or the employer's option. If neither the employee or employer elects to substitute paid leave for unpaid FMLA leave, the employee remains entitled to use all paid leave earned or accrued. The Union believes it is appropriate to give employees the option not to use paid time off for FMLA leave.

The Union advances its final offer with full knowledge that the internal comparables contain the same language as proposed by the Village. However, it still believes its proposal is the more reasonable because it allows employees to use paid time off for leisure activities rather than be compelled to use it during a period of family stress.

Discussion. The philosophy behind the Union's final offer is laudable, particularly when one envisions the potential situation where an employee saddled with a major health issue might be forced to exhaust earned vacation time during FMLA leave. On the other hand, there is no evidence in the record to suggest that the Village has administered FMLA leave in an unreasonable, harsh or cavalier manner. Absent such evidence, the Arbitrator is unwilling to adopt the Union's final offer on mere speculation about what might happen in the future.

The internal comparables provide strong support for selection of the Village's final offer on this issue as well. The fire command unit, and police rank-and-file unit, and the police command unit all contain exactly the language it proposes here. That language simply confirms the Village's right to take reasonable steps to comply with the Act. It does not seem to grant the Village any rights it does not already have under the Act. For that reason, and in view of the substantial support the Village's final offer derives from the internal comparables, it is hereby adopted.

Non-Economic Issue No. 6 - Americans With Disabilities Act

Village Final Offer. The Village's final offer on this issue would incorporate the existing language into Section 1 entitled "Generally" and add the following new Section 2:²⁵

Section 2. Americans with Disabilities Act. The parties agree that the Employer may, notwithstanding any other provisions of this Agreement, take action that is in accord with what is legally permissible under the Act in order to be in compliance with the Americans with Disabilities Act.

The Village asserts that substantial support for its final offer is found by both the ADA's legislative history and the EEOC's advice concerning how the parties can comply with their obligations under the ADA. Both of those sources support the adoption of contract language permitting an employer to "take all actions necessary to comply" with the Act. The Village argues that since its final offer tracks recommendations by Congress and the EEOC, it should be adopted.

The Village relies on the internal comparables for support of its final offer as well. It notes that both the MAP and FOP contracts contain "essentially similar" ADA language. The Village also notes that the language in the MAP contract is the product of Arbitrator George Fleischli's 1994 interest arbitration award.

Union Final Offer. The Union's final offer amends Article XVI with the addition of the following new Section 12:

Section 12. In the event the Village shall be required to make a reasonable accommodation under the Americans with Disabilities Act to the disability of an applicant or incumbent employee that may be in conflict with the right of an employee under this Agreement, the

²⁵ In its posthearing brief the Village did not identify the relevant article number.

Village shall bring this matter to the attention of the union. In the event the parties cannot reach an agreement on such accommodation, the provisions of Article IX shall be available, and the arbitrator shall consider the Village's and the union's (if any exist) obligations under the Americans with Disabilities Act and this Agreement, provided that no employee shall be displaced by such decision.

The Union believes that collective bargaining over ADA accommodations is necessary to ensure protection of such contractual provisions as seniority rights. It further notes that the NLRB General Counsel opined it "seems unlikely that an employer would be privileged to unilaterally change working conditions to achieve compliance with the ADA without giving the union any notice or opportunity to bargain."²⁶

The Union also argues that the Village's proposal gives it carte blanche authority to comply with the ADA absent any consultation whatsoever with the Union. Such an approach has already been rejected by one interest arbitrator in Schaumburg, the Union notes, since Arbitrator Fleischli expressed justifiable concern over actions taken by the Village which might be contrary to the terms of the collective bargaining agreement yet might be required by law.

Discussion. The Village's final offer contains the very significant phrase "notwithstanding any other provisions of this Agreement." Such language would seemingly allow it to violate any provision of the collective bargaining agreement in order to comply with the ADA. It raises questions as well concerning the Union's right to grieve such violations. Like Arbitrator Fleischli, I too am troubled by such a sweeping provision.²⁷ Fleischli's answer to the problem was to craft and adopt the following language for Schaumburg rank-and-file police officers:

It is agreed that the employer has the right to take any actions necessary to be in compliance with the requirements of the Americans With Disabilities Act. Nothing herein is intended to preclude the union from grieving or arbitrating any village action which, in its view, violates the agreement and is unnecessary in order to comply with such act.²⁸

²⁶ Memorandum G.C. 92-9 (August 7, 1992), 158 DLR No. 158, E-1, 1993 WL 407395; Bozeman Deaconess Hospital, 322 NLRB 1107, 1118 (1997).

²⁷ See Village of Schaumburg and Schaumburg Lodge No. 71, Illinois Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-93-155 (Fleischli, 1994), at pp. 43-44.

²⁸ *Ibid*, at 45.

The undersigned Arbitrator sees merit to adopting the above language. It preserves the Union's right to grieve and arbitrate any Village actions it believes are inappropriate. Without such preservation the Village would have a seemingly unfettered right to trample on agreement provisions under the guise of ADA compliance. Such broad-brush, unilateral authority to violate the negotiated agreement does not seem appropriate.

The Union's final offer is not without its potential problems either. It would force the Village to bargain over its ADA compliance actions before they were implemented. Such a process is contrary to the well-accepted method of administering collective bargaining agreements wherein the employer takes an action under the mantle of its administrative authority to run the organization and the union, if it chooses, may protest that action through the grievance procedure.

It is true that the language proposed by the Village is essentially the same as that found in the FOP police command contract. It is significantly different from that found in the MAP rank-and-file contract, as already discussed. It cannot therefore be said that the internal comparables support adoption of the Village's final offer.

For all of the aforesaid reasons, the Arbitrator adopts the following language on this issue:

It is agreed that the Village has the right to take any action necessary to be in compliance with the requirements of the Americans With Disabilities Act. Nothing herein is intended to preclude the Union from grieving or arbitrating any Village action which, in its view, violates the agreement and is unnecessary in order to comply with such Act.

Economic Issue No. 7 - Drug and Alcohol Testing

Village Final Offer. The Village proposes the addition of the following new last paragraph to Article XXI (Drug and Alcohol Testing):

Notwithstanding the provisions set forth above, employees who may be or are regularly assigned to operate fire apparatus vehicles shall comply with the Village's Drug and Alcohol Testing Policy for Village employees who are regularly required to operate heavy vehicles.

The Village employs public works employees who are required to possess a commercial driver's license to operate certain vehicles and equipment. It has

adopted a policy as required by the Department of Transportation (DOT) "to prevent accidents and injuries resulting from the misuse of alcohol and/or substance abuse by drivers of motor vehicles." The policy applies to every employee required to maintain a commercial driver's license as part of a job requirement. However, the State of Illinois has exempted firefighting personnel from the requirement to have such a license. The Village asserts that by their size and weight fire apparatus operated by some members of the bargaining unit would unquestionably fall under the coverage of DOT requirements, were it not for the State's exemption of fire service personnel. Thus, the Village argues, for that reason alone the same drug and alcohol testing provisions applicable to Village employees who operate heavy equipment should likewise be applicable to firefighter bargaining unit members who operate even heavier equipment.

The Village acknowledges that there is no evidence of drug or alcohol abuse having resulted in accidents or injuries among firefighters who operate heavy equipment. It asserts, however, that it should not be forced to wait until such accidents or injuries occur before having the ability to take preventive measures. It encourages the Arbitrator to rely on the age old maxim, "Better safe than sorry," and accept its final offer on this issue.

Union Final Offer. The Union's final offer is to maintain the status quo on this issue. The Union notes that the parties have already negotiated an extensive drug and alcohol testing clause that is two and one-half pages in length and does not allow for random drug testing. The clause was agreed upon in negotiations for the 1990-1993 agreement and was carried over virtually unchanged into the successor agreement. It protects employee interests by requiring reasonable suspicion prior to any drug and alcohol testing.

The Village presented no evidence of necessity for its proposed random testing clause. Moreover, the Union argues, a contractual reference to Village policy would create the situation where the Village could unilaterally change the policy and, in doing so, unilaterally change the contract.

The Union also notes that none of the external comparables refer to heavy vehicle operation or a special kind of drug testing for employees who operate vehicles. It points out as well that none of the comparable collective bargaining agreements contain provisions for random drug testing.

Discussion. The Village's wish to institute random drug and alcohol testing represents a quantum departure from the "reasonable suspicion" testing procedure negotiated by the parties themselves in 1990 and carried forward into the

next collective bargaining agreement. For the past eight years the parties have lived together under that negotiated provision, and neither reported in these proceedings the existence of any problems associated with it --- safety related or otherwise. That historical evidence strongly supports adoption of the Union's offer here.

Examination of collective bargaining agreements across the external comparables strongly supports the Union's final offer as well. In Arlington Heights employees are required to submit to a urinalysis and/or other appropriate test "if the Village determines there is reasonable suspicion that the employee has been using alcohol and/or drugs . . ." ²⁹ In Des Plaines, the firefighters' association is involved in "all drug policy decisions," and there is no indication in the collective bargaining agreement that random testing is allowed. The Elgin agreement provides that the city may require an employee to submit to urine and/or blood tests if it determines there is "reasonable suspicion" for such testing. In Elk Grove Village, there is no provision for random testing. Rather, employees are required to submit to testing if the employer determines there is "reasonable suspicion" for doing so. ³⁰ And in Hoffman Estates, where the parties negotiated a comprehensive and detailed Substance Abuse Policy, the firefighters' contract includes the following policy statement:

It is the policy of the Hoffman Estates Fire Department to not have random testing or "across the board" blood and urinalysis testing of all employees for the purpose of detecting substance abuse.

The Hoffman Estates negotiated Policy goes on to specify that testing will be required where there is "reasonable individualized suspicion" of the improper use of drugs or alcohol.

The negotiated provisions referenced above mirror the language found in the current Schaumburg Professional Firefighters Association contract. It begins with the following paragraph:

The Village may require an employee to submit to urine and/or blood tests if the Village determines there is reasonable suspicion for such testing, and provides the employee with the basis for such suspicion in writing within 48 hours after the test is administered.

In the Arbitrator's view, and apparently in the view of employers and unions across the comparable jurisdictions as well, the above provision sets the proper balance

²⁹ Employees are also required to submit to such tests as part of their biennial medical examination.

³⁰ The provision also allows for drug/alcohol testing during the biennial medical examination.

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 has decided that the following provisions shall be included in the parties' May 1, 1996 - April 30, 1999 collective bargaining agreement, along with all of the matters agreed to by the parties themselves:

1. Economic Issue No. 3 - Pay Raises for Fire Lieutenants (Removal of Step Plan). The final offer of the Village is adopted.
2. Economic Issue No. 4 - Retroactivity. The final offer of the Union is adopted.
3. Economic Issue No. 5 - Paramedic Pay. The final offer of the Union is adopted.
4. Economic Issue No. 6 - Acting Out of Classification Pay. The final offer of the Village is adopted.
5. Economic Issues No. 7, 8 and 9 - Specialty Pay. All three of these matters are considered to be a single issue in these proceedings. The final offer of the Village is adopted.
6. Economic Issue No. 10 - Holiday Pay. The final offer of the Village is adopted.
7. Economic Issue No. 11 - Personal Days. The final offer of the Village is adopted.
8. Economic Issue No. 13 - Funeral Leave. The final offer of the Union is adopted.
9. Economic Issues No. 16 and 17 - Quartermaster Maintenance Allowance. The Arbitrator asserts jurisdiction over these two matters, which are considered to be a single issue in these proceedings. The final offer of the Village is adopted.
10. Economic Issue No. 18 - Work Cycle for Shift Employees. The final offer of the Union is adopted.
11. Economic Issue No. 19 - Compensatory Time. The final offer of the Union is adopted.
12. Economic Issue No. 21 - Promotions. The final offer of the Village is adopted.

among the public interest and the privacy rights of individual firefighters. I find no compelling reason in the record before me to depart from it.

The Union's final offer on this issue is hereby adopted.

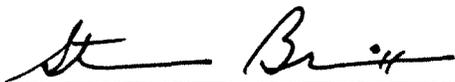
Non-Economic Issue No. 8 - Grievance Procedure (Wording of Step 3)

The parties have reached a tentative agreement on this issue.

13. Economic Issue No. 22 - Paramedic Trainee. The final offer of the Village is adopted.
14. Non-Economic Issue No. 1 - Seniority/Shift Assignments. The Arbitrator does not have jurisdiction over this issue.
15. Non-Economic Issue No. 2 - Seniority/Company Assignments. The Arbitrator does not have jurisdiction over this issue.
16. Non-Economic Issue No. 4 - Physical Fitness. The final offer of the Union is adopted on this issue, absent its last paragraph.
17. Non-Economic Issue No. 5 - Family and Medical Leave Act. The final offer of the Village is adopted.
18. Non-Economic Issue No. 6 - Americans With Disabilities Act. The Arbitrator adopts the following language on this issue:

It is agreed that the Village has the right to take any action necessary to be in compliance with the requirements of the Americans With Disabilities Act. Nothing herein is intended to preclude the Union from grieving or arbitrating any Village action which, in its view, violates the agreement and is unnecessary in order to comply with such Act.
19. Non-Economic Issue No. 7 - Drug and Alcohol Testing. The final offer of the Union is adopted.

Signed by me at Chicago, Illinois this 23rd day of February, 1998.



Steven Briggs

